



HM Revenue  
& Customs



HM Treasury

# Review of the corporate Intangible Fixed Assets regime

## **Consultation document**

Publication date: 19 February 2018

Closing date for comments: 11 May 2018

<b>Subject of this consultation:</b>	The corporate Intangible Fixed Assets regime in Part 8 CTA 2009.
<b>Scope of this consultation:</b>	To review the operation of the IFA regime and consider whether there is scope for targeted, value-for-money reforms that support the regime's administration and international competitiveness.
<b>Who should read this:</b>	The government welcomes comments from those affected by any restrictions or potential changes to the regime, including companies, advisors and representative bodies.
<b>Duration:</b>	The consultation runs from 19 February 2018 to 11 May 2018.
<b>Lead official:</b>	Bezhan Salehy – Business, Assets & International Directorate, HMRC George Langdon-Davies – Business & International Tax Group, HM Treasury
<b>How to respond or enquire about this consultation:</b>	Responses, requests for hard copies, general queries about the content or scope of the consultation and requests for information about consultation events can be sent by email to <a href="mailto:ifa.consultation@hmrc.gsi.gov.uk">ifa.consultation@hmrc.gsi.gov.uk</a> or by post to: Intangible Fixed Assets Consultation, Room 3/63, HMRC, 100 Parliament Street, London, SW1A 2BQ.  For telephone queries, please call 03000 575 610
<b>Additional ways to be involved:</b>	As this consultation concerns complex policy and technical issues the government is keen to arrange meetings with external bodies, but also encourages written responses.
<b>After the consultation:</b>	The government will publish its response to the consultation together with any proposed changes in the second half of 2018.
<b>Getting to this stage:</b>	This new consultation was announced at Autumn Budget 2017.
<b>Previous engagement:</b>	This new consultation is being launched in response to representations made to HMT and HMRC by customers and representative bodies. The consultation is at the first stage of the consultation process.

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# 1. Introduction

- 1.1 The Intangible Fixed Assets regime (“IFA regime”), which was introduced from 1 April 2002, fundamentally changed the way the UK corporation tax system treats intangible fixed assets (such as copyrights, patents and trademarks) and goodwill.
- 1.2 When a company acquires an IFA it will initially recognise the expenditure as an asset on its balance sheet.
- 1.3 The value of the IFA may then decrease over time, for example if the IFA represents a legal right such as a patent that will expire on a particular date. Accounting standards recognise this by allowing companies to write down the value of their IFAs, either over the asset’s useful life (“amortisation”) or by reference to an annual assessment of their value (“testing for impairment”).
- 1.4 Prior to the introduction of the IFA regime the tax system did not allow relief for amortisation or impairment of IFAs. Changes in value of the asset were generally only recognised in the tax system at the time an asset was sold.
- 1.5 In contrast, the IFA regime provided companies with relief for the cost of acquiring intangible fixed assets and goodwill by allowing a deduction from income for the amortisation and impairment debits recognised in a company’s accounts. It also taxes receipts in respect of IFAs, including disposal proceeds, as income. This is subject to reliefs similar to those in the capital gains rules, including reinvestment relief and tax-neutral transfers within a group.
- 1.6 The objective behind the regime is to provide a fair and consistent approach to the taxation of intangible assets that is aligned with the approach taken in companies’ accounts and supports UK competitiveness.
- 1.7 While there have been a number of changes to the regime since 2002, most of these changes have focussed on closing down avoidance schemes and removing unfairness within the existing tax rules.
- 1.8 The government believes that, in light of the growing importance of intellectual property (“IP”) to the productivity of modern businesses, and the restructuring of IP ownership within multinational groups in response to recent international tax changes, it is now the right time for a more comprehensive review of the regime.
- 1.9 This consultation will therefore explore whether the IFA regime continues to deliver an administrable approach for taxing intangible assets that is aligned with accounts and supports the competitiveness of the UK for innovative businesses.

1.10 The government has identified a number of specific areas where it is seeking stakeholders' views:

- The impact of the 1 April 2002 commencement rule (the "pre-FA02 rule") and the restriction on goodwill and customer related intangibles on the complexity and competitiveness of the regime.
- The use and competitiveness of the election for a 4% per annum fixed rate of relief.
- The impact of the regime's de-grouping rules on mergers and acquisitions.

