

## **Corporation tax: Accelerated loss relief for companies adversely impacted by Covid-19 restrictions**

### **Part 12-03-05**

This document should be read in conjunction with sections 396, 396A, 396B and 396D of the Taxes Consolidation Act 1997

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## Introduction

Section 396D of the Taxes Consolidation Act 1997 provides for a temporary acceleration of corporation tax loss relief for companies. The provision allows companies to estimate trading losses for certain accounting periods affected by the Covid-19 restrictions and make a provisional claim, referred to as an ‘interim claim’, to carry-back up to 50% of those losses against taxable profits of the preceding accounting period on an accelerated basis. This will result either in a repayment of some or all of the corporation tax paid for that period or in a reduction in the amount of corporation tax payable for that period.

The purpose of section 396D is to provide cash-flow support to previously profitable companies who have become loss-making during the period impacted by Covid-19 and the associated public health measures. This manual provides guidance on the operation of section 396D as well as an overview of corporation tax loss relief rules, relief under which is accelerated by section 396D.

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

## 1 Existing scheme of loss relief for companies

### 1.1 Introduction

Companies who, in an accounting period, incur losses in carrying on a trade, the profits from which would be chargeable to tax under Case I of Schedule D, can make a claim to carry those losses back against chargeable profits of the preceding accounting period. A claim for carry back loss relief can usually only be made after the end of the accounting period in which the loss is incurred and following the filing of a tax return for that period. Section 396D permits an interim claim to be made for the carry back of trading losses incurred or expected to be incurred in certain accounting periods, thereby accelerating relief available under sections 396(2), 396A or 396B in respect of those losses. Set out below is a brief overview of the existing scheme of relief for the carry back of trading losses under those provisions.

### 1.2 Trading losses

#### 1.2.1 Relevant trading losses – section 396A

Under section 396A a loss incurred in an accounting period by a company in carrying on a trade, the profits from which would be chargeable to corporation tax at the 12.5% rate (“relevant trading losses”), may be offset against:

- other income chargeable to tax at the 12.5% rate in the same (or “current”) accounting period. For example, income from another trade or certain foreign dividends chargeable to tax at the 12.5% rate because they are paid out of trading profits (section 396A(3)), and
- relevant trading income and other income of the company chargeable to tax at the 12.5% rate in the preceding accounting period (section 396A(3)).

The company must make a claim for relief under section 396A(3) within 2 years of the end of accounting period in which the relevant trading loss is incurred (section 396A(5)). If the relevant trading loss cannot be fully absorbed under section 396A(3), section 396B allows the company to make a claim for relief for the excess loss on a value basis as detailed below.

#### 1.2.2 Relief for certain trading losses on a value basis – section 396B

A claim for relief under section 396B can only be made to the extent that the total relevant trading loss incurred in the current accounting period exceeds the amount in respect of which a claim has been made, or could have been made, under section 396A. Section 396B allows a company to set off the tax value of a relevant trading loss (i.e. the amount of the loss multiplied by the standard rate of corporation tax) against corporation tax chargeable in respect of other income and profits taxable at the higher rate of 25% (referred to as relevant corporation tax) in the current accounting period and in the immediately preceding accounting period of equal length. This ensures that relief for a relevant trading loss relief is given on a value basis. As with loss relief claims under section 396A(3), a claim for relief under section 396B must be made within 2 years from the end of the accounting period in which the loss is incurred (section 396B(6)).

#### 1.2.3 Order of relief under sections 396A and 396B

The order in which relief is given for relevant trading losses under sections 396A and 396B is as follows:

- firstly, the losses are to be offset against other relevant trading income or foreign dividends which are taxed at the 12.5% rate in the current accounting period,
- any remaining balance may then be offset against relevant trading income or foreign dividends which are taxed at the 12.5% rate in the preceding accounting period,
- any remaining loss may then be offset on a value basis against relevant corporation in the current accounting period, and
- finally, any remaining balance of the relevant trading loss may then be offset on a value basis against relevant corporation tax in the preceding accounting period.

Any relevant trading loss not fully utilised by claims under section 396A and section 396B, or which is not surrendered to a member of the same group under section 420A or 420B, may be carried forward for offset against future income from the same trade under section 396(1).

#### 1.2.4 Trading losses from an excepted trade – section 396(2)

The profits of an excepted trade are chargeable to corporation tax at the 25% rate. An excepted trade includes:

- (i) subject to exclusions, a trade of dealing in or developing land;

- (ii) a trade involving working scheduled minerals, mineral compounds or mineral substances; and
- (iii) a trade relating to certain petroleum activities.

