

[15.03.03] Tax relief for new start-up companies [section 486C TCA 1997]

Last updated February 2016

1. Summary

Section 486C of the TCA 1997 was introduced by Finance (No. 2) Act 2008 and provides for relief from corporation tax for start-up companies in their first three years of trading. The relief is granted by reducing the corporation tax payable on the profits of the new trade and gains on the disposal of any assets used for the purpose of the new trade.

Prior to Finance Act 2011, full relief was available where the corporation tax otherwise payable by the company was €40,000 or less. Marginal relief applied where the corporation tax liability was between €40,000 and €60,000. Finance Act 2011 modified the relief by linking it to the amount of Employers' PRSI paid by a company in an accounting period, subject to a maximum of €5,000 per employee and an overall limit of €40,000.

Finance Act 2013 provided for an enhancement of the relief by allowing any unused relief arising in the first three years of trading, due to losses or insufficient profits, to be carried forward for use in subsequent years.

2. Availability of relief

Section 486C provides for relief from corporation tax for start-up companies that:

- are incorporated on or after 14 October 2008,
- set up and commence a qualifying trade between 1 January 2009 and 31 December 2018, and
- have corporation tax liabilities which do not exceed specified levels.

A qualifying trade is a new trade set up and commenced by a company in the period 1 January 2009 to 31 December 2018 but does not include a trade:

- which was previously carried on by another person and to which the company has succeeded,
- the activities of which were previously carried on as part of another person's trade or profession,
- a trade of dealing in or developing land or exploration and extraction of petroleum or minerals (referred to in section 21A of the TCA 1997 as an "excepted trade"),
- a trade consisting of service company activities as defined in section 441 of the TCA 1997. (Service companies include close companies whose businesses consist of the carrying on of a profession or the provision of professional services, or of exercising an office or employment. Service companies also include businesses that provide services to professionals.),
- the activities of which form part of an undertaking to which subparagraphs (a) to (h) of Article 1 of Commission Regulation (EC) No. 1998/2006 apply¹, or

¹ This includes the fishery and aquaculture sectors, the primary production of agricultural products, and the coal sector.

- the activities of which, if carried on by an associated company of the new company, would form part of a trade carried on by that associated company.

Where a company claiming relief takes over the activities of another trade, those activities will be treated as a separate trade, which will not be a qualifying trade, having been previously carried on by another person. Relief will continue to be available with regard to corporation tax attributable to the qualifying trade within three years of commencement, subject to the limits set out in paragraph 3.

Where in an accounting period a company transfers part of a qualifying trade to a connected person, the company shall not be entitled to relief in respect of that trade for that or any subsequent accounting periods.

The Revenue Commissioners may, for the purposes of ensuring compliance with EU de minimis State aid rules, disclose information on the tax relief claimed by companies under the provisions of section 486C, to government departments and agencies paying other de minimis aid and, if requested, to the EU Commission.

3. Operation of the Relief

Prior to Finance Act 2011, full relief was available to a new company in any of its first three years of trading where its total corporation tax liability for a 12-month accounting period did not exceed €40,000. A new qualifying company with a corporation tax liability up to this amount had its corporation tax liability reduced to nil.

Finance Act 2011 modified the relief by linking it to the amount of Employers' PRSI paid by a company in an accounting period, subject to a maximum of €5,000 per employee and an overall limit of €40,000. Credit is also given for any Employers' PRSI exempted under the Employers' Job (PRSI) Incentive Scheme² in respect of a company's employees in determining the amount of corporation tax relief available to the company.

The Finance Act 2011 changes mean that where the total corporation tax payable by a qualifying start-up company for an accounting period does not exceed €40,000, the aggregate amount of corporation tax referable to income and gains³ of the qualifying trade in that period will be reduced by the amount of qualifying Employers' PRSI.

Prior to Finance Act 2011, where the total corporation tax payable by a company exceeded €40,000 but did not exceed €60,000, marginal relief was allowed by reducing the corporation tax payable for the accounting period to an amount determined by the following formula:

$3 \times (T-M) \times (A+B)/T$ where:

- T is the total corporation tax payable by the company for the accounting period,
- M is the lower relevant maximum amount (i.e. €40,000),
- A is the corporation tax payable by the company for the accounting period so far as is referable to income from the qualifying trade for the accounting period, and

² The Employer Job (PRSI) Incentive Scheme ceased on 30 June 2013 for new participants.

