

Tax losses accrued before 2018 expire in 2022

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Under the transitional provisions of the Corporate Income Tax (CIT) Act, companies may use their pre-2018 tax losses to offset the CIT charge on dividends, yet this relief has to be taken by the end of 2022. This article explores the finer points you need to know.

Provisions of the CIT Act

The CIT Act states that distributed profits (dividends) arising after 2017 must be included in the taxable base and charged to CIT.

Paragraph 13 of the transitional provisions states that the taxpayer may use his pre-2018 tax losses to offset the CIT charge on dividends subject to the following restrictions:

- The relief is restricted to 15% of the total accumulated loss reported on the CIT return at 31 December 2017.
- The CIT reduction from losses for the financial year must not exceed 50% of the CIT charged on dividends for the year.
- The relief expires in 2022.

Since no information has been released about any plans to extend the relief period, companies might want to consider claiming it within these restrictions. Remember also that the relief is available to offset the CIT charged on dividends only.

An example

To illustrate how the relief could be taken and reported on the CIT return, this example uses a case-study company:

X Ltd reported a tax loss on the CIT return at 31 December 2017 (column 4 of the table on line 78.1 plus line 77). EUR 1,000,000

From 1 January 2018, X Ltd is allowed to use 15% of the total accumulated loss (column 2 of table 1.2 of the CIT return). EUR 150,000

Retained earnings at 31 December 2021 include post-2017 profits only. EUR 2,000,000

On 21 September 2022, X Ltd shareholders resolved to distribute retained earnings of EUR 1,000,000 (line 1 of the CIT return). The CIT charge on dividends is EUR 250,000 at an effective rate of 25%.

X Ltd is allowed to use an accumulated loss of EUR 125,000 (column 4 of table 1.2 of the CIT return) to offset the CIT charge on dividends because the tax reduction must not exceed 50% of the CIT charge of EUR 250,000.

A loss of EUR 25,000 remains unused if the relief period is not extended.

Paying an interim dividend

A company that has already made a profit distribution in 2022, but is willing and able to fully take this relief by the end of 2022, might think of its right to pay interim dividends under section 161.1 of the Commerce Act, including the following conditions:

- The option of paying interim dividends is prescribed by the articles of association.
- The shareholders' equity is a positive figure.
- The interim dividend does not exceed 85% of the profit made during the period for which it's declared.
- The general meeting of shareholders resolves to declare an interim dividend no earlier than three months after the previous dividend resolution was passed.
- An interim dividend may be declared and paid if the company had no tax debts, no deferred tax payments, no tax payments split into instalments, etc., when the resolution was passed.

Accordingly, if your company has not used its accrued tax losses yet and has some post-2017 retained earnings available for distribution in dividends, then we recommend you follow the loss relief rules and consider every opportunity to take the available relief for tax losses accrued before 2018 because it expires in 2022.