

IRAS Consultation Paper

Mergers and Acquisitions Scheme



INLAND REVENUE
AUTHORITY
OF SINGAPORE

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Public Consultation on Mergers & Acquisitions Scheme

1 Invitation to Comment

- 1.1 In Budget 2010, the Minister for Finance introduced a merger and acquisition (“M&A”) allowance and stamp duty relief (collectively, the “M&A scheme”) to encourage companies in Singapore to consider M&A as a strategy for growth and internationalisation.
- 1.2 This consultation paper sets out the details of the proposed M&A scheme.
- 1.3 We seek your views and comments on the proposed M&A scheme, particularly on the following:
- (a) What are the issues that companies may face if the proposed qualifying conditions for the scheme are adopted? Please provide your proposed modification(s) to the qualifying conditions (if any) which can address the issues you have highlighted but does not give rise to unintended adverse revenue implications. Please illustrate clearly your suggestion and the related implications.
 - (b) What are the anti-avoidance measures necessary to prevent the abusive tax practices mentioned in section 11? What are other potential forms of arrangements that may be made to artificially create or inflate M&A allowance that are not envisaged in section 11? What should be done to prevent such potential abusive tax practices?
 - (c) What other issues or concerns that you like to share or clarification are needed arising from the M&A scheme? Please state the issues and concerns, and your suggestions on how to address them.
- 1.4 The proposed draft legislation¹ and explanatory statement relating to the M&A allowance is set out in **Annex 6**. We would appreciate your feedback on it.

2 Submission

- 2.1 To facilitate our review of your views and comments, please indicate the specific section to which they relate and submit clear and succinct submission of preferably no more than 4 pages in length.
- 2.2 The closing date for submission of your views and comments is **23 June 2010**. Your submission should include your name, the organisation you work for or represent, your email address, your contact details and be addressed to:
- Comptroller of Income Tax
Inland Revenue Authority of Singapore
Tax Policy & Rulings Branch
55 Newton Road
Singapore 307987

¹ The draft legislation relating to stamp duty relief for qualifying M&A deals will be issued for consultation separately.

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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. We may also contact the contributor if we need further clarification on any views or comments provided. All views and comments received will be considered.

3 Overview of Proposed M&A Scheme

- 3.1 The M&A scheme is limited to qualifying share acquisitions only. It is **not** applicable to a company which acquires the business assets of another company (including as a going concern)². A company engaged in an M&A deal should therefore determine based on its own considerations whether an acquisition of shares or assets is more appropriate in its circumstances.

M&A Allowance

- 3.2 Under the scheme, subject to conditions, a company (“acquiring company”) that acquires the ordinary shares of another company (“target company”) during the period 1 April 2010 to 31 March 2015 (both dates inclusive) is granted an M&A allowance, equal to 5% of the value of the acquisition.
- 3.3 The maximum amount of M&A allowance granted to an acquiring company is \$5 million for each year of assessment (“YA”) for all qualifying M&A deals executed in the basis period for that YA (i.e. 5% of qualifying M&A deals worth up to \$100 million). The M&A allowance is allowed over 5 years on a straight-line basis and cannot be deferred.
- 3.4 The example in **Annex 1** illustrates the computation of M&A allowance.

Stamp Duty Relief

- 3.5 Under the scheme, the amount of stamp duty relief granted to the acquiring company for the acquisition of unlisted ordinary shares³ is capped at \$200,000 per financial year⁴ (FY).
- 3.6 Subject to conditions, stamp duty relief is granted on any contract or agreement for sale of equitable interest in unlisted ordinary shares or any transfer documents for the acquisition of the unlisted ordinary shares under an M&A deal. The instrument

² The company in such a case may claim relevant deductions/ allowances on the assets acquired against its income under current tax rules, where applicable e.g. capital allowances on plant & machinery, tax deduction of interest on borrowings used to finance the purchase of the assets.

³ This applies to unlisted shares of a Singapore-based company or shares of a foreign company which are registered in a register kept in Singapore.

⁴ This relates to the same basis period for the YA for which the M&A allowance is granted for income tax purposes. For stamp duty purpose, where there is a change in accounting period, the Commissioner of Stamp Duties may also, at his discretion, use any other period as reference in applying the cap.

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must be executed during the period from 1 April 2010 to 31 March 2015 (both dates inclusive) to be eligible for the relief.

3.7 The example in **Annex 2** illustrates the application of the stamp duty relief.

4 Qualifying Conditions

4.1 The scheme seeks to help Singapore-based companies that conduct substantive economic activities in Singapore to grow by acquisition. It is not intended to apply to:

- (a) an internal restructuring/ reorganization of companies undertaken within a corporate group⁵ except where such a restructuring/ reorganization also results in the corporate group acquiring an increased number of ordinary shares of a target company after the event⁶;
- (b) the setting up of new (subsidiary) companies within a corporate group to carry on business activities;
- (c) the acquisition of shares which form part of the acquiring company's trading stocks.

4.2 To qualify for M&A allowance and stamp duty relief under the scheme, an acquiring company must meet **all** the following conditions –

- (a) it must be incorporated in and be a tax resident of Singapore. Where an acquiring company belongs to a corporate group, its ultimate holding company must also be incorporated in and be a tax resident of Singapore⁷;
- (b) it must carry on a trade or business as at the date of M&A;
- (c) it must have at least 3 Singapore-based employees excluding company directors (i.e. Singapore citizens or Singapore permanent residents where the employer and employee make CPF contributions) working for the company for at least 12 months preceding the date of M&A⁷;
- (d) it must not be directly or indirectly connected, as defined in section 4.5b, to the target company for two years prior to the date of M&A;

⁵ For the purpose of the M&A scheme, a corporate group refers to one comprising 2 or more companies, each of which is either a holding company or subsidiary of another entity within the group.

⁶ For example, before a reorganisation within a group, Company A held 100% and 60% ordinary shares in Company B and Company C respectively. After the reorganisation, Company A holds 100% shares in Company B while the latter holds 60% of the shares in Company C. In such a case, no M&A allowance and stamp duty relief shall be granted to Company B for its acquisition of the ordinary shares in Company C as there is no increase in the number of ordinary shares of Company C held by the corporate group as a whole. But if Company B had acquired 70% instead of 60% of the shares in Company C, then M&A allowance and stamp duty relief based on the value the additional 10% shares in Company C shall be granted to Company B.

