TAIWAN

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1. Introduction

1.1 General Information on M&A in Taiwan

During the recent years, domestic M&A activities have been active, particularly in the financial industry as it has been the government's intention to reduce the number of financial institutions.

In order to increase the global competitiveness of Taiwanese enterprises, the Taiwan government has also enacted the Enterprise Merger and Acquisition Law (EMAL), the Financial Institution Merger Law (FIML), the Financial Holding Company Law (FHCL) and amended the Statute for Upgrading Industries, which provide various tax incentives to M&A transactions of Taiwan companies. These tax incentives offer significant tax savings for foreign investors wanting to acquire Taiwan companies.

1.2 Corporate Tax

The income tax regime in Taiwan is divided into personal consolidated income tax for individuals (individual income tax), and profit-seeking enterprise income tax for business enterprises (business enterprise tax or corporate income tax). The term "business enterprise" refers to an entity that engages in profit-seeking activities, including sole proprietorship, partnership, company, or any other form of organisation that is organised for profit-seeking purposes.

A resident corporate taxpayer is subject to income tax on its worldwide income. For non-resident corporate taxpayers, including those that do not have a permanent establishment (PE) in Taiwan, only Taiwan-sourced income is subject to tax in Taiwan (normally in the form of withholding tax).

Taiwanese corporations and foreign corporations operating in Taiwan through branches are subject to progressive corporate tax rates depending on their level of taxable income. Below is a table of progressive corporate tax rates.

Taxable income	Tax
Up to NT$50,000	Exempt
NT$50,001 to NT$71,428	50% of taxable income, less NT$25,000
NT$71,429 to NT$100,000	15% of taxable income
NT$100,001 and over	25% of taxable income, less NT$10,000

The President Office announced the third reading of a special law (known as Alternative Minimum Tax law or AMT law) on 28th December 2005, which took effect on 1st January 2006. Pursuant to the law, companies (which are residents in Taiwan and foreign companies having permanent establishments in Taiwan) and resident individuals have to calculate an AMT amount under the relevant formulae and compare such tax amount with regular income tax amount. If the former is more than the latter, taxpayers have to pay income tax based on regular income tax amount plus the difference between the AMT amount and the regular income tax amount.

Below is a table illustrating salient points of the law.

Items	Companies	Individuals
AMT rate	10% to 12%	20%
Tax exemption amount	NT$2 million	NT$6 million
Taxable base	Regular taxable income with adjustments for the following items: **Plus** • tax-exempt capital gain on sales of domestic marketable securities and futures; • tax-free income provided by the Statute for Upgrading Industries (including tax holiday and Operational Headquarter incentives); • tax-free income provided by other laws (including tax holiday granted for investment in industries at scientific park and participation in construction of communication and public work); • tax-free income provided by the EMAL (carry over of tax holiday); • tax-free income earned by offshore banking unit (OBU); and • other tax-free income announced by the Ministry of Finance (MOF); **Minus** • loss deriving from domestic securities and futures transactions; • loss incurred by OBU; and • other loss announced by the MOF. The deduction of each type of the said losses is limited to the same type of income and can be carried forward for five years.	Regular taxable income with adjustments for the following items: **Plus** • non-Republic of China-sourced and Macau and Hong Kong-sourced income over NT$1 million; • tax-exempt life or annuity insurance proceeds paid for death over NT$30 million; • tax-exempt capital gain on sales of non-listing and non-OTC shares and private-placement shares, mutual funds, etc; • deducted non-cash contribution; • tax-exempt difference between market price and face value of employee stock bonus; and • other tax-free income or deduction announced by the MOF; **Minus** • loss on sales of shares non-listing and non-OTC shares and private-placement shares, mutual funds, etc; and • other loss announced by the MOF. The deduction of each type of the said losses is limited to the same type of income and can be carried forward for three years.

- Dividend

Taiwan adopts the imputation tax system in relation to the taxation of dividend income. The system is designed to reduce the overall tax liabilities of a shareholder in respect of dividends, which have effectively suffered corporate tax (on corporate level) and personal consolidated income tax (on individual level). Under this system, for dividends received from a Taiwan corporation out of profits which have been subject to corporate tax, a resident individual shareholder is entitled to offset the company's underlying corporate tax paid against his/her own personal consolidated income tax liabilities. As a result, the effective tax rate for a resident individual taxpayer with the highest marginal rate may be reduced from 55% to 40% on such dividends.

