

# CORPORATION TAX ACT 2009

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 8: Intangible fixed assets**

##### **Overview**

##### *Chapter 10: Excluded assets*

##### *Section 800: Introduction*

2113. Not all assets that might fall within the definition of “intangible fixed asset” are intended to come within the rules in this Part. This section introduces the rules on assets that are excluded. It is new.

##### *Section 801: Right to dispose of or acquire excluded asset also excluded*

2114. This section gives an important general extension to the exclusion rules in this Chapter: if an asset is excluded by those rules, so is an option or other right to acquire or dispose of that asset. It is based on paragraph 72 of Schedule 29 to FA 2002.

2115. There is a counterpart, obverse rule in section 713(2).

##### *Section 802: Effect of partial exclusion*

2116. This section addresses the case where an asset falls partly within and partly outside the intangible fixed asset rules. It is based on paragraph 72 of Schedule 29 to FA 2002.

##### *Section 803: Non-commercial purposes etc*

2117. This section is an exclusion rule of general application which can exclude any asset by reference to the purpose for which it is held. It is based on paragraph 77 of Schedule 29 to FA 2002.

2118. This section is necessary because the intangible fixed assets regime is largely autonomous and does not contain general calculation rules that apply elsewhere for corporation tax such as the prohibition of a deduction for expenses not incurred wholly and exclusively for the purposes of a trade. Without this rule there would be no test of purpose or commerciality for non-trading gains and losses.

##### *Section 804: Assets for which capital allowances previously made*

2119. This section excludes entirely assets in respect of which capital allowances have previously been made. It is based on paragraph 73A of Schedule 29 to FA 2002.

##### *Section 805: Rights over tangible assets*

2120. This section excludes rights over tangible assets. It is based on paragraph 73 of Schedule 29 to FA 2002.

***Section 806: Financial assets***

2121. This section excludes financial assets. It is based on paragraph 75 of Schedule 29 to FA 2002.

2122. *Subsection (3)* lists the main financial assets but is not intended to be exhaustive.

***Section 807: Rights in companies, trusts etc***

2123. This section excludes shares and other rights in companies, rights under a trust and the interest of a partner in a partnership. It is based on paragraph 76 of Schedule 29 to FA 2002.

2124. *Subsections (2)* and *(3)* provide for exceptions that follow the accounting treatment. They are exceptions to an exclusion, so the assets they refer to come within the intangible fixed assets regime.

***Section 808: Assets representing production expenditure on films***

2125. This section excludes certain expenditure on films. It is based on paragraph 80A of Schedule 29 to FA 2002.

***Section 809: Oil licences***

2126. This section excludes oil licenses. It is based on paragraph 74 of Schedule 29 to FA 2002.

2127. Oil licences are potentially only transitory intangible assets in that they may subsequently be charged to a tangible asset account representing successful exploration costs. They are outside the accountancy definition of goodwill and intangible assets and are subject to their own industry reporting standard.

***Section 810: Mutual trade or business***

2128. This section excludes, except as respects royalties, intangible fixed assets to the extent they are held for the purposes of a mutual trade or business. It is based on paragraph 79 of Schedule 29 to FA 2002.

2129. *Subsection (2)* is new. It gives a signpost to an exception relevant to certain insurance companies.

***Section 811: Sound recordings***

2130. This section excludes, except as regards royalties, intangible fixed assets to the extent they represent certain expenditure on sound recordings. It is based on paragraph 80B of Schedule 29 to FA 2002.

***Section 812: Master versions of films***

2131. This section excludes certain recent film expenditure from the intangible fixed assets regime. It is based on paragraph 80A of Schedule 29 to FA 2002.

***Section 813: Computer software treated as part of cost of related hardware***

2132. This section excludes, except as regards royalties, intangible fixed assets to the extent they represent expenditure on certain computer software. It is based on paragraph 81 of Schedule 29 to FA 2002.

2133. Software acquired with the related hardware is not treated as an intangible asset under accountancy rules, so it is excluded from the intangible fixed assets regime.

***Section 814: Research and development***

2134. This section limits the application of the rules in this Part to the extent specified where intangible fixed assets represent expenditure on research and development. It is based on paragraph 82 of Schedule 29 to FA 2002.

***Section 815: Election to exclude capital expenditure on software***

2135. This section, if the company so elects, limits the application of the rules in this Part to the extent specified where intangible fixed assets represent capital expenditure on computer software. It is based on paragraph 83 of Schedule 29 to FA 2002.
2136. This section sets out the substantive rule and its tax effects. This rule reflects the existence of capital allowances rules that would normally offer a company more beneficial relief. The election switches off the intangible fixed assets rules in this Part that would otherwise override those capital allowances rules.
2137. *Subsection (8)* is new. It gives a signpost to the extension of the right to make an election under this section to some insurance companies.

***Section 816: Further provision about elections under section 815***

2138. This section gives procedural rules in respect of the election under the preceding section. It is based on paragraph 83 of Schedule 29 to FA 2002.