

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

# CORPORATION TAX ACT 2009

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

##### **Overview**

1972. This Part gives a comprehensive scheme for the taxation of profits and losses arising to a company from its intangible fixed assets. It is based on Schedule 29 to FA 2002.
1973. This Part sets out a uniform and largely self-contained set of rules on the tax treatment of intangible fixed assets used for business purposes by companies. For assets within its rules, it overrides all other tax legislation. Broadly, it applies only to assets acquired from third parties, or created, after 31 March 2002. Other intangible fixed assets continue, subject to some particular exceptions, to be dealt with under general rules. The tax treatment of intangible fixed assets within this Part generally follows the accountancy treatment. In this respect, it resembles the loan relationship and derivative contract provisions which also largely erase the distinction between capital and revenue expenditure.

##### *Chapter 1: Introduction*

##### *Section 711: Overview of Part*

1974. This section provides a “route map” of the Part. It is new.

##### *Section 712: “Intangible asset”*

1975. This section explains what is meant by “intangible asset”. It is based on paragraph 2 of Schedule 29 to FA 2002.

##### *Section 713: “Intangible fixed asset”*

1976. This section explains what is meant by “intangible fixed asset”. It is based on paragraph 3 of Schedule 29 to FA 2002.
1977. *Subsection (2)* is an important general extension to the rules. That is, if an asset is an “intangible fixed asset” under the rules in this Part, so is an option or other right to acquire or dispose of that asset. There is a counterpart, obverse rule in section 805.

##### *Section 714: “Royalty”*

1978. This section is definitional. It is based on paragraph 139 of Schedule 29 to FA 2002.

##### *Section 715: Application of this Part to goodwill*

1979. This section brings goodwill within the intangible fixed assets regime. It is based on paragraph 4 of Schedule 29 to FA 2002.

1980. The inclusion of goodwill extends the relevance of these rules to a far wider range of companies than would otherwise be the case.

***Section 716: “Recognised” amounts and “GAAP-compliant accounts”***

1981. This section identifies the accountancy amounts from which the related tax amounts are derived. It is based on paragraph 134 of Schedule 29 to FA 2002.
1982. *Subsection (4)* rewrites part of paragraph 5(1) of Schedule 29 to FA 2002. The subsection uses the label “GAAP-compliant accounts” as being a more neutral term than the label “correct accounts” used in the source legislation.

***Section 717: Companies without GAAP-compliant accounts***

1983. This section deals with the case where a company does not draw up accounts in accordance with generally accepted accounting practice or, exceptionally, does not draw up accounts at all. It is based on paragraph 5 of Schedule 29 to FA 2002.
1984. In both cases the rules apply as though GAAP-compliant accounts had been drawn up.
1985. *Subsection (3)* applies where accounts are GAAP-compliant in themselves but follow on from a period for which the accounts were not. It allows the later accounts to be adjusted to reflect the adjustments required in the earlier accounts.

***Section 718: GAAP-compliant accounts: reference to consolidated group accounts***

1986. This section allows reference to be made to consolidated group accounts in determining whether a company’s accounts are GAAP-compliant. It is based on paragraph 6 of Schedule 29 to FA 2002.

***Section 719: Accounting value***

1987. This section is definitional. It is based on paragraph 135 of Schedule 29 to FA 2002.

***Chapter 2: Credits in respect of intangible fixed assets***

***Section 720: Introduction***

1988. This section introduces the rules dealing with the main category of accounting gains to be brought into account as credits for tax purposes. It is based on paragraph 13 of Schedule 29 to FA 2002.
1989. The rules in this Chapter do not apply on a realisation of an intangible fixed asset. *Subsection (3)* gives a signpost to the rules that do.

***Section 721: Receipts recognised as they accrue***

1990. This section covers all kinds of receipts (including most ordinary royalties) from the exploitation of intangible fixed assets, apart from those deriving from the realisation of such assets. It is based on paragraph 14 of Schedule 29 to FA 2002.

***Section 722: Receipts in respect of royalties so far as not dealt with under section 721***

1991. This section applies to credits in respect of some exceptional royalties to bring them within the charge when this would not otherwise happen. It is based on paragraph 14A of Schedule 29 to FA 2002.

***Section 723: Revaluation***

1992. This section applies when an intangible fixed asset is revalued upwards. It is based on paragraph 15 of Schedule 29 to FA 2002.

***Section 724: Negative goodwill***

1993. This section applies to certain releases of negative goodwill. It is based on paragraph 16 of Schedule 29 to FA 2002.

***Section 725: Reversal of previous accounting loss***

1994. This section applies to an accounting gain that reverses a previous loss for which relief was given. It is based on paragraph 17 of Schedule 29 to FA 2002.
1995. *Subsection (3)* ensures that if the tax debit in the previous period was not the same figure as the accounting loss, the credit on the reversal of the loss is the accounting gain adjusted in the ratio which the debit bears to the loss.
1996. There is a parallel, converse rule in section 732.

***Chapter 3: Debits in respect of intangible fixed assets***

***Section 726: Introduction***

1997. This section introduces the rules dealing with the main category of accounting losses which may be brought into account as a debit for tax purposes. It is based on paragraph 7 of Schedule 29 to FA 2002.
1998. The rules in this Chapter do not apply to the realisation of an intangible fixed asset. *Subsection (3)* provides a signpost to the Chapter that does.

***Section 727: References to expenditure on an asset***

1999. This section explains what is meant by “expenditure on an asset”. It is based on paragraph 133 of Schedule 29 to FA 2002.
2000. *Subsection (2)* puts beyond doubt the exclusion of capital expenditure on tangible assets that might otherwise appear to come within *subsection (1)* such as expenditure on cars used by company staff promoting the company’s brand name.

