Core Deposits Held Amortizable in *Trustmark*

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It seems that intangibles just cannot get out of the limelight. Even after the belabored legislative process that culminated in last year's enactment of section 197, pending intangibles cases have had to be settled. (See "Is the IRS's Intangibles Settlement Program Good News?," 2 *M&A Tax Rep't* 8 (March 1994), p. 1.) In addition, other litigated cases were still being decided, *e.g.*, *Ithaca Industries, Inc.*, 97 TC No. 16 (1991), which dealt with workforce amortization. (See "Fourth Circuit Upholds Denial of Work Force Depreciation," 2 *M&A Tax Rep't* 9 (April 1994), p. 3.)

Core deposits are once again in the news, with the Tax Court's decision in *Trustmark Corp.*, TC Memo 1994-184. The court approved the amortization of core deposits, thus reiterating the importance of *Citizens & Southern Corp.*, 91 TC 463 (1988), *aff'd w/o pub. op.*, 900 F.2d 266 (CA-11, 1990).

Core Deposit Acquired

In *Trustmark*, a bank holding company owned Trustmark National Bank ("Trustmark"). Trustmark entered into a purchase agreement for the assets of Canton Exchange Bank. Because of the importance of deposit balances in arriving at the appropriate acquisition price, before executing the purchase agreement, Trustmark engaged Touche Ross to perform an analysis of the useful life and value of the deposit base of the Canton Bank.

For financial, regulatory, and income tax accounting purposes, Trustmark recorded on its books a core deposit intangible asset equal to the value determined in Touche Ross's report. The figure was hardly small—$4,744,366 was allocated to the core deposit intangible asset, and only $305,994 was allocated to going-concern value and goodwill. No allocation of the purchase price with regard to the core deposit (or to any other asset) was made in the acquisition agreement, or in any other agreement.

Expert's Analysis

Trustmark retained an expert to value the core deposit intangible. This individual (whom the court noted was the same individual who was hired as the taxpayer's expert in *Citizens & Southern Corp.*) used the cost-savings approach for valuation that had been approved in that case. This method determines the value of the core deposit intangible based on the present value of the difference between the asset's ongoing cost and the cost of the next most favorable market alternative.

Quite apart from the question of *whether* Trustmark could amortize this asset, the Tax Court also had to consider *how* the amortization could be effected. Trustmark amortized the core deposit intangible based on an accelerated method of amortization for tax purposes, yet for financial and regulatory purposes, it used the straight-line method.

OK to the Core

Relying heavily on *Citizens & Southern*, the Tax Court held that Trustmark was entitled to amortize the core deposit intangible, and that the accelerated method was permissible. The court also found substantial support in *Newark Morning Ledger Co. v. U.S.*, 113 S.Ct. 1670 (1993), noting that the Supreme Court in that case suggested that the test for allowance of a deduction is whether the asset is capable of being valued, and whether that value diminishes over time.

Perhaps of greatest interest from a procedural and tactical viewpoint, however, is the fact that the court in *Trustmark* virtually castigated the IRS for not having come forward with its own views about value. The Tax Court even rebuked the IRS for not being helpful in the case. That stemmed from the IRS's argument that core deposit intangibles never have an ascertainable useful life separate and distinct from goodwill and going-concern value.

As a result of this all-or-nothing approach, the IRS in *Trustmark* made no attempt to value the core deposit intangible or to determine its useful life. Presumably, the IRS will get the Tax Court's not-too-subtle hint that, at least as to core deposits (and perhaps, as to other intangible assets), all-or-nothing arguments may fall on deaf ears. The Tax

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Court took notice of the fact that core deposits are regularly bought and sold, and that the Resolution Trust Corporation makes sales of core deposits to banks that are clearly not sales of goodwill or going-concern value by the then-failed financial institutions.

Conclusion

While most of the focus these days is on the IRS settlement policy on pending intangibles cases, it should be borne in mind that cases like *Trustmark* show both that the courts (or at least the Tax Court) may extend the reasoning of *Newark Morning Ledger*, and that the IRS may be forced to argue in the alternative that something is inseparable from goodwill, or that if it is not so inseparable, that the taxpayer's valuation is wrong. ■