

Loss relief for self-employed individuals adversely impacted by Covid-19 restrictions

Part 12-01-03

This document should be read in conjunction with sections 304, 395A, 395B and 395C of the Taxes Consolidation Act 1997 and Tax and Duty Manuals [Part 12-01-02](#) and [Part 12-05-06](#).

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1 Introduction

Section 10 of the Financial Provisions (Covid-19) (No. 2) Act 2020 provides for a number of temporary income tax measures to assist self-employed individuals who have been adversely impacted by the Covid-19 restrictions.

In summary, these measures are as follows:

- Self-employed individuals may claim to have their 2020 losses and certain unused capital allowances carried back and deducted from their profits for the year of assessment 2019, thus reducing the amount of income tax payable on those profits. A €25,000 limit on the total amount that may be carried back will apply.
- Subject to meeting certain conditions, self-employed individuals may make an interim claim for relief in respect of an estimated amount of relief that will be due to them in respect of a claim to have their 2020 losses and certain unused capital allowances carried back to the year of assessment 2019.
- An option is given to individual farmers to step out of income averaging for the tax year 2020, notwithstanding that the farmer may also have stepped out of income averaging in one of the four preceding tax years.

The purpose of this Tax and Duty Manual is to explain how the first and second measures referred to above will operate in practice. Tax and Duty Manual [Part 23-01-34](#) "Averaging of Farm Profits" has been updated to include guidance on the income averaging measure.

The legislative provisions referred to in this document are contained in the Taxes Consolidation Act 1997, unless otherwise stated.

2 Carry back of losses (section 395A)

Section 395A provides for income tax relief in respect of losses incurred in the period 1 January 2020 to 31 December 2020 (“**the relevant period**”). The relief is available to individuals carrying on a trade or profession, either as sole traders or in partnerships.

The section provides that where, in a year of assessment, an individual carrying on a trade or profession:

- incurs a loss which would, but for the operation of this relief, be available to carry forward to the following year of assessment under section 382¹, and
- all or part of the loss is incurred in the relevant period,

the individual may claim to have any part (see [Example 2](#) below) of the loss that is incurred in the relevant period carried back and set off against the profits of the same trade or profession for the year of assessment 2019.

The amount claimed will be given as a deduction from the profits of the same trade or profession for the year of assessment 2019, thus reducing the amount of income tax payable in respect of those profits.²

Where such relief is given, relief in respect of the loss may not be claimed under any other provision of the Income Tax Acts.

3 Carry back of specified allowances (section 304(3A))

Section 304(3A) provides for income tax relief in respect of certain unused “**specified allowances**” to the extent that those allowances relate to the relevant period. The relief is available to individuals carrying on a trade or profession, either as sole traders or in partnerships.

The specified allowances are wear and tear allowances for plant and machinery (section 284(1)), writing-down allowances for industrial buildings and structures (section 272(3)) and allowances for farm buildings and structures (section 658(2)).

Section 304(3A) provides that where, in a year of assessment, an individual carrying on a trade or profession:

- claims any specified allowances which would, but for the operation of this relief, be available to carry forward to the following year of assessment under section 304(4), and

¹ For guidance on the carry forward of losses under section 382, see Tax and Duty Manual [Part 12-01-02](#) “Income tax loss relief: Restrictions to the amount of relief available”.

² The relief is not deductible for USC or PRSI purposes.

- all or part of those specified allowances are in respect of the relevant period,

the individual may claim to have any part of the allowances that are in respect of the relevant period carried back and set off against the profits of the same trade or profession for the year of assessment 2019.

The amount claimed will be given as a deduction from the profits of the same trade or profession for the year of assessment 2019, thus reducing the amount of income tax payable in respect of those profits.³

Where only part of the specified allowances claimed in a year of assessment are in respect of the relevant period, an apportionment to the relevant period will be required. This apportionment will be made in proportion to the number of months (or fraction of months) in the respective periods (see [Example 3](#) below).

Where relief is given in respect of such allowances, the allowances may not be relieved, either directly or indirectly, under any other provision of the Income Tax Acts.

4 Limitations on relief for losses and specified allowances (section 395C)

Relief under sections 395A and 304(3A) is limited in two respects.

