

Taiwan Tax Updates

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資誠



July 2013

Amendment to Article 14-2 of the Taiwan Income Tax Act to cover change in taxation of capital gain from securities transaction for individuals

On July 10, 2013, the Presidential Office announced amendments to Article 14-2 of the Taiwan Income Tax Act (“ITA”) to cover change in taxation of capital gain from securities transaction for resident taxpayers only (summarized in the table below). The relevant tax implication for non-resident individuals remain unchanged where capital gains generated from sales of all types of shares are subject to 15% income tax. For detail, please refer to the August 2012 issue of Taiwan Tax Alert.

| Tax Treatment | Shares Listed on the TSE or OTC | Shares Issued by Emerging Companies | Non-Public Shares |
|--|---|--|---|
| 15% income tax on actual transaction gain ¹ | ➤ Sale of more than 10,000 shares which are acquired prior to a company filing for IPO after January 1, 2013, via an underwriter. | ➤ Sale of more than 100,000 shares (in total from various emerging companies) in the current year. | Entirely subject to tax on actual transaction gain. |
| | ➤ Annual sales price of shares exceeding NTD 1 billion (including “sales of less than 10,000 shares via an underwriter” and “sales of less than 100,000 shares in total from various emerging companies”) after January 1, 2015. ² | | |

¹ Taxable income will be reduced by one-half if the securities are held for over one year. Taxable income will be reduced to a quarter of the original amount if the securities are held for over three years after filing for IPO.

² Taxpayer may choose to be taxed at either (1) 15% income tax on actual capital gain; or (2) 1% income tax on the excess of total sales price over NTD 1 billion.



| Tax Treatment | Shares Listed on the TSE or OTC | Shares Issued by Emerging Companies | Non-Public Shares |
|-------------------------------|---|--|---|
| Tax exemption on capital gain | Sale of shares other than those meeting the above criteria. | Sale of less than 100,000 shares (in total from various emerging companies) in the current year. | Not applicable, since it is entirely taxable. |

Annualized net revenues and non-operating income amounts determine the transfer pricing (“TP”) disclosure and documentation requirement for tax return filing purpose

A profit-seeking enterprise needs to disclose related party transactions and prepare a TP report when its annual net revenues and non-operating income reach a certain threshold. Where a profit-seeking enterprise changes its calendar year end, merges with another enterprise or transfers its ownership, it will need to file an income tax return or liquidation tax return for a period of less than one year. The actual net revenues and non-operating income during the short year should be annualized into a full year to determine whether the threshold for disclosing related party transaction in the income tax return and preparing TP report has been met.

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The materials contained in this publication were assembled in July 2013 and were based on the law enforceable and information available as of June 30, 2013. In the event of any discrepancy between the English information contained in this newsletter and the original Chinese version of the laws or rulings announced by the government or any difference in the interpretation of the two versions, the Chinese version announced by the government shall prevail.

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Appendix

日期文號： 中華民國 102 年 07 月 10 日華總一義字第 10200131111 號

摘 要： 茲修正所得稅法第十四條之二、第八十八條及第八十九條條文，公布之。

主 旨： 第十四條之二

第四條之一但書規定之證券交易所得或損失之計算，應依第十四條第一項第七類規定辦理。

個人有證券交易損失者，得自當年度證券交易所得中減除，其不足減除者，不得自以後年度之證券交易所得中減除。證券交易損失之減除，以依實際成交價格及原始取得成本計算損益者為限。

納稅義務人本人、配偶及合於第十七條規定申報減除扶養親屬免稅額之受扶養親屬依前二項規定計算之證券交易所得額，不併計綜合所得總額，按百分之十五之稅率分開計算應納稅額，由納稅義務人合併報繳。

自中華民國一百零二年一月一日起，個人出售第四條之一但書第一款規定之證券，除有下列情形之一，應依前三項規定計算證券交易所得額及應納稅額外，證券交易所得額以零計算：

一、當年度出售興櫃股票數量合計在十萬股以上者。

二、初次上市、上櫃前取得之股票，於上市、上櫃以後出售者。但有下列情形之一者，不包括在內：

(一) 屬一百零一年十二月三十一日以前初次上市、上櫃之股票。

(二) 個人每年所持有該年度各該初次上市、上櫃公司股票，屬承銷取得數量在一萬股以下。

三、非中華民國境內居住之個人。

自中華民國一百零四年一月一日起，中華民國境內居住之個人出售第四條之一但書第一款規定之證券，其一年度出售金額合計超過十億元者，應就超過十億元之金額部分，依千分之五計算證券交易所得額，按百分之二十之稅率分開計算應納稅額，不併計綜合所得總額。稽徵機關應於每年四月底前填具稅額計算通知書連同繳款書寄發納稅義務人，納稅義務人於第七十一條第一項規定期限內繳納稅款者，免將該證券交易所得額辦理結算申報。

