

Part 1: Intangible fixed assets

Overview

1. This Part rewrites most of the legislation, mainly in Schedule 29 to FA 2002, that provides for the taxation of profits and losses arising to a company from its intangible fixed assets.

2. This legislation introduced a marked change from the treatment of intellectual property and other intangible assets. Previously, their tax treatment had developed over many years without a cohesive underlying approach. Schedule 29 brought a uniform, comprehensive and largely self-contained set of rules to deal with the tax treatment of intangible fixed assets used for business purposes by companies. For assets within its rules, Schedule 29 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 the general rules. The legislation resulted from extensive consultation and follows accountancy treatment of the expenditure on intangible fixed assets. In this respect, it resembles the loan relationship and derivative contract provisions which also largely erase the distinction between capital and revenue expenditure.

3. Although the legislation is detailed and, in places, quite complex, it is not legislation that is directed solely at a small, specialist taxpayer group. “Intangible fixed assets” is a wide-ranging category and the rules apply equally to goodwill. So any company chargeable to corporation tax is likely to be affected by these rules to some extent.

4. The source legislation was already drafted using rewrite drafting techniques and therefore the rewritten rules differ less dramatically from their source than is the case for some other rewritten legislation. But changes have been made to align these provisions with others within this Bill. We have also revised some of the key terminology and made a number of small structural changes.

5. There are two small changes in the law that have been adopted for income tax in ITTOIA and which are proposed for corporation tax. They are identified in Annex 1 (Bill 5) change notes that are reproduced at the end of these explanatory notes.

6. These explanatory notes use the following abbreviations:

CRCA	the Commissioners for Revenue and Customs Act 2005
FA	Finance Act.
HMRC	Her Majesty’s Revenue and Customs
ICTA	the Income and Corporation Taxes Act 1988
ITTOIA	Income Tax (Trading and Other Income) Act 2005

SE	Societas Europaea
TCGA	the Taxation of Chargeable Gains Act 1992
TMA	the Taxes Management Act 1970.

Chapter 1: Introduction

Clause 1: Overview of Part

7. This clause gives a “route map” of the provisions. It is new.

Clause 2: Priority of rules under this Part for corporation tax

8. This clause 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.

9. *Subsection (1)* makes it clear that the rules about intangible fixed assets in this Part are comprehensive and dominant, and they override provisions elsewhere in the Tax Acts that might cause different amounts - positive or negative - to be brought into account.

Clause 3: Meaning of “intangible asset”

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

Clause 4: Meaning of “intangible fixed asset”

11. This clause explains what is meant by “intangible fixed asset”. It is based on paragraph 3 of Schedule 29 to FA 2002.

12. *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 clause 88(2).

Clause 5: Goodwill

13. This clause brings goodwill within the intangible fixed asset regime. It is based on paragraph 4 of Schedule 29 to FA 2002.

14. The fact that goodwill is covered by these rules extends their relevance to a far wider range of companies than might otherwise be the case.

15. *Subsection (3)* makes it clear that “goodwill” has its accountancy meaning. That is consistent with the accountancy basis of the rules in general.

Clause 6: Meaning of “royalty”

16. This clause is definitional. It is based on paragraph 139 of Schedule 29 to FA 2002.

Clause 7: “Recognised” amounts and “GAAP-compliant accounts”

17. This clause identifies the accountancy amounts from which the related tax amounts are derived. It is based mainly on paragraph 134 of Schedule 29 to FA 2002.

18. The interpretative rule in that paragraph has been brought forward as a key element of the basic rules because it is more helpful to know early on the starting point for the calculation. The regime works by providing for tax credits and debits that track the accounting entries. The underlying principle is that the calculation follows the accounting treatment. So in many cases the accounting and tax amounts are the same. But the rules provide for adjustment of the accounting entries in particular circumstances, for example where there has been a disposal of part of the intangible fixed asset or where the expenditure on the asset includes expenditure that, in other contexts, would not be allowed.

19. *Subsection (4)* rewrites part of paragraph 5(1) of Schedule 29 to FA 2002. “Correct accounts” in that paragraph is rewritten as “GAAP-compliant accounts” as being a more neutral term consistent with the approach in rewriting other legislation.

Clause 8: Companies without “GAAP-compliant accounts”: meaning of “amounts recognised for accounting purposes”

20. This clause deals with the case where a company does not draw up accounts that conform to recognised accountancy standards or, exceptionally, does not draw up accounts at all. It is based on paragraph 5 of Schedule 29 to FA 2002.

21. In both cases the rules apply as though GAAP-compliant accounts had been drawn up.

22. *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.

Clause 9: GAAP-compliant accounts: reference to consolidated group accounts

23. This clause 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.

24. *Subsection (3)(a)* rewrites the reference in the source to a “country” as a “territory” consistent with rewrite practice elsewhere.

Clause 10: Accounting value

25. This clause is definitional. It is based on paragraph 135 of Schedule 29 to FA 2002.

Chapter 2: Credits in respect of intangible fixed assets

Clause 11: Overview of Chapter 2

26. This clause introduces the rules dealing with the main category of accounting gains to be brought into account as tax credits. It is based on paragraph 13 of Schedule 29 to FA 2002.

27. The rewrite reverses throughout this Part the order of referring to “debits and credits” in the source for consistency with other rewritten tax rules.

28. The rules in this Chapter do not apply on a realisation of an intangible fixed asset. *Subsection (3)* signposts to the rules that do.

Clause 12: Receipts recognised as they accrue

29. This clause links to clause 11(1)(a) and is based on paragraph 14 of Schedule 29 to FA 2002.

30. This clause covers all kinds of receipts from the exploitation of intangible fixed assets, apart from those deriving from the realisation of such assets. This includes most ordinary royalty payments.

Clause 13: Receipts in respect of royalties so far as not dealt with under section 12

31. This clause links to clause 11(1)(b) and 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.

Clause 14: Revaluation

32. This clause links to clause 11(1)(c) and applies when an intangible fixed asset is revalued upwards. It is based on paragraph 15 of Schedule 29 to FA 2002.

Clause 15: Negative goodwill

33. This clause links to clause 11(1)(d) and applies to certain releases of negative goodwill. It is based on paragraph 16 of Schedule 29 to FA 2002.

Clause 16: Reversal of previous accounting loss

34. This clause links to clause 11(1)(e) and 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.

35. *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.

36. There is a parallel, converse rule in clause 23.

Chapter 3: Debits in respect of intangible fixed assets

Clause 17: Overview of Chapter 3

37. This clause introduces the rules dealing with the main category of accounting losses which may be brought into account as a tax debit. It is based on paragraph 7 of Schedule 29 to FA 2002.

38. The type of accountancy loss covered by this Chapter would normally be charged to revenue in the accounts. Losses arising on the realisation of an intangible fixed asset which would normally be charged to capital are not covered by the rules in this Chapter. So *subsection (3)* provides a signpost to the Chapter where such losses are dealt with.

Clause 18: References to expenditure on an asset

39. This clause explains what is meant by “expenditure on an asset”. It is based on paragraph 133 of Schedule 29 to FA 2002.

40. The interpretative rule in that paragraph has been brought forward in these rewritten rules as a key element of the debits Chapter because that is where its main significance probably lies.

41. *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.

Clause 19: Expenditure written off as it is incurred

42. This clause links to clause 17(1)(a) and 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.

43. An example of expenditure within this clause might be expenditure on maintaining an asset or expenditure on acquiring an asset which, in the event, proves abortive.

Clause 20: Writing down on accounting basis

44. This clause links to clause 17(1)(b)(i) and 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.

45. The amounts involved are, broadly, depreciation, either “normal”, annual depreciation or exceptional depreciation in value as a result of particular circumstances.

Clause 21: Writing down at fixed rate: election for fixed-rate basis

46. This clause links to clause 17(1)(b)(ii) and 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.

47. 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.

Clause 22: Writing down at fixed rate: calculation

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

Clause 23: Reversal of previous accounting gain

49. This clause links to clause 17(1)(c) and gives relief if a previous, taxed, accounting gain is reversed. It is based on paragraph 12 of Schedule 29 to FA 2002.

50. The debit will usually be the same as the accounting loss. If, however, the credit brought to 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 taxable credit bears to the earlier accounting gain.

51. There is a parallel, converse rule in clause 16.

Chapter 4: Realisation of intangible fixed assets

Clause 24: Overview of Chapter 4

52. This clause introduces the provisions that provide for tax credits or debits when an intangible fixed asset is realised. It is based mainly on paragraph 18 of Schedule 29 to FA 2002.

53. *Subsection (2)* rewrites paragraph 25 of Schedule 29 to FA 2002 as an early signpost to the possibility of roll-over relief in realisation cases.