Domestic dividends received by a Taiwanese corporate shareholder are exempt from tax in the hands of such shareholder. Any dividends paid by such a corporate shareholder to its resident individual shareholders would, in turn, carry the underlying tax credit for corporate tax paid by its subsidiary.

A 10% profit retention tax may be imposed on any part of the current year's profit (after statutory reserves) that is not distributed as dividends. This rule also applies to FIA subsidiaries (i.e. those companies which were established with the approval of the Foreign Investment Board). This retention tax paid by the company may be used by a resident individual shareholder to offset against the shareholder's tax liabilities once the company distributes dividends from the corresponding undistributed earnings in subsequent years.

For non-resident shareholders, the 10% profit retention tax may be credited against the dividend withholding tax once the company distributes dividends from the corresponding retained earnings in subsequent years. Effectively, the imputation tax system has little impact on foreign investors.

1.3 Withholding Tax

Payments made to foreign recipients (which do not have a PE in Taiwan) will normally be subject to withholding tax at the following rates:

Type of income	Withholding tax rates
Dividends	30%/25%/20%
Interest	20%
Royalties	20% or Nil (for approved royalty)
Service Fees/Rental	20% or 3.75% (for approved technical services/ equipment lease/construction)
Commission	20%
Other	20% or 2.5% (for approved international transportation services) or 25% (for gain on sale of property)

Dividends paid by a FIA company to a foreign shareholder are taxed at 20%. Dividends paid by a non-FIA company to a foreign corporate shareholder are taxed at 25% and to a foreign individual are taxed at 30%.

Withholding tax rates on dividends, interest and royalties may be reduced if a recipient is a tax resident of one of the tax treaty countries and the relevant treaty provides for a reduced rate. As of October 2005, tax treaties with Australia, New Zealand, Indonesia, Singapore, Malaysia, Vietnam, South Africa, Swaziland, Gambia, Macedonia, Netherlands, United Kingdom, Senegal, and Sweden have been signed and effected.

A Taiwan branch of an overseas company may remit after-tax profits to its head office without any further Taiwan tax.

1.4 Business Tax

Business taxes are levied on sale of goods or services in Taiwan and on importation of goods. Business tax consists of value added tax (VAT) and non-value added tax (Non-VAT). Generally, the former is applicable to general industries whereas the latter is applicable to financial institutions.

Under the VAT system, each seller collects output VAT from the buyer at the time of sale, deducts input VAT paid on purchases from output and remits the balance to the government. Where input VAT exceeds output VAT, the excess will be refunded or carried forward to be offset against future VAT liability. The current rate is 5%. However, revenues derived from exclusively authorised businesses of the banking, insurance, investment trust, securities, futures, commercial paper, and pawnshop industries are subject to the rate of 2%.

1.5 Stamp Duty

Stamp duties are imposed on each copy of the following business transaction documents, property titles, permits, and certification executed within the territory of Taiwan.

Type	Stamp duty
Monetary receipt	0.4% of amount received
Service contract	0.1% of consideration
Real property transfer contract	0.1% of value announced by government
Sales contract for personal movable property	NT$12 per copy

1.6 Other Relevant Taxes

1.6.1 Securities Transaction Tax

Transfer of stock is subject to securities transaction tax of 0.3% of the gross proceeds. Securities transaction tax is also imposed on transfer of corporate bonds issued by Taiwanese companies, mutual funds issued by Taiwanese security investment trust enterprises, Taiwan depository certificates, and other securities at 0.1% of the gross proceeds. The Statute for Upgrading Industries currently exempts sales of corporate bonds and financial bonds from such tax.

Securities transaction tax is imposed on a seller.

1.6.2 Land Value Increment Tax

Land value increment tax is levied when the title to land is transferred and is payable by the seller. The tax is levied on the increment in the government-announced value between the time of purchase and sales. The government-announced value at the time of purchase is adjusted for government-announced consumer price index during the ownership period for the purposes of calculating the increment. The tax rate ranges from 20% to 40%. To encourage an owner to hold land for more than 20 years, a tax deduction is granted for land ownership exceeding 20 years. The tax paid, may be refunded if another piece of land is acquired within two years for the purpose of use of factory and other stipulated conditions are met.

1.6.3 Deed Tax

A title deed tax is levied on the transfer of the title to real estate and payable by the buyer. Transfer of land is not subject to the title deed tax if the seller is subject to land value incremental tax. The tax rate ranges from 2% to 6% of the government-assessed value.

