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16 April 2010

Deferred Tax Assets (DTAs) and Regulatory Capital

Dear Sirs:

We are writing as a follow up to the roundtable with you and representatives of major German banks in our office premises in Eschborn/Frankfurt/Main on 24 February 2010.

The goal of the deferred tax asset ("DTA") roundtable was to commence an open dialogue between the German regulators, the German banks and Ernst & Young regarding the most appropriate regulatory treatment of DTAs.

Since the regulatory treatment of DTAs is highly important not only for German financial institutions but also for financial institutions in other European countries, we as Ernst & Young intend to initiate similar roundtables in Paris, Zurich, Amsterdam and London among others. That way, we expect to receive an overview of the concerns of the financial institutions in Germany and abroad as well as various suggestions regarding the future regulatory treatment of DTAs.

In order to frame the discussion of the regulatory treatment of DTAs, we will first give an overview of the nature of DTAs under IFRS (see **Appendix 1** Sec. A). Then, we will summarise our understanding of the goals of Basel III and the approach to the treatment of DTAs in the Consultative Document *Strengthening the resilience of the banking sector* ("Consultative Document") (see **Appendix 1** Sec. B).

Third, we will present how the U.S. regulator treats DTAs (see **Appendix 1** Sec. C and **Appendix 2**). In the United States, the regulatory treatment of DTAs has been in discussion for more than 30 years. Therefore, the analysis of the U.S. model helps us in finding suggestions of how to treat DTAs in Germany and Europe.

Finally, we will describe the suggestions made at the DTA roundtable in Frankfurt, analyse the findings and provide suggestions as to how the German and European regulators might treat DTAs on a going forward basis (see **Appendix 1** Sec. D).

We would be very pleased receiving your feedback on our thoughts.

Best regards,

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Partner

Dr. Max Weber
Partner

Enclosures

Appendix 1

A: Overview of the nature of DTAs under IFRS

According to IAS 12.5, DTAs can be classified as follows:

a) DTAs resulting from deductible temporary differences;
b) DTAs resulting from the carry forward of unused tax losses; and
c) DTAs resulting from the carry forward of unused tax credits.

In the following, we will solely refer to these three types of DTAs. It should be noted that next to these DTAs there are also current tax assets which will not be analysed further. Current tax assets can result from a tax loss carry back or from prepayment. They represent an existing claim against the fiscal authorities which is usually due as soon as certain formal requirements are fulfilled (e.g. filling of a tax return or filling of an application). (*N.B.*: Generally, income taxes on profits of the current reporting period are recognised/ measured and presented as current tax liability. Current tax assets of prior periods may be recognised if they are "*virtually certain*" in accordance with IAS 12.46 (IAS 37.33).)

Ad a) DTAs resulting from deductible temporary differences

Temporary differences are the differences between the carrying amount of an asset or liability in the balance sheet and its tax base. The tax base of an asset or liability is the amount attributed to the asset or liability for tax purposes. The temporary differences result in higher or lower amounts that are deductible in determining the taxable profit of future periods compared to the amounts considered to determine the accounting profit. The reversal of such temporary differences occurs either in the period in which tax law requires/allows to apply the carrying amount in the balance sheet also for tax purposes, the carrying amount converges with the tax base, or latest when the asset is sold or the liability is settled. These temporary differences could be deductible temporary differences or taxable temporary differences which give rise to either DTA or deferred tax liability (DTL). Ultimately, the purpose of deferred taxes on taxable and deductible temporary differences is to reconcile taxable income with accounting profits.

More specific deductible temporary differences are composed of two different categories.

(i) Temporary differences between tax law and applicable GAAP arise from **income** being recognised for tax purposes only and not in accordance with applicable

GAAP at balance date. For example, if interest is prepaid it could fully represent taxable profit at payment date but is recognised on a pro rata basis for GAAP purposes. The corresponding DTA is effectively a prepayment to the tax authorities of a tax expense which is recognised for GAAP purposes in subsequent periods.

