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Tax Loss Carryback Global insights

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The COVID-19 pandemic has created significant uncertainty for businesses worldwide and the real impact on companies is still emerging. Many companies are facing the spectre of losses and are looking for enhanced liquidity, including through existing tax programs and the trillions of dollars being made available globally through new legislation and relief programs.

The availability of existing and pandemic-related systems and the rules underpinning them are, however, far from universal. CFOs and corporate tax directors with global and regional responsibilities require an overview of their options and requirements to assist in decision-making. In this brief report, WTS Global provides a summary of the existence of Tax Loss Carryback (TLCB) options in 100 jurisdictions on all continents.

This report maps the countries that have introduced tax loss carryback systems and summarises how businesses can make use of them. The information is up to date as of June 17, 2020 and further news from some governments can be expected.

Please contact us if you need advice on how to navigate cross-border tax matters and to discuss the unique requirements of your company.

Loss Carryover

Systems for loss carryover provide businesses the option to deduct current year losses against profits ("carryforward") or to offset those losses against past profits ("carryback"). Only a very few tax authorities permit both, with various conditions; many tax regimes allow loss carryforward, again with restrictions, i.e. time frames ranging from 1 year to indefinite.

Right now, a number of governments have introduced temporary measures to support liquidity in the face of the COVID-19 pandemic, including some relating to carrybacks.

Global Overview

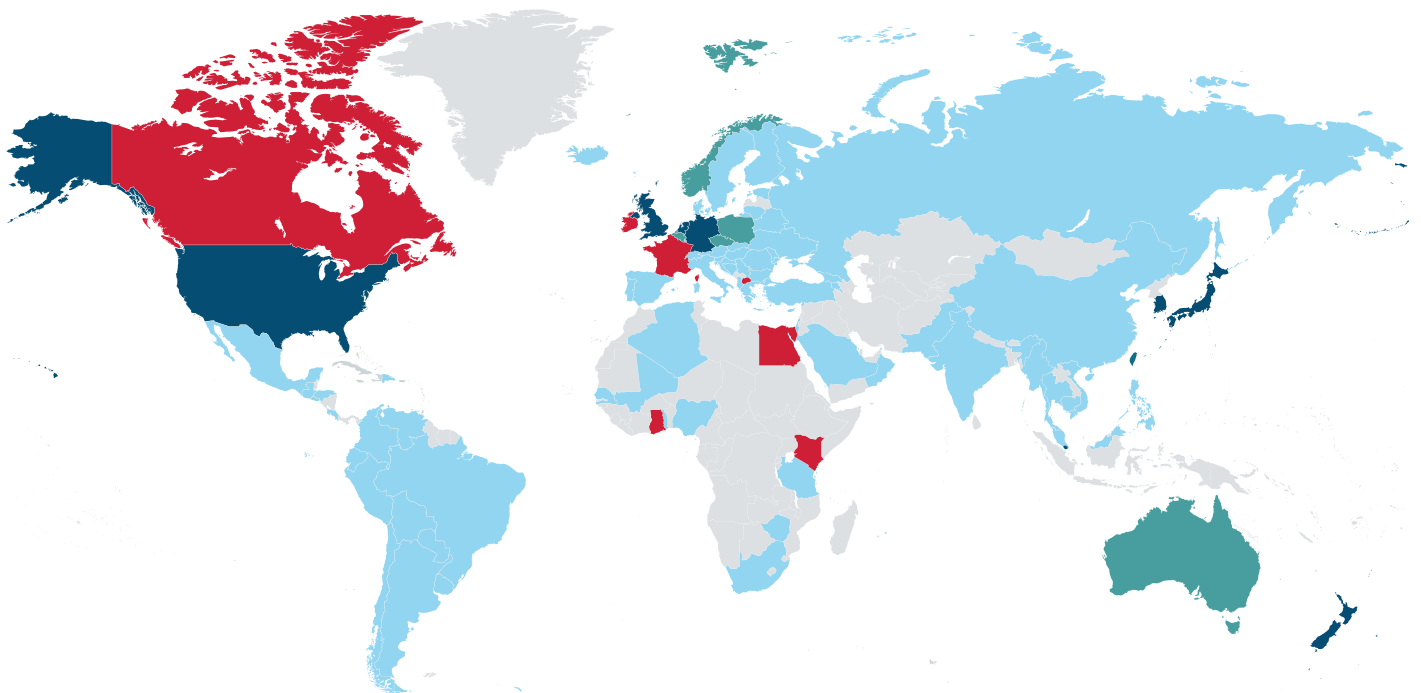
Globally, at least 20 countries or jurisdictions provide some form of Tax Loss Carryback, either as an ongoing system or as a response to the COVID-19 crisis. 75% of these are from the 37-member OECD community. At least 74 nations/jurisdictions have no TLCB provisions in place.

