Neutral Citation: [2023] UKFTT 00015 (TC)

Case Number: TC08677

FIRST-TIER TRIBUNAL
TAX CHAMBER

Held in public by remote video hearing

Appeal references: TC/2020/01147
TC/2020/01777

INCOME TAX – CORPORATION TAX – transfer of the business and goodwill of a dental practice from a partnership to a connected company – date of transfer – appellants say 1 December 2014 – HMRC say 23 October 2015 and amend partnership return to assess the partners for income between those dates and issue closure notices to the company denying amortisation of goodwill – oral agreement to transfer ineffective by virtue of The Law of Property **(***Miscellaneous Provisions) Act 1989 – grandfathering provision? - cannot apply – de facto transfer? - Angel v Hollingworth, Aeraspray Associated v Woods and Todd v Jones Brothers Ltd considered – held yes, de facto transfer on 1 December 2014 – appeals allowed*

Heard on: 25 and 26 May 2022 with additional written submissions received in August and September 2022
Judgment date: 20 December 2022

Before

TRIBUNAL JUDGE NIGEL POPPLEWELL
MR RICHARD LAW

Between

(1) 2 GREEN SMILE LIMITED
(2) DR AMEEKA PATEL (AS NOMINATED PARTNER OF 2 GREEN DENTAL PARTNERSHIP)

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Michael Firth of counsel instructed by Silver Levene LLP

For the Respondents: Martin Priestley, litigator, of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. Prior to December 2014 Ameeka Patel and Rajiv Ruwala (the "**partners**") carried on a dental practice business (the "**business**") in partnership (the "**partnership**") from premises (the "**premises**") at 2 Green Walk, Dartford.

2. 2 Green Smile Limited (the "**company**"), which had been incorporated earlier in 2014 and which changed its name in or around September 2014, succeeded to the business, and its accounts record that it started trading on 1 December 2014, providing dental services in succession to the partnership.

3. In the accounts for the year ended 30 November 2015, and in subsequent years, the company claimed an amortisation debit based on the market value of the goodwill which it claimed to have acquired on or before 1 December 2014 as part of the business ("**the goodwill**").

4. It is HMRC's view that the goodwill was not acquired on or before that date but was instead acquired on 23 October 2015. And so the amortisation debit was not available to the company.

5. Accordingly, HMRC have done two things. Firstly, they have enquired into, and issued closure notices in respect of, the company accounting periods ended 30 November 2015, 30 November 2016 and 30 November 2017. Details of these closure notices are set out below, but in essence they assess a charge to corporation tax of £49.811.52. Secondly, they have amended the partnership's tax return for the year ending 6 April 2016 which brings into charge an additional £115,974 (after revisions). HMRC have then issued assessments to the partners for the tax year 2015/2016. Details of those assessments are set out below. The company has appealed against the closure notices and the partnership has appealed against the amendment.

6. It is the partners' and the company's view that the goodwill and the business were acquired by the company on or before 1 December 2014, or, if acquired thereafter, they were so acquired pursuant to an unconditional contractual obligation entered into before that date.

7. The significance of the dates for the company is as follows. If the company acquired the goodwill on or after 3 December 2014, or it acquired the goodwill after that date but pursuant to an unconditional contractual obligation before that date, then the amortisation debit is allowable. If the company acquired the goodwill sometime between 4 December 2014 and 7 July 2015 (or acquired it after that latter date pursuant to an unconditional contractual obligation entered into during that period), then the company could claim an amortisation debit but this would be restricted to a fraction of the amount claimed. The exact amount depends on the precise date of the transfer/contractual obligation. If the goodwill was acquired by the company after 7 July 2015, it would not be entitled to any amortisation debit.

8. The position for the partnership and the partners is less subtle. It is simply that to the extent that the business was transferred after 1 December 2014, the income generated from the business will belong to the partnership and not to the company. And so the partners are liable to be assessed on a proportion of that income which has, hitherto, been included in a tax return only by the company.

9. The main issue which we have to decide is the date on which the goodwill was transferred from the partnership and acquired by the company. And in particular whether it transferred on one of two dates. The first, and earlier of these, as alleged by the appellants, is 30 November 2014, effective on and from 1 December 2014. This follows an oral agreement between the partnership and the company pursuant to which the partnership would transfer the business to the company, The second, and later of these, as alleged by HMRC, is 23 October 2015 which is the date on which the contract for the provision of NHS dental services was novated to the company. We have to decide between these competing dates.

10. Both Mr Firth and Mr Priestley made clear and helpful submissions, both written and oral which we have carefully considered in reaching our conclusions. However, we have not found it necessary to refer to each and every argument advanced by them on behalf of the parties.

The Evidence and findings of fact

11. We were provided with a bundle of documents. Oral evidence on behalf of the appellants, was given by the partners and by Mr Umesh Modi, a partner in Silver Levene LLP ("**SL**"), the accountants who acted for the partners and the company in relation to the transfer of the business. Oral evidence from HMRC was given by Officer James Coupe.

12. We set out below the relevant evidence, both documentary and oral, and thereafter make findings of relevant fact:

The documentary evidence

(1) The partners originally acquired the business from an unconnected third party in 2008. The business provided both private and NHS dental services. The business was conducted as a partnership up to at least 30 November 2014.

(2) NHS services were provided under the Standard General Dental Services Contract dated 1 December 2011 between Mr Ruwala and NHS England ("**the NHS**") (**"the NHS contract**"). According to figures provided by the appellants' agent in an email of 13 July 2019 the split between private and NHS income of the business from 1 December 2014 to 30 November 2017 was as follows:

Period ending	**NHS Income**	**Private Income**	**Total Income**	**% of income from NHS**
30/11/2015	£873,183	£662,686	£1,535,869	56.9%
30/11/2016	£590,472	£642,040	£1,232,512	47.9%
20/11/2017	£398,308	£370,135	£768,443	51.8%

(3) Clause 12 of the NHS contract provides that the partnership shall not give, sell, assign or otherwise dispose of the benefit of any of its rights under the contract, save in accordance with its terms. However, the contract does not prohibit the partnership from sub-contracting its obligations under the contract where such sub-contracting is expressly permitted by it. Clause 198 deals with sub-contracting. It provides that the partnership shall not sub-contract any of its rights or duties under the contract to any person in relation to clinical matters unless it has taken reasonable steps to satisfy itself that; it is reasonable in all the circumstances, the sub-contractor

is qualified and competent to provide the service and it is satisfied that the sub-contractor holds adequate insurance. Where the partnership sub-contracts any of its rights or duties, it is under an obligation under clause 199, to inform the NHS of the sub-contract as soon as is reasonably practicable and to provide the NHS with such information in relation to the sub-contract as the NHS reasonably requests.

(4) On 18 September 2014, an email from SL advised the partners: "You might want to contact a specialist dental solicitor re transfer of contract to limited company".

(5) A letter from SL on 19 September 2014 records that the partners were intending the transfer of the business to take place on 1 December 2014, with the accounts of the partnership to be prepared with a cessation date of 30 November 2014. The same letter set out a detailed and prescriptive list of points for the partners to attend to in order to effect this transfer by that date. These included registering the company with the General Dental Council within 3 months of trading; arranging to have the stock counted on 30 November 2014 by a professional valuer; arranging to have the freehold property valued by an estate agent; arranging to have the goodwill, fixtures and fittings valued by a professional valuer; amending business insurance cover; speaking to the British Dental Association; speaking to the local CQC and obtaining written approval from them for the transfer. The letter also deals with VAT registration, payroll, and PAYE matters.

(6) As regards the freehold property, the letter says "we will decide what to do with it, i.e. to transfer it to Limited company or leave it out. As discussed, and bearing in mind your plans to grow the number of surgeries and finally sell out altogether, then perhaps the property should be transferred to the limited company also".

(7) An email dated 22 September 2014 from SL, responding to queries raised by Dr Ruwala in an email of 21 September 2014, states "just to be clear-you will have only one company, 2 Green Smile Ltd. It will own 2 dental surgeries plus possibly the freehold of 2 Green Dental surgery. I say possibly because it will depend on the market value and therefore the stamp duty costs of transferring the property into 2 Green Smile Ltd. The goodwill value of 2 Dental Green practice will effectively be sold by you and Rajiv to 2 Green Smile Ltd, also at market value. 2 Green Smile Ltd will not physically pay you any money but that company will owe you money in the form of directors loan account. The new surgery….. will be bought by 2 Green Smile Ltd. So then 2 Green Smile Ltd will end up with 2 surgeries and possibly one freehold property".

(8) On 17 October 2014, SL emailed the partners reminding them to "…please make sure everything is done as per the letter".

(9) An email from SL to the partners dated 21 October 2014 advises "please ensure that you get the goodwill and property valuation of 2 Green Dental before we transfer it into 2 Green Smile Ltd".

(10) Letters from EDF Energy and Thames Water show that utilities were switched into the name of the company in October 2014. They were both addressed to the company, and the letter from Thames Water records the change in the company name to 2 Green Smile Ltd.

(11) On 21 October 2014, SL emailed the Partners advising that: "You have to open a new bank account in the company's name. All bank balances can be transferred from 2 Green Dental into 2 Green Smile Ltd".

(12) An invoice for equipment to be supplied by Braemar Finance was addressed to the company and dated 20 October 2014. The price for that equipment was £74,952.

(13) A valuation report (the "**valuation report**") was prepared and dated 28 October 2014. This gave three market value figures.

