Content

Title：	Regulations Governing Application for Exemption from Profit-seeking Enterprise Income Tax by Private Institutions Participating in Public Infrastructure Projects Ch
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Content：

Article 1

These Regulations are enacted pursuant to Paragraph 3, Article 36 of the Act for Promotion of Private Participation in Infrastructure Projects (hereinafter referred to as the "Act").

Article 2

The terms as used in these Regulations shall be defined as follows:

1. "Taxable income" shall mean the amount of the balance of a major infrastructure project for the current year in which a private institution participates where its business revenues from participation in the project, after deducting its operating costs and expenses, adding its attributed non-operating revenues and deducting its attributed non-operating losses, and deducting the losses attributed to such a major infrastructure project incurred in the preceding ten years as verified and determined by the tax collection authority in accordance with the provision set in Paragraph 1 Article 39 of the Income Tax Act, are positive and taxable for the profit-seeking enterprise income tax under the stipulations of the Income Tax Act.
2. "Exempt from profit-seeking enterprise income tax" shall mean taxable income under the preceding subparagraph exempted from the calculation of the profit-seeking enterprise income tax payable of the private institution under the stipulation of Article 36 of the Act.
3. "Starting of operation" shall mean the appointed date of starting of operation for the first time under the concession agreement of a major infrastructure project signed by the private institution and the authority-in-charge. If the agreement is renewed, the date of such renewal shall be the newly-appointed date of starting of operation for the first time.
4. The "year with taxable income" shall mean the year when the actual investments has been satisfied by the private institution

participating in the major infrastructure project in accordance with the terms of the scope of major infrastructure projects of the Act, the operations of the project has been started by such institution, and the positive taxable income derived from the project has been reported on such institution's profit-seeking enterprise income tax return, or the positive taxable income derived from the project has been determined by the tax collection authority afterward in the case that such institution reported no taxable income derived from the project on its return.

Article 3

The profit-seeking enterprise income tax exemption for private institutions participating in major infrastructure projects is applicable only to the following listed incomes (see attached details) derived from operating a major infrastructure project; it is not applicable to income derived from other subordinate business which is incidental to the operation of such major project:

1. Transportation facilities:

(1)Railroad transport: fare income for passenger transit and income from cargo transportation charges.

(2)Road construction: toll income.

(3)Urban highway construction: toll income.

(4)Mass rapid transit systems: fare income for passenger transit.

(5)Light rail transit systems: fare income for passenger transit.

(6)Transit stations: service income.

(7)Airports and their facilities: airport operating income and rental income.

(8)Ports and their facilities: income from port affairs services and income from stevedoring &warehousing services.

(9)Parking lots: parking fee income.

(10)Bridges and tunnels: toll income.

(11)Intelligent transportation systems: system operating income.

2. Common conduits: rental income and maintenance income.

3. Environmental pollution prevention facilities: income from environmental pollution prevention and clean-up of pollutants, income from sales of products made from processing and manufacturing recyclable materials by an agricultural production waste disposal site.

4. Sewerage facilities: fee income for utilizing sewage by end users.

5. Water supply facilities: income from water fees, construction fees charged to users for external pipeline connections and income from selling water to water utility industries.

6. Water conservancy facilities: income from the sale of desalinated seawater and water which has been recycled from effluent of contaminated water plants in industrial area.

7. Sanitation and medical facilities: service income, income from the sale of vaccines which are made by vaccine factories.

8. Social welfare facilities: income from fees charged for use of funeral homes and incinerators and income from lease of social housing.
9. Cultural and educational facilities: service income.
10. Tourist attractions and lodgings: service income and income from the business in forest recreation areas in accordance with the Forestry Act.
11. Power facilities: income from electricity supply.
12. Public gas and fuel supply facilities: income from gas supply.
13. Sports facilities: operating income.
14. Major commercial facilities:
(1)Large-scale logistics centers: operating income and service income.
(2)International exhibition centers: operating income and service income.
(3)International convention centers: operating income and service income.
15. Government office buildings: rental income and service income.
The costs and expenses incurred by private institutions for operating major infrastructure projects, other subordinate business, and other non-major infrastructure projects shall be properly allocated to each category and deducted from relevant revenues. Where such costs and expenses are difficult to allocate, they shall be allocated according to the proportion of gross business revenues from the major infrastructure projects, gross business revenues from other subordinate business, and gross business revenues from other non-major infrastructure projects.

Article 4

Where the profit-seeking enterprise income tax exemption is applicable to a private institution participating in a major infrastructure project, the period for such exemption is five years.
The period of years for tax exemption under the preceding paragraph shall be calculated in a continuous manner, and shall not be interrupted in any way.During the period of exemption, the value of the fixed assets of the private institution shall be depreciated by the year according to the service life of fixed assets prescribed by the Income Tax Act.

