



INLAND REVENUE
AUTHORITY
OF SINGAPORE

Consultation Paper on Proposed Tax Framework for Corporate Amalgamations

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Consultation Paper on Proposed Tax Framework for Corporate Amalgamations

CONSULTATION PAPER ON PROPOSED TAX FRAMEWORK FOR CORPORATE AMALGAMATIONS

1 INVITATION TO COMMENT

- 1.1 To facilitate companies in restructuring and rationalising their businesses, it was announced in Budget 2009 that a new tax framework for qualifying corporate amalgamations will be introduced. This consultation paper sets out the details of the proposed tax framework.
- 1.2 We welcome feedback from the public on the proposed tax framework for corporate amalgamations. In particular, we seek feedback on the following questions:
- a) What are the issues and concerns that amalgamating companies and amalgamated company may face if the tax framework is adopted. Please include suggestions to modify the proposed tax framework to address the issues highlighted by you. Please also explain the basis of the modifications suggested by you.
 - b) What further measures which the Government should consider implementing to prevent potential abuses of companies seeking to monetize tax assets under the tax framework (please refer to paragraph 5.8.3).

2 Submission

- 2.1 Your comments are most useful if you indicate the specific paragraph to which they relate. To facilitate the review, please submit clear and succinct comments of preferably no more than 4 pages in length.
- 2.2 The closing date for submission of your views and comments is 20 March 2009. Your submission should include your name, the organisation you work for or represent, your email address and telephone number and be addressed to:

Comptroller of Income Tax
Inland Revenue Authority of Singapore
Tax Policy & Rulings Branch
55 Newton Road
Singapore 307987

Or email to:
Public_Consultation@iras.gov.sg

- 2.3 We reserve the right to make public all or parts of any written submissions made in response to this Consultation Paper and to disclose the identity of the contributor. All views and comments received will be considered.



Consultation Paper on Proposed Tax Framework for Corporate Amalgamations

1 Background

- 1.1 The Companies (Amendment) Act 2005 introduced a new method of carrying out mergers or amalgamations where companies can amalgamate without having to first obtain court approval. This form of amalgamation (hereinafter referred to as “statutory voluntary amalgamations”) is provided for in Sections 215B to 215G of the Companies Act and took effect from 30 January 2006.
- 1.2 A statutory voluntary amalgamation envisages the continuation of the amalgamating companies as one single company, which may be a new company or one of the amalgamating companies (hereinafter referred to as “amalgamated company”). The significant legal implication upon such an amalgamation is that all property, rights, privileges, liabilities and obligations, etc. of each of the amalgamating companies will be transferred to and assumed by the amalgamated company. Shareholders of the amalgamating companies may or may not become shareholders of the amalgamated company.
- 1.3 A statutory voluntary amalgamation takes effect on the date specified in the Notice of Amalgamation issued by the Registrar of Companies. On that day, all the assets, liabilities, property, rights, powers and privileges of the amalgamating companies are vested in the amalgamated company. The amalgamated company will have its name registered (if it is newly incorporated) and all of the amalgamating companies except the surviving company, where applicable, will be removed from the register of companies.
- 1.4 A statutory voluntary amalgamation is different from the existing two basic methods of mergers and acquisitions (“M&A”) –
- (i) acquisition of assets in a targeted company where the targeted company remains after the disposal of its assets; and
 - (ii) acquisition of shares in a targeted company where the shareholders of the targeted company sell their shares to the purchasing company and the targeted company becomes a subsidiary of the purchasing company thereafter.
- 1.5 In a statutory voluntary amalgamation, only one company remains or is formed upon completion of the amalgamation process.

2 Current Tax Treatment for Corporate Amalgamations

- 2.1 Currently, for income tax purposes, amalgamating companies are treated as having ceased businesses and disposed of their assets and liabilities and the amalgamated company having acquired or commenced a new business. This treatment may give rise to taxable gains in the hands of



Consultation Paper on Proposed Tax Framework for Corporate Amalgamations

the amalgamating companies because trading stocks¹ and certain assets² are subject to tax based on either the transfer price or open market values. Balancing allowance or charge on plant and machinery or industrial buildings will also have to be accounted for upon disposal, unless the companies involved in the amalgamation are eligible to make an election under Section 24 of the Singapore Income Tax Act (“ITA”).

