

# CORPORATION TAX ACT 2009

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

##### **Overview**

#### *Chapter 9: Application of this Part to groups of companies*

##### *Section 774: Overview of Chapter*

2074. This Chapter sets out the special rules that apply to companies that are “grouped” under the rules in Chapter 8 of this Part and this section introduces them. It is new.

##### *Section 775: Transfers within a group*

2075. This section allows the transfer of intangible fixed assets on a tax-neutral basis between group members. It is based on paragraph 55 of Schedule 29 to FA 2002.

2076. Without this rule, intra-group transfers, being transactions between related parties, would be regarded as taking place at market value (under section 845) and would trigger the normal realisation rules.

##### *Section 776: Meaning of “tax-neutral” transfer*

2077. This section defines a key term. It is based on paragraph 140 of Schedule 29 to FA 2002.

2078. Here and elsewhere in this Part the provisions refer to transfers that *are* tax-neutral rather than, as in the source legislation, transfers that are *treated* as tax-neutral. Since “tax-neutral” is a defined term, the abstractness of the source is not necessary.

##### *Section 777: Relief on realisation and reinvestment: application to group member*

2079. This section allows, subject to certain conditions, group members to be treated as the same company for reinvestment relief purposes. It is based on paragraph 56 of Schedule 29 to FA 2002.

2080. *Subsection (3)(e)* aligns the reference in this section to a “dual resident investing company” with other such references in the source legislation (reproduced in this Part) by introducing a signpost to the provision defining that term.

##### *Section 778: Relief on reinvestment: acquisition of group company: introduction*

2081. This section, along with section 779, extends reinvestment relief to reinvestment in shares in a company which owns assets within the intangible fixed assets regime. It is based on paragraph 57 of Schedule 29 to FA 2002.

***Section 779: Rules that apply to cases within section 778***

2082. This section is supplementary to the previous section and provides reinvestment relief for reinvestment in shares in a company which owns assets within the intangible fixed assets regime. It is based on paragraph 57 of Schedule 29 to FA 2002.

***Section 780: Deemed realisation and reacquisition at market value***

2083. This section provides for a deemed realisation and reacquisition of an asset in certain cases where a company leaves a group following an earlier transfer to it of intangible fixed assets on a tax-neutral basis. It is based on paragraph 58 of Schedule 29 to FA 2002.

2084. It is the first of several sections dealing with degrouping transactions which amount to disposals of the underlying intangible fixed asset by means of a disposal of the shares in the company to which it belongs. They are needed to ensure that such an indirect disposal of intangible fixed assets does not provide a tax advantage over a direct disposal.

2085. The broad effect of these provisions is to recognise a gain or loss deferred on an earlier tax-neutral disposal if the asset in question leaves the group otherwise than by a direct disposal of the asset. The rules achieve this by creating a deemed realisation and reacquisition of the asset by the company at market value immediately after the time it acquired the asset from another group company.

2086. *Subsection (5)(d)* gives a signpost to an exception to this rule where degrouping is part of a commercially motivated merger the purpose of which is not tax avoidance. Consistent with the approach elsewhere, “bona fide” in the source legislation is rewritten as “genuine”.

***Section 781: Character of credits and debits brought into account as a result of section 780***

2087. This section supplements the previous section to determine how credits and debits are brought into account. It is based on paragraph 58 of Schedule 29 to FA 2002.

***Section 782: Certain transferees of businesses etc not treated as leaving group***

2088. This section disapplies section 780 in the case of certain European cross-border transfers of business. It is based on paragraph 58 of Schedule 29 to FA 2002.

***Section 783: Associated companies leaving group at the same time***

2089. This section modifies the effect of section 780 so that, when more than one company degroups at the same time, a degrouping charge arises only in circumstances that amount to a subsequent effective disposal of the intangible fixed asset. It is based on paragraph 59 of Schedule 29 to FA 2002.

2090. *Subsection (4)* is new and gives a signpost to an exception to this rule where degrouping is part of a commercially motivated merger the purpose of which is not tax avoidance. That exception may be relevant because section 780 is subject to that exception and section 783 merely modifies the effect of section 780.

***Section 784: Groups with a relevant connection***

2091. This section defines the link between groups that must exist if the previous section is to apply. It is based on paragraph 59 of Schedule 29 to FA 2002.

