OFFICE DEPOT INC
Form 10-Q/A
April 06, 2011

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10-Q/A

Amendment No. 1

(Mark One)

x Quarterly Report Pursuant to Section 13 or 15 (d) of the

Securities Exchange Act of 1934
For the quarterly period ended September 25, 2010

or

¨ Transition Report Pursuant to Section 13 or 15 (d) of the

Securities Exchange Act of 1934
For the transition period from ___________ to ___________

Commission file number 1-10948

Office Depot, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**59-2663954**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
6600 North Military Trail; Boca Raton, Florida	**33496**
(Address of principal executive offices)	(Zip Code)

(561) 438-4800

(Registrant s telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No ¨

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No ¨

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.:

Large accelerated filer	x	Accelerated filer	¨
Non-accelerated filer (Do not check if a smaller reporting company)	¨	Smaller reporting company	¨

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ¨ No x

The number of shares outstanding of the registrant s common stock, as of the latest practicable date: At March 26, 2011 there were 277,571,087 outstanding shares of Office Depot, Inc. Common Stock, $0.01 par value.

OFFICE DEPOT, INC.

FORM 10-Q/A

EXPLANATORY NOTE

This Amendment No. 1 to the quarterly report of Office Depot, Inc. on Form 10-Q/A (Form 10-Q/A) amends our quarterly report on Form 10-Q for the period ended September 25, 2010, which was originally filed on October 27, 2010 (Original Form 10-Q). This amendment is being filed for the purpose of restating certain amounts in Item 1, Financial Statements, Item 2, Management s Discussion and Analysis of Financial Condition and Results of Operations, Item 4, Controls and Procedures, as well as for currently dated certifications from the company s principal executive officer and principal financial officer as required by Section 302 and 906 of the Sarbanes-Oxley Act of 2002. The certifications of the Company s principal executive officer and principal financial officer are attached to this Amended Filing as Exhibits 31.1, 31.2, and 32.

The company s 2010 financial statements included in the Original Form 10-Q were prepared reflecting the expected carry back of certain net operating losses. The company s position was based on its view, after consultation with its tax advisor, that its tax losses qualified for extended carry-back provisions enacted in 2009. That position resulted in the company recognizing tax benefits in the third quarter and year-to-date periods of approximately $22 million and $29 million, respectively. The company filed its full year 2010 carry back claim in February 2011 and in March 2011, the claim was denied by the Internal Revenue Service. Because the company has recognized full valuation allowances on its domestic deferred tax assets, the tax benefits recognized in the third quarter and year-to-date periods no longer met the accounting recognition criteria. The net operating losses included in the denied carry back claim will be available to offset what would otherwise be future tax payments over a 20-year period.

In addition to reducing the tax benefit for the third quarter and year-to-date periods, this restatement reduced net earnings and income available to common shareholders by $22 million and $29 million, respectively. Diluted earnings per share was reduced by $0.06 for the third quarter and $0.10 for the year-to-date period. Also, approximately $32 million of tax-related assets have been removed from the balance sheet at September 25, 2010.

These restatements relate to non-cash entries in the 2010 financial statements and the reduction in net earnings has been offset in the consolidated statement of cash flows by a change in working capital and other items.

The Form 10-Q/A also reflects a correction to the 2010 presentation of approximately $22 million of acquisition-related payments from investing activities to financing activities in the consolidated statement of cash flows.

The restatement is more fully described in Note B to the Notes to Condensed Consolidated Financial Statements.

This Form 10-Q/A does not reflect events occurring after the filing of the Original Form 10-Q, other than the restatement for the matter discussed above. Such events include, among other things, the events described in the company s current reports on Form 8-K and Forms 10-Q and 10-K after the date of the Original Form 10-Q. Concurrent with the Form 10-Q/A, the company will file an amended Form 10-Q for the second quarter of 2010 and an amended Form 10-K for the full year 2010.

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements.

OFFICE DEPOT, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS

(In thousands, except share and per share amounts)

(Unaudited)

