SARS
South African Revenue Service

DRAFT INTERPRETATION NOTE

DATE:

ACT : INCOME TAX ACT 58 OF 1962

SECTION : SECTIONS 11(*e*), 12C, and 44(3)(*a*)

SUBJECT : THE MEANING OF "DEEMED TO BE ONE AND THE SAME PERSON" FOR DETERMINING THE ENTITLEMENT TO THE WEAR-AND-TEAR ALLOWANCE UNDER AN AMALGAMATION TRANSACTION

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Preamble

In this Note unless the context indicates otherwise –

- **"allowance asset"** means a capital asset in respect of which a deduction or allowance is allowable under the Act for purposes other than the determination of any capital gain or capital loss;[1]
- **"amalgamated company"** means the transferor company under an amalgamation transaction as contemplated in section 44(1);
- **"amalgamation transaction"** means an "amalgamation transaction" as defined in section 44(1) that meets all the requirements of that section;

[1] Paragraph (*a*) of the definition of "allowance asset" in section 41(1).

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- **"CGT"** means capital gains tax, being the normal tax attributable to the inclusion of a taxable capital gain in taxable income under section 26A;
- **"corporate rules"** means the special corporate restructuring rules under Chapter 2, Part III of the Act, inclusive of sections 41 to 47;
- **"disposal"** means a disposal as defined in paragraph 1 of the Eighth Schedule;
- **"paragraph"** means a paragraph of the Eight Schedule;
- **"resultant company"** means the transferee company under an amalgamation transaction as contemplated in section 44(1);
- **"Schedule"** means a Schedule to the Act;
- **"section"** means a section of the Act;
- **"the Act"** means the Income Tax Act 58 of 1962;
- **"transaction date"** means the date on which a corporate restructuring transaction is concluded under the corporate restructuring rules;
- **"wear-and-tear allowance"** or **"allowance"** means the wear-and-tear allowances provided for under sections 11(*e*) and 12C; and
- any other word or expression bears the meaning ascribed to it in the Act.

All interpretation notes referred to in this Note are available on the SARS website at **www.sars.gov.za**. Unless indicated otherwise, the latest versions of these documents should be consulted.

1. Purpose

This Note provides guidance on the interpretation and application of the phrase "deemed to be one and the same person" as it appears in section 44(3)(*a*)[2] to determine which party to an amalgamation transaction may be entitled to the wear-and-tear allowance[3] in the year of assessment when an allowance asset is disposed of.

This Note does not consider the corporate rules or the requirements for the wear-and-tear allowances in detail.

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[2] See also section 42(3)(*a*) (asset for share transaction), section 45(3)(*a*) (intra-group transaction) and section 47(3)(*a*) (transaction relating to liquidation, winding-up and deregistration) referring to the same phrase.

[3] The same principle may apply also to other similar allowances, for example various building allowances, research and development allowances on buildings and equipment, energy generation under section 12B. These allowances are not considered separately.

2. Background

The corporate rules establish special provisions for corporate restructuring transactions. The purpose of these rules is to facilitate specific transactions between companies[4] on a tax-neutral basis by providing roll-over relief, which defers income tax on asset transfer until those assets are eventually disposed of.[5] To qualify for the roll-over relief, the transaction must satisfy the relevant requirements under sections 41 to 47, depending its nature or type. If roll-over relief applies, and the transferor company disposes of an allowance asset while the transferee company acquires that asset as an allowance asset, the corporate rules deem the transferor and transferee companies to be "deemed to be one and the same person" for purposes of determining the amount of any allowance to be claimed, recovered, recouped, or included in income regarding that asset.[6]

Section 41(2) provides that, subject to section 41(3), the corporate rules in sections 42 to 47 apply to transactions set out in those sections, and these sections take precedence over other provisions in the Act, except for the specific sections mentioned in section 41(2).[7]

To be eligible to claim an allowance, the requirements of the relevant section under which the allowance is sought must be met. In some cases, the allowance must be apportioned if the asset is used for only part of a year of assessment.[8] In other cases no apportionment is required if a qualifying asset is acquired or disposed of during the year of assessment. The non-apportionment of the allowance may result from the asset's nature, which is used for a specific purpose or trade.[9]

Uncertainty exists regarding whether the transferor or transferee is entitled to claim the wear-and-tear allowance on an allowance asset that is not subject to apportionment in the year of assessment when that asset is disposed of under an amalgamation transaction.