Article 5

In the case where a private institution participating in a major infrastructure project has satisfied the terms of the scope of major infrastructure projects of the Act for its actual investments, has started operations of such project and has reported the positive taxable income derived from the project when filing its profit-seeking enterprise income tax return, such institution shall submit the following documents to the Ministry of Finance to apply for

exemption from profit-seeking enterprise income tax within six months from the day after the date of filing such income tax return. In the case that the private institution reported no taxable income derived from the project when filing its profit-seeking enterprise income tax return and afterward the positive taxable income derived from the project was determined by the tax collection authority, such institution shall submit the following documents to the Ministry of Finance to apply for exemption from profit-seeking enterprise income tax within six months from the day after the date of receiving the notice of assessment of tax:

1. Photocopies of company registration documents.

2. Documents issued by the authority-in -charge approving the participation of the private institution in the major infrastructure project.

3. Photocopies of the certificate of permission to operate issued by the authority-in-charge of the major infrastructure project.

4. A certificate issued by the authority-in-charge of the major infrastructure project after adequate examination to confirm that the major infrastructure project falls within the scope eligible for tax exemption as provided under Paragraph 1, Article 3 of the Act. The certificate shall explicitly include the name, identification number, and address of the private institution, the date of application, the category of the major infrastructure project, the way under which the private institution is participating in the major infrastructure project, the date of the approval of the participation of the major infrastructure project by the authority-in-charge, the date of the starting of operation, the terms and the date of the projects falling within the stipulations of the scope of major infrastructure projects of the Act eligible for major infrastructure under the Act, categories of tax-exempt income, and the amount of actual investment (excluding the actual amount of investment in land).

5. A private institution participating in a major infrastructure project shall submit a photocopy of the profit-seeking enterprise income tax return filing receipt if the positive taxable income was reported by such institution when filing its profit-seeking enterprise income tax return; or a photocopy of the notice of assessment of profit-seeking enterprise income tax if no taxable income was reported by such institution when filing its profit-seeking enterprise income tax return and afterward the positive taxable income was determined by the tax collection authority. In both above-mentioned cases, the calculation sheet of the taxable income of the major infrastructure project shall be submitted.

6. A list of machinery, equipment and primary buildings of the major infrastructure project issued by the authority-in-charge of the major infrastructure project after adequate examination. The list shall explicitly include the name, functions, purposes, and sources of the machinery and equipment, as well as the time of release from factories, date of purchase or import, volume, price, and the

construction cost breakdowns evidencing the cost incurred in the procurement of the primary buildings of the major infrastructure project. The machinery, equipment or primary buildings above-mentioned shall mean those purchased or constructed before or on the ending day of the "year with taxable income".

Private institutions shall apply for the certificate and the list of machinery, equipment and primary buildings of the major infrastructure project as referred to in Subparagraphs 4 and 6 of the preceding paragraph to the authority-in-charge before the deadline for filing the income tax return of the "year with taxable income" if the positive taxable income was reported by itself when filing its profit-seeking enterprise income tax return, or within three months from the day after the date of receiving the notice of assessment of profit-seeking enterprise income tax if no taxable income was reported by the private institution itself when filing its profit-seeking enterprise income tax return and afterward the positive taxable income was determined by the tax collection authority. The authority-in-charge shall issue such certificate and list within three months from the day after the date of application and notify the Taxation Agency of the Ministry of Finance and the tax collection authority where the private institution is located.

Article 6

Private institutions selecting to defer the commencement date of the tax exemption period according to Paragraph 2, Article 36 of the Act shall, within the time limit of 4 years from the "year with taxable income", apply for approval from the Ministry of Finance. No application shall be admissible if submitted beyond the deadline, unless in accordance with the stipulation of Paragraph 3 of this Article:

1. If the application is filed concurrently with the application for exemption from profit-seeking enterprise income tax, the selected commencement date of the tax exemption period and the starting and ending dates of its fiscal year shall be specified in the same application form.
2. If the application is made after the approval of exemption from profit-seeking income tax, a separate application shall be submitted to state the selected commencement date of the tax exemption period and the starting and ending dates of its fiscal year.

A private institution applying for deferment of the commencement date of the tax exemption period shall select a year among the three years immediately following the "year with taxable income" as the commencement year of the tax exemption period. Once selected, no change is permitted unless in accordance with the stipulation of Paragraph 4 of this Article.

For a private institution that has reported no taxable income when filing its profit-seeking enterprise income tax return and afterward the positive taxable income was determined by the tax collection

authority, if such institution receives the notice of assessment of profit-seeking enterprise income tax beyond the deadline under Paragraph 1 above, or before the deadline but the remainder of the period of time before the time limit for application is less than three months, such institution shall state the selected commencement date of the tax exemption period and the starting and ending dates of its fiscal year within three months from the day after the date of receiving the notice of assessment and apply for deferment of the commencement date of the tax exemption period with the Ministry of Finance. No application shall be admissible if submitted beyond the deadline. Once approval is granted, no change is permitted unless in accordance with the stipulation of Paragraph 4 of this Article.