1.7 Exchange Control

Foreign exchange control regulations restrict the outward remittance of funds exceeding a certain amount. A resident individual is allowed to remit outward funds up to US$5 million per annum without obtaining a prior approval from the Central Bank of China. However, if any single remittance is in excess of US$1 million, the bank may seek consent from the Central Bank of China before remittance. A resident corporation is allowed to remit outward funds up to US$50 million per annum without obtaining a prior approval from the Central Bank of China.

Overseas investment shall be reported to the Investment Commission of the Ministry of Economic Affairs (ICMOEA). Nonetheless, any overseas investment of more than US$50 million requires a prior approval from the ICMOEA. Any investment in the People's Republic of China (even if the investment is made through a third country) requires a prior approval from the ICMOEA.

2. Acquisition

2.1 The Preference of Purchasers: Stock vs. Asset Deal

The EMAL of Taiwan provides certain tax incentives to qualified asset acquisitions while the general principle of taxation would apply to stock acquisitions and unqualified asset acquisitions.

Nevertheless, whether a deal is structured as a stock deal or asset deal would depend on commercial considerations. In terms of tax costs, a stock deal may be preferable since it incurs less tax costs than an asset acquisition.

2.2 Stock Acquisition

- Tax Losses Carried Forward

  The Target Company may continue to enjoy the unutilised taxes losses carried forward that have been granted before the stock deal.

- Unutilised Tax Depreciation Carried Forward

  The Target Company may continue to depreciate the fixed assets at the same tax base after the stock acquisition, i.e. there is no change in the cost base and the method of depreciating the assets.

- Tax Incentives

  The Target Company may continue to enjoy the unused tax incentives (i.e. investment tax credit, tax holiday, etc.), after the stock acquisition.

- Others

  In general, since only the shareholder portfolio is different after the stock deal, the financial accounting books and the tax basis of the Target Company would not be affected. Also, tax attributes of the Target Company prior to the stock deal generally remain unaffected after the deal.

2.3 Asset Acquisition

- Tax Losses Carried Forward

  The tax losses carried forward in the Target Company may not be transferred to the acquiring company in an asset deal.

  In general, gains arising from transfer of tangible and intangible assets (except for lands and securities) are taxable at a corporate income tax rate of 25%. If the Target Company has tax losses carried forward, gains may be offset against the tax losses for corporate income tax purposes. The aforementioned gains may be exempt if certain requirements are met, pursuant to the EMAL.

- Unutilised Tax Depreciation Carried Forward

  An asset deal potentially allows the purchaser to step up the basis of acquired assets for tax purposes. Such step up in value enables the buyer to reduce its future tax liability through a larger amount of depreciation of the tangible assets or amortisation of the intangibles.

  The differences between the transaction price and the fair market value (or, in some cases, the book value) of the assets transferred shall be recognised as “business right” or “goodwill” of the Target Company. For corporate income tax purposes, the business right shall be amortised over the period for no less than ten years and the goodwill shall be amortised over the period for no less than five years.

- Tax Incentives

  In general, the tax incentives (i.e. investment tax credits on qualified machinery and equipment or qualified research and development expenditures, tax holiday, etc.) may not be carried over by the transferee (the acquiring company in an asset deal). Furthermore, the transfer of qualified machinery and equipment, on which the investment tax credits were granted, may lead to a recapture of previously used tax credits if the qualified machinery and equipment are transferred within three years when the tax credits are obtained.

  Where an asset deal meets all the criteria as set forth under the EMAL, the unutilised tax holiday and the investment tax credits on the qualified machinery and equipment may be transferred to the acquiring company. However, the amount of tax holiday and investment tax incentives that may be carried over by the acquiring company are limited to the portion of taxable income/tax payable attributed to the Target Company.

2.4 Transaction Cost

2.4.1 VAT

- Stock Acquisition

  The transfer of stock falls outside the scope of VAT.

- Asset Acquisition

  In an asset deal, the seller is generally required to issue Government Uniform Invoice (GUIs) and charge VAT at the rate of 5% to the buyer for the sale of its operating assets, including inventories, fixed assets and intangibles. The sale of land and marketable securities is exempt from VAT.

  However, the VAT is exempted for the transfer of tangible or intangible assets if the asset acquisition is carried out in accordance with the EMAL and the acquiring company issues voting shares accounting for more than 65% of the total considerations to the Target Company for the asset acquisition.

2.4.2 Stamp Duty

- Stock Acquisition

  For disposal of qualified securities (e.g. stock in the Taiwanese company organised as a company limited by shares), a securities transaction tax at the rate of 0.3% on gross proceeds received from the disposition would apply.

