

e-Tax alert

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Regulations governing the special deduction of investment for surtax calculation under SII has been promulgated

Under Taiwan Income Tax Law, companies are subject to 5% surtax on undistributed earnings which is calculated based on the current year's accounting earnings after deducting specific items allowed under the income tax laws such as dividend distributed and legal reserves. Companies are required to file their prior year surtax return together with their current year CIT(Corporate Income Tax) return. Prior to the introduction on tax incentive provided for surtax calculation under Article 23-3 of the SII (Statute for Industrial Innovation), the earnings used by companies for investment as opposed to declaring as dividend would be subject to surtax. To encourage investment by companies into its business operation, the Ministry of Finance (MOF), has introduced special tax incentive for surtax calculation under SII where the qualified actual investment made by companies can become one of the deduction items for surtax calculation.

Requirements

- Effective period: applicable to FY2018's surtax return and onwards.
- Investments period: To qualify for the incentive, the investments should be completed within 3 years after the year the earnings are generated. For example, if the company adopts calendar year

basis, for investment made out of its earnings generated in FY2018, only those investment that are completed within January 1, 2019 to December 31, 2021 would qualify for the incentive.

- Types of qualified investments: investment in construction or acquisition of buildings, hardware and software or technologies that are used by companies for their core or ancillary business operation and production, **excluding purchase of land and acquisition of devices and equipment that would not be capitalized.**

For professional leasing companies which engage in providing operating leases and derive leasing income, the assets they purchased for such leasing purpose could be regarded as being used for their business operation or ancillary business. However, if the assets purchased are leased by the company to its customers under capital lease, as such lease is deemed as sale of assets in substance, the purchase of relevant assets by the leasing company would not be eligible as investment for the surtax incentive.

- Minimum amount: The actual accumulated amount invested should exceed TWD 1 million.

Recognition of the Investment Date

- Buildings: for acquisition of buildings, the date which the ownership registration is transferred in the case where buildings are acquired. For constructed buildings, the date which the usage license is issued by the authority.
- Acquisition of hardware and software: the date which the hardware and software is delivered.
- Acquisition of technologies: The date which the technologies are acquired.
- For buildings constructed in different phases or equipment delivered in different batches: the date which the construction of each phase is checked and accepted or the date which each batch of equipment is delivered.

Application Procedures

- If the investment amount made out of a financial year's earnings reach TWD 1 million by the time the surtax return for that year's undistributed earnings is filed: the investment amount can be included as the one of the deduction items in the specific tax filing form used for that year's surtax calculation.
- If the investment made out of a financial year's earnings reaches TWD 1 million after the related surtax for that financial year is filed: the surtax return filed should be amended within one year after the date which the investment is completed. The undistributed earnings reported should be recalculated and the excess surtax paid can be refunded accordingly. [The aforementioned "date which investment is completed" refers to the date which the last investment project was made within the required three-year investment period.](#)

Required Supporting Documents

- Copies of the construction or acquisition contracts, catalogue of properties, government uniform invoices, import declarations or receipts, proof of delivery and acceptance, proof of payment.
- For construction of buildings: details of cost items, usage license or proof of acceptance.

- For self-developed hardware and software: in addition to the foregoing documents details of cost items, records of transferring the hardware/software to self-use or related supporting documents.
- [The "documents demonstrating board or shareholder resolution approval" previously required under the draft version of the Regulations is no longer required under the promulgated version of the Regulation.](#)

Other Considerations

- For investment made out of FY2018 earnings: if the investment is made between January 1 to July 26, 2019 (the date Article 23-3 of the SII is promulgated and became effective), it could also qualify for the surtax incentive.
- If the assets purchased is lent, leased, sold, returned or its original usage purpose is altered, the surtax that are deducted or refunded should be paid and interest would be charged as well. Transfer of assets carried out in accordance with the M&A Act are excluded from this special condition.

KPMG Observations

To utilize the aforementioned surtax incentive, companies only need to submit the application form, along with supporting documents, when filing or amending their surtax returns on undistributed earnings. Approvals from the competent authorities on the relevant investment plans are not required.

Further, as the earning used to make the investments has already been subject to corporate income tax, the surtax incentive will not give rise to "double dipping" of tax benefits. Where possible, companies should utilize this incentive offered under SII to achieve optimal tax efficiency.

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