IRAS e-Tax Guide

Income Tax & Stamp Duty:
Mergers and Acquisitions Scheme
(Second edition)

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Income Tax & Stamp Duty: Mergers and Acquisitions Scheme

1 Aim

1.1 This e-Tax Guide sets out the details of the mergers and acquisitions ("M&A") allowance and stamp duty relief scheme (collectively, the "M&A scheme"). The M&A scheme was introduced in Budget 2010 and enhanced in Budget 2012.[1]

1.2 It is relevant to a company incorporated and tax resident in Singapore that acquires a controlling ordinary share stake in another company.[2]

2 Overview of M&A scheme[3]

M&A Allowance

2.1 Under the scheme, subject to conditions, a company ("acquiring company") that acquires the <u>ordinary shares</u> of another company ("target company") during the period 1 April 2010 to 31 March 2015 (both dates inclusive) is granted an M&A allowance, equal to 5% of the value of the acquisition.

2.2 An acquiring company may acquire the ordinary shares of a target company either directly or through a wholly owned subsidiary that is incorporated for the primary purpose of acquiring and holding shares in other companies ("acquiring subsidiary"). In both situations, the M&A allowance is granted only to the acquiring company.

2.3 The maximum amount of M&A allowance granted to an acquiring company is $5 million for each year of assessment ("YA") for all qualifying share acquisitions executed in the basis period for that YA (i.e. 5% of the purchase consideration of qualifying share acquisitions aggregating up to $100 million).

2.4 The M&A allowance on the purchase consideration (including any contingent consideration[4]) incurred for any qualifying share acquisition is allowed over 5 years on a straight-line basis ("5-year write-down period") and cannot be deferred.

2.5 Where any contingent consideration is incurred in a basis period subsequent to the basis period in which the qualifying share acquisition took place, the M&A allowance on that contingent consideration is allowed on a straight-line basis over the remaining years of the 5-year write-down period. However, if any contingent

[1] This e-Tax guide replaces the IRAS' e-Tax guide on "Mergers and Acquisitions Scheme" published on 27 June 2011.

[2] This scheme applies only where a share acquisition results in a company having > 50% or ≥ 75%, as the case may be, of ordinary share ownership in the target company (please refer to paragraph 3.3 for more details).

[3] The M&A scheme is provided under section 37L of the Income Tax Act ("ITA") (for M&A allowance) and section 15A of the Stamp Duties Act (for Stamp duty relief) respectively.

[4] Contingent consideration is that part of the purchase consideration for the share acquisition that is payable only when conditions pre-agreed between the acquiring company and target company are met.

consideration is incurred in the last basis period of the 5-year write-down period or later, the M&A allowance on that contingent consideration is allowed fully in the YA relating to the basis period in which the consideration was incurred.

2.6 The example in **Annex 1** illustrates the computation of M&A allowance.

Stamp Duty Relief

2.7 Under the scheme, subject to conditions, stamp duty relief is granted on any contract or agreement for sale of equitable interest in ordinary shares or on any transfer documents for the acquisition of the ordinary shares under an M&A deal. The instrument must be executed during the period 1 April 2010 to 31 March 2015 (both dates inclusive) to be eligible for the relief.

2.8 The acquiring company may acquire the ordinary shares of the target company directly or through an acquiring subsidiary[5]. The amount of stamp duty relief which is granted to the acquiring company only is capped at $200,000 for each financial year[6] ("FY").

2.9 Where both stamp duty relief and M&A allowance are claimed on the same qualifying share transaction, the FY or elected 12-month period[7] for the purpose of stamp duty relief must be identical to the basis period or elected 12-month period for the purpose of claiming M&A allowance.

2.10 The example in **Annex 2** illustrates the application of the stamp duty relief.

3 Scope of M&A Scheme

3.1 The scheme seeks to help Singapore-based companies which carry on substantive business operations in Singapore to grow by acquisition. It is not intended to apply to:

(a) an internal restructuring/ reorganisation of companies undertaken within a corporate group[8] except where such a restructuring/ reorganization also results in the corporate group acquiring a higher proportion of ordinary share ownership in a target company after the event[9];

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5 Please refer to paragraph 2.2.

6 This relates to the same basis period for the YA for which the M&A allowance is granted for income tax purpose. For stamp duty purpose, where there is a change in accounting period, the Commissioner of Stamp Duties may also, at his discretion, use any other period as reference in applying the cap.

7 See paragraph 3.7(ii) for more details.

8 For the purpose of the M&A scheme, a corporate group refers to one comprising 2 or more companies, each of which is either a holding company or subsidiary of another entity within the group.

9 For example, before a reorganisation within a group, Company A held 100% and 60% ordinary shares in Company B and Company C respectively. After the reorganisation, Company A holds 100% shares in Company B while the latter holds 60% of the shares in Company C. In such a case, no M&A allowance and stamp duty relief shall be granted to Company B for its acquisition of the ordinary shares in Company C as there is no increase in the proportion of ordinary share ownership in Company C held by the corporate group as a whole. However, if Company B had acquired 80% instead of 60% of the ordinary shares of Company C, then M&A allowance and stamp duty relief is available to Company B in respect of its acquisition of the additional 20% ordinary shares of Company C.

(b) the setting up of new (subsidiary) companies within a corporate group to carry on business activities;

(c) the acquisition of ordinary shares which form part of the acquiring company's trading stocks.

Qualifying Conditions

3.2 The M&A allowance and stamp duty relief under the scheme is given to an acquiring company for any YA (or FY) only if the following conditions are met:

(a) the acquiring company –

(i) is incorporated and tax resident in Singapore. Where the acquiring company belongs to a corporate group, its ultimate holding company must also be incorporated and tax resident in Singapore;

(ii) is carrying on a trade or business[10] in Singapore on the date of the acquisition of the ordinary shares of a target company;

(iii) has in its employment at least 3 local employees, excluding company directors, (i.e. Singapore citizens or Singapore permanent residents who and whose employer make CPF contributions) throughout the period of 12 months prior to the date of acquisition of the ordinary shares of the target company;

(iv) is not connected, as defined in paragraph 3.10(b), to the target company for at least two years prior to the date of acquisition of the ordinary shares[11];

(b) where the acquisition is made through an acquiring subsidiary, the acquiring subsidiary –

(i) does not carry on a trade or business in Singapore or elsewhere on the date of the acquisition of ordinary shares of the target company; and

(ii) is wholly and directly owned by the acquiring company on that date; and

(iii) does not claim any deduction for M&A allowance and stamp duty relief under the scheme

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[10] This means the income derived by the acquiring company is chargeable to tax under section 10(1)(a) of the ITA.

