Part 6C

Qualifying Amalgamations

(Part 6C added 18 of 2021 s. 3)

40AE. Interpretation

In this Part—

amalgamated company (合併後公司) means—

(a) a company—

(i) that amalgamates with one or more of its wholly owned subsidiaries under section 680 of the Companies Ordinance; and

(ii) the shares of which are not cancelled on the amalgamation; or

(b) a wholly owned subsidiary of a body corporate—

(i) that amalgamates with one or more of the other wholly owned subsidiaries of the body corporate under section 681 of the Companies Ordinance; and

(ii) the shares of which are not cancelled on the amalgamation;

amalgamating company (參與合併公司) means a company—

(a) that is amalgamated in a qualifying amalgamation; and

(b) the shares of which are cancelled on the amalgamation;

body corporate (法人團體) has the meaning given by section 2(1) of the Companies Ordinance;

Companies Ordinance (《公司條例》) means the Companies Ordinance (Cap. 622);

company (公司) has the meaning given by section 2(1) of the Companies Ordinance;

date of amalgamation (合併日期), in relation to a qualifying amalgamation, means the effective date of the amalgamation specified in the certificate of amalgamation for the qualifying amalgamation under section 685(1) of the Companies Ordinance;

qualifying amalgamation (合資格合併) means an amalgamation of companies—

(a) under section 680 or 681 of the Companies Ordinance; and

(b) for which a certificate of amalgamation has been issued by the Registrar of Companies under section 684(3) of the Companies Ordinance;

year of cessation (停業年度), in relation to an amalgamating company in a qualifying amalgamation, means the year of assessment in which the amalgamating company is treated as having ceased to carry on its trade, profession or business under section 40AG.

40AF. Application of Part 6C

This Part applies in relation to a qualifying amalgamation that takes effect on or after the date of commencement* of the Inland Revenue (Amendment) (Miscellaneous Provisions) Ordinance 2021 (18 of 2021).

Editorial Note:

* Commencement date: 11 June 2021.

40AG. Amalgamating company treated as having ceased to carry on trade, profession or business

For the purposes of this Ordinance, an amalgamating company in a qualifying amalgamation is treated as having ceased to carry on its trade, profession or business on the day immediately before the date of amalgamation.

40AH. Provisional profits tax for amalgamating company

Despite section 63H(1), an assessor may, having taken section 40AG into account, estimate the amount of provisional profits tax payable by an amalgamating company in a qualifying amalgamation for its year of cessation.

40AI. Provisional profits tax for amalgamated company

Despite section 63H(1), an assessor may estimate the amount of provisional profits tax payable by the amalgamated company in a qualifying amalgamation—

(a) for the year of assessment the basis period for which the date of amalgamation falls in; and

(b) for the succeeding year of assessment,

taking into account the succession of any trade, profession or business from any amalgamating company in the qualifying amalgamation.

40AJ. Obligations and liabilities of amalgamating companies

The amalgamated company in a qualifying amalgamation must comply with all obligations, and meet all liabilities, of each of the amalgamating companies under this Ordinance, for the year of cessation of the amalgamating companies and all preceding years of assessment.

40AK. Rights, powers and privileges of amalgamating companies

The amalgamated company in a qualifying amalgamation is entitled to all rights, powers and privileges of each of the amalgamating companies under this Ordinance, for the year of cessation of the amalgamating companies and all preceding years of assessment.

40AL. Returns for profits tax for amalgamating companies

Without limiting sections 40AJ and 40AK, the amalgamated company in a qualifying amalgamation must furnish a return for profits tax for each of the amalgamating companies for its year of cessation.

40AM. Election for Schedule 17J

(1) The amalgamated company in a qualifying amalgamation may, within 1 month after the date of amalgamation (or any further period that the Commissioner may allow), elect for Schedule 17J to apply to the amalgamated company and each amalgamating company in the qualifying amalgamation.

(2) If an election under subsection (1) is made, it must be made by the amalgamated company by notice in writing to the Commissioner.

(3) An election made under subsection (1) is irrevocable.

(4) If the condition specified in subsection (5) is met, the requirement under section 51(6) is regarded as having been complied with in respect of each amalgamating company in the qualifying amalgamation.

(5) The condition is that the amalgamated company has given the notice under subsection (2) within 1 month after the date of amalgamation.

