

SCHEDULES

SCHEDULE 9

INTANGIBLE FIXED ASSETS: RESTRICTIONS ON GOODWILL AND CERTAIN OTHER ASSETS

6 After section 879 insert—

“CHAPTER 15A

DEBITS IN RESPECT OF GOODWILL AND CERTAIN OTHER ASSETS

Introduction

879A Introduction

- (1) This Chapter contains special rules about the debits to be brought into account by a company for tax purposes in respect of relevant assets.
- (2) In this Chapter “relevant asset” means—
 - (a) goodwill in a business or part of a business,
 - (b) an intangible fixed asset that consists of information which relates to customers or potential customers of a business or part of a business,
 - (c) an intangible fixed asset that consists of a relationship (whether contractual or not) between a person carrying on a business and one or more customers of that business or part of that business,
 - (d) an unregistered trade mark or other sign used in the course of a business or part of a business, or
 - (e) a licence or other right in respect of an asset within any of paragraphs (a) to (d).

Requirement to write down at a fixed rate

879B Requirement to write down at a fixed rate

- (1) This section applies if a company acquires or creates a relevant asset on or after 1 April 2019.
- (2) The company is to be treated as having made an election under section 730 to write down the cost of the asset for tax purposes at a fixed rate.
- (3) In its application in relation to the asset, section 731 (writing down at fixed rate: calculation) has effect as if in subsection (1)(a) for “4%” there was substituted “6.5%”.
- (4) The Treasury may by regulations amend subsection (3) so as to alter the percentage substituted for 4%.

Restrictions on debits: pre-FA 2019 relevant assets

879C Restrictions on debits: pre-FA 2019 relevant assets

- (1) This section applies in respect of a relevant asset of a company if it is a pre-FA 2019 relevant asset.
- (2) No debits in respect of the asset are to be brought into account by the company for tax purposes under Chapter 3 (debits in respect of intangible fixed assets) or Chapter 15 (adjustments on change of accounting policy).
- (3) Any debit in respect of the asset that is brought into account by the company for tax purposes under Chapter 4 (realisation of intangible fixed assets) is treated for the purposes of Chapter 6 as a non-trading debit.
- (4) Sections 879D to 879H set out the cases in which a relevant asset of a company is a pre-FA 2019 relevant asset for the purposes of this Chapter.

879D Pre-FA 2019 relevant asset: the first case

For the purposes of this Chapter a relevant asset of a company is a pre-FA 2019 relevant asset if—

- (a) the company acquired or created the asset during the period beginning with 8 July 2015 and ending with 31 March 2019, and
- (b) the asset was a chargeable intangible asset in relation to the company at any time during the period beginning with 29 October 2018 and ending with 31 March 2019.

879E Pre-FA 2019 relevant asset: the second case

- (1) For the purposes of this Chapter a relevant asset of a company (“C”) is a pre-FA 2019 relevant asset if—
 - (a) another company acquired or created the asset during the period beginning with 8 July 2015 and ending with 31 March 2019,
 - (b) it was a chargeable intangible asset in relation to that other company at any time during the period beginning with 29 October 2018 and ending with 31 March 2019, and
 - (c) C acquired the asset on or after 1 April 2019 otherwise than in case A or case B from a person who was a related party in relation to C.
- (2) Case A is where—
 - (a) C acquired the asset from a company that was within the charge to corporation tax at the time of the acquisition, and
 - (b) the asset was not a pre-FA 2019 relevant asset in the hands of that company immediately before the acquisition.
- (3) Case B is where C acquired the asset from a person (“the intermediary”) who acquired the asset on or after 1 April 2019 from a third person—
 - (a) who was not at the time of the intermediary’s acquisition a related party in relation—
 - (i) to the intermediary, or