⁷ This ensures that the beneficiaries of the scheme are Singapore-based companies.

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- (e) it must acquire a target company⁸ that –
 - (i) carries on a trade or business in Singapore or elsewhere as at the date of M&A; and
 - (ii) has at least 3 employees working for the company for at least 12 months preceding the date of M&A.

4.3 In addition, the acquisition must result in –

- (i) the acquiring company owning more than 50% of the ordinary shares in a target company if the acquiring company owns 50% or less of the ordinary shares in the target company before the date of M&A; or
- (ii) the acquiring company owning at least 75%⁹ of the ordinary shares in a target company if the acquiring company already owns more than 50% (but less than 75%) of the ordinary shares in the target company before the date of M&A¹⁰.

When the cumulative shareholding of >50% or ≥75%, as the case may be, is crossed, all acquisitions of ordinary shares in a target company made by the acquiring company during the 12-month period immediately preceding the date the relevant shareholding threshold is crossed would be consolidated for granting M&A allowance and stamp duty relief¹¹. The example in **Annex 3** illustrates how the M&A allowance and stamp duty relief are granted when the ordinary shares in a target company are acquired over a period of time.

4.4 To remain eligible to claim the M&A allowance for each of the YA during the write-down period, the acquiring company must meet the following conditions¹²:

- (a) it must continue to carry out a trade or business (i.e. under section 10(1)(a) of the Income Tax Act) throughout the basis period relating to the YA in which the deduction is claimed; and

⁸ A target company may be a company incorporated in Singapore or elsewhere. For a target company incorporated outside Singapore, the acquiring company has to furnish an independent valuation report of the target company to IRAS for the purpose of claiming the M&A allowance.

⁹ A 75% controlling interest facilitates the passing of special resolution in the target company.

¹⁰ M&A allowance or stamp duty relief is not applicable to qualifying M&A deals entered into by an acquiring company which already owns 75% of the ordinary shares in a target company (e.g. to increase the ordinary share ownership to 100%).

¹¹ This is to recognise that an acquiring company may acquire the ordinary shares in a target company over a period of time before attaining the specified shareholding threshold(s). It is however necessary to specify an appropriate timeframe for this purpose to facilitate compliance and administration of the proposed scheme. The acquiring company is allowed to choose only one date within the same basis period (or FY) relating to a YA for the consolidation of its share purchases.

¹²For the purpose of stamp duty relief, the acquiring company must meet these 2 conditions for 2 years from the date of M&A, instead of throughout the corresponding basis periods for the write-down period for M&A allowance.

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- (b) it must have at least 3 Singapore-based employees excluding company director (i.e. Singapore citizens or Singapore permanent residents where the employer and employee make CPF contributions) throughout the basis period relating to the YA in which the deduction is claimed.

If any of the above conditions is not met for any YA during the write-down period, the M&A allowance shall cease to be granted from that YA onwards¹³. As regards to stamp duty relief, if any of the above qualifying conditions is not met for 2 years from the date of M&A, full claw-back of any corresponding stamp duty relief given shall apply. In addition, interest at the rate of 6% per annum will also apply on the stamp duty recovered.

4.5 For the purpose of the proposed scheme:

- (a) “the date of M&A” refers to the date on which an agreement for sale of equitable interest in the ordinary shares of the target company is entered into by the acquiring company or the date of execution of the transfer of ordinary shares for the completion of the M&A deal, whichever is earlier. Where consolidation of multiple ordinary share acquisitions referred to in paragraph 4.3 applies, the date of M&A shall be the date of agreement for sale of equitable interest or the date of execution of share transfer for the completion of the last qualifying M&A transaction in the relevant 12-month consolidation period.
- (b) an acquiring company and a target company are considered to be connected to each other if –
 - (i) at least 75% of the total number of ordinary shares in one company is beneficially held, directly or indirectly, by the other; or
 - (ii) at least 75% of the total number of ordinary shares in each of the 2 companies is beneficially held, directly or indirectly, by a third company.

5 Determination of M&A Allowance

5.1 The M&A allowance given to an acquiring company is determined based on 5% of the cash consideration paid for acquiring the ordinary shares in a target company.

5.2 However, the Government is prepared to extend the scheme to M&A deals where an acquiring company issues its own shares as consideration for the ordinary shares acquired in a target company. In such cases, the amount of M&A allowance to be granted to the acquiring company shall be determined as follows:

- (a) 5% of the net asset value (“NAV”) ¹⁴ (or if available, the market value) of the

¹³ In others words, M&A allowance shall not be granted for the affected YA and all remaining YAs during the write-down period.

¹⁴ The NAV is computed based on the audited accounts at the end of the accounting period immediately before the date of the M&A.

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shares of the acquiring company on the date of M&A, where the purchase consideration is satisfied wholly by way of such shares; or

- (b) 5% of the sum of the cash paid and the NAV (or if available, the market value) of the shares issued by the acquiring company as at the date of M&A, where the purchase consideration is satisfied by way of cash and such shares.

6 Determination of Stamp Duty Relief

- 6.1 Stamp duty is computed based on the amount or value of the consideration or the NAV of the unlisted ordinary shares of the target company acquired, whichever is higher. The consideration may be in cash or in the form of shares in the acquiring company, or a combination of both.
- 6.2 Where the consideration is satisfied by way of the acquiring company's shares, the value of the consideration shares shall be the NAV of the acquiring company's shares.

7 Divestment or Dilution

Divestment of shares acquired pursuant to an M&A deal

M&A Allowance

- 7.1 An acquiring company, for whatever reasons, may divest of the ordinary shares acquired for which M&A allowance is granted, at anytime during the write-down period of the M&A allowance. When this divestment results in the acquiring company reducing its ownership to $\leq 50\%$ or $< 75\%$, as the case may be depending on the threshold that has given rise to the allowance in the first instance, of the ordinary shares of the target company, the M&A allowance shall cease to be given from the YA to which the divestment of shares relates.
- 7.2 Where the divestment does not result in the acquiring company owning $\leq 50\%$ or $< 75\%$, as the case may be, of the ordinary shares of the target company, the M&A allowance shall continue to be granted but on a prorated basis to reflect the corresponding reduction in shareholding.
- 7.3 The examples in **Annex 4** illustrate the proration of M&A allowance arising from divestment of shareholding in a target company.

