

Decision making and Intangible Assets

**A qualitative evaluation of the UK
Intangibles regime on behalf of HMRC**

November 2010

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Published by HM Revenue and Customs, November 2010

www.hmrc.gov.uk

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Executive summary

1. Executive summary

This study explored the role played by the UK Intangible Assets regime in business decision making, specifically around the acquisition or creation of intangible assets. In order to do so, 24 qualitative depth interviews were conducted across 17 firms in a range of sectors. While this was a relatively small study, there was a great deal of consistency in what was said in the interviews, regardless of role, sector or experience. This gives us confidence that the findings contained in this report are broadly reflective of large businesses as a whole.

Acquisition and development of intangibles

Intangibles were **widely acknowledged to be important**, and in some cases vital, to the success of a business. Brands formed the core of many businesses while, for others, know how was central to the services they provide. Additionally, the exploitation of patents and intellectual property was a major source of income for many firms.

That said, **taxation of intangible assets was a secondary issue** for all firms taking part in this research. The **primary concern** in acquiring or developing intangible assets is **whether or not they fit with corporate strategy and improve business performance**. Therefore it would appear that the taxation of intangibles is influential on **how** but not **if** a deal is done.

The decision making process

There **were three key factors** in the decision making process: **context, strategy and opportunity**.

All businesses existed in the context of being driven to expand and improve performance. Within this context, a board level corporate strategy was developed, providing a **framework to guide business development**. This process was largely driven by senior level staff – **CEOs, Finance Directors and other board members**. The strategy, outlined in a corporate plan, influenced all acquisitions or development of intangible assets – the key question being whether or not the intangible would **benefit the business** and the extent to which it would fit with the overall corporate plan. All firms agreed that **no intangibles would be sought that did not help drive the business forward**. It was felt that acquiring or developing intangibles for the tax benefits alone would be **‘putting the cart before the horse’**.

While strategy was set and driven by the board and senior corporate and finance teams, **all levels of a business were aware of the strategy** and sought to identify opportunities to improve the business. This could be through the **acquisition of intangibles from outside the business** or **development of new intangibles through in-house innovation**. Therefore, the expansion and improvement of businesses were driven by the **top-down** board strategy and **bottom-up pressures** from specialist functions.

Tax issues around intangibles are important but all firms agreed that tax experts typically only became involved once a deal has been decided upon. **Tax implications did not influence whether or not to do a deal**, only how a deal was to be structured.

Mobility

The general consensus among those interviewed was that, whilst intangibles are *theoretically* mobile, a number of practical restrictions meant that **'off shoring' is rare**. Intangibles were said to need an **infrastructure and support network** and additionally, the location of intangibles was influenced by the **'magnetism'** of major functions or core operations, key customer groups or tradition. Exit costs, both through taxation and potential damage to reputation, also restricted the mobility of intangible assets.

The availability of important resources such as **a skilled workforce was considered to outweigh any competitive tax advantage** that might be offered by another regime.

The wider tax environment was also considered to be much more influential than the specifics of the intangibles regime. For example, **high personal tax rates affected the ability of businesses to attract the best senior or specialised staff**.

Overall attitudes to the regime

Despite the **relative lack of influence** of the intangibles regime on the acquisition or creation of intangible assets, the legislation itself was **seen in a broadly positive light**. Most firms found the intangibles regime to be **user-friendly and clear** regarding what does and does not comprise an intangible asset. The potential for writing off goodwill and other intangibles has also allowed firms to be more flexible in how much they bid for acquisitions, which is appreciated.

Background and methodology

2. Background and methodology

Summary section: Background and methodology

The **key objectives** of this research were to explore the **decision making** process around intangible assets, the **influence of the UK tax regime** on decisions and to assess current **understanding of the regime**.

Given the complexity of the subject matter, an **exploratory qualitative research design** was used. This involved a series of in-depth interviews and case studies with tax specialists and senior decision makers within **17 firms across a range of sectors**. Views expressed in these interviews were **highly consistent** across sectors and roles, meaning we can be confident the findings presented in this report are **broadly reflective** of the overall business population.

This chapter examines the aims and objectives of this study, as well as detailing the methodological approach adopted to answer the key research questions.

2.1 Aims and objectives

Intangible assets encompass a range of intellectual and other properties which many large companies view as among their most valuable attributes and as a powerful source of competitive advantage. Assets with no physical properties, such as brands, know-how, patents, trademarks, registered designs and copyrights, have become increasingly important to industry, particularly as the UK has shifted towards a knowledge and service-based economy in the last decade.

Yet, despite this growing importance, there has been little existing research to describe how large companies make decisions regarding the creation, acquisition, maintenance and trade of these types of assets as well as the factors that influence these decisions.

HMRC commissioned Ipsos MORI to explore the decision making process around intangible assets and the influence of the current intangibles regime. The research had three key aims:

- To explore the decision making process of large companies around the creation, acquisition, maintenance and disposal of intangible assets;
- To identify influential factors in this process, in particular the role played by the UK tax regime; and,
- To assess current understanding of and views on the regime.

In addition to these core issues, the research also aimed to answer other questions. These centred around participants' views on the changes to the tax treatment of intangibles since 2002 and the impact they had on dealing with intangibles. Lines of questioning also covered factors that influence which tax regime intangibles were located under and the income derived from intangibles.

2.2 Research approach

Ipsos MORI adopted a flexible qualitative approach to the research. The decision to adopt a qualitative approach was primarily driven by the lack of existing research around intangible assets. Allowing researchers to probe on issues from the starting point of open questions proved the best approach to complex issues such as decision making processes and intangible assets. Also, as the research was discussing things that happened over a broad time frame, an exploratory qualitative research design was most appropriate.

Qualitative in-depth interviews were the main approach used in this project. In addition, and where possible, case studies of tax specialists and senior decision makers were also conducted. This typically involved interviewing two specialists or decision makers within the same firm, either jointly as part of a paired depth interview or separately, depending on availability.

A total of 24 interviews were carried out, across 17 different firms and a range of sectors, between December 2009 and March 2010. A breakdown of interviews by sector can be found in the table below.

Figure 1: Sample Frame

	Number of interviews (case studies)
Finance	2 (1)
Food/tobacco/alcohol	5 (2)
Mining/oil & gas/agriculture	2 (1)
Other manufacturing	4 (1)
Real Estate	1
Transport/comms	2
Utilities & construction	4
Retail/hotels	4 (2)
	24

When discussing the findings presented in this report, it is important to consider what a qualitative approach can provide. Qualitative research is an interactive process, aiming not only to identify what people think but also their reasons for this. It allows the attitudes and opinions of participants to be explored in detail, as well as providing insight into the key reasons underlying participants' views.

It is important to note though that qualitative findings are *illustrative* and *indicative*, not statistically representative. The findings presented in this report are based on common themes, however, it is not possible to quantify findings or suggest they reflect the attitudes of *all* of those who deal with intangible assets. On this point though it is worth bearing in mind the consistency of responses gathered from this research study. The uniformity in opinions expressed by businesses, regardless of their role and sector, lends us to believe that we can be reasonably confident that the findings contained in this report are broadly reflective of the overall business population.

When reading the report it is also useful to bear in mind that it is possible that individual participants may hold two contradictory views simultaneously – a phenomenon known as ‘cognitive dissonance’ – and it is not unusual to find this in qualitative research. It is important to note that when situations like this occurred, interviewers focused on the apparent contradictions and explored the issues further, unpicking the reasons for conflicting views.

2.3 Methodological implications

Obtaining interviews with appropriate people, tax specialists and senior decision makers for example, proved to be more difficult than expected. There were a number of reasons for this:

- We approached large multinational companies, where potential interviewees were often reluctant to take part in research. This reluctance was due to a range of issues. Some organisations have a ‘no research’ policy, others felt over-researched, while others were simply unwilling to discuss potentially sensitive issues with us;
- Finding more than one person with experience of intangible assets proved difficult. Of those case studies we did manage to conduct, colleagues said much the same things as one another as the process of dealing with intangibles is highly collaborative;
- Similarly, many of those who did agree to take part suggested that there is very little point interviewing anyone else in their company as part of this study. It was generally felt that, outside of tax departments, there is very little specific knowledge of intangible assets, as this remark from one of the participants indicates;

I can guarantee you that no-one else in this organisation apart from my team is aware that there is a tax regime for intangible fixed assets, not one single person would. The M&A team would know because we’ve talked about it on every deal, but aside from that no-one knows or cares

Telecoms firm

- Fieldwork was conducted at a busy time, with first the Christmas holidays (and the poor weather during January) and then financial year end, meaning that many people struggled to find time to participate in the research, while the sample targeted some sectors – banking, for example – which had been affected by the economic downturn and so had other priorities; and
- More broadly, difficulties when recruiting for other research conducted by Ipsos MORI indicates that firms have been more selective about taking part in research during the recession.

