

Tax Matters Relating to the Companies Act 2014

Part 38-00-01

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1 Companies Act 2014: Introduction

The Companies Act 2014 (the Act) came into effect on 1 June 2015. The Act consolidated, and introduced a number of reforms to, Irish company law statutes. The Act made provision for new company types and modernised and streamlined how Irish companies can be reorganised, including through schemes of arrangement and acquisitions as well as, notably, through procedures for mergers and divisions.

Following the enactment of the Act, consequential amendments were made to tax legislation which, for the most part, involved the updating of references to previous Companies Acts. The Finance Act 2017 amendments also adapted certain tax provisions to address transfers of assets and liabilities from a transferor company to a successor company in the course of a merger or division undertaken in accordance with the Act.

The purpose of this manual is to provide guidance in relation to certain tax matters arising in connection with the Act and, in particular, in relation to tax administration and compliance matters arising from mergers and divisions.

2 Corporate form under the Companies Act 2014

2.1 Background

The Act introduced major changes to company structures. One of the principal changes relates to the private company limited by shares (the “private company”), which is the most common type of company in Ireland. There are now two types of private company instead of the previous single type. These are Designated Activity Companies (DACs) and private companies limited by shares (LTDs). The constitution of a DAC includes a memorandum of association, which sets out the objects of the DAC. The purpose of the new LTD company is to replace the previous private limited company structure with a more simplified format allowing for a simplified constitution, no requirement for an AGM in certain circumstances and only one director.

Under the Act, all existing private companies limited by shares (i.e. companies incorporated under the previous Companies Acts) had the option to convert to one of the new company types (LTD or DAC) during a transition period which expired on 30 November 2016. Any companies that did not apply for conversion to either a LTD or a DAC during this period were automatically converted to a LTD on 1 December 2016.

The Act requires that the company type be included as part of the company name. The name of an unlimited company must end with either “unlimited company” or “cuideachta neamhtheoranta”. The words “unlimited company” and “cuideachta neamhtheoranta” can be abbreviated to “uc” and “cn” as the case may be.

2.2 Implications for registering a company for tax

Since December 2015, when using Revenue's eRegistration service to register a new company for tax purposes, it is mandatory for all applicants to enter the Company Registration Office (CRO) number. The CRO number is automatically validated against the CRO record and the verified CRO number is used to pre-populate the fields on the "Company Details" screen in the eRegistration service.

The registration screen in the eRegistration service also contains a field and associated check box for the company type known as "Designated Activity Companies". When validating the CRO number, details of the company type are provided and if the company is a DAC, the check box is automatically updated.

When registering the simplified "Private Limited Company" (LTD model), details of one company director only will be required on the "Director Details" page. However, this company type must have a separate Company Secretary. All other company types will require details of two directors.

If the CRO number entered cannot be validated against the CRO Register, registration through the eRegistration service will not be possible and the customer is advised to contact the CRO.

Subject to certain requirements, a company may re-register as a different company type. For example, a DAC may re-register as a LTD. Where a company changes its designation in this manner the company does not need to notify Revenue. Any name changes notified to the CRO will be automatically updated on Revenue's systems.

3 Mergers and Divisions under the Companies Act 2014

3.1 Background

The Act provides for the transfer of all the assets and liabilities of a “transferor company” to a “successor company” or “successor companies” pursuant to a merger or division. Such transfers occur by operation of law and, importantly, at the same time as the assets and liabilities of the transferor company transfer to one or more successor companies, the transferor company dissolves without going into liquidation. While the transferor company ceases to exist from the point of transfer of the assets and liabilities by virtue of company law, as set out in [paragraph 3.4](#) below, the successor company ‘steps into the shoes’ of the transferor company as regards certain rights and obligations of the transferor company.

3.2 Mergers

Chapter 3 of Part 9 and Chapter 16 of Part 17 of the Act set out the legal framework under which company mergers may be undertaken. In the case of a company that is not a Public Limited Company (PLC), a merger can be done by either a summary approval procedure (SAP), which involves both companies passing unanimous resolutions and certain declarations being made by the directors, or by court approval. In the case of a PLC, the merger must be done by way of court approval. The Act provides for three forms of merger as follows:

- I. **Merger by acquisition** – This involves a transferor company being dissolved without going into liquidation and its assets and liabilities transferring to a successor company in exchange for the issue of shares to the transferor company’s members (with or without a cash payment).

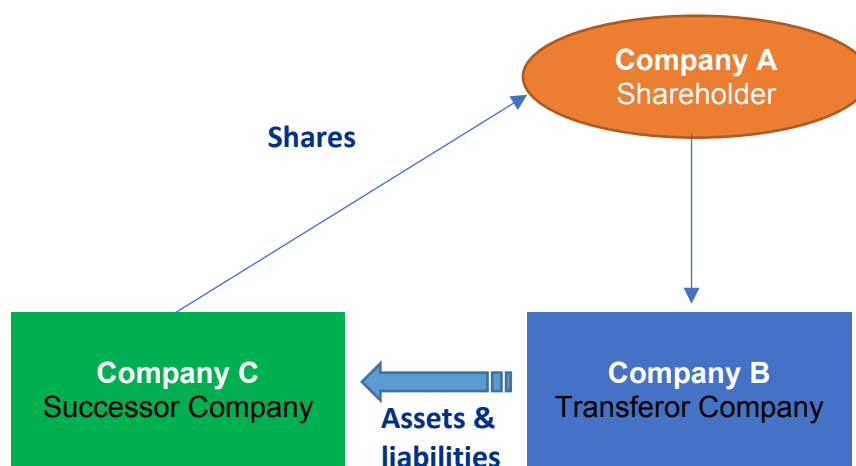


Figure 1: Example 3.2.1 – Merger by acquisition

Arising from the merger by acquisition, the assets and liabilities of Company B are transferred to Company C, Company B is dissolved and Company A holds shares in Company C.

