Restriction of losses by reference to capital allowances and renewal allowances (S.555)

Part 19-02-12

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

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Revenue
Cáin agus Custaim na hÉireann
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Introduction

Section 555 of the Taxes Consolidation Act 1997 (“TCA 1997”) provides for the special treatment of expenditure which, although indirectly allowable for Income Tax (“IT”) or Corporation Tax (“CT”) in the form of capital allowances or renewals allowances, is nevertheless capital outlay. Notwithstanding **section 554 TCA 1997**, such capital outlay is an allowable deduction for Capital Gains Tax (“CGT”) purposes. However, where a loss accrues on the disposal, the amount of the loss allowable is restricted to the extent that it has been covered by the amount of capital allowances or renewals allowances granted for IT or CT purposes.

12.1 Definitions of Capital Allowance and Renewals Allowance

For the purpose of the provision requiring the restriction of losses (**para 12.2** to **12.5**) "capital allowance" means any allowance under the provisions of the IT Acts which relate to allowances in respect of capital expenditure and includes an allowance under **section 284 TCA 1997** (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 TCA 1997** (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 Restriction of losses

In general, expenditure which has qualified for capital allowances or renewals allowances (see **para 12.1**) should not be excluded from the CGT "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 CGT purposes.

Example 1

A buys a factory for €1,000,000. A is entitled for IT 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 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 IT 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 IT purposes.

12.3 Capital Allowances to be taken into account

Under **sections 312(5), 289(6) and 295 TCA 1997**, 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 3

A buys plant for €1,000,000 and capital allowances of €200,000 were allowed to A. 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 B sells the plant for €500,000 and is granted a balancing allowance of €140,000.

A's position is -

Cost of asset	€1,000,000
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 and Balancing Charges

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 TCA 1997** on the disposal should be deducted from the capital allowances taken into account.

12.5 Milk Quotas

Milk quotas were abolished with effect from 1 April 2015. Relief under **section 538 TCA 1997** 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.