



Corporation Tax Act 2009

2009 CHAPTER 4

PART 8

INTANGIBLE FIXED ASSETS

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”.

Status: This is the original version (as it was originally enacted).

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)).

When assets are treated as created or acquired

883 Assets treated as created or acquired when expenditure incurred

- (1) This section—

Status: This is the original version (as it was originally enacted).

- (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 all intangible assets except those to which the provisions specified in subsection (2) apply.
- (2) The provisions referred to in subsection (1)(b) are—
- (a) section 884 (internally-generated goodwill: time of creation),
 - (b) section 885 (certain other internally-generated assets: time of creation), and
 - (c) section 886 (assets representing production expenditure on films: time of creation).
- (3) An intangible asset to which this section applies 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.

884 Internally-generated 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) internally-generated goodwill is treated as created before (and not on or after) 1 April 2002 if the business in question was carried on at any time before 1 April 2002 by the company or a related party.

885 Certain other internally-generated assets: 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 internally-generated 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.

Status: This is the original version (as it was originally enacted).

- (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 before (and not on or after) 1 April 2002 if the asset in question was held at any time before that date by the company or a related party.

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.
- (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.

Status: This is the original version (as it was originally enacted).

- (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.

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

Status: This is the original version (as it was originally enacted).

- (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.
- (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.

Status: This is the original version (as it was originally enacted).

- (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.
- (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,
 - (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”.

Status: This is the original version (as it was originally enacted).

- (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.
- (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 or ordinarily UK resident.
- (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.