

Master in Finance

Accounting and Tax - Mergers and
Acquisitions Operations

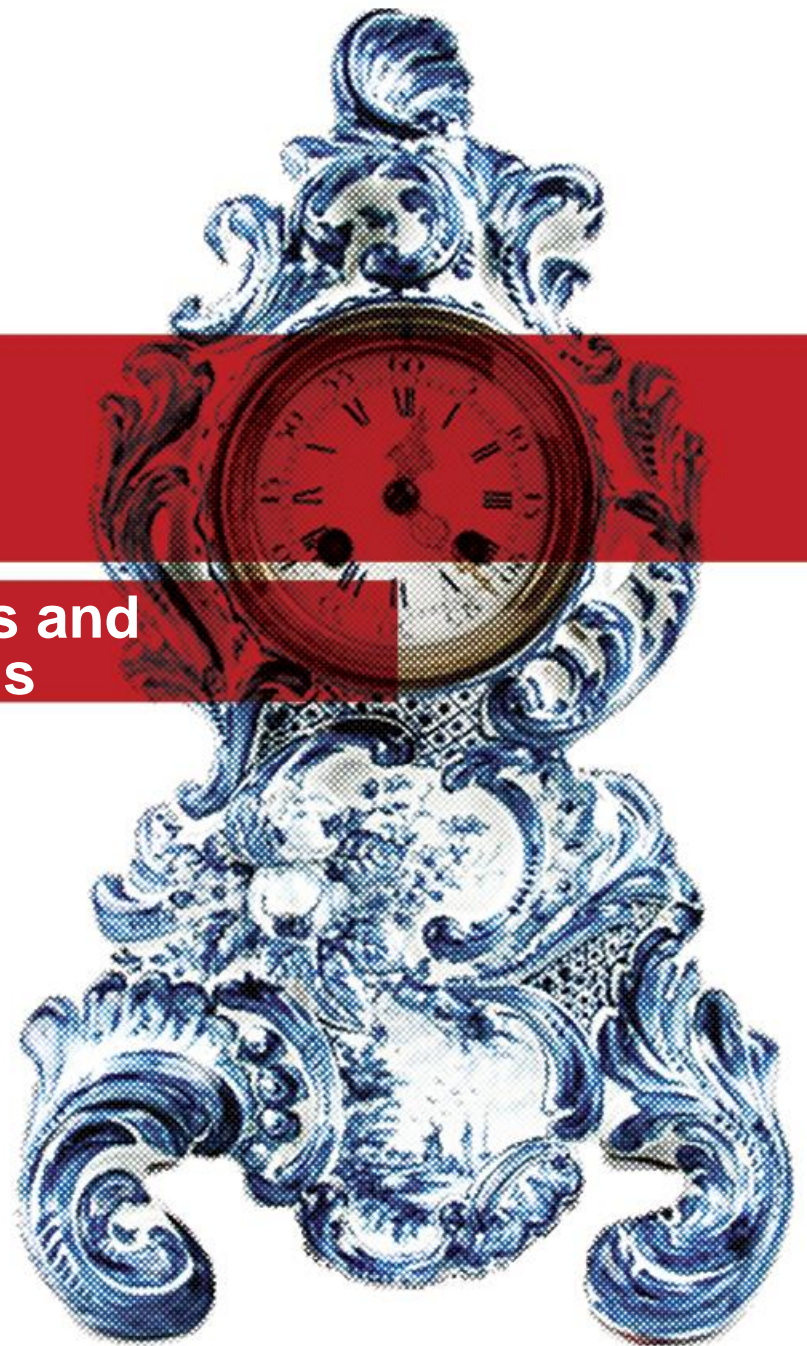
2020



Instituto Superior de Economia e Gestão
UNIVERSIDADE TÉCNICA DE LISBOA

DESDE 1911

100 ANOS A PENSAR NO FUTURO

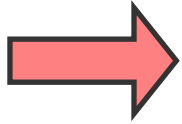


Accounting and taxation aspects inherent to Business Combinations



- Applicable regulation;
- Identifying a business combination;
- Accounting method;
- Acquisition method application;
- Goodwill;
- Review (2009) and summary of IFRS 3 and other regulatory references.

