Corporate intangible fixed assets regime consultation ATT and CIOT meetings

Large Corporate **OMB**

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The ATT and CIOT have met with HMRC to discuss potential reforms to the corporate intangible fixed assets regime.

On 19 February 2018 HMRC and HM Treasury launched a consultation on the corporate intangible fixed assets regime exploring whether there is scope for targeted, value-for-money reforms that support the regime's administration and international competitiveness.

Specific areas of the intangibles regime considered in the consultation include:

- The 1 April 2002 commencement rule, which excludes pre-April 2002 intangible assets from the regime.
- Restrictions on the relief available for the amortisation of goodwill and customer related intangibles introduced in 2015.
- The use and competitiveness of the election for a 4 per cent per annum fixed rate of relief.
- The impact of the intangible asset degrouping charge rules on mergers and acquisitions.

ATT meeting

On 20 March the ATT met with HMRC and HM Treasury representatives to specifically discuss how the intangible assets regime affects smaller companies. HMRC recognise that any changes to the regime need to work for all companies, and were happy to consider the issues which may be important to smaller businesses.

A key theme at this meeting was the complexity of the regime for small companies and their advisers. HMRC were sympathetic to the request that any future changes focus on simplifying, and not further complicating, the existing rules.

Regarding pre-2002 assets, it was noted that bringing these into the intangibles regime would be a helpful simplification. However, there would still be a requirement to separately track goodwill and customer related intangibles acquired since 2015. Any transitional rules on moving assets into the regime should be as simple as possible, with a preference for using book value of assets.

The denial of relief for goodwill amortisation was discussed in some detail, including how this may have a particularly severe impact on the smallest companies (who could, as an extreme, end up in a loss position for accounting purposes but with cash tax to pay).

While the original intention behind limiting relief for incorporation goodwill was to reduce tax motivated incorporations and level the playing field with start-up companies and unincorporated businesses, there is a concern that, combined with changes to entrepreneurs' relief, these changes may have moved things too far the other way, and that there may be instances where a commercial desire to incorporate is not followed up due to tax concerns.
HMRC indicated that, given concerns over costs to Exchequer, a high level of evidence would be required to justify any changes regarding goodwill amortisation. However, they were keen to explore innovative ideas as to how to level the playing field between different business types whilst limiting cost.

Beyond goodwill, a key area where further guidance was requested was the treatment of website costs, domain names and software, where there is currently some uncertainty as to how relief should be claimed.

CIOT meeting

On 29 March the CIOT met with HMRC and HMT. This meeting also considered the various proposals in the consultation document.

With regard to pre-FA 2002 assets, this meeting also concluded that removing this distinction would be a welcome simplification which would reduce complexity in transactions and result in greater alignment between tax and the accounts. However the extent of the simplicity achieved would, to some extent, depend upon what the

transitional rules were and it was necessary to address fairness concerns around use of capital losses and non-trading debits against gains on pre-FA 2002 assets. The meeting explored whether any new rules should include an election to enable taxpayers to choose whether or not to come within the intangibles regime for all pre-FA 2002 assets.

The restriction introduced in 2015 in relation to goodwill and customer related assets was also noted to be an unwelcome complication in the taxation of intangibles. The CIOT questioned, as they had in 2015 when the rule was introduced, the rationale around HMRC/HMT concerns about tax motivated asset deals being carried out, rather than share deals, noting the rules introduced in December 2014 around incorporations, which seemed to address the key concern.

As at the ATT meeting, HMRC and HMT emphasised that changes to the intangible assets regime must give value to the Exchequer (in terms of economic growth where there is a tax cost). HMRC and HMT also emphasised the fact that this consultation was at Stage 1 and that they remained very open to suggestions and input from stakeholders. It was noted that the aim of the intangible fixed assets regime was to support wider economic growth and investment in assets that are important to growing businesses. The final chapter of the consultation document is effectively asking how well the regime is doing this, and how it could be made to do it better.

Both the ATT and the CIOT will be submitting a response to HMRC/HMT on this consultation. These responses are due in on 11 May, so if you do have any comments you have a short amount of time to get these to us.