C'M'S' Albiñana & Suárez de Lezo

TAX ALERT

# BALANCE SHEET STEP-UP FOR TAX PURPOSES
## What you need to know

**Act 16/2012 on the adoption of various tax measures to consolidate public finances and stimulate economic activity. (Article 9)**

Dear reader,

2013 has begun with a great many new developments of which we will continually keep you informed.

This first alert is exclusively dedicated to one new development in particular due to its special nature, its tax and commercial impact, and the relatively brief lapse of time given by the rule to make and enforce decisions. It concerns the adjustment of balance sheets provided by Article 9 of Act 16/2012.

- It is the first to be offered since 1996.
- Interesting tax and commercial effects, since the amortisation of assets applied from the first tax year as of 1 January 2015 shall take into account the adjusted value and the sum of revaluation would be paid into the "Act 16/2012 of 27 December revaluation reserve" account which would be integrated into company equity.
- Short decision-making window, since value adjustments must be made between the closing date and the approval of the first balance sheet closed as of 28 December 2012. This would typically be that of 31 December 2012, to be approved on 30 June 2013.

The tax impact of the revaluation which, without doubt, will be one of the key elements in the decision making process, is a complex calculation which must be performed per asset, taking into consideration past amortisations and the dates thereof, the market value of the assets, estimated income and the company's future taxable bases, etc.

We at the tax department of CMS Albiñana & Suárez de Lezo have already prepared the tools that will allow us to assist you in these calculations as efficiently as possible, and we are on hand to work together with you in this process.

We hope that you find this brief alert to be interesting, useful and practical.

Sincerely yours,
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### 1. What is this?

Spanish Act 16/2012 allows payers of Corporate Income Tax to adjust their balance sheet, i.e. step-up the value of certain assets on the balance sheet for tax and accounting/commercial law purposes.

### 2. What would be the results of this?

Essentially:

- As regards taxation:

    - A 5% levy would be imposed on the value of the adjustment as calculated under this legislation.
    - Tax depreciation of adjusted assets is allowed in financial years as from 1 January 2015.

- In terms of accounting/commercial law:

    - A special reserve would be created that would form part of company equity and would thus strengthen the balance sheet.

### 3. Is the step-up efficient for tax purposes?

This must be studied on a case by case basis. A comparison of the 5% tax and the increase in deductible amortization is required.

### 4. When can the step-up be carried out? When must a decision be made?

The adjustment would made on the first balance sheet closed as from 28 December 2012 (in the majority of cases this would be 31/12/2012) and must be carried out between the balance sheet date and its date of approval (six months therefrom, commonly 30/06/12).

### 5. What assets can be stepped-up?

If the step-up is chosen, it must be for all tangible fixed assets including real estate (although excluding real estate assets held as stock), asset held under financial leasing agreements (provided a purchase option is to be executed) and administrative concessions recorded as intangible assets.

An asset-by-asset choice to undertake the step-up is available only for real estate properties.

### 6. How is the adjusted value of the asset calculated?

The calculation of each adjusted value is complex and requires revision on an individual basis. The calculation is made by virtue of the following steps: (N.B. The description and formula are simplified and must NOT be applied without attending to the particulars of each asset and case):

1) A coefficient is applied to the acquisition price of each asset according to the date of acquisition, less the tax deducted depreciation as multiplied by a coefficient depending on the moment of such depreciation.

2) The prior net value of the asset is then subtracted from the above result.

3) Another coefficient is then applied to this new result, which comprises net equity as the numerator and net equity plus total liabilities less credit rights and cash in the denominator.

A simplified form of this calculation would look like:

$$\text{Adjusted value of asset} = \text{Net equity}\ [(\text{Purchase price x coefficient} - \text{deprec. by coefficient}) - \text{asset prior net value}] \text{ x } \frac{\text{Net equity}}{+\text{ total liabilities} - \text{credit rights \& cash}}$$

Should the last balance sheet step-up taking place in 1996 (RDL 7/1006) have also been applied, the revaluation amount of said year should be subtracted from result of the formula.
The net equity/net equity + total liabilities – credit rights and cash formula is not applied if it should exceed 0.4.

The limit on revaluation of the asset is its market value.

### 7. What tax is payable as a result of the step-up?

A single levy of 5% is payable upon submission of the Corporate Income Tax return of the year in which the revaluation is carried out. It will be considered tax liability but not a CIT payment nor a deductable expense.

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