Inland Revenue
Te Tari Taake

INTERPRETATION STATEMENT | PUTANGA WHAKAMĀORI

Income tax and GST – Amalgamations

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IS 25/10

This interpretation statement provides guidance on the tax treatment of company amalgamations.

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

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Key terms | Kīanga tau tāpua

Amalgamation	An amalgamation that occurs under Part 13 or 15 of the Companies Act 1993 (or under a foreign law that has the same or similar effect to Part 13 or 15) that causes two or more companies to amalgamate and continue as one company. Includes certain transfers between building societies under s 33 of the Building Societies Act 1965.
Amalgamating company	A company that amalgamates with one or more other companies under an amalgamation. Generally, it includes both the continuing company and any company that ceases to exist after the amalgamation. However, in this statement, unless otherwise specified, **amalgamating**

	company means only the company that ceases to exist after an amalgamation.
Amalgamated company	The company that continues or survives after an amalgamation or a new company (ie, the continuing company).
Concessionary amalgamation	An amalgamation that is a "resident's restricted amalgamation" (as defined in s FO 3 the Act) and receives concessionary tax treatment under subpart FO.
Non-concessionary amalgamation	An amalgamation either that does not meet the criteria for a concessionary amalgamation or that the companies elect not to treat as a concessionary amalgamation.

Summary | Whakarāpopoto

1. This interpretation statement provides guidance on the income tax and GST treatment of amalgamations. It does not address the tax treatment of losses on amalgamation or how an amalgamated company calculates its available subscribed capital. The following items consider those matters:
   - IS 25/09: **Tax treatment of losses on amalgamation**; and
   - QB 25/06: **How does an amalgamated company calculate its available subscribed capital following an amalgamation?**
2. The amalgamation rules provide the income tax consequences when companies amalgamate. Subpart FO contains most of the amalgamation rules.
3. The amalgamation rules generally provide tax concessions when an amalgamation is a concessionary amalgamation. The amalgamation rules may also apply to amalgamations that do not fit the criteria for a concessionary amalgamation (non-concessionary amalgamation).
4. This statement will indicate where tax treatment differs between concessionary amalgamations and non-concessionary amalgamations.
5. Table | Tūtohi 1 summarises the provisions in subpart FO for amalgamations. It also identifies the starting paragraph where each provision is discussed in more detail in this statement.

6. Other provisions also apply to amalgamations. This statement considers those provisions under the heading "Other matters" (including matters such as dividends, provisional tax and imputation credit accounts) from [97], FBT from [124], GST from [130] and administrative matters from [143].

Table | Tūtohi 1 - Summary of amalgamations provisions in subpart FO

Section	Subject covered	Comment	Application
FO 4	Rights and obligations of amalgamated companies (see from [20])	Amalgamated company assumes rights, obligations and liabilities of amalgamating companies	All amalgamations
FO 5	Remitted liabilities (see from [26])	No income arises to an amalgamating company merely because the amalgamated company succeeds to the unpaid liabilities of an amalgamating company	All amalgamations
FO 6	Cancellation of shares (see from [30])	Amalgamating company disposes of shares in another amalgamating company at cost	All amalgamations
FO 7	Income derived after amalgamation (see from [36])	Income of amalgamated company	All amalgamations
FO 8	Bad debts and expenditure or loss (see from [38])	Amalgamated company entitled to deductions for pre-amalgamation activities	Concessionary amalgamation
FO 9	Unexpired portion of prepaid expenditure (see from [42])	Allocate up to amalgamation date	All amalgamations
FO 10	Property passing (see from [44])	Default rule – amalgamated company steps into shoes of	Concessionary amalgamation

Section	Subject covered	Comment	Application
		amalgamating company and inherits historical cost Broadly, the rule applies to depreciable property and revenue account property of both amalgamating and amalgamated companies Trading stock of both companies – disposal on amalgamation at tax book value Revenue account property of amalgamating company but capital property of amalgamated company – disposal on amalgamation at market value Financial arrangements – special rules	
FO 11	Property passing (see from [60])	Disposal on amalgamation at market value Limit on depreciation cost base if associated persons	Non-concessionary amalgamation
FO 12–14	Transfer of third-party financial arrangements	Default rule: No base price adjustment (BPA) – amalgamated company steps into the shoes of the amalgamating company (s FO 12; see from [70]) Does not meet default rule and does not change spreading method: BPA on disposal – but fair and reasonable allocation (s FO 13; see from [75])	Concessionary amalgamation

Section	Subject covered	Comment	Application
		Does not meet default rule and changes spreading method: BPA on disposal at market value (s FO 14; see from [80])	
FO 15	Transfer of financial arrangements (see from [82]	Market price for assuming obligation under financial arrangement	Non-concessionary amalgamation
FO 16	Amortising property (see from [48])	Amalgamated company steps into shoes of amalgamating company – supplements s FO 10	Concessionary amalgamation
FO 17	Land (see from [53])	Different rules apply to land that is: ▪ held on capital account; ▪ held on revenue account; or ▪ subject to bright-line or 10-year rule	Concessionary amalgamation
FO 18	Financial arrangements between amalgamating companies (see from [84])	Disposal at face value if borrower able to repay financial arrangement Disposal at market value if borrower unable to repay financial arrangement	Concessionary amalgamation

Company amalgamations – general overview

7. Broadly, the Companies Act 1993 (CA 1993) allows two or more companies to amalgamate and continue as one company. That company may be one of the amalgamating companies or a new company.

8. The CA 1993 provides that an amalgamated company succeeds to all the property, rights, powers and privileges of each amalgamating company. It also assumes all of their liabilities and obligations.

9. Amalgamations may be either long form or short form under part 13 of the CA 1993:

   - The long-form amalgamation procedure is in ss 220 and 221 of the CA 1993. A long-form amalgamation is commonly used when companies are unrelated.
   - The short-form amalgamation procedure is in s 222 of the CA 1993.

10. Amalgamations may also occur under part 15 of the CA 1993 for court-approved amalgamations and amalgamations involving a code company (broadly, certain companies that have financial products).

Income tax consequences of an amalgamation – general concepts

11. Subpart FO sets out the income tax consequences for when companies amalgamate. Most amalgamations that are subject to subpart FO will be amalgamations that occur under part 13 of the CA 1993. Section 225(a) of the CA 1993 provides that the amalgamation is effective on the date shown in a certificate of amalgamation.

12. However, "amalgamation" in s YA 1 also includes:

   - amalgamations that occur under a foreign law that has an effect that is the same as or similar to part 13 or part 15 of the CA 1993 and causes two or more companies to amalgamate and continue as one company; and
   - a transfer by a building society of all of its engagements to another building society under s 33 of the Building Societies Act 1965 if certain requirements are met.

Concessionary amalgamation

13. Generally, subpart FO provides tax concessions when a concessionary amalgamation occurs (s FO 1).

14. The broad principles of a concessionary amalgamation are:

   - the amalgamated company acquires most assets of the amalgamating companies at their tax book value;
   - the amalgamated company inherits the tax losses and imputation credits of the amalgamating companies if continuity and commonality tests are met; and
   - the amalgamating companies do not derive income or incur a loss.

15. To be a concessionary amalgamation, each of the amalgamating companies and the amalgamated company must, at the time of the amalgamation:

    - be New Zealand resident; and
    - not:
        - be treated as resident in another country under a double tax agreement; or
        - derive only exempt income (unless the exempt income is dividends from a foreign company (s CW 9) or dividends between wholly-owned group members (s CW 10)).

16. If the amalgamated company is a qualifying company (a regime which is being phased out) immediately after the amalgamation, each of the amalgamating companies must also be a qualifying company at the time of the amalgamation. However, a qualifying company can amalgamate into an amalgamated company that is not a qualifying company.[1]

17. Section HF 3(2)(a) provides that a Māori authority must not amalgamate with a company that is not a Māori authority.

18. Companies can choose not to treat the amalgamation as a concessionary amalgamation by notifying the Commissioner under s 75 of the Tax Administration Act 1994 (TAA). For example, the companies may want the assets of the amalgamating companies to transfer to the amalgamated company at market value. Section 75 of the TAA is discussed further at [143].

19. The provisions in subpart FO may apply to all amalgamations, to concessionary amalgamations only or to non-concessionary amalgamations only (depending on the context).

Rights and obligations of amalgamated companies

20. Several amalgamation provisions in the Act refer to an amalgamating company "ending its existence" on amalgamation. This wording refers to an amalgamating company ceasing to exist as a separate entity, because it is removed from the register of companies under the CA 1993.

