IRAS e-Tax Guide

Tax Framework for Corporate Amalgamations
(1st Edition)

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INTRODUCTION

1. To facilitate mergers and consolidations of companies in Singapore, the Minister for Finance, in Budget 2009, announced the introduction of a new tax framework for corporate amalgamations.

2. This e-Tax Guide sets out the details of the new tax framework for corporate amalgamations[1].

BACKGROUND

3. Since 30 January 2006, companies have been able to carry out voluntary amalgamations 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.

4. 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.

5. 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.

6. A statutory voluntary amalgamation is different from the existing two basic methods of mergers and acquisitions **–**

   (i) acquisition of assets in a target company where the target company remains after the disposal of its assets; and

   (ii) acquisition of shares in a target company where the shareholders of the target company sell their shares to the purchasing company and the target company becomes a subsidiary of the purchasing company thereafter.

   In a statutory voluntary amalgamation, only one company remains or is formed upon the completion of the amalgamation process.

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[1] This follows public feedback received on the consultation paper on the "Proposed Tax Framework for Corporate Amalgamations" published on IRAS website at www.iras.gov.sg on 20 February 2009.

CURRENT INCOME TAX TREATMENT FOR CORPORATE AMALGAMATIONS

7. 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 the amalgamating companies because revenue assets are subject to tax based on either the transfer price or open market value ("OMV")[2]. 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").

NEW INCOME TAX TREATMENT FOR CORPORATE AMALGAMATIONS

8. To minimise the tax consequences arising from amalgamations, a new tax framework for specified statutory amalgamations (hereinafter referred to as "qualifying amalgamations"), is introduced. The new tax framework recognises the consequences as provided in the Companies Act or the Banking Act[3] for such qualifying amalgamations and gives effect to by aligning the tax treatments for amalgamations as such.

9. The new tax framework is intended to give tax effect to qualifying 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 qualifying 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 businesses seamlessly.

10. The new tax framework ensures 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 is ascertained on the basis that the businesses of the amalgamating companies 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.

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[2] For example, under section 32 of the ITA for trading stocks, the transfer price or OMV may be used for computing the gain/ profits of the amalgamating companies.
[3] section 14C and Second Schedule to the Banking Act.

DEFINITION OF A QUALIFYING AMALGAMATION

11. Under the new tax framework, a qualifying amalgamation is one where the notice of amalgamation under section 215F of the Companies Act or the certificate of approval under section 14A of the Banking Act is issued on or after 22 January 2009.

12. Subject to the approval of Minister for Finance, the new tax framework may be made available to companies where the amalgamation is court-directed under the Companies Act or to any other amalgamation of companies, provided the amalgamation has a similar effect[4] as that of a statutory voluntary amalgamation under sections 215B to 215G of the Companies Act.

INCOME TAX TREATMENT OF SPECIFIC ASSETS, LIABILITIES AND TAX ITEMS

13. A new legislative provision, section 34C of the ITA, provides for the income tax treatment applicable to amalgamating companies and an amalgamated company in a qualifying amalgamation. The provision specifies that under a qualifying amalgamation, all the amalgamating companies' businesses in Singapore will be treated as carried on by the amalgamated company beginning from the date of amalgamation and

    (i) any property on capital account of each amalgamating company will be treated as property on capital account of the amalgamated company; and

    (ii) any property on revenue account of each amalgamating company will be treated as property on revenue account of the amalgamated company.

<u>Effect of Cancellation of Shares</u>

14. Where an amalgamating company ("first company") held shares in another amalgamating company ("second company") and the shares of the second company were cancelled upon amalgamation, the first company will be treated as having disposed of the shares in the second company for an amount equal to the cost of the shares to the first company. Furthermore, if the first company had borrowed money to acquire shares in the second company and the liability arising from the money borrowed was transferred to and becomes the liability of the amalgamated company, no deduction will be given for any interest or other borrowing costs incurred by the amalgamated company on or after the date of amalgamation on such liability.

[4] That is, the legal effect of the amalgamation should be such that all the property, rights, privileges, liabilities and obligations, etc. of each of the amalgamating companies will be transferred to and assumed by the amalgamated company and all the amalgamating companies (except where it is the surviving amalgamated company) will cease to exist upon the amalgamation.

Assets on Capital Account

15. Where the amalgamated company intends to continue holding assets taken over as investment 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.

16. For the purpose of determining the appropriate income tax treatment for disposals of the assets subsequent to the amalgamation (e.g. whether the disposal is capital or revenue in nature), 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.

Assets on Revenue Account

17. Assets on revenue accounts will be transferred, for income tax purposes, at the carrying amounts, 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 businesses.

18. Hence, in the case of inventory or trading stocks, the amalgamated company will be deemed, for income tax purposes, to have taken over the trading stocks of the amalgamating companies at their net book value ("NBV"). 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.

19. We understand, however, that the accounting of amalgamations between unrelated companies is governed by Financial Reporting Standard 103 *Business Combinations* ("FRS 103"). 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 trading stocks taken over is higher than its NBV, the amalgamated company is required to track the NBV of the trading stocks until the trading 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.

20. 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 for the year of assessment relating to the basis period in which the amalgamation occurs. This option, once elected, will be irrevocable and must apply to all trading stocks taken over by the amalgamated company.

Reclassification of Assets

21. There may be instances where assets originally held on revenue account by an amalgamating company are held as assets on capital account (e.g. investments) in the books of the amalgamated company upon amalgamation. In such a case, the revenue assets are deemed to be sold by the amalgamating company at the open market value ("OMV") at the point of amalgamation. The amalgamating company has to account for the gain or loss of the assets upon amalgamation. This is consistent with the current income tax treatment on disposal of trading stock under section 32(1)(b) of ITA.

22. Conversely, where investment assets of an amalgamating company become revenue assets of the amalgamated company upon amalgamation, the OMV of the assets or the actual amount incurred[5] for such assets upon amalgamation will be used as the cost of the revenue assets in the hands of the amalgamated company for the purpose of computing gains or profits of its business when the assets are subsequently disposed of.