Merger Process: Accounting Aspects



APPLICABLE REGULATION

Disclaimer: *As accounting and tax issues deal with several legislation/regulations and changes may take place at any time, the following slides should be understood as a working basis but in presence of a specific assignment it may be necessary to validate if specific regulation is still in force or if it registered any changes.*

Applicable regulation

❑ Accounting regulation:

<http://www.iasplus.com/en/standards/ifrs/ifrs3>

- ❑ IFRS 3 – Business Combinations (replace NIC/IAS 22) - International Accounting Standards Board.
- ❑ FAS 141 – Accounting treatment of business combinations – US – Financial Accounting Standards Board

❑ Purpose and Scope:

- ❑ [IFRS 3] The objective of this IFRS is to improve the relevance, reliability, and comparability of an entity's financial statements with respect to the information provided about business combinations and their effects. IFRS 3 establishes principles and requirements regarding recognition and measurement of identifiable assets and goodwill acquired, liabilities assumed, any non-controlling interest in the acquire, and any gains from a bargain purchase.

FAS 141(R) retains the "acquisition method" (formerly known as the "purchase method") of accounting for all business combinations and requires an acquirer to be identified for each business combination.

Applicable regulation

□ Purpose and Scope:

- In particular, IFRS 3 – that appears in March 31, 2004 – specifies that all business combinations must be accounted using the method of acquisition.

- However this IFRS shall not apply to:
 - a) Business combinations in which separate business entities or combine to form a joint venture;
 - b) Business combinations between entities or businesses under common control;
 - c) On Business Combinations involving two or more mutual status;

Applicable regulation

□ Purpose and Scope:

□ However this IFRS shall not apply to:

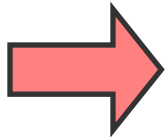
- d) Business combinations in which, through a contract, separate entities or businesses are combined to form only a reporting entity, but without obtaining any ownership (for example, combinations in which separate entities are combined by midst of a contract to build a society with two securities traded).

Merger Process: Accounting Aspects



4) Analysis of the Financing options

APPLICABLE REGULATION



IDENTIFYING A BUSINESS COMBINATION

Identifying a Business Combination

□ [IFRS3.4] What is a Business Combination?

- A business combination is defined in IFRS 3 as “a transaction or other event in which an acquirer obtains control of one or more businesses. Transactions sometimes referred to as ‘true mergers’ or ‘mergers of equals’ are also business combinations as that term is used in this IFRS.”

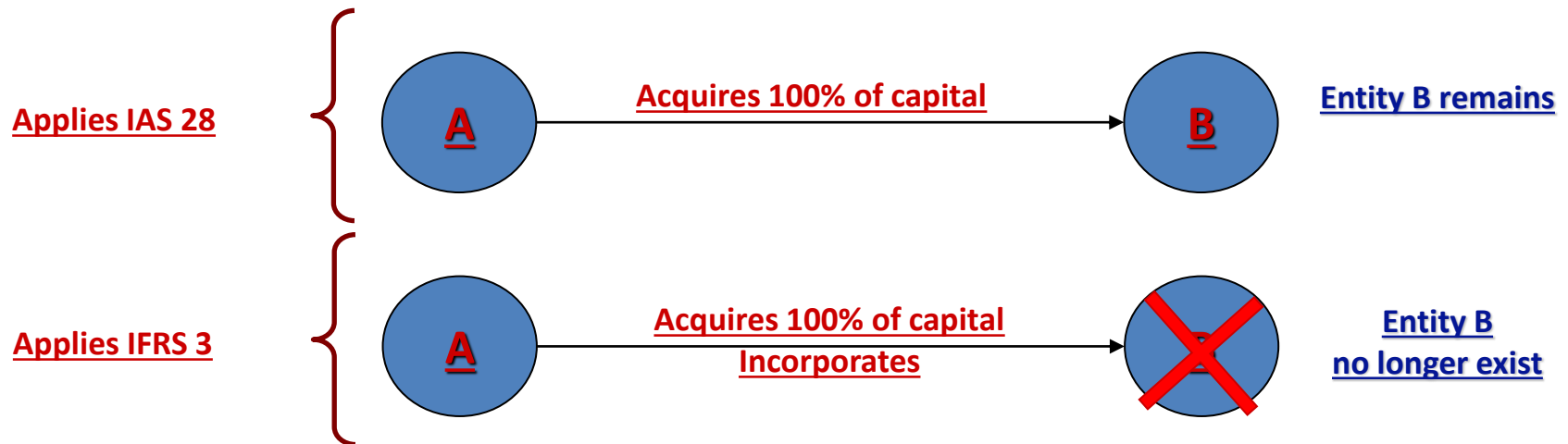
□ Business definition

- A business can be seen as “an integrated set of activities and assets that is capable of being conducted and managed” to provide a return to investors – or other owners, members or participants – by way of dividends, lower costs or other economic benefits.