3 Proposed Tax Framework for Corporate Amalgamations

- 3.1 To minimise the tax consequences arising from amalgamations, a new tax framework for specified statutory amalgamations (hereinafter referred to as “qualifying statutory amalgamations”), is proposed. The proposed tax framework recognises the consequences as provided in the Companies Act for such qualifying statutory amalgamations and gives effect by aligning the consequential tax treatments for amalgamations.
- 3.2 The proposed tax framework is intended to give tax effect to qualifying statutory amalgamations as if there is no cessation of the existing businesses by the amalgamating companies (and hence no acquisition of new businesses by the amalgamated company) and all risks and benefits that exist prior to the merger are transferred and vested in the amalgamated company. In other words, under the proposed tax framework, qualifying statutory amalgamations will be treated as a continuation of the existing businesses of the amalgamating companies by the amalgamated company. On the date of amalgamation, i.e., the date shown in a notice of amalgamation or a court order, the amalgamated company would be treated as having “stepped into the shoes” of the amalgamating companies and continued with the business(es) seamlessly.
- 3.3 Under the proposed tax framework, the intention is to ensure that most of the tax consequences of a continuing business will apply to the amalgamated company. Hence, the tax treatment of provisions, trading stocks, capital allowances, accruals, prepayments etc., transferred to the amalgamated company from the amalgamating companies, will be ascertained on the basis that the businesses that have been taken over entirely have not ceased but continue in the amalgamated company, as part of the business (or enlarged business) of the amalgamated company.

4 Definition of Qualifying Statutory Amalgamation

- 4.1 For the purposes of the proposed tax framework, a qualifying statutory amalgamation is one that is carried out in accordance with sections 215B to 215G of the Companies Act, and satisfies the following conditions:

¹ This is provided for under Section 32 of the ITA.

² The taxability of gains from the disposal of certain non-trading stocks is determined based on the badges of trade.



Consultation Paper on Proposed Tax Framework for Corporate Amalgamations

- (i) all the amalgamating companies must be tax residents of Singapore before the amalgamation;
- (ii) the amalgamated company must be a tax resident of Singapore after the amalgamation; and
- (iii) on the day of amalgamation³, the amalgamated company intends to continue the business(es) of the amalgamating companies as part of the amalgamated company's business or enlarged business.

4.2 Where the amalgamation is a court-directed or approved amalgamation under the Companies Act or Banking Act, the proposed tax framework may still be made available to the companies, provided the amalgamation has a similar effect as that of a voluntary amalgamation under sections 215B to 215G of the Companies Act, and the conditions in paragraph 4.1(i) to (iii) are satisfied.

5 Tax Treatment of Specific Assets, Liabilities and Tax Items

5.1 The proposed tax treatment for certain specific assets, liabilities and tax items transferred under a qualifying statutory amalgamation is provided in the Annex⁴. Some of these items are highlighted below.

5.2 Plant & Machinery ("P&M") and Industrial Buildings ("IB")

In respect of P&M and IB where capital allowances have been claimed, the amalgamated company will be allowed to continue to claim capital allowances on the assets transferred based on tax written down value of the assets taken over. The amalgamating companies and the amalgamated company will be deemed to have made an election under section 24 of the ITA even if the companies are not related. As such, the transfer will not give rise to a balancing allowance or a balancing charge at the point of amalgamation. Balancing adjustments will only be made to the amalgamated company when it subsequently disposes of the assets or when its business permanently ceases.