[11] This condition does not apply during a period when an acquiring company or an acquiring subsidiary, as the case may be, is acquiring a target company's ordinary shares cumulatively over a period of time ("step-acquisition") as stated in paragraph 3.7.

(c) the target company or a subsidiary wholly and directly owned by the target company ("operating subsidiary") –

(i) carries on a trade or business in Singapore or elsewhere on the date of share acquisition; and

(ii) has at least 3 employees working for the company throughout the period of 12 months prior to the date of share acquisition.

3.3 In addition, the share acquisition must result in the acquiring company owning[12] –

(i) > 50% of the ordinary shares of a target company if the company owns ≤ 50% of the ordinary shares of the target company before the date of share acquisition; or

(ii) ≥ 75% of the ordinary shares of a target company if the company already owns > 50% (but < 75%) of the ordinary shares of the target company before the date of share acquisition.

Relaxation of conditions for share acquisitions made during period 17 Feb 2012 to 31 Mar 2015

3.4 In Budget 2012, enhancements to the M&A scheme were introduced for qualifying share acquisitions made on or after 17 February 2012, as follows:

(a) the M&A scheme is now available as an added feature of the Headquarters Tax Incentive Programme ("HQ Programme")[13] administered by the Economic Development Board ("EDB") and the Monetary Authority of Singapore ("MAS"). The economic agency concerned may waive the requirement that the ultimate holding company of the acquiring company must be incorporated and tax resident in Singapore, on a case-by-case basis, for companies under the HQ programme, subject to conditions imposed by the economic agency[14];

(b) the requirement that a wholly owned acquiring subsidiary must be directly owned by the acquiring company (see paragraph 3.2(b)(ii)) is, subject to paragraph 3.5, removed. In other words, the acquiring subsidiary may now be directly or indirectly wholly owned by the acquiring company; and

(c) the requirement that the conditions in paragraph 3.2(c) can only be met by a wholly and directly owned operating subsidiary of a target company is removed. With this, the conditions can be satisfied by an operating

[12] This refers to the cumulative total ordinary shares owned by the acquiring company itself and those owned through its wholly owned acquiring subsidiaries.

[13] The HQ Programme aims to encourage companies to conduct substantive headquarters management activities from Singapore to oversee, manage and control their regional and global operations and businesses.

[14] To apply for waiver of this condition, please contact the relevant economic agency (i.e. EDB or MAS) administering the HQ Programme.

subsidiary, whether directly or indirectly, wholly owned by the target company.

3.5 Where a wholly owned acquiring subsidiary is indirectly owned by an acquiring company through any intermediate company, each of the intermediate company –

(a) must not carry on a trade or business in Singapore or elsewhere on the date of share acquisition;

(b) must be wholly owned by the acquiring company on that date; and

(c) must not claim any deduction for M&A allowance and stamp duty relief under the scheme.

3.6 Please refer to **Annex 3** for examples of structures which may now qualify under the M&A scheme.

Step-Acquisition

3.7 Where the ordinary shares of the target company are acquired cumulatively over a period of time (i.e. in a "step-acquisition"), the acquiring company is allowed to consolidate all acquisitions of ordinary shares of a target company made during any of the following periods –

(i) the basis period or FY in which the threshold of > 50% or ≥ 75% of ordinary share ownership in the target company is met; or

(ii) the 12-month period ending on the date of share acquisition, during which the threshold of > 50% or ≥ 75% is met[15].

This is provided that at the end of the basis period or FY (of paragraphs (i) or (ii) above), the company continues to own > 50% or ≥ 75%, as the case may be, of the ordinary shares of the target company.

3.8 The example in **Annex 4** illustrates the application of M&A allowance and stamp duty relief in the case of a step-acquisition.

Eligibility conditions during 5-year write-down period

3.9 To remain eligible for M&A allowance for each of the YA during the 5-year write-down period, the following conditions must be met[16]:

(a) the acquiring company, throughout the basis period relating to the YA in which

[15] The acquiring company is allowed to choose only one date within the same basis period (or FY) relating to a YA for consolidation of its or the acquiring subsidiary's purchases of ordinary shares, as the case may be.

[16] For the purpose of stamp duty relief, the acquiring company and subsidiary (where applicable) must meet these conditions for 2 years from the date of share acquisition or in the case of a step-acquisition, 2 years from the date of the last share acquisition. For the purpose of claiming M&A allowance on any contingent consideration incurred after the 5-year write-down period, the acquiring company and subsidiary (where applicable) must meet these conditions throughout the basis period in which the contingent consideration is incurred.

the deduction is claimed, -

(i) remains incorporated and tax resident in Singapore. Where the acquiring company belongs to a corporate group, its ultimate holding company must also remain incorporated and tax resident in Singapore (unless waiver of the condition is granted[17]);

(ii) must continue to carry out a trade or business in Singapore; and

(iii) has in its employment at least 3 local employees, excluding company directors, (i.e. Singapore citizens or Singapore permanent residents where the employer and employee make CPF contributions); and

(b) the acquiring subsidiary as well as any intermediate company (i.e. if the acquiring subsidiary is owned by the acquiring company through one or more intermediate company), if applicable, throughout the basis period relating to the YA in which the deduction is claimed, –

(i) does not carry on any trade or business in Singapore or elsewhere; and

(ii) is wholly owned by the acquiring company[18].

If any of the above eligibility conditions is not met for any YA during the 5-year write-down period, the M&A allowance ceases to apply from that YA onwards. In such a case, M&A allowance shall not be granted for the affected YA and all remaining YAs of the 5-year write-down period.

As regards stamp duty relief, if any of the above eligibility conditions is not met for 2 years from the date of share acquisition or in the case of a step-acquisition, from the date of the last share acquisition, any stamp duty relief given shall be clawed back. In addition, interest at the rate of 6% per annum shall apply on the stamp duty recovered.

3.10 For the purpose of the scheme-

(a) the date of share acquisition is -

(i) the date on which the agreement for the sale of ordinary shares is entered into by the acquiring company or the acquiring subsidiary, as the case may be;

(ii) in the absence of such an agreement, the date of the transfer of ordinary shares of the target company to the acquiring company or acquiring subsidiary, as the case may be.

(b) the acquiring company and the target company are considered to be connected to each other if –

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[17] See paragraph 3.4(a) for more details.

[18] For share acquisitions that took place from 1 April 2010 to 16 February 2012, the wholly owned acquiring subsidiary must also be directly owned by the acquiring company throughout the basis period relating to the YA in which the deduction is claimed.

(i) ≥ 75% of the ordinary shares of one company is beneficially held, directly or indirectly, by the other; or

(ii) ≥ 75% of the ordinary shares of each of the 2 companies is beneficially held, directly or indirectly, by a third company.