Unabsorbed Capital Allowances, Losses and Donations

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

[5] Where the amalgamation is a "short-form amalgamation" under section 215D of the Companies Act (i.e. where the shares of the wholly-owned subsidiary companies are cancelled without any consideration paid), the OMV will be used as the cost base in computing the gain or loss of the amalgamated company when the revenue asset is subsequently disposed of.

24. Where the business of an amalgamating company with unabsorbed tax loss items (that ceases to exist upon amalgamation) is transferred to the amalgamated company, such unabsorbed tax loss items should strictly be disregarded and sections 37(5) and 23(2) of the ITA are not applicable. This is because the unabsorbed tax loss items cannot be transferred between different legal entities. Nonetheless, to facilitate corporate amalgamations, the utilisation of such unabsorbed tax loss items across entities will be allowed if the corporate amalgamations are undertaken for genuine commercial reasons and are not tax-motivated. The following conditions will apply:

(i) The amalgamating company from which the unabsorbed tax loss items were transferred must be carrying on a trade or business up to the point of amalgamation;

(ii) The amalgamated company continues to carry on the same trade or business on the date of amalgamation as that of the amalgamating company from which the unabsorbed tax loss items were transferred;

(iii) The shareholdings test similar to the requirements under sections 23(4) or 37(12) of the ITA are met.[6]

In the event that condition (iii) is not satisfied, the amalgamated company may apply to Comptroller of Income Tax ("CIT") for a waiver of shareholding test.

25. Furthermore, the unabsorbed tax loss items can only be set-off against the income of the amalgamated company from the same trade or business as that of the amalgamating company immediately before the amalgamation.

Income Tax Treatment of Specific Assets, Liabilities and Tax items

26. Annex A summarises the income tax treatment for specific assets, liabilities and tax items under a qualifying amalgamation. Annex B provides illustrative examples of how certain tax items are dealt with under a qualifying amalgamation. These Annexes only cover assets, liabilities and tax items that are commonly encountered in amalgamations of companies in general. For items not covered in the Annexes, the tax treatment will generally follow the principles set in paragraphs 9 and 10 above.

[6] Where, in applying the shareholding test, the last day of the year in which the losses were incurred or when donations were made by the amalgamating company is later than the date of amalgamation, then the relevant dates for the shareholding test will be the day immediately before the date of amalgamation and the first day of the Year of Assessment ("YA") that the amalgamated company wishes to utilise the losses or donations. Similarly, for the utilisation of CA, if the last day of the YA in which the CA arose is later than date of amalgamation, then the relevant dates for the shareholding test will be the day immediately before the date of amalgamation and the first day of the YA that the amalgamated company wishes to utilise the CA. Illustration 2 of Annex B demonstrates how the shareholding test is applied.

ADMINISTRATIVE PROCEDURES

Timeframe for Election

27. The new income tax framework will apply to qualifying amalgamations that take place on or after 22 January 2009. The amalgamated company is required to make an election in writing to CIT to apply the new income tax framework within the timeframe stipulated below:

    (i) where the amalgamation has occurred on or after 22 January 2009 but before the issuance of this e-Tax Guide, within 90 days from the date of the issuance of the e-Tax Guide;

    (ii) where the amalgamation occurs on or after the date of issuance of this e-Tax Guide, within 90 days from the date of the qualifying amalgamation.

    An election, once made by the amalgamated company, is irrevocable and has to be accompanied by the notice of amalgamation under section 215F of Companies Act or certificate of approval under section 14A of Banking Act or court order, as the case may be. The election can be made in the prescribed form[7] which can be downloaded from IRAS website. A sample copy of the form is attached at Annex C.

Information to be furnished

28. The amalgamated company which elects for the new income tax framework to apply is required to furnish the following information at the time it makes the election in writing to CIT or within such time as CIT may approve:

    (i) reasons for the amalgamation;

    (ii) a copy of the amalgamation proposal;

    (iii) option on whether the trading stock would be transferred at NBV or FV as mentioned in paragraph 20;

    (iv) a list giving details of the investment assets taken over by the amalgamated company as outlined in paragraph 15 above; and

    (v) finalised set of accounts and tax computation(s) for the current year of assessment up to the date of amalgamation of all the amalgamating companies that ceased to exist and all other outstanding returns of these companies.

[7] "Form for Companies for Qualifying Amalgamations under section 34C of the ITA"

GOODS AND SERVICES TAX ("GST")

29. The GST implications for qualifying amalgamations[8] are set out in Annex D. For other types of amalgamations or transfers, the prevailing GST rules will apply.

STAMP DUTY

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

ENQUIRIES

31. For any general enquiries or clarification on this e-Tax Guide, please call:

1800-356 8622 (Corporate Income Tax);

1800-356 8633 (Goods and Services Tax); or

6351 3697/ 6351 3698 (Stamp Duty)

Inland Revenue Authority of Singapore

[8] That is, where the notice of amalgamation under section 215F of the Companies Act or the certificate of approval under section 14A of the Banking Act is issued on or after 22 January 2009. The prevailing GST rules will apply to all other forms of amalgamation including those that are approved by the Minister of Finance under section 34C(2)(b) of the ITA.

ANNEX A - Summary of income tax treatment for specific assets, liabilities and tax items under a qualifying amalgamation in Singapore

The summary below covers only assets, liabilities and tax items commonly encountered in amalgamations of companies. For items which have not been covered in this summary, the applicable tax treatment should be guided by the principles set out in paragraphs 9 and 10 of the e-Tax Guide.

