

Supreme Court Will Not Hear Appeal In Stock Options Case

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On May 24 a panel of the Supreme Court of Canada (SCC) dismissed the taxpayer's application for leave to appeal the Federal Court of Appeal's (FCA) decision in *Imperial Tobacco Canada Limited v. The Queen* (2011 FCA 308), meaning that the result in the case is now final. (For the FCA's decision, see *Doc 2011-24445* or *2011 WTD 225-16*; for prior coverage, see *Tax Notes Int'l*, Nov. 28, 2011, p. 615, *Doc 2011-24406*, or *2011 WTD 225-2*. For an analysis, see *Tax Notes Int'l*, Jan. 23, 2012, p. 295, *Doc 2011-26799*, or *2012 WTD 14-16*.)

The FCA had dismissed the taxpayer's appeal in the case on November 10, 2011. *Imperial Tobacco* dealt with the deductibility of amounts paid to holders of employee stock options (that is, options to purchase shares granted to employees as part of their employment compensation) in exchange for the surrender or termination of those options. The taxpayer argued that payments to terminate these options should be deductible as a current expense, while the Canada Revenue Agency took the position that they were expenditures of a capital nature and therefore not deductible for tax

purposes. The FCA sided with the CRA, concluding that capital treatment was the appropriate result given various factors, such as:

- the fact that the termination payments were made in connection with a reorganization of the capital of Imperial Tobacco; and
- that the payments achieved a "once and for all" result of terminating Imperial Tobacco's obligations under the stock option plan.

The taxpayer then sought leave to appeal the decision to the SCC. In taxation matters, there is no automatic right of appeal to the SCC; appeals are permitted only if the SCC decides that the issue in question is one of national importance and chooses to grant the applicant permission to appeal.

Although the result in this case is to some extent dependent on the particular facts, it now seems very likely that generally, payments to terminate employee stock options made in connection with a reorganization of the payer's capital structure will be nondeductible capital expenditures. ◆

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