



# Corporation Tax Act 2009

## 2009 CHAPTER 4

### PART 8

#### INTANGIBLE FIXED ASSETS

##### Modifications etc. (not altering text)

- C1** Pt. 8 modified (1.1.2010) by [Northern Rock plc \(Tax Consequences\) Regulations 2009](#) (S.I. 2009/3227), regs. 1, **6(1)**
- C2** Pt. 8 modified (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010](#) (c. 4), **ss. 601, 1184(1)** (with Sch. 2)
- C3** Pt. 8 modified (1.10.2011) by [Postal Services Act 2011](#) (c. 5), s. 93(2)(3), **Sch. 2 para. 6(1)**; S.I. 2011/2329, art. 3
- C4** Pt. 8 modified (15.11.2011 for specified purposes, 30.3.2012 for E.W.) by [Localism Act 2011](#) (c. 20), ss., 240(5)(o), **Sch. 24 para. 1(3)**; S.I. 2012/628, art. 3(b)
- C5** Pt. 8 modified (1.4.2012) by [Budget Responsibility and National Audit Act 2011](#) (c. 4), s. 29, **Sch. 4 para. 3(1)**; S.I. 2011/2576, art. 5
- C6** Pt. 8 modified (with effect in accordance with s. 148 of the amending Act) by [Finance Act 2012](#) (c. 14), **s. 88(1)(2)(7)** (with s. 147, Sch. 17)

#### CHAPTER 1

##### INTRODUCTION

###### *Introductory*

### 711 Overview of Part

- (1) This Part sets out how a company's gains and losses in respect of intangible fixed assets are calculated and brought into account for corporation tax purposes.

*Status: Point in time view as at 01/09/2013.*

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- (2) For the meaning of “intangible fixed assets” and rules about the assets to which this Part applies, see—
  - (a) sections 712 to 715,
  - (b) Chapter 10 (excluded assets), and
  - (c) Chapter 16 (pre-FA 2002 assets etc).
- (3) For how such gains and losses are calculated and brought into account, see, in particular, Chapter 6 which—
  - (a) deals with the use of credits and debits in respect of some intangible fixed assets in calculating the profits and losses of trades, businesses and other concerns (see sections 747 to 750),
  - (b) provides for the calculation of gains and losses where there are credits or debits in respect of other intangible fixed assets (see section 751),
  - (c) makes gains so calculated subject to the charge to corporation tax on income (see section 752), and
  - (d) gives an allowance for losses so calculated (see section 753).
- (4) For the priority of this Part for corporation tax purposes, see Chapter 18 (under which the general rule is that the amounts brought into account in accordance with this Part in respect of any matter are the only amounts that may be brought into account for corporation tax purposes in respect of it).
- (5) This Part operates by reference to the accounts of companies and amounts recognised for accounting purposes.
- (6) For the meaning of “amounts recognised for accounting purposes” and other expressions related to accounting and for rules about “GAAP-compliant accounts”, see sections 716 to 719.
- (7) Chapters 2 to 6 contain basic rules about the credits and debits to be brought into account for corporation tax purposes in respect of intangible fixed assets.
- (8) For rules about particular situations and cases, see—
  - (a) Chapter 7 (roll-over relief in case of realisation and reinvestment),
  - (b) Chapters 8 and 9 (groups of companies),
  - (c) Chapter 11 (transfer of business or trade),
  - (d) Chapter 12 and 13 (related parties),
  - (e) Chapter 14 (further provisions relating to miscellaneous cases),
  - (f) Chapter 15 (adjustments on change of accounting policies), and
  - (g) Chapter 17 (insurance companies).

### *Basic definitions*

#### **712 “Intangible asset”**

- (1) In this Part “intangible asset” has the meaning it has for accounting purposes [<sup>F1</sup>(and includes an internally-generated intangible asset)].
- (2) In particular, “intangible asset” includes intellectual property.
- (3) For this purpose “intellectual property” means—

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- (a) any patent, trade mark, registered design, copyright or design right, plant breeders' rights or rights under section 7 of the Plant Varieties Act 1997 (c. 66),
  - (b) any right under the law of a country or territory outside the United Kingdom corresponding or similar to a right within paragraph (a),
  - (c) any information or technique not protected by a right within paragraph (a) or (b) but having industrial, commercial or other economic value, or
  - (d) any licence or other right in respect of anything within paragraph (a), (b) or (c).
- (4) This section is subject to Chapter 10 (excluded assets).

#### Textual Amendments

- F1** Words in s. 712(1) inserted (with effect in accordance with s. 70(7)(8) of the amending Act) by Finance Act 2009 (c. 10), s. 70(2)

### 713 “Intangible fixed asset”

- (1) In this Part an “intangible fixed asset”, in relation to a company, means an intangible asset acquired or created by the company for use on a continuing basis in the course of the company's activities.
- (2) In this Part “intangible fixed asset” includes an option or other right—
  - (a) to acquire an intangible asset that would be a fixed asset if it were acquired, or
  - (b) to dispose of an intangible fixed asset.
- (3) This Part applies to an intangible fixed asset whether or not it is capitalised in the company's accounts.
- (4) Subsection (3) is subject to any indication to the contrary.
- (5) This section is subject to any such provision of regulations under section 854 (finance leasing etc) as is mentioned in section 855(1) (assets to be treated as intangible fixed assets of finance lessor).

### 714 “Royalty”

In this Part “royalty” means a royalty in respect of the enjoyment or exercise of rights that constitute an intangible fixed asset.

#### *Goodwill*

### 715 Application of this Part to goodwill

- (1) This Part applies to goodwill as it applies to an intangible fixed asset.
- (2) Subsection (1) is subject to any indication to the contrary.
- (3) In this Part “goodwill” has the meaning it has for accounting purposes [<sup>F2</sup>(and includes internally-generated goodwill)].
- [<sup>F3</sup>(4) For the purposes of this Part, goodwill is treated as created in the course of carrying on the business in question.]

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### Textual Amendments

- F2** Words in s. 715(3) inserted (with effect in accordance with s. 70(7)(8) of the amending Act) by Finance Act 2009 (c. 10), s. 70(3)(a)
- F3** S. 715(4) inserted (with effect in accordance with s. 70(7)(8) of the amending Act) by Finance Act 2009 (c. 10), s. 70(3)(b)

## *Accounting rules and definitions*

### 716 “Recognised” amounts and “GAAP-compliant accounts”

- (1) References in this Part to an amount “recognised” in determining a company's profit or loss for a period are to—
  - (a) an amount recognised in—
    - (i) the company's profit and loss account, income statement or statement of comprehensive income for that period,
    - (ii) the company's statement of total recognised gains and losses, statement of recognised income and expense, statement of changes in equity or statement of income and retained earnings for that period, or
    - (iii) any other statement of items brought into account in calculating the company's profits and losses for that period, and
  - (b) an amount that would have been so recognised if such an account or statement had been drawn up for that period in accordance with generally accepted accounting practice.
- (2) An amount that in accordance with generally accepted accounting practice is shown as a prior period adjustment in any such statement as is mentioned in subsection (1) must be brought into account for the purposes of this Part in calculating the company's profits and losses for the period to which the statement relates.
- (3) Subsection (2) does not apply to an amount recognised for accounting purposes by way of correction of a fundamental error.
- (4) In this Part “GAAP-compliant accounts” means accounts drawn up in accordance with generally accepted accounting practice.
- (5) In the case of a company that is a member of a group, see also section 718.

### 717 Companies without GAAP-compliant accounts

- (1) If a company—
  - (a) draws up accounts that are not GAAP-compliant accounts, or
  - (b) does not draw up accounts at all,
 this Part applies as if GAAP-compliant accounts had been drawn up.
- (2) References in this Part to amounts recognised for accounting purposes are references to the amounts which would have been recognised if GAAP-compliant accounts had been drawn up for the period of account in question and any relevant earlier period.
- (3) For this purpose a period of account is relevant to a later period if the accounts for the later period rely to any extent on amounts derived from the earlier period.

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## **718 GAAP-compliant accounts: reference to consolidated group accounts**

- (1) In determining whether a company's accounts are GAAP-compliant, reference may be made to any view about—
  - (a) the useful life of an asset, or
  - (b) the economic value of an asset,taken for the purposes of consolidated group accounts prepared for any group of companies of which the company is a member.
- (2) This section does not apply if the consolidated group accounts—
  - (a) are drawn up using a different accounting framework from that used for the company's individual accounts, and
  - (b) as a result are prepared on a basis that, in relation to the matters mentioned in subsection (1), substantially diverges from the basis used in the company's individual accounts.
- (3) This section does not apply so far as the consolidated group accounts are prepared—
  - (a) in accordance with the requirements of the law of a country outside the United Kingdom, and
  - (b) on a basis that, in relation to the matters mentioned in subsection (1), substantially diverges from generally accepted accounting practice.

## **719 Accounting value**

In this Part “accounting value”, in relation to an asset, means the net book value (or carrying amount) of the asset recognised for accounting purposes.

# **CHAPTER 2**

## **CREDITS IN RESPECT OF INTANGIBLE FIXED ASSETS**

### **720 Introduction**

- (1) This Chapter provides for credits to be brought into account by a company for tax purposes in respect of—
  - (a) receipts in respect of intangible fixed assets that are recognised in determining the company's profit or loss as they accrue (see section 721),
  - (b) receipts in respect of royalties, so far as the receipts do not give rise to a credit under section 721 (see section 722),
  - (c) revaluation of an intangible fixed asset (see section 723),
  - (d) credits recognised for accounting purposes in respect of negative goodwill (see section 724), and
  - (e) the reversal of previous accounting debits in respect of an intangible fixed asset (see section 725).
- (2) This Chapter does not apply in relation to amounts brought into account in connection with the realisation of an intangible fixed asset within the meaning of Chapter 4 (see section 734).
- (3) For the rules about those amounts, see that Chapter.

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## 721 Receipts recognised as they accrue

- (1) If in a period of account a gain representing a receipt in respect of an intangible fixed asset is recognised in determining the company's profit or loss, a corresponding credit must be brought into account for tax purposes.
- (2) The amount of the credit is the same as the amount of the gain recognised by the company for accounting purposes.
- (3) Subsection (2) is subject to any adjustments required by this Part or [F4Part 4 of TIOPA 2010] (provision not at arm's length).

### Textual Amendments

- F4** Words in s. 721(3) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 145\(1\), \(2\)](#) (with [Sch. 9 paras. 1-9, 22](#))

## 722 Receipts in respect of royalties so far as not dealt with under section 721

- (1) So far as a receipt in respect of any royalty does not give rise to a credit under section 721 in the period of account in which it is received or in a subsequent period of account, a credit must be brought into account for tax purposes.
- (2) The credit must be brought into account in the accounting period in which the receipt is recognised for accounting purposes.
- (3) The amount of the credit is equal to so much of the amount of the receipt as does not give rise to a credit under section 721.

## 723 Revaluation

- (1) If in a period of account there is an increase in the accounting value of an intangible fixed asset on a revaluation, a credit must be brought into account for tax purposes.
- (2) The amount of the credit is the lesser of—
  - (a) the amount corresponding for tax purposes to the increase (see subsection (3)), and
  - (b) the net total of relevant previous tax debits (see subsection (4)).
- (3) The amount corresponding for tax purposes to the increase is—

$$I \times \frac{WDV}{AV}$$

where—

I is the increase,

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WDV is the tax written-down value of the asset immediately before the revaluation, and

AV is the accounting value of the asset by reference to which the revaluation is carried out.

- (4) The net total of relevant previous tax debits is—

$$D - C$$

where—

D is the total debits previously brought into account for tax purposes in respect of the asset, and

C is the total credits so brought into account.

- (5) For the purposes of this section “revaluation” includes—
- the valuation of an asset for which a value is shown in the company's balance sheet, but which has not previously been the subject of a valuation, and
  - the restoration of past losses.
- (6) This section does not apply to an asset in respect of which an election has been made under section 730 (writing down at fixed rate: election for fixed-rate basis).

#### **724 Negative goodwill**

- If in a period of account a gain is recognised in determining the company's profit or loss in respect of negative goodwill arising on an acquisition of a business, a corresponding credit must be brought into account for tax purposes.
- The amount of the credit is so much of the gain recognised for accounting purposes as, on a just and reasonable apportionment, is attributable to intangible fixed assets.

#### **725 Reversal of previous accounting loss**

- This section applies if—
  - in a period of account a gain is recognised in determining the company's profit or loss (“the recognised gain”),
  - the gain wholly or partly reverses a loss recognised in a previous period of account (“the reversed loss”), and
  - a debit was brought into account for tax purposes under Chapter 3 (debts in respect of intangible fixed assets) in respect of that loss (“the tax debit”).
- A corresponding credit must be brought into account for tax purposes.
- The amount of the credit is—

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$$RG \times \frac{D}{RL}$$

where—

RG is the recognised gain,

D is the tax debit, and

RL is the reversed loss.

- (4) This section does not apply to a gain on a revaluation within the meaning of section 723 (see subsection (5) of that section).

### CHAPTER 3

#### DEBITS IN RESPECT OF INTANGIBLE FIXED ASSETS

#### 726 Introduction

- (1) This Chapter provides for debits to be brought into account by a company for tax purposes in respect of—
- (a) expenditure on an intangible fixed asset that is written off for accounting purposes as it is incurred (see section 728),
  - (b) writing down the capitalised cost of an intangible fixed asset—
    - (i) on an accounting basis (see section 729), or
    - (ii) on a fixed-rate basis (see sections 730 and 731), and
  - (c) the reversal of a previous accounting gain in respect of an intangible fixed asset (see section 732).
- (2) This Chapter does not apply in relation to amounts brought into account in connection with the realisation of an intangible fixed asset within the meaning of Chapter 4 (see section 734).
- (3) For the rules about those amounts, see that Chapter.

#### 727 References to expenditure on an asset

- (1) References in this Part to expenditure on an asset are to any expenditure (including abortive expenditure)—
- (a) for the purpose of acquiring or creating, or establishing title to, the asset,
  - (b) by way of royalty in respect of the use of the asset, or
  - (c) for the purpose of maintaining, preserving or enhancing, or defending title to, the asset.
- (2) No account may be taken of capital expenditure on tangible assets in determining for the purposes of this Part the amount of expenditure on an intangible asset.



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- (3) In subsection (2) “capital expenditure” has the same meaning as in CAA 2001.
- (4) If expenditure is incurred partly as mentioned in subsection (1) or (2) and partly otherwise, any necessary apportionment must be made on a just and reasonable basis.

## 728 Expenditure written off as it is incurred

- (1) If in a period of account expenditure on an intangible fixed asset is recognised in determining a company's profit or loss, a corresponding debit must be brought into account for tax purposes.
- (2) The amount of the debit recognised for tax purposes is the same as the amount of the loss recognised by the company for accounting purposes.
- (3) Subsection (2) is subject to any adjustments required by this Part or [<sup>F5</sup>Part 4 of TIOPA 2010] (provision not at arm's length).
- (4) This section does not apply if the loss represents previously capitalised expenditure.
- (5) Nothing in section 59 (patent royalties) prevents a debit from being brought into account in accordance with this section, and so given effect under Chapter 6 of this Part.

### Textual Amendments

- F5** Words in s. 728(3) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 145\(1\), \(2\)](#) (with [Sch. 9 paras. 1-9, 22](#))

## 729 Writing down on accounting basis

- (1) If in a period of account a loss is recognised in determining a company's profit or loss in respect of capitalised expenditure on an intangible fixed asset—
  - (a) by way of amortisation, or
  - (b) as a result of an impairment review,a corresponding debit must be brought into account for tax purposes.
- (2) The reference in subsection (1) to an “impairment review” does not include the valuation of an asset for the purpose of determining the amount of expenditure to be capitalised in the first place.
- (3) In the period of account in which expenditure on an asset is capitalised the amount of the debit for tax purposes in respect of the expenditure is—

$$L \times \frac{E}{CE}$$

where—

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L is the amount of the loss recognised for accounting purposes,

E is the amount of expenditure on the asset that is recognised for tax purposes, and

CE is the amount capitalised in respect of expenditure on the asset.

- (4) For the purposes of subsection (3), subject to any adjustments required by this Part or [F6Part 4 of TIOPA 2010] (provision not at arm's length), the amount of expenditure on the asset that is recognised for tax purposes is the same as the amount of expenditure on the asset capitalised by the company.
- (5) In a subsequent period of account the amount of the debit for tax purposes in respect of the expenditure on an asset is—

$$L \times \frac{WDV}{AV}$$

where—

L is the amount of the loss recognised for accounting purposes,

WDV is the tax written-down value of the asset (see section 742) immediately before the amortisation charge is made or, as the case may be, the impairment loss is recognised for accounting purposes, and

AV is the value of the asset recognised for accounting purposes immediately before the amortisation charge or, as the case may be, the impairment review.

- (6) In this section “capitalised” means capitalised for accounting purposes.
- (7) This section does not apply to an asset in respect of which an election is made under section 730.

#### Textual Amendments

- F6** Words in s. 729(4) substituted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 8 para. 145(1), (2) (with Sch. 9 paras. 1-9, 22)

### 730 Writing down at fixed rate: election for fixed-rate basis

- (1) A company may elect to write down the cost of an intangible fixed asset for tax purposes at a fixed rate.
- (2) The election may be made whether or not the asset is written down for accounting purposes.
- (3) The election may only be made—
- (a) in writing,
  - (b) to an officer of Revenue and Customs, and

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- (c) not later than 2 years after the end of the accounting period in which the asset is created or acquired by the company.
- (4) The election applies to all expenditure on the asset that is capitalised for accounting purposes.
- (5) The election is irrevocable.

### 731 Writing down at fixed rate: calculation

- (1) If an election is made under section 730 for writing down at a fixed rate, a debit equal to the lesser of—
  - (a) 4% of the cost of the asset, and
  - (b) the balance of the tax written-down value,must be brought into account for tax purposes in each accounting period beginning with that in which the relevant expenditure is incurred.
- (2) If the accounting period is less than 12 months, the amount mentioned in subsection (1) (a) must be proportionately reduced.
- (3) In this section “the cost of the asset” means the cost recognised for tax purposes.
- (4) The cost of the asset recognised for tax purposes is the same as the amount capitalised for accounting purposes in respect of expenditure on the asset.
- (5) Subsection (4) is subject to any adjustments required by this Part or [F7Part 4 of TIOPA 2010] (provision not at arm's length).
- (6) If there is a part realisation of the asset (see section 734(4)), the reference in subsection (1)(a) to the cost of the asset must be read as a reference to the sum of—
  - (a) the cost recognised for tax purposes in respect of the value of the asset recognised for accounting purposes immediately after the part realisation, and
  - (b) the cost recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes.
- (7) If there is a further part realisation, subsection (6) applies again.

#### Textual Amendments

- F7** Words in s. 731(5) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 145\(1\), \(2\)](#) (with [Sch. 9 paras. 1-9, 22](#))

### 732 Reversal of previous accounting gain

- (1) This section applies if—
  - (a) in a period of account a loss is recognised in determining a company's profit or loss (“the recognised loss”),
  - (b) the loss wholly or partly reverses a gain recognised in a previous period of account (“the reversed gain”), and
  - (c) a credit was brought into account for tax purposes under Chapter 2 (credits in respect of intangible fixed assets) in respect of that gain (“the previous credit”).

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- (2) A corresponding debit must be brought into account for tax purposes.
- (3) The amount of that debit is—

$$RL \times \frac{PC}{RG}$$

where—

RL is the recognised loss,

PC is the previous credit, and

RG is the reversed gain.

- (4) References in this section to the recognition of a loss that reverses a gain recognised in a previous period of account do not include a loss recognised—
- (a) by way of amortisation of an asset that has previously been the subject of a revaluation, or
  - (b) as a result of an impairment review of such an asset.
- (5) In subsection (4) “revaluation” has the same meaning as in section 723 (see subsection (5) of that section).

## CHAPTER 4

### REALISATION OF INTANGIBLE FIXED ASSETS

#### 733 Overview of Chapter

- (1) This Chapter provides for credits or debits to be brought into account for tax purposes on the realisation by a company of an intangible fixed asset.
- (2) For the meaning of “realisation”, see section 734.
- (3) Sections 735 to 738 are subject to Chapter 7 (roll-over relief in case of realisation and reinvestment).
- (4) This Chapter is also relevant for determining—
  - (a) whether an asset is a chargeable intangible asset for the purposes of this Part, and
  - (b) whether a gain is a chargeable realisation gain for the purposes of this Part.
- (5) For the meaning of “chargeable intangible asset” and “chargeable realisation gain”, see section 741.

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#### **734 Meaning of “realisation”**

- (1) References in this Part to the realisation of an intangible fixed asset are to a transaction resulting, in accordance with generally accepted accounting practice—
  - (a) in the asset ceasing to be recognised in the company's balance sheet, or
  - (b) in a reduction in the accounting value of the asset.
- (2) In subsection (1) “transaction” includes any event giving rise to a gain recognised for accounting purposes.
- (3) In relation to an intangible fixed asset that has no balance sheet value (or no longer has a balance sheet value), subsections (1) and (2) apply as if it did have a balance sheet value.
- (4) References in this Part to a “part realisation” are to a realisation falling within subsection (1)(b).

#### **735 Asset written down for tax purposes**

- (1) This section applies if there is a realisation of an intangible fixed asset in respect of which debits have been brought into account for tax purposes.
- (2) If the proceeds of realisation exceed the tax written-down value of the asset, a credit equal to the excess must be brought into account for tax purposes.
- (3) If the proceeds of realisation are less than the tax written-down value of the asset, a debit equal to the shortfall must be brought into account for tax purposes.
- (4) If there are no proceeds of realisation, a debit equal to the tax written-down value must be brought into account for tax purposes.
- (5) References in this section to the tax written-down value of an asset are to its tax written-down value immediately before the realisation.

#### **736 Asset shown in balance sheet and not written down for tax purposes**

- (1) This section applies if—
  - (a) there is a realisation of an intangible fixed asset to which section 735 does not apply, and
  - (b) a value is shown for the asset in the company's balance sheet.
- (2) If the proceeds of realisation exceed the cost of the asset, a credit equal to the excess must be brought into account for tax purposes.
- (3) If the proceeds of realisation are less than the cost of the asset, a debit equal to the shortfall must be brought into account for tax purposes.
- (4) If there are no proceeds of realisation, a debit equal to the cost of the asset must be brought into account for tax purposes.
- (5) In this section “the cost of the asset” means the cost recognised for tax purposes.
- (6) The cost of the asset recognised for tax purposes is the same as the amount of expenditure on the asset capitalised by the company for accounting purposes.

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- (7) Subsection (6) is subject to any adjustments required by this Part or [F8Part 4 of TIOPA 2010] (provision not at arm's length)).
- (8) If this section has applied on a part realisation of an asset and applies again (on the realisation of the unrealised asset) the references in subsections (2) to (4) to the cost of the asset must be read as references to the sum of—
- (a) the cost recognised for tax purposes in respect of the value of the asset recognised for accounting purposes immediately after the part realisation, and
  - (b) the cost recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes.
- (9) If there is a further part realisation, subsection (8) applies again.

