Explanatory Note

Clause 1: Intangible fixed assets: pre-FA 2002 assets

Summary

1. This measure clarifies the rules for intangible fixed assets in Part 8 of the Corporation Tax Act 2009 (CTA 2009). The measure confirms that arrangements involving bodies such as partnerships or LLPs cannot be used to move assets into the Part 8 rules in ways that were not intended by the legislation. Clause 2 makes a related change to the rules that establish the value to be taken into account on a transfer.

Details of the clause

2. Clause 1 amends sections 882, 894 and 895 of CTA 2009.

3. Subsection (2) inserts new subsections (5A) to (5D) into section 882 of CTA 2009. Section 882 is the provision that sets out the rules to determine whether assets fall within the Part 8 rules, or whether they remain within the pre 1st April 2002 rules.

4. New section 882(5A) adds to section 882 the requirement that a 'participation condition' must also be considered when determining whether assets fall within the Part 8 rules, or whether they remain within the pre 1st April 2002 rules.

5. New section 882(5B) applies section 882(5A) to a firm for the purposes of section 1259 of CTA 2009.

6. New section 882(5C) sets out what is meant by 'section 1259 purposes'. Section 1259 of CTA 2009 determines how profits or losses of a partnership or LLP are computed when the partnership or LLP contains at least one member that is a company.

7. New section 882(5D) brings in the 'participation condition' from section 148 of TIOPA.

8. Subsection (3) provides that new sections 882(5A) to (5D) also apply for the purposes of sections 893 and 894 of CTA 2009.

9. Subsection (4) provides that new sections 882(5A) to (5D) also apply for the purposes of sections 895 of CTA 2009.

10. Subsections (5) to (7) set out the time from when the changes apply. The new rules will apply to debits or credits arising in accounting periods beginning on or after 25 November 2015. For that purpose an accounting period is split into two notional accounting periods - one ending on 24 November 2015 and one beginning on 25 November 2015. The rules apply to debits and credits irrespective of when the relevant transfers of intangible fixed assets took place.

Background note

11. This measure confirms that the corporation tax regime for intangible fixed assets applies to those assets intended to be within its scope. Those rules, contained in Part 8 of CTA 2009, were introduced in FA 2002 to provide a modern set of tax rules for intangible assets. Broadly, the rules provide tax deductions for corporation tax that match the amounts amortised or written-off in the accounts year by year.

12. These rules only apply to assets created on or after 1st April 2002, or to assets acquired by a company from a third party after that date. Assets owned since before 1st April 2002 by a company or a party related to it should stay within the old rules, where relief for the cost of the asset is given when the asset is disposed of.

13. However, HMRC has identified arrangements that use bodies such as partnerships or LLPs to transfer assets in ways that aim to bring the assets within the new rules without an effective change of economic ownership.

14. HMRC does not consider that these arrangements work in the way that they are claimed to work. This measure widens the conditions that must be met for an asset to come within the Part 8 rules. This confirms that these arrangements are not effective to avoid the Part 8 commencement rules. A related change ensures that the correct value is used when assets which are within the Part 8 regime are transferred between companies and persons such as partnerships or LLPs.

15. If you have any questions about this change, or comments on the legislation, please contact Martin Trott on 03000 585619 (email: martin.trott@hmrc.gsi.gov.uk)