



TC02960

Appeal number: TC/2011/04228

Tax – intangibles relief under Schedule 29 Finance Act 2002 - whether intangibles relief available on acquisition of other members' interests in LLP – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ARMAJARO HOLDINGS LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE & CUSTOMS**

Respondents

**TRIBUNAL: JUDGE GREG SINFIELD
NIGEL COLLARD**

Sitting in public in London on 3 and 4 July 2013

Alun James, counsel, instructed by Price Bailey LLP, for the Appellant

Luke Connell, officer of HM Revenue and Customs, for the Respondents

DECISION

Introduction

- 5 1. This is an appeal by Armajaro Holdings Limited (“AHL”) against the decision of the Respondents (“HMRC”) that AHL was not entitled to intangibles relief under Schedule 29 to the Finance Act 2002 in respect of AHL’s acquisition of other members’ interests in Armajaro Asset Management LLP (“AAM”) in the accounting period ending 31 August 2008.
- 10 2. The outcome of the appeal turns on whether section 118ZA of the Income and Corporation Taxes Act 1988 (“ICTA”) requires AAM, a limited liability partnership (“LLP”), to be treated as a general partnership under the Partnership Act 1890 when applying Schedule 29 to the Finance Act 2002 or, alternatively, that it should simply be looked through so that AHL is treated as having a direct interest in the assets of AAM.
- 15 3. For the reasons set out below, we have decided that AHL was not entitled to intangibles relief in respect of its acquisition of the interests of other members in AAM. Accordingly, AHL’s appeal must be dismissed.

Facts

- 20 4. There was no material dispute as to the facts in this case. The parties produced a statement of agreed facts, which we reproduce below with minor changes to conform to the defined terms used in this decision:
- (1) AHL was incorporated on 4 June 1998 and commenced trading in the last quarter of 1998. AHL’s principal activity is to provide management services to its subsidiaries and associated undertakings.
- 25 (2) On 4 July 2002, AAM was incorporated as a limited liability partnership. The principal activity of AAM is the provision of investment management services. On incorporation, the members’ agreement provided that the members were AHL and three individuals, namely R I A Gower, A R B Ward and N Brennan. A partnership agreement dated 18 September 2002 records that the
- 30 members’ respective initial capital contributions were £100,000, £5,000, £5,000 and £5,000, and that special provision (not congruent with initial contributions) was made for the distribution of income and capital profits (or losses). On 29 January 2005, J M Tilney and C N Brodie also joined as members, with C N Brodie retiring on 2 November 2005.
- 35 (3) On 5 March 2008, in consideration for N Brennan ceasing to be a member of AAM, giving up all his rights in AAM, and selling his capital interest in AAM to AHL, AHL agreed to pay US\$17,593,011 to N Brennan. On 30 April 2008 and 1 August 2008, that amount was duly paid to N Brennan.
- 40 (4) On 6 March 2008, AHL purchased A R B Ward’s and R I A Gower’s member’s interests in AAM for US\$6,169,988.55 and A R B Ward and R I A Gower ceased to be members.

(5) The total consideration paid by AHL to the selling members for all three transactions together was US\$23,763,000.

(6) On 7 March 2008, a new Limited Liability Partnership agreement provided that the members of AAM were AHL, Armajaro Limited and J M
5 Tilney (with capital contributions of £948,000, £1 and £652,000 respectively).

(7) The transactions in paragraphs (3) to (6) above increased AHL's interest in AAM in terms of the initial fixed capital contributions from 44.64% to 59.25%.

(8) After the transactions in paragraphs 3 to 6 above, AAM continued to trade
10 as a separate legal entity and to operate its own business, as it did prior to the transactions.

(9) AHL did not acquire any identifiable assets and liabilities of AAM, nor the business of AAM, as a result of the transactions described in paragraphs (3) to (6).

(10) There is no intangible asset included on the balance sheet of AAM as at
15 30 November 2007 or 30 November 2008.

(11) AAM is a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000, and not a general partnership under the Partnership Act 1890.

20 *AHL's individual accounts*

(12) In note 13 ("Fixed Asset Investments") page 21 relating to its individual balance sheet for the accounting period ending 31 August 2008, AHL has recognised investments in subsidiary undertakings to the value of US\$40,882,000.

(13) In note 13 ("Fixed Asset Investments") page 23 provides a breakdown of the US\$40,882,000. It shows additions of "Additions to Fixed Asset Investments in Subsidiary Undertakings", in the amount of US\$36,148,000. That amount includes the total consideration US\$23,763,000 for the transactions in paragraphs (3) to (6) above.