	September 25, 2010 (Restated)	December 26, 2009	September 26, 2009
Assets			
Current assets:			
Cash and cash equivalents	$ 678,717	$ 659,898	$ 692,886
Receivables, net	987,013	1,121,160	1,165,003
Inventories	1,183,854	1,252,929	1,176,659
Deferred income taxes	9,146	16,637	19,502
Prepaid expenses and other current assets	153,973	155,705	170,454
Total current assets	3,012,703	3,206,329	3,224,504
Property and equipment, net	1,219,151	1,277,655	1,281,066
Goodwill	19,431	19,431	19,431
Other intangible assets	22,634	25,333	26,360
Deferred income taxes	81,395	81,706	96,312
Other assets	313,628	279,892	257,563
Total assets	$ 4,668,942	$ 4,890,346	$ 4,905,236
Liabilities and stockholders equity			
Current liabilities:			
Trade accounts payable	$ 1,045,121	$ 1,081,381	$ 1,061,345
Accrued expenses and other current liabilities	1,170,788	1,280,296	1,249,575
Income taxes payable	6,653	6,683	4,854
Short-term borrowings and current maturities of long-term debt	73,475	59,845	60,265
Total current liabilities	2,296,037	2,428,205	2,376,039
Deferred income taxes and other long-term liabilities	582,081	654,851	665,758
Long-term debt, net of current maturities	657,164	662,740	667,025
Total liabilities	3,535,282	3,745,796	3,708,822
Commitments and contingencies			
Redeemable preferred stock, net (liquidation preference $368,516 in September 2010, $368,116 in December 2009 and $359,138 in September 2009)	355,979	355,308	340,218
Stockholders equity:			
Office Depot, Inc. stockholders equity:			
Common stock - authorized 800,000,000 shares of $.01 par value; issued and outstanding shares 282,982,123 in 2010, 280,652,278 in December 2009 and 280,634,590 in September 2009	2,830	2,807	2,806

Additional paid-in capital	1,164,525	1,193,157	1,195,005
Accumulated other comprehensive income	205,761	238,379	241,619
Accumulated deficit	(535,407)	(590,195)	(528,575)
Treasury stock, at cost 5,915,268 shares in 2010, December 2009, and September 2009	(57,733)	(57,733)	(57,733)
Total Office Depot, Inc. stockholders equity	779,976	786,415	853,122
Noncontrolling interest	(2,295)	2,827	3,074
Total stockholders equity	777,681	789,242	856,196
Total liabilities and stockholders equity	$ 4,668,942	$ 4,890,346	$ 4,905,236

This report should be read in conjunction with the Notes to Condensed Consolidated Financial Statements (Notes) herein and the Notes to Consolidated Financial Statements in the Office Depot, Inc. Form 10-K filed February 23, 2010 (the 2009 Form 10-K).

OFFICE DEPOT, INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(In thousands, except per share amounts)

(Unaudited)

	13 Weeks Ended		39 Weeks Ended	
	September 25, 2010 (Restated)	September 26, 2009	September 25, 2010 (Restated)	September 26, 2009
Sales	$ 2,899,717	$ 3,029,207	$ 8,671,162	$ 9,078,612
Cost of goods sold and occupancy costs	2,070,534	2,169,084	6,161,560	6,544,179
Gross profit	829,183	860,123	2,509,602	2,534,433
Store and warehouse operating and selling expenses	665,905	715,439	1,998,339	2,201,342
General and administrative expenses	154,965	177,480	475,043	524,273
Operating profit (loss)	8,313	(32,796)	36,220	(191,182)
Other income (expense):				
Interest income	2,513	24	3,493	1,936
Interest expense	(6,093)	(17,242)	(40,456)	(51,905)
Miscellaneous income (expense), net	11,189	9,369	21,969	6,222
Earnings (loss) before income taxes	15,922	(40,645)	21,226	(234,929)
Income tax expense (benefit)	(24,700)	358,400	(32,496)	302,312
Net earnings (loss)	40,622	(399,045)	53,722	(537,241)
Less: Net loss attributable to the noncontrolling interest	(632)	(1,011)	(1,066)	(2,396)
Net earnings (loss) attributable to Office Depot, Inc.	41,254	(398,034)	54,788	(534,845)
Preferred stock dividends	9,210	14,931	27,898	15,417
Income (loss) available to common shareholders	$ 32,044	$ (412,965)	$ 26,890	$ (550,262)
Earnings (loss) per share:				
Basic	$ 0.12	$ (1.51)	$ 0.10	$ (2.02)
Diluted	0.12	(1.51)	0.10	(2.02)

Weighted average number of common shares outstanding:				
Basic	275,956	274,194	275,170	272,554
Diluted	275,956	274,194	275,170	272,554

This report should be read in conjunction with the Notes herein and the Notes to Consolidated Financial Statements in the 2009 Form 10-K.