4 Determination of M&A Allowance

4.1 The M&A allowance available to an acquiring company is determined based on 5% of the cash consideration paid for the acquisition of ordinary shares in a target company. The consideration must be fully paid up within 6 months from the date of the acquisition of the ordinary shares; or in the case of contingent consideration, within 6 months from the date on which the contingent consideration becomes payable.

4.2 As a concession, the Government has extended the scheme to share acquisitions where an acquiring company uses its own shares as consideration for the ordinary shares acquired in a target company. In such cases, the amount of M&A allowance to be granted to the acquiring company shall be determined as follows:

(a) 5% of the market value (or if unavailable, the net asset value (“NAV”) [19]) of the shares of the acquiring company on the date of share acquisition, where the purchase consideration is satisfied wholly by way of such shares; or

(b) 5% of the sum of the cash paid and the market value (or if unavailable, the NAV) of the shares of the acquiring company on the date of share acquisition, where the purchase consideration is satisfied by way of cash and such shares.

5 Determination of Stamp Duty Relief

5.1 Stamp duty is computed based on the amount or value of the consideration or the NAV of the ordinary shares of a target company acquired, whichever is the higher. The consideration may be in cash or by way of an acquiring company’s shares, or a combination of both.

5.2 Where the consideration is satisfied by way of the acquiring company’s shares, the value of the consideration shall be the NAV of the acquiring company’s shares. In the event where the NAV of the ordinary shares of target company is higher than the NAV of the acquiring company’s share, then stamp duty is computed on the higher amount.

[19] The NAV is determined by reference to the audited accounts at the end of the accounting period immediately before the date of the share acquisition.

6 Events Resulting in Forfeiture or Reduction in M&A Allowance and/or Stamp Duty Relief

Divestment of ordinary shares acquired pursuant to a qualifying share acquisition

M&A Allowance

6.1 An acquiring company or acquiring subsidiary, as the case may be, may subsequently divest the ordinary shares acquired for which M&A allowance has been granted. Where the divestment occurs after the basis period for the YA in which the qualifying share acquisition took place and causes the company's ordinary share ownership in the target company to become ≤ 50% or < 75% (whichever was the threshold reached that resulted in the M&A allowance), the M&A allowance ceases to be given to the acquiring company from the YA to which the divestment of ordinary shares relates.

6.2 Where the divestment does not result in an acquiring company owning ≤ 50% or < 75% (whichever was the threshold reached that resulted in the M&A allowance) of the ordinary shares of the target company, the M&A allowance continues to be given to the acquiring company but on a prorated basis to reflect the corresponding reduction in shareholding.

6.3 The examples in **Annex 5** illustrate the proration of M&A allowance arising from divestment of ordinary shares in a target company.

Stamp Duty Relief

6.4 Where an acquiring company or acquiring subsidiary, as the case may be, divests the ordinary shares of a target company and this results in the company's ordinary share ownership in the target company to become ≤ 50% or < 75% (whichever was the threshold reached that resulted in the claim of stamp duty relief) within a two-year period[20] starting from the date of share acquisition or in the case of step-acquisition, from the date of the last share acquisition, any stamp duty relief shall be clawed back. In addition, interest at the rate of 6% per annum shall apply on the stamp duty recovered.

Dilution of ordinary shareholding in Target Company

M&A Allowance

6.5 Where the shareholding of an acquiring company in a target company is subsequently diluted due to the issuance of new ordinary shares by the target company, M&A allowance continues to be available to the company without pro-ration if it continues to own > 50%[21] of the ordinary shares of the target company. This is to allow greater flexibility to the acquiring company in raising funds after the share acquisition,

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[20] This two-year period mirrors the two-year claw-back period for Section 15 Relief under the Stamp Duties Act, which requires a person who acquires shares for which the relief is granted not to divest the acquired shares within two years, as otherwise the relief given shall be clawed back.

[21] This requirement is to ensure that the target company remains part of the corporate group of the acquiring company.

including through the issuance of new ordinary shares of the target company, for further expansion and growth of the group's business. However, where the dilution results in the acquiring company owning ≤ 50% of the ordinary shares of the target company, the M&A allowance ceases to be given from the YA to which the dilution of shareholding relates.

Stamp Duty Relief

6.6 Where the shareholding of an acquiring company in a target company is subsequently diluted due to the issuance of new ordinary shares by the target company within 2 years from the date of share acquisition or in the case of a step-acquisition, from the date of the last share acquisition and the dilution of shareholding in the target company results in the company, owning ≤ 50% of the ordinary shares in the target company, any stamp duty relief previously allowed shall be clawed back. In addition, interest at the rate of 6% per annum shall apply on the stamp duty recovered.

Substantial Change of Shareholders in Acquiring Company

M&A Allowance

6.7 Where there is a substantial change of ultimate shareholders in an acquiring company, the M&A allowance ceases to be given from the YA in which the change of shareholders occurs unless the shareholding requirement[22] is waived. This seeks to prevent any abusive arrangement entered into with one of its main purposes as creating M&A allowance.[23]

Stamp Duty Relief

6.8 Where there is a substantial change of ultimate shareholders in an acquiring company, within a two-year period starting from the date of share acquisition or in the case of a step-acquisition, from the date of the last share acquisition, any stamp duty relief previously allowed shall be clawed back unless the shareholding requirement is waived. Interest at the rate of 6% per annum shall apply on the stamp duty recovered.

7 Double Tax Deduction for Transaction costs (for share acquisitions made during the period 17 Feb 2012 to 31 Mar 2015)

7.1 Besides the enhancements set out in paragraph 3.4, Budget 2012 also introduced a double tax deduction ("DTD") scheme for qualifying transaction costs incurred on qualifying share acquisitions made during the period 17 February 2012 to 31 March

[22] The shareholding requirement is met if the shareholders of the acquiring company on the first day of the YA in which the deduction is claimed are substantially similar to its shareholders on the date of acquisition of the shares.

[23] For example, a corporate shareholder (Company A) of a target company (Company B) may, shortly after selling his controlling shareholding to an acquiring company (Company C) (for which Company C may claim M&A allowance and stamp duty relief), arrange to acquire Company C to claim another set of M&A allowance and stamp duty relief. If appropriate anti-avoidance measures are not in place to prevent it, multiple sets of M&A allowance and stamp duty relief can result in this manner even though there is actually no substantive change to a corporate group arising from the series of acquisition activities.