- Asset Acquisition

  The acquiring company shall pay for the stamp duty on the contract for sale of chattels concluded within Taiwan at NT$12 for each original contract as well as on the contract for transfer of real estate (such as building and land) at 0.1% of the government-announced value.

2.4.3 Deed Tax

- Stock Acquisition

  Title Deed Tax is not applicable in respect of stock deal since there would not be a transfer of titles of real estate.

- Asset Acquisition

  The acquiring company should bear the title deed tax levied on the contract for sale of building, at 6% of the government-assessed value.

2.4.4 Land Value Increment Tax

- Stock Acquisition

  Land value increment tax is not applicable in respect of a stock deal since there would not be a transfer of land.

- Asset Acquisition

  The land value increment tax is levied on the increase in the government-announced value and applicable progressive tax rates are between 20% and 40%.

2.4.5 Tax Deductibility of Transaction Costs

- Stock Acquisition

  Costs (including professional fees, securities transaction tax, etc.) on a stock deal incurred by a foreign investor are not tax deductible for Taiwan tax purposes. In addition, such costs are also not deductible to a Taiwan acquiring company.

- Asset Acquisition

  Transaction costs are generally deductible. Some transaction costs incurred on fixed assets are generally capitalised as part of the costs of the relevant assets acquired. If the assets are eligible for tax depreciation or amortisation, such cost could also be depreciated or amortised. Costs relating to purchase of land and marketable securities are generally not tax deductible.

  VAT paid pay the acquirer, if a VAT entity, may be creditable to the acquirer.

  Professional fees are generally recorded as expenses. If the professional fees can be directly attributed to a certain real estate, such fees will also follow the tax treatment of relevant asset.

3. Basis of Taxation Following Stock or Asset Acquisition

3.1 Stock Acquisition

A stock deal will not allow the buyer to step up the basis of the assets owned by the Target Company. The asset value would remain unchanged as it was before the stock deal. Thus, it would not allow the buyer to maximise tax benefits that are potentially available to an asset deal. .

3.2 Asset Acquisition

An asset deal allows the buyer to step up the basis of acquired assets for tax purposes, thus, enabling the buyer to reduce its future tax liability through depreciation of the fixed assets or amortisation of the intangibles. Generally, the costs of plant and equipment may be depreciated over their respectively useful life prescribed by the tax authority.

Furthermore, the difference between the consideration price paid and the fair market value (or, in some cases, the book value) of the assets transferred may be recognised as operating right or goodwill. The minimum amortisation period is ten years for operating right and five years for goodwill. A ten-year amortisation period on goodwill is required for M&A cases completed pursuant to the EMAL.

4. Financing of Acquisitions

4.1 Thin Capitalisation

Equity falls into two categories, namely common share and preferred share. There are no thin capitalisation rules in Taiwan. The decision to set a debt to equity ratio is generally governed by commercial considerations. Except for certain restricted industries (e.g. financial industry), the minimum equity capital is NT$1 million for a company limited by shares and NT$0.5 million for a limited company.

4.2 Deductibility of Interest

4.2.1 Stock Acquisition

The interest incurred by a foreign investor on purchase of stock in a Taiwan target is not tax deductible against the dividend income paid by the Target Company.

Alternatively, the foreign investor may set up a new company in Taiwan to acquire shares of the Target Company. In such a case, the new Taiwan company may obtain funds through either local finance vehicles or cross-border inter-company loans to finance the acquisition with an aim to reduce the dividend withholding tax. However, the interest expenses may not be tax deductible by the new Taiwan company at the time of calculating the 25% corporate income tax.

When a foreign loan is obtained, the payment of interest may be subject to interest withholding tax.

4.2.2 Asset Acquisition

Interest incurred on funds used to acquire fixed assets generally needs to be capitalised and amortised in accordance with the nature of the assets. Furthermore, since capital gains arising from sale of land and marketable securities are exempt from income tax, the interest relating to the purchase of the land and marketable securities is not deductible for corporate income tax purposes.

