

[12.05.06] Income Tax: Relief for Terminal Loss

[Section 385 TCA 1997]

Contents

[12.05.06] Income Tax: Relief for Terminal Loss	1
[Section 385 TCA 1997]	1
1. Key features of terminal loss relief.....	2
2. Meaning of ‘permanently discontinued’ for the purposes of terminal loss relief (s. 388)	2
3. Calculating the terminal loss.....	2
3.1. Basis of assessment on cessation of a trade or profession	2
3.2. Compute the amount of the Terminal Loss.....	3
3.3. Ensure all loss relief claimed under other sections is granted first.....	3
3.4. Order of claim	4
3.5. PRSI & USC	4
3.6. Example	4
4. Claiming terminal loss relief.....	6
5. Terminal loss relief and partnerships (s. 388).....	6
6. Terminal loss relief for foreign trades	6
7. Time limits for making terminal loss relief claims.....	6

1. Key features of terminal loss relief

A loss that is incurred by an individual in the last 12 months of a discontinued trade or profession and which cannot be otherwise relieved may be carried back and set against the profits of the same trade or profession for the 3 preceding years.

This relief is known as terminal loss relief and is dealt with under the provisions of s. 385.

The key features of this relief are:

- The relief only applies to either a **sole trader** or a partner in a partnership
- To be entitled to the relief the trade or profession must have been **permanently discontinued** (s. 385(1) & 388)
- The loss sustained in the **last 12 months** of trade of a business is available for terminal loss relief.
- Relief is given against the trading profits from the same trade/profession (not other income) of the **last three** fiscal years of the business, taking most recent years first.
- The loss is **not** to displace relief already given or capable of being given for losses carried forward from earlier periods

2. Meaning of 'permanently discontinued' for the purposes of terminal loss relief (s. 388)

A trade is deemed to be 'permanently discontinued' for the purposes of terminal loss relief where:

- The trade/profession has permanently ceased¹,
- The person carrying on the trade or profession dies², or
- There is a change of ownership.

3. Calculating the terminal loss

3.1. Basis of assessment on cessation of a trade or profession

Before any decision is made as to whether or not a claim for terminal loss relief is valid, the first step is to ensure that the basis of assessment on the cessation of a trade or profession is correct. There are certain rules set out

¹ Refer to manual [04.03.06] for considerations on when a trade has ceased.

² It is long standing Revenue practice that a widow / widower may elect not to apply the cessation / commencement rules on the death of their spouse / civil partner who was carrying on the trade / profession before his / her death. This 'continuing business' election may be made where the widow / widower takes an absolute interest in the business immediately after the death of the spouse / civil partner. Where a continuing business election is made, terminal loss relief is not available.

under the provisions of s. 67 regarding the cessation of trade³. Where a trade ceases it is assessed on actual basis in that year of cessation.

The assessment (including a self assessment if relevant) of the penultimate year (prior year) will also need to be reviewed in order to compare the assessed profits with the actual profits. The assessment will need to be revised if the actual profits are greater than what was originally assessed.

3.2. Compute the amount of the Terminal Loss

The amount of the 'Terminal Loss' is the aggregate of the following:

- (A) The loss sustained in the year of cessation
- (B) The relevant capital allowances for the year of cessation
- (C) The loss in the part of the penultimate (year preceding the final year of trading) year of assessment, beginning twelve months before the date of cessation to the extent it has not already been used (for example in a s.381 claim)
- (D) The proportion (on a time basis) of the relevant capital allowances for the penultimate year of assessment appropriate to the period mentioned in (C) to the extent it has not already been used

In addition to the above mentioned, s. 390 provides that a 'terminal' loss may also arise in respect of Trade Charges⁴. This 'trade charge' loss would be included to the extent that it falls into the final year of trading or that it is apportioned in the part to the penultimate year within the last 12 months of trading.

Note:

Only the Capital Allowances in respect of the year of assessment in (B) and (D) above are to be taken into account in determining the actual terminal loss. Capital Allowances carried forward from previous years are not to be taken into account for the purposes of this calculation.

If a profit is shown in either (A) or (C) above then this profit is ignored in computing the terminal loss.

3.3. Ensure all loss relief claimed under other sections is granted first

The amount of loss available for inclusion in a terminal loss is calculated after all other reliefs claimed have been granted. Therefore, the final step in calculating the amount of terminal loss available for claiming terminal loss relief is to ensure that all other claims for relief for losses (e.g. s.382 loss forward for example or claims under s.381) and capital allowances (e.g. s.284 capital allowances forward or claims to use capital allowances to augment a loss under s.392) are allowed first. Only the unused amount of losses or capital allowances can form part of the terminal loss.

³ Manual [04.03.04] contains details on the basis of assessment in cessation situations.

⁴ Refer to manual [08.02.02] for details on the treatment of trade charges.

3.4. Order of claim

A claim for terminal loss relief should not generally displace any other deduction made in charging the profits of the trade or profession in the three years before cessation (s.387). That is, a claim for terminal loss relief is made after relief is given for items such as capital allowances for a year, capital allowances forward from previous years and relief for losses under s.382.

For example, an individual may make a claim for terminal loss relief in 2014 and carry back the terminal loss against the trading profits of 2013, 2012 and 2011. In 2012 his net trading income is Nil as the profits assessable under Case I are less than the capital allowances claimed under s.284. If s. 387 did not prescribe the order of set-off, this taxpayer might wish to claim the terminal loss relief before the capital allowances in 2012. This would allow him reduce his taxable Case I income to Nil through the use of a terminal loss while also reducing his other income by offsetting the capital allowances by way of a s.392 claim. In this way, the taxpayer would effectively claim terminal loss relief against other income. Therefore, s.387 specifies that terminal losses do not generally displace other deductions made in charging the profits of the trade / profession.

