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Taiwan Tax Update

November 2020

Tax Incentives

Ministry of Economic Affairs announced draft amendment to Act for Development of Biotech and Pharmaceuticals Industry

The draft amendment introduces new investment tax credit for individual shareholders, reduction of tax base to tax deferral of shares obtained by high-level executives and technology investors from contribution of know-how, and extension of relevant tax incentives to December 31, 2031. The key differences between the current legislation and draft amendment are summarized as follows:

Subject	Current Provision	Draft Amendment
Research & Development Credit	Credit up to 35% of R&D expenditure against income tax payable (up to 50% for amount exceeding average R&D expenditure of previous 2 years)	Credit up to **30%** of R&D expenditure against income tax payable
Personnel Training Credit	Credit up to 35% of training expenditure against income tax payable (up to 50% for amount exceeding average training expenditure of previous 2 years)	1. Credit up to **30%** of training expenditure against income tax payable 2. Limited to training expenditure for **"dedicated full-time R&D personnel"**
Investment Credit	A profit-seeking enterprise that (i) subscribes for shares issued by a biotech and new pharmaceuticals company, and (ii) has been a registered shareholder of the biotech and new pharmaceuticals company for 3 years or more, may, for a period of 5 years from	1. Corporate shareholders: Same as current provision. 2. **"Individual shareholders" who:** ① Provide cash investment in newly issued shares of the same biotech or pharmaceuticals company

	the time it has corporate income tax payable, credit up to 20% of the subscription price of shares against income tax payable.	reaching NTD 1 million within the same year; and ② Hold such newly issued shares for at least 3 years ③ Can deduct up to 50% of cash investment amount from gross consolidated income for a period of 5 years after having held the shares for 3 years.
Tax Deferral of Income from Technology Shares Obtained from Contribution of Know-how	Shares issued to high-level executives and technology investors for contribution of know-how in a biotech and new pharmaceuticals company shall be excluded from the income of such executives and investors in the year shares are received, and taxed only when such shares are subsequently transferred, gifted or distributed as estate, based on transfer price of shares or market value of shares when gifted or distributed as estate, less acquisition costs of relevant shares.	1. Current provision continues to apply. 2. **Shares held for over 2 years shall be taxed at the lower of "transfer price or market value of shares when gifted or distributed as estate" or "acquisition price", less acquisition costs of relevant shares.**
Tax Deferral of Income on Shares Acquired from Stock Warrants	Shares acquired from exercising stock warrants issued by biotech and new pharmaceuticals company to high-level executives and technology investors shall be excluded from the income of such executives and investors in the year shares are received, and taxed only when such shares are subsequently transferred, gifted or	1. Current provision continues to apply. 2. **Shares held for over 2 years by high-level executives and technology investors shall be taxed at the lower of "transfer price or market value of shares when gifted or**

	distributed as estate, based on transfer price of shares or market value of shares when gifted or distributed as estate, less acquisition costs of relevant shares.	**distributed as estate" or market value of shares on the acquisition date or vesting date", less acquisition costs of relevant shares.**

PwC Analysis:

1. Given majority of biotech and pharmaceuticals companies do not have corporate tax payable to utilize investment tax credits, the investment tax credit carried forward is significant. Such investment tax credits may be carried forward indefinitely if eligible companies are consistently in a tax loss position, and eligible companies can begin claiming tax credits within 5 years from the time they are subject to income tax. Consequently, the draft amendment eliminates tax credit for up to 50% of amount exceeding average expenditure of previous 2 years. In addition, R&D and personnel training tax credit is deceased to 30% of expenditures, and personnel training credit is limited to training expenditures incurred by **"dedicated full-time R&D personnel"**.

2. The draft amendment provided an additional provision that subject to certain criteria, individual shareholders making cash investments in biotech or pharmaceuticals companies can deduct up to 50% of cash investment amount from gross consolidated income, without limitation on amount of income that can be deducted. This provision is similar to tax incentive granted to angel investors provided under Article 23-2 of Statute for Industrial Innovation, whereby angel investors are subject to deduction limit of NTD 3 million per annum from gross consolidated income. Since the draft amendment stipulates that the same investment shall not enjoy multiple tax incentives, only one of the two aforementioned tax incentives can be applied.

3. With reference to tax deferral of income at lower of transfer price or acquisition price introduced under the Statute for Industrial Innovation for employee share-based compensation and technology shares, the draft amendment stipulates that shares received by high-level executives and technology investors for contribution of know-how in a biotech and pharmaceuticals company which are held for over 2 years shall be taxed at the lower of "transfer price", or "acquisition price" (for technology shares obtained from contribution of know-how) / "market price at acquisition date or vesting date" (for stock warrant). Unlike the Statute for Industrial Innovation, the draft amendment does not require high-level executives to be employed by the company for more than 2 years. High-level executives refer to those having biotech/pharmaceutical related expertise, who assume the position

of CEO or manager and above of the company. For technology investors, relevant costs can be deducted in computing income, provided such costs are supported by evidence. Otherwise, acquisition costs are deemed as 30% of transfer price where no such evidence is available.

