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Tax	Goodwill – Post 1-April 2019	Paul Davies

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Goodwill – Post 1-April 2019

Finance Act 2019 re-introduces a limited measure of *amortisation relief* for *goodwill and related assets (relevant assets)* during the period in which they are owned by a company. The measure can be found in CTA 2009, Part 8, Ch. 15A and applies to accounting periods beginning on or after 1 April 2019 in relation to assets acquired on or after that date. *Straddling accounting periods* are treated as separate accounting periods for this purpose.

The definition of *relevant asset* is based on that used for the former restriction on goodwill and related assets in CTA 2009, 816A.

Relevant asset means:

- (1) goodwill in a business;
- (2) an intangible fixed asset consisting of information relating to customers (or potential customers) of a business;
- (3) an intangible fixed asset consisting of a relationship (contractual or otherwise) between a person carrying on a business and customers of that business;
- (4) an unregistered trade mark or other sign used in the course of a business; or
- (5) a licence (or other right) in respect of an asset within any of these categories.

1. General rule for assets acquired or created on or after 1 April 2019

For a relevant asset acquired (or created) on or after 1 April 2019, the general rule is that a company is treated as having made a *fixed rate amortisation election* under [CTA 2010, s. 730](#) to write down the cost of the asset for tax purposes at a fixed annual rate of 6.5% (as opposed to the normal rate of 4% for this election).

1.1 Exceptions

Fixed rate amortisation relief under the general rule, is not available:

- (1) where the *relevant asset* is not acquired as part of the acquisition of a business;
- (2) where the company does acquire the asset as part of the acquisition of a business, but does not acquire **qualifying IP assets** with that acquisition for continuing use in the business;
- (3) in the case of certain related party acquisitions from individuals or partnerships where the *relevant asset* was created by the individual or partnership; or
- (4) for assets subject to the former restriction on *amortisation relief* for assets acquired on or after 8 July 2015 in CTA 2009, s. 816A (**pre-FA 2019 assets**).

In each of these cases, a debit arising on the *realisation* of the *relevant asset* is allowable as a non-trading debit.

1.2 Meaning of qualifying IP asset

A qualifying IP asset, in relation to a company, means an *intangible fixed asset* that meets the following two conditions:

- (1) that the asset is (or is an equivalent right under non-UK law) a patent; registered design; copyright; design right; plant breeders' right; right under the *Plant Varieties Act 1997*, s. 7; or a licence (or other right) in respect of any of those rights; and
- (2) that the asset is not to any extent
 - (a) an excluded asset within [CTA 2009, Ch. 10](#);
 - (b) a pre-FA 2002 asset within [CTA 2009, s. 881](#); or
 - (c) the use of computer software.

2. Partial restriction of relief by reference to value of qualifying IP assets acquired

Fixed rate amortisation relief under the general rule may be partially restricted by reference to the value of qualifying IP assets acquired with the same business in which the *relevant asset* in question is acquired. A similar restriction applies in certain *related party* situations.

Relief is restricted if the acquirer's expenditure on *relevant assets* is more than 6 times its expenditure on *qualifying IP assets*.

2.1 Restriction of amortisation relief – Calculation

The amount of *fixed rate amortisation relief* allowable in an accounting period for a *relevant asset* under the general rule, and relief for adjustments on a *change in accounting policy*, is restricted in accordance with the following formula:

$$\text{Allowable debit} = D \times RA$$

For these purposes:

- (1) D is the amount of the debit that would (in the absence of this restriction) be allowable in an accounting period by way of *fixed rate amortisation* under the general rule;
- (2) Any calculation of the tax written-down value of the *relevant asset* needed to determine D ignores the effect of this restriction on previously allowable debits;
- (3) RA is the relevant amount;
- (4) Relevant amount means:
 - (a) where this restriction applies only by reason of the *qualifying IP restriction* just described, six times the ratio of expenditure on *qualifying IP assets* to expenditure on *relevant assets*;

- (b) where the restriction applies only by reason of the *related party acquisition restriction*, the ratio of relevant accounting value of third party acquisitions to expenditure on the relevant asset; or
- (c) where the restriction applies by reason of both of those sections, the amount found by multiplying the ratios in (a) and (b) above.

2.2 Restriction of relief on realisation - Calculation

The allowable amount of *relief on realisation* is:

- a *trading debit* (TD) equal to $D1 \times RA$; plus
- a *non-trading debit* equal to $D2 - TD$.