(14) AHL's individual accounts correctly record its additional interests in AAM as a fixed asset investment and not goodwill. AHL's individual accounts are in accordance with UK GAAP in this respect.

AHL's consolidated accounts

(15) In note 16 page 26 relating to its consolidated balance sheet for the
35 accounting period ended 31 August 2008, AHL shows positive goodwill relating to the purchase of AAM of US\$22,553,000. As set out in note 13 page 22, the goodwill of US\$22,553,000 is the difference between the total consideration paid of US\$23,763,000 and the fair value of members' capital purchased of US\$1,210,000.

(16) AHL amortises the goodwill of US\$22,553,000 over seven years. The
40 amortisation charge in respect of this goodwill in its consolidated profit and loss

account for the year ended 31 August 2008 is US\$1,661,000, which is approximately a six month amortisation figure.

AHL's tax computation

5 (17) The details in respect of goodwill in AHL's tax computation differed slightly from that in the consolidated accounts. It shows goodwill of US\$23,335,823, being the difference between the consideration of US\$23,762,856 and the acquisition of members' interest in capital of US\$427,033.

10 (18) AHL's calculation of profits for corporation tax purposes treated the goodwill of US\$23,335,823 as goodwill of AHL, to be amortised over a period of 7 years. The claim for this period is US\$1,666,845 (see paragraph (16) above).

(19) In so claiming, AHL claims relief under Part 2 of Schedule 29 to FA 2002.

15 5. On the basis of the statement of agreed facts and the documents placed before us, we find the relevant facts are as follows. AHL was incorporated on 4 June 1998 and commenced trading in the last quarter of 1998. AHL's principal activity is to provide management services to its subsidiaries and associated undertakings. One of these is AAM which provides investment management services to hedge funds. In
20 March 2008, AHL, which already held a 44.64% interest (in terms of fixed capital contribution) in AAM, acquired the interests of three other members of AAM for \$23,763,000. Following the acquisition of the further interests, a new limited liability partnership agreement provided that the members of AAM were AHL, its subsidiary, Armajaro Limited, and the remaining individual member, Mr J M Tilney. AHL's
25 interest in AAM was 59.25% in terms of fixed capital contribution, 100% in terms of capital profits participation (save as regards one of the funds under management, the capital profits of which were shared 50:50 with Mr Tilney) and 100% in terms of income profits participation (save for a minimal participation right belonging to Mr Tilney). AHL had full control of the voting and management of AAM.

30 6. Before the March 2008 transaction, AHL's interest in AAM was recognised in AHL's accounts as an investment. Following the acquisition of a controlling interest in AAM, AHL's entity accounts to 31 August 2008, in accordance with UK GAAP, showed AAM as a subsidiary undertaking and not as goodwill. The consolidated
35 group accounts for the period showed goodwill relating to the purchase of AAM of US\$22,553,000 that was to be amortised over seven years.

7. AHL's calculation of profits for corporation tax purposes treated the purchase of a controlling interest in AAM as an acquisition of goodwill by AHL of \$23,335,823 (the difference between this value and the value shown in the consolidated accounts is not material to the issue in the appeal). The cost of acquisition of the goodwill was to
40 be amortised over seven years and, accordingly, AHL claimed relief under Schedule 29 to the Finance Act 2002 in the sum of \$1,666,845 for the relevant part of the accounting period to 31 August 2008. AHL's Corporation Tax Self Assessment return for period ending 31 August 2008 included the following information:

“(5) Amortisation of goodwill (Detailed analysis)

Amortisation of goodwill arising on acquisition of partners interest in AHL.

AHL was co-founder of AAM in July 2002.

5 On 5 March 2008, AHL acquired 14.61% of the external members’ capital in AAM, a partnership previously shown as an external investment. This resulted in AHL acquiring 100% of the income rights of AAM.

10 AAM has been accounted for as a subsidiary undertaking as the members capital amounts to an equity interest under GAAP, by virtue of AAM’s LLP status. Had AAM not been an LLP but had instead been constituted under the 1890 Partnership Act it would not have had a legal identity distinct from that of AHL: AAM would have been a branch or trading style of AHL. AHL as the legal owner and trader would have included AAM’s income, costs, assets and liabilities on a proportionate, line by line basis within its own accounts.

15 ...

