



Individual tax alert

Belgium

Recharged stock option costs are not deductible says Brussels Court of Appeal



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In April 2010, the Brussels Court of First Instance rejected the deduction of stock option costs insofar as they are related to capital losses on shares recharged by a foreign affiliate to the Belgian employer of the beneficiary.

The Brussels Court of Appeal has rejected the appeal lodged by the taxpayer in its decision dated 25 June 2014.

The technical reasoning of the Court of Appeal can be summarised as follows:

- capital losses on shares are disallowed based on an explicit provision in the Income Tax Code;
- this provision not only refers to capital losses in the hands of the Belgian shareholder but also to capital losses incurred abroad by the foreign shareholder and recharged to a Belgian entity. Stated differently, a recharge does not alter the nature of the underlying cost;
- the recharged capital loss cannot be deducted as a salary cost because there is a specific provision in the Income Tax Code that disallows this specific cost.

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