

Global Rewards Update: Belgium – availability of corporate tax deductions

October 2014

Background

Although the individual tax and social security treatment of share options is explicitly provided for in Belgian legislation, this is not the case for the corporate tax treatment of share option plan expenses recharged by a foreign parent entity to their Belgian subsidiaries.

Case law: 'capital loss on shares' is not deductible

In a case recently presented to court, a Belgian subsidiary had considered the entire amount of share option plan expenses that were recharged to it by its South African parent company, as tax deductible. Two types of expenses relating to share option plans were recharged to the Belgian subsidiary:

- 1) Administrative expenses, such as overhead costs for the preparation of the plan, consultant, management costs and transaction costs; and
- 2) The capital loss incurred by the South African company, i.e. the *negative difference* between the exercise price at which the Belgian employees exercised the share option and the acquisition price that the South African company paid for the underlying shares.

The deductibility of the first category of expenses is explicitly recognised under Belgian legislation. However, there is some disagreement regarding the second category of expenses and, contrary to general expectations, the Brussels Court of Appeal agreed with the tax authorities' position that the capital loss on shares is not deductible.

Deloitte view

- Companies should take this decision into consideration when recharging to Belgium subsidiaries of overseas parent companies.
- Where a company recharges (or plans to recharge) a 'loss on shares' (relating to share options or other similar equity plans) to Belgium, we recommend that further guidance be sought from a tax advisor.

People to contact

For assistance with these issues, or any other issue related to the operation of your global equity plans, please contact your usual Deloitte adviser or email us at globalshareplans@deloitte.co.uk, and an adviser will contact you.

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