Schedule 17J

[s. 40AM]

Qualifying Amalgamations—Special Tax Treatment

(Schedule 17J added 18 of 2021 s. 4)

1. Interpretation

(1) In this Schedule—

commercial building or structure (商業建築物或構築物) has the meaning given by section 40(1);

industrial building or structure (工業建築物或構築物) has the meaning given by section 40(1);

R&D activity (研發活動)—see section 2 of Schedule 45;

R&D expenditure (研發開支)—see section 6 of Schedule 45;

specified event (指明事件)—see section 40AP;

trading stock (營業存貨), in relation to a trade or business, means anything that is—

(a) held for sale in the ordinary course of the trade or business;

(b) in the production process for the sale; or

(c) in the form of materials or supplies to be consumed in the production process or rendering of services.

(2) The following expressions have the same meaning in this Schedule as in section 40AE—

(a) amalgamated company;

(b) amalgamating company;

(c) body corporate;

(d) company;

(e) date of amalgamation;

(f) qualifying amalgamation;

(g) year of cessation.

2. Application of Schedule 17J

This Schedule applies in relation to a qualifying amalgamation—

(a) that takes effect on or after the date of commencement* of the Inland Revenue (Amendment) (Miscellaneous Provisions) Ordinance 2021 (18 of 2021); and

(b) for which an election has been made under section 40AM(1).

3. Succession of business and asset etc.

(1) Despite section 40AG, the trade, profession or business carried on by each amalgamating company in a qualifying amalgamation in Hong Kong immediately before the date of amalgamation is, unless the Commissioner is notified otherwise, treated as being carried on by the amalgamated company in Hong Kong beginning on the date of amalgamation.

(2) If the amalgamated company succeeds to any asset (excluding any trading stock) of an amalgamating company on the amalgamation—

(a) subject to section 4 of this Schedule, any asset on revenue account of the amalgamating company is treated as an asset on revenue account of the amalgamated company; and

(b) subject to section 5 of this Schedule, any asset on capital account of the amalgamating company is treated as an asset on capital account of the amalgamated company.

(3) In relation to each asset referred to in subsection (2), the amalgamated company is treated as—

(a) having acquired the asset—

(i) on the date on which the amalgamating company acquired the asset; and

(ii) for an amount that was incurred by the amalgamating company for acquiring the asset; and

(b) having been charged to tax on all such profits, or allowed all such deductions, in connection with the asset, as charged on, or allowed to, the amalgamating company.

4. Reclassification of asset from revenue account to capital account on amalgamation

(1) This section applies if any asset on revenue account of an amalgamating company in a qualifying amalgamation becomes an asset on capital account of the amalgamated company on the amalgamation.

(2) The amalgamating company is deemed to have sold the asset to the amalgamated company immediately before the date of amalgamation for a consideration equal to the amount that the asset would have been realized had it been sold in the open market on the date of amalgamation.

(3) The amalgamated company is deemed to have purchased the asset from the amalgamating company immediately before the date of amalgamation for a consideration equal to the amount referred to in subsection (2).

(4) Any profit arising from the deemed sale under subsection (2) is to be brought into account for the purpose of computing the chargeable profits of the amalgamating company for its year of cessation.

5. Reclassification of asset from capital account to revenue account on amalgamation

(1) This section applies if any asset on capital account of an amalgamating company in a qualifying amalgamation becomes an asset on revenue account of the amalgamated company on the amalgamation.

(2) The amount that the amalgamated company would have incurred, had the asset been purchased in the open market on the date of amalgamation, is taken as the cost of the asset to the amalgamated company for the purpose of computing the profits of the amalgamated company chargeable to tax under Part 4.

(3) The amalgamating company is deemed to have sold the asset to the amalgamated company immediately before the date of amalgamation for a consideration equal to the amount referred to in subsection (2).

6. Succession of trading stock

(1) This section applies if—

(a) the amalgamated company in a qualifying amalgamation succeeds to any trading stock of a trade or business carried on by an amalgamating company in Hong Kong on the amalgamation; and

(b) the amalgamated company uses the trading stock as its trading stock for carrying on a trade or business in Hong Kong.

(2) Section 15C does not apply to the amalgamating company.

(3) Subject to section 7 of this Schedule, if the trading stock is accounted for in the financial account of the amalgamated company at a value equal to the carrying amount of the trading

stock of the amalgamating company immediately before the date of amalgamation, the amalgamated company is deemed to have purchased the trading stock on the amalgamation for a consideration equal to that value.

(4) Also, subject to section 7 of this Schedule, any unrealized gain or loss in respect of the trading stock that has not been brought into account in ascertaining the chargeable profits of the amalgamating company—

(a) is treated as an unrealized gain or loss of the amalgamated company in respect of the trading stock; and

(b) is to be brought into account in ascertaining the chargeable profits of the amalgamated company—

(i) when it is realized; or

(ii) in accordance with the tax treatment applicable to the amalgamated company.

