

## CHAPTER XVIII

---

---

### TAX INCENTIVES

#### I. General Description

During the 1950s, our national savings were at a low ebb. Industrial development was just beginning to burgeon. In order to channel the savings of the citizens, attract foreign investment, and improve the investment environment, the ROC government amended the income tax laws in 1955, hoping to encourage economic growth. In 1960, the Statute for the Encouragement of Investment was enacted to meet the needs of the economic environment. The conclusion of this Statute was marked after a period of thirty years in 1990.

The remarkable achievement of economic development in the past three decades in Taiwan has been hailed world-wide as an “economic miracle.” Although the contribution of hardworking people in the ROC is a significant factor in this achievement, the tax incentives provided by this Statute can not be neglected.

Given that the economy of the ROC has changed considerably due to the nature of the international and domestic environments, the growth rate of the gross national product has slowed down and the rate of inflation has been rising, the Statute for the Encouragement of Investment was no longer suited to the changing economy. For further development, the economic structure needed to be transformed and the industrial sector needed to be upgraded. Therefore, the ROC government promulgated “The Statute for Upgrading Industry” on 1<sup>st</sup> January, 1991 to replace the previous statute. This new Statute was effective until 31<sup>st</sup> December, 1999. After 2000, due to the continued need for economic structural transformation and the promotion of international competitiveness, the tax incentive applications of this statute were amended and the effective period of the statute was extended from 31<sup>st</sup> December, 1999 to 31<sup>st</sup> December, 2009. Also, in accordance with the implementation of the income tax integration system, some of the tax incentives were limited to certain enterprises only.

The tax incentives provided under the Statute for Upgrading Industries were terminated on 31<sup>st</sup> December, 2009 and the Statute was abolished on 12<sup>th</sup> May, 2010. In order to encourage further industrial innovation, the ensuing “Statute for Industrial Innovation” was promulgated on 12<sup>th</sup> May, 2010 and provides a tax incentive for innovative R&D activities only. In addition, the Directions for the Termination of Chapter 2 and Article 70-1 of the Statute for Upgrading Industries were issued so as to deal with the tax issues arising in the transition period.

## II. Tax Benefits of the Statute for Industrial Innovation

The Statute for Industrial Innovation offers a tax incentive whereby 15% of the amount invested in innovative R&D expenditure by a company may be credited from the profit-seeking enterprise income tax within a limit of 30% in the same year. Such tax incentive is retroactive and effective from 1<sup>st</sup> January, 2010 and is valid until 31<sup>st</sup> December, 2019.

## III. Tax Benefits for the Biotech and New Pharmaceuticals Industry

For the purpose of promoting the biotech and new pharmaceuticals industry, “The Act for the Development of Biotech and New Pharmaceuticals Industry” was enacted on 4<sup>th</sup> July, 2008, in which a biotech and new pharmaceuticals company may, for a period of five years from the time it is subject to profit-seeking enterprise income tax, enjoy a reduction in its income tax payable for up to 35% of the total funds invested in R&D and personnel training each year; provided, however, that if the R&D expenditure of a particular year exceeds the average R&D expenditure of the previous two years, or if the personnel training expenditure of a particular year exceeds the average personnel training expenditure of the previous two years, 50% of the amount in excess of the average may be used to credit against the amount of income tax payable.

The total amount of investment credited against the income tax payable in each year under the preceding paragraph shall not exceed 50% of the amount of income tax payable by a biotech and new pharmaceuticals company in a year; provided, however, that this restriction shall not apply to the amount to be offset in the last year of the aforesaid five-year period.

In order to encourage the establishment or expansion of biotech and new pharmaceuticals companies, a profit-seeking enterprise that (i) subscribes for the stock issued by a biotech and new pharmaceuticals company at the time of the latter's establishment or subsequent expansion; and (ii) has been a registered shareholder of the biotech and new pharmaceuticals company for a period of three years or more, may, for a period of five years from the time it is subject to profit-seeking enterprise income tax, enjoy a credit in its income tax payable for up to 20% of the total amount of the price paid for the subscription of shares in such biotech and new pharmaceuticals company; provided, that such biotech and new pharmaceuticals company has not applied for exemption from profit-seeking enterprise income tax or shareholder's investment credit based on the subscription price under other applicable laws and regulations.