2.4 Presentation of findings

This report is divided into seven sections, each representing different aspects of the research:

1. The executive summary, providing a brief overview of the research program and the key findings;
2. Background and methodology, outlining the approach taken to the research;

3. Acquisition and development of intangibles, exploring the importance of intangibles and taxation to businesses;
4. The decision making process, setting out how and why decisions are made and the factors that influence them;
5. Mobility of intangible assets, looking at how mobile intangibles are and any restrictions on this;
6. Overall attitudes to the regime, where views of the UK regime and comparisons to other regimes are discussed; and
7. Conclusions, summarising the views outlined in the report.

2.5 Glossary of abbreviations

HMRC	Her Majesty's Revenue and Customs
R&D	Research and development
IA	Intangible assets
IP	Intellectual property

2.6 Acknowledgements

Ipsos MORI would like to thank Adam Roberts, Jen Poyser, Kerry Pope, John Williams, Peter Faherty and all in the KAI team for their help and support throughout the project. We would also like to thank the participants for giving up their time.

Acquisition and development of intangibles

3. Acquisition and development of intangibles

Summary section: Acquisition and development of intangibles

Intangibles were **widely acknowledged to be important**, and in some cases vital, to the success of a business. **Brands** were one commonly cited example – they formed the core of many major businesses, highlighting what these firms stand for. For others, **know how** and business expertise was central to what they do. Alternatively, the exploitation of **patents** and intellectual property was a major source of income for many firms. In this way, different intangibles performed different roles for different firms.

However, **taxation of intangible assets was a secondary issue**, a view expressed with great consistency by all the firms that took part in the research. The primary concern in acquiring or developing intangible assets is whether or not they **fit with corporate strategy and improve business performance**. Taxation of intangibles is influential on **how** but not **if** a deal is done.

3.1 Introduction

In this chapter, we describe the importance of different intangible assets to businesses. In addition, we look at how important the taxation of intangibles is to the acquisition or creation of intangibles and the influence it has on these processes.

3.2 The importance of intangible assets

All of those interviewed said that intangible assets form an important part of their business. In many cases, large and obvious intangibles such as brands or patents were considered to be the life blood of the business. Brands were particularly important to food and beverage industries – they were considered to be the symbols of the values and identities of firms and the products they produce. Much of the value inherent in such business was seen to reside in the brand itself, which helped drive recognition and attract customers. Such organisations acknowledged the primacy of branding as an intangible asset by referencing many of the largest and best-known brands in the world, in addition to their own.

They are what the business is, that is our business – you are talking about the equivalent of a Coca Cola or McDonalds; it's all about the name and what do people associate with the name in terms of consistency of expectations

Hotel firm

Intangibles such as patents were depicted as central components of the products and services offered by technology and pharmaceutical companies. Being able to exploit their own work and innovation in this way allowed such firms to stay 'ahead of the game'.

However, similarly high levels of importance were also attributed to less visible intangibles such as operating systems or business know how. Again, technology firms in particular saw know how as providing them with a key competitive advantage. For those in the telecoms industry, know how and expertise in handling customer information (which in turn allowed them to successfully manage customer relationships) were felt to be vital to the company

surviving, let alone thriving. The quote below illustrates how an intangible asset, such as a customer management system, can be a vital part of a business.

So for example we have a customer relationship management system... that is intangible. That's an intangible asset, and that's vital. Our business would collapse without that

Telecoms firm

Indeed, business know how and the ability to adjust this to differing markets and situations was considered to be just as important as branding in ensuring the success of some retail firms. For example, adjusting in-store approaches to merchandising, layout and customer offering, according to different markets and local preferences, provided important advantages over competitors and attracted customers.

Well, the brand itself is clearly very important and is growing in importance because people, international travellers anyway, are starting to recognise it. What I think is probably as important is that we have found that across the world we have had to adapt our store management techniques to adapt to differing markets

Food and beverage retailer

3.3 Taxation is a secondary issue

Tax implications were not seen as a driver of decision making in relation to intangible assets. While all those who were interviewed acknowledged that intangible assets play an important, sometimes vital, role in their firms' success, perhaps the key finding from the research was that the taxation of intangibles was always of secondary importance in decision making. Decision making is *always* guided by practical business and commercial considerations in the first instance. Taxation of intangibles is, by comparison, a minor issue and unimportant to the decision making process.

Indeed, many of those we contacted felt that they had little to say about the intangible assets regime, emphasising that this is not a top of mind consideration for many firms.

Regardless of whether the expenditure is on intangible assets, tangible asset or operating costs, we make decisions on investment in order to meet our strategic priorities...the fact that some assets are classified as "intangible" is not a key consideration...In particular, tax considerations are not a part of the decision making process around capital expenditure

Email response from contact

Everyone who took part in this research emphasised the primacy of commercial need and corporate direction in decisions about acquiring, creating and maintaining intangible assets. Making such decisions on the basis of potential tax benefits was not considered to be a sensible way to run a successful business; impulses to improve competitiveness and drive a business forward were considered of paramount importance by all. Thus, the tax considerations were very much felt to be a background factor, an influence on *how* business is done rather than *whether* it is done at all. It is, therefore, difficult for the intangibles tax regime to affect decision making.

It would never change whether you acquire it. Whether to acquire it is always a business decision. Always, always, always

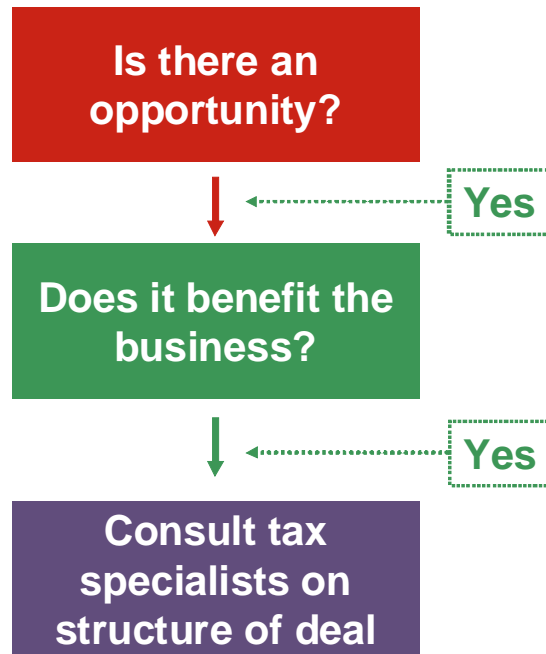
Telecoms firm

These are business decisions. We don't drive the business around tax. Tax is an element that you have to deal with and you take into account...once you've made a commercial decision...the commercial decision is what drives things

Food and beverage firm

When considering the acquisition of an asset, the tax treatment is only taken into account after an initial decision is taken to make an offer. Following such a decision to bid for any given asset, tax experts would be consulted on the details of a deal and how this might be structured. However, this was always done *after* the decision was made to make an offer. So, for example, a commercial team may propose an acquisition to the board, based on an assessment of opportunity and strategy. If this proposal is taken up, it is only at this point that the tax consequences will be explored. This process is outlined in the diagram below.

Figure 2: When tax implications are considered in the decision making process



Essentially there would be a commercial proposal which will be looking at whether or not to acquire a business...and then the business people would ask us, being people in the tax department, what are the tax issues and how would you suggest that we structure this acquisition?

Hotel firm

Despite the primacy of commercial direction over tax considerations, some of those we spoke to suggested that the intangibles regime *could potentially* be influential at the marginal level. That is, if all other things were equal, if practical costs such as moving staff and exit costs are low, then the intangibles regime could be influential on decision making. However, this was only discussed as a hypothetical situation – no firm had actually experienced this and none expected to.

