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## HMRC internal manual

# Corporate Intangibles Research and Development Manual

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## CIRD45265 - Intangible assets: related party rules: partnership incorporation of a pre-FA 2002 business: technical arguments

The arguments below assume that you can establish that at least one of the partners is a related party at the time of acquisition and was carrying on the business in question prior to 1 April 2002 so that CTA09/PART8/S884 applies to treat the internally generated goodwill as created before 1 April 2002.

## Argument 1 - partner leaves prior to transfer

It is claimed that a partner retires or leaves the partnership prior to the transfer and relief is claimed in respect of the outgoing partner's goodwill (on the basis that they are not a "related party" at the time of acquisition).

Normally the partnership agreement will set out the treatment of partnership property when a partner leaves. For example, it will often provide for the acquisition of an outgoing partner's share in the partnership by the continuing partners.

Where you have established that the goodwill of the business is partnership property then it is not capable of independent disposal from the business by the outgoing partner. A partner cannot point to specific items of partnership property and say that they own a proportion of a particular asset. A partner's share in a partnership represents their proportion of the partnership assets, once all liabilities and debts have been discharged, on the winding up (dissolution) of the partnership. In other words, it is a monetary value, not an entitlement to fractional shares of actual partnership property. So, the partner cannot dispose of his share of goodwill to the company prior to the transfer of the business.

Thus, there are 2 possible solutions to this argument, depending on the facts.

Where the outgoing partner leaves prior to the transfer of the business to the company, the outgoing partner's interests will either have been transferred to the remaining partners or a new partner. All partners will therefore be "related parties" either because they are themselves "participants" or "associates of participants" at the time of acquisition by the company.

Where the outgoing partner did not leave prior to the business transfer, the outgoing partner will still be a related party because they are an "associate

of a participator” at the time of acquisition by the company.

## **Argument 2 - partnership and/or business ceased prior to transfer**

The other argument seen is based on an erroneous contention that the partnership or business ceased prior to the transfer, say on 30 April, with the company commencing in business the day after on 1 May.

It is a question of fact whether or not the business has ceased but it is important to distinguish between the partnership’s cessation (dissolution) and an actual cessation of the business. A change in business ownership and the transfer of goodwill are strong indicators that the purchaser has succeeded to the trade and the trade has not ceased. Since goodwill is inseparable from the business and the partnership has disposed of the business as a going concern, it follows that the partnership must have existed at the time of acquisition by the company. In other words, there is no moment in time where the business was not owned by either the partnership or the company.

## **Other arguments**

In the context of partnership incorporations, it is worth reinforcing the rule at S884, which provides that goodwill is treated as wholly created before 1 April 2002 if any one of the related parties was carrying on that business prior to that date. There is nothing within the deeming rule at S884 that allows part of the goodwill of the business to have been created before 1 April 2002 and part thereafter (see also [CIRD11680](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird11680) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird11680>)).

Where part of the proceeds represents the goodwill of a previously purchased business, whether this goodwill falls within or outside the

scope of Part 8's commencement provisions will be determined separately.

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