21. However, the rights and obligations of the amalgamating company continue to exist in the form of the amalgamated company for income tax purposes. For example, an

[1] See s HA 23 for the treatment of tax losses on amalgamation where a company that is not a qualifying company amalgamates with a qualifying company and ends its existence on the amalgamation.

amalgamated company could rely on a ruling previously issued to an amalgamating company.[2]

22. When an amalgamating company ceases to exist on amalgamation, for the income year of the amalgamation and all earlier income years (s FO 4) the amalgamated company:

- must comply with the obligations of the amalgamating company under the Inland Revenue Acts;
- must meet the liabilities of the amalgamating company under the Inland Revenue Acts; and
- is entitled to the rights, powers and privileges of the amalgamating company under the Inland Revenue Acts.

23. These obligations and entitlements are mirrored in s 76 of the TAA. Section 76 is discussed from [145].

24. An amalgamated company notifies the Commissioner of an amalgamation by filing a **Declaration of an amalgamation – IR 432**.

25. The amalgamation rules set out in the following sections explain the specific tax consequences when companies amalgamate.

Remitted liabilities (s FO 5)

26. On amalgamation, the amalgamated company assumes all the liabilities and obligations of each amalgamating company.

27. No income arises merely because the amalgamated company assumes the liabilities of an amalgamating company (s FO 5). This is because the amalgamated company will be responsible for paying the liabilities. Different rules apply where the liability is a financial arrangement (discussed at [67]).

28. Section FO 5 also modifies the effect of s CG 2C (remitted amounts). Section CG 2C provides that income arises to a profit company if:

- the profit company has received the benefit of a loss from a loss company;
- the loss company's liability for the loss is remitted or cancelled; and
- the loss company is removed from the register of companies.

29. If an amalgamating company incurred deductible expenditure that it was liable to pay and that was offset as losses to another group company, the amalgamated company is treated as if it were the amalgamating company from the amalgamation date until the

[2] See IS0081: **The impact of company amalgamations on binding rulings**.

liabilities are met. This treatment prevents group companies from avoiding the effect of s CG 2C by amalgamating the two companies and liquidating the amalgamated company.[3]

Cancellation of shares (s FO 6)

30. Part 13 of the CA 1993 provides when shares of an amalgamating company must be cancelled without payment or other consideration.[4]

31. Any shares an amalgamating company or amalgamated company (A Co) holds in another amalgamating company (B Co) that are cancelled on amalgamation are deemed to be disposed of at cost immediately before the amalgamation (s FO 6). This means no taxable gain or loss arises for A Co from the cancellation of B Co's shares.

32. Example | Tauira 1 illustrates a situation where shares an amalgamated company holds in an amalgamating company are cancelled on amalgamation.

Example | Tauira 1 – Cancellation of shares at cost

B Co has issued 100 shares at $1 per share. A Co holds 20 of B Co's shares on capital account.

A Co and B Co amalgamate. A Co continues as the amalgamated company.

Under the amalgamation the shares in B Co that A Co holds, are cancelled without payment or other consideration.

A Co is deemed to dispose of its 20 shares in B Co for $20 (the cost of the shares).

A Co has no gain or loss on disposal of the shares.

33. The outcome in Example | Tauira 1 would be the same if A Co held the B Co shares on revenue account. Section FO 6, because it is a specific provision for amalgamations, overrides any general market value disposal rules, such as s GC 1 (disposals of trading stock at below market value).

34. All shares in an amalgamating company that ceases to exist on amalgamation also cease to exist. As discussed at [31], s FO 6 applies to shares in an amalgamating company held by another amalgamating company or the amalgamated company. No specific rule in the amalgamation rules discusses the tax treatment where other

[3] Section FO 5(2).

[4] Sections 220(3), 222(1)(b)(i) and 222(2)(b)(i) of the CA 1993.

shareholders hold shares in an amalgamating company. In that situation the tax treatment will be determined based on the general provisions of the Act.

35. The CA 1993 provides some flexibility as to how amalgamations occur. For example, shares in the amalgamating company that are not required to be cancelled might convert to shares in the amalgamated company, or they might be cancelled (and new shares issued), or the shareholder might exit for cash. How the general provisions of the Act apply will depend on the particular facts.

Income derived after amalgamation (s FO 7)

36. If an amalgamated company derives an amount after the amalgamation because of the actions of an amalgamating company, the amount is income of the amalgamated company where it would have been income of the amalgamating company but for the amalgamation (s FO 7). The amount is income of the amalgamated company in the income year that it is derived.[5]

37. Example | Tauira 2 illustrates a situation where an amalgamated company derives income as a result of an amalgamating company's pre-amalgamation actions.

Example | Tauira 2 – Income derived as a result of an amalgamating company's actions before amalgamation

B Co (a furniture-making business) has partially manufactured furniture for a client when it amalgamates with A Co. A Co continues as the amalgamated company. When A Co invoices the client for the furniture after it is completed, the amount derived is income of A Co.

Bad debts and expenditure or loss (s FO 8)

38. An amalgamated company is entitled to a deduction for any debts acquired from an amalgamating company that it writes off as bad or for any expenditure or loss that it incurs as a result of the activities of an amalgamating company before the amalgamation (s FO 8) if all of the following requirements are met:

- The amalgamation is a concessionary amalgamation.
- A deduction would have been available to the amalgamating company if it had continued to exist.
- A deduction is not otherwise available to the amalgamated company.

[5] Section CV 4.

39. Example | Tauira 3 illustrates an amalgamated company that can claim a deduction for the debt of an amalgamating company that the amalgamated company writes off after amalgamation.

Example | Tauira 3 – Amalgamated company writes off amalgamating company's debt after amalgamation

B Co from Example | Tauira 2 invoiced a customer for furniture it sold before the amalgamation. The invoice was unpaid at the date of amalgamation.

Following the amalgamation, A Co writes the debt off as a bad debt.[6]

A Co can claim a deduction for the amount of the bad debt it wrote off.

40. Example | Tauira 4 illustrates a situation where an amalgamated company incurs deductible expenditure as a result of an amalgamating company's pre-amalgamation activities.

Example | Tauira 4 – Expenditure an amalgamated company incurs from an amalgamating company's activities before amalgamation

B Co from Example | Tauira 2 and Example | Tauira 3 ordered materials for making furniture before the amalgamation. B Co had not received delivery of the materials or received an invoice for the materials at the date of amalgamation.

The manufacturer invoices A Co on delivery of the materials. A Co can claim a deduction for the expenditure it incurred on the materials.

41. Section FO 8 applies only where the amalgamation is a concessionary amalgamation. If an amalgamation is not a concessionary amalgamation, the ordinary tax rules will apply:

- Acquired debts may be capital (non-deductible) or revenue (deductible) in nature, depending on the circumstances.
- Whether it is possible to deduct other expenditure an amalgamated company incurs for an amalgamating company's pre-amalgamation activities depends on the circumstances.

[6] For guidance on when a debt is bad and which actions are sufficient to write off a debt as bad, see BR PUB 18/07: **Income Tax and Goods and Services Tax – Writing off debts as bad**.

Unexpired portion of prepaid expenditure (s FO 9)

42. An amalgamating company must include as income any unexpired portion of prepaid expenditure in its final tax return prepared for the company to the date of amalgamation. The unexpired portion of the amalgamating company's expenditure for the income year of amalgamation is treated as the amalgamated company's unexpired amount of the expenditure (s FO 9).[7] The outcome of this treatment is that the amalgamated company can deduct the unexpired portion of the expenditure (as at the amalgamation date) in the year of amalgamation and must add back as income any unexpired portion of the expenditure at year end.

43. Example | Tauira 5 illustrates how s FO 9 applies where an amalgamating company has an unexpired portion of prepaid expenditure at the date of amalgamation.

Example | Tauira 5 – Prepaid expenditure of an amalgamating company

B Co advertises in a furniture magazine. On 1 April 2023, B Co prepays $60,000 for its advertising for the 2024 income year ($5,000 per month).

B Co and A Co (both of which have a standard 31 March balance date) amalgamate on 31 December 2023. A Co continues as the amalgamated company.

B Co must include the unexpired portion of the expenditure as income in its final tax return for the period 1 April 2023 to 31 December 2023 (which consists of the amounts prepaid for January, February and March 2024, ie, 3 × $5,000 = $15,000). B Co has a net deduction of $45,000.

A Co can claim a deduction for the $15,000 in its tax return for the period 1 April 2023 to 31 March 2024 (ie, the total of the amounts prepaid for January, February and March 2024).

