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Corporate Intangibles Research and Development Manual

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CIRD11660 - Intangible assets within CTA09/PART8: FA02 rule: asset acquired on or after 1 April 2002: asset transfers within TCGA92/S139 or S140A CTA09/PART8/S892

Background

This provision is concerned with situations where the transferor company of an intangible asset is within the CG rules for corporation tax in respect

of a disposal and that disposal is regarded for CG purposes as taking place on no gain/no loss terms.

Before 1 July 2020 the asset would also be outside CTA09/PART8 in the hands of the transferee company by virtue of the exclusion of assets acquired from companies that are 'related parties' of the transferee. (See [CIRD11520](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird11520) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird11520>) for the exclusion and [CIRD45105](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird45105) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird45105>) onwards for the meaning of 'related party').

In some circumstances, however, the CG rules may impose no gain/no loss treatment on the transferor of an intangible asset where the transferee is not a related party for the purposes of CTA09/PART8. This may arise for example where the transfer occurs as part of the transfer of a trade or business within the rules in TCGA92/S139, TCGA1992/S140A or TCGA1992/S140E. See CG52800 onwards and CG45706 onwards.

Where the parties are not related in these circumstances, and in the absence of a special rule, the asset transferred would be within CTA09/PART8 in the hands of the transferee and carry an acquisition cost based on the 'fair value' of the asset in the accounts of the transferee (arrived at by applying FRS102 s19).

This could result in relief under CTA09/PART8 being available on an amount that was not liable to tax in the hands of the transferor.

Practical effect

To avoid this mismatch between the treatment of the transferor and that of the transferee, CTA09/S892 ensures that the asset transferred in these circumstances is excluded from

CTA09/PART8 whether the transferor and transferee are related parties or not. The practical consequence is that the asset remains within the CG rules in the hands of the transferee, with an acquisition cost equal to the transferor's disposal value.

CTA09/S892 was amended by FA20/S31 with effect from 1 July 2020 to extend this rule to transfers within TCGA1992/S171. This prevents assets coming within the CTA09/PART8 rules by virtue of CTA09/S882(1C) on an intra-group no gain/no loss transfer under TCGA1992/S171. This preserves the TCGA1992 treatment for capital gains grouped companies.

Provision

CTA09/S892 applies to the transfer of an intangible asset where both of the following apply:

- the asset is an 'pre-FA 2002 asset' in the hands of the transferor - see [CIRD10140](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird10140) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird10140>)
- the transfer is one to which TCGA92/S139, S140A, S140E or S171 applies and therefore for CG purposes the transferor is regarded as disposing of the asset on no gain/no loss terms

In these circumstances the asset is treated as a pre-FA 2002 asset in the hands of the transferee company.

Similar provisions applicable to certain transfers of assets by mutual societies are in Regs 14 and 30 of SI2009/2971.

Circumstances where rule of no application

Neither TCGA92/S139, S140A, nor S140E will apply to the transfer of an intangible asset that falls within CTA09/PART8/S818 - 820 (the corresponding provisions in the intangibles code).

That is where the asset is a ‘chargeable intangible asset’ (see [CIRD20035 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird20035\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird20035)) in the hands of the transferor immediately before the transfer and in the hands of the transferee immediately afterwards. See [CIRD42000 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird42000\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird42000) onwards.

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