A company that incurs a loss in the carrying on of an excepted trade can make a claim to carry back the loss against profits of the preceding accounting period. The relief is similar to that available for relevant trading losses except that, because the loss has a tax value of 25%, it may be offset against total profits of the company in the accounting period in which the loss is incurred or in its preceding accounting period without any value restriction. Relief under section 396(2) is granted on the making of a claim by the company which incurs the loss within 2 years of the end of the accounting period in which the loss arises (section 396(9)). There is no obligation on a company to make such a claim and if not made, the losses may either be surrendered to a group company by way of group relief under section 420 (if applicable) or carried forward for offset against future income from the same trade under section 396(1).

#### 1.2.5 Preceding accounting period(s)

In relation to the references above to the carry back of losses to the preceding accounting period under sections 396(2), 396A(3) and 396B, the legislation makes provision for circumstances where the duration of the current accounting period (the period in which a trading loss is incurred) differs in length to the duration of a preceding accounting period. In effect, relief can be claimed in respect of the time immediately preceding the current accounting period in which the loss is incurred which is equal in length to the current accounting period. This could mean, for example, under section 396A(3), relevant trading losses may only be offset against a proportion of the relevant trading income in the preceding accounting period where that period is longer in length than the current accounting period. Conversely, where the current accounting period is longer in length than the preceding accounting period, under section 396A(3), relevant trading losses may, in addition to being offset against relevant trading income in the preceding accounting period, also be offset against a proportion of the relevant trading income in the pre-preceding accounting period. As relief under section 396D is an acceleration of the carry back loss reliefs, these rules similarly apply for the purposes of relief under section 396D (see [section 2.3](#)).

## 2 Accelerated loss relief under section 396D

### 2.1 Introduction

Accelerated loss relief concerns the carry back of trading losses incurred in certain accounting periods against profits of an immediately preceding accounting period on an accelerated basis by allowing companies to make interim claims.

Section 396D(2) provides that where, for a **'specified accounting period'**, a company has an **'estimated non-relevant trading loss'** or, where applicable, an **'estimated**

**relevant trading loss**, the company can make an **interim claim** to carry back up to 50% of the estimated loss against profits of the **'preceding accounting period'**. The interim claim is treated as if it were a claim for relief under the existing loss relief provisions of sections 396(2), 396A(3) or 396B, as applicable, and therefore the rules applicable to those provisions also apply to an interim claim.

## 2.2 Specified accounting periods – section 396D(1)

A 'specified accounting period' is defined in section 396D(1) as any accounting period of a company carrying on a trade which includes some or all of the period commencing on 1 March 2020 and ending on 31 December 2020. This means that accounting periods ending in 2020 and 2021 could be eligible for accelerated loss relief. However, where a company incurs a trading loss in two specified accounting periods, in practice, accelerated loss relief may, depending on the particular facts of a case, confer a benefit in respect of only one of those accounting periods (as demonstrated in Example 2 below)<sup>1</sup>.

### Example 1:

Car Rental Company has an accounting year end of 31 July. Both the accounting periods ended 31 July 2020 and 31 July 2021 are specified accounting periods as they include part of the period from 1 March 2020 to 31 December 2020. In those periods, Car Rental Company's only income source was from carrying on a trade. In respect of the specified accounting period ended 31 July 2020, Car Rental Company was trading profitably up to March 2020 but experienced losses from then on because of the Covid-19 restrictions. The net result was a trading profit for the accounting period ended 31 July 2020, albeit lower than expected. The specified accounting period ended 31 July 2021 is expected to be loss-making. Both accounting periods are specified accounting periods, but only the accounting period ended 31 July 2021 is loss-making and therefore eligible for accelerated loss relief. An interim claim may be made for an early offset of up to 50% of the estimated trading losses for the July 2021 accounting period against profits in the July 2020 accounting period, allowing a potential reclaim of tax paid for that period as early as 1 December 2020 (i.e. after at least 4 months of the 2021 accounting period have lapsed).

### Example 2:

If, for example, Car Rental Company incurs a trading loss in its accounting period ended 31 July 2020 and also expects to incur a trading loss in its accounting period ended 31 July 2021, accelerated loss relief will only confer a benefit to the company in respect of the trading loss incurred in the accounting period ended 31 July 2020. As the company will not have any profits in its July 2020 accounting period against

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<sup>1</sup> A company might obtain the benefit of accelerated loss relief in respect of a relevant trading loss incurred in two specified accounting periods where, in the earlier of the two specified accounting periods (the 'earlier specified accounting period'), the company has non-trading income and, after the carry back of the loss from that period against relevant trading income in the preceding accounting period, there is either no loss remaining, or an insufficient loss remaining, to offset the tax chargeable on the non-trading income on a value basis. This means that the carry back of a relevant trading loss from the later specified accounting period to the earlier accounting period could result in additional loss relief, relief which is available on an accelerated basis under section 396D.

which the trading loss can be offset, accelerated relief for losses incurred, or expected to be incurred, in the accounting period ended 31 July 2021 will not give rise to any benefit.