Property passing on amalgamation (s FO 10)

Concessionary amalgamation – general rule for property passing

44. The general rule for property (excluding financial arrangements) that passes on a concessionary amalgamation is as follows:

[7] Taxpayers should also consider whether Determination E12 – Persons excused from complying with section EA 3 of the Income Tax Act 2007 may apply.

- The passing of ownership of the property on amalgamation is treated as a disposal of the property by the amalgamating company and an acquisition by the amalgamated company (s FO 10(3)).
- The amalgamating company is deemed to have disposed of its property to the amalgamated company immediately before the amalgamation (s FO 10(3)).
- The amalgamated company is treated as having acquired the property on the date the amalgamating company acquired the property for the sum of (s FO 10(4)):
  - the original purchase price; plus
  - any expenditure incurred in purchasing or improving the property; plus
  - any expenditure incurred in securing or improving the amalgamating company's legal rights to the property.

45. Broadly, the general rule has two effects:
    - The amalgamating company will not derive income or incur a loss from the disposal.
    - The cost base of the property is rolled over to the amalgamated company (ie, the amalgamated company 'steps into the shoes' of the amalgamating company).
46. The general rule will most often apply to depreciable property. Some modifications to the general rule apply to amortising property (which includes depreciable property) (discussed from [48]) and land (discussed from [53]).
47. Different rules apply to the disposal of property that is trading stock of both companies (discussed at [55]) and to the disposal of revenue account property (if the property is revenue account property of the amalgamating company but not revenue account property of the amalgamated company) (discussed from [56]).

Amortising property (s FO 16)

48. On a concessionary amalgamation, the following modified rules apply:
    - The amalgamating company will not derive any depreciation recovery income or incur a loss on disposal as a result of the deemed disposal (s FO 16(1B)).
    - The amalgamated company is deemed to have been allowed the depreciation or amortisation deductions taken by the amalgamating company (s FO 16(4)).
    - The amalgamating company is allowed a depreciation deduction for the property transferred to the amalgamated company for the period beginning on the first day of the income year of amalgamation and ending on the day before the date of amalgamation (s FO 10(7) and s DV 15(3)).

- The amalgamated company is allowed a depreciation deduction for the property from the amalgamation date to the end of the relevant income year.

49. Example | Tauira 6 illustrates the tax outcome when depreciable property passes from an amalgamating company to an amalgamated company on a concessionary amalgamation.

Example | Tauira 6 – Passing of depreciable property on a concessionary amalgamation

A Co and B Co amalgamate on 1 April 2024. A Co continues as the amalgamated company. The amalgamation is a concessionary amalgamation.

Both companies have a 30 June balance date.

B Co owned the following depreciable assets before the amalgamation:

Asset	Cost	Date acquired	Dep rate (DV)	Closing tax book value at 30 June 2023	Depreciation deduction 2024		
					Full year	9/12 B Co	3/12 A Co
Motor vehicle	$25,000	1 July 2020	30%	$8,575	$2,572	$1,929	$643
Laptop	$2,800	31 March 2022	50%	$1,166	$583	$437	$146

On amalgamation, the tax outcome is as follows:

- A Co is deemed to have acquired the motor vehicle and laptop from B Co on the same date as B Co acquired them (1 July 2020 for the motor vehicle and 31 March 2022 for the laptop) and for the same cost ($25,000 for the motor vehicle and $2,800 for the laptop).
- B Co has no depreciation recovery income or depreciation loss on the deemed disposal on the motor vehicle and laptop.
- B Co can claim a depreciation deduction for the assets for the 9-month period beginning on 1 July 2023 (the beginning of its income year) and ending on 31 March 2024 (the day before the amalgamation) of $1,929 for the motor vehicle and $437 for the laptop.

- A Co can claim a depreciation deduction for the assets for the 3-month period from 1 April 2024 to 30 June 2024 of $643 for the motor vehicle and $146 for the laptop.

Pool property

50. Different rules apply to depreciable property that is subject to the pool method. Broadly, under the pool method, the following rules apply:

- The taxpayer elects that a collection of low-value assets is treated as one asset and depreciated at the lowest diminishing value rate applicable to the assets in the pool.
- When a pooled asset is disposed of, the sale proceeds are deducted from the adjusted tax value of the pool. If the sale proceeds:
  - are more than the adjusted tax value of the pool, the difference is income; or
  - are less than the adjusted tax value of the pool, the difference is deductible.
- Once assets are pooled, they are no longer treated as individual assets, so any capital gain made on the sale of any or all assets from the pool cannot be separated from depreciation recovered. The entire proceeds of any sale of pooled assets must be accounted for and any gains are taxable income.

51. If the depreciable property passing on amalgamation:

- forms the **whole** of the pool property of the amalgamating company, no income or loss arises to the amalgamating company, because the disposal is deemed to occur at the pool's adjusted tax value; or
- forms **part** of the pool property of the amalgamating company, no income or loss arises to the amalgamating company, because the disposal is deemed to occur at either market value or the adjusted tax value of the pool, whichever is lower.

52. Example | Tauira 7 illustrates a situation where depreciable property that is subject to the pool method passes from an amalgamating company to an amalgamated company on a concessionary amalgamation.

Example | Tauira 7 – Passing of pool property on a concessionary amalgamation

A Co and B Co amalgamate on 1 January 2024. A Co continues as the amalgamated company. The amalgamation is a concessionary amalgamation.

Both companies have a 31 March balance date.

B Co pooled its depreciable property. The adjusted tax value of the pool was $500,000 on 31 December 2023. The entire pool passes to A Co on amalgamation.

B Co claims depreciation on the pool for the period 1 April 2023 to 31 December 2023. Also, B Co has no income or loss on the disposal of its pool property ($500,000 less $500,000).

The adjusted tax value of the pool property to A Co is $500,000. A Co claims depreciation on the pool for the period 1 January 2024 to 31 March 2024.

Land (ss FO 10 and FO 17)

53. In general, land passes from an amalgamating company to the amalgamated company on a concessionary amalgamation at cost or market value. Whether land passes at cost or market value depends on how the amalgamating company and amalgamated company hold the land.

54. Table | Tūtohi 2 summarises when land passes at cost and when it passes at market value. In this table, any reference to "bright-line or 10-year rule" means the 2-year bright-line test under s CB 6A, or the 10-year rule for land under any of ss CB 9 to CB 11 and s CB 14.

Table | Tūtohi 2 - Passing of land on a concessionary amalgamation

Amalgamating company (B Co)	Amalgamated company (A Co)	Outcome	Section
Land held on capital account	Land held on capital account	A Co inherits B Co's cost and acquisition date No income or loss arises to B Co	FO 10(4)
Land held on capital account	Land held on revenue account	B Co disposes of land on amalgamation at market value A Co acquires land on amalgamation at market value	FO 17(2)(a)
Land held on revenue account (excluding bright-	Land held on capital account	B Co disposes of land on amalgamation at market value A Co acquires land on amalgamation at market value	FO 10(6)

Amalgamating company (B Co)	Amalgamated company (A Co)	Outcome	Section
line or 10-year rule)			
Land held on revenue account (excluding bright-line or 10-year rule)	Land held on revenue account (excluding bright-line or 10-year rule)	A Co inherits B Co's cost and acquisition date No income or loss arises to B Co	FO 10(4)
Land held on revenue account (excluding bright-line or 10-year rule)	Bright-line or 10-year rule may apply from amalgamation date	B Co disposes of land on amalgamation at market value A Co acquires land on amalgamation at market value	FO 17(2)(b)
Land held on revenue account because of bright-line or 10-year rule	Bright-line or 10-year rule may apply from date when B Co acquired land	A Co inherits B Co's cost and acquisition date No income or loss arises to B Co A Co taxable on any gain if sells within bright-line or 10-year rule from date B Co acquired land	FO 10(4) FO 17(3)

Trading stock

55. If the property is trading stock for both the amalgamating company and the amalgamated company, the consideration for the disposal and acquisition is the value of the trading stock to the amalgamating company determined under subpart EB at the time of amalgamation. This means no gain or loss should arise on the deemed disposal of the trading stock.

Revenue account property

56. Broadly, property is revenue account property if it is trading stock or property where a taxable gain or deductible loss arises when sold. Conversely, property is capital account property if the sale of the property results in a non-taxable, non-deductible capital gain or loss.

57. Property that is revenue account property of the amalgamating company, but capital account property of the amalgamated company is treated as disposed of and acquired at the property's market value at the time of the amalgamation under s FO 10(6).

58. Section FO 10(6) does not apply to land that is revenue account property of the amalgamating company merely because of the bright-line test or the 10-year rule in the land provisions.

59. Section FO 10(6) ensures that any unrealised gains are income when an asset moves out of the tax base on amalgamation (ie, it moves from being held on revenue to capital account).