1.11 However, the government is also generally interested in understanding whether there are targeted changes that could be made to the IFA regime to support its policy objectives, and deliver value-for-money in terms of the economic and fiscal impacts on the UK.

## 2. Pre-FA 2002 Assets

- 2.1 The IFA regime does not apply to assets that existed at 1 April 2002, unless the assets were acquired from an unrelated party on or after that date. For assets excluded by this “pre-FA02 rule”, the capital gains rules generally continue to apply.
- 2.2 The rationale behind the pre-FA02 rule was that “grandfathering” existing assets would be the fairest way of transitioning to the new regime. Removing capital gains treatment for existing assets would have significantly changed the tax profile of some companies, for example those with capital losses that could be relieved against gains on such assets. The rule also mitigated the cost to the Exchequer of introducing the new relief.
- 2.3 Businesses have voiced concerns that the pre-FA02 rule could be making the UK a less attractive location in which to hold IP. They have made representations that:
- the lack of relief for pre-FA02 intangible assets means the UK provides less generous tax treatment than some other major economies.
  - the 2002 boundary can lead to similar assets being treated in different ways without a clear justification. For example disposals of IP within the IFA regime are eligible for roll-over relief when the proceeds are reinvested in IFAs, whereas disposals that fall under the CG regime are not.
  - the pre-FA02 rule introduces complexity and administrative cost into transactions, which can distort business decisions. It requires companies to identify which tax regime applies to which of their intangible assets. This has been raised as a particular problem where commercial transactions involve bundles of assets, or assets which were developed prior to 2002 but subsequently enhanced.
  - the pre-FA02 rule can produce unfair outcomes, such as the absence of relief where a pre-2002 intangible asset is brought into the UK from a newly-acquired foreign subsidiary.
- 2.4 The Office of Tax Simplification also identified the pre-FA02 rule as a suitable area for reform in its July 2017 report *Simplification of the corporation tax computation*, noting that the multiplicity of tax treatments of intangible assets and goodwill were an “over-complication”.
- 2.5 The government is keen to understand the significance of the concerns expressed and explore what impact the pre-FA02 rule is having on business decisions in practice.
- 2.6 Before making a decision to bring pre-FA02 intangibles into the IFA regime the government would need to be convinced that there is an economic case for

doing so, and that this change would represent value for money to the Exchequer.

**Question 1: What types of asset are typically affected by the pre-FA02 rule?**

**Question 2: What difficulties or benefits has the need to distinguish between pre- and post-FA02 assets caused for your business? How has the significance of these issues changed over time? If possible, please provide details of any extra administration and cost this imposed.**

**Question 3: What would be the impact (positive or negative) of allowing pre-FA02 assets to come within the IFA regime?**

### **Transitional issues**

- 2.7 There are a number of practical issues that would need to be considered if the 2002 boundary were to be removed.
- 2.8 Companies holding excluded pre-FA02 assets will generally have recognised accounting amortisation or impairment debits in respect of those assets. Those debits will not have been taken into account for tax purposes.
- 2.9 If such assets were to be brought within the IFA regime, there are therefore a number of residual values on which the relief available could be based – including net book value, market value or some other cost or value.

**Question 4: If pre-FA02 assets were brought within the IFA regime, at what value should they be recognised, and why?**

- 2.10 Gains on disposals of pre-FA02 assets are currently taxed under the capital gains regime. If a company has unrelieved capital losses from disposals of other assets it may offset them against gains from such intangible assets. However capital losses cannot be offset against income, including gains on assets within the IFA regime.
- 2.11 Bringing pre-FA02 assets within the IFA regime would therefore prevent companies from obtaining the benefit of capital losses in the event of a disposal. Similar issues could arise in relation to other capital gains reliefs, and transitional provisions may be required to avoid arbitrary outcomes.

