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By PwC Deutschland | 20 August 2020

Federal Ministry of Finance: draft circular on the application of Section 8d of the Corporation Tax Act

The Federal Ministry of Finance has sent the draft of a Ministry circular on the application of Section 8d of the Corporation Tax Act (CTA) – continuance-bound loss carry-forward after loss forfeiture - to the professional associations for comment.

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The deadline for comments is September 11, 2020. The circular indicates that the Federal States will issue a statement of practice shortly using with the same wording with respect to Section 10a of the Trade Tax Act (TTA) and that it is intended to apply the principles of the circular without restriction to Section 10a TTA.

In the letter, the Ministry of Finance asks specifically for comment as to whether there is a need for a regulation to cover cases in which only trade tax losses exist, so that an application under Section 8d CTA for the purposes of corporation tax has not been made.

The draft contains comments on important questions of interpretation and application in practice, in particular on the term “business operation” as the central point of reference in the provision, on the application requirements and on the catalogue of (harmful) events which can lead to the cancellation of the continuance-bound loss carry-forward. As a statement of practice, the Ministry of Finance’s legal interpretation is illustrated by numerous examples.

Overview of contents:

I. Scope of application

II. Application requirements

III. Material requirements

IV. Legal consequences

V. Discontinuation of the continuance-bound loss carry-forward following harmful events

VI. Hidden reserves clause of Section 8d (2) Sentence 1 , 2nd half-sentence 2 CTA

VII. Application of Section 8c CTA to a Section 8d CTA continuance-bound loss carry-forward

VIII. First application of § 8d CTA

Keywords

continuance-bound tax loss carry-forward, loss carry forward