HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD48320 - Intangible assets: avoidance: intangible assets exchanged for other assets recognised at net book value (step-up schemes)

Background

CTA09/PART8/S846(1) disapplies the market value rule (CTA09/S845) in relation to transfers of intangible fixed assets, between related parties, where the transfer pricing legislation (TIOPA2010/PART4) applies (see CIRD45040 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird45040)). HMRC received notification of an avoidance scheme under DOTAS (Disclosure of tax avoidance schemes) that exploited this rule. The transaction normally involves an accounting step-up in value. The scheme is described below.

Accounting step-up

The purported consequence of the disclosed scheme is that a customer may fail to recognise the full value of the proceeds of realisation in the disposing company. The other party may also claim relief on the full value of the intangible asset in the acquiring company.

The scheme works something like this:

- Company A exchanges one asset, typically an internally-generated intangible asset that has no accounting book value, for shares or an equity interest in Company B.
- Company A accounts for the shares/equity interest at cost. 'Cost' in this scheme is either the net book value of the exchanged intangible asset (probably nil), or the par value of the shares, rather than the fair value of the consideration.
- Company A does not recognise a gain on the disposal of the intangible asset - because accounting for the shares received as consideration equal to the net book value of the asset disposed results in no gain.
- Company A claims that the proceeds of realisation to be recognised for the purpose of CTA09/PART8/CHAPTER4 is nil or the par value of the shares.
- Company B however recognises the fair value of the intangible asset acquired.

Thus, the arrangements purport to create a ‘step up’ in value. Company A’s gain on the disposal is based on proceeds of either nil or the notional par value of the shares. Company B claims relief under CTA09/PART8 on the fair value of the intangible asset acquired.

Points to note:

- The arrangements could involve parties that may not be related.
- The arrangements could involve a partnership.
- The arrangements could involve a licence.
- Company B may be outside the charge to Corporation Tax e.g. because it is non-resident. Although there may be no UK tax mis-match, the UK company (i.e. Company A) has failed to account for the appropriate value of the intangible asset on disposal.

To help counter such schemes an amendment to CTA09/S846 was made by F(2)A15/S42 (see CIRD48330 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird48330)).

Further amendments were announced at Autumn Budget 2017, effective from 22 November 2017. Details of the further amendments can be found in the guidance from CIRD48340 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird48340) onwards.

Deciding which tax provisions will apply to the arrangements will depend on the transactional analysis.

If you encounter this scheme you will need to liaise with:

- an advisory accountant on the accounting matters
- a transfer pricing specialist
- Shares and Assets Valuation
- Business, Assets and International

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