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Taiwan Tax Update

October 2021

Tax Incentives

Ministry of Economic Affairs announced draft amendment to Article 10-1 of Statute for Industrial Innovation

The draft amendment extends expiry date for claiming investment tax credit ("ITC") on expenditure for smart machinery and 5G system, and expands coverage to include investment tax credit on expenditure for information security products or services. Salient points of the draft amendment are summarized as follows:

ITC Item	ITC Period	ITC Scope
Smart Machinery	January 1, 2019 ~ December 31, 2024	Brand new smart machinery for self-use
5G Mobile Communications Network	January 1, 2019 ~ December 31, 2024	Brand new hardware, software, technology or services related to the implementation of 5G mobile communications network
Information Security Products or Services **(newly added)**	January 1, 2022 ~ December 31, 2024	1. Terminal and mobile device protection hardware, software, technology or technical services (e.g. anti-virus, anti-hacking, anti-malware, identity recognition, access right management, etc.) 2. Network security maintenance hardware, software, technology or technical services (e.g. firewall, intrusion detection system, integrated threat management system, IoT

		encryption module, industrial control system information security, etc.) 3. Data and cloud security maintenance hardware, software, technology or technical services (e.g. email security, content filtering, data encryption, etc.) 4. Information security technical services spanning terminal, network, and cloud usage (e.g. information security monitoring service, information security incident notification service, attack incident reaction service, penetration testing, vulnerability scanning, offensive and defensive exercise, etc.)

PwC Explanation:

Investment tax credit mentioned above is available for expenditure that is equal to or more than NT$ 1 million and equal to or less than NT$ 1 billion in the same tax year. The enterprise may choose one of the below investment tax credit rate, which cannot be modified once selected:

1. Current year: 5%
2. For three consecutive years starting from current year: 3%

The creditable amount is capped at 30% of corporate income tax payable and undistributed earnings tax. Whereas, the sum of all investment tax credits (R&D investment tax credit etc.) shall not exceed 50% of corporate income tax payable and undistributed earnings tax. However, if in accordance with other laws or regulations, such investment tax credit is due to expire in the last year, and there is no cap to the creditable amount, the above-mentioned 50% cap for sum of all investment tax credits shall not apply.

PwC Reminder:

1. Installation location: limited to company-owned or leased production site or business premise, where exception applies for enterprise with unique business feature. Application shall be filed with competent authority if installation location changes.
2. No transfer allowed within three years. Additional income tax and interest will apply if the no-transfer rule is violated. The afore-mentioned additional income tax and interest shall not apply if relevant transfer is due to merger, spin-off or acquisition in accordance with the Business Mergers and Acquisitions Act.
3. No duplicate enjoyment of tax incentive is allowed (e.g. The Management, Utilization, and Taxation of Repatriated Offshore Funds Act). However, Article 23-3 of the Statute for Industrial Innovation (i.e. deduction of substantive investment from tax base of undistributed earnings tax) can be applied on top of Article 10-1 of the Statute for Industrial Innovation.

Income Tax

Ministry of Finance announced amendment to Enforcement Rules of the Income Tax Act

Amendment to Article 82 of the Enforcement Rules of the Income Tax Act announced on September 16, 2021 reiterates that the timing of payment of various income as laid out in the Income Tax Act refers to actual payment, transfer payment or remittance payment. However, dividends announced by the company based on shareholders' resolution to distribute profit shall be deemed paid if such dividends remain unpaid within six months from the date of shareholders' resolution. The amendment added a clause explicitly stating that cash dividends announced by the company based on board of directors' resolution to distribute profit will likewise be deemed paid if such dividends remain unpaid within six months from the date of board of directors' resolution.

PwC Explanation:

The Company Act amended on August 1, 2018 added Article 228-1 and amended Article 240 of the Company Act to allow companies to incorporate in its Articles of Incorporation that cash dividends may be distributed on a quarterly or semi-annual basis upon resolution by the board of directors; whereas a public company may authorize its board of directors to reach a resolution to distribute cash dividends via its Articles of Incorporation. As such, the Ministry of Finance announced amendment to the Enforcement Rules of the Income Tax Act in response to amendment to the Company Act.

PwC Reminder:

The Company shall estimate and retain income tax payable, make up accumulated deficit and set aside legal reserve (unless legal reserve is already equal to or exceeds paid-in capital) before distributing profits in the first three quarters or the first half of the fiscal year. For public companies, the financial statements of interim earnings distribution or loss-make up proposal shall be audited or reviewed by a certified public accountant. In addition, where companies distribute share dividends via issuance of new shares, due to changes in shareholding which may significantly impact shareholders' interest, the proposal shall be resolved by both the board of directors and special resolution by the shareholders.

Where earnings are distributed to non-tax residents or foreign enterprises, the company shall withhold tax at the time dividends are deemed paid, submit withholding tax to the treasury, and report withholding tax statements within 10 days taxes are withheld.

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