2015. The DTD is applicable to transaction costs, net of grants or subsidies from Government/ Statutory Board, subject to an expenditure cap of $100,000 per YA. Transaction costs include legal fees, accounting or tax advisor's fees, valuation fees and such other professional fees that are necessarily incurred for a qualifying share acquisition but do not cover professional and incidental fees in respect of a loan arrangement. The DTD of transaction costs is given in the YA in which M&A allowance for the qualifying share acquisition is claimed[24].

7.2 Transaction costs incurred in relation to share acquisitions that took place before 17 February 2012 remain non-tax deductible.

8 Group Relief, Carry-back and Carry-forward of unabsorbed M&A allowance and DTD for transaction costs

8.1 The M&A allowance and DTD for transaction costs are not available for transfer under the group relief system. This is because the scheme is intended to directly benefit a Singapore-based acquiring company which carries on substantive business operations in Singapore and is seeking growth through M&A.

8.2 Any unabsorbed M&A allowance and unabsorbed DTD for transaction costs are also not available for carry back to offset the acquiring company's assessable income for preceding year(s). The unabsorbed M&A allowance and unabsorbed DTD for transaction costs, however, may be carried forward to offset the acquiring company's future income subject to it meeting the shareholding test[25].

9 Abusive Tax Practices

9.1 Where it appears that an acquiring company or acquiring subsidiary has entered into an arrangement with the main purpose of creating or inflating M&A allowance, the arrangement shall be disregarded under section 33 of the ITA. Any M&A allowance and DTD for transaction costs previously given to the acquiring company shall be withdrawn. The statutory time limits to raise additional assessments or make adjustments to assessments which result in any unabsorbed allowances or losses, under section 74(1) and (4) of the ITA, shall not apply in such cases.

9.2 Examples of arrangement considered to be abusive tax practice are –

(a) Inflated value of share acquisition deal

An acquiring company may arrange with a target company to artificially inflate the value of ordinary shares acquired in order to maximise the M&A allowance available to the acquiring company. Such arrangement could be facilitated

[24] For example, if the qualifying share acquisition took place on 1 Mar 2012 and the acquiring company makes a claim for M&A allowance in YA 2013 (assuming its financial year-end is 31 December), all the transaction costs relating to the share acquisition on 1 Mar 2012 will be allowed in YA 2013 subject to a cap of $100,000, regardless of when the transaction costs are incurred. Hence, if say, the transaction costs in relation to the share acquisition on 1 Mar 2012 amounted to $70,000, the acquiring company will be allowed a tax deduction of $140,000 ($70,000 x 2) in YA 2013.

[25] Same as provided in section 23(4) of the ITA for the utilisation of unabsorbed capital allowances

especially if the target company is located in a jurisdiction where there is no requirement to maintain financial accounts or records.

(b) Divestment and repurchase of shares

An acquiring company may arrange to sell and shortly thereafter, repurchase the ordinary shares of a target company which gives rise to M&A allowance and stamp duty relief and such an arrangement cannot be substantiated by sound commercial reasons.[26]

(c) Artificial creation of M&A allowance

Instead of incorporating a new company, a special purpose vehicle ("SPV") is set up with the main purpose to own the asset that the acquiring company intends to acquire. For example, a company which wishes to acquire a plot of land for redevelopment may arrange for its directors (or any third party) to incorporate a SPV to acquire the land before the company acquires the SPV which entitles it to avail itself of M&A allowance and stamp duty relief.

(d) Asset stripping

An acquiring company or acquiring subsidiary, as the case may be, may, shortly after acquiring the ordinary shares in a target company for which M&A allowance is granted to the acquiring company, strip-off the assets of the target company (or the assets of the target company's subsidiaries) by selling them to a third party; or transfer the assets to another related party with the main purpose of creating a tax deduction for the related party.

10 Summary of effect on M&A allowance and stamp duty relief for acquiring company due to changes in shareholding in a target company, in its shareholders or business operations and non-compliance of conditions under M&A scheme

10.1 **Annex 6** summarises the effect on the availability of M&A allowance and stamp duty relief for the acquiring company due to changes in its ultimate shareholders or business operations, or in ordinary share ownership in a target company, or non-compliance of other conditions under the M&A scheme.

11 Registered Business Trust

11.1 The M&A scheme is also extended to a registered business trust ("acquiring RBT")[27]. The acquiring RBT is subject to the same conditions (with necessary modifications) as those imposed on an acquiring company that claims M&A

[26] A purchase, sale and buyback, and so on, of ordinary shares of a target company can result in two or more sets of M&A allowance and stamp duty relief being given, and therefore erosion of our tax base, if such arrangements are undertaken without sound commercial reasons. However, where the divestment and repurchase of the ordinary shares of a target company were carried out due to sound commercial reasons, the situation is not considered an abusive tax practice.

[27] This is because an RBT is treated as a company for tax purposes under section 36B of the ITA.

allowance and stamp duty relief pursuant to a qualifying share acquisition.

11.2 **Annex 7** summarises the modified conditions applicable to an acquiring RBT under the M&A scheme.

12 Administrative Matters

12.1 An acquiring company/ RBT must ensure that it meets the qualifying conditions before making a claim under the M&A scheme.

Claim for Stamp Duty Relief

12.2 The acquiring company/ RBT is required to furnish the following information when making an application for stamp duty relief[28] under the M&A scheme-

(a) A copy of the executed share purchase agreement and if such an agreement is not available, the instrument of transfer;

(b) A copy of the latest statement of accounts of the target company (accounts must be within 24 months from the date of agreement or transfer, as the case may be), whether the target company is incorporated in Singapore or outside Singapore;

(c) An independent professional valuation report of the target company, where the target company is incorporated outside Singapore

(d) Statutory declaration by an advocate, solicitor or by a responsible officer of the acquiring company/ RBT confirming that –

(i) the conditions for relief have been / will be met;

(ii) the acquiring company/ RBT or acquiring subsidiary, as the case may be, has no intention to dispose of the ordinary shares acquired within two years from the date of share acquisition or in the case of a step-acquisition, from the date of the last share acquisition such that company's ownership in the target company becomes ≤ 50% or < 75% (whichever was the threshold reached that resulted in the claim of stamp duty relief);

(iii) the target company has no intention to issue new ordinary shares such that the ordinary share ownership of the acquiring company/ RBT in the target company is diluted to ≤ 50% within 2 years from the date of share acquisition or in the case of a step-acquisition, from the date of the last share acquisition; and

[28] Qualifying acquisition documents are required to be stamped within -
(i) 14 days from the date of execution of such documents, for documents executed in Singapore; or
(ii) 30 days from the date such documents are first received in Singapore, for documents executed outside Singapore;
except when an application for stamp duty relief is made within the period stated in (i) or (ii).

