

Tax Costs Related to Functioning of Selected Intangible Assets

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Abstract. This article presents selected issues from tax costs related to functioning of intellectual property rights. This topic is especially important in the era of economy based on knowledge. In the first part of the considerations the focus was set on showing the definition of the concept of intangible assets in both domestic and foreign literature, then the components of intellectual property rights and their amortization according to tax law were discussed. The tax law allows amortization of intangible assets. Most of the companies using intangible assets amortize trademarks. To start recognizing depreciation of costs, one needs to face a number of other requirements for the recording of intangible assets. The company must acquire non-tangible assets. They can not produce them on their own and later depreciate them, because the cost of depreciation of intangible assets could not be included in operating expenses. Conditions of depreciation of cost is the fact, that the intangible assets are owned by the company. They can not be a subject to a lease contract. Entrepreneurs often use intangible assets to distinguish their activities from other companies. After detailed presentation of the issue of intangible assets, the conclusions from the analysis are presented.

Keywords: Intellectual Property Law, Depreciation, Costs.

1 Aim and Methodology of Introducing the Topic of Intangible Assets

Business units conducting economic activity in Poland undergo tax jurisdiction in terms of earned income. Depending on the legal form of the business conducted by the entrepreneur, tax law provides various tax structures for taxation of positive financial results. Particularly noteworthy are tax costs, which must be in a reliable and uncertain manner provided in the settlement of the financial result. Tax law written in:

- Act on corporate income tax,
- Act on personal income tax,

treats costs very restrictively, often not allowing the taxpayer to include certain expenses into the category of costs. The taxpayer must carefully calculate income tax

in order to properly meet his obligations in terms of costs. The economic category - costs - concerns mainly the company's fixed assets. Expresses their consumption in a time perspective, which is usually settled annually. Among all assets, non-material assets deserve recognition, which are increasingly used in the course of business.

The aim of the article is to present a very wide issue of tax costs related to the functioning of selected components of intangible assets. Entrepreneurs are primarily interested in the use of intellectual property rights, because to a large extent, it allows them to achieve a competitive advantage and at the same time to achieve tax benefits. It allows one to combine business goals with tax goals. However, this topic is very difficult to apply in practice due to complicated tax law regulating these issues. The applied research methods in the article include:

- literature studies concerning the issues of intellectual property rights and tax regulations relating to them,
- a descriptive method used to identify tax structures relating to the costs of amortization of intellectual property rights.

The article presents the legal status on the day 01.06.2018

2 The Concept of Intangible Assets and their Importance in the Resources of the Enterprise

Intangible assets are increasingly used by large business entities to strengthen their competitive advantage. The fact of having such resources forces them to thoroughly analyze tax regulations in order to limit the tax risk resulting from inadequate records of intangible assets and, therefore, unreliable presentation of depreciation costs. Many economists emphasize the importance of intangible assets in business. Urbanek emphasizes that enterprises that want to create significant and lasting value for shareholders or other interest groups must pay attention not only to short-term financial results, but also to create business activity, which is primarily determined by intangible assets [8].

In foreign literature, the term intangible assets is often used to describe intangible assets, which are understood as assets that are not monetary and physical substance [1]. In this regard, they also speak about Ch. Chareonsuk and Ch. Chansa-ngavej, who say that during the industrial revolution the emphasis was placed on material assets, whereas now interest has turned to non-material assets [2].

In turn, E. Stańczyk-Hugiart and S. Stańczyk also perceive sources of competitive advantage in intangible assets. In addition, they believe that they have benefited from this in the form of quick access to these assets [6].

A. Jarugowa and J. Fijałkowska on the pages of their study believe that the enterprise's existence depends primarily on how to collect, generate, process and use information. According to these economists, the most important is the fact that information on intangible assets is quickly used [3].

The fact of having such resources forces them to thoroughly analyze tax regulations in order to limit the tax risk resulting from inadequate records of intangible assets and, therefore, unreliable presentation of depreciation costs. Modern publications by G.

Michalczuk from the University of Bialystok also talk about the importance of intangible assets. They indicate that the economic success achieved by economic units is not dependent on traditional resources. To a large extent, intangible assets are responsible for the well-being of business, which is the consequence of the existence of knowledge and its embodiment. It considers non-physical assets as knowledge-based resources that are unique and capable of generating potential benefits, as well as additional resources controlled or controlled by the enterprise. Among intangible assets, the author distinguishes two groups:

- individually identifiable, i.e. they have a separate economic and legal existence, so-called "hard" resources being the subject of intellectual property, e.g. patents, utility models, software, databases and other rights, e.g. rights to radio frequencies,
- individually identifiable, in the sense of their separation from the enterprise, i.e. "soft" resources, eg assets relating to people, assets related to processes, assets relating to relationships [5].