- II. **Merger by absorption** – This involves a transferor company being dissolved without going into liquidation and its assets and liabilities transferring to a company that holds all of the shares in the transferor company.

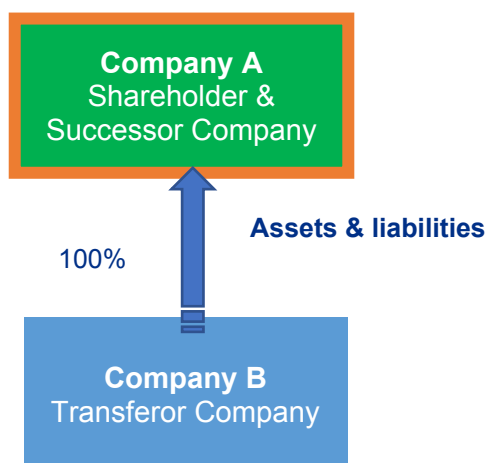


Figure 2: Example 3.2.II – Merger by absorption

Arising from the merger by absorption, the assets and liabilities of Company B are held by Company A and Company B is dissolved.

- III. **Merger by formation of a new company** – This involves one or more transferor companies being dissolved without going into liquidation and their assets and liabilities transferring to a new successor company in exchange for the issue of shares to the members of the transferor company or companies, with or without a cash payment.

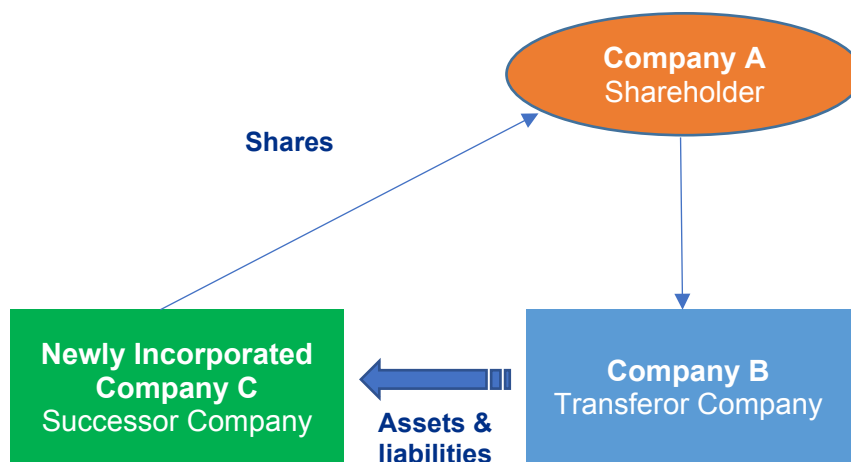


Figure 3: Example 3.2.III – Merger by formation of a new company

Arising from the merger by formation of a new company, the assets and liabilities of Company B are transferred to Company C, Company B is dissolved and Company A holds shares in Company C.

3.3 Divisions

Chapter 4 of Part 9 and Chapter 17 of Part 17 of the Act set out the legal framework under which company divisions may be undertaken. A division is subject to a court order approving the division. A SAP may not be used to effect a division. The Act provides for two forms of division as follows:

- I. **Division by acquisition**— This involves a transferor company being dissolved without going into liquidation and its assets and liabilities transferring to two or more successor companies (of which one or more but not all may be a new company) in exchange for the issue of shares to the transferor company's members (with or without a cash payment).

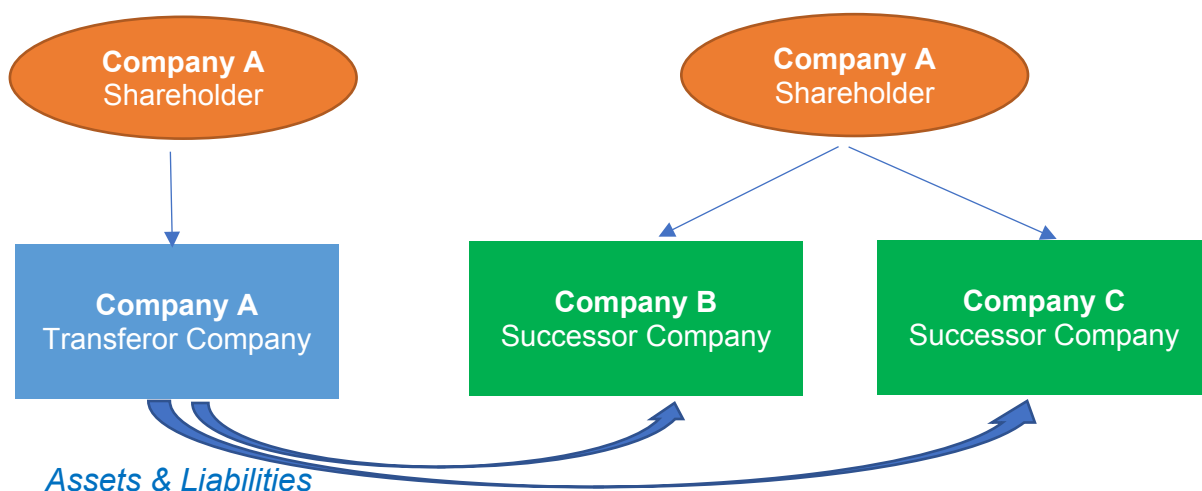


Figure 4: Example 3.3.I – Division by acquisition

Arising from the division by acquisition, the assets and liabilities of Company A are transferred to Company B and Company C. Company B and Company C issue shares to the shareholders of Company A. Company A is dissolved without going into liquidation.

Division by formation of a new company—This involves the same transaction as illustrated in example 3.3.I above, but Companies B and C will be new companies instead of existing companies.