Identifying a Business Combination

□ Consequences

- In what concerns to financial reports and reporting purposes after a merger remains only one company.
- It differs from investments in associated companies, where there are still two (or more) entities.



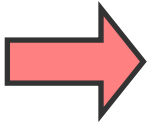
Merger Process: Accounting Aspects



APPLICABLE REGULATION

IDENTIFYING A BUSINESS COMBINATION

METHOD OF ACCOUNTING



Method of accounting

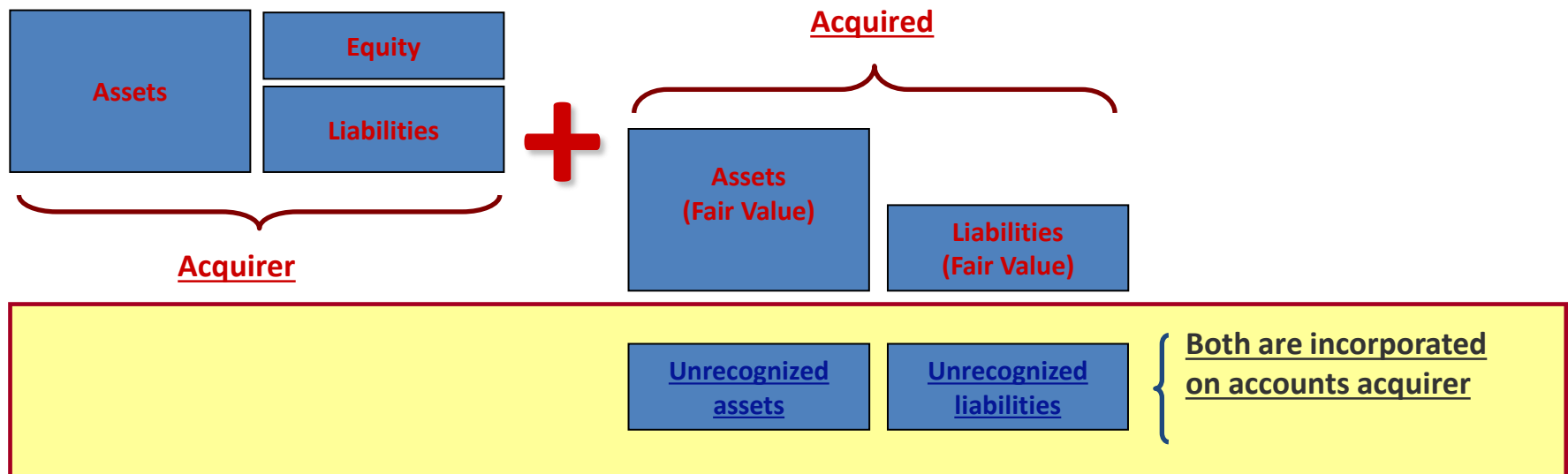
- ❑ **Acquisition Method** [IFRS 3.14] All business combinations are accounted for using the method of acquisition.
 - ❑ It differs from investments in associated companies, where there are still two (or more) entities.

- ❑ **How to apply this method?**
 - ❑ [IFRS 3.15] The method provides for the purchase business combination from the perspective of the merged entity that is identified as acquiring institution. The buyer will purchase the net assets and recognize the assets acquired liabilities and contingent liabilities assumed, including those previously unrecognized by the acquired entity.

Method of accounting

□ How to apply this method?

- [IFRS 3.15] The valuation of assets and liabilities of the acquirer will not be affected by the transaction, nor does it recognize additional assets or liabilities of the purchaser as a result of the transaction, since they are not subjects on which it rests.



Merger Process: Accounting Aspects

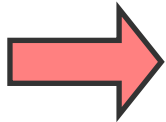


APPLICABLE REGULATION

IDENTIFYING A BUSINESS COMBINATION

METHOD OF ACCOUNTING

APPLICATION OF THE ACQUISITION METHOD



Application of the acquisition method

□ [IFRS 3.16] Steps to follow:

- 1) identification of the acquiring institution;
- 2) valuation of the cost of the business combination;
- 3) distribution, on the date of acquisition, the cost of business combination between the assets acquired and liabilities assumed and contingent liabilities.