If the aforementioned profit-seeking enterprise is a venture capital company (“VC”), such VC's corporate shareholders may, for a period of five years from the 4<sup>th</sup> anniversary of the date on which the VC becomes a registered shareholder of the subject biotech and new pharmaceuticals company, enjoy a credit in their profit-seeking enterprise income tax payable based on the total creditable amount enjoyed by the VC hereof and by the shareholders' respective shareholdings in the VC.

#### IV. Encouragement of Investment in Urban Area Renewal Projects

A corporation investing in the urban renewal business of an implemented urban renewal area designated by the competent authority may credit 20% of its total invested amount against its profit-seeking enterprise income tax payable for the then current year. If the income tax payable is not enough for the credit, it can be carried forward for four years.

However, the amount of the tax credit against the profit-seeking enterprise income tax payable in each year shall be limited to not more than 50% of the amount of the profit-seeking enterprise income tax payable in the same year with the exception that this limitation shall not apply to the creditable amount in the last year of the said four-year period.

#### V. Tax Benefits for the Development of International Airport Parks

The International Airport Park Development Act was implemented on 23<sup>rd</sup> January, 2009. Articles 21 and 35 of the Act stipulate that an airport company may be exempted from business tax, land tax, and house tax. The Act also regulates that foreign profit-seeking enterprises which use the logistic services in the international airport park shall be exempted from profit-seeking enterprise income tax so as to enhance competitiveness and to promote the prosperous development of the airport and its locality.

#### VI. Tax Benefits for Free Trade Zones

According to Articles 24, 26, 28, and 29 of the Act for the Establishment and Management of Free Trade Zones, certain goods to be transported from a tax area to a free trade zone may apply for tax reduction, exemption or return of customs duties, certain goods traded between free-trade-zone enterprises and the enterprises in a tax area or a bonded area may apply for zero business tax rate, and foreign profit-seeking enterprises which use logistics services for the purposes of storing and/or performing simple processing or sell the metals certified by the approved foreign Metal Exchange and with the same HS Code approved by the competent authority in a free trade zone may be exempted from profit-seeking enterprise income tax. The aforesaid tax incentives will help promote trade liberalization and internationalization, and enhance international competitiveness.

#### VII. Tax Benefits for Small and Medium Size Enterprises

Commencing in 20<sup>th</sup> May, 2014, 3 tax incentives are provided in the Act for Development of Small and Medium Enterprises:

##### A. Tax Credit for R&D

Small-and-medium size enterprises have the option of choosing one of two choices in the number of years and the related tax rates for the claiming of the tax credit. That is to say, if an enterprise's R&D activities are qualified, the enterprise can choose to claim the tax credit within three years using a 10% tax credit rate or within the current year using a 15% tax credit rate.

##### B. Tax Deferral on Income in the Form of Stock from transfer of Intellectual Property

In order to encourage small-and-medium size enterprises to invest in innovation, where a small-and-medium size enterprise or an individual owns the intellectual property rights and exchanges with an unlisted company in return for common stock of the company which acquires the right, the enterprise or individual will receive a tax-deferral for the transfer of the intellectual property right.

#### C. Encouragement of Increase of Employees

In order to enhance employment, small-and-medium size enterprises may claim 130% of the salary of newly recruited employees as deductible expenses.

### VIII. Tax Benefits of the Abolished Statute for Upgrading Industries

#### A. Tax Benefits for the Encouragement of Investment

##### 1. Acceleration of Depreciation for Upgraded Equipment

The serviceable life of instruments and equipment purchased by a company for exclusive use for research and development (R&D) purposes, experiments, and/or inspection of quality, or machinery and equipment purchased by a company and used for energy saving purposes or employing new and clean energy, may be accelerated by two years; however, if there is any post-depreciation residual value during the accelerated serviceable life, asset depreciation may continue over one year or several years within the serviceable life of such assets as specified in the Income Tax Act, until the permissible depreciation is completed.

