LETTERS TO THE EDITORS

From J P Zigmond
Coopers & Lybrand
Albion Court
5 Albion Place
Leeds LS1 6JP

Dear Sirs,

The No Bounty Formula - Supplemental Thoughts (Volume 2, Issue 2)

I refer to Jeremy Heal's article in the recent issue of The Personal Tax Planning Review.

I do not understand the comment in the penultimate sentence of the third paragraph under the sub-heading *Particular Situations* (i.e the third full paragraph on page 104). In particular this states "*but was unable to set off his losses on other transactions against the deemed gain*".

I am not aware of any restriction on offset of capital losses against capital gains where the *gain arises* on a transaction with a connected person. (There is a restriction where the *loss arises* on a transaction with a connected person.) I am sure I am misunderstanding what Mr Heal is driving at, and I shall be grateful for enlightment.

From Jeremy Heal
Howes Percival
The Guildyard
51 Colegate
Norwich
Norfolk NR3 1DD

Dear Mr Zigmond,

Thank you for your letter, what you say is of course absolutely correct, and I apologise that my sentence was rather misleading.

The normal problem that would arise is, if as you say, that it would be a loss made on the transaction which could not be set off against other gains. On reflection I think I would have done better to expand this sentence to explain that.

What arose in this particular instance was something of an oddity, and for reasons of confidentiality I was anxious not to expand on it because it could have been recognised by others; particularly as those taxpayers had an unfortunate series of investigations following accepting advice from a firm of supposedly reputable chartered accountants who actually recommended a fraudulent course of action. Indeed, your firm (in one of its other offices) was involved in sorting out the problems.

The difficulty in this case was not that the loss as such could not be set off, but that it was not treated as a loss at all because the two parties were not at that time connected and therefore a deemed market value was not taken. The actual consideration was used, which did not produce a loss. To explain it by way of example, imagine the first sale of property with a base value of £400 but with a market value of £300. The actual sale was at a price that was somewhat stretched to meet the base value, i.e., £400, producing no gain or loss. Had the parties been treated as connected on this transaction, there would have been a loss of £100; but they did not become connected until the later transaction so there was no loss then available.

I hope this clarifies your point, which is important, and I am grateful for your inquiry.