7. Trading stock accounted for in financial account of amalgamated company at different value

(1) This section applies if the trading stock mentioned in section 6 of this Schedule is accounted for in the financial account of the amalgamated company at a value other than the carrying amount of the trading stock of the amalgamating company immediately before the date of amalgamation.

(2) The amalgamating company is deemed to have sold the trading stock to the amalgamated company immediately before the date of amalgamation for a consideration equal to the value as reflected in the financial account of the amalgamated company on the date of amalgamation.

(3) The amalgamated company is deemed to have purchased the trading stock from the amalgamating company immediately before the date of amalgamation for a consideration equal to the value as reflected in the financial account of the amalgamated company on the date of amalgamation.

(4) Any profit arising from the deemed sale under subsection (2) is to be brought into account for the purpose of computing the chargeable profits of the amalgamating company for its year of cessation.

8. Amalgamating company's trading stock not used by amalgamated company as trading stock

(1) This section applies if—

(a) the amalgamated company in a qualifying amalgamation succeeds to any trading stock of a trade or business carried on by an amalgamating company in Hong Kong (***relevant stock***) on the amalgamation; and

(b) the amalgamated company does not use the relevant stock as its trading stock for carrying on a trade or business in Hong Kong.

(2) Section 15C applies to the amalgamating company.

(3) The relevant stock is to be valued in accordance with section 15C(b) for the purpose of computing the profits of the amalgamating company chargeable to tax under Part 4 for its year of cessation.

(4) The amalgamated company is deemed to have purchased the relevant stock for a consideration equal to the value referred to in subsection (3).

9. Effect of cancellation of shares of amalgamating company

(1) This section applies if in a qualifying amalgamation, an amalgamating company (***first company***) holds shares of another amalgamating company (***second company***).

(2) The first company is deemed to have sold the shares of the second company immediately before the date of amalgamation for an amount equal to the cost incurred by the first company for acquiring the shares.

(3) If—

(a) the first company has borrowed money to acquire shares of the second company; and

(b) the liability arising from the money borrowed is transferred to, and becomes the liability of, the amalgamated company,

subject to subsection (4), no deduction is to be allowed for any interest or other borrowing costs incurred by the amalgamated company on or after the date of amalgamation on the liability (***incurred costs***).

(4) The incurred costs are allowable for deduction—

(a) if the shares of the second company are held by the first company on revenue account; and

(b) to the extent that they are incurred in the production of profits for which the amalgamated company is chargeable to tax under Part 4.

10. Succession of machinery or plant, or rights or entitlement to rights, related to R&D activities

(1) This section applies if—

(a) the amalgamated company in a qualifying amalgamation succeeds to—

(i) any machinery or plant used for; or

(ii) any rights or entitlement to any rights generated from,

R&D activities of an amalgamating company on the amalgamation; and

(b) a deduction for the related R&D expenditure has been allowed to the amalgamating company under section 16B(2).

(2) Section 16B(5) does not apply to the amalgamating company because of the succession.

(3) If a situation mentioned in section 16(1) or 17(1) of Schedule 45 arises, or a specified event occurs, in respect of the machinery or plant, or the rights or entitlement to the rights, on or after the date of amalgamation, section 16B(5) applies to the amalgamated company as it would have applied to the amalgamating company had the circumstances specified in subsection (4) occurred.

(4) The circumstances are—

(a) that the amalgamating company had continued to own the machinery or plant, or the rights or entitlement to the rights; and

(b) that the amalgamating company had done all such things in connection with owning the machinery or plant, or the rights or entitlement to the rights, as were done by the amalgamated company.

11. Succession of patent rights etc.

(1) This section applies if—

(a) the amalgamated company in a qualifying amalgamation succeeds to any patent rights (as defined by section 16E(4)), or rights to any know-how (as defined by that section), of an amalgamating company on the amalgamation; and

(b) a deduction for the capital expenditure incurred on the purchase of the rights has been allowed to the amalgamating company under section 16E(1).

(2) Section 16E(3) does not apply to the amalgamating company because of the succession.

(3) If a situation mentioned in section 16E(3) arises, or a specified event occurs, in respect of the rights on or after the date of amalgamation, that section applies to the amalgamated company as it would have applied to the amalgamating company had the circumstances specified in subsection (4) occurred.

(4) The circumstances are—

(a) that the amalgamating company had continued to own the rights; and

(b) that the amalgamating company had done all such things in connection with owning the rights as were done by the amalgamated company.

12. Succession of specified intellectual property rights

(1) This section applies if the amalgamated company in a qualifying amalgamation succeeds to any specified intellectual property rights (as defined by section 16EA(11)) of an amalgamating company on the amalgamation.

(2) Subject to subsection (4), any balance of deduction allowable under section 16EA(2) in respect of the rights is to be allowed to the amalgamated company for a year of assessment as it would have been allowed to the amalgamating company for that year of assessment had the circumstances specified in subsection (3) occurred.