Stamp Duty Relief

- 7.4 Where an acquiring company divests of the acquired ordinary shares and this results in the acquiring company reducing its ownership to $\leq 50\%$ or $< 75\%$, as the case may be, of the ordinary shares of the target company within a two-year period¹⁵ starting from the date of M&A, full claw-back of any corresponding stamp duty relief given

¹⁵ This two-year period mirrors the two-year claw-back period for Section 15 Reliefs under the Stamp Duties Act, wherein the acquirer enjoying the relief cannot divest in the acquired shares within two years, or a full claw back of the relief given will result.

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shall apply. In addition, interest at the rate of 6% per annum will also apply on the stamp duty recovered.

Dilution of shareholding in Target Company

M&A Allowance

- 7.5 Where an acquiring company's shareholding in a target company is subsequently diluted due to the issuance of new ordinary shares by the target company, any M&A allowance shall continue to be given without any pro-rata if the acquiring company continues to own more than 50%¹⁶ of the ordinary shares of the target company. This is to provide greater flexibility for the acquiring company to raise funds after the M&A deal, including through the issuance of new ordinary shares in the target company, for further expansion and growth of the group's business. However, where the dilution results in the acquiring company owning $\leq 50\%$ of the ordinary shares of the target company, the M&A allowance shall cease to be given from the YA to which the dilution of ordinary shareholding relates.

Stamp Duty Relief

- 7.6 Where an acquiring company's ordinary shareholding in a target company is subsequently diluted due to the issuance of new ordinary shares by the target company within 2 years from the date of M&A and the dilution of shareholding in the target company results in the acquiring company owning $\leq 50\%$ of the issued ordinary shares in the target company, full claw-back of any stamp duty relief given shall apply. In addition, interest at the rate of 6% per annum will also apply on the stamp duty recovered.

8 Substantial Change of Shareholders in Acquiring Company

M&A Allowance

- 8.1 Where there is a substantial change of substantial shareholders in an acquiring company, the M&A allowance shall cease to be given from the YA in which the change of shareholders takes place unless a waiver of the shareholding requirement¹⁷ is granted. This is intended to prevent abusive arrangements entered into to create M&A allowance.¹⁸

¹⁶ This ensures that the target company remains part of the corporate group of the acquiring company.

¹⁷ The shareholding requirement is met if the shareholders of the acquiring company on the first day of the YA in which the deduction is claimed are substantially similar to its shareholders on the date of the M&A.

¹⁸ For example, a corporate shareholder (Company A) of a target company (Company B) may, shortly after selling his controlling shareholding to an acquiring company (Company C) (for which Company C may claim M&A allowance and stamp duty relief), arrange to acquire Company C to claim another set of M&A allowance and stamp duty relief. If appropriate anti-avoidance measures are not in place to prevent it, multiple sets of M&A allowance and stamp duty relief can result in this manner even though there is actually no substantive change to a corporate group arising from the series of acquisition activities.

Stamp Duty Relief

- 8.2 Where there is a substantial change of shareholders in an acquiring company within a two-year period starting from the date of M&A, full claw-back of any stamp duty relief given shall apply unless a waiver of the shareholding requirement is granted. Interest at the rate of 6% per annum will also apply on the stamp duty recovered.
- 8.3 A summary of the impact on the M&A allowance and stamp duty relief under certain events is in **Annex 5**.

9 Group Relief, Carry-back and Carry-forward of unabsorbed M&A allowance

- 9.1 The M&A allowance shall not be available for transfer under the group relief system as the scheme is intended to directly benefit a Singapore-based acquiring company that is carrying on a substantive trade or business in Singapore and is seeking growth through M&A.
- 9.2 The unabsorbed M&A allowance shall also not be available for carry back to offset against the acquiring company's preceding year(s) assessable income.
- 9.3 Any unabsorbed M&A allowance may be carried forward to offset against the acquiring company's future income subject to it meeting the shareholding test¹⁹.
- 9.4 Where after the share acquisition, the acquiring company and the target company amalgamate under sections 215B to 215G of the Companies Act, the unabsorbed M&A allowance and any unclaimed M&A allowance shall continue to be available for use by the amalgamated company subject to it meeting the shareholding test.

10 Transaction costs

- 10.1 Transaction costs (e.g. valuation costs and due diligence costs) incurred in relation to an M&A deal remain non-tax deductible under current tax rules. They shall also not form part of the M&A deal for the purpose of determining the amount of the M&A allowance.

11 Abusive Tax Practices

- 11.1 Anti-abuse measures would be put in place to prevent arrangements entered into with a main purpose of creating or inflating M&A allowance. Some potential abusive tax practices are –

(a) Inflated value of M&A deal

An acquiring company may arrange with a target company to artificially inflate the value of an M&A deal to maximise the M&A allowance available to the acquiring company. For example, Company A may arrange to acquire Company B in a tax haven jurisdiction at an inflated value where the value of

¹⁹ Same as provided in section 23(4) of the ITA for the utilisation of unabsorbed capital allowances

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Company B is also not easily verifiable.

(b) Divestment and repurchase of shares

An acquiring company may arrange to divest of its ordinary shareholding in a target company and repurchase the ordinary shares of the same target company shortly after, claiming a second set of M&A allowance for another 5 years. The acquiring company might also attempt to claim an additional set of stamp duty relief on the repurchase of the divested shares.

(c) Artificial creation of M&A allowance

Instead of incorporating a new company, a special purpose vehicle (“SPV”) is set up solely to own the asset that the acquiring company intends to acquire. For example, a company which wishes to acquire a plot of a land for redevelopment may arrange for its directors (or any third party) to incorporate a SPV to acquire the land before the company acquires the SPV to create M&A allowance.

