Taiwan Tax Updates

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Draft Amendment to the Statute for Industrial Innovation

On October 2, 2014, the Executive Yuan passed the draft amendment to the Statute for Industrial Innovation (the “Statute”). The salient points are summarized as follows:

Proposed amendments
1. Tax credit on R&D expenditures – effective from the date the amended Statute comes into effect to December 31, 2019 (Article 10 of the Statute). Companies may elect one of the following methods to claim R&D tax credit. The R&D credit claimed cannot exceed 30% of the income tax payable (“ITP”) in the current year. Once the preferred method is elected, no further change is allowed. (1) Credit 15% of qualifying R&D expenses against the ITP in the current year; or (2) Credit 10% of qualifying R&D expenses against the ITP within a period of 3 years starting from the current year.
2. Defer payment of income tax on employee stock-based compensation schemes – effective from January 1, 2015 to December 31, 2019 (Article 19-1 of the Statute). (1) Stock-based compensation schemes may include employee bonuses awarded in shares, employees subscribing for additional shares via capital increase, purchase of treasury shares for distribution to employees, stock options, and restricted stock units granted to employees, etc. (2) The draft amendment applies to employees of the company that issued the stock-based compensation schemes described above, and employees of subsidiaries of the first-mentioned company, where the invested shares or paid-in capital of the subsidiary exceeds 50% of the total outstanding voting shares, or 50% of the

Proposed amendments
paid-in capital amount of the first-mentioned company. However, the term "employee" shall exclude the chairman or members of the board of directors that also concurrently serve managerial positions. (3) Employees granted with stock-based compensation which has a fair market value of NTD 5 million or less on the grant date may choose to defer payment of income tax payable for 5 years following the year the shares are granted. However, the said 5 years shall take into account the share transfer restriction period during which employees are not allowed to sell the shares. An example is given as follows: A company purchases treasury stocks for use as employee stock-based compensation in 2015. The stocks granted to employees in 2015 are subject to a restriction clause on disposal of shares for a period of 2 years. Therefore, the income tax payable can only be deferred for an additional 3 years to 2020.
3. If title of shares obtained from stock-based compensation scheme is transferred during the tax-deferral period, the employee will be taxed in the year in which the title of the shares is transferred (Article 67-1 of the Statute).

Tax amortization of unpatented intangible assets is not allowed

According to Tax Ruling No. 32167 issued by the Ministry of Finance on April 4, 1978, unpatented technologies do not qualify as tax amortizable intangible assets under Article 60 of the Income Tax Act ("ITA"), since it does not have a specified useful life for amortization purposes as provided in relevant regulations (e.g. Patent Act).

An example is provided as follows:

Scenario	Assertion
Company A purchased an unpatented technology of NTD 66.5 million from Company B, and amortized the cost over 18 months. In its 2012 income tax return, Company A reported an amortization expense of NTD 22.16 million for the unpatented technology.	Since the unpatented technology purchased by Company A was not registered as a patent with the competent authority, it does not have a useful life as provided under the Patent Act, and thus is not eligible for amortization under Article 60 of the ITA or Tax Ruling No. 32167. As such, NTD 22.16 million was disallowed by the tax authority, and Company A was liable for relevant tax shortfall.

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