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THE IMPACT OF COMPANY AMALGAMATIONS ON BINDING RULINGS

SUMMARY

This interpretation statement considers whether an amalgamated company is entitled to rely on a private, product, or status ruling which was issued to an amalgamating company prior to the amalgamation.

This statement concludes that an amalgamated company is entitled to rely on private, product, or status rulings which an amalgamating company was previously entitled to rely on. However, the ability to rely on a pre-amalgamation ruling is subject to the continued fulfilment of any conditions and assumptions, and the Arrangement not being materially different to the Arrangement ruled upon.

LEGISLATION

Tax Administration Act 1994 ("the TAA")

The relevant provisions of the TAA in relation to binding rulings are as follows:

76 AMALGAMATED COMPANY TO ASSUME RIGHTS AND OBLIGATIONS OF AMALGAMATING COMPANY

76 Where any amalgamating company ceases to exist on an amalgamation, the amalgamated company shall, in accordance with section 209G of the Companies Act 1955 or section 225 of the Companies Act 1993,—

(a) Comply with all obligations of and meet all liabilities of, and be entitled to all rights, powers and privileges of, the amalgamating company under the Inland Revenue Acts with respect to the income year in which the amalgamation occurs and all preceding income years; and

(b) In particular but without limitation, make a return of income in respect of the amalgamating company and the income year in which the amalgamation takes place.

…

91EA EFFECT OF A PRIVATE RULING

91EA(1) Notwithstanding anything in any other Act, if—

(a) A private ruling on a taxation law applies to a person in relation to an arrangement; and

(b) The person applies the taxation law in the way stated in the ruling,—

the Commissioner must apply the taxation law in relation to the person and the arrangement in accordance with the ruling.

…

91EB(2) A private ruling does not apply to a person in relation to an arrangement if—

(a) The arrangement is materially different from the arrangement identified in the ruling; or

(b) There was a material omission or misrepresentation in, or in connection with, the application for the ruling; or

(c) The Commissioner makes an assumption about a future event or another matter that is material to the ruling , and the assumption subsequently proves to be incorrect; or

(d) The Commissioner stipulates a condition that is not satisfied.

…

91EI WITHDRAWAL OF A PRIVATE RULING

91EI(1) The Commissioner may at any time withdraw a private ruling by notifying the person to whom the ruling applies in writing that the ruling has been withdrawn.

91EI(2) The private ruling is withdrawn from the date specified in the notice of withdrawal. That date may not be earlier than the date on which the person could reasonably be expected to receive the notice of withdrawal.

91EI(2A) A status ruling on a withdrawn private ruling does not apply on and after the date specified in the notice of withdrawal.

91EI(3) If the Commissioner withdraws a private ruling—

(a) The ruling does not apply if the arrangement was entered into after the date of withdrawal; but

(b) The ruling continues to apply, for the remainder of the period or income year specified in the ruling, if the arrangement was entered into before the date of withdrawal; and

(c) A status ruling that has been made on the private ruling continues to apply, for the remainder of the period or income year specified in the private ruling, if the arrangement was entered into before the date of withdrawal.

…

91FA EFFECT OF A PRODUCT RULING

91FA(1) Notwithstanding anything in any other Act, if—

(a) A product ruling on a taxation law applies to an arrangement; and

(b) A person who enters into the arrangement applies the taxation law in the way stated in the ruling,—

the Commissioner must apply the taxation law in relation to the arrangement in accordance with the ruling.

…

91FB(2) A product ruling does not apply to an arrangement if—

(a) The arrangement is materially different from the arrangement identified in the ruling; or

(b) There was a material omission or misrepresentation in, or in connection with, the application for the ruling; or

(c) The Commissioner makes an assumption about a future event or another matter that is material to the application of the ruling, and the assumption subsequently proves to be incorrect; or

(d) The Commissioner stipulates a condition that is not satisfied.

…

91FJ WITHDRAWAL OF A PRODUCT RULING

91FJ(1) The Commissioner may at any time withdraw a product ruling.

91FJ(2) The Commissioner must notify the withdrawal by giving adequate notice in the Gazette.