***Section 728: Expenditure written off as it is incurred***

2001. This section gives a deduction for expenditure never capitalised but written off in the period of account in which it is incurred. It is based on paragraph 8 of Schedule 29 to FA 2002.
2002. An example of expenditure within this section might be expenditure on maintaining an asset or expenditure on acquiring an asset which, in the event, proves abortive.

***Section 729: Writing down on accounting basis***

2003. This section gives a deduction for amounts written off an intangible fixed asset that has been capitalised in the company’s accounts. It is based mainly on paragraph 9 of Schedule 29 to FA 2002.

***Section 730: Writing down at fixed rate: election for fixed-rate basis***

2004. This section gives the option of a writing down deduction at a fixed rate, regardless of the accounting treatment of the intangible fixed asset. It is based on paragraph 10 of Schedule 29 to FA 2002.
2005. The main purpose of this option is to make relief available for the cost of acquiring the most durable of intangible assets which either are not amortised at all in the accounts or are amortised over a very long period. An example of such an asset could be a very strong brand name.

***Section 731: Writing down at fixed rate: calculation***

2006. This section gives the calculation rule that applies when the fixed rate writing down option is taken under the previous section. It is based on paragraph 11 of Schedule 29 to FA 2002.

***Section 732: Reversal of previous accounting gain***

2007. This section gives relief if a previous, taxed, accounting gain is reversed. It is based on paragraph 12 of Schedule 29 to FA 2002.
2008. The debit will usually be the same as the accounting loss. If, however, the credit brought into account for the earlier period was different from the accounting gain, the formula in *subsection (3)* ensures that the debit to be recognised is the accounting loss adjusted in the ratio which the earlier credit bears to the earlier accounting gain.
2009. There is a parallel, converse rule in section 725.

***Chapter 4: Realisation of intangible fixed assets***

***Section 733: Overview of Chapter***

2010. This section introduces the provisions that provide for credits or debits for tax purposes when an intangible fixed asset is realised. It is based on paragraph 18 of Schedule 29 to FA 2002.
2011. *Subsection (3)* rewrites paragraph 25 of Schedule 29 to FA 2002 as an early signpost to the possibility of roll-over relief in realisation cases.

***Section 734: Meaning of “realisation”***

2012. This section defines “realisation”. It is based on paragraph 19 of Schedule 29 to FA 2002.
2013. Consistent with the underlying principle of this Part, “realisation” is defined by reference to generally accepted accounting practice. Only events which are “realisations” in these terms are within this Chapter. And only events within this Chapter can come within the roll-over rules in Chapter 7 of this Part.
2014. *Subsection (3)* is relevant to assets that have been wholly written off or to assets which have been generated internally (such as goodwill) which cannot be capitalised under generally accepted accounting practice.

***Section 735: Asset written down for tax purposes***

2015. This section gives the rules quantifying the credit or debit for an intangible fixed asset which has previously been written down for tax purposes. It is based on paragraph 20 of Schedule 29 to FA 2002.

***Section 736: Asset shown in balance sheet and not written down for tax purposes***

2016. This section gives the rules quantifying the credit or debit for an intangible fixed asset shown in the company’s balance sheet and not previously written down for tax purposes. It is based on paragraph 21 of Schedule 29 to FA 2002.
2017. Examples of intangible fixed assets to which this section applies include those sold soon after acquisition.

***Section 737: Apportionment in case of part realisation***

- 2018. This section deals with cases where either of the two previous sections apply to a part realisation of an intangible fixed asset. It is based on paragraph 22 of Schedule 29 to FA 2002.
- 2019. The section determines the appropriate proportion of the tax written-down value or cost of the asset to be set off.
- 2020. *Subsection (2)* gives a formula that covers both the simple case, where the tax written-down value has not diverged from the book value in the accounts, and the more complicated case where the tax and book values have diverged.

***Section 738: Asset not shown in balance sheet***

- 2021. This section deals with cases where the intangible fixed asset that is realised is never shown in the balance sheet. It is based on paragraph 23 of Schedule 29 to FA 2002.
- 2022. Internally-generated goodwill is probably the most common example of an intangible fixed asset to which this section applies.

***Section 739: Meaning of “proceeds of realisation”***

- 2023. This section defines “proceeds of realisation”. It is based on paragraph 24 of Schedule 29 to FA 2002.

***Section 740: Abortive expenditure on realisation***

- 2024. This section provides for a debit for tax purposes in respect of abortive realisation expenditure. It is based on paragraph 26 of Schedule 29 to FA 2002.
- 2025. “Abortive” expenditure is expenditure incurred for the purposes of a transaction which would have amounted to a realisation of the intangible fixed asset if it had proceeded to completion. Such expenditure would not be allowable under any other rules.

***Section 741: Meaning of “chargeable intangible asset” and “chargeable realisation gain”***

- 2026. This section defines two related key terms used in this Part. It is based on paragraph 137 of Schedule 29 to FA 2002.

***Chapter 5: Calculation of tax written-down value***

**Overview**

- 2027. Identifying the “tax written-down value” of an intangible fixed asset is an essential part of calculating the credit or debit for tax purposes.
- 2028. This Chapter provides rules to determine the “tax written-down value”.

***Section 742: Asset written down on accounting basis***

- 2029. This section provides the tax written-down value when the intangible fixed asset has been written down on the accounting basis under section 729. It is based on paragraph 27 of Schedule 29 to FA 2002.

***Section 743: Asset written down at fixed rate***

- 2030. This section provides the tax written-down value when the intangible fixed asset has been written down on the fixed-rate basis under section 730. It is based on paragraph 28 of Schedule 29 to FA 2002.

***Section 744: Effect of part realisation of asset***

2031. This section provides the tax written-down value when there has been a part realisation of the intangible fixed asset. It is based on paragraph 29 of Schedule 29 to FA 2002.

