

New clause 6 and new Schedule 1: Intangible fixed assets: restrictions on goodwill and certain other assets

Summary

1. This new clause and Schedule amend Part 8 of the Corporation Tax Act (CTA) 2009 to allow fixed rate relief for goodwill and certain other assets acquired in business acquisitions occurring on or after 1 April 2019. The amount of relief will be determined by reference to the value of any qualifying IP assets acquired with the business.
2. The new clause and Schedule also reintroduce a restriction on relief for certain related party incorporations.

Details of the clause and Schedule

3. New clause 6 introduces new Schedule 1.

New Schedule 1: Intangible fixed assets: restrictions on goodwill and certain other assets

4. Paragraph 1 amends Part 8 of the Corporation Tax Act (CTA) 2009.
5. Paragraphs 2 to 4 insert references to new Chapter 15A and relevant legislation into various existing provisions in Part 8.
6. Paragraph 5 repeals section 816A.
7. Paragraph 6 inserts new Chapter 15A into Part 8.

Chapter 15A

8. Chapter 15A comprises new sections 879A to 879P, which contain special rules about the debits to be brought into account by a company in respect of “relevant assets”, including goodwill.
9. The default position under Part 8 is that relevant assets attract relief. However Chapter 15A includes the following rules that fully restrict that relief in particular circumstances:
 - A rule that fully restricts debit relief in respect of relevant assets previously subject to the section 816A restriction (section 879C),

- A rule that fully restricts debit relief in respect of relevant assets acquired on or after 1 April 2019 either separately from a business, or as part of a business that does not include qualifying IP assets (sections 879I), and
 - A rule that fully restricts debit relief in respect of relevant assets acquired on or after 1 April 2019 in a related party incorporation where the assets were generated internally by the transferor (section 879K).
10. Chapter 15A also contains a rule (section 879O) that applies when none of the full restrictions applies. This rule partially restricts debit relief in respect of relevant assets that were acquired on or after 1 April 2019:
- as part of a business that included qualifying IP assets where the expenditure on relevant assets exceeds 6 times the expenditure on qualifying IP assets (section 879M), and/or
 - in a related party incorporation where the assets were previously acquired from a third party (section 879N).
11. Chapter 15A also contains a general rule that provides that relevant assets created or acquired on or after 1 April 2019 are to be written down for tax purposes at a fixed rate (section 879B).
12. Section 879A defines “relevant asset”. It is based on the definition previously in section 816A of CTA 2009.
13. Section 879B provides that a relevant asset created or acquired by a company on or after 1 April 2019 is to be written down for tax purposes at a fixed rate of 6.5% of cost per annum, and not on an accounting basis. It achieves this by treating the company as having made a fixed rate election in respect of the asset when it was created or acquired.
14. Subsection (4) gives the Treasury the power to amend this rate of writing-down by regulations.

Restriction on assets acquired pre-1 April 2019

15. Section 879C restricts the debits available in respect of “pre-FA 2019” relevant assets. This preserves the effect of section 816A on relevant assets held by a company between 29 October 2018, when the reforms to goodwill relief were announced, and 1 April 2019, when the new legislation commences.
16. Subsection (2) provides that no debits are to be brought into account under Chapters 3 or 15 of Part 8 in relation to such assets.
17. Subsection (3) provides that any debit brought into account under Chapter 4 of Part 8 in relation to pre-FA 2019 assets is to be treated as a non-trading debit.
18. Sections 879D to 879H define the four cases in which an asset is a pre-FA 2019

relevant asset in relation to a company.

19. Section 879D describes the first case. It preserves the effect of the section 816A restriction on relevant assets that were:
 - acquired by a company between 8 July 2015 and 31 March 2019 (and therefore subject to section 816A restriction in that company's hands), and
 - held by that company between the announcement of the reforms to goodwill relief on 29 October 2018 and 1 April 2019, which is when Chapter 15A takes effect.
20. Section 879E describes the second case. It is based on the rule in section 882 for pre-FA 2002 assets and prevents the first case from being circumvented as a result of assets being transferred between related parties.
21. Subsection (1) provides that the second case applies to a relevant asset held by a company, C, that was:
 - acquired or created by another company between 8 July 2015 and 31 March 2019 (and therefore subject to section 816A restriction in that company's hands),
 - held by that other company between the announcement of the reforms to goodwill relief on 29 October 2018 and 1 April 2019, which is when Chapter 15A takes effect, and
 - acquired by C on or after 1 April 2019 from a related party (subject to two exceptions).
22. Subsection (2) describes the first exception, Case A. This applies where a company has acquired a relevant asset from a company within the charge to corporation tax, and the asset was not a pre-FA 2019 relevant asset in that other company's hands immediately before the acquisition.
23. Subsection (3) describes the second exception, Case B. This is modelled on the rule in section 882(4). The exception applies where the company, C, mentioned in section 879E(1) acquired a relevant asset from a related party ("the intermediary"), which in turn acquired the asset on or after 1 April 2019 from a another person who was neither:
 - related to the intermediary at the time it acquired the asset, nor
 - related to C at the time it acquired the asset from the intermediary.
24. Subsections (4) to (7) extend the definition of related party by mirroring similar provisions in subsections 882(5A) to (5D).
25. Sections 879F and 879G describes the third case in which an asset is a pre-FA 2019

