TECHNICAL DECISION SUMMARY > PRIVATE RULING

WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKATAUNGA TŪMATAITI

Income tax – amalgamation

Decision date | Rā o te Whakatau: 31 March 2026

Issue date | Rā Tuku: 14 August 2026

TDS 26/11

Subjects | Kaupapa

This item summarises a private ruling that considered the income tax consequences of a company amalgamation.

Taxation laws | Ture tāke

All legislative references are to the Income Tax Act 2007 (ITA), unless otherwise stated.

Summary of facts | Whakarāpopoto o meka

1. The Arrangement is the amalgamation of a number of companies. Each of these companies is directly or indirectly wholly owned by a parent company.
2. The assets that the amalgamating companies hold include land, amortising property and shares in a company that is not part of the amalgamation (Shares). One of the amalgamating companies holds the amortising property as a nominee (the nominee company) for other amalgamating companies (co-owners). Following the amalgamation, the amalgamated company will own the assets that the amalgamating companies currently own.
3. The amalgamating companies are party to intercompany loans as follows:

Lender	Borrower	Interest-bearing?
Parent company	Amalgamating company	No
Parent company	Amalgamating company	Yes
Parent company	Amalgamated company	No
Amalgamated company	Amalgamating company	No

4. The parties to the loans referred to above will adopt the following tax positions:
   - The method of calculating income and expenditure from each loan will not change after the amalgamation. The amalgamated company's return of income for the corresponding tax year in which the amalgamation is effected will be made on this basis.

- The amalgamated company will apply s FO 12(3) and (4) in its return of income for the income year in which the amalgamation is effected.

5. At the date of the amalgamation, none of the amalgamating companies:
   - is tax resident in a jurisdiction outside of New Zealand;
   - has elected to be a qualifying company;
   - would have tax losses carried forward;
   - has made a taxable bonus issue that is subject to s ED 1(4B); or
   - has notified the Commissioner that it will not treat the amalgamation as a resident's restricted amalgamation under s FO 3(5).

6. The Applicants stated that the commercial or private purposes of the amalgamation are to simplify the group structure by reducing the number of companies and saving on compliance costs.

Issues | Take

7. The main issues that the Tax Counsel Office (TCO) considered in this ruling were whether, on amalgamation:
   - any net income or net loss will arise from the deemed disposal of shares in any amalgamating company;
   - any income will arise in connection with an amalgamating company's deemed disposal of the Shares;
   - the disposal of the amortising property gives rise to depreciation recovery income or depreciation loss for the amalgamating company making the disposal;
   - s HG 4 applied because the co-owners were in a partnership;
   - any income or expenditure will arise for the amalgamating companies in connection with the loans from the parent company;
   - the loan between the amalgamated company and the amalgamating company will be treated as having been repaid; and
   - whether s BG 1 applies to the Arrangement.

Decisions | Whakatau

8. TCO decided that:

- s FO 6 applies, with the consequence that no net income or net loss arises from the deemed disposal of shares in an amalgamating company on amalgamation;
- s FO 10 applies, with the consequence that no income arises in connection with an amalgamating company's deemed disposal of the Shares on amalgamation;
- ss FO 10 and FO 16 apply, with the consequence that no income or deduction arises under the depreciation rules for an amalgamating company disposing of the amortising property under the amalgamation;
- s HG 4 does not apply as a result of the amalgamation because the co-owners were not in a partnership;
- s FO 12 applies to the loans from the parent company to an amalgamating company, with the consequence that no income or expenditure arises for the amalgamating companies on amalgamation;
- s FO 21 applies to the loan between the amalgamated company and an amalgamating company, with the consequence that the amalgamating company is treated as having paid, and the amalgamated company is treated as having been paid, the amount of the loan on the date of the amalgamation; and
- s BG 1 does not apply to the Arrangement.

Reasons for decisions | Pūnga o ngā whakatau

Issue 1 | Take tuatahi: Disposal of shares in an amalgamating company

9. Under the amalgamation, only the amalgamated company will continue. The shares in the other amalgamating companies will be cancelled without payment or other consideration.

