

Taiwan Tax Updates

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Abbreviations

| Abbreviation | Full Name |
|---------------------|--|
| ITA | Income Tax Act |
| NTA | National Tax Administration |
| Guideline | Guideline for Determination of Taiwan-Sourced Income under Article 8 of the Income Tax Act |

Corporate Tax

Relief from being fined for non-filing of dissolution and liquidation income tax returns where taxes payable are assessed using industry standard profit rate (Tax Ruling Tai-Tsai-Shuei No. 09900220630)

Fines related to failure to file income tax returns and omission or under-reporting of taxable income are stipulated by Article 110 of the Income Tax Act (“ITA”). The said article was amended on May 27, 2009 to explicitly provide that such fines would also apply to dissolution and liquidation income tax returns.

In accordance with Tax Ruling Tai-Tsai-Shuei No. 09900220630, for profit-seeking enterprises who fail to file the dissolution and liquidation income tax returns within 45 and 30 days of the dissolution and liquidation date, respectively, the said fine per Article 110 Paragraph 2 of the ITA shall be relieved if the taxes payable are assessed by the tax authorities based on the Standards for Peers’ Profit (the “Standards”). The reason for such relief is that, as the company did not file tax returns and the assessment based on the Standards is only an estimation of taxable income, it cannot be used to determine whether the company had actually omitted or under-reported any taxable income.

However if the National Tax Administration (“NTA”) discovers any understatement of taxable income after the above-said assessment, the taxpayer will be fined in accordance with Article 110 of the ITA.

Supreme Administrative Court ruled remuneration for services rendered offshore but utilized onshore as Taiwan-sourced income

For years, the NTA has deemed fees paid for services rendered outside of Taiwan but utilized in Taiwan to be Taiwan-sourced until the recent announcement of the Guideline for Determination of Taiwan-Sourced Income under Article 8 of the ITA (“the Guideline”).

However in a recent tax case, the Supreme Administrative Court (“Court”) over-ruled the claim of business profits as non-Taiwan-sourced income under Article 8 Item 9 of the ITA, which disregarded the primary principle of the Guideline (i.e. the location where the services are rendered shall be the determinant of whether such income is Taiwan-sourced or not).

The salient points of the Court case are as follows:

1. The Court rebutted the NTA’s assessment for treating the remuneration earned by the foreign company from a combination of various services as “other income” under Article 8 Item 11 of the ITA. The Court opined that such treatment was incorrect and ruled that the remuneration received from various services (including know-how, foreign client information, marketing efforts, etc) should be regarded as “business profits”, rather than service remuneration (per Article 8 Item 3 of the ITA) or other income (per Article 8 Item 11 of the ITA).

2. Further, the Court ruled that "business profit" should be treated as Taiwan-sourced income on the grounds that the services (as part of the core business operation of the service provider) were finally consumed in Taiwan. Thus, the foreign supplier was regarded to have operated its business within Taiwan.

Many are discussing whether the Court's decision for treating business profits as Taiwan-sourced income based on location of consumption will undermine the spirit of the Guideline in defining circumstances where remuneration for services performed outside of Taiwan by a foreign entity is not regarded as Taiwan-sourced income.

Currently, it is unclear whether the above Court decision will be broadly adopted by the tax authorities. However, it is anticipated that there will be more tax disputes in the future with regards to the definition of Taiwan-sourced income. For taxpayers to secure their tax position or better manage their tax risk, application for advanced ruling may be considered.

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Appendix

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摘要： 營利事業未辦理決算申報，經稽徵機關依法核定無短漏報處罰適用。

主旨： 營利事業未依所得稅法第75條第1項及第2項規定期限辦理當期決算申報或清算申報，經稽徵機關依查得資料按同業利潤標準核定其所得額及應納稅額者，不適用所得稅法第110條第2項處罰之規定。但嗣後經稽徵機關調查另行發現課稅資料者，不在此限。

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The materials contained in this publication were assembled in August 2010 and were based on the law enforceable and information available as of July 31, 2010.

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