

## New corporate income tax treatment of intangible assets and goodwill following enactment of the new Audit Law

14 September 2015

[Audit Law 22/2015 of 20 July 2015](#), (hereinafter, **LAC**) was published in Spain's Official State Gazette (B.O.E.) on 21 July 2015. This Law includes a relevant modification that affects the tax treatment of **intangible assets**.

[Audit Law 22/2015 of 20 July 2015](#)

As a starting point, we would recall that a distinction has traditionally been drawn between intangible assets with a **defined useful life** (e.g. patents) and those with an **undefined useful life** (e.g. goodwill).

From an accounting perspective, the LAC has amended **Article 39.4 of the Commercial Code** for financial statements corresponding to **annual** periods starting **as of 1 January 2016**. This modification relates to intangible assets, specifically to goodwill, and introduces two important concepts:

- **Intangible assets recognized in the accounts will fall into a single category:** intangible assets with a **defined useful life**. However, a new subcategory is created, "**intangible assets whose useful life cannot be reliably estimated**", these will be amortized in 10 years, unless a different period is provided for in another law.
- **Goodwill** may be included as an asset when it is acquired in "onerous basis" (i.e. pay for it) and, **in principle, will be amortized in 10 years**.

This amendment has tax implications for **articles 12 and 13 of Corporate Income Tax Law 27/2014**.

Article 12(2) is now worded as follows: "*Intangible assets will be amortized having regard to their useful life. When the useful life cannot be reliably estimated reliably, amortization will be deductible up to a maximum annual limit of the twentieth part of its value.*"

*Goodwill amortization will be deductible up to a maximum annual limit of the twentieth of its value*".

**Therefore, as with any other intangible asset the useful life of which cannot be reliably estimated, goodwill may be amortized subject to an annual limit of 5%.**

Consequently, it is eliminated the Article 13(3), regarding the deductibility in 20 years of the undefined life intangible asset's acquisition price, including the goodwill, by way of a value tax adjustment that did not require its accounting register.

Hence, the new tax regime for these intangible assets, the amortization expense must be recognized for accounting purposes in order to be tax deductible.

The difference between the accounting percentage (in principle, 10%), and the tax percentage (5%) will call for **adjustments to the** Corporate Income Tax base.

**This new tax regime will enter into force for tax years starting from January 1<sup>st</sup>, 2016.**

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