



Tax Aspects of Financial Restructurings

Circular No. 32a of the Federal Tax Administration (FTA), published on January 20, 2025, deals with the tax treatment of restructuring measures for corporations and cooperatives. It replaces the previous version (Circular No. 32) from 2010 and takes into account changes in administrative practice, current case law, and legislative changes relating to direct federal tax, withholding tax, and stamp duty. The main changes are outlined below.

Definition of restructuring

From an income tax perspective, a company is in need of restructuring if it has a commercial law deficit. For the purposes of withholding tax and stamp duty, the term is now defined separately. For withholding tax purposes, hidden reserves are only taken into account if they are claimed by the taxpayer and can be proven. With regard to stamp duty, the Federal Tax Administration specifies that profit carry forwards and profit reserves must be offset against losses.

Waiver of claims by shareholders

A waiver of claims by a shareholder that is booked directly to a company's equity is always income tax neutral. It is irrelevant whether the company is in need of restructuring or not. The FTA thus clarifies that the tax follows accounting principle must also be followed in the area of waivers of claims in the context of restructuring.

If the contributions are not offset against existing losses, the stamp tax is payable. If, on the other hand, no losses under commercial law are eliminated and the capital contributions are made directly to the company's equity, they are considered capital contribution reserves (KER).

If the debt waiver is recorded in the income statement, this results in taxable restructuring income. In this case, debt waivers recorded in the income statement are not considered capital contribution reserves.

Restructuring allowance

As explained above, a capital contribution recorded directly in equity is not subject to income tax. If the company is in need of restructuring and the capital contribution is offset against existing commercial law losses, it can claim a restructuring allowance of up to CHF 10 million of equity for the purposes of stamp duty. Losses incurred in the financial year in which the restructuring takes place are considered existing losses. The offsetting of losses must be decided at the latest at the annual general meeting that approves the annual financial statements for the period in which the restructuring was carried out. The losses must be derecognized at the latest in the financial year following the restructuring.

Restructuring merger

As part of circular No. 32a, the administrative practice previously published in circular No. 5a of February 1, 2022, in connection with the restructuring merger was adopted: If, from a dynamic perspective, there are no economic reasons for a merger or if it constitutes tax avoidance, the transfer of tax loss carryforwards in the context of a merger is excluded. Furthermore, the reserves lost as a result of the restructuring merger are subject to withholding tax.

When restructuring a company, there are many aspects to consider from a tax perspective in order to take advantage of any tax benefits. Grant Thornton Switzerland/Liechtenstein is happy to assist you as a competent partner for all questions relating to restructuring.



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