***Chapter 6: How credits and debits are given effect***

***Section 745: Introduction***

2032. This section introduces this Chapter which deals with how effect is given to credits and debits brought into account under this Part. It is based on paragraph 30 of Schedule 29 to FA 2002.
2033. In this Part, accounting gains and accounting losses are translated, respectively, into credits and debits for tax purposes. Although all the credits and debits are brought into account as revenue items, different rules govern how they enter the calculation depending on the nature of the business activity for which the intangible fixed asset in respect of which they arise is held.

***Section 746: “Non-trading credits” and “non-trading debits”***

2034. This section explains two key terms. It is new.

***Section 747: Assets held for purposes of trade***

2035. This section incorporates the credits and debits directly into the trade profit calculation if the intangible fixed asset is held for the purposes of a trade. It is based on paragraph 31 of Schedule 29 to FA 2002.

***Section 748: Assets held for purposes of property business***

2036. This section incorporates the credits and debits directly into the property business profit calculation if the intangible fixed asset is held for the purposes of a property business. It is based on paragraph 32 of Schedule 29 to FA 2002.
2037. Paragraph 32(4) of Schedule 29 to FA 2002 has not been rewritten because it is not necessary. It is intended to make clear that losses of a furnished holiday lettings business consisting of Schedule 29 debits are still to be treated as trade losses but it is difficult to see what alternative, without paragraph 32(4), could ensue. Paragraph 32(4) applies the provisions of section 503 of ICTA which treats all a company's lettings of furnished holiday accommodation (as defined in section 504 of ICTA) as a separate and single trade for (and only for) the purposes of loss relief although the income remains chargeable as income from property. But paragraph 32(3) of Schedule 29 to FA 2002 already ensures that the furnished holiday lettings profits and other property profits are kept separate. That being the case, the fact that the debits and credits are (under paragraph 32(1) of Schedule 29 to FA 2002) brought into account as part of the separate furnished holiday lettings business identified by paragraph 32(3) would seem to be enough. Once that has taken place, the general corporation tax loss rules (of which section 503 of ICTA is really part) then apply in the ordinary way to the result.

***Section 749: Assets held for purposes of mines, transport undertakings, etc***

2038. This section incorporates the credits and debits directly into the profit calculation of a relevant business if the intangible fixed asset is held for the purposes of that business. It is based on paragraph 33 of Schedule 29 to FA 2002.

***Section 750: Assets held for purposes falling within more than one section***

2039. This section provides an apportionment rule. It is based on paragraph 30 of Schedule 29 to FA 2002.



***Section 751: Non-trading gains and losses***

2040. This section sets out rules to give effect to non-trading credits and debits. It is based on paragraph 34 of Schedule 29 to FA 2002.

***Section 752: Charge to tax on non-trading gains on intangible fixed assets***

2041. This section applies the charge to corporation tax on income when there is a non-trading gain under section 751. It is based on section 18 of ICTA.
2042. It is necessary because the general charge label of the source referred to in paragraph 34(4) of Schedule 29 to FA 2002 (“Case VI of Schedule D”) ceases to exist in this Act.

***Section 753: Treatment of non-trading losses***

2043. This section provides for loss relief when there is a non-trading loss under section 751. It is based on paragraph 35 of Schedule 29 to FA 2002.
2044. Relief under this section is subject to a claim in accordance with *subsection (2)*. Under the source legislation a discretionary power of extension of the time limit for the claim is exercised by the Commissioners for HMRC. In practice it would be exercised by an officer of HMRC and the Act reflects that. See *Change 1* in Annex 1.

***Chapter 7: Roll-over relief in case of realisation and reinvestment***

***Section 754: The relief: the “old asset” and “other assets”***

2045. This section introduces a form of roll-over relief enabling some or all of a credit arising under Chapter 4 of this Part on the realisation of an intangible fixed asset (including goodwill) to be deferred. It is based on paragraph 37 of Schedule 29 to FA 2002.
2046. *Subsection (4)* is new. The rules in this Chapter deal only with mainstream cases where, broadly, assets already within the intangible fixed assets regime are replaced in arm’s length transactions by a single company by assets that, on acquisition, are also within the regime. This is the simplest case. Subsection (4) gives a signpost to additional, more complex, rules that deal with those cases involving group company and related party transactions as well as transitional interaction with the capital gains rules.

***Section 755: Conditions relating to the old asset and its realisation***

2047. This section states the conditions for roll-over relief that must be met in respect of the intangible fixed asset that is replaced. It is based on paragraph 38 of Schedule 29 to FA 2002.
2048. *Subsection (4)* applies to such assets as internally-generated goodwill.

***Section 756: Conditions relating to expenditure on other assets***

2049. This section states the conditions that must be met in respect of the intangible fixed asset that replaces the old asset. It is based on paragraph 39 of Schedule 29 to FA 2002.
2050. *Subsection (1)* sets a reinvestment period which is subject to discretionary extension. Under the source legislation this power is exercised by the Commissioners for HMRC. In practice it would be exercised by an officer of HMRC and the Act reflects that. See *Change 1* in Annex 1.

***Section 757: Claim for relief***

2051. This section sets out the required contents of a claim for relief. It is based on paragraph 40 of Schedule 29 to FA 2002.

***Section 758: How the relief is given: general***

2052. This section states how the relief is given. It is based on paragraph 41 of Schedule 29 to FA 2002.

***Section 759: Determination of appropriate proportion of cost and adjusted cost***

2053. This section adjusts the cost of the intangible fixed asset that is replaced in cases of part realisation. It is based on paragraph 42 of Schedule 29 to FA 2002.

***Section 760: References to cost of asset where asset affected by change of accounting policy***

2054. This section modifies the cost of the intangible fixed asset that is replaced, for the purposes of the reinvestment relief rules, in cases where there has been a change of accounting policy resulting in adjustments under Chapter 15 of this Part. It is based on paragraph 42A of Schedule 29 to FA 2002.

