

Supreme Court: cash bonus paid for the cancellation of conditionally granted share rights is tax-deductible

On Friday, October 9, 2026, the Supreme Court rendered judgment in proceedings concerning the interpretation of the deduction limitation in Section 10(1)(j) CITA 1969. This provision disallows the deduction of costs relating to the issue or grant of own shares, options on own shares, profit-sharing certificates or comparable rights. It is often referred to as the deduction limitation for 'employee stock options', but its scope is broader, as it also applies to shares and options granted to third parties.

The case and the dispute

In 2013 and 2014, the parent company of X BV granted five employees of X BV conditional rights to shares in the capital of the parent company. If they remained employed for four years after the conditional grant and certain performance conditions were met, they would become entitled to a fixed number of shares.

In 2015, part of the shares in the parent company were sold to a third party. The new shareholder wanted to keep the remaining shares off the market and therefore offered the five employees a 'cash bonus' in exchange for cancelling their conditionally granted rights to shares. This lump-sum payment was not dependent on continued employment, performance or any condition other than the cancellation of those rights. The employees accepted the offer, and the cash bonuses were paid in 2016 and 2018. In retrospect, it became apparent that the employees would not have met the performance conditions applicable to the conditional share rights.

X BV sought to recognize a provision for the cash bonuses in 2015 and deduct the corresponding expense. The issue in dispute was whether recognition of the provision was disallowed by the deduction limitation in Section 10(1)(j) CITA 1969, as a provision cannot be recognized for tax purposes in respect of non-deductible expenditure.

The judgment of the Supreme Court

The Supreme Court ruled that, in this case, there had not yet been an issue or grant of shares, or a grant of option rights on shares, within the meaning of Section 10(1)(j) CITA 1969. The deduction limitation therefore does not apply, meaning that a tax-deductible provision could be recognized for the cash bonuses in 2015.

In reaching this judgment, the Supreme Court referred to case law predating the introduction of Section 10(1)(j) CITA 1969. Under that case law, a tax deduction could be taken into account in respect of shares or option rights granted to employees. As regards the point in time at which that liability could be recognized, the Supreme Court referred to Sections 6:21 and 6:22 of the Dutch Civil Code. Accordingly, where the grant of the rights was subject to a condition precedent, the deduction could be recognized only once that condition had been satisfied.

According to the same case law, any subsequent change in the value of those rights does not affect the company's taxable profit. The legal relationship between the holder of share options and the company is regarded as sufficiently similar to that of a shareholder for subsequent changes in value to fall outside the scope of the company's taxable profit. This is also referred to as a 'pseudo-shareholding', a doctrine relevant to the participation exemption. Pseudo-shareholding arises only when the option holder's

rights are no longer subject to a condition precedent and are both legally and factually enforceable.

The Supreme Court has now ruled that this doctrine remains applicable and that Section 10(1)(j) CITA 1969 applies at the point in time at which, under the earlier case law, a tax deduction could have been taken into account. In the present case, no pseudo-shareholding had arisen because the employees had not yet satisfied the performance conditions. The conditional share rights had therefore not yet reached the stage at which Section 10(1)(j) CITA 1969 applied, and the cash settlement was consequently tax-deductible.

Apparently, it was not disputed in the proceedings that, if the expense was deductible, it could be recognized in 2015 by means of a provision. Because the Supreme Court ruled that Section 10(1)(j) CITA 1969 did not apply, recognition of the provision in 2015 was permitted.

Comments by KPMG Meijburg & Co

The deduction limitation in Section 10(1)(j) CITA 1969 has formed part of the CITA 1969 since January 1, 2007, but this is the first Supreme Court judgment addressing the interpretation of the provision.

Because the wording of Section 10(1)(j) CITA 1969 refers to the 'issue or grant' of shares or option rights as the event giving rise to the deduction limitation, debate arose as to when the limitation should apply. This judgment shows that the earlier doctrine remains, at least in part, relevant in determining the timing of the deduction. Section 10(1)(j) CITA 1969 applies when the grant becomes unconditional and the right is both legally and factually enforceable. Because, in the present case, the cash bonuses were granted before the conditional share rights became unconditional, the deduction limitation did not apply.

The judgment fits within the framework of Section 10(1)(j) CITA 1969. The provision was introduced following earlier case law from 1996 in which the Supreme Court had ruled that a tax deduction was allowed in respect of issued employee stock options. Because the legislator intended to disallow that deduction, it is consistent for the deduction limitation to apply at the same point in time as the deduction could have been recognized under the earlier case law. In line with the Court of Appeal, the Supreme Court also confirmed that the criteria for recognizing pseudo-shareholding remain relevant following the introduction of this deduction limitation.

It is also important to note that the statutory provision was broadened in 2009 to also cover 'stock appreciation rights', that is, rights whose value is determined mainly, directly or indirectly, by changes in the value of shares or profit-sharing certificates, where the relevant employee's remuneration exceeds € 728.000 (2026 amount). In its judgment, the Supreme Court did not provide further guidance on the scope of this specific rule or the point in time at which it applies.

If you would like to know more, please feel free to contact us or your usual Meijburg advisor.

KPMG Meijburg & Co
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