(ii) Temporary differences between tax law and applicable GAAP are arising from **expenses** being recognised for GAAP purposes only and not in accordance with applicable tax law as at balance date. For example, a fair market valuation loss automatically reverses over time by either market recovery or when the loss is recognised for tax purposes.

Ad b) DTAs resulting from carry forward of unused tax losses

IAS 12.34 requires that DTA on unused tax losses may only be recognised for carry forward of unused tax losses to the extent that it is probable that future taxable profits will be available against which the unused tax losses can be utilized.

In contrast to deductible temporary differences IAS 12.35 assumes that the existence of unused tax losses is **strong evidence** that future taxable profits may not be available. Therefore, when an entity has a history of recent losses, the entity recognises a deferred tax asset arising from unused tax losses only to the extent that the entity has sufficient taxable temporary differences or there is **convincing other evidence** that sufficient taxable profit will be available against which the unused tax losses can be utilised by the entity. In such circumstances, IAS **12.82** requires **disclosure** of the amount of the deferred tax asset and the nature of the evidence supporting its recognition.

IAS 12.36 points out in detail the prerequisites which need to be satisfied in order to recognise a DTA on tax loss carry forwards.

Ad c) DTAs from carry forward of unused tax credits

DTAs resulting from carry forward of unused tax credits may arise if a company basically qualifies for tax credits but those tax credits have not been able to be applied to reduce the taxes payable in the current period. Many countries permit a carry forward of such unused tax credits into future years. Tax accounting treatment is similar to DTA on unused tax losses whereby it is worth noting that eligible taxable profits which utilise unused tax credits must satisfy specific tax law requirements (e.g. country by country limitations). Accordingly the recoverability testing of DTA on unused tax credits is in most instances more difficult than for unused tax losses.

DTA for unused tax losses and unused tax credits represent a legally binding benefit against fiscal authorities.

B: Introduction to Basel III: How does the Consultative Document treat DTAs?

A core part of the Basel III proposals is the definition of regulatory capital going forward. To make the banking sector more robust, Basel III develops some more restrictive requirements for designating financial instruments (hybrid structures) as regulatory capital. Along with that, Basel III will change the structure of regulatory capital. Within Tier 1, Core Tier 1 will have a predominant role. In addition, the split within Tier 2 Capital will be removed and Tier 3 Capital will be abolished.

From our understanding, the objective of Tier 1 Capital (*i.e.* the predominant part as well as the non predominant part of Tier 1) is to absorb losses and help banks to remain going concerns (*i.e.*, to prevent failures). Thus, the capital adequacy requirements in pillar 1 apply primarily on a going concern basis. Stress cases and liquidation assumptions are a subject of pillar 2.

The objective of Tier 2 Capital is to absorb losses on a “gone concern” basis. Tier 2 Capital is intended to improve the position of depositors in case of the insolvency of the bank.

To make sure that capital is available to absorb losses, some adjustments have to be made mainly from the predominant part of Tier 1. One of the proposed adjustments to Tier 1 Capital is to change the treatment of deductions and one factor behind the proposals is to harmonize the treatment across countries going forward.

It is proposed that going forward DTAs should be deducted if they rely on future profitability of the bank. We understand that the thinking behind this is that it is not appropriate to rely on these assets since they may have to be written off in a period of stress and do not generate cash in a crisis. The proposal suggests that the deduction of DTAs from Tier 1 Capital should be net of deferred tax liabilities.

The Consultative Document also proposes that DTAs which do not rely on the future profitability of the bank *e.g.* prepayments to or receivables related to the carry-back of tax deductions from the local tax authority should be treated as risk assets and considered with the relevant sovereign risk weighting. Those positions are receivables from the local taxing authorities. In item 98 of the Consultative Document, these positions are considered DTAs. However, it should made clear that these tax assets are not DTAs from an accounting perspective but rather receivables (current tax assets, see A: above) from the local taxing authorities.

