



Chargeable gains roll-over relief: reinvestment in intangible fixed asset

Who is likely to be affected?

Companies making a disposal of tangible assets and using the proceeds to acquire intangible fixed assets.

General description of the measure

This measure prevents companies claiming chargeable gains roll-over relief on the disposal of tangible assets where the proceeds are reinvested in an intangible fixed asset.

This measure also adjusts the tax cost of the replacement intangible fixed asset for claims made on or after 1 April 2009 and before 19 March 2014, preventing double tax relief being given on any roll-over relief claims already made.

Policy objective

This measure corrects an error in the rewriting of legislation in relation to capital gain roll-over relief where the proceeds on the disposal of a tangible asset are reinvested in an intangible fixed asset. This measure amends the re-written legislation in line with that previously enacted and in line with policy intentions.

This measure makes the tax system fairer and simpler by clarifying the current legislation.

Background to the measure

This measure was announced in Budget 2014. There has been no previous consultation on the change.

Detailed proposal

Operative date

This measure will have effect on and after 19 March 2014 for corporation tax purposes in respect of claims to capital gain roll-over relief where the proceeds are reinvested in an intangible fixed asset.

Current law

Schedule 29 to the Finance Act 2002 (gains and losses of a company from intangible fixed assets) withdrew capital gains roll-over relief on disposals of tangible assets where the proceeds were reinvested in replacement intangible fixed assets acquired on or after 1 April 2002. The current legislation, rewritten as part of the Tax Law Rewrite project, is now contained with section 156ZB of the Taxation of Chargeable Gains Act 1992 (TCGA 1992).

Subsection (3) of section 156ZB of TCGA 1992 replicates the source legislation at paragraph 132(5) of Schedule 29 Finance Act 2002 but the opening words of subsection (1) "This section applies if..." might be regarded as limiting when the provision can apply and inadvertently allowing a gain in respect of a tangible asset, e.g. on the disposal of property, to be rolled-over under the capital gains rules on the acquisition of an intangible fixed asset.

If that interpretation is correct, the current rules in Part 8 of the Corporation Tax Act 2009 (CTA 2009) do not provide for an adjustment to the cost of the replacement asset. The overall tax effect would be to allow relief to be given twice: once when capital gains roll-over relief is claimed under the capital gains regime and again when the expenditure on the replacement asset is relieved under Part 8 CTA 2009.

The rewrite of the legislation was not intended to change the rules. Although HMRC are confident that the courts would recognise the change as an obvious drafting error a legislative change will put the matter beyond doubt.

Proposed revisions

Legislation will be introduced in Finance Bill 2014 to amend section 156ZB TCGA 1992 to bring the corporation tax treatment of companies seeking to claim capital gains roll-over relief into line with the rules enacted in Finance Act 2002.

Section 156ZB TCGA 1992 will be amended to make it clear that roll-over relief under the chargeable gains rules is not available where the proceeds are reinvested in an intangible fixed asset, effective from 19 March 2014.

Legislation will also be introduced in Finance Bill 2014 to enable the tax cost of any intangible fixed asset to be adjusted where roll-over relief has been claimed in respect of a reinvestment in intangible fixed assets before Budget 2014 (19 March 2014). The tax cost will be adjusted when calculating any debits and credits within Part 8 CTA 2009 arising for any accounting periods beginning on or after 19 March 2014. Any companies affected by this change will be required to compute debits and credits separately for the periods before and on or after 19 March 2014.

Summary of impacts

| Exchequer impact (£m) | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
|-----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|---------|---------|---------|
| | nil | nil | nil | nil | nil |
| | This measure is not expected to have an Exchequer impact. | | | | |
| | This measure supports the Exchequer in its commitment to protect revenue. | | | | |
| Economic impact | The measure is not expected to have any economic impacts. | | | | |
| Impact on individuals and households | This measure is expected to have no impact on individuals or households. This measure will only affect companies. | | | | |
| Equalities impacts | The measure is not expected to have an impact on any protected equality group as it will only affect companies. | | | | |
| Impact on business including civil society organisations | This measure is expected to have no impact on businesses or civil society organisations. This measure clarifies existing legislation but does not change the burden. | | | | |
| Operational impact (£m) (HMRC or other) | This measure is expected to have negligible operational impacts. | | | | |
| Other impacts | Other impacts have been considered and none have been identified. | | | | |

Monitoring and evaluation

This measure will be kept under review through communication with affected taxpayer groups.

Further advice

If you have any questions about this change, please contact John Williams on 03000 530434 (email: john.r.williams@hmrc.gsi.gov.uk).