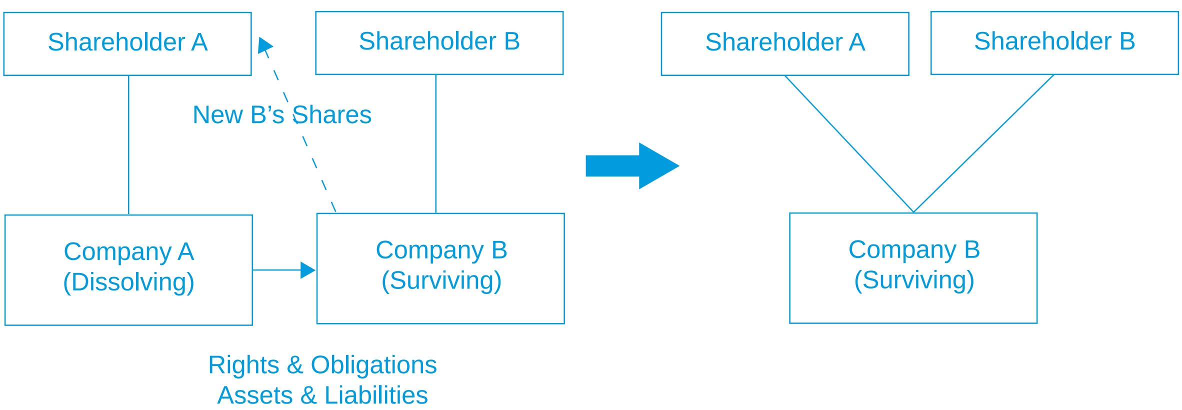
5. Mergers

For most M&A cases to the extent to which the issues are covered in the EMAL, the EMAL prevails over other laws, such as the Company Law, Securities Trade Law, Statute for Upgrading Industries, Fair Trade Law, Labour Standard Law, Statute for Foreigner Investment, etc. Any M&A matters not dealt with in the EMAL, should then be governed by these other laws

M&A of financial institutions are subject to the FHCL, and the FIML. Any M&A matters not dealt with in these two laws should be governed by the EMAL failing which the other laws would apply.

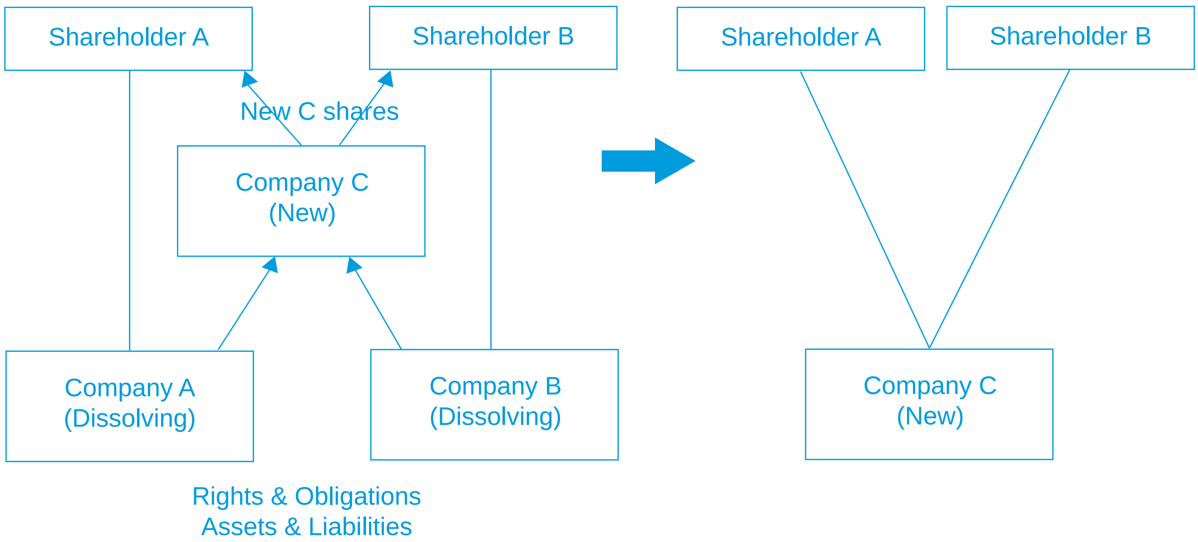
In the Taiwan context, a "merger" could take place as follows.

- Merger



Under this example, the business and assets of Company A are transferred to Company B. In return, Company B issues shares to shareholders of Company A in exchange for business in Company A. Company A is subsequently dissolved.

- Consolidation



Under this example, the business and assets of Company A and B are transferred to newly established Company C. Company C issues shares to shareholders of Companies A and B. Companies A and B are subsequently dissolved.

The EMAL also allows cash, shares in other company and other property as payment for the consideration.

