



## Tax characteristics of the new merger

### The following report may be of interest to:

All clients

### In brief:

On 21 February 2024, the Revenue Department issued the tax ruling, GorKhor 0702/1112, regarding the tax consequences of an amalgamation under Section 1238 (2) of the Civil and Commercial Code (CCC) (a “new merger”).

In the ruling, the Revenue Department states that a new merger under Section 1238 (2) of the CCC, in which one company continues to exist while the other company is merged into the existing company, does not fall within the definition of an amalgamation of limited companies under Section 73 of the Revenue Code. Instead, it has the same characteristics as an entire business transfer for tax purposes, making Section 74(1)(c) of the Revenue Code applicable.

### 1. Tax implications of the new merger:

The ruling also includes the tax implications of the new merger, which are briefly outlined as follows:





#### (a) Corporate income tax (CIT)

Where the transferor company registers for dissolution and enters liquidation in the same accounting period as that in which the entire business is transferred, the computation of the net profit and loss for CIT purposes is as follows:

Party	CIT computation
<b>Transferor company</b>	For the purposes of calculating profits subject to CIT, Section 74(1)(c) of the Revenue Code requires a valuation of the balance sheet assets to fair market value on the date of dissolution. However, the market value of the property is not treated as revenue or expense of the transferor company in the CIT computation.
<b>Transferee company (existing company)</b>	The transferee company inherits the book value of the assets transferred and is required to follow the rules and rates for the depreciation of assets used by the transferor company. In addition, the net losses of the transferor company cannot be carried across to the transferee company.
<b>Corporate shareholders</b>	Where shareholders receive shares in the surviving company, they should be exempt from tax on any capital gains provided that they receive the shares in the same accounting period as the entire business transfer.

#### (b) Value added tax

The entire business transfer is not considered as a sale under Section 77/1(8)(f) of the Revenue Code and is not subject to VAT.

#### (c) Specific business tax

Income from the sale of immovable property that is the seller's place of business is exempt from specific business tax.





#### (d) Stamp duty

The transferor is exempt from stamp duty arising from the entire business transfer.

#### 2. Our observations:

According to the CCC, the new merger does not require the registration of dissolution of the merging company. However, the Revenue Code only provides tax benefits for an entire business transfer if the transferor company registers for dissolution and liquidates within the same accounting period as the business transfer. Therefore, it raises the question as to whether the new merger would still qualify for the tax benefits.

We will continue to monitor these matters closely for any additional rulings or further clarifications from the Revenue Department. This is important as it can have a significant impact on the implementation of the new merger moving forward.



#### For further information, please contact:

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