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# Quoted

## Loss compensation in 2022

LOYENS & LOEFF

# In this edition

# 1. Introduction

This contribution has been prompted by the introduction of the new loss compensation rule in article 20 of the Dutch Corporation Tax Act 1969 (*Wet op de vennootschapsbelasting 1969*, **CIT Act**) as from 1 January 2022. Under this new rule, corporation tax losses can be carried forward indefinitely and the loss compensation in one year is capped at €1 million plus 50% of the taxable profit in excess of €1 million.

This edition of Quoted discusses the application of the new loss compensation rule and topics of practical interest. This contribution is structured as follows:

- first, we describe the new loss compensation rule in corporation tax and illustrate its effect with two examples (section 2);
- second, we discuss the concurrence with the debt waiver income exemption, as well as the concurrence with the revaluation option provided by article 20a, paragraph 12 CIT Act (sections 3 and 4);
- third, we discuss the concurrence of the new loss compensation rule with the fiscal unity in the context of offsetting pre-fiscal unity losses (section 5);
- fourth, we examine the meaning of the Dutch sound business principles and the timing of income and expenses under the new loss compensation rule (section 6);
- last, we address offsetting holding company and financing losses (section 7).

Where necessary, the different sections end with some practical conclusions and points to consider.

# 2. The new loss compensation rule

## 2.1 General

Under the loss compensation rules that applied until 1 January 2022, losses could be carried forward for six years (until 2019: nine years) and carried back for one year. Losses could be offset against profits without limitation during these loss compensation periods.

Under the new loss compensation rule as from 1 January 2022, losses can be carried forward indefinitely and still be carried back for one year. But there is a downside to the new loss compensation rule: the legislator has introduced a cap on the extent of the loss compensation; the loss compensation carried forward and backwards is namely capped at €1 million (threshold) plus 50% of the taxable profit in excess of €1 million. The new rules on loss compensation also apply to existing pre-2022 losses for loss compensation as from 2022. This new loss compensation rule stems from the report of the Advisory Committee on the Taxation of Multinationals (Ter Haar), entitled *Op weg naar balans in de vennootschapsbelasting*[1] (Towards balance in corporation tax). The loss compensation rule was one of the report's seven recommendations aimed at fairer taxation of multinationals.

According to the legislator, the new loss compensation rule aims to prevent companies with profitable activities in the Netherlands from paying no corporation tax for years on end because of loss compensation.[2] The new system must ensure a minimum level in corporation tax for companies with profitable activities in the Netherlands.[3] The new rule also aims to achieve more gradual loss compensation and thus more stable tax revenues.[4] Several European and other countries, including Germany, apply a similar system for offsetting losses.

1 Advisory Committee on the Taxation of Multinationals, *Op weg naar balans in de vennootschapsbelasting: Analyses en aanbevelingen* (Towards balance in corporation tax: Analyses and recommendations), 15 April 2020.

2 Lower House, session year 2020–2021, 35 572, no. 12, p. 3.

3 Lower House, session year 2020–2021, 35 572, no. 12, p. 4.

4 Ibid.

## 2.2 Examples

The effect of the new loss compensation rule can be explained with two examples: one with a loss carry-forward and the other with a loss carry-back.

**Example 1 (loss carry-forward)**

| Year | Result |
|---|---|
| 2021 | € -2M (no loss carry-back possible) |
| 2022 | € -3M |
| 2023 | € 4M |
| 2024 | € 1.5M |
| 2025 | € 1M |