+

goodwill

Application of the acquisition method

□ Identifying the acquirer

- The purchaser is the combined entity that obtains control of other businesses or entities involved in the mix. The relationship between the combining entities determines which entity obtains control, i.e.:
 - Under IFRSs, which entity has power to govern the financial and operating policies of the other entity so as to obtain benefits from its activities; or
 - Under U.S. GAAP, which entity has controlling financial interest over the other.

Application of the acquisition method

□ Identifying the acquirer

- [IFRS 3.20] Although at times it can be difficult to identify an entity acquiring, generally there are indications that reveal its existence. Some clues are:
 1. if the fair value of one of the combined entities is significantly greater than that of the other combined entity, it is likely that the purchaser is the largest fair value;
 2. if the business combination is effected through a regular exchange of instruments of heritage with voting rights, for cash or other assets, it is likely that the purchaser is an entity that delivers cash or other assets;
 3. if the business combination would result in the direction of one of the combined entities will be able to control the selection of the management team of the combined entity resulting, it is likely that the entity whose address is capable of exercising this control is the purchaser.

Application of the acquisition method

□ Cost of Business Combination

- [IFRS 3.24] The acquiring institution will assess the cost of business combination as the sum of:
 - a. fair values at the date of exchange of assets handed over, liabilities incurred or assumed, and equity instruments issued by the purchaser in exchange for control of the entity acquired; more
 - b. any costs directly attributable to the business combination.

Application of the method of purchase:

Imputation, on the date of acquisition, the cost of the combination to the assets acquired and liabilities and contingent liabilities assumed.

The acquirer must allocate the cost of the merger, to proceed to the recognition of assets, liabilities and contingent liabilities of the acquired party, the criterion of fair value;

The only exception relates to non-current assets (disposal groups called), that are classified as held for sale, as required by IAS 8.

Merger Process: Accounting Aspects



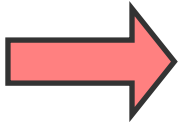
APPLICABLE REGULATION

IDENTIFYING A BUSINESS COMBINATION

METHOD OF ACCOUNTING

APPLICATION OF THE ACQUISITION METHOD

GOODWILL



Goodwill

□ Definition of goodwill

- Goodwill is an accounting concept inherent to business combinations is measured as the difference between (a) and (b) with:
 - a) The sum of:
 - The fair value of the consideration transferred;
 - The recognized amount of any non-controlling interest in the acquiree; and
 - For a business combination achieved in stages, the fair value of any previously held equity interest in the acquiree.
 - b) The recognized amount (generally fair value) of the identifiable assets acquired and liabilities assumed

Goodwill

□ Definition of goodwill

- [IRFS 3.52] Goodwill can also be defined as a payment made by the purchaser as a foretaste of future economic benefits of the assets which could not be identified and recognized separately.
- If for some reason the price paid by the acquirer to obtain the control over the other entity is lower than the sum of the fair values of assets and liabilities the goodwill appears as a negative goodwill (*badwill*)

Goodwill

□ Measurement and recognition

- [IRFS 3.51] Initially goodwill is assessed by its cost, being the excess cost of the business combination on the participation of the acquirer in the fair value of net assets, liabilities and contingent liabilities identifiable of the acquired company.
 - If the difference is positive, the result is a **positive goodwill** and the recognition is given as another **asset**.
 - If the difference is negative, the result is a **negative goodwill** and the recognition of this is given as a **profit of the period**.

This way, the goodwill is measured as the residual cost of the business combination, after recognizing the assets, liabilities and contingent liabilities of the acquired entity (IFRS 3, p.53)

Goodwill

❑ Accounting treatment of Goodwill

- ❑ When the acquirer company proceed to the recognition of the identifiable assets, liabilities, and contingent liabilities, should also proceed to the recognition of goodwill.
- ❑ Following [IFRS 3.55] Goodwill can not be amortized. Instead, the acquiring institution will analyze the deteriorating value annually or more frequently if events or changes in circumstances indicate that its value could suffer deterioration in accordance with IAS 36 Impairment of Assets.



- ❑ This fact contributes to increase the result's volatility.

