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## HMRC internal manual

# Corporate Intangibles Research and Development Manual

From: [HM Revenue & Customs](#)  
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Published 11 March 2016

Updated: 10 September 2025 - [See all updates](#)

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## CIRD42040 - Intangible assets: company reorganisations: transfer of foreign permanent establishment from UK to a non resident company: deferral of charge

### CTA09/PART8/S827

The provisions of S827 are modelled on the provisions in TCGA92/S140. S827 deals with the situation where a UK resident company has been trading in another country through an overseas permanent establishment.

It is not uncommon in such circumstances for the UK company to decide that the part of its trade carried on by the permanent establishment should be transferred to a non-resident company, frequently in exchange for shares in the non-resident company. Such a transfer of the trade may also involve the transfer of intangible fixed assets attributable to the trade (for example the goodwill of the trade, whether it appears as a balance sheet asset or not). In such circumstances the disposal may trigger a taxable credit on the transferor under the rules described in [CIRD13210 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird13210\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird13210) onwards.

All or part of this taxable credit may be deferred under S827 if all the following conditions are satisfied:

- 1 - A UK resident company carrying on a trade outside the UK through a permanent establishment transfers that trade, or part of it, together with all the related assets (or all the assets other than cash), to a non-UK resident company.
- 2 - The consideration for the trade or part trade transferred consists wholly or partly of shares, or shares and loan stock, issued by the transferee company to the transferor company.
- 3 - The shares so issued, together with any other shares in the transferee company already held by the transferor company, are at least 25% of the ordinary share capital of the transferee company.
- 4 - The transferor company makes a claim.  
(Although relief cannot be claimed both under these outward domestication provisions and under the provisions implementing the EC Mergers Directive that deal with the transfer of a non-UK trade. See [CIRD42060 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird42060\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird42060).)

5 - The transfer is undertaken for bona fide commercial reasons and does not form part of a scheme or arrangements where the main purpose, or one of the main purposes, is avoidance of liability to Corporation Tax, Capital Gains Tax or Income Tax.

How to work out the amount of the deferred taxable credit and the circumstances in which it ceases to be deferred are covered at [CIRD42045](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird42045) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird42045>) and [CIRD42050](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird42050) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird42050>).

(FA03/S153 (1) substituted the words 'permanent establishment' for 'branch or agency' effective for all accounting periods beginning on or after 1 January 2003.)

## Points to note

- There is a provision for companies to seek advance clearance that the fifth condition above (the commercial purpose test) is satisfied. The Clearance and Counteraction Team deals with all statutory clearance applications and the procedure is described in [CIRD42100](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird42100) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird42100>).
- Clearance will only be considered in respect of intangible assets (including goodwill) that can be properly and wholly attributed to a trade carried on by the company through a foreign permanent establishment. Intangible assets that have mixed use, for example intangible assets that are used both in the trade of a foreign permanent establishment and by the company in other areas, and/or assets that cannot be wholly attributed to the foreign permanent establishment, will not be covered by any clearance given.

- Where a company submits tax computations on the basis that relief is available under S827 and there is no record of a clearance application, HMRC officers should contact the Clearance and Counteraction Team at [\(This content has been withheld because of exemptions in the Freedom of Information Act 2000\)](#) .
- Unlike the equivalent CG tax provision in TCGA92/S140, there is no requirement that intangible asset taxable credits and deductible debits resulting from the transfer be aggregated before computing the deferral available. Instead, under this section, companies have to claim on an asset-by-asset basis. It follows that the application should identify the assets that are subject to the clearance application.

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