Firstly, the total amount of losses and specified allowances that may be carried back is limited to €25,000 per individual taxpayer⁴.

Secondly, where the relief is claimed by an individual who is subject to the High-Income Earner Restriction⁵ for the year of assessment 2019, the relief will be given to the individual after any other relief that he or she is entitled to for that year.

5 Illustrative examples

5.1 Example 1

John has been running a small construction business as a sole trader since 2002. His business accounts are prepared for the period 1 January to 31 December and, for each year of assessment, he is charged to income tax on the basis of the profits arising in that period.⁶

For the year of assessment 2019, John's trading profits were €156,754. He is assessed to income tax on this amount when he files his Form 11 tax return for 2019 on 31/10/2020.

³ The relief is not deductible for USC or PRSI purposes.

⁴ If a taxpayer has more than one trade, the €25,000 limit must be applied to the losses in total: it is not a €25,000 limit per trade. If two individuals are jointly assessed, they each have a €25,000 limit for their own trading /professional income.

⁵ Refer to TDM [Part 15-02a-05](#).

⁶ Refer to TDM [Part 04-03-03](#), [Part 04-03-04](#) and [Part 04-03-05](#) for more detail on these.

In 2020, as a result of the restrictions imposed on the construction sector during the Covid-19 pandemic, John has to stop trading for a number of months. While he is in receipt of the Pandemic Unemployment Payment⁷ during this time, between unavoidable fixed costs and lost business, he incurs an overall trading loss of €27,634 in the period 1 January to 31 December 2020. He also has unused wear and tear allowances for plant and machinery in the amount of €13,550 for the same period. John could make claims under section 382 and 304(3A) respectively to carry forward the loss and the unused allowances to the year of assessment 2021.

On the basis that John would be entitled to carry forward the loss under section 382 and all of the loss was incurred in the relevant period, John makes a claim under section 395A to have €25,000 of the loss carried back to the year of assessment 2019. This reduces his trading profits for the year of assessment 2019 from €156,754 to €131,754. As a result, he receives a repayment of income tax in the amount €10,000 (i.e. €25,000 @ 40%).

As John has used up his limit of €25,000, he is not entitled to make a claim for relief under section 304(3A) also. However, he makes claims under sections 382 and 304(4) respectively to carry forward to the year of assessment 2021 the balance of the loss, i.e. €2,634, and all of the unused allowances in the amount €13,550.

5.2 Example 2

Maebh has been farming for many years, and she has not opted to be taxed under income averaging⁸. She prepares her farm accounts to 31 December each year and is charged to income tax on the basis of the profits arising in that period.

For the year of assessment 2019, Maebh's trading profits were €26,820. She is assessed to income tax on this amount when she files her Form 11 tax return for 2019 on 31/10/2020.

In 2020, as a result of the loss of sales to the restaurant sector because of restrictions imposed worldwide during the Covid-19 pandemic, Maebh incurs an overall trading loss of €19,627 in the period 1 January to 31 December 2020. She also has unused wear and tear allowances for plant and machinery in the amount €6,312 for the same period. Maebh could make claims under section 382 and 304(4) respectively to carry forward the loss and the unused allowances to the year of assessment 2021.

Maebh made pension contributions in 2019, for which she wants to leave the tax deduction unchanged. As she is sure she will be profitable in the future, she also does not want the losses back to displace her personal tax credits for 2019. She calculates that she wants to carry back only €5,430 of the loss to 2019. She receives a refund of all of the income tax which she had paid in respect of 2019.

⁷ It is important to note that the Pandemic Unemployment Payment (PUP) is liable to income tax.

⁸ Refer to TDM [Part 23-01-34](#) for more details on income averaging for farmers

She then makes claims under sections 382 and 304(4) respectively to carry forward to the year of assessment 2021 the balance of the loss, i.e. €14,197, and all of the unused allowances in the amount of €6,312.

5.3 Example 3

Charlie has been running a busy café as a sole trader since 2015. Her business accounts are prepared for the period 1 June to 31 May and, for each year of assessment, she is charged to income tax on the basis of the profits arising in that period.