10. Under s FO 6, the amalgamating companies that hold shares in another amalgamating company are treated as having disposed of the shares immediately before the amalgamation for an amount equal to the cost of the shares to the holder of the shares.

11. If assessable income arises from the deemed disposal of the shares under the amalgamation (which may not be the case), there would not be any "net income" or "net loss" (calculated under s BC 4) if that income is matched by a deduction of an equal amount in the relevant year.

12. If any assessable income were to arise on the deemed disposal of the shares, the shares would be considered "revenue account property" under para (b) of that definition in s YA 1. The amalgamating companies disposing of those shares would be entitled to an equivalent deduction for the cost of the shares under s DB 23. If assessable income arises, the limitations in s DA 2(3) to (6) do not apply. For example, if the disposal gives rise to assessable income, then it is not incurred in deriving exempt income.

13. Applying the timing rules in part E, any deductions under s DB 23 would be deferred until the year of disposal for the following reasons:

    - Shares are "excepted financial arrangements" under s EW 5(13) and are therefore subject to valuation under subpart ED. Accordingly, s EA 1 provides the value of the shares (determined under s ED 1) at the end of the year (if still held) is income under s CH 1 and deductible the following year under s DB 49. Provided that the value of the shares is the "cost", the deduction under s DB 23 would effectively be deferred until the year of disposal. The corresponding income from disposal (which is an amount equal to the "cost" of the shares under s FO 6) would then offset the deduction, meaning no net income.
    - Under s ED 1(1), the value of the shares is determined at the end of each income year at cost. Section ED 1(9) states that the value determined under s ED 1 (ie, cost) is used for the purposes of the closing and opening values under ss CH 1 and DB 49.
    - The above supports the view that any deduction under s DB 23 would be deferred until the year of disposal, which is also when the related income would arise if the shares were held on revenue account.

14. However, if any taxable bonus issues were made, this outcome would change as it would give rise to a larger deduction for an amount equal to the dividend arising from the taxable bonus issue (rather than cost). Given none of the amalgamating companies has made a taxable bonus issue that is subject to s ED 1(4B), this outcome is not affected.

15. Accordingly, TCO concluded that, if any assessable income were to arise from the disposal of shares in the amalgamating companies, the deduction and income would be matched in an equal amount (ie, the cost of the shares under s FO 6), resulting in no net income.

Issue 2 | Take tuarua: Disposal of Shares held by an amalgamating company

16. The Shares held by an amalgamating company will become the property of the amalgamated company on amalgamation. In this issue, TCO considered whether any income will arise from an amalgamating company's disposal of the Shares to the amalgamated company.

17. Under subpart FO, the implications of property passing on an amalgamation depend on whether it constitutes a "resident's restricted amalgamation", as defined in s FO 3.

18. TCO considered that the amalgamation is a resident's restricted amalgamation under s FO 3 for the following reasons:

    - Each of the amalgamating companies was incorporated in New Zealand and therefore a New Zealand tax resident under s YD 2(1)(a).
    - Each of the amalgamating companies is not treated as tax resident in a jurisdiction outside New Zealand.
    - None of the companies derives exempt income only.
    - None of the companies is a qualifying company.
    - None of the companies has notified the Commissioner that it will not treat the amalgamation as a resident's restricted amalgamation.

19. Section FO 10 applies when property belonging to an amalgamating company becomes the property of the amalgamated company on a resident's restricted amalgamation.[1]

20. Under s FO 10(3), the passing of the Shares from an amalgamating company on amalgamation will be treated as a disposal of the property by the amalgamating company and an acquisition by the amalgamated company. This is deemed to occur immediately before the amalgamation. Under s FO 10(4), the amalgamated company is treated as having acquired the Shares on the date the amalgamating companies acquired the Shares for the sum of the original purchase price plus any expenditure incurred in the purchase. Broadly, s FO 10(3) and s FO 10(4) have the following effects:

    - An amalgamating company will not derive income or incur a loss from the disposal.