#### Textual Amendments

- F8** Words in s. 736(7) substituted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 8 para. 145(1), (2) (with Sch. 9 paras. 1-9, 22)

### 737 Apportionment in case of part realisation

- (1) In the case of a part realisation—
- (a) the references in section 735 to the tax written-down value of the asset, and
  - (b) the references in section 736 to the cost of the asset,
- must be read as references to the appropriate proportion of that amount.
- (2) That proportion is—

$$\frac{AVB - AVA}{AVB}$$

where—

AVB is the accounting value immediately before the realisation, and

AVA is the accounting value immediately after the realisation.

### 738 Asset not shown in balance sheet

- (1) This section applies if—
- (a) there is a realisation of an intangible fixed asset, and
  - (b) neither section 735 (asset written down for tax purposes) nor section 736 (asset shown in balance sheet and not written down for tax purposes) applies.
- (2) A credit equal to any proceeds of realisation must be brought into account for tax purposes.

*Status: Point in time view as at 01/09/2013.*

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### 739 Meaning of “proceeds of realisation”

- (1) In this Part “proceeds of realisation” of an asset means the amount recognised for accounting purposes as the proceeds of realisation, less the amount so recognised as incidental costs of realisation.
- (2) The amounts referred to in subsection (1) are subject to any adjustments required by this Part or [<sup>F9</sup>Part 4 of TIOPA 2010] (provision not at arm's length).

#### Textual Amendments

- F9** Words in s. 739(2) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 145\(1\), \(2\)](#) (with [Sch. 9 paras. 1-9, 22](#))

### 740 Abortive expenditure on realisation

- (1) This section applies if—
  - (a) in a period of account a loss is recognised in determining the company's profit or loss in respect of expenditure by the company for the purposes of a transaction,
  - (b) the transaction does not proceed to completion, but
  - (c) were it completed, it would constitute a realisation of an intangible fixed asset.
- (2) A corresponding debit must be brought into account for tax purposes.
- (3) The amount of the debit is the same as the amount of the loss recognised by the company for accounting purposes.
- (4) Subsection (3) is subject to any adjustments required by this Part or [<sup>F10</sup>Part 4 of TIOPA 2010] (provision not at arm's length).

#### Textual Amendments

- F10** Words in s. 740(4) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 145\(1\), \(2\)](#) (with [Sch. 9 paras. 1-9, 22](#))

### 741 Meaning of “chargeable intangible asset” and “chargeable realisation gain”

- (1) For the purposes of this Part, an asset is a “chargeable intangible asset” in relation to a company at any time if any gain on its realisation by the company at that time would be a chargeable realisation gain.
- (2) For the purposes of this Part, “chargeable realisation gain”, in relation to an asset, means a gain on the realisation of the asset that gives rise to a credit required to be brought into account under this Chapter.
- (3) For the purposes of subsections (1) and (2), there is a gain on the realisation of an asset in any case if section 735(2), 736(2) or 738(2) applies.
- (4) For the purpose of subsections (1) and (2), ignore any question whether—

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- (a) relief under Chapter 7 (roll-over relief in case of realisation and reinvestment) is available, or
- (b) a transfer of an asset is tax-neutral for the purposes of this Part (see section 776).

## CHAPTER 5

### CALCULATION OF TAX WRITTEN-DOWN VALUE

#### 742 Asset written down on accounting basis

- (1) For the purposes of this Part, the tax written-down value of an intangible fixed asset to which section 729 (writing down on accounting basis) applies is the cost of the asset recognised for tax purposes, less the total net debits brought into account for tax purposes previously in respect of the asset.
- (2) For the purposes of subsection (1) the cost of the asset recognised for tax purposes is the same as the amount of the expenditure on the asset that is capitalised for accounting purposes.
- (3) Subsection (2) is subject to any adjustments required by this Part or [F11 Part 4 of TIOPA 2010] (provision not at arm's length).
- (4) For the purposes of subsection (1) “the total net debits brought into account for tax purposes previously in respect of the asset”, means the total debits so brought into account, less the total credits so brought into account (if any).
- (5) In the case of an asset that has been the subject of a part realisation, this section is subject to section 744.
- (6) In the case of an asset that has been subject to adjustment on a change of accounting policy, this section is subject to Chapter 15 (adjustments on a change of accounting policy).

#### Textual Amendments

- F11** Words in s. 742(3) substituted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 8 para. 145(1), (2) (with Sch. 9 paras. 1-9, 22)

#### 743 Asset written down at fixed rate

- (1) For the purposes of this Part, the tax written-down value of an intangible fixed asset in respect of which an election has been made under section 730 (writing down at fixed rate: election for fixed-rate basis) is the cost of the asset recognised for tax purposes, less any debits brought into account for tax purposes previously in respect of the asset under section 731 (writing down at fixed rate: calculation).
- (2) For the purposes of subsection (1), the cost of the asset recognised for tax purposes is the same as the amount of the expenditure on the asset that is capitalised for accounting purposes.



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- (3) Subsection (2) is subject to any adjustments required by this Part or <sup>F12</sup>Part 4 of TIOPA 2010] (provision not at arm's length).
- (4) In the case of an asset that has been the subject of a part realisation, this section is subject to section 744.
- (5) In the case of an asset that has been subject to adjustment on a change of accounting policy, this section is subject to Chapter 15 (adjustments on change of accounting policy).

#### Textual Amendments

**F12** Words in s. 743(3) substituted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 8 para. 145(1), (2) (with Sch. 9 paras. 1-9, 22)

#### 744 Effect of part realisation of asset

- (1) The tax written-down value of an intangible asset that has been the subject of a part realisation is determined as follows.
- (2) Immediately after the part realisation the tax written-down value of the asset is—

$$\text{WDVB} \times \frac{\text{AVA}}{\text{AVB}}$$

where—

WDVB is the tax written-down value of the asset immediately before the part realisation,

AVA is the accounting value of the asset immediately after the part realisation, and

AVB is the accounting value immediately before the part realisation.

- (3) Subsequently, the tax written-down value of the asset is determined in accordance with section 742 or 743, but subject to subsections (4) and (5).
- (4) The cost of the asset recognised for tax purposes is the sum of—
  - (a) the tax written-down value in accordance with subsection (2), and
  - (b) the cost recognised for tax purposes of subsequent expenditure on the asset that is capitalised for accounting purposes.
- (5) Only credits and debits brought into account for tax purposes after the part realisation are taken account of.
- (6) If there is a further part realisation, subsections (1) to (5) apply again.
- (7) If there is a subsequent change of accounting policy affecting the asset, Chapter 15 (adjustments on change of accounting policy) applies.

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## CHAPTER 6

### HOW CREDITS AND DEBITS ARE GIVEN EFFECT

#### *Introductory*

#### **745 Introduction**

- (1) Credits and debits to be brought into account for tax purposes under this Part are given effect in accordance with this Chapter.
- (2) Credits and debits in respect of assets held for the purposes mentioned in any of the following sections are given effect in accordance with that section—
  - (a) section 747 (assets held for purposes of trade),
  - (b) section 748 (assets held for purposes of property business),
  - (c) section 749 (assets held for purposes of mines, transport undertakings, etc).
- (3) Credits and debits in respect of intangible fixed assets that are not within sections 747 to 749 are dealt with in accordance with sections 751 to 753.
- (4) This section is subject to section 901 (effect of application of the I minus E basis: non-trading amounts).

#### **746 “Non-trading credits” and “non-trading debits”**

- (1) In this Part credits and debits in respect of intangible fixed assets that are not within sections 747 to 749 are referred to respectively as “non-trading credits” and “non-trading debits”.
- (2) See also—
  - (a) section 781(5) (character of credits and debits brought into account as a result of section 780),
  - (b) section 792(5) (reallocation of charge within group), and
  - (c) <sup>F13</sup>section 901] (insurance companies: effect of application of the I minus E basis: non-trading amounts).

#### **Textual Amendments**

**F13** Words in s. 746(2)(c) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 173](#)

#### *Trading etc credits and debits*

#### **747 Assets held for purposes of trade**

- (1) This section applies if credits or debits are to be brought into account in an accounting period in respect of an asset held by a company for the purposes of a trade carried on by it in that period.
- (2) The credits are given effect by treating them as receipts of the trade in calculating the profits of the trade for tax purposes.

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- (3) The debits are given effect by treating them as expenses of the trade in calculating the profits of the trade for tax purposes.

#### **748 Assets held for purposes of property business**

- (1) This section applies if credits or debits are to be brought into account in an accounting period in respect of an asset held by a company for the purposes of a property business carried on by it in that period.
- (2) The credits are given effect by treating them as receipts of the business in calculating the profits of the business for tax purposes.
- (3) The debits are given effect by treating them as expenses of the business in calculating the profits of the business for tax purposes.
- (4) In subsection (1) “property business” means—
  - [<sup>F14</sup>(a) an ordinary UK property business,
  - (b) a UK furnished holiday lettings business,
  - (c) an ordinary overseas property business, or
  - (d) an EEA furnished holiday lettings business.]

[<sup>F15</sup>(5) In this section—

“commercial letting of furnished holiday accommodation” has the meaning given by section 265,

“EEA furnished holiday lettings business” means an overseas property business so far as it consists of the commercial letting of furnished holiday accommodation in one or more EEA states,

“ordinary overseas property business” means an overseas property business except so far as it is an EEA furnished holiday lettings business,

“ordinary UK property business” means a UK property business except so far as it is a UK furnished holiday lettings business, and

“UK furnished holiday lettings business” means a UK property business so far as it consists of the commercial letting of furnished holiday accommodation.]

#### **Textual Amendments**

**F14** S. 748(4)(a)-(d) substituted (19.7.2011) for s. 748(4)(a)-(c) (with effect in accordance with Sch. 14 para. 9 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 7\(8\)\(a\)](#)

**F15** S. 748(5) substituted (19.7.2011) (with effect in accordance with Sch. 14 para. 9 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 7\(8\)\(b\)](#)

#### **749 Assets held for purposes of mines, transport undertakings, etc**

- (1) This section applies if credits or debits are to be brought into account in an accounting period in respect of an asset held by a company for the purposes of a concern listed in section 39(4) (mines, quarries and other concerns) that is carried on by it in that period.
- (2) The credits are given effect by treating them as receipts of the concern in calculating the profits of the concern under Part 3 (trading income).

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- (3) The debits are given effect by treating them as expenses of the concern in calculating the profits of the concern under that Part.

## **750 Assets held for purposes falling within more than one section**

If an asset is held—

- (a) for purposes falling within more than one of sections 747 to 749, or
- (b) for purposes falling within one or more of those sections and for purposes not so falling,

any necessary apportionment must be made on a just and reasonable basis.

### *Non-trading credits and debits*

## **751 Non-trading gains and losses**

- (1) If there are non-trading credits or debits in an accounting period in respect of intangible fixed assets, the company's non-trading gain or loss on such assets in the period must be calculated.
- (2) There is a non-trading gain on intangible fixed assets in an accounting period if subsection (3) or (4) applies.
- (3) If in the accounting period—
  - (a) there are non-trading credits, but
  - (b) there are no non-trading debits,
 there is a non-trading gain on intangible fixed assets equal to the sum of the credits.
- (4) If in the accounting period—
  - (a) there are both non-trading credits and non-trading debits, and
  - (b) the total non-trading credits exceed the total non-trading debits,
 there is a non-trading gain on intangible fixed assets equal to the excess.
- (5) There is a non-trading loss on intangible fixed assets in an accounting period if subsection (6) or (7) applies.
- (6) If in the accounting period—
  - (a) there are non-trading debits, but
  - (b) there are no non-trading credits,
 there is a non-trading loss on intangible fixed assets equal to the sum of the debits.
- (7) If in the accounting period—
  - (a) there are both non-trading credits and non-trading debits, and
  - (b) the total non-trading debits exceed the total non-trading credits,
 there is a non-trading loss on intangible fixed assets equal to the excess.
- (8) For the treatment of non-trading gains and losses see—
  - (a) section 752 (charge to tax on non-trading gains on intangible fixed assets), and
  - (b) section 753 (treatment of non-trading losses).

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## **752 Charge to tax on non-trading gains on intangible fixed assets**

The charge to corporation tax on income applies to non-trading gains arising to a company on intangible fixed assets.

## **753 Treatment of non-trading losses**

- (1) A company that has a non-trading loss on intangible fixed assets for an accounting period may claim to have the whole or part of the loss set off against the company's total profits for that period.
- (2) Such a claim must be made—
  - (a) not later than the end of the period of 2 years immediately following the end of the accounting period to which it relates, or
  - (b) within such further period as an officer of Revenue and Customs may allow.
- (3) To the extent that the loss is not—
  - (a) set off against total profits on a claim under subsection (1), or
  - (b) surrendered by way of group relief [<sup>F16</sup>under Part 5 of CTA 2010],it is carried forward to the next accounting period of the company and treated as if it were a non-trading debit of that period.

### **Textual Amendments**

- F16** Words in s. 753(3)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 644** (with Sch. 2)

## **CHAPTER 7**

### **ROLL-OVER RELIEF IN CASE OF REALISATION AND REINVESTMENT**

#### *When the relief is given*

## **754 The relief: the “old asset” and “other assets”**

- (1) This Chapter provides for relief if a company realises an intangible fixed asset and incurs expenditure on other intangible fixed assets.
- (2) In this Chapter references to the “old asset” are references to the asset that is realised and references to “other assets” are references to the other assets on which expenditure is incurred.
- (3) A company is entitled to relief under this Chapter only if—
  - (a) the conditions in section 755 are met in relation to the old asset and its realisation,
  - (b) the conditions in section 756 are met in relation to the expenditure on other assets, and
  - (c) the company claims the relief in accordance with section 757.
- (4) See also the following provisions (which extend or restrict the circumstances in which relief is available)—

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- (a) sections 777 to 779 (application of roll-over relief where there is reinvestment by group members),
- (b) section 791 (application of roll-over relief in relation to degrouping charge),
- (c) section 794 (application of roll-over relief in relation to reallocated charge),
- (d) section 850 (part realisation involving related party acquisition: exclusion of roll-over relief), and
- (e) sections 898 and 899 (roll-over relief for disposals of pre-FA 2002 assets).

### **755 Conditions relating to the old asset and its realisation**

- (1) The old asset must have been a chargeable intangible asset of the company throughout the period during which it was held by the company (but see subsection (5)).
- (2) The proceeds of realisation of the old asset must exceed—
  - (a) the cost of the asset,
  - (b) in the case of a part realisation, the appropriate proportion of the cost of the asset (see section 759(1) and (2)), or
  - (c) in the case of the realisation of an asset that has previously been the subject of a part realisation, the adjusted cost of the asset (see section 759(3)).
- (3) In subsection (2) “the cost of the asset” means the total capitalised expenditure on the asset recognised for tax purposes.
- (4) The condition in subsection (2) is met if the old asset has no cost as defined in subsection (3).
- (5) Subsection (6) applies if the old asset was a chargeable intangible asset of the company—
  - (a) at the time of its realisation, and
  - (b) for a substantial proportion of the period during which it was held by the company, but not for the whole of that period.
- (6) The same proportion of the asset is treated for the purposes of this Chapter as if it were a separate asset in relation to which the condition in subsection (1) was wholly met.
- (7) Any apportionment necessary for the purposes of subsections (5) and (6) must be made on a just and reasonable basis.

### **756 Conditions relating to expenditure on other assets**

- (1) The expenditure on other assets must be incurred in the period—
  - (a) beginning 12 months before the date of realisation of the old asset or at such earlier time as an officer of Revenue and Customs may by notice allow, and
  - (b) ending 3 years after the date of realisation of the old asset or at such later time as an officer of Revenue and Customs may by notice allow.
- (2) The expenditure on other assets must be capitalised by the company for accounting purposes.
- (3) Immediately after the expenditure is incurred the other assets must be chargeable intangible assets in relation to the company.

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- (4) For the purposes of this section expenditure is treated as incurred when it is recognised for accounting purposes.

### **757 Claim for relief**

A claim by a company for relief under this Chapter must specify—

- (a) the old assets to which the claim relates,
- (b) the amount of the relief claimed in relation to each old asset, and
- (c) in relation to each old asset, the expenditure on other assets by reference to which relief is claimed.

*How the relief is given*

### **758 How the relief is given: general**

- (1) A company that is entitled to relief under this Chapter is treated for the purposes of this Part as if—
  - (a) the proceeds of realisation of the old asset, and
  - (b) the cost recognised for tax purposes of acquiring the other assets,were each reduced by the amount available for relief.
- (2) If the qualifying expenditure on other assets equals or exceeds the proceeds of realisation of the old asset, the amount available for relief is the amount by which the proceeds of realisation exceed the cost of the old asset.
- (3) If the qualifying expenditure on other assets is less than the proceeds of realisation of the old asset, the amount available for relief is the amount by which the qualifying expenditure on other assets exceeds the cost of the old asset.
- (4) In this section “qualifying expenditure” means expenditure in relation to which the conditions in section 756 are met.
- (5) In this section “the cost of the old asset” means the total capitalised expenditure on the asset recognised for tax purposes, but—
  - (a) in the case of a part realisation, references to the cost of the old asset are references to the appropriate proportion of the cost (see section 759(1) and (2)), and
  - (b) in the case of the realisation of an asset that has previously been the subject of a part realisation, references to the cost of the old asset are references to the adjusted cost (see section 759(3)).
- (6) The relief does not affect the treatment of any other party to—
  - (a) any transaction involved in the realisation of the old asset, or
  - (b) the expenditure on the other assets,for any purpose of the enactments relating to income tax, corporation tax or chargeable gains.

### **759 Determination of appropriate proportion of cost and adjusted cost**

- (1) In the case of a part realisation, any reference in section 755 or 758 to the appropriate proportion of the cost of the old asset is to the following proportion of it—

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$$\frac{AVB - AVA}{AVB}$$

where—

AVB is the accounting value immediately before the part realisation, and

AVA is the accounting value immediately after the part realisation.

- (2) If the old asset has previously been the subject of a part realisation, the reference in subsection (1) to the cost of the old asset is a reference to the adjusted cost.
- (3) References in sections 755 and 758 and subsection (2) to the adjusted cost are references to the cost of the old asset, less the sum of the amounts given by subsections (1) and (2) in relation to earlier part realisations.

#### **760 References to cost of asset where asset affected by change of accounting policy**

- (1) In the case of an asset to which Chapter 15 has applied (adjustments on change of accounting policy) the references in this Chapter to the cost of the asset must be read as follows.
- (2) If section 872 (adjustments in respect of change) applied, the references are unaffected.
- (3) If section 874 or 876 (change of accounting policy involving disaggregation) applied, the references to the cost of the asset must be read as references to the appropriate proportion of that cost.
- (4) For the purposes of subsection (3) the appropriate proportion is determined by applying to the cost of the asset the same fraction as is applied by section 875(2) or (3) or 876(3), as the case may be, to determine the tax written-down value of the asset after the change.
- (5) References in this section to sections 872, 874, 875 and 876 include references to those provisions as applied by section 877 (election for fixed-rate writing down in relation to resulting asset).

#### **761 Declaration of provisional entitlement to relief**

- (1) A company realising an intangible fixed asset may make a declaration of provisional entitlement to relief under this Chapter.
- (2) While the declaration continues in force, this Chapter applies as if the conditions for relief under this Chapter were met.
- (3) A declaration of provisional entitlement is a declaration by the company, in its company tax return for the accounting period in which the realisation takes place, that the company—
  - (a) has realised an intangible fixed asset,
  - (b) proposes to meet the conditions for relief under this Chapter, and



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- (c) accordingly is provisionally entitled to relief of a specified amount.
- (4) A declaration of provisional entitlement ceases to have effect if or to the extent that—
  - (a) it is withdrawn, or
  - (b) it is superseded by a claim for relief under this Chapter.
- (5) So far as not previously withdrawn or superseded, a declaration of provisional entitlement ceases to have effect 4 years after the end of the accounting period in which the realisation took place.
- (6) If a declaration of provisional entitlement ceases to have effect, in whole or in part, all necessary adjustments must be made, by assessment or otherwise.
- (7) Subsection (6) applies despite any limitation on the time within which assessments or amendments may be made.

## **762 Realisation and reacquisition**

If a company realises an asset and subsequently reacquires it, this Chapter applies as if what is reacquired were a different asset from that previously realised.

## **763 Disregard of deemed realisations and reacquisitions**

- (1) This Chapter does not apply in relation to a realisation of an asset that does not actually occur but is treated as occurring, except as provided by—
  - (a) section 791 (application of roll-over relief in relation to degrouping charge), or
  - (b) section 794 (application of roll-over relief in relation to reallocated charge).
- (2) Reacquisitions that do not actually occur but are treated as occurring are ignored for the purposes of this Chapter.

# **CHAPTER 8**

## **GROUPS OF COMPANIES: INTRODUCTION**

### *Introductory*

## **764 Meaning of “company”, “group” and “subsidiary”**

- (1) This Chapter applies for the purposes of this Part to determine whether companies form a group and, where they do, which is the principal company of the group.
- (2) In this Chapter, references to a company apply only to—
  - (a) a company within the meaning of the Companies Act 2006 (c. 46),
  - (b) a company (other than a limited liability partnership) constituted under any other Act or by a Royal Charter or letters patent,
  - (c) a company formed under the law of a country or territory outside the United Kingdom,
  - (d) a registered industrial and provident society,
  - (e) an incorporated friendly society within the meaning of the Friendly Societies Act 1992 (c. 40), or

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(f) a building society.

- (3) In this Part “group” and “subsidiary” must be read with any necessary modifications if applied to a company formed under the law of a country or territory outside the United Kingdom.

### *Rules*

#### **765 General rule: a company and its 75% subsidiaries form a group**

- (1) The general rule is that—
- (a) a company (“A”) and all its 75% subsidiaries form a group, and
  - (b) if any of those subsidiaries have 75% subsidiaries, the group includes them and their 75% subsidiaries, and so on.
- (2) A is referred to in this Chapter and in Chapter 9 as the principal company of the group.
- (3) Subsections (1) and (2) are subject to the following provisions of this Chapter.

#### **766 Only effective 51% subsidiaries of principal company to be members of group**

- (1) A group of companies does not include any company (other than the principal company of the group) that is not an effective 51% subsidiary of the principal company of the group.
- (2) For the meaning of “effective 51% subsidiary”, see section 771.

#### **767 Principal company cannot be 75% subsidiary of another company**

- (1) The general rule is that a company (“A”) is not the principal company of a group if it is itself a 75% subsidiary of another company (“B”).
- (2) That rule is subject to subsection (3).
- (3) A is the principal company of a group (“group C”) if—
- (a) A and B are prevented from being members of another group by section 766,
  - (b) the requirements of sections 765 and 766 are met in relation to group C, and
  - (c) A being the principal company of group C does not enable a further company to be the principal company of a group of which A would be a member.