3.4 Company law implications of mergers and divisions

The Act¹ provides that a merger or division, as the case may be, will have the following legal effects:

- (i) all of the assets and liabilities of the transferor company are transferred to the successor company or companies;
- (ii) the transferor company or companies is or are dissolved;
- (iii) all legal proceedings pending by or against any transferor company shall be continued with the substitution, for the transferor company, of the successor company or companies as a party;
- (iv) the successor company or companies is or are obliged to make to the members of the transferor company or companies any cash payment required by the common draft terms of the merger or division;
- (v) every contract, agreement or instrument to which a transferor company is a party shall, notwithstanding anything to the contrary contained in that contract, agreement or instrument be read and have effect as if:
 - a. the successor company had been a party thereto instead of the transferor company,
 - b. for any reference to the transferor company there were substituted a reference to the successor company, and
- (vi) any reference to the directors, officers, representatives or employees of the transferor company were respectively a reference to the directors, officers, representatives or employees of the successor company or to such director, officer, representative or employee of the successor company as the successor company nominates. Where there is no nomination, the reference will be to the director, officer, representative or employee who corresponds as nearly may be to the first mentioned director, officer, representative or employee; every contract, agreement or instrument to which a transferor company is a party becomes a contract, agreement or instrument between the successor company or companies and the counterparty with the same rights and subject to the same obligations, liabilities and incidents (including rights of set-off), as would have been applicable thereto if that contract, agreement or instrument had continued in force between the transferor company and the counterparty;

¹ Refer to sections 480, 503, 1144 and 1166 of the Act.

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- (vii) any money due and owing (or payable) by or to a transferor company under or by virtue of any such contract, agreement or instrument as is mentioned in paragraph (iv) above shall become due and owing (or payable) by or to the successor company or companies instead of the transferor company;
 - (viii) an offer or invitation to treat made to or by a transferor company before the date appointed by the court confirming the merger or division, shall be read and have effect, respectively, as an offer or invitation to treat made to or by the successor company or companies;
 - (ix) In the case of a division, where a liability is not allocated or it is not possible to determine the manner in which the liability has been allocated, the liability shall become jointly and severally the liability of the successor companies.

4 Tax implications of Mergers and Divisions

4.1 Background

In general, where a merger or a division takes place by operation of company law, the relevant successor company or companies succeeds to the tax filing, reporting and payment obligations of the transferor company and must file returns and make payments in like manner to the transferor company. The successor company effectively 'steps into the shoes' of the transferor company with regard to the tax filing and reporting obligations of the transferor company. The successor company will also be able to claim, in certain circumstances, refunds of tax to which a transferor company is entitled.

Section 638A of the Taxes Consolidation Act 1997 (TCA) ensures that all liabilities, obligations and requirements or things to be fulfilled or done by a transferor company, will, for the purposes of Part 38 (returns of income and gains, other obligations and returns, and revenue powers), Part 41A (assessing rules including rules for self-assessment), Part 42 (collection and recovery) and Part 47 (penalties, revenue offences, interest on overdue tax and other sanctions) of the TCA, transfer to a successor company or companies following a merger or division undertaken in accordance with the Act.

The onus is on the transferor and successor companies to ensure that, in the course of preparing for and implementing the merger or division, as the case may be, all tax obligations pertaining to the transferor company and the merger/division are identified and discharged.

For example, the transfer of all the transferor company's assets and liabilities to a successor company might result in the cessation of the trade of the transferor company. This event and the company's dissolution will trigger the end of a tax accounting period for the transferor company. Certain tax filing and payment obligations flow from this event (as well as from the disposal of any chargeable assets). In the context of a merger or division, the transferor company will dissolve without a winding up period and without a liquidator being appointed. At the time that tax returns are due to be filed, the transferor company will have ceased to exist and, therefore, there will be no company officers to sign and submit tax returns and make tax payments on its behalf. These obligations will therefore transfer to the successor company or companies.

It is not possible for Revenue guidance to cover all issues that might arise in the context of mergers and divisions. However, this part of the manual sets out general guidance for transferor and successor companies in fulfilling their tax filing and payment obligations.

4.2 Reporting obligations

Where practicable, the transferor company should, prior to its dissolution, file all information reporting returns (e.g. Forms 46G) which reflect transactions between the last relevant return date and the dissolution date. Section 638A(2) TCA ensures that the tax liabilities and tax obligations of a transferor company are treated as liabilities and obligations of the successor company or companies. Therefore, in circumstances where, for any reason, the transferor company has not fulfilled its information reporting obligations, the successor company must meet all return filing obligations. In these circumstances, returns should be filed in line with normal filing deadlines under the reference number of the transferor company. Also see [paragraph 4.8](#) below.

4.3 Tax Filing obligations

The successor company is obliged to file returns of the transferor company within statutory timeframes in accordance with section 638A(2) TCA. The returns should be filed by the successor company using the tax reference number of the transferor company. Also see [paragraph 4.8](#) below.

4.4 Tax payment obligations

The obligations of the successor company for making tax payments in connection with the liabilities of the transferor company will usually arise in respect of the period immediately preceding the dissolution date. However, it is important to note that any historical tax liabilities of the transferor company will also become liabilities of the successor company, for example, any additional liabilities that are identified as part of a compliance check that relate to the period prior to dissolution. The Act operates to ensure that all assets and liabilities of the transferor company, whether realised or unrealised, at the time of the merger/division, transfer to the successor company or companies. For example, a debt asset which is transferred to the successor company may have been subject to a provision related to a bad debt which was recognised and deducted for tax purposes by the transferor company in the past. If some or all of the transferred debt is later recovered by the successor company, due to the debt previously written off being discharged by a debtor, the successor company will be subject to tax on the debt recovery amount in the same way as the transferor company would have been. In the event that there was an inability to pay claim by the transferor company, the successor company will have responsibility for payment.

