

THE OFFSETTING OF PROPERTY INCOME LOSSES AGAINST GENERAL INCOME WHEN CREATED BY CAPITAL ALLOWANCES

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The Landlord often sets out how unfortunate his position is but there will be an ironic position from 6 April 2011 where general property could have an advantage over Furnished Holiday Lets (FHL). The income tax loss on FHLs will no longer be able to be offset "sideways", i.e. against general income from 6 April 2011.

Whilst there is a delay in implementing the introduction of the days available to let on FHL (from 6 April 2011 to 6 April 2012) the loss relief position of the original consultation document does apply from 6 April 2011.

Guidance

Guidance can be found in PIM 4220 which sets out the rules for losses on property income which are attributable to certain capital allowances. The amount of the loss attributable to these items can be set against the general income of the year of loss or the following year. A claim has to be made by the 31 January following the end of the tax year, just under 22 months from the end of the year of assessment.

General Rule

The general rule is that a taxpayer cannot set rental business losses against the rest of their income. But they may be able to do so where they have made a loss in their rental business in a tax year and rental business capital allowances are due. In this case they may make a claim to have some or all of the capital allowances part of the loss set against their general income.

Capital allowances & losses

A taxpayer has the right to offset the capital allowances part of the loss against their general income of either:

- The tax year in which the rental business loss was made, or
- The tax year following that in which the rental business loss was made.

The amount of loss relief available because of capital allowances is restricted to the smallest of the following three figures:

- The taxpayer's total general income for the year after deducting rental business losses brought forward (to the extent of the rental business income) and after deducting any sideways relief for the previous year's loss (see above),
- the amount of the rental business loss made in the year,
- the net capital allowances after setting off any balancing charge.

Special Rules

Special rules apply to FHLs where capital allowances are included in loss relief claims: see PIM4130.

There might be those who would consider moving property from FHL status to rental where large capital allowances are anticipated but the Capital Gains Tax advantages of the FHL e.g. rollover relief, holdover relief and Entrepreneurs Relief would be lost! Likewise any chance of achieving Business Property Relief on the property would be lost if it was a normal letting position.

The claiming of the loss created by capital allowances from property income is an area of tax planning often overlooked by both the taxpayer and the tax planner. With the changes to the FHL rules from 6 April 2011 and 2012 a large review of property income tax planning should be considered including pre-letting expenses and the status of let property.



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