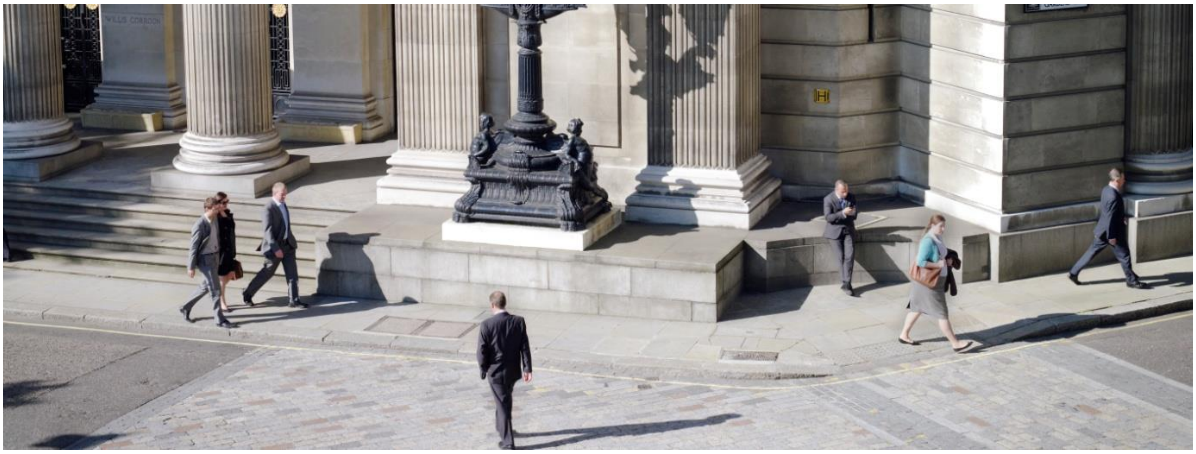
Recent legislative updates



This month's issue addresses recent tax and legal changes in various jurisdictions, namely:

- *United Kingdom*— Changes to compliance for employee share plans
- *Belgium*— Court of Appeals confirms 2010 court decision on deductibility of stock option awards

Country summaries

For a more comprehensive discussion, please see *Country Discussions* starting on page 2.

United Kingdom

Changes to compliance for employee share plans

The Finance Act 2014 received Royal Assent on July 17, 2014. As a result, major changes have been introduced to the annual reporting requirements for employee share plans. This includes compulsory online registration of employee share plans and the electronic filing of annual returns. More information than ever before will need to be reported within the new templates, creating further complexity and cost to the employer. Other developments include the introduction of self-certification for tax-advantaged share plans (replacing the formal HMRC approval procedures) and changes to the taxation of share awards provided to internationally mobile employees. Further detail on these changes will be provided in the September newsletter.

Belgium

Court of Appeals confirms 2010 court decision on deductibility of stock option awards

In July 2014, The Court of Appeals of Brussels confirmed an original 2010 ruling by the Court of First Instance of Brussels that did not allow a South African parent company to deduct the amount charged back to its Belgian subsidiary. This case was unique in that the invoices received by the Belgian subsidiary indicated that the shares had experienced a capital loss. This ruling was important for two reasons. First, it confirms that the equity incentive related expenses that are charged back by foreign headquartered companies to their Belgian subsidiaries are in principle deductible under article 49 of the ITC. Second, where such invoiced expenses include capital losses on shares (or other expenses where the deduction is explicitly prohibited by the ITC), they may not be tax deductible.

Country discussions

Belgium

Court of Appeals confirms 2010 court decision on deductibility of stock option awards

Historically, the general view in Belgium is that equity awards charged back by a foreign parent to a Belgian subsidiary should be tax deductible provided that the costs do not qualify as a capital loss on shares. A capital loss on shares will typically not arise in the context of equity awards unless the Belgian employing entity actually held the shares underlying the award. Therefore, where a foreign parent company issues the shares to the employees of the Belgian subsidiary it has generally been accepted that the chargeback does not qualify for a capital loss and a deduction is available provided all other requirements for a deduction are met.

In 2010, PwC reported on a case in Belgium that involved a South African parent company that granted stock option awards to employees of its Belgian subsidiary. When the employees exercised their options, the parent company charged back the difference between the cost of the shares to the parent company and the exercise price. The Belgian tax authorities' argued that this difference was not deductible and should be regarded as a capital loss on shares, despite the fact that the shares had never been held by the Belgian subsidiary. The court confirmed the view of the tax authorities. However, this case was unique in that the invoices received by the Belgian subsidiary from the parent in respect of the stock option costs actually mentioned that they related to a loss on shares.

The company appealed the decision and in July 2014 the Court of Appeals of Brussels confirmed the original 2010 ruling by the Court of First Instance of Brussels. The Court of Appeals did not challenge the professional character of the expense (article 49 of Income Tax Code (ITC)) but, ignoring the fact that this expense was a capital loss did not alter the nature of such expense for the Belgian company. On that basis, the Court of Appeal confirmed that the expense was not tax deductible for the Belgian employer.

The decision is important for two reasons. Firstly it confirms that the equity incentive related expenses that are charged back by foreign headquartered companies to their Belgian subsidiaries are in principle deductible professional expenses under article 49 of the ITC. Secondly, where such invoiced expenses include capital losses on shares (or other expenses where the deduction is explicitly prohibited by the ITC); they may not be tax deductible.

It is still the view of many tax practitioners in Belgium (including PwC-Belgium) that there are arguments based on Belgian GAAP that no capital losses on shares have been realized by the Belgian subsidiary if the shares have never been booked in its financial statements. As the Belgian tax authorities in this particular case stressed that the invoices received by the Belgian subsidiary in respect of the costs actually mentioned that they related to a loss on shares, it is recommended that companies check the wording of their invoices and recharge agreements in order to minimize the risk of the tax authorities denying a corporate tax dedicator for equity plan costs.

Let's talk

For more information about any of these developments, please feel free to contact any of our team members listed below.

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