



**Inland Revenue Department**

**The Government of the Hong Kong Special Administrative Region  
of the People's Republic of China**

# **Inland Revenue (Amendment) (Qualifying Amalgamations, Specified Assets and Furnishing of Returns) Bill 2021**

**Legislative Council Panel on Financial Affairs  
4 January 2021**

# Proposed legislative amendments

- Tax treatment of court-free amalgamation of companies
- Tax treatment of transfer or succession of specified assets without sale
- Filing of tax returns

# Court-free amalgamation

- New Companies Ordinance (Cap. 622)
  - Effective date: 3 March 2014
  - Allows court-free amalgamation
  - Applies to wholly-owned intra-group companies incorporated in Hong Kong

# Court-free amalgamation

- Types of amalgamation
  - Vertical amalgamation
    - Between holding company and wholly owned subsidiary(ies)
  - Horizontal amalgamation
    - Between wholly owned subsidiaries of a body corporate
- Amalgamated company
  - Shares are not cancelled upon amalgamation
- Amalgamating company
  - Shares are cancelled upon amalgamation

# Court-free amalgamation

- Existing tax treatment
  - IRD's Interim administrative assessment practice  
([https://www.ird.gov.hk/eng/tax/bus\\_cfa.htm](https://www.ird.gov.hk/eng/tax/bus_cfa.htm))
  - No legal backing for the practice
  - Need to provide clarity and certainty for tax treatment

# Court-free amalgamation

- Proposed special tax treatment
  - By election, irrevocable
  - Only applies to qualifying amalgamation
  - Generally speaking, amalgamated company treated as if it were continuation of and same person as amalgamating company

# Qualifying amalgamation

- What is a qualifying amalgamation
  - Amalgamation of companies within group under s.680 or 681 of Companies Ordinance
  - A certificate of amalgamation has been issued by the Registrar of Companies under s.684(3) of the Companies Ordinance for the amalgamation

# Qualifying amalgamation

- Special tax treatment for following items
  - Transfer of assets and trading stock
  - Depreciation allowance and balancing adjustment of capital assets
  - Capital expenditure
  - Pre-amalgamation loss of amalgamated company and amalgamating company



# Qualifying amalgamation

- Succession of assets
  - Without reclassification of assets
    - Trading assets of amalgamating company are treated as trading assets of amalgamated company
    - Capital assets of amalgamating company are treated as capital assets of amalgamated company
  - Reclassification of assets
    - Assets are treated as being sold by amalgamating company to amalgamated company at market value on the date of amalgamation

# Qualifying amalgamation

- Succession of trading stock
  - Used in the same trade and accounted for by amalgamated company
    - at book value of amalgamating company: deemed as being purchased by the amalgamated company at that book value
    - at value different from the book value of amalgamating company: deemed as being sold at that value by amalgamating company; and being purchased by the amalgamated company at that value
  - Not used in the same trade by amalgamated company
    - measured at market value (s.15C of Inland Revenue Ordinance (IRO))

# Qualifying amalgamation

- Succession of capital assets
  - Balance of deduction allowable to amalgamated company: specified intellectual property rights (s.16EA) and building refurbishment (s.16F)
  - Balance of depreciation allowance allowable to amalgamated company: commercial/ industrial building and structure (s.33A and s.34) and plant or machinery (s.37, s.37A and s.39B)

# Qualifying amalgamation

- Succession of capital assets
  - Deduction and depreciation allowance allowed to amalgamating company will be clawed back when the assets are sold by amalgamated company
  - Amount clawed back: lower of capital expenditure or
    - amount of expenditure: R&D activities (s.16B(5)) or
    - deductions allowed or allowances made:
      - patent rights etc. (s.16E(3)); specified intellectual property rights (s.16EB); prescribed fixed assets (s.16G(3)); environmental protection facilities (s.16J); commercial and industrial buildings and structures (s.35); machinery or plant (s. 38 and s.39D)