***Section 761: Declaration of provisional entitlement to relief***

2055. This section allows a company reinvestment relief on a provisional basis if it intends to incur expenditure on other assets within the prescribed time limit. It is based on paragraph 43 of Schedule 29 to FA 2002.

***Section 762: Realisation and reacquisition***

2056. This section treats an intangible fixed asset that is realised and subsequently reacquired as a different asset for the purposes of the reinvestment relief rules. It is based on paragraph 44 of Schedule 29 to FA 2002.
2057. This enables relief to be given where, for example, a company has a change of business plans.

***Section 763: Disregard of deemed realisations and reacquisitions***

2058. This section gives a general rule that deemed realisations and reacquisitions are ignored for the purposes of the reinvestment relief rules. It is based on paragraph 45 of Schedule 29 to FA 2002.

***Chapter 8: Groups of companies: introduction***

***Section 764: Meaning of “company”, “group” and “subsidiary”***

2059. This section gives rules of interpretation. It is based on paragraph 46 of Schedule 29 to FA 2002.

***Section 765: General rule: a company and its 75% subsidiaries form a group***

2060. This section gives the basic group membership rule for the purposes of the intangible fixed assets regime. It is based on paragraph 47 of Schedule 29 to FA 2002.

***Section 766: Only effective 51% subsidiaries of principal company to be members of group***

2061. This section imposes an additional group requirement for the purposes of the intangible fixed asset rules. It is based on paragraph 48 of Schedule 29 to FA 2002.
2062. *Subsection (2)* is new and gives a signpost to the definition of “effective 51% subsidiary”.



***Section 767: Principal company cannot be 75% subsidiary of another company***

2063. This section gives a general rule that prevents a 75% subsidiary company from being the principal company of a group. It is based on paragraph 49 of Schedule 29 to FA 2002.

2064. *Subsection (3)* defines the only exception to the general rule.

***Section 768: Company cannot be member of more than one group***

2065. This section gives a general rule that prevents a company from belonging to more than one group for the purposes of the reinvestment relief rules. It is based on paragraph 50 of Schedule 29 to FA 2002.

2066. If a company *is* a member of more than one group, this section sets out tests that are applied sequentially to determine to which group that company belongs for the purposes of the reinvestment relief rules.

***Section 769: Continuity of identity of group***

2067. This section gives a general rule that preserves the identity of a group as long as the same company remains the principal company of the group. It is based on paragraph 51 of Schedule 29 to FA 2002.

***Section 770: Continuity where group includes an SE***

2068. This section preserves group identity in certain cases involving the formation of an SE. It is based on paragraph 51A of Schedule 29 to FA 2002.

2069. This provision and the other rules specifically concerning SEs remove any uncertainty about their tax position. The section preserves continuity of group identity in the circumstances set out in *subsection (1)*.

***Section 771: Meaning of “effective 51% subsidiary”***

2070. This section defines a key term. It is based on paragraph 52 of Schedule 29 to FA 2002.

***Section 772: Equity holders and profits or assets available for distribution***

2071. This section imports definitions, adapted as necessary, from ICTA. It is based on paragraph 53 of Schedule 29 to FA 2002.

***Section 773: Supplementary provisions***

2072. This section gives minor supplementary “group” rules. It is based on paragraph 54 of Schedule 29 to FA 2002.

2073. *Subsection (2)* applies certain provisions of TCGA. Those TCGA provisions cover certain statutory bodies created to run an industry (or part of an industry) under public ownership. They include, in particular, those set up under the Transport Acts of 1962 and 1968. The effect of subsection (2) is that they can be treated as companies for the purposes of testing whether their subsidiaries form a group with them.

***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.

***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.

***Chapter 11: Transfer of business or trade***

***Section 817: Overview of Chapter***

2139. This section introduces the rules that allow transfers of intangible fixed assets to be made on a tax-neutral or other tax advantageous basis when they are made as part of certain transfers of businesses. It is new.
2140. The purpose of these rules is to ensure continuity or consistency of treatment where those assets change hands in the course of genuine commercial business reorganisations.
2141. *Subsection (2)* gives a signpost to provisions dealing with the “genuine commercial transaction requirement”. This requirement limits the application of the reliefs under this Chapter to cases where the transfer is not motivated by tax avoidance.

***Section 818: Company reconstruction involving transfer of business***

2142. Where there are certain transfers of a business (or part of a business) as part of a company reconstruction, this section allows the tax-neutral transfer of intangible fixed assets that are within the intangible fixed asset rules. It is based on paragraph 84 of Schedule 29 to FA 2002.
2143. A “tax-neutral transfer” is defined in section 776.

***Section 819: European cross-border transfers of business: introduction***

2144. This section introduces the rule in section 820 providing for the tax-neutral transfer of assets in the case of certain European cross-border transfers of business and states the main conditions for it to apply. It is based on paragraph 85 of Schedule 29 to FA 2002.

***Section 820: Transfer of assets on European cross-border transfer of business***

2145. This section provides for the tax-neutral transfer of assets in the case of certain European cross-border transfers of business. It is based on paragraph 85 of Schedule 29 to FA 2002.

***Section 821: European cross-border mergers: introduction***

2146. This section introduces the rule in section 822 providing for the tax-neutral transfer of assets in the case of certain European cross-border mergers and states the main conditions for it to apply. It is based on paragraph 85A of Schedule 29 to FA 2002.

***Section 822: Transfer of assets on European cross-border merger***

2147. This section provides for the tax-neutral transfer of assets in the case of certain European cross-border mergers. It is based on paragraph 85A of Schedule 29 to FA 2002.

***Section 823: Interpretation of sections 821 and 822***

2148. This section gives rules of interpretation relevant to the two preceding sections. It is based on paragraph 85A of Schedule 29 to FA 2002.

