

## **TR 60**

### **Facts**

A non-resident societe acquired the entire share capital of five resident companies forming part of two different groups carrying business in the same business activity. For administrative reasons the boards of the said companies, referred to as the amalgamating companies, have proceeded to an amalgamation into one single company, via Company A (Mauritius) Ltd, the amalgamated company.

### **Point of Issue**

Whether consequent to the effect of amalgamation, the "property, rights, powers and privileges" of the amalgamating companies under the Companies Act are also the property, rights, powers and privileges of the amalgamated company, and as such whether the tax losses accumulated by the amalgamating companies can be used for carry forward and set off against the net income of the amalgamated company.

### **Ruling**

Notwithstanding the fact that the "property, rights, powers and privileges" of the amalgamating companies continue to be the property, rights, powers and privileges of the amalgamated company under the Companies Act 2001, for income tax purposes the tax losses accumulated by the amalgamating companies cannot be said to have been incurred and accumulated by the amalgamated company. The amalgamated company can, under Section 59 of the Income Tax Act, carry forward only losses that it has itself incurred.