# Qualifying amalgamation

- Special payment under approved retirement scheme
  - Balance of deduction will be allowed to amalgamated company
- Bad debts and impairment losses
  - Deduction allowed to amalgamated company
- Release of debts/reversal of bad debts and impairment losses
  - Treated as chargeable income of amalgamated company

# Qualifying amalgamation

- Pre-amalgamation losses of amalgamating company would be allowed to set off against profits of amalgamated company if following conditions are satisfied
  - Same trade condition
    - can only set off against profits derived by amalgamated company from the trade succeeded from amalgamating company
  - Post entry condition
    - loss incurred after amalgamated company and amalgamating company has qualifying relationship
  - Not for tax avoidance

# Qualifying amalgamation

- Pre-amalgamation losses of amalgamated company would be allowed to set off against profits of business succeeded from amalgamating company if following conditions are satisfied
  - Financial resources condition
    - amalgamated company has financial ability to acquire amalgamating company's business
  - Trade continuation condition
    - amalgamated company carrying on the trade, profession or business until the amalgamation
  - Post entry condition
    - loss incurred after amalgamated company and amalgamating company have qualifying relationship
  - Not for tax avoidance

# Transfer of specified assets without sale

- Except for limited circumstances, there is currently no provision under the IRO to deal with transfer of assets without sale
- In the absence of specific provisions, capital expenditures which have been allowed deductions or allowances cannot be clawed back



# Transfer of specified assets without sale

- Proposed tax treatment will be applied if
  - Specified assets are transferred from one person to another person without sale
  - Transfer other than by way of
    - succession on person's death or
    - qualifying amalgamation and proposed special tax treatment has been elected

# Transfer of specified assets without sale

- What are specified assets
  - Capital expenditure on the following assets and deduction or allowance of which has been allowed to the person who incurred it:
    - R&D activities (including plant or machinery) (s.16B)
    - patent rights, etc (s.16E)
    - specified intellectual property rights (s.16EA)
    - prescribed fixed asset (s.16G)
    - environmental protection facilities (s.16I)
    - commercial/industrial building or structure (s.33A or s.34)
    - plant or machinery (s.37, s.37A or s.39B)

# Transfer of specified assets without sale

- Deemed as sale
- The lower of open market value of asset at the time of transfer and capital expenditure incurred or amount allowed will be treated as chargeable receipt of the transferor

# Filing of tax returns

- Existing modes of filing of tax returns

- Paper

- E-filing

- not popular as existing technology infrastructure of IRD cannot support electronic processing of voluminous accounting data

# Filing of tax returns

- Finance Committee approved in July 2020 funding for enhancement and relocation of information technology systems of Inland Revenue Department (IRD)
- Enhanced e-Tax Portal in 2023
- New Business Tax Portal in 2025

# Filing of tax returns

- Proposed amendments will provide legislative backing to encourage e-filing of returns (including financial statements)
  - Commissioner of Inland Revenue (Commissioner) can specify in gazette notice
    - manner in which an e-return or attachment is to be generated, signed and delivered to IRD
    - classes of persons who must file returns by e-filing
  - Taxpayers can appoint service providers to furnish tax returns

# Filing of tax returns

- Benefits of e-filing of tax returns
  - no time and place constraint in filing returns
  - easily access past data
  - pre-filing of certain data
  - reduction of paper consumption

# Filing of tax returns

- Service providers
  - Taxpayers may engage service providers to furnish tax returns
  - Service provider must obtain written confirmation from taxpayer stating that the information contained in the return is correct and complete



# Filing of tax returns

- Engagement of service provider will not relieve taxpayer from obligation of furnishing tax return
- Provision for penalties against service providers
  - Failure to furnish a return
  - Failure to obtain or retain written confirmation from taxpayer
  - Knowingly furnishing an incorrect return
  - Failure to notify Commissioner of discovery of an incorrect return

**Thank You**