[1] Section FO 10 does not apply to a financial arrangement and is subject to the rules for amortising property and land. The Shares are not a financial arrangement, amortising property or land. Accordingly, the exclusions in s FO 10(2) do not apply.

- 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).

21. If the Shares are not revenue account property (s FO 10(5)) or trading stock (s FO 10(6)), then those subsections do not apply to deem consideration to arise.

22. TCO considered the key issue is whether the Shares are revenue account property or trading stock of an amalgamating company or are held on capital account. An amount is income of a person if it is their income under a provision in Part C. It is important to many sections in Part C whether any consideration is of a capital nature. A number of other provisions in Part C apply in specific scenarios that are not relevant to the Arrangement.

23. TCO considered that the Shares are not revenue account property or trading stock. The Shares are instead capital assets held by the amalgamating company, for the following reasons:[2]
    - The Shares are part of the capital framework of the amalgamating company's business.
    - It is not the amalgamating company's business to deal in those Shares.
    - Disposing of the Shares cannot be considered part of the ordinary incident of the amalgamating company's income-producing business.
    - The realisation of such capital assets, outside of any business activity, indicates any receipt is of a capital nature.

24. Accordingly, s FO 10(3) and s FO 10(4) apply with the following effects:
    - The amalgamating company will not derive income or incur a loss from the disposal of the Shares.
    - The cost base of the Shares is rolled over to the amalgamated company.

25. Therefore, TCO concluded the Shares are held on capital account by an amalgamating company and no income arises to the amalgamating company from disposal of the Shares on amalgamation because either:
    - no consideration arises under s FO 10 on the amalgamation because neither subs (5) nor subs (6) of s FO 10 applies to deem it to arise; or
    - any consideration arising (for whatever reason) is a non-taxable capital receipt of the amalgamating company (as none of the provisions in Part C applies).

[2] Applying factors from *BP Australia Ltd v FCT* [1966] AC 224 (PC).

Issue 3 | Take tuatoru: Disposal of amortising property

26. In this issue, TCO considered whether depreciation recovery income or depreciation loss will arise under subpart EE from the deemed disposal of the amortising property of the amalgamating companies on amalgamation.

27. The nominee company holds the amortising property for the co-owners.

28. TCO considered that, because the nominee company is holding the amortising property as trustee of a bare trust, it is a "nominee" under s YB 21(2). If a person holds something or does something as nominee for another person, s YB 21 treats the other person as holding or doing that thing and the nominee is ignored.

29. Subpart EE contains most of the depreciation rules. Section EE 1 sets out what "depreciation loss" and "depreciation recovery income" are.

30. As set out under Issue 2 | Take tuarua, the amalgamation will be a resident's restricted amalgamation and s FO 10 applies. The amalgamating companies are deemed to dispose of the property, and the amalgamated company is deemed to acquire the property, immediately before the amalgamation. However, s FO 10(2)(b)(i) provides that this general rule is subject to the rules for "amortising property" in s FO 16. Section YA 1 provides that "amortising property" means property for which a person is allowed a deduction for an amount of depreciation loss.

31. Applying s FO 10 and s FO 16, TCO considered the following will occur:

    - The amalgamating companies disposing of the amortising property are treated as neither deriving income nor having a deduction under ss EE 24 to EE 53 (which relate to disposals of depreciable property) as a result of the deemed disposal (s FO 16(1B)).
    - For assets that do not form part of a pool of depreciable property, the amalgamated company is treated as having been allowed the deduction that the amalgamating companies would have had for the depreciation of the assets (s FO 16(4)). Read with s FO 10(4), the amalgamated company inherits the cost base and deductions previously claimed on the assets.
    - For assets that form the whole of a pool of depreciable property, s FO 16(2) provides that the consideration for the disposal and acquisition is the adjusted tax value of the pool immediately before the amalgamation. Read with s FO 10(3), the amalgamated company is treated as acquiring the assets for the adjusted tax value immediately before amalgamation.

