SINT MAARTEN

Year-End Tips 2022

General tips for improving your overall tax position

Preface

With the end of the year fast approaching, we would like to take this opportunity to provide you with some general information on potential tax savings that can be implemented before the end of the year.

We would like to emphasize that the below described is general information and may not be considered tax advice for any specific case. Our tax professionals will be glad to assist you at any time with any questions you may have.

Reduction Individual Taxable Income

It is possible to deduct certain expenses from your income in 2022 so that your tax burden will be reduced.
Some examples are:
• Donations to certain organizations. These reduce your taxable income with a maximum of 3% of the income provided the applicable requirements are met;
• Certain expenses related to your own home that may reduce your taxable income, such as financing costs (maximum of ANG 27,500) and maintenance costs (maximum of 2% of the value for land tax purposes and not exceeding ANG 3,000);
• Interest paid on personal loans which can reduce your taxable income for a maximum of ANG 2,500 (or ANG 5,000 for married couples)

Reduced or 0% tax rate

If you're looking for opportunities to grow your savings tax-friendly, consider:

• Buying local treasury bonds on which the interest received is exempt from income tax;
• Invest your assets in financial products with the aim of realizing tax-free capital gains instead of an annual income;
• Savings at a local bank, where the interest received on local savings deposits is taxed at the low-income tax rate of 6.5%.

Pensioners Facility

If you have reached the age of 50 and you have recently moved to, or are planning to move to Sint Maarten, you might qualify for the 'Penshonado Regime' which features an attractive Income Tax rate on certain qualifying foreign income. If the applicable requirements are met, an advantageous 10% Personal Income Tax rate could be applicable to most foreign income items.

Private Fund Foundation (PFF) in Dutch (“SPF”)

The PFF is a useful instrument for investing and protecting your capital and/or assets as well as to facilitate estate planning. It may also be possible to invest your capital in a tax-friendly manner by using a PFF. Investing through a PFF can be advantageous, because:

• Contrary to a regular Foundation, a PFF can make distributions to its founders and/or beneficiaries;
• Income derived by a PFF is exempt from Profit Tax, except if it arises from conducting a business;
• The PFF is a safe instrument to keep the family wealth intact for future generations.
• Please note that a single distribution, as well as periodical distributions by PFF to a Sint Maarten resident individual, shall be subject to Sint Maarten Personal Income Tax.

Sint Maarten Trust

If you are in the market for an alternative instrument for investing and protecting your capital and/or assets as well as to facilitate estate planning the Sint Maarten Trust could be interesting for you.

As also is the case with the PFF, please note that a single distribution, as well as periodical distributions made by a Sint Maarten Trust to a Sint Maarten resident individual, shall in principle trigger Sint Maarten Personal Income Tax.

Tax Exempt Company

Under certain conditions, a Sint Maarten limited liability company ("B.V.") can opt for an exempt status for Profit Tax purposes. If you use a Tax Exempt Company, you should in any event be aware of the following points of attention:

• A Tax Exempt Company must meet the legal requirements at all times. It is therefore of great importance to check whether your Tax Exempt Company has met and still meets all relevant conditions so that the company can continue to use its exempt status.

• A Tax Exempt Company's income may not exceed the allowed maximum of so-called "tainted dividends". It is therefore important to closely evaluate what the income of the Tax Exempt Company consists of.

Tax-Free Allowances for Employees

Under circumstances, it is possible to provide employees with a tax-free allowance, such as for instance:

- Allowance for work clothes;
- Allowance for professional / technical literature;
- Allowance for attending conferences and seminars;
- Allowance for expenses incurred for working from home (internet);
- Allowance for work-related car expenses and fuel.

Private Entrepreneurs

If you are an entrepreneur for Personal Income Tax purposes or have a Sole Proprietorship, please also consider the items with an (*) in the below paragraphs as these may also apply to you.

Contractors

If you retained services from individuals offering their services as independent services providers, the names, addresses, identification numbers and telephone numbers of these individuals should be reported to the tax authorities within 30 days after year-end. In this respect, reference is made to article 45 of the General Ordinance on Land taxes (in Dutch: " Algemene Landsverordening Landsbelastingen").

Turnover tax on Foreign services*

If you retained services from foreign services providers or any business established overseas, you as a local entrepreneur established in Sint Maarten could be held liable for the Turnover tax due on these cross-border transactions. Considering, the penalties that can accumulate in these types of cases, it is highly recommended that you verify with the overseas services providers if they are duly registered with the tax authorities in Sint Maarten.

Voluntary disclosure procedures*

In case you have identified any underpayment of taxes due before this underpayment has been addressed by the tax authorities, it could be considered applying for the voluntary disclosure procedure (in Dutch: "Inkeerregeling"). For this procedure, the approval of the tax inspector is required and if honored the fines imposed by the tax authorities could be limited to 15%, instead of regular fines ranging from 25% to 50% and even 100%.

