



## Colombia Constitutional Court rules that loss carryforwards can affect CREE taxable base

In a decision dated 20 May 2015, Colombia's Constitutional Court affirmed the constitutionality of the provision (article 22 of Law 1607/2012) used to calculate the tax base for the income tax for equality (CREE), which applies in addition to the corporate income tax. According to the court, the option to offset tax losses against net income earned in future years is included in article 22 pursuant to the provision in the Colombian tax code (article 147) that permits the unlimited carryforward of losses for corporate income tax purposes.

By declaring this provision constitutional, the court indicated that the option to offset tax losses against future net income to determine the taxable base for the CREE does not conflict with the essential nature of the CREE, which taxes, just as the income tax does, all taxable income received by a taxpayer during the fiscal year. In this sense, since the income tax and the CREE are of a similar nature, the Constitutional Court deemed as fair the inclusion of tax losses as part of the calculation of the taxable base for the CREE since this same methodology is permitted for corporate income tax purposes.

The Constitutional Court's decision will apply to all situations considered to be within the scope of article 22 of Law 1607/2012, and will remain effective as long as the law is enforceable.

— Mario Andrade (Bogota)  
Partner  
Deloitte Colombia  
maandrade@deloitte.com

Oscar Jiménez (Bogota)  
Manager  
Deloitte Colombia  
ojimenez@deloitte.com

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