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## HMRC internal manual

# Corporate Intangibles Research and Development Manual

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## CIRD48350 - Intangible assets: avoidance: related party licence not granted at market value

### CTA09/S849AB-AD

FA18/S21 introduced new legislation at CTA09/S849AB – AD. This extends the market value rule used in CTA09/S845 to a licence in respect of an intangible asset granted between related parties. These rules ensure that related parties cannot convey the economic benefit of an intangible fixed asset by means of a licence, and

obtain a tax advantage by manipulating the price of that licence. This change is effective from 22 November 2017.

It is expected that most related party licence arrangements will come within the rules of TIOPA10/PART4. A market value adjustment under CTA09/S849AB - AD will only apply where:

- the licence is not granted at market value, and
- an adjustment under TIOPA10/PART4 is less than the market value adjustment (CTA09/S849AC(3)).

### **When the rule applies**

CTA09/S849AB applies either:

- to companies granting a licence in respect of an intangible fixed asset to a related party at less than market value (CTA09/S849AB(2)), or
- to companies who have been granted a licence in respect of an intangible fixed asset by a related party at above market value (CTA09/S849AB(3)).

It is subject to new CTA09/S849AC (see below).

### **Market Value**

Market value is defined by CTA09/S849AB(12):

“Market value” means the price the licence or right might reasonably be expected to fetch on a sale in the open market’.

“Sale” in this context is synonymous with grant.

### **Applying market value to the grant of a licence**

CTA09/S849AB addresses the risk that a tax advantage may arise where rights in respect of an intangible asset are granted between related parties other than at market value. CTA09/S849AB

does not, in general terms, require a licence granted in return for a royalty to be compared with a “sale”. For example; there is no requirement to establish the net present value of a royalty licence or substitute a licence for royalties with an equivalent lump sum or upfront fee licence.

CTA09/S849AB requires a comparison of the amounts payable under the terms of the licence with the amounts that the market would expect to pay on the grant of that licence. The amounts payable in this context are all the payments due under the licence, or the undertaking to make such payments. This could include future royalties, up-front or lump sum payments and any other amounts payable under the terms of the licence. It is legitimate to consider whether a royalty licence should include an upfront fee, if that is what the market would expect on the grant of that licence.

Licence agreements are complex contractual arrangements which should take into account the risks and rewards of both the licensor and the licensee. Commercial arrangements might expect royalties to be payable, or a lump sum payment, or a mixture of both. When considering whether a licence granted between related parties is on arms-length terms or on a market value basis both the licensor’s and licensee’s commercial positions need to be considered.

If it can be concluded that the licence was granted at market value no adjustment will be due under CTA09/S849AB. For example, if a licence granted at a fixed 5% royalty with no upfront fee payable is what would be expected on a grant in the open market, no adjustment will be required.

Conversely; a licence granted on terms different to those which would be expected on the open market might lead to the conclusion that some or all of the terms (such as royalty rate, steps in the royalties, up-front payment, contingent milestone payments etc.), require adjustment or imposition.

Each case must be considered on its own facts by reference to a sale/grant on the open market.

## CT09/S849AC

An adjustment may be due under TIOPA2010/PART4 or CTA09/S849AB. CTA09/S849AB is subject to CTA09/S849AC. It follows that adjustments required under the TIOPA10/PART4 rules must be considered before establishing whether adjustments are required under CTA09/S849AB.

Where adjustments are due under TIOPA2010/PART4 and CTA09/S849AB, CTA09/S849AC provides that the greater adjustment is brought into account.

For practical examples see [CIRD48360](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird48360) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird48360>).

## CT09/S849AD

The application of the market value rule is modified in relation to grants involving other taxes (CTA09/S849AD). It does not apply to grants giving rise to a distribution or employment income charge on any person under CTA10/PART23 (distributions) or Part 3 of ITEPA (employment income). This replicates the rule in CTA09/S847 for transfers (see [CIRD45033](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird45033) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird45033>)).

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