

Corporate intangible fixed assets – relief for goodwill

(Lecture B1123 – 17.52 minutes)

On 21 December 2018, the Government published draft legislation as part of various important amendments to the current Finance Bill. One of them relates to a new targeted relief for goodwill and other intangible fixed assets with effect from 1 April 2019.

It is reasonable to say that, following the February 2018 consultation on the corporate intangible fixed assets regime and comments made by the Chancellor in his last Budget, these changes were widely anticipated.

The latest rules repeal S816A CTA 2009 (which denied corporation tax relief for relevant assets such as goodwill and other customer-related intangibles acquired on or after 8 July 2015) and reintroduce a limited relief for the acquisition of relevant assets on or after 1 April 2019 where a business has been acquired which includes qualifying intellectual property for use in the course of a company's trade or activities.

At the time of the Budget, the Government stated that relief would only be given for goodwill and would not be extended to customer-related intangibles. Interestingly, in what companies will undoubtedly see as a positive development, the revised code now confirms that assets such as customer information, customer relationships, unregistered trademarks and licences or other rights in respect of any of these assets are to be included.

It should be remembered that intangible fixed assets that do not fall into the relevant asset definition were not subject to the 2015 prohibition. Amortisation relief continued to be available on or after 8 July 2015 for intellectual property assets such as patents, know-how, registered designs and copyrights and this is still the case.

Where, on or after 1 April 2019, a company acquires relevant assets as part of a business acquisition, the company will be treated as having made an irrevocable election to write down the cost of such assets at a fixed rate of 6.5% per annum. However, relief may be partially restricted if the amount of the company's expenditure on qualifying intellectual property multiplied by six is less than its expenditure on the relevant assets acquired.

In other words, if the company's qualifying intellectual property expenditure is £1,000,000 and the cost of the relevant assets acquired is £9,000,000, the formula set out in the Finance Bill produces a fraction of:

$$\frac{1,000,000 \times 6 = 6,000,000}{9,000,000}$$

i.e. two-thirds. Given that this comes to less than one, only two-thirds of the company's expenditure on relevant assets will be eligible for the new writing down relief. The Government's objective is to limit the amount of expenditure on relevant assets for which the company can receive the 6.5% relief to a multiple of six times the company's expenditure on qualifying intellectual property assets.

It is worth noting that the legislation gives HM Treasury the power to amend, at a later date, both the fixed rate percentage of relief and the multiple of six, if that is thought to be necessary.

Where relevant assets are acquired other than as part of a business acquisition or where the business acquisition does not include expenditure on qualifying intellectual property, no relief is available.

Qualifying intellectual property is defined as an intangible fixed asset that meets the following two conditions:

1. It must be a patent, registered design, copyright, design right, plant breeders' right or a licence or other right which relates to any of the above (or a corresponding foreign equivalent); and
2. It must not have been acquired before 1 April 2002.

Registered trademarks are excluded from the definition of qualifying intellectual property, as is know-how if it is not protected by one of the rights listed above. Such trademarks were originally included in the scope of qualifying intellectual property at the time of the Budget announcements, but their subsequent omission has presumably come about because of the need to fund the increase in the multiplier compared to what was initially proposed.

Provisions to reinstate the FA 2015 legislation that sought to discourage tax-motivated incorporations are also included. These will apply where the transferor of goodwill is an individual who is related to the acquiring company or is a firm of which the individual is a partner.

Intangible fixed assets acquired before 8 July 2015 will not be impacted by these changes and so full relief should continue to be available for these assets.

It is intended that the revised rules will have effect in relation to accounting periods beginning on or after 1 April 2019. If a company's accounting period straddles this date, it will be treated as having ended on 31 March 2019, with a new accounting period beginning on 1 April 2019.

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