Merger Process: Accounting Aspects



APPLICABLE REGULATION

IDENTIFYING A BUSINESS COMBINATION

METHOD OF ACCOUNTING

APPLICATION OF THE ACQUISITION METHOD

GOODWILL

Other regulatory references

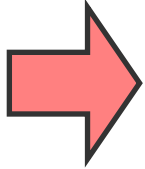
- European Commission (2004). Regulation nº 2236/2004;
- IASB (2004). International Financial Reporting Standards nº 1 – First-time Adoption of International Financial Reporting Standards;
- IASB (2004). International Financial Reporting Standards nº 3 – Business Combinations;
- IASB. International Accounting Standards N° 36 – Impairment of Assets;
- IASB. International Accounting Standards N° 38 – Intangible Assets.
- Regulation (EC) N.º 495/2009 de 3 de June de 2009 (IFRS 3 reviewed).

Merger Process: Tax Aspects



- Applicable regulation
- The principle of “fiscal neutrality”
- Transferability of tax losses

Merger Process: Tax Aspects



APPLICABLE REGULATION

Applicable regulation

❑ Main legislation applicable

- ❑ Article 71 (**Artigo 71.º - Regime específico de dedução de prejuízos fiscais**) No 2 of Code of Taxation of Income and Gains of Collective Persons (hereinafter “IRC Code”): Specific arrangements for the deduction of tax losses;
- ❑ Subsection IV from Section VI of IRC Code: Special arrangements applicable to mergers, de-mergers, transfers of assets and exchanges of shares (**articles 73 to 78**);
- ❑ Article 74 of IRC Code (**Artigo 74.º - Regime especial aplicável às fusões, cisões e entradas de activos**): Special arrangements applicable to mergers, de-mergers and transfers of assets; (**Law n.º 2/2014, January 16**);
- ❑ Article 60 (**Artigo 60.º - Reorganização de empresas em resultado de operações de reestruturação ou de acordos de cooperação**) of Portuguese Tax Incentives Statute (*Estatuto dos Benefícios Fiscais - EBF*): Companies restructuring as a result of acts of business combinations or cooperation agreements (Decree-Law No 198/2012, of August 24)

Applicable regulation

❑ Specific arrangements for the deduction of tax losses (Article 71 of IRC Code)

- ❑ “2 – Where, during the operation of the scheme, mergers occur among companies **in the group** or a company absorbs one or more companies from outside group, the losses of the merged company or companies incurred in years prior to the beginning of the scheme may be deducted from the taxable profit of the group to the extent of the taxable profit of the new company or the acquiring company”
- ❑ When mergers between group companies or a company incorporating one or more companies **not belonging to the group** are carried out during the application of the scheme, the losses of a merged company during taxation periods prior to the commencement of the scheme may be deducted To the taxable profit of the group up to the limit of the taxable profit of the new company or the acquiring company, provided that the special scheme set out in Article 74 (**Artigo 74.º - Regime especial aplicável às fusões, cisões e entradas de activos**) and the terms and conditions set out in Article 75 (**Artigo 75.º - Transmissibilidade dos prejuízos fiscais**) are applied to those operations.

Applicable regulation

- ❑ **Definition and Scope – Article 73** (Artigo 73.º - Definições e âmbito de aplicação - PREJUÍZOS FISCAIS - FUSÕES E CISÕES - CONDIÇÕES FISCAIS DA FUSÃO E CISAÓ - LUCRO TRIBUTÁVEL DAS SOCIEDADES CINDIDAS) **of IRC Code**
 - ❑ “1 – A merger is a transaction involving:
 - a) **The transfer of all the assets** of one or more companies (**merged company**) to another existing company (acquiring company) and the allocation of shares to their members representing the capital of the recipient and, possibly involving also payments to them **not exceeding 10%** of the nominal value of the shares or, in the absence of nominal value, the accounting equivalent to the nominal value of the shares issued to them;
 - b) The incorporation of a new way (acquiring company), to which are contributed all the assets of two or more companies (merged companies), and the allocation of shares to their members representing the capital of the recipient and, possibly involving also payments to them not exceeding 10% of the nominal value of the shares or, in the absence of nominal value, the accounting equivalent to the nominal value of the shares issued to them;

Applicable regulation

□ Definition and Scope – Article 73 of IRC Code

- “1 – A merger is a transaction involving:
 - c) A transaction in which a company (merged company) transfers the whole of its assets and liabilities to another company (acquiring company) holding all of its share capital.”

