Inland Revenue
Te Tari Taake

QUESTIONS WE'VE BEEN ASKED | PĀTAI KUA UIA MAI

How does an amalgamated company calculate its available subscribed capital following an amalgamation?

Issued | Tukuna: 4 April 2025

QB 25/06

This question we've been asked explains how an amalgamated company calculates its available subscribed capital.

Key provisions | Whakaratonga tāpua

Income Tax Act 2007 – s CD 43

REPLACES | WHAKAKAPIA:

- **QB 13/02**: Income tax – Determining the "subscriptions" amount for an amalgamated company under the available subscribed capital rules
- **QB 14/05**: Income tax – ASC rules – Calculating the "subscriptions" amount for an amalgamated company when the shares of an amalgamating company are held by another amalgamating company

Question | Pātai

How does an amalgamated company calculate its available subscribed capital (ASC) following an amalgamation?

Answer | Whakautu

An amalgamated company calculates its ASC using the formula:

1 July 1994 balance + subscriptions − returns − look-through company returns

The purpose of the ASC formula is to determine the amount that shareholders have paid into a company as capital when subscribing for shares. The ASC of a company can be returned to shareholders tax-free in certain circumstances rather than being treated as a dividend.

The definitions of "subscriptions" and "returns" are modified for an amalgamated company.

The amalgamated company's "subscription" amount for a class of share will include the:

- **total amount of consideration that the company received after 30 June 1994 for the issue of shares of the same class; and**
- **ASC of all shares in the amalgamating companies, provided that:**
  - **the amalgamating company's shares are of an equivalent class;**
  - **the amalgamating company's shares are not held directly or indirectly by an amalgamating company; and**
  - **the shares are not shares in the amalgamated company.**

The "returns" amount will increase if an amalgamating company holds shares in an amalgamated company and the shares are cancelled on amalgamation. The amalgamated company's ASC per share will reduce by the "returns" amount.

Key terms | Kīanga tau tāpua

Amalgamated company means the company that continues or survives after an amalgamation or a new company (ie, the continuing company).

Amalgamating company means a company that amalgamates with one or more other companies under an amalgamation. Generally, it includes both any company that ceases to exist after the amalgamation and the continuing company.

ASC means the amount that shareholders have paid into a company as capital when subscribing for shares. It is calculated using the formula in s CD 43(1).

Concessionary amalgamation means an amalgamation that is a "resident's restricted amalgamation" (as defined in s FO 3) and receives concessionary tax treatment under subpart FO.

Non-concessionary amalgamation means 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.

Explanation | Whakamāramatanga

Introduction

1. This question we've been asked (QWBA) explains how an amalgamated company calculates its ASC following an amalgamation.

2. We have been asked to consider how the "subscriptions" and "returns" amounts are modified for an amalgamated company.

3. This item applies to both concessionary amalgamations and non-concessionary amalgamations.

4. See IS 25/10: **Income tax and GST – Amalgamations** for tax guidance on amalgamations.

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

This QWBA replaces previous publications

6. In 2013, the Commissioner issued a QWBA on determining the "subscriptions" amount for an amalgamated company under the ASC rules (QB 13/02: **Income tax – Determining the "subscriptions" amount for an amalgamated company under the available subscribed capital rules**).

7. To complement QB 13/02, the Commissioner issued a further QWBA on the topic: QB 14/05: **Income tax – ASC rules – Calculating the "subscriptions" amount for an**

amalgamated company when the shares of an amalgamating company are held by another amalgamating company.

8. This QWBA replaces QB 13/02 and QB 14/05 from the date of issue.

Formula for calculating available subscribed capital

9. A company, including an amalgamated company, calculates its ASC using the formula:[1]

   1 July 1994 balance + subscriptions – returns – look-through company returns

10. The purpose of the ASC formula is to determine the amount that shareholders have paid into a company as capital when subscribing for shares. The ASC of a company can be returned to shareholders tax-free in certain circumstances rather than being treated as a dividend.

11. In this QWBA we focus on the “subscriptions” and “returns” components of the formula because these are specifically modified in an amalgamation.