> "(a) The Market Value (1) of the Freehold interest of the subject property as a fully equipped operational entity having regard to trading potential is a figure in the region of £1,440,000…..
>
> (b) The Market Value (2) of the Freehold interest as a fully equipped operational entity having regard to trading potential, subject to the following conditions
>
> (i) Exchange will take place within 6 months
>
> (ii) Accounts or records of trade would not be available to a Prospective purchaser and that and [sic]
>
> (iv) The business is open for trade
>
> Is a figure in the region of £1,370,000…….
>
> (c) The Market Value (3) of the Freehold Interest as a fully equipped operational entity having regard to trading potential, subject to the following Special Assumptions, that:
>
> (i) Exchange will take place within 6 months;
>
> (ii) Accounts or records of trade would not be available to a Prospective purchaser;
>
> (iii) The business is closed and the registration/licences removed and
>
> (iv) The trading inventory has been removed;
>
> Is a figure in the region of £600,000……..".

(14) The accounts for the company for the year ended 30 November 2015 which were signed off by the company on 9 August 2016 show that:

> (a) The company started trading on 1 December 2014 and that its principal activity during the year was that of providing dental services;
>
> (b) The partners ceased to trade as a partnership on 30 November 2014 and on 1 December 2014 the company took over the trade of the business at market value;
>
> (c) An addition of £600,000 attributable to freehold property was added as a tangible fixed asset and depreciated by £12,000 for that year; and
>
> (d) an addition of £804,500 attributable to goodwill was added as an intangible fixed asset and depreciated by £114,929 in that year.

(15) Correspondence between the directors of the company and Barclays Bank on 11 November 2014 shows they had begun the process of opening a company bank account at that date.

(16) However, according to para 9.3 of a letter from SL dated 30 August 2018:

> "As is often the case when opening a bank account, there was some delay in setting up the 2GSL bank account, which was set up, in the end, on 2nd April 2015".

(17) Two Board Minutes were produced by the company on 30 November 2014. One (the "**Board Minute**") recorded:

> "It was noted that on acquisition of the assets of the business, known as 2 Green Dental, title to the goodwill and freehold property were retained by the vendors. It was noted that Dr R Ruwala and Dr A Patel, owners of the goodwill and freehold property, had offered to sell the goodwill and freehold property to the company. The price (at market value) at which they offered to sell was £1,404,500. This offer was considered by the directors and accepted verbally on behalf of the company by Dr R Ruwala and Dr A Patel.
>
> There being no further business the meeting was closed".

(18) The other recorded:

> "Minutes for the acquisition of the partnership business known as 2 Green Dental was produced. It was noted that Dr R Ruwala and Dr A Patel were the owners of the business. Dr R Ruwala was authorised to execute the transaction on behalf of the company".

(19) The company was sent an invoice by a dental supply company for an item of dental equipment on 2 December 2014.

(20) An organization called Henry Schein dental sent a statement to the company dated 31 December 2014 requesting payment of approximately £44.

(21) On 1 February 2015, the company wrote to staff of the business providing their P45's from the partnership and advising them of the change. The sample letter in the bundle states that "This letter is to advise you the company has changed from 2 Green Dental as a partnership to 2 Green Smile Ltd as a Limited company as of 1st December 2014. Although we still trade as 2 Green Dental……"

(22) As at 31 August 2015, the practice's website made no reference to the company. The copyright in the footer still read: "© 2011 2Green Dental…". By 14 December 2015, the website had been updated. The footer read: "© 2015 2 Green Smile Ltd T/A 2Green Dental…".

(23) On 9 October 2015, the company registered as a service provider with the Care Quality Commission ("**CQC**") for the first time with a certification date of 16 October 2015.

(24) On 23 October 2015 pursuant to a deed of novation and guarantee (the "**deed of novation**"), the NHS contract was novated from the partnership to the company. The deed of novation does not define the "current contractor" but it seems to be Dr Ruwala. We think that he was acting in his capacity as agent for the partnership. Nor does it define the "new DBC", but we take this to mean the company. It includes a number of recitals including:

(a) The current contractor is to sell its dental practice at 2 Green Walk, Dartford, DA1 4JL, to the new DBC;

(b) The new DBC is willing to assume all of the current contractor's liability and obligations in regard to the GDS contract entered into between the current contractor and NHS England with effect from 23rd October 2015; and

(c) NHS England is willing to enter into this deed of novation to indicate that it agrees and consents to the new DBC assuming all the liability and obligations in the place of the current contractor in respect of the GDS contract from 23rd October 2015.

(25) The deed of novation provides for the partnership to novate and transfer to the company all of its rights and obligations under the NHS contract, and the company undertook that from 23 October 2015 it would comply with, perform and be responsible for the partnership's obligations under the NHS contract and be bound by its terms as if it were an original party thereto. It also provides for continuity of care and treatment which was being provided by the partnership on 23 October 2015.

(26) The NHS released the partnership from its obligations under the NHS contract, but the partnership guaranteed the obligations of the company in the event of a default by the company of its obligations under the novated NHS contract.

(27) For the purposes of payments, in an email of 8 December 2015, the NHS advised they would be using a start date for the company of 1 November 2015.

(28) A Land Registry form TR1 dated 30 January 2016 records that title to the premises and land adjoining it was transferred from the partners to the company. A second TR1, dated 1 February 2016, in identical terms to the first, also purports to transfer title to those premises from the partners to the company. It was not made clear to us which is the effective transfer, but we find as a fact that that transfer of the premises was effective on and from either 30 January 2016 or alternatively on 1 February 2016.

(29) On 16 July 2017, HMRC opened an enquiry under paragraph 24(1) Schedule 18 Finance Act 1998 ("**Schedule 18**") into the company's Corporation Tax ("**CT**") Return for the accounting period ending ("**APE**") on 30 November 2015 which had been received by them on 24 August 2016.

(30) On 21 December 2017, HMRC opened an enquiry under paragraph 24(1) Schedule 18 into the company's CT Return for the APE 30 November 2016 which had been received by them on 27 July 2017.

(31) On 1 February 2018, the company held a board meeting. At paragraph 4.1 of the minutes it reported that on 30 November 2014:

> "…the Company entered into a transaction where the Company agreed to purchase the NHS and private dental practice business".

(32) Paragraph 4.2 of these minutes then ratified the company entering an *"Asset Purchase Agreement"* ("**APA**"). The APA is dated 1 February 2018. Completion Date is expressed to be 30 November 2014, and the APA recites that at that date the partners agreed to sell, and the company agreed to purchase the business (the NHS and private dental practice carried on by the partnership as at the close of business on 30 November 2014) as a going concern on the

terms and conditions of the APA. The assets comprising the business include its goodwill and the premises. The document declares that the company purchased those assets with effect from the aforesaid time. Schedule 1 shows that £804,500 was attributed to the goodwill, and £600,000 to the freehold of the premises.

(33) On 3 August 2018, HMRC opened an enquiry under paragraph 24(1) Schedule 18 into the company's CT Return for the APE 30 November 2017 which had been received by HMRC on 30 April 2018.

(34) On 29 August 2018, the partners and the company entered into a contract (the "**sub-contract**"). The sub-contract relates to the NHS contract.

(35) Recitals to the sub-contract declared that the partners had transferred the beneficial interest in the NHS contract to the company under the APA with effect from 1 December 2014, and that it followed that the partnership had held the NHS contract on trust for the company for the "Relevant Period" (defined as a period starting on 1 December 2014 and ending on 23 October 2015). It went on to declare that on 23 October 2015 the partnership had transferred its legal interest in the NHS contract to the company under the deed of novation. Operative terms of the sub-contract included confirmation that during the Relevant Period the partnership had permitted the company to perform all of its obligations under the NHS contract, "other than the Clinical Services", and that the company had performed such obligations throughout the Relevant Period. "Clinical Services" are defined as the dental services provided by qualified clinicians under the NHS contract. The sub-contract declares that it represents the entire agreement between the parties relating to its subject matter.

(36) On 27 November 2019 HMRC closed the enquiries into the company's returns by closure notices issued to the company under paragraph 32 of Schedule 18.

(37) On 27 November 2019 HMRC issued a letter outlining their view of the matter.

(38) On 19 February 2020 HMRC issued amendments to the partnership under s30B Taxes Management Act 1970 ("**TMA 1970**") and to the partners under s30B(2) TMA 1970 with respect to their 2015-16 returns.

(39) On 25 February 2020 HMRC issued a review conclusion letter to the company.

(40) On 18 March 2020 the company appealed to the Tribunal.

(41) On 14 May 2020, the partners and partnership notified their respective appeals to the Tribunal.

Health and Social Care Act 2000 ("HCA")

(42) The provision of dental care is a regulated activity for the purposes of the HCA. Section 10 of the HCA provides that a person who carries on a regulated activity without being registered under the HCA in respect of carrying on that activity, is guilty of an offence which carries a penalty of a fine and/or a term of imprisonment not exceeding 12 months. Registration under the HCA was, at the relevant time, registration with the CQC.

