Tax Loss Carryforwards under Swiss Tax Law: The Most Important Practical Pitfalls Despite the New 10-Year Carryforward Period

16.07.2026

At first glance, the utilization of tax losses appears straightforward: losses may be offset against future profits.

In practice, however, it is common for tax loss carryforwards to remain entirely or partially unused despite the existence of sufficient taxable profits. Typical reasons include participation income, restructurings, corporate reorganizations, financial restructurings, real estate sales, or international corporate structures.

The recently adopted extension of the loss carryforward period from seven to ten years will certainly enhance the usability of existing tax losses. However, it does not eliminate the most significant practical risks.

Pestalozzi Rechtsanwälte AG
Feldeggstrasse 4
CH-8008 Zürich
T +41 44 217 91 11
zrh@pestalozzilaw.com

Pestalozzi Avocats SA
Cours de Rive 13
CH-1204 Genève
T +41 22 999 96 00
gva@pestalozzilaw.com

pestalozzilaw.com

Key takeaways

- **The tax loss carryforward rules are being expanded: In the future, loss carryforwards can be offset against future profits for ten years instead of the previous seven. The new rule applies to losses from fiscal years beginning in 2020 or later.**
- **Despite this extension, proactive tax planning remains crucial: Loss carryforwards can be inadvertently lost or used in a tax-inefficient manner, particularly in the case of participation income, real estate gains, financial restructurings and reorganizations.**
- **In Switzerland, loss carryforwards generally do not automatically expire upon a change of ownership. However, in cases of shell company transactions or restructurings motivated purely by tax considerations, tax authorities may deny the use of such losses.**
- **International groups should note that loss carryforwards cannot be utilized group-wide, and their treatment may differ under local Swiss tax law, foreign regulations, and Pillar Two.**
- **Loss carryforwards should be documented on an ongoing basis: The amount and tax recognition of existing losses are often not reviewed by the tax authorities until the time they are actually utilized.**

How does the carryforward of prior-year losses work under Swiss law?

Swiss tax law is fundamentally based on the system of loss carryforwards. Losses incurred in a tax period cannot therefore be considered in isolation but, under certain conditions, may be offset against taxable profits in subsequent periods. In contrast, loss carrybacks — that is, the retroactive offsetting of a loss against profits from previous years that have already been taxed — are not permitted at the federal level or in most cantons.

The tax-related loss is the determining factor here. While the starting point is generally the financial result under commercial law as shown in the annual financial statements, tax adjustments (for example, due to expenses not justified by business practice, offsets, or special tax provisions) can result in the tax-related loss differing from the loss under commercial law.

Furthermore, the offsetting of losses is not at the taxpayer’s discretion. Losses must generally be offset in the order in which they arose (first in, first out). Companies therefore cannot decide to leave older losses unused and instead utilize more recent losses. Existing loss carryforwards are generally taken into account in full before a taxable net profit is determined. It is not possible to selectively use or intentionally save loss carryforwards.

Under current law, how long can tax losses be carried forward, and what changes are planned?

Under current law, tax losses from the seven fiscal years preceding the tax period may be offset against the taxable profit of the respective period, provided they have not already been taken into account.

This period will be extended in the future: In December 2025, Parliament decided to extend the period for offsetting tax losses from seven to ten years. The legislative amendment stems from a motion submitted in connection with the COVID-19 pandemic; however, it is broadly formulated and does not apply solely to pandemic-related losses. This is intended to give companies more time to offset loss periods against future profits for tax purposes.

The Federal Council will determine the effective date of the new regulation, which will take effect no later than January 1, 2028.

It is important to note that the extension does not apply to all existing loss carryforwards. The new ten-year loss carryforward period applies to losses from fiscal years that began in 2020 or later.

Can tax loss carryforwards be used even after the regular deadline has passed?

Swiss tax law provides for a special rule in cases of financial restructuring. Losses from prior fiscal years may be offset against certain restructuring measures without any time limit if these measures are undertaken to address a genuine capital shortfall.

This is intended to prevent a company from being subject to a tax burden due to a restructuring, even though, from an economic perspective, it is merely offsetting prior losses.

However, the application of this provision requires that a tax-relevant restructuring situation actually exist. Not every restructuring or capital measure automatically qualifies as a restructuring for tax purposes.

This distinction is particularly relevant in the case of debt forgiveness, grants, or other restructuring measures and has been further clarified by the Federal Tax Administration's updated administrative practice regarding the tax treatment of restructurings. See our separate Legal Update on this topic.

