



## Deductibility of foreign-source losses revised

Law 4446/2016, passed by Greece's parliament on 21 December 2016, introduces several changes to the rules governing the deduction of foreign-source losses for Greek tax purposes. The new rules apply retroactively as from 1 January 2014.

### Contact

**Maria Trakadi**

Tax Managing Partner  
[mtrakadi@deloitte.gr](mailto:mtrakadi@deloitte.gr)  
Tel.: 210 6781260

**Thomas Leventis**

Tax Partner  
[tlevantis@deloitte.gr](mailto:tlevantis@deloitte.gr)  
Tel.: 210 6781262

**Konstantinos Roupis**

Tax Senior Manager  
[kroumpis@deloitte.gr](mailto:kroumpis@deloitte.gr)  
Tel.: 210 6781272

Article 27 of the Income Tax Code is amended to provide that losses incurred abroad from the activities of a Greek permanent establishment (PE), generally may not be offset against domestic-source profits. However, the losses may be offset if they arise from business activities of a PE, carried out in an EU/EEA member state that has concluded a tax treaty with Greece that does not contain a provision for a foreign branch income exemption.

As noted above, the new rules apply retroactively as from 1 January 2014 and confirm the content of old Circular POL 1088/2016, which provides that losses incurred abroad generally may not be offset against income taxed in Greece.

The relevant circular POL 1200/2016, recently issued, also clarifies that in order to prevent the double deduction, utilization possibilities for losses arising from a PE abroad first must be exhausted in the country of the PE, before determining whether any such losses could be potentially set off or utilized in Greece.

If the taxpayer can show by any acceptable means that PE losses are permanent (e.g. due to the cessation of the branch operations), these losses can be used (at the time they became permanent) in calculating the company's Greek taxable profits. The main rule that foreign losses arising from a PE abroad should be monitored separately per country (for EU/EEA countries) still applies.

Finally, companies now are able to offset any foreign-source losses from business activities not related to a foreign PE (e.g. losses arising on the sale of shares or bonds issued by a foreign company may be deducted from the company's business profits in Greece). The main rule that tax losses may be carried forward for five consecutive years remains unchanged.

Considering the retroactive nature of the new rules, potentially affected companies should assess whether foreign-source losses that had been tax adjusted for fiscal years 2014 and 2015 can be deducted for income tax purposes under the current framework, and if so, should consider filing an amended tax return.



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3a Fragoklissias & Granikou str., 151 25 Maroussi, Attika – Greece, Tel: +30 210 6781 100

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