Case V excess capital allowances and Case V losses:

Order of set-off for individuals and between jointly assessed spouses and civil partners

Part 04-08-08

This document should be read in conjunction with sections 97, 305, 381, 384, 406, 409A and 485C of the Taxes Consolidation Act 1997

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Revenue
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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 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) provisions

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

Section 97 TCA is the main Case V computation section. It is concerned with computing the profits or gains "arising in any year" (section 97(1)) and with allocating income and expenses to individual properties. The combined surpluses for each rental property are reduced by the combined deficiencies. The section 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" (section 384(2) TCA). The loss is set off against the

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"assessment for the first subsequent year of assessment" (section 384(3) TCA).

Section 305 TCA details how Case V capital allowances are to be used when "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 used 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 for the current year of the claimant and of the claimant's jointly assessed spouse or civil partner, subject to a maximum annual ceiling of €31,750 (section 409A (2) TCA).

3.1 Sequence of calculations

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).

The next step is that capital allowances are deducted from income as computed in accordance with section 97 TCA. Capital allowances are defined as allowances other than allowances or deductions to be made in computing income (section 2 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 deducted in charging income for that year.

Capital allowances brought forward are set off against Case V income. If there are excess capital allowances, those excess capital allowances may be set off against other non-Case V income for the year (section 305(b)(i) TCA).

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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 of Part 15 TCA provides for the “high income individuals’ restriction” (HIIR) which limits the amount of “specified reliefs” that an individual with high income can use to reduce her or his tax liability in a single year. See Tax and Duty Manual Part 15-02A-05 for information on HIIR Capital allowances for the various sectoral and area-based tax incentive schemes which are included in the “specified reliefs” to be restricted.

Section 485C(3) TCA 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 and USC

Capital allowances, but not Case V losses forward, can be deducted from Case V income in computing “reckonable income” for the purposes of PRSI.

Capital allowances, but not Case V losses forward, can be deducted before USC is charged. See sections 7 and 8 of Tax and Duty Manual Part 18D-00-01

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6 Examples of order of set-off

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

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7 Rental losses not offset between jointly assessed spouses or civil partners

Case I (trading) and Case II (professional) losses can be offset between jointly assessed spouses or civil partners. Any such losses that cannot be absorbed by the individual who sustained the losses may be set against the income of that individual's jointly assessed spouse or civil partner (Section 381(3)(b)(i) TCA).

However, Case V (rental), Case III (investment) or Case IV (miscellaneous) losses cannot be offset between jointly assessed spouses or civil partners. An individual cannot use her/his unused current year Case V losses to reduce the income of their spouse or civil partner. Any unused losses can only be carried forward against the future Case V income of the individual who has sustained those losses.

Case V losses carried forward from a previous year are allowed in calculating an individual's total income but can only be set off against that individual's Case V income, if any. Any such deduction can only reduce the Case V income of the individual in question and, if that income is not sufficient to absorb the full deduction, no part of the unused loss forward may be deducted in arriving at their spouse's or civil partner's total income.

For joint assessment purposes, each individual spouse or partner's total income is determined separately before being combined with that of their spouse or civil partner and before further deductions to arrive at 'taxable income'.

An individual's total income is the combined total of her/his income from all sources as reduced by certain specified allowances and deductions (for example, Case V losses carried forward). Where an individual sustains a Case V loss in a year, there is no Case V income available to combine with the spouse or partner's income. While there is a specific provision that allows a set off of trading or professional losses (section 381(3)(b)(i) TCA) there is no such provision for Case V losses.

8 Excess rental capital allowances may be offset between jointly assessed spouses or civil partners

Excess Case V capital allowances may be offset between jointly assessed spouses or civil partners where the individual elects to do this under section 305(1)(b)(i) TCA. This sideways set-off of excess capital allowances is subject to an annual limit of €31,750. This limit applies to capital allowances set-off against the individual's other income or against the income of the jointly assessed spouse or civil partner.

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However, excess wear and tear allowances for fixtures and fittings in respect of the letting of furnished residential accommodation cannot be set off against the individual's other income or against the income of the individual's jointly assessed spouse or civil partner. This is because section 406 ringfences such allowances by preventing an election under section 305(1)(b) TCA.

More information on the treatment of capital allowances for plant and machinery that is leased with a building can be found in Tax and Duty Manual Part 09-02-03, concerning plant in leased buildings.

9 Rented residential relief ("Section 23") properties passing to surviving spouse or civil partner on the death of the other spouse or civil partner

For information on this topic please consult the Tax and Duty Manual Part 10-11-01, regarding rented residential relief ("Section 23 relief").

For information on individuals subject to the high income individuals' restriction please see Tax and Duty Manual Part 15-02A-04, concerning claw-back of rented residential relief in death cases.

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