relevant asset. This case is modelled on sections 893 and 894, which are aimed at situations where a company acquires a relevant asset that derives its value from a pre-FA 2002 asset held by a related party. A typical situation in which one asset derives its value from another asset is where a licence is granted in respect of the other asset.

26. Subsection (1) provides that the third case applies where, on or after 1 April 2019:
- a company acquires from a related party a relevant asset that was created on or after 29 October 2018,
 - that asset derives some or all of its value from some other asset, and
 - that other asset meets the “preserved status condition” in section 879G.
27. Subsection (2) provides for cases in which only part of the value of the acquired relevant asset derives from the asset that meets the “preserved status condition”. In such circumstances the relevant asset is to be treated as two separate assets to allow only part of the asset to be treated as a pre-FA 2019 asset.
28. Subsection (3) clarifies some of the circumstances in which the value of an asset may derive from another asset.
29. Section 879G determines when the other asset referred to in section 879F meets the “preserved status condition”. The condition identifies assets that would have been be pre-FA 2019 relevant assets in the hands of the company, C, had C actually acquired those assets, in order that the restriction may be extended to assets derived from them.
30. Subsection (1) provides that the other asset meets the preserved status condition if either subsection (2) or (3) applies.
31. Subsection (2) contains two conditions.
32. The first condition, in subsection (2)(a) requires that the other asset was acquired or created by a company between 8 July 2015 and 31 March 2019, which is the period during which the section 816A restriction was in force.
33. The second condition, in subsection (2)(b) requires that the other asset was:
- a chargeable intangible asset (and therefore subject to the section 816A restriction) in the hands of that company between the announcement of the reforms to goodwill relief on 29 October 2018 and 1 April 2019, which is when Chapter 15A takes effect
- at a time when the company was either:
- a related party of the company, C, mentioned in section 879F(1), or
 - a related party of the transferor defined in section 879F(1)(b).

34. Subsection (3) provides that the other asset also meets the preserved status condition if, between 1 April 2019 and the acquisition mentioned in section 879F(1)(b), it was a pre-FA 2019 asset in the hands of a company that was:
- a related party of the company, C, or
 - a related party of the transferor.
35. Subsection (4) confirms that it does not matter who, for the purpose of section 879F(1)(a) created the relevant asset.
36. Subsection (5) provides for a just and reasonable apportionment in the circumstances where a relevant asset is only partly derived from a pre-FA 2019 asset.
37. Subsections (6) adopts the extensions to the definition of a related party in section 879E(4) to (7) for the purposes of sections 879F and 849G.
38. Subsection (7) provides that expressions used in section 879G have the same meaning as in section 879F.
39. Section 879H describes the fourth case in which an asset is a pre-FA 2019 relevant asset. It is modelled on section 895 which treats an asset as a pre-FA 2002 asset when it is acquired in connection with the disposal of a pre-FA 2002 asset by a related party.
40. Subsection (1)(a) provides that the fourth case applies where a company acquires a relevant asset in consequence of, or in connection with, the disposal of a relevant asset by another person.
41. Subsection (1)(b) provides that this case only applies if the asset disposed of would have been a pre-FA 2019 asset in the hands of the acquiring company, had it been transferred to that company directly. This is a hypothetical test which identifies situations in which the other pre-FA 2019 cases are circumvented through arrangements of the kind described by subsection (1)(a).