### 2.3 Preceding accounting period – section 396D(1)

Section 396D enables companies to carry back up to 50% of their estimated trading losses for offset against taxable profits of the ‘preceding accounting period’. The preceding accounting period is the accounting period(s) which immediately precedes a specified accounting period in which the company incurs a trading loss and which is equal in length to the specified accounting period. Where the specified accounting period and the preceding accounting period are not equal in length, then in line with the provisions of sections 396, 396A and 396B (see [section 1.2.5](#)), relief under which is available under section 396D on an accelerated basis, the preceding accounting period should be identified by reference to the time immediately preceding the specified accounting period that is equal in length to the specified accounting period. In effect, this means that parts of accounting periods can be taken into account for the purpose of determining the preceding accounting period.

For example, if the specified accounting period is a 10-month accounting period commencing on 1 March 2020 and ending on 31 December 2020, 50% of the estimated trading loss can be carried back against taxable profits in the previous 10-month period. Where the immediately preceding accounting period is longer in duration than the specified accounting period e.g. 12 months, the profits of the preceding accounting period must be time apportioned. Equally, if the preceding accounting period is shorter in duration than the specified accounting period e.g. 6 months, then the company may look also to the pre-preceding accounting period and offset the loss on an accelerated basis against any profits arising in 4 months of that period on a time apportionment basis.

Where more than one accounting period is taken into account in relation to the ‘preceding accounting period’, the loss is to be set against the profits of the later accounting period, in priority to those of the earlier accounting period or part of that period.

### 2.4 Estimated relevant and non-relevant trading losses – section 396D(1)

An ‘estimated relevant trading loss’ is defined in section 396D(1) as a trading loss incurred, or expected to be incurred, based on the best estimate that may reasonably be made, by a company in a specified accounting period other than so much of the loss as is incurred in an excepted trade. An ‘estimated non-relevant trading loss’ is defined as a loss incurred, or expected to be incurred, based on the best estimate that may reasonably be made, by a company carrying on an excepted trade. Therefore, accelerated loss relief applies to losses from trades the profits from which (i) are chargeable to tax at 12.5% and (ii) are chargeable to tax at 25% (excepted trades).

Section 396D requires that the amount of a trading loss be quantified on a ‘best estimate’ basis. A company will be regarded as having made a best estimate where a

genuine attempt has been made to calculate the amount of the loss based on all the information available to the company at the time the interim claim is made. It is recognised that 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 evolve for the remainder of 2020 and their corresponding impact on companies. Companies should take a practical and proportionate approach in estimating the amount of their trading loss.

A company should calculate its actual loss<sup>2</sup> incurred up to the date of the interim claim<sup>3</sup> and should project any future losses expected to be made to the best of the company's knowledge and belief. This could involve, for example, predicting the company's future financial position based on year-to-date amounts of income received and expenditure incurred or by comparing against the turnover of the company in the preceding accounting period, while factoring in known information concerning future circumstances which will affect the company's future profit-making ability and making a reasonable adjustment to the financial position of the company to take account of such factors. For example, the company may estimate its future income and expenditure streams on the basis that the Covid-19 restrictions evolve as set out in the Government's roadmap, while factoring in any seasonal peaks (for example Christmas).

Companies 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 companies impacted by Covid-19, should also ensure that they factor such funding supports into their income projections when calculating their estimated loss.

## 2.5 Timing of interim claims – section 396D(3)

An interim claim may be made as early as 4 months after the beginning of the specified accounting period and up to 5 months after the end of the specified accounting period. Where a specified accounting period is less than 4 months, the claim may be made after the end of the accounting period and up to 5 months after that date. A company will be able to revise its interim claim as the specified accounting period progresses (and up to 5 months after its end), including increasing its interim claim where the company estimates that its loss for the specified accounting period will be greater than the amount previously expected. The legislation does not provide any limit on the number of times a company may revise its interim claim within the permitted timeframe for making an interim claim.

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<sup>2</sup> It is not a requirement that a loss has been incurred from the beginning of the accounting period to the date of the claim, but a significantly higher standard of proof will be required for a company which shows a profit for the year to date, but which makes an interim claim on the basis it expects to be loss-making at the end of the accounting period.

<sup>3</sup> It is expected that in the case of companies that are not small or micro companies, management accounts will be available to demonstrate the amount of any trading loss incurred up to the date of making or increasing an interim claim.



## 2.6 Eligibility for accelerated loss relief

A number of criteria must be satisfied in order for a company to be eligible to make an interim claim, giving rise to accelerated loss relief.

### 2.6.1 Declaration – section 396D(6)(a)

When the company makes an interim claim, it will be required to make a declaration that it has incurred, or it will reasonably expect to incur, an estimated relevant or non-relevant trading loss in the specified accounting period.

