HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD49010 - Intangible assets: just and reasonable apportionment: introduction

Just and reasonable apportionment - introduction

In addition to the valuation issues mentioned at CIRD10240 (http://manual/corporate-intangibles-research-and-development-manual/cird10100) there are times when the values attributed to chargeable intangible assets need to be apportioned by reference to other assets. For example:

- Where an option is acquired in relation to multiple or disaggregated assets, see CIRD11175 (http://manual/corporate-intangibles-research-and-development-manual/cird11175).
- Where expenditure on acquisition or creation is incurred before and after commencement, see CIRD11685 (http://manual/corporate-intangibles-research-and-development-manual/cird11685).
- Where an intangible asset is acquired or realised together with other assets, see CIRD12740 (http://manual/corporate-intangibles-research-and-development-manual/cird12740) and CIRD13245 (http://manual/corporate-intangibles-research-and-development-manual/cird13245).
- Where intangible assets should be attributed to negative goodwill, see CIRD13080 (http://manual/corporate-intangibles-research-and-development-manual/cird13080).
- Where the asset is partially excluded, see CIRD25015 (http://manual/corporate-intangibles-research-and-development-manual/cird25015).

Apportionment between Part 8 assets and other assets

One of the more common areas where apportionment is required is where an intangible asset is acquired with other intangible assets, or together with other tangible assets, normally as part of a business acquisition. If the bundle of intangible assets include Part 8 intangible assets together with other assets, including intangible assets that fail the FA02 rule or are restricted by special rules within Part 8 (see CIRD11505 (http://manual/corporate-intangibles-research-and-development-manual/cird11505)), you will need to apportion the costs between the unrestricted Part 8 assets and other assets. A similar apportionment could also be required in relation to realisations.

Please note that apportionment may be required in addition to agreeing values of intangibles, for example if an intangible asset is acquired with other assets from a related party.

For issues relating to an apportionment on a just and reasonable basis involving assets within the CG regime (Capital Gains Manual at CG14781), for example pre-FA02 assets, and CTA09/PART 8 intangible assets, Capital Gains Specialists also need to be involved. See CG14771 and CG14773.

Asset identification

Identifying which intangible assets fall within the CG regime and fall within particular rules in CTA09/PART 8 is vital before attempting any sort of apportionment or valuation exercise. You will need to identify the type of intangible assets and the context in which they are used. This will help determine their value. For the less obvious intangible assets you may also need a full description of the asset and a commercial understanding of what drives the value in that particular intangible asset or bundle of intangible assets. For example, the value of a pharmaceutical patent might be determined by the expected sales revenues of pharmaceuticals having the relevant patent protection.

Once you have identified the relevant intangible assets it may become apparent that an asset by asset valuation will be impractical. You then need to consider how to apportion the value attached to these intangibles as part of the transaction. Usually within the transaction an overall value is allocated to a particular group of intangibles like trade marks and associated intangibles or patents.

When in this type of transaction it is necessary to apportion value between intangibles falling in either the CG regime or CTA09/PART8, the apportionment should be made on a just and reasonable basis. As this type of apportionment is valuation based it should be considered in collaboration with SPT – Share and Assets Valuation.

It is recognised that the term ‘just and reasonable’ is not defined for tax purposes but also, that guidance in this specific area is needed, so as to enable informed consideration of how HMRC approaches this task. This should assist in limiting related risks and/or identifying and handling risks as appropriate. The HMRC approach to applying a ‘just and reasonable’ apportionment in this specific area and the illustrative examples in CIRD49030 (http://manual/corporate-intangibles-research-and-development-manual/cird49030), apply in this specific context and not to other parts of tax legislation where a ‘just and reasonable’ apportionment is required.

Each registered/created intangible is a separate asset either within the CG regime or CTA09/PART8. As many businesses maintain large numbers of such intangibles, for example trade marks or patents, it is recognised that it might be impractical to attach value to each asset. This is why a single value or valuation is likely to have been applied to the group of intangibles for the purposes of the transaction.

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