Non-concessionary amalgamation – property passing (s FO 11)

60. Under a non-concessionary amalgamation, property of an amalgamating company is deemed to pass to the amalgamated company on amalgamation at market value (s FO 11(1)). This means the amalgamating company may derive income or incur a loss. "Property" is something capable of being owned and transferred and includes, for example, trading stock, revenue account property, land and fixed assets.

61. Section EE 41 modifies this rule for depreciable property where the amalgamating company and amalgamated company are associated persons at the time of amalgamation. Broadly, s EE 41 prevents associated companies from using the amalgamation rules to increase depreciation deductions by transferring depreciable assets that have a market value greater than cost.

62. Most often, the cost of the property for the amalgamated company for depreciation purposes is the lesser of the following two amounts under s EE 41:

- the market value of the property at the time the amalgamated company acquired it; and
- the cost of the item to the amalgamating company.

63. Different rules apply where the depreciable property was not always used for the purpose of deriving assessable income and was later brought into the tax base.[8]

64. Despite s EE 41, the cost of the item to the amalgamated company may be used if:

- the property is not depreciable intangible property (eg, software) and the Commissioner approves the cost; or

[8] See EE 41(2)(a).

- the amalgamating company derives income from the transfer of the property to the amalgamated company (other than as depreciation recovery income).

65. The amalgamated company cannot depreciate the property at a higher depreciation rate than the rate that the amalgamating company used.[9]

66. Example | Tauira 8 illustrates how s FO 11 applies to the passing of depreciable property between associated persons on a non-concessionary amalgamation.

Example | Tauira 8 – Passing of depreciable property between associated persons on a non-concessionary amalgamation

B Co and A Co are wholly owned. B Co amalgamates with A Co. A Co continues as the amalgamated company.

B Co owned plant that cost $500,000 and had a tax book value of $250,000 and a market value of $700,000. B Co depreciated the plant at a 10% straight-line rate.

The companies elect for a non-concessionary amalgamation.

A Co must depreciate the plant using a cost of $500,000 under s EE 41. B Co is treated as disposing of the plant to A Co for its market value on the date of amalgamation under s FO 11 resulting in depreciation recovery income of $250,000.

The current depreciation rate for the plant is 12% straight line. If A Co wishes to use the straight-line rate, it must use a depreciation rate of 10% straight line (as it cannot exceed B Co's depreciation rate of 10%).

If A Co wishes to use the diminishing value rate it must be no more than the diminishing value equivalent of the straight-line rate used by B Co (10%). The equivalent diminishing value rate of the straight-line rate of 10% is 15% (see Schedule 10 of the Act).

Financial arrangements

67. The financial arrangements rules (FA rules) govern the tax treatment of financial arrangements, such as a loan. Broadly, the FA rules:

- require parties to a financial arrangement to spread income or expenditure from the arrangement over its term;

[9] See s EE 41(4). Where the amalgamated company uses a different depreciation method from the amalgamating company, the rate applied cannot be more than a rate equivalent to the rate that the amalgamating company used. Schedule 10 sets out the straight-line equivalents of diminishing value rates of depreciation.

- override the capital limitation; and
- aim to stop the acceleration of deductions for expenditure and the deferral of income recognition.

68. A base price adjustment (BPA) is required when a financial arrangement matures to calculate the final income or expenditure arising from the financial arrangement (ie, a "wash-up" calculation). Generally, a BPA is also required when a financial arrangement is transferred to allocate income and expenditure in the year of transfer between the transferor and the transferee (unless an exception applies).

69. Different rules apply depending on whether the financial arrangement is with a third party or between companies that are involved in the amalgamation.

Concessionary amalgamation – transfer of third-party financial arrangements (ss FO 12, 13 and 14)

Transfer of third-party financial arrangements – default rule (s FO 12)

70. On a concessionary amalgamation, the amalgamated company can step into the shoes of the amalgamating company in relation to a financial arrangement that passes to it (s FO 12). This means there is no BPA on amalgamation, if all of the following requirements are met:

- The FA rules apply to the financial arrangement.
- For the whole of the income year before the amalgamation, the amalgamating company and amalgamated company were part of the same wholly owned group.
- The amalgamated company uses the same method of calculating income and expenditure for the financial arrangement (spreading method) as the amalgamating company used. For example, both use the yield to maturity method.
- The amalgamating company does not have losses carried forward from an earlier year or years that could not be attributed to the amalgamated company.[10]

71. If these conditions are met and the amalgamated company makes an election, the following outcomes apply:

- The amalgamating company is treated as if it had never held the financial arrangement before the amalgamation. The amalgamated company is treated as

[10] For a discussion of the treatment of tax losses of amalgamating companies, see IS 25/09: Tax treatment of losses on amalgamation.

if it had acquired the financial arrangement on the same date and for the same consideration as the amalgamating company.

- The amalgamated company is deemed to have incurred all other expenditure and to have derived all gains that the amalgamating company has incurred or derived before the amalgamation. Further, it is deemed to have included these amounts of income and expenditure in its income tax returns.

72. The amalgamated company makes the election by including in its tax return in the year of amalgamation any income or expenditure the amalgamating company derived or incurred under the financial arrangement in the year of the amalgamation (s FO 12(2)).

73. Section FO 12 applies regardless of:

- s EW 42, which deems the acquisition of entitlements under a financial arrangement for no or inadequate consideration to be at market value; and
- s GB 21, which deems arm's length consideration where parties to a financial arrangement deal with each other in a way that defeats the intention of the FA rules.

74. Section FO 12 is the default rule. Example | Tauira 9 illustrates how it applies.

Example | Tauira 9 – Transfer of a bank deposit (default rule)

B Co and A Co are wholly owned companies. Both companies have a 31 March balance date.

On 1 April 2023, B Co deposited $100,000 with a bank at an interest rate of 5% pa.

B Co amalgamates with A Co on 31 December 2023. A Co continues as the amalgamated company. The amalgamation is a concessionary amalgamation.

B Co's final tax return for the period 1 April 2023 to 31 December 2023 excludes any interest earned on the bank deposit.

A Co's tax return for the 2024 income year (ending 31 March) includes interest income of $5,000 earned on the bank deposit.

Transfer of third-party financial arrangements – default rule not met but no change in spreading method (s FO 13)

75. Section FO 13 applies if the requirements for the s FO 12 default rule discussed from [70] are not met and there is no change in the spreading method after the amalgamation. For example, if the amalgamating company and amalgamated company were not in a wholly owned group of companies before the amalgamation.

76. Section FO 13 treats the amalgamating company as having disposed of the financial arrangement. The disposal triggers a BPA. The consideration for the disposal under s FO 13 is the amount that means the BPA gives a fair and reasonable allocation between the amalgamating company and amalgamated company in the year of amalgamation of the interest expenditure or income that the amalgamating company would have incurred or derived if the amalgamation had not taken place. This ensures that the FA rules give the correct amount of expenditure or income over the life of the financial arrangement.

77. The BPA formula is as follows (s EW 31(5)):

consideration – income + expenditure + amount remitted

78. Table | Tūtohi 3 defines each of the elements in this formula.

Table | Tūtohi 3: Elements in the BPA formula

BPA item	Definition
Consideration	Plus all consideration that has been paid or is or will be payable **to** the person (Less all consideration that has been paid or is or will be payable **by** the person under the financial arrangement)
(Income)	(Less amounts derived by the person under the financial arrangement in earlier income years)
Expenditure	Plus amounts incurred **by** the person under the financial arrangement in earlier income years
Amount remitted	Plus an amount not included in the consideration paid or payable to the person because it has been remitted by the person or by law

79. Example | Tauira 10 illustrates how the rule in s FO 13 applies.

Example | Tauira 10 – Bank deposit (default rule does not apply but no change in spreading method)

On 1 April 2023, B Co deposited $100,000 with its bank at an interest rate of 5% per annum (interest payable annually in arrears).

B Co amalgamates with A Co on 31 December 2023. A Co continues as the amalgamated company. The amalgamation is a concessionary amalgamation.

Both companies have a 31 March balance date.

B Co and A Co are **not** wholly owned but apply the same spreading method to the bank deposit.

As B Co has held the deposit for 9 months before the amalgamation, a fair and reasonable allocation of the interest income for the year would be $3,750 ($5,000 × 9/12 months). A Co's allocation would be $1,250 ($5,000 × 3/12 months).

To arrive at this outcome, the consideration paid **to** B Co (and by A Co) will need to be $103,750 as demonstrated by the BPA calculation below.

