

CARRYING FORWARD TAX LOSSES ABOLITION OF TIME LIMITS

OBJECT

Article 23, paragraph 9 of Decree Law 98/2011 (Collective Manoeuvre 2011) has intervened to regulate the carrying forward of tax losses by those liable to IRES (Corporate Tax).

HOW APPLIES

The new feature essentially consists of the **abolition of the time limit for carrying them forward, a maximum of 5 years in the past, in favour of a new quantitative time limit.**

Losses may be carried forward in future years, in fact, but **only up to a limit of 80% of the profit produced.**

In essence, a change of course which will, nevertheless, entail subjecting a quota of 20% of the profit realised by companies, even with large previous losses, to taxation.

A mere financial penalty therefore, which finds its financial contra-entry in the reduction of time limits, by allowing a loss exceeding 80% of profits to be recovered in future years without any time limit.

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EXCEPTION

The exception for losses realized in the **first three years of the start up of a new company remains unaffected**. For these losses, in fact, the quantitative limit is less; they are indefinitely deductible within the limit of the taxable profit realised in subsequent years and for the whole amount contained in the actual profit, provided, however, that they refer to a new productive activity.

Therefore, for example, previous losses acquired by means of a merger will not benefit from this treatment if realized beyond the first 3 years of the NewCo which has incurred them.

The rule attempts to favor companies, by giving them the option to carry forward losses without a limit and therefore not to lose the availability thereof and, substantially, brings the Italian system closer to other European taxation systems, for example, the French and German ones, with the difference, in respect of the latter, that no differentiated system linked to a company's size has been introduced, which leads to greater financial sacrifice for small companies.

WHEN

The new features will be applicable **from 2011**.

Our Firm is available to provide any further clarification and assistance in this matter.

Best regards,

Milan, September 3rd 2011

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