C: The U.S. model

In the U.S., banks are regulated by a variety of different agencies depending on the type of banking charter. The various agencies adopt uniform rules concerning the disallowance of "excess" DTAs. These rules limit the amount of DTAs that are *dependent on future income* that can be included in Tier 1 Capital. In determining the amount of DTAs that are *dependent on future income* a bank must assume (i) that DTAs and DTLs are netted on a global basis even if there is no legally enforceable right to offset them, (ii) that its timing differences all reverse as of the reporting date (quarter-end or year-end), and (iii) that a unlimited 2 year carry back is hypothetically permitted globally based on US tax law, i.e. even in countries like Germany where a carryback is limited to one year and 511,000 €. The resulting hypothetical net operating loss carryback is then compared to the taxable income in the current year and the prior year's covered by the carryback period, again on a global basis. The portion of the DTA that cannot be recovered through this hypothetical carryback plus the DTAs related to net operating loss or tax credit carry forwards are the DTAs that are considered *dependent on future income*.

The limitation of the DTAs that are considered dependent on future income is the lesser of the amount of such DTAs that can be absorbed by earnings during the next 12 months, or 10 percent of Tier 1 Capital.

A more thorough explanation of the U.S. model, its history and how it differs from the relevant U.S. GAAP rules is provided in **Appendix 2** of this paper.

D: Recommendation

Based on our understanding, it would seem appropriate to carve out deferred taxes on temporary differences (which include DTAs and DTLs) and generally maintain DTAs resulting from tax loss carry forward and unused tax credits as Tier 1 Capital, the latter as long as they appear to meet its requirements. DTAs on unused tax losses and unused tax credits are the most important group of DTAs and they should be the focus of the discussion.

In order to follow a pragmatic approach, we suggest that regulatory capital should be calculated as follows:

> **DTAs presented on the face of the balance sheet resulting from tax loss carry forwards and unused tax credits should be included in the regulatory capital up to a limit *i.e.* only those in excess of a certain percentage of the regulatory capital (for example a percentage between 30% and 50%) shall be a deducted from Tier 2 or Tier 1 Capital.**

The use of a flat limit would have the advantage of being indifferent to the varying tax laws across the countries that will be impacted by the proposed rules.

We suggest that the limit should apply only to DTAs resulting from tax loss carry forwards and unutilized tax credits for the following reasons.

a) Carve out DTAs on temporary differences

DTAs on temporary differences may represent a prepayment of a tax liability or could even reverse over time without any impact on taxable profit if the carrying amount converges with the tax base. Further, a significant driver of deductible temporary differences for banks is the fact that many tax laws recognise loan loss provisions at realisation whereby the deduction for GAAP purposes arises at the time the provision is made (*N.B.*: already acknowledged by CRD IV issued on 24/2/2010, no 152)

The same applies to DTL on temporary differences which should not be added back to regulatory capital as they are only driven by different computation rules for GAAP and tax law purposes.

b) Risk Limitation on a Going Concern Basis

The objective of Tier 1 Capital is to ensure the existence of the financial institution on a going concern basis and to limit the risk of a shortfall to the creditors. The objective of Tier 1 Capital is not to focus on insolvency. A 100% deduction of DTAs from Tier 1 Capital with the argument that they do not generate cash in a crisis would – in addition to the fact that this is technically not correct as outlined below – not be in line with such objective. Further, the reaction of equity positions on stressed economies or markets is (already) part of pillar II. Possible deductions of DTAs on unused tax losses and unused tax credits from equity should be individually discussed within modelling scenarios in pillar II first. However, it is possible arguments could be made in favour of a pragmatic approach of requiring a Tier 1 deduction with a reasonably high haircut, recognising multiple tax laws may be taken into consideration.

c) Robust Accounting Tests

The preconditions for recording DTAs on the balance sheet are very strict and subject to robust accounting tests (IAS 12.35 et seq). These accounting tests are conducted by the financial institution and verified by independent auditors. Therefore, the risk that a financial institution records DTAs which are unjustified on a balance sheet is rather low.