Charlie's trading profits for the period 1 June 2018 to 31 May 2019 were €73,210. She is charged to income tax on this amount when she files her Form 11 tax return for the year of assessment 2019.

In 2020, as a result of the restrictions imposed on the hospitality sector during the Covid-19 pandemic, Charlie has to close the café for a number of months. When some of the restrictions are lifted, she reopens the café on a takeaway basis only.

When her accounts for the period 1 June 2019 to 31 May 2020 are finalised, Charlie's accountant advises her that she incurred a trading loss in the amount €13,232 in the period 1 June 2019 to 31 May 2020 and that could make a claim under section 382 to carry forward this loss to the year of assessment 2021. Her accountant advises her that all of this loss was incurred in the relevant period and, therefore, she is entitled to make a claim for relief on the full amount of the loss under section 395A. Charlie makes a claim for relief under section 395A to have the loss in the amount €13,232 carried back to the year of assessment 2019.

Charlie's accountant also advises her that she has unused wear and tear allowances for plant and machinery for the same period in the amount €5,600 and that she could make a claim under section 304(4) to carry forward these allowances to the year of assessment 2021. The accountant has carried out an apportionment to determine the allowances that are in respect of the relevant period, as follows:

- Unused allowances for 12-month period 1 June 2019 to 31 May 2020 = €5,600
- Unused allowances for 5-month period 1 January 2020 to 31 May 2020 = €2,333

Charlie makes a claim for relief under section 304(3A) in relation to the allowances that relate to the relevant period, i.e. €2,333. (She also makes a claim to have the remaining unused allowances in the amount €3,267 carried forward to the year of assessment 2021).

The two claims reduce her trading profits for the year of assessment 2019 from €73,210 to €57,645. As a result, Charlie receives a repayment of income tax in the amount of €6,226 (i.e. (€13,232 + €2,333) @ 40%).

When Charlie's accounts are prepared for the period 1 June 2020 to 31 May 2021, her accountant advises her that she has incurred a trading loss in the amount €1,232 and that all

of this loss was incurred in the relevant period. Charlie makes a claim under section 395A to have this loss carried back to the year of assessment 2019. As a result, she receives a further repayment of income tax for the year of assessment 2019 in the amount of €493 (i.e. €1,232 @ 40%). For the same period, Charlie has no unused allowances relating to the relevant period and, therefore, she is not able to make a further claim for relief under section 304(3A).

In this example, Charlie has received relief under sections 395A and 304(3A) totalling €6,719 (i.e. €6,226 + €493).

5.4 Example 4

Donnchad is a professional who prepares his accounts to 31 December each year. He makes a loss in 2020 and hopes to make a claim for relief against his 2019 profits. He made a number of investments in prior years that have given rise to specified reliefs⁹ carried forward. Based on his 2019 profits and the reliefs available to him, he is likely to be subject to the High-Income Earner Restriction in 2019.

Donnchad must complete his 2019 Form 11, and Form RR1, before he can calculate how much relief he is entitled to for his 2020 losses. The amount of the loss which can be carried back and deducted from his 2019 trading profits, cannot displace any of the specified reliefs used (that is, those listed in the Form RR1). Any portion of his trading profits against which specified reliefs were offset cannot instead be reduced by the carry-back of a loss from 2020.

6 Interim claims for relief (section 395B)

Section 395B provides that taxpayers may make a claim for relief on an interim basis under section 395A (losses incurred in the relevant period) and/or section 304(3A) (specified allowances relating to the relevant period).

Interim claims are to be made in primarily the same way as claims are to be made under sections 395A and 304(3A). However, rather than claiming the actual amount of relief that will be available under those sections, an estimated amount is to be claimed instead. This estimated amount is to be an amount that, based the best estimate that can reasonably be made at the time the interim claim is made, is likely to equal the actual amount of relief that will be available to be claimed in respect of losses incurred in the relevant period under section 395A and/or specified allowances relating to the relevant period under section 304(3A).

Before an interim claim may be made, the taxpayer must be fully tax compliant¹⁰. In addition, the following time limits apply:

⁹ Refer to TDM [Part 15-02a-05](#) and [Part 15-02a-06](#).