(d) Asset stripping

An acquiring company may, shortly after acquiring the shares in a target company for which M&A allowance is granted to the acquiring company, strip-off the assets of the target company (or the target company’s subsidiaries’ assets) by selling them to a third party; or transfer the assets to another related party with the sole and main purpose to generate a tax deduction for the related party.

12 Administrative Matters

- 12.1 An acquiring company must ensure that it meets the qualifying conditions before making a claim under the M&A scheme.
- 12.2 Where an acquisition is funded by way of issuance of shares, an acquiring company should provide independent professional valuation report of the value of ordinary shares acquired in a target company if the market value of its shares is not readily available or if it does not wish to determine the M&A allowance based on the NAV of its shares.

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Annex 1: Example on Computation of M&A allowance

Company A with financial year-end 31 December undertakes qualifying M&A deals as follows:-

| S/N | Value of Share Acquisition (\$ million) | Date of execution of qualifying M&A | YA |
|-----|---|-------------------------------------|------|
| 1. | 200 | 1 April 2010 | 2011 |
| 2. | 40 | 15 May 2011 | 2012 |
| 3. | 50 | 10 July 2011 | 2012 |
| 4. | 100 | 30 September 2013 | 2014 |
| 5. | 80 | 1 November 2013 | 2014 |
| 6. | 90 | 31 March 2015 | 2016 |

Company A's schedule for the writing-down of the M&A allowance is shown in the table below (in \$ million):

| YA 2011 | YA 2012 | YA 2013 | YA 2014 | YA 2015 | YA 2016 | YA 2017 | YA 2018 | YA 2019 | YA 2020 |
|-----------------|-----------------|------------|-----------------|------------|-----------------|------------|------------|------------|------------|
| 1.0 (Note 1) | 1.0 | 1.0 | 1.0 | 1.0 | | | | | |
| | 0.9 (Note 2) | 0.9 | 0.9 | 0.9 | 0.9 | | | | |
| | | | 1.0 (Note 3) | 1.0 | 1.0 | 1.0 | 1.0 | | |
| | | | | | 0.9 (Note 4) | 0.9 | 0.9 | 0.9 | 0.9 |
| 1.0 | 1.9 | 1.9 | 2.9 | 2.9 | 2.8 | 1.9 | 1.9 | 0.9 | 0.9 |

Note 1:

As the value of acquisition exceeds \$100 million for YA 2011, the maximum M&A allowance is capped at \$5 million (i.e. 5% x \$100 million), to be written down over 5 years on a straight-line basis.

Note 2:

As the combined value of the acquisitions does not exceed \$100 million for YA 2012, the maximum M&A allowance is \$4.5 million (i.e. 5% x [40 million + 50 million]).

Note 3:

As the first M&A deal in YA 2014 is already worth \$100 million, the second deal does not qualify for M&A allowance.

Note 4:

As the date of the M&A deal is executed before 31 March 2015, the deal qualifies for M&A allowance.

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Annex 2: Example on Application of Stamp Duty Relief

Company A with financial year-end 31 December undertakes qualifying M&A deals, as follows:-

| S/N | Value of Unlisted Share Acquisition (\$ million) | Date of execution of share transfer | Stamp Duty Payable |
|-----|--|-------------------------------------|--------------------|
| 1. | 50 | 1 January 2010 (Note 1) | \$100,000 |
| 2. | 50 | 1 April 2010 | \$100,000 |
| 3. | 40 | 15 December 2010 | \$80,000 |
| 4. | 50 | 1 April 2011 | \$100,000 |
| 5. | 40 | 15 July 2011 | \$80,000 |
| 6. | 50 | 10 December 2011 | \$100,000 |

Company A's schedule for stamp duty relief will be as shown in the table below:

| Financial year-end | Date of execution of share transfer | Stamp Duty Relief |
|--------------------|-------------------------------------|-------------------|
| 2010 (Note 2) | 1 April 2010 | \$100,000 |
| | 15 December 2010 | \$80,000 |
| 2011 (Note 3) | 1 April 2011 | \$100,000 |
| | 15 July 2011 | \$80,000 |
| | 10 December 2011 | \$20,000 |

Note 1:

Stamp duty relief does not apply to the share transfer executed on 1 January 2010. This is because the stamp duty relief is only applicable to documents executed from 1 April 2010 to 31 March 2015 (both dates inclusive).

Note 2:

Company A is eligible for stamp duty relief on the share transfer documents executed on 1 April 2010 and 15 December 2010. The total amount of stamp duty remitted for share transfer documents executed in the financial year-ended 31 December 2010 is \$180,000. Any unutilised stamp duty relief is disregarded and not allowed to be carried forward to the next FY.

Note 3:

Company A is eligible for stamp duty relief up to \$200,000 on the share transfer documents executed in the financial year-ended 31 December 2011 as the stamp duty relief is capped at \$200,000 per FY. Stamp duty on qualifying M&A deals in excess of \$200,000 during a FY therefore remains payable. Accordingly, in this example, stamp duty of \$80,000 remains payable for the FY 2011.

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Annex 3: Example on Computation of M&A allowance and Application of Stamp Duty Relief for Consolidation of Multiple Share Acquisitions

Company A with financial year-end 31 December acquired the ordinary shares in Company B in the following tranches:

| S/N | Date of Share Acquisition | Value of Share Acquisition in millions (S\$) | Shareholding (%) | |
|-----|---------------------------|--|------------------|------------|
| | | | Acquisition | Cumulative |
| 1 | March 2010 | 5 | 5 | 5 |
| 2 | April 2010 | 15 | 10 | 15 |
| 3 | July 2010 | 20 | 15 | 30 |
| 4 | September 2010 | 25 | 20 | 50 |
| 5 | January 2011 | 30 | 25 | 75 |
| 6 | June 2011 | 25 | 20 | 95 |

In August 2011, Company A disposes 10% of the ordinary shares in Company B.

