

## CURRENCY OPTION LOSSES NOT ALWAYS DEDUCTIBLE AS TAX COSTS

Let us draw your attention to a case dealt with by the Supreme Administrative Court ("SAC") in its judgement dated 2 June 2015 (case no. **II FSK 2249/13**), where it was held that currency option losses cannot be allowed for tax purposes if the transaction was speculative.

The case involved a company engaged in manufacturing and service of power distribution and control equipment. A tax inspection held in the company found that it wrongly treated its losses on certain derivatives transactions as tax costs. The company appealed but the higher tax authority dismissed its appeal on the basis that the risks taken by the company were disproportionately higher than the protection it gained against currency depreciation.

The judicial review held by SAC centred around the issue of whether the company's derivatives losses can be said to have been incurred with a view to obtaining or securing a source of income, which is a condition of their deductibility (see Article 15.1 CIT Act). SAC stated that this condition is satisfied only if the taxpayer acts reasonably, that is his transactions have an economic purpose and are necessary to achieve real and visible business objectives and economic effectiveness. In this case, held SAC, rather than with a view to securing an exchange rate to be applied to its core business transactions, the company used currency options for exchange rate speculation and therefore cannot be permitted to deduct the resulting losses.

If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

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