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HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD46050 - Intangible assets: Special rules for restricted assets: when an intangible asset is restricted – the first case – acquisitions from a person who is not a company

CTA09/S900B(3) – (7)

The first case – acquisitions from a person other than a company

CTA09/S900B(3)

You can only apply the pre-FA 2002 asset definition to a company. A different rule is therefore needed for an asset that would have been a pre-FA 2002 asset at 1 July 2020 if held by a company but is in fact held by a person other than a company.

The CTA09/S900B(3) rule is loosely modelled on the old pre-FA02 rule and considers the original date of creation of the asset. This alternative proposition together with CTA09/S900B(1) requires the following conditions to be met:

- the asset must be acquired on or after 1 July 2020 (CTA09/S900B(1)(a)),
- the asset must be acquired from a person who was a related party to the company at the time of acquisition (CTA09/S900B(1)(b)),
- the asset was created before 1 April 2002 (CTA09/S900B(3)(a)),
- immediately before 1 July 2020 the asset was held by a person other than a company (CTA09/S900B(3)(b)), and
- at no time has the asset been the subject of a relieving acquisition (CTA09/S900B(3)(c)).

Example

C Ltd acquires an asset from an individual 'P' on 1 September 2020. At the time of the acquisition the parties are related parties. The asset was created before 1 April 2002. The asset is a restricted asset in C Ltd's hands because the first four conditions above are met and at no time has the asset been the subject of a relieving acquisition (CTA09/S900B(3)(c)). It does not matter whether the asset was created by P or by some other person.

The intermediary rule - CTA09/S900B (4) – (7)

The rule in CTA09/S900B(3) is however subject to the exception in CTA09/S900B(4) - (7). This intermediary rule is based on the intermediary rule in CTA09/S882(4). It considers the relationships between the parties both at the time of the

intermediary's acquisition and at the time of acquisition by the company. For the exception in CTA09/S900B (4) to apply all the following conditions must be met:

- The person mentioned in CTA09/S900B(3) ('the intermediary') must have acquired the asset on or after 1 April 2002 from another person ('the third party') (CTA09/S900B(4)), and that third party
- is not a company, or if it is a company then it is not a related party of the intermediary at the time of the intermediary's acquisition (CTA09/S900B(5)),
- is not at the time of the intermediary's acquisition a related party in relation to a company to which the intermediary is related (CTA09/S900B(6)), and
- is not at the time of acquisition by the company related to that company (CTA09/S900B(7)).

Example

C Ltd acquires an asset from an individual 'X' on 1 April 2022. At the time of the company's acquisition X and C Ltd are related parties. X originally acquired the asset from another person 'P' (the third party) on 1 August 2019. P was not a company and was not a related party to C Ltd at the time of C Ltd's acquisition and was also not a related party to any company to which X was related at the time of X's acquisition.

The asset is not a restricted asset in C Ltd's hands. The asset is not within CTA09/S900B(3) because:

- X (the intermediary) acquired the asset on or after 1 April 2002 from a third party, P, (CTA09/S900B(4)).
- At the time of the acquisition by X from P
 - P was not a company (CTA09/S900B(5)(a)), and
 - P wasn't a related party to a company to which X was related at the time X acquired the asset (CTA09/S900(6)), and

- At the time of the acquisition by C Ltd from X
 - P was not related to C Ltd (CTA09/S900(7)).

If however, P was a related party to a company to which X was also related at the time X acquired the asset, or P was related to C Ltd at the time of the C Ltd's acquisition, the exception in CTA09/S900B(4) would not apply because either CTA09/S900B(6) or CTA09/S900B(7) would not be met. The asset would fall within CTA09/S900B(3) and be a restricted asset (assuming other conditions for a restriction are also met).

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