BPA item	Definition	Calculation for B Co
Consideration	Plus all consideration that has been paid or is or will be payable **to** the person (Less all consideration that has been paid or is or will be payable **by** the person under the financial arrangement)	$103,750 paid by A Co (balance figure) ($100,000) initial principal deposit paid to the bank
(Income)	(Less amounts derived by the person under the financial arrangement in earlier income years)	0
Expenditure	Plus amounts incurred by the person under the financial arrangement in earlier income years	0
Amount remitted	Plus an amount not included in the consideration paid or payable to the person because it has been remitted by the person or by law	0
BPA outcome		$3,750 income to B Co

BPA item	Definition	Calculation for A Co
Consideration	Plus all consideration that has been paid or is or will be payable **to** the person (Less all consideration that has been paid or is or will be payable **by** the person under the financial arrangement)	$105,000 principal repayment and interest from the bank ($103,750) paid to B Co (balance figure)
(Income)	(Less amounts derived by the person under the financial arrangement in earlier income years)	0
Expenditure	Plus amounts the person incurred under the financial arrangement in earlier income years	0
Amount remitted	Plus an amount not included in the consideration paid or payable to the person because it has been remitted by the person or by law	0
BPA outcome		$1,250 income to A Co

Transfer of third-party financial arrangements – default rule not met and there is a change in spreading method (s FO 14)

80. If neither s FO 12 nor s FO 13 applies (ie, there is a change in spreading method), the transfer of the financial arrangement is deemed to be at market value (s FO 14).

81. Example | Tauira 11 illustrates the outcome where the obligations of an amalgamating company under a financial arrangement pass to an amalgamated company at market value.

Example | Tauira 11 – Bank deposit in foreign currency (default rule not met and there is a change in spreading method)

B Co deposited US$100,000 to a bank on 1 April 2023, which converted to NZ$142,000 on that day. Interest is paid monthly in arrears at a floating interest rate.

B Co amalgamates with A Co on 31 December 2023. A Co continues as the amalgamated company. The amalgamation is a concessionary amalgamation.

Both companies have a 31 March balance date.

B Co and A Co apply different spreading methods to calculate income and expenditure under the US$ bank deposit.

On 31 December 2023, the US$100,000 deposit converted to NZ$166,000 (due to exchange rate fluctuations).

B Co is deemed to have disposed of the US$100,000 deposit to A Co on 31 December 2023 at NZ$166,000 under s FO 14.

In B Co's final tax return for the period 1 April 2023 to 31 December 2023, B Co has income (foreign exchange gain) under the BPA calculation of NZ$24,000 (NZ$166,000 consideration paid to B Co less NZ$142,000 consideration paid by B Co) plus interest income received.

A Co acquires the US$100,000 deposit for NZ$166,000.

Non-concessionary amalgamation – transfer of obligations under third-party financial arrangements (s FO 15)

82. On a non-concessionary amalgamation, where an obligation that an amalgamating company has under a financial arrangement passes to the amalgamated company:

- the consideration for the disposal of a financial arrangement obligation by the amalgamating company is the market price for assuming the obligation at the time of amalgamation; and
- the amalgamated company acquires the financial arrangement for the same amount and is treated as assuming the financial arrangement obligation.

83. Example | Tauira 12 illustrates the outcome where the obligations of an amalgamating company under a financial arrangement pass to an amalgamated company on a non-concessionary amalgamation.

Example | Tauira 12 – Transfer of financial arrangement obligation on a non-concessionary amalgamation

B Co borrowed US$100,000 from a bank on 1 April 2023, which converted to NZ$142,000 on that day. Interest is paid monthly in arrears at a floating interest rate.

B Co amalgamates with A Co on 31 December 2023. A Co continues as the amalgamated company. The amalgamation is a non-concessionary amalgamation.

A Co and B Co have a standard 31 March balance date.

On 31 December 2023, the US$100,000 loan converted to NZ$166,000 (due to exchange rate fluctuations).

The US$100,000 obligation is deemed to be transferred at NZ$166,000 under s FO 15.

In its final tax return for the period 1 April 2023 to 31 December 2023, B Co has a foreign exchange loss of NZ$24,000 (NZ$142,000 less NZ$166,000) plus interest expense incurred in the period.

A Co acquires the obligation to repay the US$100,000 loan for NZ$166,000.

Financial arrangements between amalgamating companies (s FO 18)

84. Where a financial arrangement is between companies involved in the amalgamation, the financial arrangement collapses on amalgamation (ie, the obligations and/or entitlements each party has under the financial arrangement merge).

85. Section FO 18 applies if s FO 21 does not apply. The following discussion on s FO 18 through to [91] assumes that s FO 21 does not apply. We discuss situations in which s FO 21 applies from [92].

86. In applying s FO 18, companies need to consider whether:

- the borrower is able to meet its obligations under the financial arrangement at the time of the amalgamation; and
- the amalgamation is a concessionary amalgamation.

Concessionary amalgamation – borrower can meet obligations

87. Under a concessionary amalgamation, if the borrower is solvent, or insolvent but likely to meet its obligations under the financial arrangement (eg, because property of the borrower fully secures the debt), the financial arrangement is deemed to be discharged immediately before the amalgamation for the accrued balance of the financial

arrangement (s FO 18(2)(a)(i) and (ii)). In general, this means no income under the FA rules (referred to in this interpretation statement as "debt remission income") should arise to the borrower for unpaid amounts.

88. For example, for a loan, the accrued balance is the principal and unpaid interest accrued to the date of amalgamation. If any unpaid interest has accrued to the date of amalgamation, the deemed payment of this balance on discharge of the financial arrangement will give rise to income in the hands of the lender (and a corresponding deduction will arise in the hands of the borrower).

Concessionary amalgamation – borrower unlikely to meet its obligations under the financial arrangement

89. Under a concessionary amalgamation, if the borrower is insolvent and unlikely to meet its obligations under the financial arrangement, the financial arrangement is deemed to be discharged immediately before the amalgamation for the market value of the financial arrangement on the date of amalgamation (s FO 18(2)(a)(iii)). In general, this means that remission income will arise to the borrower if the value of the financial arrangement has declined (unless s FO 21 applies, which relates to economic groups). Also, generally the lender cannot claim a deduction for the amount remitted.

90. Example | Tauira 13 illustrates how s FO 18 applies on a concessionary amalgamation where the borrower is unlikely to meet its obligations under the financial arrangement.

Example | Tauira 13 – Insolvent borrower

B Co borrowed $1 million from A Co on 1 April 2022 for 2 years at an interest rate of 10% per annum, payable annually in arrears. B Co pays interest of $100,000 on 31 March 2023. By 31 December 2023, B Co is insolvent and cannot repay any of the $1 million loan or accrued interest to 31 December 2023 of $75,000. The loan has a market value of nil.

A Co and B Co are not wholly owned.

A Co and B Co amalgamate on 31 December 2023. A Co continues as the amalgamated company. The amalgamation is a concessionary amalgamation.

The following tables outline the outcome of the BPA for B Co and A Co respectively.

Outcome of the BPA for B Co

BPA item	Definition	Calculation for B Co (borrower)
Consideration	Plus all consideration that has been paid or is or will be payable **to** the person (Less all consideration that has been paid or is or will be payable **by** the person under the financial arrangement)	$1 million initial loan ($100,000) interest paid $0 market value deemed for discharge of loan
(Income)	(Less amounts the person derived under the financial arrangement in earlier income years)	0
Expenditure	Plus amounts the person incurred under the financial arrangement in earlier income years	$100,000 interest paid
Amount remitted	Plus an amount not included in the consideration paid or payable to the person because it has been remitted by the person or by law	0
BPA outcome		$1 million of income to B Co

Outcome of the BPA for A Co

BPA item	Definition	Calculation for A Co (lender)
Consideration	Plus all consideration that has been paid or is or will be payable **to** the person	$100,000 interest received

	(Less all consideration that has been paid or is or will be payable **by** the person under the financial arrangement)	($1 million) initial loan $0 market value deemed for discharge of loan
(Income)	(Less amounts the person derived under the financial arrangement in earlier income years)	($100,000) interest income
Expenditure	Plus amounts the person incurred under the financial arrangement in earlier income years	0
Amount remitted	Plus an amount not included in the consideration paid or payable to the person because it has been remitted by the person or by law	$1.075 million principal and accrued interest[11]
BPA outcome		$75,000 of income to A Co

A Co would need to claim a bad debt deduction for the accrued interest of $75,000 under s DB 31(2) (if they meet the requirements of that section) to offset the BPA income of $75,000.