S/N	Item and specific provisions in ITA	Income tax treatment (for qualifying amalgamations only)
A	**Income**	
1	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/ impairment is addressed in item B3 below.
2	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.
3	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.
B	**Deductions**	
1	Incidental expenses relating to amalgamations	As the incidental expenses (e.g. incorporation expenses, professional and legal fees) incurred in relation to the amalgamation process are capital expenditure, they remain non-deductible for tax purposes.
2	Inventories or trading stocks	The amalgamated company, in computing its profits, may claim a deduction for the cost of the trading stocks, which will be the net book value (NBV) of the stocks as reflected in the amalgamating company's books at the point of transfer. This is on the basis that the amalgamated

S/N	Item and specific provisions in ITA	Income tax treatment (for qualifying amalgamations only)
		company is treated as having stepped into the shoes of the amalgamating company and continued with the business. 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.
3	Bad debts, specific provision for doubtful debts and impairment (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.
4	Provisions (e.g. warranty expenses)	Such provisions are generally not allowable as deduction to the amalgamating company as the liability has not crystalised 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 would have been allowed to the amalgamating company but for the amalgamation.
5	Prepayments	The prepayments will not be allowable as a deduction to the amalgamating 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 ITA. The amalgamated company will be allowed a claim for deduction as and when the expenses are wholly and exclusively incurred in the production of its income.

S/N	Item and specific provisions in ITA	Income tax treatment (for qualifying amalgamations only)
6	Accruals/ payables	Such accruals/ payables are generally already allowed as a deduction to the amalgamating company as and when the expenses were wholly and exclusively 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-back will be taxable in the hands of the amalgamated company if a deduction was previously given either to the amalgamating or amalgamated company.
7	Renovation and Refurbishment (R&R) costs [section 14Q]	R&R costs previously incurred by amalgamating companies Any balance of qualifying R&R deductions under section 14Q belonging to the amalgamating companies will be transferred to the amalgamated company that will continue to claim the combined balance until it is depleted even though the total deductions may exceed the $150,000 cap imposed on a single company. R&R costs newly incurred by amalgamated company i) *Relevant 3-year period* Where one or more amalgamating companies has incurred R&R costs, the start of the relevant 3-year period for the amalgamated company will be based on the earliest of the relevant periods of the amalgamating companies. ii) *Cap on R&R costs* *Where the relevant 3-year period covers the period before and after the amalgamation* The amalgamated company will be allowed to claim as deduction the R&R costs incurred by it in the relevant 3-year period up to the cap of $150,000 if the sum of R&R costs incurred by all the amalgamating companies prior to the amalgamation is less than $150,000. If the sum of R&R costs incurred by all the amalgamating companies prior to the amalgamation is more than $150,000, then no further R&R costs will be allowed to the amalgamated company until after the expiration of that relevant 3-year period.

S/N	Item and specific provisions in ITA	Income tax treatment (for qualifying amalgamations only)
		Where the start of the relevant 3-year period falls on the date of amalgamation The $150,000 cap will apply to the amalgamated company based on the R&R costs incurred by it during the relevant 3-year period. Please refer to **illustration 1 of Annex B**.
8	Interest restriction/ adjustment	<u>Interest bearing loans taken to finance share acquisition in amalgamating company</u> If a company takes up a loan to purchase shares in another company and the two companies subsequently amalgamate, the interest expense or borrowing costs incurred on acquiring the shares in the second company will not be available for deduction against the taxable income of the amalgamated company. If the acquisition of the shares in the second company is financed from a mixed pool of funds (interest bearing and non-interest bearing funds), interest adjustment needs to be done to disallow the interest expense attributable to the acquisition cost of the shares. <u>Refinancing of loans taken to finance share acquisition in amalgamating company</u> If a loan is taken up to refinance a loan that was used to acquire the shares of the amalgamating company, interest expense would continue not to be available for deduction against the taxable income of the amalgamated company. <u>Non-income producing assets</u> 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 regarded to have stepped into the shoes of the amalgamating company, interest adjustment would be made on the amalgamated company 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

Annex A

S/N	Item and specific provisions in ITA	Income tax treatment (for qualifying amalgamations only)
		previously acquired the assets using interest-bearing funds, interest adjustment would still be made on the amalgamated company if such assets are non-income producing.
C	**Allowances**	
1	Residue of expenditure of industrial building or structures for which Industrial Building Allowance (IBA) is granted [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 residue of expenditure as at the date of amalgamation.
2	Tax written down value (TWDV) on Plant & Machinery (P&M) 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	Intellectual Property Rights (IPR) and TWDV of IPRs [section 19B]	No writing down allowance will be given in respect of an 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. In respect of IPRs existing before the amalgamation, the

S/N	Item and specific provisions in ITA	Income tax treatment (for qualifying amalgamations only)
		amalgamated company will be allowed to continue claiming writing down allowance based on the amount claimable by the amalgamating company before the transfer. (*Note: The "purchase method" under FRS 103 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.)
D	**Set-offs**	
1	Unabsorbed tax loss items [sections 23 and 37]	In the case where the surviving company is utilising its own unabsorbed tax loss items (i.e. unabsorbed loss, unabsorbed CA, unabsorbed donation) that arose before the amalgamation, the eligibility of utilisation of these unabsorbed tax loss items by it will continue to be governed by the shareholding test, and additionally, in the case of unabsorbed CA, the business continuity test and in the case of unabsorbed donation, the 5-year carried forward limitation. In the event that a substantial change in shareholding occurs upon amalgamation, the avenue for waiver of shareholding test under sections 23(5) or 37(16) of the ITA is also available for a qualifying amalgamation that is not motivated by tax reasons and undertaken for commercial reasons. The utilisation of unabsorbed tax loss items <u>across entities</u> will be allowed if the amalgamation is undertaken for genuine commercial reasons and is not tax motivated. The following conditions will apply: i. The amalgamating company from which the unabsorbed tax loss items were transferred must be carrying on a trade or business up to the point of amalgamation; ii. The amalgamated company continues to carry on the same trade or business on the date of amalgamation as that of the amalgamating company from which the unabsorbed tax loss items were transferred; and