##### 2. Tax Credits for Upgraded Equipment

To meet the requirements of industrial upgrading, a company may credit 5% to 20% of the amount of funds disbursed for any of the following purposes against the amount of profit-seeking enterprise income tax payable within five years starting from the current year:

- a. Funds invested in equipment used for automation of production or production technology;
- b. Funds invested in equipment or technology used for reclamation of resources and/or pollution control;
- c. Clean energy, energy saving, or recycling of water for industrial use;
- d. Funds invested in the equipment or technology used for the reduction of greenhouse gas emissions or the enhancement of energy efficiency; and
- e. Funds invested in hardware or software or technology used for the internet, television functions, enterprise resource planning, communications and telecommunications products, electronics, television-video, digitized content production, etc. to enhance the efficiency of digital information.

A company may credit up to 35% of the amount of funds invested for R&D and personnel training against the amount of profit-seeking enterprise income tax payable within five years starting from the then current year. In the case that the R&D and/or personnel training expenditure of the then current year is greater than the average R&D expenditure of the previous two years, 50% of the excess amount may be credited against the amount of profit-seeking enterprise income tax.

### 3. Credit for the Encouragement of Geographical Balance

In order to promote the balanced development of industries in various geographical areas, in the case where a company invests a specific amount of capital or employs a specific number of employees in specific industries in a county or township area with scanty natural resources or of slow development, it may credit up to 20% of the total amount of its investment against the amount of profit-seeking enterprise income tax payable within five years starting from the then current year.

### 4. Encouragement of Newly Emerging, Important, and Strategic Enterprises

In order to encourage the incorporation or expansion of newly emerging, important, and strategic industries which are of high risk, worthy of support, and helpful for economic development, an investor, being a profit-seeking enterprise or an individual, who subscribes or underwrites the registered stock issued by such industries and has held such stock for a period of three years or longer, may be granted credit against the profit-seeking enterprise income tax or the consolidated income tax payable within five years starting from the then current year:

- a. A profit-seeking enterprise may credit up to 20% of the price paid for acquisition of such stock against the profit-seeking enterprise income tax in the then current year.
- b. An individual may credit up to 10% of the price paid for acquisition of such stock against the consolidated income tax payable in the then current year. However, the deductible amount shall be limited to not more than 50% of the consolidated income tax payable in the then current year for the individual, with the exception that this limitation shall not apply to the deductible amount in the last year of the said four-year period.

The tax credit rate of the preceding Item b. in the preceding paragraph shall be lowered by 1% every two years from 1<sup>st</sup> January, 2000.

A company which is a newly emerging, important, and strategic industry may, within two years from the beginning date for payment of the stock price by its shareholders select through the approval of its shareholders' meeting, make an application for the investment incentive in the form of exemption from profit-seeking enterprise income tax for a period of five consecutive years and for the waiver of shareholders' investment credit against payable income tax as set forth in the preceding paragraph. However, once the selection is made, no change shall be allowed.

Where a company selects the tax exemption described in the preceding paragraph, during the exemption period, the equipment shall still be subject to depreciation according to the serviceable life of fixed assets as provided for in the Income Tax Act.

5. Encouragement to Import Machinery and Equipment Not Produced by the ROC

From 1<sup>st</sup> January, 2002, machinery and equipment imported from abroad by companies in scientific industries for their business operations shall be exempt from import tax and business tax provided that corresponding machinery and equipment has not been manufactured and produced by ROC companies and such import has been specifically approved by the Ministry of Economic Affairs.

6. Encouragement of Investment in Manufacturing and the Technical Services Industry

To further economic development and encourage investment in the manufacturing industry and its related technical services industry, from 1<sup>st</sup> January, 2002 to 31<sup>st</sup> December, 2003, or from 1<sup>st</sup> July, 2008 to 31<sup>st</sup> December, 2009, companies which were newly incorporated or had undergone an expansion by capital increase shall be exempted from profit-seeking enterprise income tax in accordance with the following provisions:

- a. In the case of a newly incorporated company, it shall be exempted from profit-seeking enterprise income tax for a period of five consecutive years from the date on which it begins to sell its products or to render services.
- b. In the case of the expansion of an existing company by capital increase, the company shall be exempted from profit-seeking enterprise income tax levied on the increased income derived as a result of such expansion for a period of five consecutive years from the date that the newly added equipment starts to operate or the rendition of services begins.

