

Taiwan passes a 'chips act' giving 25% tax credits for advanced R&D

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Newsletter

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搜尋 清除

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The increasing international trade disputes and geopolitical risks lead to the major countries' consideration of the reorganization of their industry chain. In order to achieve corresponding policy goals, governments in different jurisdictions are beginning to design preferential policies for various forward-looking technologies and cutting-edge industries. Take the semiconductor industry as an example, both the CHIPS and Science Act in the U.S. and the European Chips Act in the EU aim to attract competitive industry players to invest in the U.S. or the EU through various types of subsidies (including the establishment of funds, low-interest loans or tax credits and so forth) so as to create comprehensive and competitive semiconductor industry clusters in the U.S. and the EU.

Taiwan is a key participant in the global semiconductor industry, and Taiwan's Legislative Yuan passed the amendments to Articles 10-2 (the "Amendment") of the Statute for Industrial Innovation (the "Statute") on January 7, 2023 to provide tax incentives for qualified industry participants to invest in Taiwan. According to Article

72 of the Statute, the Amendment will be effective from January 1, 2023 to December 31, 2029.

The Amendments that just cleared the legislative floor provide two types of tax incentives: (i) a fixed-rate (25%) investment credit for “forward-looking innovative research and development expenditures”; and (ii) a fixed-rate (5%) investment credit for the acquisition of machinery and equipment used in “advanced manufacturing processes”. We summarize the statutory requirements to apply for these two types of tax incentives in the table below, and then we will explain the statutory elements in more details.

Type

Statutory Requirements

I. Active Requirement

- (I) The applicant must be a “ company ”.
- (II) The applicant must engage in technological innovation “ within the territory of the Republic of China (Taiwan) ”.
- (III) The applicant must occupy “ key position in the international supply chain ”.
- (IV) The applicant’s “ research and development expenses ” and “ research and development expenses as a percentage of net operating income ” for the same tax year must reach a certain threshold in the same tax year
- (V) The “ project/subject ” of investment must meet the definition thereof.
- (VI) The “ effective tax rate ” for the year in which the tax credit is claimed must reach the statutory minimum thereof.

II. Passive Requirement

- (I) Concurrent applications for same types of investment tax credits are not allowed.
- (II) The total amount of the credit received shall not exceed the statutory limit.
- (III) No material violation of environmental protection, labor or food safety and health related laws within past three years.

I. Active Requirements

- (I) The applicant must be a “ company ”: Unlike Article 10 or 10-1 of the Statute, the investment tax credit provided under this Amendment is currently available only to “corporate organizations” and is not available to unincorporated organizations such as limited partnerships.
- (II) The applicant must engage in technological innovation “ within the territory of the Republic of China (Taiwan) ”: The definition of “within the territory of the Republic of China (Taiwan)” is to be specified by the competent authority in the subordinate legislation authorized under the Statute.

Where a multinational corporation headquartered in Taiwan wishes to apply for the investment tax credit under this Amendment, but its technological innovation is conducted jointly by the corporation’s research and development centers in the U.S. and Taiwan, is the technological innovation not eligible for the investment tax credit under this Amendment at all? Or can the investment expenditures in Taiwan and overseas be apportioned at a reasonable split (e.g., based on the contribution rate of individual research and development centers) and the amount apportioned for Taiwan be used to determine whether the applicant is eligible for the investment tax credit under this Amendment?

- (III) The applicant must occupy “ key position in the international supply chain ”: The definitions of “international supply chain” and “key position” are to be specified by the competent authority in the subordinate legislation authorized under the Statute.

1. With regard to the definition of an “international” supply chain: Does an industrial supply chain constitute an “international” one as long as there are participants of other nationalities in any part thereof? Moreover, is the nationality of an industry participant determined by the place of incorporation thereof or of its ultimate parent company?
2. With regard to the definition of “key position”: From the perspective of “maintaining/creating a competitive

edge”, the concepts of “irreplaceability (qualitative characteristics)” and “market share (quantitative characteristics)” under competition laws may be referred to as the criteria to measure whether a particular company occupies a key position in the supply chain. However, in practice, it is still up to the competent authority to specify the relevant criteria based on different industry characteristics in the subordinate legislation authorized under the Statute.

For example, the semiconductor industry can be generally divided into three major segments: IC design, wafer fabrication, and semiconductor packaging and testing, based on the characteristics of the industry, and the boundaries between these segments are becoming increasingly blurred in the advanced IC market (e.g., wafer-level packaging technology allows wafer fabricators to enter the packaging and testing market; the system-on-chip concept creates a competitive relationship between packaging & testing and IC design). Such industry characteristics make it difficult to accurately identify the criteria for determining whether a particular company occupies a key position (e.g., the criteria for determine the scope of a specific market/space).

(IV) The applicant’s “research and development expenses” and “research and development expenses as a percentage of net operating income” must reach a certain threshold in the same tax year: While such threshold is to be specified by the competent authority in the subordinate legislation authorized under the Statute, we know from the legislative reasons provided for this Amendment that the amount of “research and development expenses” and “net operating income” should both be based on the applicant’s individual comprehensive income statement.

1. The amount of “research and development expenses” specified under this subparagraph are not limited to those spent on “forward-looking innovations”, and we are of the view that it may be appropriate to include all of the applicant’s accountable “research and development expenses” for the taxable year in the calculation thereof.

2. The “amount of research and development expenditure on forward-looking innovation” specified under Paragraph 1 of the amended Article 10-2 of the Statute, may, based on the grammatical interpretation thereof, include:

- (1) the amount of the development expenditure that has been capitalized in accordance with the relevant accounting standards; and
- (2) the expensed amount of the research and development expenditure.