(iv) the acquiring company/ RBT is not aware of any events that may result in a substantial change of its ultimate shareholders within two years from the date of share acquisition or in the case of a step-acquisition, from the date of the last share acquisition.

Claim for M&A allowance

12.3 The acquiring company/ RBT may claim the M&A allowance when it lodges its income tax return for the YA relating to the basis period in which the qualifying share acquisition took place. Where the acquiring company/ RBT elects to consolidate acquisitions of a target's ordinary shares over a 12-month period as provided under paragraph 3.7(ii), it must make such an election in its tax computation at the time of lodgement of its income tax return for the YA relating to the basis period in which the threshold of > 50% or ≥ 75%, as the case may be, is met.

12.4 The acquiring company/RBT need not submit any supporting documents/information with its income tax return when making a claim only for the M&A allowance and not stamp duty relief under the M&A scheme. However, it needs to prepare and retain* the following documents/information: -

(a) Confirmation by a responsible officer of the acquiring company/ RBT that all qualifying conditions for M&A allowance have been met;

(b) Documents specified in paragraph 12.2(a) and (b);

(c) An independent professional valuation report of the ordinary shares of the target company acquired under any of the following circumstances:

(i) the target company is incorporated outside Singapore;

(ii) the acquisition is funded by way of the acquiring company/acquiring RBT's issuance of shares/units and the market value of such shares/units is not readily available; or

(iii) the acquiring company/RBT does not wish to determine the M&A allowance based on the NAV of its shares/ units.

*The relevant documents/information must be retained for a period of at least five years from the relevant Year of Assessment. These documents should be submitted to the Comptroller of Income Tax upon request. For more information on record keeping, please refer to Record keeping essentials for businesses.

12.5 The requirement for an independent professional valuation report is waived when –

(a) the acquiring company or acquiring RBT, as the case may be, and the shareholders in the target company are not related to each other on the date of share acquisition; and

(b) the value of the share acquisition is $5 million or below.

13 Contact Information

13.1 For any general enquiries or clarification on this e-Tax Guide, please call:

1800 356 8622 (Corporate Income Tax); or
6351 3697/ 6351 3698 (Stamp Duty)

14 Updates and amendments

	Date of amendment	Amendments made
1	28 June 2012	The previous e-tax guide published on 27 June 2011 is updated for the following enhancements to the M&A scheme announced in Budget 2012: (a) relaxation of conditions for share acquisitions made during the period 17 February 2012 to 31 March 2015 (refer to paragraph 3.4); and (b) introduction of a double tax deduction scheme for qualifying transaction costs incurred on qualifying share acquisitions made during the period 17 February 2012 to 31 March 2015 (refer to paragraph 7).
2	16 May 2014	Paragraph 12.4 has been revised as the relevant documents should be retained and submitted to the Comptroller of Income Tax upon request.

Annex 1: Example on Computation of M&A allowance

Company A with financial year-end 31 December undertakes qualifying share acquisitions as follows:

Acquisition Order	Value of Share Acquisition ($ million)	Date of share acquisition	Year of Assessment (“YA”)
1st	200	1 April 2010	2011
2nd	100	30 September 2011	2012
3rd	80	1 November 2011	2012
4th	65	15 May 2012	2013
5th	90	31 March 2015	2016

Company A also incurred contingent consideration of $20 million and $18 million in respect of the 4th share acquisition in the basis periods for YA 2014 and YA 2015 respectively.

Company A’s schedule for the writing-down of the M&A allowance is shown in the table below (in $ million):

YA 2011	YA 2012	YA 2013	YA 2014	YA 2015	YA 2016	YA 2017	YA 2018	YA 2019	YA 2020
1.0 **(Note 1)**	1.0	1.0	1.0	1.0					
	1.0 **(Note 2)**	1.0	1.0	1.0	1.0				
		0.65 **(Note 3)**	0.65	0.65	0.65	0.65			
			0.25 **(Note 4)**	0.25	0.25	0.25			
				0.25 **(Note 5)**	0.25	0.25			
					0.9 **(Note 6)**	0.9	0.9	0.9	0.9
1.0	**2.0**	**2.65**	**2.9**	**3.15**	**3.05**	**2.05**	**0.9**	**0.9**	**0.9**

Note 1:

As the purchase consideration for the 1st acquisition relating to YA 2011 exceeds $100 million, the M&A allowance available for YA 2011 is capped at $5 million (i.e. 5% x $100 million). The M&A allowance is written down over 5 years on a straight-line basis.

Note 2:

As the total purchase consideration for the 2nd and 3rd acquisitions relating to YA 2012 exceeds $100 million, the M&A allowance available for YA 2012 is capped at $5 million (i.e. 5% x $100 million). The M&A allowance is written down over 5 years on a straight-line basis.

Note 3:

As the purchase consideration for the 4th acquisition relating to YA 2013 does not exceed $100 million, the M&A allowance available for YA 2013 is $3.25 million (i.e. 5% x $65 million). The M&A allowance is written down over 5 years on a straight-line basis.

Annex 1 (continued): Example on Computation of M&A allowance

Note 4:

As the total purchase consideration for the 4th acquisition relating to YA 2013 does not exceed $100 million for YA 2013 i.e. $85 million ($65 + $20 million), the M&A allowance given on the contingent consideration incurred in the basis period for YA 2014 is $1 million (i.e. 5% x $20 million) and is written down over the remaining 4 years of the 5-year write-down period.[29]

Note 5:

As the total purchase consideration for the 4th acquisition relating to YA 2013 now amounts to $103 million ($65 + $20 + $18 million), the excess over $100 million i.e. $3 million of contingent consideration incurred in the basis period for YA 2015 is disregarded. The M&A allowance given on the contingent consideration is therefore capped at $0.75 million [5% x ($18 - $3) million)]. The M&A allowance is written down over the remaining 3 years of the 5-year write-down period.

Note 6:

As the 5th acquisition occurs on 31 March 2015 which is within the qualifying period of the M&A scheme (i.e. 1 April 2010 to 31 March 2015), it qualifies for M&A allowance.

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[29] The 5-year write-down period in respect of the 4th acquisition is from YA 2013 to YA 2017.

Annex 2: Example on Application of Stamp Duty Relief

Company B with financial year-end 31 December undertakes qualifying share acquisitions, as follows:

S/N	Value of Unlisted Share Acquisition ($ million)	Date of execution of share transfer	Stamp Duty Payable
1.	50	1 January 2010 **(Note 1)**	$100,000
2.	50	1 April 2010	$100,000
3.	40	15 December 2010	$80,000
4	50	1 April 2011	$100,000
5.	40	15 July 2011	$80,000
6.	50	10 December 2011	$100,000

Company B's schedule for stamp duty relief is shown in the table below:

Financial year ("FY")	Date of execution of share transfer	Stamp Duty Relief
2010 **(Note 2)**	1 April 2010	$100,000
	15 December 2010	$80,000
2011 **(Note 3)**	1 April 2011	$100,000
	15 July 2011	$80,000
	10 December 2011	$20,000

Note 1:

Stamp duty relief does not apply to the share transfer executed on 1 January 2010. This is because the stamp duty relief is only applicable to documents executed from 1 April 2010 to 31 March 2015 (both dates inclusive).

