C(C)CTB

Depreciation and roll-over relief

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Agenda

- In brief
- In depth
  - Normal deprecation
    - Individually depreciable assets
    - Collectively depreciable assets (the ‘pool’)
  - Exceptional deprecation
  - Roll-over relief
- Conclusions

In brief

- Fixed assets are subject to normal deprecation
  - Unless the assets are not depreciable
    - Assets not subject to wear and tear
    - Self-generated intangibles
  - Long(er)-term fixed assets are depreciated individually
  - Short-term fixed assets are depreciated collectively
    - Cost linked to depreciable fixed assets are deductible over the (pre determined) useful life
- Non-depreciable fixed assets are subject to exceptional deprecation only
  - Unless the fixed assets generates tax exempt income
    - Cost linked to non-depreciable fixed assets are deductible in tax year of disposal
- Roll-over relief is available for individually depreciable assets

Scope

- Only fixed assets are (potentially) subject to depreciation
  - Other rules apply to stocks and work-in-progress
- Which assets are fixed?
  - Tangible assets acquired for value or created by the taxpayer
  - Intangible assets acquired for value
  - Financial assets (Article 4(20) CCTB)
    - Shares, loans, investments held as fixed assets
- Which assets are not fixed?
  - Intangible assets created by the taxpayer!
    - Production costs already taken as expense ex Article 9 CCTB
  - Assets with value < € 1,000 (i.e. deducted as expense)
  - Financial assets held for trading

Individually depreciable assets

- Method of depreciation is straight-line
  - Deprecation base includes costs directly relating to the acquisition, construction or improvement
  - No residual value
  - Useful life is fixed
    - No degressive or progressive depreciation allowed

Individually depreciable assets

- 5 categories of individually depreciable assets
  - Commercial, office and other buildings and other immovable property in use for business @ 40 years
  - Industrial buildings and structures @ 25 years
  - Long-life tangible assets other than buildings, e.g. aircraft and ships
    - Useful life ≥ 15 years (4(22) CCTB) @ 15 years
  - Medium-life tangible assets
    - Useful life ≥ 8-15 years (4(23) CCTB) @ 8 years
  - Intangible assets @ term legal protection or 15 years
- Short term assets (< 8 years) are depreciated collectively in a pool

Individually depreciable assets

- Example
  - A new office building is acquired on 1 July 2019
    - Purchase price € 9 million
    - Acquisition costs € 1 million

- Deprecation
  - Deprecation base € 10 million
  - Residual value nil
  - Useful life 40 years (or 2.5% p.a.)
  - Annual deprecation € 0.25 million (€ 10 million ÷ 40)

- Tax consequences year 1?
  - Full deduction of € 0.25 million in year 1
    - This constitutes *expenses* (‘other deductible expenses’)

Individually depreciable assets

- Example
  - After 10 years the building is sold
    - Selling price € 12 million
    - Recorded value in asset register € 7.5 million
      - (€ 10 million -/- (10 * € 250 thousand)

- Tax consequences year 11
  - Proceeds ad € 12 million constitutes *revenues*
  - Tax value ad € 7.5 million constitutes *expenses*
  - Taxable profit = € 4.5 million
    - No depreciation in year 11

Individually depreciable assets

- Rules seems to be clear
- Define asset and apply relevant rule

- What about a mixed asset?
  - e.g. an immovable property consisting of both building and land
    - Building is depreciable
    - Land is non-depreciable as not subject to wear and tear

- Proportionate approach?
  - Divide depreciation base in a
    - Depreciable part?
    - Non-depreciable part?

- Perhaps under scope of Article 40 CCTB

Individually depreciable assets

- Example
  - A new office building is acquired on 1 July 2019
    - Purchase price € 9 million
    - Acquisition costs € 1 million
    - Land represents € 2 million

- Deprecation
  - Deprecation base € 8 million
  - Residual value nil
  - Useful life 40 years (or 2.5% p.a.)
  - Annual deprecation € 0.2 million (€ 8 million ÷ 40)

- Tax consequences year 1?
  - Deduction of € 0.2 million in year 1?