The successor company will also be liable for civil liabilities - tax, interest and penalties – arising out of any incident of fraud or neglect by the transferor company.

In the case of a division, where a liability to tax is not allocated or it is not possible to determine the manner in which the liability has been allocated, the liability shall become the joint and several liability of the successor companies.

Tax liabilities which have transferred to the successor company from the transferor company should be paid by the successor company under the relevant tax reference number of the transferor company. Once all of the transferred liabilities have been settled and all outstanding returns have been filed, the successor company can apply for the tax reference numbers of the transferor company to be deleted. Also see [paragraph 4.8](#) below.

4.5 Tax declarations, certificates and other documentation of the transfer or company

Except to the extent that they are relevant to the pre-transfer period of the transferor company, the successor company or companies may not rely, post transfer, on tax or tax-related documentation provided to the transferor company, including declarations (e.g. DWT declarations), treaty clearances, certificates, Revenue approvals, opinions and confirmations. These items will not generally be considered to have transferred over, and apply, to the successor company or companies. Where a successor company wishes to rely on any tax or tax-related documentation provided to a transferor company, it should make an application to Revenue and Revenue will consider the matter based on its merits. However, in general, the successor company should take any necessary steps to put in place any tax-related documentation it wishes to rely on after a merger or division.

4.6 Dividend Withholding Tax (DWT) obligations

Section 172K TCA sets out the requirements relating to returns, payment and collection of DWT. Following a merger or division, where a transferor company has not fulfilled these requirements, the relevant obligations transfer to the successor company (see paragraphs [4.3](#), [4.4](#) and [4.8](#)).

4.7 De-registering the transferor company for tax

The transferor company can be de-registered for all relevant taxes on completion of its tax filing, reporting and payment obligations, with the cessation date recorded as the date the company ceases trading or the date of dissolution in the case of a company not engaged in carrying on a trade at the transfer date. This can be done online.

4.8 Meeting payment and filing obligations

Provision should be made by the officers of the transferor and successor companies in the course of their preparation for, and implementation of, the merger or division to ensure that the necessary administrative arrangements are in place to ensure that filing and payment obligations can be met.

Access to information on ROS is only available using Digital-certificates, and it is incumbent on both the transferor company and the successor company to ensure proper preparation is carried out so that the successor company is able to access the Digital-certificate of the transferor company post-merger and, therefore, to ensure it is in a position to fulfil its obligations to file tax returns and make tax payments in connection with the transferor company. Once the transferor company ceases to exist it will no longer be able to renew its ROS Digital-certificate. ROS Digital-certificates currently have a lifetime of 24 months. It should therefore renew the certificate about one month prior to the date of the merger or division, irrespective of the actual renewal date. Provision should also be made by the parties for the new certificate (and its associated password) to be made available to the successor company, so as to afford it access to ROS information for the transferor company, and thereby allowing it to fulfil its tax obligations.

The ROS administrator can use the '[ROS Reset login](#)' option, which results in a new ROS certificate being downloaded, which will have a 2-year expiry date. In order to use that self-service option, the security questions must be set (in the ROS Profile tab). Furthermore, ROS access is unavailable until the new Administrator certificate is downloaded and all sub-user and linked certificates will be suspended. After the new certificate is downloaded, the Administrator may need to restore the sub-users (in the Admin Services tab in ROS). Digital-certificates can be renewed indefinitely and the Reset option may be used at any time to extend the lifetime of a certificate. If the certificate expires, the Reset ROS Login option may be used to obtain a new certificate quickly using the security questions. A new certificate may be obtained by either using the security questions to reset or by re-registering (this relies on receipt of the ROS Access Number (RAN) letter).

4.9 Appeals

In accordance with section 638A(3) and (4) TCA, an appeal made by a transferor company for the purposes of Part 40 or 40A TCA is to be treated as an appeal made by a successor company and any right of appeal and consequential rights in relation to an appealable matter conferred on a transferor company is to be treated as conferred on a successor company.

4.10 Stamp Duty

Sections 66 and 67 of Finance Act 2017 amended sections 79 and 80 of the Stamp Duties Consolidation Act 1999 in relation to the availability of Stamp Duty reliefs following certain transfers of assets and liabilities from a transferor company to a successor company as a result of a merger undertaken in accordance with the Act. Please refer to the following Tax and Duty manual for further information:

- [Part 7](#) Stamp Duty Manual (Exemptions and Reliefs from Stamp Duty)

Revenue will consider, on a case-by-case basis, any matters arising from transactions covered by the Act, but not specifically provided for in Irish law or the tax and duty manual.

4.11 Capital Gains Tax

Section 82 and Schedule 2 of Finance Act 2017 amended sections 541, 587, 615 and 625 of the TCA to address issues regarding the disposal of debts and the availability of relief in the case of a reconstruction or amalgamation arising from certain transfers of assets and liabilities from a transferor company to a successor company as a result of a merger or division undertaken in accordance with the Act. Please refer to the following Tax and Duty manuals for further information:

- [Part 19-01-13](#) (Debts)
- [Part 19-04-11](#) (Company reconstructions and amalgamations)
- [Part 20-01-02](#) (Company reconstruction or amalgamation: transfer of assets)
- [Part 20-01-12](#) (Shares in subsidiary member of group)

Revenue will consider, on a case-by-case basis, any matters arising from transactions covered by the Act, but not specifically provided for in Irish law.

4.12 Capital Acquisitions Tax

Section 82 and Paragraph 4 of Schedule 2 of Finance Act 2017 amended sections 101 and 104 of the Capital Acquisitions Tax Consolidation Act 2003. These amendments address issues regarding the availability of business relief and the credit for capital gains tax paid on the same event, arising from certain transfers of assets and liabilities from a transferor company to a successor company, as a result of a merger or division undertaken in accordance with the Act.

