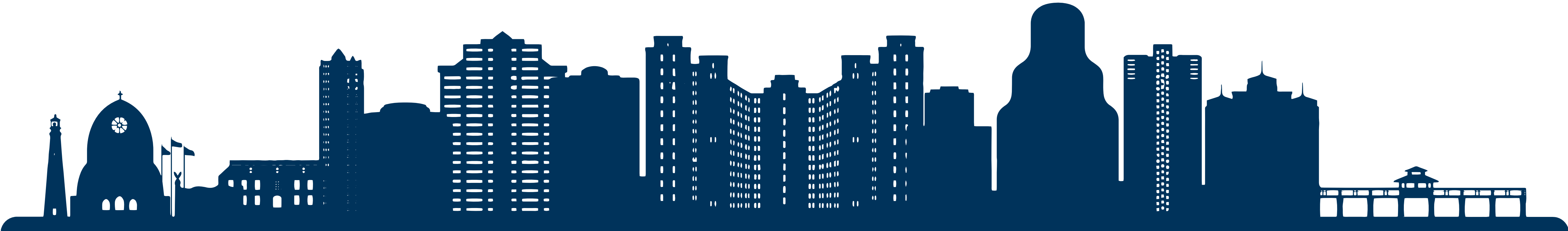
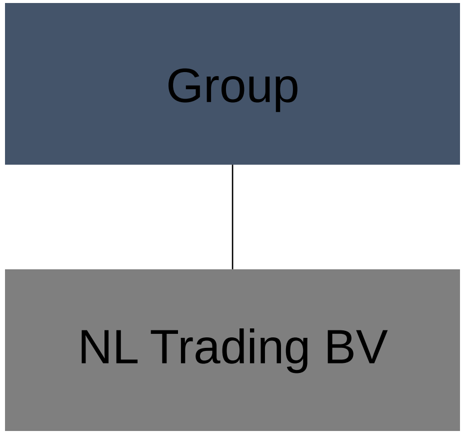


Dutch / Swiss business restructuring

The Client

- NL Trading BV belongs group active in the downstream segment in the Oil&Gas industry.
- NL Trading BV carries out wholesale trade in petrol, diesel, gas oil and petroleum, including bio-fuel and HVO under its own Dutch trade name
- NL Trading BV purchases on the open market and sells to oil traders, petrol stations of small independent chains and individual petrol station operators in the Netherlands. NL trading BV also supplies its own reselling operations and petrol stations.
- Purchasing contracts are renegotiated yearly / combination of suppliers changes yearly.
- Purchasing network centralized in Switzerland (until now traders regularly visited in London).
- The Dutch CEO is closely involved with and has an important role in terms of pricing and strategy. Purchasing at the right price is key profit driver.



Dutch / Swiss business restructuring

The Case

- NL Trading BV / Group considers to setting-up a trading/wholesale team in Switzerland and to eventually increase the Swiss team with further new business activities.

- Driving factors / strategic considerations for CH Trading AG:

    - Stable political and economic climate.
    - Highly educated workforce.
    - Well-established legal system and favourable regulatory environment for commodities trading.
    - Switzerland has developed specialized expertise in commodities trading over the years, with a skilled workforce and a concentration of industry knowledge and experience.
    - **Movements of competitors**
    - **Client currently has its purchasing network centralized in Switzerland. Contacts until now regularly visited in London. To build on and further gain on that network presence in Switzerland is considered key.**