Where a private institution is eligible for tax exemption under the preceding article or Paragraph 1, and if in one of its fiscal years, in front of the "year with taxable income", for which no taxable income was reported by the private institution itself when filing its profit-seeking enterprise income tax return and afterward the positive taxable income was determined by the tax collection authority, that year shall be deemed the new "year with taxable income". The private institution shall select or re-select one of the following three years after the new "year with taxable income" to be the commencement year at the time of applying for the deferment of the commencement date of the tax exemption period according to Paragraph 2, Article 36 of the Act; the selected year shall not be later than the original selected year.

The application under the preceding paragraph shall be made within three months from the day after the date of receiving the notice of assessment of profit-seeking enterprise income tax. If the private institution fails to comply with the deadline of the application, it shall be eligible for the tax exemption to start from the new "year with taxable income".

Article 7

Private institutions eligible for application under these Regulations failing to submit the complete documents within the deadline set forth in Article 5 of these Regulations but having proper reason therefore may, before expiry of the deadline, apply for an extension, with the complete documents being submitted within ninety days from the day after the date of the expiry of the deadline.

If a private institution fails to comply with the deadline set forth in Article 5 or within the extended period to submit the documents prescribed in the preceding paragraph, as the case may be, the Ministry of Finance may still approve the tax exemption for the remaining period of time of the original tax exemption period of five years from the profit-seeking enterprise income tax prescribed in Article 36 of the Act since the "year with taxable income", provided, however, the calculation of the remaining period of time of

the tax exemption period shall base on the amount of the fully complete months in which the private institution is still eligible for tax exemption and that no incentive may be granted where the remaining period of time is less than a month.
The remaining period of time referred to in the preceding paragraph shall commence from the date of the submission of the complete documents.

Article 8

Private institutions shall not be eligible to apply for the exemption from profit-seeking enterprise income tax prescribed in Article 36 of the Act if one of the following conditions applies:
1. The income derived from operating a major infrastructure project has enjoyed an exemption from profit-seeking enterprise income tax according to other regulations.
2. The private institution fails to file the income tax return according to Article 71 of the Income Tax Act.
3. The private institution which omitted or under-reported the income on the filings of annual income tax returns, current final reports on total business income or income earned from liquidation has been punished in accordance with the provisions of Article 110 of the Income Tax Act during the tax exemption period. However, this shall not apply to cases where the amount of the income omitted or under-reported calculated at the profit-seeking enterprise income tax rate applicable in the current year does not exceed NT$200,000, or the ratio of the amount of income omitted and under-reported to the annual total income does not exceed 10%.
In the case where the amount of the annual total income of a private institution is filed as zero or negative in the profit-seeking enterprise income tax return of such institution, the stipulation specified in Subparagraph 3 of the preceding paragraph to calculate the ratio of the amount of income omitted and under-reported to annual total income shall not apply.

Article 9

The following rules shall apply to a private institution whose investment concession agreement was terminated by the authority-in-charge under the stipulations of Articles 52 or 53 of the Act:
1. If the private institution is not responsible for the termination of the concession agreement, the remaining years that the private institution is exempted from the profit-seeking enterprise income tax under these Regulations which has not yet been determined by the tax collection authority, the tax exemption of those years shall no-longer be applicable.
2. If the private institution is responsible for the termination of the concession agreement, not only shall the remaining years that the private institution is exempted from the profit-seeking enterprise

income tax under these Regulations which has not yet been determined by the tax collection authority no-longer be applicable, but also, with respect to such profit-seeking enterprise income tax exemption as may have already been exempted under these Regulations, the institution concerned shall pay to the tax collection authority the exempted profit-seeking enterprise income tax payable, plus interest to be calculated on a daily basis at the fixed interest rate of postal savings for a one-year time deposit from the date after the deadline for filing the tax return for the current year to the date of supplemental payment of such tax.

A private institution which is exempted from profit-seeking enterprise income tax under the stipulation of Article 36 of the Act, and afterward recognized by the authority-in-charge as not complying with the terms of the scope of the major infrastructure projects specified in Paragraph 2 of Article 3 of the Act, shall pay to the tax collection authority the full amount of the profit-seeking enterprise income tax payable which has already been exempted, plus interest to be calculated on a daily basis at the fixed interest rate of postal savings for a one-year time deposit from the date after the deadline for filing the tax return for the current year to the date of supplemental payment of such tax.

If the authority-in-charge of the major infrastructure projects terminates the concession agreement under Paragraph 1, or recognizes the total investment of the major infrastructure project as not complying with the terms of the scope of the major infrastructure projects under Paragraph 2 of Article 3 of the Act, it shall notify immediately the tax collection authority where the private institution is located, stating the fact and criteria of evidence.

Article 10

These Regulations shall come into force from the date of promulgation; however, Subparagraph 15 of Paragraph 1 of Article 3 amended and promulgated on May 18, 2020 came into force on November 27, 2017 and Subparagraph 8 came into force on June 10, 2019.

Data Source：Ministry of Finance, R.O.C. Laws and Regulations Retrieving System