#### **768 Company cannot be member of more than one group**

- (1) A company cannot be a member of more than one group.
- (2) If, apart from subsection (1), a company (“A”) would be a member of 2 or more groups, the group of which it is a member is determined by applying the rules in subsections (4), (6), (7) and (8) successively in that order until an answer is obtained.
- (3) In those subsections the principal company of each group is referred to as its head.
- (4) A is a member of the group of which it would be a member if in applying section 766 (only effective 51% subsidiaries of principal company to be members of group) the amounts specified in subsection (5) were ignored.

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- (5) Those amounts are—
- (a) any amount to which a head of a group is beneficially entitled of any profits available for distribution to equity holders of a head of another group (see section 772), and
  - (b) any amount to which a head of a group would be beneficially entitled of any assets of a head of another group available for distribution to its equity holders on a winding up (see that section).
- (6) A is a member of the group the head of which is beneficially entitled to a percentage of the profits available for distribution to A's equity holders that is greater than the percentage of those profits to which any other head of a group is so entitled.
- (7) A is a member of the group the head of which would be beneficially entitled to a percentage of any of A's assets available for distribution to its equity holders on a winding up that is greater than the percentage of those assets to which any other head of a group would be so entitled.
- (8) A is a member of the group the head of which owns directly or indirectly a percentage of A's ordinary share capital that is greater than the percentage of that capital owned directly or indirectly by any other head of a group.
- [<sup>F17</sup>(9) For the purposes of subsection (8) share capital is owned directly or indirectly if it would be so owned by a body corporate for the purposes of section 1154(2) of CTA 2010 (meaning of “51% subsidiary”).]

#### Textual Amendments

- F17** S. 768(9) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 645](#) (with [Sch. 2](#))

### 769 Continuity of identity of group

- (1) A group of companies remains the same group of companies for the purposes of this Part so long as the same company is the principal company of the group.
- (2) If the principal company of a group becomes a member of another group—
- (a) the groups are treated as the same group for the purposes of this Part, and
  - (b) the question whether a company has ceased to be a member of a group must be determined accordingly.
- (3) The passing of a resolution or the making of an order, or any other act, for the winding up of a company is not treated for the purposes of this Part as causing any company to cease to be a member of any group of which it is a member.

### 770 Continuity where group includes an SE

- (1) This section applies if the principal company of a group (“Group 1”)—
- (a) becomes an SE as a result of being the acquiring company in the formation of an SE by merger by acquisition (in accordance with Articles 2(1), 17(2) (a) and 29(1) of Council Regulation [\(EC\) No 2157/2001](#) on the Statute for a European company),

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- (b) becomes a subsidiary of a holding SE (formed in accordance with Article 2(2) of that Regulation), or
  - (c) is transformed into an SE (in accordance with Article 2(4) of that Regulation).
- (2) For the purposes of this Part—
- (a) Group 1 and any group of which the SE is a member on formation is treated as the same, and
  - (b) the question whether a company has ceased to be a member of a group must be determined accordingly.

### 771 Meaning of “effective 51% subsidiary”

- (1) For the purposes of this Part a company (“the subsidiary”) is an effective 51% subsidiary of another company (“the parent”) if (and only if) conditions A and B are met.
- (2) Condition A is that the parent is beneficially entitled to more than 50% of any profits available for distribution to equity holders of the subsidiary (see section 772).
- (3) Condition B is that the parent would be beneficially entitled to more than 50% of any assets of the subsidiary available for distribution to its equity holders on a winding up (see section 772).

### [<sup>F18</sup>772 Equity holders and profits or assets available for distribution

- (1) Chapter 6 of Part 5 of CTA 2010 (group relief: equity holders and profits or assets available for distribution) applies for the purposes of sections 768 and 771.

[<sup>F19</sup>(2) In that Chapter as it applies for those purposes—

- (a) section 158 of CTA 2010 has effect as if after subsection (2) there were inserted—
  - “(2A) But for those purposes a person carrying on a business of banking is not treated as a loan creditor of a company in respect of any loan capital or debt issued or incurred by the company for money lent by the person to the company in the ordinary course of that business.”, and
- (b) sections 171(1)(b) and (3), 173, 174 and 176 to 182 of that Act are to be treated as omitted.]]

#### Textual Amendments

**F18** S. 772(1)(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 646](#) (with [Sch. 2](#))

**F19** S. 772(2) substituted (retrospective and with effect in accordance with art. 1(2) of the amending S.I.) by [Corporation Tax Act 2010 \(Amendment\) Order 2010 \(S.I. 2010/2902\)](#), arts. 1(1), [3](#)

### 773 Supplementary provisions

- (1) In applying the definition of “75% subsidiary” in [<sup>F20</sup>section 1154 of CTA 2010] for the purposes of this Chapter, any share capital of a registered industrial and provident society is treated as ordinary share capital.

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- (2) Section 170(12) to (14) of TCGA 1992 (application to certain statutory bodies of provisions relating to groups of companies) applies for the purposes of this Chapter as it applies for the purposes of sections 171 to 181 of TCGA 1992.

#### Textual Amendments

- F20** Words in s. 773(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 647** (with Sch. 2)

## CHAPTER 9

### APPLICATION OF THIS PART TO GROUPS OF COMPANIES

#### *Introductory*

#### **774 Overview of Chapter**

- (1) This Chapter makes provision about how this Part applies in the case of certain transactions involving groups.
- (2) In particular—
- (a) for the treatment of transfers within groups as “tax-neutral transfers” and the meaning of that expression, see sections 775 and 776,
  - (b) for the application of Chapter 7 (roll-over relief in case of realisation and reinvestment) in relation to a company that is a member of a group, see sections 777 to 779,
  - (c) for the rules that apply where a company ceases to be a member of a group, see—
    - (i) sections 780 to 791 (which provide for the deemed realisation of chargeable intangible fixed assets and their deemed reacquisition at market value), and
    - (ii) sections 792 to 798 (which provide for elections for a different member of the group to be treated as the company to which any gain on the deemed transfer accrues, how roll-over relief applies in such a case and for the recovery of the charge on any such gain), and
  - (d) for the disregard of some payments made in connection with claims for relief under Chapter 7 where this Chapter applies and payments made in connection with such elections as are mentioned in paragraph (c)(ii), see section 799.
- (3) Section 788 contains provisions that supplement sections 780 to 787.

#### *Transfers within a group treated as tax-neutral*

#### **775 Transfers within a group**

- (1) A transfer of an intangible fixed asset from one company (“the transferor”) to another company (“the transferee”) is tax-neutral for the purposes of this Part if—
- (a) at the time of the transfer both companies are members of the same group,

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- (b) immediately before the transfer the asset is a chargeable intangible asset in relation to the transferor, and
  - (c) immediately after the transfer the asset is a chargeable intangible asset in relation to the transferee.
- (2) For the consequences of a transfer being tax-neutral for the purposes of this Part, see section 776.
- (3) [F21Part 4 of TIOPA 2010] (provision not at arm's length) does not apply in relation to a transfer to which subsection (1) applies.
- (4) Subsection (1) does not apply if—
- (a) the transferor or transferee is a qualifying society within the meaning of section 461A of ICTA (incorporated friendly societies entitled to exemption from tax),<sup>F22</sup>...
  - (b) the transferee is a dual resident investing company within the meaning of [F23section 949 of CTA 2010 (dual resident investing companies)]<sup>F24</sup>, or
  - (c) an election under section 18A has effect in relation to the transferor and the asset has at any time been held by the transferor wholly or partly for the purposes of a permanent establishment in a territory outside the United Kingdom through which the transferor carries on business.]

#### Textual Amendments

- F21** Words in s. 775(3) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 146](#) (with Sch. 9 paras. 1-9, 22)
- F22** Word in s. 775(4)(a) omitted (19.7.2011) by virtue of [Finance Act 2011 \(c. 11\), Sch. 13 paras. 5, 31](#)
- F23** Words in s. 775(4)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 648](#) (with Sch. 2)
- F24** S. 775(4)(c) and word inserted (19.7.2011) by [Finance Act 2011 \(c. 11\), Sch. 13 paras. 5, 31](#)

#### 776 Meaning of “tax-neutral” transfer

- (1) This section sets out the consequences of a transfer of an asset being “tax-neutral” for the purposes of this Part.
- (2) The transfer is treated for those purposes as not involving—
- (a) any realisation of the asset by the transferor, or
  - (b) any acquisition of the asset by the transferee.
- (3) The transferee is treated for those purposes—
- (a) as having held the asset at all times when it was held by the transferor, and
  - (b) as having done all such things in relation to the asset as were done by the transferor.
- (4) In particular—
- (a) the original cost of the asset in the hands of the transferor is treated as the original cost in the hands of the transferee, and
  - (b) all such credits and debits in relation to the asset as have been brought into account for tax purposes by the transferor under this Part are treated as if they had been brought into account by the transferee.

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- (5) The references in subsection (4)(a) to the cost of the asset are to the cost recognised for tax purposes.

*Roll-over relief under Chapter 7 (realisation and reinvestment)*

**777 Relief on realisation and reinvestment: application to group member**

- (1) This section deals with the application of Chapter 7 (roll-over relief in case of realisation and reinvestment) in relation to a company that is a member of a group.
- (2) Chapter 7 does not apply if the expenditure on other assets is expenditure on the acquisition of assets from another member of the same group by a tax-neutral transfer.
- (3) Chapter 7 applies as if two companies (“A” and “B”) are the same person if—
- (a) the realisation of the old asset is by A,
  - (b) at the time of the realisation A is a member of a group,
  - (c) the expenditure on other assets is by B,
  - (d) B is a member of the same group as A at the time the expenditure is incurred (“the expenditure time”),
  - (e) B is not a dual resident investing company within the meaning of [F25section 949 of CTA 2010 (dual resident investing companies)] at the expenditure time,
  - (f) immediately after the expenditure time the other assets are chargeable intangible assets in relation to B, and
  - (g) both A and B make a claim for relief under Chapter 7.
- (4) Expressions used in this section that are defined for the purposes of Chapter 7 have the same meaning in this section.
- (5) In particular, see section 754 for the meaning of “the old asset” and “the other assets”.

**Textual Amendments**

- F25** Words in s. 777(3)(e) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 649** (with **Sch. 2**)

**778 Relief on reinvestment: acquisition of group company: introduction**

- (1) Chapter 7 (roll-over relief in case of realisation and reinvestment) applies in accordance with section 779 if—
- (a) a company (“A”) acquires a controlling interest in another company (“B”), and
  - (b) intangible fixed assets (“underlying assets”) are held by B or one or more other companies within subsection (2).
- (2) A company is within this subsection if—
- (a) it was not in the same group as A before the acquisition, and
  - (b) as a result of the acquisition it is in the same group as A immediately after it.
- (3) For this purpose A acquires a controlling interest in B if—

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- (a) A and B are not in the same group,
  - (b) A acquires shares in B, and
  - (c) as a result of the acquisition A and B are in the same group immediately after the acquisition.
- (4) A claim for relief under Chapter 7 made because of section 779 must be made jointly by A and the company or companies holding the underlying assets concerned.
- (5) In this section and section 779 expressions that are defined for the purposes of Chapter 7 have the same meaning as in that Chapter.

### **779 Rules that apply to cases within section 778(1)**

- (1) The expenditure by A on the acquisition is treated as expenditure on acquiring the underlying assets.
- (2) The amount of the expenditure so treated is taken to be the lower of—
- (a) the tax written-down value of the underlying assets immediately before the acquisition, and
  - (b) the amount or value of the consideration for the acquisition.
- (3) The requirement in section 756(3) (that immediately after the expenditure on acquiring the assets is incurred the assets must be chargeable intangible assets in relation to A) is treated as met in relation to the underlying assets if the condition in subsection (4) is met.
- (4) That condition is that the underlying assets are chargeable intangible assets in relation to the company by which they are held immediately after the acquisition by A.
- (5) The tax written-down value of the underlying assets in the hands of the company by which they are held is reduced by the amount available for relief (but see subsections (6) and (7)).
- (6) If—
- (a) there is more than one underlying asset, and
  - (b) the amount of expenditure on other assets that is treated as incurred exceeds the amount available for relief,
- the company which holds the underlying assets may decide how the amount available for relief is to be allocated in reducing the tax written-down values of the assets.
- (7) If there are two or more such companies, they may agree between them how that amount is to be allocated.
- (8) In this section references to “A” and “B” and “underlying assets” must be read in accordance with section 778(1).

### *Company ceasing to be member of group*

### **780 Deemed realisation and reacquisition at market value**

- (1) This section applies if—



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- (a) a company (“the transferor”) that is a member of a group (“the group”) transfers an intangible fixed asset (“the relevant asset”) to another company (“the transferee”),
  - (b) immediately before the transfer the relevant asset is a chargeable intangible asset in relation to the transferor,
  - (c) immediately after the transfer the relevant asset is a chargeable intangible asset in relation to the transferee,
  - (d) the transferee—
    - (i) is a member of the group at the time of the transfer, or
    - (ii) subsequently becomes a member of the group,
  - (e) the transferee ceases to be a member of the group during the period of 6 years after the date of the transfer, and
  - (f) when the transferee ceases to be a member of the group, the relevant asset is held by the transferee or an associated company (see section 788(3)) also leaving the group.
- (2) This Part applies as if the transferee—
- (a) had realised the relevant asset immediately after its transfer to the transferee for its market value at that time, and
  - (b) had immediately reacquired the asset at that value.
- (3) The adjustments to be made as a result of subsection (2), by the transferee or a company to which the relevant asset has been subsequently transferred, in relation to the relevant period must be made by bringing the total net credit or debit into account as if it had arisen immediately before the transferee ceased to be a member of the group.
- (4) In subsection (3) “the relevant period” means the period between—
- (a) the transfer of the relevant asset to the transferee, and
  - (b) the transferee ceasing to be a member of the group.
- (5) This section is subject to—
- (a) section 782 (certain transferees of businesses etc not treated as leaving group),
  - (b) section 783 ( <sup>F26</sup>certain ] associated companies leaving group at the same time),
  - (c) section 785 (principal company becoming member of another group),
  - (d) section 787 (company ceasing to be member of group because of exempt distribution), and
  - (e) section 789 (merger carried out for genuine commercial reasons).
- (6) See section 788 (provisions supplementing this section and sections 781 to 787) for the interpretation of certain expressions used in this section or those sections.
- (7) For the way in which Chapter 7 applies if a company is treated as having realised an asset as a result of this section, see section 791 (application of roll-over relief in relation to degrouping charge).

#### Textual Amendments

- F26** Word in s. 780(5)(b) inserted (19.7.2011) (with effect in accordance with Sch. 10 para. 9 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 10 para. 7\(2\)](#)

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#### **Modifications etc. (not altering text)**

- C7** S. 780 applied (with effect in accordance with reg. 1(3) of the amending S.I.) by [Mutual Societies \(Transfers of Business\) \(Tax\) Regulations 2009 \(S.I. 2009/2971\)](#), regs. 1(1), **13(6)**, **29(6)**
- C8** S. 780 excluded (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), **Sch. 17 para. 24(3)**

### **781 Character of credits and debits brought into account as a result of section 780**

- (1) For the purposes of Chapter 6 (how credits and debits are given effect) credits or debits brought into account as a result of section 780 take their character from the purposes for which the relevant asset was held by the transferee immediately after the transfer.
- (2) But subsection (1) does not apply if conditions A and B are met.
- (3) Condition A is that immediately after the transfer the relevant asset was held by the transferee for the purposes of a trade, business or concern within section 747, 748 or 749.
- (4) Condition B is that the transferee ceased to carry on that trade, business or concern before it ceased to be a member of the group.
- (5) If conditions A and B are met, a credit or debit brought into account because of section 780 is treated for the purposes of Chapter 6 as a non-trading credit or debit.
- (6) References in this section to “the transferee” and the relevant asset” must be read in accordance with section 780.

### **782 Certain transferees of businesses etc not treated as leaving group**

- (1) This section applies if—
  - (a) the relevant asset is transferred in the course of a transfer of business to which section 820 applies or which includes such a transfer as is mentioned in [F27 section 116(2)(b)(iii) of TIOPA 2010] and in respect of which [F28 section 117] of that Act applies (European cross-border transfers of business), and
  - (b) in consequence of the transfer the transferee ceases to be a member of a group (“Group 1”).
- (2) For the purposes of section 780, the transferee is not treated as having left Group 1.
- (3) If as a result of the transfer the transferee becomes a member of another group (“Group 2”), it is treated for the purposes of section 780 as if Group 1 and Group 2 were the same.
- (4) References in this section to “the transferee” and “the relevant asset” must be read in accordance with section 780.

#### **Textual Amendments**

- F27** Words in s. 782(1)(a) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 8 para. 94(a)** (with Sch. 9 paras. 1-9, 22)

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**F28** Words in s. 782(1)(a) substituted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 94(b)** (with Sch. 9 paras. 1-9, 22)

## 783 [F29 Certain associated] companies leaving group at the same time

[F30(1) Where two companies cease to be members of a group at the same time, section 780 does not apply in relation to a transfer by one of the companies to the other if condition A or B is met.

(1A) Condition A is that the companies—

- (a) are both 75% subsidiaries and effective 51% subsidiaries of another company on the date of the transfer, and
- (b) remain both 75% subsidiaries and effective 51% subsidiaries of that other company until immediately after they cease to be members of the group.

(1B) Condition B is that one of the companies—

- (a) is both a 75% subsidiary and an effective 51% subsidiary of the other on the date of the transfer, and
- (b) remains both a 75% subsidiary and an effective 51% subsidiary of the other until immediately after the companies cease to be members of the group.]

(2) This subsection applies if—

- (a) a company (“the transferee”) that is a member of a group of companies (“the first group”) acquires an asset from another company (“the transferor”) which is a member of that group at the time of the transfer,
- (b) the transferee ceases to be a member of the first group,
- (c) subsection (1) applies in relation to the transferee ceasing to be a member of the first group (so that section 780 does not apply),
- (d) the transferee subsequently ceases to be a member of another group of companies (“the second group”), and
- (e) there is a relevant connection between the two groups (see section 784).

(3) If subsection (2) applies, section 780 applies in relation to the transferee ceasing to be a member of the second group as if both companies had been members of the second group at the time of the transfer.

(4) This section is subject to section 789 (merger carried out for genuine commercial reasons).

### Textual Amendments

**F29** Words in s. 783 heading substituted (19.7.2011) (with effect in accordance with Sch. 10 para. 9 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 10 para. 7(3)**

**F30** S. 783(1)-(1B) substituted (19.7.2011) for s. 783(1) (with effect in accordance with Sch. 10 para. 9 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 10 para. 7(3)**

## 784 Groups with a relevant connection

(1) For the purposes of section 783(2) there is a relevant connection between the first group and the second group if, at the time when the transferee ceases to be a member

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of the second group, the company which is the principal company of that group is under the control of—

- (a) a person within subsection (2),
  - (b) a person or persons within subsection (3), or
  - (c) a person or persons within subsection (4).
- (2) A person is within this subsection if it is the company—
- (a) that is the principal company of the first group, or
  - (b) if that group no longer exists, that was its principal company when the transferee ceased to be a member of it.
- (3) A person or persons are within this subsection if they—
- (a) control the company within subsection (2), or
  - (b) have had it under their control at any time in the period since the transferee ceased to be a member of the first group.
- (4) A person or persons are within this subsection if they have, at any time in that period, had under their control either—
- (a) a company that would have fallen within subsection (3) if it had continued to exist, or
  - (b) a company to which subsection (5) applies.
- (5) This subsection applies to a company if, had the company continued to exist—
- (a) it would have fallen within subsection (4) because of its control of another company that would have fallen within subsection (3) if that other company had continued to exist, or
  - (b) it would have fallen within subsection (4) because of its control of a company to which paragraph (a) or this paragraph would have applied.
- [<sup>F31</sup>(6) For the purposes of this section “control” is to be read in accordance with sections 450 and 451 of CTA 2010 (close companies: meaning of control).]
- (7) But a person carrying on a business of banking is not treated for those purposes as having control of a company just because of—
- (a) having any rights in respect of loan capital or debt issued or incurred by the company for money lent by that person to the company in the ordinary course of that business, or
  - (b) the consequences of having exercised such rights.
- (8) References in this section to “the first group”, “the second group” and “the transferee” must be read in accordance with section 783.

#### Textual Amendments

**F31** S. 784(6) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 650](#) (with [Sch. 2](#))

### 785 Principal company becoming member of another group

- (1) Section 780 does not apply if a company ceases to be a member of a group just because the principal company of the group becomes a member of another group (“the second group”).

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*Status: Point in time view as at 01/09/2013.*

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- (2) This subsection applies if—
  - (a) section 780 would have applied but for subsection (1),
  - (b) after the transfer and before the end of the period of 6 years after the date of the transfer, the transferee ceases to meet the condition that it is both a 75% subsidiary and an effective 51% subsidiary of one or more members of the second group (“the qualifying condition”), and
  - (c) at the time at which the transferee ceases to do so, the relevant asset is held by the transferee or another company in the same group.
- (3) If subsection (2) applies, this Part applies as if immediately after the transfer to the transferee of the relevant asset the transferee had—
  - (a) realised the asset for its market value at that time, and
  - (b) immediately reacquired the asset at that value.
- (4) The adjustments to be made as a result of subsection (3), by the transferee or a company to which the relevant asset has been subsequently transferred, in relation to the relevant period must be made by bringing the total net credit or debit into account as if it had arisen immediately before the transferee ceased to meet the qualifying condition.
- (5) In subsection (4) “the relevant period” means the period between—
  - (a) the transfer of the relevant asset to the transferee, and
  - (b) the transferee ceasing to meet the qualifying condition.
- (6) This section is subject to section 789 (merger carried out for genuine commercial reasons).
- (7) References in this section to “the transferee” and “the relevant asset” must be read in accordance with section 780.
- (8) For the way in which Chapter 7 applies if a company is treated as having realised an asset as a result of this section, see section 791 (application of roll-over relief in relation to degrouping charge).

## **786 Character of credits and debits brought into account as a result of section 785**

- (1) For the purposes of Chapter 6 (how credits and debits are given effect) credits or debits brought into account because of section 785 take their character from the purposes for which the relevant asset was held by the transferee immediately after the transfer.
- (2) But subsection (1) does not apply if conditions A and B are met.
- (3) Condition A is that immediately after the transfer the asset was held by the transferee for the purposes of a trade, business or concern within section 747, 748 or 749.
- (4) Condition B is that the transferee ceased to carry on that trade, business or concern before it ceased to meet the qualifying condition.
- (5) If conditions A and B are met, a credit or debit brought into account because of section 785 is treated for the purposes of Chapter 6 as a non-trading credit or debit.
- (6) References in this section to “the transferee” and the relevant asset” must be read in accordance with section 780.