Clause 25: Meaning of “realisation”

54. This clause defines “realisation”. It is based on paragraph 19 of Schedule 29 to FA 2002.

55. Consistent with the underlying principle of these rules, “realisation” is defined by reference to generally accepted accounting practice. Only events which are “realisations” in these terms are within Chapter 4 of this Part. And only events within Chapter 4 of this Part can come within the roll-over rules in Chapter 7 of this Part.

56. *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.

Clause 26: Realisation of asset written down for tax purposes

57. This clause gives the rules quantifying the tax 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.

Clause 27: Realisation of asset shown in balance sheet and not written down for tax purposes

58. This clause gives the rules quantifying the tax credit or debit for an intangible fixed asset shown in the company's balance sheet but which has not previously been written down for tax purposes. It is based on paragraph 21 of Schedule 29 to FA 2002.

59. Examples of intangible fixed assets to which this clause applies include those considered to have an indefinite life (in which case writing down is not appropriate) and those sold soon after acquisition.

Clause 28: Apportionment in case of part realisation

60. This clause deals with cases where either of the two previous clauses apply to a part realisation of an intangible fixed asset. It is based on paragraph 22 of Schedule 29 to FA 2002.

61. The clause determines the appropriate proportion of the relevant tax written-down value or cost of the asset to be set off.

62. *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.

Clause 29: Realisation of asset not shown in balance sheet

63. This clause 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.

64. Internally generated goodwill is probably the most common example of an intangible fixed asset to which this clause applies.

Clause 30: Meaning of "proceeds of realisation"

65. This clause defines "proceeds of realisation". It is based on paragraph 24 of Schedule 29 to FA 2002.

Clause 31: Abortive expenditure on realisation

66. This clause provides for a tax debit in respect of abortive realisation expenditure. It is based on paragraph 26 of Schedule 29 to FA 2002.

67. "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 otherwise be allowable under any other rules.

Clause 32: Meaning of “chargeable intangible asset” and “chargeable realisation gain”

68. This clause 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

69. Identifying the “tax written-down value” of an intangible fixed asset is an essential part of calculating the tax credit or debit.

70. This Chapter provides rules to determine the “tax written-down value”.

Clause 33: Asset written down on accounting basis

71. This clause provides the tax written-down value when the intangible fixed asset has been written down on the accounting basis under clause 20. It is based on paragraph 27 of Schedule 29 to FA 2002.

Clause 34: Asset written down at fixed rate

72. This clause provides the tax written-down value when the intangible fixed asset has been written down on the fixed-rate basis under clause 21. It is based on paragraph 28 of Schedule 29 to FA 2002.

Clause 35: Effect of part realisation of asset

73. This clause 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.

74. The effect of the formula in *subsection (2)* is that the tax written-down value immediately after the realisation is the previous value reduced in the ratio which the accounting value of the asset immediately after the realisation bears to the accounting value immediately before. If the tax written-down value of the intangible fixed asset has not diverged from the book value in the accounts the tax value after the realisation remains the same as the revised book value. If it has diverged from the book value the tax written-down value of the asset immediately after its realisation is its tax value immediately before, adjusted in the ratio which the new book value bears to the pre-realisation book value.

75. *Subsection (3)* sets out how the tax written-down value of the intangible fixed asset after the part realisation is calculated subsequently.

76. *Subsection (4)* reapplies the rules in this clause if there is a further part realisation.

Chapter 6: How credits and debits are given effect

Clause 36: Overview of Chapter 6

77. This clause states the purpose of this Chapter and signposts to its particular provisions. It is based on paragraph 30 of Schedule 29 to FA 2002.

78. Under the rules in this Part, accounting gains and accounting losses are translated, respectively, into tax credits and tax debits. It is those credits and debits that are incorporated into the tax calculation and this Chapter gives the rules on how that incorporation takes place. 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.

Clause 37: Assets held for purposes of trade

79. This clause incorporates the tax 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.

Clause 38: Assets held for purposes of property business

80. This clause incorporates the tax 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.

81. 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 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)) 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.

Clause 39: Asset held for purposes of mines, transport undertakings, etc

82. This clause incorporates the tax 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.

Clause 40: Non-trading gains and losses

83. This clause sets out rules to give effect to the tax credits and debits when the business activity does not come within any of the three previous provisions. It is based on paragraph 34 of Schedule 29 to FA 2002.

84. All non-trading credits and debits are added together to produce a “non-trading gain” or “non-trading loss”.

Clause 41: Charge to tax on non-trading gains on intangible fixed assets

85. This clause imposes a charge when there is a non-trading gain on intangible fixed assets under clause 40. It is based mainly on section 18 of ICTA.

86. It is necessary because the general charge label of the source referred to in paragraph 34(4) (“Case VI of Schedule D”) will cease to exist in the rewrite.

Clause 42: Income charged under section 41

87. This clause states the basis of the charge under the previous clause. It is based on section 70(1) of ICTA.

88. It is necessary as a consequence of the specific charge introduced by clause 41

Clause 43: Treatment of non-trading losses

89. This clause provides for loss relief if there is a non-trading loss under clause 40. It is based on paragraph 35 of Schedule 29 to FA 2002.

90. Relief for a non-trading loss as group relief is dealt with in the group relief rules.

91. Relief under this clause 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 of HMRC. In practice it would be exercised by an officer of HMRC and the rewrite reflects that. See *Change 1* in Annex.

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

Clause 44: The relief: the “old asset” and “other assets”

92. This clause introduces a form of roll-over relief enabling some or all of a taxable 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.

93. *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)* signposts 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.

Clause 45: Conditions relating to the old asset and its realisation

94. This clause 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.

95. *Subsection (4)* applies to such assets as internally-generated goodwill.

Clause 46: Conditions relating to expenditure on other assets

96. This clause 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.

97. *Subsection (1)* sets a reinvestment period which is subject to discretionary extension. Under the source legislation this power is exercised by the Commissioners of HMRC. In practice it would be exercised by an officer of HMRC and the rewrite reflects that. See *Change 1* in Annex.

Q1. We welcome comments on the proposal to change the references to “Inland Revenue” in paragraphs 35(2) and 39(1)(a) of Schedule 29 to FA 2002 to “officer of Revenue and Customs”.

Clause 47: Claim for relief

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

Clause 48: How the relief is given: general

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

100. Under *subsection (1)(b)*, the cost of the replacement asset is treated as reduced. That has consequences for subsequent accounts in reduced amortisation debits and the amounts taken into account on subsequent realisations of the assets. This is one of the principal reasons why the accounting and tax values of particular assets may diverge.

Clause 49: Determination of appropriate proportion of cost and adjusted cost

101. This clause 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.

Clause 50: References to cost of asset where asset affected by change of accounting policy

102. This clause 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.

Clause 51: Declaration of provisional entitlement to relief

103. This clause 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.

Clause 52: Realisation and reacquisition

104. This clause 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.

105. This enables relief to be given where, for example, a company has a change of business plans.

Clause 53: Disregard of deemed realisations and reacquisitions

106. This clause 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

Clause 54: Overview of Chapter 8

107. This clause introduces the first of two Chapters dealing with groups of companies. It is based on paragraph 46 of Schedule 29 to FA 2002.

108. The intangible fixed asset regime recognises that groups of companies normally form single financial entities in economic terms. So it includes special rules that, very broadly, permit groups to manage assets within the regime in a way which recognises that economic identity.

109. Chapter 8 of this Part sets out the rules for determining whether companies are “grouped” for the purposes of the substantive group rules in Chapter 9 of this Part.

Clause 55: General rule: a company and its 75% subsidiaries form a group

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

111. *Subsection (3)* makes it clear that there are further group membership conditions to be satisfied which are set out in this Chapter.

112. Nothing in any of the conditions excludes companies that are not resident in the UK.

Clause 56: Membership of group restricted to effective 51% subsidiaries of principal company

113. This clause 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.

114. *Subsection (2)* is new and gives a prominent signpost to the definition of “effective 51% subsidiary”.

Clause 57: Principal company cannot be 75% subsidiary of another company

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

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

Clause 58: Company cannot be member of more than one group

117. This clause 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.

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

Clause 59: Continuity of identity of group

119. This clause 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.

120. This rule may be relevant on a company take-over, for example, when the principal company of a group becomes a member of another group.

121. *Subsection (3)* provides continuity in the particular case of winding up. When winding up commences a company loses its beneficial interest in its assets, including shares owned in other companies. So the commencement of winding up of an intermediate holding company within a group would de-group the intermediate holding company’s subsidiaries from the intermediate holding company and from the remainder of the group. *Subsection (3)* prevents this.

