



# Finance Act 2006

## 2006 CHAPTER 25

### PART 3

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER 8

#### AVOIDANCE: MISCELLANEOUS

#### *Intangible fixed assets*

#### **77 Treating assets as “existing assets” etc**

- (1) Schedule 29 to FA 2002 (gains and losses of a company from intangible fixed assets) is amended as follows.
- (2) In paragraph 13 (credits in respect of intangible fixed assets: introduction), in subparagraph (1) (credits brought into account under Part 3), after paragraph (a) (receipts recognised in determining profit or loss), insert—
  - “(aa) receipts in respect of royalties so far as the receipts do not give rise to a credit under paragraph 14 (see paragraph 14A),”.
- (3) After paragraph 14 (receipts recognised as they accrue) insert—

#### *“Receipts in respect of royalties so far as not dealt with under paragraph 14*

- 14A (1) So far as a receipt in respect of any royalty does not give rise to a credit under paragraph 14 (whether in the period of account in which it is received or in a subsequent period of account), a credit shall be brought into account for tax purposes.

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- (2) The amount of the credit to be brought into account for tax purposes is equal to so much of the amount of the receipt as does not give rise to a credit under paragraph 14.
- (3) The credit shall be brought into account for tax purposes in the accounting period in which the receipt is recognised for accounting purposes.”.
- (4) In paragraph 82 (assets excluded to extent specified: research and development), in sub-paragraph (2) (provisions of Schedule not applying to asset so far as representing expenditure on research and development)—
  - (a) in paragraph (a) (Part 2 not to apply subject to exception relating to paragraph 14), at the end insert “or 14A (receipts in respect of royalties so far as not dealt with under paragraph 14)”, and
  - (b) in paragraph (b) (Part 3 not to apply subject to exception for paragraph 14), for “paragraph 14” substitute “paragraphs 14 and 14A”.
- (5) In paragraph 83 (assets excluded to extent specified: election to exclude capital expenditure on computer software), in sub-paragraph (3) (effect of election)—
  - (a) in paragraph (a) (Part 2 not to apply subject to exception relating to paragraph 14), at the end insert “or 14A (receipts in respect of royalties so far as not dealt with under paragraph 14)”, and
  - (b) in paragraph (b) (Part 3 not to apply subject to exception for paragraph 14), for “paragraph 14” substitute “paragraphs 14 and 14A”.
- (6) In paragraph 118 (application of Schedule to assets created or acquired after commencement, that is to say, on or after 1st April 2002)—
  - (a) in sub-paragraph (4) (application of sub-paragraph (1) subject to other paragraphs), at the end insert “and
    - (c) paragraph 127A (assets whose value derives from existing assets treated as existing assets), and
    - (d) paragraph 127B (assets acquired in connection with disposals of existing assets treated as existing assets).”, and
  - (b) in sub-paragraph (6) (nothing in paragraph 118 restricts application of Schedule in accordance with paragraph 119), at the end insert “, but see sub-paragraph (5) of that paragraph.”.
- (7) In paragraph 119 (application of Schedule to royalties), at the end insert—
  - “(5) Nothing in this paragraph shall be read as authorising or requiring an amount to be brought into account in connection with the realisation of an existing asset within the meaning of Part 4.”.
- (8) After paragraph 127 (certain assets acquired on transfer of business treated as existing assets) insert—

*“Assets whose value derives from existing assets treated as existing assets*

127A (1) This paragraph applies where—

- (a) a company acquires an intangible fixed asset (“the acquired asset”) after commencement from a person (“the transferor”) who at the time of the acquisition is a related party in relation to the company,

- (b) the acquired asset is created, whether by the transferor or any other person, after commencement,
  - (c) the value of the acquired asset derives in whole or in part from any other asset (“the other asset”),
  - (d) the other asset has not at any time on or after 5th December 2005 been a chargeable intangible asset in the hands of the company or a related party in relation to the company or the transferor, and
  - (e) the existing asset condition is met.
- (2) The existing asset condition is that, after commencement,—
- (a) the other asset has been an existing asset in the hands of the transferor at a time when the transferor was a related party in relation to the company, or
  - (b) the other asset has been an existing asset in the hands of any other person at a time when the other person was a related party in relation to the company or the transferor.
- (3) Where this paragraph applies the acquired asset shall be treated for the purposes of this Schedule as an existing asset in the hands of the company, but only so far as its value derives from the other asset.
- (4) If only part of the value of the acquired asset so derives—
- (a) this Schedule has effect as if there were a separate asset representing the part of the value not so derived, and
  - (b) the enactments that apply where this Schedule does not apply have effect as if there were a separate asset representing the part of the value so derived.
- Any apportionment necessary for this purpose shall be made on a just and reasonable basis.
- (5) For the purposes of this paragraph 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.
- (6) For the purposes of this paragraph the time at which an asset is created or acquired is the time at which it would be regarded as created or acquired for the purposes of paragraph 118 (application of Schedule to assets created or acquired after commencement).

*Assets acquired in connection with disposals of existing assets treated as existing assets*

- 127B (1) This paragraph applies where—
- (a) a person disposes of an asset which, at the time of the disposal, is an existing asset in the hands of the person,
  - (b) a company which at the time of the disposal is a related party in relation to the person acquires an intangible fixed asset directly or indirectly in consequence of, or otherwise in connection with, the disposal, and

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- (c) the intangible fixed asset that is acquired would, apart from this paragraph, at the time of the acquisition be a chargeable intangible asset in the hands of the company.
- (2) Where this paragraph applies the intangible fixed asset that is acquired shall be treated for the purposes of this Schedule as an existing asset in the hands of the company.
- (3) For the purposes of this paragraph—
  - (a) “asset”, in relation to any disposal, means any asset for the purposes of the Taxation of Chargeable Gains Act 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 the asset,
  - (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.
- (4) For the purposes of this paragraph it does not matter—
  - (a) whether the asset that the person disposes of is the same asset as the one that the company acquires,
  - (b) whether the asset that is acquired is acquired at the time of the disposal or at any other time, or
  - (c) whether the asset that is acquired is acquired by merging two or more assets or is acquired in any other way.”.
- (9) In paragraph 143 (index of defined expressions), in the entry relating to existing asset, in the second column, for “paragraph 127” substitute “paragraphs 127 to 127B”.
- (10) The amendments made by this section have effect in relation to the debits or credits to be brought into account for any accounting period beginning on or after 5th December 2005 (and, in relation to the debits or credits to be brought into account for any such period, shall be deemed always to have had effect).
- (11) For this purpose an accounting period beginning before, and ending on or after, that date is treated as if—
  - (a) so much of that period as falls before that date, and
  - (b) so much of that period as falls on or after that date,were separate accounting periods.