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## 787 Company ceasing to be member of group because of exempt distribution

- (1) Sections 780 and 785 do not apply if a company ceases to be a member of a group just because of an exempt distribution, unless subsection (2) applies.
- (2) This subsection applies if there is a chargeable payment within 5 years after the making of the exempt distribution.
- (3) If subsection (2) applies, all such adjustments as may be required, by way of assessment, amendment of returns or otherwise, may be made within the period of 3 years after the making of the chargeable payment.
- (4) Those adjustments may be made despite any time limit on the making of an assessment or the amendment of a return.
- (5) In this section—
  - “exempt distribution” means a distribution that is exempt because of [<sup>F32</sup>section 1076 or 1077 of CTA 2010] (distributions involving shares in 75% subsidiaries), and
  - “chargeable payment” has the meaning given in [<sup>F33</sup>section 1088(1) of CTA 2010].
- (6) Subsections (7) and (8) apply for determining for the purposes of this section whether one company is a 75% subsidiary of another company.
- (7) The other company is treated as not being the owner of any share capital that it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade.
- (8) The other company is treated as not being the owner of any share capital that—
  - (a) it owns indirectly, and
  - (b) is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.

### Textual Amendments

- F32** Words in s. 787(5) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 651\(a\)](#) (with [Sch. 2](#))
- F33** Words in s. 787(5) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 651\(b\)](#) (with [Sch. 2](#))

## 788 Provisions supplementing sections 780 to 787

- (1) References in sections 780 to 787 (degrouching) to a company ceasing to be a member of a group do not include cases where a company ceases to be a member of a group in consequence of another member of the group ceasing to exist.
- (2) For the purposes of those sections an asset acquired by a company is treated as the same as an asset owned at a later time by that company or an associated company if the value of the second asset is derived in whole or in part from the first asset.
- [<sup>F34</sup>(3) For the purposes of those sections and this section two companies are associated with each other if one is a 75% subsidiary of the other or both are 75% subsidiaries of another company.]

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### Textual Amendments

**F34** S. 788(3) substituted (19.7.2011) (with effect in accordance with Sch. 10 para. 9 of the amending Act) by Finance Act 2011 (c. 11), Sch. 10 para. 7(4)

## 789 Merger carried out for genuine commercial reasons

- (1) Sections 780 to 787 do not apply if—
  - (a) the transferee ceases to be a member of a group of companies (“the group”) as part of a merger,
  - (b) the merger is carried out for genuine commercial reasons, and
  - (c) the avoidance of liability to tax is not the main purpose of the merger or one of its main purposes.
- (2) For this purpose “merger” means an arrangement in respect of which each of conditions A to D is met.
- (3) Condition A is that—
  - (a) as a result of the arrangement one or more companies (“the acquiring company” or “the acquiring companies”) acquire one or more interests in the whole or part of the business which, before the arrangement took effect, was carried on by the transferee,
  - (b) the acquiring company is not a member of the group or, as the case may be, none of the acquiring companies is such a member,
  - (c) at least 25% by value of each of the interests acquired consists of a holding of ordinary share capital, and
  - (d) the acquisition is not with a view to the disposal of the interests.
- (4) Condition B is that—
  - (a) as a result of the arrangement one or more members of the group acquire one or more interests in the whole or part of the business or each of the businesses which, before the arrangement took effect, was carried on—
    - (i) by the acquiring company or acquiring companies, or
    - (ii) by a company at least 90% of whose ordinary share capital was then beneficially owned by two or more of the acquiring companies,
  - (b) at least 25% by value of each of the interests acquired consists of a holding of ordinary share capital,
  - (c) the remainder of the interest, or as the case may be of each of the interests, acquired consists of a holding of share capital (of any description) or debentures or both, and
  - (d) the acquisition is not with a view to the disposal of the interests.
- (5) Condition C is that the value or, as the case may be, the total value of the interest or interests acquired as mentioned in subsection (3) is substantially the same as the value or, as the case may be, the total value of the interest or interests acquired as mentioned in subsection (4).
- (6) Condition D is that the consideration for the acquisition of the interest or interests acquired by the acquiring company or acquiring companies as mentioned in subsection (3)—

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- (a) consists of, or is applied in the acquisition of, the interest or interests acquired by members of the group as mentioned in subsection (4), or
- (b) consists partly of, and as to the balance is applied in the acquisition of, that interest or those interests.

(7) Section 790 supplements this section.

#### **790 Provisions supplementing section 789**

- (1) In section 789 “arrangement” includes a series of arrangements.
- (2) For the purposes of section 789(3) and (4) a member of a group of companies is treated as carrying on as one business the activities of that group.
- (3) For the purposes of section 789(3)(c), (4)(b) and (5) the value of an interest is determined as at the date of its acquisition.
- (4) For the purposes of section 789(6), any part of the consideration for the acquisition which is small by comparison with the total is ignored.

#### **791 Application of roll-over relief in relation to degrouping charge**

- (1) Chapter 7 (roll-over relief in case of realisation and reinvestment) applies with the modifications specified in subsections (2) to (4) if a company is treated as having realised an asset as a result of section 780 or 785 (degrouping).
- (2) In section 755 (conditions relating to the old asset), for the references to the old asset being a chargeable intangible asset in relation to the company substitute references to its being a chargeable intangible asset in relation to the transferor.
- (3) In section 756(1) (conditions relating to expenditure on other assets), for the references to the date of realisation of the old asset substitute—
  - (a) in a case within section 780, references to the date on which the transferee ceased to be a member of the group, and
  - (b) in a case within section 785, references to the date on which the transferee ceased to meet the qualifying condition.
- (4) For references in Chapter 7 to the proceeds of realisation substitute references to the amount for which the transferee is treated as having realised the asset.
- (5) A reduction of that amount as a result of a claim for relief under Chapter 7 does not affect the value at which the company is treated as having reacquired the asset.
- (6) In this section “the transferee” and “the transferor” have the same meaning as in section 780.

*Reallocation of degrouping charge within group and recovery*

#### **792 Reallocation of charge within group**

- (1) This section applies if a chargeable realisation gain (see section 741) accrues to a company (“A”) under section 780 or 785 in respect of an asset.



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- (2) A and a company (“B”) that was a member of the relevant group at the relevant time may jointly elect that the gain, or such part of it as may be specified in the election, must be treated as accruing to B, and not A.
- (3) In a case within section 780—
  - (a) “the relevant group” is the group of which A was a member at the relevant time, and
  - (b) “the relevant time” is immediately before A ceases to be a member of the group.
- (4) In a case within section 785—
  - (a) “the relevant group” is the second group (within the meaning of that section), and
  - (b) “the relevant time” is immediately before A ceases to meet the qualifying condition (within the meaning of that section).
- (5) The effect of the election is that the gain, or the part specified in the election, is treated—
  - (a) as if it had accrued to B at the relevant time as a non-trading credit for the purposes of Chapter 6 (how credits and debits are given effect), and
  - (b) if B is not UK resident at the relevant time, as if it had accrued in respect of an asset held for the purposes of a permanent establishment of B in the United Kingdom.
- (6) Section 793 makes further provision about elections under this section.
- (7) Section 794 makes provision for enabling claims under Chapter 7 to be made by B.
- (8) In sections 793 and 794 references to “A” and “B” and “the relevant time” must be read in accordance with this section.

### **793 Further requirements about elections under section 792**

- (1) An election under section 792 may be made only if subsection (2) or (3) applies to B.
- (2) This subsection applies if at the relevant time B was UK resident.
- (3) This subsection applies if at the relevant time—
  - (a) B carried on a trade in the United Kingdom through a permanent establishment, and
  - (b) B was not exempt from corporation tax in respect of the income or chargeable gains of that permanent establishment because of [<sup>F35</sup>arrangements that have effect under section 2(1) of TIOPA 2010] (double taxation relief).
- (4) An election under section 792 may not be made if at the relevant time B was—
  - (a) a qualifying society within the meaning of section 461A of ICTA (incorporated friendly societies entitled to exemption from tax), or
  - (b) a dual resident investing company within the meaning of [<sup>F36</sup>section 949 of CTA 2010 (dual resident investing companies)].
- (5) An election under section 792 may only be made—
  - (a) by notice in writing to an officer of Revenue and Customs, and

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- (b) not later than 2 years after the end of the accounting period of A in which the relevant time falls.

#### Textual Amendments

- F35** Words in s. 793(3)(b) substituted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 95** (with Sch. 9 paras. 1-9, 22)
- F36** Words in s. 793(4)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 652** (with Sch. 2)

### 794 Application of roll-over relief in relation to reallocated charge

- (1) This section applies where an election has been made under section 792 for the purpose of enabling B to make a claim under Chapter 7 (roll-over relief on realisation and reinvestment).
- (2) Chapter 7 applies as if the realisation of the asset treated as occurring under section 780 or 785 had been by B, and not A.
- (3) The conditions in section 755 (conditions relating to the old asset) are treated as met in relation to the asset if they would have been met if there had been no election and A had made the claim.
- (4) The proceeds of realisation and the cost of the old asset recognised for tax purposes are what they would have been if there had been no election and A had made the claim.
- (5) If the election relates to only part of the gain on the realisation of an asset treated as occurring under section 780 or 785, Chapter 7 and this section apply as if the realisation treated as occurring had been of a separate asset representing a corresponding part of the asset.
- (6) If subsection (5) applies, any necessary apportionments must be made accordingly.

### 795 Recovery of charge from another group company or controlling director

- (1) This section applies if—
  - (a) a company (“A”) is liable to a degrouping charge,
  - (b) an amount of corporation tax has been assessed on A for the relevant accounting period, and
  - (c) the whole or part of that amount is unpaid at the end of the period of 6 months after the time when it became payable.
- (2) An officer of Revenue and Customs may serve a notice on the persons to whom this subsection applies (see subsections (3) and (4)) requiring them to pay the lesser of—
  - (a) the amount of corporation tax referable to the degrouping charge (see section 796(2)), or
  - (b) the amount that remains unpaid of the corporation tax payable for the relevant accounting period by A.
- (3) If A was a member of a group at the relevant time, subsection (2) applies to—
  - (a) a company that was at that time the principal company of the group, and

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- (b) any other company that at any time in the period of 12 months ending with the relevant time—
  - (i) was a member of that group, and
  - (ii) owned the relevant asset or any part of it.
- (4) If at the relevant time A is not UK resident but carries on a trade in the United Kingdom through a permanent establishment, subsection (2) applies to any person who is a controlling director—
  - (a) of A,
  - (b) of a company that has control of A,
  - (c) of a company that had control of A within the period of 12 months ending with the relevant time,or was such a controlling director during that period.
- (5) Section 796 applies for the interpretation of this section and in that section references to “A” must be read in accordance with this section.

## **796 Interpretation of section 795**

- (1) For the purposes of section 795 and this section—
  - “the relevant accounting period” is the accounting period in which the degrouping charge falls to be brought into account by A,
  - “the relevant time” is—
    - (a) in a case within section 780, when A ceased to be a member of the group,
    - (b) in a case within section 785, when A ceased to meet the qualifying condition (within the meaning of that section), and
    - (c) if there has been an election under section 792, the time that would have been the relevant time under paragraph (a) or (b) had there been no such election, and
  - “the relevant asset” is the asset in respect of which the degrouping charge arises.
- (2) For the purposes of section 795 the amount of corporation tax referable to a degrouping charge is the difference between—
  - (a) the tax in fact payable for the relevant accounting period, and
  - (b) the tax that would have been payable for that period in the absence of the degrouping charge.
- (3) References in section 795 and this section to a degrouping charge are to—
  - (a) a credit required to be brought into account under section 780(3) or 785(4), or
  - (b) if there has been an election under section 792, a credit required to be brought into account as a result of the election.
- (4) In section 795 and this section—
  - “director”, in relation to a company—
    - (a) has the meaning given by section 67(1) of ITEPA 2003 (read with section 67(2) of that Act) and
    - (b) includes any person falling within [F37section 452(1) of CTA 2010] ,
  - “controlling director”, in relation to a company, means a director of the company who has control of it, and

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“group” and “principal company” have the meaning that would be given by Chapter 8 if in that Chapter for references to 75% subsidiaries there were substituted references to 51% subsidiaries.

- (5) In subsection (4) “control” [F38] is to be read in accordance with sections 450 and 451 of CTA 2010].

#### Textual Amendments

- F37** Words in s. 796(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 653(2)** (with Sch. 2)
- F38** Words in s. 796(5) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 653(3)** (with Sch. 2)

### 797 Recovery under section 795: procedure etc

- (1) A notice served under section 795(2) may require the payment of the amount required to be paid by the notice within 30 days of the service of the notice.
- (2) The notice must state—
  - (a) the amount of the tax referable to the degrouping charge (within the meaning given in section 796(2)),
  - (b) the amount of corporation tax assessed on A for the relevant accounting period that remains unpaid,
  - (c) the date when it first became payable, and
  - (d) the amount required to be paid by the person on whom the notice is served.
- (3) The notice has effect—
  - (a) for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and
  - (b) for the purposes of appeals,
 as if it were a notice of assessment and that amount were an amount of tax due from that person.
- (4) A person who has paid an amount required to be paid by a notice under section 795(2) may recover the amount paid from A.
- (5) A payment required to be made by such a notice is not allowed as a deduction in calculating any income, profits or losses for any tax purposes.
- (6) In this section “A” and “the relevant accounting period” have the same meaning as in section 795 (see section 795(1) and section 796(1) respectively).

### 798 Recovery under section 795: time limit

- (1) A notice under section 795(2) must be served before the end of the period of 3 years beginning with the date on which A's liability to corporation tax for the relevant accounting period is finally determined.
- (2) In subsection (1) “A” and “the relevant accounting period” have the same meaning as in section 795 (see section 795(1) and section 796(1) respectively).

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- (3) If the unpaid tax is charged because of a determination under paragraph 36 or 37 of Schedule 18 to FA 1998 (determination where no return delivered or return incomplete), the date mentioned in subsection (1) is the date on which the determination was made.
- (4) If the unpaid tax is charged in a self-assessment, the date mentioned in subsection (1) is the latest of—
- (a) the last date on which notice of enquiry may be given into the return containing the self-assessment,
  - (b) if notice of enquiry is given, 30 days after the enquiry is completed,
  - (c) if more than one notice of enquiry is given, 30 days after the last notice of completion,
  - (d) if after such an enquiry an officer of Revenue and Customs amends the return, 30 days after notice of the amendment is issued, and
  - (e) if an appeal is brought against such an amendment, 30 days after the appeal is finally determined.
- (5) If the unpaid tax is charged in a discovery assessment, the date mentioned in subsection (1) is—
- (a) if there is no appeal against the assessment, the date when the tax becomes due and payable, and
  - (b) if there is such an appeal, the date on which the appeal is finally determined.
- (6) In this section—
- “self-assessment” includes a self-assessment that supersedes a determination as a result of paragraph 40 of Schedule 18 to FA 1998, and
  - “discovery assessment” means an assessment under paragraph 41(1) of that Schedule.

*Disregard of payments between group members for reliefs*

**799 Disregard of payments between group members for reliefs**

- (1) If a payment for group roll-over relief or for the reallocation of a degrouping charge does not exceed the amount of the relevant relief—
- (a) it is not taken into account in calculating profits or losses of either of the companies involved for corporation tax purposes, and
  - (b) it is not a distribution for any of the purposes of the Corporation Tax Acts.
- (2) A payment for group roll-over relief is a payment made—
- (a) in connection with a claim for relief under Chapter 7 (roll-over relief in case of realisation and reinvestment) made because of—
    - (i) section 777 (relief on realisation and reinvestment: application to group member), or
    - (ii) section 779 (rules that apply to cases within section 778(1)),
  - (b) by the company whose proceeds of realisation are reduced as a result of the claim,
  - (c) to a company whose acquisition costs are reduced (in a case within section 777) or the tax written-down value of whose assets is reduced (in a case within section 779) as a result of the claim, and

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- (d) in accordance with an agreement between those companies in connection with the claim.
- (3) A payment for the reallocation of a degrouping charge is a payment made—
- (a) in connection with an election under section 792 (reallocation of charge within group),
  - (b) by the company to which the chargeable realisation gain accrues,
  - (c) to the company to which as a result of the election the whole or part of that gain is treated as accruing, and
  - (d) in accordance with an agreement between those companies in connection with the election.
- (4) In the case of a payment in connection with such a claim for relief as is mentioned in section 777(3), the amount of the relevant relief is the amount of the reduction, as a result of the claim, in the acquisition costs of the company to which the payment is made.
- (5) In the case of a payment in connection with such a claim for relief as is mentioned in section 778(4), the amount of the relevant relief is the amount of the reduction, as a result of the claim, in the tax written-down value of the assets of the company to which the payment is made.
- (6) In the case of a payment in connection with an election under section 792, the amount of the relevant relief is the amount treated as a result of the election as accruing to the company to which the payment is made.

## CHAPTER 10

### EXCLUDED ASSETS

#### *Introductory*

#### **800 Introduction**

- (1) This Chapter provides for the exclusion from this Part of certain assets.
- (2) This Chapter provides for 3 kinds of exclusion—
- (a) assets within sections 803 to 809 are wholly excluded from this Part,
  - (b) assets within sections 810 to 813 are excluded from this Part except as respects royalties, and
  - (c) assets within section 814 or 815 are excluded from this Part to the extent specified in that section.
- (3) For further rules about the exclusion of assets from this Part, see—
- (a) Chapter 16 (pre-FA 2002 assets etc), <sup>F39</sup> ...
  - <sup>F39</sup>(b) .....

#### **Textual Amendments**

**F39** S. 800(3)(b) and the word immediately preceding it omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 174](#)

*Status: Point in time view as at 01/09/2013.*

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### **801 Right to dispose of or acquire excluded asset also excluded**

So far as an asset of any description is excluded from this Part by this Chapter, an option or other right to acquire or dispose of an asset of that description is similarly excluded.

### **802 Effect of partial exclusion**

- (1) If because of any of sections 803 to 815 an asset is excluded to the extent that—
  - (a) it represents particular rights,
  - (b) it is an asset of a particular description,
  - (c) it is held for particular purposes, or
  - (d) it represents expenditure of a particular kind,this Part applies as if there were a separate asset representing so much of the asset as is not so excluded.
- (2) The other provisions of the Corporation Tax Acts apply as if there were a separate asset representing so much of the asset as is excluded.
- (3) Any apportionment necessary for the purposes of this section must be made on a just and reasonable basis.

*Assets wholly excluded from this Part*

### **803 Non-commercial purposes etc**

This Part does not apply to an intangible fixed asset so far as it is held—

- (a) for a purpose that is not a business or other commercial purpose of the company, or
- (b) for the purpose of activities in respect of which the company is not within the charge to corporation tax [<sup>F40</sup>, otherwise than as a result of Chapter 3A of Part 2].

#### **Textual Amendments**

**F40** Words in s. 803(b) inserted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 13 paras. 6, 31](#)

### **804 Assets for which capital allowances previously made**

- (1) This Part does not apply to an intangible asset of a company if conditions A, B and C are met.
- (2) Condition A is that the asset falls to be treated as an intangible asset in accounts of the company.
- (3) Condition B is that in a previous period of account the asset fell to be treated as a tangible asset in accounts of the company.
- (4) Condition C is that an allowance under Part 2 of CAA 2001 (plant and machinery allowances) was made to the company in respect of the asset on the basis that it was a tangible asset.

*Status: Point in time view as at 01/09/2013.*

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## 805 Rights over tangible assets

This Part does not apply to an intangible fixed asset so far as it represents—

- (a) rights enjoyed by virtue of an estate, interest or right in or over land, or
- (b) rights in relation to tangible movable property.

## 806 Financial assets

- (1) This Part does not apply to financial assets.
- (2) In this Part “financial asset” has the same meaning as it has for accounting purposes.
- (3) “Financial asset” includes—
  - (a) loan relationships (see Parts 5 and 6),
  - (b) derivative contracts (see Part 7),
  - (c) contracts or policies of insurance or capital redemption policies,
  - [<sup>F41</sup>(ca) assets so far as they are derived from, or are referable to, contracts or policies of insurance or capital redemption policies,] and
  - (d) rights under a collective investment scheme within the meaning of FISMA 2000 (see section 235 of that Act).

### Textual Amendments

**F41** S. 806(3)(ca) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 175](#)

## 807 Rights in companies, trusts etc

- (1) This Part does not apply to an asset so far as it represents—
  - (a) shares or other rights in relation to the profits, governance or winding up of a company,
  - (b) rights under a trust, or
  - (c) the interest of a partner in a firm.
- (2) Subsection (1)(b) does not apply to rights that for accounting purposes fall to be treated as representing an interest in trust property that is an intangible fixed asset to which this Part applies.
- (3) Subsection (1)(c) does not apply to an interest that for accounting purposes falls to be treated as representing an interest in partnership property that is an intangible fixed asset to which this Part applies.

## 808 Assets representing production expenditure on films

- (1) This Part does not apply to an intangible fixed asset held by a film production company so far as it represents production expenditure on a film to which Chapter 2 of Part 15 (taxation of activities of film production company) applies.
- (2) In this section—
  - (a) “film” has the same meaning as in Part 15 (see section 1181),
  - (b) “film production company” has the same meaning as in that Part (see section 1182), and



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- (c) “production expenditure” has the same meaning as in that Part (see section 1184(1)).

#### **[<sup>F42</sup>808A Assets representing production expenditure on certain TV programmes**

- (1) This Part does not apply to an intangible fixed asset held by a television production company so far as it represents production expenditure on a television programme to which Chapter 2 of Part 15A (taxation of activities of television production company) applies.
- (2) In this section—
- (a) “television programme” has the same meaning as in Part 15A (see section 1216AA),
- (b) “television production company” has the same meaning as in that Part (see section 1216AE), and
- (c) “production expenditure” has the same meaning as in that Part (see section 1216AG(2)).

#### **Textual Amendments**

**F42** Ss. 808A, 808B inserted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 18 paras. 9, 22](#); S.I. 2013/1817, art. 2(2)

#### **808B Assets representing core expenditure on video games**

- (1) This Part does not apply to an intangible fixed asset held by a video games development company so far as it represents core expenditure on a video game to which Chapter 2 of Part 15B (taxation of activities of video games development company) applies.
- (2) In this section—
- (a) “video game” has the same meaning as in Part 15B (see section 1217AA),
- (b) “video games development company” has the same meaning as in that Part (see section 1217AB), and
- (c) “core expenditure” has the same meaning as in that Part (see section 1217AD).]

#### **Textual Amendments**

**F42** Ss. 808A, 808B inserted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 18 paras. 9, 22](#); S.I. 2013/1817, art. 2(2)

#### **809 Oil licences**

- (1) This Part does not apply to an oil licence or an interest in an oil licence.

[<sup>F43</sup>(1A) The reference in subsection (1) to an oil licence or an interest in an oil licence includes all goodwill, and any intangible asset, which relates to, derives from or is connected with an oil licence or an interest in an oil licence.]

- (2) In [<sup>F44</sup>this section] “oil licence” means a UK oil licence or a foreign oil concession.

