



## **Transferring Capital Losses to a Spouse**

What happens when one spouse has capital gains and the other spouse has capital losses? The Income Tax Act prevents taxpayers from triggering a loss by selling a property to a person with whom they do not deal at arm's length, such as a spouse, through the concept of a "superficial loss". A superficial loss is a capital loss realized on a disposition where in the 30 day period before and 30 day period after the sale, an affiliated person acquired the same or similar property, and the same or similar property was still owned by the affiliated person 30 days later. An affiliated person includes one's spouse. If a taxpayer disposes of a property and incurs a superficial loss, the loss is denied and added to the cost of the substituted property.

However, where there is a will there is a way (or at least a way around it) and proper tax planning can utilize the superficial loss rules that will allow spouses to offset gains and losses realized by each other. For example, say a taxpayer purchased a share of a publicly traded company for \$100 and the current market value is \$30. If the taxpayer sold this share to his or her spouse for \$30 (electing to sell the share at its current market value, rather than its cost), the spouse could sell the share for its current market value and realize a \$70 capital loss. This loss could then be used to offset any capital gains he or she may have. The only caveat is that to take advantage of the superficial loss rules, the share must be held by the acquiring spouse for at least 30 days. This type of tax planning can only be used in connection with one's spouse, since the superficial loss rules do not apply on dispositions to children, parents or other family members.