前項個人得選擇依第一項至第三項規定計算證券交易所得額及應納稅額，依第七十一條第一項規定辦理結算申報，不適用前項規定。

第五項所定一年度出售金額之計算，以轉讓第四條之一但書第一款規定證券之金額加總計算。但第四項第一款、第二款規定證券之出售金額及透過第三條之四第六項規定信託基金之出售金額，不予計入。

個人出售第四條之一但書規定之證券，其成本之計算，應採用加權平均法，其適用第十四條第一項第七類第三款持有期間及第四項第二款規定證券之認定，應採用先進先出法。

個人於初次上市、上櫃前取得之股票，於上市、上櫃以後繼續持有滿三年以上者，以其證券交易所得之四分之一作為當年度所得額，不適用第十四條第一項第七類第三款規定。

證券交易所或損失之查核，有關其成交價格、成本及費用認定方式、未申報或未能提出實際成交價格或原始取得成本者之核定等事項之辦法，由財政部定之。

本法中華民國一百零二年六月二十五日修正之條文施行前，個人已向其證券戶所屬證券商申請選定自一百零二年起依第一項至第三項規定計算證券交易所或損失及應納稅額，而納稅義務人綜合所得稅尚未核課或尚未核課確定之案件，其證券交易所或損失之計算，適用第四項規定。

第八十八條

納稅義務人有下列各類所得者，應由扣繳義務人於給付時，依規定之扣繳率或扣繳辦法，扣取稅款，並依第九十二條規定繳納之：

一、公司分配予非中華民國境內居住之個人及總機構在中華民國境外之營利事業之股利淨額；合作社、合夥組織或獨資組織分配予非中華民國境內居住之社員、合夥人或獨資資本主之盈餘淨額。

二、機關、團體、學校、事業、破產財團或執行業務者所給付之薪資、利息、租金、佣金、權利金、競技、競賽或機會中獎之獎金或給與、退休金、資遣費、退職金、離職金、終身俸、非屬保險給付之養老金、告發或檢舉獎金、結構型商品交易之所得、執行業務者之報酬，及給付在中華民國境內無固定營業場所或營業代理人之國外營利事業之所得。

三、第二十五條規定之營利事業，依第九十八條之一之規定，應由營業代理人或給付人扣繳所得稅款之營利事業所得。

四、第二十六條規定在中華民國境內無分支機構之國外影片事業，其在中華民國境內之營利事業所得額。

獨資、合夥組織之營利事業依第七十一條第二項或第七十五條第四項規定辦理結算申報或決算、清算申報，有應分配予非中華民國境內居住之獨資

資本主或合夥組織合夥人之盈餘總額者，應於該年度結算申報或決算、清算申報法定截止日前，由扣繳義務人依規定之扣繳率扣取稅款，並依第九十二條規定繳納；其後實際分配時，不適用前項第一款之規定。

前二項各類所得之扣繳率及扣繳辦法，由財政部擬訂，報請行政院核定。

第八十九條

前條各類所得稅款，其扣繳義務人及納稅義務人如下：

一、公司分配予非中華民國境內居住之個人及總機構在中華民國境外之營利事業之股利淨額；合作社分配予非中華民國境內居住之社員之盈餘淨額；獨資、合夥組織之營利事業分配或應分配予非中華民國境內居住之獨資資本主或合夥組織合夥人之盈餘，其扣繳義務人為公司、合作社、獨資組織或合夥組織負責人；納稅義務人為非中華民國境內居住之個人股東、總機構在中華民國境外之營利事業股東、非中華民國境內居住之社員、合夥組織合夥人或獨資資本主。

二、薪資、利息、租金、佣金、權利金、執行業務報酬、競技、競賽或機會中獎獎金或給與、退休金、資遣費、退職金、離職金、終身俸、非屬保險給付之養老金、告發或檢舉獎金、結構型商品交易之所得，及給付在中華民國境內無固定營業場所或營業代理人之國外營利事業之所得，其扣繳義務人為機關、團體、學校之責應扣繳單位主管、事業負責人、破產財團之破產管理人及執行業務者；納稅義務人為取得所得者。

三、依前條第一項第三款規定之營利事業所得稅扣繳義務人，為營業代理人或給付人；納稅義務人為總機構在中華民國境外之營利事業。

四、國外影片事業所得稅款扣繳義務人，為營業代理人或給付人；納稅義務人為國外影片事業。

扣繳義務人未履行扣繳責任，而有行蹤不明或其他情事，致無從追究者，稽徵機關得逕向納稅義務人徵收之。

機關、團體、學校、事業、破產財團或執行業務者每年所給付依前條規定應扣繳稅款之所得，及第十四條第一項第十類之其他所得，因未達起扣點，或因不屬本法規定之扣繳範圍，而未經扣繳稅款者，應於每年一月底前，將受領人姓名、住址、國民身分證統一編號及全年給付金額等，依規定格式，列單申報主管稽徵機關；並應於二月十日前，將免扣繳憑單填發納稅義務人。每年一月遇連續三日以上國定假日者，免扣繳憑單申報期間延長至二月五日止，免扣繳憑單填發期間延長至二月十五日止。