Further in this context, it should be noted that DTAs are not comparable with goodwill and intangibles. Goodwill and intangibles are created as part of a purchase price allocation whereas DTA reflect actual assets which are realised for full value in cash and may only depend on the cycle of a business plan (further see below Sec. D g))

d) There is a FMV of DTAs on unused tax losses which may generate a cash inflow

DTAs on unused tax losses and unused tax credits may, under certain circumstances, generate cash even in a stress situation of a financial institution.

Transferrable DTAs resulting from tax loss carry forwards are an important driver for the value of a financial institution (or parts of it) and may increase the purchase price in case of a sale of the business. The purchaser may use these DTAs for its own tax purposes and is therefore ready to pay a higher purchase price. In a stress situation, the financial institution may dispose of an affiliated company and in that way generate cash from the DTAs even in a stress situation.

We are aware of the fact that the possibility of transferring DTAs resulting from tax loss carry forwards is limited in some jurisdictions. However, in other jurisdiction, such transfer is either generally unlimited or under certain preconditions possible. The attached **Appendix 3** provides an overview of how the jurisdictions which are home to the most important financial centres treat the transferability of

DTAs resulting from tax loss carry forwards. Since the transfer of DTAs resulting from tax loss carry forwards is possible in most jurisdictions, it should be possible to partially retain DTAs as Tier 1 Capital.

e) Argument from the U.S. perspective

Under the proposed Basel III framework outlined in the Consultative Document, DTAs that reverse in the near term would seemingly be admitted into Tier 1 Capital if a bank could, hypothetically, carryback that reversing temporary difference to prior years to obtain refunds. This is a slightly different twist on the U.S. hypothetical carryback rule.

To illustrate how this might apply, assume a bank had a $100 deductible temporary difference relating to loan loss reserves that it projected would reverse in 2011. Under the Consultative Document, the bank would need to evaluate whether the deduction in 2011 could be carried back to prior tax years under the laws of the relevant jurisdiction. If the relevant jurisdiction was the U.S., the projected loss could be carried back two years, *i.e.,* to 2009. If the bank possessed sufficient U.S. tax liability in 2009 to absorb the hypothetical carryback of its loan loss DTA then it would not disallow that DTA in determining Tier 1 Capital under the Consultative Document. However, a similarly situated German bank would be required to reduce Tier 1 Capital because German law would not allow a carryback of that DTA (except for a minimal amount).

One could argue that the difference in the U.S. tax law vis-à-vis German tax law would justify the different capital treatment. However, this ignores reality. In the real world, it is difficult, if not impossible, to predict the reversal patterns of temporary differences. That was one reason why the U.S. Financial Accounting Standards Board chose to rescind FAS 96 and replace it with FAS 109, under which detailed projections of temporary differences are generally not required. In most instances, the realization of a DTA related to loan losses occurs in the normal course of business – the bank earns future income that it offsets with loan loss deductions (charge-offs and the like). Those DTAs are not, very often, converted into cash as a result of the cessation of all business and the ripening of the underlying tax loss into a carryback claim. Consequently, the proposal is based on an unlikely scenario that should give regulators no assurance about the liquidation value of the DTA in a “gone concern” scenario. Moreover, the proposed rule would motivate any U.S. bank to project a near-term reversal pattern and would inevitably create unfair advantage vis-à-vis German banks.