So far, a dozen national tax authorities have introduced significant pandemic relief TLCB programs. Belgium, Germany, Japan, Korea, the Netherlands, Singapore, and the United States have all supplemented their existing TLCB systems with significant programs.

Belgium, the Czech Republic, New Zealand, Norway, Poland and Taiwan did not previously have TLCB systems, but have introduced temporary measures to support business liquidity during the crisis.

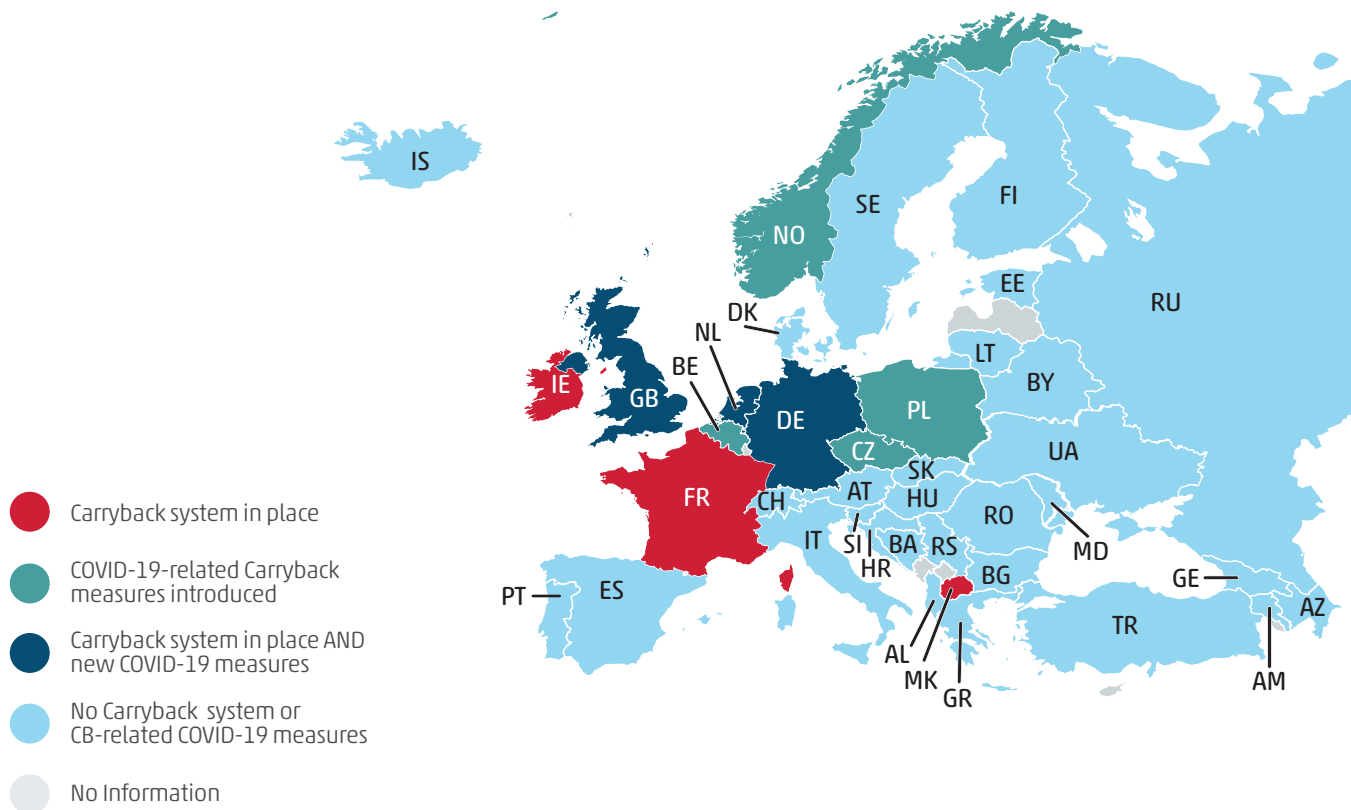
A number of economies have either general or restricted TLCB systems in place but so far have not added any further pandemic-related CB measures. These include Canada, Egypt, France, Ghana, Ireland and Kenya.