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- (ii) if the intermediary was not a company, to a company in relation to which the intermediary was a related party, and
 - (b) who is not, at the time of the acquisition by C, a related party in relation to C.
- (4) References in this section to one person being (or not being) a related party in relation to another person are to be read as including references to the participation condition being met (or, as the case may be not being met) as between those persons.
- (5) References in subsection (4) to a person include a firm in a case where, for section 1259 purposes, references in this section to a company are read as references to the firm.
- (6) In subsection (5) “section 1259 purposes” means the purposes of determining under section 1259 the amount of profits or losses to be allocated to a partner in a firm.
- (7) Section 148 of TIOPA 2010 (when the participation condition is met) applies for the purposes of subsection (4) as it applies for the purpose of section 147(1)(b) of TIOPA 2010.

879F Pre-FA 2019 relevant asset: the third case

- (1) For the purposes of this Chapter a relevant asset of a company (“C”) is a pre-FA 2019 relevant asset if—
- (a) the relevant asset was created on or after 29 October 2018,
 - (b) C acquired the relevant asset on or after 1 April 2019 from a person (“the transferor”) who was a related party in relation to C at the time of the acquisition,
 - (c) the value of the relevant asset derives in whole or in part from another asset (“the other asset”), and
 - (d) the other asset meets the preserved status condition (see section 879G).
- (2) But if only part of the value of the relevant asset derives from the other asset—
- (a) the relevant asset is to be treated for the purposes of this Chapter as if it were two separate assets—
 - (i) one representing the part of the value of the relevant asset that does so derive, and
 - (ii) the other representing the part of the value of the relevant asset that does not so derive, and
 - (b) subsection (1) applies only in relation to the separate asset representing the part of the value of the relevant asset that does so derive.
- (3) For the purposes of this section the cases in which the value of a relevant asset may be derived from another asset include any case where—
- (a) assets have been merged or divided,
 - (b) assets have changed their nature, or
 - (c) rights or interests in or over assets have been created or extinguished.

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(4) Section 879G supplements this section.

879G The preserved status condition etc

- (1) For the purposes of section 879F the other asset meets the preserved status condition if subsection (2) or (3) applies.
- (2) This subsection applies if the other asset—
 - (a) was acquired or created by a company during the period beginning with 8 July 2015 and ending with 31 March 2019, and
 - (b) was a chargeable intangible asset in the hands of that company at any time during the period beginning with 29 October 2018 and ending with 31 March 2019 when—
 - (i) that company and C were related parties, or
 - (ii) that company and the transferor were related parties.
- (3) This subsection applies if the other asset was a pre-FA 2019 relevant asset in the hands of a company at any time during the period beginning with 1 April 2019 and ending with the acquisition mentioned in section 879F(1)(b) when—
 - (a) that company and C were related parties, or
 - (b) that company and the transferor were related parties.
- (4) It does not matter for the purposes of section 879F(1)(a) who created the relevant asset.
- (5) Any apportionment necessary for the purposes of section 879F(2) must be made on a just and reasonable basis.
- (6) Section 879E(4) to (7) applies for the purposes of section 879F and this section.
- (7) Expressions used in this section have the same meaning as in section 879F.

879H Pre-FA 2019 relevant asset: the fourth case

- (1) For the purposes of this Chapter a relevant asset of a company is a pre-FA 2019 relevant asset if—
 - (a) the company acquired the asset on or after 1 April 2019 directly or indirectly in consequence of, or otherwise in connection with, a disposal of a relevant asset by another person, and
 - (b) the asset disposed of would have been a pre-FA 2019 relevant asset in the hands of the company had the person transferred it to the company at the time of the disposal.
- (2) For the purposes of this section it does not matter whether—
 - (a) the asset disposed of is the same asset as the acquired asset,
 - (b) the acquired asset is acquired at the time of the disposal, or
 - (c) the acquired asset is acquired by merging assets or otherwise.