Admittedly, it could be argued that the purpose of Tier 1 Capital is to measure the funds available in the event of a bank failure and therefore it is justifiable to favor the DTAs of a U.S. bank over a German bank because the U.S. laws would allow for tax refunds in a failed bank scenario. But that argument assumes too much about the state of the failed bank. When U.S. banks fail, it is often the case that the bank has very little carryback potential. This can occur for numerous reasons. First, failing banks often generate small amounts of taxable income for a period of years leading up to their demise. Second, the failure of a bank is often driven by increased loss reserves (often at the behest of regulators), which do not necessarily translate into tax deductions (since the tax law usually requires a charge-off or a realization event). Third, bank holding companies often engage in careful tax planning strategies in order to retain the tax benefits attributable to bank losses. Such planning takes many different shapes, but often involves deferring the bank's losses to years where the resulting net operating loss becomes a carryforward of the bank holding company, which allows the creditors of the bank holding company to extract value following the emergence from bankruptcy. For these reasons, it seems arbitrary for the proposed regulatory capital rules to admit into Tier 1 Capital a U.S. bank's DTAs simply because of a hypothetical fact pattern that will likely never occur.

f) Competitiveness

The U.S. regulator allows U.S. institutions to keep DTAs in the Tier 1 Capital which do not "*rely on future profitability*" or are expected to be realised within one year. In practice, the application of this rule is significantly relieved because in arriving at the DTA subject to subtraction following assumptions are made:

(i) a globally operating bank is considered to be one entity which allows a regulatory netting even in absence of an enforceable right which is required for financial accounting offsetting,
(ii) a hypothetical reversal of temporary differences is assumed at balance date, and
(iii) based on U.S. tax law which is hypothetically applied to all jurisdictions in which the bank is operating and consequently allows for an un-capped tax loss carry back of 2 years (for 2008 and 2009 even up to 5 years).

It is without saying that a profitable globally operating bank does not need to deduct – at least – any DTAs on temporary differences.

From past experiences, it is possible that Basel recommendations are not fully adopted in all major jurisdictions. Therefore, there is a significant concern that major jurisdictions retain their current approach or a variation of it. The consequence of implementing the current proposal without a global level field playing or modifications would place Non-European based banks at a comparative advantage.

g) DTAs avoid regulatory capital volatility and prevent distorted investment decisions

Recognising DTAs as Tier 1 Capital helps to avoid volatility of regulatory capital as capital consumption from losses is reduced by DTA recognition and capital contribution from profits is reduced by DTA releases bearing in mind that those have passed robust recoverability tests for accounting purposes already.

The following example illustrates distorted investment decisions and the resulting effect of pro-cyclicality of regulatory capital:

A financial institution is profitable in its home country and considers two alternative investment opportunities: opportunity 1 – Investment in its home market (expected risk-adjusted ROI 12 %) and opportunity 2 – Investment in a new market in another jurisdiction (expected risk-adjusted ROI 15%). In both cases, start-up losses of one-hundred million € are expected in year 1. From a pre-tax analysis, opportunity 2 is obviously the better investment decision. However, without recognition of DTAs in case of opportunity 1 the start-up losses can be offset against the existing current year profits in the home country. Therefore in case of a 30% tax rate the net effect from the start-up losses is only 70 Mio €. In case of opportunity 2 the start-up losses cannot be offset against the home country profit and therefore the net-effect amounts to 100 Mio €. In each subsequent year a pre-tax profit of 50 Mio € is assumed.

This illustrates that non-recognition of DTA may result in a distortion of investment decision as financial institutions may focus on the short-term accounting consequences of long-term investments. Taking into consideration that a global bank operates in many different jurisdictions the example underlines that the mere existence of DTA is not at all representing that the bank has globally an impaired capital position. Instead a deduction of DTA set distorted incentives for "otherwise" sensible investment decisions.

Further, as a result of the current Basel proposal management of a volatile regulatory capital position would be required for investment opportunity 2 over a time-horizon which is usually 5 years in accordance with a usual business plan. Loss of regulatory capital of 100 Mio € in year 1 is followed by capital contribution of 50 Mio € in year 2 and 3. From year 4 onwards capital contribution amounts to 35 Mio €.

Appendix 2

There are some additional rules in the U.S. model worth mentioning.