1 Capital gains roll-over relief: intangible fixed assets

- (1) In section 156ZB of TCGA 1992 (intangible fixed assets: interaction with relief under Chapter 7 of Part 8 of CTA 2009), in subsection (1), for “This section” substitute “Subsection (2)”.
- (2) In Chapter 14 of Part 8 of CTA 2009 (intangible fixed assets: miscellaneous provisions), after section 870 insert –

“Roll-over relief under TCGA 1992

870A Claims for relief made under sections 152 and 153 of TCGA 1992

- (1) Subsection (2) applies where –
 - (a) a company has made a claim for relief under section 152 or 153 of TCGA 1992 (roll-over relief) during the period beginning with 1 April 2009 and ending with 19 March 2014, and
 - (b) the relief claimed relates to disposal proceeds that are applied in acquiring an intangible fixed asset within the meaning of this Part.
- (2) The company is treated for the purposes of this Part as if the cost of the asset recognised for tax purposes were reduced on 19 March 2014 by the amount in respect of which the relief under section 152 or 153 of TCGA 1992 is given.
- (3) But the effect of subsection (2) must not be to reduce the tax written-down value of the asset to below nil.
- (4) The references to adjustments in sections 742(3) and 743(3) (assets written down) include any adjustment required by subsection (2).”
- (3) The amendment made by subsection (1) has effect in relation to claims for relief under section 152 or 153 of TCGA 1992 made on or after 19 March 2014.
- (4) The amendment made by subsection (2) has effect in relation to accounting periods beginning on or after 19 March 2014.
- (5) For the purposes of subsection (4), an accounting period beginning before, and ending on or after, 19 March 2014 is to be treated as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods.

EXPLANATORY NOTE

CAPITAL GAINS ROLLOVER RELIEF: INTANGIBLE FIXED ASSETS

SUMMARY

1. This clause corrects a tax law rewrite error. The clause prevents companies claiming capital gains rollover relief on the disposal of tangible assets where the proceeds are reinvested in an intangible fixed asset. The clause also adjusts the tax cost of the replacement intangible fixed asset where rollover relief has been given for claims made on or after 1 April 2009 and before 19 March 2014, in order to prevent double tax relief being given.

DETAILS OF THE CLAUSE

Amendment to Section 156ZB TCGA 1992

2. Subsection (1) amends subsection (1) of section 156ZB of the Taxation of Chargeable Gains Act 1992 (TCGA) to restrict its application to subsection (2) so that subsection (3) operates independently. This amendment prevents capital gains rollover relief claims where the disposal proceeds are applied on the acquisition of new chargeable intangible assets within Part 8 of the Corporation Tax Act 2009 (CTA 2009).

New section 870A CTA 2009

3. Subsection (2) inserts new section 870A into Part 8 CTA 2009.

4. Subsection (1) of new section 870A explains when subsection (2) applies. It provides that subsection (2) applies whenever a claim to capital gains rollover relief is made in the circumstances where the proceeds are applied in acquiring an intangible fixed asset within Part 8 CTA 2009.

5. Subsection (2) provides for a reduction in the tax cost of the asset under Part 8 CTA 2009 by the amount of the capital gains rollover relief claim. This ensures that any future debits and credits under Part 8 CTA 2009 reflect the capital gains rollover relief given, preventing relief being given twice. The reduction to tax cost is made on 19 March 2014.

6. Subsection (3) restricts the adjustment in subsection (2) so that the asset cannot have a negative written down value.

7. Subsection (4) ensures that the reduction in subsection (2) is also applied when calculating the tax written-down value of the asset in subsequent accounting periods.

Commencement

8. Subsection (3) provides the effective date for the amendment to section 156ZB TCGA is 19 March 2014 for all claims under section 152 or 153 TCGA.
9. Subsection (4) provides the effective date for new section 870A CTA 2009 is accounting periods beginning on or after 19 March 2014.
10. Subsection (5) provides that an accounting period straddling 19 March 2014 is treated as two separate accounting periods. The consequence of subsections (4) and (5) is that where new section 870A CTA 2009 applies, an accounting period will always commence on 19 April 2014 and the tax cost of the asset will be adjusted to reflect a claim made under section 152 or 153 TCGA on the first day of that accounting period.

BACKGROUND NOTE

11. Schedule 29 to the Finance Act 2002 (gains and losses of a company from intangible fixed assets) introduced a new regime from 1 April 2002 to deal with the taxation of companies' intangible fixed assets. It also withdrew capital gains rollover relief on disposals of tangible assets where the proceeds were reinvested in replacement intangible fixed assets acquired on or after 1 April 2002.
12. The legislation was subsequently rewritten in Part 8 CTA 2009 with minor amendments also being made to section 156ZB TCGA. There was no intention to change the rules under the tax law rewrite project. HM Revenue & Customs (HMRC) have been made aware of a drafting error in the rewritten legislation contained in section 156ZB TCGA. This error might suggest that capital gains rollover relief has been reinstated even when replacement intangible fixed assets are acquired on or after 1 April 2002. HMRC consider that this is not correct.
13. These changes correct the drafting error and restore the legislation to what was intended by Parliament. The new legislation at section 870A CTA 2009 also ensures that where rollover relief is given any entitlement to future relief under Part 8 CTA 2009 is adjusted by the amount of any rollover relief given.
14. The changes made by the clause are effective from 19 March 2014, the date on which HMRC published the draft legislation.