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)

 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

Amended article	Current article	Explanation
Article 44-2		1. This article is newly
To encourage enterprises		added.
to form industrial holding		2. As the prosperity of
companies and enhance		industry helps increase
international		corporate revenue and
competitiveness, within		individual income,
five years from the		expanding the tax base
effective date of this		and generating tax
Article, if a company is		revenue, stimulating
		Taiwan's industrial
acquired under Article 29		development
by any other surviving or		environment, enhancing
newly incorporated		the international
company as a 100% held		competitiveness of small
subsidiary company, and		and medium-sized
the acquiring company, the		enterprises (SMEs), and
acquired company, and its shareholders meet certain		assisting in break through
		growth bottlenecks,
requirements, and the		encouraging companies to
acquiring company is		establish industrial
recognized as an industrial		holding companies has
holding company by the		become an important
National Development		policy direction. Since
Council, the shareholders		companies may form
may, in exchange for		industrial holding
transferring their shares in		companies through share
the acquired company to		exchange, shareholders
the industrial holding		could face immediate
company as consideration		taxation, which may
for subscribing to new		reduce their willingness to
shares issued by or as		do this. Paragraph 1 thus
capital for initiating the		stipulates that income
industrial holding		from such securities
company, choose to		transactions may be
exclude the securities		excluded from the basic
transaction gains in the		income of the year in
basic income for the year in which the share		which the conversion
		occurs, and declared only
exchange takes place.		upon actual transfer or
Once this choice is made,		when the shares are
it cannot be changed. For		entered in a designated
those who choose not to		securities custodial
include the gains in the		account.
year of share conversion,		3. Paragraph 1 stipulates the
when they actually		duration of

## the Business Mergers and Acquisitions Act

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<ul> <li>provisions of the Income</li> <li>Basic Tax Act.</li> <li>The acquiring company</li> <li>described above must</li> <li>apply for recognition as an</li> <li>industrial holding</li> <li>company from the NDC</li> <li>before January 31 of the</li> <li>year following the share</li> <li>exchange, using the</li> <li>prescribed format and</li> <li>submitting relevant</li> <li>documents. Late</li> <li>holding company are an</li> <li>considered transfers.</li> <li>6. Paragraph 4 states that if</li> <li>the shareholders of the</li> <li>acquired company, who</li> <li>have opted for and been</li> <li>approved for deferred</li> <li>taxation, later find that the</li> <li>acquiring company's</li> <li>recognition as an</li> <li>industrial holding</li> <li>company is revoked or</li> <li>terminated, or if the</li> <li>acquiring company, target</li> <li>company, or their</li> </ul>		
Basic Tax Act.Considered transfers.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. Late6. 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		holding company are all
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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		the shareholders of the
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company from the NDCtaxation, tater 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		approved for deferred
before January 31 of the year following the share exchange, using the prescribed format and submitting relevant documents. Late List time to the state before January 31 of the recognition as an industrial holding company is revoked or terminated, or if the acquiring company, target company, or their	0	taxation, later find that the
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year following the share exchange, using the prescribed format and submitting relevant documents. Late industrial holding company is revoked or terminated, or if the acquiring company, target company, or their	•	1 0 1 0
exchange, using the prescribed format and submitting relevant documents. Late Company is revoked or terminated, or if the acquiring company, target company, or their		-
prescribed format and submitting relevant documents. Late terminated, or if the acquiring company, target company, or their		-
submitting relevant acquiring company, target company, or their	1	
documents. Late company, or their	0	-
shareholders half to meet	applications will not be	shareholders fail to meet

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accepted. The NDC shall		the specified
notify the recognition		requirements, then the
result by March 31. If		shareholders will be
recognized as an industrial		deemed ineligible for the
holding company, it must,		deferred tax benefit from
within 15 days of		the start. The securities
receiving the recognition		transaction income at the
letter, submit the required		time of the share
documents according to		exchange must thus be
the format prescribed by		included in the basic
the Ministry of Finance		income for that year, and
(MOF) to the local tax		the outstanding taxes and
authority where the		interest must be calculated
company is located, to		and paid accordingly.
apply for the shareholders		7. With reference to Article
of the acquired company		67-1 of the Statute for
to defer income tax as		Industrial Innovation and
stated above. Late		Article 16 of the Act for
applications will not be		the Development of
accepted. Only after		Biotech and
approval may the		Pharmaceutical Industry,
shareholders of the		Paragraph 5 stipulates that
acquired company apply		industrial holding
the tax deferral provisions.		companies are responsible
the tax defental provisions.		for notifying the tax
The term "transfer" in		authority with relevant
		taxation information when
Paragraph 1 includes sale,		shareholders subsequently
exchange, gift, inheritance		transfer or reallocate
distribution, share		shares of the holding
cancellation due to capital		company, and such
reduction, liquidation,		transactions are subject to
mergers, or any other		income tax.
causes resulting in the		
change of ownership of		
the shares.		
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		
,	1	

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
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
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
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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
within a specified period from the date of revocation, annulment, or non-compliance, include the securities transaction gains from the time of
from the date of revocation, annulment, or non-compliance, include the securities transaction gains from the time of
revocation, annulment, or non-compliance, include the securities transaction gains from the time of
non-compliance, include the securities transaction gains from the time of
the securities transaction gains from the time of
gains from the time of
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.
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

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.	
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.	
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	

be prescribed by the MOF.	
Chapter 5-1: Penalties	"Addition of Chapter 5-1:
(Newly Added)	Special Chapter on
	Penalties"
Article 52-1:	1. This article is newly
If an industrial holding	added.
company violates the	2. In line with Article 44-2,
provisions of Paragraph 5,	Paragraph 5, which
Article 44-2, by failing to	stipulates compliance with
report within the prescribed	the reporting requirements
time limit or by providing	to the tax authority, and
false or incomplete	with reference to Article
information, the tax	67-1 of the Statute for
collection authority shall, in	Industrial Innovation and
addition to ordering the	Article 16 of the Act for
company to make a	the Development of
supplementary report within	Biotech and Bharman anti-and Industry
a specified period, impose a	Pharmaceutical Industry,
fine from NT\$50,000 to	penalty provisions are
NT\$500,000.	newly added for industrial holding companies that
If the company fails to	violate their reporting
make the supplementary	obligations.
report within the deadline	oongations.
set by the tax collection	
authority, a fine from	
NT\$100,000 to	
NT\$1,000,000 shall be	
imposed.	