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HMRC internal manual

Corporate Intangibles Research and Development Manual

From: [HM Revenue & Customs](#)
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CIRD40350 - Intangible assets: groups: tax-neutral transfers: points to watch CTA09/PART8/S775

Non-resident group members

Companies that are not resident in the UK may be members of a group for the purposes of CTA09/PART8, but the transfer of an asset between a UK resident member and a non-resident member will not necessarily satisfy the ‘chargeable intangible asset’ requirement

([CIRD40250 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird40250\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird40250)) unless the asset is held for the purposes of a trade carried on in the UK through a permanent establishment in the UK by the non-resident group member. Where both group members are not resident in the UK, the asset must be held for those purposes by both companies.

It may be necessary to consider the transfer pricing rules where intra group transactions involve non-resident companies in circumstances where tax neutral treatment is not available (see [CIRD48040 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird48040\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird48040)).

(FA03/S153(1) substituted the words ‘permanent establishment’ for ‘branch or agency’ effective for all accounting periods beginning on or after 1 January 2003.)

Transfers to group companies in European Economic Area (EEA) member states (TMA70/SCH3ZB)

In early 2019, a decision of the First-tier Tax Tribunal held that in some circumstances the operation of TCGA92/S171 was not compatible with EU law because it did not provide an option to defer payment of the tax that arises on a transfer to an EU group member where a similar transfer to a UK group member would not trigger a gain. In December 2020, the [Upper Tribunal concluded \(https://www.bailii.org/uk/cases/UKUT/TCC/2020/354.pdf\)](https://www.bailii.org/uk/cases/UKUT/TCC/2020/354.pdf) that it was necessary to make a referral to the Court of Justice of the European Union. This guidance is therefore conditional on the outcome of that referral.

In order to provide certainty to UK business, the Government introduced an option to defer payment of tax relating to certain transfers out of the UK. The deferral option is also available for liabilities that arise because of the operation of

other corporation tax transfer rules, including those for loan relationships and intangible assets. It can apply to transfers to group members in the EEA, which consists of EU members plus Iceland, Lichtenstein and Norway.

The option is available for corporation tax payable for accounting periods that end on or after 10 October 2018.

Any case team receiving an enquiry or application in respect of deferral of tax under this measure should seek advice from BAI.

Transaction between group members not involving the transfer of an asset

As explained in [CIRD40250](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird40250) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird40250>), not all transactions involving the realisation of a chargeable intangible asset by one group member in favour of another involve the transfer of an asset. Where there is no transfer of an asset, tax-neutral treatment is not available.

For the same reason, the market value rule in CTA09/S845 cannot apply.

For licences granted between related parties on or after 22 November 2017 not at Market Value, the tax treatment is governed by CTA09/S849AB-AD (see [CIRD48350](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird48350) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird48350>)).

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