

# Taiwan Tax Update

June 2022

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## Income Tax

Legislative Yuan announced extension of “Special Act for Prevention of COVID-19 and Introduction of Economic Stimulus Package” and associated special budget implementation deadline to June 30, 2023

On May 27, 2022, the Legislative Yuan announced extension of “Special Act for Prevention of COVID-19 and Introduction of Economic Stimulus Package” (“Special Act for COVID-19”) and associated special budget implementation deadline to June 30, 2023, with other tax exemption or reduction measures also extended simultaneously:

1. Profit-seeking enterprise may deduct 200% of salary expense paid to employees who take quarantine leave or family care leave as a result of COVID-19 from current year taxable income; however, relevant salary expense shall exclude those which are already covered under government subsidy programs, and this tax incentive can not be used simultaneously with other tax incentives (e.g. R&D tax credit).
2. Subsidies, allowances, incentives, or compensation provided by the government under Special Act for COVID-19 shall be exempt from income tax.

## PwC Analysis:

1. Tax incentives which reduce taxable income under the above two scenarios do not need to be included in alternative minimum tax base for profit-seeking enterprises.
2. Other tax incentives provided by the Ministry of Finance (“MOF”) for consideration by enterprises include: extend filing deadline for both individual and corporate income tax returns, allow deferral of tax payment or payment of taxes due in installment owing to financial difficulties faced as a result of COVID-19, refund of

excessive VAT paid, etc.

3. Purchase of epidemic prevention supplies by enterprises for use by all employees do not need to be considered as employees' taxable salaries, and can be treated as tax deductible expenses. In addition, input VAT associated with such purchases can be used to offset output VAT.
4. Donation of epidemic prevention supplies by enterprises to all levels of government (including public hospitals) can be fully tax deductible, i.e. not subject to tax limit, and associated input VAT can be used to offset output VAT. Whereas, donation to organizations (e.g. hospitals organized as medical foundations) is capped at 10% of profit-seeking enterprise's taxable income, and associated input VAT cannot be used to offset output VAT.

## **Business Mergers and Acquisitions Act**

Legislative Yuan passed third reading of amendment to Business Mergers and Acquisitions Act on May 24, 2022

Salient points of the amendment are as follows:

1. Protect the rights of shareholders: The company should state explicitly in the notice to convene shareholders' meeting material facts of directors who are stakeholders (whose personal interest may be affected) in the M&A transaction, and reasons for approval or dissent. Moreover, shareholders who may exercise right to request the company to repurchase their shares are no longer limited to those who have objected to the M&A transaction either in writing or verbally (with appropriate record) before or during the shareholders' meeting, and who have waived their voting rights, but also to those who have casted a negative vote. This allows shareholders who object to the M&A transaction to exit and redeem their investment at a fair price.
2. Relax requirement for whale-minnow merger: Where the merging corporation uses no more than 20% of its total issued share capital as consideration for the shares of the merged company, or the merging corporation uses a combination of shares, cash, and other assets which is no more than 20% of its total net asset value as consideration for the shares of the merged company, the board of directors may reach a resolution to proceed with a whale-minnow merger without obtaining

shareholder's meeting approval.

3. Expand flexibility of tax measures

- (i) Individual (non-corporate) shareholders of an acquired startup company can elect full deferral of tax payment on consideration received from merger;
- (ii) Explicitly define scope of identifiable intangible assets, with tax amortization based on actual acquisition cost using statutory or defined useful lives;
- (iii) Adopt guidance provided in tax ruling governing "Goodwill Recognition Principles and Evidentiary Documents Required for Tax Amortization".

**PwC Analysis:**

1. Other than incorporating draft amendments announced by the Executive Yuan governing tax measures in the third reading by the Legislative Yuan, the amended M&A Act also incorporates guidance provided in tax ruling governing "Goodwill Recognition Principles and Evidentiary Documents Required for Tax Amortization" announced on March 30, 2022. Please refer to January 2022 and April 2022 Taiwan Tax Update for more information.
2. In accordance with tax ruling governing taxability of consideration received by shareholders of dissolved company in a merger, where merger consideration allocated to shareholders of the dissolved company in a share swap exceeds the capital contribution of all shareholders, the amount in excess shall be deemed as dividend income. The amended M&A Act allows individual (non-corporate) shareholders of an acquired startup company to defer taxation of dividend income received from merger evenly over the third to fifth year from the next year following the merger or acquisition. Given relevant taxable income has been determined at the time of merger or acquisition, and future sales price of shares is irrelevant to the deferral of tax payment, there are no special restrictions on the timing of such sales.
3. In order to strengthen competitiveness and expand into key markets, acquisition of key technologies and customer lists are often critical factors leading to mergers and acquisitions. Prior to amendment of the M&A Act, unregistered proprietary technology and customer relationship cannot be amortized for tax purposes. Whereas, post amendment to the M&A Act, it is possible to treat the aforementioned

items as "trade secrets" eligible for tax amortization if they meet the three criteria laid out in the Trade Secrets Act, i.e. secretive, has economic value, and company has taken reasonable measures to protect its secrecy. Enterprises may simultaneously refer to checklist of identifiable intangible assets published by the MOF to assess if they meet the recognition criteria laid out in T-IFRS/Enterprise Accounting Standards and Statement of Valuation Standards.

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