



# TAXREP 45/15 (ICAEW REPRESENTATION 124/15)

## **Finance (No. 2) Bill 2015 Clause 32: Intangible fixed assets: goodwill etc.**

ICAEW welcomes the opportunity to comment on the Finance Bill published on 15 July 2015.

This briefing of 14 September 2015 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

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## WHAT THE CLAUSE IS INTENDED TO DO

1. The clause disallows a corporation tax deduction for goodwill and certain other intangible assets linked to customers and customer relationships. It takes effect from 8 July 2015.
2. According to the Explanatory Notes to the Finance Bill 2015 the object of clause 32 is to remove an artificial incentive for companies to purchase goodwill and other intangible assets that are closely related to goodwill.

### Our concerns

3. The wide definition of “relevant assets” includes assets such as mailing lists, unregistered trade marks and licences in respect of such assets. Assets of this kind are commonly used by trading companies that are established by charities to raise funds from their supporters. The assets in question may be acquired by the trading company from third parties or from the parent charities.
4. It is common practice for parent charities to grant rights to their trading companies to make use of the charity’s mailing lists and logo (which may well be an unregistered trade mark). It is necessary for these transactions to be carried out on arm’s length terms in order to meet the requirements of charity law and tax law.
5. It appears that clause 32 will not affect some payments by a trading company to a parent charity since a transfer from a parent company to a “75% subsidiary” is generally deemed not to involve an acquisition for the purposes of the intangible assets regime, s776, Corporation Tax Act 2009. However, this will only be the case if the trading company is a 75% subsidiary. Therefore, a charity-owned trading company that makes payments to related parties for the right to use a mailing list or an unregistered logo would be likely to incur disallowable expenditure if its parent charity is a trust or if the company is owned by several charities.

## RECOMMENDATIONS

6. Where the trading company acquires the assets or the right to use the assets in the ordinary course of its business, whether from its parent charity or from third parties, we cannot see any justification for restricting corporation tax relief for a legitimate business expense. We therefore believe that an amendment to the Bill is required to preserve the current entitlement of charity-owned companies to claim corporation relief in these circumstances.

## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see via <http://www.icaew.com/en/about-icaew/what-we-do/technical-releases/tax>).