
When is interest cost incurred in view of capital reduction or dividend distribution tax-deductible?

- A cost is tax-deductible if, amongst others, it has been incurred in order to acquire or maintain income. This is the so-called 'purpose'- condition.
- If BelCo concludes a debt in order to finance a capital reduction or dividend distribution, the tax authorities sometimes argue that the interest cost aims at impoverishing BelCo. Hence, the interest cost is sometimes disallowed for corporate tax purposes.
- However, the Belgian Finance Minister has confirmed before that, as a matter of principle, interest expenses incurred to fund a capital reduction or dividend distribution should not be disallowed (*Questions & Answers*, Chamber, 2016-17, ed.. 100, 324).
- The Belgian Supreme Court does neither exclude the tax deduction of such interest expenses, be it only if BelCo demonstrates that the interest expenses as such – so explicitly not the capital reduction or dividend distribution – satisfy the 'purpose' – condition. Unfortunately, in both the Nyrstar-case (Cass., 19.03.2020) and the Duvel Moortgat - case (Cass. 31.03.2023) BelCo did not succeed in providing that evidence. Rightfully so, in both court cases, the judge emphasized that the tax authorities may not proceed to any forbidden judgment call.
- If a capital reduction intends to facilitate the personal succession planning of a shareholder being a natural person, the Court has also already disallowed the interest expenses (Ghent Court of Appeal, 26.09.2023).
- Recently, the Court of Appeal accepted the tax deduction of an interest expense (Ghent Court of Appeal, 10.12.2024). In summary: in that case, an active holding company had demonstrated that there was no valid alternative for a debt-financing. Indeed, the holding company also derived management fees from its shareholdings and if it were to sell these to finance the capital reduction or dividend distribution, the company would lose this recurring income. The mere fact that the shareholder being a natural person needed the funds to finance a private investment was of no importance.