As it results from the several intangible asset definitions presented here, they are increasingly important in creating the value of the enterprise. The greatest ability to generate economic benefits for a business entity are assigned to them [4].

Analysed literature as well as economic practice shows that intangible assets are increasingly important in the course of business. Particularly noteworthy are intellectual property rights, which in a very visible way allow one to improve business, as well as tax savings. To do this it is necessary to properly recognize such assets, their depreciation, which will ultimately affect the financial result for taxation. As a result, business owners are interested in purchasing intellectual property rights that are the product of human labour for business purposes.

The purchase of such a right involves large financial benefits due to high depreciation costs, which are included in the tax-deductible costs.

However, before the issue of tax costs of selected intangible assets is presented in this article, it is necessary to discuss their substance in the light of tax law.

The doctrine of law treats intellectual property very carefully. D. Zak writes in his arguments that this is a very broad concept, which includes in its frames objects of protection resulting from copyright and industrial property, which may become the result of products on the market [12]. The doctrine of the law of intellectual property treats:

- in a narrow sense, which is limited to works as copyright objects [10],
- in broad terms we talk about industrial property rights, ie: inventions, industrial designs, rationalization projects, geographical indications, topographies of integrated circuits, utility models, trademarks [11].

In international terms, the concept of intellectual property has been precisely defined in the Agreement on Trade-Related Aspects of Intellectual Property (Agreement, 1994). In accordance with this legal act, intellectual property resources include: works in the sense of copyright, data sets (databases), computer programs, trademarks, geographical indications, industrial designs, patents, designs (topographies) of integrated circuits.

3 Discussion about the Intellectual Property Law in the Light of the Tax Law

In the light of tax law, i.e. the Personal Income Tax Act and the Corporate Income Tax Act, intellectual property rights are recognized in non-current assets, in particular intangible assets. The aforementioned acts, however, do not contain a literal definition of the term in their content. The Act on Income Taxes speaks only of amortization of purchased goods suitable for commercial use on the day of their acceptance for use:

- a cooperative ownership right to a dwelling,
- cooperative right to business premises,
- rights to a detached house in a housing association,
- copyright or related property rights,
- licenses,
- rights specified in the Act of 30 June 2000 - Industrial Property Law,
- value being the equivalent of obtained knowledge-related information in the field of industrial, commercial, scientific or organizational (know-how),
- with an anticipated period of use longer than one year, used by the taxpayer for needs related to his business activity or given by him for use under a license agreement (sublicense), lease contract or a specific contract. In turn, the second act - Intellectual property law to intellectual property rights qualifies: patents, protection law for: utility model, trademark; the right to register from an industrial design.

An additional requirement that introduces tax law is the value of a given intellectual property right, which should be above PLN 10,000, which is related to the subsequent depreciation of this asset. In order to be able to amortise intellectual property rights, an enterprise must purchase them from another entity on the market. This is an obligatory condition that imposes law. Therefore, one cannot create such a right on his own and then depreciate it. After purchasing the listed rights, we must proceed to the correct determination of the initial value. At a value of less than PLN 10,000, taxpayers can make depreciation write-offs or one time in the month of putting into use an intangible asset or in the following month. Legal regulations provide depreciation deductions from the initial value of a given intellectual property right, from the first month following the month in which the given intangible asset was entered in the register. Thus, the taxpayer can choose the method of calculating amortization write-offs and their frequencies, eg monthly, quarterly, once a year. It is assumed that depreciation charges are made until the amount of depreciation write-offs is equated with their initial value. It should be emphasized that certain intellectual property rights, eg trademarks, patents, utility marks, even though they belong to entrepreneurs, their depreciation is possible in the case of obtaining legal protection of a given intellectual property right in the Patent Office of the Republic of Poland or the EU Patent Office. The depreciation period is described in detail in art. 16m paragraph 1 of the Corporate Income Tax Act, ie:

- from licenses (sublicenses) to computer programs and from copyrights - 24 months;
- from the license to display films and the broadcasting of radio and television programs - 24 months;
- from incurred costs of completed development works - 12 months;
- from other intangible assets - 60 months.

The mentioned provisions do not separately deal with intellectual property rights with a specific depreciation rate. Entrepreneurs most often take a rate of 20% per annum, booking depreciation write-offs for 60 months. This is the most advantageous solution, because faster deduction of intellectual property rights into the costs of the initial value of the intellectual property results in a lower income tax. Of course, an entrepreneur may extend the amortization period of intangible assets for any period of time. He must remember, however, that the amortization rate can only be changed from the beginning of the tax year.

