Corporate intangible fixed assets regime: ATT and CIOT responses

Large Corporate **OMB**

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The ATT and CIOT have responded to the consultation on reforms to the corporate intangible fixed assets regime.

The consultation, which closed on 11 May, explores whether there is scope for targeted, value-for-money reforms that would support the intangible fixed asset regime's administration and international competitiveness.

The areas covered by 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 de-grouping charge rules on mergers and acquisitions.

The ATT response can be found on the ATT website and the CIOT response on the CIOT website.

ATT response

The ATT response focuses primarily on how smaller companies are affected by the intangible fixed assets regime and the potential impact on such companies of any changes. It follows on from, and builds upon, a meeting with HMRC and HM Treasury on 21 March 2018.

The response highlights the complexity of the current regime for small companies and their advisers, and welcomes any simplification measures.

With respect to pre-2002 assets, the ATT notes that whilst bringing these into the intangible fixed assets regime may be a helpful simplification, any transitional rules should be as straightforward as possible. For example, assets should be brought into the regime at their book value rather than market value.

The ATT suggests that a possible way to address concerns over ‘stranded’ capital losses on moving pre-2002 assets into the intangible fixed assets regime would be to allow for an irreversible one-off election to keep assets in the chargeable gains regime instead. This would also allow companies to benefit from indexation allowance on any future disposal.

The denial of relief for goodwill amortisation in 2015 (2015 restriction) 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). The ATT suggests that one way to provide some measure of relief for goodwill, whilst at the same time limiting the cost to the Exchequer and the potential for manipulation, could be to limit relief to a fixed percentage per annum deduction, in a similar way to the current 4% fixed rate election.

The ATT does not believe that the election for a 4% fixed rate relief is of particular benefit to smaller companies. In particular, it does not deliver any real simplification when amortisation already has to be calculated for accounts purposes.

CIOT response

The CIOT also supported the removal of the current distinction between pre-2002 and post-2002 intangible assets, as this is an artificial boundary in tax law that does not exist in commerce. We also agree that an election mechanism should be introduced to permit companies to elect to remain in the existing capital gains regime so that taxpayers that have capital losses or non-trading debits and would have anticipated using them against any gain on pre-2002 intangible assets, or taxpayers who, having been through the transition to the new rules in 2002, are now quite happily running the two regimes side by side and for whom a compulsory change to the system would be more disruptive than maintaining the status quo, are not unduly disadvantaged.

We noted that there is an interaction between the suggestion to remove the distinction between pre-2002 and post-2002 intangible assets with the de-grouping charge. If pre-2002 assets are brought into the IFA regime, but the substantial shareholding exemption (SSE)-related relief from de-grouping charge for capital gains assets is not extended to the IFA regime, then taxpayers could be in position where such UK-UK transfers of pre-2002 assets undertaken before a change of law, could be unexpectedly caught by a de-grouping charge on the third-party sale. We suggested, therefore, that if the change to the commencement provisions is made, it is also necessary to make the change proposed in part four of the consultation document, regarding the de-grouping rules.

Our response strongly supported the proposal to removing the 2015 restriction which is an artificial boundary in the tax system; removing it would better meet the overall principle of aligning taxation of intangible assets with the accounts. Moreover, the acquisition of goodwill and related customer assets is a genuine cost for business. To be competitive with other regimes, it is our view that relief should be given for this cost over the life of the asset rather than only on its disposal.

We said that we would welcome the amendment of the de-grouping charge in the IFA regime to mirror the capital gains de-grouping rules, so far as possible. The current position is another artificial barrier in the tax system created by the fact that there are different de-grouping rules for chargeable assets and for chargeable intangible assets.

The CIOT’s response supported, and indeed suggested an increase in the rate of the 4% election. Although we understand that the irrevocability of the election means that the number of claims that are in place is small, those that are made are high in value. Thus the 4% election is an important mechanism for obtaining relief on intangible assets (especially goodwill) in circumstances where relief would not otherwise be available because of the accounting treatment. We suggested that a more competitive rate would be 10% per annum (to effect relief over 10 years), which would be comparable to the position under FRS102.

Our response offered some thoughts around the UK’s competitiveness and the role of the IFA regime in this. Changes such as those identified in the consultation document may, for some businesses, tip the balance in favour of the UK. To the extent that changes in the IFA regime helps either to bring business to the UK or prevent it moving offshore, the overall Exchequer cost should be measured not just

by considering changes in corporation tax receipts but also increases in other taxes; and the position should be considered not against the status quo but against the likely future position absent any changes.

Finally, we took the opportunity to raise some related points around the IFA regime with HMRC. These concern divisionalised companies, the clearance process and transfers from limited liability partnerships to companies.