

TAX NEWSFLASH: THE INCOME TAX AMENDMENT (No.2)/ LAW 188(I)/2012

Five year restriction of carry-forward losses

Please find below an unofficial translation of the Inland Revenue circular of 30th May 2013 with regards to the five year restriction of carry-forward losses.

**Republic of Cyprus
Ministry of Finance**

**Department of Inland Revenue
1472 Nicosia**

**File no. : 05.13.001
Circular no. : 2013/8**

30 May 2013

To all Staff

**The Income Tax (Amendment) (No.2) Law 188(I)/2012
Five-year restriction of carry-forward and setoff of losses
(unofficial translation)**

The above amendment law, which has been put into force from 21.12.2012, adds to article 13 of the initial law, which governs the allowances for losses, the following new reservation:

"Provided that, regardless of any clause provided for in the current Law, in the case of a person who, according to the provisions of the Collection and Assessment Law, is obliged to maintain accounting books and records and to prepare accounts that are audited by an independent auditor, as well as to submit a statement of the charge of tax, the loss of any tax year will not be carried forward and will not be set off against the income of any tax year after the lapse of five years from the end of the tax year during which the loss occurred."

According to the above new provision, commencing from the tax year 2012 and thereafter, the taxable income of each year can be set off only against the losses of the previous five years. That is, the taxable income of 2012 can be set off against the tax losses of 2007 and of the subsequent years, but it cannot be set off against the tax losses of 2006 and of the preceding years. A table is attached as an example of the new provision with regards to the setoff of losses.

Temporary tax for the year 2012

Bearing in mind that the amendment law was put into force in December of 2012 and that the dates of payment of the installments of the temporary tax and of its revision have elapsed, which was obviously calculated without the new provision, for the purpose of due process as to the imposition of additional tax due to low estimation of the temporary tax, for the tax year 2012 the following procedure will be followed:

The persons whose taxable income for 2012 is affected by the above provision, are called to submit the self-assessment, as provided for in article 13 of the Assessment and Collection Law No.4/78 and calculate and pay 10% additional tax for low estimation of the temporary tax of 2012 for any other reason, other than the enforcement of the new provision.

Upon the imposition of tax by the Inland Revenue Department (IRD) for the tax year 2012, no 10% additional tax is to be imposed due to the low estimation of temporary tax for the year 2012, which is due to losses of 2006 and of preceding years which, according to the new provision can no longer be set off. A relevant example is attached.

It is understood that, from the tax year 2013 and onwards, when implementing article 13 (self assessment) and article 26 (temporary tax) of the Assessment and Collection Law No. 4/78, the current new provision should be taken into consideration.

Losses of Permanent Establishment outside the Republic

The above provision is also applicable with regards to the allowance for loss of a permanent establishment abroad (article 13(9) of the Income Tax Law). According to the reservation of article 36(3) of the same Law, an amount of profit from a permanent establishment abroad equal to the amount of losses granted in this manner in previous years, will be included in the taxable income of the year in which such a profit will arise.

It is clarified that the losses recovered by way of an equivalent taxation of profits, are restricted to the losses that have been granted and have been set off as an allowance in the assessments of taxable income of previous years against other income, and do not include losses that have been claimed but have not been set off due to the lapse of the five-year period.

At the calculation of losses, for purposes of articles 13(9) and 36(3), it is considered that the loss from a permanent establishment abroad is first set off against profits of the same year from other permanent establishments abroad. The remaining losses are set off against the taxable profits from the rest of the operations of the same year and can be surrendered to other companies of the group. Any losses which are not absorbed are carried forward to the following years, to be claimed at first against profits from a permanent establishment and then against profits from other operations.

If there are cases which are not covered under the current circular, these will be forwarded to the Director for final decision.

(G. Poufos)
Commissioner
of Inland Revenue Department

CC:

1. Accountant General of the Republic
2. Permanent Secretary of the Ministry of Finance
3. President of Tax Tribunal
4. Institute of Certified Public Accountants of Cyprus (ICPAC)
5. Institute of Certified Public Accountants (CPA)
6. Institute of Approved Accountants of Cyprus
7. Institute of Financial Accountants
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