Corporation Tax: losses in transactions from which income would be chargeable under Case IV or V of Schedule D (section 399 TCA 1997)

Part 12-03-03

This document should be read in conjunction with section 399 of the Taxes Consolidation Act 1997

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Revenue
Cáin agus Custaim na hÉireann
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The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

1. Introduction

Section 399 Taxes Consolidation Act 1997 (TCA 1997) provides relief from corporation tax corresponding to the relief from income tax under sections 383 and 384 TCA 1997 for losses incurred in transactions which, if they had given rise to profits, would have been chargeable to corporation tax under Case IV or Case V of Schedule D. As in the case of income tax, such losses can be set off for corporation tax purposes against income of the same class, i.e. a Case IV loss may only be set off against Case IV income and a Case V loss may only be set off against Case V income.

There is one exception to this rule. A Case IV loss on a transaction in certificates of deposit and assignable deposits coming within subsections (1) or (2) of section 814 TCA 1997 may be set off for corporation tax purposes against any interest on the certificates of deposit for which the company is chargeable to tax.

2. Case IV loss

Where the claim is for a Case IV loss under section 399(1) TCA 1997, the loss must first be set off, as far as possible, against other Case IV income of the same accounting period. Any balance of the loss which cannot be so set off may be carried forward for set off against Case IV income of subsequent accounting periods, beginning with the earliest.

3. Case V loss

Where the claim is for a Case V loss under section 399(2) TCA 1997, i.e. where the "loss" consists of an excess of aggregate deficiencies computed under section 97(1) TCA 1997 over aggregate surpluses so computed, the loss must first be set off, as far as possible, against Case V income of an immediately preceding accounting period of the same length as the accounting period in which the loss was incurred. Any balance of the loss which cannot be so allowed may be carried forward for set off against Case V income of subsequent accounting periods, beginning with the first.

4. Case V – non-resident landlords

Where a company not resident in the State comes within the charge to corporation tax as a consequence of section 25(2A) TCA 1997, Case V losses carried forward by such a company as at 31 December 2021 under section 384(2) (being an income tax provision) are to be treated as an amount of Case V losses carried forward under section 399(2) (being the corporation tax equivalent).

5. Claims

Case IV and Case V losses may be relieved under section 399 TCA 1997 only on a due claim being made.

It should be noted that there is no facility to claim group relief for Case IV or Case V losses.

A claim in respect of a Case V loss must be made within two years from the end of the accounting period in which the loss was incurred.