The oral evidence

(43) Mr Modi's evidence was: Following finalisation of the 2013 partnership accounts, he had met with the partners to discuss incorporating the partnership. The reason was that their tax liability was increasing and the only way to mitigate this was through increased pension contributions. He discussed the issues surrounding the pension contributions and left it to the partners to consider. Following the 2014 partnership accounts which showed profits, he had another meeting with the partners to discuss incorporation. The partners told him that they were planning to expand and were then negotiating for the acquisition of another practice. It was obvious to Mr Modi that they should incorporate. He set out his advice in his letter of 19 September 2014. He had included the premises in the company accounts for the year ended 30 November 2015 on the basis there was a binding contract for the transfer of those premises in that year even though completion of the transfer of the premises did not take place until early 2016. The board minutes of 1 February 2018 and the APA were compiled in response to HMRC's request, in their letter of 21 December 2017, for evidence that the goodwill had been transferred. It was his view that this was unnecessary and that the Board Minute was satisfactory evidence. His recollection was that it was the lawyers who suggested drafting the sub-contract.

(44) Dr Patel's evidence was: She met Mr Modi in 2013 to discuss incorporation so as to mitigate increasing tax liabilities by making increased pension contributions. She had a further meeting with Mr Modi on 12 September 2014 to discuss incorporation. She confirmed Mr Modi's evidence regarding wishing to expand the practice. Mr Modi said that they should incorporate the practice and they agreed, during that meeting, to proceed with the conversion of the partnership into a corporate entity. On 30 November there was a verbal agreement between herself and Mr Ruwala stating that the practice (including the goodwill) would be transferred to the company with immediate effect. This is recorded in the Board Minute which had been drafted by SL. The board meeting recorded in that minute was actually held. It was at that meeting that she and Mr Ruwala agreed, on behalf of the company, to purchase the business. They never intended to incorporate only part of the business, the intention was to incorporate everything. She could not remember details of the meeting. Due to a delay on the part of the NHS, they could not transfer the NHS contract until October 2015 and therefore had to operate that contract under the sub-contract. She was on maternity leave at the time so Mr Ruwala had responsibility for arranging this and registering the company with the CQC. She returned from maternity leave in April 2015 and oversaw the transition and the registration. In 2018 she instructed lawyers to draft the APA in an effort to try to resolve the situation. In her view the APA reflected the verbal agreement already in place. She was conscious of her legal obligations under the HCA. Even though the company was not registered with the CQC immediately following the transfer of the business, the partnership was registered, and the same people were running the practice before and after the transfer. She knew from talking to colleagues that sub-contracting was a common way round the problem of assigning an NHS contract, which often took some time to achieve. They did not however tell the NHS about the sub-contracting arrangements. Her evidence was that it did not cross their minds that the NHS would not agree to novate the NHS contract. They had no contingency plan if the NHS had not agreed to novate it. In her "head" it was the company who owned the NHS money in the period between 30 November 2014 and the date of formal novation of the NHS contract, on 23 October 2015.

(45) Mr Ruwala's evidence was: He confirmed that the board meeting recorded by the Board Minute actually happened. Those minutes had been drawn up by SL. Mr Ruwala had spoken to the CQC about registering the company. He had delegated the responsibility for completing

the relevant registration documents to the practice manager. He had, informally, been told by the CQC, who at that stage were new to dentistry, that it would not be a problem to change the registration to a company. The CQC is concerned with patient safety and their patients would have noticed no change when the business was incorporated. The reason that the company's bank accounts had not been opened immediately on incorporation was administrative on the bank's behalf. He confirmed that he had never heard of the NHS refusing to novate a contract to an associated company on incorporation of a dental business. He accepted that, strictly speaking, under the terms of the NHS contract, incorporating the business could have enabled the NHS to terminate the NHS contract. But in reality, this would not have happened. He had never heard of a practice having its NHS contract taken away just because it incorporated.

(46) Officer Coupe tendered a witness statement which was accepted by Mr Firth. Officer Coupe was responsible for overseeing the investigation and for issuing the closure notices and the assessments. It was his view that the business did not transfer to the company on 1 December 2014 nor was there an unconditional contractual obligation to do so at that date. The oral contract was conditional on the novation of the NHS contract which only occurred on 23 October 2015 and neither the APA nor the sub-contract changed this. HMRC have correctly denied the company amortisation relief, and any income generated up until 23 October 2015 should have been charged to the partnership which is reflected in the assessments.

The decisions under appeal

(47) The decisions under appeal are set out below:

The company

Decision	**Appellant**	**Period**	**Amount**
Closure notice	The company	APE 30 Nov 2015	£13,202.80
Closure notice	The company	APE 30 Nov 2016	£18,197.60
Closure notice	The company	APE 30 Nov 2017	£18,411.12

The partnership

(48) The partnership appeals against an amendment to the partnership return for the tax year ended 5 April 2016 which brings into charge (after revision) an additional £115,974. The resultant amendments to the partners returns are set out below:

Decision	**Appellant**	**Period**	**Amount**
Assessment	Ameeka Patel	2015/16	£26,961.19
Assessment	Rajiv Ruwala	2015/16	£27,479.27

THE LAW

13. There is no dispute as to the relevant law which we have set out in the appendix to this decision.

14. In summary, as regards the company, it is this:

(1) If the company acquired the goodwill (or was under an unconditional contractual obligation to do so) prior to 3 December 2014, the company would be entitled to the amortisation debits contained within its returns.

(2) If the company acquired the goodwill (or was under an unconditional contractual obligation to do so) at some time between 3 December 2014 and 7 July 2015 inclusive, the company's debit would be restricted to a small fraction of the amount claimed, but the exact amount claimable would depend on the precise date of transfer/obligation.

(3) Otherwise, the company is not entitled to any debit for amortisation, as per HMRC's closure notices.

APPROACH TO THE EVIDENCE

15. There are a number of cases which, over the last decade, have considered the approach to be taken in respect of oral evidence received, particularly concerning facts and matters which occurred sometime before the giving of the evidence. These cases have been comprehensively reviewed in the judgment of Judge Brooks in *Hargreaves v HMRC* [2019] UKFTT 244.

16. So far as material in the present appeal the tribunal notes, from that judgment, that a certain degree of caution is to be taken because:

"26. …

(1) memories are fluid and malleable, being constantly rewritten whenever they are retrieved …

(2) the process of … litigation … subjects the memories of witnesses to powerful bias …

(3) witnesses, especially those who are emotional, who think they are morally right, tend very easily and unconsciously to conjure up a legal right that did not exist…."

17. The judgments summarised by Judge Brooks conclude that:

"The best approach from a judge is to base factual findings on inferences drawn from documentary evidence and known or probable facts. "This does not mean that oral testimony serves no useful purpose… But its value lies largely… in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth".

DISCUSSION

Burden of proof

18. The burden of showing that the closure notices and the assessments are valid in time notices and assessments, rests with HMRC, and the standard of proof is the civil standard of on the balance of probabilities. Once HMRC have established that these are procedurally valid, then the burden of establishing that they incorrect rests with the appellants, who must show

that on the balance of probabilities the notices and assessments are wrong. It is our view that in order to do this, the burden is on the appellants to show that the date of the transfer of the goodwill was not, as alleged by HMRC (and which forms the basis of the closure notices and the assessments) 23 October 2015, but was on an earlier date (and the appellants' case is that the business and goodwill was transferred before 3 December 2014, whether it was transferred on 30 November 2014 or 1 December 2014).

Submissions

19. Following our review of the evidence and the parties submissions at the oral hearing, it was our initial view (for the reasons which are set out in more detail below) that whilst the goodwill was capable of being transferred from the partnership to the company without formality (and could therefore, theoretically, have been transferred by dint of an oral agreement on or before 1 December 2014) the agreement between the partnership and the company, was for the sale of the entirety of the partnership business, including the premises and the goodwill, and the transfer of the goodwill was not divisible or separable from the transfer of the premises. Since, therefore, there was no written contract for the transfer the premises on or before 1 December 2014, the goodwill could not have been acquired by the company on or before that date. This arises as a consequence of the provisions of section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989 **("the 1989 Act**"). It was also our initial view that the grandfathering provisions set out in section 26 (5) FA 2015 could not apply since it requires existence of a valid and enforceable contract. Accordingly we sought additional submissions from the parties regarding the date of transfer of the goodwill, and the submissions which we summarise below reflect the parties original submissions together with those supplemental submissions.

20. In summary Mr Firth, on behalf of the appellants, submitted as follows:

(1) The best evidence of the transfer taking place on 30 November 2014/1 December 2014 is the oral testimony of the appellants combined with the Board Minute. The latter is contemporaneous evidence, and reflects an agreement reached between the partners on the one hand, and the company on the other, to transfer the business to the company.

(2) There are no formalities attaching to the transfer of the business and its goodwill so there was no reason why the agreement was not effective in transferring the business and the goodwill.

(3) However, it is clear from the contemporaneous documents that the transfer of the business was not dependent on the transfer of the premises. This is clear from the letters of 19 September 2014 and the email of 22 September 2014 both of which countenance the possibility of the premises being retained by the partnership/partners. And so the transfer of the goodwill is outside the provisions of the 1989 Act and so there is no requirement for a written contract for its effective transfer.

(4) The APA and the sub-contract, both of which were created in 2018 were an attempt by lawyers to put this simple agreement which the parties had reached in 2014 into legal language and doesn't assist in resolving what happened in 2014. HMRC appear to accept this yet are inconsistent in their approach in that in certain circumstances they seek to rely on those documents as evidence of what happened in 2014.