(3) The circumstances specified for the purposes of subsection (2) are—

(a) that the amalgamating company had continued to own the rights; and

(b) that the amalgamating company had done all such things in connection with owning the rights as were done by the amalgamated company.

(4) If the amalgamating company is eligible to claim a deduction under section 16EA(2) for its year of cessation, no deduction under that section is to be allowed to the amalgamated company for the same year of assessment.

(5) Section 16EB(2) does not apply to the amalgamating company because of the succession.

(6) If a situation mentioned in section 16EB(2) arises, or a specified event occurs, in respect of the rights on or after the date of amalgamation, that section applies to the amalgamated company as it would have applied to the amalgamating company had the circumstances specified in subsection (7) occurred.

(7) The circumstances specified for the purposes of subsection (6) are—

(a) that the amalgamating company had continued to own the rights; and

(b) that the amalgamating company had done all such things in connection with owning the rights as were done by the amalgamated company.

(8) However, if any deduction under subsection (2) has been allowed to the amalgamated company, the circumstances specified in subsection (7) for the purposes of subsection (6) would then be—

(a) that the amalgamating company had continued to own the rights;

(b) that the amalgamating company had done all such things in connection with owning the rights as were done by the amalgamated company; and

(c) that the amalgamating company had continued to be allowed all such deductions in connection with owning the rights as were allowed to the amalgamated company.

13. Succession of refurbished buildings or structures

(1) This section applies if—

(a) the amalgamated company in a qualifying amalgamation succeeds to an amalgamating company's interest in any renovation or refurbishment of a building or structure (as defined by section 16F(5)) on the amalgamation; and

(b) a deduction for the capital expenditure incurred on the renovation or refurbishment has been allowed to the amalgamating company under section 16F(1).

(2) Subject to subsection (4), any balance of deduction allowable under section 16F(1) in respect of the expenditure is to be allowed to the amalgamated company.

(3) However, no deduction is to be allowed to the amalgamated company for a year of assessment unless the deduction would have been allowed to the amalgamating company for that year of assessment but for the amalgamation.

(4) If the amalgamating company is eligible to claim a deduction under section 16F(1) for its year of cessation, no deduction under that section is to be allowed to the amalgamated company for the same year of assessment.

14. Succession of prescribed fixed assets

(1) This section applies if—

(a) the amalgamated company in a qualifying amalgamation succeeds to any prescribed fixed assets (as defined by section 16G(6)) of an amalgamating company on the amalgamation; and

(b) a deduction for the specified capital expenditure (as defined by section 16G(6)) incurred on the provision of the assets has been allowed to the amalgamating company under section 16G(1).

(2) Section 16G(3) does not apply to the amalgamating company because of the succession.

(3) If a situation mentioned in section 16G(3) arises, or a specified event occurs, in respect of the assets on or after the date of amalgamation, that section applies to the amalgamated company as it would have applied to the amalgamating company had the circumstances specified in subsection (4) occurred.

(4) The circumstances are—

(a) that the amalgamating company had continued to own the assets; and

(b) that the amalgamating company had done all such things in connection with owning the assets as were done by the amalgamated company.

15. Succession of environmental protection facilities

(1) This section applies if—

(a) the amalgamated company in a qualifying amalgamation succeeds to any environmental protection facilities (as defined by section 16H(1)) of an amalgamating company on the amalgamation; and

(b) a deduction for the specified capital expenditure (as defined by section 16H(1)) in relation to the facilities has been allowed to the amalgamating company under section 16I(2), (3), (3A), (3B) or (4).

(2) Section 16J(2), (2A), (3), (3A), (5), (5A) and (5B) does not apply to the amalgamating company because of the succession.

(3) If a situation mentioned in section 16J(2), (2A), (3), (3A), (5), (5A) or (5B) arises, or a specified event occurs, in respect of the facilities on or after the date of amalgamation, section 16J applies to the amalgamated company as it would have applied to the amalgamating company had the circumstances specified in subsection (4) occurred.

(4) The circumstances are—

(a) that the amalgamating company had continued to own the facilities; and

(b) that the amalgamating company had done all such things in connection with owning the facilities as were done by the amalgamated company.

16. Succession of commercial or industrial buildings or structures—initial and annual allowances

(1) This section applies if—

(a) the amalgamated company in a qualifying amalgamation succeeds to an amalgamating company's interest in any commercial building or structure, or in any industrial building or structure, on the amalgamation; and

(b) the interest is the relevant interest (as defined by section 40(1)) in relation to the capital expenditure (as defined by that section) incurred on the construction of the building or structure.