Note 2:

Company B is eligible for stamp duty relief on the share transfer documents executed on 1 April 2010 and 15 December 2010. The total amount of stamp duty remitted for share transfer documents executed in the FY 2010 is $180,000. Any unutilised stamp duty relief is disregarded and not allowed to be carried forward to the next FY.

Note 3:

Company B is eligible for stamp duty relief of up to $200,000 on the share transfer documents executed in the financial year-ended 31 December 2011 as the stamp duty relief is capped at $200,000 per FY. Stamp duty on qualifying share acquisitions in excess of $200,000 during a FY therefore remains payable. Accordingly, in this example, stamp duty of $80,000 remains payable for the FY 2011.

Annex 3: Examples of structures that qualify under the M&A scheme for qualifying share acquisitions made during the period 17 Feb 2012 to 31 Mar 2015

Illustration 1A: Examples of structures which will satisfy the requirement under the M&A scheme that the acquiring subsidiary must be wholly owned, whether directly or indirectly, by the acquiring company.

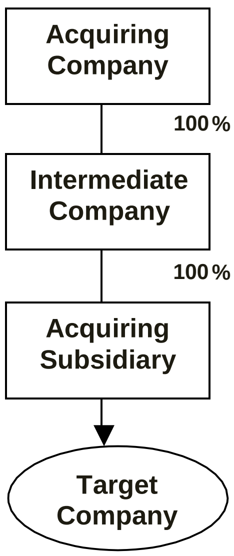
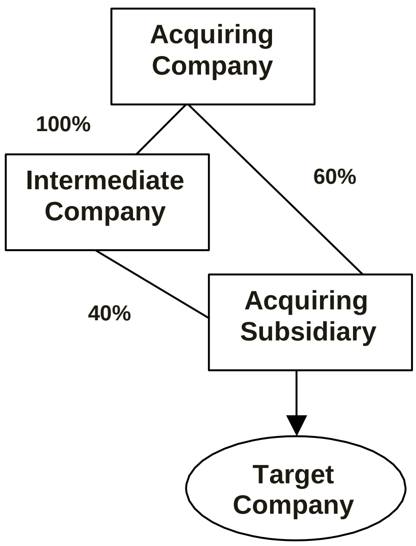
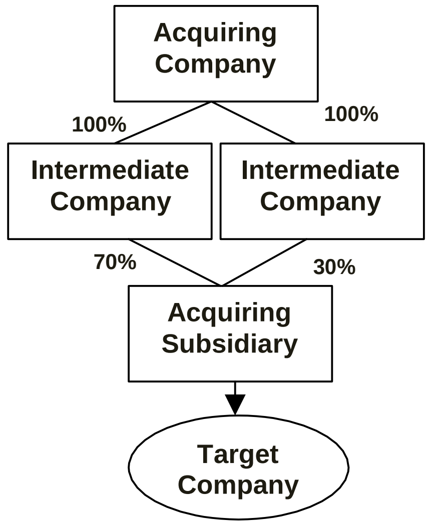
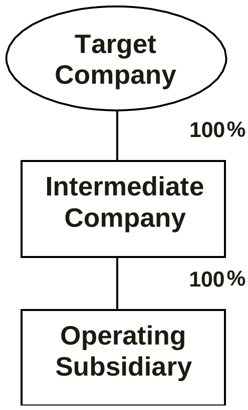
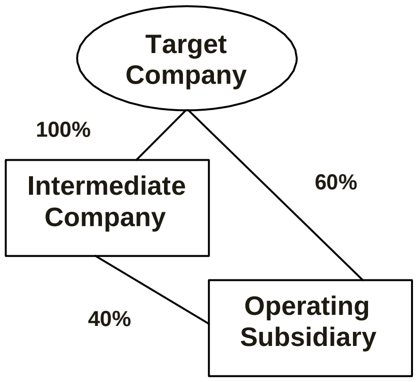
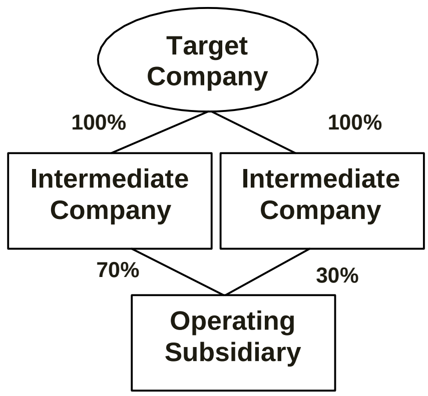
Example (a)	Example (b)	Example (c)
		

Illustration 1B: Examples of structures which will satisfy the requirement under the M&A scheme that the target company or its wholly owned, whether directly or indirectly, operating subsidiary –

(a) carries on a trade or business in Singapore or elsewhere on the date of share acquisition; and

(b) has at least 3 employees working for the company for at least 12 months preceding the date of the share acquisition.

Example (a)	Example (b)	Example (c)
		

Annex 4: Examples on Computation of M&A allowance and Application of Stamp Duty Relief in a Step-Acquisition

Example 1

Company C with financial year-end 31 December acquired the ordinary shares in Company D in the following tranches:

S/N	Date of Share Acquisition	Value of Share Acquisition in millions (S$)	Shareholding	
			Number of Shares in millions	Cumulative (%)
1	March 2011	20	20	20
2	April 2011	45	40	60
3	July 2011	35	30	90

The share acquisition in April 2011 is the acquisition that results in Company C owning > 50% of the ordinary shares of Company D, the target company.

As the share acquisitions in March 2011 and July 2011 fall in the same basis period as the share acquisition in April 2011 when the > 50% shareholding threshold was met, Company C is allowed to consolidate all these 3 share acquisitions that took place in the basis period for YA 2012 as long as at the end of the basis period or FY, Company C continues to own > 50% of Company D's ordinary shares.

