Content

Title：	Regulations on Deduction of Undistributed Surplus Earnings and Application for Tax Refund for Substantial Investment Made by a Company or Limited Partnership Ch
Date：	2020.01.09
Legislative：	Promulgated by Decree No. 10804671270 issued by the Ministry of Finance on January 9, 2020.

Content：

Article 1

These Regulations are enacted pursuant to Paragraph 4, Article 23-3 of the Statute for Industrial Innovation (hereinafter referred to as the Statute).

Article 2

In accordance with the provisions of Paragraph 1, Article 23-3 of the Statute, as needed for operation of its business or ancillary business within three years from the year after earnings are derived, a company or limited partnership uses its undistributed earnings to construct or purchase buildings, software or hardware equipment, or technology for use in production or operation.

The scope of the foregoing buildings, software or hardware equipment, or technology is as follows:

1. Buildings constructed or purchased for use in production or operation, including operating offices, administrative offices, branch or sub-branch offices, business offices, factories, workshops, warehouses, storehouses, construction sites and their ancillary buildings, as well as capital expenditures to expand such buildings to increase their value or utility.
2. Software or hardware equipment purchased for use in production or operation, including machinery, equipment, tools, instruments, vehicles, ships, aircraft, transportation means, information and communications software/hardware equipment and other tangible assets for business use, as well as capital expenditures for enhancing and repairing such equipment to increase their value or utility.
3. Technology purchased for use in production or operation, including business rights, copyrights, patents, trademarks, designs or models, secret formulas, trade secrets, proprietary technologies, and any franchises.

The buildings, software and hardware equipment, or technology which a company or limited partnership constructs or purchases for use in production or operation prescribed in the preceding paragraph do not include the purchase

of land and tools and equipment that does not belong to capital expenditures.

Article 3

The term "a certain amount to construct or purchase buildings, software or hardware equipment, or technology for use in production or operation," as used in Paragraph 1, Article 23-3 of the Statute, refers to that the actual expenditure amount invested by a company or limited partnership using its undistributed surplus earning from the year 2018 and subsequent years, complying with the scope of Paragraph 1 of the preceding article, shall reach one million New Taiwan Dollars within three years from the year after such earnings are derived. Such expenditure includes payments made during the construction process of buildings for each phase of engineering fees or installment payments for the purchase of buildings, equipment, and technology.

The actual expenditure amount invested in buildings, software or hardware equipment, or technology under the preceding paragraph refers to the remaining balance after deducting government subsidies from the following expenditures:

1. The actual cost incurred in constructing a building, including materials, labor, and all expenses incurred in designing and construction necessary to make it fit for use in the operation of business. As for purchasing a building, the acquisition cost includes not only the purchase price paid at the time of acquisition but also all necessary expenses incidental to acquisition or incurred in making it fit for use in the operation of business.
2. As for the purchase of hardware or software equipment or technology, the acquisition cost refers to the purchase price of the machinery, equipment, or technology, as well as all necessary expenses incidental to acquisition or incurred in making it fit for use in the operation of business (such as insurance fees, import duties, harbor construction fees, freight, installation fees). When using the self-made machinery or equipment, the cost is determined based on the cost of producing the machinery or equipment.

A company or limited partnership may make an investment with undistributed surplus earnings, from the year 2018 and subsequent years, within three years from the year after such earnings are derived. If the total of actual expenditures invested from earnings, in compliance with the preceding two paragraphs, meets the prescribed amount under Paragraph 1 based on the year's earnings, at that time, the actual expenditure amount may be a deduction item in the calculation of the current year’s undistributed surplus earnings in accordance with Paragraph 2, Article 66-9 of the Income Tax Act. The investment date shall be determined as follows:

1. Buildings constructed or purchased for use in production or operation:
(1)Purchases from others shall be based on the completion date of ownership registration. If it is exempt from the ownership registration, it shall be based on the receipt date.
(2)For self-built or delegating third-party to construct projects, it shall be based on the issuance date of the usage license by the competent authority of buildings. If it is exempt from the usage license, it shall be based on the completion date as stated in the relevant construction documents. For phased construction projects, the completion and acceptance date of each phase governs.
2. Software or hardware equipment purchased for use in production or operation shall be based on the delivery date. For phased construction or partial delivery, it shall be based on the completion and acceptance date of each phase of construction or the delivery date of each batch of equipment. The same applies to orders made under the same purchase order document in bulk.
3. Technology purchased for use in production or operation shall be based on the date of acquisition.
For technology purchases that constitute an integral part of a system and cannot be separated, they may be determined in accordance with the preceding subparagraph.