20 The acquisition of goodwill represented a transaction between members (being connected parties) at market value. Relief arises under Schedule 29, Finance Act 2002 for corporation tax purposes on the amortisation of the goodwill as recognized for accounting purposes.

25 Under section 118ZA ICTA 1988, for corporation tax purposes AAM’s activities and property are required to be treated as if they were carried on by or the property of AHL. However, statutory accounts have not been prepared on this basis: they assume that AHL has an equity investment in AAM.

30 The profit and loss account disclosed above at Note 2 has been restated as if AAM is not a separate legal entity and hence it recognises a deduction for the amortisation of goodwill on the basis of s.118ZA.”

Legislation

8. During the period under consideration, section 118ZA ICTA provided for the tax treatment of limited liability partnerships as follows:

35 “(1) For corporation tax purposes, where a limited liability partnership carries on a trade, profession or other business with a view to profit -

(a) all the activities of the partnership are treated as carried on in partnership by its members (and not by the partnership as such),

40 (b) anything done by, to or in relation to the partnership for the purposes of, or in connection with, any of its activities is treated as done by, to or in relation to the members as partners, and

(c) the property of the partnership is treated as held by the members as partnership property.

References in this subsection to the activities of the limited liability partnership are to anything that it does, whether or not in the course of carrying on a trade, profession or other business with a view to profit.

5 (2) For all purposes, except as otherwise provided, in the Corporation Tax Acts -

(a) references to a partnership include a limited liability partnership in relation to which subsection (1) above applies,

10 (b) references to members of a partnership include members of such a limited liability partnership,

(c) references to a company do not include such a limited liability partnership, and

(d) references to members of a company do not include members of such a limited liability partnership.”

15 9. Schedule 29 to the Finance Act 2002 (now Part 8 of the Corporation Tax Act 2009) is an exclusive regime or code for the corporation tax treatment of gains and losses in respect of intangible fixed assets (see paragraph 1 of Schedule 29). The explanatory notes to the Finance Bill 2002 make it clear that “gains and losses” in Schedule 29 means gains and losses for accounting purposes.

20 10. Paragraph 2(1) of Schedule 29 provides that ‘intangible asset’ has the meaning it has for accounting purposes. Paragraph 3(1) provides that:

“...‘intangible fixed asset’, in relation to a company, means an intangible asset acquired or created by the company for use on a continuing basis in the course of the company’s activities.”

25 11. For accounting purposes, goodwill is not regarded as an intangible asset but paragraph 4 of Schedule 29 provides that

“(1) Except as otherwise indicated, the provisions of this Schedule apply to goodwill as to an intangible fixed asset.

30 4(2) In this Schedule ‘goodwill’ has the meaning it has for accounting purposes.”

12. Paragraph 5 of Schedule 29 provides that if a company does not draw up correct accounts, that is accounts in accordance with generally accepted accounting practice (“GAAP”), then Schedule 29 is applied as if the company had drawn up such accounts. Paragraph 6 states that, in determining whether a company’s accounts are correct, reference may be made to any view as to the useful life, or the economic value, of an asset taken for the purposes of the consolidated group accounts of any group of companies of which the company is a member.

13. Paragraphs 7(a) and 8 of Schedule 29 provide for expenditure on an intangible fixed asset that is written off for accounting purposes and recognised in determining a company’s profit or loss to be brought into account by a company for tax purposes as a debit in the same amount as the loss recognised by the company for accounting

purposes. Paragraphs 9 to 11 similarly provide for the writing down of the capitalised expenditure on an intangible fixed asset by way of, among other things, amortisation.

14. Paragraph 46 of Schedule 29 is the first paragraph of Part 8 of the Schedule which deals with groups of companies. Paragraph 46(2)(b) provides that references to a company in Part 8 apply to “a company (other than a limited liability partnership)”.
5

15. Part 10 of Schedule 29 provides for certain assets to be wholly or partly excluded from the Schedule. Assets which fall within paragraphs 73 to 77 are entirely excluded from Schedule 29 and thus from the intangibles regime. Paragraph 76 provides as follows:

10 “Assets entirely excluded: rights in companies, trusts, etc
76(1) This Schedule does not apply to an asset to the extent that it represents -

...

(c) the interest of a partner in a partnership.

15 ...

(3) Sub-paragraph (1)(c) does not apply to an interest that for accounting purposes falls to be treated as representing an interest in partnership property that is an intangible fixed asset to which this Schedule applies.”