M&A allowance

The M&A allowance for YA 2012 is computed as follows-

$100 (i.e. $20 + $45 + $35) million x 5% = $5 million

Stamp Duty Relief

The stamp duty relief for FY 2011 is computed as follows-

$100 (i.e. $20 + $45 + $35) million x 0.2% = $200,000

Annex 4 (continued): Examples on Computation of M&A allowance and Application of Stamp Duty Relief in a Step-Acquisition

Example 2

Company E with financial year-end 31 December acquired the ordinary shares in Company F in the following tranches:

S/N	Date of Share Acquisition	Value of Share Acquisition in millions (S$)	Shareholding	
			Number of Shares in millions	Cumulative (%)
1	March 2010 **(Note 1)**	60	60	60
2	March 2012	10	10	70
3	June 2012	10	5	75
4	September 2012	10	5	80

The share acquisition in June 2012 is the acquisition that results in Company E owning ≥ 75% of the ordinary shares of Company F, the target company. Before the date of this acquisition, Company E owns > 50% but < 75% of the ordinary shares of Company F.

As the share acquisitions in March 2012 and September 2012 fall in the same basis period as the share acquisition in June 2012 when the ≥75% shareholding threshold was met, Company E is allowed to consolidate the 3 share acquisitions that took place in the basis period for YA 2013 as long as at the end of that basis period, Company E continues to own ≥ 75% of Company F's ordinary shares.

M&A allowance

The M&A allowance for YA 2013 is computed as follows-

$30 (i.e.$10 + $10 + $10) million x 5% = $1.5 million

Stamp Duty relief

The stamp duty relief for FY 2012 is computed as follows-

$30 (i.e. $10 + $10 + $10) million x 0.2% = $60,000

Note 1:

The acquisition in March 2010 does not qualify for M&A allowance or stamp duty relief as the shares were acquired before 1 April 2010 (i.e. before the qualifying period of the M&A scheme).

Annex 4 (continued): Examples on Computation of M&A allowance and Application of Stamp Duty Relief in a Step-Acquisition

Example 3

Company G with financial year-end 31 December acquired the ordinary shares in Company H in the following tranches:

S/N	Date of Share Acquisition	Value of Share Acquisition in millions (S$)	Shareholding	
			Number of shares in millions	Cumulative (%)
1	15 March 2010	5	5	5
2	30 April 2010	15	10	15
3	15 July 2010	20	15	30
4	30 September 2010	25	20	50
5	31 January 2011	30	20	**70**
6	30 June 2011	25	25	**95**

In August 2011, Company G disposes 10 million of Company H's ordinary shares.

Company G is allowed to consolidate the multiple purchases of the ordinary shares of Company H that took place within a continuous 12-month period immediately prior to the date of share acquisition during which the threshold of > 50% or ≥75% of ordinary share ownership in Company H was met. In this case, the > 50% shareholding threshold was met with the share acquisition on 31 January 2011 **(Note 1).** Therefore, Company G can elect to consolidate its share purchases from 1 February 2010 to 31 January 2011 ("Period A") or 1 July 2010 to 30 June 2011 ("Period B") to claim for M&A allowance and stamp duty relief.

M&A allowance for YA 2012 and Stamp Duty relief for FY 2011

	Period A	**Period B**
Elected 12-month period	1 February 2010 – 31 January 2011	1 July 2010 – 30 June 2011
Consolidated share acquisitions (before disposal)	65 (i.e.10+15+20+20) million shares Disregarded - • Acquisition on 15 March 2010 **Note 2** • Acquisition on 30 June 2011	80 (i.e. 15+20+20+25) million shares Disregarded - • Acquisition on 15 March 2010 • Acquisition on 30 April 2010
M&A allowance	$4.5 million (i.e. $[15+20+25+30] million x 5%) **Note 3 & 4**	$4.375 million (i.e.[80-10]/80 x $[20+25+30+25] million x 5%) **Note 3 & 4**
Stamp Duty Relief	$180,000 (i.e. $[15+20+25+30] million x 0.2%) **Note 4**	$200,000 (i.e. $[20+25+30+25] million x 0.2%) **Note 4**

Annex 4 (continued): Examples on Computation of M&A allowance and Application of Stamp Duty Relief in a Step-Acquisition

Example 3 (cont'd)

Note 1:

Where both the > 50% and ≥75% thresholds are crossed within the same basis period (or FY) that relates to a YA, Company G is considered to have met the > 50% threshold instead of the ≥75% threshold for the purposes of claiming M&A allowance. Furthermore, Company G is allowed to choose only one date (i.e. either 31 January 2011 or 30 June 2011) to determine the 12-month period.

Note 2:

The acquisition on 15 March 2010 does not qualify for M&A allowance or stamp duty relief as the shares were acquired before 1 April 2010 (i.e. before the qualifying period of the M&A scheme).

Note 3:

The disposal of 10 million shares in August 2011 is deemed to be from the last share acquisition on 30 June 2011 (which does not fall within the elected 12-month period A).

Note 4:

If Company G had disposed 50 million shares in Company H instead of 10 million shares in August 2011, it does not qualify for any M&A allowance or stamp duty relief on the share acquisitions that occurred during the basis period (or FY) for YA 2012 as it owns only 45% of the ordinary shares in Company H at the end of that basis period (or FY).

Annex 5: Examples on how M&A allowance is prorated in event of divestment

Example 1

Acquiring Company K executed a qualifying share acquisition on 31 August 2010 to acquire 80% or 800,000 of the ordinary shares of Company L, the target company, for $90 million. However, on 30 June 2012, it disposes 20% or 200,000 of the ordinary shares of Company L.

Company K's financial year-end is 31 December.

Company K's schedule for the writing down of the M&A allowance is shown in the table below (in $ million):

YA 2011	YA 2012	YA 2013	YA 2014	YA 2015
0.9 **(Note 1)**	0.9	0.675 **(Note 2)**	0.675	0.675

Note 1:

The M&A allowance available for the qualifying share acquisition is $4.5 million (5% x $90 million). The allowance is written down equally over 5 years (i.e. $0.9 million each year).

Note 2:

As Company K continues to own 60% (i.e. >50%) of the ordinary shares of Company L after the share disposal on 30 June 2012, it can continue to avail the M&A allowance granted previously but only on a pro-rated basis.

Formula for pro-rating M&A allowance –

$$\frac{Y}{X} \times \text{Yearly write-down amount of M\&A allowance (based on X)}$$

Where,

X is the number of ordinary shares acquired for which M&A allowance is first given

Y is:

- the difference between X and the number of ordinary shares divested/ disposed, if this is the first divestment/disposal subsequent to the qualifying share acquisition, or
- the difference between X and the cumulative number of ordinary shares divested/disposed to-date if this is not the first divestment/disposal event.