3. The law

The relevant sections of the Act are quoted in the **Annexure**.

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4 The definition of "company" in section 41(1) does not include a headquarter company, and for purposes of sections 42 and 44, includes any portfolio of a collective investment scheme in securities or any portfolio of a hedge fund collective investment scheme.

5 The corporate rules generally defer the incidence of income tax, donations tax, dividends tax, transfer duty, securities transfer tax and value-added tax and can therefore be considered to be a unified and comprehensive structure of relief, for example, when a merger, acquisition or restructuring does not economically facilitate a contribution to revenue by the parties to the relevant transaction.

6 See for example, section 44(3)(*a*).

7 Sections 24BA, 24I, 25BB(5), 40CA(*b*) and 103, Part IIA of Chapter III and paragraph 11(1)(*g*) of the Eighth Schedule and any adjusted gain on transfer or redemption of an instrument, as defined in section 24J(1) and any adjusted loss on transfer or redemption of an instrument as defined in section 24J(1).

8 For example, allowance provided for under section 11(*e*).

9 For example, the allowance provided for under section 12C applying to qualifying assets used in a process of manufacture or a similar process.

4. Application of the law

4.1 Disposal of an allowance asset under section 44(3)(*a*)

An amalgamation transaction qualifies for the roll-over relief under section 44(3)(*a*)(i) and (ii), if all the following requirements are met:

- There must be a disposal of an asset.
- The asset disposed of to the resultant company as part of the amalgamation transaction must have been an "allowance asset" for the amalgamated company.
- The resultant company must acquire the asset as an allowance asset, or if the resultant company is a REIT (Real Estate Investment Trust) or a controlled company,[10] the asset must be acquired as a capital asset or allowance asset.

Since section 44(3)(*a*)(ii) stipulates that the amalgamated company and resultant company are deemed to be one and the same person for purposes of determining the amount of any allowance or deduction related to the asset, the cost and the corresponding allowances permitted as a deduction will roll over from the amalgamated company to the resultant company. Consequently, the resultant company may continue to claim the allowances and deductions, if applicable.

For the purposes of the corporate rules, section 41(1) defines "date of acquisition" as the date of acquisition determined in accordance with paragraph 13, or, if an allowance asset is acquired under the corporate rules, the deemed date of acquisition of that asset is the date specified under the applicable corporate rule. Under section 41(2), this rule takes precedence over the specific rule in paragraph 13. It is common for an allowance asset to be part of a corporate restructuring transaction, and that asset may qualify for an allowance under the general provision in section 11(*e*) or a specific provision, such as section 12C, 12D, or 13*quin.* The allowance under section 11(*e*) must be calculated for the period that the asset is used by the taxpayer for trade purposes during a year of assessment. Thus, if an allowance asset is used for part of the year, the taxpayer is entitled to the allowance only for that portion of the year. Conversely, the allowance under section 12C does not require apportionment of the allowance when the respective asset is used for only part of a year of assessment. For instance, if the asset is disposed of during a year of assessment, the taxpayer who is the seller of the asset may claim the allowance for the entire year of assessment, even if the asset was used for only a part of that year.[11]

Sections 42(3)(*a*)(i) and (ii), 44(3)(*a*)(i) and (ii), 45(3)(*a*)(i) and (ii), and 47(3)(*a*)(i) and (ii) contain similar provisions regarding the tax treatment of an allowance when the allowance asset is disposed of under such transactions and the transferee acquires that asset as an allowance asset.[12]

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[10] As defined in section 25BB(1).