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- (3) In this section—
  - “UK oil licence” means a licence under—
    - (a) Part 1 of the Petroleum Act 1998 (c. 17) (“the 1998 Act”), or
    - (b) the Petroleum Production (Northern Ireland) Act 1964 (c. 28 (N.I.)) (“the 1964 Act”),
 authorising the winning of oil, and
    - “foreign oil concession” means any right that—
      - (a) is a right to search for or win oil that exists in its natural condition in a place to which neither the 1998 Act nor the 1964 Act applies, and
      - (b) is conferred or exercisable (whether or not under a licence) in relation to a particular area.
- (4) In [<sup>F45</sup>this section] “interest in an oil licence” includes any entitlement under an agreement to, or to a share of, oil or the proceeds of its sale if the agreement—
  - (a) relates to oil from the whole or a part of the licensed area, and
  - (b) was made before the extraction of the oil to which it relates.
- (5) In subsection (4)(a) “licensed area” means—
  - (a) in relation to a UK oil licence, the area to which the licence applies, and
  - (b) in relation to a foreign oil concession, the area in relation to which the right to search for or win oil is conferred or exercisable under the concession.
- (6) In this section “oil”—
  - (a) in relation to a UK oil licence, means any substance won or capable of being won under the authority of a licence granted under Part 1 of the 1998 Act or the 1964 Act, other than methane gas won in the course of making and keeping mines safe, and
  - (b) in relation to a foreign oil concession, means any petroleum (as defined in section 1 of the 1998 Act).

**Textual Amendments**

**F43** S. 809(1A) inserted (19.7.2011) (with effect in accordance with s. 62(5)(6) of the amending Act) by [Finance Act 2011 \(c. 11\), s. 62\(2\)](#)

**F44** Words in s. 809(2) substituted (19.7.2011) (with effect in accordance with s. 62(5)(6) of the amending Act) by [Finance Act 2011 \(c. 11\), s. 62\(3\)](#)

**F45** Words in s. 809(4) substituted (19.7.2011) (with effect in accordance with s. 62(5)(6) of the amending Act) by [Finance Act 2011 \(c. 11\), s. 62\(4\)](#)

*Assets excluded from this Part except as respects royalties*

**810 Mutual trade or business**

- (1) Except as respects royalties, this Part does not apply to an intangible fixed asset so far as it is held for the purposes of any mutual trade or business.
- <sup>F46</sup>(2) .....

*Status: Point in time view as at 01/09/2013.*

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### Textual Amendments

**F46** S. 810(2) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 176](#)

## 811 Sound recordings

- (1) Except as respects royalties, this Part does not apply to an intangible fixed asset held by a company so far as it represents expenditure by the company on the production or acquisition of the master version of a sound recording.
- (2) For this purpose—
  - (a) “sound recording” does not include a film soundtrack,
  - (b) “master version” means master tape or master audio disc of the recording, and
  - (c) references to the master version include any rights in the master version that are held or acquired with it.

## 812 Master versions of films

- (1) Except as respects royalties, this Part does not apply to an intangible fixed asset held by a company so far as it represents expenditure by the company—
  - (a) on the production of the original master version of a film that began principal photography before 1 January 2007, or
  - (b) on the acquisition before 1 October 2007 of such an original master version.
- (2) In this section—
  - (a) “film” has the same meaning as in Part 15 (see section 1181),
  - (b) “original master version” means the original negative, tape or disc, and
  - (c) references to the original master version of a film include—
    - (i) the original master version of the film soundtrack, if any, and
    - (ii) any rights in the original master version that are held or acquired with it.

### Modifications etc. (not altering text)

**C9** S. 812 applied (with modifications) by S.I. 2007/1050, regs. 3-12 (as amended (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 2 para. 131](#) (with [Sch. 2 Pts. 1, 2](#)))

## 813 Computer software treated as part of cost of related hardware

Except as respects royalties, this Part does not apply to an intangible fixed asset held by a company so far as it represents expenditure by the company on computer software that falls to be treated for accounting purposes as part of the costs of the related hardware.

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*Assets excluded from this Part to the extent specified*

**814 Research and development**

- (1) This section applies to an intangible fixed asset held by a company so far as it represents expenditure by the company on research and development.
- (2) Chapter 2 (credits in respect of intangible fixed assets) does not apply to the asset, except for—
  - (a) section 721 (receipts recognised as they accrue), and
  - (b) section 722 (receipts in respect of royalties so far as not dealt with under section 721).
- (3) Chapter 3 (debits in respect of intangible fixed assets) does not apply to the asset, except for section 732 (debit on reversal of previous accounting gain) so far as that section relates to credits previously brought into account under section 721 or 722.
- (4) Chapter 4 (realisation of intangible fixed assets) applies to the asset as if its cost did not include any expenditure on research and development.
- (5) In this section “research and development” has the meaning given by [<sup>F47</sup>section 1138 of CTA 2010] and includes oil and gas exploration and appraisal.

**Textual Amendments**

- F47** Words in s. 814(5) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 654** (with Sch. 2)

**815 Election to exclude capital expenditure on software**

- (1) If a company so elects in respect of capital expenditure by the company on computer software, this section applies to an intangible fixed asset held by the company so far as it represents the expenditure.
- (2) Chapter 2 (credits in respect of intangible fixed assets) does not apply to the asset, except for—
  - (a) section 721 (receipts recognised as they accrue), and
  - (b) section 722 (receipts in respect of royalties so far as not dealt with under section 721).
- (3) Chapter 3 (debits in respect of intangible fixed assets) does not apply to the asset, except for section 732 (debit on reversal of previous accounting gain) so far as that section relates to credits previously brought into account under section 721 or 722.
- (4) Chapter 4 (realisation of intangible fixed assets) applies as if the cost of the asset did not include any expenditure in respect of which an election under this section has been made.
- (5) A credit is required to be brought into account under this Part in respect of the asset only so far as the receipts to which the credit relates are not taken into account in calculating disposal values under section 72 of CAA 2001.
- (6) The references in this section and section 816—
  - (a) to capital expenditure, and

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(b) to the time when such expenditure is incurred,  
have the same meaning as if this section were in CAA 2001.

(7) Section 816 makes further provision about elections under this section.

<sup>F48</sup>(8) .....

#### Textual Amendments

**F48** S. 815(8) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 177](#)

### 816 Further provision about elections under section 815

- (1) An election under section 815 must specify the expenditure to which it relates.
- (2) The election must be made not more than 2 years after the end of the accounting period in which the expenditure was incurred.
- (3) The election must be made in writing to an officer of Revenue and Customs.
- (4) The election is irrevocable.

## CHAPTER 11

### TRANSFER OF BUSINESS OR TRADE

#### *Introduction*

### 817 Overview of Chapter

- (1) This Chapter contains provisions—
  - (a) treating some transfers of assets as tax-neutral transfers for the purposes of this Part (see sections 818, 820, 822, 824 and 826), and
  - (b) giving relief in respect of the transfer of assets to a non-UK resident company (see sections 827 to 830).
- (2) Sections 831 to 833 deal with the genuine commercial transaction requirement (which applies in some cases for the treatment mentioned in subsection (1)(a)).
- (3) For the consequences of a transfer being tax-neutral for the purposes of this Part, see section 776.

#### *Tax-neutral transfers*

### 818 Company reconstruction involving transfer of business

- (1) This section applies if—
  - (a) a scheme of reconstruction involves the transfer of the whole or part of the business of one company (“the transferor”) to another company (“the transferee”), and

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- (b) the transferor receives no part of the consideration for the transfer (otherwise than by the transferee taking over the whole or part of the liabilities of the business),  
but see subsections (3) to (5).
- (2) If the transfer includes intangible fixed assets that—
  - (a) are chargeable intangible assets in relation to the transferor immediately before the transfer, and
  - (b) are chargeable intangible assets in relation to the transferee immediately after the transfer,
 the transfer of those assets is tax-neutral for the purposes of this Part.
- (3) This section does not apply if the transfer is one to which section 775 (transfers within a group) applies.
- (4) This section does not apply if the transferor or the transferee is—
  - (a) a qualifying society within the meaning of section 461A of ICTA (incorporated friendly societies entitled to exemption from tax), or
  - (b) a dual resident investing company within the meaning of [F49section 949 of CTA 2010 (dual resident investing companies)].
- (5) This section applies only if the reconstruction meets the genuine commercial transaction requirement (see section 831).
- (6) In this section “scheme of reconstruction” has the same meaning as it has in section 136 of TCGA.

#### **Textual Amendments**

**F49** Words in s. 818(4)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 655** (with **Sch. 2**)

### **819 European cross-border transfers of business: introduction**

- (1) Section 820 applies if—
  - (a) condition A or B is met, and
  - (b) each of the companies mentioned in subsection (2)(a) or (3)(a) makes a claim under this section,
 but see section 820(2) and (3).
- (2) Condition A is that—
  - (a) an EU company resident in one member State transfers the whole or part of the business carried on by it in the United Kingdom to an EU company resident in another member State, and
  - (b) the transfer is wholly in exchange for securities issued by the transferee to the transferor.
- (3) Condition B is that—
  - (a) an EU company transfers part of its business to one or more EU companies,
  - (b) the transferor is resident in one member State,

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- (c) the part of the transferor's business which is transferred is carried on by the transferor in the United Kingdom,
  - (d) at least one transferee is resident in a member State other than that in which the transferor is resident,
  - (e) the transferor continues to carry on a business after the transfer, and
  - (f) the transfer—
    - (i) is made in exchange for the issue of shares in or debentures of each transferee to the persons holding shares in or debentures of the transferor, or
    - (ii) is not so made only because, and only so far as, a transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (c. 46) (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.
- (4) For the purposes of this Chapter, a company is resident in a member State if—
- (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
  - (b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.
- (5) In this section and section 820—
- (a) “company” means any entity listed as a company in [F50Part A of Annex I] to the Mergers Directive,
  - (b) “EU company” means a body incorporated under the law of a member State,
  - (c) “securities” includes shares,
  - (d) “transferee” has the same meaning as in subsection (2) or (3), and
  - (e) “the transferor” has the same meaning as in subsection (2) or (3).

#### Textual Amendments

**F50** Words in s. 819(5)(a) substituted (1.7.2011) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2011 \(S.I. 2011/1431\)](#), regs. 1(2), 4(6)

## 820 Transfer of assets on European cross-border transfer of business

- (1) If the transfer of business includes intangible fixed assets that—
- (a) are chargeable intangible assets in relation to the transferor immediately before the transfer, and
  - (b) are chargeable intangible assets in relation to the transferee immediately after the transfer,
- the transfer of those assets is tax-neutral for the purposes of this Part.
- (2) This section applies only if the transfer of the business or part meets the genuine commercial transaction requirement (see section 831).
- (3) This section does not apply if the transferor is a transparent entity.
- (4) In this section—
- “the transfer of business” means the transfer of business mentioned in section 819(2)(a) or (3)(a), and



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“transparent entity” means a company which is resident in a member State other than the United Kingdom and does not have an ordinary share capital.

- (5) For the purposes of subsection (4) an entity is resident in a member State if—
- (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
  - (b) it is not regarded, for the purposes of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

## 821 European cross-border mergers: introduction

- (1) Section 822 applies if the following conditions are met in the case of any merger—
- (a) conditions A, B and C,
  - (b) in the case of a merger within subsection (2)(a), (b) or (c), condition D, and
  - (c) in the case of a merger within subsection (2)(c) or (d), condition E,
- but see section 822(3) to (5)).
- (2) Condition A is that—
- (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) No. 2157/2001 on the Statute for a European company (Societas Europaea),
  - (b) an SCE is formed by the merger of two or more co-operative societies, at least one of which is a society registered under the Industrial and Provident Societies Act 1965 (c. 12), in accordance with Articles 2(1) and 19 of Council Regulation (EC) No. 1435/2003 on the Statute for a European Co-operative Society (SCE),
  - (c) a merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or
  - (d) a merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.
- (3) Condition B is that each merging company is resident in a member State.
- (4) Condition C is that the merging companies are not all resident in the same State.
- (5) Condition D is that—
- (a) the transfer of assets and liabilities to the transferee in the course of the merger is made in exchange for the issue of shares or debentures by the transferee to each person holding shares in or debentures of a transferor, or
  - (b) that transfer of those assets and liabilities is not so made only because, and only so far as, a transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (c. 46) (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.
- (6) Condition E is that in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 (c. 45)).
- (7) For the meaning of expressions used in this section, see section 823.



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## **822 Transfer of assets on European cross-border merger**

- (1) If this section applies, the transfer of qualifying assets in the course of the merger is tax-neutral for the purposes of this Part.
- (2) For the purposes of this section an asset is a qualifying asset if—
  - (a) it is a chargeable intangible asset in relation to the transferor immediately before the transfer, and
  - (b) it is a chargeable intangible asset in relation to the transferee immediately after the transfer.
- (3) This section does not apply if section 818 (company reconstruction involving transfer of business) applies to any qualifying assets transferred in the course of the merger.
- (4) This section does not apply if—
  - (a) one or more of the merging companies is a transparent entity, and
  - (b) the assets and liabilities of a transparent entity are transferred to another company in the course of the merger.
- (5) This section applies only if the merger meets the genuine commercial transaction requirement (see section 831).
- (6) For the meaning of expressions used in this section, see section 823.

## **823 Interpretation of sections 821 and 822**

- (1) This section applies for the interpretation of sections 821 and 822 and this section.
- (2) “Transferor” means—
  - (a) in relation to a merger within section 821(2)(a), a company merging to form the SE,
  - (b) in relation to a merger within section 821(2)(b), a co-operative society merging to form the SCE, and
  - (c) in relation to a merger within section 821(2)(c) or (d), each company transferring all its assets and liabilities.
- (3) “Transferee” means—
  - (a) in relation to a merger within section 821(2)(a), the SE,
  - (b) in relation to a merger within section 821(2)(b), the SCE, and
  - (c) in relation to a merger within section 821(2)(c) or (d), the company to which assets and liabilities are transferred.
- (4) “Transparent entity” has the meaning given in section 820(4).
- (5) References to a company are references to any entity listed as a company in [F51Part A of Annex I] to the Mergers Directive.
- (6) In section 821 and this section “co-operative society” means a society registered under the Industrial and Provident Societies Act 1965 (c. 12) or a similar society governed by the law of a member State other than the United Kingdom.

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### Textual Amendments

**F51** Words in s. 823(5) substituted (1.7.2011) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2011 \(S.I. 2011/1431\)](#), regs. 1(2), 4(7)

## 824 Transfer of business of building society to company

- (1) This section applies if—
  - (a) there is a transfer of the whole of a building society's business to a company (“the successor company”) in accordance with section 97 and the other applicable provisions of the Building Societies Act 1986 (c. 53),
  - (b) the transfer includes intangible fixed assets,
  - (c) those assets are chargeable intangible assets in relation to the society immediately before the transfer, and
  - (d) those assets are chargeable intangible assets in relation to the successor company immediately after the transfer.
- (2) The transfer of those assets is tax-neutral for the purposes of this Part.
- (3) For the application of sections 780 and 785 in cases where this section applies, see section 825.
- (4) In that section “the successor company” has the same meaning as in this section.

## 825 Application of sections 780 and 785 where transfer within section 824 occurs

- (1) This section deals with the application of—
  - (a) section 780 (deemed realisation and reacquisition at market value), and
  - (b) section 785 (principal company becoming member of another group),
 where there is a transfer within section 824.
- (2) If, because of the transfer, a company ceases to be a member of the same group as the building society, that event does not cause section 780 or 785 to apply as respects any asset acquired by the company from the building society or any other member of the same group.
- (3) If the building society and the successor company are members of the same group at the time of the transfer but later cease to be, that later event does not cause section 780 or 785 to apply to any asset to which this subsection applies.
- (4) Subsection (3) applies to—
  - (a) any asset acquired by the successor company on or before the transfer from the building society or any other member of that same group, or
  - (b) any asset acquired from the building society or any other member of that group by a company other than the successor company that is a member of that group at the time of the transfer.
- (5) Subsection (6) applies if a company which is a member of the same group as the building society at the time of the transfer—
  - (a) ceases to be a member of that group and becomes a member of the same group as the successor company, and
  - (b) later ceases to be a member of that group.

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- (6) Section 780 applies on that later event as if any asset to which this subsection applies that has not been acquired from the successor company had been so acquired.
- (7) Subsection (6) applies to—
- (a) any asset acquired by the company from the building society when the company and the building society were members of the same group, or
  - (b) any asset acquired by the company from another company which is a member of the same group at the time of the transfer, when the company, the building society and the other company, were members of the same group.
- (8) Subsection (6) does not apply if—
- (a) the company which acquired the asset is a 75% subsidiary of the company from which it was acquired, or vice versa,
  - (b) those companies cease simultaneously to be members of the same group as the successor company, and
  - (c) those companies continue to be members of the same group as one another.

## **826 Amalgamation of, or transfer of engagements by, certain societies**

- (1) This section applies if—
- (a) two or more societies to which this section applies amalgamate or there is a transfer of engagements from one such society to another,
  - (b) in the course of the amalgamation or transfer of engagements or as part of it intangible fixed assets are transferred from one society (“the transferor”) to another (“the transferee”),
  - (c) those assets are chargeable intangible assets in relation to the transferor immediately before the transfer, and
  - (d) those assets are chargeable intangible assets in relation to the transferee immediately after the transfer.
- (2) The transfer of those assets is tax-neutral for the purposes of this Part.
- (3) This section applies to—
- (a) a building society,
  - (b) a registered industrial and provident society, and
  - (c) a co-operative association in relation to which [<sup>F52</sup>section 1057 of CTA 2010 (UK agricultural or fishing co-operatives) applies.]

### **Textual Amendments**

**F52** Words in s. 826(3)(c) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 656** (with **Sch. 2**)

*Transfer of assets to non-UK resident company*

## **827 Claims to postpone charge on transfer**

- (1) This section applies if—

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- (a) a UK resident company carrying on a trade outside the United Kingdom through a permanent establishment (“the transferor”) transfers that trade or part of it to a non-UK resident company (“the transferee”),
  - (b) the transfer meets conditions A, B and C,
  - (c) the transfer includes intangible fixed assets that are chargeable intangible assets in relation to the transferor immediately before the transfer (“relevant assets”), and
  - (d) the transferor makes a claim under this section.
- (2) If this section applies, this Part applies in accordance with sections 828 to 830.
- (3) Condition A is that the transfer includes—
- (a) the whole assets of the transferor used for the purposes of the trade or part, or
  - (b) the whole of those assets other than cash.
- (4) Condition B is that the transfer is wholly or partly in exchange for securities consisting of—
- (a) shares within subsection (5) that are issued by the transferee to the transferor, or
  - (b) shares within paragraph (a) and loan stock that is so issued.
- (5) Shares are within this subsection if they—
- (a) amount in all to at least one quarter of the ordinary share capital of the transferee, or
  - (b) do so if taken together with any other shares in the transferee already held by the transferor.
- (6) Condition C is that the transfer meets the genuine commercial transaction requirement (see section 831).
- (7) No claim may be made under this section if a claim is made in relation to the transfer under [<sup>F53</sup>section 116(6) of TIOPA 2010] (European cross-border transfers of business: application for [<sup>F54</sup>section 117] of that Act to apply).
- (8) In sections 828 to 830 “transferor”, “transferee” and “relevant assets” have the same meaning as in this section.

#### Textual Amendments

- F53** Words in s. 827(7) substituted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 96(a)** (with Sch. 9 paras. 1-9, 22)
- F54** Words in s. 827(7) substituted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 96(b)** (with Sch. 9 paras. 1-9, 22)

## 828 Relief on transfer

- (1) If the proceeds of realisation of a relevant asset exceed the cost of the asset recognised for tax purposes, the proceeds are treated as reduced.
- (2) If the securities are the whole consideration for the transfer, the reduction is by the amount of the excess.

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- (3) If the securities are not the whole of that consideration, the reduction is by the appropriate proportion of the excess.
- (4) In subsection (3) “the appropriate proportion” means the proportion that the market value of the securities at the time of the transfer bears to the market value of the whole of the consideration at that time.

## **829 Charge on subsequent realisations**

- (1) If at any time after the transfer the transferor realises the whole or part of the securities held by it immediately before that time, the transferor must bring into account for tax purposes a credit equal to the whole or the appropriate proportion of the total deferred gain.
- (2) In subsection (1)—
  - “the total deferred gain” means the sum of the amounts by which the proceeds of realisation of relevant assets were reduced under section 828(2) or (3), so far as not already taken into account under subsection (1) or (3) of this section, and
  - “the appropriate proportion” means the proportion that the market value of the part of the securities realised bears to the market value of the securities held immediately before the realisation.
- (3) If at any time within 6 years after the transfer the transferee realises all or some of the relevant assets held by it immediately before that time, the transferor must bring into account for tax purposes a credit equal to the whole or the appropriate proportion of the total deferred gain.
- (4) In subsection (3)—
  - “the total deferred gain” has the meaning given in subsection (2), and
  - “the appropriate proportion” means the proportion that the deferred gain attributable to the relevant assets realised bears to the deferred gain attributable to the relevant assets held immediately before the realisation.
- (5) For the purposes of subsection (4) the deferred gain attributable to relevant assets means the sum of the amounts by which the proceeds of realisation of those assets were reduced under section 828(2) or (3).
- (6) For cases where transfers are ignored for the purposes of subsection (1) or (3), see section 830.

## **830 Exclusion from section 829 of group transfers**

- (1) For the purposes of section 829(1), any disposal within section 171 of TCGA 1992 (transfers within a group) is ignored.
- (2) For the purposes of section 829(3), any transfer by one member of a group to another is ignored.
- (3) This subsection applies if—
  - (a) a person (“A”) acquires securities on a transfer that is ignored under subsection (1), and

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- (b) any previous transfer that has occurred was ignored under subsection (1) or (2).
- (4) If subsection (3) applies, a subsequent realisation of the securities by A is treated as a realisation by the transferor.
- (5) This subsection applies if—
  - (a) a person (“B”) acquires an asset on a transfer that is ignored under subsection (2), and
  - (b) no previous transfer has occurred that was not ignored under subsection (1) or (2).
- (6) If subsection (5) applies, a subsequent realisation of the asset by B is treated as a realisation by the transferee.

*The genuine commercial transaction requirement and clearance*

**831 The genuine commercial transaction requirement and clearance**

- (1) For the purposes of this Chapter, a reconstruction, transfer or merger meets the genuine commercial transaction requirement if it—
  - (a) is effected for genuine commercial reasons, and
  - (b) does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax, capital gains tax or income tax.
- (2) The conditions in subsection (1) are treated as met if before the reconstruction, transfer or merger—
  - (a) the appropriate applicant has applied to the Commissioners for Her Majesty's Revenue and Customs, and
  - (b) the Commissioners have notified the appropriate applicant that they are satisfied that the requirements of subsection (1) will be met.
- (3) In subsection (2) “the appropriate applicant” means—
  - (a) in the case of an application about a reconstruction within section 818(1)(a), the transferee (within the meaning of that section),
  - (b) in the case of an application about a transfer falling within section 820 because condition A in section 819(2) is met, the transferor and the transferee (within the meaning of section 819(2)),
  - (c) in the case of an application about a transfer falling within section 820 because condition B in section 819(3) is met, the transferor and the transferee (within the meaning of section 819(3)),
  - (d) in the case of an application about a merger falling within section 821(2), the transferor (as defined in section 823(2)), and
  - (e) in the case of an application about a transfer falling within section 827(1)(a), the transferor (within the meaning of that section).
- (4) For the procedure on such an application, see section 832.

