
Editorial

Leasing has become a corporate financing instrument to be regarded in much the same way as bank borrowing or new capital. As a matter of fact leasing now provides more capital to US corporations than bank loans. Next to the financial advantages of leasing there are the well known tax benefits. The basis of most lease operations is that at least one of the parties in a transaction can take advantage of tax allowances. Those allowances can be distributed in such a way that there are benefits on both sides of the equation, 'with only the taxman having to wait for his money'.

These, and other advantages, are in general also available in cross-border lease transactions. What gives, however, cross-border leases an almost mystique aura are the so-called 'double' or 'triple dip' leases. Double dips result out of the different approach to lease arrangements by the various countries. Where the countries of lessor and lessee use different criteria for allocating the tax depreciation allowances it is possible for both parties to get a depreciation allowance. A triple dip can, for instance, be achieved by using a sublessee resident in a country which applies yet another criterium or by the use of a dual resident company.

Another tax benefit available in cross-border lease arrangements is the use of tax sparing credits. Especially Japanese leasing companies have made use of this facility which is available for lease payments ('royalties' or, partly, interest) in a number of tax treaties concluded between Japan and developing countries like Brazil.

The very success of the tax driven leasing arrangements attracted, of course, the attention of tax authorities and legislators. In the early 1980's most countries introduced legislation disallowing special tax allowances, like investment tax credits and first-year allowances, for an asset leased outside their countries. Although this has been a serious blow to the cross-border leasing industry, the normal depreciation allowances might still provide benefits that make the double dip worthwhile. As Mr. Schlütter points out in his instructive article, the arrangement should still be considered as one of the tools available to reduce the tax burden imposed on German subsidiaries of US based groups.

Japan arrived at the cross-border lease market in late 1978 and early 1979 with 'Samurai leasing'. A programme of subsidized international leasing denominated in dollars and initiated by the Japanese government to reduce the country's trade surplus. In 1981 the purely commercial 'Shogun leases' were introduced. Shogun leases are yen-denominated leases for foreign borrowers. At a later stage Japanese leasing companies became also active in overseas business denominated in dollars and other currencies.

It should be noted that the Japanese companies were never able to take advantage of artificially accelerated depreciation or investment tax credits. They did, however provide the debt portion of US leveraged leases in the past and, more recently, financed leveraged leases in a low tax jurisdiction like Hong Kong.

In addition there is a wide spread use of the tax sparing credit facility to be found in the Japanese treaties with developing countries.

The sheer size of the country's trade surplus and savings makes any change in the rules affecting the Japanese lease industry – once called 'Japan's Greatest Export Success' – of immediate concern for the whole financial community. Mr. Otsuka's article, discussing the tax aspects of leases in Japan and the recent changes in attitude of especially the Tokyo tax authorities, is, therefore, of interest to anyone involved in international financing. Personally, I found it remarkable that even the mere deferral of Japanese tax in a cross-border lease seems to be considered an 'abuse'.

In this issue you will also find an excellent overview of the work of the OECD by Mr. Bierlaagh who takes part as representative for the Netherlands in the Fiscal Committee's Work. We consider the work of the Fiscal Committee as important and we will, therefore, in forthcoming issues publish reviews of some recent Reports:

Finally, I would like to draw your attention to Mr. van der Lande's review of a recently issued Netherlands report on transfer pricing. The report's authors – among them representatives of industry and government – recommend a maximum freedom for the

multinational corporation to fix the group's transfer prices. The only limits would be the 'limits of reasonableness' which are to be found by applying a functional analysis of the economic conduct of the group companies concerned. Here again, the functional analysis is making headway. We will come back on the issue in the near future.

Fred C. de Hosson
Amsterdam