OFFICE DEPOT, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

(Unaudited)

	39 Weeks Ended	
	September 25, 2010 (Restated)	**September 26, 2009**
Cash flows from operating activities:		
Net earnings (loss)	$ 53,722	$ (537,241)
Adjustments to reconcile net earnings (loss) to net cash provided by operating activities:		
Depreciation and amortization	155,681	161,765
Charges for losses on inventories and receivables	42,784	57,390
Valuation allowance and non-cash tax settlements	(45,945)	321,566
Changes in working capital and other	(24,356)	263,678
Net cash provided by operating activities	181,886	267,158
Cash flows from investing activities:		
Capital expenditures	(120,469)	(74,057)
Acquisition related payments	(10,952)	
Release of restricted cash		6,037
Proceeds from assets sold	24,718	147,731
Other	1,106	1,213
Net cash provided by (used in) investing activities	(105,597)	80,924
Cash flows from financing activities:		
Proceeds from exercise of stock options and sale of stock under employee stock purchase plans	2,226	33
Acquisition of noncontrolling interests	(21,786)	
Share transactions under employee related plans	(1,281)	
Proceeds from issuance of redeemable preferred stock, net		324,801
Preferred stock dividends	(18,688)	
Debt related fees	(4,688)	
Payments of debt under asset based credit facility		(139,098)
Net payments on long-and short-term borrowings	(2,669)	(8,483)
Net cash provided by (used in) financing activities	(46,886)	177,253
Effect of exchange rate changes on cash and cash equivalents	(10,584)	11,806
Net increase in cash and cash equivalents	18,819	537,141
Cash and cash equivalents at beginning of period	659,898	155,745
Cash and cash equivalents at end of period	$ 678,717	$ 692,886

This report should be read in conjunction with the Notes herein and the Notes to Consolidated Financial Statements in the 2009 Form 10-K.

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OFFICE DEPOT, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

Note A Summary of Significant Accounting Policies

Basis of Presentation: Office Depot, Inc., including consolidated subsidiaries, (Office Depot) is a global supplier of office products and services. Fiscal years are based on a 52- or 53-week period ending on the last Saturday in December. The Condensed Consolidated Balance Sheet at December 26, 2009 has been derived from audited financial statements at that date. The condensed consolidated interim financial statements as of September 25, 2010 and September 26, 2009, and for the 13-week and 39-week periods ended September 25, 2010 (also referred to as the third quarter of 2010 and the year-to-date 2010) and September 26, 2009 (also referred to as the third quarter of 2009 and the year-to-date 2009) are unaudited. However, in our opinion, these financial statements reflect adjustments (consisting only of normal, recurring items) necessary to provide a fair presentation of our financial position, results of operations and cash flows for the periods presented. We have included the balance sheet from September 26, 2009 to assist in analyzing our company. The September 26, 2009 balance sheet includes a line for Deferred income taxes, separate from Other assets, to conform to the September 25, 2010 and December 26, 2009 presentation. Additionally, the Deferred income taxes and Changes in working capital and other line items have been combined in the condensed consolidated statement of cash flows for the 39-week period ended September 26, 2009 to conform to the year-to-date 2010 presentation.

These interim results are not necessarily indicative of the results that should be expected for the full year. For a better understanding of Office Depot and its condensed consolidated financial statements, we recommend reading these condensed interim financial statements in conjunction with the audited financial statements for the year ended December 26, 2009, which are included in our 2009 Annual Report on Form 10-K (the 2009 Form 10-K), filed with the U.S. Securities and Exchange Commission (SEC).

Cash Management: Our cash management process generally utilizes zero balance accounts which provide for the reimbursement of the related disbursement accounts on a daily basis. Accounts payable and accrued expenses as of September 25, 2010, December 26, 2009 and September 26, 2009 included $54 million, $77 million and $70 million, respectively, of disbursements not yet presented for payment drawn in excess of our book deposit balances where offset provisions exist. We may borrow to meet working capital and other needs throughout any given quarter, which may result in higher levels of borrowings and invested cash within the period. At the end of the quarter, excess cash may be used to minimize borrowings outstanding at the balance sheet date.

New Accounting Pronouncements: There are no recently issued accounting standards that are expected to have a material effect on our financial condition, results of operations or cash flows.

NOTE B RESTATEMENT OF CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

The company s third quarter 2010 financial statements included in its Original Form 10-Q were prepared reflecting the expected carry back of certain net operating losses. The company s position was based on the view that its tax losses qualified for extended carry-back provisions enacted in 2009. That position resulted in the company recognizing tax benefits in the third quarter and year-to-date 2010 periods of approximately $22 million and $29 million, respectively. The company filed its full year 2010 carry back claim in February 2011 and in March 2011, the claim was denied by the Internal Revenue Service. Because the company has recognized full valuation allowances on its domestic deferred tax assets, the tax benefits recognized in the 2010 financial statements included in the Original Form 10-Q no longer met the accounting recognition criteria and, accordingly, these financial statements are being restated. The net operating losses included in the denied carry back claim will be available to offset what would otherwise be future tax payments over a 20-year period. As a result of the need to restate the financial statements included in the Original Form 10-Q, on March 30, 2011 the company obtained a waiver of default from the lending institutions participating in the asset based credit facility (the Facility).