5.3 Intellectual Property Rights ("IPR")

5.3.1 In respect of IPR, the amalgamated company will be allowed to continue to claim writing down allowances under section 19B of the ITA based on the tax written down amount of the rights taken over. As such, the transfer will

³ If the amalgamated company were to subsequently change its intention concerning the business(es) taken over or assets pertaining to the business(es) taken over, normal tax rules will apply to determine any tax consequences that may arise from such a change of intention at the time when the intention changes.

⁴ The Annex covers assets, liabilities and tax items commonly encountered in amalgamations of companies in general. Although not covered in this paper, the tax treatment for items transferred in amalgamations involving companies in specialised industries (e.g., banks and insurance companies) will generally follow the principles set out in paragraphs 3.1 to 3.3 above.



Consultation Paper on Proposed Tax Framework for Corporate Amalgamations

not give rise to a charge under section 19B(5).

5.3.2 Where, as a result of the amalgamation, IPRs (or intangible assets) are required to be recognised in the balance sheet of the amalgamated company in accordance with the requirements of Financial Reporting Standard (“FRS”) 103 – Business Combinations, no writing down allowances would be allowed on these rights recognised by the amalgamated company for financial reporting purposes. This applies whether the transfer is made between related parties or not. This is consistent with the concept underlying the new tax framework which regards the amalgamated company as a continuation of the amalgamating companies. As such, no new IPRs should be regarded as being acquired or created in the amalgamation process.

5.4 Assets on Capital Accounts

5.4.1 For the purpose of determining the appropriate tax treatment for disposals of assets subsequent to the amalgamation (e.g. whether the disposal is capital or revenue in nature, whether there has been a change in intention for the acquisition of the asset, etc.), the amalgamated company will be deemed to have held the relevant asset from the date the asset was first acquired by the amalgamating company. The gain or loss on disposal will be computed based on the original cost incurred by the amalgamating companies and not on the fair value of the asset as at the date of transfer. This is consistent with the proposal to allow the amalgamated company to continue claiming capital allowances on the assets taken over based on their tax written down value.

5.4.2 Where the amalgamated company intends to continue holding assets taken over as capital assets, it should maintain a list of these items as at the date of amalgamation. Details that should be kept on the assets include:

- (i) Description of the asset;
- (ii) Date of purchase by the amalgamating companies;
- (iii) Original cost of asset;
- (iv) How the asset was financed;
- (v) Purpose of the acquisition by the amalgamating companies, together with supporting evidence; and
- (vi) Basis for claiming that the assets are on capital account.

5.5 Assets on revenue account

5.5.1 Assets on revenue accounts will be transferred, for tax purposes, at the carrying amounts (i.e. the net book values), as reflected in the amalgamating companies’ books at the point of amalgamation. This is on the basis that the amalgamated company is treated as having stepped into the shoes of the amalgamating companies and continued with the business(es).



Consultation Paper on Proposed Tax Framework for Corporate Amalgamations

- 5.5.2 Hence, in the case of inventory or trading stocks, the amalgamated company will be deemed, for tax purposes, to have taken over the trading stocks of the amalgamating companies at their net book value (“NBV”), which, based on FRS 2 – Inventories, will be the lower of cost and the net realisable value. Consequently, the cost of the trading stocks that may be claimed as deduction by the amalgamated company in computing the gains or profits of its business is the NBV of the trading stocks taken over at the point of amalgamation.
- 5.5.3 We understand, however, that the accounting of amalgamations between unrelated companies is governed by FRS 103 – Business Combinations. Amalgamations within the scope of FRS 103 have to be accounted for using the “purchase method”, where all items taken over should be reflected at fair value (“FV”). Hence, where the FV of the stocks taken over is higher than its NBV, the amalgamated company is required to track the NBV of the trading stocks until the stocks are sold, for the purposes of computing the gains or profits of its business. Furthermore, if there is subsequent diminution in the value of the trading stocks taken over, only the amount of write-down below the NBV of the stocks taken over at the point of amalgamation will be allowed as a deduction to the amalgamated company.
- 5.5.4 To eliminate the need for the amalgamated company to track the NBV of the trading stocks taken over from the amalgamating companies until the day the stocks are sold, the amalgamated company will be given the option to take over the stocks at their FV. The amalgamating companies, on the other hand, will be deemed to have sold their stocks at the same FV as reflected in the amalgamated company’s books. Where the FV exceeds the NBV of the trading stocks, the difference will be brought to tax in the hands of the relevant amalgamating company at the point of amalgamation. This option, once elected, will be irrevocable and must apply to all trading stocks taken over by the amalgamated company.