- For assets that form part of a pool of depreciable property, s FO 16(3) provides that the consideration for the disposal and acquisition is the market value of the property or the adjusted tax value of the pool immediately before the amalgamation, whichever is lesser. The disposal of assets forming part of a pool does not, in itself, give rise to any depreciation loss or depreciation recovery income. Any depreciation loss or depreciation recovery income is calculated on the last day of an income year (s EE 22(4) and (5)). Accordingly, if any depreciation loss or depreciation recovery income were to arise, it would not arise on disposal. Instead, it would arise later to the amalgamated company.

32. Further, s FO 16(1B) confirms the amalgamating companies will have no income or deductions. It expressly states the companies are treated as neither deriving income nor having a deduction under ss EE 24 to EE 53 (which relate to disposals of depreciable property) as a result of the deemed disposal.

33. Thus, TCO concluded that no income or deductions will arise under the depreciation rules for the amalgamating companies disposing of the amortising property under the amalgamation.

Issue 4 | Take tuawhā: s HG 4 – partnership

34. The outcome in Issue 3 | Take tuatoru would be affected if the co-owners were in a partnership under s HG 4. In this issue, TCO considered whether the co-owners were in a partnership.

35. If s HG 4(2) were to apply, then the co-owners would be treated as disposing of their assets for market value and then reacquiring them, followed by disposing of them to the amalgamated company.

36. Relevantly, para (a) of the definition of "partnership" in s YA 1 defines the term as a group of two or more persons who have, between themselves, the relationship described in s 8(1) of the Partnership Law Act 2019.

37. Section 8(1) of the Partnership Law Act 2019 states "partnership" is the relationship that exists between persons carrying on a business in common with a view to profit.

38. After reviewing the documentation provided in this ruling application, TCO considered the co-owners were not carrying on a business in common and were not in a partnership for tax purposes.

39. Therefore, TCO concluded that s HG 4 did not apply as a result of the amalgamation because no partnership existed.

Issue 5 | Take tuarima: Loan between the parent company and the amalgamating companies

40. In this issue, TCO considered whether any income or expenditure will arise for the amalgamating companies in connection with the loans from the parent company.

41. Section FO 12 applies to the obligations an amalgamating company has under a financial arrangement that pass to the amalgamated company on a resident's restricted amalgamation when the requirements in s FO 12(1) are met.

42. If the requirements in s FO 12(1) are met, the section provides for the following tax treatments:

- The amalgamating company is treated as if it had never been a party to the financial arrangement. The base price adjustment formula in s EW 31 does not apply in relation to the transfer of the financial arrangement or the obligations under it.
- The amalgamated company is treated as if it had taken the place of the amalgamating company in relation to the financial arrangement in terms of the date the arrangement was entered into; the consideration paid; income derived; the expenditure incurred; and the returns of income provided.

43. TCO considered the obligations under the loans from the parent company to the amalgamating companies meet the requirements as set out in s FO 12(1) for the following reasons:

- The financial arrangement rules apply to the loans for the borrower. The non-interest-bearing loans may be an excepted financial arrangement for the lender (s EW 5(10)), but that does not affect the application of s FO 12 to the borrower's loan obligations.
- The amalgamating companies and the amalgamated company are part of the same wholly owned group of companies for the whole of the income year before the amalgamation.
- The amalgamated company's method of calculating income and expenditure from each of the loans will not change after the amalgamation. The company's return of income for the corresponding tax year will be made on this basis.
- Sections IA 3 to IA 6 and subparts IB and ID, which relate to tax losses of companies and consolidated groups, do not apply to allow the amalgamating company to carry a loss balance forward from an earlier tax year as none of the

amalgamating companies has tax losses carried forward at the date of the amalgamation.

44. Therefore, s FO 12 applies to the loans from the parent company to the amalgamating companies with the consequence that no income or expenditure arises for the amalgamating companies in connection with the loans.