¹⁰ That is, they must have complied with all their obligations under tax legislation in relation to the payment of taxes and the filing of returns. An individual who qualifies for 'warehousing' of certain tax liabilities under the special warehousing provisions in section 991B, section 17C of the Social Welfare Consolidation Act 2005 and/or section 114B of the Value Added Tax Consolidation Act 2010, will, notwithstanding the non-payment of

- Where the interim claim relates to losses incurred or specified allowances to be claimed in the year of assessment 2020, the claim may not be made after 31 May 2021.
- Where the interim claim relates to losses incurred or specified allowances to be claimed in the year of assessment 2021, the claim may not be made after 31 May 2022.
- Where the interim claim relates to losses incurred or specified allowances to be claimed in the year of assessment 2021, the claim may not be made until the first four months of the basis period for that year of assessment have elapsed. For instance, where, for the year of assessment 2021, a taxpayer is assessable to income tax on the basis of profits arising in the period 1 August 2020 to 31 July 2021, that taxpayer may not make an interim claim until 1 December 2020.
- Taxpayers who make an interim claim are required to maintain and have available to Revenue records which verify that the amount of relief claimed was computed in a reasonable manner and to the best of the taxpayer's knowledge and belief.

6.1 Decreasing amount of interim claim (section 395(B)(5)(a))

Before a final claim is made or before the due date for making a final claim is reached (whichever is the earliest), taxpayers are required to decrease the amount of the interim claim in the following circumstances:

- where the taxpayer, after making the interim claim, estimates that a lower amount of relief will be due to him/her under sections 395A and/or 304(3A);
- where the taxpayer determines that a lower portion of the estimated amount should be claimed.

Such an adjustment should be carried out as soon as is reasonably possible and the revised amount should reflect the correct amount, or correct portion, that should be claimed.

Individuals are not required to constantly re-evaluate their interim claims. However, if, for example, business is better than expected when the interim claim was made, it would be reasonable to revisit any estimates used in making that interim claim.

6.2 Increasing amount of interim claim (section 395(B)(5)(b))

Up until the latest date by which an interim claim can be made, taxpayers may increase the amount of an interim claim in the following circumstances:

tax liabilities permitted by those sections, still be regarded as being tax compliant provided the individual complies with the provisions of those sections and is generally tax compliant.

- where the taxpayer, after making the interim claim, estimates that a greater amount of relief will be due to him/her under sections 395A and/or 304(3A);
- where the taxpayer determines that a greater portion of the estimated amount should be claimed.

The amount of the interim claim would be increased by amending the Form 11 tax return for 2019.

6.3 Estimating relevant losses and allowances

As an interim claim against the 2019 profits can be made before the end of the 2020 year, it must be made in respect of the estimated losses and estimated allowances. There is an inherent uncertainty involved in making a claim for a tax relief on an estimated basis, particularly as it is not possible at this point to judge how the restrictions arising from Covid-19 will look for the rest of 2020. While some taxpayers may have monthly accounts, it is not considered necessary that taxpayers who would not normally prepare such accounts do so in order to claim this relief. Instead, individuals should take a practical and proportionate approach to quantifying their relief.

Individuals in receipt of any taxable Covid-19 related financial support, including for example the Covid-19 Wage Subsidy Scheme and other loans, grants and schemes available to those impacted by Covid-19, should also ensure that they factor such funding supports into their income projections when calculating their estimated loss.

The following is a suggested method that income tax payers could use, and document, when estimating their loss or allowances for an interim claim:

- Start with the losses that have you incurred from 1 January to date. For most income taxpayers this can be based on income and expenditure for the period (excluding any large capital expenditures).
- Do you know of anything in the months from now to December that could change that loss significantly, assuming that the Covid-19 restrictions evolve as set out in Government's roadmap? For example:
 - If the business is seasonal and the peak period has not passed yet (such as Christmas) you may need to decrease the loss figure before making the claim to take account of the anticipated peak period.
 - If the seasonal period for your business has passed, and you know that you will continue to incur expenses in the later part of the year without any corresponding sales, then the amount of any loss incurred year to date¹¹ may be less than your full year's loss.