“Subscriptions” is the total amount of consideration received

12. The “subscriptions” amount of a company is the total amount of consideration that the company received after 30 June 1994 and before the calculation time for the issue of shares of the same class.[2]

13. The subscriptions amount for an amalgamated company includes an amount equal to the ASC at the time of the amalgamation of all shares in the amalgamating companies that are:[3]

    - of an equivalent class to the class; and
    - not held directly or indirectly by an amalgamating company; and
    - not shares in the amalgamated company.

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[1] s CD 43(1)

[2] s CD 43(2)(b)

[3] s CD 43(15). Section CD 43(2)(b) is subject to s CD 43(15). The phrase “subject to” indicates that one provision qualifies, modifies or changes another. The phrase also indicates which provision is to prevail in the event of a conflict: *C & J Clark Ltd v Inland Revenue Commissioner* [1973] 1 WLR 905; *Harding v Coburn* [1976] 2 NZLR 577; and *Re Tasman Pacific Airlines of NZ Ltd (in rec & liq)* [2002] 1 NZLR 688

14. Each of these requirements is considered further below.

15. The subscriptions amount does not include any other amount for the agreement of shareholders to the amalgamation and the resulting property acquisitions by the amalgamated company.[4]

Shares are of an equivalent class

16. The subscriptions amount for an amalgamated company includes an amount equal to the ASC at the time of the amalgamation of all shares in the amalgamating companies that are of an equivalent class to the class of shares in the amalgamated company.[5]

17. To determine whether the shares of an amalgamating company are of an equivalent class to those of the amalgamated company, the amalgamating company's constitution and any shareholder agreements should be reviewed. Factors to consider are whether the amalgamating company's shares carry the same:
    - shareholder decision-making rights;
    - rights to be paid profits that the company distributes; and
    - rights to the distribution of assets on the cancellation of shares.

Shares are not held directly or indirectly by an amalgamating company

18. The subscriptions amount for an amalgamated company does not include an amount equal to the ASC of shares in an amalgamating company if another amalgamating company holds (directly or indirectly) the amalgamating company's shares.[6]

19. The reason for excluding the ASC of subsidiaries from the ASC calculation is to avoid the double-counting of capital that the underlying shareholders have introduced. The underlying shareholders have subscribed for the shares in the parent company, and an amount of ASC equivalent to that value should be included only once for the amalgamated company. Example | Tauira 1 calculates an amalgamated company's ASC where it holds shares in the amalgamating company. Example | Tauira 2 calculates an amalgamated company's ASC where the shares in the amalgamating company are not held directly or indirectly by an amalgamating company.

[4] s CD 43(15)(b)
[5] s CD 43(15)(a)(i)
[6] s CD 43(15)(a)(ii)

Shares are not the amalgamated company's shares

20. As discussed at [12] the "subscriptions" amount of a company (which includes an amalgamated company) is the total amount of consideration that the company received after 30 June 1994 and before the calculation time, for the issue of shares of the same class.

21. As the subscriptions amount for an amalgamated company "includes" the ASC of all shares in the amalgamating companies and an amalgamated company is also an amalgamating company, this requirement prevents the amalgamated company's subscriptions from being counted twice.[7]

"Returns" is the total consideration paid on cancellation

22. The "returns" amount of a company is the total amount of consideration that the company has paid after 30 June 1994 and before the calculation time, on the cancellation of shares of the same class and the consideration was excluded from being a dividend under specific provisions.[8]

Modifying the "returns" amount for an amalgamated company

23. The "returns" component of the ASC formula is modified where an amalgamating company holds shares in an amalgamated company, and the shares are cancelled on amalgamation.[9]

24. The effect of the modification is to increase the "returns" amount (reducing the amalgamated company's ASC) by the amount calculated using the following formula:

    cancelled shares x ASC per share

    where:[10]

    "cancelled shares" is the number of cancelled shares

    "ASC per share" is the ASC per share calculated under the slice rule of each cancelled share immediately before the amalgamation.

