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## HMRC internal manual

# Corporate Intangibles Research and Development Manual

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

## CIRD48290 - Intangible assets: avoidance: new measures in FA09/S70: confirmation of rules: time of creation of goodwill and certain other internally generated assets

Legislation in FA09/S70 confirms existing rules in CTA09 concerning the creation of goodwill and certain other internally generated assets. The measures do not change the effect of the existing rules; they confirm the operation of the existing legislation.

## Description of the avoidance

The avoidance device (or perhaps more accurately a technical interpretation) attempted to exploit a perceived loophole in the regime's rules. This technical interpretation represents an attempt to get around the exclusion of denying relief for assets and goodwill which existed prior to the commencement of the regime on 1 April 2002 ('existing assets' in Schedule 29 FA02 or 'pre-FA 2002 assets' in CTA09/PART8).

It is claimed by taxpayers that the goodwill purchased when acquiring the business and assets of a group member is, for the purposes of the regime, an asset that was created or deemed to be created by the purchaser on acquisition (i.e. when it is recognised in the purchaser's balance sheet). Therefore, the argument goes that the goodwill is within the regime and that Company B is able to claim amortisation of the goodwill under Part 8 of CTA (formerly Schedule 29 to the Finance Act 2002).

## New measures

Legislation was introduced at Section 70 Finance Act 2009 to confirm that for the purposes of the regime, goodwill includes internally generated goodwill ([CIRD11070 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird11070\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird11070)). It also confirms that all goodwill is created in the course of carrying on the business in question ([CIRD11680 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird11680\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird11680)) and is subject to rules determining whether goodwill is treated as created before or after 1 April 2002 ([CIRD11685 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird11685\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird11685)).

In the particular case of a business carried on by the company or a related party at any time before

1 April 2002, the legislation operates in conjunction with existing rules to confirm that for the purposes of the regime all goodwill, including goodwill generated by the business after 1 April 2002, is treated as created before 1 April 2002. So, relief for amortisation of capitalised expenditure on the acquisition of such internally-generated goodwill is not available unless or until it is acquired by an unrelated party.

Some related amendments were made to the definition of intangible asset and to parallel rules determining the treatment of assets representing non-qualifying expenditure.

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

The new measures are deemed to have always been in force, for the purposes of making tax calculations for accounting periods beginning on or after 22 April 2009 (and the latter part of any straddling period). For example, the legislation confirms that no relief is available in making such tax calculations in respect of amortisation of capitalised expenditure on goodwill where a business, which commenced before 1 April 2002, has been acquired from a related party before 22 April 2009.

### **Periods prior to 22 April 2009**

HMRC has maintained that no such relief is available for periods ending before 22 April 2009 and this view was confirmed by the First-Tier Tribunal in the case of [Greenbank Holidays Ltd v HMRC Commissioners \[2010\] UKFTT 109 \(TC\)](https://financeandtax.decisions.tribunals.gov.uk/Aspx/view.aspx?id=4779) (<https://financeandtax.decisions.tribunals.gov.uk/Aspx/view.aspx?id=4779>) (“Greenbank”) and upheld by the Upper Tribunal in [Greenbank Holidays Ltd v HMRC Commissioners \[2011\] UKUT 155 \(TCC\)](https://www.gov.uk/tax-and-chancery-tribunal-decisions/greenbank-holidays-limited-v-the-commissioners-for-hm-revenue-and-customs-2011-ukut-155-tcc) (<https://www.gov.uk/tax-and-chancery-tribunal-decisions/greenbank-holidays-limited-v-the-commissioners-for-hm-revenue-and-customs-2011-ukut-155-tcc>).

## The First-Tier and Upper Tribunal decisions confirmed

- “goodwill” includes internally-generated goodwill
- “goodwill” is neither created by the purchaser on acquisition nor created when recognised in the purchaser’s accounts
- Section 884 CTA 2009 (formerly Paragraph 121 Schedule 29 FA02) determines the time of creation in relation to the commencement of Part 8
- The Section 70 FA09 amendment is a confirmatory amendment

The Greenbank decision is final.

← **Previous page**

(/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird48280)

→ **Next page**

(/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird48300)



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