
Taiwan Tax Update

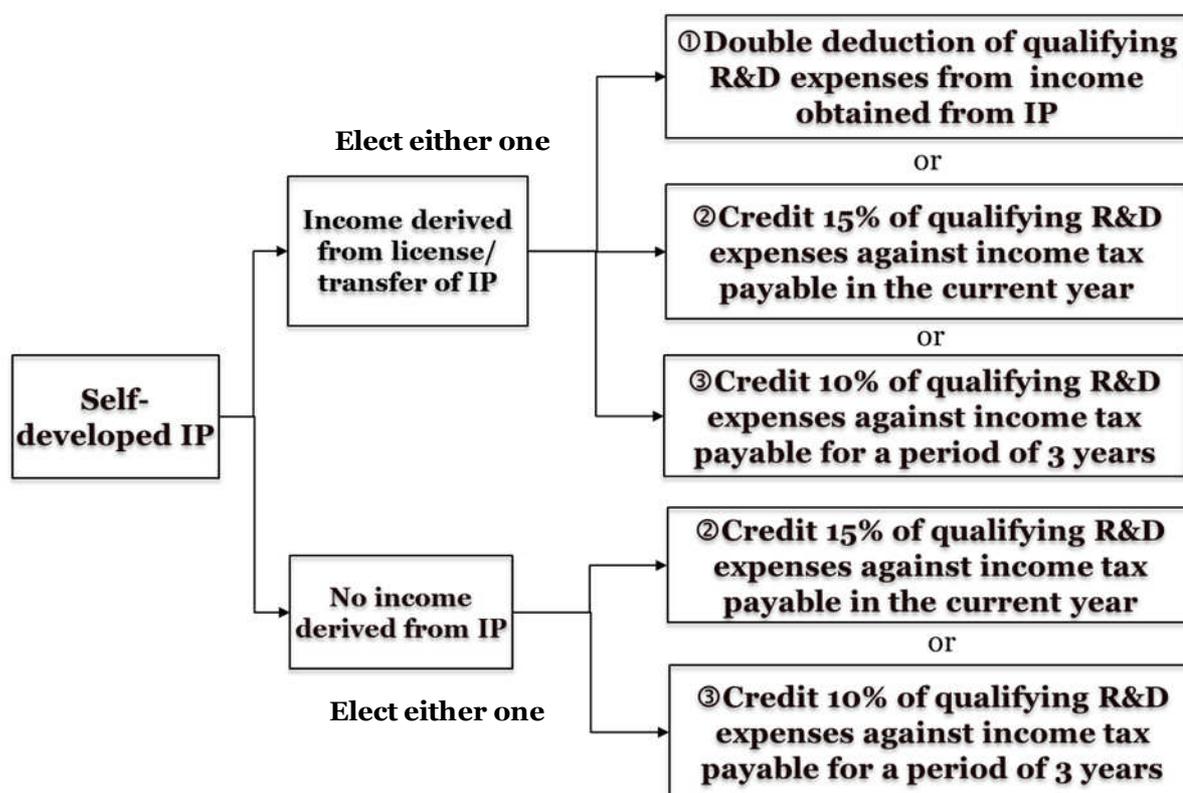
January 2016

Amendments to the “Statute for Industrial Innovation”

Considering the serious outflow of domestic talent and Taiwan’s insufficient technical capability in recent years, on December 15, 2015, the Legislative Yuan passed amendments to the Statute for Industrial Innovation, with goals to enhance the competitive advantage of domestic industries. The amendments are effective from January 1, 2016 to December 31, 2019. The salient points of the amendment are summarized as follows:

I. R&D expenses can elect double deduction or investment tax credits

To encourage continued investment in innovative R&D activities and to meet the actual needs of different industries and achieve policy results, the amendments to the Statute for Industrial Innovation provides another alternative for companies to claim R&D credit of 10% of qualifying R&D expenses against income tax payable within a period of three years starting from the current year. In addition, to facilitate the circulation and application of innovative R&D results, and to promote industrialization of innovative technologies, where individuals/companies derive income from transfer or license of their self-developed intellectual property, the amendments also allow the individuals/companies to either deduct qualifying R&D expenses up to 200% (capped at corresponding income received) within the current year, or claim R&D tax credits against income tax payable.



PwC Observation:

Where individuals or companies derive income from transfer or license of self-developed intellectual property, the individuals or companies may deduct “qualifying R&D expenses” up to 200%, capped at income derived from transfer or license of IP in the current year. Having said the above, the amendments do not indicate whether qualifying R&D expenses refer to “total annual R&D expenses incurred”, “highly innovative R&D expenses submitted to Industrial Development Bureau (“IDB”) for approval under Statute for Industrial Innovation, or “highly innovative R&D expenses approved by IDB subsequent to the original application”. Since the three categories of R&D expenses may vary significantly, further clarification is required from the competent authority.