### 2.6.2 Tax compliance – section 396D(6)(b)

To be eligible to make an interim claim, a company must be tax compliant. This means that the company must have complied with all its obligations under tax legislation in relation to the payment of taxes and the filing of returns. A company which 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 tax liabilities permitted by those sections, still be regarded as being tax compliant provided the company complies with the provisions of those sections. A company that has agreed a phased payment for outstanding debt that does not qualify for warehousing will be treated as having complied with payment obligations relating to tax covered by those arrangements.

### 2.6.3 Supporting documentation – section 396D(5)(a)(i)

A company which makes a claim for accelerated loss relief is not required to automatically submit any documentation in support of its claim. However, the company is required to maintain, and have available for inspection upon request, any relevant documentation and records for the purposes of demonstrating that the losses have been computed in a reasonable manner and to the best of the company’s knowledge and belief.

## 3 Effect of making an interim claim – section 396D(2)

The company may make an interim claim under section 396D(2) to offset up to 50% of its estimated trading losses for the specified accounting period against profits of the preceding accounting period. A claim for accelerated loss relief under section 396D(2) is treated as if it were a claim for loss relief under the existing loss relief provisions in sections 396(2), 396A(3) or 396B, as appropriate. The losses carried back will be used to reduce the taxable profits and/ or reduce tax on chargeable profits in the preceding accounting period. This may result in a repayment becoming due to the company in respect of tax already paid (subject to any offset of tax as authorised by section 960H), or it may mean that, because of the reduction in profits/tax for the preceding accounting period, there is no more tax or less tax to pay for that accounting period.

### **Example 3:**

Event Planning Ltd has a year end of 31 December. It has trading profits of €160,000 for the accounting period ended 31 December 2019 and a tax liability of €20,000.

Event Planning Ltd anticipates that, based on its best estimate, it will have relevant trading losses of €100,000 in the accounting period ended 31 December 2020, which is a specified accounting period. The company has already paid preliminary tax in respect of the 2019 accounting period of €18,000 and has a balance of tax of €2,000 to pay on or before 23 September 2020.

Event Planning Ltd makes an interim claim under section 396D in September 2020 to carry back €50,000 ( $€100,000 \times 50\%$ ) of its estimated loss for the 2020 accounting period for offset against its profits in the 2019 accounting period. As a result of the claim, the 2019 profits are reduced to €110,000 ( $€160,000 - €50,000$ ) with a resulting tax liability of €13,750. Therefore, by making an accelerated loss relief claim under section 396D, the company is no longer required to pay a balance of tax of €2,000 in respect of the accounting period ended 31 December 2019 and it will be entitled to a refund of €4,250 ( $€18,000 - €13,750$ ), in respect of tax already paid for that period. That refund is available to the company at least one year earlier than would be the case if a carry back of those 50% of losses were only available to the company after it files its 2020 tax return in September 2021.

Event Planning Ltd will be able to make a further claim, on filing its tax return for the specified accounting period, to utilise the amount by which its actual trading loss for the accounting period ended 31 December 2020 exceeds the amount in respect of which an interim claim has been made. See [section 6](#) below.

#### 4 Excess claims – section 396D(4)(b) & section 396D(7)

It is recognised that there may be difficulty in accurately projecting the amount of losses expected to be incurred in a specified accounting period. Therefore, as mentioned in [section 2.5](#), once a company has submitted an interim claim for accelerated loss relief, it will be allowed to increase the amount in respect of which a claim is made or to reduce its claim where the company realises it has overestimated the amount of the loss. Where it comes to the company's notice that 50% of the estimated loss is lower than the amount in respect of which an interim claim has been made, the company is required to reduce the claim by the excess amount without delay.

Provision is made in section 396D(7) for the application of interest under section 1080 in respect of an excess claim, being the amount by which tax repaid or offset by virtue of an interim claim exceeds 50% of the actual trading loss incurred for the specified accounting period. In recognition of the inherent uncertainty around making an interim claim, an underpayment of tax relating to a claim that was made neither deliberately nor carelessly, and which is remedied by the company without delay, will only attract interest from the date on which the claim was reduced to the date the tax is repaid by the company. In all other cases, interest will apply from the date the tax was refunded by the Revenue Commissioners or offset against any outstanding liability of the company in accordance with section 960H.

#### 5 Submitting a claim for accelerated loss relief

A carry back of loss relief under sections 396(2), 396A(3) and 396B against profits of the preceding accounting period is made by making a claim in the corporation tax

return (CT1) for the preceding accounting period. Where a company is satisfied that it is eligible to claim accelerated loss relief under section 396D and has maintained the necessary supporting documentation, an interim claim may be made by completing the relevant loss relief sections of the CT1 for the preceding accounting period through the Revenue Online System (ROS). No supporting documentation is required to be submitted with the return however Revenue may request documentation to substantiate the claim at a later date.