The fundamental things are just what's the commercial needs and drivers but then again, behind that, then it's what's needed to do it, what are the costs around that, if we are talking about people it will obviously be what's the cost of the people concerned in all aspects, and obviously where is the expertise available. So it's more those aspects and then if there is a significant tax difference then that may come into the balance in the sense that if you have got a marginal decision then tax can be significant enough to swing it

Hotel firm

Well, I suppose it could come down to just the pure economics of it...if the expected return on a post tax basis was marginal, then the way somebody wants tax rights would have a big impact in respect of return, I could imagine that could be influential
Mining firm

Case study – telecoms firm

While tax considerations are influential and clearly matter to how a particular deal may be structured, they are not the primary drivers of decision making. For this firm, it would be “a nonsense” if tax was driving decisions. Commercial aims are by far the most important and influential factor – considering tax benefits before the commercial gains was described as being ‘back to front’, in that competitiveness and improving the business was the only aim of acquiring new intangibles

Tax is part of the bigger picture, but again it’s driven by does it make sense for us commercially and is the price right

Telecoms firm

The influence of tax considerations is felt during the process of putting a deal in place rather than initial decision making. Tax considerations influence *how* not *if* a deal is done. Tax experts become involved only once a deal looks likely. Then, as needed, they are called in to explore tax issues and work out how a deal can be most beneficially structured.

If it then looks like we’ve got the makings of a deal then they’ll call in myself as the head of tax to check out the tax ramifications

Telecoms firm

This firm felt that the current regime is better regarded than before 2002. This is primarily due to the way businesses can now project the likely tax relief they earn from the cost of an acquisition. This, in turn, has removed some of the restrictions on prices that businesses can bid for an asset, making them more competitive. However, on the other hand, these changes have introduced a tension between shares and assets, with sellers being keen to sell shares and buyers seeking to acquire assets.

This firm was also keen to stress that not all intangibles are valued and placed on the balance sheet as some assets can fluctuate in value too quickly for this to be realistic.

There are probably other intangibles in their organisation but which we’d never valued, so we’d never decided to put them onto our balance sheet

Telecoms firm

The decision making process

4. The decision making process

Summary section: The decision making process

There **were three key factors** in the decision making process: **context, strategy and opportunity**. All businesses existed in the context of being driven to expand and improve performance. Within this context, a board level corporate strategy was developed, providing a **framework to guide business development**. This process was largely taken forward by senior level staff – **CEOs, Finance Directors and other board members**. The strategy outlined in a corporate plan influenced all acquisitions or development of intangible assets – the key question being whether or not the intangible would **benefit the business** and fit with the overall corporate plan. All firms agreed that **no intangibles would be sought that did not help drive the business** forward; acquiring or developing intangibles was not done just for the tax benefits alone; all felt this would be a case of **‘putting the cart before the horse’**.

While strategy was set and driven by the board and senior corporate and finance teams, **all levels of a business were aware of the strategy** and sought to identify opportunities to improve the business. This could be through the **acquisition of intangibles from outside** the business or **development of new intangibles through in-house innovation**. Driven by the **top-down** board strategy or **bottom-up pressures** from specialisms within a business, this was always focussed on expanding and improving business performance.

That said, **tax issues around intangibles are important** but all firms agreed that typically, tax experts only become involved once a deal has been decided upon. **Tax implications rarely influenced whether or not to do a deal**, only how a deal was to be structured.

4.1 Introduction

In this chapter we explore the three key factors used in the decision making process – context, strategy and opportunity. Following this, the decision making process is mapped out and each individual stage is explored. Case studies are also used to illustrate the process.

4.2 Context

The context in which decisions are taken is key. All firms are driven by the capitalist impulse to innovate and stay ahead of the competition and by the desire to seek an advantage over others. Strategy is devised to achieve this and opportunities are sought which provide this.

All of the businesses we spoke to stressed that intangible assets had to be important drivers of commercial success – intangibles were neither acquired nor developed for their own sake nor for any tax advantage they could bring. The question isn't whether or not a firm should seek to acquire an asset. Instead, all decisions are framed in the context of whether or not an asset would improve the business, help it to stay ahead, or maintain a competitive edge over others. From this perspective, all other actions and decisions flow. As the quote below indicates, the need to acquire a particular intangible was not framed as a need for an intangible asset *per se*. Rather, the need was for an asset that imparted a commercial or business advantage.

There's no one thinking "I must get this intellectual property". They think "I need this asset to make my business better, to develop, to continue being at the forefront of technology or to continue innovating"

Telecoms firm

At the same time, all internal research and development is driven by the same impulse. New technologies or ways of doing business, for example, are directed towards improving and expanding a firm's performance. For the hotel firm quoted below, improving customer management systems and check-in software – i.e. know how – was driven by a desire to be better, to improve its service to customers and, hence, performance.

It's all part of the ongoing business, we plough it back into developing and expanding the business

Hotel firm

4.3 Strategy

Within this context all organisations had a corporate plan, set at board level, which was responsible for driving business decisions, including those made about intangible assets. With a business plan guiding the development of the business, all the firms to which we spoke insisted that this was the only sensible way to proceed. While tax issues around intangible assets were clearly important, they did not drive the decision making. Giving issues of taxation a more prominent role was felt to be 'putting the cart before the horse' and it was thought that no business could thrive under such conditions.

Indeed, businesses stated that *no* decision could ever be driven by tax considerations alone. The over-riding concern of all businesses was that any intangible asset must fit within the overall business strategy. For example, a tax director at a major technology firm discussed how the engineering function decided on priorities and, therefore, guided direction over the acquisition or creation of key intangibles.

We wouldn't buy this sort of intellectual property simply to get a tax deduction, it would be a nonsense. Because if it didn't make sense commercially then you the tax payer would be wagging the corporate dog, which wouldn't be the right way round

Telecoms firm

That is, the tax paid by a business cannot take precedence over commercial imperatives. The need to improve business performance drives decisions, rather than tax considerations.

4.4 Opportunity

The board level strategy was communicated and understood throughout each business, allowing each aspect of a business to seek and identify an opportunity to improve its operations, to innovate and to expand.

Opportunities were identified by senior management within, for example, commercial teams or corporate finance teams. These teams sought out opportunities that matched the corporate strategy and allowed the firm to grow. This could take the form of new and emerging markets, new territories or new business areas.

The strategy is set by the board, which reflect areas we want to develop into. We have a combination of commercial people who carry out the strategies of the board and a dedicated corporate finance team who look for opportunities for growth and for acquisition opportunities that fit within our strategies

Food and beverage firm

However, there was not only top-down pressure from the corporate and commercial teams. Given that the direction was understood by all, there was bottom-up influence from individual

business units. Through research and development, for example, business units could identify new brands that needed to be created. Alternatively, specialist technology teams would identify areas where new products or systems were required that would improve business performance.

So the telecoms team decide they need to move to some new technology for telephony. They decide that's what they need to do, that's what they're going to deliver...ultimately, the decision lies with that team and with the executive that oversees that team

Telecoms firm

Case study – multinational pharmaceutical company

The primary intangible assets for this firm were goodwill and patents. These were felt to be “vital” to the success of the company. For a technology-based company such as this, science and intellectual property underpin everything they do. All business decisions relating to intangible assets are made at board level. These decisions are driven by both **top down** and **bottom up** pressures – by the business need for innovation as well as by the overall corporate strategy.

All these guys...– the R&D functions – they are developing and improving the process and sometimes one process becomes redundant and they move on to another and so that determines its economic life

Pharmaceutical company

Tax considerations are the second stage of this process – while the taxation of intangibles was seen as important, it would never outweigh the crucial importance of whether or not the intangible itself offered a competitive advantage or a means to improving performance. Intellectual property is primarily held in the UK, as this is where most of the research and development is done. They would consider moving intellectual property and intangibles away from the UK if there was a “pronounced” tax advantage and such a move could be achieved in a “tax free” manner. However, such a move was felt to be impractical as the logistical and practical barriers to having IP in one location and R&D in another were felt to be too high to make moving them worthwhile.

Changes to the regime in 2002 were very welcome as legislation needed freshening up to keep up with the rest of the world, but the changes have made little practical difference to how they actually deal with intangibles. There are some specific issues around the wording used in parts of the legislation, which they are debating with contacts at HMRC – Schedule 29 was felt to be poorly worded, relying on accountancy standards to determine when goodwill came into existence. This caused a different understanding of the legislation to HMRC’s understanding and was exploited by some companies, requiring the legislation to be updated.

Ultimately, tax considerations were considered to be secondary to commercial needs and corporate strategy. In practice, they felt that this will always be the case.