What to watch out for when receiving participation income

A common practical scenario involves companies with income from qualified participation. In Switzerland, dividends from qualified participations are largely exempt from income tax through the indirect participation exemption system.

However, the participation exemption does not constitute an direct exemption for participation income. Rather, the participation income is first included in taxable net income; only then is

the tax burden reduced through the participation exemption system.

This can result in tax loss carryforwards being offset against participation income and thereby exhausted, even though this income would have remained largely tax-free even without such an offset. It is therefore important to assess whether the timing and structure of dividend distributions may have an impact on the utilization of existing loss carryforwards.

Practical Example

A holding company has carryforward losses of CHF 10 million and receives a dividend of CHF 10 million from a qualified participation. The carryforward losses are generally offset against the dividend and are thus exhausted, even though the dividend would have been largely tax-free for economic purposes due to the participation deduction.

What happens to tax loss carryforwards when a company is sold?

Unlike various foreign tax systems, Switzerland generally does not have a general change-of-control rule. A mere change in shareholders therefore does not automatically result in the forfeiture of existing loss carryforwards.

However, this does not mean that loss-making companies can be transferred and utilized at will. Restrictions apply in particular to so-called “shell company transactions,” i.e., when an economically liquidated or inactive company is transferred and subsequently reactivated primarily to utilize existing loss carryforwards with a new business.

In corporate acquisitions, existing loss carryforwards should therefore always be reviewed as part of tax due diligence.

Practical Example

A company develops software over several years but ceases business operations and, at the time of cessation, has loss carryforwards of CHF 8 million. The shares are subsequently sold to a third party who does not continue the previous business activity but instead brings a new, profitable trading activity into the company.

Although the loss carryforwards formally continue to exist, their use may be denied for tax purposes if the tax authorities conclude that, from an economic standpoint, an empty loss shell (“shell company”) was acquired in order to offset the loss carryforwards against the profits from the new business activity.

Can loss carryforwards be transferred during restructurings?

In the case of tax-neutral restructurings, particularly mergers, existing loss carryforwards can generally be transferred to the acquiring company.

However, this is subject to the condition that the restructuring is tax-neutral and does not constitute tax avoidance. In particular, the transaction must be based on objective reasons and must not be primarily aimed at transferring existing loss carryforwards to profitable

companies. The offsetting of losses is subject to the general anti-abuse rule. Such abuse exists, for example, if the business generating the loss is not continued after the merger.

A restructuring that is exclusively or predominantly aimed at offsetting the profits of one company against the losses of another company cannot be recognized for tax purposes.

Can losses be offset within a corporate group?

Switzerland does not have group taxation or a tax consolidation regime. Each company is treated as a separate taxable entity.

Therefore, losses incurred by one group company generally cannot be directly offset against profits of another group company. This distinguishes Switzerland from various other jurisdictions that permit tax consolidation within a corporate group.

As a result, offsetting losses within a group is generally only possible through structural measures such as reorganizations, provided that the relevant tax requirements and anti-abuse rules are observed. However, such measures should be planned well in advance, as the retroactive transfer of losses that have already been incurred is subject to significant tax restrictions.

Practical example

Companies A and B both tax resident in Zurich and belong to the same corporate group. If Company A has a profit of CHF 5 million and Company B has a loss of CHF 5 million, these results generally cannot be offset against each other, even though they belong to the same group. Company A is taxed based on a taxable profit of CHF 5 million.

What special rules apply to the offsetting of losses in connection with gains on real estate?

For real estate companies and companies that own real property, special attention must be paid to the offsetting of losses in connection with real estate gains. The tax treatment depends largely on the applicable cantonal real estate gains tax system.

In cantons with a monistic system, real estate gains are generally subject to a separate real estate gains tax. However, based on Federal Supreme Court case law, business losses incurred by a company based outside the canton must also be taken into account for real estate gains tax purposes to avoid inter-cantonal double taxation.

In practice, it is crucial that such losses be claimed at the appropriate time. The Federal Supreme Court recently confirmed that, in the case of a final real estate gains tax assessment, a failure to offset losses generally cannot be corrected retroactively through an appeal based on double taxation. If the loss offset is not claimed in a timely manner and the corresponding assessment becomes final, a subsequent correction may be precluded.

Companies with real estate holdings in multiple cantons should therefore check early on in real estate transactions where existing loss carryforwards exist and in which assessment they must

be claimed.

How are losses at permanent establishments within Switzerland taken into account?