Change of Intention

- 5.5.5 There may be instances where assets originally held as trading stocks by an amalgamating company are to be reclassified as capital assets (e.g. investments) in the accounts of the amalgamated company at the point of amalgamation. Once a change in intention is clearly established, the trading stocks are deemed to have been sold by the amalgamating company at the open market value upon amalgamation. The amalgamating company has to account for the gain or loss of trading stock at the point of amalgamation. This is consistent with the current tax treatment applied to assets when there is a change in intention of the use of the assets.
- 5.5.6 Conversely, where investment assets of an amalgamating company become the trading stocks of the amalgamated company at the point of amalgamation, the open market value of the assets upon amalgamation will be adopted as the cost of trading stocks in the hands of the



Consultation Paper on Proposed Tax Framework for Corporate Amalgamations

amalgamated company for the purpose of computing gains or profits of its business when the stocks are subsequently disposed of.

5.6 Bad Debts, contingent losses, etc.

5.6.1 The amalgamated company will be entitled to a deduction for impairment of trading debts taken over, and for expenditure or loss arising from the activities of an amalgamating company before a qualifying amalgamation, if a deduction would have been available to the amalgamating company if it had continued to exist. All subsequent recoveries by the amalgamated company will be taxable (even in respect of bad debts or specific provisions previously allowed to the amalgamating company).

5.7 Deduction of interest and related borrowing costs

5.7.1 Interest or borrowing cost is deductible against a particular item of income only if a direct nexus exists between the money borrowed and that income item. This is a requirement under Section 14(1)(a) of the ITA. This requirement remains for amalgamated companies seeking to claim a deduction of interest or borrowing cost in respect of any loan taken over from the amalgamating companies.

5.7.2 For example, if a company takes up a loan to purchase shares in another company and the two companies subsequently amalgamate in accordance with sections 215B to 215G of the Companies Act, the interest expense or borrowing costs incurred on acquiring the shares in the second-mentioned company will not be available for deduction against the taxable income of the amalgamated company. This is because there no longer exists a direct link between the money borrowed (for the purpose of share acquisition) and the income of the amalgamated company.

5.7.3 On the other hand, if the loan taken up by the amalgamating company was for the purchase of a capital asset (e.g., investment property) that is transferred to the amalgamated company, the interest incurred by the amalgamated company on that loan will continue to be allowed a deduction against the income produced by the capital asset after amalgamation.

5.8 Unabsorbed Capital Allowances, Losses and Donations

5.8.1 The eligibility of utilisation of these unabsorbed items by the amalgamated company will continue to be governed by the shareholding test as well as the business continuity test for capital allowances and the 5-year carried forward limitation in the case of donations. The shareholding test was introduced to ensure that unabsorbed tax losses and capital allowances are not monetised through the acquisition of loss making companies. Where a substantial change in shareholding occurs pursuant to a M&A transaction, the avenue for waiver of shareholding test is currently available under sections 37(16) and 23(5) of the ITA for a M&A that is not motivated by tax reasons and undertaken for commercial reasons.



