

Year end memorandum
2008

PWC

TAX LAWYERS
AND TAX
CONSULTANTS

POSSIBILITIES FOR TAX SAVINGS IN
VIEW OF THE GLOBAL CREDIT

CRISIS *

Foreword

Today's World is dominated by the global credit crisis and the consequences thereof for the financial position of businesses and individuals.

The exact consequences are unpredictable. One thing that everybody agrees on is that the consequences will be severe.

PwC has analyzed what the fiscal consequences of the "credit crunch" could be and to which extent these consequences can be anticipated when optimizing your fiscal position.

This "year-end memorandum" is primarily focussed on the effects of the "credit-crunch". In addition, you will find other fiscal solutions and points of attention.

We hope that this memorandum inspires you to take the required fiscal action and are of course ready to provide you with additional advice.

Sincerely,

Paul van Vliet

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1 Profit tax

1.1 Consequences of credit-crunch for your business

The credit crisis can have different effects on your business, for example a decrease in demand for your products or difficulty collecting your accounts receivable. Possibly, you need to (temporarily) downsize your operations or even close down completely.

In times of economic pressure on the financial position of your business, fiscal possibilities present themselves to anticipate by saving profit tax. Of course, all this within the boundaries of the law / case law and taking into account the principle of prudence.

1.2 General rules for valuation

In general, fixed assets have to be valued at cost, minus accumulated annual depreciation. In addition, rules have been established for the valuation of work in progress and accounts receivable. However, lower fiscal valuation becomes possible in special circumstances. The present financial crisis may very well result in increasing payment problems with your debtors. You can anticipate these payment problems by taking into account an increased amount for bad debt. Increased write-offs are also possible for other assets by taking into account a decreased demand for products and services. Below we will discuss the possibilities for the forming of additional provisions. Of course, we are available to determine which possibilities are applicable to your specific situation in order to reduce tax liabilities. This is especially important in the Netherlands Antilles as, contrary to other countries, losses suffered can not be carried back and offset against profits realized in prior years. Consequently, it is of greater importance to account for expected losses as early as possible and as early as needed. We emphasize that taking into account additional write-offs only makes sense if you expect to realize a profit for the current year and do not have carry-forward losses available. If you expect a loss or have carry-forward losses available it would be advisable to postpone these write-offs



in order to reduce the current year's loss or increase the carry forward loss compensation so that the carry forward losses do not expire. Carry forward losses can only be offset against profits of the next 10 years.

1.3 Write-offs

Write-offs are possible for fixed assets as well as other assets.

- Fixed assets
It is possible that, as a result of the credit crunch, the economic value of fixed assets has decreased. This can manifest itself in both a lower direct economic value (nobody wants to buy these machines anymore) as well as a lower indirect economic value (the demand for products decreases as a result of which the usage of the machines is reduced or some machines are not used at all). When valuing the asset at lower economic value, the highest of these values is applicable.
- Inventory
Inventories can be written-off when, for example as a result of a price decrease of raw materials, the purchase price has gone down to below cost of your inventory.
- Ongoing projects
A provision can be formed if it is clear that the project, based on a preliminary budget calculation, is expected to result in a loss. This provision can also be formed when it appears during the execution of the project that a loss may be suffered even though the preliminary budget calculation showed a profit
- Accounts receivable
A good review of the financial position of your debtors is of the utmost importance. When determining the value of receivables, value decreasing circumstances (for instance doubts that a debtor will be able to pay) can be taken into account if these circumstances exist on balance sheet date. If it appears that, when drafting the financial statements, a value decreasing circumstance existed at balance sheet date, it is allowed to take this into account.

1.4 Provisions

It is important to establish whether a provision can be formed for expenditures that will occur in later years so that they can



be expensed in an earlier year. The conditions for forming a provision are:

- (i) The future expenditures are caused by facts and circumstances that occurred in the period prior to the balance sheet date,
- (ii) the future expenditures can be allocated to this period, and
- (iii) it is reasonably certain that the future expenditures will in fact be made. Forming a provision for the effects of the credit crisis itself –taking into account above-mentioned conditions- in prior years does not appear to be possible. However, one can think of forming a reorganization provision or maintenance provision.

1.5 Other possibilities

Sale of unprofitable activities

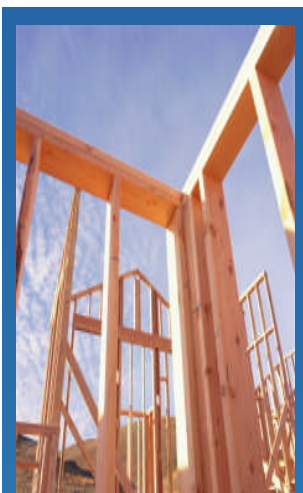
When contemplating the sale of unprofitable activities, take into account the possibility of an asset/liability transaction rather than the sale of shares in a subsidiary. Losses suffered with the sale of assets are deductible while a loss suffered on the sale of a subsidiary is not.

