

DENOVO

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TO AMALGAMATE IN TERMS OF THE COMPANIES ACT OR THE INCOME TAX ACT

Companies being desirous to amalgamate can execute same in terms of section 113 of the Companies Act 71 of 2008 (the “Companies Act”) or section 44 of the Income Tax Act 58 of 1962 (the “Tax Act”). Amalgamations in terms of the Tax Act are preferred as there are no adverse tax consequences, should the requirements of section 44 be met.

One of the requirements of an amalgamation in terms of the **Tax Act** is that the amalgamated company/ies must, within a period of 36 months after the date of the amalgamation transaction, cease to exist. Therefore, the amalgamated company/ies must take the steps, contemplated in section 41(4) (of the **Tax Act**) to be liquidated, wound up or deregistered. These steps include (but is not limited to):

- lodging of a resolution authorising the voluntary winding up in terms of section 80(2) of the **Companies Act**; and
- lodging a request to deregister in terms of section 82(3)(b)(ii) of the **Companies Act**,

however, it does not include the deregistration of the amalgamated company/ies by operation of law (as done by an amalgamation in terms of section 113 of the **Companies Act**).

As such, should companies amalgamate in terms of section 113 of the **Companies Act**, and the amalgamated companies be deregistered by operation of law and not by applying the steps of section 41(4) of the **Tax Act**, such companies will not enjoy tax relief and the transaction will not be tax neutral.

However, notwithstanding the above, it was proposed in the 2019 Budget that the scope of section 41(4) of the **Tax Act** be extended to include deregistration of amalgamated companies by operation of law, which may enable companies to execute amalgamations in terms of section 113 of the **Companies Act** in a tax neutral manner.

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