Please refer to the following Tax and Duty manuals for further information:

- [CAT - Part 12](#) Capital Acquisitions Tax Manual (Business Relief)
- [CAT - Part 13](#) Capital Acquisitions Tax Manual (Credit for Capital Gains Tax)

4.13 Corporation Tax

4.13.1 General

A merger or division under the Act will trigger the end of a tax accounting period for the transferor company, bringing with it obligations to pay tax (where there is a tax liability) and to file a corporation tax return (CT1 return). For example, Company A (transferor company) is merging with Company B (successor company) on 20 June 2019. Both companies have 31 December year ends. From the time of the merger on 20 June, Company A will cease to exist without going into liquidation.

The filing date for the 2019 CT1 return is 20 March 2020, 9 months after the cessation date. As per [paragraph 4.8](#) above, the Board resolution or agreement on the merger or division should ensure that the relevant officers of the transferor and successor companies or their agents have taken the necessary steps to ensure that the companies are able to meet their filing and payment obligations on ROS. The successor company has an obligation to file CT1 returns that have not been filed by the transferor company.

If the successor company (Company B) is required to file the CT1 return of Company A, it should obtain access to Company A's ROS certificate details. Standard timeframes for return filing will apply.

A Merger Financial Statement² is required to be prepared under Section 469 of the Act in certain circumstances and records the solvency position of the dissolving company. The final corporation tax return(s) and associated iXBRL filings of the transferor company will therefore be based on the last statutory financial statements prepared and management accounts for any final period up to the date of the merger.

Revenue will not require audited financial statements for the transferor company in the dissolution period where none have been prepared but will require the Merger Financial Statement (where applicable) and a copy of any Management Accounts prepared to the date of dissolution. This is on the basis that the taxpayer is required to prepare a true and complete tax return. Copies of the CRO Summary showing the company has been dissolved by merger and the Directors' declarations filed with the CRO, which contain details of the successor company, will also be required.

A Form CT1 for the period may be based on the profit/loss recorded in the income statement of the dissolving company for the period from the last financial accounting balance sheet date to the dissolution date and on a management accounting balance sheet reflecting assets/liabilities immediately pre-dissolution/transfer to the successor company.

A transferor company can be de-registered for corporation tax purposes on completion of its tax filing, reporting and payment obligations. The officers of the transferor company should ensure that there are arrangements in place, as part of the merger/division resolution, so that the subsequent filing and payment obligations can be met. The registrations pertaining to the transferor company should be ceased by the successor company after the cessation date, with the cessation date recorded as the date the company ceases to trade or the dissolution date in the case of a company not engaged in carrying on a trade prior to the merger or division. Also see [paragraph 4.7](#).

² The purpose of the Merger Financial Statement is to provide information which supports the solvency test which directors must satisfy under the Companies Act and to provide a basis for understanding the value of assets and liabilities in order to satisfy shareholders (and the High Court where applicable) that the economic interests of shareholders pre and post-merger/division in the merging/dividing entities have been preserved e.g. where shareholders in a dissolving entity receive shares in the successor company, the parties to the merger have to be satisfied that the proportionate interests of the shareholders in the two pre-merger companies, now one post-merger company, have been preserved. The Merger Financial Statement is prepared to a date prior to the effective date of the merger and may not be based on GAAP/IFRS accounting principles applicable to the preparation of accounts of an ongoing business.

The approach to accounts preparation for most mergers and divisions is likely to be:

- Management accounts prepared for the dissolving entity to the date of its dissolution.
- In the case of a merger, audited financial statements for the successor company reflecting the combined assets and liabilities of the merged entities at balance sheet date. Profit/loss for the entire accounting period arising from the successor company's pre-merger activities together with the profit and loss arising from the acquired assets and liabilities of the transferring company from the date of dissolution of the transferor company to the balance sheet date. A similar outcome should apply for the income statements and balance sheets of the successor companies in the case of a division.

4.13.2 Elections

Section 434(3A) TCA provides that where a close company pays a dividend, or makes a distribution, to another close company, the companies may jointly elect, by giving notice to the Collector-General in such manner as the Revenue Commissioners may require, that the dividend or distribution is not to be treated as a distribution for the purposes of section 440 TCA (which imposes a surcharge on undistributed investment and estate income of close companies). An election by a company must be included with the company's CT1 return for the accounting period concerned. Section 434(3A) requires the joint election be included in the CT1 return of both companies.

Where the transferor company has dissolved pursuant to a merger or division, a joint election may not be possible. For example, a subsidiary company may merge with its parent company after the payment of a dividend to its parent company. A joint election to treat the dividend as not being a distribution for the purposes of the close company surcharge will not be possible following the merger because the subsidiary will no longer exist. In these circumstances, provided all the other conditions are met, Revenue will accept that the provisions of section 434(3A) may apply where the election is made by the parent company, being the successor company. In relation to the other types of merger, responsibility for making the election on behalf of the transferor company passes to the successor company and should be made within the specified time limits.

A single election made by a successor company will suffice for elections under section 617(4) TCA.

Elections for group relief claims require the consent of the surrendering company under section 429 TCA and these will be considered by Revenue on a case-by-case basis.

4.13.3 Capital Allowances and Losses

Section 308A TCA provides that the transfer of trade assets in the course of a merger will not give rise to a balancing charge. Section 400 TCA provides, in certain circumstances, for the right to capital allowances (and liability to balancing charges) and relief for trading losses to be transferred from one company to another where a trading company ceases to carry on a trade and, following the cessation, another company carries on the trade. Section 400 applies where not less than 75% of the trade belongs to the same persons that it belonged to at sometime within one year before the transfer.