***Section 824: Transfer of business of building society to company***

2149. This section allows the tax-neutral transfer of intangible fixed assets within the intangible fixed assets rules when the business of a building society is transferred to a company. It is based on paragraph 90 of Schedule 29 to FA 2002.

***Section 825: Application of sections 780 and 785 where transfer within section 824 occurs***

2150. This section relaxes certain degrouping rules in Chapter 9 of this Part on the transfer of a building society's business to a company. It is based on paragraph 90 of Schedule 29 to FA 2002.

***Section 826: Amalgamation of, or transfer of engagements by, certain societies***

2151. This section allows the tax-neutral transfer between certain societies of intangible fixed assets within the intangible fixed assets rules when the transfer is part of an amalgamation of the societies or when the whole or a part of the business of one society is transferred to the other ("a transfer of engagements"). It is based on paragraph 91 of Schedule 29 to FA 2002.

***Section 827: Claims to postpone charge on transfer***

2152. This section sets out the circumstances under which a charge under this Part can be postponed when a trade is transferred to a non-UK resident company. It is based on paragraph 86 of Schedule 29 to FA 2002.

***Section 828: Relief on transfer***

2153. This section sets out the effect of the section 827 postponement of charge. It is based on paragraph 86 of Schedule 29 to FA 2002.

***Section 829: Charge on subsequent realisations***

2154. This section provides for a whole or partial reinstatement of the charge postponed under 827. It is based on paragraph 86 of Schedule 29 to FA 2002.

***Section 830: Exclusion from section 829 of group transfers***

2155. This section allows transfers, subsequent to the transfer of the trade under 827, of assets between group members without triggering the reinstatement rules in section 829. It is based on paragraph 86 of Schedule 29 to FA 2002.

***Section 831: The genuine commercial transaction requirement and clearance***

2156. This section states the genuine commercial transaction conditions and provides for an advance clearance procedure in respect of it. It is based on paragraph 84 of Schedule 29 to FA 2002.
2157. Many of the relieving provisions in Part 11 of Schedule 29 to FA 2002 are conditional on the transactions involved not having an avoidance purpose. And to provide certainty to those contemplating a transaction they provide for an advance clearance application. In the source legislation these matters are repeated in each relieving provision to which they apply. Rather than rewrite the same condition and clearance as part of each of the sections to which they apply, they are rewritten only once, in this section, and applied, where appropriate, by reference, in the sections to which they are relevant, to the “genuine commercial transaction requirement”.
2158. *Subsection (3)* defines the “appropriate applicant” referred to in *subsection (2)*. The source legislation defines in each relevant paragraph who should make the clearance application. Rewriting the clearance rule only once (as described in the previous paragraph) necessitates identification of the appropriate applicant depending on the transaction in respect of which the application is to be made.

***Section 832: Procedure on application for clearance***

2159. This section deals with procedural matters in respect of the clearance application under the previous section. It is based on paragraph 88 of Schedule 29 to FA 2002.

***Section 833: Decision on application for clearance***

2160. This section deals with the outcome of a clearance application under section 831. It is based on paragraph 88 of Schedule 29 to FA 2002.

***Chapter 12: Related parties***

***Section 834: Overview of Chapter***

2161. This section introduces the Chapter that gives rules to determine whether parties to a transaction are “related parties” and therefore subject to special rules (set out in Chapter 13 of this Part). It is new.
2162. The approach in this Act to “related parties” differs in two ways from that in the source legislation.
2163. First, the provisions that define who are “related parties” *precede* the rules that then apply to them.
2164. Second, those two groups of rules are separated into different Chapters.

***Section 835: “Related party”***

2165. This section defines “related party”. It is based on paragraph 95 of Schedule 29 to FA 2002.
2166. The definition depends on terms that are defined in the eight sections that immediately follow this section.

***Section 836: “Control”***

2167. This section defines “control” for the related party rules. It is based on paragraph 96 of Schedule 29 to FA 2002.

***Section 837: “Major interest”***

2168. This section defines “major interest” for the related party rules. It is based on paragraph 96 of Schedule 29 to FA 2002.

***Section 838: General rule***

2169. This section gives a general rule about the attribution of rights and powers for the related party rules. It is based on paragraph 97 of Schedule 29 to FA 2002.

***Section 839: Rights and powers held jointly***

2170. This section gives a further rule about the attribution of rights and powers, held jointly, for the related party rules. It is based on paragraph 98 of Schedule 29 to FA 2002.

***Section 840: Partnerships***

2171. This section gives a further rule about the attribution of rights and powers for the related party rules. It is based on paragraph 99 of Schedule 29 to FA 2002.

***Section 841: “Participator” and “associate”***

2172. This section defines certain terms used in the related party rules. It is based on paragraph 100 of Schedule 29 to FA 2002.

***Section 842: Introduction***

2173. This section introduces the rules that determine whether a person is connected with another for the purposes of the related party rules. It is based on paragraph 101 of Schedule 29 to FA 2002.

***Section 843: Who are connected persons***

2174. This section states which persons are connected for the purposes of the related party rules. It is based on paragraph 101 of Schedule 29 to FA 2002.

***Chapter 13: Transactions between related parties***

***Section 844: Overview of Chapter***

2175. This section gives a “route map” of the Chapter. It is new.
2176. The Chapter sets out the special rules that apply to transactions between persons who are “related parties” within the meaning of the rules in Chapter 12 of this Part.

***Section 845: Transfer between company and related party treated as at market value***

2177. This section gives the main related party, market value rule. It is based on paragraph 92 of Schedule 29 to FA 2002.
2178. Paragraph 92 of Schedule 29 to FA 2002 also sets out the exceptions to the basic rule. When the intangible fixed assets rules were first introduced there were only two exceptions. But, subsequently, further exceptions were added and the paragraph grew in both length and complexity with little commonality in the substance of the exceptions. It is therefore rewritten in five sections in this Act, the first stating the basic market value rule and the four immediately following stating the exceptions.