[11] See Interpretation Note 47 "Wear-and-Tear or Depreciation Allowance".

[12] The above principles also apply to a person making an election in respect of a replacement asset under paragraphs 65 or 66 who disposes of or distributes a replacement asset under sections 42, 44, 45 or 47 and that replacement asset continues to be held as an "allowance asset" as defined in section 41(1).

The effect of the roll-over relief is that:

- Allowances claimed as a deduction on the asset must not be recovered, recouped, or included in the amalgamated company's taxable income in the year of disposal.[13]
- The amalgamated company and the resultant company must be deemed to be one and the same person for purposes of determining the amount of any allowance or deduction –[14]
  - to which the resultant company may be entitled in respect of that asset; or[15]
  - that is to be recovered, recouped, or included in the income of the resultant company in respect of that asset.[16]

Therefore, upon the transfer of the allowance asset by the amalgamated company, the allowances previously allowed as a deduction to the amalgamated company, along with the allowances claimed by the resultant company, are recouped in the hands of the resultant company upon the eventual disposal of the asset.[17] This means that there are no immediate income tax implications for the amalgamated company in the year of assessment in which the allowance asset is transferred to the resultant company.

4.2 Deeming the amalgamated company and resultant company to be "one and the same person"

The meaning and effect of the phrase "deemed to be one and the same person" is considered below.

4.2.1 Meaning of the phrase "deemed to be one and the same person"

The deeming provision under section 44(3)(*a*)(ii) provides that the amalgamated company and the resultant company must be deemed to be one and the same person. The word "deemed" is not defined in the Act or for the purposes of the corporate rules in section 41, hence one must consider the ordinary meaning and context in which the word is used.[18] *Dictionary.com* defines the word "deem" as follows:[19]

> "1. to hold as an opinion; think; regard as:"

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13 The effect of the roll-over relief under section 44(3)(*a*)(i) on the disposal of an asset is not discussed in this Note.

14 Section 44(3)(*a*)(ii).

15 Section 44(3)(*a*)(ii)(*aa*).

16 Section 44(3)(*a*)(ii)(*bb*).

17 Section 44(3)(*a*)(i).

18 *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

19 **www.dictionary.com/browse/deem** [Accessed 18 November 2025].

The Supreme Court of Appeal addressed the effect and meaning of a deeming provision in legislation in *Eastern Cape Parks and Tourism Agency v Medbury (Pty) Ltd t/a Crown River Safari.*[20] Navsa JA pointed out the importance of considering how deeming provisions in legislation have been interpreted in case law and by commentators. He referred to Bennion's "Statutory Interpretation", which states the following about deeming provisions:[21]

> "Deeming provisions in Acts *often* deem things to be what they are not. In construing a deeming provision it is necessary to bear in mind the legislative purpose."

Navsa JA further noted[22] that an exposition of the types of deeming provisions and their construction can be found in the decision of the then Appeal Court in *S v Rosenthal*[23]. Trollip JA explained the following:

> "The words shall be deemed (word geag in the signed, Afrikaans text) are a familiar and useful expression often used in legislation in order to predicate that a certain subject-matter, eg a person, thing, situation, or matter, shall be regarded or accepted for the purposes of the statute in question as being of a particular, specified kind whether or not the subject-matter is ordinarily of that kind. The expression has no technical connotation. Its precise meaning, and especially its effect, must be ascertained from its context and the ordinary canons of construction."

The court in *Rosenthal* further clarified:

> "Some of the usual meanings and effect [deeming provisions] can have are the following. That which is deemed shall be regarded or accepted (i) as being exhaustive of the subject-matter in question and thus excluding what would or might otherwise have been included therein but for the deeming, or (ii) in contradistinction thereto, as being merely supplementary, ie, extending and not curtailing what the subject-matter includes, or (iii) as being conclusive or irrebuttable, or (iv) contrarily thereto, as being merely *prima facie* or rebuttable. I should add that, in the absence of any indication in the statute to the contrary, a deeming that is exhaustive is also usually conclusive, and one which is merely *prima facie* or rebuttable is likely to be supplementary and not exhaustive."