**Question 5: How significant would the transitional issues around capital losses and other reliefs be in practice, and what do you consider would be the best way of addressing this potential unfairness?**

**Question 6: Do you anticipate any other transitional issues? If so, please provide details.**

## 3. Goodwill and other relevant assets

- 3.1 Goodwill is the difference between the purchase price of a business and the fair value of the individual identifiable assets and liabilities acquired. It is commonly considered to represent the value of an existing business's reputation and customer relationships.
- 3.2 Accounting standards have adopted different approaches to how the value of goodwill should be recognised and written down in a company's accounts. For example, under UK GAAP companies amortise goodwill over its useful life, while under IFRS goodwill is tested for impairment annually.
- 3.3 In the Finance Act 2015 the government introduced a new restriction to the IFA regime denying relief for "relevant assets", which include goodwill and those assets that would typically be subsumed within, or closely associated with, the business goodwill:
- Customer information
  - Customer relationships
  - Unregistered marks or signs
  - A licence in respect of any of these things

The changes took effect from 8 July 2015 and apply to relevant assets acquired on or after that date. The changes mean that, instead of giving a deduction for expenditure on these relevant assets when the cost is recognised for accounting purposes as amortisation or impairment losses, the IFA regime now only gives a deduction at the time of disposal.

- 3.4 The 2015 restriction reflects that allowing deductions for amortisation of goodwill is an expensive relief. It also seeks to minimise tax distortions in business mergers and acquisitions. It does this by removing a tax incentive to structure an acquisition of a business as a trade and asset (including goodwill) purchase rather than a share purchase.
- 3.5 It has been over two years since this restriction was introduced and the government would like to explore the impact it has had on businesses.
- 3.6 Some businesses have raised concerns that the absence of relief for customer-related intangibles creates complexity and a friction for transactions by introducing a further boundary to the regime that does not align with accounting treatment.
- 3.7 It has also been claimed that the UK is out-of-line with typical international practice in denying relief for goodwill amortisation, which is a business expense recognised in accounts.
- 3.8 Businesses have said that this is impacting on the UK's competitiveness in attracting mobile businesses and leading groups to locate their intangible

assets (and the economic functions associated with those assets) in jurisdictions that offer more generous relief.

- 3.9 The government wants to explore these concerns and consider whether there could be ways to provide relief for goodwill amortisation that deal with the concerns cited above about the cost of the relief.
- 3.10 The government welcomes views on the approaches taken by other countries in this area, including those that allow relief for the amortisation of goodwill but restrict relief to certain categories of income.

**Question 7: In what situations do companies pay more for a business than the fair value of the individual assets, and what does this difference represent?**

**Question 8: How has the scope of the 2015 restriction – which extends beyond goodwill to customer-related intangibles – impacted on your business? Please explain both the positive and negative impacts, and provide specific examples where possible.**

**Question 9: To what extent could changes be made in this area in a way that deals with the issues that motivated the removal of relief in 2015?**

## 4. De-grouping

- 4.1 Under the IFA regime any transfer of assets between companies in the same group takes place on a “tax-neutral” basis. This means that the transferor company is not taxed when the asset is transferred. Instead, the acquiring company inherits the tax history of the transferor in relation to the asset and is taxed based on the transferor’s original purchase cost if and when it sells the asset to a third party.
- 4.2 This tax-neutral treatment for intra-group transfers opens up the possibility of tax planning arrangements. Companies may try to obtain a tax advantage by enveloping assets in a limited company prior to disposal. This allows the company to avoid disposing of the asset to a third party and thereby crystallising a taxable gain. Instead the shares, which typically do not stand at a gain, may be sold.
- 4.3 The regime therefore also includes a “de-grouping charge” in s780 CTA09.
- 4.4 The de-grouping charge applies if a company leaves a group while holding assets that were transferred to it by another group company on a tax-neutral basis within the previous six years. On leaving the group the company is deemed to dispose of and reacquire those assets at their market value immediately after the time of the tax-neutral transfer, realising taxable gains or losses as appropriate.
- 4.5 This effectively restores the tax consequences that would have arisen if the tax-neutral treatment had not applied.
- 4.6 Both the tax-neutral transfer rule and the de-grouping charge mirror similar provisions in the capital gains regime.
- 4.7 However, since 19 July 2011 a capital gains de-grouping charge has generally been exempt from tax in cases where the Substantial Shareholding Exemption applies to the disposal of the asset-owning company. The assets to which the charge applies are therefore rebased to market value, with no tax consequences. This is not a feature of the IFA regime.
- 4.8 Stakeholders have made representations to the government that the IFA de-grouping charge – which produces an immediate tax charge on the company holding the asset – is onerous compared to the treatments that apply to other kinds of asset (including pre-FA02 IFAs). They argue this can hinder legitimate M&A transactions structured as share sales.
- 4.9 The scale of this issue would increase if pre-FA02 assets were brought within the IFA regime, because this would increase the pool of assets potentially subject to the de-grouping charge.