For these purposes:

- D1 is the amount of the debit that would (in the absence of this restriction) be allowable on *realisation* disregarding (in calculating the tax written down value of the *relevant asset*) the effect of this restriction on previously allowable debits;
- RA is the relevant amount; and
- D2 is the amount of the debit that would (in the absence of this restriction) be allowable on *realisation* having regard to (in calculating the tax written-down value of the *relevant asset*) the effect of this restriction on previously allowable debits.

3. Pre-FA 2019 relevant assets

A pre-FA 2019 relevant asset is excluded from the 6.5% *fixed rate amortisation relief*. The broad intention of this rule is to exclude *relevant assets*:

- held by a company between 29 October 2018 (when the 6.5% *fixed amortisation relief* measure was first announced) and 1 April 2019 (when the measure came into effect); and
- which were already denied *amortisation relief* in full by former CTA 2009, s. 816A (which applies from 8 July 2015 to the commencement of the present rules on 1 April 2019).

The legislation prescribes four cases in which a *relevant asset* is a pre-FA 2019 relevant asset. The first case applies if:

- (1) the company acquired (or created) the asset between 8 July 2015 and 31 March 2019 (inclusive); and
- (2) the asset was a *chargeable intangible asset* of the company at any time between 29 October 2018 and 31 March 2019.

The second case is based on the rule in [CTA 2009, s. 882](#) for *pre-FA 2002 assets* and is intended to prevent the first case from being circumvented as a result of assets being transferred between *related parties*.

Cases 3 and 4 are beyond the present scope.

4. Related party acquisitions from individual or partnership

Fixed rate amortisation relief by virtue of the general rule for *relevant assets* are not available for a *relevant asset* in the case of certain related party acquisitions from individuals or partnerships.

The intention of this rule is to restrict *amortisation relief* for *relevant assets* acquired on or after 1 April 2019 in a *related party* incorporation where the assets were generated internally by the transferor. It is based on the rule for *goodwill etc. acquired from a related party* in former CTA 2009, s. 819D and applies if:

- (1) the company acquires a *relevant asset* on or after 1 April 2019 directly (or indirectly) from an individual or firm (the *transferor*);
- (2) the related party condition is met; and
- (3) the third party acquisition condition is not met.

The related party condition is met if:

- (a) the *transferor* is an *individual* who is a *related party* of the company at the time of the acquisition; or
- (b) the transferor is a *partnership* and any individual who is a member of the partnership is a *related party* of the company at that time.

For goodwill, the *third party acquisition condition* is met if the *transferor* acquired all (or part) of a business in one (or more) *third party acquisitions* in which the *transferor* acquired goodwill and the *relevant asset* is acquired by the company as part of an acquisition of all the relevant business.

For other *relevant assets*, it is met if the *transferor* acquired the *relevant asset* in a *third party acquisition* and the *relevant asset* is acquired by the company as part of an acquisition of all the relevant business.

4.1 Meaning of third party acquisition

The *transferor* acquires something in a *third party acquisition* if:

- (a) the *transferor* is an individual who is not a *related party* of the company (or *connected person* of the person) from which *the transferor* acquires the item; or
- (b) the *transferor* is a partnership for which no partner who is an individual is a *related party* of company (or *connected person* of the person) from (or whom) which *the transferor* acquires the item.

Importantly, an acquisition is not a *third party acquisition* if its main purpose (or one of its main purposes) is for any person to obtain a *tax advantage*; or if it occurs between 8 July 2015 and 31 March 2019 (inclusive).

5. Partial restriction of relief – Related party acquisition from individual or partnership

The new 6.5% fixed rate amortisation is also partially restricted where:

- (1) the company acquires the asset on or after 1 April 2019 directly (or indirectly) from an individual or partnership (the *transferor*);

- (2) the related party condition is met;
- (3) the third party acquisition condition is met; and
- (4) the ratio below is less than one:

In this case the ratio is:

- the relevant accounting value of third party acquisitions; divided by
- the expenditure incurred on the acquisition of the *relevant asset* that is either capitalised for accounting purposes, or written off to profit or loss as incurred.

The relevant accounting value of the goodwill or other relevant asset is what its accounting value would have been in GAAP-compliant accounts drawn up by the transferor on a going concern basis immediately before the relevant asset was acquired.