**Effect of example 1 (loss carry-forward)**

| Year | Result (a) | Threshold (b) | 50%-rule (c, being 50%*(a-b)) | Scope for offsetting (b+c) | Loss compensation (d) | Taxable amount (a-d) | Offsetable losses at financial year-end |
|---|---|---|---|---|---|---|---|
| 2021 | € -2M | n/a | n/a | n/a | n/a | € -2M | € 2M |
| 2022 | € -3M | n/a | n/a | n/a | n/a | € -3M | € 5M (€ 2M + € 3M) |
| 2023 | € 4M | € 1M | € 1.5M (50%* (€ 4M - € 1M)) | € 2.5M | € 2.5M | € 1.5M | € 2.5M (€ 5M - € 2.5M) |
| 2024 | € 1.5M | € 1M | € 250K (50%* (€ 1.5M - € 1M)) | € 1.25M | € 1.25M | € 250K | € 1.25M (€ 2.5M - € 1.25M) |
| 2025 | € 1M | € 1M | € 0 (50%* (€ 1M - € 1M)) | € 1M | € 1M | € 0 | € 250K (€ 1.25M - € 1M) |

The offsetable losses at the end of 2025 in this example are €250,000. This is the remaining loss from 2022. The new loss compensation rule ensures that corporation tax is always due in years when the taxable profit exceeds €1 million, even if the total available offsetable losses exceed the taxable profit for that year. Under the loss compensation rules that applied before 1 January 2022, the losses in the above example would have been utilized sooner; the losses would have been offset fully in 2024 and the taxable amount would have been zero (with no corporation tax payable) in 2023 and €0.5 million in 2024.

**Example 2 (loss carry-back)**

| Details | |
|---|---|
| Loss at the end of 2022 | € -2M |
| Taxable result 2023 | € 5M |
| Taxable result 2024 | € -1.5M |

**Effect of example 2 (loss carry-back)**

Given the rule that loss compensation occurs in the order in which the losses are incurred (article 20, paragraph 4 CIT Act), the loss at the end of 2022 is first carried forward to be offset against the taxable profit in 2023. This loss carry-forward is done as follows:

*Loss carry-forward for 2022 loss*

| Year | Result (a) | Threshold (b) | 50%-rule (c, being 50%*(a-b)) | Scope for offsetting (b+c) | Loss compensation (d) | Taxable amount (a-d) | Remaining scope for offsetting (b+c-d) |
|---|---|---|---|---|---|---|---|
| 2023 | € 5M | € 1M | € 2M (50%* (€ 5M - € 1M)) | € 3M | € 2M (loss carry forward for 2022) | € 3M | € 1M |

The loss at the end of 2022 (€2 million) can thus be fully carried forward and offset against the profit for 2023. The taxable amount in 2023 after the loss carry-forward is thus €3 million (€5 million - €2 million). The remaining scope for offsetting in 2023 – after the loss carry-forward – is €1 million (€3 million - €2 million).

€1 million of the loss for 2024 (€1.5 million) can be carried back and offset against the remaining profit for 2023. The taxable amount in 2023 after the loss carry-forward and loss carry-back is thus €2 million (€5 million - €2 million - €1 million). The remaining loss for 2024 amounts to €0.5 million (€1.5 million - €1 million). It should be noted that the threshold amount of €1 million for each year of taxable profit can thus only be used once, even if losses from different years are offset in that year.

### 2.3 Retroactive effect

Although the new loss compensation rule applies to financial years starting on or after 1 January 2022, it also has retroactive effect. As for loss carry-forwards, the rule also applies to losses from financial years that started on or after 1 January 2013 that were not yet offset by the end of the 2021 financial year (also see example 1). These old losses can thus be carried forward indefinitely in time but are subject to the quantitative limitation that applies as from 2022.

A retroactive effect also applies to loss carry-backs: the new loss compensation rule also applies to the loss carry-back from 2022 (against the profit from 2021).

Losses from financial years that started before 1 January 2013 remain available for offsetting without quantitative limitation until the effective date of the new measure, subject to the nine-year period. Under the transitional law, these losses can be offset until 1 January 2022 at the latest (after this date, these losses expire).

A summary of the consequences of the new loss compensation rule for the different loss years is included in the **Appendix**.

