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By PwC Deutschland | 15 November 2026

MoF: Loss restriction under Section 8c Corporation Tax Act and impact on prior year’s loss carryforward

A loss in the year the shares were sold - and still a tax refund for previous years? The Supreme Tax Court made it possible, and the Federal Ministry of Finance (MoF) is now officially following suit.

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In its circular dated October 26, 2026, the MoF implements the landmark judgment of the Supreme Tax Court from July 2025 in the case I R 1/23 (see our **blog post of November 7, 2026**) and fundamentally revises its previous and restrictive interpretation of Section 8c of the Corporation Tax Act (CTA) on the curtailment of loss relief.

The MoF circular further explains and reads as follows (in verbatim):

I. Amendment to the former MoF circular of 28 November 2017

The restriction on loss deductions pursuant to Section 8c of the Corporation Tax Act applies to all unused negative income (unused losses) and includes, in particular, loss carryforwards pursuant to Section 10d of the Income Tax Act (including the loss carryforwards of a subsidiary from the period prior to its incorporation into the corporate group), losses pursuant to Section 2a, Section 15(4), Section 15a, and Section 15b of the Income Tax Act, as well as the assessed remaining loss carryforwards within the meaning of Section 10(3 Sentence 5 of the Foreign Tax Act.

In the case of a harmful acquisition of shares during the fiscal year, any loss incurred up to that point is also subject to the loss deduction limitation under Section 8c of the Corporation Tax Act, unless it can be carried back to previous tax years within the limits provided for under Section 10d(1) Income Tax Act and deducted there from the total amount of (taxable) income. A profit earned prior to the harmful acquisition may be offset against unused losses in accordance with the principles set forth in para 34 of the judgment of the Supreme Tax Court from November 30, 2011, case I R 14/11. The relevant loss or profit in this regard is the operating profit generated up to the time of the harmful acquisition of the share. An acquisition of a shareholding during the year is not assumed if the transfer takes place at the end of the calendar year or fiscal year."

II. Impact on the final tax balance sheet and the transfer gain in cases of reorganization

To the extent that, following the harmful acquisition of an investment, the loss-making company is transformed into another legal entity with retroactive tax effect as of a date prior to the harmful acquisition, the effects of tax refund claims resulting from a carryback of negative income on the amount of the transferred assets as stated in the final tax balance sheet and on the determination of the merger profit must be examined.

The key message:

Losses incurred in the year of the harmful acquisition until that point (i. e., losses incurred until the date of the harmful share transfer) may be carried back and offset against the total positive income of the two preceding tax assessment periods. The previous administrative interpretation strictly prohibited such carrybacks, arguing that the loss is completely lost due to the change in shareholders. The Supreme Tax Court and the MoF now clarified that Section 8c CTA only prohibits the carryforward of such losses to future years (to prevent harmful loss transfers) but does not prohibit carrybacks to prior years at the level of the former shareholders.

In brief, the following applies:

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Loss carrybacks are permitted without restriction to prior years under the conditions set forth in general Section 10d(1) Income Tax Act.

In the case of share acquisitions made during the fiscal year, the reduction under Section 8c CTA applies only to the extent that the loss cannot be deducted from the positive total taxable income in the prior year.

The total taxable income earned up to the time of the loss-causing acquisition is the yardstick for the calculation.

The new regulation applies to all open cases.

Caution: The trade tax trap

The new regulation applies exclusively to corporation tax. Since the Trade Tax Act does not provide for loss carrybacks (Section 10a Trade Tax Act), the tax authorities maintain that trading losses incurred during the year are permanently lost if shares are purchased.

Source: Ministry of Finance, circular of 26 October 2026 (published on ….)

Note: Excerpts taken from an article published on 13 November 2026 in the German Blog *Steuern & Recht*.

Keywords

Loss relief, harmful share acquisition