### 5.1 Interim claims under section 396A and section 396B

A company can claim accelerated loss relief in the corporation tax return for the preceding accounting period.

The company must have filed, or be filing (when making a section 396D claim)<sup>4</sup>, its CT1 for the preceding accounting period to which it wishes to carry back the estimated relevant trading loss under section 396A and/or section 396B. A claim for accelerated loss relief can be made in the CT1 for the preceding accounting period through ROS by entering an amount of up to 50% of the estimated relevant trading loss for the specified accounting period in the existing 'Losses claimed under Sec. 396A(3) (carry back of losses)' or 'Trading Losses Carried Back (Sec.396B)' fields in the CT1.<sup>5</sup>

### 5.2 Interim claims under section 396(2)

The CT1 has been updated to include a new field in which a company carrying on an excepted trade can make an interim claim on an accelerated basis under section 396D. A company can claim this accelerated loss relief in the corporation tax return for the preceding accounting period.

A section 396D claim in respect of a trading loss relating to an excepted trade (for which relief is available under section 396(2)) can be made in the preceding accounting period's CT1 through ROS by entering an amount of up to 50% of the estimated non relevant trading loss (i.e. an excepted trade loss) for the specified accounting period in the new field 'Loss claimed under Sec. 396 (2) in respect of Excepted Trades (carry back of losses)' which is under the subheading 'Trade Loss' under the main heading 'Excepted Trade Profits (Section 21A) at 25%' in the CT1.

### 5.3 Submission of all interim claims

The following declarations must be made via 'tick the box' as part of a section 396D claim:

1. Declaration that the claim is an interim claim under section 396D;

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<sup>4</sup> Prior to 18 August 2020 it was only possible to make an interim claim by amending the CT1 for the preceding accounting period (i.e. after the CT1 had been filed for that period). It is now possible to make an interim claim when filing the CT1 for the preceding accounting period.

<sup>5</sup> A section 396A and section 396B relief claim under the Knowledge Development Box regime can be made by making a claim in the preceding accounting period's CT1 through ROS by entering an amount of 50% of the estimated loss for the specified accounting period in the fields 'relief under Sec. 396A(3) in respect of Qualifying Assets (carry back of losses) or 'Trading Losses in respect of Qualifying Assets Carried Back (Sec.396B)'.

2. Declaration that the company has incurred or reasonably expects to incur a non-relevant trading loss or relevant trading loss in the specified accounting period; and
3. Declaration that the company is tax compliant at the date the interim claim is made.<sup>6</sup>

## 6 Finalising a claim

Once the specified accounting period in respect of which an interim claim for estimated losses has been made has ended, the company will be able to prepare the necessary accounts for the specified accounting period and quantify the amount of the actual non-relevant trading loss or relevant trading loss incurred in the specified accounting period.

Following the end of the specified accounting period and the quantification of the actual trading loss for that period, the company will, in the normal manner, be able to make a claim to carry back any remaining trading loss available in respect of the preceding accounting period. This will involve filing a tax return for the specified accounting period (including any iXBRL accounts where applicable) and then amending the CT1 filed for the preceding accounting period to claim any additional amount of loss relief available to carry back to that period. When amending the CT1 the company will have to tick a disclosure box confirming that this is a final claim under section 396(2), 396A(3) or 396B as appropriate, rather than an interim claim under section 396D.

In accordance with section 396(9), 396A(5) or 396B(6), as appropriate, any claim for the carry back of any remaining balance of trading losses incurred in the specified accounting period against profits of the preceding accounting period, must be made within 2 years from the end of the specified accounting period.

### 6.1 Illustrative examples

#### **Example 4:**

Top Movies Limited (“TM Limited”) is a company which operates a number of cinema complexes throughout Ireland. TM Limited has a 30 September year end. Both the accounting periods ended 30 September 2020 and 30 September 2021 are specified accounting periods as they include part of the period from 1 March 2020 to 31 December 2020. In respect of the specified accounting period ended 30 September 2020, TM Limited has experienced a 40% reduction in turnover since March as it was forced to shut all its cinemas for a number of months as a result of Covid-19 restrictions. Although the cinemas have now reopened, they are operating at a significantly reduced capacity. TM Limited forecasts that this pattern is likely to continue for the foreseeable future. Taking account of this and its sizeable fixed costs, the company estimates it will have a relevant trading loss of €500,000 in the accounting period ended 30 September 2020 and a relevant trading loss of €250,000 in the accounting period ended 30 September 2021. As TM Limited does not have any profits in the September 2020 accounting period against which to offset the loss

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<sup>6</sup> Refer to [section 2.6.2](#) for the meaning of ‘tax compliant’ in this context.

expected to be incurred in the September 2021 accounting period, accelerated loss relief confers no benefit in respect of those losses.