- At the early stage we're identifying the technology that we need and I don't think that's influenced by the tax rules at all

- As far as I know and I've been around a bit now, that's the case in every organisation

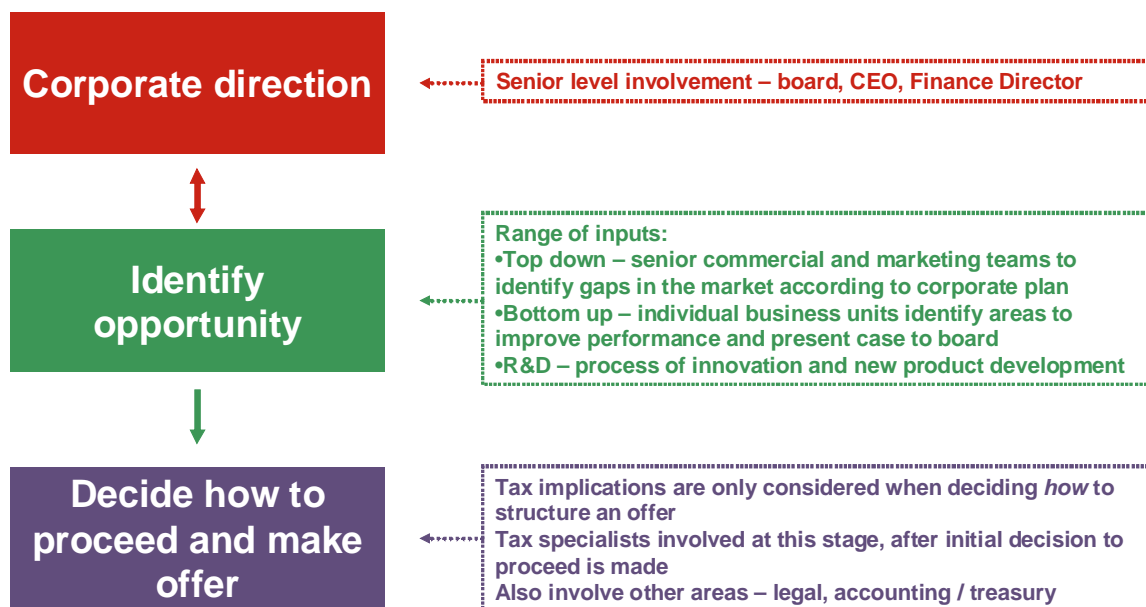
Pharmaceutical company

4.5 An overview of the decision making process

The typical decision making process involved different people at different stages. As the chart below demonstrates, overall direction is driven by the board, with feedback between different teams and different levels as opportunities are identified.

Only after decisions have been taken are tax issues considered.

Figure 3: The decision making process



Corporate direction

Corporate direction, driven by the impulse to expand a business and improve performance, was set at board level. A corporate plan was seen as the key first step in any decision making around intangible assets, setting the tone and framework in which all decisions are made. Without this, firms would have no reference point about what sorts of intangible assets should be sought.

In terms of what it is we need, a strategy in terms of the businesses that we are looking at and seeking to acquire, that's defined by the board.

Pharmaceutical firm

The key influencers in setting direction were typically found to be the Chief Executive Officer, the Finance Director, alongside various other board members. Responsibility for carrying out this strategy was often given to commercial and corporate finance teams. These teams were closely aware of strategy and intimately involved in turning that strategy into action.

The strategies and direction has to be set from the board and there are teams of people who go out and carry out those strategies. The businesses are well aware of those strategies...[which] will be driven by the commercial people

Food and beverage firm

Identify opportunity

While the board and commercial teams were given responsibility for driving through strategic goals, other teams then identified how this is done 'on the ground'. For example, brand managers played a key role in nurturing existing intangibles (for example, through investing in already successful brands), identifying areas for improvement or opportunities to acquire new intangibles. Their teams then helped to identify gaps in a market into which they could move, which fitted with the firm's strategic direction.

It is the operating teams – that's their business to go out there and look and see, as well as the brand teams and management, to think what's out there, what are the gaps in our business, where should we be heading next?

Hotel firm

However, there is also a bottom-up influence driving decision making. Research and development teams, driven by the overall board direction, were constantly seeking to innovate and produce new technologies, products and systems that could improve the business. This process would take place independently of board control or, in some cases, without needing board approval. In many respects, this was seen to be the primary function of, for example, R&D teams, who are wholly focussed on innovation and the development of new technologies and processes.

Those would be probably quite specific people, more technical people...closer to the ground in our product groups who will be driving it...there would be business development people in each product group, but there would be a central one as well

Mining firm

Therefore, bottom-up and top-down pressures acted in a feedback loop, taking board level strategy and identifying new opportunities for development and expansion. While overall strategy was key to this process, it was constantly being modified and adjusted in light of the development opportunities produced in-house or the expansion opportunities identified outside the business.

Making an offer

Only once the decision to pursue the acquisition of an intangible asset had been taken – when it had been concluded that the intangible presented an opportunity for improving or expanding the business – would the tax implications be considered. For example, only once senior members of the finance and acquisition teams had signed off on an opportunity, would tax specialists become involved. This stage of the process typically involved other members of the accounts and treasury teams within a firm.

The people that are usually responsible will be our finance director and our acquisitions manager. If it then looks like we've got the makings of a deal then they'll call in myself as the head of tax to check out the tax ramifications, call in our treasurer to deal with the financing implications and call in our senior accountant for him to consider the accounting implications.

Hotel firm

Tax experts then influenced how any potential deal would be structured. For example, whether to take one arm of a company, a whole company or even a group of businesses. Firms were keen to emphasise that tax considerations were still important to whether or not a

deal would go ahead. While influencing structure, they also helped decide about the viability of any deal and whether or not it was worth pursuing further. However, the initial business decision was still of primary importance.

The starting driver is going to be the business decisions, but then as I say the tax aspects will, or may, affect either or both of just the commercial viability of acquiring something at all and then, secondly, they certainly affect how you do that

Hotel firm

Case study – manufacturing firm

Overall business strategy was set by the board, which transmitted this direction throughout the group. Opportunities and needs were identified within this framework. The group then determined whether those needs could be met through in-house development of intangibles or whether an outside asset ought to be acquired.

The group sets out a strategy and determines areas where it believes that there is scope and then it determines whether we can do things in-house, or if we try and do things in-house, or whether we need to do a bolt-on

Manufacturing firm

Once the decision was taken to look at acquiring an intangible from outside the firm, likely candidates were identified. Decision-makers at board level, along with other specialist experts, then looked at how well an opportunity met their business needs.

If we need to do a bolt-on then we will try and find the business... is there a strategic fit into the business? Does it add to our capability in a particular sector? Is it cash generative or capable of being cash generative?

Manufacturing firm

Once a decision was taken to pursue a deal, tax specialists became involved. While these specialists had little influence on whether or not the deal went ahead in clear cut cases, they were very important to how any deal was structured.

We will generally have a structured deal, so tax does not have any influence on whether or not a deal is made

Manufacturing firm

It is more about how the deal is made rather than if it is

Manufacturing firm

Tax issues were considered earlier in the process if there were questions over how viable a deal seemed. Thus, potential tax benefits were identified in marginal deals. However, no deal could be done purely for tax benefits alone – this was a secondary issue, which only became relevant in specific cases.

Sometimes we might be involved if the benefits appear marginal, then we tend to be consulted at quite an early stage in terms of looking at a deal and saying if there are any tax benefits that we should build into our modelling. But it tends to be if there are also tax benefits to be gained by this rather than just should we do this for tax reasons

Manufacturing firm

It is a secondary consideration rather than a primary one

Manufacturing firm

Mobility

5. Mobility

Summary section: Mobility

The general consensus among those interviewed was that, while intangibles are *theoretically* mobile, practical restrictions meant that **'off shoring' was rare**. Intangibles were said to need **infrastructure and support networks**. The location of intangibles was influenced by the **'magnetism'** of major functions or core operations, key customer groups or tradition. Exit costs, both through taxation and potential damage to reputation, also restricted the mobility of intangible assets.

The availability of important resources such as **a skilled workforce was considered to outweigh any competitive tax advantage** that might be offered by another regime.

The wider tax environment was considered to be much more influential than the specifics of the intangibles regime. For example, **high personal tax rates affected the ability of businesses to attract the best senior or specialised staff**.

5.1 Introduction

This chapter explores attitudes towards the mobility of intangible assets – whether or not they are practically mobile and the factors that influence location. The opportunity to 'offshore' such assets and move them to more favourable tax regimes, was considered by many firms. However, the general consensus was that this was more of a theoretical possibility than a practical option.

