

# Can taxpayer choose between tax reliefs? 3/42/21

Companies have access to several reliefs that help reduce their corporate income tax (CIT) charge on dividends. This article answers the question of whether the legislation prescribes any order in which those reliefs may be taken or whether the taxpayer has a right to determine that order.

## The legal framework

**The Taxes and Duties Act**, which lays down the rights and obligations of taxpayers, implies that taxpayers have a right to take statutory tax reliefs and duty reliefs.

**The CIT Act** lists several tax reliefs the taxpayer has a right to claim if he has a taxable base to which a relief is applicable. **We have already written** about all the CIT reliefs available to the taxpayer and ways of reducing tax on profit distribution.

Our analysis of **the CIT legislation** suggests that the lawmaker has not inserted a section in **the CIT Act** to regulate all the tax reliefs or the order in which they may be claimed, nor has the lawmaker authorised the Cabinet of Ministers to issue rules prescribing how those tax reliefs may be taken. So the legislation is silent on the order in which the taxpayer should be taking the available tax reliefs. Specifically, the legislation does not state that the taxpayer should first take reliefs allowing him to reduce his taxable base and then reliefs allowing him to reduce his CIT charge on dividends.

And our analysis of **the CIT Act's** provisions giving the tax reliefs suggests that those provisions are discretionary, as the lawmaker's words "is entitled" and "may reduce" indicate. So the taxpayer has a right, not an obligation, to take a relief and in taking any relief the taxpayer has discretion – to take it or to leave it. In other words, the taxpayer has discretion to decide which of the CIT reliefs he is entitled to in the tax period he will take and the extent to which he will do so against the CIT charge on dividends or against dividends included in the taxable base.

## Completing the tax return

When completing the CIT return, the taxpayer can make sure he is able to choose and include in his tax calculation the allowance he considers to be the most suitable in the relevant period, but not to exceed the tax charge on dividends or dividends included in the taxable base.

For example, a company has received dividends from a subsidiary and is allowed to deduct those dividends from the taxable base arising from dividends. The company also has access to accrued tax losses that can be deducted from the CIT charge on dividends by the end of 2022. However, if the dividends received are first deducted from the taxable base arising from dividends, there will be no taxable base subject to CIT, so the relief for accrued losses cannot be utilised. So, when completing the CIT return for the relevant period, the company will consider which of the two reliefs it wants to take and how far against the CIT charge on dividends (by completing table 1.2 for losses) or against dividends included in the taxable base (by completing the table on line 2 for dividends received and attributing all or some of the amount to future tax periods).

With various tax reliefs available, the company may be entitled to two or more of them. So in each situation we need to evaluate the opportunity to take the available reliefs, considering their size and the CIT charge on dividends or dividends included in the taxable base.