In respect of the accounting period ended 30 September 2019, TM Limited has trading profits of €300,000 and investment income of €50,000. The company paid preliminary tax of €45,000 on 23 August 2019. The company filed its CT1 for the accounting period ended 30 September 2019 on 23 June 2020 and paid a balance of tax of €5,000 on this date, before taking account of any carry back of losses from the accounting period ended 30 September 2020.

TM Limited makes an interim claim for relief under section 396D on 1 September 2020 to carry back €250,000 of its estimated relevant trading loss back to its accounting period ended 30 September 2019 by amending the CT1.

### Effect of making an interim claim

As consequence of making an interim claim under section 396D, TM Limited's revised tax position for the accounting period ended 30 September 2019 is as follows:

Case I - Trading income	€300,000
Less: relevant trading loss from AP 30/9/20 <sup>7</sup>	<u>(€250,000) (1)</u>
Revised Case I trading income	€50,000
Case III - Investment income	€50,000
<b>Corporation tax payable</b>	
Trading income (€50,000 @ 12.5%)	€6,250
Investment income (€50,000 @ 25%)	<u>€12,500</u>
Corporation tax payable	€18,750
Less: tax paid	<u>(€50,000)</u>
<b>Refund due</b>	<b>€31,250</b>

### Finalising its claim

Following the end of the accounting period ended 30 September 2020 and the finalisation of accounts for that period, TM Limited is able to quantify its actual relevant trading loss for the accounting period as €510,000 and the company also has investment income of €10,000 for that accounting period.

Following the filing of a CT1 for the accounting period ended 30 September 2020 on 23 June 2021, TM Limited can make the following additional claim for loss relief in respect of the accounting period ending 30 September 2019—

Case I - Trading Profits	€50,000
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<sup>7</sup> section 396A(3) – claimed on an accelerated basis under section 396D

Less: relevant trading loss from AP 30/9/20 <sup>8</sup>	(€50,000) <b>(2)</b>
Revised trading profits	NIL
Case III - Investment income	€50,000
Relevant corporation tax (at 25%)	€12,500
Less: loss relief – section 396B <sup>9</sup>	(€12,500) <b>(4)</b>
Net corporation tax due	NIL
Less: tax paid <sup>10</sup>	(€18,750)
<b>Refund due</b>	<b>€18,750</b>

#### **Loss memo – Accounting period ended 30 September 2020**

Total relevant trading loss	(€510,000)
<b>(1)</b> Utilised on 1 September 2020 against relevant trading income for the AP 30/9/19 <sup>11</sup>	€250,000
<b>(2)</b> Utilised on 23 June 2021 against balance of relevant trading income for the AP 30/9/19 <sup>12</sup>	€50,000
<b>(3)</b> Utilised on 23 June 2021 against relevant corporation tax due in respect of investment income for the AP 30/9/20 <sup>13</sup>	€20,000
<b>(4)</b> Utilised on 23 June 2021 against relevant corporation tax due in respect of investment income for the AP 30/9/19 <sup>14</sup>	€100,000
Balance of relevant trading loss available for carry forward against income from same trade under section 396(1)	€90,000

#### **Example 5:**

Fashion Clothing Limited (“FC Limited”) is a clothing retailer which operates a busy retail store as well as making online sales through its website. FC Limited has a 31 March year end. FC Limited was forced to close its retail store for a number of months between March and June due to Covid-19 restrictions but has performed well in terms of online sales during the period. In respect of the accounting period ended 31 March 2021, being a specified accounting period, FC Limited experienced a 30% reduction in sales between April and August 2020 and forecasts that this pattern is likely to continue for the remainder of the accounting period ended 31 March 2021. On that basis, the company estimates it will have a relevant trading loss of €850,000 in the accounting period ended 31 March 2021.

<sup>8</sup> Section 396A(3)

<sup>9</sup> €12,500 x 100/12.5 = €100,000

<sup>10</sup> €50,000 - €31,250 (previously refunded) = €18,750

<sup>11</sup> Section 396A(3) - claimed on an accelerated basis by making an interim claim under section 396D

<sup>12</sup> Section 396A(3)

<sup>13</sup> €2,500 x 100/12.5 = €20,000

<sup>14</sup> €12,500 x 100/12.5 = €100,000

In respect of the accounting period ended 31 March 2020, FC Limited has trading profits of €400,000 and investment income of €50,000. The company paid preliminary tax of €56,500 on 23 February 2020 and, before taking account of any carry back of losses from the accounting period ended 31 March 2021, would have to pay a balance of tax of €6,000 on or before 23 December 2020.

FC Limited makes an interim claim under section 396D on 1 September 2020 to carry back €425,000 of its estimated relevant trading loss back to its accounting period ended 31 March 2020.