Assets acquired post-1 April 2019: full restrictions

42. Section 879I contains the first full restriction.
43. Subsection (1) provides that the restriction applies when a company acquires a relevant asset other than as part of a business.
44. Subsection (2) provides that the restriction also applies when a company acquires a relevant asset as part of a business but does not acquire any qualifying IP assets as part of that business acquisition.
45. In order to be taken into account for the purposes of subsection (2), any qualifying IP assets acquired with the business must be acquired for use on a continuous basis in the course of the business. This excludes assets that are acquired as part of, or alongside, the acquisition of a business but where the acquirer has no intention to retain them.
46. Subsections (3) and (4) provide that, where section 879I applies, debits in respect of

the relevant assets in question are restricted as described at paragraphs 16 and 17 above.

47. Section 879J defines “qualifying IP asset”.
48. Subsection (1) requires that, in order to be a qualifying IP asset, an asset must be an intangible fixed asset within the meaning of Part 8.
49. Subsection (2) requires that the asset is one of the types of intellectual property listed in that subsection.
50. Subsection (3) requires that the asset is neither a pre-FA 2002 asset, nor excluded from Part 8 by Chapter 10.
51. Subsection (4) modifies the list of intellectual property rights in subsection (2) to exclude user licences over computer software.
52. Subsection (5) gives the Treasury the power to amend the definition of qualifying IP asset by regulations.
53. Section 879K contains the second full restriction, which applies when, on or after 1 April 2019:
 - a company acquires a relevant asset from a related individual, or from a firm one of the members of which is an individual related to the company and
 - the transferor did not previously acquire all or part of the relevant asset from a third party.

It is based on the restriction previously in section 849D.

54. Subsections (2) and (3) describe the related party and third party acquisition conditions applicable to subsection (1).
55. Subsections (4) and (5) provide that, where section 879K applies, debits in respect of the relevant assets in question are restricted as described at paragraphs 16 and 17 above.
56. Section 879L defines the terms “relevant business” and “third party acquisition”, which are used in section 879K.
57. Subsection (2) defines the “relevant business” in relation to a relevant asset as the business mentioned in section 879A to which the asset is linked.
58. Subsection (3) defines a “third party acquisition” made by a transferor as one in which an asset is acquired from a person who does not have one of several specified connections to the transferor.
59. Subsection (4) provides an exception to the definition of a third party acquisition so that an acquisition is not a third party acquisition if:
 - it has a tax avoidance purpose, or

- it occurs during the period from 8 July 2015 to 31 March 2019.

The second limb of this exclusion ensures that relief is not available for relevant assets acquired by the transferor during the period that the general restriction in section 816A was in force.

60. Subsection (5) adopts the meaning of “connected” that is used in Chapter 12 of Part 8.

Assets acquired post-1 April 2019: partial restriction

61. Section 879M provides for the first case in which the partial restriction applies. Its objective is to limit the amount of expenditure on relevant assets for which a company receives writing down relief to 6 times the company’s expenditure on qualifying IP assets.
62. Subsection (1) provides that the restriction set out in section 879O applies when:
- a relevant asset is acquired as part of a business which includes qualifying IP assets, and
 - the calculation set out in subsection (3) results in an amount less than 1.
63. Subsection (2) gives the full restrictions in sections 879C and 879K priority over section 879O. If either of those sections apply it is not, therefore, necessary to consider section 879O.
64. Subsection (3) provides the formula required to calculate the amount referred to in subsection (1)(c). This is the ratio between 6 times an affected company’s expenditure on qualifying IP assets and its expenditure on relevant assets. This will be less than 1 if the acquirer’s expenditure on relevant assets is greater than 6 times its expenditure on qualifying IP assets.
65. Subsection (4) gives the Treasury the power to amend the value of 6 used in subsection (3) by regulations.
66. Subsection (5) defines “expenditure” for the purposes of section 879M, and adopts the definition of “qualifying IP asset” in section 879J.
67. Section 879N provides for the second case in which the partial restriction applies. Its objective is to limit the expenditure on which a company receives writing down relief to the “notional accounting value” of the relevant asset in question.
68. Subsection (1) provides that the restriction set out in s879O also applies when:
- a company acquires a relevant asset from a related individual, or a firm one of the members of which is a related individual,
 - the transferor previously acquired all or part of the relevant asset from a third party, and
 - the calculation set out in subsection (6) results in an amount less than 1.