The company eligible for exemption from profit-seeking income tax under the aforesaid description may, within two years from the date on which it begins to sell its products or to render its services, decide to defer, at its own discretion, the commencement date of the tax exemption period; provided that the maximum period of such deferment shall not exceed four years from the date on which it begins to sell its products or to render its services, and that the commencement date of such deferred tax exemption period shall be the beginning date of a fiscal year.

The ceiling of the aforesaid exemption will be the total amount of the investment, if the investment is made between 1<sup>st</sup> July, 2008 and 31<sup>st</sup> December, 2009.

Where a company is already eligible for application of the investment incentives provided in Articles 8 or 9 of the Statute for Upgrading Industry, it shall not be entitled to the application of the investment incentive provided for in the Article 9-2 of the Statute. From 1<sup>st</sup> July, 2008 to 31<sup>st</sup> December, 2009, companies which were newly incorporated or had undergone an expansion by capital increase could apply for the exemption only once.

7. Encouragement of Enterprises to Invest Abroad

For the outward investment made, in response to government policy, by a company with the approval of the collection authority-in-charge of the end enterprise concerned, an amount of up to 20% of the total amount of such outward investment may be set aside as the reserve for loss in outward investment so as to cover the investment loss upon its occurrence.

8. Encouragement of Investment by Non-Resident Individuals or Non-Resident Enterprises

Where a non-resident individual or a non-resident profit-seeking enterprise, having been approved to make investment in the ROC under the Statute for Investment by Overseas Chinese or the Statute for Investment by Foreign Nationals, receives dividends distributed by a company located in the ROC or profits distributed by a partnership in the ROC, the income tax payable thereon by such individual or enterprise shall be withheld at the time of payment thereof by the withholding agent as specified in the Income Tax Act at the rate of 20% of such distribution, and the provisions provided in the Income Tax Act for filing a final income tax return shall not apply.

9. Exemption for Income Tax on Salaries of Foreign Personnel Dispatched to the ROC by a Foreign Profit-Seeking Enterprise

Where a foreign profit-seeking enterprise, having been approved to make investment in the ROC under the Statute for Investment by Overseas Chinese or the Statute for Investment by Foreign Nationals, has dispatched its directors, managerial officers, or technical personnel to the ROC to perform temporary work, such as investment-making and plant construction, or market survey, and has had them reside in the ROC for a period or periods of less than 183 days aggregate in a taxable year, their salaries paid outside the ROC by the said profit-seeking enterprise shall not be considered as income sourced in the ROC.

10. Exemption for Profit-Seeking Enterprise Income Tax on Logistics Distribution Centers in the ROC

Logistics distribution centers established in the ROC by foreign profit-seeking enterprises or their branch offices in the ROC, whether operated by themselves or by other domestic enterprises through commissioning arrangements, solely for storage, simple processing, and delivery of goods to their domestic customers, shall be exempted from profit-seeking enterprise income tax.

B. Tax Benefits for Promoting the Reasonable Operation of an Enterprise

1. Encouragement of Merger or Consolidation

Where a company is approved by the Ministry of Economic Affairs to enter into merger or consolidation for the purpose of rationalizing its operations and management, the following provisions shall govern:

- a. The company shall be exempt from stamp tax, deed tax, securities transaction tax, and business tax payable as a result of such merger or consolidation.
- b. Where the land previously used directly by the enterprise is transferred along with the merger or consolidation, registration shall be made for the transfer of the ownership of the land immediately after the current value of the land has been duly assessed according to law; the land value increment tax payable may be charged to the account of and paid by the enterprise surviving after the merger or consolidation at the time the land is further transferred. Upon the bankruptcy or dissolution of the surviving enterprise, the land-value increment tax previously charged to its account shall be paid in priority over all other debts.
- c. Where machinery and equipment previously owned by the enterprise is sold in accordance with the approved merger or consolidation plan, the proceeds realized from such sale subsequently used for payment in whole for purchase of new machinery and equipment under the merger and consolidation plan shall be exempt from stamp tax.
- d. Where land and plant buildings previously owned by the enterprise as factory sites and/or mining districts are sold in accordance with the approved merger and consolidation plan, the proceeds realized from such sales and subsequently used for payment in whole for purchase or acquisition of new land and plant buildings under the merger and consolidation plan shall be exempt from deed tax and stamp tax payable by the merged enterprise.
- e. If, as a result of merger and consolidation, land previously used directly by the enterprise as a factory site is sold and other land is purchased for construction of plant buildings in the designated industrial district, or in an industrial district in another urban plan or on other designated industrial land established pursuant to the Statute for Encouragement of Investment prior to the effective date of this Statute, and the price paid for such land is in excess of the selling price of the original land less the land value increment tax paid, then for such deficit amount for the purchase of the new land, the merged enterprise may request the competent tax collection authority to refund, to the extent of such deficit, the amount of land value increment tax already paid.
- f. The provisions in the preceding item shall apply, *mutatis mutandis*, to a case where the purchase of land for construction of a factory has to be effected prior to the sale of the land of the original factory in order to satisfy the needs of production operation.
- g. The goodwill generated from a merger may be amortized within fifteen years.

