LE PERDITE FISCALI NEL REDDITO D’IMPRESA

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ABSTRACT

This paper provides for a reasoned analysis about the taxpayer’s right to carry losses according to the Italian income tax rules and with special reference to the corporate income tax rules.

This is a three-part analysis.

The first part focuses on the role of the «time factor» to determine the business income, as this time factor is strictly related to the loss carry forward. Above all such analysis takes place on a business and economic basis, that is not only in order to note every difference existing with respect to the tax analysis, but also because of the circumstance that the business income considered by the Italian corporate income tax rules is determined according to the balance sheet. The balance sheet is just prepared on a business and economic basis.

Furthermore, this paper is based on a specific tax perspective and covers that topic dealing with the relevance of the time factor to determine the income tax due by a certain taxpayer. In fact, on a specific tax perspective the profit of a single year (as emerging from the balance sheet) is relevant and therefore it happens a different income - that could be higher or lower than the actual one - could be taxed. So the losses carry forward becomes essential to determine the business income over several years and to see that the ability to pay principle will be guaranteed and respected.
Following the analysis of the losses carry forward aim, this paper examines the nature of the losses carry forward to understand if it can be seen as a right or as a benefit. Assuming the losses carry forward as a taxpayer’s right, this paper tries to determine who has the right to carry forward losses especially with reference to group entities.

The last topic of this first part analysis deals with the general losses utilization rules applicable to corporations and especially those rules concerning the losses carry forward and carry back according to the Italian law provisions. The role of the time factor and time limits to use losses by way of carry forward and carry back are been analyzed too.

The second part of this paper (i.e. the third chapter) focuses on those general law provisions regulating the losses use in Italy since they were introduced the first time until today. Also this analysis (such the previous one realized in the first part) aims to demonstrate the loss carry forward becomes essential to determine the business income over several years.

Losses utilization rules are not limited to corporations since similar losses utilization rules also cover natural persons and partnerships, so this paper has considered both losses utilization rules applicable to corporations and to natural persons. Losses utilization rules referred to the transparency regime and to the group consolidated taxation has been also considered. Instead special considerations of
other forms of rules (such as losses carry forward in a group reorganization, in a bankruptcy procedure or with reference to “non operating companies”) are beyond the scope of this paper.

The third part of this paper (i.e. the fourth chapter) describes on a procedural basis how losses identified in the taxpayer tax return and verified by the tax authorities by way of an income tax assessment may be deducted from taxable income, even if the taxpayer has to claim a judge to challenge the tax assessment.

In conclusion, the systematic analysis of the substantive and procedural law provisions related to the tax losses has identified some critical areas that make it desirable an effective legislative action for the future.