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Corporate Intangibles Research and Development Manual

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CIRD46090 - Intangible assets: special rules for restricted assets: The special rules – section 900C and 900D cases CTA09/S900F

Special rule: section 900C and 900D cases

A different approach is needed to deal with section 900C and section 900D cases to reflect that these transactions are not as straightforward as transfers. Consideration needs to be given to both

‘the asset concerned’ and ‘the other asset’. These types of transactions can be complex, particularly where licences, partial licences and sub-licences are granted.

However, there are some similarities to CTA09/S900E:

- The relevant Chapters are the same as for CTA09/S900E (CTA09/S900F(6)).
- Cost is still restricted to the adjusted amount (CTA09/S900F(2)).

The calculation of the adjusted amount is however very different to CTA09/S900E and the following additional terms are introduced within S900F:

- ‘relevant other asset’
- ‘notional deduction amount’

When working through this section of the guidance it will help to be familiar with the guidance at [CIRD46060 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird46060\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird46060) and [CIRD46070 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird46070\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird46070) where you need to consider a hypothetical situation for both CTA09/S900C and S900D. These provisions require you to consider what the position would be if the other asset had been acquired directly instead of the restricted asset. The terms and approach in CTA09/S900F reflect that statutory fiction:

- ‘Relevant other asset’ is the ‘the other asset’ from CTA09/S900C and S900D.
- ‘notional deduction amount’ is the ‘adjusted amount’ of the relevant other asset.

CTA09/S900F(5) - notional deduction amount

The three subsections (a) – (c) consider the circumstances leading to a restriction, including the statutory fiction mentioned above.

- CTA09/S900F(5)(a) applies if a company would have been the first company to acquire the relevant other asset instead of the restricted asset. In that scenario the notional deduction amount is the market value of the relevant other asset at the time the restricted asset was acquired.
- CT09/S900F(5)(b) applies if a company would not have been the first company to acquire the relevant other asset instead of the restricted asset. In that scenario the notional deduction amount is the market value of the relevant other asset at the time it was first acquired by a company on or after 1 July 2020.
- CT09/S900F(5)(c) applies in any other scenario where subsection (2) of S900F would have applied had the company acquired the relevant other asset instead of the restricted asset. This covers situations where the relevant other asset is itself derived from some other asset as set out in either CTA09/S900C(2) or CTA09/S900D(2). In that scenario the notional deduction amount is the amount that would have been deducted at step 2 of CTA09/S900F(3) if the company had acquired the relevant other asset instead of the restricted asset.

So, in each of the scenarios above you need to decide which statutory fiction would have applied had the relevant other asset been acquired directly instead of the restricted asset, i.e. whether:

- section 900E(2) would have applied, or
- section 900E(3) would have applied, or
- section 900F(2) would have applied.

Calculation of the adjusted amount under S900F

The main difference between CTA09/S900F(3) and CTA09/S900E(3) is therefore at step 2, where section 900F requires you to deduct the 'notional deduction amount' of the relevant other asset rather than the market value used in section 900E. The calculation proceeds as follows:

- Step 1 – establish the cost of the asset. This is the actual cost for the acquiring company, or the amount it would be regarded as having acquired the asset for, for the purposes of the Taxes Acts. This means that you must apply any of the valuation adjustments summarised in CIRD12720 such as a market value, transfer pricing adjustments etc. However, you ignore any adjustments required by CTA09/S900E.
- Step 2 – deduct the notional deduction amount, or such an appropriate proportion as is just and reasonable.
- Step 3 – where the deduction at the second step produces a negative value, the adjusted amount is nil.

Example

J Ltd holds a pre-FA 2002 trade mark. On 1 October 2020 J Ltd grants an exclusive territorial licence to a related company, K Ltd, for £1m. The licence effectively splits the value of territorial trade mark rights equally between the two parties, which means the total value of the trade mark was £2m at the time the licence was granted.

In order to determine the notional deduction amount we need to consider what would have happened if K Ltd had acquired part of the trade mark right. Since this is the first time the asset has been acquired by a company on or after 1 July 2020, CTA09/S900E(2) would have applied. The notional deduction amount in accordance with CTA09/S900F(5)(a) is therefore £1m, being the assumed cost of 50% of the trade mark rights had these been acquired directly.

The adjusted amount of the restricted asset is therefore:

- Step 1 – Cost of Licence £1m (no tax adjustment required),
- Step 2 – deduct the notional deduction amount of £1m calculated from CTA09/S900F(5)(a). Note there is no need to make a just and reasonable apportionment under

CTA09/S900F(3) if this has already been done under the statutory fiction.

The adjusted amount is nil.

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