
Chapter 1

INTRODUCTION

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TAIWAN'S TAX SYSTEM

¶1-010 Overview of Taiwan's tax system

In Taiwan, each tax is legislated under a specific tax law. The most significant tax law is the Act Governing the Allocation of Government Revenues and Expenditures. Classified as national and municipality, county or city taxes, different tax scopes are applied by the district range in which the government has divided the country's tax system. For example, national taxes are allocated to the central government, while municipality, as well as county and city taxes, are allocated to the local governments of special municipalities, counties and cities.

From a tax perspective, the investment environment in Taiwan is internationally competitive. The Act for Industrial Innovation, which was enacted in May 2010, provides an income tax credit for innovation related to research and development (R&D) expenses incurred by Taiwan-based enterprises at their facilities located in Taiwan. The Act allows a company to take a credit against its tax payable up to 15% of its total R&D expenditure for the current year. The tax credit is capped at 30% of the taxpayer's corporate income tax payable for the current year.

The Taiwan tax system bears many similarities to the systems in Europe and the United States (US). Based on the information provided by the government, the tax law is clearly defined, taxpayer protection is reliable and the tax filling process is relatively simple and straightforward. Tax collection by the tax offices is characterized by fairness and a high degree of accessibility.

¶1-020 Income taxes

Profit-seeking enterprise tax

For corporate investors, the Income Tax Act is the most relevant tax law. The income tax rate is currently 17% for corporations, labeled as "profit-seeking enterprises" in Taiwan. In addition to income tax, the other major taxes for companies are the business tax, customs duty and commodity tax on certain goods. With respect to business tax, most business entities are subject to a value-added tax (VAT), except for financial institutions which are subject to the gross

business receipts tax. VAT will not result in a real tax burden for enterprises. The average nominal and effective tariff rates for customs duty purposes have been reduced gradually on an annual basis since Taiwan joined the World Trade Organization (WTO). Taiwan also follows the WTO's standards for customs duty collection to conform to international trend.

Profit-seeking enterprise income tax		
Imposed object and scope	Taxpayers	Regulation
Any profit-seeking enterprise based in Taiwan, regardless of organization structure, will be subject to profit-seeking enterprise income tax	Profit-seeking Enterprise.	Income Tax Act Enforcement Rules of the Income Tax Act Income Basic Tax Act Enforcement Rules of the Income Basic Tax Act Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing -

Source: Ministry of Finance (MOF)

Individual income tax

Individuals who have Taiwan-sourced income are liable to income tax in Taiwan. Taxpayers are subject to tax rates ranging from 5% to 45% according to their net taxable income, and they are eligible for exemptions as well as deductions. Non-Taiwan residents are subject to a tax rate of 18% on salary and separation pay, and 20% on other income. They are also eligible for exemptions and deductions.

¶1-030 Tax law classification

The Act Governing the Allocation of Government Revenues and Expenditures became effective in 1999. According to the law surrounding this Act, taxes are classified as follows:

- National taxes which consist of income tax (individual income tax and profit-seeking enterprise income tax), estate and gift tax, customs duty, business tax, commodity tax, tobacco and alcohol tax, securities transactions tax and futures transactions tax.
- Municipality and county/city taxes which consist of land tax (land value tax, agricultural land tax and land value increment tax), house tax, vehicle license tax, deed tax, stamp tax and amusement tax.

Taiwan's tax system and structure is comparable to those in countries such as the Organization for Economic Cooperation and Development (OECD) nations. According to the Yearbook of Tax Statistics compiled by the Ministry of Finance (MOF), the proportion of direct taxes in total tax revenue rose from 54.8% to 62.0% between 2003 and 2015, while that of indirect taxes declined from 45.2% to 38.0%, and the proportion of direct taxes in that period increased by 7.2%.

In practice, Taiwan's tax structure has undergone changes in tandem with the government's efforts in tax reform (equitable and rational tax system policy).

¶1-040 Tax authorities

Central government - MOF

The MOF is the highest administrative authority for tax purposes. Becoming effective in 2013, the government created a new organization structure to carry out transactions of tax collection effectively. MOF then established regional taxation bureaus (formerly called administrations) under the Organic Statute for the Regional National Taxation Bureaus. The bureaus created under this restructuring are responsible for research and development, planning and design, execution and performance appraisal of national tax collection transactions. They are also responsible for the dissemination of national taxation laws and regulations and taxation payment services as well as the examination, inspection, review of national taxes. In terms of enforcement of tax law, the bureaus must also be hold accountable of enforcement.

Total Net Tax Revenues and Budget Amount

Total Net Tax Revenues and Budget Amount			
CY 2015 Unit: NT\$ thousand; %			
Item of Tax	Net Tax Revenues	Budget Amount	% of Budget Amount
Grand Total	2,134,857,093	1,947,069,583	109.6
Customs Duties	110,977,956	110,000,000	100.9
Income Tax	936,730,879	775,125,556	120.8
Profit-seeking Enterprise Income Tax	462,784,445	392,746,667	117.8
Individual Income Tax	473,946,434	382,378,889	123.9
Estate and Gift Tax	32,735,575	25,751,000	127.1
Estate Tax	18,354,890	15,449,000	118.8
Gift Tax	14,380,685	10,302,000	139.6
Commodity Tax	183,130,790	174,136,667	105.2
Securities Transaction Tax	82,032,932	94,027,000	87.2
Futures Transaction Tax	3,783,497	2,249,000	168.2
Tobacco and Alcohol Tax	44,160,168	43,712,500	101.0
Specifically Selected Goods and Services Tax	4,191,738	4,560,000	91.9
Business Tax	335,761,368	339,437,908	98.9
Land Tax	184,598,397	171,716,611	107.5
Land Value Tax	71,141,328	70,674,763	100.7