91FJ(3) A product ruling is withdrawn on the date stated in the notice of withdrawal. The date cannot be before the date on which notice is given under subsection (2).

91FJ(3A) A status ruling on a withdrawn product ruling does not apply on and after the date specified in the notice of withdrawal.

91FJ(4) If the Commissioner withdraws a product ruling—

(a) The ruling does not apply to an arrangement entered into after the date of withdrawal; but

(b) The ruling continues to apply, for the remainder of the period or income year specified in the ruling, to any arrangement to which it previously applied that was entered into before the date of withdrawal; and

(c) A status ruling that has been made on the product ruling continues to apply, for the remainder of the period or income year specified in the product ruling, if the arrangement to which it previously applied was entered into before the date of withdrawal.

91FJ(5) A notice of withdrawal must specify—

(a) That it is a withdrawal of a product ruling under this section; and

(b) The ruling that is being withdrawn; and

(c) The original period or income year for which the ruling applied; and

(ca) Any status ruling that applied to the product ruling; and

(cb) That the status ruling is also being withdrawn; and

(d) The date of the withdrawal.

Anything that does not contain these statements is not a notice of withdrawal of a product ruling.

91FJ (6) The Commissioner shall also notify the withdrawal in writing to the person who applied for the product ruling.

…

91GH EFFECT OF STATUS RULING

91GH If a person applies a taxation law in accordance with a status ruling, the Commissioner must also apply the taxation law in accordance with the status ruling.

Income Tax Act 2004 ("the ITA")

FE 1 AMALGAMATION OF COMPANIES: PURPOSE

FE 1(1) Subject always to the express provisions of the amalgamation provisions, those provisions are intended—

(a) to specify certain taxation consequences of the amalgamation of companies; and

(b) in the case of a qualifying amalgamation, to permit certain property to be transferred to an amalgamated company on a concessional taxation basis and an amalgamated company to succeed to the net losses and imputation credit account and other credits of amalgamating companies, subject to tests of continuity and commonality of ownership being met; and

(c) to apply notwithstanding anything to the contrary in section 225(d) of the Companies Act 1993.

…

FE 8 AMALGAMATED COMPANY TO ASSUME RIGHTS AND OBLIGATIONS OF AMALGAMATING COMPANY

FE 8 Where any amalgamating company ceases to exist on an amalgamation, the amalgamated company must, in accordance with section 209G of the Companies Act 1955 or section 225 of the Companies Act 1993, comply with all obligations of and meet all liabilities of, and be entitled to all rights, powers, and privileges of, the amalgamating company under the Inland Revenue Acts with respect to the tax year in which the amalgamation occurs and all preceding tax years.

…

OB 1 DEFINITIONS

OB 1 For the purposes of this Act, unless the context otherwise requires,—

...

amalgamated company means the 1 company that results from and continues after an amalgamation and that may be 1 of the amalgamating companies or a new company

amalgamating company means a company that amalgamates with 1 or more other companies under an amalgamation

amalgamation means an amalgamation to which both the following apply:

(a) it—

(i) occurs under Part 13 or 15 of the Companies Act 1993; or

... and

(b) it causes 2 or more companies to amalgamate and continue as 1 company

Companies Act 1993 ("the Companies Act")

219. Amalgamations—

Two or more companies may amalgamate, and continue as one company, which may be one of the amalgamating companies, or may be a new company.

…

225. Effect of certificate of amalgamation—

On the date shown in a certificate of amalgamation,—

…

(d) The amalgamated company succeeds to all the property, rights, powers, and privileges of each of the amalgamating companies; and

(e) The amalgamated company succeeds to all the liabilities and obligations of each of the amalgamating companies; and

…

APPLICATION OF THE LEGISLATION

Binding rulings

Where a company which is entitled to rely on a private, product, or status ruling is amalgamated, an issue arises as to whether the amalgamated company is entitled to rely on that ruling. This issue is directly relevant to the applicants of private, product, and status rulings, as well as to the consumers of product rulings (being persons who are entitled to rely on product rulings).