³ i.e. chargeable gains on the disposal of assets of the qualifying trade

- B is the corporation tax payable by the company for the accounting period so far as is referable to chargeable gains on the disposal of qualifying assets of the qualifying trade.

For example: if a company's tax liability is €41,000 (all attributable to income from a qualifying trade), it will get relief of €38,000 and will pay €3,000, calculated as follows:

$$3 \times (\text{€}41,000 - \text{€}40,000) \times \text{€}41,000 / \text{€}41,000 = \text{€}3,000$$

Following the changes introduced by Finance Act 2011, where the total corporation tax payable exceeds €40,000 but does not exceed €60,000, the aggregate amount of corporation tax referable to income and gains of the qualifying trade will be reduced to an amount as calculated in accordance with the original existing marginal relief formula or, if greater, to that aggregate as reduced by the amount of qualifying Employers' PRSI.

Worked examples of the relief following Finance Act 2011 changes are set out in **Appendix 1**. These changes apply to all qualifying companies commencing a qualifying trade on or after 1 January 2011. Companies which set up and commenced a qualifying trade in 2009 or in 2010 can obtain relief on the previous (i.e. pre-Finance Act 2011) basis for profits earned in accounting periods commencing before 2011.

The maximum relief allowable over three years is €120,000 (€100,000 for companies engaged in the transport sector).

There is no relief for a company with a corporation tax liability of €60,000 or greater in any 12 month accounting period.

The relevant limit of €5,000 and the relevant maximum amounts of €40,000 and €60,000 are proportionately reduced for accounting periods of less than 12 months.

4. Finance Act 2013 changes

Finance Act 2013 provided for a significant enhancement of the relief by allowing any relief not availed of in the first three years of trading, due to losses or insufficiency of profits, to be carried forward for use in subsequent years. This is subject to the amount of relief in any year not exceeding the Employers' PRSI contributions of the company, with relief for these contributions capped at €5,000 per employee and €40,000 in total for a year.

Prior to Finance Act 2013, the relief operated on a 'use it or lose it' basis. Relief was not available to a start-up company in any of the first three years of trading where a loss was incurred and relief was only partly available where the tax payable on profits from the new trade was not sufficient to enable the company to obtain full relief for its Employers' PRSI contributions. There was no provision for carry forward of unused amounts to later years.

Finance Act 2013 addressed this by allowing a start-up company with eligible Employers' PRSI contributions in excess of the corporation tax referable to the qualifying trade for an accounting period within the three-year start-up period, to carry forward the excess amount and use it to reduce corporation tax in respect of the trade in subsequent years. Provision was also made to enable a company entitled to marginal relief for an accounting period in the three-year period to carry forward the additional amount of marginal relief that would have

been available if the corporation tax in respect of the trade were of a sufficient amount to match the company's Employers' PRSI contributions.

Calculation of the amount of unused relief to be carried forward from the three-year start-up period will depend on whether the company is eligible to claim full relief or marginal relief in any of the accounting periods in the three-year period.

In the case of a company eligible for full relief in an accounting period falling within the three-year period, where the total Employers' PRSI contribution exceeds the corporation tax referable to the qualifying trade for the accounting period, the excess amount (referred to in the legislation as a "first relevant amount") is carried forward and will be available to reduce corporation tax referable to the trade in accounting periods following the three-year period. For example, in the case of a company with a total Employers' PRSI contribution of €20,000 and corporation tax referable to the trade of €10,000 for an accounting period within the three-year period, the company will be entitled to reduce that corporation tax to nil and to carry forward the unrelieved PRSI contribution of €10,000 for offset against corporation tax referable to the trade in accounting periods following the three-year period.

Once the amount to be carried forward in respect of each accounting period within the three-year period is determined, these are then aggregated and that aggregate (referred to in the legislation as a "specified aggregate") is then applied to reduce the corporation tax referable to the qualifying trade for accounting periods following the three-year start-up period. This is subject to the requirement that corporation tax shall not be reduced in any accounting period by more than the total Employers' PRSI contribution for the accounting period.