(2) If—

(a) an initial allowance has been made to the amalgamating company in relation to the capital expenditure incurred on the construction of the building or structure under section 34(1); and

(b) the building or structure has not been used before the date of amalgamation,

paragraph (b) of the proviso to section 34(1) does not apply to the amalgamating company because of the succession.

(3) If the building or structure has not been used before the date of amalgamation, and when it first comes to be used, it is not an industrial building or structure—

(a) paragraph (b) of the proviso to section 34(1) does not apply in relation to the initial allowance made to the amalgamating company; and

(b) a sum equal to the amount of the initial allowance made to the amalgamating company is deemed to be a trading receipt—

(i) arising in, or derived from, Hong Kong of a trade, profession or business carried on by the amalgamated company in Hong Kong; and

(ii) accruing on the date of amalgamation.

(4) Despite section 34(1), no initial allowance is to be made to the amalgamated company because of the succession.

(5) The annual allowances under section 33A or 34(2) are, subject to subsection (7), to be made to the amalgamated company for a year of assessment as they would have been made to the amalgamating company for that year of assessment had the circumstances specified in subsection (6) occurred.

(6) The circumstances are—

(a) that the amalgamating company had continued to be entitled to the relevant interest in relation to the capital expenditure incurred on the construction of the building or structure; and

(b) that the amalgamating company had done all such things in connection with the entitlement to the relevant interest as were done by the amalgamated company.

(7) If the amalgamating company is eligible to claim an annual allowance under section 33A or 34(2) for its year of cessation, no annual allowance under that section is to be made to the amalgamated company for the same year of assessment.

17. Succession of commercial or industrial buildings or structures—balancing allowances and charges

(1) This section applies if—

(a) the amalgamated company in a qualifying amalgamation succeeds to an amalgamating company's interest in any commercial building or structure, or in any industrial building or structure, on the amalgamation; and

(b) the interest is the relevant interest (as defined by section 40(1)) in relation to the capital expenditure (as defined by that section) incurred on the construction of the building or structure.

(2) Section 35 does not apply to the amalgamating company because of the succession.

(3) If an event mentioned in section 35(1)(a) or a specified event occurs in respect of the relevant interest on or after the date of amalgamation, any balancing allowance or balancing charge under section 35 in respect of the relevant interest is to be made to the amalgamated company as it would have been made to the amalgamating company had the circumstances specified in subsection (4) occurred.

(4) The circumstances specified for the purposes of subsection (3) are—

(a) that the amalgamating company had continued to be entitled to the relevant interest in relation to the capital expenditure incurred on the construction of the building or structure; and

(b) that the amalgamating company had done all such things in connection with the entitlement to the relevant interest as were done by the amalgamated company.

(5) However, if any allowance under section 16(5) of this Schedule has been made to the amalgamated company, the circumstances specified in subsection (4) for the purposes of subsection (3) would then be—

(a) that the amalgamating company had continued to be entitled to the relevant interest in relation to the capital expenditure incurred on the construction of the building or structure;

(b) that the amalgamating company had done all such things in connection with the entitlement to the relevant interest as were done by the amalgamated company; and

(c) that the amalgamating company had continued to be made all such allowances in connection with the entitlement of the relevant interest as were made to the amalgamated company.

18. Succession of machinery or plant not related to R&D activities—annual allowances

(1) This section applies if the amalgamated company in a qualifying amalgamation succeeds to any machinery or plant not related to R&D activities of an amalgamating company on the amalgamation.

(2) Despite sections 37(1), 37A(1) and 39B(1), no initial allowance is to be made to the amalgamated company because of the succession.

(3) Despite sections 37(4) and 39B(7), the annual allowances under section 37(2), 37A(2) or 39B(2) are, subject to subsection (6), to be made to the amalgamated company for a year of assessment as they would have been made to the amalgamating company for that year of assessment had the circumstances specified in subsection (4) occurred.

(4) The circumstances specified for the purposes of subsection (3) are—

(a) that the amalgamating company had continued to own the machinery or plant; and

(b) that the amalgamating company had done all such things in connection with owning the machinery or plant as were done by the amalgamated company.

(5) However, if any annual allowance in respect of the machinery or plant has been made to the amalgamated company for the previous years of assessment, the circumstances specified in subsection (4) for the purposes of subsection (3) would then be—

(a) that the amalgamating company had continued to own the machinery or plant;

(b) that the amalgamating company had done all such things in connection with owning the machinery or plant as were done by the amalgamated company; and

(c) that the amalgamating company had been made all such allowances in connection with owning the machinery or plant as were made to the amalgamated company for the previous years of assessment.

