

General Explanation of the Draft Amendment to the articles 44-2 and 52-1 of the Business Mergers and Acquisitions Act

General Explanation

The Business Mergers and Acquisitions Act ("this Act") was promulgated and enacted on February 6, 2002. It has been subject to three amendments, the most recent promulgated on June 15, 2022. As the prosperity of industries, which contributes to enhancing corporate revenues and individual income, and thus expands the tax base and generates tax revenue, stimulating the industrial development environment in Taiwan, improving the international competitiveness of small and medium-sized enterprises (SMEs), and helping them break through growth bottlenecks has become a key policy direction. One such policy is to encourage companies to establish industrial holding companies. As a company can become a holding company through share exchange, shareholders may face immediate tax liabilities, which could reduce their willingness to do this, to increase the willingness to form holding companies, tax incentives are proposed, and, accordingly, amendments to Articles 44-2 and 52-1 of this Act have been drafted. The key points of the proposed amendments are as follows:

1. If a company is acquired under Article 29 of this Act by any other surviving or newly incorporated company as a 100% held subsidiary company, and the acquiring company, the acquired company, and its shareholders meet certain requirements, and the acquiring company is recognized as an industrial holding company by the NDC, the shareholders may, in exchange for transferring their shares in the acquired company to the industrial holding

company as consideration for subscribing to new shares issued by or as capital for initiating the industrial holding company, choose to exclude the securities transaction gains in the basic income for the year in which the share exchange takes place. They may instead defer reporting until the actual transfer or book-entry transfer into a designated securities custodial account. (Amended Article 44-2)

2. To comply with the provisions of Paragraph 5, Article 44-2, which stipulate that the reporting requirements to the tax collection authority must be followed, a penalty provision is added for industrial holding companies that violate this obligation. (Amended Article 52-1)

**Comparison table of Draft amendment to Articles 44-2 and 52-1 of
the Business Mergers and Acquisitions Act**

Amended article	Current article	Explanation
<p>Article 44-2</p> <p>To encourage enterprises to form industrial holding companies and enhance international competitiveness, within five years from the effective date of this Article, if a company is acquired under Article 29 by any other surviving or newly incorporated company as a 100% held subsidiary company, and the acquiring company, the acquired company, and its shareholders meet certain requirements, and the acquiring company is recognized as an industrial holding company by the National Development Council, the shareholders may, in exchange for transferring their shares in the acquired company to the industrial holding company as consideration for subscribing to new shares issued by or as capital for initiating the industrial holding company, choose to exclude the securities transaction gains in the basic income for the year in which the share exchange takes place. Once this choice is made, it cannot be changed. For those who choose not to include the gains in the year of share conversion, when they actually</p>		<ol style="list-style-type: none"> 1. This article is newly added. 2. As the prosperity of industry helps increase corporate revenue and individual income, expanding the tax base and generating tax revenue, stimulating Taiwan's industrial development environment, enhancing the international competitiveness of small and medium-sized enterprises (SMEs), and assisting in break through growth bottlenecks, encouraging companies to establish industrial holding companies has become an important policy direction. Since companies may form industrial holding companies through share exchange, shareholders could face immediate taxation, which may reduce their willingness to do this. Paragraph 1 thus stipulates that income from such securities transactions may be excluded from the basic income of the year in which the conversion occurs, and declared only upon actual transfer or when the shares are entered in a designated securities custodial account. 3. Paragraph 1 stipulates the duration of