Restrictions on debits: no business or no qualifying IP assets acquired

879I Restrictions on debits: no business or no qualifying IP assets acquired

- (1) This section applies in respect of a relevant asset of a company if the company acquires the asset on or after 1 April 2019 otherwise than as part of the acquisition of a business.
- (2) This section also applies in respect of a relevant asset of a company if—
 - (a) the company acquires the asset on or after 1 April 2019 as part of the acquisition of a business, and
 - (b) the company does not acquire any qualifying IP assets as part of the acquisition of the business for use on a continuing basis in the course of the business.
- (3) No debits in respect of the asset are to be brought into account by the company for tax purposes under Chapter 3 (debts in respect of intangible fixed assets) or Chapter 15 (adjustments on change of accounting policy).
- (4) Any debit in respect of the asset that is brought into account by the company for tax purposes under Chapter 4 (realisation of intangible fixed assets) is treated for the purposes of Chapter 6 as a non-trading debit.

879J Meaning of qualifying IP asset

- (1) In section 879I “qualifying IP asset”, in relation to a company, means an intangible fixed asset that meets the following two conditions.
- (2) The first condition is that the asset is—
 - (a) a patent, registered design, copyright or design right, plant breeders’ right, or right under section 7 of the Plant Varieties Act 1997,
 - (b) a right under the law of a country or territory outside the United Kingdom corresponding or similar to a right within paragraph (a), or
 - (c) a licence or other right in respect of anything within paragraph (a) or (b).
- (3) The second condition is that in the hands of the company the asset—
 - (a) is not to any extent excluded from this Part by Chapter 10, and
 - (b) is not a pre-FA 2002 asset (see section 881).
- (4) The reference in subsection (2)(c) to a licence or other right does not include a licence or other right that permits the use of computer software but does not permit its manufacture, adaptation or supply.
- (5) The Treasury may by regulations amend the meaning of qualifying IP asset for the purposes of this Chapter.

Restrictions on debits: acquisition from individual or firm

879K Restrictions on debits: acquisition from individual or firm

- (1) This section applies in respect of a relevant asset of a company if—

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- (a) the company acquires the asset on or after 1 April 2019 directly or indirectly from an individual or firm (“the transferor”),
 - (b) the related party condition is met, and
 - (c) the third party acquisition condition is not met.
- (2) The related party condition is met if—
- (a) in a case where the transferor is an individual, the transferor is a related party in relation to the company at the time of the acquisition;
 - (b) in a case where the transferor is a firm, any individual who is a member of the transferor is a related party in relation to the company at that time.
- (3) The third party acquisition condition is met if—
- (a) in a case where the relevant asset is goodwill—
 - (i) the transferor acquired all or part of the relevant business in one or more third party acquisitions as part of which the transferor acquired goodwill, and
 - (ii) the relevant asset is acquired by the company as part of an acquisition of all the relevant business;
 - (b) in a case where the relevant asset is not goodwill—
 - (i) the transferor acquired the relevant asset in a third party acquisition, and
 - (ii) the relevant asset is acquired by the company as part of an acquisition of all the relevant business.
- (4) No debits in respect of the asset are to be brought into account by the company for tax purposes under Chapter 3 (debits in respect of intangible fixed assets) or Chapter 15 (adjustments on change of accounting policy).
- (5) Any debit in respect of the asset that is brought into account by the company for tax purposes under Chapter 4 (realisation of intangible fixed assets) is treated for the purposes of Chapter 6 as a non-trading debit.