S/N	**Item and specific provisions in ITA**	**Income tax treatment (for qualifying amalgamations only)**
		iii. The shareholdings test* similar to the requirements under sections 23(4) or 37(12) of the ITA are met. In the event that condition (iii) is not satisfied, the amalgamated company may apply to CIT for a waiver of shareholding test. The unabsorbed tax loss items can only be set-off against income of the amalgamated company from the same trade or business as that of the amalgamating company immediately before the amalgamation. * Where, in applying the shareholding test, the last day of the year in which the losses were incurred or when donations were made by the amalgamating company is later than the date of amalgamation, then the relevant dates for the shareholding test will be the day immediately before the date of amalgamation and the first day of the Year of Assessment ("YA") that the amalgamated company wishes to utilise the losses or donations. Similarly, for the utilisation of CA, if the last day of the YA in which the CA arose is later than date of amalgamation, then the relevant dates for the shareholding test will be the day immediately before the date of amalgamation and the first day of the YA that the amalgamated company wishes to utilise the CA. Please refer to **illustration 2 of Annex B**.
2	Group Relief (GR) [section 37C]	The current year loss items (i.e. current year CA, current year trade losses and current year donations) of an amalgamating company **transferred to an amalgamated company** can only be set-off against income derived by the amalgamated company from the same trade or business carried on by the amalgamating company immediately before the amalgamation subject to sections 34C(23) and (24) of the ITA. Any balance of these current year loss items are not available for GR unless such current year loss items are available under the GR system to a claimant of the

S/N	Item and specific provisions in ITA	Income tax treatment (for qualifying amalgamations only)
		amalgamated company and the claimant would have been an eligible claimant of the amalgamating company had there been no amalgamation. Please refer to **illustration 3 of Annex B**.
3	Carry-back of unutilised current year capital allowances (CA) and losses [section 37E]	A surviving amalgamated company is able to carry-back its unutilised current year CA and trade losses (but not the current year CA and trade losses transferred from an amalgamating company that ceased to exist upon the amalgamation) to set-off against its assessable income subject to the conditions in section 37E. Please refer to **illustration 4 of Annex B**. A newly incorporated amalgamated company cannot carry-back its unutilised current year CA and trade losses to set-off against the assessable income of all the amalgamating companies that have ceased to exist upon an amalgamation.
4	Utilisation of investment allowances (IA), pioneer capital allowances (CA)/ losses after expiry of incentive periods that belong to an amalgamating company that has ceased to exist upon amalgamation	The utilisation of IA, CA and losses in respect of pioneer trade (hereinafter referred to as pioneer CA, losses), that have not been fully utilised by an amalgamating company upon expiry of its incentive period, by an amalgamated company is subject to the following conditions: i. The amalgamating company from which the unutilised IA, pioneer CA or losses were transferred after expiry of the incentive period must be carrying on a trade or business at the point of amalgamation; ii. The amalgamated company continues to carry on the same trade or business on the date of amalgamation as that of the amalgamating company from which the IA, pioneer CA or losses were transferred; and iii. The shareholdings test* similar to the requirements under sections 23(4) or 37(12) of the ITA are met

S/N	Item and specific provisions in ITA	Income tax treatment (for qualifying amalgamations only)
		unless a waiver by the Comptroller is granted. The utilisation of IA, pioneer CA and losses can only be made against the income of the amalgamated company from the same trade or business of the amalgamating company (from which the unutilised tax items were transferred) immediately before the amalgamation. *For utilisation of IA and pioneer CA, the shareholders of the amalgamated company on the first day of the YA in which the IA/ pioneer CA is to be utilised must be substantially the same as the shareholders of the amalgamating company with the IA/ pioneer CA balance on the last day of the year in which the IA/ pioneer CA arose. As for pioneer losses, the shareholders of the amalgamated company on the first day of the YA in which the pioneer losses is to be utilised must be substantially the same as the shareholders of the amalgamating company with the pioneer losses on the last day of the year in which the pioneer losses were incurred. Where, in applying the shareholding test, for the utilisation of IA and CA, if the last day of the YA in which the IA/ CA arose is <u>later</u> than date of amalgamation, then the relevant dates for the shareholding test will be the day immediately before the date of amalgamation and the first day of the YA that the amalgamated company wishes to utilise the IA/ CA. Similarly, if the last day of the year in which the pioneer losses were incurred by the amalgamating company is <u>later</u> than the date of amalgamation, then the relevant dates for the shareholding test will be the day immediately before the date of amalgamation and the first day of the YA that the amalgamated company wishes to utilise the pioneer losses. Please refer to **illustration 5 of Annex B**.

S/N	**Item and specific provisions in ITA**	**Income tax treatment (for qualifying amalgamations only)**
5	Research and Development Allowance (RDA) [section 37G]	<u>Cap on RDA account</u> Any balance in the RDA account of the amalgamating companies will be transferred to the amalgamated company at the point of amalgamation even though combined balance may exceed $450,000. However, no further credits can be made to the RDA account of the amalgamated company until the RDA account falls below $450,000. <u>Base year expenditure of an amalgamated company</u> The base year expenditure will be the combined base expenditure of the amalgamating companies. <u>Transfer of RDA</u> RDA granted in respect of YA *X* is available for setoff in YA *(X+1)*. For example, RDA granted to the amalgamating companies in YA 2010 is available to the amalgamated company for utilisation in YA 2011. Please refer to **illustration 6 of Annex B.**
E	**Incentives**	
1	Tax incentives granted on application (e.g. section 13S, Incentives under the Economic Expansion Incentives (Relief from income tax) Act (EEIA))	The tax incentives granted to an amalgamating company are specific to it and strictly speaking, cannot be enjoyed by an 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. In the case where amalgamation takes place during the incentive period enjoyed by one or more amalgamating companies, the current restrictions under the EEIA and the ITA in respect of the utilisation of unabsorbed CA and losses will continue to apply. For example, in the case of company granted the pioneer incentive, the unabsorbed CA and losses in respect of a pioneer trade during the tax

