

# Taiwan Tax Updates

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資誠



## June 2014

### **Creditability of Imputation Tax for Dividends with Ex-Dividend Date Falling in 2014**

Amendments to the Income Tax Act (“ITA”) were announced by the Presidential Office on June 4, 2014<sup>1</sup>.

Pursuant to the said amendments, the ceiling of 10% surtax creditable against dividend withholding tax for *non-resident* corporate and individual shareholders is reduced to one-half of the original amount starting from January 1, 2015 onwards. In other words, the ceiling of 10% surtax creditable against dividend withholding tax = [Dividends distributed from retained earnings where 10% surtax has already been levied] x 10% x 50%. Likewise, the imputation tax credit which can be offset against the *resident* individual shareholder’s income tax liability will also be reduced by one-half starting from January 1, 2015 onwards.

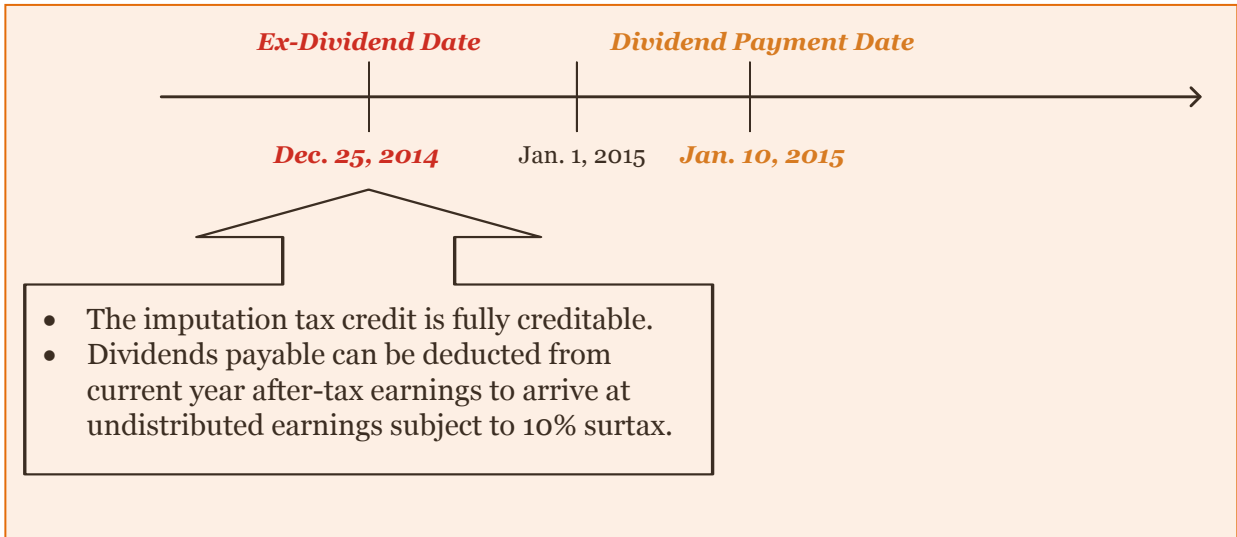
The aforementioned tax credit is booked under the Imputation Credit Account (“ICA”). Moreover, in accordance with Article 66-4 of the ITA, the imputation tax credit is to be deducted from the ICA on the “dividend distribution date”, which is defined by Article 48-8 of the ITA Enforcement Rules as the “ex-dividend date<sup>2</sup>”, rather than the “dividend payment date”. In light of the above, the 10% surtax can still be fully credited against dividend withholding tax if the “ex-dividend date” falls in 2014, even if dividends are actually paid to shareholders on or after January 1, 2015.

### **PwC Observation**

The concept discussed above is consistent with tax ruling no. 0890453511 dated May 4, 2000. According to this tax ruling, where the ex-dividend date falls within the fiscal year following the fiscal year when the underlying earnings were generated, the corresponding dividend amount shall be deducted from the undistributed after-tax earnings subject to 10% surtax, irrespective of the dividend payment date. We demonstrate the concept above using the below chart:

<sup>1</sup> For details, please refer to Taiwan Tax Updates March 2014 and May 2014 editions.