Consultation Paper on Proposed Tax Framework for Corporate Amalgamations

5.8.2 Where the business of an amalgamating company is transferred to a new company, sections 37(5) and 23(2) of the Income Tax Act are not applicable. This is because the unabsorbed items cannot be transferred between different legal entities. The amalgamated company will also not be able to carry back unabsorbed capital allowances and losses as the amalgamating company (unless it becomes the surviving amalgamated company) will be wound up and de-registered after the amalgamation. Nonetheless, to facilitate corporate amalgamations, the utilisation of such unabsorbed items across entities may be allowed if the corporate amalgamations are undertaken for commercial reasons and are not tax-motivated. The following conditions will apply:

- (i) The amalgamating company must be carrying on an active trade or business and is not dormant at the point of amalgamation;
- (ii) The amalgamated company continues to carry on the same trade or business as the amalgamating company from which the unabsorbed items were transferred; and
- (iii) The shareholding test requirements, similar to that under Sections 37(12) and 23(4) of the ITA are met unless a waiver by the Comptroller is granted⁵;

5.8.3 Other than the conditions above, the government may impose further conditions with the view to prevent monetisation of unabsorbed tax assets of the amalgamating companies.

5.9 Unremitted Foreign-Sourced Income

5.9.1 Foreign-sourced income of the amalgamating companies will not be deemed as having been remitted to Singapore upon amalgamation as long as the income continue to remain outside Singapore at the point of amalgamation. The foreign-sourced income would be considered as remitted by the amalgamated company to Singapore when it subsequently falls within one of the situations mentioned under section 10(25)(a) to (c) of the ITA.

5.10 Tax Incentives

5.10.1 Tax incentives enjoyed by the amalgamating companies which will be terminated upon amalgamation may, subject to the agreement of the relevant economic promoting agencies, be accorded or transferred to the amalgamated company. Once approval is granted by the relevant

⁵ To illustrate the application of the shareholding test across entities, say for example, Company A ("A") amalgamates with Company B ("B") to form a new entity, Company C ("C"). A has unabsorbed losses at the point of amalgamation. The shareholding test requirements will be met if the ultimate shareholders of C on the first day of the year of assessment that it wishes to utilise the losses of A are substantially the same as the ultimate shareholders of A on the last day of the year in which the loss was incurred.



Consultation Paper on Proposed Tax Framework for Corporate Amalgamations

economic promoting agency for the transfer of tax incentive, the amalgamated company would continue to enjoy the concessionary rates or exemption for the specified incentivised income streams, as well as to utilise any balance of the investment allowance that have not been utilised by the amalgamating companies.

5.10.2 Companies accorded tax incentives should approach the relevant economic agencies and IRAS prior to any proposed amalgamation so that the transfer or modification of the incentives could be considered.

5.11 Tax Payable/ Refunds

5.11.1 Under section 215G of the Companies Act, the amalgamated company will assume all liabilities and obligations of the amalgamating companies, including tax liabilities and obligations. Accordingly, where any outstanding tax liabilities or obligations of the amalgamating companies are not discharged prior to the date of amalgamation, the amalgamated company will have to assume and discharge all outstanding tax liabilities and obligations of the amalgamating companies.

5.12 FRS 39 Tax Treatment

5.12.1 Where the amalgamating companies have previously elected to remain on the pre-FRS 39 tax treatment, the amalgamated company will retain the pre-FRS 39 tax treatment unless it opts to move to the FRS 39 tax treatment⁶.

5.12.2 On the other hand, if any of the amalgamating companies have previously adopted the FRS 39 tax treatment, then the amalgamated company will not be allowed to opt out of the FRS 39 tax treatment. In this case, the gains or losses arising from the transitional tax adjustments to the financial assets and liabilities of the amalgamating company that was on the pre-FRS 39 tax treatment (as described in paragraphs 20 to 22 of IRAS' circular "Income Tax Implications arising from the adoption of FRS 39 – Financial Instruments: Recognition & Measurement" published on 8 March 2006) will be taxed as the income of the amalgamated company, or allowed as a deduction against its income.

5.13 Goods and Services Tax (GST)

5.13.1 No GST will be imposed in qualifying statutory amalgamations where the same conditions for GST exclusion as in the transfers of going concerns⁷ are met.

⁶ For details on FRS 39 (as well as pre-FRS 39) tax treatment, please refer to refer to IRAS e-Tax guide on "Income tax implications arising from the adoption of FRS 39 – Financial Instruments: Recognition & Measurement" published on 8 March 2006.