S/N	Item and specific provisions in ITA	Income tax treatment (for qualifying amalgamations only)
		relief period can only be set-off against the income of the pioneer trade.
2	Tax incentives granted on automatic basis (e.g. sections 13A, 43I, 43K)	The amalgamated company can continue to enjoy the tax incentive or concession as long as it satisfies the conditions specified under the respective provisions for which the tax exemption or concession are given. Where an amalgamating company has previously made an irrevocable election to opt out of the incentive, the amalgamated company will be allowed to make a fresh election on whether it wants to enjoy the incentive or opt out of it at the time of submission of its first tax return after the amalgamation.
F	**Other items**	
1	FRS 39 Tax Treatment	Where all of 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. 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 as it may not be possible for the amalgamated company to know the historical costs and the tax impact of the financial assets/ liabilities of the amalgamating companies that are already on 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 22 to 24 of IRAS' e-Tax Guide "Income Tax Implications arising from the adoption of FRS 39 – Financial Instruments: Recognition & Measurement" first published on 30 December 2005, and amended on 8 March 2006 and 14 August 2009) will be taxed as the income of the amalgamated company, or allowed as a deduction against its income. The 5-year instalment plan may be granted if any of the amalgamating companies that is on the pre-FRS 39 tax treatment is still eligible for the 5-year instalment

S/N	Item and specific provisions in ITA	Income tax treatment (for qualifying amalgamations only)
		plan under the concession given in the e-Tax Guide (Note: The concession is not applicable to amalgamating companies incorporated after 1 January 2005).
2	Income Tax Treatment of Foreign Exchange Gains/ Losses	Where all of the amalgamating companies have opted out of the concession (i.e. foreign exchange gains or losses on revenue account are not taxable or deductible for tax purposes until there is physical conversion of foreign currencies into the functional currency of an entity), the amalgamated company will continue to prepare its tax computation on the same basis (i.e. opted out of the concession) as that of the amalgamating companies. On the other hand, if any of the amalgamating companies has availed itself of the concession , then the tax treatment under the concession shall be applicable to the amalgamated company i.e. the amalgamated company is not allowed to opt out of the concession. This is because, under such circumstances, it may not be possible for the amalgamated company to know the historical rates of transactions of an amalgamating company that has not opted out of the concession. Any foreign exchange gains/ losses arising from adopting the accounting treatment for foreign exchange differences arising from <u>all</u> assets on revenue account for tax purposes will be taxed or allowed in the amalgamated company's hands for the YA relating to the basis period in which the amalgamation took place.
3	Filing of Income Tax Computations and Financial Statements in Functional Currencies other than in Singapore Dollar	Where an amalgamating company has elected to use either the changeover rate or average rate to convert its existing Singapore dollar balances referred to in paragraph 9 of the e-Tax Guide on Filing of Income Tax Computations and Financial Statements in Functional Currencies other than in Singapore Dollar, the same option elected continues to apply in respect of those S$ balances in the amalgamated company's tax computation. In other words, where one amalgamating company has elected the change-over rate basis and another amalgamating has elected the average rate basis for converting their existing Singapore dollar balances, the changeover rate or average rate will apply to the respective existing S$ balances

S/N	Item and specific provisions in ITA	Income tax treatment (for qualifying amalgamations only)
		transferred from the amalgamating companies in the amalgamated company's tax computation until the S$ balances are depleted. For the assets transferred from amalgamating companies to the amalgamated company under section 34C(8) of the ITA (i.e. deemed section 24 election), the exchange rate prevailing on the date of amalgamation/ transfer shall apply. Where there is a change in functional currency from what was previously used by an amalgamating company to the functional currency of the amalgamated company, the foreign exchange gains or losses arising from this change in functional currency will not be taxable or deductible for income tax purposes. Any unabsorbed tax items or prior year income/ expenses transferred from the amalgamating company are to be converted to the foreign currency of the amalgamated company based on the exchange rate on the date of amalgamation.
4	"Qualifying company" for the purposes of various incentives under sections13M (ERIS), 37H (RISE) and 43(6A) (Start - up exemption)	Where the amalgamated company is the surviving company, it will continue to be eligible for the incentives under sections 13M, 37H or 43(6A) subject to the conditions specified under those sections. Where the amalgamated company is a newly incorporated company, then the following tax treatment will apply: i. If all of the amalgamating companies are no longer eligible to qualify for the incentives under sections 13M, 37H or 43(6A), the newly incorporated amalgamated company will similarly not be eligible to enjoy these incentives. ii. If one or more of the amalgamating companies is still eligible to qualify for the incentives under sections 13M, 37H or 43(6A) (if not for the amalgamation), then the qualifying period for the amalgamated company would be determined on the basis of the longest remaining qualifying year(s) of assessment

S/N	Item and specific provisions in ITA	Income tax treatment (for qualifying amalgamations only)
		or period, as the case may be, of any of the amalgamating companies subject to the amalgamated company satisfying the conditions specified under those sections. Please refer to **illustration 7 of Annex B**.
5	Rights and Obligations (e.g. tax payable, tax refunds, submission of returns, etc)	The amalgamated company will have to comply with all obligations, meet all liabilities, and will be entitled to all rights, powers and privileges, of the amalgamating companies (that have ceased to exist) with respect to the YA relating to the basis period in which the amalgamation occurs and all preceding years of assessment as if the amalgamated company is the amalgamating company.

Annex B - Illustrative examples

Illustration 1

Deduction for Renovation and Refurbishment (“R&R”) Expenditure

Company A (“Co A”) amalgamates with Company B (“Co B”) to form a new Company C (“Co C”) on 1.7.2010. Each of the companies accounting year-end is 31 December.

Table (1) below shows the R&R costs incurred by all the companies:

Table (1):

	YA 2009	YA 2010	YA 2011		YA 2012
			(1.1.2010 to 30.6.2010)	(1.7.2010 to 31.12.2010)	
A	15,000	45,000			
B	-	30,000		-	
New C				80,000	120,000

Relevant 3-year periods

The start of the relevant 3-year period for Co C will be YA2009 (i.e. based on the earlier of the two relevant periods of Co A and Co B). The start of Co C’s second relevant 3-year period will be YA 2012.

Qualifying R&R Costs

As the combined R&R costs of Co A and Co B is $90,000 before amalgamation, the qualifying R&R costs for Co C in YA 2011 is $60,000 ($150,000-15,000-45,000-30,000), capped at $150,000.