**832 Procedure on application for clearance**

- (1) This section applies in relation to an application under section 831(2).

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- (2) The application must be in writing and must contain particulars of the operations that are to be effected.
- (3) The Commissioners for Her Majesty's Revenue and Customs may by notice require the applicant to provide further particulars for the purpose of enabling them to make their decision.
- (4) Such a notice may only be given within 30 days of the receipt of the application or of any further particulars previously required under subsection (3).
- (5) If such a notice is not complied with within 30 days or such longer period as the Commissioners for Her Majesty's Revenue and Customs may allow, they need not proceed further on the application.

### **833 Decision on application for clearance**

- (1) The Commissioners for Her Majesty's Revenue and Customs must notify their decision on an application under section 831(2) to the applicant—
  - (a) within 30 days of receiving the application, or
  - (b) if they give a notice under section 832(3), within 30 days of the notice being complied with.
- (2) If the Commissioners for Her Majesty's Revenue and Customs—
  - (a) notify the applicant that they are not satisfied that the conditions in section 831(1) will be met, or
  - (b) do not notify their decision to the applicant within the time required by subsection (1),the applicant may within 30 days of the notification or of that time require them to transmit the application to the tribunal, together with any notice given and further particulars provided under section 832(3).
- (3) In that case any notification by the tribunal has effect for the purposes of section 831(2)
  - (b) as if it were a notification by the Commissioners for Her Majesty's Revenue and Customs.
- (4) If any particulars provided under section 832 do not fully and accurately disclose all facts and considerations material for the decision—
  - (a) of the Commissioners for Her Majesty's Revenue and Customs, or
  - (b) of the tribunal,any resulting notification by the Commissioners for Her Majesty's Revenue and Customs or the tribunal is void.

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## CHAPTER 12

### RELATED PARTIES

#### *Introductory*

#### **834 Overview of Chapter**

- (1) This Chapter deals with the question whether a person and a company are related parties for the purposes of this Part.
- (2) That question is relevant, in particular, for Chapter 13 (transactions between related parties).

*Meaning of “related party”, “control” and “major interest”*

#### **835 “Related party”**

- (1) This section explains when a person (“A”) is a “related party” in relation to a company (“B”) for the purposes of this Part.
- (2) In a case where A is a company, A is a related party in relation to B if—
  - (a) A has control of, or holds a major interest in, B, or
  - (b) B has control of, or holds a major interest in, A.
- (3) In a case where A is a company, A is a related party in relation to B if A and B are both under the control of the same person (but see subsection (4)).
- (4) Subsection (3) does not apply if the person controlling both A and B is—
  - (a) the Crown,
  - (b) a Minister of the Crown or a government department,
  - (c) the Scottish Ministers,
  - (d) the National Assembly for Wales,
  - (e) a Minister within the meaning of the Northern Ireland Act 1998 (c. 47) or a Northern Ireland department,
  - (f) a foreign sovereign power, or
  - (g) an international organisation.
- (5) A is a related party in relation to B if B is a close company and A is, or is an associate of—
  - (a) a participator in B, or
  - (b) a participator in a company that has control of, or holds a major interest in, B.
- (6) In a case where A is a company, A is a related party in relation to B if B is another company in the same group.
- (7) A is treated as being a related party in relation to B if A would be so but for any person (other than an individual) being the subject of—
  - (a) insolvency arrangements, or
  - (b) equivalent arrangements under the law of any country or territory, whether made when the person is solvent or insolvent.



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- (8) In subsection (7) “insolvency arrangements” includes—
- (a) arrangements under which a person acts as the liquidator, provisional liquidator, receiver, administrator or administrative receiver of a company or firm, and
  - (b) voluntary arrangements proposed or approved in relation to a company or firm under Part 1 of the Insolvency Act 1986 (c. 45) or Part 2 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (9) In subsection (8)—
- “administrative receiver” has the meaning given in section 251 of the Insolvency Act 1986 or Article 5(1) of the Insolvency (Northern Ireland) Order 1989,
- “administrator” means a person appointed to manage the affairs, business and property of the company or firm under Schedule B1 to that Act or Order,
- “receiver” means a person appointed as receiver of some or all of the property of the company or firm under an enactment or under an instrument issued for the purpose of representing security for, or the rights of creditors in respect of, any debt.
- (10) For the meaning of “control”, “major interest”, “associate”, “participator”, see sections 836, 837 and 841.

### **836 “Control”**

- (1) For the purposes of this Chapter, in relation to a company, “control” means the power of a person to secure that the company's affairs are conducted in accordance with the person's wishes—
- (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or
  - (b) as a result of powers conferred by the articles of association or other document regulating the company or any other company.
- (2) Sections 838 to 840 (rights and powers to be taken into account) apply in relation to the determination for the purposes of this Chapter whether a person has control of a company.

### **837 “Major interest”**

- (1) For the purposes of this Chapter, a person has a “major interest” in a company if—
- (a) the person and one other person together have control of that company, and
  - (b) the rights and powers by means of which they have such control represent, in the case of each of them, at least 40% of the total.
- (2) The reference in subsection (1)(a) to two persons together having control of a company is to two persons who, taken together, have the power mentioned in section 836.
- (3) Sections 838 to 840 (rights and powers to be taken into account) apply in relation to the determination for the purposes of this Chapter whether a person has a major interest in a company.

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### *Rights and powers to be taken into account*

#### **838 General rule**

- (1) This section provides for a person (“A”) to be treated as having rights and powers where A's rights or powers are relevant in determining if a person—
  - (a) has control of a company, or
  - (b) has a major interest in a company.
- (2) A is treated as having rights and powers that A—
  - (a) is entitled to acquire at a future date, or
  - (b) will, at a future date, become entitled to acquire.
- (3) A is treated as having rights and powers of other persons, so far as they are required or may be required to be exercised in any one or more of the following ways—
  - (a) on A's behalf,
  - (b) under A's direction, or
  - (c) for A's benefit.
- (4) A is treated as having rights and powers of a person connected with A (see section 842).
- (5) A is treated as having rights and powers that a person connected with A would be treated as having if that person were a person whose rights or powers are relevant in determining if a person has control of or a major interest in a company.
- (6) For the purposes of subsections (3) to (5), a person is treated as having rights or powers that the person—
  - (a) is entitled to acquire at a future date, or
  - (b) will, at a future date, become entitled to acquire.
- (7) Subsection (3) does not apply to rights and powers conferred in relation to property of a borrower by the terms of any security relating to the borrower's loan.

#### **839 Rights and powers held jointly**

- (1) References in this Chapter—
  - (a) to rights and powers of a person, or
  - (b) to rights and powers that a person is or will become entitled to acquire,
 include rights or powers that are exercisable by that person, or when acquired will be exercisable by that person, only jointly with one or more other persons.
- (2) Subsection (1) is subject to section 840 (partnerships).

#### **840 Partnerships**

- (1) The rights and powers of a person as a member of a firm are ignored unless the person has control of or a major interest in the firm.
- (2) Whether a person has control of or a major interest in a firm is determined in accordance with sections 836 to 839 as in relation to a company.

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- (3) For the purposes of subsection (2), references in those sections to any other company must be read as including any other firm.

### *Meaning of “participator” and “associate”*

#### **841 “Participator” and “associate”**

- (1) In this Chapter “participator”, in relation to a close company, has the meaning [F55 given by section 454 of CTA 2010], except as provided in subsection (2).
- (2) “Participator” does not include a person just because the person is a loan creditor of the company within the meaning [F56 given by section 453 of CTA 2010].
- (3) In this Chapter “associate”, in relation to a participator in a close company, has the meaning given by [F57 section 448 of CTA 2010].

#### **Textual Amendments**

- F55** Words in s. 841(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 657(2)** (with Sch. 2)
- F56** Words in s. 841(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 657(3)** (with Sch. 2)
- F57** Words in s. 841(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 657(4)** (with Sch. 2)

### *Connected persons*

#### **842 Introduction**

- (1) Section 843 explains what is meant in this Chapter when a person is referred to as being connected with another person.
- (2) If that section provides that one person (“A”) is connected with another person (“B”), B is connected with A too.
- (3) In that section—  
“relative” means brother, sister, ancestor or lineal descendant, and  
“settlement” and “settlor” have the same meaning as in Chapter 5 of Part 5 of ITTOIA (see section 620 of that Act).

#### **843 Who are connected persons**

- (1) An individual (“A”) is connected with another individual (“B”) if—  
(a) A is B's spouse or civil partner,  
(b) A is a relative of B,  
(c) A is the spouse or civil partner of a relative of B,  
(d) A is a relative of B's spouse or civil partner, or  
(e) A is the spouse or civil partner of a relative of B's spouse or civil partner.
- (2) A person in the capacity of a trustee of a settlement is connected with—

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- (a) any individual who is a settlor in relation to the settlement,
  - (b) any person connected with such an individual, and
  - (c) any body corporate that is connected with the settlement.
- (3) For the purposes of subsection (2) a body corporate is connected with a settlement if—
- (a) it is a close company (or not a close company only because it is not UK resident) and the participators include the trustees of the settlement, or
  - (b) it is controlled by a company within paragraph (a).
- (4) A person is connected with a company if they are related parties because of section 835(2) or (3).
- (5) For the purposes of subsection (4) and for the purposes of section 835 as it applies for the purposes of subsection (4)—
- (a) “company” includes any body corporate or unincorporated association, but does not include a firm, and
  - (b) a unit trust scheme is treated as if it were a company and as if the rights of the unit holders were shares in the company.

## CHAPTER 13

### TRANSACTIONS BETWEEN RELATED PARTIES

#### *Introductory*

#### **844 Overview of Chapter**

- (1) This Chapter sets out special rules relating to transactions between related parties.
- (2) Sections 845 to [F58849A] are about the rule that transfers between a company and a related party are treated as being at market value.
- (3) Sections 850 and 851 set out other rules for transactions involving related parties.
- (4) See Chapter 12 for the meaning of “related parties”.

#### **Textual Amendments**

**F58** Word in s. 844(2) substituted (with effect in accordance with s. 61(6) of the amending Act) by Finance Act 2013 (c. 29), s. 61(3)

#### *Transfers treated as being at market value*

#### **845 Transfer between company and related party treated as at market value**

- (1) The basic rule is that a transfer of an intangible asset—
  - (a) from a company to a related party, or
  - (b) to a company from a related party,
 is treated for all purposes of the Taxes Acts as being at market value (as respects both the company and the related party) if condition A or B is met.

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- (2) Condition A is that the asset is a chargeable intangible asset in relation to the transferor immediately before the transfer.
- (3) Condition B is that the asset is a chargeable intangible asset in relation to the transferee immediately after the transfer.
- (4) That rule is subject to—
  - (a) section 846 (transfers not at arm's length),
  - (b) section 847 (transfers involving other taxes),
  - (c) section 848 (tax-neutral transfers),<sup>F59</sup>...
  - <sup>F60</sup>(ca) section 848A (assets held for purposes of exempt foreign permanent establishments), and]
  - (d) section 849 (transfers involving gifts of business assets).
- (5) In subsection (1)—

“market value” means the price the asset might reasonably be expected to fetch on a sale in the open market, and

“the Taxes Acts” means the enactments relating to income tax, corporation tax or chargeable gains.

#### Textual Amendments

**F59** Word in s. 845(4)(c) omitted (19.7.2011) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 13 paras. 7\(a\)](#), 31

**F60** S. 845(4)(ca) inserted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 13 paras. 7\(b\)](#), 31

## 846 Transfers not at arm's length

- (1) Section 845 does not apply if the consideration for the transfer—
  - (a) falls to be adjusted for tax purposes under [<sup>F61</sup>Part 4 of TIOPA 2010] (provision not at arm's length), or
  - (b) falls within [<sup>F62</sup>that Part] without falling to be so adjusted.
- (2) For the purposes of subsection (1)(b) the consideration for a transfer falls [<sup>F63</sup>within that Part] without falling to be adjusted under it if—
  - <sup>F64</sup>(a) the condition in section 147(1)(a) of TIOPA 2010 is met,
    - (aa) the participation condition is met (see subsection (2A)), and]
    - (b) the actual provision does not differ from the arm's length provision.
- <sup>F65</sup>(2A) Section 148 of TIOPA 2010 (when the participation condition is met) applies for the purposes of subsection (2)(aa) as it applies for the purposes of section 147(1)(b) of TIOPA 2010.]
- (3) In subsection (2) “the actual provision” and “the arm's length provision” have the same meaning [<sup>F66</sup>as in that Part (see, respectively, sections 149 and 151 of TIOPA 2010)].

#### Textual Amendments

**F61** Words in s. 846(1)(a) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 147\(2\)](#) (with [Sch. 9 paras. 1-9, 22](#))

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- F62** Words in s. 846(1)(b) substituted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 147(3)** (with Sch. 9 paras. 1-9, 22)
- F63** Words in s. 846(2) substituted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 147(4)** (with Sch. 9 paras. 1-9, 22)
- F64** S. 846(2)(a)(aa) substituted for s. 846(2)(a) (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 147(5)** (with Sch. 9 paras. 1-9, 22)
- F65** S. 846(2A) inserted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 147(6)** (with Sch. 9 paras. 1-9, 22)
- F66** Words in s. 846(3) substituted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 147(7)** (with Sch. 9 paras. 1-9, 22)

## 847 Transfers involving other taxes

- (1) This section applies if—
- (a) in a case where section 845(1) applies and the asset is transferred from the company to a related party, the transfer is at less than its market value,
  - (b) in a case where that section applies and the asset is transferred to the company from the related party, the transfer is at more than its market value, and
  - (c) conditions A and B apply.
- (2) Condition A is that the related party—
- (a) is not a company, or
  - (b) is a company in relation to which the asset is not a chargeable intangible asset immediately after the transfer to it or, as the case may be, immediately before the transfer from it.
- (3) Condition B is that the transfer—
- (a) gives rise to an amount to be taken into account in calculating any person's income, profits or losses for tax purposes because of a relevant provision, or
  - (b) would do so apart from section 845(1).
- (4) If this section applies, section 845(1) does not apply in relation to the calculation referred to in subsection (3) for the purposes of any relevant provision.
- (5) In this section “relevant provision” means—
- (a) [F67 Chapter 2 of Part 23 of CTA 2010 (matters which are distributions), except section 1000(2),] and
  - (b) Part 3 of ITEPA 2003 (employment income: earnings and benefits etc treated as earnings).

### Textual Amendments

- F67** Words in s. 847(5)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 658** (with Sch. 2)

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## 848 Tax-neutral transfers

- (1) Section 845 does not apply if the transfer is tax-neutral for the purposes of this Part as a result of any provision in this Part.
- (2) For such provisions, see, in particular—
  - (a) section 775 (transfers within a group), and
  - (b) sections 818 to 826 (transfer of business or trade).

### [<sup>F68</sup>848A Assets held for purposes of exempt foreign permanent establishments

- (1) This section applies if—
  - (a) subsection (1) of section 775 (transfers within a group) would apply in relation to the transfer but for paragraph (c) of subsection (4) of that section, and
  - (b) the asset has not at all times when the election under section 18A had effect been held by the transferor wholly for the purposes of a permanent establishment such as is mentioned in that paragraph.
- (2) The transfer is treated for the purposes of this Part as being at the following value—

WDV + FPEA

where—

WDV is the tax written-down value of the asset, and

FPEA is the amount which, for the purposes of Chapter 3A of Part 2, would in the case of the transferor be the foreign permanent establishments amount attributable to the transfer for the accounting period in which it took place if the transfer were at market value.]

#### Textual Amendments

**F68** S. 848A inserted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 13 paras. 8, 31](#)

## 849 Transfers involving gifts of business assets

- (1) This section applies if—
  - (a) the asset is transferred to the company mentioned in section 845(1), and
  - (b) on a claim for relief under section 165 of TCGA 1992 (relief for gifts of business assets) in respect of the transfer, a reduction is made under section 165(4)(a).
- (2) The transfer is treated for the purposes of this Part as being at market value, less the amount of the reduction.
- (3) Any necessary adjustments may be made, by way of assessment, amendment of returns or otherwise, regardless of any relevant time limits.

### [<sup>F69</sup>849A Disincorporation relief: transfer values for post-FA 2002 goodwill

- (1) This section applies where—

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- (a) a company transfers its business to some or all of the shareholders of the company, and
  - (b) a claim for disincorporation relief in respect of the transfer has been made under section 58 of the Finance Act 2013.
- (2) If section 735 applies to the transfer of the goodwill of the business, the transfer is treated for the purposes of this Part as being at the lower of—
- (a) the tax written-down value of the goodwill, and
  - (b) its market value.
- (3) If section 736 applies to the transfer of the goodwill of the business, the transfer is treated for the purposes of this Part as being at the lower of—
- (a) the cost of the goodwill, and
  - (b) its market value.
- (4) If section 738 applies to the transfer of the goodwill of the business, the proceeds of realisation of the goodwill are treated for the purposes of this Part as being nil.
- (5) In subsection (2)(a) the reference to the tax written-down value of the goodwill is to its tax written-down value immediately before the transfer.
- (6) In subsection (3)(a) “the cost of the goodwill” means the cost recognised for tax purposes (determined in accordance with section 736(6) and (7)).
- (7) In this section market value has the meaning given in section 845(5).]

#### Textual Amendments

**F69** S. 849A inserted (with effect in accordance with s. 61(6) of the amending Act) by [Finance Act 2013](#) (c. 29), s. 61(5)

#### *Other rules*

### **850 Part realisation involving related party acquisition: exclusion of roll-over relief**

- (1) Chapter 7 (roll-over relief in case of realisation and reinvestment) does not apply in relation to the part realisation by a company of an intangible fixed asset if there is a related party acquisition as a result of, or in connection with, the part realisation.
- (2) For this purpose there is a related party acquisition if a person who is a related party in relation to the company acquires an interest of any description—
- (a) in the intangible fixed asset, or
  - (b) in an asset whose value is derived in whole or in part from that asset.

### **851 Delayed payment of royalty by company to related party**

- (1) This section applies if—
- (a) a royalty is payable by a company to or for the benefit of a related party,
  - (b) the royalty is not paid in full within the period of 12 months after the end of the period of account in which a debit in respect of it is recognised by the company for accounting purposes, and



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- (c) credits representing the full amount of the royalty are not brought into account under this Part in any accounting period by the person to whom it is payable.
- (2) The royalty is brought into account for the purposes of this Part only when it is paid.

## CHAPTER 14

### MISCELLANEOUS PROVISIONS

#### *Grants and other contributions to expenditure*

#### **852 Treatment of grants and other contributions to expenditure**

- (1) This section applies if a grant or other payment is intended by the payer to meet, directly or indirectly, expenditure of a company on an intangible fixed asset.
- (2) A gain recognised in the company's profit and loss account in respect of the grant or other payment is treated for the purposes of section 721 (receipts recognised as they accrue) as a gain representing a receipt in respect of the intangible fixed asset.
- (3) This section does not apply to a grant within section 853.

#### **853 Grants to be left out of account for tax purposes**

- (1) This section applies to the following grants (“exempt grants”)—
  - (a) grants under Part 2 of the Industrial Development Act 1982 (c. 52) (regional development grants), and
  - (b) grants made under Northern Ireland legislation and declared by the Treasury by order to correspond to a grant under that Part.
- (2) A gain in respect of an exempt grant to a company is ignored for the purposes of this Part, even though it is recognised in determining the company's profit or loss.
- (3) This subsection applies if, as a result of an exempt grant being brought into account by the company to which it is made, there is a reduction—
  - (a) in the amount of a loss recognised in determining the company's profit or loss, or
  - (b) in the amount of expenditure on an intangible fixed asset that is capitalised for accounting purposes.
- (4) If subsection (3) applies, the amount of the reduction is added back for the purposes of this Part.

#### *Finance leasing*

#### **854 Finance leasing etc**

- (1) The Treasury may make provision by regulations as to the application of this Part in relation to a company that is the finance lessor of an intangible asset that is the subject of a finance lease.
- (2) Section 855 is about the provision that the regulations may make.

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- (3) References in this section and that section to a finance lease—
  - (a) have the meaning they have for accounting purposes, and
  - (b) include hire-purchase, conditional sale or other arrangements if they are of a similar character to a finance lease.
- (4) References to the finance lessor or finance lessee have a corresponding meaning.
- (5) Regulations under this section may be made so as to have effect from 1 April 2002.

### **855 Further provision about regulations under section 854**

- (1) Regulations under section 854 may provide that this Part applies as if the asset were an intangible fixed asset of the finance lessor and not a financial asset, even though the asset is accounted for by the finance lessor as a financial asset.
- (2) The regulations may provide that this Part applies as if the amount at which the asset is recognised in the finance lessor's balance sheet were capitalised expenditure on an intangible fixed asset, but that—
  - (a) no election may be made under section 730 (writing down at fixed rate: election for fixed-rate basis) in respect of that amount, and
  - (b) that amount is not to be treated as capitalised expenditure for the purposes of section 756(2) (roll-over relief in case of realisation and reinvestment: conditions to be met in relation to expenditure on other assets).
- (3) The regulations may provide that if an asset formerly recognised by the finance lessor for accounting purposes as an intangible fixed asset becomes subject to a finance lease (and so comes to be accounted for as a financial asset), the value of the asset so created is recognised as realisation proceeds of the intangible fixed asset on the change of accounting treatment.
- (4) The regulations may provide that assets partially excluded from this Part by sections 810 to 813 <sup>F70</sup>... (assets excluded except as respects royalties) are entirely excluded from this Part as respects the finance lessor if they—
  - (a) are subject to a finance lease, and
  - (b) are accounted for by the finance lessor as financial assets.
- (5) The regulations may provide for excluding from the regulations assets used by the finance lessee for the purposes of a trade or business in respect of which the finance lessee is liable to income tax.
- (6) The regulations may provide that an intangible asset counts as a pre-FA 2002 asset in the hands of the finance lessor if the finance lessee is—
  - (a) a company for which the asset was the whole or part of a pre-FA 2002 asset, or
  - (b) a person who is a related party in relation to such a company.
- (7) The regulations may make incidental, supplemental, consequential and transitional provision and savings.
- (8) That provision may include modifications of the operation of other provisions of the Corporation Tax Acts.

