Corporation tax: relief for terminal loss in a trade

Part 12-03-02

This document should be read in conjunction with section 397 of the Taxes Consolidation Act 1997

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Introduction

Section 397 provides that a loss incurred in the last 12 months of a discontinued trade, insofar as it cannot be otherwise relieved, may be carried back and set against the trading income of the same trade in the three preceding years. The relief provided by this section broadly corresponds to the income tax relief of section 385 TCA 1997.

1. Definition

A terminal loss is a trading loss incurred within the 12 months before the date of cessation. It may be used to reduce income of the same trade arising in the three years immediately preceding those 12 months. Relief under section 397 TCA 1997 is given only in respect of losses which cannot be otherwise relieved.

The terminal loss is to be set against income of a later period in priority to an earlier period and is not to displace relief already given or capable of being given for losses carried forward from earlier periods.

2. Accounting periods not equal to 12 months

Where the final accounting period of trading is less than twelve months, the terminal loss is the aggregate of the loss, if any, for the period and the loss, if any, sustained in the part of the penultimate accounting period beginning twelve months before the date of cessation. In such a case, where the trading result for the final accounting period or for that part of the penultimate accounting period is a profit, the amount to be taken into account for the final accounting period or for that part of the penultimate accounting period, as the case may be, in computing the terminal loss is nil.

Losses and income are to be apportioned as necessary where accounting periods fall partly outside the periods of 12 months and three years.

3. Computational issues

The provisions of subsections (5) to (8) of section 396 are applied for the purposes of terminal loss relief. This secures that for terminal loss purposes –

- a loss is to be computed in the same manner as profits,
- relief is available against interest and dividends (other than dividends from a resident company) of a financial trade concern,
- charges on income in excess of profits, which are paid for the purposes of the trade can, up to the amount of the excess, be treated as creating a loss qualifying for terminal loss relief, and
- relief is available only to a company which is within the charge to corporation tax at all material times.

The provisions of section 396(7), as regards the computation of a loss for section 396(1) purposes where there is an excess of charges on income over total profits, apply equally to the computation of a loss for the purposes of section 397.

Section 397(3) provides that the operation of the relief must not interfere with any section 243 or section 243A deduction made in respect of payments made wholly and exclusively for the purposes of the trade ("trade charges"). This provision ensures that the maximum relief is given for the aggregate of the terminal loss and the trade charges of the three years preceding the last twelve months of the trade.

In ascertaining the amount of the trading income against which a terminal loss may be carried back, charges are to be deducted from the total profits as reduced by any other relief except group relief.

Example 1

A company which makes up its accounts to 31 May ceases to trade on 30 November 2018 and incurs a trading loss of €120,000 in the final six months of trading. Its trading results were as follows:

Accounting period	**Profit/(Loss)**
12 months ending 31 May 2018	(€50,0000)
12 months ending 31 May 2017	€80,000
12 months ending 31 May 2016	€50,000
12 months ending 31 May 2015	€40,000

Relief under section 396A(3)

In computing the amount of the terminal loss for the purposes of relief under section 397, relief under section 396A(3) must be first computed:

Accounting period	**Profit/(Loss)**
12 months to 31 May 2017	€80,000
12 months to 31 May 2018	(€50,000)
Balance	€30,000*

Terminal Loss	**Profit/(Loss)**	
6 months to 30 November 2018	(€120,000)	
6 months to 31 May 2018	Nil	Loss relieved in full under section 396A(3)
Terminal loss	(€120,000)	

Terminal Loss Relief	**Profit/(Loss)**	
6 months to 30 November 2017	Nil	
12 months to 31 May 2017	€30,000	*Balance

12 months to 31 May 2016	€50,000	
6 months to 31 May 2015	€20,000	(€40,000 x $^{6}/_{12}$ months)
Total relief	€100,000	
Terminal loss	(€120,000)	
Unrelieved loss	€20,000	

Example 2

A company which carried on an excepted trade and makes up its accounts to 31st December ceases to trade on 31 December 2018. In the 12-month accounting period to that date the company incurs a trading loss of €10,000. In the 12-month accounting period to 31 December 2018 the company also has investment income chargeable to corporation tax of €2,000.

The trading loss to be carried back must be reduced by the amount of €2,000 because terminal loss relief is not deductible to the extent that it can be claimed under another provision, in this instance section 396(2). The terminal loss which may be carried back for offset against trading income of the 3-year period ending on 31 December 2017 is therefore €8,000.

12-month accounting period to 31 December 2018	**Profit/(Loss)**	**TCA reference**
Trading loss	(€10,000)	
Offset against: Investment income	€2,000	Section 396A(2)
Terminal loss	€8,000	

4. Time Limit

A claim for terminal loss relief is subject to the 4-year time limit in accordance with the provisions of section 865 TCA 1997.