II. 5-year income tax deferral of employee share based compensation schemes

Given talents are the key element of industrial development, to assist companies in retaining talent and to encourage employees to participate in company operations and share business profits, employees who are granted share based compensation where the annual **fair market value** of the shares granted is equal to or less than NTD 5 million, may elect to defer the income tax payable on the share based compensation to the 5th year starting from the year following receipt of the share based compensation. No change is allowed once an individual has elected to defer income tax payable on the share based compensation.

1. **Applicable Scope:** All major types of share based compensation, including stock grants, subscription right to capital increase using cash, treasury stocks, stock option certificates and restricted stock units, are eligible for tax deferral to retain talent.
2. **Applicable persons:** Employees of both the company that issues the share based compensation mentioned above, and its qualified subsidiaries (i.e. where the invested shares of the subsidiary exceed 50% of the total outstanding voting shares of the subsidiary, or paid-in capital of the subsidiary exceeds 50% of the total paid-in capital of the subsidiary) are eligible for tax deferral. Chairman, members of the board of director, and supervisors that concurrently serve managerial positions are excluded.
3. **Restriction:** Employees granted share based compensation may elect either full deferral or no deferral of income tax payable. Partial deferral of income tax payable is not available. If title of shares obtained from share based compensation scheme is transferred through sale, gift, inheritance, stock cancellation due to capital reduction, liquidation, or transferred from marketable securities book-entry custody account held by the company to securities account held by the employees during the tax-deferral period, the employee will be taxed in the year in which share title is transferred, or when shares are transferred from company held book-entry custody account to employee held securities account .

PwC Observation:

According to the content of the provision, deferred income tax liability is calculated based on the market value of shares granted. However, this may lead to inconsistent calculation basis for shares acquired with and without consideration, which yields different results in regards to deferred taxation on capital gains. An example is provided below to elaborate:

Scenario	Share type	Original cost	Market value	Capital gain	Qualifying amount for deferred taxation
1	Stock bonus (without consideration)	-	10 million	10 million	5 million
2	Stock subscription (with consideration)	8 million	10 million	2 million	1 million (Note)

Note: 2 million x (5 million/10 million) = 1 million.

In the illustration shown above, even though capital gain derived in Scenario 2 is only NTD 2 million, the qualifying amount of capital gain for deferred taxation is NTD 1 million. Whereas, in Scenario 1, the qualifying amount for deferred taxation is capital gain of NTD 5 million. Therefore, companies should be aware of the relevant difference and choose whichever compensation scheme is more favourable to the employees.

Newsletter - Taiwan Tax Update

PwC Contacts:

Corporate Income Tax / Other Tax

Howard Kuo
886-2-2729-5226
Howard.Kuo@tw.pwc.com

Tony Lin
886-2-2729-5980
Tony.Lin@tw.pwc.com

Jason C Hsu
886-2-2729-5212
Jason.C.Hsu@tw.pwc.com

Rosamund Fan
886-2-2729-6077
Rosamund.Fan@tw.pwc.com

Sam Hung
886-2-2729-5008
Sam.Hung@tw.pwc.com

Li-Li Chou
886-2-2729-6566
Li-Li.Chou@tw.pwc.com

Jack Hwang
886-2-2729-6061
Jack.Hwang@tw.pwc.com

International Tax Services

Elaine Hsieh
886-2-2729-5809
Elaine.Hsieh@tw.pwc.com

Wendy Chiu
886-2-2729-6019
Wendy.Chiu@tw.pwc.com

Patrick Tuan
886-2-2729-5995
Patrick.Tuan@tw.pwc.com

Albert Chou
886-2-2729-6626
Albert.Chou@tw.pwc.com

Transfer Pricing

Lily Hsu
886-2-2729-6207
Lily.Hsu@tw.pwc.com

Elliot Liao
886-2-2729-6217
Elliot.Liao@tw.pwc.com

Financial Services

Richard Watanabe
886-2-2729-6704
Richard.Watanabe@tw.pwc.com

Jason C Hsu
886-2-2729-5212
Jason.C.Hsu@tw.pwc.com

M&A Tax

Wilson Wang
886-2-2729-6666 ext 35101
Wilson.Wang@tw.pwc.com

Elaine Hsieh
886-2-2729-5809
Elaine.Hsieh@tw.pwc.com

General Accounting and Relevant Out-Sourcing Services

Lucy Ho
886-2-2729-5218
Lucy.Ho@tw.pwc.com

The information contained in this publication is of a general nature only. It is not meant to be comprehensive and does not constitute legal or tax advice. PricewaterhouseCoopers ("PwC") has no obligation to update the information as law and practice change. The application and impact of laws can vary widely based on the specific facts involved. Before taking any action, please ensure that you obtain advice specific to your circumstances from your usual PwC client service team or your other tax advisers.

The materials contained in this publication were assembled in January 2016 and were based on the law enforceable and information available as of December 31, 2015. In the event of any discrepancy between the English information contained in this newsletter and the original Chinese version of the laws or rulings announced by the government or any difference in the interpretation of the two versions, the Chinese version announced by the government shall prevail.

©2016 PricewaterhouseCoopers Taiwan. All rights reserved. PwC refers to the Taiwan member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.tw for further details. This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.