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### Textual Amendments

**F70** Words in s. 855(4) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 178](#)

## *Values to be used in special cases*

### **856 Assets acquired or realised together**

- (1) Any reference in this Part to the acquisition or realisation of an asset includes a reference to the acquisition or realisation of that asset together with other assets.
- (2) For the purposes of this Part assets acquired or realised as a result of one bargain are treated as acquired or realised together even though—
  - (a) separate prices are, or purport to be, agreed for separate assets, or
  - (b) there are, or purport to be, separate acquisitions or realisations of separate assets.
- (3) If assets are acquired together, any values allocated to particular assets by the company in accordance with generally accepted accounting practice must be accepted for the purposes of this Part.
- (4) If no such values are so allocated, so much of the expenditure as on a just and reasonable apportionment is properly attributable to each asset is treated for the purposes of this Part as referable to that asset.
- (5) If assets are realised together, so much of the proceeds of realisation as on a just and reasonable apportionment is properly attributable to each asset is treated for the purposes of this Part as proceeds of the realisation of that asset.

### **857 Deemed market value acquisition: adjustment where nil accounting value**

- (1) This section applies if—
  - (a) a company is treated for the purposes of this Part as acquiring an asset at market value, but
  - (b) the accounting value of the asset transferred is nil in the hands of the transferee.
- (2) In such a case any reference in this Part to—
  - (a) the cost of the asset recognised for accounting purposes,
  - (b) the accounting value of the asset, or
  - (c) any loss recognised for accounting purposes in respect of capitalised expenditure on the asset,is a reference to the cost, value or loss that would have been recognised if the asset had been acquired at market value.
- (3) If the asset is revalued, the revaluation is ignored.
- (4) In this section “revaluation” has the same meaning as in section 723 (see subsection (5) of that section) and “revalued” must be read accordingly.

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### *Fungible assets*

#### **858 Fungible assets**

- (1) For the purposes of this Part—
  - (a) fungible assets of the same kind that are held by the same person in the same capacity are treated as indistinguishable parts of a single asset,
  - (b) that asset is treated as growing as additional assets of the same kind are created or acquired, and
  - (c) that asset is treated as diminishing as some of the assets are realised.
- (2) In this Part “fungible assets” means assets of a nature to be dealt in without identifying the particular assets involved.

#### *Assets ceasing to be or becoming chargeable intangible assets*

#### **859 Asset ceasing to be chargeable intangible asset: deemed realisation at market value**

- (1) If an asset ceases to be a chargeable intangible asset in relation to a company in any of the circumstances specified in subsection (2), this Part applies as if—
  - (a) immediately before the asset ceased to be a chargeable intangible asset in relation to the company, the company had realised the asset for its market value at that time, and
  - (b) the company had immediately reacquired it at that value.
- (2) The circumstances are—
  - (a) that the company ceases to be UK resident,
  - (b) in the case of a company that is not UK resident, any circumstances not involving the realisation of the asset by the company, and
  - (c) that the asset begins to be held for the purposes of a mutual trade or business.
- (3) Subsection (1) is subject to section 860.

#### **860 Asset ceasing to be chargeable intangible asset: postponement of gain**

- (1) This subsection applies if—
  - (a) section 859 applies because a company (“A”) ceases to be UK resident,
  - (b) immediately before A ceases to be UK resident the asset is held by it for the purposes of a trade carried on by it outside the United Kingdom through a permanent establishment,
  - (c) the proceeds of the realisation of the asset that is treated as occurring under section 859 exceed the original cost of the asset recognised for tax purposes,
  - (d) immediately after A ceases to be UK resident it is a 75% subsidiary of another company (“B”) that is UK resident, and
  - (e) A and B so elect by notice given to an officer of Revenue and Customs not later than 2 years after the date on which A ceased to be UK resident.
- (2) If subsection (1) applies, this Part applies as if the proceeds of the realisation of the asset that is treated as occurring under section 859 were reduced to the original cost of the asset recognised for tax purposes.

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- (3) For the later treatment of the amount of the reduction under subsection (2), see sections 861 and 862.
- (4) In those sections—
  - (a) “the postponed gain” means the amount of that reduction, and
  - (b) references to “A” and “B” must be read in accordance with this section.

### **861 Treatment of postponed gain on subsequent realisation**

- (1) This section applies if A realises the asset to which section 860 applies before the end of the period of 6 years after the date on which it ceases to be UK resident.
- (2) B must bring into account for tax purposes—
  - (a) a credit equal to the postponed gain, or
  - (b) in the case of a part realisation, a credit equal to the appropriate proportion of the postponed gain.
- (3) The appropriate proportion is—

$$\frac{MVB - MVA}{MVB}$$

where—

MVB is the market value of the asset immediately before the part realisation, and

MVA is the market value of the asset immediately after the part realisation.

- (4) Subsection (2) does not apply—
  - (a) so far as the postponed gain has already been brought into account on a previous part realisation, or
  - (b) if the postponed gain has already been brought into account under section 862.
- (5) A credit brought into account by B under this section is treated as a non-trading credit for the purposes of Chapter 6 (how credits and debits are given effect).

### **862 Treatment of postponed gain in other cases**

- (1) This section applies if at any time after A ceases to be UK resident—
  - (a) A ceases to be a 75% subsidiary of B on the disposal by B of ordinary shares of A,
  - (b) A ceases to be such a subsidiary otherwise than on such a disposal and later B disposes of such shares, or
  - (c) B ceases to be UK resident.
- (2) B must bring into account for tax purposes a credit equal to the postponed gain.
- (3) Subsection (2) does not apply so far as the postponed gain has already been brought into account under section 861.

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- (4) Any credit falling to be brought into account under subsection (2) because B ceases to be UK resident must be brought into account immediately before it does so.
- (5) A credit brought into account by B under this section is treated as a non-trading credit for the purposes of Chapter 6 (how credits and debits are given effect).

### **863 Asset becoming chargeable intangible asset**

- (1) This section applies if an asset becomes a chargeable intangible asset in relation to a company—
  - (a) on the company becoming UK resident,
  - (b) in the case of a company that is not UK resident, on the asset beginning to be held for the purposes of a trade carried on by the company in the United Kingdom through a permanent establishment, or
  - (c) on the asset ceasing to be held for the purposes of a mutual trade or business.
- (2) This Part applies as if—
  - (a) the company had acquired the asset immediately after it became a chargeable intangible asset in relation to the company, and
  - (b) had done so for its accounting value at that time.

*Matters to be ignored*

### **864 Tax avoidance arrangements to be ignored**

- (1) In determining whether a credit or a debit is to be brought into account under this Part and, if so, its amount, any tax avoidance arrangements are ignored.
- (2) Arrangements are “tax avoidance arrangements” for this purpose if their main object or one of their main objects is to enable a company—
  - (a) to obtain a debit under this Part to which it would not otherwise be entitled,
  - (b) to obtain a debit under this Part which exceeds that to which it would otherwise be entitled,
  - (c) to avoid having to bring a credit into account under this Part, or
  - (d) to reduce the amount of any such credit.
- (3) In this section—
 

“arrangements” includes any scheme, agreement or understanding, whether or not it is legally enforceable, and

“brought into account” means brought into account for tax purposes.

### **865 Debts for expenditure not generally deductible for tax purposes**

- (1) No debit may be brought into account for tax purposes under this Part in respect of expenditure that is not generally deductible for tax purposes.
- (2) Expenditure is “not generally deductible for tax purposes” so far as revenue expenditure of that description incurred for the purposes of a trade would be non-deductible because of a provision specified in subsection (3).
- (3) Those provisions are—

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- (a) section 56 (car <sup>F71</sup>... hire),
- (b) section 1298 (business entertainment and gifts),
- (c) section 1304 (crime-related payments), and
- (d) section 246(2) of FA 2004 (expenditure on benefits under employer-financed retirement benefits schemes).

#### Textual Amendments

**F71** Words in s. 865(3)(a) omitted (with effect in accordance with Sch. 11 paras. 65-67 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 11 para. 55](#)

### *Delayed payments and bad debts*

#### **866 Delayed payment of employees' remuneration**

- (1) This subsection applies if—
  - (a) a debit in respect of employees' remuneration is recognised by a company for accounting purposes, and
  - (b) apart from this section, a debit in respect of the remuneration could be brought into account for the purposes of this Part for the period of account in which the debit is recognised.
- (2) No such debit may be so brought into account unless the remuneration is paid before the end of the period of 9 months beginning with the end of the period of account.
- (3) If the remuneration is paid after the end of the 9 month period, the debit may be brought into account for the purposes of this Part for the period of account in which it is paid.
- (4) Section 867 makes further provision relating to the application of this section.

#### **867 Provisions supplementing section 866**

- (1) For the purposes of section 866 a debit in respect of employees' remuneration recognised for accounting purposes includes an amount reserved in the accounts of an employer with a view to its becoming employees' remuneration.
- (2) For the purposes of section 866 it does not matter if the debit is in respect of—
  - (a) particular employments, or
  - (b) employments generally.
- (3) Any adjustment required by section 866 of an accounting debit that is partly referable to an amount to which that section applies and partly to other matters must be made on a just and reasonable basis.
- (4) In making a calculation for tax purposes that has to be made before the end of the 9 month period mentioned in section 866(2), it must be assumed that any remuneration which is unpaid when the calculation is made will not be paid before the end of that period.
- (5) But if the remuneration is subsequently paid before the end of the period, nothing in subsection (4) prevents the calculation being revised and any tax return being amended accordingly.

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- (6) For the purposes of section 866 and this section, remuneration is paid when it—
- (a) is treated as received by an employee for the purposes of ITEPA 2003 by section 18 or 19 of that Act (receipt of money and non-money earnings), or
  - (b) would be so treated if it were not exempt income.
- (7) In section 866 and this section—
- “employee” includes an office-holder and so “employment” includes an office, and
- “remuneration” means an amount which is or is treated as earnings for the purposes of ITEPA 2003.

### **868 Delayed payment of pension contributions**

- (1) This section applies if—
- (a) a debit in respect of pension contributions is recognised by a company for accounting purposes, and
  - (b) the contributions are not paid until after the end of the period of account in which the debit is recognised.
- (2) The contributions may be brought into account for the purposes of this Part only when they are paid.
- (3) For the purposes of this section “pension contributions” means—
- (a) sums paid by an employer by way of contributions under a registered pension scheme,
  - (b) sums paid to the trustees or managers of such a scheme that are treated as if they were the payment of contributions under the pension scheme (see section 199 of FA 2004), or
  - (c) expenses within section 246(3) of FA 2004 (expenditure on benefits under employer-financed retirement benefits schemes).
- (4) Any adjustment required by this section of an accounting debit that is partly referable to an amount to which this section applies and partly to other matters must be made on a just and reasonable basis.

### **869 Bad debts etc**

- (1) No debit may be brought into account for the purposes of this Part in respect of a debt owed to the company, except—
- (a) by way of impairment loss, or
  - (b) so far as the debt is released as part of a statutory insolvency arrangement.
- (2) If a debt is so released, any gain in respect of the release that is brought into account for accounting purposes by the debtor is disregarded for the purposes of this Part.
- (3) Any other gain in respect of an unpaid debt in respect of an intangible fixed asset that is brought into account by the debtor for accounting purposes is treated for the purposes of section 721 (receipts recognised as they accrue) as a gain in respect of an intangible fixed asset.



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- (4) Any adjustment required by this section of an accounting gain or loss that is partly referable to an amount affected by this section and partly to other matters must be made on a just and reasonable basis.
- (5) In this section “debt” includes an obligation or liability that falls to be discharged otherwise than by the payment of money.

F72 ...

#### Textual Amendments

**F72** S. 870 and cross-heading omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 29](#) (with [Sch. 20 para. 50\(9\)](#))

### **F72 870 Assumptions for calculating chargeable profits**

.....

## CHAPTER 15

### ADJUSTMENTS ON CHANGE OF ACCOUNTING POLICY

#### *Introductory*

### **871 Introduction to Chapter**

- (1) This Chapter applies if—
  - (a) there is a change of accounting policy in drawing up a company's accounts from one period of account to the next, and
  - (b) the approach in each of those periods accords with the law and practice applicable in relation to that period.
- (2) In this Chapter—
  - (a) the first of those periods of account is referred to as “the earlier period”, and
  - (b) the next is referred to as “the later period”.
- (3) This Chapter applies, in particular, if—
  - (a) the company prepares accounts for the earlier period in accordance with UK generally accepted accounting practice and for the later period in accordance with international accounting standards, or
  - (b) the company prepares accounts for the earlier period in accordance with international accounting standards and for the later period in accordance with UK generally accepted accounting practice.

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### *Change of policy involving change of value*

#### **872 Adjustments in respect of change**

- (1) This section and section 873 apply if—
- (a) as a result of the change of accounting policy there is a difference (“the accounting difference”) between—
    - (i) the accounting value of an intangible fixed asset of the company at the end of the earlier period, and
    - (ii) the accounting value of that asset at the beginning of the later period, and
  - (b) no election has been made in respect of the asset under section 730 (writing down at fixed rate: election for fixed-rate basis).
- (2) If there is an increase in that value, a corresponding credit must be brought into account for tax purposes in the later period.
- (3) If there is a decrease in that value, a corresponding debit must be brought into account for tax purposes in the later period.
- (4) The amount of the credit or debit is—

$$D \times \frac{WDVE}{AVE}$$

where—

D is the accounting difference,

WDVE is the tax written-down value of the asset at the end of the earlier period, and

AVE is the accounting value of the asset at the end of the earlier period.

- (5) But if subsection (2) applies, the credit must not exceed—
- (a) the sum of debits brought into account for tax purposes in respect of the asset before the later period, less
  - (b) the sum of the credits so brought into account.
- (6) This section is subject to section 878 (exclusion of credits or debits brought into account under other provisions).

#### **873 Effect of application of section 872 in later period and subsequently**

- (1) A credit or debit that is required to be brought into account under section 872 is treated as arising at the beginning of the later period (“the relevant time”).
- (2) If a credit is to be brought into account, the tax written-down value of the asset at the relevant time is the sum of—
- (a) the tax written-down value of the asset at the end of the earlier period, and

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- (b) the credit.
- (3) If a debit is to be brought into account, the tax written-down value of the asset at the relevant time is—
  - (a) the tax written-down value of the asset at the end of the earlier period, less
  - (b) the debit.
- (4) After the relevant time the cost recognised for tax purposes is the sum of—
  - (a) the tax written-down value given by subsection (2) or (3), and
  - (b) the cost recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes.
- (5) After the relevant time the tax written-down value is determined taking account only of subsequent credits and debits.

*Change of policy involving disaggregation*

**874 Original asset not subject to fixed-rate writing down**

- (1) This section and section 875 apply if—
  - (a) the change of accounting policy results in an intangible fixed asset of the company that was treated as one asset (“the original asset”) in the earlier period being treated as two or more assets (“the resulting assets”) in the later period,
  - (b) there is a difference (“the accounting difference”) between—
    - (i) the accounting value of the original asset at the end of the earlier period, and
    - (ii) the sum of the accounting values of the resulting assets at the beginning of the later period,
  - (c) no election under section 730 (writing down at fixed rate: election for fixed-rate basis) has been or is subsequently made in respect of the original asset, and
  - (d) no such election is subsequently made in respect of any of the resulting assets.
- (2) If the accounting difference is an increase, a corresponding credit must be brought into account for tax purposes in the later period.
- (3) If the accounting difference is a decrease, a corresponding debit must be brought into account for tax purposes in the later period.
- (4) The credit or debit is—

$$D \times \frac{\text{WDVE}}{\text{AVE}}$$

where—

D is the accounting difference,

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WDVE is the tax written-down value of the original asset at the end of the earlier period, and

AVE is the accounting value of that asset at the end of that period.

- (5) But if subsection (2) applies the credit must not exceed—
- (a) the sum of the debits brought into account for tax purposes in respect of the original asset before the later period, less
  - (b) the sum of the credits so brought into account.
- (6) This section is subject to section 878 (exclusion of credits or debits brought into account under other provisions).

### **875 Effect of application of section 874 in later period and subsequently**

- (1) A credit or debit that is required to be brought into account under section 874 is treated as arising at the beginning of the later period (“the relevant time”).
- (2) If section 874(2) applies, the tax written-down value of each resulting asset at the relevant time is—

$$(WDVE + C) \times \frac{AV}{TAV}$$

where—

WDVE is the tax written-down value of the original asset at the end of the earlier period,

C is the credit,

AV is the accounting value of the resulting asset in question at the relevant time, and

TAV is the sum of the accounting values of all the resulting assets at the relevant time.

- (3) If section 874(3) applies, the tax written-down value of each resulting asset at the relevant time is—

$$(WDVE - D) \times \frac{AV}{TAV}$$

where—

WDVE, AV and TAV have the same meaning as in subsection (2), and

D is the debit.

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- (4) After the relevant time the cost recognised for tax purposes for each resulting asset is taken to be the sum of—
  - (a) the tax written-down value given by subsection (2) or, as the case may be, subsection (3), and
  - (b) the cost recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes.
- (5) After the relevant time the tax written-down value for each resulting asset is determined taking account only of subsequent credits and debits.

### 876 Original asset subject to fixed-rate writing down

- (1) This section applies if—
  - (a) the change of accounting policy results in an intangible fixed asset of the company that was treated as one asset (“the original asset”) in the earlier period being treated as two or more assets (“the resulting assets”) in the later period, and
  - (b) an election under section 730 (writing down at fixed rate: election for fixed-rate basis) has been or is subsequently made in respect of the original asset.
- (2) That election has effect—
  - (a) in relation to the original asset, for periods up to and including the earlier period, and
  - (b) in relation to each of the resulting assets, for the later period and subsequent periods.
- (3) The tax written-down value of each resulting asset at the beginning of the later period (“the relevant time”) is—

$$\text{WDVE} \times \frac{\text{AVL}}{\text{TAVL}}$$

where—

WDVE is the tax written-down value of the original asset at the end of the earlier period,

AVL is the accounting value of the asset in question at the beginning of the later period, and

TAVL is the sum of the accounting values of all the resulting assets at the beginning of that period.

- (4) After the relevant time the cost recognised for tax purposes for each resulting asset is the sum of—
  - (a) the tax written-down value given by subsection (3), and
  - (b) the cost recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes.

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- (5) After the relevant time the tax written-down value for each resulting asset is determined taking account only of subsequent credits and debits.

### 877 Election for fixed-rate writing down in relation to resulting asset

- (1) This section applies if—
- (a) the change of accounting policy results in an intangible fixed asset of the company that was treated as one asset (“the original undivided asset”) in the earlier period being treated as two or more assets (“the resulting assets”) in the later period, and
  - (b) no election under section 730 (writing down at fixed rate: election for fixed-rate basis) has been or is subsequently made in respect of the original undivided asset.
- (2) An election under that section may be made in respect of any of the resulting assets.
- (3) But such an election may be made only within the period during which such an election could have been made in relation to the original undivided asset.
- (4) The effect of the election is that—
- (a) the original undivided asset is treated as if it had at all material times consisted of as many assets (“notional original assets”) as there are resulting assets,
  - (b) each notional original asset is taken to be the same asset as one of the resulting assets (its “corresponding resulting asset”),
  - (c) the appropriate proportion of every amount falling to be taken into account in relation to the original undivided asset is attributed to each of the notional original assets, and
  - (d) this Part applies in relation to each of the notional original assets and its corresponding resulting asset accordingly.
- (5) For the purposes of subsection (4)(c) the appropriate proportion of every amount falling to be taken into account in relation to the original undivided asset that is to be attributed to each notional original asset is found by reference to the notional original asset’s corresponding resulting asset.
- (6) The appropriate proportion in relation to each resulting asset is—

$$\frac{\text{AVL}}{\text{TAVL}}$$

where—

AVL is the accounting value of that resulting asset at the beginning of the later period, and

TAVL is the sum of the accounting values of all the resulting assets at the beginning of that period.

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### *Supplementary*

#### **878 Exclusion of credits or debits brought into account under other provisions**

- (1) A credit or debit is not required to be brought into account under this Chapter so far as a credit or debit representing the accounting difference in question is brought into account for tax purposes under a provision specified in subsection (2).
- (2) Those provisions are—
  - (a) section 723 (revaluation),
  - (b) section 725 (reversal of previous accounting loss), or
  - (c) section 732 (reversal of previous accounting gain).

#### **879 Subsequent events affecting asset subject to adjustment under this Chapter**

- (1) On a further change of accounting policy affecting an intangible fixed asset in relation to which this Chapter has applied, the previous provisions of this Chapter apply again.
- (2) On a subsequent part realisation affecting the asset in question, section 744 (effect of part realisation of asset) applies.

## **CHAPTER 16**

### **PRE-FA 2002 ASSETS ETC**

#### *Introduction*

#### **880 Overview of Chapter**

This Chapter—

- (a) sets out a general rule limiting the application of this Part to certain assets (see section 882(1): application of this Part to assets created or acquired on or after 1 April 2002),
- (b) makes provision about when assets are treated as created or acquired (see sections 883 to 889),
- (c) makes special provision about particular kinds of assets (see sections 890 to 897), and
- (d) provides how roll-over relief is to apply in some circumstances where assets excluded by the general rule mentioned in paragraph (a) are involved (see sections 898 and 899).

#### **881 Meaning of “pre-FA 2002 assets”**

Intangible fixed assets which are excluded from the application of this Part by the general rule mentioned in section 880(a) (subject to any express provision to the contrary) are referred to in this Part as “pre-FA 2002 assets”.

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### *General rule*

#### **882 Application of this Part to assets created or acquired on or after 1 April 2002**

- (1) The general rule is that this Part applies only to intangible fixed assets of a company (“the company”) that—
  - (a) are created by the company on or after 1 April 2002,
  - (b) are acquired by the company on or after that date from a person who at the time of the acquisition is not a related party in relation to the company, or
  - (c) are acquired by the company on or after that date in case A, B or C from a person who at the time of the acquisition is a related party in relation to the company.
- (2) For provisions explaining when assets are treated as created or acquired, see sections 883 to 889.
- (3) Case A is where the asset is acquired from a company in relation to which the asset was a chargeable intangible asset immediately before the acquisition.
- (4) Case B is where the asset is acquired from a person (“the intermediary”) who acquired the asset on or after 1 April 2002 from a third person—
  - (a) who was not at the time of the intermediary's acquisition a related party in relation—
    - (i) to the intermediary, or
    - (ii) if the intermediary was not a company, to a company in relation to which the intermediary was a related party, and
  - (b) who is not, at the time of the acquisition by the company, a related party in relation to the company.
- (5) Case C is where the asset was created on or after 1 April 2002 by the person from whom it is acquired or any other person.
- (6) The general rule in subsection (1) is subject to—
  - (a) section 890 (fungible assets: application of section 858),
  - (b) section 892 (certain assets acquired on transfer of a business),
  - (c) section 893 (assets whose value derives from pre-FA 2002 assets),
  - (d) section 895 (assets acquired in connection with disposals of pre-FA 2002 assets),
  - (e) section 897 (application to pre-FA 2002 assets consisting of telecommunication rights),
  - (f) sections 898 and 899 (application of roll-over relief in relation to some pre-FA 2002 assets), and
  - (g) section 905 (pre-FA 2002 assets: Lloyd's syndicate capacity).
- (7) This section does not restrict the application of this Part in accordance with section 896 (application to royalties) (but see section 896(3)).

