

Clause X: Intangible fixed assets: transactions between related parties

Summary

1. This clause introduces legislation to ensure licensing (or similar) transactions between related parties involving intangible fixed assets recognise the market value of the licence. It is effective from 22 November 2017. A related change is made by clause [Intangible fixed assets: realisation involving non-monetary receipt].

Details of the clause

2. Clause X amends Chapter 13 of Part 8 Corporation Tax Act 2009 (CTA 2009).
3. Subsection (1) makes a consequential amendment to the overview of Chapter 13 of Part 8 CTA 2009 in section 844 and inserts new subsection (2ZA).
4. Subsection (2) introduces new sections 849AB to 849AD into Chapter 13 of Part 8 CTA 2009.
5. New Section 849AB sets out the conditions in which a licence or other right in respect of an intangible asset is treated as being:
 - A grant at market value by the grantor, and
 - An acquisition at market value by the grantee.
6. Section 849AB(1) sets out the conditions when new section 849AB will apply to the grant of a licence or other right between related parties.
7. Section 849AB(2) and (3) provide when the market value should be recognised in relation to the grant of a licence or other right between related parties but only where either condition A or B in subsections (4) or (5) are met.
8. Section 849AB(4) and (5) define conditions A and B referred to in subsections (2) and (3).
9. Section 849AB(6) provides that new sections 849AC and 849AD will limit the circumstances when new section 849AB will apply.
10. Section 849AB(7) and (9) expand the definition of related party in section 835 CTA 2009 to include circumstances when the participation condition in Taxation (International and Other Provisions) Act 2010 (TIOPA 2010) would be met.
11. Section 849AB(8) and (10) ensure new section 849AB applies for the purposes of section 1259 CTA 2009. 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.

12. Section 849AB(11) ensures that an intangible fixed asset held by a firm is treated as a chargeable intangible asset for the purposes of the section 1259 computation.
13. Section 849AB(12) defines ‘market value’ and ‘the Taxes Acts’ as used in this section.
14. New Section 849AC provides for the situation where an adjustment could be made under new section 849AB and under Part 4 of TIOPA 2010.
15. Section 849AC(1) sets out the conditions when new subsection 849AC will apply.
16. Section 849AC(2) and (3) provide that the adjustment to be made is the greater of the Part 4 of the TIOPA 2010 adjustment or the new section 849AB adjustment.
17. New Section 849AD restricts the circumstances when new section 849AB applies. It limits circumstances where the grant of a licence or other right, at overvalue or undervalue as the case may be, is adjusted to market value when calculating the profits or losses for other purposes of the Taxes Acts.
18. Section 849AD(1) – (3) set out the conditions when new section 849AD will apply to the grant of a licence or other right between related parties.
19. Section 849AD(4) provides that where the condition in subsection (1) of new section 849AD is met, subsections (2) and (3) of new section 849AB will not apply for the purposes of certain ‘relevant provisions’ in the Taxes Acts.
20. Section 849AD(5) defines the ‘relevant provisions’ to which the market value rule in new section 849AB are disapplied.
21. Subsection (3) sets out the commencement rule.
22. Subsection (4) defines when a contract is unconditional for the purposes of the commencement rule in subsection (2).

Background note

23. The law in relation to the taxation of intangible fixed assets held by companies is contained in Part 8 of CTA 2009. In general terms, Part 8 follows amount recognised in a company’s accounts in relation to these assets to calculate the taxable profit or allowable loss. Amounts recognised for accounting purposes are however subject to adjustment under Part 8.
24. One requirement of Part 8 is that transfers of relevant intangible assets between related parties takes place at least at market value (if an adjustment under Part 4 of TIOPA for arm’s length provision is not a greater value).
25. This clause applies a similar market value rule to grants of licences and other rights between related parties.
26. A related change is made by clause [Intangible fixed assets: realisation involving non-monetary receipt] that is designed to put beyond doubt that where the consideration for an intangible fixed asset includes something other than cash, the amount recognised as the proceeds of realisation for the purposes of section 739 is the market value in cash of whatever is received as consideration.