The Form 10-Q/A also reflects a correction to the 2010 presentation of approximately $22 million of acquisition-related payments from investing activities to financing activities in the consolidated statement of cash flows.

The effects of the restatement on the condensed consolidated balance sheet as of September 25, 2010 are summarized in the following table:

(In thousands)	As of September 25, 2010		
	Previously Reported	Adjustments	Restated
Receivables, net	$ 998,792	$ (11,779)	$ 987,013
Total current assets	3,024,482	(11,779)	3,012,703
Other assets	333,844	(20,216)	313,628
Total assets	4,700,937	(31,995)	4,668,942
Additional paid-in capital	1,167,828	(3,303)	1,164,525
Accumulated deficit	(506,715)	(28,692)	(535,407)
Total Office Depot, Inc. stockholders equity	811,971	(31,995)	779,976
Total stockholders equity	809,676	(31,995)	777,681
Total liabilities and stockholders equity	4,700,937	(31,995)	4,668,942

The effects of the restatement on the condensed consolidated statements of operations for third quarter and year-to-date 2010 are summarized in the following table:

(In thousands)	Third quarter September 25, 2010		
	Previously Reported	Adjustments	Restated
Income tax benefit	$ (46,943)	$ 22,243	$ (24,700)
Net earnings	62,865	(22,243)	40,622
Net earnings attributable to Office Depot, Inc.	63,497	(22,243)	41,254
Income available to common shareholders	54,287	(22,243)	32,044
Earnings per common share:			
Basic	$ 0.18	$ (0.06)	$ 0.12
Diluted	$ 0.18	$ (0.06)	$ 0.12

(In thousands)	Year to Date September 25, 2010		
	Previously Reported	Adjustments	Restated
Income tax benefit	$ (61,188)	$ 28,692	$ (32,496)
Net earnings (loss)	82,414	(28,692)	53,722
Net earnings attributable to Office Depot, Inc.	83,480	(28,692)	54,788
Income available to common shareholders	55,582	(28,692)	26,890
Earnings per common share:			
Basic	$ 0.20	$ (0.10)	$ 0.10
Diluted	$ 0.20	$ (0.10)	$ 0.10

The effects of the restatement on the condensed consolidated statement of cash flows for year-to-date 2010 is summarized in the following table:

(In thousands)	Year to Date September 25, 2010		
	Previously Reported	Adjustments	Restated
Cash flow from operating activities:			
Net earnings (loss)	$ 82,414	$ (28,692)	$ 53,722
Changes in working capital and other	(56,351)	31,995	(24,356)
Net cash provided by operating activities	178,583	3,303	181,886
Cash flow from investing activities:			
Acquisition related payments	(32,738)	21,786	(10,952)
Net cash (used in) investing activities	(127,383)	21,786	(105,597)
Cash flow from financing activities:			
Acquisition of noncontrolling interests		(21,786)	(21,786)
Tax benefits from employee share-based payments	3,303	(3,303)	
Net cash (used in) financing activities	(21,797)	(25,089)	(46,886)

Note C Debt

On March 26, 2010, the company executed a second amendment to its asset based credit facility. This second amendment amends the facility by, among other things, allowing the company to make certain restricted payments, including the payment of cash dividends on preferred stock and make share repurchases, in an aggregate amount of $50 million per fiscal year, subject to the maintenance of certain minimum liquidity conditions, removing the ability of the company to elect one- or two-month interest periods with respect to its LIBOR borrowings, making certain technical amendments to permit the company to issue unsecured or subordinated convertible debt securities, allowing the company and its subsidiaries to enter into certain internal tax restructuring transactions subject in certain circumstances to various conditions, and waiving certain technical events of default, including written notice of certain events to the U.S. Agent and European Agent under the asset based credit facility and certain related security agreements. The company was in compliance with all applicable financial covenants at September 25, 2010.

Note D Redeemable Preferred Stock

In June 2009, the company issued $350 million of Redeemable Convertible Preferred Stock with a 10% stated dividend rate. Dividends are payable quarterly and are paid in-kind or, in cash at the discretion of the board of directors, to the extent that the company has funds legally available for such payment. If not paid in cash, an amount equal to the cash dividend due will be added to the liquidation preference and measured for accounting purposes at fair value. Dividends accrued through January 1, 2010, were settled in-kind. Subsequent quarterly dividends of $9.2 million were paid in cash on April 1, 2010, July 1, 2010 and October 1, 2010.

Note E Asset Impairments, Exit Costs and Other Charges

In prior years, we performed strategic reviews of assets and processes with the goal of positioning the company to deal with the degradation in the global economy and to benefit from its eventual improvement. The results of those internal reviews led to decisions to close stores, exit certain businesses and write off certain assets that were not seen as providing future benefit. These decisions resulted in material charges (the Charges) that were recognized during the fourth quarter of 2008 and fiscal year 2009. Our measurement of operating profit for each of our segments excludes the Charges because they are evaluated internally at the corporate level.