Total Net Tax Revenues and Budget Amount			
CY 2015 Unit: NT\$ thousand; %			
Item of Tax	Net Tax Revenues	Budget Amount	% of Budget Amount
Land Value Increment Tax	113,457,069	101,041,848	112.3
House Tax	69,421,961	66,373,895	104.6
Vehicle License Tax	61,679,154	59,314,522	104.0
Deed Tax	13,826,660	12,427,259	111.3
Stamp Tax	11,285,336	9,998,636	112.9
Amusement Tax	1,632,574	1,516,754	107.6
Special and Provisional Tax Levies	666,530	760,788	87.6
Education Surtax	7,393	–	–
Financial Enterprises Business Tax	25,137,156	24,461,487	102.8
Health and Welfare Surcharge on Tobacco Levies	33,097,029	31,500,000	105.1

Source: MOF

Total Net Tax Revenues – by Direct and Indirect Taxes

Total Net Tax Revenues – by Direct and Indirect Taxes			
CY 2015 Unit: NT\$ thousand			
Direct Taxes		Indirect Taxes	
Amount	%	Amount	%
1,323,137,294	62.0	811,719,799	38.0

Source: MOF

A. Taxation Agency, MOF

The Taxation Agency is a subordinate agency of the MOF. It is responsible for the enforcement of national tax laws (except for the Customs Law) and the collection of national taxes (except customs duty).

B. Other MOF tax subordinate bureaus:

There are currently five subordinate bureaus under MOF:

- National Taxation Bureau of Taipei;
- National Taxation Bureau of Kaohsiung;
- National Taxation Bureau of the Northern Area;
- National Taxation Bureau of the Central Area; and
- National Taxation Bureau of the Southern Area.

C. County and city tax offices

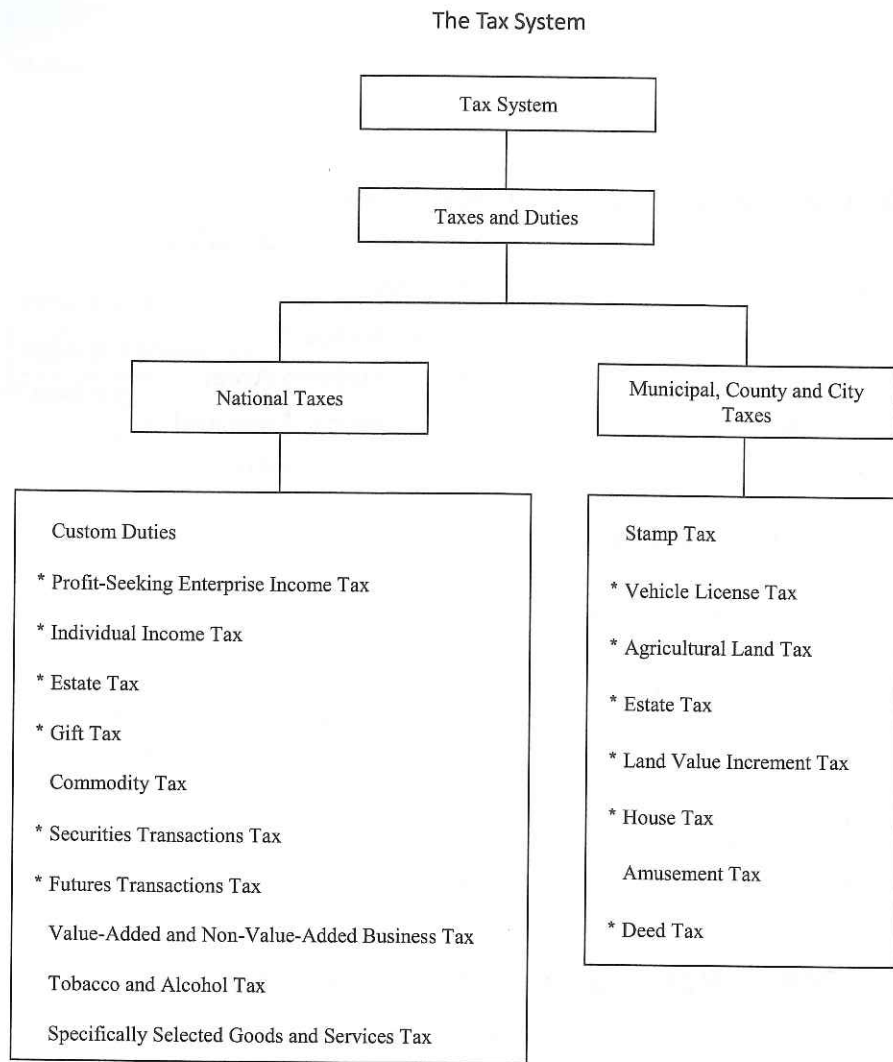
The county and city tax offices are subordinate agencies of the county or city government. These are established to collect municipal taxes.

County and city governments have their own tax offices in charge of the collection of county and city taxes. These tax offices may, in view of the administrative divisions and business conditions of the area, set up branches as local level collection units. County and city tax offices are subordinate organs of the county and city governments concerned, performing tax collection tasks on orders from the magistrate of the county or the mayor of the city, and are directed and supervised by the county and city government concerned, as well as the Finance Bureau.