Other national governments around the globe, including Cairo, Canberra, La Paz and Vienna continue to evaluate their options in response to the pandemic and may announce budget measures in the coming weeks.



- Carryback system in place
- COVID-19-related Carryback measures introduced
- Carryback system in place AND new COVID-19 measures
- No Carryback system or CB-related COVID-19 measures
- No Information

Europe



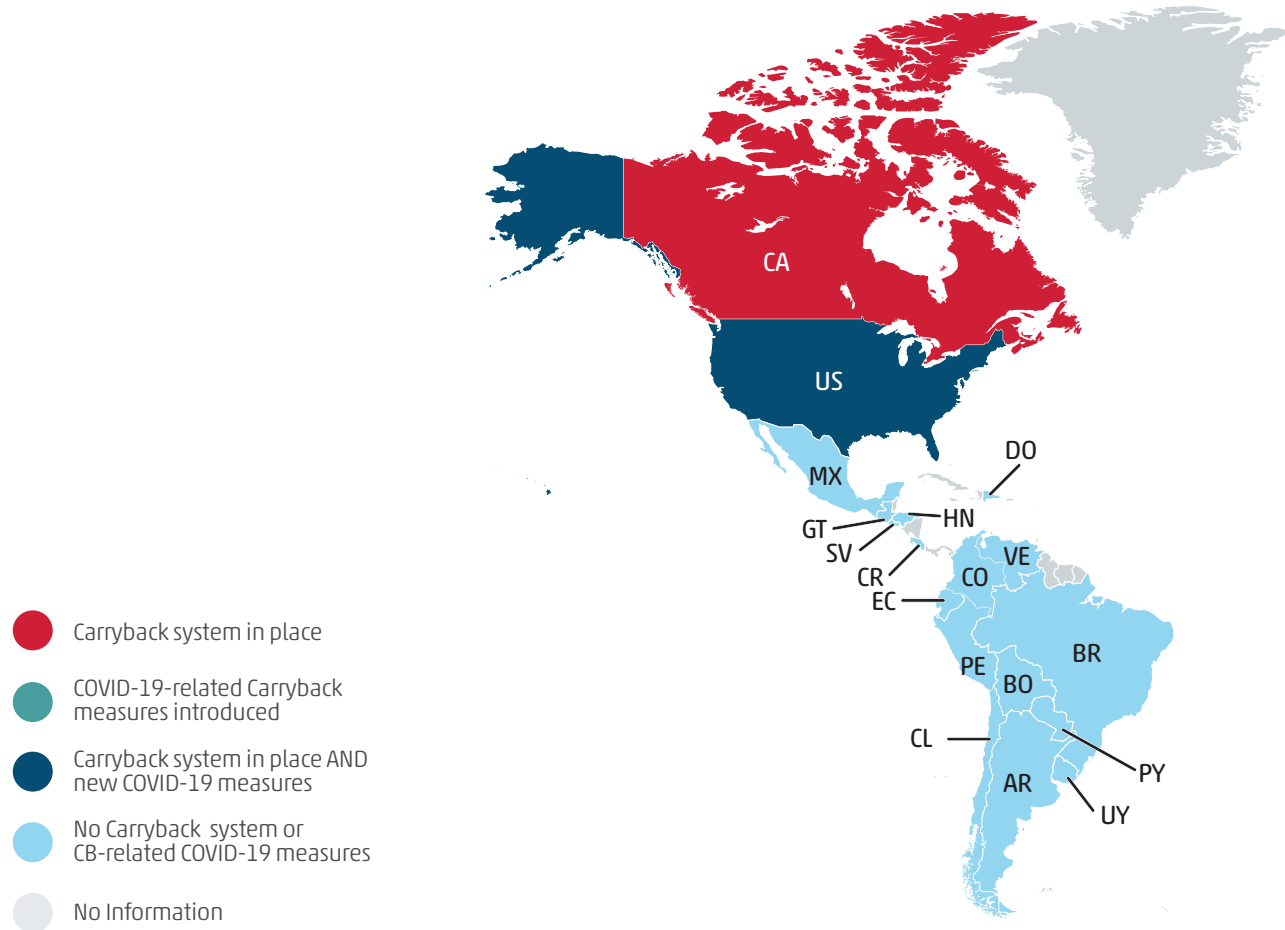
Eight European nations have implemented TLCB in some form:

- » **Germany**, the **Netherlands** and the **UK** had ongoing systems in place and have further enhanced them to support businesses impacted by the corona virus.
- » **France** and **Ireland** have existing systems, but no news has been released of COVID-19-related modifications.
- » The **Czech Republic**, **Norway** and **Poland** did not have TLCB systems prior to 2020 and have implemented temporary measures related to the pandemic. **Belgium's** TLCB-alike system for COVID 19 related losses only is currently being debated in parliament and is expected to be announced soon.