Navsa JA concluded in the *Eastern Cape Parks and Tourism Agency* case that it follows from the cases referred to that a deeming provision must always be construed contextually and in relation to the legislative purpose.[24]

Having regard to the above case law, the word "deemed" suggests that the amalgamated company and the resultant company must be viewed as one and the same person for purposes of determining the amount of any allowance or deduction to which the resultant company may be entitled regarding that asset, or that is to be recovered or recouped by, or included in the income of, the resultant company in respect of that asset.

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[20] 2018 (4) SA 206 (SCA). See also *The Commissioner: SARS v Kluh Investments (Pty) Ltd* 2016 (4) SA 580 (SCA) on consideration of the meaning of "deemed" used in legislation.

[21] At 215-216.

[22] At 216-217.

[23] 1980 (1) SA 65 (A).

[24] At 218.

Thus, the deeming provision effectively resets the reality for certain tax purposes and should be applied only to the extent specified by the deeming provision that creates it.

Having regard to the words, context, and purpose,[25] section 44(3)(*a*) establishes a "tax neutral" position for both the amalgamated and resultant company upon the transfer of an allowance asset. A tax neutral position implies that the allowances previously allowed as a deduction to the amalgamated company would not be recouped upon the disposal of the allowance asset to the resultant company, and any capital gain or capital loss resulting from the asset's disposal must be disregarded.[26] To achieve a tax neutral outcome, the resultant company steps into the "shoes" of the amalgamated company. This means that the initial cost of the asset, along with any subsequent costs capitalised to the asset and the corresponding accumulated allowances allowed as deductions on the asset are transferred to the resultant company. Thereafter, the resultant company may claim any future allowance or deduction from the date of the acquiring the asset.[27]

The implications of the deeming provision should be examined for purposes of the resultant company claiming an allowance, for example, under section 11(*e*), which requires an apportionment if the asset is used for trade purposes for part of a year of assessment, and for section 12C, which does not necessitate apportionment.

4.2.2 Apportionment of wear and tear allowance and non-apportionment of allowance

Section 11(*a*) provides for a deduction for expenditure and losses actually incurred in the production of income, provided such expenditure and losses are not of a capital nature. Expenditure of a capital nature is specifically excluded from deduction under section 11(*a*). However, in certain instances, the Act provides for a deduction in the form of an allowance for capital assets acquired for trade purposes, which may be based either on the useful life of the asset or a percentage of the cost or value of the asset, deductible over one or more years of assessment.[28] Sections 11(*e*) and 12C, amongst others, are examples of such specific provisions.

Section 11(*e*) provides for the apportionment of the allowance if the asset is used for trade purposes for part of a year of assessment. In contrast, section 12C does not require the allowance to be apportioned if the asset is used only for part of a year of assessment, allowing for the full allowance to be deductible.

(a) Apportionment of wear-and-tear allowance under section 11(*e*)

The deduction under section 11(*e*) is based on the cost or value of an asset and is determined by its estimated useful life, subject to certain qualifying criteria being fulfilled. The allowance is available only to the extent that the asset is used for the taxpayer's trade. Consequently, if an allowance asset has not been used for a full year of assessment for trade purposes, the allowance must be apportioned.

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[25] See *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) at 17. See also *C: SARS v Bosch and Another* 2015 (2) SA 174 (SCA); 77 SATC 61 at 74.

[26] Section 44(3)(*a*) provides roll-over relief.

[27] Section 44(3)(*a*)(ii).

[28] See Interpretation Note 47 Issue 5 "Wear-and-Tear or Depreciation Allowance", at paragraph 2.

This is explained in Interpretation Note 47 “Wear-and-Tear or Depreciation Allowance”, as follows:[29]

> “The allowance for a qualifying asset that has not been used for the purposes of trade throughout the year of assessment must be apportioned. Apportionment will apply, for example, to an asset acquired and brought into use during the year of assessment or an asset disposed of during the year of assessment.”