## 3. Concurrence with debt waiver income exemption

In practice, creditors sometimes fully or partially waive debts. If the waiver occurs for business reasons, it will in principle result in taxable profit for the debtor. However, the CIT Act provides a rule under which debt waiver income can be exempted from corporation tax at the level of the debtor.[5] This concerns waiving unrealisable rights of claim. But debt waiver income is exempt only to the extent that it exceeds the amount of tax losses (and the loss – without debt waiver income – of the current year). Up to the amount of these tax losses, the debt waiver income therefore is not exempt but taxed, although the resulting taxable profit can be offset against the available losses.

The debt waiver income exemption was introduced to prevent debtors already in an insolvent position from having to pay tax on their waived debts. Under the old loss compensation regime (before 1 January 2022), the debt waiver exemption applied once the tax losses were fully utilised. This way debtors whose debts were waived did not benefit twice by maintaining their tax losses and by not paying tax on their waiver income at the same time.

Full application of the new loss compensation rule (from 1 January 2022) means that corporation tax may be due overall on part of the debt waiver income. This is because the debt waiver income exemption does not apply up to the amount of the tax losses, while the taxed debt waiver income can be offset against those losses only up to – in short – a maximum of 50%. This notable outcome is at odds with the purpose of the debt waiver income exemption, which is to facilitate the continuation and/or winding up of a business. This point was raised during the parliamentary debate on the 2021 Tax Budget. Even so, the State Secretary for Finance stated that such an outcome is in keeping with the aim and purpose of the new loss compensation rule and that no amendment was needed regarding this point. Debt waiver therefore can lead to part of the debt waiver income being subject to corporation tax.

5 Article 3.13, paragraph 1, subparagraph a of the Dutch Income Tax Act 2001.

The example below shows the concurrence under the new loss compensation rule and under the old system.

**Example 3 (concurrence of debt waiver income and loss compensation)**
A taxpayer has €5 million in offsetable losses. The taxpayer's creditor waives a debt of €7 million for business reasons. As a result, the debtor earns debt waiver income of €7 million. The effect of this under the new and old loss compensation rules is as follows.

| | Effect under new loss compensation rules | Effect under old loss compensation rules |
|---|---|---|
| Debt waiver income | € 7 million | € 7 million |
| Offsetable losses | -/- € 5 million | -/- € 5 million |
| Debt waiver income exemption | -/- € 2 million | -/- € 2 million |
| Taxable profit | € 5 million | € 5 million |
| Loss compensation | -/- € 3 million | -/- € 5 million |
| Taxable amount | € 2 million | zero |

The concurrence of the debt waiver income exemption and the new loss compensation rule has been criticised in the literature.[6] The full application of the new loss compensation rule to the debt waiver income exemption undermines the rationale of this exemption and could create tax obstacles in achieving restarts. Some solutions have been described in the literature aimed at preventing corporation taxation in situations where creditors wish to waive their rights of claim.
A possible solution for the debtor is to write-down a debt in a year in which sufficient loss has been incurred (intra-year loss compensation), so that the income released from writing down the debt can be offset against the loss incurred in that same year. Older case law supports valuing debts by having regard to the debtor's degree of solvency.[7] If the debt write-down is correctly estimated, a subsequent waiver of the written-down portion will no longer result in debt waiver income on which corporation tax is payable as a result of the new loss compensation rule.

Where applicable, another solution could be found in the application of article 20a CIT Act, an anti-abuse rule aimed at combating trade in loss entities, by selling the shares in a taxpayer (if relaunching the activities is not relevant). If article 20a CIT Act applies, losses are no longer offsetable and are permanently lost. For article 20a CIT Act to apply, there must have been a significant change of interest with regard to the ultimate shareholder in the taxpayer, among other conditions. The sale of the shares in a taxpayer with tax losses can therefore result in those losses being permanently lost. In the absence of tax losses (through the application of article 20a CIT Act), the debt waiver income exemption then applies, in principle, to the full amount of the debt waiver income.