Any residual amount of the specified aggregate that is not used in an accounting period can be carried forward and applied to reduce corporation tax referable to the trade in subsequent accounting periods until such time as the specified aggregate is fully used up. Thus, in the accounting period immediately following the three-year start-up period, where the specified aggregate exceeds the amount by which corporation tax referable to the trade is reduced for that accounting period, the excess is carried forward and applied to reduce corporation tax referable to the trade for the next accounting period. Similarly, where it is not possible to fully use the excess in that accounting period, the remaining excess may be applied to reduce the corporation tax referable to the trade for the succeeding accounting period and so on for each succeeding accounting period until there is no excess left.

An example of how the carry-forward provisions operate is provided in **Appendix 2**. The calculation of marginal relief is outlined in **Appendix 3**.

The Finance Act 2013 provisions apply in respect of unrelieved amounts arising in accounting periods ending on or after 1 January 2013. This means that a company with an unrelieved amount of Employers' PRSI in an accounting period (within the three-year start-up period) ending in 2013 will be able to carry forward that amount and use it to reduce corporation tax referable to the qualifying trade in accounting periods following the three-year period.

Where a company carries on a qualifying trade in an accounting period falling partly within the three-year period, that part of the accounting period is to be treated as a separate accounting period for the purposes of the relief. For example, where the three-year period expires at the end of 2013 and the company's accounting period runs from 1 July 2013 to 30

June 2014, the six month period from 1 July to 31 December 2013 is treated as a separate accounting period and the corporation tax referable to income from the qualifying trade for this period, as well as the relevant Employers' PRSI limits, are determined by apportionment on a time basis.

5. Claims for relief

A claim for relief should be made on the Form CT1.

6. Further Information

While this document broadly sets out the details relating to section 486C relief, the facts of the case will determine entitlement to relief under the scheme. Further information or requests for clarification should be addressed in the first instance to a company's local tax office. More complex technical queries may be addressed through the Revenue Technical Service. Guidelines on Revenue's Service to Practitioners and Business Taxpayers are available at www.revenue.ie under the Tax Practitioners' tab.

Appendix 1

Minimum and Maximum amounts of relief (following Finance Act 2011 changes)

In the examples below it is assumed that the corporation tax referable to income from the qualifying trade represents total corporation tax payable for the accounting period before relief under section 486C.

Example 1

Company A accounting period ending 31/12/11

Corporation Tax referable to income from qualifying trade: €20,000

Employee Details	Employers' PRSI paid in accounting period
Employee 1:	€2,000
Employee 2:	€3,000
Employee 3:	€6,000 [capped at €5,000]
Total Employers' PRSI contribution:	€11,000

Qualifying Employers' PRSI paid in accounting period: €10,000

Relief available under section 486C: €10,000

Example 2

Company B accounting period ending 31/12/11

Corporation Tax referable to income from qualifying trade: €20,000

Employee Details	Employers' PRSI paid in accounting period
Employee 1:	€4,000
Employee 2:	€4,000
Employee 3:	€5,000
Employee 4:	€4,000
Employee 5:	€4,000
<u>Employees [Job Incentive Scheme⁴]</u>	<u>Amount Exempted</u>
Employee 6:	€2,000
Employee 7:	€2,000
Total Employers' PRSI contribution:	€25,000

Qualifying Employers' PRSI paid in accounting period: €25,000

Relief available under section 486C: €20,000 [maximum relief available]

Example 3

⁴ The Employer Job (PRSI) Incentive Scheme ceased on 30 June 2013 for new participants

Company C accounting period ending 31/12/11

Corporation Tax referable to income from qualifying trade: €50,000

Employee Details	Employers' PRSI paid in accounting period
As per Example 2:	As per Example 2
Total Employers' PRSI contribution:	€25,000

Qualifying Employers' PRSI paid in accounting period: €25,000

Relief available under section 486C:

Marginal relief applies - corporation tax payable reduced to greater of:

- a) €50,000 less qualifying Employers' PRSI paid and
- b) amount per formula 3 * (€50,000 - €40,000)

Corporation tax payable reduced to (b) above i.e. €30,000

Relief available under section 486C: €20,000

Appendix 2

Carry-forward of unused relief for a company entitled to full relief (following Finance Act 2013 changes)

Example:

Company eligible for full relief – i.e. total corporation tax liability does not exceed €40,000 in any of the first 3 years.