There are two possible scenarios in relation to amalgamations involving companies which are entitled to rely upon a binding ruling:

- firstly, where a company which is entitled to rely upon a binding ruling undergoes an amalgamation as an amalgamating company which "ceases to exist"; and

- secondly, where a company which is entitled to rely upon a binding ruling undergoes an amalgamation and continues as the amalgamated company.

The conclusions in this interpretation statement are equally applicable to either situation.

The issue of whether an amalgamated company is entitled to rely on a ruling the amalgamating company could previously rely on is obviously relevant from the perspective of the amalgamated company. It is also relevant in the context of the Commissioner considering new ruling applications from amalgamated companies, as the TAA precludes the Commissioner from issuing private or product rulings if one already exists in relation to how the taxation laws apply, and the proposed ruling would apply to a period or income year already covered by an existing ruling (sections 91E(4)(e) and 91F(4)(e) of the TAA).

Application to private rulings

Section FE 8

It is noted that there is nothing in either the TAA or the amalgamation provisions of the ITA which specifically addresses the issue of whether an amalgamated company is entitled to rely on a ruling after the amalgamation of the company that was originally entitled to rely on that ruling. However, section FE 8 of the ITA provides as follows:

FE 8 Where any amalgamating company ceases to exist on an amalgamation, the amalgamated company must, in accordance with section 209G of the Companies Act 1955 or section 225 of the Companies Act 1993, comply with all obligations of and meet all liabilities of, and be entitled to all rights, powers, and privileges of, the amalgamating company under the Inland Revenue Acts with respect to the tax year in which the amalgamation occurs and all preceding tax years.

Amalgamating company previously entitled to rely on ruling ceasing to exist

If the entitlement to rely on a ruling can be considered to be a "right, power or privilege under the Inland Revenue Acts", an amalgamated company may, pursuant to section FE 8, be entitled to rely on a ruling which could previously have been relied upon by an amalgamating company which ceases to exist on the amalgamation.

However, the question then arising is whether it may be argued that section FE 8 *restricts* the assumption of Inland Revenue Act rights, powers and privileges to those with respect to the income year in which the amalgamation occurs and preceding income years.

"rights, powers and privileges"

The phrase "rights, powers and privileges" is not defined in the ITA[1]. There is also nothing in the TAA which specifically states whether the entitlement to rely on a ruling gives rise to a "right, power or privilege". However, one of the ordinary meanings of the word "right" is *"a moral or legal entitlement to have or do something"* (the *Concise Oxford Dictionary* (10th ed, Revised)). It is considered that the entitlement to rely on a ruling can be considered a "right", in line with the ordinary meaning of that word, because it gives rise to a moral or legal entitlement to have or do something. Sections 91EA(1) and 91FA(1) of the TAA state that, where the requirements of those respective provisions have been met, the Commissioner must apply the taxation law in relation to the person and the Arrangement, and the Arrangement, respectively, in accordance with the ruling. Therefore, it is considered that the entitlement to rely on a ruling gives rise to a "right".

Income year in which the amalgamation occurs and all preceding income years

Because the entitlement to rely on a ruling can be considered a "right", it is clear from section FE 8 that an amalgamated company will be entitled to the rights arising under a ruling originally relied on by an amalgamating company (which ceases to exist on

[1] Section OB 1 of the ITA does define a "right" in relation to a film, however this is obviously not relevant in an amalgamation context.

the amalgamation) with respect to the year in which the amalgamation occurs and all preceding income years.

However, section FE 8 is silent in relation to the assumption of "rights, powers and privileges" for future years. It is potentially arguable that by specifically stipulating that an amalgamated company will be entitled to Inland Revenue Act rights, powers and privileges in respect of the income year of amalgamation and preceding income years, the implication is that those are *the only* years in respect of which Inland Revenue Act rights etc will be assumed by the amalgamated company. It could possibly be argued that section FE 8 is intended to exhaustively stipulate which Inland Revenue Act rights etc. will pass to the amalgamated company.