(6) If the amalgamating company is eligible to claim an annual allowance under section 37(2), 37A(2) or 39B(2) for its year of cessation, no annual allowance under that section is to be made to the amalgamated company for the same year of assessment.

19. Succession of machinery or plant not related to R&D activities—balancing allowances and charges

(1) This section applies if the amalgamated company in a qualifying amalgamation succeeds to any machinery or plant not related to R&D activities of an amalgamating company on the amalgamation.

(2) Sections 38 and 39D do not apply to the amalgamating company because of the succession.

(3) If an event mentioned in section 38(1) or a specified event occurs in respect of the machinery or plant on or after the date of amalgamation, section 38 applies to the amalgamated company as it would have applied to the amalgamating company had the circumstances specified in subsection (5) occurred.

(4) If a situation mentioned in section 39D arises, or a specified event occurs, in respect of the machinery or plant on or after the date of amalgamation, that section applies to the amalgamated company as it would have applied to the amalgamating company had the circumstances specified in subsection (5) occurred.

(5) The circumstances specified for the purposes of subsections (3) and (4) are—

(a) that the amalgamating company had continued to own the machinery or plant; and

(b) that the amalgamating company had done all such things in connection with owning the machinery or plant as were done by the amalgamated company.

(6) However, if any annual allowance in respect of the machinery or plant has been made to the amalgamated company, the circumstances specified in subsection (5) for the purposes of subsections (3) and (4) would then be—

(a) that the amalgamating company had continued to own the machinery or plant;

(b) that the amalgamating company had done all such things in connection with owning the machinery or plant as were done by the amalgamated company; and

(c) that the amalgamating company had continued to be made all such allowances in connection with owning the machinery or plant as were made to the amalgamated company.

20. Deduction of special payment under recognized retirement scheme

(1) This section applies if—

(a) an amalgamating company in a qualifying amalgamation has made a payment to a recognized retirement scheme; and

(b) a deduction in respect of the payment has been allowed to the amalgamating company under section 16A.

(2) Subject to subsection (4), any balance of deduction allowable under section 16A(1) in respect of the payment is to be allowed to the amalgamated company.

(3) However, no deduction is to be allowed to the amalgamated company for a year of assessment unless the deduction would have been allowed to the amalgamating company for that year of assessment but for the amalgamation.

(4) If the amalgamating company is eligible to claim a deduction under section 16A(1) for its year of cessation, no deduction under that section is to be allowed to the amalgamated company for the same year of assessment.

21. Deduction for bad debts, impairment losses, expenditure or losses

(1) This section applies if at any time after a qualifying amalgamation, the amalgamated company—

(a) writes off as bad or doubtful the amount of a debt, or recognizes an impairment loss in respect of a credit-impaired debt, to which the amalgamated company succeeds from an amalgamating company on the amalgamation; or

(b) incurs an amount of expenditure or loss as a result of an act, or a failure to act, of an amalgamating company on the amalgamation.

(2) A deduction is to be allowed to the amalgamated company for the amount of the debt, impairment loss, expenditure or loss (whichever is applicable) if—

(a) the amalgamating company would have been allowed the deduction but for the amalgamation; and

(b) the amalgamated company is not otherwise allowed the deduction.

22. Amount of debt recovered or impairment loss reversed treated as trading receipt

(1) This section applies if at any time after a qualifying amalgamation, the amalgamated company—

(a) recovers any amount of a debt; or

(b) reverses any amount of impairment loss of a debt,

that has been deducted under section 16(1)(d) or 18K(3) in ascertaining the profits of an amalgamating company in the amalgamation chargeable to tax under Part 4.

(2) The amount of a debt recovered, or the amount of impairment loss reversed, is, if the condition specified in subsection (3) is met, treated as a trading receipt—

(a) arising in, or derived from, Hong Kong of a trade, profession or business carried on by the amalgamated company in Hong Kong; and

(b) accruing on the date of recovery or reversal.

(3) The condition is that the amount would have been treated as the amalgamating company's trading receipt chargeable to tax under Part 4 but for the amalgamation.

23. Release of debt

(1) This section applies if any amount of a debt owed by an amalgamating company in a qualifying amalgamation in the course of carrying on a trade, profession or business in Hong Kong before the date of amalgamation is released at any time on or after that date.

(2) The amount released is, if the condition specified in subsection (3) is met, deemed to be a trading receipt—

(a) arising in, or derived from, Hong Kong of a trade, profession or business carried on by the amalgamated company in Hong Kong; and

(b) accruing at the time when the release was effected.

(3) The condition is that the amount would have been deemed to be the amalgamating company's trading receipt chargeable to tax under Part 4 but for the amalgamation.

24. Treatment of pre-amalgamation losses of amalgamating companies

(1) This section applies if an amalgamating company in a qualifying amalgamation has any pre-amalgamation loss.

