

## UK publishes draft legislation on intangible fixed assets: targeted relief for goodwill and certain other assets

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### Executive summary

On 21 December 2018, the United Kingdom (UK) Government published draft legislation as part of a Government amendment to the Finance Bill 2018-2019, introducing targeted relief for goodwill and certain other assets (Relevant Assets) from 1 April 2019 in certain circumstances. Changes were anticipated following a consultation on the corporate intangible fixed assets (IFA) regime in February 2018 and an announcement in the Budget on 29 October 2018. A summary of responses to the consultation, published on 7 November 2018, included a draft proposal to introduce a targeted relief for goodwill. The draft legislation published on 21 December includes some notable changes to what was originally put forward in the draft proposal.

The draft legislation repeals section 816A CTA 2009 - which denied relief for Relevant Assets acquired from 8 July 2015 - and introduces targeted relief for the acquisition or creation of such assets in certain circumstances on or after 1 April 2019. The relief will only be available for acquisitions where such assets are acquired on or after 1 April 2019 as part of a business acquisition that includes the acquisition of qualifying intellectual property (IP) for use on a continuing basis in the course of business. The maximum rate of relief that will be available in each accounting period is 6.5% of the cost of the asset, which is higher than the usual fixed rate relief that can be claimed of 4% and could be higher or lower than the accounting charge.

Anti-avoidance provisions may apply to fully restrict the relief in certain circumstances, and a partial restriction may also apply depending on the expenditure on qualifying IP compared to Relevant Assets.

This is a welcome change to the IFA regime making the UK more competitive at a time when many groups are looking at the location of their IP.

## Detailed discussion

### Goodwill and certain other assets (Relevant Assets)

The draft legislation provides for relief for the cost of Relevant Assets acquired on or after 1 April 2019 in certain circumstances.

The Government stated at the time of the Budget that relief would only be reintroduced for goodwill arising on a business acquisition and would not be extended to customer-related intangibles. However, in a positive development, a Relevant Asset is defined to include goodwill, intangible fixed assets that consist of customer information and customer relationships, unregistered trademarks or other signs used in the course of a business, or any licenses or other rights in respect of these items.

### Rate of relief

Where on or after 1 April 2019 the company creates, or acquires as part of the acquisition of a business, a Relevant Asset, the company will be treated as having made an irrevocable election to write down the cost of the asset for tax purposes at a fixed rate of 6.5% of the cost of the asset per annum.

However, the amount of relief may be partially restricted if the expenditure on qualifying IP times a multiplier of 6 is less than the expenditure on Relevant Assets as part of the acquisition. To determine whether a restriction applies, the following ratio is calculated:

$$\frac{\text{Expenditure on qualifying IP assets} \times 6}{\text{Expenditure on Relevant Assets}}$$

Where the ratio is less than one, the relief available for Relevant Assets is restricted by applying this fraction to the relief that would otherwise be available.

The draft legislation provides flexibility for the Treasury to amend both the fixed rate percentage and the multiple of expenditure on qualifying IP assets used to calculate the

ratio of relief available for Relevant Assets at a later date, if required. Where the assets are acquired other than as part of the acquisition of a business or where the acquisition of a business does not include expenditure on qualifying IP assets for use on a continuing basis in the course of a business, no relief will be available.

Provisions to re-introduce rules to prevent tax motivated incorporations are also included in the draft legislation, and will apply where the transferor is an individual who is related to the acquiring company at the time of the acquisition, or a firm which includes as a member, an individual who is related to the acquiring company. In such circumstances there are different rules that apply to determine whether a restriction applies. These rules are not considered further as part of this Alert.

### Qualifying IP assets

Qualifying IP includes patents; registered designs; copyrights or design rights; or a license, or other right, in respect of the above that are intangible fixed assets in relation to the company, are not a pre-2002 asset and are not an excluded asset for the purposes of the IFA regime.

However, registered trademarks are notably excluded from the definition of qualifying IP assets, as is know-how not protected by one of the rights listed above. Trademarks were included in the scope of qualifying IP in the proposal at the time of the budget announcements but their omission now might have been determined necessary to fund the increase in the multiplier compared to that proposed at the time of the budget.

### Pre-FA 2019 assets

Prior to 1 April 2019, relief for Relevant Assets created or acquired from 8 July 2015 was denied under s816A CTA2009. As that provision is repealed from 1 April 2019, new provisions are introduced to deny relief for so called pre-FA 2019 assets with detailed rules on what is treated as a pre-FA 2019 asset (including rules on intra-group transfers and where the value of the asset was derived in whole or in part from another asset).

In general, the pre-FA 2019 asset rules require that an asset (or assets from which value derives) was a chargeable intangible asset between 29 October 2018 and 31 March 2019, and therefore could impact arrangements where assets have been "offshored" between these dates and brought back into the UK.

Assets created or acquired before 8 July 2015 and within the intangible fixed asset regime will in general not be impacted by these rules and full relief should continue to be available for those assets subject to considering the precise details of their creation or acquisition and the detailed rules.

### Commencement provisions

It is intended that the new 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 ending an accounting period on 31 March 2019 and beginning a new one on 1 April 2019.

### Next steps

The draft legislation will be included as an amendment to Finance Bill 2018-19 during the report stage which is expected to take place in early 2019.

## Implications

The Government is aware that many groups are looking at the location for their intangible assets and supply chain more generally, following other recent changes to the international tax landscape, such as the BEPS<sup>1</sup> project and US tax reform. The purpose of these changes is to make the UK a more attractive location for activities with a high proportion of qualifying IP, such as patents, copyright etc.

Groups may want to carefully consider these changes in light of other recent international developments and assess whether their current supply chain is optimized.

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## Endnote

1. Base Erosion and Profit Shifting.

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