



Deduction of losses and distribution of expenses for taxable income

In accordance with Cyprus law, deductible expenses of a company, that are in turn fully deductible for corporate income tax purposes, are those expenses that have incurred wholly and exclusively for the production of income.

Further to the above, and again from an income tax perspective, the applicable regime in Cyprus is most favourable to investors given that incoming dividends as well as the gains from the disposal of securities are exempt from corporate income tax. Equally, services relating to the operation of a ship, shipmanagement services and income allocated to a permanent establishment are also exempt from the scope of corporate income tax. As such, the taxable base is substantially reduced.

Accordingly, in order to clarify the tax treatment of cases whereby losses are claimed or an allocation or apportionment of expenses and discounts is required the Commissioner of Income Tax has proceeded with the issue of a circular according to which an analysis of Article 13 of the Income Tax Law as well as the case law of the Supreme Court of the Republic of Cyprus is provided for.

In line with the above, losses may be offset against income from other sources for the same tax year or they may be carried forward during subsequent years. Offsetting of the losses is only allowable where had the said loss been a profit, it would have been taxed in accordance with the provisions of the Income Tax Law.

Based on the above principle, if the taxpayer has income which is either exempted or excluded from income tax either under the provisions of the Income Tax Law or under any other law; or subject to a special tax rate under the provisions of the Income Tax Law; a deduction of allocated expenses or discounts relating directly or indirectly to the income is made from the said income, as well as a deduction of a proportion of overheads and the taxable income is determined accordingly.

It has to be underlined also that any losses deriving from a business activity, the income or profits of which are exempted or excluded from income tax may not be offset against income or carried forward in subsequent years.

The abovementioned developments are not enforceable to cases already examined and settled unless an objection has been raised within the provided timelines. This may be seen as an adverse development for companies whose income mainly consists of tax-exempt income while companies not having any income being subject to tax at the Cyprus level are not anticipated to be affected by the abovementioned provisions. As aforementioned, exempted income from a Cyprus perspective includes gains from the sale of securities and dividend income, services relating to the operation of a ship, shipmanagement services and income allocated to a permanent establishment.

Accordingly, from a practical perspective, expenses and discounts directly or indirectly relating to activities giving rise to either tax exempt income or income subject to a special tax rate are deductible from the said income. Equally, overheads not already allocated as direct expenses are proportionately allocated based either on the gross receipts of each field of activities or on the cost of obtaining/acquiring the assets of the Company used in each field of activities, whichever is most suitable in each case, given that the same method of apportionment is consistently applied each year.

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