Co C’s qualifying R&R costs in YA2012 would be $120,000 as it has not exceeded the $150,000 cap for the second relevant 3-year period.

Allowable Deductions

Table (2) below shows the allowable deduction for R&R costs to Co A, Co B and Co C from YA 2009 to YA 2014 (Note 1):

Illustration 1 - continued

Table (2):

	Co A	**Co B**	**Co C**
YA 2009	5,000 (15,000/3)	-	
YA 2010	20,000 (15,000+45,000)/3	10,000 (30,000/3)	
YA 2011 (basis period from 1.1.10 to 30.6.10)	20,000 (15,000+45,000)/3	10,000 (30,000/3)	
YA 2011 (basis period from 1.7.10 to 31.12.10)			20,000 (60,000/3)
YA 2012			85,000 (45,000+30,000+60,000+120,000)/3
YA 2013			60,000 (60,000+120,000)/3
YA 2014			40,000 (120,000/3)
Total R&R deductions	**45,000**	**20,000**	**205,000**

Note 1:
Presume Co A and Co B claim the R&R costs incurred in YA 2010 and YA 2011 over 3 years instead of 1 year allowed for both YAs. And that Co C claims its R&R costs incurred in YA 2012 over 3 years.

Annex B

Illustration 2

Utilisation of Unabsorbed Tax Loss Items Across Entities

Co A, which manufactures mobile phones, amalgamates with Co B on 1.7.2009. Co A is the surviving amalgamated company. Each of the companies accounting year-end is 31 December.

Co B was carrying on the manufacturing of televisions from the date of its incorporation on 1.1.2003 up to 31.12.2006. From 1.1.2007 to the date of amalgamation, Co B carried on the trade of manufacturing mobile phones instead.

Co B's unabsorbed tax loss items as at the date of amalgamation are –

Unabsorbed tax loss items of Co B	$
Unabsorbed losses – year ended 31.12.2005 (from Co B's business of manufacturing televisions)	26,000
Unabsorbed losses – (period from 1.1.2009 to 30.6.2009) (from Co B's business of manufacturing mobile phones)	9,000
Unabsorbed capital allowances - YA 2008	7,000
- YA 2009	3,000
Unabsorbed donations – year ended 31.12.2008	10,000

Co A's adjusted profit (from its business of manufacturing mobile phones), rental income for the year ended 31.12.2009 and capital allowance for YA 2010 are $65,000 $20,000 and $15,000 respectively.

Assume that the shareholding test is met on the relevant dates, Co A's tax computation for YA2010 is as follows –

Co A: Tax Computation for YA 2010

	$	**$**	
Adjusted profit		65,000	Note 1
Less: Unabsorbed capital allowances b/f			
- YA 2008 (Note 2)	(7,000)		
- YA 2009 (Note 3)	(3,000)		
Capital allowance – YA 2010	(15,000)	(25,000)	
		40,000	
Less: Unabsorbed losses - year ended 31.12.05	(26,000)		Note 2
- period ended 30.6.09 (Note 4)	(9,000)	(35,000)	
		5,000	
Less: Unabsorbed donations – year ended 31.12.08		(10,000)	Note 2
Unabsorbed donations c/f		(5,000)	Note 5

<u>Illustration 2 – continued</u>

Rental income / Chargeable income before exemption	20,000
Less: Exempt amount	12,500
Chargeable income after exemption	7,500
Tax @ 17%	$1,275.00

Note 1:
Co A can set-off the unabsorbed tax loss items of Co B only against its income from the same trade as that of Co B immediately before the amalgamation (i.e. manufacturing of mobile phones).

Note 2:
The relevant dates for the purposes of shareholding test would be:
- unabsorbed capital allowance (31.12.2008 and 1.1.2010)
- unabsorbed losses (31.12.2005 and 1.1.2010)
- unabsorbed donations (31.12.2008 and 1.1.2010)

Note 3:
Since the last day of the YA in which the capital allowance arose (i.e. 31.12.2009) is later than the date of amalgamation, the relevant dates for comparison of shareholdings will be 30.6.2009 and 1.1.2010 respectively.

Note 4:
Since the last day of the year in which the loss was incurred (i.e. 31.12.2009) is later than the date of amalgamation, then the relevant dates for comparison would be 30.6.2009 and 1.1.2010 respectively.

Note 5:
The unabsorbed donations is allowed to be set-off against Co A's future profits from the manufacturing of mobile phones subject to conditions in sections 34C(23) and (24) and 5-year carried forward restriction.

Illustration 3

Group Relief

Co A and Co B are wholly-owned subsidiaries of Company D ("Co D"). Each of the companies accounting year-end is 31 December. Co A amalgamates with Co B on 1.7.2009. Co A is the surviving amalgamated company.

Co B's unabsorbed tax loss items for the period from 1.1.09 to 30.6.09 (YA 2010) are:

Unabsorbed tax loss items of Co B		$
Unabsorbed losses -	year-ended 31.12.2008	50,000
-	period ended 30.6.2009	60,000
Unabsorbed donations -	made on 1.1.2009 ($2,000 x 2.5)	5,000

Co A's adjusted profit (from the same trade of Co B immediately before the amalgamation) for the year ended 31.12.2009 and capital allowance for YA 2010 are $65,000 and $50,000 respectively.

Assume that the shareholding test is met on the relevant dates, Co A's tax computation for YA2010 is as follows:

Co A: Tax Computation for YA 2010

	$	
Adjusted profit	65,000	
Less: Capital allowances - YA 2010	(50,000)	
	15,000	
Less: Unabsorbed loss for year ended 31.12.2008	(50,000)	
	(35,000)	
Add: Unabsorbed loss for period ended 30.6.2009	60,000	
Less: Amount transferred to Co D under section 37C	(60,000)	Note 1
Unabsorbed loss for year ended 31.12.2008 c/f	(35,000)	
Current year unabsorbed donations	5,000	
Less: Amount transferred to Co D under section 37C	(5,000)	Note 1
Unabsorbed donations c/f	-	

Note 1:

Co A is allowed to transfer the current year unabsorbed loss and current year unabsorbed donations belonging to Co B to Co D under the group relief system as Co D would have been eligible to claim Co B's loss items had amalgamation not taken place.