Company A's schedule of M&A allowance and stamp duty relief is shown in the table below:

| Year of Assessment | Date of Share Acquisition | M&A Allowance | Stamp Duty Relief |
|---------------------|---------------------------|----------------|-------------------|
| YA 2012 (Note 3) | March 2010 (Note 1) | N.A. | N.A |
| | April 2010 | - | - |
| | July 2010 | } \$ 4,375,000 | \$40,000 |
| | September 2010 | | \$50,000 |
| | January 2011 | | \$60,000 |
| | June 2011 (Note 2) | | \$50,000 |

Note 1:

The acquisition in March 2010 does not qualify for M&A allowance or stamp duty relief as the shares were acquired before 1 April 2010 (i.e. before the start of the qualifying period of the M&A scheme)

Note 2:

Company A can consolidate the multiple purchases of shares in Company B that take place within a continuous 12-month period immediately before January 2011 or June 2011 (i.e. when it meets the > 50% or ≥75% controlling stakes requirements in Company B) to claim for M&A allowance and stamp duty relief. However, it is allowed to choose only one date within the same basis period (or FY) that relates to a YA for the consolidation of its share purchases. In this case, it is assumed that Company A chooses to consolidate its share purchases from June 2011 instead of January 2011. The 12-month continuous period is therefore July 2010 to June 2011. The share acquisitions in July 2010 and September 2010 shall be deemed as shares acquired within the basis period (or FY) of YA 2012.

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Note 3:

M&A allowance

The consolidated shareholding during the 12-month continuous period July 2010 to June 2011 is 80% (i.e. 15%+20%+25%+20%). However, due to the disposal of 10% in August 2011, Company A would only qualify for M&A allowance based on 70% (80% - 10%) of ordinary shares acquired. The amount of M&A allowance granted to Company A is computed as follows-

$$\frac{(80\% - 10\%)}{80\%} \times \$ [20 + 25 + 30 + 25] \text{ million} \times 5\% = \$4.375 \text{ mil}$$

Stamp Duty Relief

Company A is entitled to claim for stamp duty relief for the shares acquired on July 2010, September 2010, January 2011 and June 2011. The total amount of stamp duty remitted is \$200,000. As the share disposal in August 2011 does not result in Company A owning $\leq 50\%$ of the issued ordinary shares in Company B, there will be no claw back of stamp duty (read **Note 4**).

Note 4:

If Company A had disposed 50% of the shares instead of 10% in August 2011, it would effectively have only acquired 30% (i.e. 80% - 50%) of the ordinary shares in Company B in the basis period (or FY) for YA 2012. In such a case, Company A does not qualify for any M&A allowance or stamp duty relief on the share acquisitions that takes place during the basis period (or FY) for YA 2012 as it owns only 45% of the ordinary shares in Company B as at the end of that basis period (or FY).

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Annex 4: Examples on how M&A allowance is prorated in event of divestment

Example 1

Acquiring Company A executed a qualifying M&A deal on 31 August 2010. Under the deal, Company A acquires 80% or 800,000 of the issued ordinary shares of target Company B for \$90 million. However, on 30 June 2012, it disposes 20% or 200,000 of the issued ordinary shares of Company B.

Company A's financial year-end is 31 December.

Company A's schedule for the writing down of the M&A allowance is as shown in the table below (in \$ million):

| YA 2011 | YA 2012 | YA 2013 | YA 2014 | YA 2015 |
|-----------------|---------|-------------------|---------|---------|
| 0.9 (Note 1) | 0.9 | 0.675 (Note 2) | 0.675 | 0.675 |

Note 1:

The M&A allowance to be given for the qualifying M&A deal is \$4.5 million (5% x \$90 million) to be written down equally over 5 years (i.e. \$0.9 million each year).

Note 2:

As Company A continues to hold 60% (i.e. >50% of the issued ordinary shares in Company B) after the disposal on 30 June 2012, it can continue to avail the M&A allowance granted previously but only on a pro-rated basis.

Formula for pro-rating M&A allowance –

$$\frac{Y}{X} \times \text{Yearly write-down amount of M\&A allowance (Based on X)}$$

Where,

X is the number of ordinary shares acquired on which M&A allowance is first given

Y- is the difference between X and the number of ordinary shares divested/ disposed

Company A is therefore only entitled to claim M&A allowance of \$0.675 million (as computed below) for the remaining 3 YAs (i.e. YA 2013 to YA 2015), assuming there is no further disposal of shares in Company B (read **Note 3**).

$$\frac{(800,000 - 200,000)}{800,000} \times \$0.9 \text{ million} = \$0.675 \text{ million}$$

Note 3:

If Company A had disposed of 30% of the issued ordinary shares of Company B instead, resulting in it owning ≤50% of the issued ordinary shares in Company B, Company A is no longer entitled to the M&A allowance from YA 2013 onwards.

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Annex 4 (continued): Examples on how M&A allowance is prorated in event of divestment

Example 2

Acquiring Company A executed a qualifying M&A deal on 31 August 2010. Under the deal, Company A acquires 40% or 400,000 of the issued ordinary shares of target Company B for \$100 million. Prior to the M&A deal, Company A already owned 60% or 600,000 of the issued ordinary shares of Company B. On 30 June 2012, it disposes 5% or 50,000 of the issued ordinary shares of Company B. Company A's financial year-end is 31 December.

Company A's schedule for the writing down of the M&A allowance is as shown in the table below (in \$ million):

| YA 2011 | YA 2012 | YA 2013 | YA 2014 | YA 2015 |
|-----------------|---------|-------------------|---------|---------|
| 1.0 (Note 1) | 1.0 | 0.875 (Note 2) | 0.875 | 0.875 |

Note 1:

As Company A is not connected to Company B (please refer to section 4.5(b) of the consultation paper), it is entitled to claim M&A allowance on the acquisition as the M&A resulted in it owning 75% or more of the issued ordinary shares in Company B. The M&A allowance to be given for the qualifying M&A deal is \$5 million (5% x \$100 million) to be written down equally over 5 years.

Note 2:

As Company A continues to hold 95% (i.e. $\geq 75\%$ of the issued ordinary shares in Company B) (read **Note 3**) after the disposal on 30 June 2012, it can continue to avail the M&A allowance granted previously but only on a pro-rated basis.

Applying the formula for pro-ration in example 1, the amount of M&A allowance is:

$$\frac{(400,000 - 50,000)}{400,000} \times \$1.0 \text{ million} = \$0.875 \text{ million}$$

Note 3:

If Company A had disposed 30% of the issued ordinary shares of Company B instead, resulting in it owning $< 75\%$ of the issued ordinary shares in Company B, Company A is no longer entitled to the M&A allowance from YA 2013 onwards.

