Order of set-off between Case V capital allowances and Case V losses brought forward

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This document should be read in conjunction with sections 97, 305, 384, 409A and 485C of the Taxes Consolidation Act 1997

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1. Introduction

Current year Case V (rental) capital allowances are set-off against current year Case V income before Case V losses brought forward from an earlier year. This can be less beneficial for the taxpayer because current year capital allowances are first set against current year Case V income. This reduces the amount of Case V income available to absorb Case V losses brought forward from earlier years. Case V losses can only be set against Case V income unlike current year capital allowances which can be set off against non-rental income.

2. Interaction of Case V capital allowances and losses

The order of set off for Case V losses and capital allowances is:

1. Case V surpluses and deficiencies for the year are combined to arrive at the Case V profits or gains for the year of assessment

2. Capital allowances are then allowed in charging the income to tax. The amount assessed is after the deduction of capital allowances, including capital allowances brought forward from an earlier period. Capital allowances brought forward are treated as set off first before capital allowances of the year of assessment.

3. Losses (deficiencies) brought forward from an earlier period are set off against the amount on which the person is assessed

3. Taxes Consolidation Act 1997 (TCA) sections

The order of set off is clear from the interaction of sections 97, 384 and 305 TCA.

Section 97 is the basic Case V computation section. It is concerned with computing the profits or gains for a year (in subsection (1) “arising in any year”**)** and with allocating income and expenses to individual properties. The result is that the combined surpluses for each rental property is reduced by the combined deficiencies. The section specifically authorises only the deductions specified. There is no reference to a deduction for capital allowances or for Case V losses brought forward and no sequence of deduction for these items.

Case V losses are created when the combined deficiencies exceed the combined surpluses. Section 384 TCA provides for the carry forward of Case V losses from previous years. The losses brought forward are set off against "the amount of profits or gains on which the person chargeable is **assessed** under Case V…."(subsection 2). The loss is set off against the "**assessment"** for the first subsequent year of assessment…"(subsection 3).

Section 305 TCA details how Case V capital allowances are to be used when they are made in "**charging income** under Case V…" (as provided for in section 278 TCA). The 'charging' of a person's income is the bringing of that income into account under Case V and the allowances are made when the income is being brought into account. Current year capital allowances are first set against current year Case V income, if there is a surplus at that stage it can be set sideways against other income of the claimant and that of the claimant's jointly-assessed spouse/civil partner, subject to a maximum annual ceiling of €31,750 (section 409A(2)).

3.1 Sequence of events

First the Case V profits or gains for the year are computed in accordance with section 97 TCA. The only deductions allowed in the computation are those specified in subsection (2).

Capital allowances are defined as allowances other than allowances or deductions to be made in computing income (section 2 TCA). Capital allowances are next deducted from income as computed in accordance with section 97 TCA. Capital allowances are to be given "for any year of assessment… (and) the amount of the allowance shall be deducted from or set off against the person's income … for that year of assessment". The year of assessment is the same one for which profits or gains have been computed in accordance with section 97 TCA.

Finally, section 384 losses are not deductions to be made in computing section 97 profits or gains. Furthermore, they are not deductions that relate to the year of assessment in respect of which profits or gains are being calculated. They relate to an earlier year and are deducted after all deductions for the current year have first been allowed. They can only be deducted from or set off against the profits or gains on which a "chargeable person is assessed for any subsequent year of assessment", (section 384(2) TCA).

Income must be charged before it can be assessed to tax. Capital allowances are made in charging income under Case V. Charged income is therefore income after deducting capital allowances and before the income is assessed and taxed. The current year capital allowances are made in charging income for that year.

Capital allowances brought forward are set off against Case V income. If there are excess capital allowances they may be set off against other non-case V income for the year (section 305(b)(i) TCA). It is only at that stage that the remaining Case V income is assessable and Case V losses brought forward can be deducted.

In summary, section 384 TCA losses are not deductions that can be made in computing income or profits. Section 384 allows for a Case V loss to be brought forward to any **subsequent year of assessment"**. Sections 97 and 305 TCA provide for deductions in a specific year of assessment and therefore take precedence over deductions for items that are to be brought forward from a prior year. The losses brought forward are to be set off against the profits or gains on which the person chargeable **is assessed** under Case V. A person is assessed after the capital allowances have been given in **charging income** for a year.

4. Restrictions of tax relief for high income individuals

Chapter 2A, Part 15 TCA 1997 limits the amount of "specified reliefs" that a high worth individual can use to reduce his or her tax liability in any single year (see Tax and Duty Manual Part 15-02A-01). Capital allowances in respect of the various sectoral and area-based tax incentive schemes are included in the "specified reliefs" to be restricted.

Section 485C(3) TCA 1997 specifies the order in which Case V capital allowances are to be set off. This order applies whether or not an individual is subject to the restriction. Relief is given in a year for capital allowances that are not part of the restricted reliefs in priority to capital allowances that are restricted reliefs. The same principle applies to allowances brought forward that are attributable to both restricted and unrestricted allowances.

5. PRSI

A deduction against Case V income is allowed for capital allowances, but not Case V losses forward, in computing "reckonable income" for the purposes of PRSI and levies.

6. Examples

Example 1:	**€**
Case V profits or gains of year	4,000
Case V Deficiencies brought forward	(3,000)
Case V Capital allowances of year of assessment	(1,000)
Case V Capital allowances brought forward	(500)

Losses and capital allowances will be set off as follows:

Case V profits or gains of year	4,000
Capital allowances	(1,500)
Income assessed under Case V	2,500
Case V Deficiencies brought forward	(2,500)
Net income assessed under Case V	Nil
Case V deficiencies carried forward	(500)

Example 2:	
Case V Profits or gains of year	8,000
Capital allowances brought forward	(1,000)
Capital allowances of year	(20,000)
Case V Deficiencies brought forward	(1,000)

Losses and capital allowances will be set off as follows:

Case V profits or gains of year	8,000
Capital allowances brought forward	(1,000)
Capital allowances of year	(7,000)
Income assessed Case V for year	Nil
Case V deficiencies carried forward	(1,000)
Case V capital allowances available for set off against other income of year	(13,000)*

*Allowances available of €20,000 minus allowances used of €7,000.