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HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD44077 - Intangible assets: Restrictions for goodwill and relevant assets: Pre-FA 2019 relevant assets – second case examples

Second case examples

Unless stated otherwise the examples below are referencing companies that are chargeable to corporation tax.

Example 1 – direct acquisition

X acquires a relevant asset on 1/2/2019. X transfers the relevant asset to a related party “C” on 1/5/2019. The relevant asset is a pre-FA 2019 asset in C’s hands because:

- C acquired the asset from related party X on or after 1 April 2019 (CTA09/S879E(1)(c))
- the asset was a pre-FA 2019 asset in X’s hands (CTA09/S879E(1)(a) and (b)), and
- neither Case A nor B is met (CTA09/S879E(1)(c)).

In this example there is a direct acquisition of a pre-FA 2019 asset by a related party but note that the conditions in CTA09/S879E(1) can also apply to a series of related party transactions. This is because the conditions at CTA09/S879E(1)(a) and (b) are applied to “another company” rather than to any specific company such as the transferor. There is therefore no requirement that the other company referred to in CTA09/S879E(1)(a) and (b) is the same person as that being referred to in CTA09/S879E(1)(c). This effect is demonstrated in example 2.

Example 2 – indirect acquisitions

X acquires a relevant asset on 1/2/2019. X transfers the relevant asset to Y, a related party, on 1/5/2019. C acquires the relevant asset from Y on 1/5/2020. C and Y are related parties. The relevant asset is a pre-FA 2019 asset in C’s hands because:

- S879E(1)(a) is met – Another company (X) acquired the asset between 8 July 2015 and 31 March 2019
- S879E(1)(b) is met – The asset was a chargeable asset in relation to X between 29 October 2018 and 31 March 2019
- S879E(1)(c) is also met. C acquired the asset on or after 1 April 2019 from a related party (Y) and neither Case A nor Case B apply.

Essentially s879E applies whenever a company, that is any company, has a pre-FA2019 asset, and a company subsequently acquires that asset from a related party on or after 1 April 2019. The combined effect of CTA09/S879(1)(a) - (c) is to look beyond the immediate acquisition by C and apply this rule to any pre-FA 2019 asset that is acquired by a related party, unless one of the exceptions apply.

The Case A and Case B Exceptions

If the asset was not a pre-FA2019 asset in Y's hands, for whatever reason, Case A preserves that status. This would deal with the situation where the asset was at some point in its life a pre-FA 2019 asset but has been acquired by an unrelated party on or after 1 April 2019 and there is no need to retain the restriction. Any subsequent, related party transfers would not be caught because of the exception provided by Case A.

Case B is the intermediary rule, and operates differently. It can apply to all related parties, not just companies. Here we are looking at a break in economic ownership that might not meet Case A, for example where the intermediary is not within the charge to CT and cannot therefore satisfy Case A.

Example 3 – Case A and B

X acquires a relevant asset on 1/2/2019. X transfers the relevant asset to Q, an unrelated party, on 1/5/2019. C acquires the relevant asset from Q, a related party, on 1/5/2020. The relevant asset is not a pre-FA 2019 asset in C's hands because:

- S879E(1)(a) is met; another company (X) acquired the asset between 8 July 2015 and 31 March 2019, and
- S879E(1)(b) is also met; the asset was a chargeable asset in relation to X between 29 October 2018 and 31 March 2019, but

- S879E(1)(c) cannot be met. Although C acquired the asset on or after 1 April 2019 from a related party (Q), Case A and potentially Case B apply.

Case A applies, the asset was not a pre-FA 2019 in Q's hands following its acquisition on 1 May 2019 because X and Q weren't related.

Case B potentially applies. X (the 'third party') and Q (the 'intermediary') were not related at the time of Q's acquisition on 1 May 2019. The intermediary rule in Case B would then be met if C and X are also not related at the time of C's acquisition from Q on 1 May 2020.

If C and X were related at the time of acquisition from Q by C, Case B would not apply but this still does not prevent Case A applying as the transfer from X to Q was between unrelated parties.

Example 4 – Case B

If Q in example 3 had not been within the charge to CT, or was not a company, Case A could not apply. Case B could still apply depending on whether X and Q were related at the time of the intermediary's (Q's) acquisition, and whether X and C were related at the time of C's acquisition from Q.

Case B should be considered when there are a series of related party and unrelated party transactions that involve persons other than companies, or to companies who are not within the charge to corporation tax.

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