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## The Personal Tax Planning Review

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# IS A DORMANT COMPANY IHT "BUSINESS PROPERTY"?

Alan Pink<sup>1</sup>

The short answer is "possibly". Imagine a situation where there are two associated companies which nevertheless do not form part of an group. One company is actively trading, and the other is dormant. The dormant company has, as the sole asset on its balance sheet, a balance on inter-company current account which built up over a period some years ago when the now dormant company was trading. The balance arose from such items as inter-company trading and management charges.

Are the shares in the dormant company "relevant business property" within the terms of section 105, Inheritance Tax Act 1984? They are undoubtedly shares in an unquoted company, and therefore come within subsection (1) of section 105 (paragraph (b),(bb) or (c)). One then turns to subsection (3) of the section, which states: "... shares in or securities of a company, are not relevant business property if ... the business carried on by the company consists wholly or mainly of one or more of the following, that is to say, dealing in securities, stocks or shares, land or buildings or making or holding investments."

Although the result may seem surprising, it is the submission of this article that the dormant company in the situation imagined above does not fall within this exclusion.

Clearly the only area in which we are approaching problems is a possible claim by the Inland Revenue that "the business carried on" by the company is "holding investments".

Even granting for the purposes of argument (which one need not necessarily grant) that the company is "carrying on a business" of keeping the valuable current account balance in its balance sheet, there must be severe doubt as to whether this balance could be described without abuse of language as an "investment".

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The characteristics of investments are surely that they are acquired and/or held for one or both of two purposes: to realise income or to sell at some future date at a gain.

In the imaginary scenario of this article, the balance came into being for completely different reasons and without those two purposes in mind.

Therefore, albeit possibly by accident, the shares in the company are not excluded from being relevant business property and accordingly comprise relevant business property, as would the shares of any equally dormant holding company interposed between the dormant company imagined and the individual shareholders, under subsection (4)(b).

However, that is only the first hurdle which we need to get over in order to achieve effective relief under section 104. The second hurdle is to be found in section 112, which provides that in determining for the purposes of business property relief the value of an asset, so much of the value of relevant business property as attributable to "excepted assets" shall be left out of account.

Here there appears to be a gaping hole in the legislation. The draftsman does not appear to have noticed that dormant companies are not necessarily excluded from the definition of relevant business property and he has defined an excepted asset as one which was neither used " ... for the purposes of the business concerned [in a past "relevant period"] nor required at the time of the transfer for future use for those purposes".

This definition will simply not work when one applies it to a company which has no business, and the process of interpretation seems simply to run up against a logical brick wall here. It would be interesting to hear the opinions of others as to whether or not this excludes section 112 from applying to the shares in such a company as is hypothesised in this article, since the section envisages a scenario which simply does not fit the situation.