(5) The evidence shows that there was clearly an intention to transfer the business. This is clear from the oral evidence of the parties, the correspondence leading up to the Board Minute,

the valuation report, the fact that the employees were notified of the transfer on 1 February 2015, notification to, and correspondence with, suppliers, the ending of the partnership trade and the reflection of the commencement of trade by the company, and the inclusion of the capital assets of the partnership in the balance sheet of the company.

(6) HMRC's submissions that because certain things were not done by that date (for example CQC registration, novation of the NHS contract, transfer of the freehold title to the premises, and amending the business insurance cover) cannot detract from the validity of the transfer in 2014. Whilst failure, for example, to comply with the CQC legislation, might have rendered the partners and the company subject to sanction, that does not mean that that failure rendered the transfer of the business, invalid. Indeed, the fact that there are sanctions in the relevant legislation suggests that Parliament countenanced the possibility that people might not comply with it. But that does not render any agreement to which the legislation apply, void. This simply renders the parties subject to sanctions.

(7) Furthermore, a distinction must be made between the NHS contract on the one hand, and the goodwill associated with the NHS contract (the "**NHS goodwill**"), on the other. The NHS goodwill can pass without formality, even if the NHS contract, and its benefits, were not transferred to the company at the same time. However, it is the appellants' evidence, and this is reflected in the sub-contract, that the NHS contract was held on trust for the company under a sub-contracting arrangement, from 1 December 2014 until 23 October 2015 when the NHS contract was novated. The oral evidence was that this was a common occurrence, and it is clearly permitted under the terms of the NHS contract and is what happened in practice. From the date of transfer on 1 December 2014, the benefit of the NHS contract was vested in the company, notwithstanding that, formally, the NHS contract was still in the name of the partnership. And that during the period in question, the company had provided NHS dental services to patients. The partners' oral evidence was that they had never come across an occasion, in practice, where the NHS have declined to novate an NHS contract.

(8) The deed of novation is clearly not a contract transferring the goodwill from the partnership to the company. The fact that a recital is couched in future terms is irrelevant. The deed contains no terms that you would normally find in a contract transferring an asset, for example price.

(9) In any event, irrespective of when the transfer of the business and the goodwill actually took place, there was agreement existing as at 30 November 2014 to transfer the business and goodwill, and that was an unconditional agreement. So even if the goodwill was acquired by the company after that date, it was so acquired pursuant to an unconditional agreement existing as at 30 November 2014, and so was grandfathered under the provisions of s26(5) FA 2015 (the "**grandfathering provisions**") and the company was therefore entitled to amortisation of the entirety of its value, without restriction.

(10) Unconditional is a defined term, ("an obligation is "unconditional" if it may not be varied or extinguished by the exercise of a right (whether under the contract or otherwise).") and it is clear that the agreement was unconditional within this definition. Furthermore, it is not, as is submitted by HMRC, possible to read into the agreement an implied term that the benefit of the NHS contract could not be assigned without the NHS's agreement.

(11) The test for implying terms into contracts is a high threshold requiring the term to be necessary to give business efficacy to the contract. It is not sufficient that it would be a reasonable term to imply or that the term would improve the contract.

(12) Necessity in this sense means that, without the term, the contract would lack commercial or practical coherence:

> "It has long been established that, in order to imply a term into an ordinary business contract such as this, the term must be necessary to give business efficacy to the contract; it must be so obvious that it goes without saying; it must be capable of clear expression; and it must not contradict any express term of the contract". (*Hallman Holding Ltd v. Webster* [2016] UKPC 3 at [14]).

(13) Applying this test, no term to the effect that HMRC identify should be implied into the contract between the partners and the company. The agreement was for the transfer of the business including the NHS goodwill. If it proved impossible for that goodwill to be transferred, then the company's remedy was in damages. This did not require there to be a term inferred into the original agreement, that the transfer of the business was conditional upon the novation of the NHS contract.

(14) Furthermore, the oral evidence was that the partners did not think that there was any chance that the NHS would not novate the contract. And so they would not have included any condition into the agreement. It would not have crossed their minds that there was any need to do so. As far as they were concerned, the agreement to transfer the business was exactly that, and the transfer of the goodwill was part of it. The transfer of the goodwill was not conditional on the novation of the NHS contract.

(15) HMRC submit that because certain things took place after the Board Minute there could have been no agreement for the transfer of the business and goodwill before that. This is misconceived. The matters that happened after December 2014, for example the novation of the NHS contract, happened because there had been a transfer of the business in December 2014. The transfer of the premises which formally took place in January 2016, did so because of the previous agreement between the parties that this would happen. The matters which happened after December 2014 were simply the performance of the obligations arising from the agreement to transfer the business on 30 November 2014.

(16) It has never been in dispute that at some stage the company acquired the business and goodwill. The question is on what date that took place. Even if the oral agreement was not effective, by dint of the 1989 Act, to transfer the goodwill on 30 November 2014, there must have been a de facto transfer of that goodwill. This took place on 1 December 2014 and not on 23 October 2015. It is clear from the cases such as *Angel v Hollingworth* 37 TC 714 ("***Angel***"), *Aeraspray Associated v Woods* 42 TC 207 ("***Aeraspray***") and *Todd v Jones Brothers Ltd* 15 TC 396 ("***Todd***") that one business can succeed to the activities of another. That is the case here. Mr Firth's view was that the evidence shows that that succession took place on 1 December 2014.

(17) *Angel* shows that there is no need for there to be a valid and binding agreement as a necessary prerequisite to such a valid succession. The evidence in this case is stronger than in *Angel* and *Aeraspray*, in which cases the High Court found that the transfer had taken place on the date argued for by the taxpayer. *Todd*, on which HMRC rely, and in which the taxpayer lost, shares far fewer common features than in this case. No final agreement for a transfer had been reached and the only evidence arguably relating to a transfer was a resignation of the directors of the original company. This was found not to be evidence of a succession on the date alleged.

(18) *Aeraparay* is not, as contended by HMRC, a burden of proof case. The High Court confirmed that the Commissioners decision as to the date of transfer was consistent with the facts found.

(19) The company accounts which show the premises as an asset from 1 December 2014 do so on the basis that the parties considered that that was the date on which the business, including the premises, had been transferred from the partnership to the company. This is evidence of what the parties both intended to happen, and thought had happened.

(20) The business was transferred on 1 December 2014 and so on and from that date, the company owned the operational assets (staff, equipment, supplies etc). So, on and from that date, it was only the company who could derive income from the exploitation of those assets. Income arising between that date and 22 October 2015 was properly recognised as company income.

(21) There was a de facto sub-contracting arrangement in place as regards the NHS income. But the novation of the NHS contract should not affect the transfer of the goodwill attaching to the private income, which transferred, in any event, on 1 December 2014.

21. In summary Mr Priestley submitted as follows:

(1) The closure notices and the assessments are valid and in time. Indeed, no challenge to their procedural validity has been made by the appellants. Officer Coupe's evidence regarding these was accepted by Mr Firth.

(2) The question is when the company stepped into the shoes of the partnership.

(3) The contemporary evidence relied on by the appellant is the existence of the Board Minute. This provides very little detail, and the terms of the APA and the sub-contract illustrate the complexity of the terms that are required to effectively transfer the business. The appellants have not discharged their burden of proving that there had been an oral contract to transfer the business on or before 1 December 2014.

(4) The price recorded in the Board Minute of £1,404,500 reflects the valuation of the goodwill and the premises as set out in the valuation (the difference is explained by the value of the equipment).

(5) There is a single transaction which covers a number of assets including the premises and the goodwill. These are indivisible. This was an all or nothing deal. The intention of the parties was clearly to transfer, to the company, all of the assets of the partnership's business, as a going concern. And the agreement reflected by the Board Minute, did just that

(6) The goodwill was inherent goodwill.

(7) Since the agreement was for transfer of the premises and the goodwill, these were inseparable, and as such, under the 1989 Act there needed to be a written agreement for the transfer of the premises to legally effect a transfer of the goodwill. There was no such written agreement. And so the agreement evidenced by the Board Minute was not legally effective to transfer the goodwill to the company.

(8) The correspondence in which Mr Firth relies, suggesting that the premises might not be included in the transfer of business, is not relevant. This is just the appellants considering their options.

(9) The evidence suggests that the company was not holding itself out as carrying on the business to the wider world between 30 November 2014 and 23 October 2015. The patients were not told that the dental services were being supplied by the company. The website shows that the partnership was still holding itself out as providing the dental services as at 31 August 2015 although this had changed by December 2015. This is consistent with HMRC's contention that the effective date of transfer was in October 2015.

(10) There is no evidence that the parties were intending to undertake a partial transfer. It was all or nothing. The oral agreement encompassed all of the goodwill. The care for NHS patients and private patients is closely integrated and it is virtually impossible to provide one without the other.

(11) Furthermore, since the NHS contract was an integral part of the goodwill of the partnership, it could not be transferred until the novation of the NHS contract on 23 October 2015. The terms of the NHS contract included prohibitions on alienation without the consent of the NHS, and this consent was not given until the contract was novated on that date. The transfer of the NHS goodwill, and its acquisition by the company, took place, therefore, on 23 October 2015.

(12) Whilst it might have been the partners intention that all of the assets of the business, including the goodwill, was to be transferred with effect from 1 December 2014, that intention was only fulfilled with the transfer of the NHS goodwill on 23 October 2015, and the transfer of the premises on 30 January 2016.