¹¹ It is not a requirement that a loss has been incurred year to date, but a significantly higher standard of proof will be required for an individual whose business shows a profit for the year to date, but who makes an interim claim on the basis that he or she anticipates that the business will make a loss towards the end of the year which will be sufficient to generate relevant losses or relevant allowances.

- If your business is normally relatively constant throughout the period, taxpayers may wish to make a claim based on the losses incurred to date, and make an adjustment upwards or downwards as the year progresses.

6.4 Requirement to make a final claim (section 395B(4)(c))

Where a taxpayer makes an interim claim for relief under sections 395A and/or 304(3), he or she is required to make a corresponding **“final claim”** for relief under sections 395A and/or 304(3) by the income tax filing date for the appropriate year of assessment. For instance, where the interim claim relates to the year of assessment 2020, a corresponding final claim for relief must be made by the due date for the Form 11 tax return for 2020, which is 31 October 2021.

The final claim for relief is the actual amount of relief that is available to be claimed by the taxpayer under sections 395A and/or 304(3) for that year of assessment. Where a final claim is not made, but the interim claim is not greater than the amount of the final claim, the interim claim will be deemed to be the final claim. Final claims can be amended, in line with other claims for relief, as set out in TDM [Part 41a-04-01](#).

6.5 Illustrative example

Jane has been running a small hairdressing salon as a sole trader since 2011. She prepares her accounts on the basis of the period 1 January to 31 December. This means that, for each year of assessment, it is the profits arising in the period 1 January to 31 December of that year that are charged to income tax.

Jane’s trading profits for the year of assessment 2019 amounted to €85,000. On 31 October 2019, she paid preliminary tax on the amount of income tax she calculated would be due on these profits.

During 2020, Jane had to close her business due to the imposition of Covid-19 restrictions. By the time it comes to filing her Form 11 tax return for 2019 on 31 October 2020, Jane estimates that she will have relevant losses relating to the year of assessment 2020 in the amount €30,000. Jane makes an **interim claim** in her Form 11 2019 to have €25,000 of that amount set back and deducted from her trading profits for the year of assessment 2019. This means that €60,000 instead of €85,000 of her trading profits for the year of assessment 2019 will be chargeable to income tax. As a result, she receives a repayment of €10,000 of the preliminary tax she had paid to Revenue in 2019 (i.e. €25,000 @ 40%).

After the end of 2020, Jane estimates that her relevant losses will be €20,000, rather than the €30,000 previously estimated. Jane **amends** her Form 11 tax return for 2019 to reflect the revised amount. As a result, she has to pay an additional income tax liability in the amount €2,000 (i.e. €5,000 x 40%).

Jane is required to make a final claim for the relief under section 395A by 31 October 2021 at the latest, i.e. when her Form 11 tax return for 2020 is due to be filed. Before this date,

Jane's accountant prepares a final set of accounts for the period 1 January to 31 December 2020. The accountant calculates that the maximum amount of relief that may be claimed under section 395A is €22,323. Jane makes a **final claim** for the loss relief by amending her Form 11 tax return for 2019 by including a claim in the amount €22,323. As a result, Jane will receive a repayment of income tax for the year of assessment 2019 in the amount €930 (i.e. €2,323 x 40%).

As a result of claiming relief under the foregoing sections, Jane's income tax liability for the year of assessment 2019 is reduced by €8,930 (i.e. €10,000 - €2,000 + €930).

6.6 Excess interim claims (section 395B(6))

Section 395B(6) deals with the determination of statutory interest (under section 1080¹²) and the payment of preliminary tax (under section 959AO¹³) in circumstances where a taxpayer makes an interim claim which gives rise to an **"excess claim"**.

An excess claim refers to the amount by which the amount of tax repaid (or offset) on foot of an interim claim exceeds the amount of that tax that would have been repaid (or offset) had the repayment had been calculated in accordance with a true and correct final claim under sections 395A and/or 304(3A).

6.6.1 Excess interim claims and statutory interest (section 395B(6)(a))

For the purpose of determining interest in accordance with section 1080(2)(c), the date on which the tax is repaid (or offset) in respect of an excess claim will be the date on which the amount of the tax became due and payable.