Clause 60: Continuity where group includes SE

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

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

Clause 61: Meaning of “effective 51% subsidiary”

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

Clause 62: Equity holders and profits or assets available for distribution

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

Clause 63: Supplementary provisions

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

127. *Subsection (2)* applies certain provisions of TCGA. Those TCGA provisions cover certain statutory bodies which are created by statute 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

128. This Chapter sets out the special rules that apply to companies that are “grouped” under the rules in Chapter 8 of this Part.

Clause 64: Transfers within a group

129. This clause 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.

130. *Subsection (2)* signposts to the meaning of “tax-neutral” in clause 65. Broadly, it means that the acquiring company can step into the shoes of the disposing company in respect of the intangible fixed asset, for tax purposes.

131. Without this provision, intra-group transfers, being transactions between related parties, would be regarded as taking place at market value (under clause 132) and would trigger the normal realisation rules.

Clause 65: Meaning of “tax-neutral transfer”

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

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

Clause 66: Roll-over relief on realisation and reinvestment: application to group member

134. This clause 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.

Clause 67: Roll-over relief on reinvestment: acquisition of group company: introduction

135. This clause, along with clause 68, 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.

Clause 68: Acquisition of group company treated as equivalent to acquisition of underlying assets

136. This clause is supplementary to the previous clause 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.

Clause 69: Company ceasing to be member of group (“degrouing”): general

137. This clause 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.

138. It is the first of two clauses that rewrite that paragraph and is the first of several dealing with degrouing transactions which amount to disposals of the underlying intangible fixed asset by 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.

139. 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.

140. *Subsection (5)(d)* signposts to a rule that excludes this clause in the case of commercially motivated mergers where exploitation of the group rules is not the object. Consistent with the rewrite approach elsewhere, “bona fide” in the source is rewritten as “genuine”.

Clause 70: Company ceasing to be member of group (“degrouing”): relevance of transferee’s trade or other purposes

141. This clause supplements the previous clause to determine how credits and debits are brought into account. It is based on paragraph 58 of Schedule 29 to FA 2002. It is the second of two clauses that rewrite that paragraph.

Clause 71: Associated companies leaving group at the same time

142. This clause modifies the effect of clause 69 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. It is the first of two clauses that rewrite that paragraph.

143. *Subsection (4)* is new and signposts to an exception to this rule in the case of a commercially motivated merger where exploitation of the group rules is not the object. That exception may be relevant because clause 69 is subject to that exception and clause 71 merely modifies the effect of clause 69.

Clause 72: Groups with a relevant connection

144. This clause defines the link between groups that must exist if the previous clause is to apply. It is based on paragraph 59 of Schedule 29 to FA 2002. It is the second of two clauses that rewrite that paragraph.

Clause 73: Principal company becoming member of another group: general

145. This clause modifies the effect of clause 69 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. It is the first of two clauses that rewrite that paragraph.

Clause 74: Principal company becoming member of another group: relevance of transferee's trade or other purposes

146. This clause supplements the previous clause to determine how credits and debits are brought into account. It is based on paragraph 60 of Schedule 29 to FA 2002. It is the second of two clauses that rewrite that paragraph.

Clause 75: Exception: company ceasing to be member of group because of exempt distribution

147. This clause disapplies the degrouping rules in clauses 69 and 73 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.

148. *Subsection (5)* signposts to the meaning of terms that are part of the general demergers tax rules.

Clause 76: Exception: merger carried out for genuine commercial reasons

149. This clause disapplies the degrouping rules in clauses 69 to 75 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.

150. 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 clause (clause 77).

Clause 77: Provisions supplementing section 76

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

Clause 78: Provisions supplementing sections 69 to 75

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

Clause 79: Application of roll-over relief in relation to degrouping charge

153. This clause 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.

154. This is one of the two exceptions to the general rule in clause 53 that deemed realisations do not count for the purposes of the reinvestment rules. The other is dealt with in clause 82.

Clause 80: Reallocation of degrouping charge within group

155. This clause 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. It is the first of two clauses that rewrite that paragraph.

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

Clause 81: Further requirements about elections under section 80

157. This clause sets out the conditions for, and the form of, the election required for the reallocation provided for in the previous clause. It is based on paragraph 66 of Schedule 29 to FA 2002. It is the second of two clauses that rewrite that paragraph.

Clause 82: Application of roll-over relief in relation to reallocated degrouping charge

158. This clause allows reinvestment relief for the company to which a degrouping charge is transferred under clause 80. It is based on paragraph 67 of Schedule 29 to FA 2002.

159. This is the second of the two exceptions to the general rule in clause 53 that deemed realisations do not count for the purposes of the reinvestment rules. The other is dealt with in clause 79.

Clause 83: Recovery of degrouping charge from another group company or controlling director

160. This clause 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.

161. This is the first of two clauses that rewrite paragraph 68 of Schedule 29 to FA 2002. This is the “headline” clause which states the main features: when the provision applies, its effect and who it applies to.

Clause 84: Interpretation of section 83

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

Clause 85: Recovery of degrouping charge from another group company or controlling director: procedure etc

163. This clause sets out the procedural aspects of the recovery provision in clause 83. It is based on paragraph 69 of Schedule 29 to FA 2002.

Clause 86: Recovery of degrouping charge from another group company or controlling director: time limit

164. This clause sets a three year time limit for the service of a recovery notice under clause 83. It is based on paragraph 70 of Schedule 29 to FA 2002.

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

Clause 87: Treatment of payments between group members for reliefs

166. This clause 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

Clause 88: Overview of Chapter 10

167. Not all assets that might fall within the definition of “intangible fixed asset” are intended to come within the rules in this Part. This clause introduces the rules on assets that are excluded. It is based on paragraph 72 of Schedule 29 to FA 2002.

168. *Subsection (2)* is an important general extension to the exclusion rules in this Chapter. That is, if an asset is excluded by those rules, so is an option or other right to acquire or dispose of that asset. There is a counterpart, obverse rule in clause 4(2).

169. *Subsection (3)* signposts to the three kinds of exclusion that the rules effect.

170. *Subsections (4) to (6)* rewrite paragraph 72(3) to (5) of Schedule 29 to FA 2002 and deal with the case where the same asset falls partly within and partly outside

the intangible fixed asset rules. Then the rules apply as if there were two assets, one within the intangible fixed asset rules and one outside it.

171. *Subsection (7)* is new. It gives early warning that there are further rules relating to the age of the asset that may be relevant in a particular case.

Clause 89: Non-commercial purposes etc

172. This clause is based on paragraph 77 of Schedule 29 to FA 2002.

173. It contains an important general exclusion which is qualitatively different from the other rules in this Chapter. Those rules exclude by reference to the type of asset. By contrast, clause 89 is an exclusion rule of general application which can exclude any asset by reference to the purpose for which it is held.

174. It is necessary because the intangible fixed asset 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.

Clause 90: Assets for which capital allowances previously made

175. This clause 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.

Clause 91: Rights over tangible assets

176. This clause excludes rights over tangible assets. It is based on paragraph 73 of Schedule 29 to FA 2002.

Clause 92: Financial assets

177. This clause excludes financial assets. It is based on paragraph 75 of Schedule 29 to FA 2002.

178. *Subsection (3)* lists the main financial assets but is not intended to be exhaustive.

Clause 93: Rights in companies, trusts etc

179. This clause 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.

180. *Subsections (2)* and *(3)* provide for exceptions that follow the accounting treatment. They are exceptions to an exclusion so the assets they refer to can come within the intangible fixed assets regime.

Clause 94: Assets representing production expenditure on films

181. This clause excludes certain expenditure on films. It is based on paragraph 80A of Schedule 29 to FA 2002.

Clause 95: Oil licences

182. This clause excludes oil licenses. It is based on paragraph 74 of Schedule 29 to FA 2002.

183. 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.

Clause 96: Mutual trade or business

184. This clause 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.

185. Unlike the preceding clauses, clause 96 excludes assets by reference to the purpose for which they are held. The intangible fixed assets and goodwill excluded by this clause remain within the capital gains code.

Clause 97: Sound recordings

186. This clause 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.

Clause 98: Master versions of films

187. This clause excludes certain recent film expenditure from the intangible fixed assets regime. It is based on paragraph 80A of Schedule 29 to FA 2002.

188. Earlier films expenditure and income remain within the F(No 2)A 1992 films regime.

189. Royalties in respect of assets within either the F(No 2)A 1992 films regime or the intangible fixed assets regime are always within the latter.

Clause 99: Computer software treated as part of cost of related hardware

190. This clause 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.

191. 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.