Fiscal unity

When a holding company owns all shares in one or more subsidiaries it is possible for these corporations to request taxation for profit tax purposes as if the subsidiary(ies) have merged into the holding company. This fiscal unity offers, amongst others, the advantage that losses of one participant can be used to offset profits of the other participant(s) of the fiscal unity. Another advantage is that assets and liabilities can be transferred within the group without triggering profit tax. When for example one of the group companies is suffering losses while other group companies realize profits, formation of a fiscal unity results in a lower profit tax burden for the Group. The fiscal unity commences as of the book year in which the request has been filed. If the request is filed prior to December 31, 2008, the fiscal unity commences as of January 1, 2008.

Insurance against decrease in value of real estate

It is possible to insure Antillean real estate against decrease in value by entering into a put-option agreement using a low



tax or zero tax investment company. The option premium are deductible expenses in the Netherlands Antilles and should be tax exempt (or subject to low tax) for the recipient.

1.6 Transfer of investment portfolios from business to personal account

Investment portfolios which value has significantly decreased as a result of the credit crisis, this decreased value offers the possibility to cash-in the expected future appreciation of the portfolio free of tax. A transfer of this value appreciation to the next generation also belongs to the possibilities. This can be realized by transferring the significantly lower valued portfolio from your corporation to your personal account (resulting in profit tax savings in the corporation) or transfer the portfolio to your children so that the future appreciation in value is realized by them. Alternatively, you can provide the children call options on the investment portfolio based on today's depreciated value.

1.7 Pension liabilities employees

If your company has arranged for employees pension rights through a corporate pension fund (not being a independent insurance company), this pension fund might find itself, as a result of drastically decreased value of its investments, unable to meet its future pension obligations. Some pension arrangements allow or oblige the employer to provide additional funding to cover the expected shortage. Under certain conditions you can take this obligation into account for fiscal purposes by forming a provision or accounting for a liability.



2 The entrepreneur/director-shareholder (d.s.h.)

2.1 Pension optimisation for the d.s.h.

During the year 2008 new developments can be reported that can be implemented in 2008 but will also affect subsequent years.

Based on recent developments you can:

- include coverage for future medical expenses in your pension arrangement;
- take into account future bank charges;
- calculate the orphans pension obligation on a flat rate basis;
- use the most recent mortality tables (with unchanged age discount);
- take tax deductible losses on investment portfolios covering the pension obligations.

In addition, it may be advisable to transform (part of) an increase in gross salary into a contribution to your pension plan.

Above-mentioned developments can result in substantial (tax) advantages. In order to take action in a timely fashion, you should verify what your opportunities are so that you can take advantage of these opportunities in 2008.

2.2 Transfer of real estate

As a result of recent and expected future developments in the value of real estate it should be determined whether the ownership thereof has to be personal or corporate. Corporate ownership results in taxable gains (losses are deductible) while gains (or losses) realized with personal ownership are not subject to tax. In addition, other aspects such as fiscal depreciation, advantageous valuation of free housing, in case the d.s.h. (or other employee) occupies a dwelling owned by the corporation, should be taken into account.

Prior to transferring real estate, complications (and solutions) with respect to transfer tax and/or turnover tax need to be reviewed.



2.3 Transformation of NV into tax-exempt NA BV

Under certain conditions you can transform an NV subject to normal tax rates into a tax-exempt NA BV. In particular, this is possible for those NV whose activities are limited to investment and financing activities. If all conditions are met, the request can be filed before year-end so that the tax-exempt status can be enjoyed as early as January 1, 2009.

2.4 Ownership of shares in NA BV or offshore corporation

For income tax purpose, the ownership of shares in a foreign investment company or NA BV is, subject to certain conditions, subject to the “deemed return on investment” rules. This means that a deemed return on investment has to be accounted for as taxable income, subject to a tax rate of 19.5%. The advantage of this arrangement is that the actual income (dividends) can be realized without triggering additional tax. Providing a careful and well thought out strategy, this arrangement offers interesting tax planning opportunities.

2.5 Flat rate on interest on savings at local banks

The general exemption for interest income of up to ANG 1,000 per individual has been cancelled retro-actively to January 1, 2005. At the same time, a flat rate has been introduced of 5% (6.5% including island surtax) for interest income earned by individuals on local bank accounts. This flat rate on local interest income has been introduced to promote the repatriation of savings held in foreign countries in order to support the foreign exchange position of the Netherlands Antilles. This flat rate has not been introduced for profit tax purposes. Comparing the profit tax rate of 34.5% with the flat rate for income tax of 6.5% could result in transferring the savings from corporate accounts to private accounts.

2.6 Income tax exemption of interest on government bonds

Interest on government bonds has been tax exempted in the past, from January 1, 1998 through September 30, 1999. The exemption remained applicable on government bonds issued prior to October 1, 1999.