Alternatively, it may be that section FE 8 was intended only to clarify that Inland Revenue Act rights, powers and privileges of amalgamating companies (which cease to exist on an amalgamation) with respect to *past years* will also become rights, powers and privileges of the amalgamated company. In particular, it is noted that some rights with respect to the income year of amalgamation and preceding years may not in fact arise until subsequent years – for example, rights relating to disputes procedures.

This latter view is considered preferable. If Parliament had intended section FE 8 to alter what would otherwise be the position at company law, it is considered that this would have been done in unambiguous terms. As it is, section FE 8 uses the phrase *"… **in accordance with** … section 225 of the Companies Act 1993"* (emphasis added), which it is considered further supports the view that section FE 8 is intended to clarify the succession of Inland Revenue Act rights with respect to past income years, rather than limit the succession of rights in the case of amalgamations to those particular years.

This would seem consistent with what might be expected to be the case, as it would arguably seem somewhat unusual if an amalgamated company could rely on the ruling of an amalgamating company with respect to past income years, but not going forward.

It is noted that section 76 of the TAA has the same effect as section FE 8 – though it does, in addition, give an example of an obligation with which an amalgamated company must comply (that is, to make a return of income in respect of the amalgamating company and the year of amalgamation).

On the basis of the above, it is concluded that section FE 8 does not restrict the assumption of Inland Revenue Act rights, powers and privileges to those with respect to the year of amalgamation and previous years, as opposed to what would otherwise be the position under company law. Accordingly, where an amalgamating company to which a private ruling applies ceases to exist upon an amalgamation, the amalgamated company will be entitled to the benefit of the ruling (which can be considered to be a right under the Inland Revenue Acts).

Amalgamated company previously entitled to rely upon a binding ruling

It is noted that section FE 8 does not explicitly provide for the situation where an amalgamating company continues as the amalgamated company. However, where an amalgamating company continues as an amalgamated company it continues to exist as a legal entity, and so, subject to there being any material differences to the Arrangement ruled upon, and subject to any conditions or assumptions, it may continue to rely upon any pre-amalgamation rulings applicable to it.

The above conclusions are consistent with the company law principle of "continuance", which (as discussed below) is considered to be *prima facie* applicable for the purposes of the ITA.

The above conclusions are subject to the continued fulfilment of any conditions and assumptions, and the Arrangement not being materially different to the Arrangement ruled upon (see further below).

The principle of "continuance"

In any event, it is considered that the same result arises by virtue of the principle of "continuance", which is discussed briefly below.

Companies Act 1993

Section 219 of the Companies Act provides that two or more companies may amalgamate and continue as one company, which may be either one of the amalgamating companies, or a new company. Section 225(d) of the Companies Act provides that on the date shown in a certificate of amalgamation, the amalgamated company succeeds to all the property, rights, powers, and privileges of each of the amalgamating companies. The concept of "continuance" provided for in the Companies Act 1955 (the predecessor to the Companies Act) was considered by the Court of Appeal in *Carter Holt Harvey Ltd v McKernan* [1998] 3 NZLR 403 ("*Carter Holt Harvey*"), where the Court of Appeal noted as follows (at 411):

… In a short form amalgamation involving a parent (under s 209D(1)), **the entity "succeeds" to property and liabilities which have been *its* property and liabilities beforehand, as well as succeeding to those of the other entities**. But, as the parent continues and is not deemed to be dissolved, it is clear that "succeeds", a word used in Canadian case law though not in the legislation in that country to which we have been referred, is not to be read as requiring that there be a predecessor and a successor. **The merged entity succeeds to the assets and liabilities because that is where they are to be recognised as being or remaining as a result of the continuance of all parties to the amalgamation.**

[Emphasis added]

Amalgamating company previously entitled to rely on ruling ceasing to exist

As noted above, it is considered that the entitlement to rely on a binding ruling is a "right". Accordingly, at company law, an amalgamated company would be entitled to rely on a binding ruling on which an amalgamating company was previously entitled to rely.