Provided all relevant conditions of the respective sections are satisfied, these provisions may continue to apply where the transfer of the trade or part of the trade occurs in the context of a merger or a division undertaken in accordance with the Act.

4.13.4 Section 247 and Section 249 TCA

Companies will need to consider how the dissolution of a company as part of a merger or division may impact on a claim for interest relief under section 247 TCA and, whether that event will trigger a recovery of capital under section 247 or section 249. It should be possible for companies to address their own concerns regarding the continued availability of relief under section 247. The investing company must satisfy the requirements of section 247 and, specifically the conditions at section 247(3) must be satisfied in relation to the investee company on an ongoing basis throughout the term of the loan. Where the merger or division involves the dissolution of the investing company or the investee company, these fundamental conditions for relief will not be satisfied and relief will cease to be available.

Refer to the following tax and duty manuals for further guidance on the application of section 247 and section 249:

- Tax and Duty Manual [Part 08-02-01](#) (Charges on income for corporation tax purposes)
- Tax and Duty Manual [Part 08-02-01a](#) (Rules relating to recovery of capital and replacement loans)

4.13.5 Section 130 TCA

Section 130 TCA **treats** certain events as being a distribution. This treatment does not hinge upon any legal requirement, e.g. to have distributable reserves and, therefore, just because there cannot be a distribution from a legal point of view does not mean that there cannot be a distribution under section 130. Where there is a transfer of assets by a company to its members and such transfer meets the conditions for the application of section 130(3), the company will be treated as making a distribution. However, in accordance with Revenue guidance (Tax and Duty Manuals [Part 19-04-11](#) and [Part 20-01-02](#)), section 130 will not generally apply where the CGT reconstruction provisions apply.

4.13.6 Repayment of Preliminary Tax

In some cases, the preliminary corporation tax paid by the transferor company in respect of its accounting period to the date of dissolution may exceed its tax liability for the period. In such circumstances, any repayment due after the tax overpaid has been set off against any other taxes that are due, becomes an asset of the successor company. Section 865(10) TCA provides for a repayment of tax to a successor company or companies in respect of tax overpaid by a transferor company. Where there is more than one successor company, the repayment will be apportioned on a just and reasonable basis.

The amount of any repayment of tax to the successor company or companies shall not exceed the total amount that would have been repayable to the transferor company. Once the amount of the repayment has been determined following the filing of the CT1, the refund due may be transferred to the successor company. When the successor company files the CT1 return for the transferor company, the transferor company's balancing refund can be offset against the successor company's liability. It is only possible to ascertain the tax liability and whether a refund is due when the tax return is filed.

4.14 Payroll Taxes

A number of issues may arise in relation to employee taxes as a result of a merger or division under the Act. The following practical example outlines how these issues should be dealt with.

Company A (transferor company) is merging with Company B (successor company) on 20 June 2019. Both companies have 31 December year ends. From the time of the merger on 20 June, Company A will cease to exist without going into liquidation. As a consequence of the merger, the assets and liabilities of Company A will transfer to Company B by operation of law. Company A has 100 employees, all of whom will transfer to Company B as part of the merger.

i. How will Company B register Company A's employees as its employees?

Company B³ must register the former employees of Company A as employees of Company B. The most efficient and quickest method of organising the 'migration' of the employees from Company A to Company B is as follows:

- Company A should cease the employees by submitting a Revenue Payment Notification (RPN) with a cessation date of 20 June 2019. This advises Revenue that this is the final payment for those employees and will result in the cessation of the 100 employees on Company A's record. The RPN can be submitted prior to 20 June 2019 with the cessation date marked as 20 June.
- Company B should submit a 'Create RPN' request with a commencement date of 21 June 2019. This commences the 100 employees on Company B's record. Company B should do a 'Lookup RPN' request which includes the details of the 100 employees' tax credits and rate bands.
- On the basis that Company A has ceased the 100 employees and that the previous pay, tax, USC, etc. is provided from the final payroll submitted on 20 June 2019, the RPN available to Company B will have the up-to-date cumulative data and tax credits and rate bands. This will enable Company B to make the correct deductions when running its payroll.
- This process means that the relevant cumulative income, tax, and USC information is correctly updated on the employees' records. They will continue to be taxed cumulatively from the date of transfer. The only change is that the employees will be recorded on Company B's payroll. The Revenue record will correctly record the employer of the 100 employees as 'Company B' from 21 June.
- This process operates in real-time as the RPNs are submitted and requested.

ii. How quickly can Company A employees be transferred to Company B's employer number?

In real-time as the RPN process is operated by payrolls.

In cases where there are multiple employments or where tax credits are shared between spouses who are taxed on a joint assessment basis, the tax credits and/or rate bands may be reallocated. An employee can amend the credit/band allocation in 'PAYE Services/Manage your tax'.

³ It is assumed that Company B is already registered as an employer. If not, it should register online through the eRegistration service.

- iii. **Company A operated a monthly payroll. Following the merger, Company A will cease to exist and Company B would like to know how tax is to be accounted for on emoluments paid to employees of Company A for the month in which the merger occurs (June).**

Company A used the full month's (June) credit in the June payroll, even though they only paid 3 week's pay. Company B will use a full month's (July) credit when they pay 5 week's pay. Accordingly, the employees will benefit in June and that will be recouped in July – overall it balances out given the operation of a cumulative tax system.

- iv. **Can tax due and related filings be returned by Company B using Company A's registration number or should they be returned using Company B's registration number?**

They should be returned using Company B's registration number.

Note: the PAYE regulations apply in full to Company B including a register of employees and the calculation and deduction of tax. Also, Company A is required to meet the requirements of the PAYE regulations including that it must notify Revenue immediately when they cease to be an employer and cease the employees on their register. Also see [paragraph 4.8](#).