5.2 Intangibles are theoretically mobile

All firms were aware that many intangible assets are *theoretically* mobile. For example, many mentioned how intellectual property could be registered in tax regimes that are more competitive than the UK.

However, it was widely felt that, while possible, moving intangibles was rarely practical. Businesses stated that intellectual property and brands require support networks of infrastructure and people. If assets were to move, these support networks would need to move with them. Clearly, this represented a significant practical restriction.

Many firms spoke of how research and development or brand management functions are best served by being located near core operations for reasons of convenience and efficiency. Typically, the location of such major functions, for example mining operations, presented a 'gravitational pull' that resulted in intangibles being located as close as possible to the operational centre.

The IP would be held probably closely to core operations - so most of our mining operations in Australia...a lot of the R&D effort into mining techniques and technology are in Australia purely because that's where the operations are

Mining firm

This closely relates to another factor which has influenced the location of intangibles, as well as having been a further practical barrier to movement: decisions about where to locate intangibles and intellectual property have typically been path dependent – that is, historical precedent and momentum influence current decisions. While proximity to core operations

and important resources has influenced decisions, exit costs, both practical and legal, mean that assets such as brands, which are theoretically mobile, have remained in the country of origin. This sense of importance attached to intangibles remaining in its country of origin was expressed by many of the firms we spoke to and most felt that a major tax advantage under another regime would be required to consider moving.

We call it magnetism, it's because it's the default, it's because it works for us, it has worked for us, we know the business, we know the rules, we know the protection legislation. Our group, our whole trademark management, expertise and function is physically located there

Food and beverage firm

Linked to this, national pride also influenced location of intangibles. Companies that were based in and had originated in the UK felt that, as a British company, they should be based in Britain.

I think the instinct would be to bring it into the UK absent a significant tax disadvantage in the UK rather than the intra-tax advantage elsewhere... Because I think we are a UK company so that is ours, it is a cultural object

Food and beverage firm

Being closely associated with a firm's 'home country' is also a reputational issue. One typical example of reputational 'stickiness' was the relocation of a brand away from a country it is closely associated with. A commonly cited example was the potentially negative impact on the reputation of a brand such as Guinness. Being closely associated with Ireland, its reputation would surely suffer through a move away from Ireland. Thus any move, while potentially beneficial in terms of tax, would damage the reputation and consequently the commercial popularity of the brand itself.

A lot of the intangible stuff around brands is to do with the affinity people feel for their brands and all that sort of stuff ... you believe there is a local business

Food and beverage firm

Reputation can also prove important to a business's ability to forge a successful relationship with a particular country's government. If firms were seen to be too quick to take advantage of more advantageous tax regimes in countries away from core operations, they would lose the trust and cooperation of the originating regime. In addition, there are typically extensive tax and legal exit costs. In many cases, firms felt that these barriers meant that it was not worth moving intangibles to more favourable regimes.

We are franchising in 20+ countries but have gone nowhere near treaty shopping, getting mixed royalty fees back under a favourable regime. Why? It is more trouble than it is worth

Food and beverage firm

5.3 Other restrictions on movement

It was accepted that local commercial legislation could make markets more or less attractive. However, for many of the businesses we spoke to, the UK regime was simply not seen as different enough from other regimes to justify the expense and resources required to move.

The research also found that the possibility of relocating intangibles is likely to be entirely driven by commercial imperatives and available resources. In particular, international firms stressed that moving businesses abroad was primarily a commercial decision.

With market diversification and commercial expansion influencing such decisions, many of those we engaged with as part of this research believed that the intangibles tax regime was a relatively unimportant issue in cases like this.

I think one of the strategies is to internationalise the brand, [but] the issue that we face in some European countries is a legislative issue, in terms of how we can sell our products. So I can't see that the UK rules will have an influence over where that's done – I can't see either the benefits or the disadvantage of the UK legislation driving that

Retail firm

On the other hand, this balance could change for some firms as the focus of their business changes. As UK-based businesses expand their core operations into other countries, the rationale for moving to another, more favourable regime becomes stronger. For example, the location of intangibles was influenced by proximity to a customer base; if an organisation started to target another country as its core market, then this alone would be an incentive to move, regardless of the tax environment.

Even when another tax regime was noticeably less beneficial than the UK equivalent, firms would still consider moving to that regime if other factors could help the company. For example, the presence of a highly skilled workforce, if readily available, trumped tax considerations – such an important and useful resource was of much greater use to businesses in terms of helping a firm develop and innovate.

For example, Germany does not have a great R&D tax regime but it does have an awful lot of good engineers

Manufacturing firm

5.4 The wider tax environment

Rather than the specifics of the intangibles regime which, as we have seen, is a secondary issue in the acquisition, creation and location of assets, several firms expressed concerns about the uncertainty around the UK tax regime more broadly. Furthermore, some participants expressed concern about potential changes to the tax structure as a result of the banking crisis and, for example, changes to the wider tax environment, including personal and corporate taxes. Some suggested that this may make the UK less attractive to some firms and could force them to consider moving to different jurisdictions.

In the last seven or eight years there is a sense of uncertainty and that is, from a tax perspective, a very worrying issue

Food and beverage firm

There is all kinds of stuff going on at the moment like this, stuff to do with the tax environment, in personal tax, pensions, on corporate tax; a huge amount of stuff on the tax front that contributes to a lot of uncertainty about the UK

Food and beverage firm

More generally, the high levels of personal taxation in the UK were considered to be off-putting to more senior or specialised staff. Highly valued and skilled staffers are typically more mobile, willing to live and work in different countries. It was thought that levels of personal taxation could be a key factor in influencing where current and potential staffers are willing to work.

The negatives will be around issues that are to do with the broader business environment ... such as dealing with the more senior or expert employees ... are they happy being in the UK, are they concerned about the personal tax rates?

Hotel firm

Thus, this research has shown that, while intangibles are theoretically mobile, there are distinct practical barriers to movement, over and above the legal and tax exit costs that are typically in place. These practical barriers were many and varied, including the need to maintain proximity to core operations and support networks, historical precedent, available resources, reputational issues and the impact of the wider tax environment.

Case study – leading multinational manufacturing / technology company

Intangible assets were very important to this company. Trade secrets and know how were central to providing a competitive and commercial advantage over other firms in the sector.

The tax department had very little influence over the acquisition of assets, although it was heavily involved in the process itself. Whether or not to acquire an asset was a purely commercial decision. As with other companies, tax issues affected how a deal was done but not why a deal would be sought in the first place.

Intellectual property was held in a variety of locations world wide and has been created wherever it is needed. This was influenced by historical reasons such as the firm being a British company and local barriers such as regulatory restrictions or contract obligations with major clients. Subsequently there was little perceived advantage in off-shoring IP.

If a particular piece of technology is developed in the UK and sold in the UK, then the UK will hold the IP

Manufacturing and technology firm

The post-2002 legislation was well regarded for making the regime simpler but has made no appreciable difference to the way Intangibles are acquired/created.

For a firm like this, where innovation is crucial to what they do, most intangibles were internally generated through research and development, so the R&D tax credit was particularly appreciated

*- The regime is good – it swept up loads of regimes into one
- But it doesn't affect us to any great extent...it's not a criticism of the 2002 legislation, it was good, just not hugely beneficial to us. It's not unhelpful but nor is it legislation that we pushed for*

Manufacturing and technology firm

Case study – multinational consumer food business

Intangible assets were fundamental to the success of this company – know how, recipes and manufacturing processes provided the “value-add” of the business and, as such, gave them a competitive edge.

Acquisitions were always done with the overall business strategy in mind. Typical reasons for acquisitions included increasing geographical reach (breaking into new markets) and expanding their knowledge base through increasing know how and developing new recipes.

Acquisitions aren't done to gain anything other than a business advantage
Consumer food firm

This business acknowledged that intangibles can be moved around in spite of the practical costs associated with this. In this case, where possible, intangibles were brought back to the country in which the organisation was based, rather than kept in the country of origin. This is in part because that country (among others) was considered to offer a more proactive and pro-business environment than the UK, especially with regard to intangible assets.

However, this was also where core operations were based, so it was practical to move the management and maintenance of these new intangibles closer to management and commercial functions. This was also driven by a sense of belonging and was felt to be the right thing to do.

The UK regime was felt to be better than some – for example, Japan, France, and Germany – but worse than others including the US, Ireland and Switzerland. The latter two offered much lower rates of tax generally and so were felt to be much more attractive as a location, not only for intangibles but, given the levels of personal taxation, also skilled staff.