[7] s CD 43(15)(a)(iii)

[8] s CD 43(2)(c)

[9] s CD 43(24)

[10] s CD 43(25)

25. Example | Tauira 3 illustrates a situation where the “returns” component of the ASC is modified because the amalgamating company holds shares in the amalgamated company that are cancelled on amalgamation.

Examples | Tauira

26. The following examples provide guidance on how to apply the law.

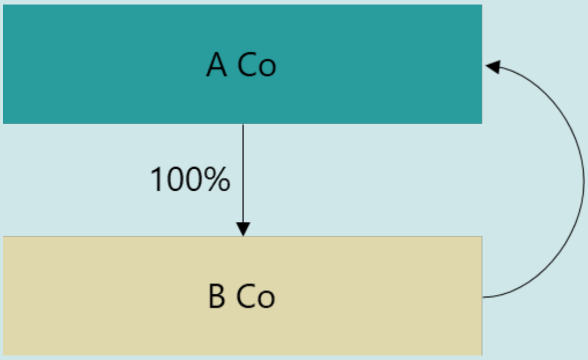
Example | Tauira 1 – ASC of an amalgamated company that held shares in the amalgamating company

On 16 February 2021, A Co was incorporated and issued 2,200 ordinary shares for $1 each.

Then on 17 March 2022, B Co was incorporated and issued 1,500 ordinary shares for $1 each to A Co.

Neither A Co nor B Co is a look-through company.

A Co and B Co amalgamate. The amalgamation provides for A Co to continue as the amalgamated company and for B Co’s shares to be cancelled.



The subscriptions amount of A Co includes its share capital ($2,200) (counted only once).[11]

An amount equivalent to B Co’s ASC ($1,500) is not included in A Co’s subscriptions because an amalgamating company (A Co) holds all of B Co’s shares.[12]

As the shares of A Co (the amalgamated company) are not cancelled on amalgamation the “returns” component of the ASC formula is not modified.

[11] s CD 43(2)(b) and CD 43(15)(a)(iii)

[12] s CD 43(15)(a)(ii)

A Co calculates its ASC as follows:

1 July 1994 balance = $0

Subscriptions = $2,200 + $0

Returns = $0

Look-through company returns = $0

ASC = $2,200

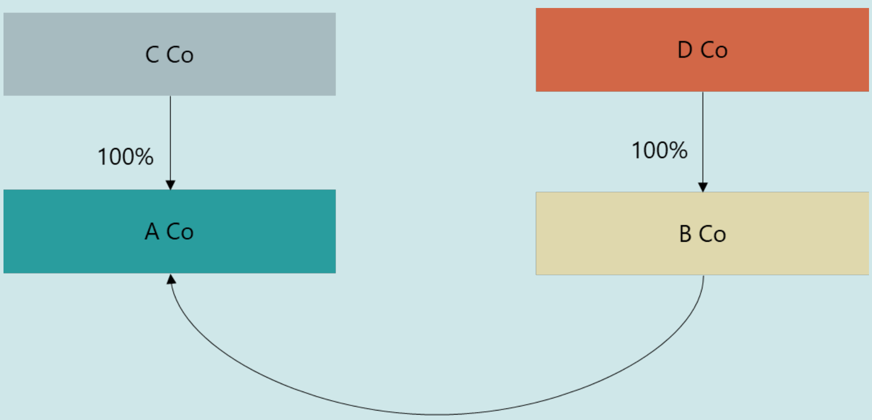
Example | Tauira 2 – ASC of an amalgamated company that did not hold shares in the amalgamating company

On 16 February 2021, A Co was incorporated and issued 2,200 ordinary shares for $1 each to C Co.

Then on 17 March 2022, B Co was incorporated and issued 1,500 ordinary shares for $1 each to D Co.

Neither A Co nor B Co is a look-through company.

A Co and B Co amalgamate. The amalgamation provides for A Co to continue as the amalgamated company and for B Co's shares to be cancelled.