Real Estate Rental income*

Real estate entrepreneurs are advised to closely check to which extent they are engaged in commercial rental and rental of certain dwellings. It is advisable to make a distinction between these two types, because of the different Turnover tax consequences.

• Commercial lease is taxed with turnover tax;

• In case of lease for habitation, it can be permanent habitation or a short-term lease. If it concerns permanent habitation, i.e., habitation for at least one year, an exemption from turnover tax can be applied. If it concerns short-term lease, on the other hand, turnover tax will in principle be due;

• We emphasize that if it concerns short-term lease to tourists, an exemption from turnover tax is applicable, provided that room tax is due.

Allocation Formula Costs for Common Account

If you regularly conclude agreements with other entrepreneurs with which you cooperate for mutual allocation of the same costs but using a different allocation formula on e.g. an annual basis, we would like to draw your attention to the policy in this respect:

• This allocation formula can no longer be changed in interim;

• If the allocation formula is nevertheless adjusted in interim, this might entail that the mutual set-offs can be taxed with turnover tax;

• Adjustment of the allocation formula is in principle only possible if the composition of the cooperating parties changes.

Postponement of Profit reporting

If it is intended that sold inventory or business assets are to be replaced it is possible to postpone the reporting of profits on such sale, provided certain conditions are met. In connection therewith, it is recommended that you timely seek advice on the profit to be reported in the year of sale.

Provisions*

Under certain conditions, it is possible to form a provision for future expenses. In that way, such future expenses may already be deducted from the taxable profit of this year.

Creating a provision can also be helpful to support your liquidity position. If there is a reasonable level of certainty that the expenses will arise in the future, it may be advantageous to form a provision for example for the following items:

- Expenses for legal proceedings;

- Medical expenses;

- Risk of irrecoverable loan receivables and claims.

Tax Deductible Write-Offs*

Under certain circumstances, it is allowed to revalue assets, including debtors and stock. Such revaluation might lead to a write-off which is deductible for Profit Tax purposes. In times of economic crisis, for instance, the following write-offs could be considered:

• Review the financial position of your debtors. If it is likely that some will not be able to meet their (re)payment obligations, you may take into account the amount that will presumably not be paid back when drafting your financial statements (provided no provision has been formed in connection therewith);

• Price declines in the market and/or the lapse of expiration dates of stock may give rise to write-offs on the balance sheet item stock;

Please do not hesitate to contact one of our advisers for the applicable conditions when considering such write-offs.

Expiration of Losses

If the calculation of the taxable profit leads to a negative amount, this will be considered a tax loss. This loss can subsequently be offset against the taxable profit of the next ten years. The loss compensation should be applied in the sequence in which the losses were suffered and the profits are realized.

We would like to emphasize that existing tax carry-forward losses of the year 2012 may still be offset against the taxable profit which is realized in the year 2022. By using this possibility, you will avoid that such losses will no longer be available for loss compensation.

Request to Report a Lower Taxable Profit

The tax amount due to be reported in the provisional Profit Tax return should at least be equal to the tax due according to the most recent final Profit Tax return:

• If you expect to owe a lower amount of Profit Tax for the year 2022 than in the preceding year, it will be important to timely file a substantiated request with the Inspectorate of Taxes stating that you wish to report a lower amount of taxable profit.

Investment deductions and accelerated depreciation*

If an amount exceeding ANG 5,000 is invested in business assets in a financial year, 8% of the investment amount may be deducted from the taxable profit of that year as well as from the taxable profit of the next year. This means that:

• It can be advantageous to enter into obligations before January 1, 2023, with regard to envisaged investments, in order to already claim the investment deduction this year.

• The (higher) depreciation basis will also be available sooner.

Disinvestments*

Besides the aforementioned possibility of profit reporting postponement, it can be important to postpone the transfer of a business asset until after January 1, 2023. This particularly applies to investments made in 2017 and to real estate investments made in 2008 in light of a previously claimed investment deduction. The so-called disinvestment addition on the sales price will expire after 6 and 15 years respectively.

Fiscal Unity

For affiliated companies, it can be considered to apply for a fiscal unity before the end of the year, so that a (fiscal) consolidation can be applied with retroactive effect to January 1, 2022.

• By forming a fiscal unity, the losses of one group company can be offset against the profits of another group company.

• Various conditions apply.

Pension Provision

To reduce the taxable profit and strengthen the pension provision, you may consider:

• If possible, review the pension provision as calculated by an actuary; perhaps the tax deduction in connection therewith can be increased.

• Any deficits in the reserved pension capital may be supplemented before the end of the year.

Learn More

We trust that this information is useful to you. If you need more information or guidance, do not hesitate to contact us.

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