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HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD48200 - Intangible assets: avoidance: measures in FA03/S184: background

Changes in June 2003 to anti-avoidance and related parties rules

As first enacted, FA02/SCH29/PARA111 (the predecessor to CTA09/S864) only applied to amortisation and write-downs under FA02/SCH29/PARA9, and to realisation gains under PART4 (now CTA09/CHAPTER 4). It did not apply to the 4% election (see [CIRD12905](#) (<https://www.gov.uk/hmrc-internal-manuals/corporate->

[intangibles-research-and-development-manual/cird12905](#)). This was because HMRC did not wish to overburden the new schedule with avoidance provisions, and it was not thought that there would be sufficient amounts at stake to motivate tax avoiders.

But it became apparent that tax avoidance schemes were being created which aimed to get existing assets into the new regime by avoidance transactions designed to overcome the protections we had against related party transactions. These were clearly avoidance schemes, but, because, after completion, the company would only elect for a 4% allowance, it was thought by scheme vendors that the schemes could not be subject to an avoidance challenge under PARA111.

Because of the very large value of existing intangible assets, we could not afford to wait to see if these schemes worked. So counter measures were introduced in FA03. These strengthened the related party definition in FA02/SCH29/PARA95 (now CTA09/s835) and the anti avoidance rule in PARA111 (now CTA09/S864). The position following these counter measures for accounting periods starting on or after 20 June 2003 is as described at [CIRD45150](#) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird45150>) (related parties) and [CIRD48150](#) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird48150>) (avoidance). But the counter measures may involve re-examining transactions that have taken place in accounting periods ending before 20 June 2003, because for accounting periods commencing on or after 20 June 2003, the new measures are deemed to have always been in force. See [CIRD48230](#) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird48230>).

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