Non-concessionary amalgamations

91. On a non-concessionary amalgamation, the financial arrangement is treated as having been discharged immediately before the amalgamation for the financial arrangement's market value on the amalgamation date (s FO 18(2)(b)):

- Where the borrower is solvent or likely to be able to meet its financial obligations under the financial arrangement, the same treatment applies as discussed at [87] relating to a solvent borrower and concessionary amalgamations. In general, this means no remission income should arise to the borrower for unpaid amounts.
- Where the borrower is insolvent, the same treatment applies as at [89] relating to an insolvent borrower and concessionary amalgamations. In general, this means

[11] See ss FO 18(7) and FO 20.

that remission income will arise to the borrower if the value of the financial arrangement has declined.

Economic groups – s FO 21

92. Section FO 21 applies to amalgamations where the companies are in the same economic group and carries the effect of s EW 46C into the amalgamation rules.

93. The core rule in s EW 46C is that where a debt remission does not cause economic income and a corresponding increase in economic wealth (and does not amount to a dividend), no debt remission income arises to the borrower. For example, no debt remission income arises when a debt is remitted within a New Zealand resident wholly owned group of companies. Debt remission and associated amendments Taxation Information Bulletin Vol 29, No 5 (June 2017): 105 discusses the introduction of s EW 46C in detail (see 105–109).

94. Where s FO 21 applies, the debtor is treated as having paid, and the creditor is treated as having been paid, the amount of the financial arrangement on the amalgamation date. This means that no debt remission income arises to the debtor.

95. Section FO 21 applies to both concessionary and non-concessionary amalgamations.

96. Example | Tauira 14 illustrates how s FO 21 applies when the amalgamating company and amalgamated companies are within a wholly owned New Zealand group.

Example | Tauira 14 – Financial arrangement between amalgamating companies within an economic group

B Co borrowed $1 million from A Co on 1 April 2023. The loan is interest free and repayable on 1 April 2026. By 31 December 2023, B Co is insolvent and cannot repay any of the $1 million loan. The loan has a market value of nil.

B Co and A Co have always been wholly owned New Zealand resident companies.

A Co and B Co amalgamate on 31 December 2023. A Co continues as the amalgamated company.

The following tables outline the outcome of the BPA under s FO 21 for B Co and A Co respectively.

Outcome of the BPA under s FO 21 for B Co

BPA item	Definition	Calculation for B Co (borrower)
Consideration	Plus all consideration that has been paid or is or will be payable **to** the person (Less all consideration that has been paid or is or will be payable **by** the person under the financial arrangement)	$1 million initial loan ($1 million) effect of s FO 21(2)
(Income)	(Less amounts derived by the person under the financial arrangement in earlier income years)	0
Expenditure	Plus amounts incurred by the person under the financial arrangement in earlier income years	0
Amount remitted	Plus an amount not included in the consideration paid or payable to the person because it has been remitted by the person or by law	0
BPA outcome		$0 to B Co

Outcome of the BPA under s FO 21 for A Co

BPA item	Definition	Calculation for A Co (lender)
Consideration	Plus all consideration that has been paid or is or will be payable **to** the person (Less all consideration that has been paid or is or will be payable **by** the person under the financial arrangement)	$1 million effect of s FO 21(3) ($1 million) initial loan
(Income)	(Less amounts derived by the person under the financial arrangement in earlier income years)	0

Expenditure	Plus amounts incurred by the person under the financial arrangement in earlier income years	0
Amount remitted	Plus an amount not included in the consideration paid or payable to the person because it has been remitted by the person or by law	0
BPA outcome		$0 to A Co

Other matters

Dividends (s CD 35)

97. On a concessionary amalgamation, an amount derived by an amalgamated company from an amalgamating company is not a dividend (s CD 35) if it arises because the amalgamated company:

- acquires property of the amalgamating company; or
- is relieved of an obligation owed to the amalgamating company.

98. Without s CD 35, the amalgamation could have dividend implications for the amalgamated company if it is a shareholder of the amalgamating company (and if no other dividend exclusions apply).

Available capital distribution amount (s CD 44)

99. Section CD 44 provides for the calculation of a company's available capital distribution amount (ACDA). Broadly, ACDA is the amount of any distribution made on the liquidation of a company that represents capital property or previously derived net capital gains.

100. An amalgamated company is treated as deriving a capital gain amount of an amalgamating company that ends its existence on amalgamation to the extent that the amalgamating company's capital gain amount (s CD 44(8)):

- was available for distribution at the time of amalgamation; and

- was not distributed to anyone other than the amalgamated company. For example, the capital gain amount was not distributed to a shareholder of the company as part of the amalgamation.

101. The amalgamated company is treated as deriving the capital gain amount of the amalgamating company at the time of the amalgamation.

Liquidation

102. The removal of an amalgamating company from the New Zealand register of companies under the CA 1993 on amalgamation, is a "liquidation" for tax purposes (s YA 1). The termination of an amalgamating company's existence under any other procedure of New Zealand or foreign law is also a "liquidation".

103. The liquidation of an amalgamating company is relevant as s CD 26 contains an exclusion from the dividend rules for amounts paid to a shareholder in relation to a share on the liquidation of a company. Broadly, an amount received on a liquidation of company will only be a dividend if it exceeds the amount of ASC and ACDA of the company.

Interest deductibility (s DB 8)

104. A company can deduct interest incurred on money borrowed to acquire shares in another company that is part of the same group of companies (ie, at least 66% commonly owned) if the companies are members of the same group of companies at the end of the income year (s DB 8(1)).

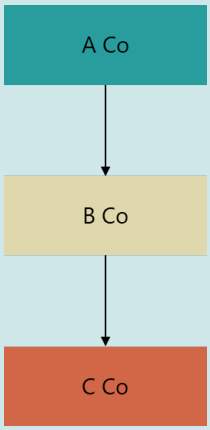
105. If a company has borrowed funds to invest in an amalgamating company, the interest is still deductible (s DB 8(3)) if:

- the amalgamation is a concessionary amalgamation; and
- the two companies were part of the same group of companies immediately before the amalgamation.

106. Example | Tauira 15 illustrates a situation where an amalgamated company can continue to deduct interest on amounts borrowed to acquire shares in a subsidiary that it amalgamates with. Example | Tauira 16 illustrates a situation where a company not involved in the amalgamation can continue to deduct interest on amounts borrowed to acquire shares in a company that ends its existence on amalgamation.

Example | Tauira 15 – Interest on amalgamated company's borrowings to acquire shares in amalgamating company

B Co borrows funds to acquire shares in C Co. B Co deducts interest on the borrowings as B Co and C Co are part of the same group of companies.



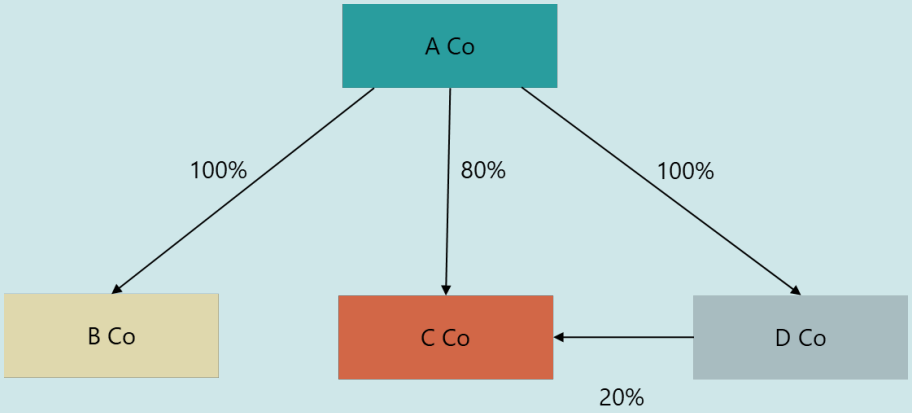
B Co and C Co amalgamate, and B Co remains as the amalgamated company. The amalgamation is a concessionary amalgamation.

B Co is able to continue deducting the interest on the borrowings under s DB 8 because:

- the amalgamation is a concessionary amalgamation; and
- B Co and C Co were part of the same group of companies immediately before the amalgamation.

Example | Tauira 16 – Company deducts interest on borrowings to acquire shares in an amalgamating company

D Co borrowed funds to acquire a 20% shareholding in C Co. D Co deducts interest on the borrowings as D Co and C Co are part of the same group of companies (D Co and C Co are 100% commonly owned by A Co).



B Co and C Co amalgamate, and B Co remains as the amalgamated company. The amalgamation is a concessionary amalgamation.

