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Taiwan Tax Update

April 2022

Income Tax Act

Ministry of Finance released tax ruling on "Recognition Principles and Evidentiary Documents Required for Recognition of Goodwill by Profit-Seeking Enterprises"

Pursuant to Tax Ruling No. 10604699410 issued by the Ministry of Finance ("MOF") in 2018, where a company with reasonable commercial purpose merges with or acquires the business of another company in accordance with the Business Mergers And Acquisitions Act ("M&A Act") or the Financial Institutions Merger Act, the excess of acquisition cost over the fair value of net identifiable assets can be recognized as goodwill, and amortized over the prescribed amortization period. Specifically, goodwill is computed as:

Acquisition costs – (tangible net assets + identifiable intangible assets)

Tax Ruling No. 11004029020 issued in 2022 incorporates relevant accounting principles and valuation standards etc. used to measure and recognize net identifiable assets in the valuation report or purchase price allocation report, and adds a requirement to fill out a Checklist of Identifiable Intangible Assets. The tax office may assess the value of goodwill based on the completeness of the aforementioned required documentation. In addition, Tax Ruling No. 10604699410 has been abolished as a result of issuance of Tax Ruling No. 11004029020.

The difference between the two tax rulings and draft amendment of the M&A Act relevant to identifiable intangible assets are summarized as follows:

Scope of identifiable intangible assets	
2018 Tax Ruling No. 10604699410	Not defined.
	Note: According to Article 60 of the Income Tax Act, identifiable intangible assets include business rights, copyrights, trademarks, patents and other franchises. In addition, per a tax ruling issued by the MOF in 2011,

	"... business rights are limited to those conferred by law (such as Privately Owned Public Utilities Supervisory Act, and Electricity Business Registration Rules under the Electricity Act)".
2022 Tax Ruling No. 11004029020	● Marketing-related intangible assets: trademarks, business names, unique product designs, domain names. ● Client-related intangible assets: client list, unfulfilled orders, client contracts, contractual and non-contractual client relationships. ● Cultural and creative work-related intangible assets (such as drama, books, movies and music): Stems from right to derive benefit from cultural and artistic work and protection of non-contractual copyright. ● Contract-related intangible assets: license and royalty agreements, labor or supply contracts, lease agreements, permits, broadcasting rights, service agreements, employment contracts, non-compete contracts, right to natural resources. ● Technology-related intangible assets (including contractual and non-contractual rights): proprietary technology, non-proprietary technology, database, formula, design, software, process, prescription. ● Others
	Note: Please refer to Attachment 2 "Checklist of Identifiable Intangible Assets" of 2022 Tax Ruling.
Draft amendment to M&A Act (added Article 40-1)	Intangible assets are limited to business rights, copyrights, trademarks, patents, integrated circuit layout rights, plant variety rights, fishery rights, mining rights, water rights, trade secrets, computer software and other franchises.
	Note: The company's methods, technologies, processes, formulas, programs, designs or other proprietary information that can be used in production,

	sales or operation, such as contractual client relationship or sales & marketing projects, can be treated as trade secret if they meet the criteria laid out in Article 2 of the Trade Secrets Act. Intangible assets acquired under foreign law are also applicable.

PwC Analysis:

Acquisition of intangible assets is often an important element in mergers & acquisitions for companies seeking to strengthen competitiveness and expand into new markets.

Draft amendments to the M&A Act passed by the Executive Yuan in late 2021 added a new article defining "intangible assets", which stipulates that "the acquisition cost of intangible assets acquired by a company can be amortized evenly over a set number of years if such intangible assets are identifiable, controllable, has future economic benefits, and can be reliably measured”. The draft amendment is currently being reviewed by the Legislative Yuan.

Other than demonstrating reasonable commercial purpose, companies undergoing mergers or acquisitions shall also abide by applicable valuation standards and practical guidance, IFRSs, Enterprise Accounting Standards, and relevant interpretations in use on the valuation date to determine the fair value of identifiable assets and liabilities. Companies planning to undergo merger & acquisition can plan ahead and prepare evidentiary documents in accordance with relevant valuation standards, and also take advantage of tax concessions.

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