⁷ Under GST (Excluded Transactions) Order



Consultation Paper on Proposed Tax Framework for Corporate Amalgamations

5.14 Stamp Duty

5.14.1 Stamp Duties Relief is available if the qualifying statutory amalgamation satisfies the Stamp Duties (Reconstruction or Amalgamation of Companies) Rules.

6 Implementation

6.1 It is proposed that the new tax framework will apply to qualifying statutory amalgamations that take place on or after Budget Day i.e. 22 January 2009. All other forms of M&A not falling within the scope of qualifying statutory amalgamation will be subject to the current tax rules and treatment.



Summary of proposed tax treatment for assets, liabilities and tax items transferred under a qualifying statutory amalgamation in Singapore.

The summary below covers only assets, liabilities and tax items commonly encountered in amalgamations of companies in general. The tax treatment for items not covered in this summary will generally follow the principles set out in paragraphs 3.1 to 3.3 of the main consultation paper.

S/N	Item and specific provisions in ITA	Proposed tax treatment (for qualifying statutory amalgamations only)
A	Accounting items	
1	Trading stocks (inventories)	<p>The amalgamated company, in computing its profits, may claim a deduction for the cost of the trading stocks, which will be the NBV (i.e. the lower of cost or net realisable value) of the stocks as reflected in the amalgamating company's books at the point of transfer. This is on the basis that the amalgamated company is treated as having stepped into the shoes of the amalgamating company and continued with the business.</p> <p>However, to eliminate the need for the amalgamated company to track the NBV of the trading stocks taken over from the amalgamating company until the stocks are sold, the amalgamated company will be given the option to take over the stocks at their fair value ("FV") as reflected in its books. Under this option, the amalgamating company will then be deemed to have sold its stocks at the same FV as reflected in the amalgamated company's books. Any gains arising from the difference in the FV and NBV of the stocks will be taxed in the hands of the amalgamating company at the point of amalgamation.</p>
2	Bad debts and specific provision for doubtful debts (trade debts)	Where the trade debts taken over subsequently become bad, doubtful or impaired, a claim for deduction by the amalgamated company would be allowed. All subsequent recoveries by the amalgamated company (including those in respect of bad or doubtful debts or impairments previously allowed to the amalgamating company) would be taxable.
3	Provision for stock obsolescence	Since provisions or impairment are generally already allowed to the amalgamating company as and when the provisions were made, the question of the amalgamated company claiming deduction for such provisions or impairment should not arise in most cases (the amalgamated company may however claim additional provision after the amalgamation). All subsequent write-backs of any provisions previously allowed tax deduction would be taxable in the hands of the amalgamated company.
4	Provisions (e.g. staff retirement and pension fund, retrenchment benefits, warranty expenses)	Such provisions are generally not allowable as deduction to the amalgamated company as the liability has not crystallised at the point of amalgamation but will only arise in the future. A claim by the amalgamated company for payments made out of provisions taken over will be allowable if the expenses are wholly and exclusively incurred in the production of its income. Any write-backs (including on those expenses allowed to the amalgamating company previously) would be taxable in the hands of the amalgamated company.