- h. The expenses incurred from a merger may be amortized within ten years.

Where companies enter into merger in accordance with the provisions of the preceding paragraph, the surviving company or the new company, which is in the realm of newly emerging, important, and strategic enterprises, and is qualified for the relevant exemption from the profit-seeking enterprise income tax, may take over the residual tax incentives enjoyed by the company which is being dissolved. However, during the exemption period, the surviving company or the new company shall continue to produce the products or provide the services as encouraged by this Statute.

If a profit-seeking enterprise organized in the form of a company, with respect to the years in which losses were sustained and deductions were therefore claimed, has maintained a complete set of relevant accounting records, books, and supporting vouchers, used the blue tax return declaration form as specified in Article 77 of the Income Tax Act or its records and books have been audited and certified by a certified public accountant, and made timely filing of income tax returns and payment of profit-seeking enterprise income tax due, then the surviving company or the newly incorporated company after the merger may, when filing its profit-seeking enterprise income tax return, have the losses sustained within five years prior to the year of the implementation of the merger by all participating companies in the merger and duly approved by the competent taxation authority, but which have not been offset against their operating earnings, deducted in proportion to the amount of the equity shares of the surviving company or the newly incorporated company held respectively by the shareholders thereof from the net operating earnings declared in each taxable year within five years from the year of the occurrence of such losses.

## 2. Deduction of Land Value Increment Tax Upon the Relocation of Factories

In the case where a company sells or transfers the land of its original factory site to others when moving its factory to an industrial district, or an industrial district in an urban plan or designated industrial land established pursuant to the Statute for Encouragement of Investment prior to the effective date of this Statute on account of any of the following reasons, the land value increment tax payable by the said enterprise shall be assessed at the tax rate applicable to the lowest tax bracket:

- a. The use of the original factory land becomes incompatible with the zoning rules concerning the implementation of an urban plan or regional plan.
- b. In order to meet the requirements of pollution control, public safety, or maintaining the natural landscape, the company has taken the initiative to apply for the relocation of its factory and such application has been approved by the competent authority.
- c. The factory is relocated under assistance initiated by the government.

## 3. Tax Exemption on the Value of Assets Increased Upon Revaluation

The appreciated value of the assets of a profit-seeking enterprise resulting from a revaluation of assets made in accordance with the Income Tax Act shall not be considered taxable income.

#### C. Tax Benefits for Operational Headquarters

In order to encourage companies to manage worldwide resources for international operations, an operational headquarters that is established in the territory of the ROC, and that has reached a certain economic scale and is expected to create a significant effect on the economy, is exempt from the profit-seeking enterprise income tax on the following incomes:

1. Income received from the provision of management services or R&D activities for its foreign-associated enterprises.
2. Royalties received from its foreign-associated enterprises.
3. Dividends received from its foreign-associated enterprises and capital gains from the alienation of shares of its foreign-associated enterprises.

#### D. Other Tax Benefits

Where a patent right legally obtained by a national of the ROC from his or her own creation or invention is provided or sold to a company in the ROC for its use, with the approval of the authority-in-charge of the end enterprise concerned, 50% of the royalty paid by the company for use thereof, or the proceeds derived from selling such right to the company for its use, shall be excluded from the amount of his or her consolidated income for taxation.