

## 1. The sale of invoices: An alternative to loans and overdrafts

For the majority of SME's, obtaining finance is often an uphill struggle, even when it involves simple cash flow loans. However, the rise of the "FinTech" industry, these businesses that bring finance and new technologies together, appears promising in this regard.

So today, platforms exist which introduce businesses with a need for liquidity to other businesses seeking attractive financial investments. The basis of the transaction? An approved invoice that the investing business buys from the "borrowing" business, in exchange for a small discount.

### Advantages:

- The business benefits from immediate liquidity, instead of having to wait 30 to 120 days for the invoice due date.
- Financing takes place on an individual, invoice by invoice basis. The borrowing business sells one or several invoices, as and when it needs to.
- The decision to finance is based on the solvency of the debtor of the invoice and not that of the company that raised the invoice.
- The platform insures the invoice against the risk of non-payment, while taking responsibility for administrative follow up with the debtor.

This new means of financing based on the activity of a business and the solvency of its clients, and issued by one business to another constitutes both technological progress and a genuine alternative for meeting the cash flow requirements of SME's.

Please do not hesitate to contact one of our advisers for further information.

## 2. BIK: Base rates of interest for 2016

The new base rates of interest for calculation of benefits in kind resulting from the granting of low interest or interest free loans have finally been set by royal decree for 2016<sup>1</sup>.

The rate causing the most excitement is the one applied to non-mortgage loans without agreed repayment terms, and used to calculate fictional interest rates on overdrawn current accounts held by company directors. Administration considers these overdrawn current accounts to be cash credits: the debtor can draw on their limitless line of credit since they are simultaneously beneficiary and "banker". In addition, as there is no guarantee accompanying the reimbursement of the current account, the interest rates applied are in effect extortionate.

In spite of a recent fall in interest rates during 2016 (and confirmed by the rates applied to other types of loans affected by the fixed-rate assessment of the benefits in kind), the rate which was already 8.16% in 2015 has increased to 9.27% in 2016!

The bill will come as a shock to some....

<sup>1</sup> MB, 3 March 2017.

### 3. The Theory of Remuneration

According to this theory, the costs incurred by a business with a view to allocating benefits in kind to its directors may be deducted on condition that they represent actual services provided by these directors, as compensation, in favour of the company.

The tax administration (followed by the courts and tribunals) is actually very attentive to the requirement for the existence, as compensation for the benefits gained, of actual services provided which relate to the principal activity of the business. The costs relating to these benefits are therefore not automatically deductible. Especially when these benefits involve the provision of real property, taxed at a fixed rate with regards to the occupant. This also applies when other BIKs are evaluated at a fixed rate, for example cars, and certainly in the case of an SPRLU in which the manager has two cars at his disposal.<sup>2</sup>

It is the responsibility of the business to provide evidence that costs pertaining to all benefits in kind are compensated by actual services provided by the director. How? Recent jurisprudence remains unclear on the subject and only enables us to come to the following conclusions:

- It is not enough to simply mention benefits in kind on a wage slip to demonstrate that the costs compensate expenses;
- It is the responsibility of the taxpayer to prove the reality of the services and not that of the tax authorities to demonstrate the absence of actual services;
- Expenses linked to the benefit in kind must also conform to the general requirements of deductibility<sup>3</sup>.

Beside these principles, proving the reality of the service depends on several facts: Approval at the general meeting of the remunerations paid, work reports, internal notes, correspondence and emails, etc. would be a good start...

Although we struggle to adopt the vision which the courts and tribunals have on the subject, it makes sense to be careful from now on...

### 4. Tax Authority Inspection Measures

Like every year, SPF Finance makes known to the public the various behaviours which might attract the attention of the tax authorities, resulting in closer scrutiny by the latter of the taxpayer's situation.

As a private individual, the authorities are sensitive to the following:

- As an employee, you have deducted genuine professional costs;
- You have not declared revenue earned abroad;
- You have not declared capital gains resulting from the sale of land or property;
- You did not submit your tax return.

For businesses, the authorities will be interested in those that:

<sup>2</sup> See Antwerp, 28 March 2017).

<sup>3</sup> Requirements as specified under article 49 CIR: the expenses:

- Must have been accepted during the period.
- Must have a link to the professional activity.
- Must have been agreed to earn or maintain taxable revenues.
- Must be supported by authentic documents.

- Invoke withholding tax on professional income;
- Let it be understood that they (wrongly) claim or allocate a VAT credit;
- Have paid reduced withholding tax on dividends paid or attributed;
- Have not declared capital gains realised on shares<sup>4</sup>;
- Have not submitted their tax return.

It is worth noting that bad students (both individuals and professionals), will find themselves in particularly hot water with regards to our administration, when it comes to the late submission of their tax declaration. You've been warned...!

## **5. VAT – The end of monthly instalments for quarterly filers**

From 1<sup>st</sup> April 2017, monthly instalments for quarterly filers have been cancelled. The latter will no longer have to pay monthly instalments as from 20 May of this year.

However, quarterly filers will now have to pay the December instalment, by the 24<sup>th</sup> of the month, at the latest.

## **6. Bankruptcy latest: The Central Insolvency Register**

Created by the law of 16 December 2016, this Register consists of a computerised database in which all information relating to bankruptcies filed in Belgium can be found. All paper bankruptcy files, as well as statements of debts, which were previously stored at the commercial courts can be found in the new register. All stakeholders involved in the procedure will have access to it, at varying levels, depending on their respective roles. This will facilitate access to the files for all those involved in the bankruptcy.

The Register will serve as an authentic source for all the acts and data stored in it. A debt which is declared in this way can be definitively considered as lost, by the creditor and accounted for as such: The loss will have to be declared, and the VAT can be recovered.

The Central Insolvency Register has been available since 1<sup>st</sup> April 2017. More information on the site: <http://www.regsol.be/>

## **7. Tax Consult News**

Further to a complete revision, our new site is now available. There is a multitude of useful information about us for you to discover, including our activities and services, as well as regular updates on Belgian and international tax news.

Discover our website here: [www.taxconsult.be](http://www.taxconsult.be)

<sup>4</sup> For large companies subject to 0.412% tax on capital gains realised on shares.