

UK Finance Bill Contemplates Useful Changes to Intangibles Rules

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The UK's draft Finance Bill (published following the Autumn Budget, and amended on its—as yet incomplete—journey through Parliament) proposes changes to the UK's corporation tax regime for intangible fixed assets (the **IFA regime**). The proposals are the response to a consultation process in 2018.

The IFA regime applies to a range of intangible fixed assets, including patents, copyrights and goodwill, where those assets are regarded as created, or are (in some circumstances) acquired, on or after 1 April 2002. Where companies form a group for IFA regime purposes, such assets may be transferred intra-group on a tax neutral basis. However, if the transferee of such an asset leaves the group (e.g. because the shares in that transferee are sold to a third party) with that asset within six years of the tax neutral transfer, it is deemed to have disposed of and reacquired that asset at its market value immediately after the intra-group transfer. This 'degrouching charge' allows any latent gain in the asset, at the time of the intra-group transfer, to be recaptured for UK tax purposes when the group is broken.

If the proposed changes are enacted in their current form, the degrouching charge described above will be disapplied where:

1. the disposal of shares which causes the degrouching falls within the UK's participation exemption for capital gains (substantial shareholding exemption), or would fall within it if the person making the disposal was subject to UK corporation tax; and
2. the disposal referred to above is not part of a wider arrangement for the recipient to dispose of some or all of the shares to another person.

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The changes would bring the IFA regime degrouping charge rules broadly into line with similar provisions in the UK's capital gains regime. As drafted, the changes will have effect for share disposals on or after 7 November 2018 that would otherwise trigger the degrouping charge.

In addition, following a recent amendment, the Finance Bill contains draft changes to the IFA regime which would provide tax relief (subject to certain conditions) for the cost of acquiring or creating 'relevant assets'. Relevant assets are defined to include goodwill (a welcome return: relief in respect of goodwill was previously withdrawn by the UK in 2015), unregistered trade marks and customer-related intangibles.

As currently drafted, the conditions to relief require that the relevant asset must be acquired or created on or after 1 April 2019. In addition, acquired relevant assets must be acquired as part of the acquisition of a business and in conjunction with other 'qualifying' intellectual property assets, in order for relief to be available. As relevant assets are specifically excluded from the existing reliefs set out in the IFA regime, there are also provisions to prevent a taxpayer from refreshing an existing relevant asset in order to benefit from the changes.

Where relief is available, the taxpayer acquiring or creating the relevant asset will be treated as electing to write down the cost of that asset for tax purposes at a fixed rate of 6.5% per annum. The Treasury will be able to vary this percentage in future.

Relief will be restricted, for any relevant asset acquired as part of a business acquisition, if the total expenditure on all relevant assets is more than six times the expenditure on qualifying IP assets in that same business acquisition.

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