***Section 785: Principal company becoming member of another group***

2092. This section modifies the effect of section 780 in cases where degrouping occurs only because the principal company becomes a member of another group: a degrouping charge then arises only in circumstances which amount to a subsequent effective disposal of the intangible fixed asset within six years. It is based on paragraph 60 of Schedule 29 to FA 2002.

***Section 786: Character of credits and debits brought into account as a result of section 785***

2093. This section supplements the previous section to determine how credits and debits are brought into account. It is based on paragraph 60 of Schedule 29 to FA 2002.

***Section 787: Company ceasing to be member of group because of exempt distribution***

2094. This section disapplies the degrouping rules in sections 780 and 785 for certain demergers unless there is a “chargeable payment” to members within five years of the related “exempt distribution”. It is based on paragraph 61 of Schedule 29 to FA 2002.

2095. *Subsection (5)* gives a signpost to the meaning of terms that are part of the general demergers tax rules.

***Section 788: Provisions supplementing sections 780 to 787***

2096. This section gives interpretative rules for the degrouping provisions. It is based on paragraphs 63 and 64 of Schedule 29 to FA 2002.

***Section 789: Merger carried out for genuine commercial reasons***

2097. This section disapplies the degrouping rules in sections 780 to 787 in the case of company mergers where exploitation of the group rules is not the object. It is based on paragraph 62 of Schedule 29 to FA 2002.

2098. The definition of “merger” in paragraph 62 of Schedule 29 to FA 2002 is restructured to make it clearer. This involves relocating some of the detail of the definition in a separate section (section 790).

***Section 790: Provisions supplementing section 789***

2099. This section gives interpretative provisions to identify a “merger” for the purposes of the preceding section. It is based on paragraph 62 of Schedule 29 to FA 2002.

***Section 791: Application of roll-over relief in relation to degrouping charge***

2100. This section allows reinvestment relief in cases where a company is treated as realising an intangible fixed asset under the degrouping rules. It is based on paragraph 65 of Schedule 29 to FA 2002.

2101. This is one of the two exceptions to the general rule in section 763 that deemed realisations do not count for the purposes of the reinvestment rules. The other is dealt with in section 794.

***Section 792: Reallocation of charge within group***

2102. This section provides, subject to certain conditions, for the transfer of a degrouping charge from the company leaving the group to another company in the group it is leaving. It is based on paragraph 66 of Schedule 29 to FA 2002.

2103. This transfer of charge may allow, for example, the charge to be sheltered by reliefs available elsewhere in the main group.

***Section 793: Further requirements about elections under section 792***

2104. This section sets out the conditions for, and the form of, the election required for the reallocation provided for in the previous section. It is based on paragraph 66 of Schedule 29 to FA 2002.

***Section 794: Application of roll-over relief in relation to reallocated charge***

2105. This section allows reinvestment relief for the company to which a degrouping charge is transferred under section 792. It is based on paragraph 67 of Schedule 29 to FA 2002.

2106. This is the second of the two exceptions to the general rule in section 763 that deemed realisations do not count for the purposes of the reinvestment rules. The other is dealt with in section 791.

***Section 795: Recovery of charge from another group company or controlling director***

2107. This section gives alternative rights of recovery if any corporation tax arising from a degrouping charge is not paid within six months of it falling due. It is based on paragraph 68 of Schedule 29 to FA 2002.

***Section 796: Interpretation of section 795***

2108. This section gives interpretative rules for the previous section. It is based on paragraph 68 of Schedule 29 to FA 2002.

***Section 797: Recovery under section 795: procedure etc***

2109. This section sets out the procedural aspects of the recovery provision in section 795. It is based on paragraph 69 of Schedule 29 to FA 2002.

***Section 798: Recovery under section 795: time limit***

2110. This section sets a three year time limit for the service of a recovery notice under section 795. It is based on paragraph 70 of Schedule 29 to FA 2002.

2111. *Subsections (3) to (6)* determine the start date of the three year period depending on the origins of the original charge.

***Section 799: Disregard of payments between group members for reliefs***

2112. This section ensures that a payment by one group company to another for the transfer of relief is left out of account provided it does not exceed the “amount of the relief”. It is based on paragraph 71 of Schedule 29 to FA 2002.