The implementation of systems varies in detail between jurisdictions, such as:

- » Most European countries permit losses to be offset only against the previous 12 months, whereas the **Czech Republic's** "Liberating Package II" and **Norway's** COVID-19 law permit a two year carryback.
- » Additionally, in the **UK**, trading losses incurred in the final 12 months of trading may be carried back to the prior 36 months.
- » In recognition of business's need for quick liquidity from the tax authority, several countries have implemented fast-track processes, including **Germany** and the Corona Reserve system in the **Netherlands** and potentially soon in **Belgium** and **Austria**.
- » In **France** and **Germany**, carryback losses are normally capped at 1 million Euros, although Berlin plans to increase this to 5 million Euros to help address COVID-19. In **Poland** the cap was set at 5 million PLN but the TLCB is available only if the revenues of the Polish tax payer in 2020 was lower than 50% of the revenues of the previous tax year.
- » **Ireland's** carryback system covers use on a value basis against trading income and other profits of the previous accounting period, but does not apply to profits from an excepted trade, taxable at higher-than-standard rates.

Americas

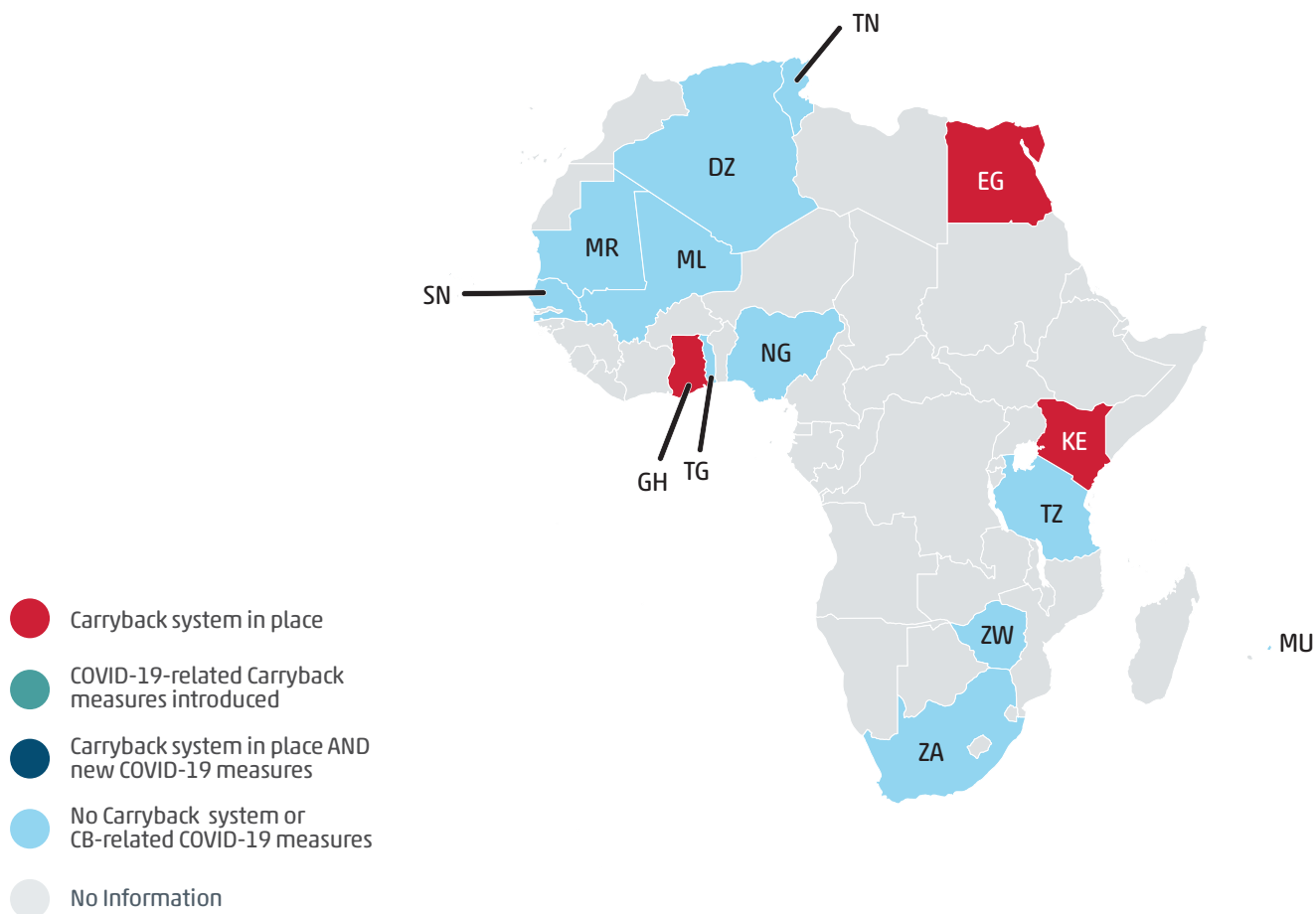


While **Canada's** existing TLCD system remains unchanged, in the **United States**, the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") has reintroduced a limited carryback period.

» In **Canada**, generally, both capital and non-capital losses may be carried back up to three taxation years from the tax year in which the loss arose. Both types of losses are subject to loss restrictions in the event of an acquisition of control.

» The **US** Tax Cut and Jobs Act of December 2017 eliminated the NOL two-year carryback period for most taxpayers, allowing NOL carryforwards indefinitely and limiting NOL deductions to offset 80% of taxable income. The March 2020 CARES Act allows NOLs arising in tax years beginning in 2018/19/20 to be carried back five years. It also delays the 80% taxable income limitation in those tax years.

Africa



Only **Egypt**, **Ghana** and **Kenya** offer limited carryback frameworks, all of which reflect the prevalence of companies in Africa with investment projects of different risk profiles.

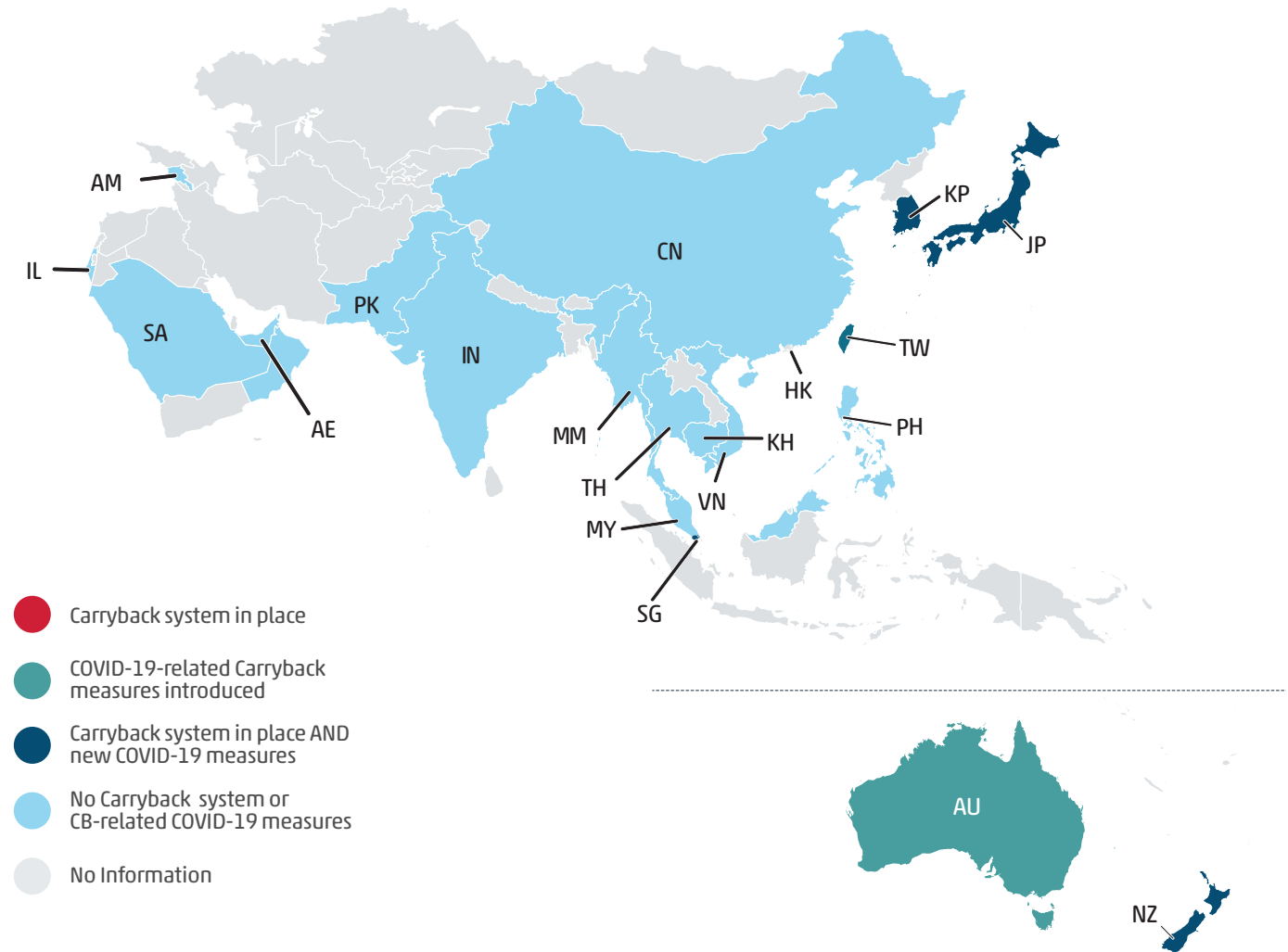
» In **Egypt**, the TLCB system applies only to losses incurred by construction companies in long-term contracts in case of the application of the percentage of completion (POC) method in revenues recognition.