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Annex 5: Summary of impact on M&A allowance and stamp duty relief under certain events

| | Scenarios | M&A Allowance | Stamp Duty Relief |
|---------------------------------|--|---|--|
| 1.Acquisition | Acquire >50% (or ≥ 75%) ordinary shareholding in target company | Yes, subject to \$5 million cap per YA. | Yes, subject to \$200,000 cap per FY. |
| 2.Divestment | a. Divests shares but still maintains > 50% (or ≥ 75%, as the case may be) of ordinary shareholding in target company | Continues to be given but on pro-rated basis. | No claw-back. |
| | b. Divests shares but did not maintain > 50% (or ≥ 75%, as the case may be) of ordinary shareholding in target company | Ceases to be given with effect from YA to which divestment of shares relates. | Claw-back with interest if divestment is within 2 years from date of M&A. |
| 3. Dilution | a. Dilution of shareholding in target company but still maintains > 50% ordinary shareholding threshold. | Continues to be given. No pro-ration. | No claw-back. |
| | b. Dilution of shareholding in target company and > 50% ordinary shareholding is not maintained | Ceases to be given with effect from YA to which dilution relates. | Claw-back with interest if dilution is within 2 years from date of M&A. |
| 4.Change of Shareholders | Substantial change of shareholders in acquiring company | Ceases to be given with effect from YA to which change of shareholders relates and any unabsorbed M&A allowance is forfeited unless a waiver of the shareholding requirements is granted by Minister. | Claw-back with interest if substantial change in shareholders is within 2 years from date of M&A and a waiver of shareholding requirements is not granted by Minister. |

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Annex 5 (continued): Summary of impact on M&A allowance and stamp duty relief under certain events

| | Scenarios | M&A Allowance | Stamp Duty Relief |
|--|---|---|---|
| 5. Cessation of trade or business | Acquiring company ceases trade or business during the write-down period of M&A allowance | Ceases to be given with effect from YA in which the trade or business ceased. | Claw-back with interest if cessation of trade or business is within 2 years from date of M&A. |
| 6. Less than 3 S'pore-based employees | Acquiring company does not have at least 3 S'pore-based employees during the write-down period of M&A allowance | Ceases to be given with effect from YA in which acquiring company does not have at least 3 S'pore-based employees | Claw-back with interest if acquiring company does not have at least 3 S'pore-based employees within 2 years from date of M&A. |

Annex 6: Draft legislation and explanatory statement

Deduction for acquisition of shares of companies

37J.—(1) Subject to this section, where a Singapore company (referred to in this section as the acquiring company) has incurred capital expenditure in acquiring ordinary shares of another company (referred to in this section as the target company) in the circumstances specified in subsection (3), the acquiring company may claim a deduction in respect of the capital expenditure computed in accordance with this section.

(2) Subsection (1) only applies where the date of the share acquisition is between 1st April 2010 and 31st March 2015 (both dates inclusive).

(3) The circumstances referred to in subsection (1) are —

- (a) the acquiring company owns 50% or less of the ordinary shares of the target company before the date of the share acquisition, and the acquisition of the ordinary shares by the acquiring company will result in it owning more than 50% of the ordinary shares of the target company after the share acquisition; or
- (b) the acquiring company owns more than 50% but less than 75% of the ordinary shares of the target company before the date of the share acquisition, and the acquisition of the ordinary shares by the acquiring company will result in it owning at least 75% of the ordinary shares of the target company after the share acquisition.

(4) Any claim for capital expenditure under this section shall be made at the time of lodgment of the return of income for the year of assessment relating to the basis period in which the expenditure is incurred or within such further time as the Comptroller may, in his discretion, allow.

(5) For the purposes of this section, capital expenditure shall be deemed to be incurred on the date of the share acquisition.

(6) For the purposes of subsection (1) and subject to subsection (10), a deduction is allowed for one-fifth of the relevant amount for the basis period for the year of assessment in which the expenditure was incurred and the balance is to be allowed by 4 equal deductions, one for each of the basis periods for the next 4 succeeding years of assessment.

(7) For the purposes of subsection (6) and subject to subsections (9) and (16), the relevant amount shall be computed in accordance with the formula

$$0.05 \times A$$

where A is

(a) in a case where the target company is the first target company whose shares are acquired by the acquiring company in accordance with subsection (1) in the basis period, A is the lower of —

- (i) the aggregate amount of cash and shares of the acquiring company paid by the acquiring company in consideration for those shares ; and

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(ii) \$100,000,000

(b) in a case where the target company is the second or subsequent target company whose shares are acquired by the acquiring company in accordance with subsection (1) in the basis period, A is the lower of —

- (i) the aggregate amount of cash and shares of the acquiring company paid by the acquiring company in consideration for those shares; and
- (ii) the difference between \$100,000,000 and the aggregate amount of capital expenditure incurred in the basis period for which a deduction has been claimed under this section.

(8) For the purposes of subsection (7), a reference to the amount of shares paid by the acquiring company in consideration for shares in the target company is a reference to the market value at the date of the share acquisition of all shares issued by the acquiring company in consideration for the shares of the target company or, if it is not possible to determine such value, the net asset value of those shares issued by the acquiring company at the end of the accounting period immediately before the date of the share acquisition.

(9) Notwithstanding subsection (7), where the amount paid by the acquiring company in respect of the share acquisition is greater than the amount (referred to in this section as the second amount) which would have been paid if the acquiring company were unrelated to the target company, the amount referred to in subsection (7)(a)(i) or (b)(i) (as the case may be) shall be substituted with the second amount in arriving at the relevant amount, and any question regarding the quantum of the second amount shall be determined by the Comptroller.