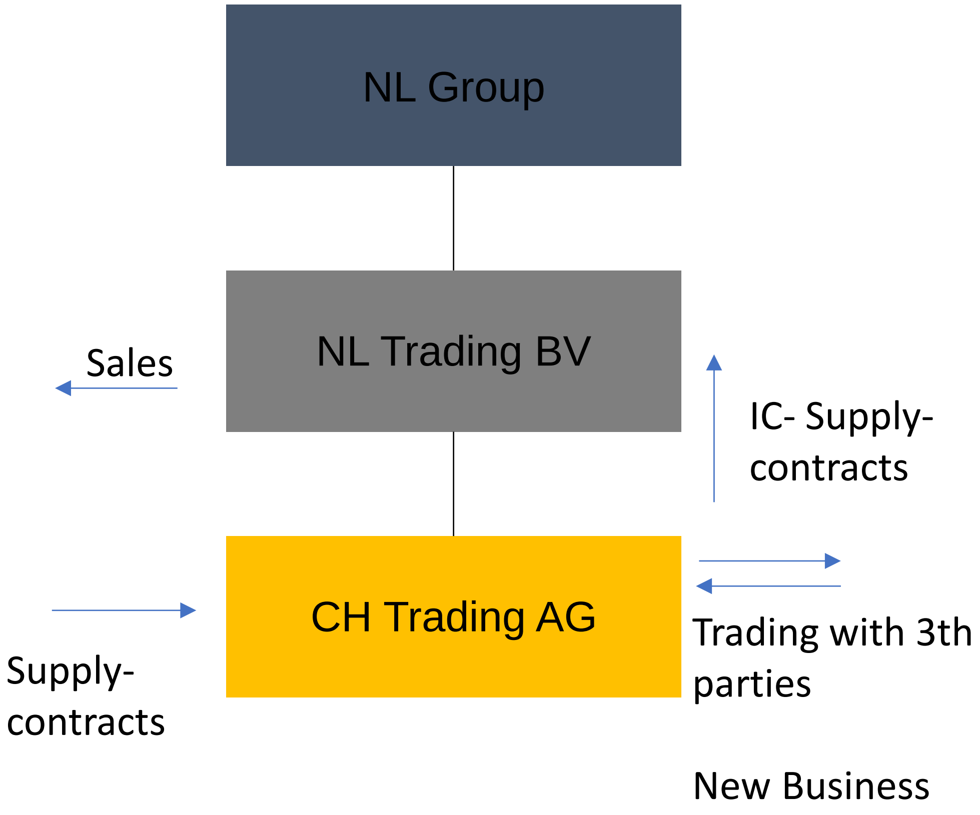
Dutch / Swiss business restructuring

Approach

i) Business case

ii) Feasibility analysis:
   - i) Possible business model and intra group relations
   - ii) Analyze competitors in CH
   - iii) Tax & Legal aspects and next steps

iii) Stucturing phase:
   - i) Functional analysis
   - ii) TP model
   - iii) Exit Tax
   - iv) Exit Tax mitigation measures



Exit tax - business restructuring

TPG

- Chapter IX of the OECD TPG → “transfer pricing aspects of business restructurings”.
- Business restructuring: cross-border reorganisation of the commercial or financial relations between associated enterprises, including the termination or substantial renegotiation of existing arrangements. (OECD TPG, paragraph 9.1).
- To understand the arm’s-length character of a business restructuring, the OECD emphasizes the need to investigate if any item of value has been transferred; i.e., whether the restructured entity should be entitled to compensation for transfers made as part of the business restructuring.
- Any compensation should be based on the profit potential (if any) linked to the activities of each entity, computed by analyzing the available options of the parties, which is consistent with how independent enterprises would likely negotiate with each other in a similar factual setting.
- This requires a functional analysis.

Exit tax - business restructuring

Dutch developments

- Dutch exit tax:

  - The mere transfer of assets triggers Dutch CIT to the extent the fair market value of that asset exceeds the tax book value

  - A transfer of assets, functions and/or risks whereby a **transfer of a ‘going concern**’ and/or a **transfer of ‘something of value’** on top of the market value of the transferred assets and liabilities is considered, sutch transfer triggers Dutch CIT over the “on top value” determined based on sound business valuation methods (**Dutch exit tax**).

  - Whether there is a mere transfer of assets and liabilities or instead a transfer of a going concern/something of value triggering Dutch exit tax, depends in essence on whether essential economical and contractual business functions are transferred including profit potential.

Exit tax - business restructuring

Dutch developments

From recent case law it follows that the following elements are relevant for the assessment of Dutch exit tax:

- Whether in relation to the transfer / reorganization, significant functions, assumed business risks and profit potential related to those functions and risks have changed.
- Whether independent parties would have agreed on a compensation (for the transfer, termination or renegotiation of arrangements) in comparable circumstances.
- All available information will be relevant, including transfer pricing documentation, functional analysis, but also other internal documentation (e.g. business plans, pre- and post-restructuring budgeting of profits, turnover and cashflow, employment contracts, job instruction and descriptions).
- Whether consistency exists between (i) these documents, (ii) the real facts and (iii) information provided to the Dutch tax authorities (where not this increases the burden of proof for the taxpayer and the risk on a considered transfer of a going concern and hence Dutch exit tax).
- That relevant functions, assets and assumed risks, including profit potential related to those functions could include procurement and sales functions (e.g. transfer of trading employees, expired and unexpired sales and purchase contracts).

Exit tax - business restructuring

Dutch developments

- Dutch exit tax is an actual topic in the Netherlands.

- Recent ruling of Dutch Court of Appeal, Amsterdam, 19 July 2024:

  - Dutch companies transferred expired and unexpired sale and purchase contracts, inventory and employees to an entity in Switzerland

  - TP-method and profit allocation changed significantly.

  - If the Dutch taxpayer takes a position in its CIT return that leads to a significant correction and if the taxpayer was or should have been aware that this position was considerably too low at the time of filing the tax return, this leads to a **reversal and increased burden of proof to the taxpayer** (because of filing an incorrect CIT return).