D Co is able to continue deducting the interest on the borrowings under s DB 8 because:

- the amalgamation is a concessionary amalgamation; and
- D Co and C Co were part of the same group of companies immediately before the amalgamation.

Environment restoration accounts (s EK 19)

107. Where an amalgamating company with an environmental restoration account (ERA) ends its existence on an amalgamation:

- the contents of the ERA are transferred to an ERA of the amalgamated company on the date of amalgamation (s EK 19(a));
- the amalgamated company is treated as having made all the payments to, and transfers from, the ERA that the amalgamating company made before the amalgamation (s EK 19(b)(i) and (ii)); and
- the amalgamated company is treated as having received all the refunds that the amalgamating company received from the ERA before the amalgamation (s EK 19(b)(iii)).

Farming, horticultural, aquacultural and forestry business improvements on a concessionary amalgamation (s DV 14)

108. Where, if the amalgamation had not occurred, an amalgamating company would have been allowed a deduction under any one of ss DO 4, DO 5, DO 6, DO 12 and DP 3

(which relate to improvements and expenditure on certain land), the amalgamated company is allowed the deduction if:

- the amalgamation is a concessionary amalgamation; and
- the amalgamated company acquires land or a business from the amalgamating company.

109. The amalgamated company is allowed the deduction while it holds the land or carries on the business.

Imputation credit accounts

110. On a concessionary amalgamation, imputation credits and debits of an amalgamating company recorded before the amalgamation date are treated as if they were recorded in the imputation credit account (ICA) of the amalgamated company with effect from the original credit and debit dates (s OA 9(2)).

111. This treatment extends to credits and debits due to an amalgamating company but not recorded in its ICA before the date of amalgamation. In this situation, the credit or debit is recorded in the amalgamated company's ICA (s OA 10). However, an amalgamated company does not include a debit in its ICA for the loss of shareholder continuity in an amalgamating company as a result of amalgamation (s OA 10(3)).

112. To carry forward imputation credits of an amalgamating company, there must be at least 66% continuity of shareholding from the date that the credit arose until the amalgamated company uses it. To determine whether continuity of shareholding exists for ICA purposes, the amalgamated company is treated for all times before the amalgamation as if it did not separately exist and was instead the amalgamating company, with the same shareholders and option holders. An amalgamated company must keep records of any imputation credits in its ICA that an amalgamating company contributed so it can determine whether continuity of shareholding is maintained for those credits.

113. Similar rules to those discussed above apply when all the companies in a consolidated group or consolidated imputation group amalgamate on a concessionary amalgamation and, as a result of the amalgamation, the group's existence ends and an amalgamated company forms.[12]

114. On a non-concessionary amalgamation, an amalgamating company's imputation credits are extinguished.

[12] See s OA 14.

115. Example | Tauira 17 illustrates a situation where an amalgamated company can use an amalgamating company's imputation credits after amalgamation.

Example | Tauira 17 – Amalgamated company uses an amalgamating company's imputation credits

A Co and B Co amalgamate on 31 March 2024. A Co continues as the amalgamated company.

The amalgamation is a concessionary amalgamation.

A Co and B Co's shareholdings have remained the same since incorporation.

At the time of amalgamation, B Co has a credit balance in its ICA of $25,000. The entries in B Co's ICA are as follows:

Date	Description	DR	CR	Balance
28/08/23	Provisional tax		$10,000	$10,000
15/01/24	Provisional tax		$20,000	$30,000
28/03/24	Dividend paid	($5,000)		$25,000

A Co wants to attach B Co's imputation credits of $25,000 to a dividend it proposes to pay on 30 June 2024.

A Co can attach B Co's imputation credits of $25,000 if it has at least 66% continuity of shareholding from the date that the credits arose ($5,000 on 28 August 2023[13] and $20,000 on 15 January 2024)) until the date the credits are used (30 June 2024). To determine shareholder continuity, A Co is treated as if it had B Co's shareholders before the amalgamation and its own shareholders after the amalgamation.

The shareholdings of A Co and B Co are as follows:

Shareholder – voting interest	A Co (1 April 2024 to 30 June 2024)	B Co (28 August 2023 to 31 March 2024)	Continuity of voting interest
Shareholder C	30%	30%	30%
Shareholder D	20%	45%	20%

[13] See s OA 8(8), debits reduce credits in the order in which the credits arise.

Shareholder E	50%	25%	25%
Total			75%

As the continuity of voting interest in A Co is 75%, the required shareholder continuity is met from the date the credits arose until the time A Co uses them.

Tax credits relating to attributed controlled foreign company (CFC) income

116. On a concessionary amalgamation, if an amalgamating company has a pre-amalgamation tax credit for tax paid on attributed CFC income, the tax credit is treated as a tax credit of the amalgamated company for the tax year in which the amalgamation occurs (s LK 13) if the tax credit could be made available to:

- the amalgamated company (unless it is a company incorporated only on amalgamation); and
- any company that has amalgamated with the amalgamated company.

117. If more than one amalgamating company contributes pre-amalgamation tax credits to the amalgamated company, the amalgamated company uses the credits in the order they arose. If the tax credits are for the same tax year, the amalgamated company can credit them in the order the amalgamated company chose if notified to the Commissioner. If the amalgamated company gave no notice, the amalgamated company uses the tax credits on a pro rata basis (s LK 14(3)).

118. An amalgamated company can only use the tax credits of another company if the other company and the amalgamated company were in a wholly owned group of companies (s LK 15).

119. Broadly, tax credits paid in relation to attributed controlled foreign company (CFC) income can be carried forward to future income years provided that 49% shareholding continuity is maintained or, if that requirement is not satisfied, no major change in the company's business occurs (ss LK 4 and LK 5). Wholly owned group companies can also use a company's tax credit relating to attributed CFC income in certain situations (s LK 6)[14]. That is, tax credits relating to attributed CFC income are subject to rules that are similar to the rules for the carry-forward and use of tax losses.

120. On an amalgamation, for the purpose of determining whether a tax credit paid in relation to attributed CFC income can be carried forward or made available to another

[14] The group company must derive attributed CFC income from the same country in which the CFC generating the tax credit was resident (see s LK 6(3)).

group company, the amalgamated company is treated as if it were the amalgamating company with the same shareholder profile as the amalgamating company (s LK 12).

Non-standard balance dates

121. An amalgamated company can only use an amalgamating company's non-standard balance date if the amalgamated company had that non-standard balance date before the amalgamation, or if the amalgamated company successfully applies to the Commissioner for consent to adopt that non-standard balance date. Example | Tauira 18 illustrates how non-standard balances apply on amalgamation.

Example | Tauira 18 – Non-standard balance dates

A Co has a 31 March balance date.

B Co has a 30 June balance date.

If A Co and B Co amalgamate and A Co continues as the amalgamated company, the amalgamated company (A Co) will have a 31 March balance date unless the Commissioner consents to a 30 June balance date.

However, if B Co were the amalgamated company, it would continue to have a 30 June balance date.

Provisional tax

122. An amalgamating company's residual income tax (the amount of income tax payable after deducting tax credits but before provisional tax) is added to the amalgamated company's residual income tax for provisional tax purposes (s RC 33). For example, an amalgamating company's residual income tax is added to the amalgamated company's residual income tax for the purpose of determining:

- whether the amalgamated company is a provisional taxpayer in the year of amalgamation (see, eg, s RC 3(3), which is the $5,000 threshold for the preceding year); and
- the amount of provisional tax payable.

123. Example | Tauira 19 illustrates how an amalgamated company calculates its provisional tax obligations.

Example | Tauira 19 – Calculating provisional tax

A Co, B Co and C Co amalgamate on 31 March 2023. A Co continues as the amalgamated company.

Each company's residual income tax for the year ended 31 March 2023 is as follows:

A Co $10,000

B Co $12,000

C Co $6,000

A Co calculates its first provisional tax instalment for the 2024 year using the standard uplift method. Under this method, the amount of provisional tax payable for the tax year is based on 105% of the person's residual income tax for the preceding tax year (here the 2023 year). A Co's residual income tax for the 2023 year is $28,000, which consists of $10,000 + $12,000 + $6,000. A Co's provisional tax payable for the tax year is $29,400 (105% of $28,000).

Fringe benefit tax

124. An amalgamating company that ceases to exist on amalgamation must file a fringe benefit tax (FBT) return to the date of amalgamation. The de minimis threshold for unclassified benefits and the threshold for paying FBT on an income basis are apportioned under the amalgamation rules.