Article 4

Undistributed surplus earnings for the year 2018 and subsequent years of a company or limited partnership, which have been used for the actual expenditure to construct or purchase buildings, software or hardware equipment, or technology for use in production or operation, before being filed the tax return of the undistributed surplus earnings in accordance with Article 102-2 of the Income Tax Act, and which reach the amount specified in Paragraph 1 of the preceding article, may be reported as deduction items from the undistributed surplus earnings for the current year in the prescribed format when being filed the tax return of the undistributed earnings for the current year. The following documentary evidence shall be attached with the tax return and submitted to the tax authority for verification of the investment amount:

1. Copies of the original certificates such as contract documents for construction or purchase, the inventory of property, uniform invoices, import declarations or receipts, proof of completion of delivery and acceptance, and payment receipts. In a

constructing buildings case, detailed cost breakdowns, usage licenses, or acceptance certificates are required attached.

For self-made software or hardware equipment, cost breakdowns, records of transfer to own use, or relevant proofs are also required attached.

2. Other relevant documentary evidence.

The format of the filing form specified in the preceding paragraph shall be prescribed by the Ministry of Finance.

Article 5

According to Article 3, a company or limited partnership may make investments with its undistributed surplus earnings, which are derived from the year 2018 and subsequent years, after it has filed the tax return of the undistributed surplus earnings in accordance with Article 102-2 of the Income Tax Act. If the above investments have reached the threshold specified in Paragragh 1, Article 3, in order to recognize the actual investment expenditure as a deduction to the said undistributed surplus earnings, the company or the limited partnership shall file the form and provide relevant certificates prescribed in the first paragraph of the preceding article within one year from the completion of the investment, and apply for the recalculation of the said undistributed surplus earnings to the tax authority for the refund of overpaid taxes.

A company or limited partnership must complete investments within three years from the year after such earnings are derived to be eligible to apply for the refund of overpaid tax under the preceding paragraph. The date when a company or limited partnership completes investment shall be deemed to occur on the final investment date specified in Paragraph 3, Article 3.

Article 6

A company or limited partnership, making a substantial investment with its current year's earnings and claiming a deduction according to the preceding two articles, shall make tax payments to the tax authority due to the deduction or refund that have been claimed within three years from the day following the completion of the undistributed surplus earnings declaration period or from the day following the application for correction and recalculation of the undistributed surplus earnings for that year if the building, software or hardware equipment, or technology, constructed or purchased with its current year's earnings, is leased, rented, resold, returned, or original use changed rather than for its production or operation. Interest due to the tax payments accrues daily at the fixed interest rate for a one-year postal savings time deposit from the day following the expiration of the current year's undistributed surplus earnings declaration period or the day following the receipt of tax

refunds until the date of payment, and these amounts shall be collected together. However, those do not apply in cases where a company undergoes a merger, consolidation, division,
or acquisition under Article 27 or Article 28 of the Business Mergers and Acquisitions Act, and transfers its assets to a surviving or newly established company after the merger or consolidation, to a surviving or newly established company after division,
or to an acquired company, continuing to use them for production or operation. A company or limited partnership applying under these regulations to use current year's earnings for substantial investment in the construction or
purchase of buildings, equipment, and technology, if found by the tax authority to have falsely reported such expenditures, shall be subject to penalties for income tax omission or under-reported as stipulated by the Income Tax Act. Additionally, their eligibility
for incentives shall be terminated and recover the incentive benefits in accordance with the provisions of the Tax Collection Act.

Article 7

These Regulations shall enter into force on the date of promulgation.

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