The US allows share transactions to be treated as assets. It can be complicated but is preferable to the UK approach
Consumer food firm

HMRC was well-regarded – “a pleasure to deal with” – despite some misgivings about how competitive the UK regime is for them. HMRC staff were felt to be extremely helpful, capable and cooperative.

Overall attitudes to the regime

6. Overall attitudes to the regime

Summary section: Overall attitudes to the regime

Despite the **relative lack of influence** of the intangibles regime, it was **seen in a broadly positive light**. Most firms found the intangibles regime to be **user-friendly and clear** about what does and does not comprise an intangible asset. The potential for writing off goodwill and other intangibles has allowed firms to be more flexible in how much they bid for acquisitions.

Recall of how intangibles were dealt with before 2002 was generally low – many of those interviewed were not in post at that time. Most agreed that decisions would be made in the same way as they are now prior to 2002.

Some mentioned that there is now a **tension between buyers and sellers** that did not exist before 2002 – buyers want to buy assets, while sellers want to sell shares.

6.1 Introduction

This chapter examines the views expressed about the intangible assets regime. It looks at knowledge of intangibles, awareness of the changes made in 2002 and the impact the changes had, as well as comparisons to other regimes.

6.2 Awareness of intangible assets

While many acknowledged that it is a 'strange concept', there was a broad understanding of the 'basket' of intangibles and all of those interviewed had a good understanding of what constitutes an intangible asset. Indeed, not only were all clear about the types of intangibles common to their own particular sector, they also had a comprehensive view of intangibles that were relevant to sectors beyond their own. For example, hotel firms who primarily focussed on their own internal systems and know how were also able to talk about the importance of brands to the success of businesses such as McDonald's and Coca-Cola.

Brands were a key intangible that many pointed to as being crucial to their own business. Know how and ways of working were also commonly mentioned.

Anything you can't lay your hands on basically but which is valuable. So, our business is a brand business and so it will be all about developing and exploiting intangible assets being the hotel brand...know-how in terms of expertise, knowledge and also our sort of standardised systems and brand standards

Hotel firm

While most pointed to the nebulous and physically insubstantial nature of intangibles, they were also likely to point to how such things related to physical assets. That is, the link between software and hardware was well-established in the minds of participants – while there is a clear tangible asset in a piece of technology (i.e. a computer or set-top box), the software and programming that goes into making that piece of hardware function was clearly acknowledged as an intangible asset.

Everything I generally can't touch or feel is probably an intangible asset. You can also have intangible assets embedded within tangible assets, so software for example embedded within a set top box or within a PC is also an intangible asset

Telecoms firm

All those we spoke to were also familiar with how intangibles related to the financial success of their organisations. Goodwill, royalties and the exploitation of patents were commonly cited as key intangible assets. Each of these allowed for financial gain and so contributed to the success of a business. Patents on technology that did not work would not provide this, thus driving the need for high quality R&D and exploitation of intellectual property.

I think goodwill is the primary one from our perspective, but there's a whole lot of intellectual property in our organisation that is intangible and for which we charge royalties across the world, there's registered patents, there's know-how, there's goodwill and a whole host of sort of things that fall somewhere in between those categories

Pharmaceutical firm

6.3 Business views on the introduction of the regime in 2002

Recall of the intangibles legislation before 2002 was relatively low. With seven to eight years having passed since the newer legislation was introduced, many of those we spoke to were not in position prior to 2002. Among these people, most suspected that the decision making process, and the decisions made, would have been the same regardless of any differences to the legislation.

It is difficult for me to say because I joined the group in 2006, so everything I have seen has been post the new regime anyway. I suspect not, I do not know

Manufacturing firm

Indeed, no firms felt that the changes influenced any decisions to acquire or create intangibles. The legislation only influenced *how* intangibles were acquired or created, not whether or not it was done at all.

The process I'm describing to you would have been the same pre 2002. It's just that simply the tax consequences and the accounting consequences would have been different

Telecoms firm

However, the legislation was seen to be an improvement on what went before. This was in part due to the benefits some got from acquiring assets and the relief that they received – that things such as goodwill now receive a tax deduction. The legislation was also thought to allow businesses to be more competitive in the prices they can offer when trying to acquire assets.

The present system is miles better than what we had before...we can buy in the form of the asset itself and get full tax relief

Telecoms firm

As we were buying the business we could see that we would be able to write off the £300 million against the income stream that arose and therefore that gave us greater flexibility in terms of the price we were prepared to offer

Telecoms firm

The legislation was also felt to be clear and easy to understand. Most firms found the intangibles regime to be user-friendly and clear about what does and does not comprise an intangible asset. Parts of the legislation were more closely aligned to accountancy principles. One of the advantages of following the accounts that was most commonly cited was the way that this allowed for further tax relief if there was amortisation of an asset.

It brings things in on a revenue basis ... it does follow the accounts, it's just straightforward, while the previous system you were falling under the Capital Gains rules, it's more cumbersome and doesn't necessarily follow the accounts...that is very attractive

Mining firm

That means we follow the accounts...if there's an amortisation we take the tax relief for it.

Telecoms firm

6.4 Tension between shares and assets

The current regime however, has introduced a tension between the selling of shares or assets that did not previously exist given the different tax implications that were applied to both. Specifically there was felt to be a 'distortion' on mergers and acquisition deals, where sellers have been incentivised by tax exemptions on share sales, while buyers are interested in owning whole assets in order to take advantage of the intangibles relief. Thus, sellers, who want to sell shares, and buyers, who want to buy assets, have conflicting interests.

The other slight disadvantage is that it slightly distorts M&A deals. So in an acquisition scenario the seller always wants to sell shares because there's an exemption for share sales, which is also good, but the buyer always wants to buy or almost always wants to buy assets because now they get to get tax relief on the intangible assets which just creates more tension than there was in the past on that process

Telecoms firm

This resulted in some comparing the UK regime negatively to that which existed in other countries. For example, the US was thought to allow more flexibility around the definition of shares and assets, so offered a distinct advantage over the UK regime.

The US is a slightly different regime – you can buy shares but you can elect to treat it as an asset purchase. That's for purchaser and sellers. So, from a legal perspective...the seller is getting rid of everything and we're taking on the risk. But from a tax perspective, they're taxed as if they're sold assets and we're taxed as if we acquired them

Food and beverage firm

6.5 The UK regime compared to others

Tensions between shares and assets aside, many firms identified differences between the UK and other regimes. The UK regime was not considered to be especially attractive but neither was there a particular disincentive. As with the example of Germany discussed earlier, there can be resource advantages that far outweigh potentially uncompetitive aspects of the intangibles regime. For example, the UK itself was felt to offer advantages such as having a highly skilled workforce and well-developed complementary industries such as advertising.

You think within the UK just how strong the creative industries are, the advertising industries, things such as that, you have got just good developed intellectual capacities

Hotel firm

As discussed throughout this report, the UK intangibles regime was always felt to be of secondary importance to commercial imperatives. Therefore, comparisons with other regimes were almost always 'drowned out' by broader issues such as availability of resources, proximity to core operations and historical precedent.

We have relatively unsophisticated tax structuring providing the burden is not insupportable, we just accept tax as a cost of doing business...The tax treatment of the intellectual property is important, it enters into the cash worth projections but it is not top of the mind

Food and beverage firm

Given this state of affairs and the lack of influence of intangibles taxation over decision making, many of those we spoke to did not spend a great deal of time exploring the comparisons between the UK and other regimes.

Conclusions

7. Conclusions

Summary section: Conclusions

The intangibles regime was **not influential** in how decisions were made – it was a **hygiene factor** rather than being important to the process. Corporate aims and board level strategy were the key drivers of all decisions.

Decisions were also felt to be **path dependent** – influenced by factors such as historical context, available resources, proximity to core operations or the difficulty of overcoming exit costs.

Ultimately, the UK regime was viewed as **neither favourable nor unfavourable** – taxation of intangibles was seen as part of doing business, rather than a direct influence on the decision making process.

The intangibles regime was considered important to decision making, in so far as intangibles were often felt to be vital to business success. However, it was not influential on what decisions were made. In this sense, **it is a hygiene factor, rather than being ‘top of mind’** and so it influenced how deals were structured, rather than whether or not they took place at all.