879L Meaning of relevant business and third party acquisition

- (1) This section applies for the purposes of section 879K(3).
- (2) “Relevant business” means—
- (a) in a case where the relevant asset is within paragraph (e) of subsection (2) of section 879A, the business or (as the case may be) the part of the business mentioned in the paragraph of that subsection within which the licensed asset falls, and
 - (b) in any other case, the business or (as the case may be) the part of the business mentioned in the paragraph of that subsection within which the relevant asset falls.
- (3) The transferor acquires something in a “third party acquisition” if—
- (a) the transferor acquires it from a company (“C”) and, at the time of that acquisition—
 - (i) if the transferor is an individual, the transferor is not a related party in relation to C, or

- (ii) if the transferor is a firm, no individual who is a member of the transferor is a related party in relation to C, or
- (b) the transferor acquires it from a person (“P”) who is not a company and, at the time of that acquisition—
 - (i) if the transferor is an individual, P is not connected with the transferor, or
 - (ii) if the transferor is a firm, no individual who is a member of the transferor is connected with P.
- (4) But an acquisition is not a “third party acquisition” if—
 - (a) its main purpose, or one of its main purposes, is for any person to obtain a tax advantage (within the meaning of section 1139 of CTA 2010), or
 - (b) it occurs during the period beginning with 8 July 2015 and ending with 31 March 2019.
- (5) In this section “connected” has the same meaning as in Chapter 12 (see section 842).

Partial restrictions on debits

879M When the partial restrictions apply: qualifying IP assets

- (1) Section 879O (the partial restrictions on debits) applies in respect of a relevant asset (“the asset concerned”) of a company if—
 - (a) the company acquires the asset concerned on or after 1 April 2019 as part of the acquisition of a business,
 - (b) the company also acquires qualifying IP assets as part of the acquisition of the business for use on a continuing basis in the course of the business, and
 - (c) the amount in subsection (3) is less than 1.
- (2) But section 879O does not apply in respect of the asset concerned if either of the following sections applies in respect of it—
 - (a) section 879C (restrictions on debits: pre-FA 2019 relevant assets);
 - (b) section 879K (restrictions on debits: acquisition from individual or firm).
- (3) The amount is—

$$\frac{A \times N}{B}$$

where—

A is the expenditure incurred by the company for or in connection with the acquisition of the qualifying IP assets mentioned in subsection (1)(b),

B is the expenditure incurred by the company for or in connection with the acquisition of the asset concerned and any other relevant assets acquired with the business, and

N is 6.

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- (4) The Treasury may by regulations amend the meaning of N.
- (5) In this section—
- “expenditure” means expenditure that is—
- (a) capitalised for accounting purposes, or
 - (b) recognised in determining the profit or loss of the company concerned without being capitalised for accounting purposes,
- subject to any adjustments under this Part or Part 4 of TIOPA 2010;
- “qualifying IP asset” has the same meaning as in section 879I (see section 879J).

879N When the partial restrictions apply: acquisition from individual or firm

- (1) Section 879O (the partial restrictions on debits) also applies in respect of a relevant asset of a company if—
 - (a) the company acquires the asset on or after 1 April 2019 directly or indirectly from an individual or firm (“the transferor”),
 - (b) the related party condition is met,
 - (c) the third party acquisition condition is met, and
 - (d) the amount in subsection (6) is less than 1.
- (2) But section 879O does not apply in respect of the relevant asset if either of the following sections applies in respect of it—
 - (a) section 879C (restrictions on debits: pre-FA 2019 relevant assets);
 - (b) section 879I (restrictions on debits: no business or no qualifying IP assets acquired).
- (3) The related party condition is met if—
 - (a) in a case where the transferor is an individual, the transferor is a related party in relation to the company at the time of the acquisition;
 - (b) in a case where the transferor is a firm, any individual who is a member of the transferor is a related party in relation to the company at that time.
- (4) The third party acquisition condition is met if—
 - (a) in a case where the relevant asset is goodwill—
 - (i) the transferor acquired all or part of the relevant business in one or more third party acquisitions as part of which the transferor acquired goodwill, and
 - (ii) the relevant asset is acquired by the company as part of an acquisition of all the relevant business;
 - (b) in a case where the relevant asset is not goodwill—
 - (i) the transferor acquired the relevant asset in a third party acquisition, and
 - (ii) the relevant asset is acquired by the company as part of an acquisition of all the relevant business.
- (5) Section 879L (meaning of relevant business and third party acquisition) applies for the purposes of this section.
- (6) The amount is—

$$\frac{A}{B}$$

where—

A is the relevant accounting value of third party acquisitions (see subsections (7) to (9)), and

B is the expenditure incurred by the company for or in connection with the acquisition of the relevant asset that is—

- (a) capitalised by the company for accounting purposes, or
- (b) recognised in determining the company's profit or loss without being capitalised for accounting purposes,

subject to any adjustments under this Part or Part 4 of TIOPA 2010.