Amalgamated company previously entitled to rely on a ruling

The same can be said in relation to a company that has continued after an amalgamation as the amalgamated company. It is apparent from the amalgamation provisions in the Companies Act that an existing company which continues after an amalgamation as the amalgamated company is also regarded as an *amalgamating company*. In particular, it is noted that section 219 of the Companies Act states that the amalgamated company may be one of the amalgamating companies or a new company. Accordingly, if a company which continues as an amalgamated company was a previously existing company entitled to rely upon a binding ruling, the principle of continuance means that, at company law, the company would be entitled to continue to rely upon the ruling after the amalgamation.

Having considered the position under the Companies Act in terms of the effect an amalgamation would have on the ability to continue to rely on a pre-amalgamation ruling, it is necessary to consider if this is modified in any way by the amalgamation regime in the ITA.

Income Tax Act 2004

Section FE 1(1) of the ITA sets out the purpose of the amalgamation provisions. It is noted that section FE 1(1)(c) states that the amalgamation provisions are intended to apply *"notwithstanding anything to the contrary in section 225(d) of the Companies Act 1993"*. Whilst section FE 1(1)(c) indicates that there *may* be a divergence between the position in relation to the succession to rights, powers and privileges under the Inland Revenue Acts, and what would otherwise be the case under company law, the analysis below will conclude that there is in fact no such divergence.

"ceases to exist"

Throughout the amalgamation provisions in the ITA, there is wording which indicates that an amalgamating company may "cease to exist". This description could, *prima facie*, suggest that an amalgamated company is not entitled to rely on a ruling previously relied on by an amalgamating company.

However, it is noted that section OB 1 of the ITA defines "amalgamation" as meaning any amalgamation under certain laws (including the Companies Act) which causes two or more companies to *"... amalgamate and continue as 1 company"*. Therefore, it is not considered that the use of the words "ceases to exist" suggests that the principle of continuance is modified for income tax purposes. It is considered that the words "ceases to exist" in the ITA refer only to the fact that an amalgamating company may cease to exist as a separate entity, not that it will cease to exist as a legal entity (within the amalgamated company). Indeed, the fact that an amalgamating company will continue to exist in the form of the new amalgamated entity seems apparent from the definition of "amalgamation" in section OB 1, which is consistent with the company law concept of an amalgamation. If Parliament had intended the principle of continuance not to be *prima facie* applicable for tax purposes, it would be expected to have done so in more explicit terms.

Whilst it is considered that the *prima facie* position is that the concept of continuance remains applicable for ITA purposes, it is noted that in some circumstances the Act alters what would otherwise be the tax consequences of an amalgamation by deeming the effect of an amalgamation to be other than what would be the case at company law. It is considered that the principle of continuance is applicable for the purposes of the Act only to the extent that that principle is not altered by specific provisions in the Act.

Why is the amalgamation issue relevant in the product rulings context?

Product rulings are made in relation to how a taxation law applies either to an "arrangement", or to the "consumer" of the product that is the subject of the ruling and to the "arrangement" (section 91FC(1) of the TAA).

Amalgamation of "applicant"

In the product rulings context there is no specifically identifiable "person" to whom the ruling applies. This differs from private rulings, which apply to a "person" in relation to an "arrangement".

However, the applicant for a product ruling is named in the product ruling. Section 91FH(1) of the TAA 1994 states:

91FH CONTENT AND NOTIFICATION OF A PRODUCT RULING

91FH(1) A product ruling must state—

(a) That it is a product ruling made under section 91F; and

(b) The name of the person who applied for the ruling; and

(c) The taxation law and the arrangement to which the ruling applies; and

(d) How the taxation law applies to the arrangement; and

(e) The period or income year for which the ruling applies; and

(f) Material assumptions about future events or other matters made by the Commissioner; and

(g) Conditions stipulated by the Commissioner.

Anything that does not contain these statements is not a product ruling.

In addition, the applicant must intend to be a party to the proposed Arrangement. Section 91FC of the TAA 1994 states:

91FC APPLYING FOR A PRODUCT RULING

91FC(1) A person, in their own right or on behalf of a person who is yet to come into legal existence, may apply to the Commissioner for a product ruling on how a taxation law applies, or would apply—

(a) To an arrangement; or

(b) To the consumer of the product that is the subject of the ruling, and to the arrangement.