Clause 100: Research and development

192. This clause 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.

193. This reflects the existence of tax rules outside this Part that relieve certain research and development expenditure. That relief remains available and the two sets of rules are complementary.

Clause 101: Election to exclude capital expenditure on software

194. This clause, 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. It is the first of two clauses that rewrite that paragraph.

195. Clause 101 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 asset rules in this Part that would otherwise override those capital allowances rules.

Clause 102: Further provision about elections under section 101

196. This clause gives procedural rules in respect of the election under the preceding clause. It is based on paragraph 83 of Schedule 29 to FA 2002. It is the second of two clauses that rewrite that paragraph.

Chapter 11: Transfer of business or trade

Clause 103: Overview

197. This clause 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 mainly new.

198. 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.

199. The rewrite groups together rules with a common theme. These groupings are, in order, rules about tax-neutral transfers, rules about other reliefs and rules for anti-avoidance and clearances.

200. *Subsection (2)* signposts 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. In the source, this limitation is repeated in each provision to which it applies. In the rewrite it is rewritten only once and applied where appropriate by reference to the “genuine commercial transaction requirement”.

Clause 104: Company reconstruction involving transfer of business

201. Where there are certain transfers of a business (or part of a business) as part of a company reconstruction, this clause 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.

202. A “tax-neutral transfer” is defined in clause 65. Broadly, it means that the transferee company subsequently stands in the shoes of the transferor company for tax purposes in respect of the intangible fixed assets transferred with the business.

203. *Subsection (7)* cross-refers to both Schedule 5AA to TCGA and section 136 of TCGA whereas paragraph 84(1) of Schedule 29 to FA 2002 (which subsection (7) partly rewrites) refers only to section 136 of TCGA. That is because the meaning of “scheme of reconstruction” depends on the date of issue of the relevant shares or debentures. For shares or debentures issued on or after 17 April 2002 a new section 136 of TCGA (substituted by section 45 of, and paragraphs 2 and 7 of Schedule 9 to, FA 2002) directs the reader (in sub-section (4)(a)) to a detailed definition of “scheme of reconstruction” in Schedule 5AA of TCGA. For shares or debentures issued before 17 April 2002 there is a much shorter definition of “scheme of reconstruction or amalgamation” in the version of section 136 of TCGA before the FA 2002 amendment.

Clause 105: Transfer of UK trade between companies resident in different EU Member States

204. This clause allows the tax-neutral transfer of intangible fixed assets within the rules in this Part where they are included in certain transfers of a UK trade (or part of a trade) between EU residents. It is based on paragraph 85 of Schedule 29 to FA 2002.

Clause 106: Formation of SE by merger

205. This clause allows the tax-neutral transfer of intangible fixed assets within the intangible fixed asset rules between EU companies merging to form a SE. It is based on paragraph 85A of Schedule 29 to FA 2002.

Clause 107: Transfer of business of building society to company

206. This clause allows the tax-neutral transfer of intangible fixed assets within the intangible fixed asset 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. It is the first of two clauses that rewrite that paragraph.

Clause 108: Application of sections 69 and 73 when transfer within section 107 occurs

207. This clause 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. It is the second of two clauses that rewrite that paragraph.

Clause 109: Amalgamation of, or transfer of engagements by, certain societies

208. This clause allows the tax-neutral transfer between certain building societies of intangible fixed assets within the intangible fixed asset 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.

Clause 110: Claims to postpone charge on transfer of assets to non-resident company

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

210. The rewritten version of this provision is located to separate it from the rules in the source that provide for tax-neutral transfers: this and the rules that immediately follow it in this Chapter give a different kind of tax benefit.

Clause 111: Transfer of assets to non-resident company: relief on transfer

211. This clause sets out the effect of the clause 110 postponement of charge. It is the second of four clauses that rewrite paragraph 86 of Schedule 29 to FA 2002.

Clause 112: Transfer of assets to non-resident company: charge on subsequent realisations

212. This clause provides for a whole or partial reinstatement of the charge postponed under 110. It is the third of the four clauses that rewrite paragraph 86 of Schedule 29 to FA 2002.

213. *Subsection (3)* sets a time limit for the subsequent transfer of intangible fixed assets that trigger reinstatement of the charge. Transfers beyond that time limit remain protected.

Clause 113: Transfer of assets to non-resident company: exclusion from section 112 of group transfers

214. This clause allows transfers, subsequent to the transfer of the trade under 110, of assets between group members without triggering the reinstatement rules in clause 112. It is the last of the four clauses that rewrite paragraph 86 of Schedule 29 to FA 2002.

Clause 114: Transfers of non-UK trade in Mergers Directive cases (general): conditions for double taxation relief

215. This clause allows double taxation relief in certain transfers of trades, involving intangible fixed assets, between EU resident companies. It is based on paragraph 87 of Schedule 29 to FA 2002.

216. It is the first of four clauses which rewrite paragraphs 87 and 87A of Schedule 29 to FA 2002 and the rewrite differs from the source in two ways; that is, in

combining the two provisions and in grouping them with the other clauses dealing with relief.

217. The two provisions are combined on account of their underlying similarity. Both provide relief for reorganisations involving the transfer to an EU company of a trade (or part of a trade) previously carried on by a UK resident company through a permanent establishment in another EU country. And in both the relief is in the form of double taxation relief for notional foreign tax paid.

218. Clause 114 sets out the basic conditions for relief for a transfer between existing companies.

Clause 115: Transfers of non-UK trade in Mergers Directive cases (formation of SE by merger): conditions for double taxation relief

219. This clause allows double taxation relief under the previous clause in certain transfers of trades, involving intangible fixed assets, between EU resident companies and the formation of a SE. It is based on paragraph 87A of Schedule 29 to FA 2002.

220. It is the second of four clauses which rewrite paragraphs 87 and 87A of Schedule 29 to FA 2002 and it sets out the basic conditions for relief when the transfer involves the formation of a SE.

221. *Subsection (2)(c)* refers to the “genuine commercial transaction requirement”. In the source legislation this restriction is effected by paragraph 87A(5) to (7) of Schedule 29 to FA 2002. Paragraph 87A(5) to (7) give anti-avoidance and clearance rules comparable with those of other provisions in Part 11 of the source and rewritten in clause 118. But in the source they are drafted slightly differently from those other provisions. First, the anti-avoidance rule is drafted negatively whereas the others are drafted positively and, second, the clearance rule is expressed less concisely. These differences are of form rather than substance, reflecting merely different drafting styles when paragraph 87A was added to Schedule 29 by section 53(1) of F(No2)A 2005. So the rewrite of paragraph 87A(5) to (7) is aligned with that of the other anti-avoidance rules in this Chapter and incorporated, as for the others, by reference to the “genuine commercial transaction requirement”.

Clause 116: Double taxation relief for transfer of non-UK trade in Mergers Directive cases

222. This clause states the basis of the relief when clauses 114 or 115 apply. It is based on paragraph 87 of Schedule 29 to FA 2002 and is the third of four clauses which rewrite paragraphs 87 and 87A of Schedule 29 to FA 2002.

223. *Subsection (1)* defines the relief. This subsection rewrites both paragraph 87(2) and 87A(2) of Schedule 29 to FA 2002. Those provisions are not expressed identically. But the differences between them are more of form than substance, reflecting merely different drafting styles when paragraph 87A was added to Schedule 29 by section 53(1) of F(No2)A 2005. The rewrite aligns them.

Clause 117: Interpretation of sections 114 to 116

224. This clause gives rules of interpretation. It is based on paragraph 87 of Schedule 29 to FA 2002 and is the last of four clauses which rewrite paragraphs 87 and 87A of Schedule 29 to FA 2002.

225. *Subsections (2) and (3)* together define residence in another member State. These subsections rewrite both paragraph 87(5) and 87A(4) of Schedule 29 to FA 2002. Paragraphs 87(5) and 87A(4) are not expressed identically. But the differences between them are more of form than substance, reflecting merely different drafting styles when paragraph 87A was added to Schedule 29 by section 53(1) of F(No2)A 2005. The rewrite aligns them.

Clause 118: The genuine commercial transaction requirement

226. This clause states the genuine commercial transaction condition and provides for an advance clearance procedure in respect of it. It is based on paragraph 84 of Schedule 29 to FA 2002.

227. 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 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 clauses to which they apply, they are rewritten only once, in this clause, and applied, where appropriate, by reference, in the clauses to which they are relevant, to the “genuine commercial transaction requirement”.