Applicable regulation

- **Tax benefits to corporate restructuring: Article 60 - Companies restructuring as a result of acts of business combinations or cooperation agreements**
 - To companies that, directly and principally, develop an economic activity with agricultural nature, commercial, industrial or service, and undergoes a reorganization as a result of acts of business combination or cooperation agreements may be granted the following benefits:
 - a) **Exemption from municipal tax on onerous transfer of property**, concerning real property, non-residential, and, when related to the activity carried out principally, to housing properties, necessary for business combination or cooperation;
 - b) **Exemption from stamp duty** regarding to property transfer referred to in paragraph a), or the constitution, capital increase or assets of a society of capital required for the business combination or cooperation;

Applicable regulation

- **Tax benefits to corporate restructuring: Article 60 - Companies restructuring as a result of acts of business combinations or cooperation agreements**
 - c) Waiver of fees and other legal costs that must be payable for the performance of the act included in the processes of business combination and cooperation.
- **The information that supports the exemption must be included in the Fiscal Dossier (Portaria n.º 51/2018).**



Applicable regulation

Exemptions are automatic (no prior authorization required) unless:

- ❑ The operation is subject to notification under the Legal Regime of Competition (Law No. 19/2012) - Regime Jurídico da Concorrência (Lei n.º 19/2012)
- ❑ In this case, the benefits can only be applied when a favorable decision is issued by the Competition Authority.

Applicable regulation

- ❑ In the **spin-off operations**, whatever their nature, it is no longer necessary to make an application to AT that is, tax exemptions (exemption from IMT – “**Imposto** Municipal Sobre as Transmissões Onerosas de Imóveis”, stamp duty and other charges and emoluments) are **now automatic**.
- ❑ However, it is necessary to ensure the conditions imposed by the new wording of Article 60 (6) of the EBF, i.e. the expected benefits will not apply when it is concluded that the operations covered by the EBF have as main objective to **obtain tax advantages**. This can be seen in particular where the transactions have not been carried out for **valid economic reasons** and **do not reflect economic substance**, such as strengthening the competitiveness of the companies, situation in which **additional taxes, will be calculated and increased by 15%**.

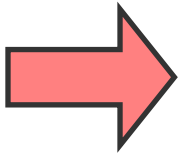
Applicable regulation

- ❑ The system of tax exemptions is extended to merger and spin-off operations when involving **confederations** and employers' and **trade union associations** as well as business or sector associations.
- ❑ Associations of a business or sectoral nature' are associations whose main purpose is to represent, promote, encourage and support enterprises in a given geographical area or economic activity.

Merger Process: Tax Aspects



APPLICABLE REGULATION



THE PRINCIPLE OF “TAX NEUTRALITY”

The principle of “tax neutrality”

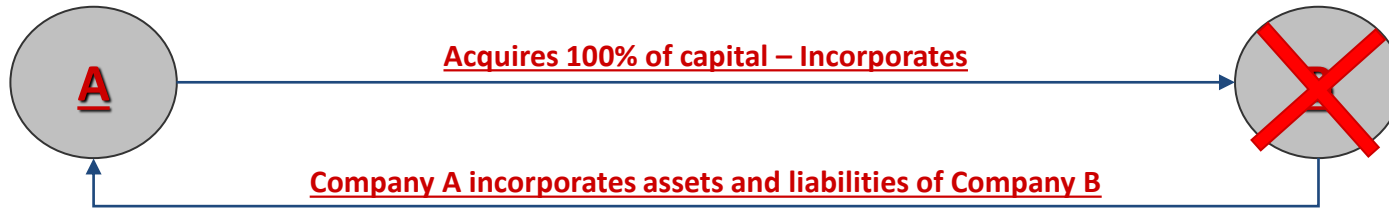
□ Principle of tax neutrality

- Tax neutrality is a term referring to the impact of taxation on the economy. When it is said that fiscal neutrality is desirable, the meaning is that the tax measure or policy should not introduce undesirable distortions into the normal working of the economy. This way the taxation shall not promote or hinder the process of business combination

The principle of “tax neutrality”

□ Principle of tax neutrality

- Its always verified that:



Company A

- Resident in Portuguese territory;
- Assets and liabilities are accounted in Company A with the same values they had in Company B;

Company B

- Resident in Portuguese territory

Post Merger

Company A

- Amortization and depreciation are made using the same accounting methodology used in Company B;
- Provisions / adjustments transferred must have the applicable regulatory used in B;

The principle of “tax neutrality”

□ Application

- The property elements that are transferred must appear in the fiscal dossier of the new company, in order to control the property elements transferred and, this way, to proceed to the taxation later;

- The company with benefits should obtain the financial statements, of the merged company, before the operation of concentration of business activity.