### Effect of making an interim claim

As consequence of making an interim claim under section 396D, FC Limited's revised tax position for the accounting period ended 31 March 2020 is as follows:

Case I - Trading income	€400,000
Less: relevant trading loss from AP 31/3/21 <sup>15</sup>	<u>(€400,000) (1)</u>
Revised Case I trading income	NIL
Case III - Investment income	€50,000
<b>Corporation tax payable</b>	
Investment income (€50,000 @ 25%)	€12,500
Less: value-based loss relief from AP 31/3/21 <sup>16</sup>	<u>(€3,125) (2)</u>
Corporation tax payable	€9,375
Less: Preliminary tax paid	<u>(€56,500)</u>
<b>Refund due</b>	<b>€47,125</b>

### Finalising its claim

Following the end of the accounting period ended 31 March 2021 and the finalisation of accounts for that period, FC Limited is able to quantify its actual relevant trading loss for the accounting period as €850,000 and the company also has investment income of €10,000 for that accounting period.

Following the filing of a CT1 for the accounting period ended 31 March 2021 on 23 December 2021, FC Limited can make the following additional claim for loss relief in respect of the accounting period ending 31 March 2020—

<sup>15</sup> Section 396A(3) – claimed on an accelerated basis under section 396D

<sup>16</sup> Section 396B – claimed on an accelerated basis under section 396D (€25,000 x 12.5% = €3,125)

Case I - Trading Profits	NIL
Case III - Investment income	€50,000
Relevant corporation tax (at 25%)	€12,500
Less: loss relief already claimed - section 396D	(€3,125)
Less: loss relief – section 396B <sup>17</sup>	<u>(€9,375) (4)</u>
Net corporation tax due	NIL
Less: Preliminary tax paid <sup>18</sup>	(€9,375)
<b>Refund due</b>	<b>€9,375</b>

### Loss memo – Accounting period ended 31 March 2021

Total relevant trading loss	(€850,000)
(1) Utilised on 1 September 2020 against relevant trading income for the AP 31/3/20 <sup>19</sup>	€400,000
(2) Utilised on 1 September 2020 against relevant corporation tax due in respect of investment income for the AP 31/3/20 <sup>20</sup>	€25,000
(3) Utilised on 23 December 2021 against relevant corporation tax due in respect of investment income for the AP 31/3/21 <sup>21</sup>	€20,000
(4) Utilised on 23 December 2021 against relevant corporation tax due in respect of investment income for the AP 31/3/20 <sup>22</sup>	€75,000
Balance of relevant trading loss available for carry forward against income from same trade under section 396(1)	€330,000

### Example 6:

Airline Catering Services Limited (“ACS Limited”) is a catering company which provides catering services to a number of international airlines. ACS Limited has a 31 December year end. In respect of the accounting period ended 31 December 2020, being a specified accounting period, ACS Limited has experienced a 70% reduction in sales between March and August 2020 due to the restrictions imposed on international travel as a result of COVID-19 and forecasts that this pattern is likely to continue for the remainder of the accounting period ended 31 December 2020. On that basis, the company estimates it will have a relevant trading loss of €5m in the accounting period ended 31 December 2020.

<sup>17</sup> €9,375 x 100/12.5 = €75,000

<sup>18</sup> €56,500 - €47,125 (previously refunded) = €9,375

<sup>19</sup> Section 396A(3) - claimed on an accelerated basis by making an interim claim under section 396D

<sup>20</sup> Section 396B - claimed on an accelerated basis by making an interim claim under section 396D

<sup>21</sup> €2,500 x 100/12.5 = €20,000

<sup>22</sup> €9,375 x 100/12.5 = €75,000



In respect of the accounting period ended 31 December 2019, ACS Limited has trading profits of €2m and investment income of €500,000. The company paid preliminary tax of €340,000 in respect of the accounting period (over two instalments) and, before taking account of any carry back of losses from the accounting period ended 31 December 2020, would have to pay a balance of tax of €35,000 on or before 23 September 2020.

ACS Limited makes an interim claim for relief under section 396D on 1 September 2020 to carry back €2.5m of its estimated relevant trading loss back to its accounting period ended 31 December 2019.

### Effect of making an interim claim

As consequence of making an interim claim under section 396D, ACS Limited's revised tax position for the accounting period ended 31 December 2019 is as follows:

Case I - Trading income	€2,000,000
Less: relevant trading loss from AP 31/12/20 <sup>23</sup>	(€2,000,000) <b>(1)</b>
Revised Case I trading income	NIL
Case III - Investment income	€500,000
<b>Corporation tax payable</b>	
Investment income (€500,000 @ 25%)	€125,000
Less: value-based loss relief from AP 31/12/20 <sup>24</sup>	(€62,500) <b>(2)</b>
Corporation tax payable	€62,500
Less: Preliminary tax paid	(€340,000)
<b>Refund due</b>	<b>€277,500</b>

### Finalising its claim

Following the end of the accounting period ended 31 December 2020 and the finalisation of accounts for that period, ACS Limited is able to quantify its actual relevant trading loss for the accounting period as €5m. The company also has investment income of €300,000 for the accounting period.