» In **Ghana**, carrying back of losses is also restricted to long-term contracts. The process is not automatic and is subject to approval by the Commissioner-General.

» In **Kenya**, a tax loss carryback system exists only for entities undertaking mining and petroleum operations. A licensed or contracted entity ceasing operations can carryback, for a maximum of three years, a loss incurred in the year in which operations cease and deduct it from profits of the previous year, from the same license area (for mining operations) or contract area (for petroleum operations). Kenya Revenue Authority approval is required.

In all cases, scrupulous documentation is important.

Asia Pacific



In **Asia Pacific**, **Japan**, **Korea** and **Singapore** all have some sort of existing TLCB system and have enhanced those to provide COVID-19 relief to businesses.

New Zealand and **Taiwan**, which had no pre-existing systems, have announced temporary measures in 2020.

» **Japan's** established system is limited, applying to deficits incurred during liquidation, dissolution or by certain SMEs. Under the New Corona Tax Legislation, larger corporations may also be eligible for refunds. Applicable company can get a refund of the previous year's corporation tax by offsetting the loss against the income for the previous year, by claiming a "request for refunds".

» **Korean** tax law allows tax losses incurred for a business year to be set off against the taxable income of a company in the previous fiscal year, with refunds up to the amount of the corporate tax imposed on the income of the previous business year.

» **New Zealand** has implemented a temporary loss carryback scheme in response to COVID-19. Broadly speaking, a business with at least 2 years of taxable income that has sustained or expects to sustain a net loss this year may elect to apply all or part of that loss to offset the prior year's profits. For technical reasons, many of the SMEs that comprise the bulk of New Zealand businesses are excluded from the regime.

» In **Singapore**, unutilized trade losses and capital allowances can generally be carried back only to the immediately preceding year for income tax purposes. To help businesses with their cash flow during the pandemic, a conditional carryback of up to three years has been temporarily introduced.

» Due to COVID-19, **Taiwan** has introduced two new regulations about tax mitigation towards VAT paid and undistributed surplus tax due. There are no loss carryback rules for corporate income tax.