One example is the net-of-tax adjustment for unrealized losses on available for sale securities. The addition of the net-of-tax debit balance produces the effect of disallowing the DTA associated with those unrealized losses. Therefore, the rules allow banks to reduce their DTAs that are dependent on future income by these automatically disallowed DTAs. Another unique situation involves the treatment of deferred tax liabilities (DTLs) relating to goodwill. In the case of tax deductible goodwill, DTLs will often arise as a result of the tax basis decreasing below the equivalent GAAP basis. At the bank's election, such DTLs can be netted against the goodwill of the bank rather than netted against the DTAs of the bank. This netting reduces the goodwill that must be subtracted from Tier 1 Capital. As a result, the "tentative" Tier 1 Capital (*i.e.*, the amount of Tier 1 Capital prior to subtracting excess DTAs) is enlarged, which in turn, increases the 10 percent limitation on DTAs dependent on future income.

Country	Loss forfeiture Time restrictions	Quantitative restrictions	General Change of control restrictions	Exceptions for qualifying as restructuring	Qualified Change of Control and change of business	Exception for qualifying restrictions	Other
China	5 years.	Yes. The amount of prior-year accumulated tax loss that can be offset/utilized in a tax (calendar) year is limited to the taxable income calculated in accordance with the PRC Corporate Income Tax regulations (i.e. accounting profits with book-to-tax adjustment) for the tax (calendar) year.	No	Yes	- 'Normal corporate merger'/ 'Normal corporate spin-off': ->No transfer of existing losses to the surviving enterprise; If certain conditions (concerning anti-tax avoidance, significance, continuation of business, equity payment, continuation of shareholder) are fulfilled in the event of special corporate restructuring; unexpired tax losses of the enterprise being merged ("MergedCo") can be carried over to the surviving enterprise, subject to a cap calculated based on the fair value of MergedCo's net asset multiplied by the year-end longest-term government bond interest rate in the year of merger. For a special corporate spin-off unexpired tax losses of the enterprise being divided can be apportioned based on the proportions of its assets spinned off over its total assets and carried over to the post spin-off enterprises to offset future taxable income within the valid period of the tax losses		The amount of tax loss may be required to be certified by Chinese certified tax agent, depending on local requirement as stipulated in local tax regulations in certain locations of China.
France	No	No	No	No	Company will lose the right to carry forward losses when: a) The company changes its tax regime and/or its corporate form; b) The company changes its business. But these rules can be avoided if the losses are consolidated group losses as opposed to single entity, subject to abuse of law theory. In case of a merger or equivalent operation the losses carried forward can be transferred from the absorbed company to the absorbing company with respect to a ruling granted by the French tax authorities when certain criterias (anti-tax avoidance rule, business continuation for at least 3 years) are met.	Restrictions regarding French tax group at single entity level.	
Ireland	No	No	<u>Change in ownership of company: disallowance of trading losses</u> ->if within a period of three years, there is both a **change in the ownership** of a company **and a major change in the nature or conduct of the trade** carried on by the company or the scale of activities carried on by a company becomes small or negligible. ***<u>Question: What is supposed to be a major change, any percentage rate been applicable?</u>***	**No exceptions.**	**No exceptions.**		
Italy	5 years, no limit for start-up losses of the first 3 years of a new business.	No	Losses forfeit if: - More than 50 % of participation with voting rights in ordinary shareholders meetings of corporation that suffered the loss are transferred (even temporarily) and - The main business activity is changed with respect to the business activity of periods when losses were generated. Change of business is relevant if it takes place in the tax period when the transfer of participation takes place or in the two prior or following tax periods. In any case, losses do not forfeit if the transferred participation are referred to corporations which, in the two years prior to the one of transfer, have had a number of employees not lower than 10 and, in the profit and loss of the period prior to transfer, have had revenues and employees costs higher than 40 % of the average of the two prior years.	No	No	No	No