<p>transfer the industrial holding company's shares or transfer such shares into a book-entry account opened for securities custody, the full transfer price, fair market value at the time of gift or inheritance distribution, or market value on the date of book-entry transfer shall be recognized as income in the year of the transfer or book-entry. After deducting the acquisition cost or expenses of the transferred shares of the acquired company, the gains from the transaction of the industrial holding company's shares shall be calculated. The shareholding period shall be calculated from the date the shareholder held shares in the acquired company to the date the industrial holding company's shares are transferred or booked, and the income tax shall be declared and levied according to the provisions of the Income Basic Tax Act.</p> <p>The acquiring company described above must apply for recognition as an industrial holding company from the NDC before January 31 of the year following the share exchange, using the prescribed format and submitting relevant documents. Late applications will not be</p>		<p>implementation for this tax measure according to Article 6, Paragraph 1 of the Taxpayer Rights Protection Act. Paragraph 1 also outlines the requirements that acquiring companies, target companies, and their shareholders must meet to apply deferred taxation. This ensures the achievement of the policy objective of synergy in business operations of the formation of industrial holding companies.</p> <p>4. Paragraph 2 specifies the deadline for the acquiring company receiving the shares to apply to the National Development Council for recognition as an industrial holding company, as well as for reporting to the local tax authority.</p> <p>5. Paragraph 3 defines the term "transfer" mentioned in Paragraph 1. Share ownership changes due to mergers, dissolutions, spin-offs, or acquisitions involving the industrial holding company are all considered transfers.</p> <p>6. Paragraph 4 states that if the shareholders of the acquired company, who have opted for and been approved for deferred taxation, later find that the acquiring company's recognition as an industrial holding company is revoked or terminated, or if the acquiring company, target company, or their shareholders fail to meet</p>
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<p>accepted. The NDC shall notify the recognition result by March 31. If recognized as an industrial holding company, it must, within 15 days of receiving the recognition letter, submit the required documents according to the format prescribed by the Ministry of Finance (MOF) to the local tax authority where the company is located, to apply for the shareholders of the acquired company to defer income tax as stated above. Late applications will not be accepted. Only after approval may the shareholders of the acquired company apply the tax deferral provisions.</p> <p>The term "transfer" in Paragraph 1 includes sale, exchange, gift, inheritance distribution, share cancellation due to capital reduction, liquidation, mergers, or any other causes resulting in the change of ownership of the shares.</p> <p>If the shareholders of the acquired company choose to defer taxation by excluding the securities transaction gains from the basic income in the year of share exchange under Paragraphs 1 and 2, and the acquiring company's recognition as an industrial holding company is later revoked or annulled, or if the</p>		<p>the specified requirements, then the shareholders will be deemed ineligible for the deferred tax benefit from the start. The securities transaction income at the time of the share exchange must thus be included in the basic income for that year, and the outstanding taxes and interest must be calculated and paid accordingly.</p> <p>7. With reference to Article 67-1 of the Statute for Industrial Innovation and Article 16 of the Act for the Development of Biotech and Pharmaceutical Industry, Paragraph 5 stipulates that industrial holding companies are responsible for notifying the tax authority with relevant taxation information when shareholders subsequently transfer or reallocate shares of the holding company, and such transactions are subject to income tax.</p>
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<p>acquiring company, acquired company, or shareholders no longer meet the prescribed requirements, the shareholders of the acquired company must, within a specified period from the date of revocation, annulment, or non-compliance, include the securities transaction gains from the time of share exchange in the basic income of that year and calculate the supplementary income tax payable. Interest calculated on a daily basis from the day following the annual income tax filing deadline for the year of exchange to the date of payment, based on the fixed rate for one-year postal savings time deposits on January 1 of each respective year, must also be paid together.</p> <p>When shareholders who have selected to defer taxation under Paragraph 1 actually transfer or book-entry the industrial holding company's shares into a securities custody account, the industrial holding company must report the details of the transferred or booked shares to the competent tax authority using the format prescribed by the MOF by January 31 of the year following the transfer or book-entry. If there is a period of more than three consecutive national</p>		
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<p>holidays in January of the following year, the deadline is extended to February 5. However, if the industrial holding company is dissolved due to liquidation, merger, or division, it shall report to the competent tax authority within ten days from the day after liquidation is completed or from the day after the competent authority approves the registration change.</p> <p>The criteria for recognition of industrial holding companies under Paragraph 1, procedures for application under Paragraph 2, prescribed formats, required documents, and other related matters shall be prescribed by the NDC in conjunction with the MOF.</p> <p>The specific requirements that the acquiring company, acquired company, and their shareholders must meet under Paragraph 1; the procedures for shareholders to choose tax deferral; calculation rules for deferred securities transaction gains; procedures for applying to the tax authority for tax deferral under Paragraph 2; required documents; calculation and payment procedures for supplementary income tax under Paragraph 4; and other related matters shall</p>		
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be prescribed by the MOF.		
Chapter 5-1: Penalties (Newly Added)		"Addition of Chapter 5-1: Special Chapter on Penalties"
<p>Article 52-1: If an industrial holding company violates the provisions of Paragraph 5, Article 44-2, by failing to report within the prescribed time limit or by providing false or incomplete information, the tax collection authority shall, in addition to ordering the company to make a supplementary report within a specified period, impose a fine from NT\$50,000 to NT\$500,000.</p> <p>If the company fails to make the supplementary report within the deadline set by the tax collection authority, a fine from NT\$100,000 to NT\$1,000,000 shall be imposed.</p>		<ol style="list-style-type: none"> 1. This article is newly added. 2. In line with Article 44-2, Paragraph 5, which stipulates compliance with the reporting requirements to the tax authority, and with reference to Article 67-1 of the Statute for Industrial Innovation and Article 16 of the Act for the Development of Biotech and Pharmaceutical Industry, penalty provisions are newly added for industrial holding companies that violate their reporting obligations.