HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD25030 - Intangible assets excluded from CTA09/PART8: assets outside FRS102 s18: rights over tangible assets

CTA09/PART8/S805

This provision excludes:

- rights enjoyed by virtue of an estate, interest or right over land; and
- rights in relation to tangible movable property.

Rights over land

The rights within the first category include those capable of giving rise to taxable property income (or which would do so if the source was within the UK), see CTA09/PART4.

This includes for example the value of trading premises acquired in a business acquisition.

Business Acquisitions - Property & Goodwill

When a company acquires a trade as a going concern, the tangible and intangible assets (property, fixtures and fittings, trademarks etc) should be recognised on the company's balance sheet initially at "fair value". In drawing up accounts in accordance with GAAP, the directors should apply FRS102 s19 (or IFRS3/FRS105 s14/FRS7) to reach the "fair value" of each of the separately identifiable assets and liabilities.

The principles of accounting for the initial measurement, valuation and depreciation of tangible fixed assets are set out in FRS102 s17 (or IAS16/FRS105 s12/FRS15). An accountant would follow these principles to ascertain an opinion on the value to assign as the fair value of a tangible fixed asset in a business acquisition.

FRS102 s17 requires the fair value of property to be determined from market-based evidence by appraisal that is normally undertaken by professionally qualified valuers. The requirements of IAS16 are similar. FRS105 s12 does not contain any guidance.

For those assets within the scope of FRS15 the guidance is more detailed. FRS 15 requires that non specialised properties should be valued on an 'existing use' basis. Within this category, there are a number of properties that are normally sold and valued on the basis of their trading potential (having been designed or specially adapted for such use) and these are distinguished for valuation purposes so that such potential is reflected within their existing use value. These typically include what are often referred to as leisure type properties and include hotels, bars, cinemas, fuel stations, nursing homes etc. A valuer in effect capitalises estimated potential earnings from this particular class of property in reaching his valuation (para. 56, FRS 15 describes it “by having regard to its trading potential”). The fair value of this type of tangible fixed asset (a pub or hotel for example) will include the expectation of capitalised earnings from that asset.

While the guidance on valuing properties within FRS102 s17, IAS16 and FRS105 s12 is not as detailed as the guidance within FRS15, it is unlikely that differences in fair values will arise in practice. This is because the additional guidance within FRS15 is based on principles that would normally be applied by a professionally qualified valuer.

Where, in the business acquisition, there is then a difference between the cost paid for the business and the fair value of its separately identifiable net assets, goodwill will result (see also CIRD30535 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird30535)).

The Corporation Tax risk in a business acquisition is that the directors will fail to identify and value the assets properly in accordance with GAAP. Valuing the trading premises without considering its “trading potential”, might undervalue the property. Since purchased goodwill is the balancing figure in a business acquisition (see CIRD11070 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird11070)), undervaluing other assets, particularly trading premises, artificially inflates the amount of purchased goodwill so that it exceeds the amount that is allowable for the purposes of CTA09/PART8.

You need to be aware of these risks in a business acquisition and coordinate your enquiries with other specialists including HMRC advisory accountants, BAI (for both CT and SDLT advice), SPT-SAV & VOA.

Rights over tangible movable property

As regards rights within the second category, a very wide construction of the words 'in relation to' could exclude virtually all intangible assets from CTA09/PART8, given that it is usually possible to find some physical manifestation of any intangible assets. That is clearly contrary to the structure and purpose of the legislation.

Instead, only rights that actually derive a significant proportion of their value from tangible assets as a matter of economic analysis should be regarded as excluded from the scope of CTA09/PART8 by this provision, wholly or in part (see CIRD25015 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird25015) as regards apportionment in such a case).

For practical purposes:

- it will only be in wholly exceptional cases that an asset which clearly falls within the scope of FRS102 s18 (or IAS38/FRS105 s13/FRS10) will be excluded by S805
- it is unlikely that an asset would be excluded by this provision unless capital expenditure in relation to that asset would be regarded as capital expenditure on a tangible asset within the meaning of CTA09/S727 - see CIRD12260 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird12260).

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