



Finance Act 2018

2018 CHAPTER 3

PART 1

DIRECT TAXES

Corporation tax

21 Intangible fixed assets: transactions between related parties

- (1) In section 844 of CTA 2009 (overview of Chapter 13 of Part 8: transactions between related parties) after subsection (2) insert—

“(2ZA) Sections 849AB to 849AD make provision for the grant of a licence or other right by a company to a related party, or vice versa, to be treated as being at market value.”

- (2) After section 849A of that Act insert—

“Grants treated as being at market value

849AB Grant of licence or other right treated as at market value

- (1) This section applies if—
- a company which holds an intangible asset grants a licence or other right in respect of the asset to a related party, or
 - a company is granted a licence or other right in respect of an intangible asset by a related party that holds the asset.
- (2) The grant of the licence or other right is treated for all purposes of the Taxes Acts as being at market value as respects the grantor if—
- the licence or other right was actually granted at less than market value, and
 - condition A or B is met.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2018, Section 21. (See end of Document for details)

- (3) The grant of the licence or other right is treated for all purposes of the Taxes Acts as being at market value as respects the grantee if—
- (a) the licence or other right was actually granted at more than market value, and
 - (b) condition A or B is met.
- (4) Condition A is that the asset is a chargeable intangible asset in relation to the grantor immediately before the licence or right in respect of it is granted.
- (5) Condition B is that the licence or right is a chargeable intangible asset in relation to the grantee immediately after it is granted.
- (6) This section is subject to—
- (a) section 849AC (grants not at arm's length), and
 - (b) section 849AD (grants involving other taxes).
- (7) References in subsection (1) to a related party in relation to a company are to be read as including references to a person in circumstances where the participation condition is met as between that person and the company.
- (8) References in subsection (7) to a company include a firm in a case where, for the purposes of section 1259, references in subsection (1) to a company are read as references to the firm.
- (9) Section 148 of TIOPA 2010 (when the participation condition is met) applies for the purposes of subsection (7) as it applies for the purposes of section 147(1)(b) of TIOPA 2010.
- (10) Subsection (11) applies where—
- (a) a gain on the grant by a firm of a licence or other right in respect of an intangible fixed asset is a gain to be taken into account for the purposes of section 1259, and
 - (b) for those purposes, references in subsection (1) to a company are read as references to the firm.
- (11) Where this subsection applies, the gain referred to in subsection (10)(a) is to be treated for the purposes of this section as if it were a chargeable realisation gain for the purposes of section 741(1) (meaning of “chargeable intangible asset”).
- (12) In this section—
- “market value” means the price the licence or right might reasonably be expected to fetch on a sale in the open market, and
- “the Taxes Acts” means the enactments relating to income tax, corporation tax or chargeable gains.

849AC Grants not at arm's length

- (1) This section applies if the consideration for the grant of a licence or other right would, but for this section, fall to be adjusted as respects one of the parties to the grant (“the relevant party”) under both—
- (a) section 849AB, and
 - (b) Part 4 of TIOPA 2010 (provision not at arm's length).

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2018, Section 21. (See end of Document for details)

- (2) The consideration for the grant is not to be adjusted as respects the relevant party under Part 4 of TIOPA 2010 if the adjustment that falls to be made under section 849AB is greater than the adjustment that would otherwise fall to be made under that Part.
- (3) The consideration for the grant is not to be adjusted under section 849AB if the adjustment that falls to be made as respects the relevant party under Part 4 of TIOPA 2010 is greater than or equal to the adjustment that would otherwise fall to be made under that section.

849AD Grants involving other taxes

- (1) This section applies if—
 - (a) in a case where section 849AB applies and the licence or other right is granted by the company to a related party, the grant is at less than its market value,
 - (b) in a case where that section applies and the licence or other right is granted to the company by a related party, the grant is at more than its market value, and
 - (c) conditions A and B apply.
 - (2) Condition A is that the related party—
 - (a) is not a company, or
 - (b) is a company in relation to which—
 - (i) in a case within subsection (1)(a), the licence or other right is not a chargeable intangible asset immediately after the grant to it, or
 - (ii) in a case within subsection (1)(b), the relevant asset is not a chargeable intangible asset immediately before the grant by it.
 - (3) Condition B is that the grant of the licence or right—
 - (a) gives rise to an amount to be taken into account in calculating any person's income, profits or losses for tax purposes because of a relevant provision, or
 - (b) would do so apart from section 849AB(2) or (3).
 - (4) If this section applies, section 849AB(2) and (3) does not apply in relation to the calculation referred to in subsection (3) for the purposes of any relevant provision.
 - (5) In this section “relevant provision” means—
 - (a) Chapter 2 of Part 23 of CTA 2010 (matters which are distributions), except section 1000(2), and
 - (b) Part 3 of ITEPA 2003 (employment income: earnings and benefits etc treated as earnings).”
- (3) The amendments made by this section apply in relation to a grant of a licence or other right made on or after 22 November 2017, unless it is made pursuant to an obligation, under a contract, that was unconditional before that date.

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 2018, Section 21. (See end of Document for details)*

- (4) For the purposes of subsection (3), an obligation is “unconditional” if it may not be varied or extinguished by the exercise of a right (whether under the contract or otherwise).

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 2018, Section 21.