20 **Issues**

16. The issue in this appeal is whether intangibles relief is available under Schedule 29 to the Finance Act 2002 in respect of AHL’s acquisition in March 2008 of some members’ interests in AAM to the extent that they represent underlying goodwill. In order to determine this issue, it is first necessary to consider whether section 118ZA
25 ICTA requires AHL’s interest in AAM to be treated as an interest in a general partnership. If so then the next issue is whether that interest is treated under para 76 of Schedule 29 as an interest in partnership property that is an intangible fixed asset to which Schedule 29 applies. As an alternative submission, AHL contends that section 118ZA ICTA requires AHL to be treated as having acquired a direct interest in the
30 underlying goodwill of AAM.

Summary of submissions and expert evidence

17. Mr Alun James of counsel, who appeared for AHL, acknowledged that the relevant accounts for the purposes of Schedule 29 are, prima facie, AHL’s entity accounts rather than the consolidated group accounts which are only relevant for the
35 limited purpose of determining the useful life or economic value of an asset. He submitted, however, that the legislator did not contemplate that an LLP could form part of a group for this or any other purpose and thus what constitutes entity accounts as compared to consolidated accounts required careful consideration where a limited company acquires and owns an interest in an LLP.

18. Mr James submitted that, by virtue of section 118ZA ICTA 1988, an LLP and its members should be treated in the same way for tax and corporation tax purposes as a general partnership and this requires that relief under Schedule 29 be available if it would have been available had AAM been a general partnership, not an LLP. AHL must, therefore, establish that relief would have been available if AAM had been a general partnership. Mr James submitted that such relief would have been available for two reasons:

(1) if AAM had been a general partnership, it would have been appropriate for accounting purposes for AHL to treat its acquisition in 2008 of what was a controlling interest in AAM as an acquisition of the underlying goodwill, or an interest therein, and write off the expenditure in its accounts;

(2) if written off in AHL's accounts, intangibles relief would have been available under Schedule 29 by virtue of para 76(3).

19. AHL produced expert evidence to establish that, if AHL were a general partnership, it would have been appropriate for AHL to treat its acquisition in 2008 of what was a controlling interest in AAM as an acquisition of the underlying goodwill, or an interest therein, and write off the expenditure thereon in its accounts. The expert evidence was in the form of a report by Peter Holgate, chartered accountant and senior accounting technical partner in the UK firm of PriceWaterhouseCoopers LLP. Mr Holgate stated that there is no UK accounting standard in place which specifically addresses the appropriate accounting treatment for an investment in a general partnership. In Mr Holgate's opinion, there are two acceptable accounting policies that could be adopted in a company's individual financial statements under UK GAAP to account for the company's interest in a general partnership, namely:

(1) The interest could be recognised as a fixed asset investment following the accounting rules set out in the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410) for fixed asset investments; and

(2) The interest could be proportionally consolidated where such treatment reflects the commercial substance of the company's interest.

20. Mr Holgate considered that the second accounting treatment was likely to be the more appropriate one where there are no restrictions on the distribution of profits of the general partnership to the partners, meaning that the investing company's share of the general partnership's profits are realised profits to the investing company at the same time as they are earned by the partnership. The proportional consolidation treatment also reflects the fact that the assets and liabilities of a general partnership are controlled by the investing company in a very direct sense, rather like the company having a branch.

21. Having reviewed the profits distribution clause of the LLP agreement, Mr Holgate concluded that proportional consolidation would be an appropriate method of accounting for AHL's acquisition of an interest in AAM if it were a general partnership. The effect of such treatment would be that AHL would include the proportionate value of the assets of AAM in its financial statements. Mr Holgate

acknowledged that he had been asked to consider a hypothetical transaction. He also briefly dealt with the actual facts and stated, at 5.33 of his report, that:

5 “... in the actual circumstances of AAM being an LLP, it is not
appropriate for AHL, as its controlling partner to account for its
interest in AAM using proportional consolidation. This is because an
LLP is a distinct legal person; put another way, the assets of AAM, the
LLP, are not directly the assets of AHL, the parent. The LLP is treated
in a similar way to a company. That is, AHL, as its parent, would
include AAM in its consolidated accounts ... but AHL in its own entity
10 accounts would just show its investment in its subsidiary undertaking
AAM.”

22. AHL acknowledged that Schedule 29 looked to the treatment in the accounts. Mr James submitted that AHL could make a computational adjustment and failure to do so would be a failure to give effect to section 118ZA which must be applied. Mr
15 James contended that HMRC’s construction of the legislation was contrary to the scheme of Schedule 29.