¶1-050 National and municipal taxes

Taiwan classifies all taxes into two categories:

- National taxes: income tax (individual income tax and profit-seeking enterprise income tax), estate and gift tax, customs duty, business tax, commodity tax, tobacco and alcohol tax, securities transactions tax and futures transactions tax; and
- Municipality and county/city taxes: taxes on land (land value, agricultural land and land value increment taxes), house, vehicle license, deed, stamp and amusement.



* Direct Taxes

Source: MOF

¶1-060 Government tax incentives

The following table summarizes the different government tax incentives:

Eligible enterprises	Tax incentives	Explanation
Private institutions participating in major infrastructure projects	Exemption from profit-seeking enterprise income tax for a maximum period of 5 years from the year in which taxable income is derived after the commencement of operation of the project.	<ul style="list-style-type: none"> Stipulated in Art 36 of the Act for Promotion of Private Participation in Infrastructure Projects. The term "participating in a major infrastructure project" means that a private institution participates in an infrastructure project which is classified under the Scope of the Major Infrastructure Projects of the Act for Promotion of Private Participation in Infrastructure Projects.
Private institutions participating in major infrastructure projects	Tax credit of 5% to 20% of certain expenditures incurred against the profit-seeking enterprise income tax payable in the then current year.	<ul style="list-style-type: none"> Stipulated in Art 37 of the Act for Promotion of Private Participation in Infrastructure Projects.

Eligible enterprises	Tax incentives	Explanation
<p>Profit-seeking enterprises which subscribe or underwrite the registered stock issued by a private institution participating in a major infrastructure project upon its incorporation or expansion</p>	<p>If the amount of profit-seeking enterprise income tax payable in the then current year is less than the creditable amount, the balance thereof may be credited against the profit-seeking enterprise income tax payable in the 4 ensuing years. The amount of tax credit against the profit-seeking enterprise income tax payable in each year shall be limited to not more than 50% of the amount of profit-seeking enterprise income tax payable in the then current year for the private institution with the exception that this limitation shall not apply to the creditable amount in the last year of the said 4-year period.</p>	<ul style="list-style-type: none"> The certain expenditures incurred refer to the amount of funds invested in the equipment or technology used for construction or operation of the infrastructure project, disbursed for the procurement of equipment or technology for pollution control, or invested for R&D and personnel training.
<p>Profit-seeking enterprises which subscribe or underwrite the registered stock issued by a private institution participating in a major infrastructure project upon its incorporation or expansion</p>	<p>Tax credit of up to 20% of the price paid for acquisition of the stock against the profit-seeking enterprise income tax payable in the then current year where the profit-seeking enterprise has held such registered stock for a period of 4 years or more.</p>	<ul style="list-style-type: none"> Stipulated in Art 40 of the Act for Promotion of Private Participation in Infrastructure Projects.

Eligible enterprises	Tax incentives	Explanation
<p>Biotech and new pharmaceutical companies approved by the Ministry of Economic Affairs</p>	<p>If the amount of profit-seeking enterprise income tax payable is less than the creditable amount, the balance thereof may be credited against the profit-seeking enterprise income tax payable in the 4 ensuing years. The amount of tax credit against the profit-seeking enterprise income tax payable in each year shall be limited to not more than 50% of the amount of profit-seeking enterprise income tax payable in the then current year for the profit-seeking enterprise, with the exception that this limitation shall not apply to the creditable amount in the last year of the said 4-year period.</p>	<ul style="list-style-type: none"> Stipulated in Art 5 of the Act for the Development of Biotech and New Pharmaceutical Industry. The term "biotech and new pharmaceutical industry" refers to the industry that deals in new drugs and high-risk medical devices to be used in human beings, animals and plants
<p>Biotech and new pharmaceutical companies approved by the Ministry of Economic Affairs</p>	<p>Tax credit of up to 35% of the amount of funds invested for R&D and personnel training against the profit-seeking enterprise income tax payable for a period of 5 years, starting from the year in which the company begins to have payable profit-seeking enterprise income tax.</p>	<ul style="list-style-type: none"> Stipulated in Art 5 of the Act for the Development of Biotech and New Pharmaceutical Industry. The term "biotech and new pharmaceutical industry" refers to the industry that deals in new drugs and high-risk medical devices to be used in human beings, animals and plants

Eligible enterprises	Tax incentives	Explanation
	<p>If the R&D expenditure of the then current year is greater than the average R&D expenditure of the previous two years, or the personnel training expenditure of the then current year is greater than the average personnel training expenditure of the previous two years, 50% of the excess amount may be credited against the profit-seeking enterprise income tax payable.</p> <p>The amount of tax credit against the profit-seeking income tax payable in each year shall be limited to not more than 50% of the amount of profit-seeking enterprise income tax payable in the then current year for the biotech and new pharmaceutical company with the exception that this limitation shall not apply to the creditable amount in the last year of the said 5-year period.</p>	<ul style="list-style-type: none"> The term "biotech and new pharmaceutical company" refers to a company in the biotech and new pharmaceutical industry that is organized and incorporated in accordance with the Company Act and engages in the research, development and manufacture of new drugs and high-risk medical devices. The term "new drug" refers to a drug that has a new ingredient, a new therapeutic effect or a new administration method as verified by the central competent authorities. Companies which propose to apply to the Ministry of Economic Affairs for review and approval as a biotech and new pharmaceutical company shall meet the following requirements:

Eligible enterprises	Tax incentives	Explanation
		<p>(1) A company having carried out initial R&D of the biotech and new pharmaceuticals, having conducted pre-clinical trials, having received authorization from the national or international competent authority of the industry to proceed with human clinical trials or field testing or having been listed by or receiving a manufacturing permit from the national or international competent authority of the industry as being eligible to market or manufacture the biotech and new pharmaceuticals; however, the terms of these regulations are not applicable to the biotech and new pharmaceuticals for which the total work of the R&D has been carried out overseas.</p>

Chapter 4

WITHHOLDING TAX

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¶4-010 Overview

Withholding tax is an amount that is required to be withheld at the set rate by the payer on certain types of income at the time of payment. The amount withheld and paid to the tax authority is a credit against the tax payable by the person or entity receiving the payment. Withholding tax is also a means to reduce tax evasion. In Taiwan, sometimes the amount of tax withheld is a final tax which means that the taxpayer is not required to make further tax payment.