The IA regime, in this case, was a fairly marginal issue and I think generally that type of regime for our business it’s almost more the hygiene factor than a driver

Hotel firm

The UK regime was therefore typically felt to be **of little consequence** in acquisitions, as strategic business and **corporate aims were the primary drivers of all decisions**. This was particularly true of multinational firms.

In many respects, the decisions about whether to acquire businesses depends on whether they are a good strategic fit into the business – do they fit into what we do? Those companies will have intellectual property but, in many cases, those territories will be outside the UK, so the intangible assets regime does not really come into play

Manufacturing firm

It is important to note, however, that this attitude was not driven by a lack of awareness or understanding. All those that participated in this study had a clear and thorough knowledge of the intangibles regime and how to apply it in a business context.

Path dependency also played a key part in forming these views. For instance, the location of intangibles was felt to be path dependent. This may have been a result of historical origins, proximity to core operations, or the difficulty of overcoming exit costs. It is worth noting that some firms were also restricted by regulation and by the type of industry they operate in.

The innovation we carry out to looking at more effective processes, making sure we can comply with our regulatory obligations...so I wouldn’t have thought the things like brand names or goodwill are particularly important in the group at the moment. It’s not something that we’d be able to exploit commercially outside our existing area where we supply our customers

Utilities firm

As a result of these opinions, the UK regime was regarded as **neither particularly favourable nor unfavourable**. What is more, most thought that this has always been the case; while the legislation introduced in 2002 was appreciated by businesses for making the law clearer, most did not believe that decision making regarding intangible assets would have been any different before this time.

Ultimately, the key message from this research was that intangible assets themselves were felt to be very important to businesses but that their business benefits far outweighed any potential tax benefits arising from the UK intangibles regime – **the tax tail does not wag the commercial dog**.

Appendix

Appendix

Discussion guide

Discussion guide – Final version 4th January

Key aims:

1. What are the specific decision making processes of large companies around creating, maintaining, acquiring and selling intangible assets?
2. What factors influence the decision-making processes of large companies around creating, maintaining, acquiring and selling intangible assets, and what, specifically, is the role of the UK tax regime?
3. Do companies find the current UK intangible assets regime fair and simple to understand, administer and to comply with?

Description	Comments	Time (mins)
<p>(1) Introduction and warm-up</p> <p>Thank participants for agreeing to be interviewed – mention that the interview should last up to an hour in length</p> <p>Research commissioned by HMRC to learn about how businesses understand and use the intangible assets regime introduced in 2002. That is:</p> <p style="padding-left: 20px;">How does your organisation make decisions about intangible assets?</p> <p style="padding-left: 20px;">How does the current IA tax regime impact upon your organisation’s decision-making?</p> <p style="padding-left: 20px;">How easy do you find dealing with the regime?</p> <p>Stress there are no right or wrong answers – we are just interested in exploring these issues in relation to their business. Re-iterate there will be a chance for them to shape the agenda of the discussion.</p> <p>Stress that this is an evidence gathering exercise. HMRC is keen to gain a deeper understanding of what it means to organisations, how they use it, how it affects the decisions that they make about acquiring and maintaining intellectual property.</p> <p>This research is not related to the Tax and Innovation Review announced in the 2009 budget</p>	<p>Warm up – explain the purpose of interview.</p> <p>Also covers general rules, insofar as there are any, and the information we are required to tell participants under the MRS Code of Conduct.</p> <p>Please note that awareness of Intellectual Property and the Intangible Assets regime will vary across different interviewees – some will be tax and finance specialists, while others will be senior decision-makers within organisations but have very limited understanding of the specifics of intangible assets and the tax regime involved.</p> <p>REMINDER: The IA regime commenced on 1 April 2002. Prior to that date IA were dealt with differently for tax purposes.</p> <p>[If asked, make it clear that there are no current proposals to make changes to the regime, but the work will inform any future policy work on the tax treatment of intangible</p>	<p>5 mins</p>

<p>report.</p> <p>We will be speaking to other people within their organisation in order to get a broad range of evidence from all of those who are involved with intangible assets.</p> <p>Reassure participants of confidentiality – MRS code of conduct</p> <p>Permission to record – for analysis purposes only</p> <p>Names, their role, sector?</p>	<p>assets.]</p> <p>See note at the end of this guide for reference to the Tax and Innovation Review and patent box – this research is not related to the Tax and Innovation Review or the PBR announced patent box.</p>	
<p>Knowledge and awareness of intangible assets (IA)</p> <p>What do you understand by the term “intangible assets”? What does this phrase mean to you?</p> <p>What different types of intangible assets are you aware of?</p> <p>And within your sector, what examples of intangible assets are there? PROBE: brands, patents, copyright, trademarks, logos, know how, goodwill</p> <p>Do you have different types of intangible assets within your own organisation? Can you tell me what these are?</p> <p>How important are they to your organisations’ success? Are some more important to your organisation than others?</p>	<p>Looking at interviewees’ general understanding of intellectual property and intangible assets, the types they come into contact with and the importance to their business.</p>	<p>10 mins</p>
<p>Knowledge and awareness of business decision making processes relating to intangible assets</p> <p>How are decisions about acquiring other businesses or acquiring individual IAs made within your organisation?</p> <p>What is your personal involvement in such decision-making?</p> <ul style="list-style-type: none"> ▪ How much do you know about the decision-making process? ▪ To what extent are business, financial and tax issues influential on the process? ▪ At what stage of the process do these issues have an impact? <p>Is this different depending on the type of IA? If so, can you explain to me how and why this happens?</p>	<p>Awareness of how business decisions relating to intangible assets are made and who deals with it within their organisation</p>	<p>5 mins</p>

<p>Who else is involved in such decisions, and in what way?</p> <ul style="list-style-type: none"> ▪ PROBE: Business Strategy managers, Business Unit managers, Managing Director, Chief Executive, Board of Directors, Financial managers, Tax Dept., External consultants. <p>Does the way your organisation currently take decisions involving the acquisition or disposal of businesses or individual intangible assets differ from the way this was done before 2002?</p> <p>Why do you think this is the case? And what about the staff who are involved in making such decisions – how has this changed since before 2002? Any specific examples you can point to?</p>		
<p>Acquisition of Intellectual Property (IP) I'd now like to talk about how your organisation makes decisions about acquiring IP.</p> <p>What examples of recent acquisitions of intellectual property has your organisation made? PROBE: brands, patents, copyright, trademarks, logos, know how</p> <p>How did you [your organisation] go about acquiring the most recent example of IP?</p> <p>Why did you decide to acquire these assets? Who was involved in that decision? What were the benefits to your business? How were these benefits identified?</p> <p>Thinking about the way in which your organisation would have acquired IP prior to the legislative changes in 2002, how does the approach under the new regime differ?</p> <ul style="list-style-type: none"> ▪ In what ways? ▪ Why? <p>I'd now like to talk about the decision-making process around your most recent IP acquisition.</p> <p>What was the aim of the acquisition? How were these aims identified? How would it improve your business? What other purposes would it serve?</p> <p>Who was involved in the decision?</p>	<p>Key to this section is exploring the decision making process from different perspectives including:</p> <ul style="list-style-type: none"> psychological (decision making process in the context of a set of needs, preferences and values) cognitive (viewed as a continuous process integrated in the interaction with the environment) normative (analysis of individual decisions, concerned with the logic of decision making and rationality). <p>Probe on timings – are different elements done simultaneously or in sequence – who is involved at each stage, and the importance of IA to each stage.</p>	<p>10 mins</p>

<p>Business Strategy managers, Business Unit managers, Managing Director, Chief Executive, Board of Directors, Financial managers, External consultants Were any tax specialists involved; if so, at what point and to what extent?</p> <p>How was the decision made? Was a business case prepared? What form did this take? Who prepared this?</p> <p>What role, if any, did the current IA tax regime play in the decision? At what stage were the tax implications considered in the decision making process? How important were they? How important were they in relation to other factors? What aspects of the tax treatment have been important? How much difference has the change in legislation made? Would the decision on this acquisition have been different if the tax rules hadn't changed in 2002?</p> <p>What other factors influenced the decision? How important were they compared to the IA tax regime?</p> <p>In relation to your acquisitions of IP more generally: At what stage were the tax implications considered in the decision making process? How important have they been? How important have they been in relation to other factors? What aspects of the tax treatment have been important? Would your decisions on acquisition of IP have been different if the tax rules hadn't changed in 2002? How much difference has the change in legislation made?</p>	<p>Key point here is that the IA regime came into being on 1 April 2002. Prior to that IP would have been dealt with differently for tax purposes e.g. most would be within the CG regime.</p>	
<p>Holding Intellectual Property and the income derived from it</p>	<p>A short section looking at how IP is held, how income is derived from it and how IP is disposed of</p>	<p>10 mins</p>