Japan	7 years	N/A	There is NOL restrictions for the case where 50% of shares in loss making company are transferred and some conditions are met. When a loss making corporation which have more than 50 % off issued shares by specified shareholders comes under certain conditions the NOLs incurred prior to the business year of the relevant date shall not be qualified for the NOLs carry-forwards deduction regime. In addition, capital losses derived from the transfer of assets incurred within three years of the first date the business year including the relevant date (limit of five years from the date of share acquisition) will not be deductible if the certain conditions stated above are met.	N/A	**<u>Exception for qualifying restrictions</u>** *In the case of tax qualified reorganizations such as merger, certain NOL utilizations are restricted.* *1. NOL of Disappearing or Transferor Corporation* If a merger or spin-off is qualified, the NOL in the disappearing or transferor corporation can be assumed by the surviving or transferee corporation, and can be utilized by such corporation for tax purposes in each fiscal year in which the merger or spin-off occurs. *2. Limitations in Utilizing Assumed NOL* However, as an anti-tax avoidance measure, there are limitations with regards to NOL incurred by related parties prior to a qualified reorganisation. If a qualified reorganization between related parties (related shareholders of more than 50%) does not meet the requirements of being a "deemed joint business", the following NOLs attributable to the disappearing or transferor corporation cannot be utilized by the surviving or transferee corporation. NOL incurred before the parties were related, and NOL incurred after the parties became related, but only to the extent such losses were realized from the transfer of assets owned before becoming related parties.		N/A
Luxembourg	Tax losses may be carried forward indefinitely. Tax loss carry-back is not permitted.	N/A	-Tax losses can only be deducted by taxpayer that actually incurred them.	N/A	- Legal identity and economic identity is necessary - In case of mergers, tax losses of absorbed companies may not be transferred to the absorbing company. - Specific rules in case of a fiscal unity apply.	N/A	
Germany	Tax loss carry forward indefinetly, tax loss carryback for corporate tax purposes: 1 year (maximum carryback is 511.500€)	Taxable income exceeding 1 Million € may only be reduced by loss carry-forwards up to 60%. Therefore 40% triggers tax (for income tax purposes and trade tax purposes).	-Tax losses expire proportionally if within a five-year period more than 25% of shares of loss entity is directly or indirectly transferred to one aquirer or an entity related to such an aquirer. - If within this 5 year period more than 50% of shares is transferred the entire remaining loss expires.	None	In case of restructuring existing tax losses won't forfeit if certain conditions are met (see para. 8c section 1a of corporate income tax act).	In case of a merger the the existing tax loss of a merged company expires and are not transferred to the surviving company (due to para. 4 of merger directive)	None
Netherlands	9 year carry forward.	N/A	Provided business is materially continued change of ownership does in principle not forfeit losses. Change of ownership is defined as a change of 30% or more. If >30% of ownership changes and business is materially discontinued, tax losses are forfeited. Special rules exist for companies of which assets consist mainly of portfolio investments (less flexible loss rules).	Yes – Exceptions apply for example if the change of ownership occurs due to regular trading in a listed company. Special rules exist for losses attributable to a part of the business that is continued even if losses are forfeited on basis of main rule.	In case of mergers or demergers specific rules exist for transfer of losses.		
Netherlands	9 year carry forward.	N/A	Provided business is materially continued change of ownership does in principle not forfeit losses. Change of ownership is defined as a change of 30% or more. **<u>Question: What happens if 30% are transferred – full or partly loose of tax losses?</u>**	Yes – Exceptions apply if the change of ownership occurs due to regular trading in a listed company.			
Singapore	None	None	Losses are forfeited if there is a substantial (more than 50%) change in the ultimate shareholders between the relevant dates - the end of the calendar year (i.e. 31 December) in which the loss was incurred and the first day (i.e. 1 January) of the tax year in which the loss is to be utilised.	Yes- From a practical angle, if the ultimate shareholder of a Singapore company is a listed corporation, the Singapore Tax Authorities, as a concession, will accept that there is no substantial change if a confirmation is given by the company secretary that the ultimate shareholder is a corporation listed on a certain exchange and that there is no merger or takeover of that entity.	Under such circumstances, a Singapore company could make an application to the Singapore Tax Authorities for a waiver of the substantial shareholding condition.	None	None