(2) Except as provided for in subsection (3), a pre-amalgamation loss of the amalgamating company cannot be—

(a) carried forward to the amalgamated company; or

(b) set off against the assessable profits of the amalgamated company.

(3) Subject to subsections (4) and (5), sections 19C, 19CAB, 19CAC and 19CB apply in relation to any qualifying loss of the amalgamating company as if the amalgamated company were the amalgamating company for the purposes of—

(a) carrying forward the qualifying loss; and

(b) setting off against the assessable profits of the amalgamated company.

(4) Any set off mentioned in subsection (3)(b) can only be made against—

(a) the assessable profits of the amalgamated company derived from the same trade, profession or business—

(i) that was carried on by the amalgamating company immediately before the date of amalgamation; and

(ii) that is succeeded by the amalgamated company; or

(b) the amalgamated company's share of assessable profits of a partnership through succession to the amalgamating company's interest in the partnership.

(5) However, no set off mentioned in subsection (3)(b) can be made unless the amalgamated company proves to the satisfaction of the Commissioner—

(a) that there are good commercial reasons for carrying out the qualifying amalgamation; and

(b) that avoidance of tax is not the main purpose, or one of the main purposes, of carrying out the qualifying amalgamation.

(6) In this section—

pre-amalgamation loss (合併前虧損), in relation to an amalgamating company in a qualifying amalgamation, means—

(a) any loss—

(i) that is sustained in a trade, profession or business carried on by the amalgamating company before the date of amalgamation; and

(ii) that is not set off under section 19C, 19CAB, 19CAC or 19CB; or

(b) the amalgamating company's share of loss—

(i) that is incurred in a trade, profession or business carried on by the amalgamating company in a partnership with another person before the date of amalgamation; and

(ii) that is not set off under section 19C, 19CAB, 19CAC or 19CB;

qualifying loss (合資格虧損), in relation to an amalgamating company and the amalgamated company in a qualifying amalgamation, means such part of a pre-amalgamation loss of the amalgamating company that was incurred at any time after the amalgamating company and the amalgamated company entered into a qualifying relationship.

(7) For the purposes of the definition of ***qualifying loss*** in subsection (6), 2 companies have a qualifying relationship if—

(a) one of the companies is a wholly owned subsidiary of the other company; or

(b) both companies are wholly owned subsidiaries of a body corporate.

25. Treatment of pre-amalgamation losses of amalgamated companies

(1) This section applies if the amalgamated company in a qualifying amalgamation has any pre-amalgamation loss.

(2) Subject to subsections (3) and (4), sections 19C, 19CAB, 19CAC and 19CB apply in relation to a pre-amalgamation loss of the amalgamated company.

(3) In relation to an amalgamating company in the qualifying amalgamation, except as provided for in subsection (4), a pre-amalgamation loss of the amalgamated company cannot be used to set off against—

(a) the assessable profits of the amalgamated company derived from the same trade, profession or business—

(i) that was carried on by the amalgamating company immediately before the date of amalgamation; and

(ii) that is succeeded by the amalgamated company; or

(b) the amalgamated company's share of assessable profits of a partnership through succession to the amalgamating company's interest in the partnership.

(4) Subsection (3) does not apply to the qualifying loss of the amalgamated company if all of the following conditions are met—

(a) the trade continuation condition specified in section 26(1) of this Schedule;

(b) the financial resources condition specified in section 26(2) of this Schedule;

(c) the Commissioner's satisfaction condition specified in section 26(3) of this Schedule.

(5) In this section—

pre-amalgamation loss (合併前虧損), in relation to an amalgamated company in a qualifying amalgamation, means—

(a) any loss—

(i) that is sustained in a trade, profession or business carried on by the amalgamated company before the date of amalgamation; and

(ii) that is not set off under section 19C, 19CAB, 19CAC or 19CB; or

(b) the amalgamated company's share of loss—

(i) that is incurred in a trade, profession or business carried on by the amalgamated company in partnership with another person before the date of amalgamation; and

(ii) that is not set off under section 19C, 19CAB, 19CAC or 19CB;

qualifying loss (合資格虧損), in relation to the amalgamated company and an amalgamating company in a qualifying amalgamation, means such part of a pre-amalgamation loss of the amalgamated company that was incurred at any time after the amalgamated company and the amalgamating company entered into a qualifying relationship.

(6) For the purposes of the definition of ***qualifying loss*** in subsection (5), 2 companies have a qualifying relationship if—

(a) one of the companies is a wholly owned subsidiary of the other company; or

(b) both companies are wholly owned subsidiaries of a body corporate.