- (7) In a case in which the relevant asset is goodwill, the relevant accounting value of third party acquisitions is the notional accounting value of the goodwill mentioned in subsection (4)(a)(i) (“the previously acquired goodwill”).
- (8) In a case in which the relevant asset is not goodwill, the relevant accounting value of third party acquisitions is the notional accounting value of the relevant asset.
- (9) The “notional accounting value” of the previously acquired goodwill, or the relevant asset, is what its accounting value would have been in GAAP-compliant accounts drawn up by the transferor—
 - (a) immediately before the relevant asset was acquired by the company, and
 - (b) on the basis that the relevant business was a going concern.

879O The partial restrictions on debits

- (1) Where this section applies in respect of a relevant asset of a company, the following restrictions have effect.
- (2) If a debit in respect of the relevant asset is to be brought into account by the company for tax purposes under a provision of Chapter 3 (debts in respect of intangible fixed assets) or Chapter 15 (adjustments on change of accounting policy), the amount of that debit is—

$$D \times RA$$

where—

D is the amount of the debit that would be brought into account disregarding this section (and, accordingly, for the purposes of any calculation of the tax written-down value of the relevant asset needed to determine D, this section's effect in relation to any debits previously brought into account is to be disregarded), and

RA is the relevant amount (see subsection (6)).

- (3) If, but for this section, a debit in respect of any of the relevant assets would be brought into account by the company for tax purposes under a provision of Chapter 4 (realisation of intangible fixed assets), the following two debits are to be brought into account under that provision instead—

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- (a) a debit determined in accordance with subsection (4), and
 - (b) a debit determined in accordance with subsection (5), which is to be treated for the purposes of Chapter 6 as a non-trading debit (“the non-trading debit”).
- (4) The amount of the debit determined in accordance with this subsection is—
- $$D \times RA$$

where—

D is the amount of the debit that would be brought into account under Chapter 4 disregarding this section (and, accordingly, for the purposes of any calculation of the tax written down value of the relevant asset needed to determine D, this section’s effect in relation to any debits previously brought into account is to be disregarded), and

RA is the relevant amount (see subsection (6)).

- (5) The amount of the non-trading debit is—
- $$D - TD$$

where—

D is the amount of the debit that would be brought into account under Chapter 4 disregarding this section (but, for the purposes of any calculation of the tax written-down value of the relevant asset needed to determine D, this section’s effect in relation to any debits previously brought into account is not to be disregarded), and

TD is the amount of the debit determined in accordance with subsection (4).

- (6) In this section the “relevant amount” means—
- (a) in a case where this section applies in respect of the relevant asset by reason only of section 879M, the amount in subsection (3) of that section;
 - (b) in a case where this section applies in respect of the relevant asset by reason only of section 879N, the amount in subsection (6) of that section;
 - (c) in a case where this section applies in respect of the relevant asset by reason of both section 879M and 879N, the amount found by multiplying the amount in subsection (3) of section 879M by the amount in subsection (6) of section 879N.

Supplementary

879P Date of acquisition of relevant asset

- (1) A company that acquires a relevant asset in pursuance of an unconditional obligation under a contract is to be treated for the purposes of this Chapter as having acquired the asset on the date on which the company became subject to that obligation or (if later) the date on which that obligation became unconditional.

- (2) An obligation is unconditional if it may not be varied or extinguished by the exercise of a right (whether under contract or otherwise).”