228. Those source provisions and the rewritten clauses that cross-refer are the following:

Paragraph 84(5) and (6) of Schedule 29 to FA 2002 - clause 104(6)

Paragraph 85(4) and (5) of Schedule 29 to FA 2002 - clause 105(5)

Paragraph 85A(4) and (5) of Schedule 29 to FA 2002 - clause 106(6)

Paragraph 86(8) and (9) of Schedule 29 to FA 2002 - clause 110(6)

Paragraph 87(7) and (8) of Schedule 29 to FA 2002 - clause 114(6)

Paragraph 87A(5)(6) and (7) of Schedule 29 to FA 2002 - clause 115(2)(c).

229. *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.

230. This clause is the first of three clauses that provide for the genuine commercial transaction exception and the related clearance procedure.

Clause 119: Procedure on application for clearance

231. This clause deals with procedural matters in respect of the clearance application under the previous clause. It is based on paragraph 88 of Schedule 29 to FA 2002. It is the first of two clauses that rewrite that paragraph.

232. Paragraph 88 of Schedule 29 to FA 2002 deals with two distinct matters in relation to a clearance: the application procedure and the outcome of the application. The paragraph is rewritten in two clauses to reflect that distinction.

Clause 120: Decision on application for clearance

233. This clause deals with the outcome of a clearance application under clause 118. It is based on paragraph 88 of Schedule 29 to FA 2002. It is the second of the two clauses that rewrite that paragraph.

Chapter 12: Related parties

Clause 121: Overview of Chapter 12

234. This clause 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.

235. The rewrite approach to “related parties” differs in two ways from that in the source.

236. First, the provisions that define who are “related parties” *precede* the rules that then apply to them.

237. Second, those two groups of rules are separated into different Chapters.

Clause 122: Meaning of “related party”

238. This clause defines “related party”. It is based on paragraph 95 of Schedule 29 to FA 2002.

239. The definition depends on terms that are defined in the eight clauses that immediately follow clause 122

Clause 123: Meaning of “control”

240. This clause defines “control” for the related party rules. It is based on paragraph 96 of Schedule 29 to FA 2002. It is the first of two clauses that rewrite that paragraph.

Clause 124: Meaning of “major interest”

241. This clause defines “major interest” for the related party rules. It is based on paragraph 96 of Schedule 29 to FA 2002. It is the second of two clauses that rewrite that paragraph.

Clause 125: Rights and powers to be taken into account: general

242. This clause 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.

Clause 126: Rights and powers to be taken into account: rights and powers held jointly

243. This clause 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.

Clause 127: Rights and powers to be taken into account: partnerships

244. This clause 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.

Clause 128: Meaning of “participator” and “associate”

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

Clause 129: Connected persons: introduction

246. This clause 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. It is the first of two clauses that rewrite that paragraph.

Clause 130: Who are connected persons

247. This clause 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 and is the second of two clauses that rewrite that paragraph.

Chapter 13: Transactions between related parties

Clause 131: Overview of Chapter 13

248. This clause gives a “route map” of the Chapter. It is new.

249. 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.

Clause 132: Transfer between company and related party treated as being at market value

250. This clause gives a basic, related party market value rule. It is based on paragraph 92 of Schedule 29 to FA 2002.

251. Paragraph 92 of Schedule 29 to FA 2002 also sets out the exceptions to the basic rule. When the intangible fixed asset 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 clauses, the first stating the basic market value rule and the four immediately following, the exceptions.

Clause 133: Transfers not at arm's length

252. This clause disapplies the market value rule in clause 132 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.

Clause 134: Transfers involving other taxes

253. This clause partially disapplies the market value rule in clause 132 in prescribed circumstances. It is based on paragraph 92 of Schedule 29 to FA 2002.

254. Where the clause has effect it is in respect only of the party to the transaction that is *not* within the intangible fixed asset rules.

Clause 135: Tax-neutral transfers

255. This clause disapplies the market value rule in clause 132 when the transfer is "tax-neutral" within the meaning of this Part. It is based on paragraph 92 of Schedule 29 to FA 2002.

Clause 136: Transfers involving gifts of business assets

256. This clause disapplies the market value rule in clause 132 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.

Clause 137: Exclusion of roll-over relief in case of part realisation involving related party acquisition

257. This clause 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.

Clause 138: Delayed payment of royalty by company to related party

258. This clause 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.

259. 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

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

Clause 139: Treatment of grants and other contributions to expenditure

261. This clause 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.

262. *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.

Clause 140: Grants to be left out of account for tax purposes

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

Clause 141: Finance leasing etc

264. This clause 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.

265. 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 paragraph 75(1) of Schedule 29 to FA 2002 (rewritten as clause 92(1)).

266. Paragraph 104 of Schedule 29 to FA 2002 permits the Treasury to make regulations about the application of the intangible fixed assets regime to finance lessors. It also defines the provisions the regulations may make. In rewriting paragraph 104 this latter aspect is rewritten in a separate clause (clause 142) and clause 141 is preliminary.

Clause 142: Further provision about regulations under section 141

267. This clause states the regulations that may be made in respect of finance leased intangible fixed assets under clause 141. It is based on paragraph 104 of Schedule 29 to FA 2002.

268. Regulations have been made and are in SI2002/1967.

269. *Subsection (7)* follows the wording used consistently in the rewrite in relation to such provisions.

Clause 143: Assets acquired or realised together

270. This clause 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.

Clause 144: Deemed market value acquisition: adjustment of amounts in case of nil accounting value

271. This clause 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.

272. This clause 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.

Clause 145: Fungible assets

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

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

Clause 146: Asset ceasing to be chargeable intangible asset: deemed realisation at market value

275. This clause 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.

276. *Subsection (2)* lists the cases to which the clause 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 asset rules (see clause 32).

277. There is an obverse rule in clause 150 which applies when an asset *becomes* a chargeable intangible asset.

Clause 147: Asset ceasing to be chargeable intangible asset: postponement of gain

278. This clause gives relief in certain cases where clause 146(2)(a) applies. It is based on paragraph 109 of Schedule 29 to FA 2002. It is the first of three clauses that rewrite that paragraph.

279. Paragraph 109 of Schedule 29 to FA 2002 gives relief and provides for recovery of the relief in two cases. Clause 147 provides for the relief. Clause 148 deals with the recovery in the first of those cases and clause 149 deals with the recovery in the second of those cases.

280. *Subsection (2)* states the extent of the relief. Because it is based on the tax cost of the asset, past amortisation is always left in account. That is, only gain equal to the excess of the market value of the asset over its tax cost (not its written-down value) is deferred.

Clause 148: Treatment of postponed gain on subsequent realisation

281. This clause recovers the relief given under clause 147 realisation of intangible fixed assets within six years of the company ceasing to be UK resident. It is based on paragraph 109 of Schedule 29 to FA 2002. It is the second of three clauses that rewrite that paragraph.

Clause 149: Treatment of postponed gain in other cases

282. This clause recovers the relief given under clause 147 the company ceases to be UK resident. It is based on paragraph 109 of Schedule 29 to FA 2002. It is the third of three clauses that rewrite that paragraph.

Clause 150: Asset becoming chargeable intangible asset

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

284. *Subsection (1)* lists the cases to which the clause 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 asset rules (see clause 32).

285. This is the obverse of the rule in clause 146 which applies when an asset *ceases* to be a chargeable intangible asset.

Clause 151: Tax avoidance arrangements to be ignored

286. This clause 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.

287. If “tax avoidance arrangements” are entered into they are disregarded in calculating entitlement to credits and debits in respect of intangible fixed assets.

Clause 152: Debits not allowed in respect of expenditure not generally deductible for tax purposes

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

289. *Subsection (3)* lists the provisions concerned. Debits must not be brought into account under this Part to the extent that they represent expenditure which would be disallowed by the provisions listed.

Clause 153: Delayed payment of employees’ remuneration

290. This clause prevents a deduction for employees’ remuneration paid late. It is based on paragraph 113 of Schedule 29 to FA 2002. It is the first of two clauses that rewrite that paragraph.

291. 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.

292. Paragraph 113 of Schedule 29 to FA 2002 is based 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, to improve clarity, as two clauses. For clarity and consistency that model will be followed for corporation tax. Clause 153 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.

293. *Subsection (1)(a)* addresses an inconsistency in the source by rewriting the reference to a debit in paragraph 113(1)(a) of Schedule 29 to FA 2002 as a reference to a loss. The computational process under these rules involves turning accounting gains and losses into, respectively, tax credits and debits and it is the accountancy figure that is referred to here.

Clause 154: Delayed payment of employees' remuneration: supplemental provisions

294. This clause gives interpretative and other supporting rules for the previous clause. It is based on paragraph 113 of Schedule 29 to FA 2002. It is the second of two clauses that rewrite that paragraph.

