

## **HMRC Consultation on the Associated Companies Rules for Corporation Tax**

**HMRC have issued a consultation paper on proposed reforms to the associated company rules, particularly regarding the provisions which require the inclusion of holdings of associates and whether those rules need to be modified.**

HMRC advise that: "The Government's aim for reform of the existing rules is to provide a test that retains those aspects of the current test that work well within a new test that attributes rights held between linked persons only in circumstances where actual links between the companies make it appropriate to do so. Put broadly, the new test seeks to ensure that companies cannot be associated by an attribution of rights by mere 'accident of circumstance'."

### **Current rules**

The legislation on associated companies is found at s.416 ICTA 1988. Companies are considered to be associated if they are under the control of the same person. Holdings of associates can also be aggregated (but don't have to be) when determining who controls a company. The definition of associates includes family members, partners in a partnership and trustees. The decision in the Newfield Developments case highlighted just how far-reaching these provisions can be.

Currently, by concession, ESC C9 allows holdings of relatives, other than a spouse or minor child, to be ignored when determining if companies are associated provided there is no "commercial interdependence" between the companies.

Companies that are dormant throughout the period in question are not treated as an associated company and Statement of Practice 5/94 extends this to dormant holding companies if certain conditions are met.

### **Proposed rules**

HMRC are proposing a new "fragmentation test", which would mean that only "relevant tax planning arrangements" undertaken in order to secure a "relevant tax advantage" would lead to the interests of associates being aggregated. It is intended this will mirror the test in ESC C9 and so will apply where there is commercial interdependence between the companies. A "relevant tax advantage" means that a reduction in the corporation tax liability is given because some, or additional small companies relief has been obtained under s13 ICTA.

### **Further details**

The full consultation document can be found at [http://www.hm-treasury.gov.uk/consult\\_simplification\\_review.htm](http://www.hm-treasury.gov.uk/consult_simplification_review.htm) and comments are invited by 22 January 2010.

**To discuss this update please contact us on 0870 166 6270 or email [sales@abbeytax.co.uk](mailto:sales@abbeytax.co.uk)**