Year	2013	2014	2015	2016	2017
Trading Profits:	14,000	12,000	70,000	100,000	120,000
Corporation tax [12.5%]:	1,750	1,500	8,750	12,500	15,000
Employers' PRSI contribution:	10,000	10,000	10,000	10,000	10,000
Tax liability after s486C relief:	Nil	Nil	Nil	2,500*	7,000
Unused amount carried forward: (‘First relevant amount’)	8,250	8,500	1,250	N/A	N/A
Aggregate amount carried forward from 3 years: (‘Specified aggregate’)			18,000		
Relief claimed after 3-year period				10,000*	8,000
Aggregate amount remaining c/f to next year:				8,000	Nil

**Relief may not exceed total Employers' PRSI contribution [€10,000] in this year.*

Appendix 3

Carry-forward of unused relief for a company entitled to marginal relief (following Finance Act 2013 changes)

A company with a total corporation tax liability of more than €40,000 but not more than €60,000 for an accounting period falling within the 3-year start-up period is eligible for marginal relief for the accounting period. In the case of a company on marginal relief, where the total Employers' PRSI contribution exceeds the corporation tax referable to the qualifying trade for the accounting period, an amount (referred to in the legislation as a 'second relevant amount') as determined by the marginal relief formula shall be carried forward and will be available to reduce corporation tax referable to the qualifying trade in accounting periods following the 3-year period. The amount to be carried forward is equivalent to the additional amount of marginal relief that would have been available to the company if its corporation tax in respect of the trade were of the same amount as its Employers' PRSI contribution.

There are three steps in calculating this amount:

(1) Step 1:- Calculate the actual amount of marginal relief available to the company for the accounting period. The amount of marginal relief available is the corporation tax referable to trade as reduced by the amount determined by the following formula:

$$3 \times (T - M) \times \frac{(A + B)}{T}$$

where-

A+B is the aggregate of (A) corporation tax referable to income from the qualifying trade and (B) corporation tax referable to chargeable gains on the disposal of relevant assets of the trade,

T is the total corporation tax payable by the company on all profits for the accounting period, and

M is the lower relevant maximum amount of €40,000.

(2) Step 2:- Calculate the amount of marginal relief that would have been available for the accounting period if the corporation tax referable to the qualifying trade were equal to the total Employers' PRSI contribution. The formula for determining this amount is as follows:

$$C - \left[3 \times \frac{(T - M)}{T} \times C \right]$$

where-

C is the total Employers' PRSI contribution for the accounting period.

(3) Step 3:- Deduct the amount at (1) above from the amount at (2) to get the amount of marginal relief that is to be carried forward and applied to reduce corporation tax referable to the trade in accounting periods following the three-year start-up period.

Example

The following is an example of how to calculate the amount of marginal relief to be carried forward from an accounting period falling within the three-year start-up period.

Corporation tax payable and Employers' PRSI contributions for the accounting period are assumed to be as follows:

	(€000's)
Total Corporation Tax (T)	= 50
Corporation Tax referable to trade (A+B) ⁵	= 20
Total Employers' PRSI contribution (C)	= 30

Step 1 – Calculate the actual amount of marginal relief available for the accounting period:

This is the amount of corporation tax referable to trade (i.e. 20) as reduced by an amount determined by the formula:

$$3 \times (T - M) \times \frac{(A + B)}{T} \text{ where } T = 50, M = 40 \text{ and } (A+B) = 20$$

$$\text{i.e. } 3 \times (50 - 40) \times \frac{20}{50} = 12$$

Thus, the actual amount of marginal relief available is: $20 - 12 = 8$

Step 2 - Calculate the amount of marginal relief that would have been available for the accounting period if the corporation tax referable to the qualifying trade were equal to the total Employers' PRSI contribution:

The formula for determining this amount is as follows:

$$C - [3 \times (T - M) \times \frac{C}{T}] \text{ where } C = 30, T = 50 \text{ and } M = 40$$

$$\text{i.e. } 30 - [3 \times (50 - 40) \times \frac{30}{50}] = 12$$

Step 3:- Subtract the amount calculated under Step 1 from the amount calculated under Step 2 to determine the amount of marginal relief to be carried forward:

Amount to be carried forward: $12 - 8 = 4$ (i.e. €4,000)

⁵ i.e. the aggregate of corporation tax referable to income from the qualifying trade (A) and corporation tax referable to chargeable gains on the disposal of relevant assets of the trade (B).