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Corporate Intangibles Research and Development Manual

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CIRD42060 - Intangible assets: company reorganisations: transfer of non UK trade between EU companies

CTA09/PART8/S820

S820 includes provisions that correspond to TCGA92/S140C, (CG45730 onwards), which gives effect to parts of the EC Mergers Directive (No 90/434/EEC) on cross-border business reorganisations. It provides for relief in the form of notional foreign tax on transfers where a UK company carries on a trade through a permanent

establishment in another EU member state. This relief cannot be claimed if relief is given under S827 (see [CIRD42040 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird42040\)\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird42040)).

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

The Mergers Directive prevents a taxation charge on certain movements of trades within the EU. In this case, the member state where the trade is located might have charged tax on the disposal triggered by the transfer of the trade were it not prevented from doing so by its domestic law giving effect to the Directive.

The requirement of the Directive affecting the taxing rights of the state where the trade is carried on does not however in itself prevent the state where the company carrying on the cross-border business is resident from charging the company to tax on the transfer. The Directive also provides therefore that the state of residence must provide relief.

In the case of a company resident in the UK, the relief works:

- by computing the tax the member state where the permanent establishment was previously located would have imposed (but for the Directive) on the transfer of any chargeable intangible assets of the business; and
- by treating this amount as actual foreign tax payable and therefore available for double taxation relief against the UK CT payable on the transfer subject to the general double taxation relief rules.

Conditions for the provision to apply

- an EU company resident in the UK must transfer to an EU company resident in another

member State the whole or part of a trade carried on through a permanent establishment in that or a third member State;

- the transfer must include all the assets used for the purposes of the trade transferred (though cash may be excluded);
- the consideration must be wholly or partly securities issued by the transferee to the transferor;
- the intangible fixed assets transferred must be 'chargeable intangible assets' in the hands of the transferor immediately before the transfer. A 'chargeable intangible asset' is defined in [CIRD20035 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird20035\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird20035);
- in the case of one or more of such assets the proceeds of realisation must exceed the cost recognised for tax purposes;
- the transferor has to claim the relief;
- no claim in respect of the same transfer must have been made under S827 (see CIRD42040); and
- the transfer is undertaken for bona fide commercial reasons and does not form part of a scheme or arrangements where the main (or one of the main) purposes is avoidance of liability to CT, CGT or income tax.

See [CIRD42065 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird42065\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird42065) for further guidance.

For transfers of trades by formation of a Societas Europaea (SE) see [CIRD42080 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird42080\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird42080).

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