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FACTS

Q Ltd was a public company incorporated in Mauritius. Its main shareholder was W Ltd which was holding 48.7% shares in Q Ltd. An amalgamation proposal was made and approved by the shareholders. Hence, Q Ltd ceased to exist and W Ltd became the amalgamated company as from 1 July 2016. Apart from W Ltd, the other shareholders of Q Ltd were:

	Shareholding
E Ltd	10.9%
R Ltd	13.8%
Members of the public	26.6%

According to the terms and conditions of the amalgamation process, E Ltd, R Ltd and members of the public were allotted 4.8277 shares for each share held in Q Ltd. Q Ltd had a number of wholly owned subsidiaries which had tax losses. Hence, after the amalgamation, since W Ltd was the surviving company, it became the holding company of the subsidiaries which have remained separate entities. All shareholders of Q Ltd were finally shareholders of W Ltd.

POINT AT ISSUE

Whether after the amalgamation of Q Ltd and W Ltd, the subsidiaries of Q Ltd can carry forward losses unrelieved at time of amalgamation or incurred for the year of assessment 2016/2017?

RULING

In accordance with Regulation 19(5) and (6) of the Income Tax Act, the criteria for the carried forward of losses is that the shareholding of a company at the end of the income year in which the loss is incurred must not have changed by more than 50% when compared to the shareholding at the end of the income year in which the loss is to be relieved.

Based on the above facts, Regulation 19(5) and (6) of the Income Tax Act are being complied with. Hence, after the amalgamation of Q Ltd with and into W Ltd, unrelieved tax losses of the subsidiaries or losses incurred by them for the year of assessment 2016/17 may be carried forward under section 59(b) of the Income Tax Act.