<p>In which tax jurisdiction is your organisation's IP located?</p> <p>Why is this?</p> <p>What factors are most important to the choice of jurisdiction?</p> <p>What are the advantages and disadvantages of the UK jurisdiction compared to those overseas?</p> <p>Does the location of your IAs attract other functions or expertise?</p> <p>And what about the income derived from IP?</p> <p>How does your organisation exploit its IP?</p> <p>What sort of royalties does your organisation receive? Is this a major income source for your organisation?</p> <p>Over what period do you seek to economically exploit your IAs? Does this vary with the type of IA held?</p> <p>Who is the IP licensed to?</p> <p>Where is it licensed?</p> <p>What influenced these choices?</p> <p>Who is involved in these decisions?</p> <p>How does your organisation dispose of IP?</p> <p>Is this in the UK or non-UK?</p> <p>Why?</p> <p>Who is involved in this decision?</p> <p>Any examples?</p>		
<p>Acquisition of businesses which include goodwill and other intangible assets</p> <p>I'd now like to talk about how your organisation makes decisions about acquiring businesses that include goodwill and other intangible assets.</p> <p>We have already discussed some of the IP that your organisation has recently acquired (MODERATOR – recap IP acquisitions discussed earlier).</p> <p>What examples of recent business acquisitions including intangible assets has your organisation made? What intangible assets were acquired with the business? PROBE: Goodwill, brands, patents, copyright, trademarks, logos, know how</p> <p>How did you [your organisation] go about acquiring this?</p> <p>Why did you decide to acquire these businesses?</p> <p>What were the benefits to your business?</p>	<p>Key to this section exploring the decision making process from different perspectives including:</p> <ul style="list-style-type: none"> psychological (decision making process in the context of a set of needs, preferences and values) cognitive (viewed as a continuous process integrated in the interaction with the environment) normative (analysis of individual decisions, concerned with the logic of decision making and rationality). <p>Probe on timings – are different elements done simultaneously or in sequence – who is involved at each stage, and the importance of IA to each stage.</p>	<p>10 mins</p>

<p>How were these benefits identified?</p> <p>Does this differ from business acquisitions made before the changes in the regime? In what ways? Why?</p> <ul style="list-style-type: none"> ▪ MODERATOR NOTE: Clarify if the assets being discussed fall under the pre2002 or post-2002 regime <p>I'd now like to talk about the decision-making process around this example</p> <ul style="list-style-type: none"> ▪ How does it differ from the process we've just discussed in relation to the acquisition of intangible assets generally? ▪ PROBE: different aims; different people involved – any tax specialists; different process for reaching a decision? ▪ What role, if any, did the current IA regime play? <p>What other factors influenced the decision? How important were they compared to the IA tax regime?</p>	<p>Key point here is that the IA regime came into being on 1 April 2002. Prior to that IA would have been dealt with differently for tax purposes e.g. most would be within the CG regime.</p>	
<p>Creation of intangible assets</p> <p>To what extent does your business create intangible assets?</p> <p style="padding-left: 40px;">Can you give me some examples? Does it create some types more than others? Why is this? Are there any types of IA that your organisation cannot make?</p> <p>How does this differ from the other decision-making processes we have already discussed?</p> <p style="padding-left: 40px;">Different aims? Different people involved? What role, if any, did the current IA tax regime play in the decision?</p> <p>What other factors influenced the decision? How important were they compared to the IA tax regime?</p> <p>And what about the maintenance of your IA?</p> <ul style="list-style-type: none"> ▪ What sort of expenditure is there on maintaining IA? ▪ Have the changes in legislation changed the way you maintain your IA 	<p>This section explores views on the creation and maintenance of IA by and organisation and the impact of the current tax regime on this</p>	<p>10 mins</p>

compared to prior to 2002?		
<p>Conclusion [Only if the individual has any involvement in / knowledge of the company's tax administration] Overall, how would you describe the regime as easy or difficult to apply?</p> <ul style="list-style-type: none"> ▪ What makes you say that? <p>[Only if this has not already been mentioned by the interviewee in answering the more open questions]</p> <p>PROBE: Are you aware of any influence on business decisions (e.g. on creation, acquisition and maintenance of IAs) of the availability of tax relief for amortisation of acquisition costs (a particular feature of the regime)?</p> <p>Is there anything that we haven't discussed that you think is relevant?</p> <p>Thank and close</p>		5 mins

Note on Tax and Innovation Review:

Extract from HMT's Budget report 2009

Tax and innovation: As part of the Government's commitment to examine the challenges facing the UK tax system and ensure its competitiveness, and its focus on supporting the high value-added priority sectors in which the UK can excel in the future, the Government will consider the evidence for changes to the way the tax system encourages innovative activity and the relative attractiveness to global firms as they make decisions on where to locate their research and development and other innovation activities. Working with representatives across the business community, the Government will examine the balance of taxation of innovative activity, including intellectual property. The Government will assess the evidence on the potential impacts of any reforms on economic activity, such as the development and exploitation of patents and other intellectual property, location of manufacturing, research and development, investment and employment (as well as where intellectual property assets are held), and on tax receipts. The Government will consider further with industry and set out its assessment and proposed approach before the 2009 Pre-Budget Report. This assessment will draw on the expertise of the Business-Government Forum on Tax and Globalisation and on existing analysis such as the Review and Refresh of Bioscience 2015 report, as well as a wider range of stakeholders.

Note on Patent Box

Budget 2009 announced the Government would work with business to examine the balance of taxation on innovative activity, including intellectual property. As part of this work, the Government has looked at the case for a reduced rate of Corporation Tax applied to income from patents (a so called "Patent Box"). **The PBR announces that Government will introduce a Patent Box applying to income from April**

2013 to strengthen the incentives to invest in innovative industries and ensure the UK remains an attractive location for innovation. Government will consult with business in time for Finance Bill 2011 on the detailed design of the patent box, which will apply to patents granted after the legislation is passed.

Introductory letter



**HM Revenue
& Customs**

Ipsos MORI

INSERT ADDRESS

Melanie Dawes
Director General, Business Tax

Please respond to:
Jennifer Poyser
HM Revenue and Customs
4th Floor, Bush House
S.W. Wing, Strand, London,
WC2B 4RD

Tel 020 7438 6895
Website: www.hmrc.gov.uk

Date

Ref

Re: EVALUATION OF THE CORPORATE INTANGIBLE ASSETS REGIME

Dear [NAME]

We are writing to ask for your help with research on the impact of Corporate Intangible Asset Regime on business decision-making. HM Revenue and Customs has commissioned Ipsos MORI to explore how organisations like yours make business decisions about acquiring and maintaining intangible assets and examine how these are influenced by the revised intangible assets legislation that has been in place since 2002.

Consultation with experts like you is crucial to evaluating the impact of the regime. To help us fully understand the decision-making process involved in the acquisition and maintenance of your organisation's intangible assets (including the acquisition of businesses incorporating goodwill and other intangible assets), we would like to speak to you and/or your most appropriate colleagues.

Each discussion will last up to one hour, and will take place at a venue, date and time convenient to those being interviewed. Please note that, if you would like to participate, all your comments will remain **completely confidential**. Ipsos MORI abides strictly by the Market Research Society Code of Conduct; we will treat all views in complete confidence, and will not attribute any comments to you or your organisation.

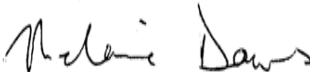
This study will form the basis of a published report, which will collate, summarise and analyse the evidence obtained from the contributors. We would be pleased to share an executive report, outlining the findings of this research, with you on its publication.

You may have been contacted by your CRM recently to obtain contact details of the most appropriate person to receive this letter. Ipsos MORI will not be aware if you informed the CRM that you wished to participate in this research.

Ipsos MORI will contact your office in the next few weeks to arrange an appointment if you are willing to take part. If you have any questions about the study or would prefer not to be contacted, please contact my colleague Paul Carroll on 020 7347 3010 or paul.carroll@ipsos-mori.com. If you would like to speak to someone at HMRC, please contact Jen Poyser on 0207 438 6895.

We understand the pressures and time constraints that you face, but we hope that you will feel able to participate in this important study and that you will take this opportunity to express your views.

Many thanks



Melanie Dawes
Director General, Business Tax