Guiding principles in relation to the treatment of Goodwill on the disposal of a business

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1. Introduction

The concept of goodwill has been described previously as something that is very easy to describe but very difficult to define. It can also be difficult to determine, in the first instance, whether goodwill exists and, if so, what valuation can be placed on it. Goodwill is not defined in Irish law and there is little or no Irish case law where it has been considered. Goodwill, however, is an accounting concept and accounting standards define it and provide helpful guidance on when it might be recognised and how it might be measured. Regarding a definition, goodwill is essentially the difference between the price paid for a business and the value of its individual assets and liabilities. In accordance with Financial Reporting Standard 102 (FRS 102), internally generated goodwill cannot be recognised on the balance sheet of a business.

The individual facts and circumstances of each business, as well as sectoral considerations, are relevant when examining whether or not goodwill exists. Consequently, prescribing definitive rules that have general application is not that easily achieved. However, Revenue believes that a number of key principles can be set out and these are summarised at paragraph 3

2. When goodwill exists

Many businesses can be expected to have some element of goodwill even though its value is likely to fluctuate from time to time. Goodwill is composed of a variety of elements and can include things like the good name and reputation of a business, its staff, business processes etc. which cannot be separated from the business itself. It is reasonable to expect that a business owner with goodwill deriving from such elements could sell his or her business, for a premium over a business lacking these attributes. When the business is sold as a going concern, any goodwill attributable to the business will be transferred to the new proprietor. However, goodwill attributable to the unique skills and personal experience of the proprietor is considered personal to the proprietor and cannot be transferred to any new proprietor. Where Revenue discovers any instances of transfers of personal goodwill, these will be thoroughly examined and fully challenged.

In addition, it should be noted that Finance Act 2017 introduced an anti-avoidance provision to section 598 Taxes Consolidation Act 1997 in relation to transfers of personal goodwill to a company with which the proprietor is connected, where the transfer is made for tax avoidance purposes. Retirement relief is now denied in relation to such transfers.

3. Key Principles

- In genuine third-party transactions, there may be a disposal of goodwill. Where this arises, goodwill is valued at arm's length.

- Goodwill is inseparable from the business in which it is generated and cannot be dealt with independently from the business to which it is attached.

- In no circumstances can goodwill, which is inextricably linked to a person, be disposed of.

- Other identifiable assets which are separable from the business, for example, (licensing agreements, patented technology and so on..), may be recognised separately on the balance sheet of an acquirer as intangible assets, where the cost or value of the assets can be measured reliably and robustly valued.

- By its nature, it is most likely that a new business will not have built up any business goodwill.