In this example, Company K is therefore able to claim M&A allowance of $0.675 million (see computation below) for each of the remaining 3 YAs (i.e. YA 2013 to YA 2015), assuming there is no further disposal of the ordinary shares of Company L (**Note 3)**.

$$\frac{(800{,}000 - 200{,}000)}{800{,}000} \times \$0.9 \text{ million} = \$0.675 \text{ million}$$

Annex 5 (continued): Examples on how M&A allowance is prorated in event of divestment

Example 1 (cont'd)

Note 3:

If Company K had disposed 30% of the ordinary shares of Company L instead, resulting in it owning ≤ 50% of the ordinary shares of Company L, Company K is no longer able to claim the M&A allowance from YA 2013 onwards.

Annex 5 (continued): Examples on how M&A allowance is prorated in event of divestment

Example 2

Acquiring Company M executed a qualifying share acquisition on 31 August 2010 to acquire 40% or 400,000 of the ordinary shares of target Company N for $100 million. Prior to this share acquisition, Company M already owned 60% or 600,000 of the ordinary shares of Company N. On 30 June 2012, it disposes 5% or 50,000 of the ordinary shares of Company N.

Company M's financial year-end is 31 December.

Company M's schedule for the writing down of the M&A allowance is shown in the table below (in $ million):

YA 2011	YA 2012	YA 2013	YA 2014	YA 2015
1.0 **(Note 1)**	1.0	0.875 **(Note 2)**	0.875	0.875

Note 1:

As Company M is not connected to Company N (please refer to paragraph 3.10(b) of this e-Tax Guide), Company M is able to claim M&A allowance on the share acquisition as the acquisition resulted in it owning ≥ 75% of the ordinary shares of Company N. The M&A allowance to be given for the share acquisition is $5 million (5% x $100 million). The allowance is written down equally over 5 years.

Note 2:

As Company M continues to own 95% (i.e. ≥75%) of the ordinary shares of Company N (**Note 3**) after the share disposal on 30 June 2012, Company M can continue to claim the M&A allowance but only on a pro-rated basis.

Applying the formula for pro-ration in example 1, the amount of M&A allowance is:

$$\frac{(400{,}000 - 50{,}000)}{400{,}000} \times \$1.0 \text{ million} = \$0.875 \text{ million}$$

Note 3:

If Company M had disposed 30% of the ordinary shares of Company N instead, resulting in it owning <75% of the ordinary shares of Company N, Company M is no longer entitled to the M&A allowance from YA 2013 onwards.

Annex 6: Summary of effect on M&A allowance and stamp duty relief for acquiring company due to changes in shareholding in a target company, in its shareholders or business operations and non-compliance of conditions under M&A scheme

	Scenarios	M&A Allowance	Stamp Duty Relief
1.Acquisition	Acquire >50% (or ≥ 75%) ordinary shareholding in target company	Yes, subject to $5 million cap per YA.	Yes, subject to $200,000 cap per FY.
2.Divestment	a. Divests shares but still maintains > 50% or ≥ 75%, as the case may be, of ordinary shareholding in target company	Continues to be given but on pro-rated basis.	No claw-back.
	b. Divests shares but did not maintain > 50% or ≥ 75%, as the case may be, of ordinary shareholding in target company	Ceases to be given with effect from YA to which divestment of shares relates.	Claw-back with interest if divestment is within 2 years from date of share acquisition or in the case of a step-acquisition, from the date of the last share acquisition.
3. Dilution	a. Dilution of shareholding in target company but still maintains > 50% ordinary shareholding threshold.	Continues to be given. No pro-ration.	No claw-back.
	b. Dilution of shareholding in target company and > 50% ordinary shareholding is not maintained	Ceases to be given with effect from YA to which dilution relates.	Claw-back with interest if dilution is within 2 years from date of share acquisition or in the case of a step-acquisition, from the date of the last share acquisition.

Annex 6 (continued): Summary of effect on M&A allowance and stamp duty relief for acquiring company due to changes in shareholding in a target company, in its shareholders or business operations and non-compliance of conditions under M&A scheme

	Scenarios	**M&A Allowance**	**Stamp Duty Relief**
4.Change of Shareholders	Substantial change of shareholders of acquiring company	Ceases to be given with effect from YA to which change of shareholders relates and any unabsorbed M&A allowance is forfeited unless the shareholding test requirement is waived by Minister.	Claw-back with interest if substantial change in shareholders occurs within 2 years from date of share acquisition or in the case of a step-acquisition, from the date of the last share acquisition unless the shareholding test requirement is waived by Minister.
5. Failure to meet eligibility conditions (referred to in paragraph 3.9)	Acquiring company fails to meet any of the eligibility conditions referred to in paragraph 3.9 of the e-Tax Guide (e.g. ceases trade or business) during the write-down period of M&A allowance	Ceases to be given with effect from the YA in which it fails to meet any of the eligibility conditions.	Claw-back with interest if the failure to meet the eligibility condition occurs within2 years from date of share acquisition or in the case of a step-acquisition, from the date of the last share acquisition.

Annex 7: Modification of Qualifying Conditions to apply in respect of an acquiring Registered Business Trust (RBT)

Qualifying Conditions in respect of an acquiring company	Qualifying Conditions in respect of an acquiring RBT
The acquiring company is incorporated in Singapore.	The acquiring RBT is established in Singapore and the trust deed of the RBT is executed in Singapore and governed by Singapore law.
The acquiring company is tax resident in Singapore.	An acquiring RBT is considered a resident in Singapore if- (a) the trustee of the RBT in his capacity as such carries on a trade or business in Singapore; and (b) the control and management of the business is in Singapore.
The ultimate holding company of the acquiring company must be incorporated and tax resident in Singapore.	Where > 50% of the acquiring RBT's units is beneficially owned, directly or indirectly, by a company, that company is incorporated and tax resident in Singapore.
The acquiring company is carrying on a trade or business in Singapore.	The acquiring RBT is carrying on a trade or business in Singapore through its trustee-manager as set out in the trust deed.
The acquiring company has in its employment at least 3 employees.	The trustee manager has in its employment at least 3 employees in respect of the business of the RBT.
The acquiring company is not connected to the target company for at least two years prior to the date of share acquisition.	For purpose of "connected" rule, references to ≥ 75% of ordinary shares in relation to the acquiring company shall be read as references to ≥ 75% of units in relation to the acquiring RBT.
To claim a deduction of the M&A allowance and to carry forward unabsorbed M&A allowance, the acquiring company must meet the shareholding test.	The unit-holders of the acquiring RBT at any date are substantially the same as the unit-holders at any other date if, on both those dates – (i) the same unit-holders are entitled to not < 50% of any residual profits of the acquiring RBT available for distribution; and (ii) the same unit-holders are entitled to not < 50% of any residual assets of the acquiring RBT available for distribution on winding up.