S/N	Item and specific provisions in ITA	Proposed tax treatment (for qualifying statutory amalgamations only)
5	Prepayments	The prepayments will not be allowable as a deduction to the amalgamated company in the year the payments are made since they are not regarded as expenses incurred for the purposes of section 14(1) of the Income Tax Act ("ITA"). The amalgamated company will be allowed a claim for deduction as and when the expenses are incurred in the production of its income.
6	Accruals/ payables	Such accruals/ payables are generally already allowed as a deduction to the amalgamating company as and when the expenses were incurred in the production of its income. If a deduction has already been given to the amalgamating company, no deduction will be given again to the amalgamated company. Any write-backs will be taxable in the hands of the amalgamated company.
7	Trade receivables	Since the income would have already been subject to tax in the hands of the amalgamating company, the amalgamated company will not be taxed on the same amount again. The claim for bad/doubtful debts is addressed in item 2 above.
8	Income received in advance	Since the income would not have been taxed in the hands of the amalgamating company because the income has not been earned yet, the amalgamated company will be taxed on the income when it is earned for tax purposes.
9	Other assets (properties and investment in shares on capital account, etc.)	The transfer will not be treated as if it was a purchase or sale. In determining the appropriate tax treatment for disposal events occurring after the amalgamation (e.g. whether disposal is capital or revenue, whether there is a change in intention etc.), the amalgamated company will be assessed as if it had been operating the same business all this while (i.e. stepped into the shoes of the amalgamating company). The gain or loss on disposal, if any, will be computed based on original cost incurred by the amalgamating company and not the open market value or FV of the asset as at the date of transfer. This means that the amalgamated company must keep a record of the details of each of these items transferred at the point of amalgamation.
10	Intellectual Property Rights ("IPR")	No writing down allowance will be given in respect of IPR recognised upon amalgamation* unless the IPR is an existing asset of the amalgamating company before the amalgamation and is taken over as part of the transfer of business. This applies whether the amalgamation involves related parties or not. This is on the basis that the amalgamated company is a continuation of the amalgamating company and as such, no new IPRs can be regarded as being acquired or created in the amalgamation process. *Note: The "purchase method" under FRS103 may require IPRs to be recognized in the balance sheet of the amalgamated company upon amalgamation if certain conditions are satisfied even if the IPRs did not previously exist in the amalgamating company's books.



S/N	Item and specific provisions in ITA	Proposed tax treatment (for qualifying statutory amalgamations only)
B	Tax items	
1	Residue of expenditure (ROE) of industrial building and structures [sections 17 and 24]	An election under Section 24 of the ITA is deemed to be made even if the amalgamating company and amalgamated company are not related, i.e. the transfer will not give rise to balancing allowance (“BA”) or charge (“BC”), and the amalgamated company will be allowed to continue claiming IBA based on the amount claimable by the amalgamating company before the transfer (provided the amalgamated company continues to carry on the qualifying trades or activities).
2	Tax written down value (TWDV) of plant & machinery and industrial building/structure for which capital allowance (CA) is granted [sections 20 and 24]	An election under Section 24 of the ITA is deemed to be made even if the amalgamating company and amalgamated company are not related, i.e. the transfer will not give rise to BA or BC, and the amalgamated company will be allowed to continue claiming CA based on the TWDV transferred from the amalgamating company.
3	Tax written down value of IPR, approved cost-sharing agreement for research and development activities and IRUs [s 19B, 19C and 19D]	<p>On the basis that the amalgamated company is treated as having stepped into the shoes of the amalgamating company and continued with the business, the amalgamated company will be allowed to continue claiming writing down allowance* based on the amount claimable by the amalgamating company before the transfer.</p> <p>(*subject to the approval of the relevant economic agency for section 19C cases)</p>
4	Unabsorbed CA/ losses/ donations [sections 23 and 37]	<p>The eligibility of utilisation of unabsorbed CA/ losses/ donations by the amalgamated company will continue to be governed by the shareholding test as well as the business continuity test for CA and the 5-year carried forward limitation in the case of donations. In the event that a substantial change in shareholding occurs due to the amalgamation, the avenue for waiver of shareholding test under sections 23(5) or 37(16) of the ITA is also available for a statutory amalgamation that is not motivated by tax reasons and undertaken for commercial reasons.</p> <p>The utilisation of unabsorbed CA/ losses/ donations <u>across entities</u> may be allowed if the amalgamation is undertaken for commercial reasons and is not tax motivated. The following conditions will apply:</p> <ol style="list-style-type: none"> i. The amalgamating company must be carrying on an active trade or business and is not dormant at the point of amalgamation;