#### **Modifications etc. (not altering text)**

**C10** S. 882 modified (1.1.2010) by [Northern Rock plc \(Tax Consequences\) Regulations 2009 \(S.I. 2009/3227\)](#), regs. 1, **6(3)**



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- C11** S. 882 modified (1.10.2011) by [Postal Services Act 2011 \(c. 5\), s. 93\(2\)\(3\), Sch. 2 para. 6\(3\)](#); S.I. 2011/2329, art. 3
- C12** S. 882 modified (1.4.2012) by [Budget Responsibility and National Audit Act 2011 \(c. 4\), s. 29, Sch. 4 para. 3\(3\)](#); S.I. 2011/2576, art. 5

*When assets are treated as created or acquired*

### **883 Assets treated as created or acquired when expenditure incurred**

- (1) This section—
- (a) applies for the purposes of section 882 (application of this Part to assets created or acquired on or after 1 April 2002), and
  - [<sup>F73</sup>(b) has effect subject to the provisions specified in subsection (2).]
- (2) The provisions referred to in subsection (1)(b) are—
- (a) section 884 (<sup>F74</sup>... goodwill: time of creation),
  - (b) section 885 ([<sup>F75</sup>assets representing non-qualifying expenditure]: time of creation), and
  - (c) section 886 (assets representing production expenditure on films: time of creation).
- (3) An intangible asset <sup>F76</sup>... is treated as created or acquired on or after 1 April 2002 so far as expenditure on its creation or acquisition is incurred on or after that date.
- (4) As to whether expenditure on the creation or acquisition of the asset is incurred on or after 1 April 2002, see sections 887 to 889.
- (5) If only part of the expenditure on the creation or acquisition of the asset is incurred on or after 1 April 2002—
- (a) this Part applies as if there were a separate asset representing the expenditure so incurred, and
  - (b) the alternative enactments apply as if there were a separate asset representing the expenditure not so incurred.
- (6) In subsection (5) “the alternative enactments” means the enactments that apply where this Part does not apply.
- (7) Any apportionment necessary for the purposes of subsection (5) must be made on a just and reasonable basis.

#### **Textual Amendments**

- F73** S. 883(1)(b) substituted (with effect in accordance with s. 70(7)(8) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 70\(4\)\(a\)](#)
- F74** Words in s. 883(2)(a) omitted (with effect in accordance with s. 70(7)(8) of the amending Act) by virtue of [Finance Act 2009 \(c. 10\), s. 70\(4\)\(b\)](#)
- F75** Words in s. 883(2)(b) substituted (with effect in accordance with s. 70(7)(8) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 70\(4\)\(c\)](#)
- F76** Words in s. 883(3) omitted (with effect in accordance with s. 70(7)(8) of the amending Act) by virtue of [Finance Act 2009 \(c. 10\), s. 70\(4\)\(d\)](#)

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## 884 <sup>F77</sup> ... Goodwill: time of creation

For the purposes of section 882 (application of this Part to assets created or acquired on or after 1 April 2002) <sup>F78</sup> ... goodwill is treated as created [<sup>F79</sup>—

- (a) before (and not on or after) 1 April 2002 in a case in which the business in question was carried on at any time before that date by the company or a related party, and
- (b) on or after 1 April 2002 in any other case.]

### Textual Amendments

**F77** Words in s. 884 heading omitted (with effect in accordance with s. 70(7)(8) of the commencing Act) by virtue of [Finance Act 2009 \(c. 10\), s. 70\(5\)\(c\)](#)

**F78** Words in s. 884 omitted (with effect in accordance with s. 70(7)(8) of the amending Act) by virtue of [Finance Act 2009 \(c. 10\), s. 70\(5\)\(a\)](#)

**F79** Words in s. 884 substituted (with effect in accordance with s. 70(7)(8) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 70\(5\)\(b\)](#)

## 885 [<sup>F80</sup>Assets representing non-qualifying expenditure]: time of creation

- (1) This section—
  - (a) applies for the purposes of section 882 (application of this Part to assets created or acquired on or after 1 April 2002), and
  - (b) applies to an <sup>F81</sup> ... asset representing non-qualifying expenditure.
- (2) In this section “non-qualifying expenditure” means expenditure that under the law as it was before 1 April 2002 is not qualifying expenditure for the purposes of any allowance under CAA 2001.
- (3) If only part of the expenditure on the creation or acquisition of the asset is non-qualifying expenditure, this Part applies as if there were separate assets representing the non-qualifying expenditure and the other expenditure.
- (4) If this Part does not apply to the asset representing the non-qualifying expenditure, the alternative enactments also apply as if there were a separate asset representing that expenditure.
- (5) In subsection (4) “the alternative enactments” means the enactments that apply where this Part does not apply.
- (6) Any apportionment necessary for the purposes of subsection (3) or (4) must be made on a just and reasonable basis.
- (7) An asset to which this section applies is treated for the purposes of section 882 as created [<sup>F82</sup>—
  - (a) before (and not on or after) 1 April 2002 in a case in which the asset in question was held at any time before that date by the company or a related party, and
  - (b) on or after 1 April 2002 in any other case.]

### Textual Amendments

**F80** Words in s. 885 heading substituted (with effect in accordance with s. 70(7)(8) of the commencing Act) by [Finance Act 2009 \(c. 10\), s. 70\(6\)\(c\)](#)

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- F81** Words in s. 885(1)(b) omitted (with effect in accordance with s. 70(7)(8) of the amending Act) by virtue of Finance Act 2009 (c. 10), s. 70(6)(a)
- F82** Words in s. 885(7) substituted (with effect in accordance with s. 70(7)(8) of the amending Act) by Finance Act 2009 (c. 10), s. 70(6)(b)

## **886 Assets representing production expenditure on films: time of creation**

- (1) In determining for the purposes of this Part whether an asset representing production expenditure on a film was created before 1 April 2002 or on or after that date, the asset is treated as created when the film is completed.
- (2) In this section—
  - (a) “completed” has the same meaning as in Part 15 (see section 1181(5)),
  - (b) “film” has the same meaning as in that Part (see section 1181), and
  - (c) “production expenditure” has the same meaning as in that Part (see section 1184).

*When expenditure treated as incurred*

## **887 General rule**

- (1) For the purposes of section 883 (assets treated as created or acquired when expenditure incurred) the general rule is that expenditure on the acquisition of an asset is treated as incurred when it is recognised for accounting purposes.
- (2) This is subject to—
  - section 888 (cases where chargeable gains rule applies), and
  - section 889 (cases where capital allowances general rule applies).

## **888 Cases where chargeable gains rule applies**

- (1) This section applies if—
  - (a) expenditure on the acquisition of an asset does not qualify for any form of tax relief against income under the law as it was before 1 April 2002,
  - (b) that expenditure would be treated as incurred on or after that date under the general rule in section 887, and
  - (c) the relevant disposal of the asset is treated as occurring before that date for the purposes of TCGA 1992 or would be so treated under the law as it was before 1 April 2002.
- (2) For the purposes of section 883 (assets treated as created or acquired when expenditure incurred), the expenditure is treated as incurred before 1 April 2002.
- (3) In subsection (1) “the relevant disposal” means the disposal on which the acquisition mentioned in subsection (1)(a) occurred.

## **889 Cases where capital allowances general rule applies**

- (1) This section applies if under the law as it was before 1 April 2002 expenditure on the creation or acquisition of an asset is qualifying expenditure for the purposes of any allowance under CAA 2001.

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- (2) For the purposes of section 883 (assets treated as created or acquired when expenditure incurred) the expenditure is treated as incurred when an unconditional obligation to pay it arises.
- (3) For this purpose the fact that the whole or part of the expenditure is not required to be paid until a later date does not prevent there being an unconditional obligation to pay it.

### *Fungible assets*

#### **890 Fungible assets: application of section 858**

- (1) This section and section 891 apply for the purposes of this Chapter in relation to assets to which section 858 (treatment of fungible assets) applies.
- (2) Section 858 applies as if—
  - (a) pre-FA 2002 assets, and
  - (b) intangible fixed assets that are not pre-FA 2002 assets, were assets of different kinds.
- (3) If section 858 applies (whether or not it is a case where subsection (2) has effect)—
  - (a) a single asset comprising pre-FA 2002 assets is treated as itself being a pre-FA 2002 asset, and
  - (b) a single asset comprising intangible fixed assets that are not pre-FA 2002 assets is treated as itself being an asset to which this Part applies.

#### **891 Realisation and acquisition of fungible assets**

- (1) Subsection (2) applies if—
  - (a) a company realises a fungible asset, and
  - (b) apart from section 890(2), the asset would be treated as part of a single asset comprising both pre-FA 2002 assets and assets that are not pre-FA 2002 assets.
- (2) The realisation is treated as diminishing the single asset of the company comprising pre-FA 2002 assets in priority to diminishing the single asset of the company comprising assets that are not pre-FA 2002 assets.
- (3) Fungible assets acquired by a company that would not otherwise be treated as pre-FA 2002 assets are so treated so far as they are identified, in accordance with the following rules, with pre-FA 2002 assets realised by the company.
- (4) Rule 1 is that assets acquired are identified with pre-FA 2002 assets of the same kind realised by the company within the period beginning 30 days before and ending 30 days after the date of the acquisition.
- (5) The reference in subsection (4) to assets “of the same kind” is to assets that are, or but for section 890(2) would be, treated as part of a single asset because of section 858.
- (6) Rule 2 is that assets realised earlier are identified before assets realised later.
- (7) Rule 3 is that assets acquired earlier are identified before assets acquired later.
- (8) In this section “fungible asset” means an intangible fixed asset to which section 858 applies.

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### *Assets treated as pre-FA 2002 assets*

#### **892 Certain assets acquired on transfer of business**

- (1) This section applies if—
  - (a) a company (“the transferor”) transfers to another company (“the transferee”) an asset that is a pre-FA 2002 asset in the hands of the transferor company,
  - (b) the transfer is one in relation to which the transferor is treated for the purposes of TCGA 1992 as disposing of the asset for a consideration that secures that neither a gain nor a loss accrues to it, and
  - (c) it is so treated because of a provision specified in subsection (2).
- (2) The provisions are—
  - (a) section 139 of TCGA 1992 (reconstruction involving transfer of business),
  - (b) section 140A of that Act (transfer or division of UK business), and
  - (c) section 140E of that Act (merger leaving assets within UK tax charge).
- (3) In the hands of the transferee the asset is treated for the purposes of this Part as a pre-FA 2002 asset.
- (4) This section does not apply if the transfer mentioned in subsection (1) occurred before 28 June 2002.

#### **893 Assets whose value derives from pre-FA 2002 assets**

- (1) This section applies if—
  - (a) on or after 1 April 2002 a company (“the acquiring company”) acquires an intangible fixed asset (“the acquired asset”) from a person (“the transferor”),
  - (b) the acquired asset is created on or after 1 April 2002,
  - (c) at the time of the acquisition the transferor and the acquiring company are related parties,
  - (d) the value of the acquired asset derives in whole or in part from any other asset (“the other asset”), and
  - (e) the other asset meets the preserved status conditions (see section 894).
- (2) In the hands of the acquiring company the acquired asset is treated for the purposes of this Part as a pre-FA 2002 asset so far as its value derives from the other asset.
- (3) If only part of the value of the acquired asset derives from the other asset—
  - (a) this Part applies as if there were a separate asset representing the part of the value that does not so derive, and
  - (b) the alternative enactments apply as if there were a separate asset representing the part of the value that does so derive.
- (4) In subsection (3) “the alternative enactments” means the enactments that apply where this Part does not apply.
- (5) For the purposes of this section the cases in which the value of an asset may be derived from any other asset include any case where—
  - (a) assets have been merged or divided,
  - (b) assets have changed their nature, or
  - (c) rights or interests in or over assets have been created or extinguished.

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(6) Section 894 supplements this section.

#### **894 The preserved status conditions etc**

- (1) For the purposes of section 893(1) the other asset meets the preserved status conditions if subsections (2) and (3) apply.
- (2) This subsection applies if on or after 1 April 2002 the other asset—
  - (a) has been a pre-FA 2002 asset in the hands of the transferor at a time when the transferor and the acquiring company were related parties, or
  - (b) has been a pre-FA 2002 asset in the hands of any other person at a time when—
    - (i) the other person and the acquiring company were related parties, or
    - (ii) the other person and the transferor were related parties.
- (3) This subsection applies if the other asset has not at any time on or after 5 December 2005 been a chargeable intangible asset in the hands of—
  - (a) the acquiring company,
  - (b) a person who is a related party in relation to that company, or
  - (c) the transferor.
- (4) It does not matter for the purposes of section 893(1)(b) who created the acquired asset.
- (5) Any apportionment necessary for the purposes of section 893(3) must be made on a just and reasonable basis.
- (6) Sections 883 to 889 (provisions explaining when assets are treated as created or acquired) apply for the purposes of section 893 as they apply for the purposes of section 882.
- (7) Expressions used in this section have the same meaning as in section 893.

#### **895 Assets acquired in connection with disposals of pre-FA 2002 assets**

- (1) This section applies if—
  - (a) a person disposes of an asset which is a pre-FA 2002 asset in the person's hands at the time of the disposal,
  - (b) a company acquires an intangible fixed asset directly or indirectly in consequence of the disposal or otherwise in connection with it,
  - (c) the company and the person are related parties at the time of the disposal, and
  - (d) the acquired asset would be a chargeable intangible asset in the hands of the company at the time of the acquisition apart from this section.
- (2) The acquired asset is treated for the purposes of this Part as a pre-FA 2002 asset in the company's hands.
- (3) For the purposes of this section—
  - (a) “asset”, in relation to any disposal, means any asset for the purposes of TCGA 1992,
  - (b) a person “disposes of” an asset if, for the purposes of that Act, the person makes a part disposal of the asset or any other disposal of it, and
  - (c) the time at which a disposal of an asset is made is the time at which it is made for the purposes of that Act.

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- (4) For the purposes of this section it does not matter whether—
- (a) the asset that the person disposes of is the same asset as the acquired asset,
  - (b) the acquired asset is acquired at the time of the disposal, or
  - (c) the acquired asset is acquired by merging assets or otherwise.

*Application of Part to royalties and telecommunication rights*

**896 Application to royalties**

- (1) This Part—
- (a) applies to royalties recognised for accounting purposes on or after 1 April 2002, and
  - (b) does not apply to royalties recognised for accounting purposes before that date.
- (2) But subsection (1) is subject to subsection (3).
- (3) This section does not authorise or require an amount to be brought into account in connection with the realisation of a pre-FA 2002 asset.
- (4) In this section “realisation” has the same meaning as in Chapter 4 (see section 734).

**897 Application to pre-FA 2002 assets consisting of telecommunication rights**

- (1) This Part applies to a pre-FA 2002 asset consisting of a licence or other right within Chapter 10 of Part 2 of ITTOIA (certain telecommunication rights) (see section 146 of that Act).
- (2) This Part applies in relation to such assets as if amounts brought into account for tax purposes under Schedule 23 to FA 2000 in accounting periods ending before 1 April 2002 had been so brought into account under this Part.
- (3) This subsection applies if the asset—
- (a) was acquired before the beginning of the first accounting period ending on or after 1 April 2002, and
  - (b) was a chargeable intangible asset immediately after the beginning of that period.
- (4) If subsection (3) applies, the asset is treated for the purposes of Chapter 7 (roll-over relief on realisation and reinvestment) as if it had been a chargeable intangible asset at all material times between its acquisition and the beginning of the first accounting period ending on or after 1 April 2002.

*Roll-over relief for disposals of pre-FA 2002 assets*

**898 Relief where assets disposed of on or after 1 April 2002**

- (1) This section applies if a company disposes of a pre-FA 2002 asset on or after 1 April 2002.
- (2) Chapter 7 (roll-over relief in case of realisation and reinvestment) applies as if—
- (a) references to the realisation of the old asset were references to its disposal,

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- (b) references to its being a chargeable intangible asset were references to its being a chargeable asset within TCGA 1992 (see section 900),
  - (c) references to the proceeds of its realisation were references to the net proceeds of disposal under that Act (see subsection (3)), and
  - (d) references to its cost recognised for tax purposes were references to the cost under that Act (see subsection (4)).
- (3) For the purposes of subsection (2)(c) the net proceeds of disposal under TCGA 1992 are taken to be the amount or value of the consideration for the disposal, less any incidental costs of making the disposal that would be allowable as a deduction under section 38(1)(c) of that Act.
- (4) For the purposes of subsection (2)(d) the cost under TCGA 1992 is taken to be an amount equal to the difference between—
- (a) the net proceeds of disposal (as defined in subsection (3)), and
  - (b) the amount of the chargeable gain on the disposal.
- (5) Section 850 (part realisation involving related party acquisition: exclusion of roll-over relief) does not apply in a case where Chapter 7 applies because of this section.
- (6) References in this section to the disposal of an asset have the same meaning as in TCGA 1992.

## **899 Relief where degrouping charge on asset arises on or after 1 April 2002**

- (1) This section applies if—
- (a) a company is treated under section 179(3) or (6) of TCGA 1992 (degrouping charge) as having sold and reacquired a pre-FA 2002 asset, and
  - (b) under section 179(4) or (8) of that Act the gain is treated as accruing on or after 1 April 2002.
- (2) Chapter 7 (roll-over relief in case of realisation and reinvestment) applies as specified in section 898(2) and with the additional modifications specified in subsections (3) to (5).
- (3) In section 755 (conditions relating to the old asset and its realisation), for the references to the old asset being a chargeable intangible asset throughout the period during which it was held by the company substitute references to its being a chargeable asset within TCGA 1992 throughout the period during which it was held by the company referred to in section 179 of that Act as “company B”.
- (4) In section 756(1) (conditions relating to expenditure on other assets), for the references to the date of realisation of the old asset substitute references—
- (a) in a case within section 179(3) of TCGA 1992, to the time at which the gain is treated as accruing under section 179(4) of that Act, and
  - (b) in a case within subsection 179(6) of that Act, to the time at which the gain is treated as accruing under section 179(8) of that Act.
- (5) For references to the proceeds of realisation substitute references to the amount of the consideration for which the company is treated under TCGA 1992 as having sold and reacquired the asset.
- (6) For the meaning of “chargeable asset within TCGA 1992”, see section 900.



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- (7) Section 850 (part realisation involving related party: exclusion of roll-over relief) does not apply in a case where Chapter 7 applies because of this section.

## **900 Meaning of “chargeable asset within TCGA” in sections 898 and 899**

- (1) For the purposes of sections 898 and 899 an asset is a chargeable asset within TCGA 1992 in relation to a company at any time if—
- (a) any gain accruing to the company on the disposal of it at that time would be a chargeable gain within the meaning of that Act,
  - (b) condition A or condition B is met in relation to the company, and
  - (c) double tax relief is not available to the company at that time.
- (2) Condition A is that at that time the company is UK resident<sup>F83</sup> ....
- (3) Condition B is that the gain would form part of the company's chargeable profits for corporation tax purposes as a result of section 10B of TCGA 1992 (non-resident company with United Kingdom permanent establishment).
- (4) For the purposes of subsection (1) double tax relief is available to the company if it would be treated for the purposes of any double taxation relief arrangements as not liable in the United Kingdom to tax on any gain accruing to it on a disposal of the asset.
- (5) References in this section to the disposal of an asset have the same meaning as in TCGA 1992.

### **Textual Amendments**

**F83** Words in s. 900(2) omitted (with application in accordance with Sch. 46 para. 138(2) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 138\(1\)](#)

## **CHAPTER 17**

### **INSURANCE COMPANIES**

#### *Effect of application of the I minus E basis: non-trading amounts*

### **[<sup>F84</sup>901 Effect of application of the I - E basis: non-trading amounts**

In the application of the I - E rules in relation to a company's basic life assurance and general annuity business, the provisions of this Part need to be read with section 88 of FA 2012 (which provides for the activities carried on by the company in the course of that business not to constitute the whole or any part of a trade or of a property business).]

### **Textual Amendments**

**F84** S. 901 substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 179](#)

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F85 ...

#### Textual Amendments

**F85** S. 902 and cross-heading omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 180](#)

#### <sup>F85</sup>**902 Excluded assets**

.....

#### <sup>F86</sup>**903 Elections to exclude capital expenditure on computer software**

.....

#### Textual Amendments

**F86** S. 903 omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 180](#)

#### *Miscellaneous*

#### <sup>F87</sup>**904 Transfers of life assurance business: transfers of assets treated as tax-neutral**

.....

#### Textual Amendments

**F87** S. 904 omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 181](#)

#### **905 Pre-FA 2002 assets: Lloyd's syndicate capacity**

- (1) The general rule in section 882 (this Part not to apply to pre-FA 2002 assets) does not apply if the intangible fixed asset consists of the rights of a member of Lloyd's under a syndicate within the meaning of Chapter 5 of Part 4 of FA 1994 (taxation of corporate members of Lloyd's).
- (2) This Part applies in relation to the asset as respects amounts to be brought into account for tax purposes in accounting periods ending on or after 1 April 2002.
- (3) For the purposes of section 729(5) (writing down on accounting basis: calculation of amount of debit for tax purposes) as it applies to the first accounting period ending on or after 1 April 2002, the tax written down value of the asset must be calculated under section 742 in accordance with subsection (4).
- (4) That value must be calculated as if the debits to be deducted under section 742 included all accounting losses previously recognised in respect of the asset.
- (5) It does not matter for the purposes of subsection (4) if those accounting losses previously gave rise to a deduction for tax purposes.
- (6) This subsection applies if an asset within subsection (1)—

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- (a) was acquired before the beginning of the first accounting period ending on or after 1 April 2002, and
  - (b) is a chargeable intangible asset immediately after the beginning of that period.
- (7) If subsection (6) applies, the asset is treated for the purposes of Chapter 7 (roll-over relief on realisation and reinvestment) as if it had been a chargeable intangible asset at all material times between its acquisition and the beginning of the first accounting period ending on or after 1 April 2002.
- (8) For the purposes of this section, an asset is treated as acquired at the same time as it would be treated as acquired for the purposes of section 882 (see sections 883 to 885).

## CHAPTER 18

### PRIORITY RULES

#### 906 Priority of this Part for corporation tax purposes

- (1) The amounts to be brought into account in accordance with this Part in respect of any matter are the only amounts to be brought into account for corporation tax purposes in respect of that matter.
- (2) Subsection (1) is subject to any indication to the contrary.
- (3) In particular, see—
  - (a) section 1308 (expenditure brought into account in determining value of intangible asset), <sup>F88</sup> ...
  - (b) <sup>F89</sup> ... [<sup>F90</sup>, and
  - (c) section 112(5) of TIOPA 2010 (deduction for foreign tax where no credit available).]

#### Textual Amendments

**F88** Word in s. 906(3) repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 97\(a\)](#), [Sch. 10 Pt. 1](#) (with [Sch. 9 paras. 1-9, 22](#))

**F89** [S. 906\(3\)\(b\)](#) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 182](#)

**F90** [S. 906\(3\)\(c\)](#) and preceding word inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 97\(b\)](#) (with [Sch. 9 paras. 1-9, 22](#))

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