

New Rules for Valuing Intangible Assets in Spain

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PRACTITIONERS' CORNER

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The tax treatment of some intangible assets in Spain has been modified and presents substantial advantages. (See *Tax Notes Int'l*, Feb. 18, 2008, p. 597, Doc 2008-2042, or 2008 WTD 35-11.)

Under Act 16/2007 of July 4, 2007, Spain grants a 50 percent corporate tax credit for income derived from the rights to use and exploit patents and other intangible assets.

On February 13, 2008, the European Commission announced that this Spanish corporate tax credit designed to promote research and development is compatible with EU rules on state aid, as the tax credit applies to all companies, regardless of their size or sector.

In relation to the application of this 50 percent tax credit, the Spanish tax authorities issued a binding tax ruling (V1299-08) on June 19, 2008, to clarify which expenses must be taken into account when determining the value of intangible assets. The value of intangible assets is relevant because this tax credit may only be applied until the tax period following the year in which the value of the income was more than six times greater than the cost of the intangible assets. The intangible assets must be created by the entity applying the exemption or by a group company in a tax group.

As a general rule, the value of an asset for tax purposes is its book value with modifications mentioned in

the Spanish Corporate Tax Act. The expenses incurred in the development of an intangible asset constitute its book value. The year's expenses can only be registered as the asset's book value if the expenses are clearly individualized and allocated to one particular project or intangible asset, and there are sufficient reasons to believe in the technical and economic success of the intangible asset. Therefore, only some expenses incurred in creating an intangible asset can be registered as an increase in the value of the intangible asset being developed.

With this ruling, the Spanish tax authorities took a taxpayer-friendly position because they considered that the cost basis for tax purposes of the intangible asset, in particular when calculating the limit on the 50 percent tax credit, should take into account the intangible asset's book value (following the rules above) but also expenses incurred that may not be registered as an increase of the book value of the assets (for example, R&D expenses of the year).

The Spanish tax authorities' interpretation reduces substantially the effect of the limit to six times the value of the intangible asset, given that this value can sometimes be much higher than the intangible asset's book value. This makes the tax regime for patents and other intangible assets, in effect in Spain since January 2008, more attractive. ♦