Tax Flash

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The European Commission sent a reasoned opinion, urging Greece to revise its income tax legislation regarding the limitation on deductibility of foreign losses

Limitation on deductibility of foreign losses

The Commission sent a reasoned opinion to Greece with regard to the limitation on deductibility of foreign losses, on the basis of par.4 of art.27 of L.4172/2013, as interpreted with Circular 1200/2016.

According to the applicable legislation and interpretation, losses incurred abroad from activities of a permanent establishment (PE) carried out in an EU/EEA member state, may neither be used in Greece at the time when they occurred, nor be transferred and offset against taxable profits in Greece over the following years. On the other hand, profits deriving from such PEs are being taxed.

The possibility to deduct losses incurred by a foreign PE is only provided when the PE has permanently ceased its operations abroad and subject to conditions (non-double deduction of losses, utilisation possibilities for losses arising from a PE abroad must first be exhausted in the country of the PE, etc.).

According to the Commission, the limitation on deductibility of losses originating in another EU/EEA member state constitutes a restriction to the right of establishment according to article 49 of the Treaty on the Functioning of the European Union, which must consequently be lifted.

If Greece does not act within the next two months, the Commission may decide to bring the case before the Court of Justice of the EU.