

EXPLANATORY NOTE

CORPORATION TAX: RESTRICTING RELIEF FOR INTERNALLY-GENERATED GOODWILL TRANSFERS BETWEEN RELATED PARTIES ON INCORPORATION

SUMMARY

1. Clause [X] will restrict when and how corporation tax relief is allowed in relation to internally-generated goodwill and certain customer related intangible assets acquired on incorporation of a business. For all relevant incorporations on or after 3 December 2014, relief will be calculated when the asset is disposed of by the company rather than at the time the expenditure is incurred.

DETAILS OF THE CLAUSE

2. Clause [X] amends and inserts new provisions into existing legislation within Part 8 Corporation Tax Act 2009 (CTA 2009).

3. Subsection (1) – (4) insert new sections 849B – D CTA 2009 to restrict the circumstances when a company can claim relief for internally-generated goodwill, and certain customer related intangible assets, when these are acquired from related party individuals, including partnerships, on incorporation of a business.

New Section 849B CTA 2009

4. New section 849B CTA 2009 details the circumstances when the restrictions in either new section 849C or new section 849D will apply to a company claiming relief for debits under Chapters 3 and 4 of Part 8 CTA 2009.

5. Subsection (1) provides that a restriction will only apply where the company acquires a relevant asset from a related party individual or a firm in which one of the members is a related party individual.

6. Subsection (2) defines “relevant asset”. Relevant assets include the goodwill of a business and certain customer-related intangible assets and unregistered trade marks normally associated with the goodwill of a business. This ensures that the same tax treatment will apply where the accounting treatment is to recognise assets closely associated with goodwill separately from goodwill.

7. Subsection (2)(e) includes a license in respect of a relevant asset to deal with circumstances where the relevant assets are retained by the individual, or a firm, on the incorporation of the business.

8. Subsection (3) defines “the relevant business or part”.
9. Subsections (4) – (6) determine whether either new section 849C or new section 849D applies.
10. Subsection (4) provides that new section 849C will only apply to goodwill to the extent that it was previously acquired from a third party before transfer to the company. Two conditions must be met; first, the transferor must have acquired the relevant business, or part of a business in respect of one or more third party acquisitions, and second, the company must also have acquired that business or part from the transferor.
11. Subsection (5) has the same effect for relevant assets that are not goodwill described in paragraph 10 above.
12. Subsection (6) provides that new section 849D will apply where section 849C does not.
13. Subsection (7) defines “third party acquisition”. Subsections (a) and (b) consider the relationship of the parties at the time the transferor acquired the relevant asset to determine whether it is a third party acquisition.
14. Subsection (a) considers the relationship of the parties where the relevant asset was acquired by the transferor from a company and treats any acquisition from a company who is unrelated as a third party acquisition.
15. Subsection (b) has the same effect as paragraph 14 above in relation to acquisitions from persons who are not a company and who are unconnected.
16. Subsection (8) defines “connected” by reference to section 842 CTA 2009.
17. Subsection (9) is an anti-avoidance rule that treats any acquisition as a non-third party acquisition where it has a main purpose of avoiding tax. The existing anti-avoidance rule at section 864 CTA 2009 can also apply.

New section 849C CTA 2009

18. New Section 849C provides for the calculation of the debit arising under Chapters 3 and 4 of Part 8 CTA 2009 to be apportioned where the relevant asset includes previous third party acquisition costs in relation to relevant assets subsequently acquired by the company.
19. Subsection (2) provides for the debit that would otherwise be taken into account under Chapter 3 (D) to be restricted by reference to the appropriate multiplier (AM).
20. Subsection (3) provides for the debit that would otherwise be taken into account on realisation of the asset under Chapter 4 of Part 8 CTA 2009 to be apportioned between trading and non-trading debits.

21. Subsection (4) provides for the calculation of the trading debit; which is the debit that would otherwise be taken into account multiplied by the appropriate multiplier (D x AM).
22. Subsection (5) provides for the calculation of the non-trading debit; which is the difference between the debits that would otherwise be taken into account (D) less the trading debit (TD).
23. Subsection (6) provides for the calculation of the appropriate multiplier (AM) for the purpose of subsections (2) and (4) and ensures that the company cannot claim relief for debits under Chapters 3, or in relation to trading debits under Chapter 4, in an amount higher than the notional accounting value of the relevant asset acquired from the transferor.
24. Subsections (7) to (9) provides that RAVTPA is the notional accounting value of the relevant asset at the time of acquisition by the company.
25. Subsection (9) provides for the notional accounting value to be determined as if transferor had retained the asset and continued the business. This limits C's debits to the amounts that the transferor would have been entitled to claim if they were entitled to relief under Part 8 CTA 2009.

New Section 849D CTA 2009

26. New section 849D explains the restrictions that will apply in relation to Chapters 3 and 4 of Part 8 CTA 2009 where the relevant asset is not subject to the third party acquisition rule in new section 849C.
27. Subsection (2) provides that no debits are to be brought into account under Chapter 3 of Part 8 CTA 2009 in respect of the amortisation of relevant assets. This is to ensure that debit relief can only be claimed under Chapter 4; for example on realisation of the asset.
28. Subsection (3) provides that any debits brought into account under Chapter 4 in respect of realisations of relevant assets are non-trading debits. This is to limit how a debit on realisation will be available to set against other income of the company.

Commencement

29. Subsections (5) – (7) of the clause provide for the commencement rules, which are effective for acquisitions occurring on or after 3 December 2014.

BACKGROUND NOTE

30. This measure supports the government's objective to have a fair tax system for all.
31. Under Part 8 Corporation Tax Act 2009 (CTA 2009) companies obtain corporation tax relief when expenditure on goodwill and intangible assets are recognised in the accounts.

The current rules allow relief to be claimed even when there is continuing economic ownership.

32. Clause [X] amends Part 8 CTA 2009 to restrict the relief available in respect of internally-generated goodwill and customer related intangible assets, where the relevant asset is acquired by a company from related party individual.

33. These amendments will make it fairer to businesses that do not have access to these reliefs. In particular:

- Small businesses that do not incorporate their business and are therefore currently at a disadvantage compared to those who do.
- Start-up businesses that have always been operated within a company and who cannot access the relief for internally-generated goodwill, are currently at a disadvantage when compared to those that incorporate their business.

34. This measure will be introduced in Finance Bill 2015 and have effect from 3 December 2014, subject to Royal Assent. It will apply to all transactions and contracts entered into on or after 3 December 2014 and pursuant to contracts entered into and not completed before 3 December 2014.

35. If you have any questions about this change, or comments on the legislation, please contact John Williams on 03000 530434 (email: john.r.williams@hmrc.gsi.gov.uk)