## 3.1 Practical conclusion(s) and points to consider

If a taxpayer has tax losses and its creditors are willing to fully or partially cancel debts for business reasons, the concurrence of the debt waiver income exemption and the new loss compensation rule is an important point to consider. Because of the new loss compensation rule, corporation tax could be due in that situation on a portion of the debt waiver income. To avoid the adverse effects of corporation tax in debt waiver situations, it is recommended that fiscally acceptable solutions be investigated.

6 A.C.P. Bobeldijk, Maatschappelijk onaanvaardbaar: belastingheffing over kwijtscheldingswinst (Socially unacceptable: taxation of debt cancellation income), WFR 2021/16 and R.P.C. Cornelisse, '*Kwijtschelding van schulden en verliesverrekening: een giftige cocktail*' (Debt cancellation and loss compensation: a toxic cocktail), NTFR Opinie 2022/1616.

7 See, for example, Supreme Court of the Netherlands (HR) 13 June 1934, B. 5633 and HR 24 June 1964, BNB 1964/224.

# 4. Concurrence with the revaluation option under article 20a, paragraph 12 CIT Act

Under the aforementioned article 20a CIT Act, existing losses can be permanently lost if there is a significant change of interest of the ultimate shareholder in the taxpayer. In such cases, article 20a, paragraph 12 CIT Act offers a concession by giving taxpayers the option of revaluing assets (with undisclosed reserves) up to their market value and/or having a reinvestment reserve released in the profit before the change of interest. In this way, profits arising materially in the period before the change of interest can be reflected in the profit before the change of interest. After the change of interest, the increased tax base of the revalued assets (i.e. step-up) can be depreciated.

Under the loss compensation system that applied until 1 January 2022, the revaluation profit resulting from the application of paragraph 12 could be offset fully (i.e. 100%) against existing losses. After the introduction of the new loss compensation rule (as from 1 January 2022), only 50% of the revaluation profit resulting from the application of paragraph 12 – if and to the extent that the revaluation results in a taxable profit in excess of €1 million – can be offset against existing losses.

The new loss compensation rule can thus lead to corporation tax being payable on part of the revaluation profit. In an acquisition process, the new loss compensation rule thus limits the benefit that can be gained by relying on paragraph 12, compared to the old loss compensation rules. Even so, it could still be attractive to rely on the revaluation option under article 20a, paragraph 12 CIT Act in an acquisition process under the new loss compensation rule. Briefly put, relying on paragraph 12 could still be attractive if the present value of the increased depreciation (in the near future) exceeds the immediate corporation tax payable on part of the revaluation profit.

## 4.1 Practical conclusion(s) and points to consider

In an acquisition process, the concurrence of the revaluation option provided for in article 20a, paragraph 12 CIT Act and the new loss compensation rule is an important point to consider. It needs to be considered on a case-by-case basis whether relying on paragraph 12 is still attractive.

# 5. Concurrence with the fiscal unity

Because of the new loss compensation rules, loss compensation in any given year is capped at €1 million plus 50% of the taxable profit insofar as it exceeds €1 million. For a fiscal unity, this loss-absorbing capacity is determined at the level of the fiscal unity. For companies included in a fiscal unity, pre-fiscal unity losses[8] can still only be offset against fiscal unity profit insofar as the fiscal unity profit is attributable to the company concerned. Until recently, it was unclear for the purpose of applying the new loss compensation rules how the loss-absorbing capacity of the fiscal unity ought to be allocated among the fiscal unity companies, if several companies have pre-fiscal unity losses.

