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# Corporate Intangibles Research and Development Manual

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## CIRD11688 - Intangible assets within CTA09/PART8: FA02 rule: time when asset treated as created or acquired: exceptions to expenditure incurred rule; example - licence granted by a related party before 1 July 2020

Example - licence granted by a  
related party

From CTA09/PART8/S712(3)(d) it is clear that a licence can be an intangible asset. The old FA02 rule which applied before 1 July 2020 in CTA09/S882 governed whether a licence in the hands of the licensee comes within CTA09/PART8.

When a licence is granted to the licensee by a related party before 1 July 2020:

- S882(1)(a) cannot apply as the licensee has not created anything
- S882(1)(b) cannot apply as the licensee is related to the licensor
- S882(1)(c) can apply if any of Case A, B or C is satisfied
- Case A (S882(3)) cannot apply as the licence was not a chargeable intangible asset in the hands of the licensor
- Case B (S882(4)) cannot apply as the licensor did not acquire the licence from any person
- Case C (S882(5)) can apply in limited circumstances as described below (and where the underlying asset itself satisfies the FA02 rule)

### **Case C - accounting periods commencing on or after 22 April 2009**

For accounting periods or parts of accounting periods commencing on or after 22 April 2009, under CTA09/S885 the licence is treated as created when it was first held (see CIRD11665). Case C may therefore apply if the following conditions are met;

- the licence was not held at any time before 1 April 2002,
- all other provisions in S885 are met, and
- the underlying asset is not itself a pre-FA 2002 asset.

Where the licensed asset was held by the licensor or a related party before 1 April 2002, and consequently is treated as a pre-FA 2002 asset, the licence will also be treated as a pre-FA2002 asset in the hands of the licensee as determined under CTA09/S893 - 894.

It should be noted that CTA09/S885 differs from CTA09/S883 in that there is no requirement for expenditure to be incurred on creation.

## **Case C - accounting periods ending prior to 22 April 2009**

For accounting periods or parts of accounting periods ending prior to 22 April 2009 the expenditure-based test in CTA09/S883 applies ([CIRD11685 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird11685\)\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird11685)).

CTA09/S883 specifies that an intangible fixed asset is treated as created on or after 1 April 2002 for the purposes of CTA09/S882 when expenditure is incurred on its creation on or after that date.

A licence is essentially a permission right normally derived from an underlying asset. For example; a permission might be granted under a licence to use a person's registered trade mark. In these circumstances you must identify whether there is any expenditure on the creation of the permission right.

It's likely that granting the licence involves no expenditure on creation. The sums paid by the licensee is expenditure on acquiring the licence. This might include incidental costs such as legal costs, not just the amounts paid directly to the licensor. Any costs incurred by the licensor on grant of the licence are likely to be attributable to the disposal or part disposal of the underlying asset. Where the underlying asset is a pre-FA02 asset these costs will be relieved under the capital gains rules. Under the test imposed by CTA09/S883 neither the licensor nor the licensee

is seen as having created an asset on or after 1 April 2002 because there is no creation expenditure. The licence therefore cannot satisfy Case C.

Note that if the licence is acquired from a related party by assignment, rather than being granted by a related party, you need to consider whether Case A can be satisfied. For example; consider if the licence was a chargeable intangible asset in the hands of the assignor.

### **FA09/S70 'always having been in force'**

For accounting periods beginning on or after 22 April 2009, and following FA09/S70 (see final paragraph of [CIRD11685 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird11685\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird11685)), debits in respect of certain excluded licences may now be within CTA09/PART8. This will be the case where, in the absence of creation expenditure, the licence was excluded under CTA09/S883 test, but falls within CTA09/S885 post-FA09/S70. It will not be the case where the licence is still excluded under CTA09/S893 - 894.

### **Licence granted by related party on or after 1 July 2020**

The advice above applies to related party licences granted before 1 July 2020. A licence granted on or after 1 July 2020 will satisfy the condition in CTA09/S882(1C) and will not be excluded from CTA09/PART8. It may however be restricted under Chapter 16A, see CIRD46000+.

### **Royalties**

Note that where any licence is treated as a pre-FA 2002 asset, whether under CTA09/S883 or some other provision, any royalties payable in respect of the licence will still be within CTA09/PART8 ([CIRD10150 \(https://www.gov.uk/hmrc-internal-](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird10150)

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