S/N	Item and specific provisions in ITA	Proposed tax treatment (for qualifying statutory amalgamations only)
		<ul style="list-style-type: none">ii. The amalgamated company continues to carry on the same trade or business as the amalgamating company from which the unabsorbed items were transferred;iii. The shareholdings test requirements, similar to that under sections 23(4) or 37(12) of the Income Tax Act are met unless a waiver by the Comptroller is granted; andiv. Any other conditions as may be included with the view to prevent monetization of unabsorbed tax assets of the amalgamating companies.
5	Transfer of retained earnings from overseas accounts. [Section 10(25)]	Foreign-sourced income of the amalgamating company will not be deemed as having been remitted to Singapore upon amalgamation as long as the funds continue to remain outside Singapore at the point of amalgamation. The foreign-sourced income would be considered as remitted by the amalgamated company to Singapore when it subsequently falls within one of the situations mentioned under section 10(25)(a) to (c) of the ITA.
6	Tax payable/refunds	The amalgamated company will assume all tax liabilities and obligations of the amalgamating company. This is also provided in S215G of the Companies Act.
7	Interest adjustment on non-income producing assets	The general principle is that interest adjustment is made on non-income producing assets if interest-bearing funds are used to finance their acquisition. Since there is no cessation of business and the amalgamated company is deemed have stepped into the shoes of the amalgamating company, interest adjustment would be made where the amalgamating company has made use of interest-bearing funds to acquire the assets. Hence, if the amalgamation is financed by non-interest bearing funds (such as new capital issue), but the amalgamating company has previously acquired the assets using interest-bearing funds, interest adjustment would still be made if the asset is non-income producing.



C Other items		
1	FRS39 Tax Treatment	<p>Where the amalgamating companies have previously elected to remain on the pre-FRS 39 tax treatment, the amalgamated company will retain the pre-FRS 39 tax treatment unless it opts to move to the FRS 39 tax treatment.</p> <p>On the other hand, if any of the amalgamating companies have previously adopted the FRS 39 tax treatment, then the amalgamated company will not be allowed to opt out of the FRS 39 tax treatment. In this case, the gains or losses arising from the transitional tax adjustments to the financial assets and liabilities of the amalgamating company that was on the pre-FRS 39 tax treatment (as described in paragraphs 20 to 22 of IRAS' circular "Income Tax Implications arising from the adoption of FRS 39 – Financial Instruments: Recognition & Measurement" published on 8 March 2006) will be taxed as the income of the amalgamated company, or allowed as a deduction against its income.</p>
2	Tax incentives granted	<p>The tax incentives granted to the amalgamating company are specific to it and strictly speaking, cannot be enjoyed by the amalgamated company. However, the amalgamating company may make an application to the relevant economic agency for the incentive status to be transferred to the amalgamated company prior to the amalgamation. Companies accorded tax incentives should approach the relevant economic agencies and IRAS prior to any proposed amalgamation so that the transfer or modification of the incentives could be considered.</p>
3	Goods and Services Tax ("GST")	<p>The current rule will continue to be applicable. Hence, no GST will be imposed in a qualifying statutory amalgamation where the same conditions for GST exclusion as in the transfers of going concerns under the GST (Excluded Transactions) Order* are met.</p> <p>* Under the GST (Excluded Transactions) Order, where a business or part thereof is transferred as a going concern, the supply of assets to the transferee pursuant to the transfer of business will be treated as neither a supply of goods nor a supply of services (out-of-scope supply) if the following conditions are met:</p> <ul style="list-style-type: none"> (a) the assets are to be used by the transferee in carrying on the same kind of business; and (b) both the transferor and transferee are taxable persons or if the transferee is not a taxable person, he would have to be a taxable person as a result of the transfer. <p>For GST purposes, a taxable person is one who is registered or required to be registered for GST.</p>
4	Stamp duties	<p>If the assets transferred involved properties/shares, stamp duty is payable unless the amalgamation exercise qualifies for relief under section 15 of the Stamp Duties Act. Stamp duties relief is granted if the amalgamation satisfies the conditions stipulated in the Stamp Duties (Reconstruction or Amalgamation of Companies) Rules.</p>