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HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD45260 - Intangible assets: related party rules: partnership incorporation of a pre-FA 2002 business: outline

BAI receive a number of requests for technical advice in relation to the application of the related party rules at CTA09/PART8/S835 on the incorporation of a pre-FA 2002 partnership business.

Rules were introduced by FA15 which applied from 3 December 2014 to 7 July 2015, and FA19 which apply from 1 April 2019, that restrict when

and how relief is given for goodwill recognised on incorporation of a business (see [CIRD44001](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird44001) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird44001>) onwards). No relief was available for goodwill acquired between 8 July 2015 and 31 March 2019. This guidance is therefore only likely to be relevant to goodwill acquired in respect of incorporations that occurred before 3 December 2014.

The term “related party” is defined by S835 (see [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>)). S835 (5) is relevant to partnership incorporations and you will need to consider the definition of “close company”, “participator” & “associate of a participator” (see [CIRD45250](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird45250) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird45250>)).

When a partnership transfers the partnership business to a close company, at a time when one of the partners is also a participator or associate of a participator in that company, the transfer is likely to be between related parties.

A common misconception is that the goodwill can somehow be apportioned between the partners so that only part of the goodwill is treated as a “pre-FA 2002 asset” (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>)). For example, claims are made in relation to an outgoing partner’s share of goodwill on the basis that the outgoing partner is not a “related party” at the time of acquisition.

For practical advice in relation to such arguments see CIRD45265. [CIRD45270](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird45270) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird45270>) provides advice in relation to information and document requests.

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