Applying the de minimis threshold to the amalgamated company

125. The FBT rules contain a de minimis exemption that allows employers to provide unclassified benefits to employees without triggering FBT. The de minimis exemption applies where:

- the total taxable value of unclassified benefits provided to each employee is not more than:
  - $300 per quarter (for employers that pay FBT quarterly); or
  - $1,200 per annum (for employers that pay FBT annually); and
- the total taxable value of unclassified benefits provided to all employees in the last four quarters, including the current quarter, is not more than $22,500 per annum (same threshold applies to annual FBT filers).

126. Section RD 46 applies when a company that is an employer ends its existence on amalgamation, or a new company is established on amalgamation. It apportions the de minimis thresholds for the period in which the amalgamation occurs according to the number of days after (Table | Tūtohi 4) or before (Table | Tūtohi 5) the amalgamation.

Table | Tūtohi 4: De minimis threshold according to the number of days after amalgamation

Amalgamating company ends its existence on amalgamation and pays FBT on:	Amalgamating company's $22,500 annual exemption is reduced by:
Quarterly basis	$22,500 × number of days in the quarter **after** amalgamation / days in quarter
Annual basis	$22,500 × number of days in the year **after** amalgamation / 365

Table | Tūtohi 5: De minimis threshold according to the number of days before amalgamation

Amalgamated company is a new company and pays FBT on:	Amalgamated company's $22,500 annual exemption is reduced by:
Quarterly basis	$22,500 × number of days in the quarter **before** amalgamation / days in quarter
Annual basis	$22,500 × number of days in the year **before** amalgamation / 365

127. Example | Tauira 20 illustrates how s RD 46 apportions the de minimis threshold when the amalgamating company pays FBT on an annual basis.

Example | Tauira 20 – Calculation of de minimis threshold on unclassified benefits where the amalgamating company pays FBT annually

A Co and B Co amalgamate on 31 December 2023. A Co continues as the amalgamated company.

B Co pays FBT on an annual basis.

B Co has a 31 March balance date and provided unclassified benefits to its employees in the income year in which the amalgamation occurred (its 2024 income year).

To determine if B Co has to pay FBT on the unclassified benefits provided, the $22,500 de minimis threshold is reduced as follows:

$22,500 × 91[15] (number of days in the year after the amalgamation)/365 = $5,610

$22,500 – $5,610 = $16,890

That is, for the de minimis exemption to apply, the total taxable value of unclassified benefits that B Co provided in its 2024 income year to the date of amalgamation must be no more than $16,890.

Paying FBT on an income year basis – close companies

128. A close company can choose to pay FBT on an income year basis in certain situations. A close company means a company with five or fewer natural persons or trustees who hold more than 50% of the voting interests or market value interests in the company. All natural persons associated at the time are treated as one person.[16]

129. One situation where a close company can choose to pay FBT on an income year basis is where its gross PAYE and ESCT deductions in the preceding income year do not exceed a stated threshold (currently, $1 million) (s RD 60(1)(a)). To determine whether the threshold has been met, the amalgamated company is deemed to have paid the gross PAYE and ESCT that the amalgamating company paid in the income year before the income year in which the amalgamation occurred.

GST

130. An amalgamation may involve the supply of goods or services (eg, transferring an amalgamating company's assets to the amalgamated company).

131. No GST implications arise where an amalgamating company supplies any goods or services to the amalgamated company on amalgamation, provided that either of the following conditions is met:

- the amalgamated company is registered or liable to be registered for GST immediately after the amalgamation; or

[15] 2024 is a leap year.

[16] See the meaning of "close company" in s YA 1.

- the amalgamating company is not registered or liable to be registered for GST immediately before the amalgamation.

132. Section 61A(2) of the Goods and Services Tax Act 1985 (GST Act) achieves this outcome by deeming there to be no supply of goods and services by the amalgamating company and no consideration provided by the amalgamated company for the acquisition of those goods and services. The one exception relates to mixed-use assets – see [136]).

133. If both conditions described at [131] are not met, the amalgamating company is deemed to have supplied any goods and services to the amalgamated company at their market value at the date of amalgamation (s 61A(3) of the GST Act).

134. An amalgamating company that ceases to exist on amalgamation is deemed to end its taxable period when it ceases to exist. It must file a GST return for the taxable period ending on the date of amalgamation.

135. The GST Act contains other specific modifications relating to amalgamations, as outlined below.

Mixed-use assets

136. A business can claim input tax deductions on purchases of goods and services it uses to make taxable supplies. Apportionment and adjustment rules apply in certain circumstances when a GST-registered person uses or intends to use goods and services for taxable and non-taxable purposes. Sections 21 to 21H of the GST Act contain the adjustment rules. Where goods have been transferred without GST consequences and later the use of the goods changes, the GST adjustment required is calculated as if the amalgamated company acquired the goods at the same time and for the same cost and purpose as the amalgamating company originally did (s 61A(2)(f) of the GST Act).

GST, FBT and entertainment expenditure

137. Where an amalgamating company has provided fringe benefits or incurred entertainment expenditure in the period before amalgamation and is deemed to have made a supply after amalgamation under subs (3) or (4) of s 21I in the GST Act, the supply is deemed to be made by the amalgamated company (not the amalgamating company) on that date (s 61A(4) of the GST Act).

138. Example | Tauira 21 illustrates a situation where an amalgamated company is deemed to supply entertainment because an amalgamating company incurred entertainment expenditure before amalgamation.

Example | Tauira 21 – Deemed supply of entertainment after amalgamation

A Co and B Co amalgamate on 31 March 2024. A Co continues as the amalgamated company.

Both A Co and B Co are registered for GST on the date of amalgamation. This means no GST implications arise from any goods or services that B Co supplied to A Co on amalgamation (eg, in transferring B Co's assets to A Co).

Before the amalgamation B Co incurred entertainment expenditure of $10,000 in its 2024 income year (of which 50% is deductible).

Under s 21I(4)(a) of the GST Act, B Co is treated as having supplied entertainment with a value equal to the amount of the deduction prevented by ss DD 1 and DD 2 of the Act ($5,000). Section 21I(4)(b) deems the time of supply to be the earlier of the date B Co furnishes its 2024 tax return and the date by which it must furnish its 2024 tax return.

B Co filed its tax return on 1 July 2024 (due on 7 July 2024). B Co is deemed to have supplied entertainment on 1 July 2024, a date after it ceased to exist.

A Co is deemed to have supplied the entertainment on 1 July 2024. A Co must return the GST component of that supply ($652, being 3/23 × $5,000) as output tax in its GST return that covers the July 2024 period.

Bad debts

139. A further modification applies where, if the amalgamation had not occurred, an amalgamating company would have been entitled under s 26 of the GST Act to a deduction against output tax for writing off a bad debt or deemed to have made a taxable supply on recovery of a bad debt. In these circumstances, the amalgamated company is entitled to that deduction or will be charged with that output tax (s 61A(5) of the GST Act).

Registration

140. A person carrying on a taxable activity is liable to register for GST if the total value of supplies (ie, the amount of money made from selling goods or services) made in New Zealand was at least $60,000 in the last 12 months or is expected to be at least $60,000 in the next 12 months (s 51(1)(a) of the GST Act).

141. For the purposes of establishing whether an amalgamated company is liable to register for GST under s 51(1)(a) of the GST Act, all the supplies the amalgamating company

made before the amalgamation are deemed to have been made by the amalgamated company (s 61A(6) of the GST Act).

142. An amalgamating company that ceases to exist on amalgamation is deemed to end its taxable period when it ceases to exist. It must file a GST return for the taxable period ending on the date of amalgamation (s 15E(3) and (4) of the GST Act).

Administrative matters

143. The amalgamated company must give notice of the amalgamation to the Commissioner within 63 working days of (s 75 of the TAA):

- delivering the amalgamation documents to the Registrar of Companies (or the equivalent procedure if the amalgamation occurs under foreign law); or
- in the case of an amalgamation of building societies, registering the notice of the transfer of all engagements.

144. The amalgamated company notifies the Commissioner of an amalgamation by filing a **Declaration of an amalgamation – IR 432**.

145. Companies wishing to opt out of the concessionary amalgamation rules must notify the Commissioner of this decision within 63 working days as discussed at [143] (s 75 of the TAA).

146. The amalgamated company must make a return of income for the amalgamating company and the tax year in which the amalgamation takes place (s 76(b) of the TAA).

147. If the amalgamation occurs on the last day of the income year, the amalgamating company's final income tax return is for the full income year (including the day of the amalgamation).

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Companies Act 1993, ss 220, 221, 222, 225, parts 13 and 15

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Goods and Services Tax Act 1985, ss 15E, 21 to 21H, 21I, 26, 51, 61A

Tax Administration Act 1994, ss 75, 76

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About this document | Mō tēnei tuhinga

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