Content

Title：	Regulations Governing Application of Income Tax Deferral in Accordance with the Act for the Development of Biotech and Pharmaceutical Industry Ch
Date：	2022.08.25
Legislative：	Promulgated by Decree No. 11104620870 issued by the Ministry of Finance on August 25, 2022.
Content：	Article 1 These Regulations are enacted pursuant to Paragraph 9, Article 9 and Paragraph 5, Article 10 of the Act for the Development of Biotech and Pharmaceutical Industry (hereinafter referred to as the “Act”). Article 2 Where a biotech and pharmaceutical company issues new shares to its top executives as bonus or compensation, or to its technology investors in return for their contribution of technology know-how, and such recipients elect to apply income tax deferral on all such shares in accordance with Paragraph 1, Article 9 of the Act, and the biotech and pharmaceutical company applies for and receives confirmation on the applicability of income tax deferral from the competent authority in accordance with the relevant regulations, the company shall, for each year from the year in which the shares are acquired or become disposable by the top executives or the technology investors to the taxable year, fill out the profit-seeking enterprise income tax return and tax reduction and exemption statement in the prescribed format when filing its annual profit-seeking enterprise income tax return. When filing the profit-seeking enterprise income tax return for the year in which the shares are acquired or become disposable by the top executives or the technology investors, the company shall also submit the following documents: 1. A photocopy of the confirmation document issued by the competent authority confirming the shares acquired by the top executives as bonus or compensation, or by the technology investors as consideration for their contribution of technology know-how. 2. Documents related to capital increase, such as minutes of board of directors meetings, minutes of shareholders’ meetings, and supporting documents before and after the company registration or any amendment thereto. 3. A photocopy of the document evidencing the top executive’s acquisition of the shares as bonus or compensation, or the technology assignment or license agreement pertaining to the subscription of shares by the

technology investor. The document shall specify the type of shares acquired, the issue price per share, and the number of shares acquired; and for technology know-how contributions, the agreement shall also specify the total amount of consideration for the assignment or license of technology.
4. A statement of election to apply income tax deferral by the top executive or technology investor.

The term “taxable year” as referred to in the preceding paragraph is the year in which the shares acquired by the top executive or technology investor are actually transferred or book-entry transferred to the custody account with the securities firm or custodian institution.

Where a top executive has held the shares and has continued to be employed by the company for at least two years, or where an individual technology investor has held the shares and has continued to provide services relating to his or her technology know-how to the company for at least two years, thereby meeting the requirements specified in Paragraph 2, Article 9 of the Act, the biotech and pharmaceutical company shall, when filing the annual profit-seeking enterprise income tax return for the year in which the requirements are met, submit, together with the return, a photocopy of the letter of recordation from the competent authority confirming that the requirements have been met.

Article 3

The top executive or technology investor that elects to apply income tax deferral in accordance with Paragraph 1 of the preceding article shall, when the shares are actually transferred or book-entry transferred to such person’s custody account with the securities firm or custodian institution, treat the actual transfer price of the shares, the market value at the time of a gift or distribution as an inheritance, or the market value on the date of the book-entry transfer as the gross income for the taxable year in which the actual transfer or book-entry transfer occurs, and shall compute and report such income in accordance with the Income Tax Act.

Where the top executive or individual technology investor meeting the requirements under Paragraph 2, Article 9 of the Act calculates and reports income tax in accordance with the preceding paragraph, if the transfer price of the shares, the market value at the time of a gift or distribution as part of an inheritance, or the market value on the date of the book-entry transfer is higher than the market value or price on the date the shares were acquired or became disposable, such market value or price on the date the shares were acquired or became disposable shall be treated as the gross income for the year of the actual transfer or book-entry transfer.

The term “transfer” as used in the preceding two paragraphs refers to a change in share ownership resulting from a sale, gift, distribution upon inheritance (upon the commencement of succession), cancellation of shares for capital reduction, company liquidation, or other causes.

Where an individual technology investor calculates income in accordance

with Paragraph 1 or 2 and is unable to provide supporting documents for costs or expenses, such costs and expenses shall be calculated as 30% of the gross income and deducted accordingly.

Once the shares referred to in Paragraph 1 have been book-entry transferred to the custody account of the top executive or technology investor with the securities firm or custodian institution, no application may be filed to reinstate the deferral of income tax or change the timing of taxation.

The biotech and pharmaceutical company shall specify the tax provisions referred to in the preceding five paragraphs in both the statement signed by the top executive or technology investor electing to apply income tax deferral and the share certificates.

Article 4

Where a top executive or technology investor of a biotech and pharmaceutical company subscribes for shares by exercising stock warrants in accordance with Paragraph 5, Article 10 of the Act and elects to apply income tax deferral on all such shares, the documents that the biotech and pharmaceutical company shall submit when filing the profit-seeking enterprise income tax return and the method for calculating the income of the top executive or technology investor when the causes for the tax deferral of the shares ceases to exist or the shares are transferred, shall be subject to the preceding two articles, and the subscription price per share shall be specified in the documents required under Subparagraph 3, Paragraph 1, Article 2.