The principle of “fiscal neutrality”

□ Application

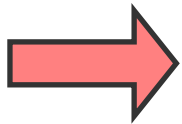
- In case the companies do not respect the principle of tax neutrality, the incorporated company will have to proceed the taxation of the results of the operation:
 - 1) recognize the existence of a negative goodwill, which will have to be taxed. However, in the other hand, the company will also be able to depreciate the items of Tangible or Intangible Asset, based on the Fair Value;

Merger Process: Tax Aspects



APPLICABLE REGULATION

THE PRINCIPLE OF “TAX NEUTRALITY”



TRANSFERABILITY OF TAX LOSSES

Transferability of tax losses

❑ Authorization of Minister of Finance

- ❑ The reporting of tax losses is subject to authorization granted by the Minister of Finance:
 - Upon request of interested parties submitted to the Directorate General of Taxes (DSIT – Directorate of Inspection Services Tax) to the end of the month following the application for registration of the merger in the commercial register.

Transferability of tax losses

- **Article 75 of IRC Code** (Artigo 75.º - Transmissibilidade dos prejuízos fiscais)
 - “The tax losses of merged companies may be offset against the taxable profits of the new company or the acquiring company, on the terms and conditions set out in Article 52 (**Artigo 52.º - Dedução de prejuízos fiscais**) until the end of the period referred to in paragraph 1 of the article, counting from the accounting period in which they arose the exercise that relate them. [Redaction given by Law No. 2/2014, of January 16]

Transferability of tax losses

□ Requirements with the demonstration that the merger is done due to right economic reasons, with the following attachments:

- a) A copy of the merger project;
- b) A demonstrative study about the economic advantages of the merger operation;
- c) A copy of an independent Auditor;
- d) A copy of the application to register the transaction in the competent Commercial Register;
- e) Information about predictable taxable profits of the new company or the acquiring company for the next 6 years after the operation;
- f) A copy of the financial statements of all companies involved in the operation, which has to make a reference to the last 3 years before the operation;

Transferability of tax losses

□ **Requirements with the demonstration that the merger is done due to right economic reasons, with the following attachments (cont.):**

- g) A copy of the estimated financial statements for the next 3 years after the operation of the new company or the acquiring company;
- h) A document proving the absence of social security debts of the merged and acquiring companies.

Transferability of tax losses

❑ Minister of Finance dispatch

- ❑ In dispatch can be set a specific plan of tax losses deduction to establish the scaling of the deduction during the period able to do it and can be defined the limits that can not be exceeded in each year.

According to **article 52** of IRC code in each tax period the deduction of tax losses can not exceed 70% of the taxable results of the year.



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Appendix



IAS 28 *Investments in Associates and Joint Ventures* (as amended in 2011) outlines how to apply, with certain limited exceptions, the equity method to investments in associates and joint ventures. The standard also defines an associate by reference to the concept of "significant influence", which requires power to participate in financial and operating policy decisions of an investee (but not joint control or control of those policies).

IAS 28 was reissued in May 2011 and applies to annual periods beginning on or after 1 January 2013.



History of IAS 28 (as amended in 2011)