(13) The APA and the sub-contract are inconsistent and do not provide any cogent evidence to support the contention that there was a valid agreement to transfer the business and the goodwill on 30 November 2014. The APA, for example, does not claim to record that agreement but to retrospectively replace it. This is clearly ineffective to transfer the business at an earlier date. However, it was signed by the partners, and Dr Patel's evidence was that it reflected the verbal agreement already in place. The deed of novation suggests that the partnership was "to sell" its dental practice to the company (in other words it is prospective and by signing up to this, the partners accepted that the NHS contract and thus the NHS goodwill was still owned by the partnership before 23 October 2015).

(14) There is evidence to suggest that there was no sub-contracting arrangement in place between the partnership and the company between 1 December 2014 and 23 October 2015. There are no board minutes, invoices, items of correspondence, or written contracts between the partnership and the company, or with the NHS, about the sub-contracting. It is not plausible that in such a highly regulated marketplace as healthcare, the company would have obtained half its turnover from this arrangement which was not properly documented. It had not been mentioned in the APA which purported to be the entire agreement between the parties.

(15) The company only registered with the CQC on 9 October 2015 and so was not able to provide dental services before then. There is no evidence of any approach being made to the CQC before 30 November 2014. It is inconceivable that the individuals would have said that they were trading as a company in the knowledge that the company was not registered with the CQC.

(16) The company did not hold adequate insurance which was a requirement for any valid sub-contracting arrangements. There is no evidence that the partners notified the NHS of the sub-contracting arrangements. The sub-contract suggests that the partnership only sub-contracted non-clinical services to the company which means that the company could not have provided the dental services.

(17) Furthermore, even if there was a sub-contracting arrangement, this is not evidence that the goodwill of the partnership has been transferred to the company on or before 1 December 2014.

(18) Whilst it is clear that the partners intended to incorporate their business, and they had been told exactly what was needed to be done by their advisers, in September and October 2014, they did not do what they needed to do. The new bank account was not opened until April 2015. No business insurance was in place. Employees were only told of the change in February 2015. The appellants' website show that it was not updated to refer to the company until some time after 31 August 2015. The partners failed to take the necessary steps to implement the intention to transfer the business on or before 1 December 2014. These necessary steps were not concluded until 23 October 2015.

(19) It is reasonable to suggest that the oral agreement to transfer the business was conditional on novation of the NHS contract. Such novation was not guaranteed. A rational purchaser would not pay the market value of the NHS goodwill irrespective of whether the NHS contract was included in the sale. Mr Priestley asks, rhetorically, whether the partners would have transferred the business to the company if the NHS had refused permission to novate the NHS contract. His view was that any suggestion to the contrary was not credible.

(20) The five conditions which must be met in order to imply a term into a contract are set out in the case of *BP Refinery* [1977] 180 C.L.R ("***BP***"). Implying a term into the oral agreement (that it was conditional upon novation of the NHS contract) is reasonable and equitable, is necessary to give business efficacy, is so obvious that it goes without saying, is capable of clear expression, and does not contradict an express terms of that agreement.

(21) If this term is implied into the oral agreement, it makes it conditional, and thus the grandfathering provisions cannot apply.

(22) As regards the de facto transfer, the facts are closer to *Todd* than to *Aeraspray*. There is no hiatus between the date on which the partnership ceased trading and the date on which the company started. It is HMRC's view that the partnership continued trading under the NHS contract until 23 October 2015. This distinguishes the facts from *Aeraspray*. The company accounts in this case reflected the introduction of the premises into the company on 1 December 2014 but the freehold was not transferred until 2016. The company accounts, therefore, are unreliable as evidence of the date of transfer.

(23) In *Todd* the High Court found that there was no evidence that there was a succession on the field of operations at all. The business went on in exactly the same way. His submission is that that is the case with the partnership and the company. The absence of a CQC registration until October 2015 demonstrates that there was no succession on the field of operations. Relevant third parties, patients, the NHS and regulatory bodies would have considered the partnership to have been running the business without any noticeable change between 1 December 2014 and 23 October 2015. These were people who had a right to know about the change yet were in ignorance. They had not been informed of the proposed change let alone the actual change if that had taken place on 1 December 2014.

(24) Even if the deed of novation does not amount to a contract for the transfer of goodwill, the novation itself is a material enough change to amount to a de facto transfer of the goodwill on 23 October 2015.

Procedural validity

22. We find as a fact that the closure notices, the amendment to the partnership's return and the assessments on the individual partners are all procedurally valid and in time. There was no challenge to HMRC's submission that this was the case, but we make this formal finding in any event.

The 1989 Act

23. The appellants submit that there is no formality required to effectively transfer the legal and beneficial interest in goodwill. There is no need for there to be a written contract. The Board Minute reflects an oral agreement between the partners on the one hand, and the company on the other, pursuant to which the goodwill of the business had been offered to the company, and the acceptance of that offer to buy the goodwill, for a total amount of £1,404,500 which include the value of the premises.

24. HMRC make two points. The first, as set out above, is that the goodwill of the business could not be transferred until the NHS contract to provide NHS dental services which had been entered into between the NHS and the partnership, had been novated to the company. That novation did not take place until 23 October 2015, and that is the date on which the goodwill was transferred to and acquired by the company. We deal with this point later in this decision.

25. The second point is that even if they are wrong on the first point, and the goodwill was capable of transfer before the novation of the NHS contract, it could not have been transferred on or prior to 1 December 2014 by virtue of the application of the 1989 Act.

26. The 1989 Act provides that "A contract for the sale or other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each".

27. The consequence of failing to comply with the 1989 Act is that any contract or agreement purporting to dispose of an interest in land which is not in writing, is unenforceable.

28. HMRC submit that the business included the premises. Legal title to the premises was transferred to the company pursuant to a Land Registry transfer (TR1) dated 30 January 2016. However, there was no prior written agreement, which complied with the terms of the 1989 Act, pursuant to which that transfer was made.

29. So the question then arises as to whether the lack of a written contract for the transfer of the premises, which comprises one of the assets of the business, blights the enforceability of an oral agreement which purportedly transfers another asset of the business (the goodwill) to such an extent as to render the oral agreement unenforceable.

30. In the Court of Appeal decision in *Simmons v Simmons* [1996] CLY2874, Lord Justice Morritt, who gave the leading judgment, approved the proposition, expressed in Halsbury's Laws of England, volume 42 of the 4th edition which states:

"Where an agreement is in part for a transaction in land and in part for some other purpose, the question arises whether there is one entire agreement or whether the agreement is divisible. In the former case, the whole contract will be unenforceable if there is no memorandum in writing, whereas in the latter case only that part of the agreement relating to land will be unenforceable. The question whether a transaction amounts to one entire contract or is severable into parts depends upon the circumstances of each case".

31. In its application to the facts of that particular case, Lord Justice Morritt went on to say:

"Third, there is the question of the part of the agreement which undoubtedly did provide for a charge over what was described as the "defendants land" to secure the lump sum of £75,000 odd. There is no doubt as was conceded by the judge, that, standing alone, that part of the agreement was an agreement for the disposition of an interest in land. The question is whether that particular obligation was sufficiently divisible, a word I preferred to use to that used by the judge of "severable". It seems to me plain, from looking at the terms of the agreement, and particularly in view of the findings of the judge, that that part of the agreement was strictly ancillary to the agreement overall, and is one which, consistent with the principle I referred to, can be divided off from the balance of the agreement".

32. In the Court of Appeal case of *North Eastern Properties Ltd* v *Coleman* [2010] EWCA Civ 277 the proposition was described somewhat differently, by Mr Justice Briggs.

33. At paragraph 46 of his judgment he says: "Section 2 (1) does not prohibit parties from structuring a transaction, for example, for the sale of the whole of the company's assets, in such a way that the land sale is dealt with in a different document from the sale of stock, work in progress or goodwill, unless the sale of the land is conditional upon the sale of the other assets".

34. At paragraph 54 i) he went on to say: "Nothing in section 2 of the 1989 Act is designed to prevent parties to a composite transaction which includes a land contract from structuring their bargain so that the land contract is genuinely separated from the rest of the transaction in the sense that its performance is not made conditional upon the performance of some other expressly agreed part of the bargain……".

35. And at paragraph 54 ii) he says: "By contrast, the parties to a composite transaction are not free to separate into a separate document expressly agreed terms, for example as to the sale of chattels or the provision of services, if upon the true construction of the whole of the agreement, performance of the land sale is conditional upon the chattel sale or service provision…..".

36. HMRC accept that the partners had the intention of incorporating their business by transferring the business and the goodwill to the company. But they say that intention was not implemented until the date on which the NHS contract was novated, namely 23 October 2015. It is the appellants' submission that there was a valid and effective agreement for the transfer which had been entered into on or before 30 November 2014, and which is reflected in the Board Minute.

37. HMRC submit that there is insufficient evidence on which we can base a finding of fact that there was such an agreement. We disagree. In our view there is ample evidence that the Board Minute reflected an oral agreement to transfer all of the assets comprising the business

of the partnership, including the goodwill, from the partnership to the company, and that oral agreement had been reached on or before 30 November 2014.

38. We do however agree with Mr Priestley that the bargain was for all of the assets of the partnership business to be transferred to the company, and there was no suggestion that it should be a partial transfer of the premises along with either the NHS goodwill or the goodwill associated with the private practice.