295. *Subsection (3)* addresses an inconsistency in the source by rewriting the reference to a debit in paragraph 113(4) of Schedule 29 to FA 2002 as a reference to a loss. It has a parallel in subsection (1)(a) of the previous clause. The computational process under these rules involves turning accounting gains and losses into, respectively, tax credits and debits and it is the accountancy figure that is referred to here.

296. *Subsection (5)* rewrites paragraph 113(5) of Schedule 29 to FA 2002 and contains a proposed 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 clause 153(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. The rewrite drops the requirement under paragraph 113(5) of a claim for that adjustment. This mirrors the rewrite of section 43(5) of FA 1989 in the Trading Income Clause. See *Change 2* in the Annex.

<p>Q2. The Change proposed for this clause mirrors that for the Trading Income Clause. We welcome comments on the proposal to align the two.</p>

Clause 155: Delayed payment of pension contributions

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

298. *Subsection (1) and (4)* address inconsistencies in the source by rewriting the reference to a debit in paragraph 113(1)(a) and (4) of Schedule 29 to FA 2002 as a reference to a loss. The computational process under these rules involves turning accounting gains and losses into, respectively, tax credits and debits and it is the accountancy figure that is referred to here.

Clause 156: Bad debts etc

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

300. 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 1988 rewritten in the Trading Income Part.

Clause 157: Assumptions for calculating chargeable profits of controlled foreign companies

301. This clause 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

302. 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.

303. Part 13A of Schedule 29 to FA 2002 applies when a company changes from UK Generally Accepted Accounting Practice to 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.

Clause 158: Introduction

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

Clause 159: Change of accounting policy involving change of value

305. This clause 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. It is the first of two clauses that rewrite that paragraph.

306. Clause 159 provides for the change in value to translate into a corresponding credit or debit.

307. *Subsection (5)* rewrites paragraph 116F(1) and (2) of Schedule 29 to FA 2002 which limits a credit to the net amount of any previous debits.

Clause 160: Effect of application of section 159 in later period and subsequently

308. This clause sets out the effects of an adjustment under the previous clause. It is based on paragraph 116B of Schedule 29 to FA 2002. It is the second of two clauses that rewrite that paragraph.

Clause 161: Change of accounting policy involving disaggregation

309. This clause 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. It is the first of two clauses that rewrite that paragraph.

310. *Subsection (5)* rewrites paragraph 116F(1) and (3) of Schedule 29 to FA 2002 which limits a credit to the net amount of any previous debits.

Clause 162: Effect of application of section 161 in later period and subsequently

311. This clause sets out the effects of an adjustment under the previous clause. It is based on paragraph 116C of Schedule 29 to FA 2002. It is the second of two clauses that rewrite that paragraph.

Clause 163: Change of accounting policy involving disaggregation: original asset subject to fixed-rate writing down

312. This clause 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 clause 21 being treated as two or more assets. It is based on paragraph 116D of Schedule 29 to FA 2002.

313. 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.

314. The election under clause 21 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.

Clause 164: Change of accounting policy involving disaggregation: election for fixed-rate writing down in relation to resulting asset

315. This clause allows a fixed rate writing down election under clause 21 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.

Clause 165: Exclusion of credits or debits brought into account under other provisions

316. This clause 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.

Clause 166: Subsequent events affecting asset subject to adjustment under this Chapter

317. This clause 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

318. The clauses in this Chapter are based on the provisions in Part 14 of Schedule 29 to FA 2002 “Commencement and transitional provisions”. In rewriting, some of the key terms used have been revised.

319. The source provisions in Part 14 of Schedule 29 to FA 2002 do not replace a single, comparable body of law, taking effect from a given date. Instead they have effect in respect only of qualifying assets when and if the asset in question satisfies the necessary conditions to get within the regime at some time on or after that date. Naturally, the rewritten provisions reflect this.

320. There are two tests which together determine whether an asset can come within the intangible fixed assets regime. The first is that that the asset must be goodwill or an intangible fixed asset for accountancy purposes and not fall within certain statutory exceptions.

321. The second brings within the scope of Schedule 29 to FA 2002 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.

322. Assets in existence before 1 April 2002 remain outside Schedule 29 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.

323. 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”. The rewrite introduces new, more appropriate terms.

Clause 167: Overview of Chapter 16

324. This clause gives a “route map” of the Chapter and introduces a revised approach to some key terms. It is new and replaces paragraph 117 of Schedule 29 to FA 2002.

325. The focus of paragraph 117 of Schedule 29 to FA 2002 is the “commencement date”, that is the date at which the intangible fixed asset regime came into force: 1 April 2002. And it refers to the law which applied up to that date as “the existing law”. The rewrite revises the approach to both these concepts.

326. The rewrite drops “the commencement date” as a defined term, throughout the rules and refers instead directly to 1 April 2002 on each occasion in this Part that such reference is necessary. The direct reference removes one layer of complexity. And, more important, the term “commencement date” is capable of being misunderstood: eligibility for the intangible fixed assets regime in respect of a particular asset does not turn simply on one fixed date. It also depends on (broadly) when the asset was created or first acquired by the company from a third party after that date (see clause 168).

327. The rewrite also drops the expression “the existing law” and now refers in this Part 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 clause 167(2)). This is because “existing” is, at best, potentially ambiguous, and, at worst, misleading now that the intangible fixed asset regime is well established. For example, it is not clear that the word is being used as a label applied to law or assets in existence before FA 2002 and it does not draw inherently the required distinction between those assets within, and those outside, the intangible fixed asset regime.

328. The rewrite adopts “pre-FA 2002” to replace “existing” in rewriting these rules. This term:

- is concise;
- can be used for both “assets” and “law” (they are related aspects of the same issue);
- indicates clearly that the asset or law in point relates to an earlier, not current, date;

- is more obviously a label; and
- is less potentially misleading.

Clause 168: Application of this Part to assets created or acquired on or after 1 April 2002

329. This clause 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.

Clause 169: Assets treated as created or acquired when expenditure incurred

330. This clause defines when an asset is created or acquired for the purposes of clause 168: when the expenditure is incurred. It is based on paragraph 120 of Schedule 29 to FA 2002.

Clause 170: Internally-generated goodwill: time of creation

331. This clause gives a special rule defining when internally-generated goodwill is created for the purposes of clause 168. It is based on paragraph 121 of Schedule 29 to FA 2002.

Clause 171: Certain other internally-generated assets: time of creation

332. This clause gives a special rule defining when internally-generated assets (other than goodwill) not qualifying for capital allowances, are created for the purposes of clause 168. It is based on paragraph 122 of Schedule 29 to FA 2002.

Clause 172: Assets representing production expenditure on films: time of creation

333. This clause gives a special rule defining when an asset representing production expenditure on films is treated as created for the purposes of clause 168. It is based on section 51(2) of FA 2006.

Clause 173: Expenditure on acquisition treated as incurred when recognised for accounting purposes

334. This clause gives a general rule to define when expenditure on acquisition of an asset is incurred for the purposes of clause 169 and, ultimately, clause 168. It is based on paragraph 123 of Schedule 29 to FA 2002.

335. The general rule in *subsection (1)* is subject to two qualifications to which *subsection (2)* signposts and which limit any conflict with pre-FA 2002 timing rules for capital gains and capital allowances.

Clause 174: When expenditure treated as incurred: application of chargeable gains rule

336. This clause qualifies the rule in clause 173 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.

337. Goodwill is an example of an asset potentially within this rule.

338. 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 clause is not in point and the general rule in clause 173 applies to the expenditure.

Clause 175: When expenditure treated as incurred: application of capital allowances general rule

339. This clause qualifies the rule in clause 173 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.

340. A patent is an example of an asset potentially within this rule.

341. This clause replicates the general rule for capital allowances in section 5 of CAA.

Clause 176: Fungible assets: application of section 145

342. This clause provides for separate pools of fungible assets in order that expenditure on them after 1 April 2002 can come within the intangible fixed asset rules. It is based on paragraph 126 of Schedule 29 to FA 2002. It is the first of two clauses that rewrite that paragraph.

343. The two clauses complement clause 145 which treats fungible assets held by the same person in the same capacity as indistinguishable parts of a single asset. The single asset grows or diminishes as additional assets of the same kind are acquired or realised. So, for example, a farmer who makes several acquisitions on different dates of milk quota units is treated as owning a single “milk quota asset”. The successive acquisitions are treated as increasing the size of the single asset. Conversely a disposal of some but not all of the units comprising the single asset is treated as a part realisation of that asset.

344. The general principle of the intangible fixed asset 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 clause 168 because the acquisitions would be regarded as merely enlarging an existing single asset.

345. The separate pool approach of clause 176 enables the time test in clause 168 to be satisfied by fungible assets acquired on or after 1 April 2002 which are additions to assets of the same kind.