- v. **Is the transferor company required to issue P45s to transferring employees?**

An employer is required to issue P45s only in respect of employment cessations up to and including 31 December 2018. Employment cessations since 1 January 2019 are to be notified to Revenue through the RPN process (by including a date of cessation on the final payment).

In relation to PAYE of transferred employees, there are provisions within the Income Tax (Employment) Regulations 2018 that cover matters relating to the succession to a business. **Regulation 25** is outlined below:

Succession to a business, etc

- (1) This Regulation applies where there has been a change in the employer from whom an employee receives emoluments in respect of his or her employment in any trade, business, concern or undertaking, or in connection with any property, or from whom an employee receives any annuity or pension.
- (2) Where this Regulation applies, the change shall not be treated as a cessation of employment for the purposes of these Regulations, but, in relation to any matter arising after the change, the employer after the change shall be liable to do anything which the employer before the change would have been liable to do under these Regulations if the change had not taken place.
- (3) The employer after the change shall not be liable for the payment of any tax which was deductible from emoluments paid to the employee before the change took place.

vi. Are there any implications for tax credit certificates?

Tax credit certificates for all transferring employees will be issued through ROS or via payroll under the employer registration number of the successor company/companies.

vii. What are the implications for P60s if a merger or division occurs during the year as is the case here?

An employer is required to issue P60s only in respect of employments up to and including 31 December 2018. Since 1 January 2019, employment details such as pay, tax, USC, LPT deductions, etc. are reported to Revenue as part of the RPN process on or before each payroll run.

viii. Will there be a deemed continuity of service for transferring employees?

Yes, for tax purposes there will be a deemed continuity of service.

ix. Where the successor company takes over the pension scheme of the transferor company in respect of the transferring employees will the payments by the successor company continue to be viewed as deductible?

Yes, a deduction will continue to be available to the successor company.

x. Where relevant, can the successor company continue to participate in the former employer pension scheme for a transitional period of time?

This is a matter for the trustees of the pension scheme.

4.15 Relevant Contracts Tax

Following a merger or division under the Act, certain issues may arise in relation to Relevant Contracts Tax (RCT). These issues will be considered with reference to the practical example of Company A (transferor company) merging with Company B (successor company) on 20 June 2019. Both companies have 31 December year ends. From the time of the merger on 20 June, Company A will cease to exist without going into liquidation. Assume that Company A is both a Principal Contractor and a Subcontractor in relation to various projects. Company B is “stepping into Company A’s shoes” with regard to these contracts/projects.

i. In respect of those contracts for which Company A is a Principal Contractor, what actions must be taken by Company B to ensure the transfer of the projects and that it fulfils its obligations?

As set out in [3.4\(v\)](#) and [3.4\(vi\)](#), the Act provides that in the event of a merger under the Act, from a company law perspective, a contract to which a transferor company is a party becomes a contract to which a successor company is a party and the successor company will have the same rights and obligations in relation to the contract as the transferor company had. Where the merger of a Principal Contractor occurs (Company A in this example), the relevant contract with the Subcontractor will continue, with Company B taking the place of Company A.

However, it is important for the parties to review the terms of the relevant contract and take appropriate legal advice to ensure that this is the case, taking account of the particular circumstances.

Where, as a matter of law, the relevant contract with the Subcontractor continues with Company B taking the place of Company A as the Principal Contractor, Company B should create new Contract Notifications in respect of each contract for which it is “stepping into the shoes” of Company A as Principal Contractor. The value of the contracts entered should be the total contract value minus the amount already paid by Company A. All future payments under the relevant contract can be notified under the new Contract Notification under Company B.

Payment and Contract Notifications for Company A should be made under Company A’s record up to the date of merger. Payment and Contract Notifications made after the date of merger should be recorded under Company B. As stated in v below, any RCT liability relating to Company A up to the date of merger will not be apparent until after the return is filed. This may not occur until the 23rd of the following month (or even the 23rd of the month following the current quarter for quarterly filers).

Company B can file the return early (using the ROS certificate of Company A) if the period has ended, or it can wait until the system auto-files the return on the 23rd. After the return is filed, Company B can pay the liability using the ROS certificate of Company A.

ii. For contracts on which Company A is a sub-contractor, what actions are required to be taken by Company B?

Where the merger of a Subcontractor company occurs and, as a consequence, it ceases to exist (Company A in this example), as a practical matter, the successor company (Company B) will need to contact all of the Principal Contractors of Company A to inform them of the merger. In addition, the relevant contracts should be reviewed, and appropriate legal advice taken, to ensure that each contract with a Principal Contractor continues with Company B taking the place of Company A.

Where, as a matter of law, relevant contracts with Principal Contractors continue, with Company B taking the place of Company A as the Subcontractor, Company B should ensure that all Principals who had engaged Company A have created new Contract Notifications for those same contracts with Company B (the value of which should be the total contract value minus the amount already paid to Company A). This can be done by reviewing all Contract Notifications correspondence from the RCT system to Company A and ensuring that they match with all expected contracts in respect of which Company B is “stepping into the shoes” of Company A. Any discrepancies should be followed up on by Company B.

iii. Should the successor company apply for a new RCT registration number to reflect the merged entity?

There is no requirement for the successor company to apply for a new Principal Contractor or Subcontractor registration number, as the case may be, unless it is a newly incorporated company or is not already registered for RCT. The successor company should, where it is already registered for RCT, continue to use its existing RCT registration number. If the successor company is not already registered, it should apply for a RCT registration. There may be circumstances where the successor company was a Subcontractor prior to the merger but, as a result of the merger, it has also become a Principal Contractor. Where this applies, the successor company should amend its existing RCT registration to reflect its new circumstances. In particular, the successor company should contact Revenue to change its RCT registration from a "Subcontractor" to a "Principal/Subcontractor". New RCT registrations and changes of registration from a "Subcontractor" to a "Principal/Subcontractor" can be carried out on ROS. There is only one RCT registration irrespective of whether a contractor is a Principal, a Subcontractor or both.