<sup>2</sup> This date is also known as “record date”, which identifies the shareholders on the share register who are eligible for the upcoming dividend payment.



### Amendments to the Statute for Industrial Innovation

On June 18, 2014, the Presidential Office promulgated amendments to the Statute for Industrial Innovation (“Statute”), which came into effect since June 20, 2014. The salient points of the amendments are summarized below:

	Amendments	Notes
1.	R&D tax credit applies to companies that did not significantly violate regulations in relation to environmental protection, labor safety, food safety, etc., should other prescribed criteria be met as well ( <i>Article 10</i> ).	As discussed with the Industrial Development Bureau, the Amendments do not take effect retroactively. Therefore, companies can still apply for R&D tax credit if the violation occurred prior to June 20, 2014. On the other hand, if the violation takes place on or after June 20, 2014, the company can only apply for R&D tax credit after 3 years.
2.	From June 20, 2014 onwards, where companies significantly violate regulations in relation to environmental protection, labor safety, food safety, etc. within the most recent 3 years, they are prohibited from applying for relevant incentives and subsidies. Moreover, incentives and subsidies previously granted during the violation period shall be reclaimed by the competent authorities ( <i>Article 70</i> ).	The so-called “incentives” and “subsidies” do not include “tax incentives” under Article 70 of the Statute. Tax incentives shall be reclaimed according to Article 48 of the Tax Collection Act (to be discussed below).

### Amendments to the Tax Collection Act

On June 18, 2014, the Presidential Office announced amendments to the Tax Collection Act (“TCA”). The following table summarizes the amendments, effective from June 20, 2014 onwards:

Amendments (Article 48 of the TCA)		Notes
1.	Where a taxpayer significantly evades taxes, the Ministry of Finance (“MOF”) shall cease granting tax incentives to the taxpayer. Moreover, tax incentives previously granted during the violation period (i.e. years when taxes were evaded) shall be reclaimed by the MOF.	As confirmed by the MOF, the amendments do not take effect retroactively. Therefore, the MOF will only cancel/reclaim tax incentives where the violation took place from June 20, 2014 onwards.
2.	Where a taxpayer significantly violates regulations in relation to environmental protection, labor safety, food safety, etc., the competent authorities shall inform the MOF to cease granting tax incentives to the taxpayer, and to reclaim tax incentives previously granted during the violation period.	

### Amendments to the Statute for Development of Small and Medium Enterprises

On June 4, 2014, the Presidential Office announced amendments to the Statute for Development of Small and Medium Enterprises (“SME Statute”). The amendments expand the scope of tax incentives for small and medium enterprises (“SME”) for a 10-year period following May 20, 2014. The amendments are summarized in the following table.

Items	Key Points
R&D tax credit (Article 35)	<p>SMEs may elect one of the following methods to calculate R&amp;D tax credit, capped at 30% of the annual corporate income tax payable:</p> <ol style="list-style-type: none"> <li>15% of qualified R&amp;D expenses for the current year, with credit limited to the same year.</li> <li>10% of qualified R&amp;D expenses for the current year, which can be carried forward for two ensuing years if the 30% cap mentioned above is exceeded.</li> </ol> <p>The calculation method cannot be changed after election by SMEs.</p>

Items	Key Points
Tax deferral of “contribution of intellectual property in exchange for newly issued shares” <i>(Article 35-1)</i>	Where SMEs or individuals contribute their own intellectual property in exchange for newly issued shares of companies that are not listed on the Taiwan Stock Exchange nor traded on the OTC /emerging market, income tax shall not be imposed at the time when shares are obtained by the SMEs or individuals in exchange for their intellectual property. Instead, income tax will be deferred until the shares are ultimately transferred, with income tax levied on the transfer price minus relevant costs/expenses.
Increased deduction of salary costs for newly-hired employees <i>(Article 36-2)</i>	If the following criteria are fulfilled, tax relief on qualified salary costs for newly-hired employees is 130% of the original amount. That is, for each \$100 of salary cost from new hires, the taxable income for SMEs will be reduced by an additional \$30: <ol style="list-style-type: none"> <li>1. Economic-related indices reach prescribed levels;</li> <li>2. The invested capital for establishing a new entity or expanding an existing entity attains prescribed thresholds; and</li> <li>3. A prescribed number of additional employees are hired, which also increases the overall amount of salaries paid by the SMEs.</li> </ol> The aforementioned prescribed levels/thresholds are pending promulgation by the Executive Yuan.