Clause 177: Realisation and acquisition of fungible assets

346. This clause gives identification rules for transactions involving fungible assets treated as comprising separate pools under the previous clause. It is based on

paragraph 126 of Schedule 29 to FA 2002. It is the second of two clauses that rewrite that paragraph.

347. 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 asset rules are not intended to apply to assets “recycled” in this way.

Clause 178: Certain assets acquired on transfer of business treated as pre-FA 2002 assets

348. This clause preserves symmetry of tax treatment between the intangible fixed asset rules and the capital gains rules on certain transfers of intangible fixed assets that are outside the intangible fixed asset regime. It is based on paragraph 127 of Schedule 29 to FA 2002.

349. 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.

350. To avoid this mismatch between the treatment of the transferor and the transferee, this clause 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.

Clause 179: Assets whose value derives from pre-FA 2002 assets treated as pre-FA 2002 assets

351. This clause excludes certain assets from the intangible fixed asset rules to the extent that they derive their value from excluded assets. It is based on paragraph 127A of Schedule 29 to FA 2002. It is the first of two clauses that rewrite that paragraph.

352. Paragraph 127A prevents tax deductions under Schedule 29 to FA 2002 for the value of intangible assets held by groups of companies prior to the introduction of Schedule 29.

353. The rewrite separates into two clauses the main principles and the conditions.

354. *Subsection (1)(e)* introduces a new term (“the preserved status conditions”) the rewrite adopts to refer to the conditions set out in clause 180.

Clause 180: The preserved status conditions etc

355. This clause defines a key term in the previous clause. It is based on paragraph 127A of Schedule 29 to FA 2002. It is the second of two clauses that rewrite that paragraph.

Clause 181: Assets acquired in connection with disposals of pre-FA 2002 assets treated as pre-FA 2002 assets

356. This clause excludes certain assets from the intangible fixed asset 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.

357. Paragraph 127B prevents tax deductions under Schedule 29 for the value of intangible assets held by groups of companies prior to the introduction of Schedule 29. It addresses avoidance schemes by which licences or other rights are granted between related parties in respect of “existing assets” (that is, pre-FA 2002 assets in the rewritten terminology). Such schemes where, for example, one group company grants a licence out of an existing trademark to another group company, seek to convert an “existing asset” into a new asset and so generate additional tax deductions. Paragraph 127B puts beyond doubt that the licence is not a newly created intangible asset but remains an “existing asset” and outside the Schedule 29 rules.

Clause 182: Application of this Part to royalties

358. This clause gives a rule to prevent double counting of royalties under the intangible fixed asset rules. It is based on paragraph 119 of Schedule 29 to FA 2002.

359. This clause rewrites only those parts of paragraph 119 of Schedule 29 to FA 2002 which have enduring effect and are not transitional.

360. Paragraph 119(2) to (4) of Schedule 29 to FA 2002 ensures the correct tax treatment during the transitional period spanning 1 April 2002. Since royalties are always capital, Schedule 29 merely changed the tax timing rules that applied and the original purpose of paragraph 119 was to ensure they were brought into account once and only once. So it gave rules governing the switch from the previous received/paid tax timing basis to the Schedule 29 accounts basis. These rules are preserved but not rewritten because they are obsolescent.

361. Paragraph 119(1) and (5) of Schedule 29 to FA 2002 on the other hand sets out enduring principles. These are reproduced in this clause.

Clause 183: Application of this Part to some pre-FA 2002 assets consisting of telecommunications rights

362. This clause ensures the intangible fixed asset rules work properly for telecommunications rights previously dealt with under a different, special tax regime. It is based on paragraph 128 of Schedule 29 to FA 2002.

363. Before FA 2002, certain telecommunications rights were within a special accounts based income regime under Schedule 23 to FA 2000 with calculation rules essentially similar to those of Schedule 29 to FA 2002. Schedule 29 to FA 2002 supersedes Schedule 23 to FA 2000 because, to the extent that the telecommunication rights fell within Schedule 23 to FA 2000, they fall within the definition of an intangible fixed asset for the purposes of Schedule 29 to FA 2002. Paragraph 128 of Schedule 29 to FA 2002 ensures continuity between the two regimes.

364. *Subsection (2)* ensures that amounts brought to account for tax under Schedule 23 to FA 2000 for earlier periods (for example in respect of the amortisation of Schedule 23 assets) are treated as having been brought into account under Schedule 29 of FA 2002.

365. *Subsection (4)* makes it clear that roll-over relief under Chapter 7 of this Part on the realisation of pre-FA 2002 telecommunications rights is not prohibited by the requirement in clause 45(1) that the asset must have been a “chargeable intangible asset” throughout the period it is held.

Clause 184: Roll-over relief where pre-FA 2002 assets disposed of on or after 1 April 2002

366. This clause extends reinvestment 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.

367. In general, for disposals on or after 1 April 2002, there is no capital gains roll-over relief in respect of intangible fixed assets which would have come within the intangible fixed assets regime had they not been pre-FA 2002 assets and which would previously have qualified for capital gains roll-over relief (paragraph 132 of Schedule 29 to FA 2002). Examples of such assets may include goodwill and milk quota. So in these circumstances reinvestment relief under the intangible fixed assets regime replaces capital gains roll-over relief.

368. And, in addition, that reinvestment relief is extended so that it can apply on disposals of intangible assets which would not previously have qualified for capital gains roll over relief.

369. The gain on disposal of the asset is still dealt with under the capital gains regime (and not under the intangible fixed asset rules).

370. Like the source legislation, this clause adapts the rules of Chapter 7 of this Part to those of the capital gains code so that the rules in Chapter 7 of this Part are applied to a disposal within the capital gains code.

371. *Subsection (2)(b)* does not confine the provision to the disposal of those intangible assets which previously qualified for capital gains roll-over relief. But the asset must be one whose disposal comes within the capital gains rules.

372. The effect of this clause is that the “amount available for relief” (in clause 48(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.

Clause 185: Roll-over relief where degrouping charge on pre-FA 2002 asset arises on or after 1 April 2002

373. This clause 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.

374. 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 asset rules had they not been pre-FA 2002 assets and when the event triggering the degrouping charge is on or after 1 April 2002.

375. Paragraph 58 of Schedule 29 to FA 2002 is modelled on section 179 of TCGA and both are intended to counter degrouping. Paragraph 58 is rewritten in clause 69 the commentary on which explains the meaning of “degrouping”. The broad effect of the degrouping provisions is to bring back into charge a gain deferred on an earlier no gain/no loss disposal if the asset in question leaves the group otherwise than by a direct disposal of the asset. The rules achieve this by deeming a disposal at market value. The company leaving the group makes a deemed disposal and reacquisition of the asset at market value immediately after the time it acquired the asset from another group company.

376. Like the source legislation, this clause adapts the intangible fixed asset rules to those of the capital gains code so that the former are applied to a deemed disposal within the capital gains code. The gain on the deemed disposal of the asset is still dealt with under the capital gains regime (and not under the intangible fixed asset rules).

377. The effect of this clause is that the “amount available for relief” (in clause 48(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.

Paragraphs not rewritten

378. In addition to those not mentioned in the foregoing notes some other provisions of Schedule 29 to FA 2002 have not been rewritten.

Insurance provisions

379. The following, which apply only to insurance companies, are not included;

- paragraph 30(5);
- paragraph 36;

- paragraph 78;
- paragraph 79(2);
- paragraph 83(2);
- paragraph 89;
- paragraph 129;
- paragraph 138.

Other provisions

Paragraph 130(7) of Schedule 29 to FA 2002

380. This is, in essence, a capital gains provision and will be dealt with by way of consequential amendment of TCGA.

Paragraph 131(5) of Schedule 29 to FA 2002

381. This is, in essence, a capital gains provision and will be dealt with by way of consequential amendment of TCGA.

Paragraph 132 of Schedule 29 to FA 2002

382. To the extent that it is necessary to rewrite this paragraph it will be dealt with by way of consequential amendment of TCGA.

383. Paragraph 132(2) to (4) provides rules of transition dealing only with a temporary overlap of the capital gains and intangible fixed asset regimes: (unless there is an extension under section 152(3) of TCGA of the time limit) they can never be relevant to disposals after 31 March 2003. So they will not be rewritten but merely preserved.

384. On the other hand, paragraph 132(1) and (5) (and the interpretative provision in subsection (6)) give rules of permanent effect so need to be rewritten. But they are, in essence, capital gains rules and will be dealt with by way of consequential amendment of TCGA.