Article 5

Where new shares are acquired in accordance with Article 9 of the Act, the date on which the biotech and pharmaceutical company delivers the shares shall be the date on which a top executive or technology investor acquires the shares.

The term “date of delivery” as used in the preceding paragraph refers to, where the shares are delivered by book-entry transfer, the date designated by the company or its stock agency for such book-entry transfer; and where the shares are not delivered by book-entry transfer, the first day on which the shares may be claimed as designated by the company or its stock agency. However, where a certificate of entitlement to new shares or a certificate of payment is delivered prior to the delivery of the shares, the date on which the book-entry transfer is made or the date on which such certificates are delivered shall apply.

Where a top executive or technology investor subscribes for shares by exercising stock warrants in accordance with Article 10 of the Act, the date on which such rights are exercised shall be the date on which the shares are acquired.

The term “date on which such rights are exercised” as used in the preceding paragraph refers to the date on which the shares are delivered by the biotech and pharmaceutical company or its stock agency in accordance

with applicable rules. However, where a certificate of payment is delivered prior to the delivery of the shares, the date on which such certificate is delivered shall apply.

Where the shares referred to in Paragraphs 1 and 3 are subject to a restricted transfer period, the date on which such shares may be disposed of shall be determined as follows:

1. Where the restricted employee shares are specified in Paragraph 9, Article 267 of the Company Act, the date shall be the date on which the vesting conditions are met. Where the shares are held in a centralized depository, the date shall be the date on which the Taiwan Depository and Clearing Corporation removes the restriction markings on the restricted employee shares; where the shares are held in a trust, the date shall be the date on which the trustee transfers the shares to the employee's account.
2. Where the shares are other than those referred to in the preceding subparagraph, the date shall be the date following the expiration of the restricted transfer period.

Article 6

Where a top executive or technology investor is subject to Paragraph 1, Article 9 or Paragraph 5, Article 10 of the Act, the tax withholder shall be exempt from withholding tax in accordance with Article 88 of the Income Tax Act when delivering the shares.

Where a biotech and pharmaceutical company's application for confirmation under Paragraph 6, Article 9 or Paragraph 5, Article 10 of the Act is rejected by the competent authority, the tax withholder shall, within one month from the date on which the rejection letter is served on the biotech and pharmaceutical company, make the supplementary withholding and payment of the tax withheld, submit the Withholding and Non-Withholding Tax Statement to the tax collection authority, and issue the withholding tax statement to the taxpayer.

Where a biotech and pharmaceutical company has its approval letter revoked in accordance with Paragraph 3, Article 4 of the Regulations Governing the Approval of Biotech and Pharmaceutical Companies, the tax withholder shall, within one month from the date on which the revocation letter is served on the biotech and pharmaceutical company, make the supplementary withholding and payment of the tax withheld, submit the Withholding and Non-Withholding Tax Statement to the tax collection authority, and issue the withholding tax statement to the taxpayer.

Where a biotech and pharmaceutical company has its approval letter terminated by the competent authority in accordance with Paragraph 3, Article 4 of the Regulations Governing the Approval of Biotech and Pharmaceutical Companies, Paragraph 1 of Article 3 and Article 4 shall apply to top executives and technology investors who acquired newly issued shares within the validity period of the approval letter; Paragraph 2 of Article 3 and Article 4 shall apply to top executives and individual technology investors who acquired shares within the validity period of the approval letter and have continued to be employed by or provide services relating to their technology know-how to the company for at least two

years.

Where a tax withholder completes the supplementary tax payment, files and issues the withholding tax statement within the time limit specified in Paragraph 2 or 3, it may be exempt from the interest and penalties prescribed in Articles 111 and 114 of the Income Tax Act; if it fails to do so within the time limit, it shall be subject to the penalties prescribed in the aforementioned provisions of the Income Tax Act.

Article 7

Biotech and pharmaceutical companies shall, in accordance with Paragraph 1, Article 16 of the Act, submit to the tax collection authority a statement of the transferred shares in the prescribed format by January 31 of the year following the actual transfer or book-entry transfer of the shares, and issue the withholding tax statement to the taxpayer by February 10. Where three national holidays occur in succession in January, the period for the submission of the tax statements shall be extended to February 5, and the period of the issuance of such statements shall be extended to February 15.

Where a top executive or technology investor sells shares that are subject to Articles 9 and 10 of the Act through a centralized securities exchange or an over-the-counter market, the securities firm shall notify the biotech and pharmaceutical company of the date of the share transfer, the number of shares transferred, and the transaction price on the business day following the transaction.

Article 8

These Regulations shall be effective from January 1, 2022 to December 31, 2031.

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