The subscriptions amount of A Co includes its share capital ($2,200) (counted once only).[13]

[13] s CD 43(2)(b) and CD 43(15)(a)(iii)

As an amalgamating company does not own B Co directly or indirectly, and as B Co is not the amalgamated company, an amount equivalent to B Co's ASC ($1,500) is included in A Co's subscriptions amount.[14]

As the shares of A Co (the amalgamated company) are not cancelled on amalgamation, the "returns" component of the ASC formula is not modified.

A Co calculates its ASC as follows:

1 July 1994 balance = $0

Subscriptions = $2,200 + $1,500

Returns = $0

Look-through company returns = $0

ASC = $3,700

Example | Tauira 3 – ASC of amalgamated company where its shares are held by the amalgamating company and cancelled on amalgamation

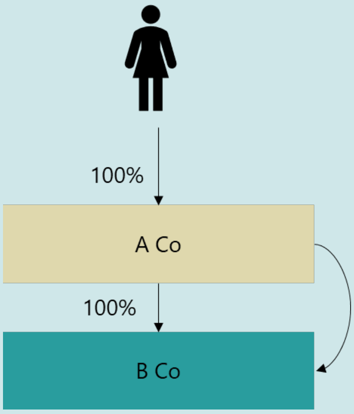
On 16 February 2021, A Co was incorporated and issued 2,200 ordinary shares for $1 each.

Then on 17 March 2022, B Co was incorporated and issued 1,500 ordinary shares for $1 each to A Co.

Neither A Co nor B Co is a look-through company.

A Co and B Co amalgamate. The amalgamation provides for B Co to continue as the amalgamated company, for B Co's shares to be cancelled, and A Co's shares to convert into B Co's shares.

[14] s CD 43(15)(a)(i), (ii) and (iii)



The subscriptions amount of B Co includes its share capital ($1,500) (counted once only).[15]

As an amalgamating company does not own A Co directly or indirectly, and as A Co is not the amalgamated company, an amount equivalent to A Co's ASC ($2,200) is included in B Co's subscriptions amount.[16]

As the shares of B Co (the amalgamated company) are cancelled and an amalgamating company owns B Co, the "returns" component in the ASC formula is modified.[17]

B Co calculates its ASC as follows:

1 July 1994 balance = $0

Subscriptions = $1,500 + $2,200

Returns = $1,500

Look-through company returns = $0

ASC = $2,200

References | Tohutoro

Legislative references | Tohutoro whakatureture

Income Tax Act 2007 – ss CD 43

[15] s CD 43(2)(b) and CD 43(15)(a)(iii)

[16] s CD 43(15)(a)(i), (ii) and (iii)

[17] s CD 43(24) and (25)

Case references | Tohutoro kēhi

C & J Clark Ltd v Inland Revenue Commissioner [1973] 1 WLR 905

Harding v Coburn [1976] 2 NZLR 577

Re Tasman Pacific Airlines of NZ Ltd (in rec & liq) [2002] 1 NZLR 688

Other references | Tohutoro anō

IS 25/10: Income tax and GST – Amalgamations (April 2025)
taxtechnical.ird.govt.nz/interpretation-statements/2025/is-25-10

QB 13/02: Income tax – Determining the "subscriptions" amount for an amalgamated company under the available subscribed capital rules *Tax Information Bulletin* Vol 25, No 6 (July 2013): 50
taxtechnical.ird.govt.nz/tib/volume-25---2013/tib-vol25-no6
taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2013/qb-1302-income-tax-determining-the-subscriptions-amount-for-an-amalgamated-company-under-the-availab

QB 14/05: Income tax – ASC rules – Calculating the "subscriptions" amount for an amalgamated company when the shares of an amalgamating company are held by another amalgamating company *Tax Information Bulletin* Vol 26, No 6 (July 2014): 51
www.taxtechnical.ird.govt.nz/tib/volume-26---2014/tib-vol26-no6
taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2014/qb-1405-income-tax-asc-rules-calculating-the-subscriptions-amount-for-an-amalgamated-company-when-th

About this document | Mō tēnei tuhinga

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