If a company maintains permanent establishments in multiple cantons, an inter-cantonal tax allocation is performed for cantonal tax purposes. Profits and losses are allocated to the participating cantons in accordance with the rules of inter-cantonal tax law.

Losses incurred by a permanent establishment are generally not treated as isolated losses in the canton where the permanent establishment is located. If the inter-cantonal allocation results in an overall loss, this loss must be taken into account by the company and may be carried forward in accordance with the general rules.

The inter-cantonal allocation rules ensure that losses are not permanently disregarded and, at the same time, that there is no double use of losses. The goal is to avoid inter-cantonal double taxation or the permanent disregard of losses.

How are losses from foreign permanent establishments treated?

Special rules apply to foreign permanent establishments of a Swiss company. Unlike foreign subsidiaries, a permanent establishment is not a separate taxable entity. Losses incurred by a foreign permanent establishment may therefore, under certain conditions, initially be taken into account by the Swiss company.

However, this offset is generally only temporary in nature. If the foreign permanent establishment returns to profitability in subsequent years, the losses previously offset in Switzerland are subject to a recapture mechanism and taxed accordingly in Switzerland. This is intended to prevent losses from being used to reduce taxes in Switzerland while subsequent profits are allocated to foreign countries due to international tax allocation rules.

In contrast, losses of foreign subsidiaries generally cannot be offset against the profits of a Swiss group company due to their legal independence. These losses generally remain with the respective foreign company and are subject to the tax laws applicable there.

What other international considerations are relevant when it comes to loss carryforwards?

In addition to permanent establishment structures, cross-border restructurings, relocations of the registered office, and the acquisition or sale of companies can, in particular, have an impact on existing loss carryforwards.

In each case, it must be determined whether loss carryforwards are retained or forfeited due to the termination of a tax liability, the transfer of functions or assets, or specific foreign restrictions.

International groups must also take into account that many foreign tax systems impose stricter restrictions on the use of losses than Switzerland does. In particular, changes in ownership (change-of-control rules), significant changes in business activities, or intra-group restructurings in other countries can lead to a complete or partial restriction on existing loss carryforwards.

What is the significance of loss carryforwards under Pillar Two?

For Pillar Two purposes, tax loss carryforwards under local law are not automatically relevant. Particularly for groups with extensive loss histories, significant differences may arise between the local tax position and the GloBE calculations. A separate analysis therefore remains necessary.

Why is it important to carefully document carryforward losses?

A common misconception is that reported loss carryforwards have already been definitively recognized by the tax authorities. In fact, loss carryforwards are generally not subject to substantive review until they are to be offset against taxable profits.

At the time of the subsequent loss offset, the tax authorities may verify whether the claimed losses actually occurred and to what extent they can be recognized for tax purposes. This applies even if the tax periods in which the losses occurred have already been legally assessed.

Companies should therefore carefully document the history of their tax loss carryforwards and, in particular, retain tax returns, assessment notices, loss calculations, and relevant correspondence with the tax authorities.

Complete documentation is particularly crucial in the context of corporate acquisitions and restructurings. A tax due diligence review should not only examine the amount of existing tax loss carryforwards but also their tax-related quality and the likelihood of their future utilization.

Conclusion

Extending the carryforward period for losses provides additional flexibility. However, the key question remains whether existing losses can actually be utilized.

Companies with significant loss carryforwards should, in particular, assess well in advance of dividend distributions, restructurings, real estate sales, or major transactions whether the intended measures will have unintended consequences for the usability of existing loss carryforwards.

Authors: Remo Keller (Partner), Anja Murer (Junior Associate)

No legal or tax advice

This legal update provides a high-level overview and does not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this legal update or

would like to have advice concerning your particular circumstances, please get in touch with your contact at Pestalozzi Attorneys at Law Ltd. or one of the contact persons mentioned in this legal update.

© 2026 Pestalozzi Attorneys at Law Ltd. All rights reserved.

Remo Keller

Partner
Swiss Certified Tax Expert

Pestalozzi Attorneys at Law Ltd
Feldeggstrasse 4
8008 Zurich
Switzerland
T +41 44 217 92 78
remo.keller@pestalozzilaw.com

Jonas Sigrist

Partner
Attorney at law, Swiss Certified Tax Expert
Head of Tax Practice Group

Pestalozzi Attorneys at Law Ltd
Feldeggstrasse 4
8008 Zurich
Switzerland
T +41 44 217 93 26
jonas.sigrist@pestalozzilaw.com