At a Glance: Countries with TLCB systems

| Jurisdiction | Existing TLCB (period) | New COVID-19 TLCB (period) | Remarks |
|----------------|------------------------|----------------------------|--|
| Belgium | n/a | tbc | Government has submitted a proposal to introduce a TLCB alike system. Under this proposal, companies are entitled to defer their 2019 profits in order to compensate such profits with 2020 tax losses. This system would apply for one year only, and be capped at € 20 million. The TLCB would not be available for companies making dividend or similar distributions, and to companies that have a qualifying link with tax haven countries. |
| Canada | 3 years | n/a | Non-capital losses may be deducted against any type of income or gain in computing taxable income. Capital losses are only deductible against capital gains (if any). Both types of losses are subject to loss restrictions in the event of an acquisition of control. |
| Czech Republic | n/a | 2 years | Introduced in 2020, Liberating Package II enables both natural and companies to retroactively apply their 2020 tax losses to the 2018 and 2019 tax returns. This measure can be applied after the 2020 tax return showing a tax loss is filed, i.e. not before the beginning of 2021. |
| Egypt | contract | n/a | Applies only for losses incurred by construction companies in a long term contracts in case of the application of the percentage of completion (POC) method in revenues recognition. |
| France | 12 months | n/a | Tax losses are carried back up to an amount of EUR 1 million to the tax year which immediately precedes the tax year in which the losses occurred. |
| Germany | 12 months | 12 months | <p>A new draft law has been published in which it is intended to allow a loss carryback up to 5m EUR (currently 1m EUR) for fiscal years 2020 and 2021. In addition, on request of the taxpayer, a loss carry-back into the fiscal year 2019 could be assessed which equals 30% of the income of the fiscal year 2020 (preliminary loss carry-back of fiscal year 2020). If the taxpayer can evidence a higher amount, such higher loss carry-back could be assessed.</p> <p>Note that these changes are included in the 2nd Corona Tax Help Law (2. Corona Steuerhilfegesetz) which has been introduced into the legislative procedure but has not yet been approved by parliament.</p> |
| Ghana | contract | n/a | Restricted to long-term contracts. Losses incurred on completion of long-term contracts may be carried back to prior tax years. The amount carried back shall be limited to the profit from the contract for the basis period to which the loss is carried back. TLCB in respect of long-term contracts is not automatic and the Commissioner-General, whose permission is required, may refuse the application. |
| Ireland | 12 months | — | <p>If a company sustains trading losses in an accounting period they can be offset as a means of a relief from tax in the following order:</p> <ol style="list-style-type: none"> 1. Against other trading income for the same accounting period on a euro for euro basis. |

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| | | | <p>2. Against other profits of the same accounting period on a value basis. The tax value of trading losses is limited to 12.5%, the standard rate of Corporation Tax.</p> <p>3. Against trading income for the immediately preceding accounting period on a euro for euro basis.</p> <p>4. Against other profits for the immediately preceding accounting period on a value basis.</p> <p>The value basis of relief does not apply to profits arising from an excepted trade; i.e. a trade which is not taxable at the standard (12.5%) corporation tax rate but is taxable at a rate of 25%.</p> |
| Japan | limited | — | <p>Generally applicable deficits:</p> <ul style="list-style-type: none"> » Deficit incurred in each business year ended during liquidation » Deficit incurred such as at the time of dissolution » Deficit incurred by SMEs (with capital of less than 100 million yen) in the blue filing status (blue deficit) <p>New Corona Tax Legislation Time frame: Deficit incurred for business year ending between February 1, 2020 and January 31, 2022 Enlarged number of applicable companies: Big corporations with capital of >100 million yen (and < 1 billion yen) will also be able to receive the refund of blue deficit.</p> |
| Kenya | 1-3 years | n/a | <p>Restricted to entities undertaking mining and petroleum operations. Allows a licensed or contracted entity which is ceasing operations to carry back a loss incurred in the year in which operations cease and deduct it from profits of the previous year, from the same license area (for mining operations) or contract area (for petroleum operations). The loss can be carried back for a maximum of three years from the year in which it arose. A taxpayer who makes an election to carry back losses must do so by notice in writing to the Commissioner (Kenya Revenue Authority).</p> |
| Korea | 12 months for SMEs | Half-yearly for SMEs | <p>The corporate tax can be refunded up to the amount of the corporate tax imposed on the income of the previous business year.</p> <p>In response to COVID-19 a system has been implemented to help secure liquidity for small and medium-sized enterprises (SME). Instead of the tax loss carryback system normally applied on an annual basis, for SMEs that incur tax losses in the first half of the fiscal year 2020, a system for early refund of taxes for the first half of the tax loss has been established (requiring the application for the tax refund within two months from the end of the first half for FY 2020).</p> |
| The Netherlands | 12 months | 12 months | <p>Adjustments regarding loss relief have been made by making it possible to create a so-called "corona reserve". To improve liquidity, the expected 2020 loss, in as far as it relates to the corona crisis, may already be taken into account when calculating the 2019 corporate income tax liability, instead of waiting until the 2020 tax return has been filed. This corona reserve can be taken into account in the 2019 corporate income tax return or through a faster track,</p> |

