



Response from ICAS

Review of the corporate Intangible Fixed Assets Regime

10 May 2018

About ICAS

1. The following submission has been prepared by the ICAS Tax Board. The Board, with its five technical committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants and ICAS Tax Professionals working across the UK and beyond, and it does this with the active input and support of over 60 committee members. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants and we represent over 21,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors.

General comments

2. ICAS welcomes the opportunity to contribute to the consultation "Review of the corporate Intangible Fixed Assets regime" published on 19 February 2018.
3. We were pleased to have the opportunity to discuss the consultation with HMRC at a meeting of our International and Large Business Tax Committee in April.
4. As discussed at that meeting we strongly support reform of the corporate intangibles regime. In particular, we believe that removing the restriction of relief for goodwill and customer related intangibles and aligning the de-grouping regime for IFAs with the capital gains regime would make a valuable contribution to supporting economic growth.

Comments on specific areas

Pre-FA2002 Assets

5. The requirement to distinguish between pre- and post-FA02 assets for tax purposes causes administrative burdens and increased compliance costs; there is no commercial reason for making any distinction. The rules are complex, and it can take months to determine whether assets fall into the pre- or post FA02 category and to arrive at valuations where bundles of assets are concerned. There are particular problems for companies with long established retail brands created prior to April 2002 which have continued to change and develop after that date.
6. These issues have an impact on investment into the UK, making it a less attractive location to hold intellectual property. Simplification of the regime by bringing pre-FA02 intangibles into the IFA regime would therefore be a positive step; it would remove distortions and would help to attract jobs and intellectual property to the UK in future.
7. However, there are many groups which have capital losses and pre-FA02 assets. They expect that when they dispose of the assets they will be able to use the losses. This is a very important issue for some sectors; for example, businesses disposing of old retail brands will want to use capital losses against any gains, so any sudden change to the rules would cause difficulties.
8. Any move towards a unified IFA regime will therefore need to include transitional provisions. These will need to offer different options to reflect the issues for different business sectors and prevent any unfairness. In particular, it will be important to ensure that long-established companies with self-generated (rather than acquired) assets are not disadvantaged.
9. An opt-out mechanism should be provided, which would allow companies to opt out of moving to the IFA regime – either on a global basis or on an asset by asset basis.
10. We suggest that assets brought into the IFA regime should generally be recognised at net book value. Other options might need to be available for assets where this would present a problem.

Goodwill and relevant assets

11. The restriction introduced in 2015 is an impediment to investment in the UK; other jurisdictions provide relief for accounts-based amortisation of goodwill, making the UK a less attractive option by comparison. The absence of alignment with the accounts and the need for valuations also generates unnecessary costs.

12. The new US tax rules, with a more favourable regime, make it unlikely that companies will want to move intellectual property from the US to the UK. As discussed at our meeting with HMRC there are particular issues for some technology companies, where much of the value is attributable to goodwill. The US is attracting companies, particularly in this sector, which might otherwise have been attracted by the UK. Existing UK companies may also consider migration before expansion.
13. We therefore support the removal of the 2015 restriction on relief for 'relevant assets'. We do not think that any distinction should be made between goodwill and customer-related intangibles. If relief is reinstated for one but not the other it is likely to lead to valuation difficulties (and attempts to attribute value to one category, rather than the other).
14. We note government concerns about the cost of the relief, which prompted the 2015 changes. However, if removing the restriction helps to attract more business investment in the UK and deters migration out of the UK, there will be increased tax receipts which will offset the cost.
15. As discussed at our meeting one option which could be considered would be to reinstate the relief but cap it at a fixed percentage. We suggest that this should not be lower than 4% - preferably higher. This would not be as generous as relief in some other jurisdictions but would be preferable to the present position; the absence of any relief is not attractive to prospective investors in the UK.

De-grouping

16. The absence of alignment between the rules for IFAs and the capital gains rules causes problems for mergers and acquisitions from a due diligence perspective and also because transactions often have to be structured in a more complex way to mitigate the adverse effects. In some cases, there will be increased costs because even restructuring the transaction is not completely effective; this can be a significant factor when considering a commercially-motivated merger or acquisition.
17. We therefore support alignment of the de-grouping rules. We note the comments about retaining the ability to claw back relief given; as discussed at our meeting one option which could be considered would be to remove a charge where an asset continues to be used in the business after the transaction.

Basis of relief

18. We agree that the default accounts-based rule is generally the right basis for relief. However, as discussed at our meeting with HMRC, in our experience whilst the election for the fixed 4% rate is not widely used it is critical for those who do use it. The ability to make an election for the fixed rate should be retained.
19. Other jurisdictions offer higher fixed rates but due to the availability of accounts-based relief we do not see this as a significant factor in business decisions on where to locate.

Supporting economic growth

20. The IFA regime is obviously only one factor which businesses considering locating or expanding in the UK would consider. However, for some companies it is a very important factor and as noted above we believe that the changes outlined to pre-FA02 assets, goodwill and de-grouping would increase the attractiveness of the UK as a business location and would therefore support economic growth.
21. If reforms have to be prioritised we believe that removing the restrictions on goodwill and customer intangibles would have the most significant impact, followed by alignment of the de-grouping rules with the capital gains regime.
22. As discussed at our meeting we do not consider that increasing the complexity of the regime, as suggested in paragraphs 6.4 to 6.6 of the consultation document, in order to 'focus' relief would be effective. The impact would vary from one business to another; in some cases, no relief at all might be available. The resulting uncertainty about the amount or availability of relief would be counter-productive.