Types of income subject to withholding

Taxpayer	Type of Income
Non-resident, including the following: <ul style="list-style-type: none"> • Individual • Profit-seeking enterprise with no fixed place of business 	<ul style="list-style-type: none"> • Dividends distributed by a company • Surplus profit distributed by a cooperative, partnership or wholly-owned organization
Resident and non-resident, including the following: <ul style="list-style-type: none"> • Individual • Profit-seeking enterprise with fixed place of business • Profit-seeking enterprise with no fixed place of business 	<ul style="list-style-type: none"> • Salaries and wages • Interest • Rental income • Commissions • Royalties • Contest awards or lottery winnings • Pension income • Rewards for information or accusation • Income from transactions in structured products • Professional fees

Withholding agents

Under the withholding tax system, a payer who obliges to withhold tax from the income paid to the taxpayers and pays it to the tax authority is called a "withholding agent". Withholding agents include the following:

- Responsible persons of enterprises;
- Heads of the units responsible for tax withholding at the relevant organizations, institutions or schools;
- Practitioners of professions;
- Trustees of bankrupt estates; and
- Trustees of trust deeds.

¶4-020 Withholding tax rates

Tax rates for withholding are as follows:

Type of income	Individual		Profit-seeking enterprise	
	Resident	Non-resident	With fixed place of business	With no fixed place of business
Dividends	Not applicable	20%	Not applicable	20%
Salaries and wages	<ul style="list-style-type: none"> • Monthly salaries and wages are withheld as follows: <ol style="list-style-type: none"> (i) 5%; or (ii) based on the salary withholding schedule • Salaries and wages that are not paid monthly or salaries for part-time job: 5% and no withholding tax to be applied on the amount of each payment made by the withholding 	<ul style="list-style-type: none"> • 18% • Monthly salaries/wages which are under 1.5 times of the basic salary as assessed by the Executive Yuan: 6% 	Not applicable	Not applicable

Type of income	Individual		Profit-seeking enterprise	
	Resident	Non-resident	With fixed place of business	With no fixed place of business
	agent which is less than the standard withholding tax amount in accordance with the salary withholding tax table applied to a taxpayer who does not have a spouse or dependent			
Commissions	10%	20%	10%	20%
Interest	10%	<ul style="list-style-type: none"> • 20% • Interest derived from short-term commercial papers, securitized instruments, government/corporate/financial 	10%	<ul style="list-style-type: none"> • 20% • Interest derived from short-term commercial papers, securitized instruments, government/corporate/financial

		institution bonds, or conditional transactions: 15%		institution bonds, or conditional transactions: 15%
Rental income	10%	20%	10%	20%
Royalties	10%	20%	10%	20%
Contest awards or lottery winnings	<ul style="list-style-type: none"> • 10% • No withholding tax on government-sponsored lottery winnings less than or equal to NT\$2,000 per winning; withholding tax is 20% on such winnings over NT\$2,000 per winning 	<ul style="list-style-type: none"> • 20% • No withholding tax on government-sponsored lottery winnings less than or equal to NT\$2,000 per winning 	<ul style="list-style-type: none"> • 10% • No withholding tax on government-sponsored lottery winnings less than or equal to NT\$2,000 per winning; withholding tax is 20% on such winnings over NT\$2,000 per winning 	<ul style="list-style-type: none"> • 20% • No withholding tax on government-sponsored lottery winnings less than or equal to NT\$2,000 per winning

Type of income	Individual		Profit-seeking enterprise	
	Resident	Non-resident	With fixed place of business	With no fixed place of business
Professional fees	10%	20% (not applicable for individual income derived from written articles, copyrighted books, etc that do not exceed NT\$5,000 for each payment)	Not applicable	Not applicable
Pension income	6% on payment after deduction of certain exempted income.	18% on payment after deduction of certain exempted income.	Not applicable	Not applicable
Rewards for information or accusation	20%	20%	20%	20%
Income from transactions in structured products	10%	15%	10%	15%
Capital gains	Not applicable	Not applicable	No withholding tax	Not applicable

Income derived from international transportation, construction projects, furnishing of technical services and leasing of equipment by a foreign profit-seeking enterprise which has been approved by the Ministry of Finance (MOF) to fix a rate deemed as profit	Not applicable	Not applicable	Not applicable	20% of the deemed profits as calculated by multiplying the Taiwan-sourced revenue by a fixed rate as stated below:
Income derived by a foreign motion picture enterprise which has been approved by the MOF to fix a rate deemed as profit	Not applicable	Not applicable	10%	20% of the deemed profits
Other income	No withholding tax	No withholding tax	No withholding tax	20%

For the above income derived by an individual who is a resident, the withholding agent is not required to withhold tax if the tax to be withheld is NT\$2,000 or less. However, for the income below which is taxed separately from those reported in the annual income tax return, tax should still be withheld:

- (1) Interest from commercial papers attributable to the excess of the price at maturity over the price of initial issuance;
- (2) Interest distributed from beneficiary securities or asset-backed securities issued in accordance with the Financial Asset Securitization Act and the Real Asset Securitization Act;
- (3) Interest from government/corporate/financial institution bonds;
- (4) Interest attributable to the excess of the selling price at maturity over the purchase price from conditional transactions utilizing securities or short-term commercial papers in (1) to (3) above;
- (4) Government-sponsored lottery winnings;
- (5) Rewards for informers; and
- (6) Income from structured product transactions through security institutions or banks.