With regard to the compliance history of Company A, the transferor company and successor company are two distinct entities and there is no basis on which the successor company can be deemed to take over the compliance history of the transferor company.

iv. What is the position with regard to the rate of deduction?

There are a number of factors that determine the rate of deduction for a subcontractor. The rate for each case is determined by the circumstances of the case and included in this is a zero rate for new cases where the district is satisfied that this is appropriate. It is not possible for the requirements of section 530G to be disregarded for the purposes of determining whether the zero rate should apply to the successor company or companies as the circumstances will be different in every case.

v. Should Principal Contractors' Deduction Summaries (month end returns) for the period up to the date of the merger/division be filed, with the RCT paid, by the successor company under the tax reference number of the transferor company?

Yes, responsibility for RCT filings and payments relating to the transferor company will pass to the successor company or companies.

Deduction authorisations issued to the transferor company by Revenue will be available to the successor company on ROS, in the event that they are requested by a Subcontractor in the future.

Company A will need to make all Payment Notifications up to 20 June and then close the contracts by altering the end dates of those contracts. There is no need for Company B to file the RCT monthly returns (or quarterly returns if Company A is a quarterly filer) because the eRCT system will automatically file those returns when the return filing date comes based on the deduction summary information. There may be a RCT liability on the return and this will need to be paid by Company B on ROS using Company A's Digital-certificate.

As set out in [paragraph 4.8](#) access to information on ROS is only available using Digital-certificates, and it is incumbent on both Company A and Company B to ensure proper preparation is carried out prior to 20 June so that Company B is in a position to fulfil its tax obligations. Company A should renew the certificate about one month prior to 20 June or the merger date irrespective of the actual renewal date. Provision should be made by the parties for the new certificate (and its associated password) to be made available to Company B, so as to afford Company B access to ROS information for Company A, and thereby allowing it to fulfil its tax obligations. ROS Digital-certificates currently have a lifetime of up to 24 months. However, Digital-certificates can be renewed indefinitely and the Reset option may be used at any time to extend the lifetime of a certificate. If the certificate expires, the Reset ROS Login option may be used to obtain a new certificate quickly using the security questions. A new certificate may be obtained by either using the security questions to reset or by re-registering (this relies on receipt of the ROS Access Number (RAN) letter).

As noted in [paragraph 4.13.1](#) above, the CT pay and file date for Company A is 20 March 2020 and if the ROS certificate goes out of date between 20 June 2019 and 20 March 2020, Company B should renew company A's ROS certificate as outlined in the previous paragraph. This will enable Company B to fulfil its corporation tax obligations relating to Company A.

With regard to providing new Deduction Authorisations to the Subcontractors of Company A, this can only be done using the Digital-certificate of Company A. After 20 June, Company B can do this using Company A's Digital-certificate.

vi. Can RCT held on account for the transferor company be transferred to the successor company, for offset against other tax liabilities (of the transferor company or the successor company) as they arise?

It is not possible in ROS to transfer RCT withheld from one company to another company. RCT credit only becomes available for offset once the annual return has been filed. In this case, the corporation tax filing date is 20 March 2020. It should be noted that RCT credit is a down payment of Income Tax/Corporation Tax. It should be used exclusively for the payment of preliminary tax with any excess amount available to other tax heads (of that company), with two exceptions:

- Non-residents; and
- Interim refunds which can be made under hardship cases based upon a Revenue examination.

RCT credit is generally not available for offset against a current liability and is not transferable between companies. If, following the filing of the corporation tax return for Company A, a credit remains in Company A's record, and if there are no other liabilities of Company A to offset that RCT credit, Company B will need to contact the Revenue branch dealing with its tax affairs with regard to transferring that credit to Company B's record or to arrange a refund of the RCT.

vii. What are Company B's obligations in relation to discharging Company A's RCT liabilities?

If a RCT return filed for Company A post-merger shows a RCT liability, it will be the responsibility of Company B to pay it. Company B can make the payment on ROS using Company A's Digital-certificate. Where Company A is due a RCT refund, an application may be made to Revenue to allocate Company A's RCT refund against a RCT liability of Company B or alternatively to arrange a refund of the RCT.

viii. Will the Deduction Authorisations issued to the transferor company by Revenue be made available to the successor company on ROS, in the event that they are requested by a Subcontractor in the future?

If it is agreed by the parties to the merger/division and, provision is made by them for such access, the successor company may access the transferor company's ROS account (as per [paragraph 4.8](#)).

Even if the transferor company has 'ceased' its ROS account, ROS records (deduction authorisations, etc.), of the transferor company remain available for a period of time. See response to Question v above, which provides details in relation to the duration of ROS Digital-certificates and how they may be renewed.

ix. Do Revenue opinions/confirmations obtained in respect of the transferor company remain valid for the successor company?

No, if the successor company wishes to rely on an opinion/confirmation provided by Revenue to the transferor company, the successor company should apply to Revenue in accordance with published guidance for obtaining an opinion/confirmation from Revenue. For further information please refer to the following Tax & Duty Manuals:

- [Part 37-00-00a](#) (The Revenue Technical Service)
- [Part 37-00-40](#) (Large Cases Division: Opinions/Confirmations on Tax/Duty Consequences of a Proposed Course of Action)

Each application will be considered on its merits on a case-by-case basis.

x. Can the transferor company be ceased for RCT purposes on completion of its tax filing, reporting and payment obligations?

A transferor company can be ceased for RCT purposes on completion of its tax filing, reporting and payment obligations.

4.16 VAT

Any queries relating to the VAT implications of a merger or division should be addressed to the Revenue branch dealing with the taxpayer's tax affairs and they will be considered on a case-by-case basis.