Following the filing of a CT1 for the accounting period ended 31 December 2020 on 23 September 2021, ACS Limited can make the following additional claim for loss relief in respect of the accounting period ending 31 December 2019—

Case I - Trading Profits	NIL
Case III - Investment income	€500,000
Relevant corporation tax (at 25%)	€125,000

<sup>23</sup> section 396A(3) – claimed on an accelerated basis by making an interim claim under section 396D

<sup>24</sup> Section 396B – claimed on an accelerated basis under section 396D (€500,000 x 12.5%) = €62,500

Less: loss relief already claimed – section 396D	(€62,500)
Less: loss relief – section 396B <sup>25</sup>	(€62,500) <b>(4)</b>
Net corporation tax due	NIL
Less: Preliminary tax paid <sup>26</sup>	(€62,500)
<b>Refund due</b>	<b>€62,500</b>

### Loss memo – Accounting period ended 31 December 2020

Total relevant trading loss	(€5,000,000)
<b>(1)</b> Utilised on 1 September 2020 against relevant trading income for the AP 31/12/19 <sup>27</sup>	€2,000,000
<b>(2)</b> Utilised on 1 September 2020 against relevant corporation tax due in respect of investment income for the AP 31/12/19 <sup>28</sup>	€500,000
<b>(3)</b> Utilised on 23 September 2021 against relevant corporation tax due in respect of investment income for the AP 31/12/20 <sup>29</sup>	€600,000
<b>(4)</b> Utilised on 23 September 2021 against relevant corporation tax due in respect of investment income for the AP 31/12/19 <sup>30</sup>	€500,000
Balance of relevant trading loss available for carry forward against income from same trade under section 396(1)	€1,400,000

## 6.2 Excess interim claims – section 396D(5)(a)(ii)

Where, following the end of the accounting period, it is found that a company has significantly over-estimated its trading loss and 100% of the actual trading loss incurred in the specified accounting period is lower than the amount in respect of which an interim claim has been made (which is based on 50% of the estimated trading loss for the specified accounting period), section 396D(5)(a)(ii) requires the company to adjust downwards the amount of the interim claim. The company is required to do so no later than the due date for the filing of the return in respect of the specified accounting period in which the loss was made. As noted in [section 4](#), where an underpayment of tax arises as a result of a claim which is excessive, provided the overclaim was not made deliberately or carelessly, interest will apply from the date the claim is reduced until the date the tax is repaid to Revenue. In the case of a deliberate or careless overclaim, interest will apply from the date the tax was refunded/offset until it is repaid to Revenue. As noted in [section 6.3](#) below, penalties may also be imposed.

<sup>25</sup> €62,500 x 100/12.5 = €500,000

<sup>26</sup> €340,000 - €277,500 (previously refunded) = €62,500

<sup>27</sup> section 396A(3) - claimed on an accelerated basis by making an interim claim under section 396D

<sup>28</sup> Section 396B - claimed on an accelerated basis by making an interim claim under section 396D

<sup>29</sup> €75,000 x 100/12.5 = €600,000

<sup>30</sup> €62,500 x 100/12.5 = €100,000

**Example 7:**

Using the Example 4 in [section 6.1](#) above, say following the end of the accounting period ended 30 September 2020 and the finalisation of accounts for that period, TM Limited's losses are actually only €200,000, and not €500,000 as was originally estimated.

TM Limited must, no later than the 23 June 2021, adjust the interim claim made on 1 September 2020 to reduce the amount of the claim to €200,000.

### 6.3 Excess claims and penalties

Any interim claims for relief under section 396D which are found to be excessive may be liable for a penalty under section 1077E and regard should be had to the Code of Practice for Revenue Audit and other Compliance Interventions (the "Code") in this respect.

While processing an interim claim Revenue may contact the company for additional information in relation to how the estimated relevant trading loss or estimated non-relevant trading loss was 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<sup>31</sup>.

### 6.4 Excess claims and preliminary tax

Where a company makes an excessive claim for accelerated loss relief for a specified period, it may result in the preliminary tax which has been paid by the company being less than should have been paid in accordance with the prescribed limits in the legislation. Where an underpayment of preliminary tax occurs due to an excessive interim claim, the same consequences arise as would be applicable to the underpayment of preliminary tax in other circumstances i.e. for the purpose of determining the amount of interest payable on the underpayment, the full corporation tax liability for the accounting period is deemed to have been due and payable on the date or dates on which preliminary tax was due and payable.

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

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<sup>31</sup> See section 3.2 of the Code.