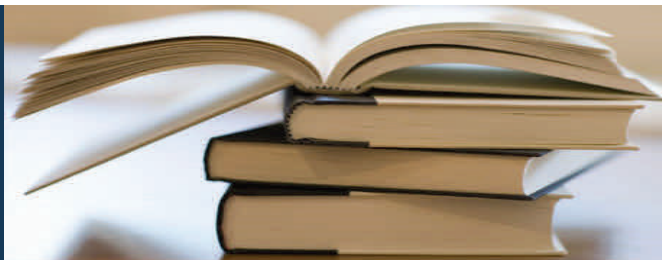


OHT Guide to Tax Relief On Start-up Companies



Tax Relief for Start-up Companies

Tax relief was introduced in 2009 for new start-up companies (incorporated after 14 October 2008), and it applied to corporation tax and CGT arising in the first three years of trading.

The relief exempts profits from tax up to a ceiling of €40,000 (with some provision for marginal relief up to €60,000).

At a corporation tax rate of 12.5% relief on tax of up to €40,000 would shelter profits of €320,000 per year, and over 3 years a company could shelter up to €960,000 of trading profits from tax, so this was a potentially valuable relief. In 2011 the relief was linked to the amount of employers' PRSI paid by the new company.

While any tax relief for a start up company is to be welcomed, in practice the use of this relief is limited by the fact that many new companies incur losses in the early years of operation.

In addition the link to Employers' PRSI means that new companies which will go on to generate employment when they are established, but which are largely run in the early years by proprietary directors (who are class S1 and therefore outside the Employer's PRSI provisions) obtain little benefit from this relief.

Qualifying Trade

The relief is restricted to new trades and does not apply where the trade is taken over, i.e. where it was previously carried on by another person, or an associated company.

In addition if a new company starts a new trade, but the activities of that trade would be part of an existing trade if carried on by an associated company, then profits from the trade will not qualify for relief.

Where a company claiming relief takes over the activities of another trade, those activities will be treated as a separate non-qualifying trade which does not attract relief, to ensure that the scheme is focused on new

business activities.

Certain trades are excluded from the relief. A trade consisting of the provision of "service company" activities (as defined in the professional services surcharge provision - S. 441 TCA 1997). In addition relief will not be available on a trade which involves any of the following activities:-

- land dealing,
- petroleum, coal and mineral activities,
- aquaculture or agriculture,
- road freight operations or export activities.

Profits Eligible for Relief

The relief applies to two classes of profits:

1. corporation tax payable by the company for an accounting period that is "referable to income from the qualifying trade" for that accounting period", and
2. corporation tax payable by the company which is "referable to the chargeable gains on the disposal of qualifying assets in relation to the trade".

Relief on Disposal of Assets

Relevant assets are asset (including goodwill but not including shares or securities or other assets held as investments) which are used for the purposes of that trade.

There are two categories of asset excluded from this definition:-

1. any asset if the gain on disposal of the asset would not be a chargeable gain, or
2. any asset if the consideration for the acquisition of the asset is determined by section 617 (group relief) or section 631 (mergers relief).

The exclusion of assets which have benefited from group or mergers relief is an anti-avoidance provision aimed at preventing assets with inherent gains being transferred

Legislation (S.486C Taxes Consolidation Act, 1997)

S.31F(No2)A08	introduced New Start-up Company Relief for companies that began to trade in 2009.
S.45FA10	extended the relief to start-up companies that began to trade in 2010.
S.34FA11	further extended the relief to start-up companies that began to trade in 2011, and modified the relief by linking the value of the relief to the amount of employer's PRSI paid by the company. It also capped the relief at €5,000 per employee and introduced an overall limit for the company of €40,000.
S.45FA12	extended the relief to cover companies which begin to trade up to 31 December 2014.
S.34FB14	proposes extending the relief to cover companies which began to trade up to 31 December 2015.

to a new company with a view to selling and generating a tax exempt gain.

Corporation Tax Return

The start up relief which a company is claiming must be specified in the company's corporation tax return.

PRSI Restriction & Caps

S. 34 Finance Act 2011 extended the relief to start-up companies which begin trading in 2011. However the Act modified the operation of the relief by linking the relief allowed 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.

Revenue indicate that the purpose of linking the relief to employer's PRSI is to target the relief at start-up companies generating employment, rather than benefiting all new start-up companies. The change could exclude start-up companies from the relief if they set up with one or two directors who are the main or sole employees, as entrepreneurs would be in category S1 for PRSI purposes and the company would not be paying any employers' PRSI on their salaries.

If the total corporation tax payable by a qualifying start-up company for an accounting period does not exceed €40,000, the corporation tax will be reduced to nil or to the net corporation tax after deduction of Employers' PRSI (if greater).

Example: Operation of the PRSI Cap

Start-up Limited is set up on 1 January 2011 with an accounting period ending on 31 December 2011. In 2011 all income is derived from a qualifying trade and the corporation tax is €20,000.

	PRSI Paid €	Allowed €
Employee 1:	2,000	2,000
Employee 2:	3,500	3,500
Employee 3:	6,000	5,000
Total Employers' PRSI	11,500	10,500
Qualifying Employers' PRSI		10,500
Relief under S. 486C		10,500
CT due		9,500

Marginal Relief

If the total corporation tax due (before relief) is between €40,000 and €60,000, a marginal relief formula will be applied to establish the tax due after relief. This figure

is then compared with the tax due if the amount of qualifying employers' PRSI is deducted from the tax (that would be due without relief), and the greater of these two sums will be due. For an accounting period of less than 12 months the thresholds of €40,000 and €60,000 and the €5,000 PRSI limited are proportionately reduced.

Marginal Relief Formula

If marginal relief applies the tax is reduced using the following formula:

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

T = total corporation tax (including CGT) payable by the company for the accounting period

M = the lower limit, i.e. €40,000

A = corporation tax payable for the accounting period relating to income from the qualifying trade

B = corporation tax payable by the company for that accounting period re chargeable gains on the disposal of qualifying assets.

Example: Start-up Marginal Relief post FA11

New Ideas Ltd was incorporated on 1 January 2011 and prepared its first set of accounts 31 December 2011. In 2011 the corporation tax for income and gains in its qualifying trade was €50,000 (so the s486C claim is on a marginal relief basis). It had 5 employees and it paid employers' PRSI as follows:-

Employee 1	€8,000	Employee 2	€5,000
Employee 3	€12,000	Employee 4	€5,000
Employee 5	€7,500		

The total qualifying employers' PRSI paid in the period was €25,000 (maximum €5,000 per employee for 5 employees). Marginal relief will restrict the maximum tax payable as follows:

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

$$3 \times (50,000-40,000) \times (50,000)/50,000$$

$$= € 30,000 \text{ (maximum tax)}$$

Marginal relief results in the CT liability being reduced from €50,000 to €30,000 (relief of €20,000). Relief is restricted to the marginal amount as this is lower than the qualifying employer's PRSI (€25,000).

If tax advice is required on any point covered in this article an email should be sent to info@ohanlontax.ie.

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Caveat: These notes are intended as a general guide to Stamp Duty. OHT has endeavoured to provide an accurate commentary but the notes cannot cover all circumstances. OHT strongly recommends that formal tax advice be obtained before any steps are taken that may have a tax effect.