For payments of income to the same taxpayer amounting to a total of NT\$1,000 or less in a tax year, the withholding agent is not required to file a non-withholding report.

¶4-030 Time of withholding and payment

Time of withholding

The withholding agent withholds taxes at the time of payment at the prescribed tax rates. The time of payment refers to the time when actual payment, transfer payment or remittance payment is made.

Due date for payment

Withholding tax should be paid through the local banks together with the submission of the withholding tax form.

Taxpayer	Due date for payment
Resident	Before the 10th day of the following month
Non-resident	Within 10 days of the payment of income

If the due date falls on a Saturday, Sunday or public holiday, it can be extended to the next business day.

Due date for reporting

The withholding agent should prepare the withholding certificates and submit them to the tax authority for verifying the amount of tax withheld from the taxpayers in the preceding year.

Taxpayer	Due date for reporting
Resident	Before or on the last day of January of each year*
Non-resident	Within 10 days of the payment

* For the three national holidays occurring in immediate succession in January, the period for submission of the withholding certificates will be extended to 5 February.

Due date for issuance of withholding certificate

The withholding agent should issue a receipt of the withholding certificate to each of the taxpayers.

Taxpayer	Due date for reporting
Resident	Before or on 10 February of each year*
Non-resident	Within 10 days of the payment

* For the three national holidays occurring in immediate succession in January, the period for issuance of the certificates will be extended to 15 February.

¶4-040 Penalty provisions

- If a withholding agent fails to withhold taxes, withholds less than the tax due or fails to submit a withholding report, the collection authority must notify the agent to pay the deficiency and file a correct report within a specified period, and the withholding agent will be subject to a penalty not more than the amount which has not been withheld.
- If a withholding agent has withheld taxes and paid such to the Treasury, but fails to submit or file a withholding report

and receipt to the tax authority, the collection authority will notify the agent to file a correct report within a specific period, and a penalty of 20% of the taxes withheld, being not less than NT\$1,500 and not more than NT\$20,000, is levied on the withholding agent. The penalty is reduced to half of the amount if the withholding agent submits or files a withholding report and receipt before receiving the notice from the tax authority. In the event that the withholding agent fails to submit an accurate withholding report and receipt within the period prescribed in the notice, the penalty is increased to three times the tax withheld, being not less than NT\$3,000 and not more than NT\$45,000.

- If persons in charge of accounting for a government agency, enterprise, organization or school fail to submit withholding reports and receipts within the period prescribed by law, or the withholding reports and receipts submitted are inaccurate, they are subject to a fine at the request of the tax authority. If a private enterprise or business fails to submit a withholding report and receipts, or submits an inaccurate report and receipts within the period prescribed by law, the penalty is NT\$1,500 or 5% of the payment, being not less than NT\$3,000 and not more than NT\$90,000, whichever is higher.
- If a withholding agent appropriates the tax withheld, fails to pay or underpays the tax withheld, or fails to withhold any tax through fraudulent or other undue action, he or she is subject to a punishment of imprisonment for up to five years, detention or fine up to NT\$60,000.

Summary of penalties

Scenario	Penalty
Failure to withhold tax or under-withhold tax	<ul style="list-style-type: none"> • Supplementary within prescribed time limit: No more than the amount of tax which has not been withheld • Supplementary beyond prescribed time limit: No more than three times the amount of tax which has not been withheld

Tax has been withheld and paid, but failure to submit or file a withholding report and receipt to the tax authority	<ul style="list-style-type: none"> • Supplementary within prescribed time limit: 20% of the tax withheld (upper limit: NT\$20,000; lower limit: NT\$1,500) • Supplementary beyond prescribed time limit: Three times the tax withheld (upper limit: NT\$45,000; lower limit: NT\$3,000)
Surcharges for late payment of tax	1% of the tax unpaid for every two days

¶4-050 Current issues and disputes

Generally, Taiwan-sourced income paid to non-resident companies or individuals would be subject to withholding tax. Although there are related definitions for Taiwan-sourced income in the Income Tax Act, in practice, there are still many disputes between the tax payers/withholders and the Taiwan tax authority due to the ambiguity of the definitions. To resolve the disputes, the MOF has issued the "Principles for Identification of Taiwan Sourced Income" on 3 September 2009 which contain detailed regulations and criteria for identifying Taiwan-sourced income. While taxpayers were observing whether the newly issued principles would cause any change on the disputes between the tax payers/withholders and the Taiwan tax authority, the Council of Supreme Administrative Court Chiefs issued a resolution on 25 May 2010 expressing the Supreme Administrative Court's viewpoint on Taiwan-sourced income. In the resolution, it adopted a strict viewpoint by including the "place of use" in the criteria for deciding whether a service fee is Taiwan-sourced income. Although there are arguments that the resolution's viewpoint is not reasonable and is inconsistent with the Income Tax Act and the principles issued by the MOF, the resolution with its efficacy should serve as a base for resolving related tax law suits. The tax authority's attitude and viewpoint towards the identification of Taiwan-sourced income is more conservative, and almost all the income or fees paid by Taiwan entities to non-resident foreign individuals and companies would be subject to withholding tax since they are very likely to be considered as Taiwan-sourced income. Based on the current regulations and the tax authority's viewpoint, tax payers/withholders should consider using the income tax treaties between Taiwan and other jurisdictions to lower or waive the withholding tax, since this may be the most cost-beneficial way.