**Question 10: To what extent does the IFA de-grouping charge cause difficulties with M&A transactions in practice? Please provide specific examples where possible.**

**Question 11: Do you consider that the IFA de-grouping charge could be modified to eliminate such difficulties? How could this be achieved affordably, while preserving the Exchequer's ability to claw-back deductions given in excess of the economic cost?**

## 5. Basis of relief

- 5.1 The default rule is that the relief given under the IFA regime “follows the accounts”. The regime allows a tax deduction for the cost of an intangible fixed asset that is equal to the debits – e.g. amortisation or impairment charges – recognised in respect of that asset in a company’s profit and loss account.
- 5.2 The debits that a company recognises will depend on the accounting framework under which its accounts are prepared. Typically, assets that are judged to have a finite useful life are amortised over that life, while under International Accounting Standards those judged to have an indefinite life are tested for impairment annually.
- 5.3 The regime also allows companies to instead elect to receive a tax deduction at a fixed rate of 4% per annum of an asset’s accounting cost. The election is made on an asset-by-asset basis and is irrevocable. Typically, companies will make the election in respect of assets that are amortised over more than 25 years, or not amortised at all.
- 5.4 The government considers that the IFA regime’s default accounts-based rule is generally the right basis for relief. There is then consistency between accounting and taxable profits, which is a central principle of the regime. The relief is based on an appropriate measure of the economic cost to the company.
- 5.5 The 4% fixed rate of relief diverges from this approach. It allows companies to obtain a deduction even though the asset in question may not be decreasing in value. This was intended to provide an incentive for companies to invest in intangibles with a long or indefinite useful life by providing a degree of tax relief for the cost.
- 5.6 There are no restrictions on the way in which deductions for IFA relief may be used. The entirety of a deduction may be used to reduce a company’s trading or non-trading profit, or to increase its relievable losses.
- 5.7 Many other major jurisdictions give relief for intangible fixed assets in a similar way to the UK, with a combination of accounts-based deductions and varying fixed amortisation rates (including guideline rates that are accepted by the relevant fiscal authority for particular types of asset) being the norm.
- 5.8 Some stakeholders have made representations that the rate of relief available in the UK is out-of-line with typical practice internationally. While accepting that some overseas regimes offer higher fixed amortisation rates, the government considers that the availability of accounts-based deductions means the UK’s regime is broadly on a par with most major nations.
- 5.9 The government also questions the extent to which varying the fixed rate of relief would impact on business decisions. Such a change would not impact on

the tax charges recognised in companies' accounts, given that it would be matched by a movement in deferred tax assets or liabilities.

**Question 12: In what circumstances do companies typically elect for fixed rate relief?**

**Question 13: Do you consider that the UK's approach to the elective fixed rate relief deters international businesses from locating intangibles in the UK?**

**Question 14: Should the way in which fixed-rate relief is given under the IFA regime be changed? How would this impact on business decisions?**

## 6. Supporting economic growth

- 6.1 The changes to the IFA regime that have been raised in this consultation would come at a cost to the Exchequer.
- 6.2 The government would therefore like to understand what economic and fiscal benefits the changes would bring to the UK. That includes the extent to which the changes:
- would make UK businesses more likely to invest in intangible assets,
  - would make the UK more attractive as a location for mobile business activities, and
  - would make the UK more attractive as a place for multinational groups to own IP and, in light of the BEPS transfer pricing reforms, the impact that would have on the location of skilled personnel and value-generating functions in the UK.

### **Question 15: What are the benefits to the UK of international businesses holding intangible assets in the UK?**

- 6.3 The government would also like to consider options that mitigate the cost of potential changes to the IFA regime, and help to secure the economic benefits identified above.
- 6.4 For example, currently there is no link between the expenditure that is relieved under the regime and the benefits that expenditure leads to in the form of increased economic activity and profit-generation.
- 6.5 One way of achieving this might be to widen the range of assets that are eligible for relief under the IFA regime, but restrict the relief that is given, for example by reference to the income generated by the asset that is being amortised.
- 6.6 This could focus the relief, limiting it to situations where the expenditure that is relieved generates additional economic activity.