3.5. PRSI & USC

Terminal loss relief is a relief in arriving at Total Income. Unlike other such deductions (e.g. loss relief under s.382) it is not specifically allowed as a deduction for USC purposes (s.382 being specifically allowed as a deduction by s.531AM(vi)), neither is it allowable as a deduction for PRSI purposes. That is, terminal loss relief is an income tax relief and does not provide for relief from USC or PRSI.

3.6. Example

A trader makes up annual accounts to 31 December each year and ceases to trade on 30 September 2013.

The profits, losses and capital allowances are as follows:

Accounts period		31-Dec-09	31-Dec-10	31-Dec-11	31-Dec-12	30-Sep-13
Case I	Profit/(loss)	6,000	6,000	5,000	4,000	(5,000)
	Capital Allowances	(3,000)	(3,000)	(6,000)	(2,000)	(2,000)

Calculate taxable profits before claiming terminal loss relief:

Year of Assessment		2009	2010	2011	2012	2013
Case I	Profit/(loss)	6,000	6,000	5,000	4,000	0
	Capital Allowances	(3,000)	(3,000)	(5,000)	(2,000)	0
	Capital allowances fwd				(1,000)	
Taxable income		3,000	3,000	0	1,000	0

Note – the year of cessation is already on an actual basis and therefore there is no need to change the basis of assessment or review the penultimate year.

Calculate the Terminal Loss:

Last 12 months of trading runs from 1-Oct-12 to 30-Sept-13. This bridges two years of assessment.

(A) Loss for the year of Cessation	5,000	Period from 1-Jan-13 to 30-Sept-13 => 9 months
(B) Capital Allowances for the year of Cessation	2,000	9 months from 1-Jan-13 to 30-Sept-13
(C) Loss for part of penultimate year which falls into final 12 months	Nil	Period from 1-Oct-12 to 31-Dec-12 => 3 months Profit in the period therefore Nil included in Terminal Loss calculation
(D) Capital Allowances for the period in (C)	NIL	3 months from 1-Oct-12 to 31-Dec-12. All capital allowances were used against profits in the period so none are available for Terminal Loss relief.

Total Terminal Loss 7,000

Identify the periods in which the terminal loss may be relieved:

Year of assessment in which cessation occurred: 2013
3 years of assessment preceding that year: 2012, 2011 and 2010.

Calculate taxable profits claiming terminal loss relief:

Year of Assessment	2010	2011	2012	2013
Case I Profit/(loss)	6,000	5,000	4,000	0
Capital Allowances	(3,000)	(5,000)	(2,000)	0
Capital allowances fwd			(1,000)	
Terminal loss relief	(3,000)	0	(1,000)	
Revised taxable income	0	0	0	0

There is a balance of €3,000 (€7,000-€4,000) of unrelieved Terminal Losses.

4. Claiming terminal loss relief

Where an individual is claiming terminal loss relief in respect of a period for which it is not possible to claim terminal loss relief on the prescribed form (the Form 11) then that individual may submit a claim by way of written correspondence to their local district⁵.

5. Terminal loss relief and partnerships (s. 388)

There are a number of different ways in which terminal loss relief can arise in a partnership context:

- If a partner retires from a partnership when that partnership is making losses, then that partner may be eligible to claim terminal loss relief on the cessation of his/her involvement in that particular trade/ profession.
- In situations where a partnership ceases to trade then each partner who was carrying on the trade/profession may be entitled to claim terminal loss relief.
- If one or more of the partners continues to carry on the trade as a partnership or as a sole trader then those individuals are not permanently ceasing to trade and are not entitled to claim terminal loss relief.

However, if one of these individuals who has been continuously carrying on the trade subsequently ceases that trade within 12 months, then any terminal loss arising on the cessation can be carried back against the profits that arose when the trade was carried on in partnership (s. 388(b)).

The reverse is also true. Where an individual who was carrying on a sole trade formed that trade into a partnership then the cessation of the sole trade is not viewed as a permanent discontinuance of the trade for the purposes of terminal loss relief. If the individual then subsequently ceases carrying on that trade through a partnership (either through retiring or through the partnership ceasing) then terminal loss relief may be available.

6. Terminal loss relief for foreign trades

Having regard to manual [04.09.02](#) if an individual has a Case III trade and incurs a loss in the last 12 months of trading, then, on the basis that s.385 is not restricted to either Case I trades or to Irish trades, terminal loss relief is available for the foreign trade in the same way as it is available for Irish trades.

7. Time limits for making terminal loss relief claims

No specific time limit is laid down for the making of a terminal loss claim in s.385. S. 385(1) specifically provides that “there shall be made all such amendments of assessments or repayments of tax as may be necessary to give effect to the claim”.

S.865(4) provides that Revenue are debarred from making a repayment of tax after 4 years from the year in to which the claim relates.

⁵ There is no provision on Form 11s published up to January 2014 to claim terminal loss relief, but provision may be made on Form 11s published after this date.

Furthermore, s.955(2)(b)(iii) / s.959AA(2)(c) [as appropriate depending on the year of assessment] both provide that the general prohibition on Revenue amending assessments outside of the 4 year period may be lifted if the amendment is to reflect something which happened after the return is delivered.

Taking these three provisions together:

A claim for terminal loss relief will not give rise to a repayment of tax unless it is made within four years of the year of cessation. While repayments relating to the three year carry back period will be outside of the 4 year time limit having regard to the wording of s.385(1) and s.955(2)(b)(iii) / 959AA(2)(c) assessments for the earlier periods should be amended and any amounts due to the taxpayer should be repaid.