39. We make these findings based on the following evidence.

(1) Firstly, the contemporaneous documentary evidence. It is abundantly clear from the correspondence leading up to the Board Minute and which is set out above, that the partners had been advised that they should incorporate the business for sound financial reasons. They were told by their accountant precisely what was required to achieve such incorporation (namely the transfer of the assets of the partnership to the company) and, before 30 November 2014, they undertook some of those. This is evidenced by the fact that the utility companies had written to the company in October 2014 about transferring the partnership accounts with them. It was clear that the transfer was to take place on or around 30 November 2014/1 December 2014. One of the reasons for the incorporation, too, was to enable the company to act as recipient of further properties which might be purchased in the future.

(2) The valuation report had been prepared which valued the business including the premises on a going concern basis at £1,440,000. The value of the premises was valued at £600,000, and the balance was goodwill and equipment. The goodwill element is the amount added as an intangible fixed asset in the accounts of the company of £804,500.

(3) The Board Minute, which had been prepared by Mr Modi, states clearly that the partners had offered to sell the goodwill and premises to the company. The partners, in their capacity as directors of the company had considered the offer which had been accepted verbally by them in that capacity. The Board Minute is dated 30 November 2014. It has not been suggested that the Board Minute was anything other than genuine or that it was a sham. It is not an agreement itself, but it seems to us abundantly clear that it reflects an oral agreement between the partnership and the company that the former would sell the goodwill and the premises for the stated price, and that took effect (to the extent that it was legally able to) on and from 30 November 2014.

(4) This transfer was then reflected in the letters to the employees of 1 February 2015 which told them that the business entity changed from the partnership to the company as at 1 December 2014.

(5) The goodwill and the premises were reflected in the company accounts for the year ended 30 November 2015.

(6) Secondly, the oral evidence of Mr Modi and the appellants. This is recorded above. We accept it. The evidence shows that the board meeting recorded in the Board Minute was actually held and it was at that meeting that the partners in their capacity as directors, acting on behalf of the company, agreed to purchase the business of the partnership. It was Dr Patel's evidence that there was never any intention of there being a partial transfer of the business. The intention was that all of the assets of the business should be transferred to the company.

(7) Thirdly, there is the APA. We do not set much probative value by this document. It is clearly self-serving, and indeed it was accepted, in evidence, that its only purpose was to try to

set the record straight during HMRC's enquiry. We agree with both Mr Firth and Mr Priestley that it does not rewrite history and that it is not contemporaneous evidence of the agreement reached on 30 November 2014. However, it was signed by the partners, and we are assuming that they had read it and agreed that it accurately reflected the deal made in 2014 before they signed it. And Dr Patel in oral testimony said that in her view the APA reflected the verbal agreement already in place. Significantly, the APA records that the transfer was of all of the assets of the partnership's business, and it also reflects the price attributed to those assets of goodwill at £804,500, and the freehold property at £600,000. This is, of course, unsurprising given that those figures had been included in the company accounts for a number of years prior to execution of the APA. But to our mind its importance is that it reinforces the contemporaneous and oral evidence that the bargain between the partners and the company was for a transfer of all of the assets of the partnership under a single deal.

40. It is on this basis that we find as a fact that there was an oral agreement between the partnership and the company on 30 November 2014 pursuant to which the partnership would transfer its business and all of its assets to the company on and from that date. We also find as a fact that there was no written agreement between the partnership and the company on 30 November 2014 pursuant to which the partnership would transfer its business and all of its assets to the company on and from that date.

41. We accept that there are no legal formalities required to transfer goodwill. Mr Firth submitted this and provided case law to substantiate that submission. Mr Priestley did not demur.

42. However, as we have set out at [23] above, the 1989 Act provides that a contract which disposes of an interest in land must be in writing, and if it is not, the contract is ineffective and unenforceable**.** Given that we have found that the oral agreement reached between the partnership and the company on 30 November 2014 was for a transfer of all of the assets of the partnership, including the premises, the question is whether this oral agreement was effective to transfer the goodwill given that the goodwill is inseparable from the transfer of the premises which can only be made pursuant to a valid written contract?

43. In our judgment, the oral agreement reached on around 30 November 2011 was an entire indivisible agreement to transfer all of the assets of the partnership to the company. This is not a case where the transfer of the goodwill was ancillary to the transfer of the premises, nor was the transfer of the goodwill severable from the transfer of the premises. The agreement was for the transfer of all of the assets of the partnership, and there was no separation in that agreement of the goodwill from the premises. And the APA is consistent with that position. To our mind the transfer of the goodwill and of the premises are so intertwined that it is not possible to say that one would have happened without the other. The evidence is clear that the transfer of the premises was not, nor was it intended to be, separated from the transfer of the goodwill.

44. We find, therefore, that the transfer of the goodwill is subject to the provisions of the 1989 Act, and thus for any agreement of the goodwill to be to legally effective, it had to be in writing. The Board Minute was not such an agreement, it reflected an oral agreement. We have found as a fact that there was no written agreement on 30 November 2014 for the transfer of the goodwill.

45. Accordingly, we reject the appellants' submission that the oral agreement reflected in the Board Minute effectively transferred the goodwill from the partnership to the company on 30 November 2014.

46. It is also our view that because there was no valid or enforceable contract for the transfer of the goodwill on and from 30 November 2014, the grandfathering provisions cannot apply to save the appellant. For those provisions to apply there must have been the acquisition of an asset pursuant to an obligation under a contract that was unconditional before 3 December 2014. It is our firm view that the contract referred to must be a valid and enforceable contract. The oral agreement reflected in the Board Minute was not such a valid and enforceable contract as it was not a written agreement. There was no such written agreement for the transfer of the goodwill before 3 December 2014. As a result, the grandfathering provisions do not apply.

Deed of novation

47. We now need to consider the second of the issues raised by HMRC, namely that the goodwill, and in particular the NHS goodwill, could not be (and was not) transferred until the NHS contract had been novated. This took place only on 23 October 2015 when the deed of novation was executed. Until then the partnership remained owner of the goodwill and it was only the partnership which could, therefore, exploit it and generate money from that exploitation, which in effect meant that the income derived under the NHS contract was the partnership's income until 23 October 2015. Furthermore, the company was not entitled to claim amortisation of that goodwill.

48. The appellants' position is that the NHS goodwill did not require any transfer or novation of the NHS contract to effectively transfer it from the partnership to the company. There was an effective transfer of that goodwill either under the oral agreement or de facto, on 1 December 2014, which transferred all operational assets required for the company to carry on the business, including the goodwill, to the company. The company therefore undertook all the operational dental activities on and from that date, including servicing the NHS patients, and thus the income deriving therefrom is the company's. Because the NHS contract had not been formally transferred, it could only do this under a sub-contracting agreement, but was able to do so under a de facto sub-contracting agreement as it (and not the partnership) owned the operational assets to enable it to do so. The deed of novation simply formalised the position. It was executed as a result of the pre-existing agreement.

49. It is our decision that the appellants' position is to be preferred and is the correct one. We reject HMRC's submission that the deed of novation itself comprised a contract which transferred the goodwill from the partnership to the company. That is simply a misconstruction of the document. The parties never intended it to transfer the goodwill. It was simply intended to formalise the transfer of the benefit of the NHS contract from the partnership to the company.

50. HMRC's better argument is that whilst it was not a contract for the sale of the goodwill itself, the goodwill is so dependent on the NHS contract (since without having the benefit of that contract, income cannot be generated from NHS patients (and HMRC's view that this provides over half of the income of the partnership)) that the NHS goodwill could not be transferred without the transfer of the NHS contract itself.

51. We wholly accept that the NHS goodwill and the NHS contract are very closely linked. Indeed, without the NHS contract there could be no NHS goodwill. The NHS goodwill exists because of the income from NHS patients which is only possible because the partnership benefitted from the NHS contract. Without that contract there could be no income, and thus no NHS goodwill.

52. But that does not mean that the NHS goodwill and the NHS contract are the same assets, and that the NHS goodwill could not transfer without there being a transfer of the NHS contract.

These are two separate but related, assets, and one element of that relationship lies in the value attributable to the goodwill. An arm's length purchaser might purchase the goodwill, but the price it would pay will depend on whether, in its view, the NHS contract might be assigned to it, and thus it will be able to generate the income from the patients generated by the previous owner. A properly advised purchaser faced with a wholly un-assignable contract would pay a great deal less for the goodwill associated with the benefit of that contract than would be the case if it was freely assignable. But that does not mean that a contract for the transfer of that goodwill (absent any legal formalities such as compliance with the 1989 Act) does not effectively transfer that goodwill.

53. We have found that the goodwill could not transfer under the oral agreement since that did not comply with the 1989 Act. But we also find that it is perfectly possible for the goodwill to have transferred under a de facto agreement before the deed of novation, and that the deed of novation simply perfected that transfer.

54. The question to our minds, although this was not dealt with in detail by either party, is whether the value attributable to the NHS goodwill, set out in the accounts, reflects the fact that the NHS contract required the consent of the NHS for its valid assignment from the partnership to the company. Submissions were made that if we were to find that the NHS goodwill could not transfer without the deed of novation, then we might find that the goodwill associated with the private patients (and which could be assigned without any novation) transferred in 2014. And there was some suggestion too that the value of the NHS component of the goodwill was about one half of £804,500. But neither party made numerical submissions as to how the valuation attributable to the NHS goodwill might have been affected by the fact that the NHS had to give consent for it to be validly assigned to the company.

