These notes refer to the Corporation Tax Act 2009 (c.4) which received Royal Assent on 26 March 2009

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8: Intangible fixed assets

Overview

Chapter 14: Miscellaneous provisions

Overview

2187. This Chapter groups together a number of miscellaneous rules, many of relatively limited or specialised application.

Section 852: Treatment of grants and other contributions to expenditure

2188. This section brings grants and other contributions in respect of intangible fixed assets into account. It is based on paragraph 102 of Schedule 29 to FA 2002.

2189. S*ubsection (2)* refers to a gain recognised in the profit and loss account. This includes amounts recognised separately as incomings or netted off against expenditure.

Section 853: Grants to be left out of account for tax purposes

2190. This section excludes from the previous section certain grants made out of UK public funds. It is based on paragraph 103 of Schedule 29 to FA 2002.

Section 854: Finance leasing etc

2191. This section provides for finance leased intangible fixed assets to be brought within this Part, in respect of the lessor. It is based on paragraph 104 of Schedule 29 to FA 2002.

2192. The rules in this Part apply automatically without adaptation to a finance leased intangible fixed asset of the lessee in the same way as they would if the asset were simply purchased with the aid of a loan. But special provisions are required to bring finance leased assets within the scope of this Part for the lessor**.** That is because finance leases are, for the lessor, financial assets and financial assets are excluded by section 806(1).

Section 855: Further provision about regulations under section 854

2193. This section states the regulations that may be made in respect of finance leased intangible fixed assets under section 854. It is based on paragraph 104 of Schedule 29 to FA 2002.

2194. Regulations have been made and are in SI 2002/1967.

Section 856: Assets acquired or realised together

2195. This section requires individual values to be allocated to assets acquired or realised together with others as part of the same bargain. It is based on paragraph 105 of Schedule 29 to FA 2002.

Section 857: Deemed market value acquisition: adjustment where nil accounting value

2196. This section provides for accounting entries based on market value for the purposes of the calculation rules. It is based on paragraph 106 of Schedule 29 to FA 2002.

2197. This section is relevant when an intangible fixed asset is transferred at a nil accounting value but is treated under the rules in this Part as acquired at market value. The most common example is internally-generated goodwill.

Section 858: Fungible assets

2198. This section gives a “single asset” rule for assets that are “fungible”. It is based on paragraph 107 of Schedule 29 to FA 2002.

2199. *Subsection (2)* defines “fungible assets”. An example (from the dairy farming industry) is milk quota.

Section 859: Asset ceasing to be chargeable intangible asset: deemed realisation at market value

2200. This section gives a market value deemed realisation and reacquisition rule in three particular cases. It is based on paragraph 108 of Schedule 29 to FA 2002.

2201. *Subsection (2)* lists the cases to which the section applies. In each, without changing ownership, the asset ceases to be a “chargeable intangible asset”. That is, any gain on realisation would cease to fall within the intangible fixed assets rules (see section 741).

2202. There is an obverse rule in section 863 which applies when an asset *becomes* a chargeable intangible asset.

Section 860: Asset ceasing to be chargeable intangible asset: postponement of gain

2203. This section gives relief in certain cases where section 859(2)(a) applies. It is based on paragraph 109 of Schedule 29 to FA 2002.

Section 861: Treatment of postponed gain on subsequent realisation

2204. This section recovers the relief given under section 860 if there is a subsequent realisation of the intangible fixed asset within six years of the company ceasing to be UK resident. It is based on paragraph 109 of Schedule 29 to FA 2002.

Section 862: Treatment of postponed gain in other cases

2205. This section recovers the relief given under section 860 in three other particular cases. It is based on paragraph 109 of Schedule 29 to FA 2002.

Section 863: Asset becoming chargeable intangible asset

2206. This section gives an accounting value deemed acquisition rule in three particular cases. It is based on paragraph 110 of Schedule 29 to FA 2002.

2207. *Subsection (1)* lists the cases to which the section applies. In each, without changing ownership, the asset becomes a “chargeable intangible asset”. That is, any gain on realisation would fall within the intangible fixed assets rules (see section 741).

2208. This is the obverse of the rule in section 859 which applies when an asset *ceases* to be a chargeable intangible asset.

Section 864: Tax avoidance arrangements to be ignored

2209. This section neutralises the effect on the calculations where there are transactions intended to exploit the intangible fixed asset rules. It is based on paragraph 111 of Schedule 29 to FA 2002.

2210. If "tax avoidance arrangements" are entered into they are ignored in calculating entitlement to credits and debits in respect of intangible fixed assets.

Section 865: Debits for expenditure not generally deductible for tax purposes

2211. This section applies some general rules, outside this Part, which restrict deductions. It is based on paragraph 112 of Schedule 29 to FA 2002.

Section 866: Delayed payment of employees' remuneration

2212. This section prevents a deduction for employees' remuneration paid late. It is based on paragraph 113 of Schedule 29 to FA 2002.

2213. It is possible, in certain circumstances, for employees' remuneration to come within the intangible fixed asset rules. An example might be the remuneration of staff employed in promoting a company's product brands. If the remuneration is not paid within nine months from the end of the accounting period for which it is charged in the accounts, paragraph 113 of Schedule 29 to FA 2002 defers the tax deduction for that remuneration until it is paid.

2214. Paragraph 113 of Schedule 29 to FA 2002 is modelled on section 43 of FA 1989 which applies the same restriction outside this Part to other income types. For income tax, section 43 was rewritten in sections 36 and 37 of ITTOIA as two sections. For clarity and consistency that model is followed for corporation tax. This section rewrites that part of paragraph 113 of Schedule 29 to FA 2002 that states the main restriction and, in so doing, is consistent with the approach to rewriting section 43 of FA 1989.

Section 867: Provisions supplementing section 866

2215. This section gives interpretative and other supporting rules for the previous section. It is based on paragraph 113 of Schedule 29 to FA 2002.

2216. *Subsection (5)* rewrites paragraph 113(5) of Schedule 29 to FA 2002 and contains a Change. *Subsection (4)* deals with the case in which the company submits its tax return before the end of the nine months period mentioned in section 866(2) and all or any of the remuneration is unpaid. The company must assume the remuneration will remain unpaid. If, subsequently, the remuneration is paid within the time limit the calculation can be adjusted and the return amended. This Act drops the requirement under paragraph 113(5) of a claim for that adjustment. This mirrors the rewrite of section 43(5) of FA 1989 as a general calculation rule in section 1289(3). See *Change 68* in Annex 1.

Section 868: Delayed payment of pension contributions

2217. This section delays a deduction for employees' pension contributions paid late. It is based on paragraph 114 of Schedule 29 to FA 2002.

Section 869: Bad debts etc

2218. This section gives special rules applying to debts. It is based on paragraph 115 of Schedule 29 to FA 2002.

2219. The rules in paragraph 115 of Schedule 29 to FA 2002 correspond to general rules that apply outside this Part; that is, the rules in sections 88D and 94 of ICTA rewritten in Part 3 (trading income).

Section 870: Assumptions for calculating chargeable profits

2220. This section gives special rules when this Part applies to a "controlled foreign company". It is based on paragraph 116 of Schedule 29 to FA 2002.