23. HMRC did not challenge the conclusions in Mr Holgate’s report in any respect but contended that the report is irrelevant because AAM is an LLP not a partnership. HMRC accepted as correct, for the purposes of this appeal, the conclusions contained
20 in Mr Holgate’s report. In summary, HMRC accepted, for the purposes of the appeal, that a company which is the controlling partner in a general partnership is permitted to frame its individual financial statements by consolidating its proportional share of the assets held by the partners with its own assets. HMRC also accepted that proportional consolidation is a treatment “for accounting purposes” as defined in section 832 of
25 ICTA 1988, and as contemplated in paragraph 76(3) of Schedule 29 to the Finance Act 2002.

24. Mr Luke Connell, who represented HMRC, submitted that AHL’s entity accounts do not recognise the goodwill and do not seek to amortise the expense: without this, as Schedule 29 follows the accounts, no relief can be given. Mr Connell
30 submitted that the exception to the exclusion of a partnership interest in paragraph 76(3) applies only where the interest is treated as representing an interest in partnership property for accounting purposes. The exception does not refer to interests that are treated as assets of a partnership for corporation tax purposes.

25. Mr Connell contended that Schedule 29 only applied to purchased goodwill that could be included in the individual balance sheet of the company. Mr Connell
35 submitted that AHL could not amortise the \$22,553,000 in its entity accounts because there was no purchased goodwill on the company’s balance sheet. Mr Holgate, AHL’s expert, recognised that it was not appropriate for AHL to include any purchased goodwill on the acquisition of the controlling interest in AAM in AHL’s
40 individual balance sheet. Mr Connell submitted, and Mr Holgate appeared to confirm, that this was because AAM was not a partnership for accounting purposes but a LLP, which was a separate entity.

26. In relation to section 118ZA ICTA, Mr Connell contended that it prescribed how a LLP that carries on a trade, profession or other business with a view to profit must be treated for corporation tax purposes. He submitted that section 118ZA only applied for the purposes of interpreting and applying corporation tax provisions: it did not apply for the purposes of applying accounting principles and rules. Accordingly, in Mr Connell's submission, section 118ZA neither requires nor permits, AHL to treat AAM as a partnership for the purpose of making an adjustment to AHL's individual entity accounts when AAM cannot be treated as a partnership in the accounts under UK GAAP. Section 118ZA does not affect UK GAAP or require any adjustment to the accounts of AHL. In short, HMRC accept that, by virtue of section 118ZA, AAM is to be treated as a partnership for corporation tax purposes but do not accept that AAM must be treated as a partnership for accounting purposes.

27. AHL's case is that not looking through section 118ZA leads to problems in the application of Schedule 29. Mr James pointed to the related party provisions in Schedule 29. The concept of "related parties" is used to ensure that transactions between such parties cannot be made at an undervalue. It is also applied in the transitional rules to ensure that pre-2002 goodwill, which is outside the Schedule 29 regime, cannot be brought within the intangibles regime simply by transferring it to a related party. The definition of related parties is contained in paragraph 95(1) of Schedule 29. Mr James contended that a LLP, not being a company, cannot be a "related party" as defined. Only one of the categories in paragraph 95 can include a non-corporate person and Mr James submitted that it was unlikely to apply to a LLP. Mr James's submission was that the legislation was predicated on the assumption that a LLP would simply be looked through in the normal way.

28. It is not necessary for us to set out paragraph 95. We are not directly concerned in this appeal with the provisions of paragraph 95 and the concept of related parties. The issue in this appeal is whether AHL, a company, is entitled to intangibles relief in relation to its acquisition of an interest in AAM. Even if we accept Mr James's submission that an LLP cannot be a related party (and we express no view on that point), we do not agree that it leads to the result that a LLP must be looked through for all purposes of Schedule 29 under section 118ZA ICTA or otherwise.

29. Mr James also referred to section 267A of the Inheritance Tax Act 1984 which provides that the property of a LLP is to be treated as property to which the members are entitled as partners and this is interpreted as meaning that, for inheritance tax purposes, the members are treated as having direct interests in the underlying assets, rather than an interest in the LLP. Our view is that the fact that the Inheritance Tax Act 1984 specifically provides that the property of a LLP is treated as property to which the members are entitled as partners does not change the way that Schedule 29 to the Finance Act 2002 must be interpreted and applied.