Paragraph 141 of Schedule 29 to FA 2002

385. Paragraph 141 of Schedule 29 to FA 2002 has not been rewritten. Paragraph 141(2) provides that references in Schedule 29 to the Inland Revenue are, subject to stated exceptions, references to any officer of the Board. The exceptions mentioned in paragraph 141(1) are in relation to the discretionary extension of the time limits for group relief under Part 6 of Schedule 29 and for reinvestment relief under Part 7 of Schedule 29 and in relation to clearance applications in respect of specified provisions in Part 11 of Schedule 29. In the case of these exceptions “Inland Revenue” means the Board. Matters to be dealt with by the Board are traditionally those requiring the exercise of judgement and discretion in particularly sensitive areas. The “Board” here

is stated to mean the Commissioners of Inland Revenue reflecting directly the defined usage of terms in section 1(1) of TMA.

386. Paragraph 141 of Schedule 29 to FA 2002 provides a way for Schedule 29 to make the necessary references to Revenue officers while preserving the distinction between functions that could be performed at an “ordinary” level in the department and those that could not. The terminology has however been overtaken by the advent of HMRC and the provisions of CRCA. If paragraph 141 was rewritten, it would be necessary to translate there the references to “Board”, “Inland Revenue” and “Commissioners of Inland Revenue” into the post-CRCA equivalents while preserving the “special treatment” in respect of the provisions referred to in paragraph 141(1).

387. However this does not appear necessary. A general interpretative provision is appropriate when the intangible fixed asset rules are set out in a separate Finance Act Schedule. But in the rewrite, these rules are part of the main body of the corporation tax rules. So the appropriate post-CRCA term has simply been inserted into each provision, which is an easier and more convenient approach for the reader.

388. For intended references to “any officer of the Board” under the general rule in paragraph 141(2) of Schedule 29 to FA 2002, the post-CRCA term is “any officer of Revenue and Customs” (section 50(1) of CRCA).

389. For intended references to the “Commissioners of Inland Revenue” under the specific rule in paragraph 141(1) and (3) of Schedule 29 to FA 2002, the post CRCA term is the “Commissioners of Her Majesty’s Revenue and Customs” (sections 1(1) and 50(1) of CRCA). However, as explained in the notes relating to the clauses involved, changes are proposed in respect of paragraph 35(2) of Schedule 29 to FA 2002 (rewritten as clause 43(2)) and paragraph 39(1)(a) of Schedule 29 to FA 2002 (rewritten as clause 46(1)) to reflect the fact that the power attributed there to the Commissioners of HMRC is, in practice, exercised by an officer of HMRC (see also *Change 1* in the Annex).

390. It is not necessary to rewrite the final sentence in paragraph 141(1) of Schedule 29 to FA 2002 which refers to the authority to delegate Board’s functions. Under section 13 of CRCA practically all functions of the Commissioners are stated to be delegable to an officer of the Department. The established rewrite approach to denoting a function as proper to the Commissioners of HMRC is to leave section 13 of CRCA to spell out that it need not be carried out by the Commissioners personally.

Paragraph 142

391. This paragraph will be superseded by an Act-wide provision.

Paragraph 143

392. This index of definitions will be included in an Act-wide Schedule.

ANNEX

Change 1: References to “officer of Revenue and Customs”: clauses [], [], 43, 46, [] and []

This change replaces references to the “Board of Inland Revenue” in the source legislation with references to “an officer of Revenue and Customs”.

It brings the income and corporation tax codes back into line.

References in the source legislation to the “Board of Inland Revenue” are treated by section 50(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA) as references to “the Commissioners for Her Majesty’s Revenue and Customs”. The rest of this note accordingly refers to the Commissioners for Her Majesty’s Revenue and Customs (“the Commissioners”) rather than to the Board of Inland Revenue.

The provisions affected by this change will in future authorise or require things to be done by or in relation to an officer of Revenue and Customs rather than by or in relation to the Commissioners. This reflects the way in which Her Majesty’s Revenue and Customs is organised and operates in practice. Section 13 of CRCA allows nearly all functions conferred on the Commissioners to be exercised by any officer. All of the functions affected by this change, which are in the main concerned with administrative processes, are in fact exercised by officers of the Commissioners, and the Commissioners themselves are not personally involved in their exercise.

Where the source legislation provides for a claim or election to be made to the Commissioners, this Bill does not expressly state to whom such a claim or election is to be made. Where a notice to deliver a corporation tax return has been issued, paragraphs 57 and 58 of Schedule 18 to FA 1998 require the claim to be made in the return or by amendment of the return if possible. A return must be made to the officer who issued it. A notice amending a return must be made to an officer. Similarly, where the claim is made outside a return or amendment, paragraph 2(1) of Schedule 1A to TMA requires the claim to be made to an officer.

Each provision affected by the conversion of references to the Commissioners will be identified in the Table of Origins by a cross-reference to this change.

This change has no implications for the amount of tax due, who pays it or when. It affects (in principle and in practice) only administrative matters.

Change 2: Unpaid remuneration of employees: payment made after return submitted but within nine months of the end of the period of account: clauses [], 154 and []

This change drops the requirement to make a claim for a deduction for remuneration paid after the return is submitted but within nine months of the end of the period of account in which it is charged.

This change brings the income tax and corporation tax codes back into line for section 43 of FA 1989. And it is adopted for consistency in rewriting a parallel rule in paragraph 113 of Schedule 29 to FA 2002.

Section 43(5) of FA 1989 deals with profit calculations made within nine months of the end of the period of account. Paragraph (a) requires the assumption that any remuneration unpaid at the time of the calculation will not be paid by the end of that nine month period. That means the proposed remuneration cannot be deducted in making the calculation. Paragraph (b) provides an adjustment procedure that applies when the remuneration is paid after the calculation is made but before the end of the nine month period. If a claim is made within two years of the end of the period of account the calculation may be adjusted.

There is a parallel rule in paragraph 113(5) of Schedule 29 to FA 2002 which applies to the intangible fixed assets regime.

This change brings the adjustment procedure into line with the normal Self Assessment rules and deals with the adjustment as an amendment to a return.

The change alters the time available for making the adjustment from two years after the end of the period of account in every case to a date that depends on the length of the period of account.

Paragraph 15(4)(a) of Schedule 18 to FA 1998 gives the time limit for making amendments to corporation tax returns. It is 12 months from the filing date for the relevant return.

Corporation tax returns are required for accounting periods. The end of a period of account will always end an accounting period. In the normal case where the company has a 12 month period of account the change makes no difference to the time limit for “claiming” the relief. The filing date is 12 months after the accounting date and the date for amending the return is 12 months after that. This is the same time limit as that in section 43(5) of FA 1989.

In fact, the time limit for “claiming” the relief is unaffected if the period of account is no longer than 18 months.

Example One

A notice to file for the 12 months ended 31 December 2005 is issued in January 2006. This accounting period is included in a period of account that runs from 1 January 2005 to 30 June 2006. The filing date for the accounting period is 30 June 2007 and the amendment date 30 June 2008. This is two years after the end of the period of account.

The time limit for “claiming” the relief will be reduced only if the period of account is longer than 18 months. The filing date for the first accounting period in such a period of account is 12 months after the 18-month point. The time limit for amending the return is 12 months after that filing date. This will be less than two years after the end of the period of account.

Example Two

A notice to file for the 12 months ended 31 December 2005 is issued in January 2006. This accounting period is included in a period of account that runs from 1 January 2005 to 31 December 2006. The filing date for the accounting period is 30 June 2007 and the amendment date 30 June 2008. This is less than two years after the end of the period of account (31 December 2008).

A company is unlikely to be disadvantaged by the change. In Example Two above the company would have to submit its return before 30 June 2007 (the filing date) at a time when the remuneration was unpaid. The remuneration would then have to be paid on or before 30 September 2007. Under the change the company would still have nine months to “claim” the relief (compared with fifteen months under section 43(5)(b) of FA 1989).

In practice periods of account longer than 18 months are unusual and nearly all companies affected by the provision claim the deduction in their original return.

This change puts the method of allowing relief on the same basis as that in paragraph 6 of Schedule 24 to FA 2003, rewritten as clause [].

Schedule 24 to FA 2003 is a similar provision to section 43 of FA 1989. It denies a deduction for amounts charged in respect of employee benefit contributions unless the benefits are provided within nine months of the end of the period in respect of which they are charged.

Paragraph 6 of Schedule 24 to FA 2003 deals with the case in which the return is made before the end of the nine month period. Unlike section 43(5) of FA 1989 it does not require a claim. It provides merely that the calculation can be adjusted. This is the most appropriate way of dealing with the point under Self Assessment.

This change has no implications for the amount of tax due, who pays it or when. It affects (in principle and in practice) only administrative matters.