Therefore, if both the amalgamated and resultant companies are entitled to a wear-and-tear allowance under section 11(*e*) for the same asset, the allowance must be apportioned based on their respective usage of the asset.

Example 1 – Interaction between section 11(*e*) and section 44(3)(*a*)

Facts:

Company A purchased an asset on 1 January 2022 at a cost of R500 000. The asset qualifies for a wear-and-tear allowance under section 11(*e*), with an acceptable write-off period of 4 years as per the Annexure to Interpretation Note 47 “Wear-and-Tear or Depreciation Allowance”. Company A completed an amalgamation transaction under section 44 with Company B, with the effective date of acquisition of the asset being 1 July 2024. Company A transferred the allowance asset to Company B as part of the amalgamation, and Company B acquired the asset as an allowance asset. Both Company A’s and Company B’s years of assessment end on 31 December.

Result:

Wear-and-tear allowance under section 11(*e*) and income tax implications for Company A:

	R
Cost of asset	500 000
Less: Allowance for 2022 (R500 000 × 25%)	(125 000)
Income tax value at 31 December 2022	375 000
Less: Allowance for 2023 (R500 000 × 25%)	(125 000)
Income tax value at 31 December 2023	250 000
Less: Allowance for 2023 [(R500 000 × 25%) × 6/12]	(62 500)
Income tax value at 1 July 2024 (date of disposal)	187 500

The annual wear-and-tear allowance under section 11(*e*) on the asset is R125 000. An apportionment of the allowance under section 11(*e*) is required if the asset has not been used for the full year of assessment.[30] Company A disposed of the asset on 1 July 2024; therefore, in that year, it may only deduct the allowance for 6 months, amounting to R62 500 (R125 000 × 6/12).

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[29] See Interpretation Note 47 Issue 5“Wear-and-Tear or Depreciation Allowance”, at paragraph 4.1.6.

[30] The apportionment of the wear-and-tear allowance under section 11(*e*) is apportioned when an asset is not used throughout the year since section 11(*e*) refers to “…and used by the taxpayer for purposes of his or her trade has been diminished by reason of wear and tear or depreciation during the year of assessment …”.

Section 44(3)(*a*)(i) provides that allowances previously allowed as a deduction to the amalgamated company (Company A) must not be recovered, recouped, or included in its income for the year of that transfer.

Wear-and-tear allowance under section 11(*e*) and income tax implications for Company B:

	R
Cost of asset	500 000
Less: Accumulated wear-and-tear allowances allowed (Note)	(312 500)
Income tax value on1 July 2024 (date of acquisition)	187 500
Less: Allowance for 2024 (R125 000 × 6/12)	(62 500)
Income tax value at 31 December 2024	125 000
Less: Allowance for 2025 tax year	(125 000)
Income tax value at 31 December 2025	Nil

Company B acquired the asset as an allowance asset on 1 July 2024 as part of an amalgamation transaction under section 44(3)(*a*). Company B is entitled to the remaining wear-and-tear allowance under section 11(*e*), limited to the tax value of the asset on 1 July 2024. In the 2024 year of assessment, the allowance must be apportioned based on the extent that the asset was used for trade purposes by Company B. Provided that the requirements of section 11(*e*) are met, Company B may claim the wear-and-tear allowance of R62 500 (R125 000 × 6/12) for the 2024 year of assessment and the full allowance of R125 000 in the 2025 year of assessment.

Note:

Accumulated wear-and-tear allowance claimed by Company A	R
Allowance for 2022 tax year (R500 000 × 25%)	125 000
Allowance for 2023 tax year (R500 000 × 25%)	125 000
Allowance for 2024 tax year [(R500 000 × 25%) × 6/12]	62 500
Accumulated wear-and-tear allowances claimed	312 500

(b) Non-apportionment of allowance under section 12C

The allowance under section 12C is based on the specific nature and use of the asset, namely, plant or machinery used in a process of manufacture or a similar process. An allowance under a specific section is available only after the specific requirements have been satisfied. For example, section 12C requires the asset to be new or unused plant or machinery acquired by a taxpayer under an agreement formally and finally signed on or after 1 March 2002 and brought into use after this date in a process of manufacture or a similar process.