***Section 846: Transfers not at arm's length***

2179. This section disapplies the market value rule in section 845 when a transfer falls within the provisions mentioned because it is not at arm's length. It is based on paragraph 92 of Schedule 29 to FA 2002.

***Section 847: Transfers involving other taxes***

2180. This section partially disapplies the market value rule in section 845 in prescribed circumstances. It is based on paragraph 92 of Schedule 29 to FA 2002.
2181. Where the section has effect, it is only in respect of the party to the transaction that is *not* within the intangible fixed asset rules.

***Section 848: Tax-neutral transfers***

2182. This section disapplies the market value rule in section 845 when the transfer is "tax-neutral" within the meaning of this Part. It is based on paragraph 92 of Schedule 29 to FA 2002.

***Section 849: Transfers involving gifts of business assets***

2183. This section disapplies the market value rule in section 845 when the transfer is a gift of a business asset qualifying for relief under the capital gains rules. It is based on paragraph 92 of Schedule 29 to FA 2002.

***Section 850: Part realisation involving related party acquisition: exclusion of roll-over relief***

2184. This section prohibits roll-over relief under Chapter 7 of this Part if an intangible fixed asset is partly realised and an interest in it is acquired by a related party. It is based on paragraph 93 of Schedule 29 to FA 2002.

***Section 851: Delayed payment of royalty by company to related party***

2185. This section gives a timing rule for the deduction of a royalty paid to a related party. It is based on paragraph 94 of Schedule 29 to FA 2002.
2186. The effect of *subsection (2)* is to bring approximate symmetry to the timing of the charge on the recipient of the royalty and relief for the payer.

***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. *Subsection (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.

### ***Chapter 15: Adjustments on change of accounting policy***

#### **Overview**

2221. This Chapter rewrites the rules in Part 13A of Schedule 29 to FA 2002. Part 13A gives rules dealing with a company's change of accounting policy where it affects assets within the intangible fixed assets regime.
2222. Part 13A of Schedule 29 to FA 2002 applies, in particular, when a company changes between UK generally accepted accounting practice and International Accounting Standards. It ensures that any change in accounting value of the assets resulting from the change of accounting policy will be brought into account for tax purposes.

#### ***Section 871: Introduction to Chapter***

2223. This section explains when the rules in this Chapter apply. It is based on paragraph 116A of Schedule 29 to FA 2002.

#### ***Section 872: Adjustments in respect of change***

2224. This section provides for an adjustment when the value of an intangible fixed asset changes as a result of a change of accounting policy. It is based on paragraph 116B of Schedule 29 to FA 2002.
2225. This section provides for the change in value to translate into a corresponding credit or debit.

#### ***Section 873: Effect of application of section 872 in later period and subsequently***

2226. This section sets out the effects of an adjustment under the previous section. It is based on paragraph 116B of Schedule 29 to FA 2002.

***Section 874: Original asset not subject to fixed-rate writing down***

2227. This section provides for an adjustment when a change of accounting policy results in one intangible fixed asset being treated as two or more assets and gives the calculation rules. It is based on paragraph 116C of Schedule 29 to FA 2002.

***Section 875: Effect of application of section 874 in later period and subsequently***

2228. This section sets out the effects of an adjustment under the previous section. It is based on paragraph 116C of Schedule 29 to FA 2002.

***Section 876: Original asset subject to fixed-rate writing down***

2229. This section ensures the calculation rules work properly when a change of accounting policy results in an intangible fixed asset that was subject to a fixed-rate writing down election under section 730 being treated as two or more assets. It is based on paragraph 116D of Schedule 29 to FA 2002.

2230. It gives rules:

- to apportion the former tax written-down value of the original intangible fixed asset to each disaggregated asset on the basis of the ratio of their new accounting values; and
- to determine how written-down value and cost recognised for tax purposes will be identified subsequently.

2231. The election under section 730 in respect of the original intangible fixed asset applies to that asset for the period prior to the change and to each of the disaggregated assets subsequently.

***Section 877: Election for fixed-rate writing down in relation to resulting asset***

2232. This section allows a fixed rate writing down election under section 730 to be made in respect of disaggregated assets and gives calculation rules to deal with the effects. It is based on paragraph 116E of Schedule 29 to FA 2002.

***Section 878: Exclusion of credits or debits brought into account under other provisions***

2233. This section prevents double counting and gives priority to other rules in this Part where double counting might otherwise arise. It is based on paragraph 116G of Schedule 29 to FA 2002.

***Section 879: Subsequent events affecting asset subject to adjustment under this Chapter***

2234. This section gives rules on subsequent accounting adjustments in respect of intangible fixed assets which have already been subject to the provisions of this Chapter on a change of accounting policy. It is based on paragraph 116H of Schedule 29 to FA 2002.

***Chapter 16: Pre-FA 2002 assets etc***

**Overview**

2235. The sections in this Chapter are based on the provisions in Part 14 of Schedule 29 to FA 2002 “Commencement and transitional provisions” and some of the key terms used in the source legislation have been revised.
2236. There are two tests which together determine whether an asset can come within this Part of the Act. The first is that the asset must be goodwill or an intangible fixed asset for accountancy purposes and not fall within certain statutory exceptions.

2237. The second brings within the scope of this Part only those intangible fixed assets which:
- came into existence on or after 1 April 2002; or
  - were acquired directly or indirectly from independent parties on or after that date.
2238. Assets in existence before 1 April 2002 remain outside this Part and subject to general corporation tax rules for as long as they remain within the same economic family as they did before that date. This basic rule is subject to a number of exceptions.
2239. The source legislation identifies intangible fixed assets that do not fall within the regime as “existing assets” and the law which governs their tax treatment as the “existing law”. This Part replaces these terms with new, more appropriate terms.

