

## TAX LOSS BECOMES SUBJECT TO STATUTE OF LIMITATIONS AFTER 5 YEARS

We wish to alert you to a resolution adopted on 6 November 2017 (case no. **II FPS 3/17**) by the Supreme Administrative Court (SAC) sitting in a bench of 7 justices. The matter, which related to corporate income tax loss, involved a question if tax authorities can proceed with respect to such loss where the underlying tax is no longer claimable by tax authorities due to statute of limitations.

The Taxes Management Act prescribes that a tax payable can no longer be claimed more than 5 years after the end of the tax year in which the tax fell due for payment. However, you can carry forward your tax loss and deduct it from income over five consecutive tax years (but no more than 50% of the loss in any one of the years).

In such a situation, most tax authorities argued that they can question a tax loss even if any tax payable for the year in which the loss arose would no longer be claimable, as long as the tax payable for the year in which the loss was deducted still would be. On this theory, they could question the amount of your tax loss for as long as even 10 years.

The SAC decision ended the controversy. On the strength of a bench of seven justices, the court clearly held that no tax proceedings may be had and no ruling on the amount of corporate income tax loss may be issued with respect to the tax year in which the loss was incurred, if any tax payable for that year would no longer be claimable. Accordingly, tax losses older than 5 years are subject to statute of limitations.

If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

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