### **Question 16: How could the IFA regime be made more cost-effective?**

## 7. Assessment of impacts

### Summary of Impacts

<b>Exchequer impact (£m)</b>	<p>The Exchequer impact of any changes to the IFA regime will depend on the detailed policy design, which will be informed by this consultation, and on the behavioural responses of affected businesses.</p> <p>If the government chooses to implement policy changes in this area, any final costing will be subject to scrutiny by the Office for Budget Responsibility, and will be set out at a future fiscal event.</p>
<b>Economic impact</b>	A full assessment of economic impacts will be undertaken as and when detailed policy options are developed.
<b>Impact on individuals, households and families</b>	It is not anticipated that there will be an impact on individuals, households and families.
<b>Equalities impacts</b>	It is not anticipated that reforms to the IFA regime will adversely affect any group with protected characteristics.
<b>Impact on businesses and Civil Society Organisations</b>	No firm estimate of the impact on businesses is available at this time. The government intends to gather more information on these impacts through the consultation process.
<b>Impact on HMRC or other public sector delivery organisations</b>	The IT cost and resource impact on HMRC will depend on the detailed policy design, which will be determined following consultation.
<b>Other impacts</b>	No other impacts have been identified.

**Question 17: Do you have any comments on the assessment of equality and other impacts summarised above?**

## 8. Summary of Consultation Questions

Question 1: What types of asset are typically affected by the pre-FA02 rule?

Question 2: What difficulties or benefits has the need to distinguish between pre- and post-FA02 assets caused for your business? How has the significance of these issues changed over time? If possible, please provide details of any extra administration and cost this imposed.

Question 3: What would be the impact (positive or negative) of allowing pre-FA02 assets to come within the IFA regime?

Question 4: If pre-FA02 assets were brought within the IFA regime, at what value should they be recognised, and why?

Question 5: How significant would the transitional issues around capital losses and other reliefs be in practice, and what do you consider would be the best way of addressing this potential unfairness?

Question 6: Do you anticipate any other transitional issues? If so, please provide details.

Question 7: In what situations do companies pay more for a business than the fair value of the individual assets, and what does this difference represent?

Question 8: How has the scope of the 2015 restriction – which extends beyond goodwill to customer-related intangibles – impacted on your business? Please explain both the positive and negative impacts, and provide specific examples where possible.

Question 9: To what extent could changes be made in this area in a way that deals with the issues that motivated the removal of relief in 2015?

Question 10: To what extent does the IFA de-grouping charge cause difficulties with M&A transactions in practice? Please provide specific examples where possible.

Question 11: Do you consider that the IFA de-grouping charge could be modified to eliminate such difficulties? How could this be achieved affordably, while preserving the Exchequer's ability to claw-back deductions given in excess of the economic cost?

Question 12: In what circumstances do companies typically elect for fixed rate relief?

Question 13: Do you consider that the UK's approach to the elective fixed rate relief deters international businesses from locating intangibles in the UK?

Question 14: Should the way in which fixed-rate relief is given under the IFA regime be changed? How would this impact on business decisions?

Question 15: What are the benefits to the UK of international businesses holding intangible assets in the UK?

Question 16: How could the IFA regime be made more cost-effective?

Question 17: Do you have any comments on the assessment of equality and other impacts summarised above?

## 9. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 1 of the process. The purpose of the consultation is to seek views on the policy design of the corporate intangible fixed asset regime and any suitable possible reforms. Draft legislation on any specific proposals that are adopted will be subject to further consultation.

### How to respond

A summary of the questions in this consultation is included at chapter 8.

Responses should be sent by 11 May 2018:

- by e-mail to [ifa.consultation@hmrc.gsi.gov.uk](mailto:ifa.consultation@hmrc.gsi.gov.uk), or
- by post to: Intangible Fixed Assets Consultation, Room 3/63, HMRC, 100 Parliament Street, London, SW1A 2BQ.

For telephone enquiries please call 03000 575 610 (from a text phone prefix this number with 18001).

**Please do not send consultation responses to the Consultation Coordinator.**

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

### Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes.

These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

### Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles. As this consultation concerns complex policy and technical issues the government is keen to arrange meetings with external bodies, but also encourages written responses

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: [hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk](mailto:hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk)

**Please do not send responses to the consultation to this address.**

# Annex A: Relevant (current) government legislation

The full text of the legislation referred to in this document can be found on the Office of Public Sector Information ([OPSI](#)) website. Links to the legislation are provided below:

[Corporation Tax Act 2009](#)

[Corporation Tax Act 2010](#)