26. Conditions for purposes of section 25(4) of this Schedule

(1) For the purposes of section 25(4)(a) of this Schedule, the trade continuation condition is—

(a) that the amalgamated company has continued to carry on a trade, profession or business since the qualifying loss was incurred up to the date of amalgamation; and

(b) if the qualifying loss was a share of loss incurred in a trade, profession or business carried on by the amalgamated company in partnership with another person—that the partnership has continued to carry on a trade, profession or business since the qualifying loss was incurred up to the date of amalgamation.

(2) For the purposes of section 25(4)(b) of this Schedule, the financial resources condition is that the amalgamated company has adequate financial resources (excluding any loan from an associated corporation of the amalgamated company) immediately before the date of amalgamation to purchase, other than through amalgamation—

(a) the trade, profession or business carried on by the amalgamating company immediately before the date of amalgamation; and

(b) the amalgamating company's interest in any partnership in which the amalgamating company was a partner immediately before the date of amalgamation.

(3) For the purposes of section 25(4)(c) of this Schedule, the Commissioner's satisfaction condition is that the amalgamated company proves to the satisfaction of the Commissioner—

(a) that there are good commercial reasons for carrying out the qualifying amalgamation; and

(b) that avoidance of tax is not the main purpose, or one of the main purposes, of carrying out the qualifying amalgamation.

(4) In this section—

associated corporation (相聯法團), in relation to an amalgamated company in a qualifying amalgamation, has the meaning in relation to a corporation given by section 14C(1);

qualifying loss (合資格虧損) has the meaning given by section 25(5) of this Schedule.

27. Election for basis for ascertainment of profits and concessionary tax rate treatment etc.

(1) This section applies if—

(a) an amalgamating company in a qualifying amalgamation has, in carrying on a trade, profession or business in Hong Kong before the date of amalgamation, made an irrevocable election under a provision of this Ordinance for the purpose of—

(i) ascertaining the profits derived from the trade, profession or business in respect of which the amalgamating company is chargeable to tax under Part 4;

(ii) applying the rate specified in one of the concession provisions (as defined by section 19CA) to the assessable profits (or part of the assessable profits) of the amalgamating company derived from the trade, profession or business; or

(iii) furnishing a return under section 50C as a reporting financial institution (as defined by section 50A(1)); and

(b) the amalgamated company continues to carry on the trade, profession or business of the amalgamating company on or after the date of amalgamation.

(2) The amalgamated company is treated as if it had made the same irrevocable election for the purpose of—

(a) ascertaining the profits derived from the trade, profession or business mentioned in subsection (1)(a)(i) in respect of which the amalgamated company is chargeable to tax under Part 4;

(b) applying the rate specified in one of the concession provisions (as defined by section 19CA) to the assessable profits (or part of the assessable profits) of the amalgamated

company derived from the trade, profession or business mentioned in subsection (1)(a)(ii); or

(c) furnishing a return under section 50C as a reporting financial institution (as defined by section 50A(1)).

(3) Despite subsection (2), the election ceases to have effect if the conditions for the election in the relevant provisions are not met by the amalgamated company at any time after the amalgamation.

28. Income accrued or derived after date of amalgamation

(1) This section applies if—

(a) a sum is accrued to, or derived by, the amalgamated company in a qualifying amalgamation; or

(b) a sum (that would have been deemed to be an income of an amalgamating company in the amalgamation chargeable to tax under Part 4 but for the amalgamation) is accrued to, or derived by, a person,

as a result of a certain thing that the amalgamating company did, or did not do, before the date of amalgamation.

(2) If the condition specified in subsection (3) is met, the sum is deemed to be a trading receipt arising in, or derived from, Hong Kong of a trade, profession or business carried on by the amalgamated company in Hong Kong.

(3) The condition is that the sum would have been a trading receipt (or would have been deemed to be a trading receipt) of the amalgamating company chargeable to tax under Part 4 but for the amalgamation.

29. Refund from approved retirement scheme after date of amalgamation

(1) This section applies if, in ascertaining the assessable profits of an amalgamating company in a qualifying amalgamation, deductions have been allowed for—

(a) contributions paid as an employer to a recognized occupational retirement scheme; or

(b) voluntary contributions paid as an employer to a mandatory provident fund scheme.

(2) If the condition specified in subsection (3) is met, any refund of the contributions or voluntary contributions (whichever is applicable) received by, or accrued to, the amalgamated company on or after the date of amalgamation is deemed to be a trading receipt arising in, or derived from, Hong Kong of a trade, profession or business carried on by the amalgamated company in Hong Kong.

(3) The condition is that the refund would have been deemed to be the amalgamating company's trading receipt chargeable to tax under Part 4 but for the amalgamation.

Editorial Note:
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