(10) Notwithstanding subsection (6) and subject to subsection (16), where —

- (a) the acquiring company owns 50% or less of the ordinary shares of the target company before the date of the share acquisition and divests of its shares in the target company at any time during the relevant period for the share acquisition which does not reduce the acquiring company's ownership of the ordinary shares of the target company to 50% or less; or
- (b) the acquiring company owns more than 50% but less than 75% of the ordinary shares of the target company before the date of the share acquisition and divests of its shares in the target company at any time during the relevant period for the share acquisition which does not reduce the acquiring company's ownership of the ordinary shares of the target company to a percentage below 75%,

the deduction for the year of assessment relating to the basis period in which the ordinary shares were divested and for the subsequent years of assessment relating to the basis periods falling within the relevant period shall be computed in accordance with the formula

$$\frac{B - C}{B} \times D \times 0.2$$

where B is the number of ordinary shares acquired by the acquiring company pursuant to the share acquisition;

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C is the aggregate number of ordinary shares divested by the acquiring company during the relevant period; and

D is the relevant amount computed in accordance with the formula in subsection (7).

(11) A deduction under this section to the acquiring company shall be made against the balance of its statutory income after the deductions allowed under sections 37(3), 37B and 37G.

(12) A deduction in respect of a share acquisition shall be made to an acquiring company under this section for any year of assessment only if —

(a) the acquiring company —

- (i) is carrying on a trade or business on the date of the share acquisition;
- (ii) has in its employment at least 3 local employees at any time during the period of 12 months immediately before the date of the share acquisition;
- (iii) is not connected to the target company for at least 2 years immediately before the date of the share acquisition; and
- (iv) in a case where the acquiring company is a subsidiary of another company within the meaning of section 5 of the Companies Act (Cap. 50), it has a Singapore company as its ultimate holding company; and

(b) the target company —

- (i) carries on a trade or business on the date of the share acquisition; and
- (ii) has in its employment at least 3 employees at any time during the period of 12 months immediately before the date of the share acquisition.

(13) Unless the Comptroller otherwise allows, no deduction shall be allowed under this section to the acquiring company in respect of any shares of the target company acquired after the date of the share acquisition for the year of assessment relating to the basis period in which the date of share acquisition falls.

(14) Where any of the following events occurs:

- (a) after the date of the share acquisition, the target company issues additional ordinary shares which reduces the acquiring company's ownership of the ordinary shares of the target company to 50% or less;
- (b) the acquiring company —
 - (i) ceases to have at least 3 local employees at any time during the basis period for the year of assessment in which the deduction is claimed;
 - (ii) ceases to carry on a trade or business at any time during the basis period for the year of assessment in which the deduction is claimed;
 - (iii) owns 50% or less of the ordinary shares of the target company before the date of the share acquisition and, before the expiry of the relevant period, divests of its shares in the target company which reduces the acquiring company's ownership of the ordinary shares of the target company to 50% or less; or

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(iv) owns more than 50% but less than 75% of the ordinary shares of the target company before the date of share acquisition and, before the expiry of the relevant period, divests of its shares in the target company which reduces the acquiring company's ownership of the ordinary shares of the target company to a percentage below 75%;

no deduction in respect of the share acquisition shall be made to the acquiring company for the year of assessment relating to the basis period in which the event occurs or for any subsequent year of assessment.

(15) If the Comptroller is satisfied that the shareholders of the acquiring company on the first day of the year of assessment in which the deduction is claimed are not substantially the same as its shareholders on the date of the share acquisition, then no deduction in respect of the share acquisition shall be made to the acquiring company for the year of assessment relating to the basis period in which the deduction is claimed or for any subsequent year of assessment

(16) Where the acquiring company and the target company are part of the same group of companies on the date of the share acquisition, no deduction shall be made under this section in respect of that share acquisition unless the total number of ordinary shares acquired by the acquiring company results in an increase in the total number of ordinary shares of the target company held on that date by all companies in the group and, where there is such increase—

- (a) subsection (7)(a)(i) and (b)(i) shall operate as if a reference to shares of the target company that are acquired by the acquiring company is a reference to the number of such shares that corresponds to such increase; and
- (b) subsection (10) shall operate as if B is the number of shares of the target company acquired by the acquiring company that corresponds to such increase, and D is the relevant amount computed in accordance with the formula in subsection (7) as modified by paragraph (a).

(17) Subject to subsection (18), where in any year of assessment full effect cannot, by reason of an insufficiency of gains or profits chargeable for that year of assessment, be given to any deduction falling to be allowed under this section, the balance of the deduction shall be added to, and be deemed to form part of the corresponding deduction, if any, for the next succeeding year of assessment, and if no such corresponding deduction falls to be allowed for that year, shall be deemed to constitute the corresponding deduction for that year, and so on for subsequent years of assessment.

(18) No balance shall be added to and be deemed to form part of the corresponding deduction, if any, to be given to an acquiring company under subsection (17) for a year of assessment unless the Comptroller is satisfied that the shareholders of the acquiring company on the last day of the year of assessment in which the deduction was claimed were substantially the same as the shareholders of the acquiring company on the first day of the first-mentioned year of assessment; and such balance shall not be allowed in any subsequent year of assessment.

(19) The Minister or such person as he may appoint may, where there is a substantial change in the shareholders of a company and the Minister or person is satisfied that such change is not for the purpose of deriving any tax benefit or

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obtaining any tax advantage, exempt that company from the provisions of subsections (15) and (18).

(20) For the purposes of subsections (15), (18) and (19) –

- (a) the shareholders of the acquiring company at any date shall not be deemed to be substantially the same as the shareholders at any other date unless, on both those dates, not less than 50% of the total number of issued shares of the company are held by or on behalf of the same persons;
- (b) shares in the acquiring company held by or on behalf of another company shall be deemed to be held by the shareholders of the last-mentioned company; and
- (c) shares held by or on behalf of the trustee of the estate of a deceased shareholder or by or on behalf of the person entitled to those shares as beneficiaries under the will or any intestacy of a deceased shareholder shall be deemed to be held by that deceased shareholder.