91FC(1A) A person making an application under subsection (1) or a prospective person, as the case may be, must intend to be a party to the proposed arrangement.

91FC(1B) For the purpose of subsection (1)(b), a "consumer" is a party to the arrangement who is not the applicant.

…

Therefore, there is an issue of whether the subsequent amalgamation of the "applicant" for a product ruling will mean that the product ruling no longer applies. That is, whether in the event of an amalgamation the company that applied for the ruling (and is required to be a party to the Arrangement) continues in existence so that the consumers are still entitled to rely on the product ruling.

As stated above, a product ruling applies to an Arrangement and the consumers who enter into an Arrangement. In contrast to private rulings, there is no requirement that a product ruling applies to a particular person. Arguably, if an applicant does "cease to exist" this will not affect the entitlement of a "consumer" to continue to rely upon the ruling as there is no legislative requirement that the applicant continues to exist for the duration of the ruling. On this basis there would be no issue about whether a product ruling will apply if the original applicant "ceases to exist".

In any event, it is considered that the above analysis in relation to private rulings and the continuance of amalgamating entities would also apply in the product ruling context in respect of applicants.

It is also noted for completeness that in most instances the applicant for a product ruling is the promoter or manager of a particular product. Where this is the case, it is unlikely that the amalgamation of the applicant would result in any material differences to the Arrangement, and so such an amalgamation would be unlikely to affect the application of the product ruling.

Amalgamation of "consumer"

Section 91FA(1) of the TAA states that if a product ruling on a taxation law applies to an Arrangement, and a person (i.e. the consumer) who enters into the Arrangement applies the taxation law in the way stated in the ruling, the Commissioner must apply the taxation law in relation to the Arrangement in accordance with the ruling.

Therefore, if a consumer, who has entered into the Arrangement and applied the taxation law in the way stated in the ruling, subsequently undergoes an amalgamation, this would not appear to affect the application of the product ruling, as that person will have fulfilled the requirements in section 91FA(1). The conclusion that the product ruling will remain applicable is, again, subject to the continued fulfilment of any conditions and assumptions, and the Arrangement not being materially different to the Arrangement ruled upon.

In addition, section 91F(1) of the TAA provides that the Commissioner can only make a product ruling where it is not practicable to identify the taxpayers who may enter into the Arrangement, and where the characteristics of the taxpayers who may enter into the Arrangement would not affect the content of the ruling. This provides further support for the view that the amalgamation of a person who enters an Arrangement

the subject of a product ruling (i.e. a consumer) will not affect the application of the ruling to the amalgamated company, provided that any conditions and assumptions are satisfied, and the Arrangement is not materially different to the Arrangement ruled upon.

Based on the analysis above, it is concluded that the entitlement to rely upon a product ruling will continue after the amalgamation of either the applicant for the ruling or a consumer of the Arrangement. However, notwithstanding this conclusion, if the Arrangement is materially different to that ruled upon (whether by virtue of the amalgamation or otherwise) the ruling will no longer apply. This will need to be considered on the specific facts.

Status rulings

The effect of a status ruling is the same as that of private rulings (section 91EA of the TAA) and product rulings (section 91FA of the TAA). Section 91GH of the TAA states, in relation to the effect of status rulings:

91GH EFFECT OF STATUS RULING

91GH If a person applies a taxation law in accordance with a status ruling, the Commissioner must also apply the taxation law in accordance with the status ruling.

Therefore, the above analysis is equally applicable to status rulings.

It has already been concluded that an amalgamated company will be entitled to rely upon a private or product ruling after the amalgamation of the applicant/consumer. For the same reasons, a status ruling made in respect of either a private or a product ruling can also continue to be relied upon.

Material difference to Arrangement

However, notwithstanding the above analysis, if the amalgamation causes a material difference to the Arrangement, the ruling will not apply. Sections 91EB(2)(a) and 91FB(2)(a) of the TAA state that private and product rulings, respectively, do not apply if the Arrangement is materially different to the Arrangement identified in the ruling.