Section 12C provides for an accelerated allowance when compared to the allowance under the general provision in section 11(*e*). A deduction under section 12C takes precedence over the general provision under section 11(*e*). Section 12C allows a taxpayer to deduct the full allowance for the year of assessment in which the qualifying asset is brought into use for trade purposes, even if the asset has been used for only part of the year; unlike an allowance under section 11(*e*), which requires an apportionment if the asset has been used for only part of the year of assessment.

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4.3 Interaction between sections 12C and 44(3)(*a*)

Section 12C(1) provides that a deduction equal to 20% of the cost of the asset to the taxpayer shall be allowed in the year of assessment during which the asset is first brought into use and does require an apportionment if it is used only for part of the year of assessment. Therefore, a taxpayer is not required to apportion the deduction when the asset is used for only part of a year of assessment.

Section 12C is triggered in the year of assessment when a qualifying asset is brought into use, provided all other requirements of the section are met. A taxpayer becomes entitled to the allowance immediately when the asset is brought into use, provided the requirements of section 12C are fulfilled. If the asset is disposed of or transferred during a year, the allowance in the year of transfer or disposal is not apportioned. The non-apportionment of the allowance is supported by section 12C(3)(*c*), which provides as follows:

> "(3) No deduction shall be allowed under this section in respect of—
>
> (*a*) – (*b*) …
>
> (*c*) any asset which has been disposed of by the taxpayer during any previous year of assessment;"

The legislative purpose and context in which the phrase "deemed to be one and the same person" appears in section 44(3)(*a*)(ii) indicate that the resultant company takes the place of the amalgamated company for purposes of all future allowances. By substituting the resultant company for the amalgamated company, it ensures that certain eligibility requirements for the allowance continue to be met, which otherwise would not have been possible. For example, the resultant company is considered to have met the "new and unused" requirement for purposes of the allowance under section 12C (see Error! Reference source not found.**(b)**).

Since the resultant company takes the place of the amalgamated company for purposes of all future allowances, the amalgamated company would be entitled to the allowance in the year of transfer of the asset because the allowance becomes available to the taxpayer that first uses the asset in a year of assessment. In subsequent years of assessment, the amalgamated company may not deduct the allowance on the asset disposed of in a previous year, but is also not required to apportion the allowance in the year of transfer or disposal (see **4.1**). The resultant company will be entitled to the allowance in the year following the transfer of the asset, provided the requirements of the relevant section are met.

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The same principles stated above, apply to the determination of allowances provided for under section 13*quin*. Interpretation Note 107 "Deduction in respect of Commercial Buildings" considers the effect of the transfer of an allowance asset under section 45(3)(*a*) and states as follows:[31]

> "If the transferor company meets the requirements for claiming the allowance in a particular year of assessment before transfer occurred, the transferor company and not the transferee company will claim the full allowance for that year of assessment even if the transferee company also met the requirements. The transferee company cannot claim the allowance for the same period, since the two companies are deemed to be one and the same person for purposes of determining the allowance. This principle applies irrespective of whether the transferee has the same or a different year of assessment."

Example 2 – Interaction between section 12C and section 44(3)(*a*)

Facts:

Company C acquired machinery on 1 January 2023 for R500 000. The machinery was utilised in a process of manufacture and qualified for a deduction under section 12C(1)(*a*).[32] An amalgamation transaction, as outlined in section 44, was completed between Company C and Company D on 1 July 2024. Company C transferred the machinery to Company D as part of the amalgamation transaction, and Company D continued to use the machinery in a process of manufacture. Both, Company C and Company D have a year of assessment that ends on 31 December.