6. Other Structuring and Post-Deal Issues

6.1 Repatriation of Profits

Taiwan does not impose significant restrictions on the repatriation of profits. The Company Law requires the company to reserve 10% of the current year's profit as legal reserve which may not freely be distributed as dividends. Also, some laws require reservation of part of profit as special reserve. Except for the said reserve requirements, FIA companies may remit dividends overseas freely.

Under the imputation tax system, for dividends received from a Taiwan corporation out of profits which have been subject to corporate tax, a resident individual shareholder is entitled to offset the company's actual underlying corporate tax paid against his/her own personal consolidated income tax liabilities. Such dividends received by a resident corporate shareholder are exempt from tax in the hands of such a shareholder.

Dividends paid to non-residents of Taiwan are subject to withholding tax. Dividends paid by a FIA company to a foreign shareholder are taxed at 20%. Dividends paid by a non-FIA company to a foreign corporate shareholder are taxed at 25% and to a foreign individual are taxed at 30%. Withholding tax rates on dividends may be reduced if a recipient is based in one of the tax treaty countries and the relevant treaty provides for a reduction in the dividend withholding tax rate. Taiwan has entered into comprehensive tax treaties with Senegal, United Kingdom, Sweden, Australia, New Zealand, Indonesia, Singapore, Malaysia, Vietnam, South Africa, Swaziland, Gambia, Macedonia, and the Netherlands.

For non-resident shareholders, the 10% profit retention tax may be credited against the dividend withholding tax once the company distributes dividends.

There are various avenues whereby the profits of the Target Company may be repatriated to the home country by means other than dividends. These include the payment of license fees, royalties, interest and management fees. However, the payment of such amounts may be subject to withholding taxes. Generally, the withholding tax rates are 20%. Tax treaties may reduce the withholding tax rates.

6.2 Losses Carried Forward

Net operating loss (NOL) may be carried forward for five years if the company's income tax return is certified by a certified public accountant or it has received an approval to use a blue form income tax return and if it maintains complete and adequate accounting records.

According to the EMAL, after the merger, the surviving or newly formed company may deduct from its net income, the NOL resulted from each merged entity in the preceding five years. The deductible amount would be calculated according to the proportions of shares in the surviving or newly formed company held by shareholders of each merged entity.

6.3 Tax Incentives

Remaining tax incentives of the Target Company may be carried over to the acquiring company. However, some requirements must be met:

- With Respect to Tax Holiday
  - the M&A activity is conducted pursuant to the EMAL or the Statute for Upgrading Industries;
  - the acquiring company continues to produce the same products or render the same services as those that produced or rendered by the acquired company before the M&A deal and has been awarded the carry over tax holiday;
  - the carry over tax holiday may only apply to income derived from the corresponding products or the services that have been awarded the carry over tax holiday and that can be independently produced or rendered; and
  - the acquiring company has to meet the same tax holiday requirements as those applicable to the Target Company.
- With Respect to the Investment Tax Credit
  - the M&A activity is conducted pursuant to the EMAL or the Statute for Upgrading Industries;
  - the carry over investment tax credit may only apply to income that is attributable to the Target Company; and
  - the acquiring company has to meet the same tax credit requirements as those applicable to the Target Company.

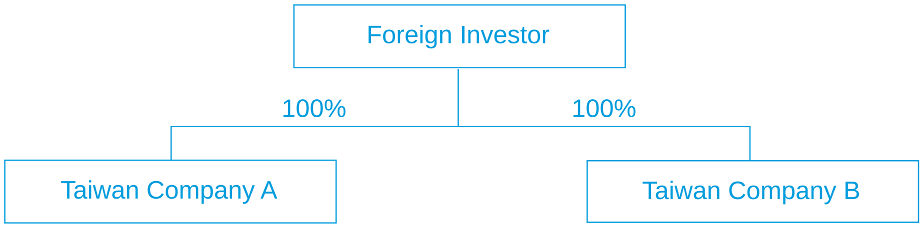
6.4 Group Relief

After the M&A deal under the EMAL is completed, the acquiring company may choose to file a single consolidated corporate income tax return (including profit retention tax return) with the 90%-or-more-owned Target Company if the acquiring company continuously holds shares in Target Company for 12 months in a taxable year.