Chapter 5

INDIRECT TAXES

VALUE-ADDED AND NON-VALUE-ADDED BUSINESS TAX

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VALUE-ADDED AND NON-VALUE-ADDED BUSINESS TAX

¶5-010 Scope of taxation

Business tax is levied on the sale of goods and provision of services in Taiwan as well as the importation of goods. Business tax is imposed under two systems: the value-added tax (VAT) system and the non-VAT system. The VAT system applies to general industries, while the non-VAT system (also known as the gross business receipts tax (GBRT) system) applies to financial institutions, special vendors of beverages and food, and small-scale business enterprises.

Comparison of the two systems

	VAT system	Non-VAT system
Applicability	General industries	Financial institutions, special vendors of beverages and food, and small-scale business enterprises
Tax rate	0% or 5%	0.1%, 1%, 2%, 3%, 5%, 15%, 25%
Tax collection specification	s 1 of chap 4 of the Value-Added and Non-Value-Added Business Tax Act (VAT Act) (therefore the VAT taxpayer is also called an entity of s 1 of chap 4)	s 2 of chap 4 of the VAT Act (therefore the Non-VAT taxpayer is also called an entity of s 2 of chap 4)
Tax collection	Output VAT- Input VAT	Sales x Tax rate

The main regulations for business tax are the VAT Act, the Enforcement Rules of the VAT Act, the Regulations for the Computation of Business Tax for Dual-Status Business Entities, the Tax Collection Act and the ruling issued by the Ministry of Finance (MOF).

All references in this chapter are to provisions of the VAT Act unless otherwise stated.

Transaction of goods or services within Taiwan territory

Transaction of goods

Transaction of goods is defined in Art 3 as a transfer of the ownership of goods to others for a consideration. The consideration is not limited to money, the exchange of goods for other goods is also included. Therefore, as long as the ownership of the goods is transferred, business tax must be levied, whether the consideration is paid in money or "accounts receivable" is irrelevant. Sometimes, for the sake of fairness and to prevent tax evasion, business tax is imposed on a transfer of ownership even when no consideration is present. For instance, para 3 of Art 3 provides that where a business entity gratuitously transfers the ownership of self-manufactured, imported or purchased goods to others without any consideration, it is still regarded as a transaction.

Other taxable instances are as follows:

- When a business entity consumes goods manufactured, imported or purchased by itself, such business entity is obliged to issue a uniform invoice and include it in the tax return;
- When a business entity is dissolved and distributes any goods left over to its shareholders;
- When a business entity consigns others to supply goods;
- When a business entity supplies goods on consignment; and
- When a business entity delivers goods purchased as an agent to its principal.

A presumed transaction has been concluded in each case, although there is no real transfer of ownership

Transaction of services

Pursuant to para 2 of Art 3, a transaction of services is defined as rendering services to others or supplying goods for the use of others for a consideration. All items fall into the category of either goods or services. Business tax is levied on all such transactions or presumed transactions.

However, such transactions of services must not include professional services rendered by professional practitioners and services performed by individual employees.

Place of transaction

Since business tax is only chargeable on transactions which occur in the territory of Taiwan, determination of the place of transaction is particularly important. Under Art 4, satisfaction of any of the following circumstances will indicate that a transaction of goods or services is within the Taiwan territory:

- (a) Where transport is required to effectuate the transaction of goods and the origin of such transport is within the Taiwan territory;
- (b) Where transport is not required to effectuate the transaction of goods and the goods are located within the Taiwan territory;
- (c) Where services are provided or utilized within the Taiwan territory;
- (d) Where an international transport enterprise carries outbound passengers and cargo from the Taiwan territory; or
- (e) Where a foreign insurance enterprise accepts reinsurance policies from an insurance company within the Taiwan territory.

Importation of goods

If a domestic consumer does not have to pay business tax to purchase imported goods but has to pay tax for domestic goods, he or she will be induced to spend most of his or her money on imported goods. In such a case, domestic manufacturers would suffer from reverse protection. Therefore, based on the principle of fairness, it is necessary to levy business tax on imported goods as well.

When a business entity pays business tax on its imported goods, the business tax paid is treated as its input tax and can be credited against its output tax on the next tax return. There is no real tax burden for such a business entity.

¶5-020 Taxpayers

Under Art 2, business tax liability is imposed on the following taxpayers:

- Business entity which supplies goods or services

A business entity is defined in Art 6 to include any profit-seeking enterprise, non-profit-seeking enterprise, institution, organization or association which supplies goods or services, and any foreign enterprise, institute, organization or association with a fixed place of business in Taiwan.