Date	Development	Comments
July 1986	Exposure Draft E28 <i>Accounting for Investments in Associates and Joint Ventures</i>	
April 1989	IAS 28 <i>Accounting for Investments in Associates</i> issued	Effective 1 January 1990
1994	IAS 28 was reformatted	
December 1998	Amended by IAS 39 <i>Financial Instruments: Recognition and Measurement</i>	Effective 1 January 2001
18 December 2003	IAS 28 <i>Investments in Associates</i> issued	Effective for annual periods beginning on or after 1 January 2005
10 January 2008	Amended by IFRS 3 <i>Business Combinations</i> (loss of significant influence)	Effective for annual periods beginning on or after 1 July 2009
22 May 2008	Amended by <i>Improvements to IFRSs</i> (impairment testing)	Effective for annual periods beginning on or after 1 January 2009
12 May 2011	IAS 28 <i>Investments in Associates and Joint Ventures</i> (2011) issued (supersedes IAS 28 (2003))	Effective for annual periods beginning on or after 1 January 2013
11 September 2014	Amended by <i>Sale or Contribution of Assets between an Investor and its Associate or Joint Venture (Amendments to IFRS 10 and IAS 28)</i>	Effective on a prospective basis to transactions occurring in annual periods beginning on or after 1 January 2016 deferred indefinitely (see below)
18 December 2014	Amended by <i>Investment Entities: Applying the Consolidation Exception (Amendments to IFRS 10, IFRS 12 and IAS 28)</i> (project history)	Effective for annual periods beginning on or after 1 January 2016
17 December 2015	Amended by <i>Effective Date of Amendments to IFRS 10 and IAS 28</i>	defer the effective date of the September 2014 amendments to these standards indefinitely
8 December 2016	Amended by Annual Improvements to IFRS Standards 2014–2016 Cycle (Measuring an associate or joint venture at fair value). Click for more information	Effective for annual periods beginning on or after 1 January 2018

History of IFRS 3



History of IFRS 3		
7/1/2001	Project added to IASB agenda (carried over from the old IASC)	History of the project
12/5/2002	Exposure Draft ED 3 Business Com-bi-na-tions and related exposure drafts proposing amend-ments to IAS 36 and IAS 38 published	Comment deadline 4 April 2003
3/31/2004	IFRS 3 Business Com-bi-na-tions (2004) and related amended versions of IAS 36 and IAS 38 issued (IFRS 3 su-per-sedes IAS 22)	Effective for business com-bi-na-tions for which the agree-ment date is on or after 31 March 2004
4/29/2004	Exposure Draft Com-bi-na-tions by Contract Alone or Involving Mutual Entities published (These proposals were not finalised, but instead con-sid-ered as part of the June 2005 exposure draft)	Comment deadline 31 July 2004
6/30/2005	Exposure Draft Proposed Amend-ments to IFRS 3 published	Comment deadline 28 October 2005
1/10/2008	IFRS 3 Business Com-bi-na-tions (2008) issued	Applies to business com-bi-na-tions for which the ac-qui-si-tion date is on or after the beginning of the first annual reporting period beginning on or after 1 July 2009
5/6/2010	Amended by Annual Im-prove-ments to IFRSs 2010 (mea-sure-ment of non-con-trol-ling interests, replaced share-based payment awards, tran-si-tional arrange-ments for con-tin-gent con-sid-er-a-tion)	Effective for annual periods beginning on or after 1 July 2010
12/12/2013	Amended by Annual Im-prove-ments to IFRSs 2010–2012 Cycle (con-tin-gent con-sid-er-a-tion)	Ap-plic-a-ble for business com-bi-na-tions for which the ac-qui-si-tion date is on or after 1 July 2014
12/12/2013	Amended by Annual Im-prove-ments to IFRSs 2011–2013 Cycle (scope exception for joint ventures)	Effective for annual periods beginning on or after 1 July 2014
12/12/2017	Amended by Annual Im-prove-ments to IFRS Standards 2015–2017	Effective for annual periods beginning on or after 1 January 2019
10/22/2018	Amended by Definition of a Business (Amend-ments to IFRS 3)	Effective for business com-bi-na-tions for which the ac-qui-si-tion date is on or after the beginning of the first annual reporting period beginning on or after 1 January 2020 and to asset ac-qui-si-tions that occur on or after the beginning of that period
Source: https://www.iasplus.com/en/standards/ifrs/ifrs3		



Appendix

Tax changes 2020 - Portugal



Tax changes concerning Mergers & Acquisitions operations for the current year 2020 in Portugal

article 60th of EBF (n.º 1, 2 and 3) – entered in force on april 1st 2020

This year, changes in this regard are minimal:

- In the context of corporate reorganization operations, the tax benefits of exemption from IMT, Stamp Duty, emoluments and other legal charges are extended to entities other than companies, public companies or cooperatives (e.g. Investment Funds).

The designation “society” was changed throughout art. 60th EBF for "entity"

- The exemption from the Stamp Duty applicable to restructuring operations, namely mergers, divisions and entry of assets, now covers the transfer operations of commercial, industrial or agricultural establishments necessary for the restructuring or cooperation agreements.