55. We are, however, content to accept that valuation not simply because no serious challenge has been mounted to it, but because of the evidence given by the partners. We have set out their evidence above, but in summary, it was their view that there was absolutely no chance that the NHS would not consent to the novation of the NHS contract. They had never heard of that happening in practice and thought that it was inconceivable that it would happen to them. So, when wearing their hats as directors of the company, they were taking that knowledge into account when deciding on the appropriate value of the NHS goodwill and the price the company should pay for it. We appreciate that they were not having to pay for it immediately as the price was left outstanding on loan account. But we infer from their evidence that have paid full market value on the basis that they have taken their own view, as set out in their evidence, that the company, for whom they acted, would get the full benefit of the NHS contract, and so be able to generate income in succession to that generated by the partnership. They have valued the NHS goodwill without any discount for the likelihood of the NHS not giving its consent to novation.

56. It is our view that the NHS goodwill, as well as the goodwill associated with the partnership private practice, was capable of effective legal and equitable transfer independently of any transfer or novation of the benefit of the NHS contract. And could, therefore, theoretically have taken place, as submitted by Mr Firth on 1 December 2014. The question, therefore, is whether the evidence shows that there was such a de facto transfer on that date, or whether, as contended by HMRC, there was no such de facto transfer until the novation on 23 October 2015.

De facto transfer

57. It is clear from the cases which we have set out above and to which we were referred, helpfully, by Mr Firth and Mr Priestley, that it is possible for a business to be transferred without the necessity for any legal formality. It is a question for us, on the evidence, whether, and if so when, the business of the partnership transferred to the company.

58. In *Aeraspray*:

> "At some date the Appellant Company took over, without any legal formalities, the business previously carried on by a company the name of which was Aeraspray Manufacturing Co., Ltd, which I shall refer to as "the old company". The question which has to be decided in the case is whether the Appellant Company stepped into the shoes of the old company at 1st April, 1953, or at some date after 6th April, 1953. The assessments were framed upon the footing that the Appellant Company commenced trading on 1st April, 1953".

59. Buckley J upheld the assessments on the basis that there was ample evidence before the Commissioners on which to conclude that Aeraspray Ltd had commenced trading on 1 April 1953. In that case the new company had been formed on 25 March 1953, following which a stock-take took place at the start of April. There were no formalities of any kind effecting the transfer of the business, orders addressed to the old company continued to be received after 1 April 1953 which were carried out by the new company, and goods were dispatched by the old company after that date.

60. Buckley J was of the view that these facts were consistent both with the new company not stepping into the shoes of the old company on 1 April 1953, or the old company acting on behalf the new company from that date. The stock-take could have been undertaken by either given that the same personnel were involved. However, there was documentary evidence indicating that the transfer had taken place on 1 April 1953, including a letter to the Inland Revenue on 13 May 1953, a letter to former employees on 9 September 1953 and a letter from the accountants of the old company to the Inland Revenue on 9 April 1954 stating that the old company ceased trading on 31 March 1953.

61. In addition.

> "One finds in other documents indications that the view generally held by those concerned was that the old company ceased to trade on 31st March. For instance, on the balance sheet as at 31st March, 1953, of the old company, there is a note:
>
> > "The Company ceased to trade on 31st March 1953 and taxation provisions included in these accounts have been computed on that basis".
>
> In that balance sheet the fixed assets, fixtures, fittings and equipment, the motor vehicles and the stock-in-trade of the old company are all shown as having been sold and as being no longer assets of the company. The accounts of the old company for the year ended 31st March, 1954, contain no trading account and contain references to no trading assets. The accounts of the Appellant Company for the year ended 31st March, 1954, contain a trading account which opens with a stock item of stock as at 31st March, 1953…".

62. There are clearly parallels in this case with the facts in this appeal.

63. In *Angel* Vaisey J was faced with a similar issue. The Special Commissioners had had to choose the date on which there was a succession by a limited company to the business of a

partnership, and the choice before the Commissioners was 1 April 1950, as contended by the partnership (and which was the date on which the transfer was deemed to have happened by the Commissioners) and 9 June 1950 as contended for by the Crown.

64. In that case there had been discussions about that transfer which were recorded in a written memorandum. That reflected the decision that the proposed company should be incorporated by the end of March 1950, and that the firm's existing business should be sold to it with effect from 31 March 1950. The judge found that these decisions were adhered to in substance throughout and finally carried out save that the actual completion, though "nominally fixed for the 1 April 1950 was in fact delayed until 9 June 1950".

65. The judge held that the memorandum did not evidence an actual, binding agreement (as we have found regarding the oral agreement for the transfer of goodwill which, by dint of the 1989 Act was legally ineffective to transfer the goodwill from the partnership to the company).

66. The judge stated:

> "It was argued before me that this memorandum was evidence of an actual agreement binding irrevocably upon the firm and upon the said Mr. Wright (who by one of its terms was to be a life director of the company upon its incorporation), but I do not take that view. I think that in the present case the matter did for some purposes remain as one of mere intention and negotiation right down to the completion of the final metamorphosis of the firm into the new company on 9th June, 1950".

67. But he also held that such a binding agreement was not a necessary prerequisite to a valid succession:

> "But in my opinion it was not necessary as a prerequisite to a valid succession that it should be based on the then existing present enforceable right, either legal or equitable existing, that is to say, at the moment of the alleged succession. It is here suggested that we have a case of a succession resulting from a prospective anticipated right co-existing with an actual entry by the successor into the predecessor's business, and with that suggestion I agree. The de facto entry is in my opinion proved and was attributable to an anticipated right which duly materialised thereafter into an existing right. The entry which I think on the facts was made on 1st April, 1950, seems to me to have been founded upon nothing more than a hope, but (and this is the important point) upon a hope which was in due course realised. Therefore there was never any abandonment of the intention formed in November, 1949, and the hope and expectation continued unaltered down to the de facto entry on 1st April, 1950, and continued thereafter until the final formal completion of the matter on 9th June, 1950".

68. Again, one can see the parallels between these circumstances and this appeal.

69. Furthermore:

> "But during that period everybody who had any right to be told about the projected change knew about it, and although it would seem that it was only the foremen who were specifically told about it at the 1949 Christmas party, they were apparently not told to keep the news to themselves. The ordinary workmen and other operatives in the business were unlikely to have taken much interest in the projected change, or to have regarded it as seriously affecting them, and they probably realised that they would still be working for those whom they might have described as the same bosses".

And:

> "To the question, if anybody had asked it after 30th March 1950, Has the proposed company been formed? the answer would, of course, have been, Yes. There were facts pointing both ways, no doubt, but the Special Commissioners have found that the proper deduction was in favour of a succession taking place on 1st April, 1950, and not on 9th June, 1950, when the matter was completed by the appropriate legal formalities, and I venture to say that I myself should have reached the same conclusion. For if a trader is asked the question, Have you sold your business? he could in my judgment truthfully answer that question in the affirmative even though there was at the time no actual contract presently enforceable by or against him. So, too, if he were asked, From what date have you sold your business? an answer could have properly been given if the arranged date were known - as, in the present case, 1st April, 1950. Of course, if the matter went off and came to nothing the suggested answer would have been falsified by the event. Here the de facto entry would have become ex post facto not the succession which was contemplated as existing".

70. In *Angel* the partners, from 1 April 1950, conducted the business on the basis that they acted for the company and not for the partnership. They opened new columns of the cash book in order to distinguish transactions of the partnership from those of the company, and they did this on the advice of their accountants and solicitors who advised them that until the sale agreement was signed, the company had no money, and that in the meantime they should carry on as agents for the company.

71. The Commissioners thought that it was important to bear in mind that the participating parties were not strangers, and that no circulars were sent to customers drawing attention to the change in proprietorship as it was not considered in the interests of the company to do so. They referred to *Todd*:

> "Now I want to deal with Mr Archer's argument, because I go a very long way with him in principle. He said that the point is not when the contract became a binding contract necessarily. The question is whether there was a succession de facto to the business; and I think that is right".

72. Further indications of the transfer having taken place on 1 April 1950 was the fact that the company's nameplate was fixed on the office door on 4 or 5 April 1950; they had arranged with printers to print the new name and stationery in February 1950 and had made arrangements with the garage to paint the new name on the lorries early in March. But the agreements relating to the stationery and lorries were deferred at the suggestion of their solicitors.

73. In that case, as in this appeal, it was submitted on behalf of the Crown that everything that happened up to 9 June 1950 was merely intention and that there were no overt acts that supported the taxpayer's contention that there was a succession on 1 April 1950. And thus the partners retained the beneficial interest in profits of the business until 9 June 1950.

74. From these cases we take a number of principles, namely:

(1) There can be a de facto transfer of a business and its assets even if there is no legally binding agreement.

(2) An intention to transfer a business which is subsequently realised can, as a matter of law, effect a de facto transfer on a date earlier than that realisation.

(3) Whether there has been such a transfer, and if so, the date of that transfer, is ultimately a question of fact for us and when considering the evidence, we can take into account the view generally held by those concerned;

75. The evidence recorded above makes it abundantly clear that prior to 30 November 2014, there was a settled intention by the partners, and the company, to transfer the whole of the business to the company on and from 1 December 2014. Indeed, this is not seriously disputed by Mr Priestley. His point is that that intention was never realised until the deed of novation on 23 October 2015.