(21) In this section —

“acquisition”, in relation to shares of a company, means the acquisition of the equitable interest in those shares;

“date of the share acquisition” means the date on which the agreement for the sale of the equitable interest in the ordinary shares of the target company is entered into by the acquiring company, or the date of transfer of the equitable interest in the ordinary shares of the target company to the acquiring company, whichever is the earlier;

“group of companies” means 2 or more companies each of which is either a holding company or subsidiary of the other or any of the others;

“holding company” and “subsidiary” have the same meanings as in section 5 of the Companies Act (Cap.50);

“local employee” means an employee of the acquiring company—

- (a) who is a citizen of Singapore or a Singapore permanent resident; and
- (b) who makes contributions in respect of the income derived from his employment with the acquiring company to the Central Provident Fund which are obligatory under the Central Provident Fund Act (Cap. 36),

but exclude a director as defined in Section 4 of the Companies Act (Cap. 50);

“relevant period” means a period of 5 consecutive basis periods beginning with the basis period in which the date of the share acquisition falls;

“Singapore company” means a company which is incorporated in Singapore and resident in Singapore;

“ultimate holding company” has the same meaning as in section 5A of the Companies Act (Cap. 50).

(22) In this section—

- (a) a company is related to another if—
 - (i) one of them directly or indirectly controls the other; or

- (ii) both of them are under the direct or indirect control of a third company;
and
 - (b) a company is connected with another if—
 - (i) at least 75% of the total number of ordinary shares in one company are beneficially held, directly or indirectly, by the other; or
 - (ii) at least 75% of the total number of ordinary shares in each of the two companies are beneficially held, directly or indirectly, by a third company.
-

EXPLANATORY STATEMENT

The new section 37J creates a new tax incentive for companies to grow their businesses through mergers and acquisitions.

Subsection (1) provides that a Singapore company which has incurred capital expenditure in acquiring the ordinary shares of another company in certain circumstances may claim a deduction in respect of the expenditure. The circumstances (set out in subsection (3)) are:

- (a) the acquiring company owns 50% or less of the ordinary shares of the target company before the acquisition and acquires enough ordinary shares to bring its ownership level to more than 50%; or
- (b) the acquiring company owns more than 50% but less than 75% of the ordinary shares of the target company before the acquisition and acquires enough ordinary shares to bring its ownership level to at least 75%.

Subsection (2) provides that the deduction is only allowed if the date of the share acquisition is between 1st April 2010 and 31st March 2015 (both dates inclusive)

Subsection (4) provides that a claim for deduction must be made at the time of lodgment of the return of income for the year of assessment relating to the basis period in which the expenditure is incurred, or within such further time as the Comptroller may allow.

Subsection (5) deems the capital expenditure to be incurred on the date of the share acquisition.

Subsection (6) provides that the total deduction allowed is the relevant amount computed in accordance with subsection (7), to be divided and made over 5 years of assessment beginning with the year of assessment relating to the basis period in which the expenditure is incurred.

Subsection (7) sets out the formula for arriving at the relevant amount.

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Subsection (8) provides that where the consideration paid by the acquiring company for the share acquisition consists of shares issued by it, the amount of consideration paid by such issued shares shall be the market value of those shares as at the date of the share acquisition or, if it is not possible to determine such value, the net asset value of the shares at the end of the accounting period immediately before that date.

Subsection (9) provides for a different basis for arriving at the relevant amount if the share acquisition is not an arm's length transaction. In the formula for arriving at the relevant amount, the amount paid by the acquiring company in respect of the share acquisition will be substituted by the amount which would have been paid if the companies were unrelated if the latter amount is smaller. The Comptroller is empowered to determine any questions regarding the amount.

Subsection (10) provides for a different deduction amount if the acquiring company subsequently divests shares in the target company and its ownership level remains at more than 50% (if its ownership level was 50% or less before the date of the share acquisition), or at least 75% (if its ownership level was more than 50% but less than 75% before the date of the share acquisition).

Subsection (11) provides that the deduction is to be made against the balance of the acquiring company's statutory income after deductions under sections 37(3), 37B and 37G of the Act.

Subsection (12) provides that a deduction may only be made if the acquiring company and target company satisfy certain conditions. These include a condition that they carry on a trade or business on the date of share acquisition and a condition that they have in their employment at least 3 employees (in the case of the acquiring company, 3 local employees) at any time during a period of 12 months immediately before that date.

Subsection (13) provides that no deduction may be made in respect of expenditure on shares acquired after the date of the share acquisition unless the Comptroller otherwise allows. For example, if the acquiring company has acquired shares to bring its ownership level up from 49% to 51%, and then acquires further shares to bring the level up to 60%, only the first acquisition will be eligible for the deduction unless the Comptroller otherwise allows.

Subsection (14) provides that when certain events occur, no deduction may be made to the acquiring company for the year of assessment relating to the basis period in which the event occurs or for any subsequent year of assessment. These events include a failure by the acquiring company to have in its employment at least 3 local employees during that basis period, and divestment of shares in the target company which brings the ownership level of the acquiring company in the target company to 50% or below (if its ownership level was 50% or less before the date of the share acquisition), or below 75% (if its ownership level was more than 50% but less than 75% before the date of the share acquisition).

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Subsection (15) provides that no deduction will be made to the acquiring company unless the Comptroller is satisfied that the shareholders of the acquiring company on the first day of the year of assessment in which the deduction is claimed are substantially the same as its shareholders on the date of the share acquisition.

Subsection (16) provides that if the acquiring company and the target company are part of the same group of companies on the date of the share acquisition, no deduction shall be made unless the aggregate number of ordinary shares of the target company held by all the companies in the group increases as a result of the acquisition. Where there is such an increase, the deduction allowed shall be limited to an amount that corresponds to the increased number of ordinary shares.

Subsection (17) provides for the carrying forward of any balance of any deduction unutilised for any year of assessment to the next succeeding year of assessment.

Subsection (18) provides that unutilised deduction cannot be carried forward to a year of assessment under subsection (17) and shall be disregarded unless the Comptroller is satisfied that the shareholders of the acquiring company on the first day of that year of assessment are substantially the same as its shareholders on the last day of the year of assessment in which the deduction was claimed.

Subsection (19) empowers the Minister or such person as he may appoint to waive the shareholding requirement under subsections (15) and (18) if he is satisfied that any substantial change in the shareholders of the acquiring company is not for the purpose of deriving any tax benefit or obtaining any tax advantage.

Subsections (20) to (22) interpret various expressions used in the new section.