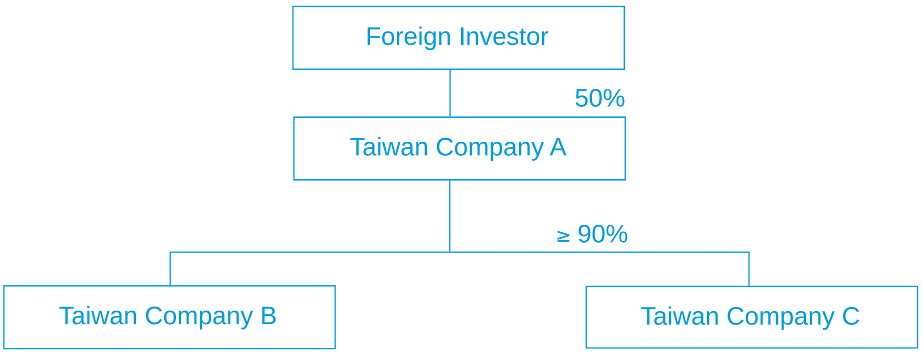
The group relief regime applies only to Taiwan companies. It is not applicable to foreign companies.

Group relief may be diagrammatically illustrated as follows.

No group relief



Group relief available to
Taiwan Company A and Taiwan Company B



Group relief applies to Taiwan Company A, Taiwan Company B
and Taiwan Company C

7. Disposal

7.1 Preference of Sellers: Stock vs. Asset Deal

The seller generally favours a stock deal for the following reasons:

- stock sale procedures are much simpler;
- gains on the sale of shares of companies limited by shares are currently exempt from tax unless the seller is taxed on AMT basis; and
- asset sales may result in corporate income tax on gains from the sales of assets.

7.2 Stock Sale

7.2.1 Profit on Sale of Stock

Gains derived from sales by the seller of a Target Company's shares are exempt from income tax unless the seller is taxed on AMT basis. However, the sales are subject to securities transaction tax of 0.3% on the proceeds from the share transfer. Such tax is borne by the seller. The EMAL exempts the securities transaction tax arising from qualified share swap.

Accordingly, for a shareholder of the Target Company, a stock sale may be the most tax efficient way to reap the gains from its investment. In the event that the Target Company has a considerable amount of undistributed earnings, by selling its shares in the Target Company at a fair market value (which should include the value of the undistributed earnings), the seller effectively receive all the gains from the disposal, tax-free, unless the seller is taxed on AMT basis.

7.2.2 Distribution of Profits

Under the imputation tax system, all profits including capital gains may be distributed as dividend that will not be assessable unless such dividends are received by the shareholders who are resident individual shareholders or non-resident shareholders. Dividends distributed to foreign shareholders are subject to a withholding tax.

7.3 Asset Sale

7.3.1 Profit on Sale of Assets

Generally, capital gains arising from a sale of assets, including intangibles, are taxable at a corporate income tax rate of 25%. If the seller has NOL, the capital gains may be used to offset against the NOL. The capital gains may be exempted from corporate income tax if prescribed requirements are met, pursuant to the EMAL. The gain from sales of land is exempt from corporate income tax, but is subject to land value increment tax. The gain on sale of Taiwanese marketable securities is also tax exempt unless the seller is subject to AMT.

7.3.2 Distribution of Profits

Please refer to section 7.2.2.

8. Transaction Costs for Seller

8.1 VAT

As indicated previously, VAT should be levied on all goods sold and services rendered in Taiwan. Hence, the Target Company is required to issue Government Uniform Invoice and charge VAT at the rate of 5% to the acquirer for sale of some assets, such as inventories and fixed assets. The 5% VAT paid by the acquirer may be used to offset its output VAT if the acquirer is a Taiwan company. The sale of land and marketable securities is exempt from VAT.

8.2 Stamp Duty

As indicated previously, stamp duties are imposed on certain types of business transaction documents such as property title deed, money receipts, and contracting agreements. Those who keep the original afore-mentioned transaction document bear the tax liabilities.

8.3 Securities Transaction Tax

Securities transaction tax is levied on securities transaction at the rate of 0.3% on gross proceeds from the sale of stocks. The Target Company should bear the liability of security transaction tax.

8.4 Land Value Increment Tax

The Target Company should pay the land value increment tax upon selling land to the acquirer. The tax is levied on the increment in the government-announced value at progress rates ranging from 20% to 40%.

8.5 Deed Tax

Generally speaking, the acquirer pays deed tax on transfer of title to buildings. The tax rate is generally 6% on the government-assessed value.

8.6 Income Tax

The Target Company has to pay corporate income tax on gains, if any, from the sales of assets. When the gains are distributed as dividends, the dividends will not be taxable unless the dividends are received by resident individual shareholders or non-resident shareholders. Some investment tax credits granted pursuant to the Statute for Upgrading Industries may be clawed back. However, if the deal complies with EMAL and other laws, the tax may be exempted and the investment tax credits would not have to be clawed back.

