Part 19-02-12

This document should be read in conjunction with section 555 of the Taxes Consolidation Act 1997

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Restriction of losses by reference to capital allowances and renewal allowances

12.1 For the purpose of the provision requiring the restriction of losses (**Par. 2 to 4**) "capital allowance" means any allowance under the provisions of the Income Tax Acts which relate to allowances in respect of capital expenditure and includes an allowance under **section 284** (wear and tear allowance) and a balancing allowance. Any balancing charge which arises is deducted from the allowances even where there is an election under **section 290** (option in the case of replacement of machinery or plant).

A renewals allowance granted on the acquisition of a new asset should be regarded as an allowance for expenditure incurred on the old asset.

12.2 In general, expenditure which has qualified for capital allowances or renewals allowances (see **Par.1**) should not be excluded from the Capital Gains Tax "cost" of the asset. To the extent that a loss on an asset has been covered by capital allowances, however, it is not to be allowed again for Capital Gains Tax purposes.

Example 1

A buys a factory for €1,000,000. A is entitled for Income Tax purposes to claim capital allowances in respect of the full expenditure. A spends €150,000 on new buildings and is entitled to capital allowances in respect of that expenditure. A sells the property for €1,500,000. A's chargeable gain (subject to expenses and ignoring any indexation relief) is:

Sale price		€1,500,000
Cost price	€1,000,000	
Outlay on new buildings	€150,000	€1,150,000
Gain		€350,000

The capital allowances granted are withdrawn for Income Tax by a balancing charge.

Example 2

If the sale price in Example 1 was €1,100,000 a capital loss of €50,000 results but this is allowable only to the extent, if any, to which it exceeds the capital allowances allowable for Income Tax purposes.

12.3 Under **sections 312(5), 289(6) and 295**, a person is treated for capital allowance purposes as having acquired an asset at the written down value taken from the capital allowance computation of the person from whom it was transferred. In these circumstances, the capital allowances to be taken into account so as to restrict the allowable capital losses of the transferee are those granted to the transferor and the transferee.

Example

A buys plant for €1,000,000 and capital allowances of €200,000 were allowed to him. The plant is then transferred to B (market value at time of transfer €900,000). Capital allowances of €160,000 are granted to B and he sells the plant for €500,000 and is granted a balancing allowance of €140,000.

A's position is -		€
Cost of asset		1000,000
Value at disposal		900,000
Loss		100,000
Capital allowances		200,000
Capital allowances exceed loss by		100,000
B's position is -		
Cost of asset		900,000
Consideration at disposal		500,000
Loss		400,000
Restrict by capital allowances granted		
B's allowance (160,000 + 140,000)	€300,000	
A's allowance (Balance)	€100,000	€400,000

No part of the loss of €400,000 is allowed to B.

12.4 Capital allowances, for the purpose of the restriction of losses, include any balancing allowance made on a disposal which gives rise to the capital gains computation. Any balancing charge made, or which would have been made but for an election under **section 290** on the disposal should be deducted from the capital allowances taken into account.

Milk quotas were abolished with effect from 1 April 2015. Relief under **section 538** is allowed in respect of losses on assets such as milk quotas. However, capital allowances were granted in respect of milk quotas that were purchased on or after 1 April 2000. Accordingly, where a loss arises in respect of a milk quota that was purchased on or after 1 April 2000, the amount of the loss allowable should be restricted by the amount of the capital allowances granted.