Commencing on January 1, 2005, the interest income on government bonds has again been declared tax exempt. The new arrangement is not limited to government bonds issued after January 1, 2005 and is consequently applicable to all outstanding government bond issues.

This exemption is not applicable for profit tax purposes. Consequently, it could be advantageous to transfer these government bonds from corporate to private ownership.



3 Wage tax aspects

3.1 Optimal use of tax free expense allowances

When providing fixed expense allowances to your employees, ensure that a substantiation of the amount of the allowance is available. The Tax Audit Bureau and Fiscal Authorities critically review these expense allowances. We always advise to adjust the fixed expense allowances annually, based on random checks, to the increasing or decreasing level of actual expenses. In doing so, (expensive) adjustments by the fiscal authorities are prevented. In addition, the level of the representation and other expense allowances must be established taking into account the actual expenses that coincides with the function level of the employee receiving the allowance (we assume that the actual expenses differ per function level!).

A fixed expense allowance for a group of employees can only be provided tax free if and when the employees are in comparable positions insofar it relates to the actual expenses for which the allowance has been provided.

As such, it is advisable to subdivide the employees in categories and determine the allowance for each category based on average expense levels, resulting from random checks, for the category.

In many cases it is possible to reduce expenses by an optimal use of fiscal facilities such as expense allowances but also, for example, by providing benefits in kind.

3.2 Free housing benefit

When an employer provides a dwelling to an employee it is possible that a part of the rent can be paid without having to take this into account as taxable wage. The part that will remain untaxed can, based on optimal use of the arrangement, be as much as 40% of the rent and will thus lead to significant tax savings. A number of conditions apply. For example, the lease agreement must be concluded in the name of the employer.

3.3 Special rate on severance pay (downsizing)

Upon termination of employment relationships, the tax code includes a special rate applicable to severance payments.



This is well known. Less well known is the fact that an even more advantageous arrangement is available when the termination takes place as a result of downsizing or closure of the business. In that case, in addition to the application of the special rate, an exemption for island surtax can be claimed.



4 Turnover tax

4.1 Common account expenditures

Turnover tax becomes payable at a rate of 3% on all transactions between entrepreneurs, also if these transactions take place between group companies. Paying turnover tax can be omitted when the expenses qualify as “common account expenditures”. In order to qualify expenses as such, a group of entrepreneurs has to enter into a co-operation agreement which, based on case law, needs to meet the following three conditions:

- Expenses are incurred for a group of entrepreneurs for common account;
- Expenses are paid by one designated entrepreneur of this group and are subsequently allocated, without mark-up and based on an agreed upon allocation method, to the group of entrepreneurs;
- The risk with respect to the expenses is carried by the group of entrepreneurs based on the agreed upon allocation method.

It is advisable to determine whether the common account expenditures doctrine can be applied in your business as this can result in significant turnover tax savings. If required, the Inspector of Taxes can be approached to confirm that the allocation of common expenses will not be subject to turnover tax.

If you already apply the common account expenditures doctrine it is advisable to review the existing allocation method for the upcoming fiscal year and adjust if required, depending on the expected expenses and profitability of the participants.

4.2 Large construction projects tourism sector

During the past years substantial investments have been made in tourism projects, also in the island territory of St. Maarten. In principle, goods and services provided by local entrepreneurs to these projects are subject to 3% turnover tax.



In accordance with the Directive of the Minister of Finance dated November 2, 2005 an exemption from turnover tax can be granted, under certain conditions, for goods and services provided to large construction projects in the tourism sector which qualify for a tax holiday in accordance with the Federal Decree establishment of businesses and hotel development. The exemption could be applicable to the provision of goods and services by local entrepreneurs directly related to the construction and (first) furnishing of a hotel project. In order to qualify, the investment with respect to the construction and first furnishing of the project must be at least ANG 50 million for the island territories of Curacao and St. Maarten and generate permanent employment to at least 75 locally born Dutch citizens. The requirements for the other islands are a minimum investment of ANG 10 million and employment for at least 15 persons. In order to qualify a written request must be filed with the Inspectorate of Taxes, accompanied by certain project related information.

4.3 Under/over payments

At the end of the year it is advisable to determine whether you have overpaid the turnover tax. It is for example possible that you have paid turnover tax for goods and services that later turned out to be exempted. Based on policy guidelines, a request for refunds of overpaid amounts can be filed for overpayments of the last two years.

If it appears that you have underpaid turnover tax during the current year, it is advisable to file an additional return in order to prevent assessments that would likely include fines.

This memorandum has been compiled as accurate and careful as possible, based on available information at the abovementioned date, and is meant only as a general guideline. We do not accept any responsibility for actions taken, based on the contents of this memorandum, without additional professional advice.

If you would like to learn more or if you have questions or remarks with respect to the contents of this memorandum you can of course contact one of the tax advisors of PricewaterhouseCoopers Netherlands Antilles or send an e-mail to info@an.pwc.com

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