



Corporation Tax Act 2009

2009 CHAPTER 4

PART 8

INTANGIBLE FIXED ASSETS

CHAPTER 9

APPLICATION OF THIS PART TO GROUPS OF COMPANIES

Company ceasing to be member of group

780 Deemed realisation and reacquisition at market value

- (1) This section applies if—
- (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—

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- (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 (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).

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

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- in section 807B(2)(b)(iii) of ICTA and in respect of which section 807C 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.

783 Associated companies leaving group at the same time

- (1) If two or more companies that are associated (see section 788(3)) cease to be members of a group at the same time, section 780 does not apply in relation to a transfer between them.
- (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).

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 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.

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- (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.
- (6) Section 416(2) to (6) of ICTA (meaning of control) applies for the purposes of this section as it applies for the purposes of Part 11 of that Act.
- (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.

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”).
- (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.

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- (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 degrouching 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.

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—

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“exempt distribution” means a distribution that is exempt because of section 213(2) of ICTA (distributions involving shares in 75% subsidiaries), and

“chargeable payment” has the meaning given in section 214(2) of that Act.

- (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.

788 Provisions supplementing sections 780 to 787

- (1) References in sections 780 to 787 (degrouing) 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.
- (3) For the purposes of those sections and this section two or more companies are associated if, by themselves, they would form a group of companies.

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.

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- (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)—
- (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.

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- (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.

Status:

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