**Note:** Definition of an SME

1. For enterprises in manufacturing, construction, mining or quarrying industries: i) with paid-in capital below TWD 80 million; or ii) with “regular employees” less than 200 under special circumstances. “Regular employees” refer to insured employees with labor insurance coverage over the most recent 12 months.
2. For enterprises in other industries: i) with prior year revenues less than TWD 100 million; or ii) with “regular employees” less than 100 under special circumstances.

**Amendments to the Business Tax Act effective from July 1, 2014**

On June 4, 2014, the Presidential Office officially announced amendments to Articles 11 and 36 of the Business Tax Act (“BTA”). Based on the amended BTA, the gross business receipts tax (“GBRT”) rate on revenues derived from the core business operations of banks and insurance companies will increase from the current rate of 2% to 5% from July 1, 2014 pursuant to an announcement no. 1030033781 made by the Executive Yuan on June 16, 2014.

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## Appendix

### 修正產業創新條例

(中華民國 103 年 6 月 18 日 華總一義字第 10300092641 號)

第十條 為促進產業創新，最近三年內未違反環境保護、勞工或食品安全衛生相關法律且情節重大之公司得在投資於研究發展支出金額百分之十五限度內，抵減當年度應納營利事業所得稅額，並以不超過該公司當年度應納營利事業所得稅額百分之三十為限。

前項投資抵減之適用範圍、申請期限、申請程序、核定機關、施行期限、抵減率及其他相關事項之辦法，由中央主管機關會同財政部定之。

第七十條 已依其他法令享有租稅優惠、獎勵、補助者，不得就同一事項重覆享有本條例所定之獎勵或補助。

公司或企業最近三年因嚴重違反環境保護、勞工或食品安全衛生相關法律且情節重大經各中央目的事業主管機關認定者，不得申請本條例之獎勵或補助，並應追回違法期間內依本條例申請所獲得之獎勵或補助。

### 稅捐稽徵法

(中華民國 103 年 6 月 18 日 華總一義字第 10300092711 號)

第四十八條 納稅義務人逃漏稅捐情節重大者，除依有關稅法規定處理外，財政部應停止並追回其違章行為所屬年度享受租稅優惠之待遇。

納稅義務人違反環境保護、勞工、食品安全衛生相關法律且情節重大，租稅優惠法律之中央主管機關應通知財政部停止並追回其違章行為所屬年度享受租稅優惠之待遇。

### 中小企業發展條例

(中華民國 103 年 6 月 18 日 華總一義字第 10300092641 號)

第三十五條 為促進中小企業研發創新，中小企業投資於研究發展之支出，得選擇以下列方式抵減應納營利事業所得稅額，並以不超過該公司當年度應納營利事業所得稅額百分之三十為限；一經擇定，不得變更：

- 一、 於支出金額百分之十五限度內，抵減當年度應納營利事業所得稅額。
- 二、 於支出金額百分之十限度內，抵減自當年度起三年內各年度應納營利事業所得稅額。

供研究發展、實驗或品質檢驗用之儀器設備，其耐用年數在二年以上者，准按所得稅法固定資產耐用年數表所載年數，縮短二分之一計算折舊；縮短後



餘數不滿一年者，不予計算。

第一項投資抵減之適用範圍、申請期限、申請程序、核定機關、施行期限、抵減率及其他相關事項之辦法，由行政院定之。

第三十五條之一 為促進創新研發成果之流通及應用，中小企業以其享有所有權之智慧財產權，讓與非屬上市、上櫃或興櫃公司，所取得之新發行股票，免予計入該企業當年度營利事業所得額課稅。

個人以其享有所有權之智慧財產權，讓與非屬上市、上櫃或興櫃之公司時，該個人所得之新發行股票，免予計入其當年度綜合所得額課稅。

前二項股票於實際轉讓、贈與或作為遺產分配時，應將全部轉讓價格，或贈與、遺產分配時之時價作為該轉讓、贈與或遺產分配年度之收益，並於扣除取得前開股票之相關而尚未認列之費用或成本後，申報課徵所得稅。

