Sale of goodwill

HMRC's views on goodwill and the sale of businesses were roundly rejected in a recent tribunal decision.

Having regard to the extraordinary events of the summer, my eye was drawn to the recent tribunal decision in *Leeds Cricket Football & Athletic Company Ltd v HMRC* [2019] UKFTT 568 which concerned the capital gains tax implications of a sale of Headingly Stadium.

Not everybody will be aware of the significance of Headingly. It will probably mean little to the Ayoreo Tribe of the Amazon, and some of the inhabitants of Mars but for others, Headingly is revered as the location of astonishing sporting events – and the home of legends.

Anyway, leaving all that aside, the issue before the tribunal was whether a sale of the stadium gave rise to certain capital gains tax consequences.

The company owned the freehold of the property which it leased to Yorkshire County Cricket Club. In December 2005, the freehold was sold to the Cricket Club together with the commercial businesses.

The company had been carrying out three distinct activities: hospitality, catering and advertising. The question was whether these operations constituted a business carried on by the company prior to the sale.

The sale contract included a specific provision that the property and the goodwill of the businesses were to be sold, and the contract defined goodwill in great detail. There was also a deed of assignment of the goodwill pursuant to the contract.

HMRC argued that the sale was not the disposal of a business together with the associated goodwill but merely a transfer of land with attached income streams. This gave rise to rather different tax consequences. It said that the income streams were not capable of existence without the land and no business was carried on. Failing that, even if a business was carried on, no goodwill attached to that business.

These arguments were roundly rejected by the tribunal. It held that the company carried on a business. It was a serious undertaking which was earnestly pursued and was conducted in accordance with recognised business principles. Accordingly, the company did transfer the property and the business, including the goodwill associated with the business, and that the transaction was not merely a transfer of land with attached. The goodwill of the business was not subsumed into the value of the property.

These arguments, that there was no business capable of transfer and that there was no goodwill in any event, are reminiscent of those in *R Villar v HMRC* [2019] UKFTT 117 (TC) relating to the goodwill of a professional practice which was heard earlier in the year. The tribunal rejected those arguments as well, holding that there was indeed goodwill and it was in fact transferred.

HMRC clearly has some independent views regarding goodwill and the sale of businesses, and I doubt whether we have heard the last of them.

I think it would be interesting for HMRC to attend a meeting where somebody (I mean a real person) is trying to buy a business and let them see the reaction when the prospective purchaser refuses to pay anything for the goodwill on the grounds that no goodwill exists. It might be in for a surprise. ■

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EU watch: no lack of ambition

We knew that EU tax developments would start rolling in fast in the autumn. But what a pace!

At the European Commission, President-elect Ursula von der Leyen announced her new cabinet and the respective portfolios of each cabinet member, on 10 September.

The former Italian prime minister, Paolo Gentiloni, was appointed commissioner for taxation, succeeding Pierre Moscovici. In her appointment letter to Gentiloni, Ursula tasked him with the following priorities:

- on digital taxation, lead efforts for an OECD solution but if this is not found in 2020, take forward a European digital tax;
- environmental taxation, including carbon border tax and revising the Energy Tax Directive;
- finalise the common consolidated corporate tax base (CCCTB) and introduce overall simplifications to the tax system;
- focus on anti-avoidance, with an emphasis on VAT and better administrative cooperation;
- progress on third country tax havens and so-called list of non-cooperative jurisdictions; and
- abandon unanimity on tax decision making and move to qualified majority voting.

With Gentiloni, Frans Timmermans (in charge of the climate agenda) will coordinate work on environmental taxes. Margrethe Vestager (competition and digitalisation) will coordinate on digital taxation. Both commissioners, as executive vice-presidents, are above Gentiloni in the commissioner hierarchy.

And finally, the Commission scored what was seen by many as a victory in its tax state aid cases. The EU's General Court ruled against the European Commission in a case against Starbucks, which was accused by the Commission of enjoying illegal state aid in the form of a tax ruling granted by the Netherlands. However, in another case, the court found that Fiat Chrysler did enjoy preferential tax treatment from Luxembourg in a way that breached state aid rules. Despite being overturned in the Starbucks case, the Commission expressed overall happiness about the rulings, because in neither case did the court question the Commission's power in principle to investigate whether taxation arrangements between different entities of the same group lead to an unfair tax advantage.

Meanwhile, at the European Parliament, the leads ('coordinators') of the economic affairs Committee (ECON) approved the setting up of a permanent sub-committee for taxation, on 16 September. This committee would replace the several ad-hoc tax committees we have seen in past years. It will keep tax prominently on the European Parliament's agenda for the whole of the new term. The committee's exact mandate is yet to be decided, but the Greens at least would like it to also include anti-money laundering.

Although the Parliament has little formal powers on tax, it demonstrated during the last term its ability to set the agenda and harness public opinion and pressure. A few measures can be traced back to the Parliament's advocacy, such as the tax intermediaries Directive, public country by country reporting (CBCR) and the whistleblower protection Directive.

And finally in the Council, EU member states held first discussions about future sustainable taxation plans and the financial transaction tax (FTT). Moreover, there is some renewed movement around tax transparency and public country by country reporting (CBCR).

On the FTT, there was little progress at a working party meeting on 20 September. At a technical level, things have been progressing somewhat but the absence of governments in both Spain and Belgium has stalled negotiations for now.

On public CBCR, the Finnish presidency of the Council has confirmed that it will try to unlock the current block on the file in the next few months. Germany's finance minister Olaf Scholz has announced that he is now in favour of public CBCR. It remains to be seen whether these two developments will be sufficient to move things forward. ■

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