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## HMRC internal manual

# Corporate Intangibles Research and Development Manual

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[Back to contents](#) > [CIRD10000](#) > [CIRD48000](#)

## **CIRD48280 - Intangible assets: avoidance: new measures in FA06/S77: change to rules: new assets derived from companies' pre-FA 2002 assets CTA09/PART8/S893 to S895**

**FA02/SCH29/PARA127A and  
PARA127B**

## Background

Prior to 1 July 2020, CTA09/PART8 and FA02/SCH29 specifically excluded assets held by companies at the commencement of the intangibles regime (1 April 2002) unless and until those assets are acquired by an unrelated party between 1 April 2002 and 30 June 2020. These assets are termed 'pre-FA 2002 assets' in CTA09 (CTA09/PART8/S881) and 'existing assets' in FA02 (FA02/SCH29/PARA118 (3)). However, it became apparent that certain tax avoidance schemes, involving intra-group arrangements, were being put in place which attempted to obtain relief under CTA09/PART8 (FA02/SCH29) for the value of companies' 'pre-FA 2002 assets' ('existing assets'), which were not intended to be within the scope of the regime.

We do not accept that such arrangements are effective. However, to put the issues beyond doubt, CTA09/PART8/Ss893-895 (FA02/SCH29/PARA127A and PARA127B) ensure that, in certain circumstances, intangible assets whose value is derived in whole or part from pre-FA 2002 assets held by related parties, or which result from related party disposals and fall within the scope of the definition of an asset for the purposes of TCGA 1992, are themselves pre-FA 2002 assets.

### **CTA09/PART8/S893 and S894 (FA02/SCH29/PARA127A)**

These paragraphs are aimed at schemes where assets are derived in whole or part from pre-FA 2002 assets. Following the changes made to the FA02 rule by FA20/S31 (see CIRD11505) CTA09/Ss893 – 895 do not apply to acquisitions on or after 1 July 2020. They are therefore only relevant to arrangements where an asset is acquired from a related party between 1 April 2002 and 30 June 2020.

Ss893-894 (PARA127A) provides that where an asset is acquired from a related party between 1 April 2002 and 30 June 2020, and that asset derives the whole or part of its value from an asset that after 5 December 2005 has been a pre-FA 2002 asset:

- in the hands of that related party, or
- in the hands of another related party of either the transferee or transferor company,

the derived asset is treated as a pre-FA 2002 asset to the extent that its value derives from a pre-FA 2002 asset (where only part of the value is derived from a pre-FA 2002 asset, then the legislation applies as if the derived asset were two assets, one representing the derived value, and one representing the rest of the value).

The scope of these paragraphs extends beyond assets which would be assets for the purposes of TCGA 1992.

### **CTA09/PART8/S895 (FA02/SCH29/PARA127B)**

S895 (PARA127B) applies where there is a related party transaction involving the acquisition of an intangible fixed asset by a company on or before 30 June 2020 and the disposal of an asset by a related person which at the time of the disposal is a pre-FA 2002 asset in the hands of the person. The effect of S895 (PARA127B) is to ensure that the acquired asset is a pre-FA 2002 asset for the acquiring company.

### **Measures deemed always to have been in force**

These measures are deemed to have always been in force for the purposes of making tax calculations for accounting periods beginning on or after 5 December 2005 (and the latter part of any straddling period).

← **Previous page**  
(/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird48270)

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→ **Next page**  
(/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird48290)



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