45. However, this conclusion does not apply to the amalgamated company (which is also an amalgamating company) as this company continues to exist after amalgamation. Therefore, the amalgamated company's loan obligations to the parent company are not affected and simply continue after amalgamation.

Issue 6 | Take tuaono: Loan between the amalgamated company and the amalgamating company

46. In this issue, TCO considered whether the loan between the amalgamated company and the amalgamating company is a loan between amalgamating companies and will, therefore, collapse on amalgamation when the lender and the borrower become the same person.

47. Sections FO 18 to FO 21 apply when amalgamating companies are parties to a financial arrangement that exists on the date of amalgamation. However, ss FO 18 to FO 20 do not apply if s FO 21 applies.

48. If the requirements in s FO 21(1) are met, the debtor is treated as having paid (s FO 21(2)), and the creditor is treated as having been paid (s FO 21(3)), the amount of the financial arrangement on the date of the amalgamation (That is, the loan is treated as having been repaid in full.)

49. TCO considered the loan between the amalgamated company and the amalgamating company meets the requirements in s FO 21(1) for the following reasons:

- Section FO 21(1)(a) requires the amalgamating companies to be parties to a financial arrangement that exists on the date of the amalgamation. The loan in question is a financial arrangement for the amalgamating company as the borrower, but it is not technically a financial arrangement for the amalgamated company as the lender (s EW 5(10)). However, both companies are the parties to the intercompany loan and it is necessary to address the tax implications that arise from those loans being eliminated on amalgamation. After examining the purpose underlying the relevant provisions, TCO considered that it supports the conclusion that the loan meets s FO 21(1)(a) on its plain text. None of the material indicates that the intercompany loan should not be treated as a financial arrangement for the purposes of s FO 21(1)(a) simply because it is an excepted financial arrangement for the lender. Therefore, TCO considered the loan meets the requirement in s FO 21(1)(a), notwithstanding the debt may be an excepted financial arrangement for the lender.

- Section FO 21(1)(b) requires that para (a) or (b) of s EW 46C(1) (consideration when debt remitted within economic group) applies. TCO considered s EW 46C(1)(a) applies, and therefore, the loan meets this requirement, as both the amalgamating company (as debtor) and the amalgamated company (as creditor) are part of the same wholly owned group of companies and the amalgamating company is a New Zealand resident company.
- Section FO 21(1)(c) requires that s EW 46C(3) does not apply. Section EW 46C(3) does not apply if: the creditor and debtor are members of the same wholly owned group of companies; the creditor is a non-resident; and the debt has been held by a person that is not a member of the wholly owned group of companies. TCO considered s EW 46C(3) does not apply because both companies are resident in New Zealand and so the loan meets the requirement in s FO 21(1)(c).

50. Therefore, TCO concluded that s FO 21 applies to the loan with the consequence that the amalgamating company is treated as having paid, and the amalgamated company is treated as having been paid, the amount of the loan on the date of the amalgamation.

Issue 7 | Take tuawhitu: s BG 1 – tax avoidance

51. Section BG 1(1) provides that a "tax avoidance arrangement" is void as against the Commissioner. Section GA 1 enables the Commissioner to make an adjustment to counteract a tax advantage obtained from or under a tax avoidance arrangement.

52. The Supreme Court in *Ben Nevis Forestry Ventures Ltd v CIR* [2008] NZSC 115, [2009] 2 NZLR 289 considered it desirable to settle the approach to applying s BG 1. This approach is referred to as the Parliamentary contemplation test, which is an intensely fact-based inquiry. *Ben Nevis* has been followed in subsequent judicial decisions.

53. The Tax Counsel Office's approach in making this decision is consistent with Interpretation Statement: Tax avoidance and the interpretation of the general anti-avoidance provisions sections BG 1 and GA 1 of the Income Tax Act 2007 (3 February 2023) (IS 23/01). IS 23/01 will not be replicated in this TDS but in summary the steps are as follows:

- Understanding the legal form of the arrangement. This involves identifying and understanding the steps and transactions that make up the arrangement, the commercial or private purposes of the arrangement and the arrangement's tax effects.