To regulate the offsetting of pre-fiscal unity losses under the new loss compensation rules, the legislator has amended the concurrence provision of article 12 of the Fiscal Unity Decree 2003 (*Besluit Fiscale Eenheid 2003,* **FUD 2003**). Under article 12, paragraph 2 (new) FUD 2003, the available loss-absorbing capacity of the fiscal unity must be allocated among the individual companies in proportion to the fiscal unity profit attributable to those companies. Article 12, paragraph 3 (new) FUD 2003 then prescribes how to deal with the situation in which a company has a lower amount of pre-fiscal unity losses than the loss-absorbing capacity allocated to it (i.e. a company with excess loss-absorbing capacity). In that case, the remaining part of the loss-absorbing capacity of the company concerned (i.e. the excess) is reallocated among the other companies that still have pre-fiscal unity losses but no loss-absorbing capacity. If several companies have unused pre-fiscal unity losses, the reallocation is repeated in proportion to the *remaining* profit attributable to those companies. This reallocation can be repeated indefinitely as long as a company does not offset more losses than its stand-alone profit and naturally as long as it does not offset more than the total available loss-absorbing capacity of the fiscal unity under article 20 CIT Act 1969.

8 Losses incurred in a period when a company was not yet part of the fiscal unity.

The example below shows how loss compensation works in the presence of pre-fiscal unity losses.

**Example 4 (concurrence of pre-fiscal unity losses and the new loss compensation rules)**

| | Fiscal Unity | A BV | B BV | C BV |
|---|---|---|---|---|
| Pre-fiscal unity losses | n/a | - 0.5 | - 8 | - 48 |
| Profit 2023 (fiscal unity as from 1 January) | + 75 | + 45 | + 10 | + 20 |
| Loss-absorbing capacity | + 38[9] | | | |
| Allocation of loss-absorbing capacity | | + 23[10] | + 5[11] | + 10[12] |
| Setoff of pre-fiscal unity losses | | + 0.5 | + 5 | + 10 |
| Remaining pre-fiscal unity losses | | n/a | - 3 | - 38 |
| Remaining loss-absorbing capacity | | + 22.5 | n/a | n/a |
| Reallocation of loss-absorbing capacity | | | + 7.5[13] | + 15[14] |
| Setoff of remaining losses | | | + 3 | + 10[15] |
| Remaining pre-fiscal unity losses | | n/a | n/a | - 28 |

### 5.1 Practical conclusion(s) and points to consider

A notable feature of the above system is that profitable companies without pre-fiscal unity losses increase the capacity for offsetting pre-fiscal unity losses with other companies in the fiscal unity. On a stand-alone basis, a company would only be able to offset its pre-fiscal unity loss up to roughly 50% of its own profit, while the full amount of its own profit is available for a compensation of carried-forward losses within a fiscal unity.

## 6. Intra-year loss compensation and timing aspects

As a result of the new loss compensation rules, the importance of the Dutch sound business principles within the context of loss compensation have increased. More specifically, the introduction of the new loss compensation rules could make it more favourable, within the limits of the Dutch sound business principles, to recognise expenses in profit years and to recognise income in loss years. In this way, it is possible to use intra-year loss compensation, which is unaffected by the limitations of the new loss compensation rules. For example, the importance of choosing a valuation method for a taxpayer's receivables and payables has increased because such a valuation method can contribute to managing the realisation of currency exchange results, which has an impact on the intra-year loss compensation. If and insofar as possible, the capitalisation of expenses for tax purposes, instead of recognising expenses immediately, can also be considered. This way, expenses are included in profits more gradually, with the possibility of using intra-year loss compensation.

Triggering undisclosed reserves, for example by transferring assets within the group, can also help to optimise loss compensation. Because there are no limitations on intra-year loss compensation, one can consider triggering an undisclosed reserve relating to an asset in a year in which a substantial loss is anticipated, in order to offset all or part of the undisclosed reserve against that loss within a financial year.

9 (75 – 1) x 50% + 1 = 38.
10 45 / 75 x 38 ≈ 23.
11 10 / 75 x 38 ≈ 5.
12 20 / 75 x 38 ≈ 10.
13 5 / 15 x 22.5 = 7.5.
14 10 / 15 x 22.5 = 15.
15 Maximised by the stand-alone profit, see Article 15ae CIT Act.

Of course, the reverse also applies: in a year in which a large profit is expected, one can consider recognising certain expenses. This way, these expenses can effectively be taken into account in full (insofar as there is sufficient profit), while the loss compensation over the years is limited.