Whether a ruling can continue to be relied on after an amalgamation will depend on the new characteristics of the surviving entity. If these characteristics are such that they result in a material difference to the Arrangement identified in the ruling, the ruling can no longer be relied on. This would need to be considered on the specific facts. However, some direction can be given as to what might be considered to be a material difference in this context.

For example, where the ruling concerns the capital or revenue nature of an activity and the amalgamation is of a company (the subject of a ruling) which is trading, with a non-trading enterprise, the new characteristics of the surviving entity may result in a material difference to the Arrangement. In this situation the characteristics of the amalgamated taxpayer could be different, which could alter whether the activities are

reported on revenue account or capital account. This could constitute a material difference to the Arrangement.

Another example may be where the ruling concerns whether a capital asset is depreciable and a company (the subject of a ruling) amalgamates with a company that deals in these assets, and so holds them on revenue account. If the classification of the asset changes as a result of the characteristics of the new amalgamated entity, this may also constitute a material difference to the Arrangement.

Conditions

Sections 91EB(2)(d) and 91FB(2)(d) of the TAA state that private and product rulings, respectively, do not apply to an Arrangement if the Commissioner stipulates a condition that is not satisfied. Therefore, notwithstanding the above conclusions that a ruling will apply after the person to whom the ruling applies has undergone an amalgamation, if a condition is not satisfied (whether by virtue of the amalgamation or otherwise), the ruling will not apply.

References in any condition to an amalgamating company which ceases to exist upon the amalgamation should, after the amalgamation, be treated as references to the amalgamated company. For example, a condition that the amalgamating company will do something should, after the amalgamation, be read as requiring that the amalgamated company do it, rather than the ruling being precluded from applying because the amalgamating company has not satisfied that condition.

Withdrawal of a ruling

Sections 91EI and 91FJ of the TAA state that the Commissioner may at any time withdraw private and product rulings, respectively, by giving the required notice. These sections also provide that a status ruling on a withdrawn ruling will not apply from the date specified in the notice of withdrawal. However, if the Commissioner withdraws a private or product ruling, but the Arrangement was entered into before the date of the withdrawal, the ruling continues to apply for the remainder of the period or income year specified in the ruling, and any status ruling made on that ruling will also continue to apply.

In the case of an amalgamation, this raises the issue of when the amalgamated company entered into the Arrangement – i.e. whether at the date the amalgamating company to which the ruling applies entered into the Arrangement, or at the date of the amalgamation (when the amalgamated company succeeded to the property, rights, powers and privileges of the amalgamating companies).

As discussed above, section FE 8 of the ITA confirms the succession of Inland Revenue Act rights with respect to past income years, where the amalgamating company ceases to exist upon the amalgamation. Therefore a ruling in respect of an Arrangement which has been entered into by an amalgamating company will be effectively saved, for the benefit of the amalgamated company. It is considered that this suggests that the Arrangement should be considered to have been entered into by the amalgamated company at the date the amalgamating company to which the ruling applied entered into it, and not at the time of the amalgamation.

Further, as discussed above, the application of the principle of "continuance" means that the amalgamated company is a continuation of all the amalgamating companies. The Court of Appeal decision of *Carter Holt Harvey* confirms that all the amalgamating companies "*continue as one company*", and the amalgamated company "succeeds to" all the benefits and obligations of the amalgamating companies. It is noted (as discussed above) that the ITA retains the principle of "continuance" for income tax purposes (except to the extent that it is altered by specific provisions in the Act). This further supports the view that the Arrangement should be considered to have been entered into by the amalgamated company at the date the amalgamating company to which the ruling applied entered into it (and not at the time of the amalgamation).

CONCLUSION

Based on the above analysis, it is concluded that an amalgamated company is entitled to rely on private, product, or status rulings which an amalgamating company was previously entitled to rely on.

However, the ability to rely on a pre-amalgamation ruling is subject to the continued fulfilment of any conditions and assumptions, and the Arrangement not being materially different to the Arrangement ruled upon.