

Newsletter No.

192

---

**Offset of losses is to be extended.** According to the will of the Parliament, the loss offset period for companies is to be extended from seven years to ten. This should also enable a better recovery of companies affected by the COVID pandemic. The Federal Council has worked out the necessary legal amendments and opened the consultation at its session on 28 June 2023.

---



By **Maurus Winzap**  
lic. iur., LL.M., Attorney at Law /  
Certified Tax Expert  
Partner  
Telephone +41 58 658 56 05  
maurus.winzap@walderwyss.com



and **Fabienne Limacher**  
MLaw, LL.M., Certified Tax Expert,  
Attorney at Law  
Partner  
Telephone +41 58 658 52 81  
fabienne.limacher@walderwyss.com

### Background and current situation

Losses can only be carried forward in Switzerland, i.e. there are no loss carry-backs to previous tax periods. In general, Swiss corporate income tax law allows carrying forward tax losses for a maximum period of seven years (so-called ordinary tax loss carryforward). It is only in the event of a financial restructuring that the seven-year time limit for offsetting losses is not applicable, and any previous losses recognized for tax purposes that could not yet be offset against profits are offsettable against taxable restructuring income for an unlimited period of time (so-called extraordinary tax loss carryforward). This provision is intended to prevent a distressed company that receives waivers of claims from third parties and shareholders in connection with a reorganisation from having to pay tax on a restructuring profit solely because part of its losses were incurred more than seven years ago.

### Content of the proposal

Compared to Western European countries, the current rule restricts the offset of losses quite a lot. Out of thirteen Western European countries mentioned in the Federal Council's report on the opening of the consultation procedure, nine have an open-ended offset option, two have a time limit of ten years or more and two have one of five or six years.

The seven-year loss offset period is now set to be extended to ten in Switzerland, but will still be permitted for just a limited period of time.

For companies that suffered heavy losses during the COVID pandemic, the extended period for offsetting losses can therefore facilitate the reconstruction of their business under certain circumstances. However, newly founded companies in particular, which have a longer start-up phase, such as start-ups in the life sciences sector, could also benefit from this measure.

### Entry into force

This measure is set to come into force on 1/1/2028. It will be applicable to losses for the fiscal year 2020. At the same time, the new rules will not apply to losses incurred in earlier fiscal periods.

The Walder Wyss Newsletter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this Newsletter should seek specific advice on the matters which concern them.

© Walder Wyss Ltd., Zurich, 2023