- Determining whether the arrangement has a tax avoidance purpose or effect. This involves:
    - Identifying and understanding Parliament's purpose for the specific provisions that are used or circumvented by the arrangement.
    - Understanding the commercial and economic reality of the arrangement as a whole by using the factors identified by the courts. Artificiality and contrivance are significant factors.
    - Considering the implications of the preceding steps and answering the ultimate question under the Parliamentary contemplation test: Does the arrangement, when viewed in a commercially and economically realistic way, make use of or circumvent the specific provisions in a manner consistent with Parliament's purpose?
- If the arrangement has a tax avoidance purpose or effect that is not the sole purpose or effect of the arrangement, consider the merely incidental test. The merely incidental test considers many of the same matters that are considered under the Parliamentary contemplation test.

54. Taking into account all of the relevant facts and circumstances (noting that as this is a summary it may not contain all the facts or assumptions relevant to the decision and, therefore, cannot be relied on) TCO concluded as follows.

Application to facts

55. The Arrangement for s BG 1 purposes is the amalgamation of the amalgamating companies.

56. The Applicants stated that the commercial or private purposes of the Arrangement are to simplify the group structure by reducing the number of companies and, therefore, achieve compliance and cost savings. Given the same company owns all the assets of the amalgamating companies either directly or indirectly, there is no need to maintain the different companies to hold separate ownership interests in those assets.

57. TCO considered the Arrangement will give rise to the following tax effects:

    - The deemed disposal (under s FO 6) of shares in an amalgamating company on amalgamation does not give rise to "net income" or "net loss" for the amalgamating companies that are deemed to have disposed of the shares.

- The deemed disposal (under s FO 10) of Shares by an amalgamating company to the amalgamated company on amalgamation does not give rise to "income" for the amalgamating company.
- The deemed disposal of amortising property by an amalgamating company under ss FO 10 and FO 16 on amalgamation does not give rise to depreciation recovery income or depreciation loss for the amalgamating company making the disposal.
- The cost base of the amortising property is rolled over to the amalgamated company. That is, the amalgamated company "steps into the shoes" of the amalgamating company.
- The provisions of subpart FO (including those that apply a concessionary treatment for a resident's restricted amalgamation) will apply to the amalgamation as appropriate.

58. TCO considered the above tax effects demonstrate the legislation is working as intended because the implications under the amalgamation provisions appear to be as intended by Parliament for an amalgamation of New Zealand resident companies (a resident's restricted amalgamation).

59. The effect of the amalgamation is that the companies and their assets and liabilities are combined into one, rather than being sold or otherwise realised by way of a change of economic ownership. Accordingly, a tax-neutral outcome by way of rollover relief is generally appropriate, as Parliament has expressed a clear intention for resident's restricted amalgamations. Particularly in the context of deemed transfers of assets, ss FO 10 and FO 16 provide for transfer of shares and amortising property on a tax-neutral basis.

60. Viewed in a commercially and economically realistic way, the Arrangement merges the assets and liabilities of the amalgamating companies, so they continue as one. There is no change of ownership or disposal of any underlying assets in a commercial and economic sense.

61. In addition, the Arrangement satisfies the stated commercial purpose and objective of simplifying the group structure to save on compliance costs. Maintaining multiple companies, when only one is needed, would result in the companies incurring wasteful administration costs.

Conclusion

62. TCO concluded that Parliament would consider that the Arrangement makes use of the relevant provisions in a manner that is consistent with Parliament's purpose for those

provisions. Therefore, the Arrangement does not have a tax avoidance purpose or effect.

63. As TCO concluded that there is no tax avoidance purpose or effect, it was not necessary for TCO to go on to consider whether the Arrangement is a "tax avoidance arrangement".

64. Accordingly, TCO concluded that s BG 1 does not apply to the Arrangement.