### ***Section 880: Overview of Chapter***

2240. This section gives a “route map” of the Chapter and introduces a revised approach to some key terms. It is new.

### ***Section 881: Meaning of “pre-FA 2002 assets”***

2241. This section defines a key term. It is new.
2242. This and section 880 together replace paragraph 117 of Schedule 29 to FA 2002 as a general introduction to the intangible fixed assets regime. The focus of paragraph 117 of Schedule 29 is the “commencement date”, that is the date at which the intangible fixed assets regime came into force: 1 April 2002. And it refers to the law which applied up to that date as “the existing law”. This Part revises the approach to both these concepts.
2243. This Part drops “the commencement date” as a defined term, throughout the rules and refers instead directly to 1 April 2002 on each occasion that such reference is necessary.
2244. This Part also drops the expression “the existing law” and refers to “the pre-FA 2002 law”. Similarly dropped is the related expression “existing assets” (defined in paragraph 118(3) of Schedule 29 to FA 2002) in favour of “pre-FA 2002 assets” (defined in this section).

### ***Section 882: Application of this Part to assets created or acquired on or after 1 April 2002***

2245. This section gives the general timing rule to identify which assets come within this Part. It is based on paragraph 118 of Schedule 29 to FA 2002.

### ***Section 883: Assets treated as created or acquired when expenditure incurred***

2246. This section defines when an asset is created or acquired for the purposes of section 882: when the expenditure is incurred. It is based on paragraph 120 of Schedule 29 to FA 2002.

### ***Section 884: Internally-generated goodwill: time of creation***

2247. This section gives a special rule defining when internally-generated goodwill is created for the purposes of section 882. It is based on paragraph 121 of Schedule 29 to FA 2002.

### ***Section 885: Certain other internally-generated assets: time of creation***

2248. This section gives a special rule defining when internally-generated assets (other than goodwill) not qualifying for capital allowances, are created for the purposes of section 882. It is based on paragraph 122 of Schedule 29 to FA 2002.

***Section 886: Assets representing production expenditure on films: time of creation***

2249. This section gives a special rule defining when an asset representing production expenditure on films is treated as created for the purposes of section 882. It is based on section 51(2) of FA 2006.

***Section 887: General rule***

2250. This section gives a general rule to define when expenditure on acquisition of an asset is incurred for the purposes of section 883 and, ultimately, section 882. It is based on paragraph 123 of Schedule 29 to FA 2002.
2251. The general rule in *subsection (1)* is subject to two qualifications to which *subsection (2)* gives a signpost and which limit any conflict with pre-FA 2002 timing rules for capital gains and capital allowances.

***Section 888: Cases where chargeable gains rule applies***

2252. This section qualifies the rule in section 887 in respect of certain expenditure that would not have qualified for any form of tax relief under the pre-FA 2002 law. It is based on paragraph 124 of Schedule 29 to FA 2002.
2253. Goodwill is an example of an asset potentially within this rule.
2254. If the expenditure does not fall within *subsection (1)(c)* (that is, it would have been treated as incurred on or after 1 April 2002 for capital gains purposes) this section is not in point and the general rule in section 887 applies to the expenditure.

***Section 889: Cases where capital allowances general rule applies***

2255. This section qualifies the rule in section 887 in respect of certain expenditure that would, before FA 2002, have qualified for relief under the capital allowances provisions. It is based on paragraph 125 of Schedule 29 to FA 2002.
2256. A patent is an example of an asset potentially within this rule.
2257. This section replicates the general rule for capital allowances in section 5 of CAA.

***Section 890: Fungible assets: application of section 858***

2258. This section provides for separate pools of fungible assets in order that expenditure on them after 1 April 2002 can come within this Part. It is based on paragraph 126 of Schedule 29 to FA 2002.
2259. This and the next section complement section 858 which treats fungible assets held by the same person in the same capacity as indistinguishable parts of a single asset. An example of a fungible asset is a milk quota which grows or diminishes as additional assets of the same kind are acquired or realised. So successive acquisitions are treated as increasing the size of the single asset, whereas a disposal of some, but not all, of the units comprising the single asset is treated as a part realisation.
2260. The general principle of the intangible fixed assets rules is that only expenditure on or after 1 April 2002 should come within the regime. But without further rules this would not be achieved for fungible assets. If fungible assets of a particular kind are held by a company before 1 April 2002 any additional assets of that kind acquired subsequently would fail the time test in section 882 because the acquisitions would be regarded as merely enlarging an existing single asset.
2261. The separate pool approach of this section enables the time test in section 882 to be satisfied by fungible assets acquired on or after 1 April 2002 which are additions to assets of the same kind.

***Section 891: Realisation and acquisition of fungible assets***

2262. This section gives identification rules for transactions involving fungible assets treated as comprising separate pools under the previous section. It is based on paragraph 126 of Schedule 29 to FA 2002.
2263. Identification rules are necessary to determine which of the two pools a transaction in fungible assets diminishes or expands. And they are also necessary because the nature of fungible assets is such that it could often be relatively easy to dispose of an asset of this kind held before 1 April 2002 and replace it immediately afterwards with a newly acquired, identical asset. The intangible fixed assets rules are not intended to apply to assets “recycled” in this way.