However, where the interim claim was made neither deliberately nor carelessly and the taxpayer reduces the interim claim to reflect the correct amount as soon as is reasonably possible, the date on which the claim is reduced will be the date on which the tax became due and payable for the purposes of determining interest in accordance with section 1080(2)(c).

Where the interim claim turns out to have been greater than the final claim, but in making the interim claim:

- the individual estimates the losses and allowances as set out in [paragraph 6.1](#) above,
- the assumptions made in arriving at those amounts are not unreasonable, and
- the individual keeps records of how those amounts were estimated and the assumptions made,

then Revenue are prepared to accept that the individual has made the interim claim neither deliberately nor carelessly.

¹² Section 1080 provides the mechanism for the calculation of the interest payable on outstanding income tax, corporation tax and capital gains tax in respect of a given period of default.

¹³ Section 959AO sets out the due dates for the payment of income tax. Preliminary tax is due by 31 October in the tax year. Income tax is, in general, due by the return filing date for the year. However, if relevant preliminary tax requirements have not been met, the due date for income tax reverts to 31 October in the tax year.

6.6.2 Excess interim claims and due date for payment of preliminary tax (section 395B(6)(b) and (c))

Any tax repaid (or offset) on foot of an interim claim will be disregarded for the purpose of determining whether the taxpayer paid the correct amount of preliminary tax in accordance with section 959AO(3). However, this will not apply where the interim claim was overstated either because it was carelessly or deliberately made.

7 Procedure for making claims

7.1 Interim claims

Initially, interim claims are to be made via [MyEnquiries](#) on the Revenue website. A letter template for making interim claims (including the necessary declaration) is provided in Appendix I. This letter must be used when making an interim claim via MyEnquiries, and other formats will not be accepted. Supporting documentation should not be forwarded with the letter.

Once the interim claim is received by Revenue, the relief due will be given by amending the taxpayer's Form 11 tax return for 2019.

7.2 Interaction with self-correction without penalty under the Code¹⁴

While processing an interim claim Revenue may contact the taxpayer for additional material in relation to how the estimated relevant losses or estimated relevant allowances were calculated. Such an enquiry, where it is limited only to the value of the interim claim at the time the claim is made, will not preclude the taxpayer from availing of the opportunity to make a self-correction without penalty under the Code.

7.3 Processing interim claims

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

¹⁴ See section 3.2 of the [Code of Practice for Revenue Audit and other Compliance interventions](#) (the "Code")

Appendix I

Interim claim letter template

Submitted via [MyEnquiries](#)

- Under the 'My Enquiry relates to' field please select 'Income Tax'
- Under the 'More specifically' field please select 'IT Relief – Covid-19 Losses'

Re: Interim claim for Covid19 losses under section 395B

PPSN: ___/___/___/___/___/___/___/___

Name: _____

Address: _____

Description of [trade / profession] (delete as appropriate):

2019 accounts period From: ___/___/___ To: ___/___/___

2020 accounts period From: ___/___/___ To: ___/___/___

Dear sirs,

I wish for my income tax return and self-assessment for 2019, filed on ___/___/___, to be amended to make an interim claim under section 395B in respect of the above mentioned [trade / profession] (delete as appropriate) as follows:

	2020 year of assessment	2021 year of assessment	Total ¹⁵
Estimated relevant losses	€	€	€
Estimated relevant allowances	€	€	€
Total¹⁷	€	€	€

I confirm that I am tax compliant, and that I have no returns or payments outstanding

I confirm that I have incurred, or reasonably expect to incur, a relevant loss and relevant allowances in the [2020 / 2021] (delete as appropriate) year of assessment

I confirm that I have maintained, and have available, records which may reasonably be required by Revenue to determine whether the estimated relevant losses and the estimated relevant allowances were computed in a reasonable manner and to the best of my knowledge and belief

Prior to making this interim claim, I was subject to the Limitation on the Use of Reliefs by High Income Individuals Yes No

Signature: _____

Date: ___/___/___

¹⁵ The maximum total claim against the 2019 profits is €25,000.