Two classes of business entities are distinguished according to how the business entity computes its tax liability. The first class (referred to as a VAT business entity) computes its tax liability in accordance with s 1, Chap 4 by offsetting its output tax by its input tax. The other class (referred to as a GBRT or NVAT business entity) computes its business tax according to s 2, Chap 4 by gross receipts;

- Consignee or holder of imported goods

Since importation of goods is within the scope of the business tax, it is necessary to define the taxpayer of imported goods. As the supplier of imported goods is outside the tax jurisdiction of Taiwan, it cannot be considered a taxpayer; and because business tax in essence is the responsibility of the consumer, the consignee or holder of the imported goods is regarded as a taxpayer. Consignees or holders of imported goods include profit-seeking enterprises, non-profit enterprises, institutes or organizations, and individuals. An individual may be considered a taxpayer if he or she is in possession of imported goods during the customs clearance process. Thus, the taxpayer of imported goods is not limited to the business entity; and

- Recipient of services sold by a foreign enterprise, organization, institute or association which has no fixed place of business in Taiwan

As services such as trademarks, patents and computer programs may be intangible and the time of their import difficult to trace, Art 1 does not explicitly specify imported services as taxable items. However, if a foreign company has a fixed place of business in Taiwan, in accordance with para 3 of Art 6, any service supplied by such foreign company is treated like a supply of services within the jurisdiction of Taiwan, and the fixed place of business becomes the taxpayer. Where there is no fixed place of business within Taiwan, and since the real business tax burden is on the consumer, the recipient shall bear the tax liability for imported services.

If an agent is appointed to handle the business of a foreign international transport enterprise without a permanent business establishment in Taiwan, the agent will be the taxpayer.

Pursuant to para 1 of Art 36, if a service is purchased by a VAT business entity solely to supply taxable goods or services from a foreign company without a fixed place of business in Taiwan,

the VAT business entity shall be immune from business tax at the time of importation.

Considering the e-commerce is getting popular, the Executive Yuan proposed the bill in September 2016 that foreign companies have no fix place in Taiwan sell online service to Taiwan individuals will be required to register and pay VAT in Taiwan. The bill is waiting for enactment procedure. The amendment bill of VAT will be effective from the third date of the Taiwan President enactment.

The main points of the proposed amendment bill are as follows:

1. Offshore e-commerce entities that sells cross-border electronic services to Taiwan individuals will be requires to register and pay VAT in Taiwan.
2. The forgoing business entity shall file an application for tax registration individually with the competent tax authority on their own or by agents in the ROC.
3. The forgoing business entity shall compute the business tax based on the payment amount in accordance with the tax rate provided in Article 10 and pay the tax on their own or by agents in the ROC.
4. Add the penalty of that the agents of the forgoing business entity fails to VAT file tax returns.

From 23 November 2011, public and private schools at any level or educational or research institutions purchasing services provided by foreign enterprises, institutions, groups or organizations having no fixed places of business within the territory of Taiwan to be used for education, research or experiment are not liable to business tax at the time of importation (Art 36-1).

Registration

The head office of a business entity and its branches with a fixed place of business in Taiwan has to file an application for business registration with the competent tax authority before commencement of business (Art 28). Once the taxpayer complies with registration and other administrative procedures, the taxpayer will be given a eight-digit VAT number (also called the "uniform serial number" or "company tax ID"). A registered tax payer has to file a VAT return in accordance with the regulations. If the VAT taxpayer fails to register as a taxpayer and commences business prior to registration, or where the business

has been continued after suspension of registration, and the sales amount has not been reported in accordance with the regulations, the competent tax authority may, by referring to the circumstances of similar businesses and other information, determine the sales amount or tax payable and levy the delinquent tax (Art 43).

¶5-030 Tax rates

In accordance with Art 10, 11, 12 and 13, the business tax rates which apply to the different categories of businesses are as follows:

- The business tax rate for business entities other than those listed below, namely VAT business entities, must not be more than 10% and not less than 5%, subject to the prescription of the Executive Yuan. The current applicable tax rate is 5%;
- The business tax rate is 5% for enterprises engaged in banking, insurance exclusively-authorized businesses, and 2% for investment trusts, securities, futures, commercial paper, and pawnshops. The business tax rate is 5% for all other operations which are not their exclusively-authorized businesses, and 1% for the reinsurance premiums of insurance enterprises.
- The business tax rates for enterprises engaging in special beverage and food services are further classified as follows:
 - (1) 15% for night clubs or restaurants providing entertainment; and
 - (2) 25% for saloons or tearooms, coffee shops, and bars offering companionship;
- The business tax rate for traders in the wholesale agricultural market and small businesses supplying agricultural products is 0.1%; and
- For small businesses and other business entities which are excluded by the MOF from reporting their transactions, the business tax rate is 1%.

¶5-040 Exempt items

The term "exemption" is defined as an exemption without credit for business tax previously paid. Since input tax on purchases is not creditable by an exempt business entity, exemption is not as advantageous as zero-rating.

Supply of goods or services

Under para 1 of Art 8, the following 31 categories of goods or services are exempt from business tax:

- (1) Sale of land;
- (2) Water supplied to farmland for irrigation;
- (3) Medical services, medicines, ward lodging and meals provided by hospitals, clinics and sanitariums;
- (4) Rearing and nursing services offered by nursing homes for children, the elderly or handicapped;
- (5) Education services offered by schools, kindergartens, and other educational and cultural institutions, including cultural services offered under government consignment;
- (6) Textbooks issued by the publishing industry and authorized by education authorities for use at various levels of schools and important specialized academic writings as designated by the government according to the law;
- (7) Goods or services sold by student-run shops of vocational schools which do not serve outsiders;
- (8) Newspapers, magazines, newsletters, advertisements, television and broadcasting programs produced and sold by legally-registered newspaper and magazine publishers, news agencies, and television and broadcasting stations, excluding advertisements sold by newspaper publishers and advertisements broadcasted by television stations;
- (9) Goods or services sold to their members by co-operatives managed in accordance with the law, and business consigned by the government to the said co-operatives;
- (10) Goods or services sold to their members by farmers' associations, fishermen's associations, workers' associations, commercial and industrial associations in accordance with the law, business consigned by the government to the said associations, and the management fee charged in accordance with Art 27 of the Agricultural Products Market Transaction Act for the use of an agricultural products wholesale market and in which the share ownership of farmers' associations, fishermen's associations, co-operatives and government institutions accounts for more than 70%;
- (11) Proceeds from goods sold in tenders, charity sales and charity shows held by charity and relief institutions and organized

