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Corporate Intangibles Research and Development Manual

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CIRD40505 - Intangible assets: groups: degrouping: overview

CTA09/PART8/S780-787

Background

S780-S787 contain rules that apply where a company leaves a group and there has been an earlier transfer to it of assets on a tax-neutral basis. The rules are closely modelled on the CG degrouping rules, as they are aimed at the same

potential problem. There is further background to these rules at CG45400 onwards.

Divergence from CG rules

One significant difference from the CG rules is that the CG rules contain provisions whereby a degrouping calculation is necessary not only where an asset, transferred on no gain/no loss terms is held by a company leaving a group, but also in a further set of circumstances. That is where the asset held by the company leaving the group is not the asset transferred but another asset into which a gain on the original asset has been rolled over when it was disposed of outside the group. There is no equivalent rule for the intangible asset degrouping adjustment.

Problem to be tackled

In general the rules for tax-neutral intra-group transfers of chargeable intangible assets would give a group the opportunity to avoid a charge on the disposal of intangible assets which if sold separately would result in a recognition of a taxable gain.

In the absence of corrective measures, the group could achieve this by tax free asset transfers within the group to a shell company, as a preliminary to a disposal of the shares in the shell company which then owns the assets. This is an arrangement commonly referred to as ‘enveloping’ or ‘the envelope trick’.

Enveloping in its simplest form consists in a company transferring an asset on tax neutral terms to a wholly owned subsidiary in consideration for a new issue of shares, and then selling the shares to a third party. For CG purposes the company acquires the newly issued shares in the subsidiary at their market value, which reflects the value of the underlying asset. In the absence of a special rule, there would be no chargeable gain on an immediate third party sale

of the shares in circumstances where a substantial intangible asset gain would have resulted from a direct sale of the underlying asset.

Where valuation of intangible assets is an issue see [CIRD10240 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird10240\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird10240).

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