Illustration 4

Carry-back Relief

Co A amalgamates with Co B on 1.7.2009. Co A is the surviving amalgamated company. Each of the companies accounting year-end is 31 December.

The unabsorbed tax loss items of Co B transferred to Co A is as follows:

Unabsorbed tax loss items of Co B	$	
Unabsorbed capital allowance – YA 2009	20,000	
Unabsorbed loss for period ended 30.6.2009	5,000	(Note 1)

Co A's capital allowance for YA 2010 is $70,000 and its adjusted profit is $30,000 from the same trade which Co B was carrying on up to the date of amalgamation.

Assume that the shareholding test is met for the purpose of utilising Co B's unabsorbed tax loss items, Co A's tax computation for YA 2010 is as follows:

Co A: Tax computation for YA 2010

	$	
Adjusted profit	30,000	
Less: Unabsorbed capital allowance b/f – YA 2009	(20,000)	
	10,000	
Less: Capital allowance of Co A – YA 2010	(70,000)	
	(60,000)	
Less: Capital allowance carried back to YA 2009	30,000	Note 2
Unabsorbed capital allowance for YA 2010 c/f	(30,000)	
Adjusted loss/ Unabsorbed loss (from Co B) c/f	5,000	Note 3

Note 1:
Co B has no prior year assessable income to offset its unabsorbed current year trade loss under section 37E.

Note 2:
Co A is allowed to carryback its capital allowance for YA 2010 as it is the surviving amalgamated company subject to conditions under section 37E.

Note 3:
Co A cannot carryback the unabsorbed current year trade loss from Co B but it can offset the loss against its future profits from the same trade which Co B was carrying out up to the date of amalgamation.

Illustration 5

Unabsorbed Investment Allowance

Co A amalgamates with Co B on 1.7.2009. Co A is the surviving amalgamated company. Each of the companies accounting year-end is 31 December.

Co B was carrying on manufacturing business from the date of its incorporation on 1.1.2002 to 31.12.2005. From 1.1.2006 to the date of amalgamation Co B carried on a trading business instead. Co B has unabsorbed investment allowances ("IA") of $500,000 at the point of amalgamation which could be traced (using FIFO method) to the IA that arose in YA 2005 amounting to $1,000,000.

If Co A wishes to avail itself of Co B's unabsorbed IA in YA 2010, it must satisfy the following conditions:

(a) Co B must be carrying on a trade or business up to the date of amalgamation;
(b) Co A must continue to carry on Co B's trading business from the date of amalgamation;
(c) The ultimate shareholders of Co A on the 1.1.2010 are substantially the same as the ultimate shareholders of Co B on 31.12.2005

The unabsorbed IA of $500,000 transferred from Co B can only be set-off against Co A's income from its trading business and not against Co A's income from other business or Co A's other sources of income.

Illustration 6

Research and Development Tax Allowance ("RDA")

Co A amalgamates with Co B to form a new entity, Co C on 1.7.2010. The accounting year end of Co A, Co B and Co C is 31 December. The base year of Co A and Co B is the basis period for YA 2008 and their base year expenditures are $300,000 and $100,000 respectively. The balances standing in the R&D accounts of Co A and Co B are $300,000 each before the amalgamation.

R&D accounts of Co A and Co B for YA 2011

	Co A $	Co B $
R&D tax allowance b/f		
- YA 2009	150,000	150,000
- YA 2010	150,000	75,000
	300,000	225,000
Less: R&D tax allowance utilised in YA 2011	-	25,000
	300,000	200,000
Add: Current year R&D allowance (Note 1)	-	100,000
R&D tax allowance c/f	300,000	300,000

Co C incurred qualifying R&D expenditure in the basis period of YA 2011 amounting to $500,000 and its adjusted profit for that YA is $450,000. The qualifying incremental R&D expenditure and tax computation of Co C for YA 2011 is as follows:

	$
Qualifying R&D expenditure incurred in basis period for YA 2011	500,000
Less: Qualifying R&D expenditure incurred in base year (300,000+100,000)	400,000
Qualifying incremental R&D expenditure	100,000

Co C: Tax Computation for YA 2011

	$
Adjusted profit	450,000
Less: R&D tax allowance utilised	(100,000)
Chargeable income before exempt amount	350,000
Less: Exempt amount	(152,500)
Chargeable income after exempt amount	197,500

Annex B

Illustration 6 – continued

R&D account of Co C

	$
R&D tax allowance transferred in (300,000+300,000)	600,000
Less: R&D tax allowance utilised	(100,000)
Add: Current year R&D tax allowance (Note 2)	-
R&D tax allowance c/f	500,000

Note 1:
Co B's current year R&D allowance of $100,000 is available for utilisation only in YA 2012.

Note 2:
No further RDA can be credited to the R&D account of amalgamated entity Co C as the amount standing to that account already exceeds the cap of $450,000.

Illustration 7

Start-up exemption

Co A amalgamates with Co B to form a new entity, Co C on 1.7.2009. The accounting year end of Co A, Co B and Co C is 31 December. Co A and Co B are newly incorporated companies with incorporation date on 2.3.2008 and 15.1.2009 respectively. The first 2 YAs before amalgamation for Co A and Co B would be:

Co A

YA	Basis Period
1st YA – YA 2009	2.3.2008 to 31.12.2008
2nd YA – YA 2010	1.1.2009 to 30.6.2009

Co B

YA	Basis Period
1st YA – YA 2010	15.1.2009 to 30.6.2009

Had the amalgamation of Co A and Co B not taken place, Co A would be eligible for tax exemption under section 43(6A) for one more YA and Co B would be similarly eligible for two more YAs. Co C would qualify for tax exemption under section 43(6A) based on the longest remaining qualifying year(s) of assessment of any of the amalgamating company (i.e. Co B's remaining qualifying YAs) provided it meets the conditions of section 43(6A). Therefore, Co C has two YAs to be eligible for tax exemption under section 43(6A).