8.7 Concessions Relating to M&As

The EMAL provides for certain transaction tax concessions on mergers, spin-offs and acquisitions (refer to section 12.1). Furthermore, the FIML, the FHCL, and the Statue for Upgrading Industries provide similar transaction tax incentives on M&A activities if the prescribed requirements are met or a prior approval is obtained.

8.8 Tax Deductibility of Transaction Costs

- In general, the stamp duty is deductible for income tax purposes, unless they are incurred as a result of selling land and domestic marketable securities. The stamp duty paid for purchase of real estate should be capitalised as costs of relevant assets.
- The land value increment tax is not deductible for income tax purposes, because it is deemed to be one of the cost items of selling land and gain/loss on sale of land is exempted from income tax.
- The securities transaction tax is not deductible for income tax, because the gain on sales of marketable securities is the exempted from income tax.
- The deed tax for purchase of buildings should be included in the purchasing costs.

9. Preparation of Target for Sale

9.1 Declaration of Dividend Prior to the Sale

One of the means of extracting surplus cash in a company that is identified for sale is through dividends. For foreign investor, withholding tax shall be levied upon dividend payment. Where the company identified for sale has imputation credit balance deriving from the 10% profit retention tax, the dividend withholding tax liability may be reduced.

9.2 Capital Reduction Prior to the Sale

Another mean of extracting original investment cash in a company is through capital reduction. Return of principal investment amount will be generally exempted from tax. For domestic investors, investment loss shall be recognised from corporate income tax perspectives if the company identified for sale has net operating loss. Though this is an efficient way to recognise tax loss for investors, the company identified for sale itself may lose qualification to enjoy some of unutilised tax incentives due to the capital reduction.

10. De-merger

There are no specific provisions in relation to de-mergers. A de-merger usually takes place through the sale of assets or business.

11. Listing/Initial Public Offer (IPO)

After acquiring a target and having a satisfied investment return, a financial buyer generally looks for an exit route either through a sale of business or sale of shares, including by way of forming the company into IPO. Tax implications on sale of business are identical with the acquisition of asset deal mentioned previously. As to sales of shares, it is exempted from income tax unless the seller is subject to tax on AMT basis but only subject to 0.3% security transaction tax, irrespective of whether the company is a listed or a private company limited by shares.

If a company is seeking a listing on the Taiwan Stock Exchange, the listed vehicle must be incorporated as a Taiwanese company limited by shares.

12. Tax Incentives

There are a number of tax incentives available under the Enterprise Merger & Acquisition Law and Statue for Upgrading Industries on Taiwan's M&A activities.

12.1 Tax Incentives Provided by the Enterprise Merger & Acquisition Law

If requirements are met (e.g. voting shares delivered account for 65% of total considerations of the M&A deal), the following main tax incentives may be available:

- deeds, agreements and money receipts created for M&A are exempted from stamp duty;
- transfer of title to acquired immovable property is exempted from deed tax;
- securities transaction tax payable is exempted;
- transfer of goods or service is deemed as not falling within the scope of business tax;
- land value increment tax payable can be postponed until next transfer;
- goodwill is amortised over 15 years;
- expenses incurred from M&A is amortised over 10 years;
- capital gain on transfer of main business and/or assets can be exempted from corporate income tax;
- a five-year tax holiday is granted on the income deriving from the assets or businesses acquired;
- exchange loss from a company applying its business or assets in subscription or exchange for the shares of another company is amortised over fifteen years;
- group taxation is available; and
- tax incentives of the acquired company are carried over to the acquiring company.

12.2 Income Tax Incentives Granted for Doing Business in Taiwan

Main income tax incentives granted for doing business in Taiwan are set forth below:

- a five-year tax holiday granted to Pioneer, Important and Strategic Industries;
- income tax exemption granted on foreign-sourced income received by Operational Headquarter;
- income tax exemption granted on domestic sales made by Logistic Distribution Center;
- withholding tax exemption granted on royalty for using technological know-how, trademark or patent of a foreign profit-seeking enterprise;
- investment tax credit granted on purchase of equipment or technological know how, expenditure of research and development, personnel training, and investment in underdeveloped areas or Pioneer, Important and Strategic Industries;
- deduction allowed for reserve for loss in overseas investment;
- tax exemption granted on gain from evaluation of fixed assets; and
- a deferral of tax on gain deriving from exchange of patent, technological know-how, or right to use either one for subscription of shares.