As of the end of 2009, we had substantially completed all activities falling under our strategic reviews. Although we did not recognize new Charges under these programs during the year-to-date 2010 period, positive and negative adjustments to previously accrued amounts as well as accretion on discounted long-term accruals such as lease obligations impacted our results in the periods. Amortizations, settlements and adjustments related to existing accruals are included in store and warehouse operating and selling expenses and recognized at the corporate level.

During the third quarter of 2009, we recognized approximately $40 million of Charges associated with these activities as the previously-identified plans were implemented and the related accounting recognition criteria were met. Approximately $34 million is included in store and warehouse operating and selling expenses, $5 million is included in general and administrative expenses and $1 million is included in cost of goods sold and occupancy costs on our Condensed Consolidated Statement of Operations. Implementation of these activities during the quarter resulted in charges primarily for lease accruals and severance expenses. Additionally, we recognized a non-cash loss of approximately $6 million in conjunction with the disposition of other assets during the third quarter of 2009.

During the year-to-date 2009 period, we recognized Charges of approximately $195 million, of which, $160 million is included in store and warehouse operating and selling expenses, $24 million is included in general and administrative expenses and $11 million is included in cost of goods sold and occupancy costs.

During the year-to-date 2009 period, we also entered into multiple sale and sale-leaseback transactions related to the strategic review and to enhance liquidity. Total proceeds from these transactions were approximately $148 million and are included in the investing section on our Condensed Consolidated Statement of Cash Flows. One transaction was the sale of an asset previously classified as a capital lease. Payments to satisfy the existing capital lease obligation are included in the financing section of the Condensed Consolidated Statement of Cash Flows. Losses on these transactions are included in the Charges above. Gains have been deferred and will reduce rent expense over the related leaseback periods. An additional sale and leaseback arrangement associated with operating properties included provisions that resulted in the transaction being accounted for as a financing. Accordingly, approximately $19 million has been included in long-term debt on the Condensed Consolidated Balance Sheets at September 26, 2009, December 26, 2009 and September 25, 2010.

Exit cost accruals related to the activities described above are as follows:

(In millions)	**Balance at December 26, 2009**	**Cash payments**	**Accretion on lease obligations**	**Currency and other adjustments**	**Balance at September 25, 2010**
One-time termination benefits	$ 13	$ (10)	$	$ (2)	$ 1
Lease and contract obligations	162	(52)	11	(3)	118
Total	$ 175	$ (62)	$ 11	$ (5)	$ 119

Note F Stockholders Equity and Comprehensive Income

The following table reflects the changes in stockholders equity attributable to both Office Depot and the noncontrolling interests of our subsidiaries in India, Sweden and South Korea. During the third quarter of 2010, the company obtained all remaining shares of the entity in Sweden through the exercise of a put/call arrangement.

(In thousands)	Attributable to Office Depot, Inc.	Attributable to noncontrolling interest	Total
Stockholders equity at December 26, 2009	$ 786,415	$ 2,827	$ 789,242
Comprehensive income:			
Net earnings (loss)	54,788	(1,066)	53,722
Other comprehensive income (loss):	(32,619)	337	(32,282)
Comprehensive income (loss)	22,169	(729)	21,440
Capital transactions with noncontrolling interests	(16,066)	(4,393)	(20,459)
Preferred stock dividends	(27,898)		(27,898)
Share transactions under employee related plans	945		945
Amortization of long-term incentive stock grants	14,411		14,411
Stockholders equity at September 25, 2010	$ 779,976	$ (2,295)	$ 777,681

	Attributable to Office Depot, Inc.	Attributable to noncontrolling interest	Total
Stockholders equity at December 27, 2008	$ 1,362,950	$ 4,883	$ 1,367,833
Comprehensive income:			
Net loss	(534,845)	(2,396)	(537,241)
Other comprehensive income (loss):	24,421	587	25,008
Comprehensive loss	(510,424)	(1,809)	(512,233)
Preferred stock dividends	(15,417)		(15,417)
Share transactions under employee and direct stock purchase plans	(16)		(16)
Share-based payments (including income tax benefits and withholding)	(3,948)		(3,948)
Amortization of long-term incentive stock grants	19,977		19,977
Stockholders equity at September 26, 2009	$ 853,122	$ 3,074	$ 856,196

Comprehensive income includes all non-owner changes in stockholders equity and consists of the following:

	Third Quarter		Year-to-Date	
(In thousands)	2010	2009	2010	2009
Net earnings (loss)	$ 40,622	$ (399,045)	$ 53,722	$ (537,241)
Other comprehensive income (loss), net of tax where applicable:				
Foreign currency translation adjustments	51,323	19,053	(34,746)	24,061
Amortization of gain on cash flow hedge	(415)	(415)	(1,244)	(1,244)
Change in deferred pension	(644)	340	3,970	(2,466)
Change in deferred cash flow hedge	1,293	1,921	(16)	4,657
Other	(249)		(246)	
Total other comprehensive income (loss), net of tax, where applicable	51,308	20,899	(32,282)	25,008
Comprehensive income (loss)	91,930	(378,146)	21,440	(512,233)

Less: comprehensive income (loss) attributable to the noncontrolling interest	64	(514)	(729)	(1,809)
Comprehensive income (loss) attributable to Office Depot, Inc.	$ 91,866	$ (377,632)	$ 22,169	$ (510,424)

Note G Earnings Per Share

The following table represents the calculation of net earnings (loss) per common share:

(In thousands, except per share amounts)	Third Quarter 2010	Third Quarter 2009	Year-to-Date 2010	Year-to-Date 2009
Basic Earnings Per Share				
Numerator:				
Income (loss) available to common shareholders	$ 32,044	$ (412,965)	$ 26,890	$ (550,262)
Denominator:				
Weighted-average shares outstanding	275,956	274,194	275,170	272,554
Basic earnings (loss) per share	$ 0.12	$ (1.51)	$ 0.10	$ (2.02)
Diluted Earnings Per Share				
Numerator:				
Income (loss) available to common shareholders	$ 32,044	$ (412,965)	$ 26,890	$ (550,262)
Preferred stock dividends	9,210	14,931	27,898	15,417
Net earnings (loss) attributable to Office Depot, Inc.	$ 41,254	$ (398,034)	$ 54,788	$ (534,845)
Denominator:				
Weighted-average shares outstanding	275,956	274,194	275,170	272,554
Effect of dilutive securities:				
Stock options and restricted stock	6,129	5,475	6,961	2,985
Redeemable preferred stock	73,703	70,000	73,667	24,616
Diluted weighted-average shares outstanding	355,788	349,669	355,798	300,155
Diluted earnings (loss) per share	N/A	N/A	N/A	N/A

Following the issuance of the redeemable preferred stock in 2009, basic earnings per share is computed after consideration of preferred stock dividends. Diluted earnings per share is based on earnings before preferred stock dividends, but after assumed conversion into common stock unless such computation results in a number that is less dilutive. The diluted share amounts are provided for informational purposes, as basic earnings (loss) per share is the most dilutive for the periods presented.

The preferred stock dividends payable on April 1, 2010, July 1, 2010 and October 1, 2010 were paid in cash. Prior dividends were paid in-kind and a separate determination of fair value above the stated dividend rate was required for those periods. The valuation reduced basic earnings per share in the respective periods, but because the company reported losses, was antidilutive in the diluted earnings per share calculation and therefore not applicable. Shares of redeemable preferred stock have certain participation rights with common stock. A two class security earnings per share presentation will be provided for any period in which these rights impact the earnings per share calculation.

Awards of options and nonvested shares representing approximately 13.2 million and 13.5 million additional shares of common stock were outstanding for the third quarter 2010 and year-to-date 2010, respectively, but were not included in the computation of diluted earnings per share because their effect would have been antidilutive. For weighted average shares purposes, no tax benefits have been assumed in jurisdictions with valuation allowances.

Note H Division Information

Office Depot operates in three segments: North American Retail Division, North American Business Solutions Division, and International Division. The following is a summary of our significant accounts and balances by segment (or Division), reconciled to consolidated totals.

	Sales			
	Third Quarter		Year-to-Date	
(In thousands)	2010	2009	2010	2009
North American Retail Division	$ 1,280,081	$ 1,288,304	$ 3,728,520	$ 3,850,749
North American Business Solutions Division	841,824	880,351	2,492,678	2,662,625
International Division	777,812	860,552	2,449,964	2,565,238
Total	$ 2,899,717	$ 3,029,207	$ 8,671,162	$ 9,078,612

	Division Operating Profit			
	Third Quarter		Year-to-Date	
(In thousands)	2010	2009	2010	2009
North American Retail Division	$ 29,662	$ 35,111	$ 111,288	$ 103,364
North American Business Solutions Division	25,073	21,294	59,328	76,902
International Division	29,670	34,177	90,171	55,835
Total	$ 84,405	$ 90,582	$ 260,787	$ 236,101

A reconciliation of the measure of Division operating profit to consolidated earnings (loss) before income taxes is as follows:

	Third Quarter		Year-to-Date	
(In thousands)	2010	2009	2010	2009
Total Division operating profit	$ 84,405	$ 90,582	$ 260,787	$ 236,101
Charges, as defined in Note E		(40,077)		(195,139)
Unallocated general, administrative and corporate expenses (excluding Charges)	(76,092)	(83,301)	(224,567)	(232,144)
Interest income	2,513	24	3,493	1,936
Interest expense	(6,093)	(17,242)	(40,456)	(51,905)
Miscellaneous income (expense), net	11,189	9,369	21,969	6,222
Earnings (loss) before income taxes	$ 15,922	$ (40,645)	$ 21,226	$ (234,929)

Our Condensed Consolidated Balance Sheets as of September 25, 2010, December 26, 2009 and September 26, 2009 reflect a goodwill balance of approximately $19.4 million, all of which is associated with our North American Business Solutions Division. The gross amount of goodwill and the amount of accumulated impairment losses as of September 25, 2010 are provided in the following table:

(Dollars in thousands)	North American Retail Division	North American Business Solutions	International Division	Total

		Division		
Goodwill	$ 1,842	$ 367,790	$ 863,134	$ 1,232,766
Accumulated impairment losses	(1,842)	(348,359)	(863,134)	(1,213,335)
	$	$ 19,431	$	$ 19,431

The balance and components of goodwill have remained constant since December 26, 2009.

Note I Employee Benefit Plans

Long-Term Incentive Plan

In April 2010, shareholders approved an amendment to our Amended Long-Term Incentive Plan which allowed the company to implement a one-time voluntary stock option exchange for eligible employees. The fair value exchange was completed on June 8, 2010 with the tender of approximately 3.8 million shares of eligible options in exchange for approximately 1.4 million shares of newly-issued options. No additional compensation expense resulted from this exchange. The new options have an exercise price of $5.13, which was the closing price of Office Depot, Inc. common stock on June 8, 2010, and generally will vest over three years.

Pension Disclosures

The components of net periodic pension cost for our foreign pension plan are as follows:

	Third Quarter		Year-to-Date	
(In millions)	**2010**	**2009**	**2010**	**2009**
Service cost	$	$	$	$
Interest cost	2.7	2.4	7.8	6.7
Expected return on plan assets	(2.1)	(1.7)	(5.9)	(4.8)
Net periodic pension cost	$ 0.6	$ 0.7	$ 1.9	$ 1.9

The pension plan was part of an entity acquired in 2003. The plan was curtailed and frozen in 2008 and no future service cost will be recognized. The purchase and sale agreement included a provision whereby the seller is required to pay to the company an amount of unfunded benefit obligation as measured based on certain 2008 data. The company is in arbitration to resolve the amount to be received from the seller. We currently cannot predict the outcome of this matter. The after-tax effect of any payment from the seller will be recognized as a credit to income when all associated uncertainties are resolved.

For the year-to-date 2010 period, we have contributed approximately $4 million to the pension plan. Every three years, the company meets with trustees to establish future funding targets with the intent of reducing the unfunded status of this plan. Based on the current funding arrangement, the company expects to contribute approximately $5 million to the pension plan during 2010. However, this amount could change if a new agreement is reached with the trustees during 2010.

Note J Income Taxes

The 2010 third quarter and year-to-date tax benefits have been restated to reflect the March 2011 denial of the company s 2010 net operating loss carry back claim. This restatement reduced the third quarter and year-to-date tax benefits by $22.2 million, and $28.7 million, respectively, primarily from a change in the previously reported estimated annual effective tax rate (the AETR) for 2010. The tax accounting method change for repair and maintenance expenses adopted in the third quarter of 2010 will now be included as a part of the net operating loss carryforward that will be available to reduce taxes payable over a twenty-year period.

The income tax benefit for the third quarter and year-to-date September 25, 2010 includes benefits from the settlement of certain tax positions. That tax settlement also resulted in the reversal of previously accrued interest expense related to these positions. The following table summarizes the significant components of book income tax (benefit) expense for the respective periods.

	Third Quarter		Year-to-Date	
(In millions)	**2010**	**2009**	**2010**	**2009**
Settlements and filing adjustments	$ (32.4)	$ 3.3	$ (33.2)	$ 8.1
Valuation allowances		321.6	(12.8)	326.2
Tax at AETR for the period	7.8	(5.5)	3.3	(69.0)
Impact of change in AETR	(0.1)	39.0	10.2	37.0

Total income tax (benefit) expense	$ (24.7)	$ 358.4	$ (32.5)	$ 302.3

In addition to the settlement of tax positions that impacted the AETR for the third quarter of 2010, approximately $7 million was offset against other tax-related accounts and had no impact on earnings.