Result:

Deduction of cost of the asset and income tax implications for Company C:

	R
Cost of machinery (1 January 2023)	500 000
Less: Section 12C allowance for 2023 (R500 000 × 40%)	(200 000)
Income tax value at 31 December 2023	300 000
Less: Section 12C allowance for 2024 (R500 000 × 20%)	(100 000)
Tax value of machinery on 1 July 2024	200 000

Company C is entitled to a deduction under section 12C(1) proviso (*c*) of 40% of the cost of the asset in the year it is brought into use and 20% in each of the three subsequent years of assessment. Although the asset was used for only a part of the year, the allowance does not need to be apportioned for the period the asset was used, as the allowance is available from the first day of the year of assessment when the asset is used in a process of manufacture.

Furthermore, section 44(3)(*a*)(i) provides that the allowances of R300 000 granted to Company C during the 2023 and 2024 years of assessment for that machinery must not be recovered or recouped by Company C or included in its income for the year in which the transfer occurred.

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[31] See Interpretation Note 107 "Deduction in respect of commercial buildings" for a detailed consideration of the allowance under section 13*quin*.

[32] Proviso (*c*) to section 12C(1) provides for an accelerated deduction of 40% in the year the asset is brought into use and 20% for each of the three subsequent years.

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Deduction of cost of the asset and income tax implications for Company D

	R
Cost of asset	500 000
Less: Accumulated section 12C allowance	(300 000)
Tax value of asset on 1 July 2024	200 000
Less: Section 12C allowance for 2024 year of assessment	(Nil)
Tax value of asset at 3I December 2024	200 000
Less: Section 12C allowance for 2025 year of assessment (R500 000 × 20%)	(100 000)
Tax value of asset at 31 December 2025	100 000

In the 2024 year of assessment, when the asset was transferred to Company D, no allowance is available to it, as the allowance becomes available from the first day of the year of assessment to the taxpayer that first uses the asset in a process of manufacture. During 2024, Company C first used the asset in a process of manufacture, thus it became entitled to the full allowance, which did not require apportionment for the period the asset was used for its trade. Both Company C and Company D are not entitled to the allowance on the same asset for the 2024 year. In the immediate subsequent year, Company D will be entitled to claim the allowance (provided that the requirements of section 12C are met) based on the initial cost of the asset, and not the tax value of the asset at the date of acquisition.[33]

5. Conclusion

The corporate rules provide corporate roll-over relief, amongst other things, for the disposal or transfer of allowance assets between taxpayers.

Section 44(3)(*a*) provides that if the amalgamated company transfers an allowance asset and the resultant company acquires that asset as an allowance asset, both companies are "deemed to be one and the same person" for the purpose of determining the amount of any allowance to which the resultant company may be entitled, and which is to be recovered, recouped, or included in the resultant company's income regarding that asset.

The phrase "deemed to be one and the same person" creates for a situation that results in a tax-neutral position for both the amalgamated and resultant companies upon the transfer of an allowance asset.

Unlike section 11(*e*), section 12C does not provide for the apportionment of the deduction[34] if the asset is used for only part of the year of assessment. Therefore, if the amalgamated company meets the requirements of section 12C to claim the allowance in the year of assessment during which the transfer of the asset occurs, the amalgamated company, not the resultant company, may claim the full allowance for that year, even if the resultant company meets the requirements for the allowance after the transfer. The resultant company may claim the section 12C allowance in the year of assessment following the year in which the amalgamation occurred, provided that the requirements of section 12C are satisfied.

33 Section 12C(1) read with section 12C(3)(*c*).

34 Section 12C(1) read with section 12C(3)(*c*).

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The accumulated deductions claimed under section 12C by the amalgamated company are rolled over to the resultant company and may be subject to recoupment in the resultant company when the asset is eventually disposed of.[35] The principles considered in this Note will also apply to an "asset-for-share transaction",[36] "intra-group transaction"[37] and "transactions relating to liquidation, winding-up and deregistration".[38]

Leveraged Legal Products
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35 Section 44(3)(*a*)(i).
36 Section 44(3)(*a*)(i).
37 Section 45.
38 Section 47.