The above can be illustrated by the following example.

**Example 5 (timing aspect of loss compensation)**
The inspector is of the opinion that in year 1 (the loss year) the taxpayer has incurred a loss of €18 million.
However, according to the taxpayer, the Dutch sound business principles allow €5 million of the expenses from year 1 to be taken into account in year 2 (the profit year).

*Situation I (according to the inspector)*
Result of year 1: - €18 million
Result of year 2: €12 million
Result of year 2 after loss compensation: €5.5 million[16]
Corporation tax payable in year 2: €1.38 million[17]

*Situation II (according to the taxpayer)*
Result of year 1: - €13 million
Result of year 2: €7 million
Result of year 2 after loss compensation: €3 million[18]
Corporation tax payable in year 2: €0.73 million[19]

The above example shows that after the introduction of the new loss compensation rule, taxpayers could benefit from carefully considering the Dutch sound business principles because its optimal application could lead to larger loss compensation in certain cases.

It should also be noted that under the old loss compensation system, the State Secretary's policy was to allow 'loss renewal' transactions.[20] In short, this policy meant that the tax authorities would adopt a reasonable and constructive attitude towards the revaluation of assets or to the transfer of assets within the group, within the limits of the Dutch sound business principles, to trigger an undisclosed reserve, with the resultant profits being offset against offsetable losses from past years that had expired or were at risk of expiring. It is uncertain whether this policy still applies to such transactions under the new loss compensation system, as losses can no longer expire. The State Secretary for Finance might introduce a new policy in this regard.

## 6.1 Practical conclusion(s) and points to consider

Under the old loss compensation rules, with no limitation on the amount of taxable profit to be offset against available losses, it was often advantageous to recognise expenses immediately to offset them against profits in the year itself or in subsequent years. But under the new loss compensation rules, it may be beneficial to capitalise expenses and spread them evenly over different years, since the amount of intra-year loss compensation, unlike loss carry-forward and loss carry-back, is not limited.

16 €12 million - (€1 million + 50% of €11 million).
17 (€395k x 15%) + ((€5.5 million - €395k) x 25.8%).
18 €7 million - (€1 million + 50% of €6 million).
19 (€395k x 15%) + ((€3 million - €395k) x 25.8%).
20 Decision of the State Secretary for Finance of 16 July 2014, no. BLKB2014/362M, para. 2.3.

# 7. Concurrence with holding company losses

The legislator has introduced a provision on the concurrence between the new loss compensation rules and the rules on offsetable holding company and financing losses that can be offset against only holding company and financing profits. This concurrence provision is laid down in article 34i CIT Act. It ensures that offsetable holding company and financing losses are subject to the same restrictions (and extensions) as regular losses. The restriction on the amount of holding company and financing losses that can be offset is the same under the new loss compensation system as for regular losses. This means that holding company and financing losses can be offset against only 50% of the taxable profit insofar as it exceeds €1 million. And holding company and financing losses can only be offset against holding company and financing profits.

A question that arises under the concurrence provision is how loss compensation proceeds if a taxpayer has both regular losses and holding company and financing losses. In the explanatory statement to the first memorandum of amendment to the 2021 Tax Budget[21], the State Secretary remarked: '*If a taxpayer has both offsetable holding company or financing losses from before 2019 and other losses, each of these types of losses is offset separately in full up to an amount of €1 million, and above this amount only up to an amount of 50% of the taxable holding company or financing profit, or the other profit*.'

This comment could be interpreted in a way that if regular losses and holding company and financing losses concur, the €1 million threshold amount may be applied to each type of loss separately. However, in the memorandum of reply to the 2021 Tax Budget, the State Secretary for Finance included a calculation example in which the regular losses and holding company and financing losses concur. It follows from this that the €1 million threshold amount can be applied only once in such a case.[22] This calculation example reads as follows:

**Example 5 (offsetting holding company and financing losses)**
Year 1: regular loss of €4 million
Year 2: holding company and financing loss of €6 million
Year 3: holding company and financing profit of €10 million

According to the State Secretary for Finance, the effect of this example is as follows. The taxpayer in this case has both offsetable holding company and financing losses and offsetable regular losses. In such a case, an amount of up to €1 million may be offset in full for each of these types of losses, and above this amount only up to an amount of 50% of the taxable holding company and financing profit, or the regular (other) profit.