Co C

YA	Basis Period
YA 2010	*1.7.2009 to 31.12.2009
YA 2011	1.1.2010 to 31.12.2010

* date of amalgamation

Annex C - Form for Companies for Qualifying Amalgamations under Section 34C of the Income Tax Act ("ITA")

Note:
- This Form may take you 10 minutes to complete.
- Please get ready particulars of the amalgamated and amalgamating companies to complete the Form.
- Under section 34C(4), the election has to be made by the amalgamated company.

Part 1 – Particulars of companies

Name of amalgamated company: ______________________________

Tax Reference No.: ______________________________

Date of amalgamation: ______________________________

Name of amalgamating companies (please provide a separate list of companies if there are more than 3 companies):

	Company Name		
1.	______________________	Tax Ref. No.	
2.	______________________	Tax Ref. No.	
3.	______________________	Tax Ref. No.	

Part 2 – Details of amalgamation

State briefly the purpose for carrying out the amalgamation

____

____

____

Part 3 – Election

We elect for section 34C in respect of qualifying amalgamation to apply to the amalgamated company and all the amalgamating companies. A copy of the notice of amalgamation under section 215F of the Companies Act / certificate of approval under section 14A of the Banking Act / court order * is attached.

We accept that the election is irrevocable.

* delete where applicable

Part 4 – Option in respect of trading stocks (Tick the appropriate box)

We opt for the value of the consideration given by the amalgamated company to the amalgamating companies for the trading stocks taken over to be at:

☐ net book value[1]

☐ fair value[2]

We accept that the option is irrevocable.

---

[1] Refer to section 34C(11) of ITA
[2] Refer to section 34C(12) of ITA

Annex C - Form for Companies for Qualifying Amalgamations under Section 34C of the Income Tax Act ("ITA")

Part 5 – Documents submitted (Tick where applicable)
We enclose the following documents together with the election made under section 34C(4) of the ITA: ☐ A copy of the amalgamation proposal ☐ A list of the investment assets[3] taken over by the amalgamated company ☐ Finalised set of accounts and tax computation(s) of all the amalgamating companies that ceased to exist, for the current year of assessment and the year of assessment relating to the basis period in which the date of amalgamation falls, and all other outstanding returns of these companies
Full name and signature of person making the election: __________ Capacity of person making the election: __________ Date of election: __________ Contact number: __________

[3] Please refer to paragraph 15 of the e-Tax Guide

Annex D - Summary of GST implications

The GST implications below are applicable insofar as the companies involved:
(i) Are registered or liable to be registered for GST; and
(ii) Have elected for the new income tax framework under section 34C(4) of the ITA where a notice of amalgamation under section 215F of the Companies Act or the certificate of approval under section 14A of the Banking Act is issued on or after 22 January 2009.

For all other forms of transfers or amalgamations including those that are approved by the Minister of Finance under section 34C(2)(b) of the ITA, the prevailing GST rules will apply.

S/N	GST Issue	GST Implications
1	Transfer of business as a going concern ("TOGC")	Under a new administrative concession, the amalgamation will automatically qualify as a TOGC, except in the case where the amalgamated company is or will be a member of a GST group. For the latter, it will have to self-assess whether the prevailing conditions set out in the GST (Excluded Transactions) Order can be satisfied.
2	GST registration/ deregistration	GST registration status is non-transferable. Hence, the prevailing rules for GST registration will continue to apply. Where the amalgamated company is already GST-registered prior to the amalgamation, its GST registration number will be retained after the amalgamation has taken place. The GST registration status of the amalgamating company that ceased to exist on the date of amalgamation will have to be terminated.
3	GST group registration/ deregistration	GST group registration status is non-transferable. Hence, the prevailing rules for GST group registration will continue to apply. Where the amalgamated company is already part of a GST group prior to the amalgamation, it will have to review its eligibility for group registration upon the amalgamation and apply for withdrawal if it can no longer satisfy the eligibility conditions (e.g. control requirements) after the amalgamation. The amalgamating company that ceases to exist on the date of amalgamation will have to be deregistered from its GST group.

Annex D

S/N	GST Issue	GST Implications
4	Major Exporter Scheme (MES)	MES status is non-transferable. Hence, the prevailing rules for MES will continue to apply. Where the amalgamated company has already obtained MES status prior to the amalgamation, it will have to review its eligibility for MES upon the amalgamation and notify the Comptroller if it can no longer satisfy the MES conditions (e.g. value of zero-rated supplies drops below MES requirements). For such cases, the Comptroller may terminate the MES status of the amalgamated company or impose additional conditions, for the protection of revenue. For an amalgamating company that ceases to exist on the date of amalgamation, its MES status will be terminated on that day.
5	GST liabilities, obligations and entitlements	All GST liabilities, obligations and entitlements (including GST returns, payments, penalties and refunds) due to the amalgamating company will be automatically transferred to and assumed by the amalgamated company on the date of amalgamation. <u>Bad debt relief</u> Amalgamated company is entitled to claim bad debt relief on supplies previously made by the amalgamating company, provided that other conditions in Regulation 83 are satisfied. <u>Repayment of input tax previously claimed by amalgamating company</u> Amalgamated company is liable under Section 19(12) of the GST Act, to repay input tax that has been previously claimed by the amalgamating companies if no actual payments were made to the suppliers within 12 months from the respective due dates.
6	Transitional rules	<u>(A) Issuance of tax invoices</u> Amalgamated company is allowed to issue tax invoices and credit notes for supplies that have been made by the amalgamating company prior to amalgamation. <u>(B) Input tax claims</u> Amalgamated company is allowed to claim input tax based on tax invoices/ import permits issued to amalgamating company for purchases and imports that have been made prior to amalgamation, subject to the other input tax conditions in Sections 19 and 20 of the GST Act