HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD47040 - Intangible assets: international issues: company ceases to be resident in UK: deferral of taxable credit: general

CTA09/S860

Circumstances where provision applies

This section applies where:

- a company holding goodwill or an intangible asset ceases to be resident in the UK before 1 January 2020,
- the asset is deemed to be realised and reacquired at market value under the rule described in CIRD47030 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird47030),
- the asset is held for the purposes of a trade carried on through a foreign permanent establishment,
- the market value exceeds the original tax cost of the asset; and
- the company and another company, which remains resident in the UK and of which the first company is a 75% subsidiary (see CIRD40030 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird40030)), jointly elect within two years of the change of residence for the provision to apply.

(FA03/S153 (1) inserted the words ‘permanent establishment’ in place of ‘branch or agency’, which was used in the original provision in FA02/SCHEDULE29/PARA109(1), and this change is effective for all accounting periods beginning on or after 1 January 2003.)

Treatment

In these circumstances recognition under CTA09/PART8 of the excess of the deemed realisation proceeds over the original cost of the asset may be deferred until the earlier of the time when:

- the intangible asset is realised if that is less than six years after the date the company ceased to be resident in the UK, or
- the 75% subsidiary relationship is broken in one of the three ways described below.

On such an event the taxable credit deferred is regarded as arising to the company remaining resident in the UK at the time of the event. It is treated as a non-trading credit in its hands (see CIRD13530 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird13530) onwards).

Where recognition of the credit is triggered by the part-realisation of the goodwill or intangible asset by the company no longer resident in the UK there are special rules to determine how much of the taxable credit deferred is to be recognised. These are described in CIRD47050 (https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird47050).

Circumstances where 75% subsidiary relationship regarded as broken

The 75% subsidiary relationship between the two companies making the election to defer the taxable credit is broken if at any time (not just within six years) either:

- the company which remains resident in the UK ('company B') disposes of enough ordinary shares in the company which left the UK ('company A') to cause company A to cease to be a 75% subsidiary, or
- company B disposes of ordinary shares in A after A has ceased to be a 75% subsidiary of B other than as a result of a share disposal, or
- company B ceases to be resident in the UK.

The second bulleted circumstance triggering recovery of the deferred taxable credit above addresses the possibility that company A could have ceased to be a 75% subsidiary of company B other than by the disposal of shares by B (which would have come within the first bullet). For example, company A could have issued sufficient additional ordinary shares to a third party to bring B's interest below 75%.

Other points to note

1. Only the excess of the market value of the asset over its tax cost (not its tax written down value) can be deferred under this provision.
2. The realisation of assets six years or more after the company ceases to be resident do not trigger recovery of the deferred taxable credit.
3. This relief is equivalent to that in TCGA92/S187 (see CG42430 onwards).
4. CTA09/S860 was repealed by FA19/S23 with effect from 1 January 2020.

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