76. Furthermore, we have found as a fact that there was an oral agreement, reflected in the Board Minute which had been entered into on 30 November 2014, prior to the date of the Board Minute. We also found that the goodwill, including the NHS goodwill was capable of being transferred by that simple oral agreement, but in the circumstances of this appeal, that oral agreement was not legally effective to effect the transfer by dint of the application of the 1989 Act. We have also found that there was no need for there to be a formal novation of the NHS contract for the effective transfer of the NHS goodwill.

77. We agree, therefore, with Mr Firth, that the facts in this appeal are stronger than those in *Angel* in that the only reason the oral agreement did not effect a valid transfer was because of a "technicality".

78. The evidence of the partners and of Mr Modi, who can all be described as "those concerned" is clearly that they considered that there had been an effective transfer of the business on before 1 December 2014.

79. We remind ourselves of the approach to oral evidence set out at [15-17] above. And, of course, it is unsurprising that the appellants' witnesses would say this, since it considerably bolsters their case. We do not, therefore, take it at face value. Instead, we must test it against the contemporaneous and subsequent documentary evidence.

80. As far as the subsequent documentary evidence is concerned, we repeat that we set little evidential store by the APA or the 1 February 2018 board minute. It is accepted that these were simply put in place in order to bolster the appellants' argument that the transfer had taken place on 1 December 2014. They were self-serving documents, and we have set out our misgivings about them, above.

81. We focus instead on the contemporaneous documents, and certain subsequent documents, namely the deed of novation, the CQC registration, and the TR1.

82. As regards the contemporaneous documents, it can be seen from the evidence that before 1 December 2014, utility companies and equipment suppliers were sending correspondence addressed to the company. Barclays Bank, too, had written to the directors of the company, evidencing that they had begun the process of opening a bank account in the name of the company. This supports the oral evidence that as far as the appellants were concerned, the company was carrying on the business on and from 1 December 2014.

83. Secondly, the goodwill was recorded, in the company's accounts as an intangible asset for the year ended 30 November 2015. This, too, is consistent with the appellants' belief that the transfer had occurred on 1 December 2014.

84. Finally, and to our mind very importantly, on 1 February 2015, the company wrote to the staff of the business, giving them their P45's from the partnership, and advising them of the change of trading entity, from the partnership to the company. That letter told members of staff that this had taken place on 1 December 2014. This clearly supports the appellants' oral evidence. It is consistent with the transfer taking place on that date, and inconsistent with it having taken place on 23 October 2015.

85. Turning now to the subsequent evidence, and it is clear from the legal principles set out above that where there was a clear intention to transfer a business on a certain date which was then subsequently transferred by the execution of the appropriate legal documentation on a later date then the fructification of that intention by those legal documents is evidence of a de facto transfer at the earlier date. And in this case, as mentioned above, there is more than just a settled intention, there is the oral agreement. So it is possible to consider the subsequent documentation to see whether that is consistent with an earlier de facto transfer.

86. The TR1 dated either 30 January 2016 or 1 February 2016, is clearly such a document. It completes the transfer of the premises from the partnership to the company, the agreement for the transfer being the oral agreement evidenced by the Board Minute.

87. The deed of novation is also such a document. We have dealt with it in some detail above, but it is not a contract for the transfer of the goodwill, but instead completes the transfer of the NHS goodwill pursuant to the agreement for the transfer made orally and reflected in the Board Minute. Contrary to the submission made by Mr Priestley, we do not think that the goodwill passed only on execution of the deed of novation on 23 October 2015.

88. Furthermore, it was Dr Patel's evidence that as far as she was concerned, the money which was generated from the business between 1 December 2014 and 23 October 2015 belonged to the company. This, again, reflects her belief that there had been a transfer of the business on 1 December 2014. The operational assets required to conduct the dental practice were therefore owned by the company. Pending formal novation, which the partners thought was inevitable, it was the company which carried out the provision of dental services and did so under a de facto contract with the partnership pending formal ratification by the NHS.

89. We now turn to the CQC registration. It was clearly a requirement of the CQC legislation that the company should have registered under the HCA on and from the date on which it started providing dental services. It is Mr Priestley's submission that since this did not take place until 9 October 2015, the company could not, lawfully, have provided dental services before that date. That indeed might have been the case, but the fact that the company applied for registration which was made on 9 October 2015 is evidence of the pre-existing intention and oral agreement, to transfer the business. The partners explained that they had put in train, on behalf of the company, an application for the company to be registered with the CQC, but a number of factors contributed to that application being made somewhat later than they had anticipated. The evidence of Mr Ruwala was that the partners did not think it was likely to be an issue given that registration is about patient safety. The same people were providing the treatment on the ground as it were, and so it was unlikely that the CQC would fail to register the company. And this optimism turned out to be well-founded. It may well be the case that in the meantime, the company had committed a regulatory misdemeanour. But that in itself does not prevent there having been a de facto transfer of the business on the date submitted by the appellants. Indeed, as mentioned above, CQC registration is subsequent evidence of the prior transfer.

90. We agree with Mr Firth's submission that at any time after 1 December 2014, if the partners had been asked whether, and if so when, they had sold their business to the company, they would have replied that it had been sold on 30 November 2014 with effect from 1 December 2014.

CONCLUSION

91. It is our conclusion that the oral agreement to transfer the business which was entered into by the partners and the company on or around 30 November 2014, and which was evidenced by the Board Minute was not legally effective to transfer the goodwill from the partnership to the company by dint of the application of the 1989 Act. However, on 1 December 2014 there was a de facto transfer of the business (including the goodwill) from the partnership to the company, and thus all income generated from the dental business after that date belonged, beneficially, to the company.

92. The company has, therefore, been liable to pay tax on that income and has been entitled to amortise the goodwill as it has claimed in its tax returns. There is no income to be added back to the partnership as alleged by HMRC and which they have reflected in the amended partnership return and the consequential assessments on the partners.

DECISION

93. Accordingly, we allow these appeals.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

94. 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.

NIGEL POPPLEWELL
TRIBUNAL JUDGE

Release date: 20 DECEMBER 2022

APPENDIX

1. Section 726 CTA 2009 introduces Chapter 3 of Part 8, relating to "Debits in Respect of Intangible Fixed Assets". This includes the writing down of the capitalised costs of an intangible fixed asset on an accounting basis (per s729 CTA 2009) or, appropriately where elected, on a fixed-rate basis (per s730 and s731 CTA 2009).

2. For goodwill acquired prior to 3 December 2014, companies were able to claim a deduction for the amortisation of purchased goodwill within their tax computations.

3. Section 26 FA 2015 brought in s849B CTA 2009.

4. Section 26(5) FA 2015 states that:

> "The amendments made by this section –
>
> (a) have effect in relation to accounting periods beginning on or after 3 December 2014, and
>
> (b) apply in relation to a relevant asset acquired by C on or after that date, unless C acquires the asset in pursuance of an obligation, under a contract, that was unconditional before that date".

5. Section 26(7) treats accounting periods spanning 3 December 2014 as two separate accounting periods for the purposes of s26(5)(a), such that the new provisions apply to any acquisition on or after that date, unless s26(5)(b) applies.

6. Section 26(8) defines an obligation as being "unconditional":

> "…if it may not be varied or extinguished by the exercise of a right (whether under the contract or otherwise)".

7. Section 849B CTA 2009 applied restrictions on debits in respect of a "relevant asset", as defined at s849B (2) CTA 2009 to include goodwill. Sub-section 849B (1) CTA 2009 states the section applies if:

> "(a) a company ("C") acquires a relevant asset directly or indirectly[1] from an individual or a firm ("the transferor"), and
>
> (b) at the time of the acquisition –
>
> (i) if the transferor is an individual, the transferor is a related party in relation to C, or
>
> (ii) if the transferor is a firm, any individual who is a member of the transferor is a related party in relation to C".

8. "Related party" is defined per s835 CTA 2009.

[1] Per s26(6) FA 2009, the words "directly or indirectly*"* are omitted where the relevant asset was acquired before 24 March 2015

9. The appellants' circumstances fall within s849B(4), because their goodwill was acquired from a third party.

10. Section 849C CTA 2009 therefore applies by virtue of s849B (4) CTA 2009. Section 849C restricts the debit available for amortisation of goodwill by applying an "Appropriate Multiplier" ("**AM**") to the debit that would otherwise have been debited under Ch3 Part 8 CTA 2009.

11. The AM is defined at s849C (6) CTA 2009 as the relevant accounting value of the third party acquisition ("**RAVTPA**") divided by the expenditure incurred by the company on the goodwill and capitalised within the accounts ("**CEA**").

12. Section 33 F2A 2015 brought in s816A CTA 2009 and omitted sections 849B to D CTA 2009 (per s33 F2A 2015(7)).

13. Section 33(10) F2A 2015 states that the amendments (including s816A CTA 2009) do not apply if the company acquires a relevant asset:

> "(a) before 8 July 2015, or
>
> (b) in pursuance of an obligation, under a contract, that was unconditional before that date."

14. Section 33(13) F2A 2015 states: "…an obligation is "unconditional" if it may not be varied or extinguished by the exercise of a right (whether under the contract or otherwise)".

15. The tests therefore mirror those seen in s26 FA 2015.

16. Section 816A CTA 2009 relates to "relevant assets", defined at s816A (2) CTA 2009 as including goodwill and other intangible fixed assets "that consist of a relationship (whether contractual or not) between a person carrying on a business and one or more customers of that business".

17. Section 816A (3) CTA 2009 prohibits any debit being brought into account for tax purposes relating to those assets.