The total offsetable losses in the example are €10 million. The regular loss of €4 million for year 1 qualifies first to be offset against the holding company and financing profit of €10 million from year 3. For the set-off of regular losses, it is not relevant whether the taxable profit is classified as holding company and financing profit. An amount of €1 million of the total offsetable losses is offset first. The remaining losses are €9 million, of which 50% or €4.5 million is set off. The total loss-absorbing capacity in year 3 thus amounts to €5.5 million. The regular loss of €4 million from year 1 can thus be fully offset in year 3. In year 3, part of the holding company and financing loss from year 2, i.e. € 1.5 million, can be offset. The taxable amount after loss compensation in year 3 is €4.5 million. At the end of year 3, there remains an amount of €4.5 million in unsettled holding company and financing losses that can be offset against holding company and financing profits in a subsequent year (or years).

21 Parliamentary Papers II, 2020/21, 35572, no. 12, p. 8.
22 Parliamentary Papers I, 2020/21, 35572, no. F, p. 12

### 7.1 Practical conclusion(s) and points to consider

If a taxpayer has both offsetable holding company and financing losses and offsetable regular losses, it is important to note that the €1 million threshold amount may be used only once and that, regardless of the classification of these offsetable losses as holding company and financing losses or regular losses, losses from the oldest loss year are offset first. This can lead to complications, as holding company and financing losses are generally more difficult to offset than regular losses.

## 8. Conclusion

This contribution has focused on the new loss compensation rules, which came into effect on 1 January 2022. Because of the quantitative limitation (i.e. 50% of the profit above €1 million), if the taxable profit exceeds €1 million, the new rules mean that a smaller loss amount can be offset than before (and corporation tax will thus be due in profit years, even if the amount of available losses exceeds the profit). However, losses can now be carried forward indefinitely and therefore no longer expire.

The concurrence between the new loss compensation system and other tax arrangements can result in notable outcomes. For example, the concurrence with the debt waiver income exemption could result in corporation tax being payable even if debts have been waived for business purposes. This, while companies in a fiscal unity with pre-fiscal unity losses can offset more pre-fiscal unity losses than would have been the case had a fiscal unity not existed.

The new loss compensation rules create a new dynamic in determining the annual taxable profit. One example is the capitalisation of expenses. Previously, it was often disadvantageous for taxpayers to capitalise expenses and spread them evenly over future years, but this can actually benefit them under the new rules. These and other aspects should be considered when applying the new loss compensation rules.

| Loss from financial year | Loss carry-back | Loss carry-forward |
|---|---|---|
| 2011 | 1 year | 9 years (until end 2020) |
| 2012 | 1 year | 9 years (until end 2021) |
| 2013 | 1 year | Unlimited with quantitative limitation |
| 2014 | 1 year | Unlimited with quantitative limitation |
| 2015 | 1 year | Unlimited with quantitative limitation |
| 2016 | 1 year | Unlimited with quantitative limitation |
| 2017 | 1 year | Unlimited with quantitative limitation |
| 2018 | 1 year | Unlimited with quantitative limitation |
| 2019 | 1 year | Unlimited with quantitative limitation |
| 2020 | 1 year | Unlimited with quantitative limitation |
| 2021 | 1 year | Unlimited with quantitative limitation |
| As from 2022 | 1 year with quantitative limitation | Unlimited with quantitative limitation |

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The authors of this issue are Rogier Vermeer (rogier.vermeer@loyensloeff.com) and Richard Snoeij (richard.snoeij@loyensloeff.com).

## Editors



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