4 Rules for Determining Costs Due to Intellectual Property Rights

The basic principle of tax law resulting from the adjustment is found in both laws on income tax, which provides that the costs borne by the taxpayer must have a cause - effect relationship. By transferring this to the land of intellectual property rights that are assets of a given entrepreneur, it is necessary to use them in the course of business. The mere fact of being in possession does not entitle the entity to include depreciation costs, e.g. of a trademark, patent, etc., to tax deductible costs. Since the taxpayer uses trademarks or other intangible assets, they should generate revenues. The legislator does not assume that they must appear obligatorily, however, they are desirable. It is worth noting that the possessed intangible assets must absolutely contribute to the appearance of revenues. There may be such a case where, for example. Entrepreneur from the confectionery industry will have depreciated and trademark, which identifies with quite other products eg. Furniture. If he acts as a producer and sells his products, he is identified in the market by a trademark that was created for these purposes. The Law on Industrial Property (Art. 120) says that a trademark any sign capable of being represented graphically, that such signs are capable of distinguishing the goods of one undertaking from those of other undertakings. Here stands the law of trademarks, words, designs, ornaments, combinations of colours, the shape of goods or their packaging, as well as melodies or other acoustic signals. The presented definition shows the variety of trademark characters. Each entity will therefore be entitled to use the trademark and then recognize their depreciation costs, if they will be used in the course of business. The law does not prohibit the possession of many trademarks, so the trader will be able to purchase and then register several protection rights for trademarks.

The first tax expense, which is undoubtedly related to the intellectual property right in the form of a trademark, are expenses related to its registration. Assistance in this area is provided by patent attorneys who relieve trademark owners on many matters related to registration. For example, an entity registering a given intellectual property right must

include the following costs associated with the registration. For example, with a trademark, these are:

- activities carried out by the Patent Attorney at the request of the trademark registration company;
- for preparing a list of goods for filing a trademark for each class;
- for preparing a description of the mark;
- for developing the regulations of the trademark;
- for examining the registration capacity of the mark.

After the positive approval of the application for registration by the registration authority, a protective decision is issued for a given intellectual property right, eg a trademark for a period of 10 years. The applicant applying for registration pays a fee, which is also a tax-deductible cost. After obtaining a protection right, eg for a trademark, an entrepreneur may start to amortize it according to the principles provided for in tax law. Upon registration of the intellectual property right, it is deemed to have been produced. Intellectual property law, which is, among others the trade mark must be priced by an appraiser before entering the balance sheet. This is a condition to make tax depreciation write-offs. When determining the value of a given trademark, the following methods are used:

- cost methods (reproduction cost and replacement cost),
- market methods (based on a comparable valuation, economic value of the product or market value of the enterprise),
- income methods (the profit multiplier method, discounted cash flows) cash, license fees),
- methods based on the valuation of real options related to the brand [9].

Intellectual property rights in order to be depreciated, first must be recorded in the records of intangible assets. This state confirms that they are controlled by a company that can freely dispose them through the right of ownership.

Fulfilling these conditions with respect to intangible assets is a condition that the depreciation costs can be directly recognized in the settlement of the financial result.

The table below presents an example of simulation of the calculation of the cost of depreciation of a trademark and its impact on the financial result in the tax treatment of the enterprise.

Table 1. Simulation of the calculation of the financial result including the amortization of the trademark.

Specification	The company's financial results
Value of the trademark	1.200.000,00 zł
The rate of annual depreciation	20 %
The value of annual depreciation	240.000,00 zł
Hypothetical savings due to non-payment of income tax	Tax rate 19 % tax 45.600,00 zł

The presented calculations show that the costs of depreciation of a trademark constitute tens of thousands of zlotys. In most units, the management takes what amortization rate will be applied. Maximum is 20%, however, it is possible to apply a lower rate. However, this must start from the new tax year. In the event when an enterprise does not achieve high revenues, it is reasonable to reduce the depreciation rate so that the write-off of the initial value of an intangible asset will be postponed for a period when the entity will generate large revenues. Then, it will result in lower income tax payments. An entrepreneur may have several trademarks. If all of them will be used as part of a business, it is effective in reducing your taxable income.

5 Conclusions

The presented subject matter of selected intangible assets is very important from the point of view of maximizing financial benefits. It can certainly be said that intellectual property rights provide a large field for action in reducing the tax burden. Therefore, it has a big impact on shaping the financial result of the entity. However, in order to do this, it is necessary to care about the proper determination of tax costs in terms of depreciation. Only reliable and defective presentation of the costs of amortization of intellectual property rights will allow one to reduce tax without any problems. In summary, it can be said that proper management of the operating costs of the intangible assets in question is a good way to optimize taxes.

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