- according to the law, provided that the total proceeds are solely used by the said institutions after deducting the necessary expenditures for the tenders, charity sales and charity shows;
- (12) Goods or services sold by employee welfare organizations of government bodies, state enterprises and social organizations which are organized and operated under the relevant laws and are not open to the public;
 - (13) Goods or services sold by prison workshops and their finished goods stores;
 - (14) Services rendered by post and telecommunication offices in accordance with the law and business consigned under government mandate;
 - (15) Monopoly goods sold at statutory prices by state-owned monopoly industries and business entities which are authorized to sell the monopoly goods;
 - (16) Service of consigned sale of stamp tax tickets and postage stamps;
 - (17) Goods or services sold by peddlers or hawkers;
 - (18) Feed and unprocessed raw agricultural, forestry, fishing and livestock products, and their by-products, and the agricultural, forestry, fishing and livestock products, and their by-products of farmers' and fishermen's harvests sold by farmers and fishermen;
 - (19) Fish caught and sold by fishermen;
 - (20) Sale of rice and wheat flour and the service of husking rice;
 - (21) Sale of fixed assets which are not regularly traded by business entities which compute their business tax according to sec 2 of Chap 4;
 - (22) Insurance policies accepted by insurance enterprises for insurance promoted by the government covering military, government and education entities and their dependents, laborers, students, farmers, fishermen, exports, compulsory automobile third-party liability insurance, reinsurance premiums paid out by insurance enterprises from premiums received by the same, life insurance policy reserves, annuity insurance policy reserves and health insurance policy reserves; however, this item does not include income, other benefits and return of policy reserves received on termination of life insurance, annuity insurance or health insurance;

Chapter 9

TRANSFER PRICING

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TRANSFER PRICING - RULES, CONCEPTS AND METHODS

¶9-010 Overview

When two associate enterprises conduct business with each another, the price negotiated between them is typically referred to as a transfer price. As a special relationship exists between related parties, tax authorities are concerned that transfer prices may be different from the prices that would be agreed between two independent enterprises.

The lack of a global tax system and different tax rates around the world provide a perceived incentive for multinational companies (MNCs) to formulate their transfer prices to recognize low profits in jurisdictions with higher tax rates, and high profits in jurisdictions with lower tax rates. By doing this, MNCs could reduce their aggregate tax payable.

To prevent this, tax authorities around the world have enacted tax rules and regulations to govern transactions between related parties (controlled transactions) and to prevent the inappropriate transfer of profit. This ensures that transactions between related parties in their jurisdictions are appropriately taxed.

¶9-020 Laws and Regulations

According to Art 43-1 of the Income Tax Act (ITA), Art 50 of the Financial Holding Company Act and subpara 1, para 1, Art 42 of the Enterprise Merger and Acquisition Act, a profit-seeking enterprise which has an affiliated relationship with, or is directly or indirectly owned or controlled by another enterprise within or outside the territory of Taiwan, whereof, if it is found that arrangement of their mutual income, cost expense, profit or loss distribution does not conform with the regular business practice, and hence results in a tax evasion or reduction, the tax collection authority for the purpose of computing the accurate income of the enterprise may report it to the Ministry of Finance (MOF) for approval in effecting an adjustment in accordance with the regular business practice.

The Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing (TP Assessment Rules) were promulgated on 28 December 2004 and became effective on the same date. Following the promulgation of the TP Assessment Rules, other important rulings which impacted Taiwan's transfer

pricing (TP) regime were introduced, eg ruling no 09704555160, the Safe Harbor Rules issued by the MOF on 6 November 2008. The effect of the TP Assessment Rules on taxpayers was substantial. Among other things, the TP Assessment Rules:

- Included the first guidance in Taiwan's TP regulations and the determination of the inter-quartile range;
- Established contemporaneous documentation requirements for related-party transactions to be prepared and maintained in Chinese; and Provided guidance on applying for Advance Pricing Agreements (APAs).

BASIC CONCEPTS OF TRANSFER PRICING

¶9-030 Related parties

If a country's tax authority determines that a direct or indirect relationship of ownership or control exists between two or more enterprises in their operational, commercial and financial relations, these enterprises may be considered as "related parties".

Taiwan, like many other countries, utilizes two types of tests to determine whether enterprises are related; the first is based on equity ownership, and the second on effective control (for which several types of test are included in the regulations). Specially, according to Art 3 of the TP Assessment Rules, related parties refer to one of the following relationships between an enterprise and another enterprise, business organization or individual:

- 20% subsidiary: the direct or indirect ownership of the total number of issued shares with voting rights or the total amount of the capital stock of another profit-seeking enterprise is 20% or more;
- 20% common ownership: 20% or more of the ownership of the total number of issued shares with voting rights or capital stock of the respective profit-seeking enterprises are controlled directly or indirectly by the same individual;
- 10% major shareholder: any profit-seeking enterprise that holds the highest ownership of the total number of issued shares with voting rights or capital stock of another profit-seeking enterprise and the ownership is 10% or more;
- Common directs: the majority (50% or more) of executive shareholders or directors of a profit-seeking enterprise are the same as those of another profit-seeking enterprise;