

Explanatory Note

Clause 2: Intangible fixed assets: transfers treated as at market value

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 transfers of assets between companies and other bodies, such as partnerships or LLPs, in respect of which the participation condition is satisfied are brought into account at their market value. Clause 1 makes a related change to the rules that establish whether intangible fixed assets come within the rules in Part 8 of CTA 2009, or whether they come within the rules that apply to pre 1st April 2002 assets.

Details of the clause

2. Clause 2 amends section 845 of CTA 2009, which applies market value to transfers of intangible fixed assets between a company and a related party.
3. Subsection (1) inserts new subsections (4A) to (4F) into section 845 of CTA 2009.
4. New section 845(4A) enables section 845 to apply to transfers between companies and other bodies, such as partnerships or LLPs, in relation to whom the 'participation condition' is met.
5. New section 845(4B) provides that references to a company in section 845(4A) also include a reference to a firm where a computation needs to be made for the purposes of section 1259 of CTA 2009.
6. New section 845(4C) brings in the 'participation condition' from section 148 of TIOPA.
7. New section 845(4D) sets out the circumstances in which subsection (4E) applies. These are that, for the purposes of section 1259, both a gain on disposal of intangible fixed assets is to be taken into account in computing profits and that references to a company in section 845(1) are to be read as references to a firm.
8. New section 845(4E) provides that where those conditions apply, a gain on the disposal of those assets is brought within the rules of Part 8 of CTA 2009 as a 'chargeable realisation gain' and is therefore subject to the market value rule in section 845 of CTA 2009.
9. New section 845(4F) sets out what is meant by 'section 1259 purposes'. Section 1259 of CTA 2009 determines how profits or losses of a partnership or an LLP are computed when the partnership or LLP contains at least one member that is a company.
10. Subsections (2) and (3) set out the commencement provision. The new rules will apply to transfers made on or after 25 November 2015, unless the transfer is made in consequence of a

contract that was unconditional before that date.

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 entities 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. These arrangements also seek to disapply the rules that ensure that these transfers are brought into account at market value for tax purposes.
14. HMRC does not consider that these arrangements work in the way that they are claimed to work. This measure confirms that these arrangements are not effective in preventing the correct value being used when assets within the Part 8 regime are transferred between companies and other bodies such as partnerships or LLPs, where the participation condition is satisfied.
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).