Ways of utilising tax losses arising before 2018 (2/41/20)

While the current corporate income tax ("CIT") regime no longer recognises the concept of tax loss, the transition rules of the CIT Act allow companies to deduct tax losses arising before 2018 from the CIT charge on dividends, but this relief is available up to 2022. Let's explore some aspects to consider before you can claim it.

Provisions of the CIT Act

The Act provides that distributions of profits arising after 2017 must be included in the taxable base and charged to CIT.

However, paragraph 13 of the transition rules of the CIT Act provides that taxpayers can deduct tax losses arising before 2018 from the CIT charge on dividends, subject to the following restrictions:

- The relief is capped at 15% of the total retained loss reported on the CIT return at 31 December 2017;
- This CIT reduction in the financial year must not exceed 50% of the CIT charge on dividends for the year; and
- The relief can be claimed by 2022.

Accordingly, to maximise this relief, companies need to evaluate their opportunities before 2022 in the light of restrictions imposed by the CIT Act. It is important to remember that the relief is available only to reduce CIT charged on dividends.

An example

To illustrate how the relief can be claimed and disclosed on the CIT return, let us invent a company named X Ltd:

A tax loss reported on the CIT return at 31 December 2017 (column 4 in the table of line 78.1 plus line 77)	EUR 1,000,000
After 2017, X Ltd can utilise 15% of its total retained loss (column 2 of table 1.2 of the CIT return)	EUR 150,000
Retained earnings at 31 December 2019 including only profits arising after 2017	EUR 2,000,000

On 21 September 2020 the shareholders decide to distribute retained earnings of EUR 1,000,000 in dividends (line 1 of the CIT return). The CIT charge on dividends is EUR 250,000 at the effective CIT rate of 25%.

X Ltd can deduct a retained loss of EUR 125,000 (column 4 of table 1.2 of the CIT return) from the CIT charge on dividends, as the tax deduction must not exceed 50% of the CIT charge of EUR 250,000.

A loss of EUR 25,000 has to be carried forward (column 5 of table 1.2 of the CIT return) up to 2022.

Paying interim dividends

A company wishing to fully utilise this relief by 2022 has the option of paying interim dividends subject to provisions of section 161.[1] of the Commerce Act including these:

- The articles of association must provide for paying interim dividends;
- The shareholders' equity must be a positive figure;
- Interim dividends are restricted to 85% of the profit earned in the period for which the dividends are declared;
- The general meeting of shareholders decides to declare interim dividends no earlier than three months after their previous decision on dividends;
- Interim dividends can be declared and paid if the company has no tax debt or tax payment deferred or split into instalments when the general meeting of shareholders makes the decision.

So if your company has not yet utilised its accumulated tax losses and has post-2017 retained earnings available for distribution in dividends, we suggest keeping in mind the rules for utilising losses and considering all opportunities to maximise the relief and reduce the CIT charge on dividends, as the current law implies that this relief cannot be claimed after 2022.