40 **Discussion**

30. Schedule 29 applies to goodwill as it applies to an intangible fixed asset. Goodwill in Schedule 29 has the same meaning as it has for accounting purposes. Intangible fixed asset is defined by paragraph 2(1) of Schedule 29 in relation to a

company but not in relation to a partnership or LLP. For a company, such as AHL, an intangible fixed asset is an intangible asset acquired or created by the company. In March 2008, AHL acquired an interest in AAM. Absent a deeming provision, AHL did not acquire or create any goodwill. AHL's case is that section 118ZA(1) ICTA is the necessary deeming provision.

31. Entitlement to relief under Schedule 29 of the Finance Act 2002 is dependent on the expenditure being reflected in the accounts of the company claiming entitlement to relief. The accounts must be drawn up in compliance with UK GAAP and it was common ground in this case that AHL's accounts were prepared in accordance with UK GAAP.

32. As Mr Holgate made clear in his report, it is not appropriate for AHL to account for its interest in AAM using proportional consolidation. In accordance with UK GAAP, AHL could not include AAM's goodwill in AHL's accounts. AHL showed its interest in AAM as a subsidiary undertaking and also the goodwill relating to the purchase of AAM in the consolidated group accounts but that does not enable AHL to claim intangibles relief under Schedule 29. AHL argues that, by virtue of Section 118ZA(1) ICTA, AAM is "looked through" as an entity for all tax and corporation tax purposes. We agree that section 118ZA(1) and (2) provides for a "look-through" but that only applies "for corporation tax purposes" and "for all purposes ... in the Corporation Tax Acts". Nothing in section 118ZA requires or permits a corporate member of an LLP to treat the assets of the LLP as its own for accounting purposes. The words "For all purposes, except as otherwise provided, in the Corporation Tax Acts ..." in section 118ZA(2) clearly contemplate the existence of exceptions, such as that in Schedule 29, where it is necessary to look at the treatment of a transaction for accounting purposes. We do not accept that section 118ZA provides for a general look-through and, specifically, it does not apply for accounting purposes. Relief under Part 2 of Schedule 29 is given by reference to expenditure written off or written down for accounting purposes. If accounting rules or practice do not permit the expenditure on acquiring an interest in an LLP to be treated as the acquisition of the LLP's intangible fixed assets included then section 118ZA does not change the accounting rules or practice or deem the accounts to include something that they do not include.

33. Section 118ZA(1) ICTA provides that, where a LLP carries on a trade, profession or other business with a view to profit, it is treated as a partnership for corporation tax purposes. Section 118ZA(1)(c) states that the property of the LLP is treated as held by the members as partnership property. The effect of section 118ZA(2) is that references in the Corporation Tax Acts to a general partnership and its partners include a LLP and its members and, accordingly, the property of an LLP is treated as held by its members as partnership property for corporation tax purposes.

34. Paragraph 76(1)(c) excludes an asset from Schedule 29 to the extent that it represents a partner's interest in a partnership. Paragraph 76(3) provides that the exclusion does not apply to an interest that is treated for accounting purposes as representing an interest in partnership property that is an intangible fixed asset to which Schedule 29 applies.

35. AAM is a LLP carrying on a trade, profession or other business with a view to profit and, therefore, is treated as a partnership for corporation tax purposes. It follows that the interests in AAM acquired by AHL in March 2008 were treated as interests in a partnership for corporation tax purposes. Such interests are excluded from Schedule 29 by paragraph 76(1)(c) but they are brought back within Schedule 29 by paragraph 76(3) if they are treated for accounting purposes as representing an interest in an intangible fixed asset of AAM. The uncontested expert evidence of Mr Holgate was that the assets of AAM are not assets of AHL for accounting purposes and AHL could not include those assets in its own accounts but must show its interest in AAM as an investment in a subsidiary undertaking. It therefore follows that paragraph 76(3) cannot save AHL's interests in AAM from being excluded from Schedule 29 by paragraph 76(1)(c). The fact that if AAM were a general partnership, it would have been appropriate for AHL to treat its acquisition in 2008 of a controlling interest in AAM for accounting purposes as an acquisition of the underlying goodwill which AHL could proportionally consolidate in its accounts does not assist AHL in the actual circumstances of AAM being an LLP.

Decision

36. For the reasons set out above, we have decided that AHL was not entitled to intangibles relief under Schedule 29 Finance Act 2002 in respect of its acquisition of the interests of other members in AAM by reference to AAM's goodwill. Accordingly, AHL's appeal must be dismissed.

Rights of appeal

37. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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GREG SINFIELD

TRIBUNAL JUDGE

RELEASE DATE: 16 October 2013