***Section 892: Certain assets acquired on transfer of business***

2264. This section preserves symmetry of tax treatment between the intangible fixed assets rules and the capital gains rules on certain transfers of intangible fixed assets that are outside the intangible fixed assets regime. It is based on paragraph 127 of Schedule 29 to FA 2002.
2265. The capital gains provisions listed in *subsection (2)* allow a no gain/no loss treatment on the transferor of an intangible asset to a transferee who is not a related party. Without a special rule, in the circumstances described in *subsection (1)*, the asset transferred would be within this Part in the hands of the transferee and carry an acquisition cost based on the “fair value” of the asset in the accounts of the transferee. This could result in relief under this Part being available on a sum that was not liable to tax in the hands of the transferor.
2266. To avoid this mismatch between the treatment of the transferor and the transferee, this section ensures that the asset transferred in these circumstances is excluded from this Part in the hands of the transferee as well as the transferor. The asset remains within the capital gains rules in the hands of the transferee, with an acquisition cost equal to the transferor’s disposal value.

***Section 893: Assets whose value derives from pre-FA 2002 assets***

2267. This section excludes certain assets from the intangible fixed assets rules to the extent that they derive their value from excluded assets. It is based on paragraph 127A of Schedule 29 to FA 2002..
2268. *Subsection (1)(e)* introduces a new term (“the preserved status conditions”) to refer to the conditions set out in section 894.

***Section 894: The preserved status conditions etc***

2269. This section defines a key term in the previous section. It is based on paragraph 127A of Schedule 29 to FA 2002.

***Section 895: Assets acquired in connection with disposals of pre-FA 2002 assets***

2270. This section excludes certain assets from the intangible fixed assets rules if acquired from a related party in connection with the disposal of other excluded assets. It is based on paragraph 127B of Schedule 29 to FA 2002.

***Section 896: Application to royalties***

2271. This section brings royalties within the intangible fixed assets regime. It is based on paragraph 119 of Schedule 29 to FA 2002.
2272. This section rewrites only those parts of paragraph 119 of Schedule 29 to FA 2002 which have enduring effect and are not transitional.



2273. Paragraph 119(2) to (4) of Schedule 29 to FA 2002 ensures the correct tax treatment of royalties during the transitional period spanning 1 April 2002. They are spent and are not rewritten.

***Section 897: Application to pre-FA 2002 assets consisting of telecommunication rights***

2274. This section brings certain telecommunication rights within the intangible fixed assets regime. It is based on paragraph 128 of Schedule 29 to FA 2002.
2275. *Subsection (2)* ensures that the intangible fixed assets rules work properly for telecommunication rights dealt with under a previous special tax regime.
2276. Paragraph 128(4) of Schedule 29 to FA 2002 is spent and is not rewritten.

***Section 898: Relief where assets disposed of on or after 1 April 2002***

2277. This section extends roll-over relief under Chapter 7 of this Part to the disposal of certain intangible fixed assets otherwise remaining within the capital gains rules. It is based on paragraph 130 of Schedule 29 to FA 2002.
2278. The effect of this section is that the “amount available for relief” (in section 758(1)) reduces the company’s consideration received for the existing asset for the purposes of the capital gains rules and the tax cost of the new asset.

***Section 899: Relief where degrouping charge on asset arises on or after 1 April 2002***

2279. This section extends roll-over relief under Chapter 7 of this Part to the deemed disposal of certain intangible fixed assets otherwise remaining within the capital gains rules. It is based on paragraph 131 of Schedule 29 to FA 2002.
2280. It applies when a capital gains degrouping charge under section 179 of TCGA arises on the deemed disposal of intangible fixed assets which would have come within the intangible fixed assets rules had they not been pre-FA 2002 assets and when the event triggering the degrouping charge is on or after 1 April 2002.
2281. The effect of this section is that the “amount available for relief” (in section 758(1)) reduces the company’s consideration deemed received for the pre-FA 2002 asset for the purposes of the capital gains rules and the tax cost of the new asset.

***Section 900: Meaning of “chargeable asset within TCGA” in sections 898 and 899***

2282. This section defines the key term used in the two preceding sections. It is based on paragraph 130 of Schedule 29 to FA 2002.
2283. *Subsection (3)* substitutes a cross-reference to section 10B of TCGA for the cross-reference to section 10(3) of TCGA in the source legislation. Section 10(3) was repealed in FA 2003 and replaced by section 10B. The substitution in this section reflects the implied substitution by section 17(2)(a) of the Interpretation Act 1978 and so preserves the effect of the source legislation.

***Chapter 17: Insurance companies***

**Overview**

2284. The sections in this Chapter rewrite a small number of provisions in Schedule 29 of FA 2002 that apply only to insurance companies.

***Section 901: Effect of application of the I minus E basis: non-trading amounts***

2285. This section ensures that credits and debits referable to life assurance business are taxed in a way consistent with the I minus E basis. It is based on paragraph 36 of Schedule 29 to FA 2002.

***Section 902: Excluded assets***

2286. This section gives particular excluded asset rules that apply to an insurance company with life assurance business. It is based on paragraph 78 of Schedule 29 to FA 2002.

***Section 903: Elections to exclude capital expenditure on computer software***

2287. This section extends the right to elect under section 815 for exclusion of capital expenditure on computer software to insurance companies with life assurance business. It is based on paragraph 83 of Schedule 29 to FA 2002.

***Section 904: Transfers of life assurance business: transfers of assets treated as tax-neutral***

2288. This section allows the tax-neutral transfer of intangible fixed assets within the rules in this Part where those assets are included in certain transfers of life assurance business between insurance companies. It is based on paragraph 89 of Schedule 29 to FA 2002.

***Section 905: Pre-FA 2002 assets: Lloyd's syndicate capacity***

2289. This section integrates intangible fixed assets within the income regime syndicate capacity rules in FA 1994 into the intangible fixed assets rules in this Part. It is based on paragraph 129 of Schedule 29 to FA 2002.

***Chapter 18: Priority rules***

***Section 906: Priority of this Part for corporation tax purposes***

2290. This section states the priority of the provisions in this Part over other tax rules. It is based on paragraph 1(3) of Schedule 29 to FA 2002.