NEW RELIEFS FOR CORPORATE INTANGIBLES FIXED ASSETS

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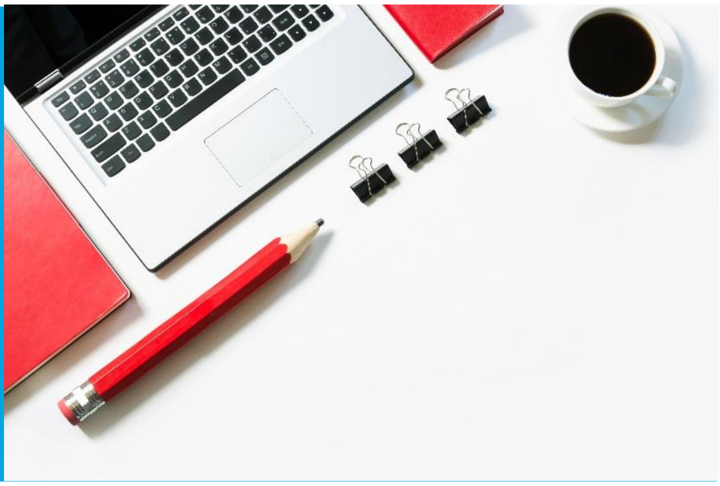

Alongside Finance Bill 2018-19, the government has published the consultation responses and its updated proposals for reform of the UK's tax regime for corporate intangible fixed assets.

Background

The UK government issued a consultation document on 19 February 2018 seeking views on targeted reforms to the intangible fixed assets (IFA) regime that would simplify its administration and improve its international competitiveness. The consultation explored the possibility of change in several areas, including:

- The exclusion of intangible assets created or acquired prior to 1 April 2002 from the IFA regime - ('pre FA-02 assets')
- The removal of a restriction introduced in July 2015 on the tax relief available on acquisition of goodwill
- The application of the de-grouping charge provisions within the IFA regime ('the IFA de-grouping regime')
- The rate at which amortisation relief is given by election as an override to the accounting treatment ('elective fixed rate relief').

Outcome of the consultation

Respondents welcomed potential simplification of the IFA regime. In particular, they welcomed the removal of the 2015 restriction on the relief for acquisition of goodwill and the exclusion of 'pre-FA 02 assets' from the regime.

There was significant support for aligning the IFA de-grouping regime with the de-grouping provisions in the chargeable gains legislation, a regime that is more flexible for businesses. Changing the rate of fixed rate amortisation relief was not a priority.

Pre FA-02 assets

The UK government is not proposing to end the exclusion of 'pre-FA02 assets' from the regime. The exclusion has limited impact on investment as it does not affect most valuable assets. Further, there is no desire to disadvantage businesses relying on the current treatment, such as those with accumulated losses.

Possible transitional measures to mitigate potential unfairness would add further unwanted complexity to the regime.

Amortisation of goodwill

The UK government acknowledges that the absence of relief for the amortisation of goodwill is out of step with many other advanced economies. The blanket exclusion has adversely affected the UK - in particular when it comes to the acquisition of IP-intensive businesses which are often valued at a significant premium to their underlying assets. The government is, therefore, re-introducing relief for acquired goodwill that has a strong connection to IP owned by the acquired business that would itself qualify for relief under the IFA regime.

It is proposed that relief for acquired goodwill (excluding goodwill arising in a related-party incorporation) would be allowed up to the value of eligible IP in the acquired business. Eligible IP would not include customer related intangibles, which were excluded from relief alongside goodwill in July 2015.

The government will consult on the detailed legislation, with a view to introducing an amendment to Finance Bill 2018-19. If the amendment is introduced in time to meet the accelerated Parliamentary process for the Bill, the rules would apply from 1 April 2019.

The IFA de-grouping regime

The chargeable gains de-grouping rules were reformed in 2011 to enable exemption of a de-grouping charge where the disposal of the shares in a company qualifies for the Substantial Shareholding Exemption (SSE).

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This effectively rebases the assets of the business to market value on a tax-free basis. However, this reform was not extended to the IFA de-grouping charge, where complex structuring was often required to achieve the same effect.

The government acknowledges the policy motivation for the 2011 reforms applies equally to IFA assets and is legislating to better align the rules. The proposed legislation does not rebase the assets to market value, but rather treats the de-grouping charge as tax neutral where the share disposal qualifies for SSE.

It achieves this by excepting the de-grouping charge so that assets remain at their tax written down value and continue to attract relief as they did prior to the de-grouping. These rules apply to de-groupings tax events that occur on or after 7 November 2018.

Fixed rate relief

The government does not intend to make any changes to the elective fixed rate of amortisation relief, and therefore this will remain at 4% per annum.

Update

As announced in Budget 2018, corporate tax relief for goodwill is to be reintroduced, in certain circumstances, from 1 April 2019. New legislation has now been added to Finance Bill 2018/19, through an amendment at the Report stage of its journey through Parliament.

Re-introduction of relief for acquired goodwill

The proposed relief applies at a fixed rate of 6.5% per annum on cost (not by reference to the accounts depreciation, which is how the deduction works for other assets) on an amount up to 6 times the value of any qualifying intellectual property assets that have been acquired. Qualifying assets will include:

- Patents
- Registered designs
- Copyright and design rights
- Plant breeders' rights.

The updated legislation retains restrictions on amortisation of goodwill on an incorporation event, as well as certain other anti-avoidance/anti-base erosion measures.

While the new relief is a welcome move, much of the value of goodwill that is acquired in many circumstances may not be deductible. Therefore, to obtain greater clarity on their tax position and optimise the statutorily available reliefs, companies contemplating major transactions should think carefully through the valuation/purchase price allocation for the different intangible fixed assets that are purchased as part of the transaction.

It will also be vital to demonstrate how each intangible fixed asset was identified (as separate from the goodwill of an enterprise) and how the valuation of each asset was arrived at. IFRS guidance (for example, IFRS 3 guidance on business combinations) can provide helpful supporting methodologies for recognition of a wide range of assets separate from the general goodwill of the enterprise that is acquired. However, each transaction will turn on the facts, and will require careful review.

Your next steps

For further advice and information, please get in touch with your usual BDO contact or one of our specialists listed below.

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