前項股票發行公司於辦理前項規定之股票移轉過戶手續時，應於移轉過戶之次日起三十日內，向所在地稅捐稽徵機關申報。發行公司依前項規定應申報而未依限申報、未據實申報或未依限填發規定格式之憑單者，除依限責令補申報及填發憑單外，並按該股票轉讓金額處百分之二十之罰鍰。

中小企業或個人計算第二項及第三項所得時，如無法提出取得成本之證明時，得以其轉讓價格百分之三十計算該股票之取得成本。

第三十六條之二 為因應國際經濟情勢變化，促進國內中小企業投資意願及提升國內就業率，經濟景氣指數達一定情形下，新投資創立或增資擴展之中小企業達一定投資額，增僱一定人數之員工且提高該企業整體薪資給付總額時，得就其每年增僱本國籍員工所支付薪資金額之百分之一百三十限度內，自其增僱當年度營利事業所得額中減除。

中小企業於本條適用期間，不符合前項要件，自不符合要件之年度起，依所得稅法規定計算其營利事業所得額及應納稅額。

第一項經濟景氣指數達一定情形、適用期間、投資額、增僱員工之對象及人數、企業整體薪資給付總額、核定機關、申請期限、申請程序及其他相關事項，由行政院定之。

第三十六條之三 產業創新條例中如有與本條例相同性質之租稅優惠，中小企業僅得擇一適用。

第四十條 本條例自公布日施行。但第三十五條、第三十五條之一及第三十六條之二施行期間自中華民國一百零三年五月二十日起十年止。

**加值型及非加值型營業稅法****(中華民國 103 年 6 月 4 日 華總一義字第 10300085111 號)**

第十一條 銀行業、保險業、信託投資業、證券業、期貨業、票券業及典當業之營業稅稅率如下：

一、經營非專屬本業之銷售額適用第十條規定之稅率。

二、銀行業、保險業經營銀行、保險本業銷售額之稅率為百分之五；其中保險業之本業銷售額應扣除財產保險自留賠款。但保險業之再保費收入之稅率為百分之一。

三、前二款以外之銷售額稅率為百分之二。

前項非專屬本業及銀行、保險本業之範圍，由財政部擬訂相關辦法，報行政院核定。

本法中華民國一百零三年五月十六日修正之條文施行之日起，至一百十三年十二月三十一日止，第一項第一款、第三款及第二款稅率百分之二以內之稅款，撥入金融業特別準備金；其運用、管理及其他應遵行事項之辦法，由金融監督管理委員會定之。

營業稅稅款依前項規定撥入金融業特別準備金期間，行政院應確實依財政收支劃分法規定，補足地方各級政府因統籌分配款所減少之收入。嗣後財政收支劃分法修正後，從其規定。

第三十六條 外國之事業、機關、團體、組織，在中華民國境內，無固定營業場所而有銷售勞務者，應由勞務買受人於給付報酬之次期開始十五日內，就給付額依第十條所定稅率，計算營業稅額繳納之；其銷售之勞務屬第十一條第一項各業之勞務者，勞務買受人應按該項各款稅率計算營業稅額繳納之。但買受人為依第四章第一節規定計算稅額之營業人，其購進之勞務，專供經營應稅貨物或勞務之用者，免予繳納；其為兼營第八條第一項免稅貨物或勞務者，繳納之比例，由財政部定之。

外國國際運輸事業，在中華民國境內，無固定營業場所而有代理人在中華民國境內銷售勞務，其代理人應於載運客、貨出境之次期開始十五日內，就銷售額按第十條規定稅率，計算營業稅額，並依第三十五條規定，申報繳納。

第一項勞務買受人購買之勞務，每筆給付額在財政部公告之限額以下者，免依該項規定繳納營業稅。

**行政院令****(中華民國 103 年 6 月 16 日 院臺財字第 1030033781 號)**

中華民國一百零三年六月四日修正公布之「加值型及非加值型營業稅法」第十一條、第三十





## 資誠

六條，定自一百零三年七月一日施行。