69. Subsection (2) gives the full restrictions in sections 879C and 879I priority over section 879O. If either of those sections apply it is not, therefore, necessary to consider section 879O.
70. Subsections (3) and (4) describe the related party and third party acquisition conditions applicable to subsection (1). They adopt the same definitions as used in section 879K.
71. Subsection (5) adopts the definitions of “relevant business” and “third party acquisition” given in section 879L for the purposes of section 879N.
72. Subsection (6) provides the formula required to calculate the amount referred to in subsection (1)(d). This is the ratio between the “relevant accounting value” of the relevant asset previously acquired from a third party, and the acquiring company’s expenditure on that asset. This will be less than 1 if the acquirer’s expenditure exceeds the asset’s relevant accounting value.
73. Subsections (7) and (8) define the “relevant accounting value” of an asset as its “notional accounting value”.
74. Subsection (9) defines the “notional accounting value” of an asset as the accounting value it would have had in hypothetical GAAP-compliant accounts drawn up by the transferor immediately prior to the acquisition by the company.
75. Section 879O restricts the relief available in respect of relevant assets. It applies when the conditions in one or both of sections 879M and 879N are met. It is based on the legislation previously in section 849C.
76. Subsection (2) provides that any debits that would otherwise be brought into account under Chapter 3 or Chapter 15 in respect of a relevant asset are reduced. This is achieved by multiplying the debits by a fraction, referred to as the “relevant amount”.
77. Subsection (3) provides that any debit that would otherwise be brought into account under Chapter 4 is divided into two parts, one of which is deemed to be a non-trading debit.
78. Subsection (4) provides that the trading debit is to be determined by multiplying the unadjusted Chapter 4 debit by the relevant amount. Subsection (5) then explains how to determine the deemed non-trading debit.
79. Subsection (6) defines the relevant amount in the circumstances that the restriction applies:
- only by virtue of section 879M,
 - only by virtue of section 879N, and
 - by virtue of both section 879M and 879N.
80. If only section 879M applies, then the relevant amount is the amount stated in section 879M(3). The effect is that the amount of expenditure on relevant assets that is

eligible for full relief is limited to 6 times the company's expenditure on qualifying IP assets.

81. If only section 879N applies, then the relevant amount is the amount stated in section 879N(6). The effect is that the amount of expenditure on relevant assets that is eligible for full relief is limited to the notional accounting value of the relevant assets previously acquired from third parties.
82. If both sections apply, then the relevant amount is found by multiplying the amounts in section 879M(3) and 879N(6). The effect is that the amount of expenditure on relevant assets that is eligible for full relief is limited:
 - firstly to 6 times the company's expenditure on qualifying IP assets, and
 - then further by reference to the notional accounting value of the relevant assets previously acquired from third parties.
83. Section 879P provides that, for the purposes of Chapter 15A, a company acquiring an asset under an unconditional contract is treated as making the acquisition when the contract is made (or, if later, when it becomes unconditional).
84. Paragraph 7 states the commencement provisions.

Background note

85. The law in relation to the taxation of intangible fixed assets (IFAs) held by companies is contained in Part 8 of CTA 2009. The Part 8 rules allow a tax deduction for expenditure on IFAs based on the debits that are recognised in a company's accounts.
86. Historically Part 8 relieved expenditure on acquisitions of goodwill in the same way as expenditure on other IFAs. However Finance Act 2015 introduced restrictions on relief in sections 849B to 849D of CTA 2009. Those sections restricted the debit relief available for relevant assets acquired in certain related party incorporations occurring on or after 3 December 2014.
87. Subsequently, the Finance (No. 2) Act 2015 introduced section 816A of CTA 2009, which restricted the debit relief available for all acquisitions of relevant assets occurring on or after 8 July 2015. That restriction superseded the earlier restriction on related-party incorporations, so sections 849B to 849D were repealed.
88. This new clause and Schedule amend Part 8 in order to give relief for acquisitions of relevant assets occurring on or after 1 April 2019. In a given business acquisition, the expenditure on relevant assets that will be eligible for relief will be limited to 6 times the value of any qualifying IP assets acquired with the business. The relief will also be given at a fixed rate of 6.5% of cost per annum rather than on an accounting basis.
89. The clause and Schedule continue to restrict relief for relevant assets that were subject to the section 816A restriction in the hands of a company between the date these reforms to goodwill relief were announced, 29 October 2018, and 1 April 2019, when

Chapter 15A takes effect. This core “pre-FA 2019” restriction is supplemented by several anti-avoidance rules which prevent it from being circumvented by arrangements involving transactions with related parties.

90. The clause and Schedule also reinstate a restriction, similar to that introduced by the Finance Act 2015 from 3 December 2014, on relevant assets acquired in a related party incorporation.
91. These changes are intended to provide relief for acquired relevant assets to the extent that the business value is connected to IP acquired with the business that would itself qualify for relief under Part 8.