Annexure – The law

Section 11

11. General deductions allowed in determination of taxable income.—For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall be allowed as deductions from the income of such person so derived—

(*a*) (*d*)

(*e*) save as provided in paragraph 12 (2) of the First Schedule, such sum as the Commissioner may think just and reasonable as representing the amount by which the value of any machinery, plant, implements, utensils and articles (other than machinery, plant, implements, utensils and articles in respect of which a deduction may be granted under section 12B, 12BA, 12C, 12DA, 12E (1), 12U or 37B) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act and used by the taxpayer for the purpose of his or her trade has been diminished by reason of wear and tear or depreciation during the year of assessment:

Section 12C

12C. Deduction in respect of assets used by manufacturers or hotel keepers and in respect of aircraft and ships, and in respect of assets used for storage and packing of agricultural products. —(1) In respect of any—

(*a*) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (b)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act and which was or is brought into use for the first time by the taxpayer for the purposes of the taxpayer's trade (other than mining or farming) and is used by the taxpayer directly in a process of manufacture carried on by the taxpayer or any other process carried on by the taxpayer which is of a similar nature;

(*b*)……(*h*),

a deduction equal to 20 per cent of the cost to that taxpayer to acquire that machinery, plant, implement, utensil, article, ship, aircraft or improvement (hereinafter referred to as the asset) shall be allowed in the year of assessment during which the asset is so brought into use and in each of the four succeeding years of assessment:

Section 41

41. General.—(1) For the purposes of this Part, unless the context otherwise indicates, any word or expression that has been defined in section 1, shall bear the same meaning so defined, and—

"allowance asset" means—

(a) a capital asset in respect of which a deduction or allowance is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss; or

(*b*) any debt contemplated in section 11 (i) or (j);

"asset" means an asset as defined in paragraph 1 of the Eighth Schedule;

"capital asset" means an asset as defined in paragraph 1 of the Eighth Schedule, which does not constitute trading stock;

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"date of acquisition" means the date of acquisition as determined in accordance with paragraph 13 of the Eighth Schedule or, where a person acquires an asset in terms of a transaction subject to the provisions of this Part, the deemed date of acquisition of that asset by that person as contemplated in this Part;

"disposal" means a disposal as defined in paragraph 1 of the Eighth Schedule and any deemed disposal in terms of this Part;

(9) Where a person has made an election in respect of an asset under paragraph 65 or 66 of the Eighth Schedule and disposes of or distributes any replacement asset in relation to that asset in terms of section 42, 44, 45 or 47—

(*a*) the person so disposing of or distributing that replacement asset must disregard any capital gain or amount recovered or recouped which was apportioned to that asset under paragraph 65 or 66 of the Eighth Schedule or section 8 (4) (e) and (*e*A), as the case may be, and which otherwise would have had to be brought to account at the time of that disposal or distribution; and

(*b*) the company acquiring that replacement asset and the person referred to in paragraph (*a*) must be treated as one and the same person for the purposes of section 8 (4) (*e*B), (*e*C) or (*e*D) and paragraphs 65 and 66 of the Eighth Schedule

Section 44(3)(*a*)

(3) Where an amalgamated company disposes of—

(*a*) an asset that constitutes an allowance asset for that amalgamated company to a resultant company as part of an amalgamation transaction and that resultant company acquires that asset as an allowance asset or that resultant company is a REIT or a controlled company, as defined in section 25BB (1), that acquires that asset as a capital asset or an allowance asset—

(i) no allowance allowed to that amalgamated company in respect of that asset must be recovered or recouped by that amalgamated company or included in that amalgamated company's income for the year of that transfer; and

(ii) that amalgamated company and that resultant company must be deemed to be one and the same person for purposes of determining the amount of any allowance or deduction—

(*aa*) to which that resultant company may be entitled in respect of that asset; or

(*bb*) that is to be recovered or recouped by or included in the income of that resultant company in respect of that asset;

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