During the third quarter of 2009, the company recognized $321.6 million of valuation allowances following an accumulation of negative evidence including reaching or nearing cumulative negative pre-tax results in certain jurisdictions for the previous 36 months during that period. The total valuation allowance recorded included $279.1 million related to domestic deferred tax assets and $42.5 million related to foreign deferred tax assets and reflects both the significant restructuring activities the company has undertaken, as well as the downturn in overall performance. The recording and ultimate reversal of valuation allowances requires significant judgment associated with past and projected performance. The existence of significant valuation allowances also results in volatility in the periodic tax provisions, as has been experienced by the company. The change in AETR during the third quarter of 2009 also resulted in a $39 million charge to reverse benefits recognized during the first half of the year.

The company is exploring the feasibility of potential international tax and business restructuring activities, that along with continued positive operating performance in the relevant jurisdictions, may allow removal of certain additional foreign valuation allowances sooner than in the U.S. This may occur in the near term, possibly within the next twelve months. It is also possible that the company may not be able to implement its tax planning strategy and related business restructuring. Until all significant valuation allowances are removed, the company likely will experience continued volatility in the effective tax rate.

We file a U.S. federal income tax return and other income tax returns in various states and foreign jurisdictions. With few exceptions, we are no longer subject to active U.S. federal, state and local, or non-U.S. income tax examinations for years before 2006. Our U.S. federal filings for the years 2006 through 2009 are under varying stages of routine examination, and it is reasonably possible that audits for some of these periods will be closed prior to the end of 2010. Additionally, the U.S. federal tax return for 2010 is under concurrent review. Significant international tax jurisdictions include the U.K., the Netherlands, France and Germany. Generally, we are subject to routine examination for years 2001 and forward in these foreign jurisdictions, and it is reasonably possible that certain of these audits will close within the next twelve months. Audit activity or settlements within the next twelve months could result in a decrease of as much as $76 million or an increase of as much as $8 million to our accrued uncertain tax positions. Additionally, we anticipate that it is reasonably possible that new issues will be raised or resolved by tax authorities that may require changes to the balance of unrecognized tax benefits, however, an estimate of such changes cannot reasonably be made at this time.

Note K Fair Value Measurements

The company applies authoritative accounting guidance for fair value measurements of financial and nonfinancial assets and liabilities. This guidance defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The related rules provide the following hierarchy for measuring fair value:

Level 1: Quoted prices in active markets for identical assets or liabilities.
Level 2: Observable market based inputs or unobservable inputs that are corroborated by market data.
Level 3: Significant unobservable inputs that are not corroborated by market data. Generally, these fair value measures are model-based valuation techniques such as discounted cash flows or option pricing models using our own estimates and assumptions or those expected to be used by market participants.

Foreign currency contracts are valued at amounts receivable or payable to terminate the agreements at the reporting date and are based on observable market data for similar assets and liabilities. The carrying amounts of trade and other accounts receivable, trade and other accounts payable and other accrued expenses approximate fair value because of the short maturity of those instruments.

Fair value estimates may be required to measure certain assets and liabilities on a nonrecurring basis for asset impairments and exit cost valuations.

The following table summarizes the company s financial liabilities measured at fair value on a recurring basis:

(In thousands)	September 25, 2010			
		Fair Value Measurement Category		
	Total	Level 1	Level 2	Level 3
Liabilities:				
Foreign exchange contracts	$ 304	$	$ 304	$

The company records its senior notes payable at par value, adjusted for amortization of a fair value hedge which was cancelled in 2005. The fair value of the senior notes indicated in the following table was determined based on quoted market prices.

(In thousands)	September 25, 2010		December 26, 2009		September 26, 2009	
	Carrying Value	Fair Value	Carrying Value	Fair Value	Carrying Value	Fair Value
$400 million senior notes	$ 400,093	$ 393,480	$ 400,172	$ 345,966	$ 400,198	$ 334,500

Note L Derivative Instruments and Hedging Activity

As a global supplier of office products and services, we are exposed to risks associated with changes in foreign currency exchange rates, commodity prices, and interest rates. Our foreign operations are typically, but not exclusively, conducted in the currency of the local environment. We are exposed to the risk of foreign currency exchange rate changes when we make purchases, sell products, or arrange financings that are denominated in a currency different from the entity s functional currency. Depending on the settlement timeframe and other factors, we may enter into foreign currency derivative transactions to mitigate those risks. We may designate and account for such qualifying arrangements as hedges. Gains and losses on these cash flow hedging transactions are deferred in accumulated other comprehensive income (OCI) and recognized in earnings in the same period as the hedged item. Transactions that are not designated as cash flow hedges are marked to market at each period with changes in value included in earnings. Historically, we have not entered into transactions to hedge our net investment in foreign operations, but may in future periods.

We also are exposed to the risk of changing fuel prices from inbound and outbound transportation arrangements. Some transportation contracts may provide for specific identification