4. The draft amendment provides that biotech/pharmaceuticals companies which have significantly violated environmental protection, labor, or food safety and sanitation laws to a substantial degree during the past 3 years are not eligible for the incentives. The above criteria was originally introduced under the secondary legislation covering only R&D and personnel training investment tax credit schemes, but have now been moved under the primary legislation in the draft amendment, so that all available incentives will be subject to this restriction.

Ministry of Economic Affairs and Ministry of Finance announced amendment to Regulations Governing the Application of Tax Credits for Corporate or Limited Partnership R&D Expenditures

The formally announced amendment includes personnel training expense incurred by dedicated full-time R&D employee as eligible expenditure for R&D credit, which shall be effective from 2020 corporate income tax return filings. Please refer to August 2020 publication of Taiwan Tax Update for details:

https://www.pwc.tw/en/publications/taiwan-tax-updates/assets/taiwan-tax-update-202008.pdf

PwC Reminder:

For calendar year-end enterprises, the tax incentive is retroactively effective as of January 1, 2020. Enterprises may evaluate if training expenses already incurred this year by dedicated full-time R&D employee qualify for the tax credit. If so, documentation such as training agenda, list of trainees, and training status report shall be prepared and submitted to the Ministry of Economic Affairs between February 1 to May 31 of the following year for assessment and review, to determine whether R&D activities satisfy the pre-requisite criteria for recognition of investment tax credit. Specific forms need to be filled out and required documentation needs to be attached when filing the corporate income tax return in May.

Income Tax Act

Ministry of Finance announced Switzerland being added as one of the countries eligible for effective information exchange of Country-by-Country Report ("CbCR") for fiscal years beginning after January 1, 2019

According to Taiwan's transfer pricing regulations, for MNCs whose total consolidated revenues in the preceding year exceed NTD 27 billion, CbCR shall be submitted within one year after the fiscal year-end if certain criteria are met. With the information exchange agreement signed and brought into effect by the Ministry of Finance and Switzerland on November 6, 2020, Switzerland has become the fourth country to effectively exchange CbCR with Taiwan, following New Zealand, Japan and Australia.

PwC Reminder:

With respect to exemption from submission of CbCR locally due to information exchange mechanism being available, CbCR submission is not required for fiscal years beginning after January 1, 2017 for Japan and New Zealand; January 1, 2018 for Australia; and January 1, 2019 for Switzerland. In addition, Taiwan has signed agreements with Japan and Australia for automatic exchange of financial account information for tax purpose under the Common Reporting Standard (CRS), and initiated a first-time information exchange this year.

PwC Contacts:

Corporate Income Tax and Indirect Tax Services

Jason Hsu (Leader)
+886-2-2729-5212
jason.c.hsu@pwc.com

Li-Li Chou
+886-2-2729-6566
li-li.chou@pwc.com

Rosamund Fan
+886-2-2729-6077
rosamund.fan@pwc.com

Tony Lin
+886-2-2729-5980
tony.lin@pwc.com

Sam Hung
+886-2-2729-5008
sam.hung@pwc.com

Jack Hwang
+886-2-2729-6061
jack.hwang@pwc.com

Pei-Hsuan Lee
+886-2-2729-5207
pei-hsuan.lee@pwc.com

Alvis Lin
+886-2-2729-5028
alvis.lin@pwc.com

Yen-Tan Tsai
+886-2-2729-6997
yen-tan.tsai@pwc.com

Ying-Hsun Liu
+886-2-2729-6258
ying-hsun.liu@pwc.com

International Tax Services

Elaine Hsieh
+886-2-2729-5809
elaine.hsieh@pwc.com

Patrick Tuan (China Tax)
+886-2-2729-5995
patrick.tuan@pwc.com

Peter Su (US Tax)
+886-2-2729-5369
peter.y.su@pwc.com

Paulson Tseng (EU Tax)
+886-2-2729-5907
paulson.tseng@pwc.com

Shing-Ping Liu (ASEAN Tax)
+886-2-2729-6661
shing-ping.liu@pwc.com

CY Hsu (China Tax)
+886-2-2729-5968
cy.hsu@pwc.com

Transfer Pricing & BEPS Services

Lily Hsu
+886-2-2729-6207
lily.hsu@pwc.com

Elliot Liao
+886-2-2729-6217
elliot.liao@pwc.com

Hsiang-Chin Fan
+886-2-2729-6669
hsiang-chin.fan@pwc.com

Financial Services

Richard Watanabe
+886-2-2729-6704
richard.watanabe@pwc.com

Jessie Chen
+886-2-2729-5360
jessie.chen@pwc.com

Mergers & Acquisitions Tax

Elaine Hsieh
+886-2-2729-5809
elaine.hsieh@pwc.com

Shing-Ping Liu
+886-2-2729-6661
shing-ping.liu@pwc.com

Family Business & Private Wealth Services

Sam Hung
+886-2-2729-5008
sam.hung@pwc.com

Tax Litigation Services

Alvis Lin
+886-2-2729-5028
alvis.lin@pwc.com

Corporate Secretarial Services

Jack Hwang
+886-2-2729-6061
jack.hwang@pwc.com

Tony Lin
+886-2-2729-5980
tony.lin@pwc.com

Outsourcing and Accounting Services

Rosamund Fan
+886-2-2729-6077
rosamund.fan@pwc.com

Sam Hung
+886-2-2729-5008
sam.hung@pwc.com