Pooled assets

- Not individually depreciable / non-depreciable assets must be depreciated in one asset pool
  - Depreciation at 25% p.a.
    - Creates a system of declining balance

- Depreciation base pooled assets

Value for tax purposes at the end of previous year	+
Assets entering the pool, include a/c/i costs	+
Assets leaving the pool, include sale proceeds	-/-
Depreciation base pooled assets	

- Negative depreciation base added to tax base
  - As well as to depreciation base (so that it is even)

Pooled assets

- Example
  - Pool with depreciation base of € 10 thousand
  - No new entries or exits of assets

- Depreciation year 1
  - Depreciation base Y1 € 10 thousand
  - 25% depreciation Y1 € 2.5 thousand
  - Depreciation base Y2 € 7.5 thousand

- Depreciation year 2
  - Depreciation base Y2 € 7.5 thousand
  - 25% depreciation Y2 € 1.875 thousand
  - Depreciation base Y3 € 5.625 thousand
  - Hence a system of declining balance

Pooled assets

- Example
  - Pool with depreciation base of € 10 thousand
  - New *entry* of assets in Y2 of € 5 thousand

- Depreciation year 1
  - Depreciation base Y1 € 10 thousand
  - 25% depreciation Y1 € 2.5 thousand
  - Depreciation base Y2 € 7.5 thousand

- Depreciation year 2
  - Adjusted depreciation base Y2 € 12.5 thousand (+5k)
  - 25% depreciation Y2 € 3.125 thousand
  - Depreciation base Y3 € 9.375 thousand

Pooled assets

- Example
  - Pool with depreciation base of € 10 thousand
  - *Exit* of asset in Y2 of € 5 thousand

- Depreciation year 1
  - Depreciation base Y1 € 10 thousand
  - 25% depreciation Y1 € 2.5 thousand
  - Depreciation base Y2 € 7.5 thousand

- Depreciation year 2
  - Adjusted depreciation base Y2 € 7.5 thousand (-5k)
  - 25% depreciation Y2 € 1.875 thousand
  - Depreciation base Y3 € 5.625 thousand

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  - Roll-over relief
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Exceptional deprecation

- Decrease in value due to
  - Force majeure
  - Criminal activities by third parties
- Available for non-depreciable fixed *tangible* assets only
  - Not available for *depreciable assets*
    - Not available for self-generated intangibles
  - Not (or no longer!) available for *financial assets* (but also)
    - Which includes *loans*
  - Not available for *assets that generate exempt income*
    - Certain financial assets ex Article 8 (c),(d) CCTB
    - *Duplication? Overlap?*

Exceptional deprecation

- Exceptional deprecation
  - Taken as a deduction from tax base
  - If permanently decrease of value at the end of a tax year

- Taxpayer must keep track of value of the asset
  - Increase in value must be added to tax base
  - However, inclusion cannot exceed original deduction

Individually depreciable assets

- Example
  - Taxpayer grants a loan to an affiliated company
    - Face value € 3 million
    - Term 10 years

- In year 4 the position of affiliated company deteriorates

- Tax consequences year 4?

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Roll-over relief

- Available for individually depreciable assets
  - Not available for fixed tangible assets not subject to wear and tear and obsolescence
- Replacement asset
  - Similar asset used for the same or a similar business purpose
    - Commission/Germany
- Minimum holding period of 3 years
  - No holding period if involuntarily
- Reinvestment before the end of the second tax year after the tax year in which disposal took place
  - 10% penalty if not reinvested timely
- Carry back of 1 year is allowed
  - Replacement precedes disposal

Roll-over relief

- Example
  - After 10 years the building is sold
    - Selling price € 12 million
    - Recorded value in asset register € 7.5 million
      - (€ 10 million -/- (10 * € 250 thousand)

- Tax consequences year 11
  - Proceeds ad € 12 million constitutes *revenues*
  - Tax value ad € 7.5 million constitutes *expenses*
  - Deduction roll-over relief € 4.5 million
  - Taxable profit = € nil
    - Idea is that deducted amount is taxed over time through higher depreciation of replacement asset

Roll-over relief

- Example
  - A replacement asset is acquired in year 11
    - Purchase price € 13.5 million
    - Acquisition costs € 1 million

- Deprecation
  - Deprecation base € 10 million (€ 14.5 less 4.5)
  - Residual value nil
  - Useful life 40 years (or 2.5% p.a.)
  - Annual deprecation € 0.25 million (€ 10 million ÷ 40)

- Tax consequences year 11?
  - Full deduction of € 0.25 million in year 11
    - This constitutes *expenses* (‘other deductible expenses’)

Roll-over relief

- Example
  - No timely replacement,
    - i.e. no reinvestment in year 13

- Tax consequences year 13
  - Addition of roll-over relief € 4.5 million
  - Addition of penalty € 0.45 million
  - Taxable profit = € 4.95 million

Conclusions

- Chapter IV CCTB provides for a rather comprehensive
  - Depreciation is certainly not rocket science!
- Of course, certain questions can be raised
  - What about
    - Mixed assets?
    - Duplication of financial assets not subject to exceptional depreciation?
- Will probably be straightened out during the process
- Thank you!