However, it is not yet possible to determine whether only the amount expensed can be used as the basis for calculating the investment credit or whether the capitalized and expensed amounts can be combined as the basis for such calculation.

(V) The “project/subject” of investment must meet the definition thereof: The research and development expenditures for which an applicant may claim the investment tax credit under this Amendment are limited to those spent on “forward-looking innovation”. The definition of “forward-looking innovation” is to be specified by the competent authority in the subordinate legislation authorized under the Statute. In addition, capital expenditures for which an applicant may claim the investment tax credit under this Amendment are limited to those spent on the “purchase” of machinery and equipment “for own use” in “advanced manufacturing processes” and the amount of such purchases must reach “the specified threshold”. The definitions of “advanced manufacturing process” and “the specified threshold” are to be specified by the competent authority in the subordinate legislation authorized under the Statute.

(VI) The “effective tax rate” for the year in which the tax credit is claimed must reach the statutory minimum thereof: Such effective tax rate is 12% in 2023 and 15% after 2024 (may be reduced to 12% in 2024 at the discretion of the central authority in consultation with the Ministry of Finance).

The effective tax rate under this subparagraph = $100\% \times (\text{tax payable} - \text{deductible amount of taxes paid on overseas income} - \text{deductible amount of taxes paid on PRC income} - \text{total amount of applicable investment tax credit}) / \text{annual income}$

II. Passive Requirements

(I) Concurrent applications for same types of investment tax credits are not allowed: In order to prevent excessive tax incentives granted under the Statute, once an applicant has applied for an investment credit under this article, it is prohibited from applying for same types of other investment credits.

For example, if a company has both “forward-looking innovative research and development expenditures” and “non-forward-looking innovative research and development expenditures”, once the company applies for the fixed-rate investment credit for “forward-looking innovative research and development expenditures”, it cannot apply for other tax incentives for “non-forward-looking innovative research and development expenditures” that are also “research and development expenditures”.

Example : Assuming that the total research and development expenditure of Company A for the taxable year X1 is NT\$10 billion, of which NT\$1.5 billion is research and development expenditure for forward-looking innovation, NT\$8 billion is research and development expenditure under Article 10 of the Statute, and NT\$500 million is research and development expenditure under Article 10-1 of the Statute. Once Company A applies for the investment tax credit under the amended Article 10-2 of the Statute (i.e., fixed rate investment credit for research and development expenditure on forward-looking innovation), Company A’s remaining research and development expenditure of NT\$8.5 billion is no longer eligible for the corresponding tax credit under Article 10 or Article 10-1 of the Statute.

(II) The total amount of the credit received shall not exceed the statutory limit.

1. The fixed-rate investment credit for “forward-looking innovative research and development expenditures” shall not exceed 30% of the company’s profit-seeking enterprise income tax liability for the specified taxable year.

Example : Assuming Company B meets the requirements specified under Article 10-2 of the Statute, its net income before research and development expenses for the year is NT\$100, its “forward-looking innovation research and development expenses (assuming no capitalized amount)” is NT\$X, its profit-seeking enterprise income tax rate is 20%, and its effective tax rate is limited to 12%, then the algebraic formula for this limit is as follows:

$$x \times 25\% \leq [(100 - x) \times 20\% - x \times 25\%] \times 30\%$$

2. The fixed-rate investment credit for the purchase of machinery and equipment used in “advanced manufacturing processes” shall not exceed 30% of the applicant’s income tax liability for the specified taxable year.

3. The total amount of investment credit claimed by the applicant under this Amendment shall not exceed 50% of the amount of the profit-seeking enterprise income tax payable by the applicant in the specified taxable year: According to legislative reasons provided for this Amendment, a company may still combine the investment credit applied in previous years in the taxable year in which the company applies for the investment credit under this Amendment.

(III) No material violation of environmental protection, labor or food safety and health related laws within past three years: In order to prevent companies that have committed material violations of environmental protection, labor or food safety laws from enjoying such significant tax incentives, this passive requirement has been included with reference to other tax incentives designed under the Statute.

In addition to the statutory requirements explained above, please note that the frequency of changes in the definitions pertaining to key provisions and the requirement of energy saving and carbon reduction should also be considered. In view of the rapid advancement in technology and the constant changes in key industries, the Legislative Yuan, when passing the Amendment, had requested the Ministry of Economic Affairs (MOEA) to invite scholars, experts and industry players to review the terms “occupying key position in the international supply chain”, “forward-looking innovation and research” and “equipment of advanced manufacturing process” and other key industry issues every year, so that the relevant tax incentives can meet the actual needs of the industries. In order to meet the international trend of energy saving, carbon reduction, climate neutrality, sustainability, and green transformation, the legislature also requested the Ministry of Economic Affairs to formulate relevant policies in the accompanying resolution, and to evaluate and actively assist in the application for the tax incentive under Article 10-2 of the Statute, while proposing specific measures for energy saving and carbon reduction, such as reducing and optimizing the use of energy in process equipment, enhancing the recovery of process gases, and optimizing process parameters to reduce greenhouse gas emissions, as well as disclosing information on various aspects of the annual carbon inventory.

The passage of Article 10-2 of the Statute by the legislature is good news for the participants in the forward-looking technologies and cutting-edge industries. Companies wishing to apply for the tax incentive under this Amendment should take stock of the nature and scale of their research and development expenditures and

advanced manufacturing processes as soon as possible to assess whether they are eligible to claim such tax incentive. Lee and Li's Tax Practice Group comprises attorneys and CPAs licensed in Taiwan and several other jurisdictions, who are conversant with the latest changes in domestic and international tax laws and work closely with L&L, Leaven & Co., CPAs to assist our clients in addressing their tax issues. If you have any questions regarding this Amendment, please do not hesitate to contact any member of our Tax Practice Group.