  - The Court of Appeal ruled that significant Dutch exit tax was due: **EUR 128 mio**

Dutch / Swiss business restructuring

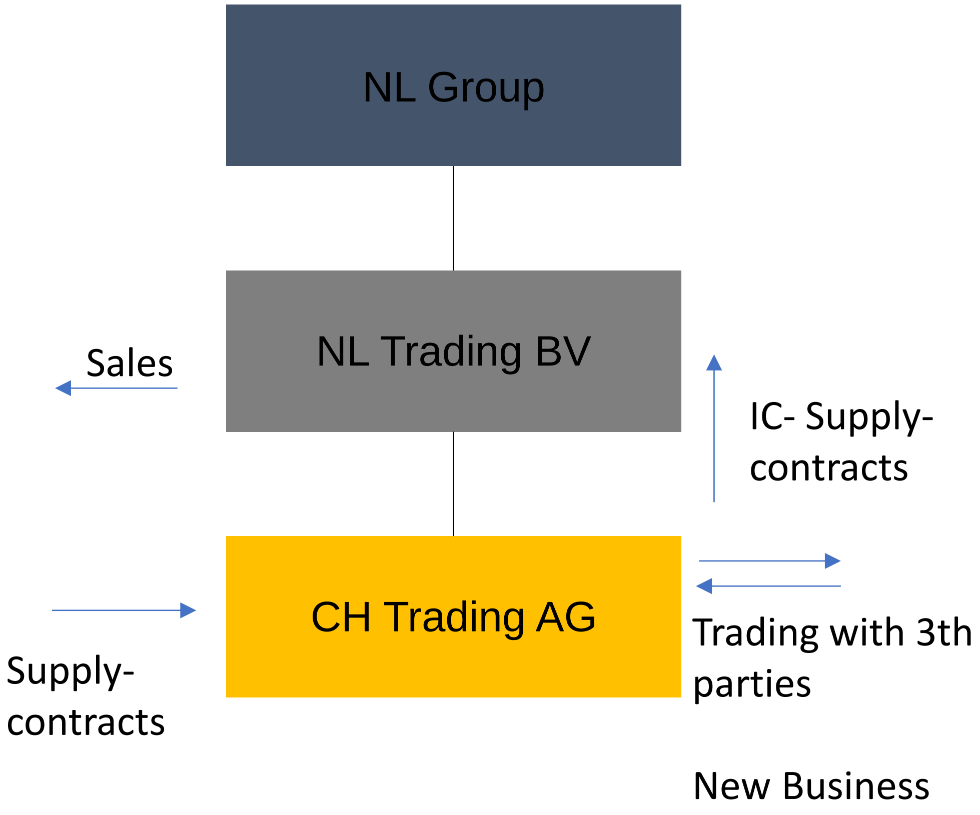
Approach

To mitigate potential exit tax discussions with the Dutch tax authorities we advised two phases:

- Starting phase (Phase 1 – FY 24/25): in this phase the function of CH Trading AG consists of being the contract party for the barge supply and selling the barge loads “back-2-back” to NL Trading B.V. In addition, a new CH business are developed.
  → *TP model: **cost-based remuneration***

- Add-on phase (Phase 2 – FY 26/27): in this phase the barge part of the trading activities in Switzerland are extended with actively managing the network, bargaining the contracts, setting prices of oil products, gaining market knowledge, purchase of oil products from suppliers. → *TP model: **profit split depending on value contribution analysis***

Advise to gradually increase profit allocation in CH entity in line with increase of functions in Switzerland over Phase I and Phase II



Exit tax - business restructuring

Approach

To mitigate potential exit tax discussions with the Dutch tax authorities we advised to

- Document business plan addressing the business reasons and the expected commercial benefits (synergy effects)
- Keep minutes of board meetings in the administration of board meetings in which the business plan further structuring steps re Phase I and Phase II are discussed and made
- Prepare proper Transfer Pricing documentation: Master File and Local Files
- Prepare intercompany agreements to lay down the intercompany relationships in line with the Transfer Pricing documents
- Employment agreements and job descriptions and job instructions (do’s/don’t’s) for the employees working in CH in line with functions and risks that CH entity should exercise.
- Hire new CH-employee at the level of CH entity: function Head of Procurement / Head of new CH business; should be team leader of the Dutch trading employee working few days in a month in CH (based on a secondment agreement) and the admin-employee.

Exit tax - business restructuring

Approach

- Document and keep in administration clear overview of days that Dutch employees worked in Switzerland for CH entity.
- Inform the Dutch tax authorities in the context of the Horizontal Monitoring agreement and inform consistent with set-up of the structure.

Exit tax - business restructuring

Approach

To mitigate exit tax exposure, we have disclosed CH PE/Branch alternative instead of CH entity:

- In theory, there should be no significant difference between an entity or a branch when it comes to transfer pricing and profit allocation
- However, in case of a branch, in principle no exit tax should be triggered if something of value is transferred to the Branch.
  - Due to method of Dutch object exemption → “Exit tax” will be due over the depreciation period of transferred assets.
  - Timing benefit
  - Reduced tax interest exposure
- Not applied as allocation of assets, functions and risk at the start of the CH activities and ongoing was considered key in this case.