At a Glance: Countries with TLCB systems

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| | | | being the 2019 provisional corporate income tax assessment (i.e. the provisional tax return). The provision may not exceed the profit for 2019 and, in addition, may not exceed the expected loss in 2020 as a result of the corona crisis. The provision must be fully released in the 2020 corporate income tax return. |
| New Zealand | — | 12 months | A temporary loss carry-back scheme in response to COVID-19 has been implemented. A business with taxable income in the 2018-2019 or 2019-2020 income year (generally the year ended 31 March) and which has or expects to sustain a net loss in the following income year may elect to apply all or part of that loss to offset the prior year's profits. Company eligibility for the scheme is affected by its ownership; special rules apply to corporate groups, and certain continuity of ownership and other thresholds must be met. This has been of no assistance to many of the SMEs that comprise the bulk of New Zealand businesses for technical reasons relating to the tax treatment of certain payments made by companies to shareholder-employees as employment income rather than company profit. Note that although the current tax-loss carry-back scheme is a temporary measure, the New Zealand Revenue had been considering the treatment and availability of losses for some time before the COVID-19 crisis, and it is quite possible that a more permanent scheme will be implemented in future." |
| Norway | — | 2 years | Generally, tax losses cannot be carried back. A rule has been introduced allowing for possible carryback on paid taxes for 2018 and 2019 is available due to COVID-19, subject to losses in 2020. |
| Poland | — | 12 months | COVID-19 related Tax Loss Carry Back instrument allows CIT taxpayers who incurred a tax loss in 2020 as a result of COVID-19, under some conditions may be entitled to settle this tax loss against the tax profit of the previous tax year up to the amount of PLN 5m. |
| Singapore | 12 months | 3 years | Current year unutilized trade losses and capital allowances can generally be carried back only to the immediately preceding year for income tax purposes, subject to a 50% substantial shareholding test and a business continuity test. To help businesses with their cash flow during the pandemic, businesses may make an irrevocable election to carry back unutilized trade losses and capital allowances from the year of assessment (YA) 2020 for up to three immediately preceding YAs. There are no loss carryback rules for corporate income tax. |
| Taiwan | n/a | 2 years (limited) | With COVID-19, there are two new VAT-related regulations: » File a tax return up to NTD300,000 on excess VAT paid is subject to decrease in revenue due to COVID-19. » Businesses with a net loss from Q1-2020 can take the loss amount to project an estimated loss balance for the first half year of 2020 and then that projected loss amount can be listed as a deduction of the undistributed surplus of 2018 which will be filed by the end of June. However the Q1 financial statement must be audited or reviewed by a CPA to prove the net loss amount is assured. |

At a Glance: Countries with TLCB systems

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|----------------|---|--------------------------------------|--|
| United Kingdom | 12 months | 12 months | <p>Trading losses and non-trading finance deficits may be carried back to the prior 12 months although property business losses and excess management expenses may not be carried back. In addition, trading losses incurred in the final 12 months of trading may be carried back to the prior 36 months. Unlike carried forward losses, there is no restriction on the utilization of carried back losses.</p> <p>Whilst typically claims to carry back losses are made in the tax return for the loss making year, which is submitted up to 12 months after the year end, there are provisions which allow early claims to be made where it can be evidenced that sufficient losses will arise in order to complete the claim. In light of COVID-19, HMRC have recently updated their guidance to clarify the application of these provisions to enable companies to make an accelerated repayment claim in the current environment to generate a cash refund where it is clear that current year losses will exceed prior year profits. These provisions may also apply to allow the repayment of tax instalment payments already made for a loss making period which was initially forecasted to be profit making.</p> |
| United States | <p>0 year (post-2017 tax year)</p> <p>2 years (pre-2018 tax year)</p> | 5 years (tax years 2018, 2019, 2020) | <p>Prior to the enactment of the Tax Cut and Jobs Act ("TCJA") in December 2017, a two-year carryback and a twenty-year carryforward period applied to net operating losses ("NOL") that arose in a tax year beginning before 2018. The TCJA modified the NOL rules arising in a tax year beginning after 2017 by eliminating the NOL two-year carryback period for most taxpayers, allowing NOL carryforwards indefinitely, and limiting NOL deductions to offset 80 percent of taxable income.</p> <p>On March 27, 2020, the U.S. passed into law the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") which temporarily modified certain NOL rules enacted in the TCJA. The CARES Act allows NOLs arising in tax years beginning in 2018, 2019 and 2020 to be carried back five years. In addition, the CARES Act delays the 80 percent taxable income limitation in tax years beginning in 2018, 2019 and 2020. Thus, any NOL arising in a tax year beginning in 2018, 2019 and 2020 may offset 100 percent of taxable income in a carryback year and in a carryforward year that begins before 2021. Any portion of a 2018-2020 NOL that is not absorbed in these years is subject to the 80 percent taxable income limitation beginning in 2021.</p> |

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