Spain	After 15 years	Tax losses from previous years may be compensated (during the referred 15 years) with the limit of the positive tax base obtained in the period they are intended to be offset (article 25 of the Spanish CIT Law).	Acquisitions of shares: tax losses may not be compensated by the acquirer if at the end of the fiscal year in which such losses were generated, and before the execution of the share purchase, its share/participa-tion was less than 25% and the acquired entity has been inactive for six month prior the acquisition.	N/A	Mergers and other reorganizations: only in the event that the transactions concerned are covered by the CIT tax deferral regime, provided by a universal succession, tax losses and tax credits may be transmitted to the acquiring entity, subject to a number of specific detailed rules.	N/A	N/A
Switzerland	after seven years	A loss of preceding year may be set-off against profit of current year. However, the profit can only be set-off to zero. The remaining part of the loss may be carried forward and set-off with current profits during the seven year period.	As long as the tax liability remains in Switzerland and the assets and liabilities are kept at tax book values, the losses may persist as such restructuring should qualify as tax neutral restructuring. If the afore-mentioned requirements are not fulfilled, the losses forfeit immediately This holds particularly true in cases where the business of a merged company is essentially discontinued.	No.	In the course of a recapitalization procedure, rescue measures other than capital contribution may be set-off with losses which are older than seven years (eternal tax loss carry forward offset).	N/A	No pending changes at the moment.
U.K.	None	None	Yes (1) Brought forward losses are forfeited if within any period of 3 years there is (a) a change in the ownership of a company and (b) either earlier or later within the 3 year period a major change in the nature or conduct of the trade carried on by the company (section 768 ICTA). (2) Brought forward losses are also forfeited if at any time after the scale of the activities in a trade carried on by a company has become small or negligible, and before any considerable revival of the trade, there is a change in the ownership of the company (section 768 ICTA). For these purposes there is, broadly, a change in ownership if more than 50% of the ordinary share capital is transferred (section 769 ICTA)		**<u>Exception for qualifying restrictions</u>** (1) Trading losses can only be set off against future profits of the same trade (section 393 ICTA). This restriction applies even if there is no change in ownership of the company. This restriction can be relevant when a company, which itself has brought forward trading losses, acquires a business from another company – if there were a new (enlarged) trade as opposed to either (a) an extension of the existing trade or (b) two separate trades then this restriction would apply. In practice this restriction rarely occurs (2) If a company transfers its trade to another, unrelated company, any brought forward trading losses will not normally be transferred to the purchaser. Such trading losses would normally be lost although there is a special provision which permits a company which ceases to trade (due to a transfer or otherwise) to carry back trading losses arising within the last 12 months against profits arising within the previous three years (normally trading losses can only be carried back 12 months) However, there are specific relieving provisions (the Mutual Societies (Transfers of Business) (Tax) Regulations 2009 (SI 2009/2971)) which provide for the transfer of trading losses for certain specified transactions, including in particular the transfer of a trade between Building Societies (mutual organizations which generally provide residential mortgages). These provisions were introduced quite recently in order to facilitate the merger of mutual organizations especially in the light of recent financial market events. For this type of organization these rules are very important because it is not possible to transfer the shareholding (as with a company) – if the shareholding is transferred the losses can be carried forward within the company (subject to s768 ICTA restriction above) or transferred to another group company (section 343 ICTA) if the trade is transferred (and subject to various detailed restrictions etc etc) (3) It should be noted that there are a range of analogous provisions to section 768 ICTA to deal with other sorts of tax losses other than trading losses		None