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Tax loss carry-forwards – an often underestimated asset

Introduction

Tax loss carry-forwards represent an economic value for companies. They enable losses from previous financial years to be offset against future profits, thereby reducing the future tax burden. Accordingly, under certain conditions and in accordance with the applicable accounting standards, they are also recognized in the balance sheet as deferred tax assets. Below, we outline what needs to be taken into account with regard to loss carry-forwards and what planning opportunities exist.

Legal Basis

In accordance with Article 31 and Article 67 of the Federal Act on Direct Federal Taxation (DBG) and the relevant cantonal provisions, self-employed persons and legal entities may offset losses from the seven preceding financial years against their income or net profit. This is subject to the losses being recognized by the tax authorities and claimed within the statutory time limit.

Determination of loss carry-forwards

The tax authorities often list losses that have not yet been set off for tax purposes in annexes to tax assessment notices. However, this does not legally bind the losses that may be set off in future. According to the Federal Supreme Court, a tax assessment showing a taxable profit of zero generally only becomes legally binding with regard to the zero profit. There is no legal entitlement to a determination of the amount of loss carry-forwards. The exact amount and tax deductibility of the loss carry-forward are therefore only definitively assessed in the tax period in which a positive taxable profit would result were the loss not to be set off. Companies should therefore document the origin and continuation of their loss carry-forwards in full. A further restriction applies if the tax return was not submitted, or was submitted with insufficient supporting documents, and the tax authority therefore issues a discretionary assessment showing a taxable profit. In such cases, loss carry-forwards claimed retrospectively are regularly disallowed.

Loss carry-forwards in the event of restructuring

In principle, loss carry-forwards are transferred to the legal successor in the event of tax-neutral restructuring, provided that the previous business activities are continued in their essential aspects. The decisive factor is whether the restructuring is economically justified. In the case of the acquisition of loss-making companies ("shell company acquisition") or a fundamental change in business activities, the offsetting of losses may be refused in whole or in part. A careful analysis of the tax implications of loss

carry-forwards is therefore advisable as early as the planning stage.

Losses from foreign permanent establishments

Although profits from a foreign permanent establishment are, in principle, not taxed in Switzerland due to the exemption principle, its losses may be set off against domestic profits. This is subject to the condition that these losses have not already been taken into account for tax purposes in the country where the permanent establishment is situated, i.e. there is no 'double dipping'. If the foreign permanent establishment generates profits within the following seven financial years and the losses originally carried forward are utilized for tax purposes in the country where the permanent establishment is situated, a corresponding additional tax assessment will be made in Switzerland. For internationally active corporate groups, this rule can have significant implications for the effective tax burden and the value of the business.

Extension of loss carry-forwards: 10 years instead of the previous 7

In December 2025, Parliament passed an amendment to the law extending the period for which losses can be carried forward from seven to ten years. The extended loss carry-forward period applies to tax losses incurred in the 2020 tax year (or in the financial year ending in 2020). The Federal Council is yet to determine the date of entry into force (no later than 1 January 2028). This extension is particularly beneficial to companies that have losses from the COVID period which have not yet been offset, as well as to start-ups and companies with high investment costs during start-up or expansion phases.

Conclusion

Loss carry-forwards are far more than a minor tax item – they represent a valuable asset that can significantly reduce future tax liabilities and have a positive impact on the value of the company. We would be happy to assist you with the analysis of loss carry-forwards, tax-optimized restructuring, and the drafting and negotiation of tax rulings with the tax authorities.

Please do not hesitate to contact us if you have any questions.

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