



ULHÔA CANTO

ULHÔA CANTO, REZENDE E GUERRA ADVOGADOS

CONCEPT:

$$\boxed{\text{Purchase Price}} - \boxed{\text{Net Equity Value}} = \boxed{\text{Goodwill}}$$

BODY OF LAWS AND REGULATIONS

- ❖ Law 6.404/76:
 - Equity Pick-up Accounting Method

- ❖ Decree-Law 1.598/77 and Law 9.532/97:
 - Concept
 - Amortization in accordance with economic grounds of goodwill

- ❖ Law 11.638/07, Law 11.941/09 and CPC 15/11:
 - International Financial Reporting Standards

- ❖ Law 12.973/14 (conversion of Provisional Measure 627/13):
 - Transitional Regime:
 - Acquisitions occurred by Dec. 31, 2014 as long as related mergers occurs by Dec. 31, 2017;
 - Mergers that depend on affirmance by governmental agencies must occur up to 12 months after the approval.

Law 12.973/14 (conversion of Provisional Measure 627/13) (Cont.):

- Adoption of the new accounting principles:
 - 1st Jan, 2014 (optional)
 - 1st Jan, 2015 (mandatory)

- Report by independent auditors:
 - Must be registered at the Notary Office or filed at the Brazilian IRS in a timely manner
 - May only be disregarded in case of proven vices

- Mergers must be between independent parties:
 - Clearer definition of dependent/independent parties
 - ✓ Common control: direct or indirect
 - ✓ Proved dependence

- Amortization period: minimum of 05 years (1/60 monthly)

- Amortization accounted at the acquisition of the investment

- Acquisition cost must be divided in three subaccounts:
 - Net equity
 - Write up/down = FMV – Net Equity
 - Goodwill = Acquisition Cost – (Net equity + Write up/down)

- Possibility of amortization involving replacement of shares

ECONOMIC GROUNDS OF THE GOODWILL

1. Fair Market Price (Tangibles):

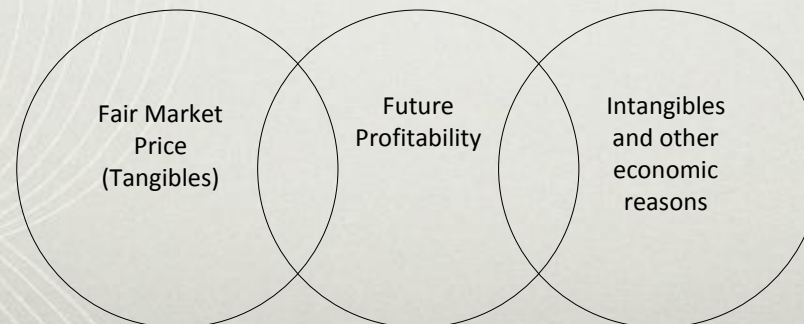
- Purchase Price Allocation Method
- Goodwill is attached to the asset
- Individualized analysis

2. Future profitability:

- Report by independent auditors
- Profitability is not guaranteed
- Focus on results

3. Intangibles and other economic reasons:

- Individualized analysis



TREATMENT OF GOODWILL AT MERGERS

MARKET VALUE (TANGIBLE)

- Goodwill is a contra asset account
- Goodwill is incorporated to the asset value
- Deductions are subject to depreciation rules

FUTURE PROFITABILITY OF THE INVESTED ENTITY

- Realization: taxable profits
- Amortization is possible
 - Upstream or Downstream Merger
- Holding or Special Purpose Vehicle

INTANGIBLES AND OTHER ECONOMIC REASONS

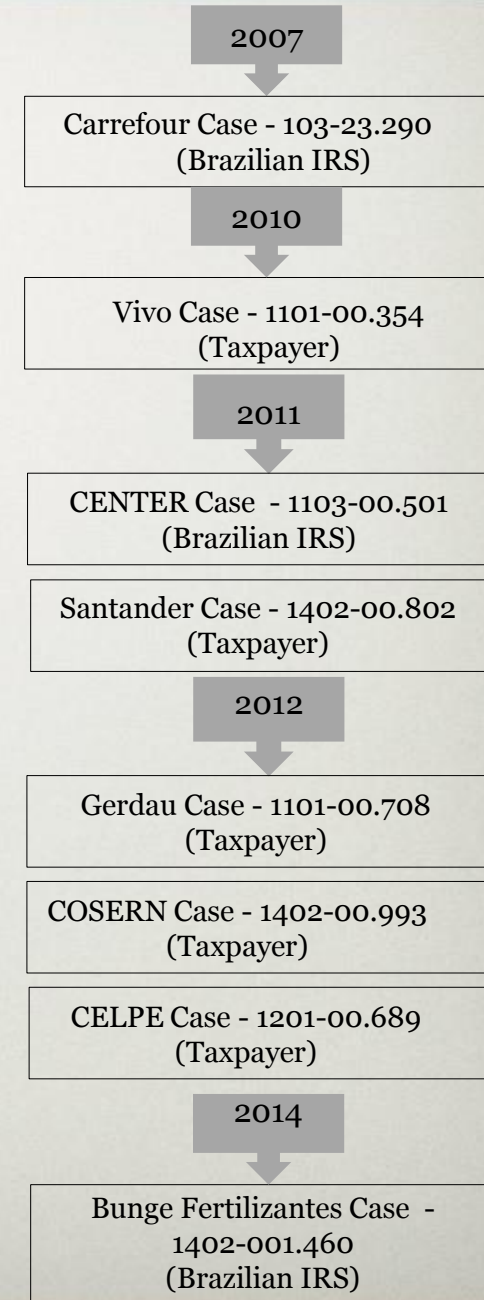
- Goodwill is a contra permanent asset account
- Amortization is not possible
- After incorporation the goodwill account disappears

GOODWILL IN BRAZIL: RELEVANT ASPECTS AND DISCUSSIONS

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CASE LAW*

- Artificial *versus* Real goodwill
- Internally generated goodwill
- Special Vehicle Purpose and Holdings
- Goodwill accounting *versus* amortization right
- Upstream and downstream Mergers
- Business purpose: is tax planning a business purpose?
- Substance over form
- Arm's length



* Available at www.conselhos.fazenda.gov.br

GOODWILL FISCAL TREATMENT ON INTERNATIONAL MERGERS

- No legal obstacle
- Worldwide taxation: universal basis
- Double taxation issue: exemption and foreign tax credits

2011

Santander Case
1402-00.802
(Taxpayer)

2014

Camargo Corrêa Case
1302-00.834
(Brazilian IRS)

- Merger of a Brazilian subsidiary

2013

Dufry Case
1302-001.182
(Taxpayer)

Multiplan Case
1302-001.150
(Taxpayer)

INCREASE OF CAPITAL (SUBSCRIPTION OF NEW SHARES)

- Subscription of new shares is a form of acquisition
- Accounting principles apply to any acquisition
- Amortization of goodwill is possible

2013




Casa do Pão de
Queijo Case
9101-001.657
(Taxpayer)

GOODWILL IN LIMITED LIABILITY COMPANIES (SOCIEDADE LIMITADA – LTDA)

- Goodwill is not corporate taxable income
- Subscription of new shares: fixed price

2009



CPM Braxis Case
1201-00.036
(Brazilian IRS)
*Pending decision

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