

Taiwan Tax Updates

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資誠



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Revised Assessment Rules Governing Application of Income Tax Exemption on Royalties and Technical Service Fees Received by Foreign Profit Seeking Enterprises

The Ministry of Finance and the Ministry of Economic Affairs promulgated the amended “Assessment Rules Governing Application of Income Tax Exemption on Royalties and Technical Service Fees Received by Foreign Profit-Seeking Enterprises from Manufacturing, Technical Service and Power-Generating Industries” (“Assessment Rules”). Key points of the amended Assessment Rules are summarized as follows:

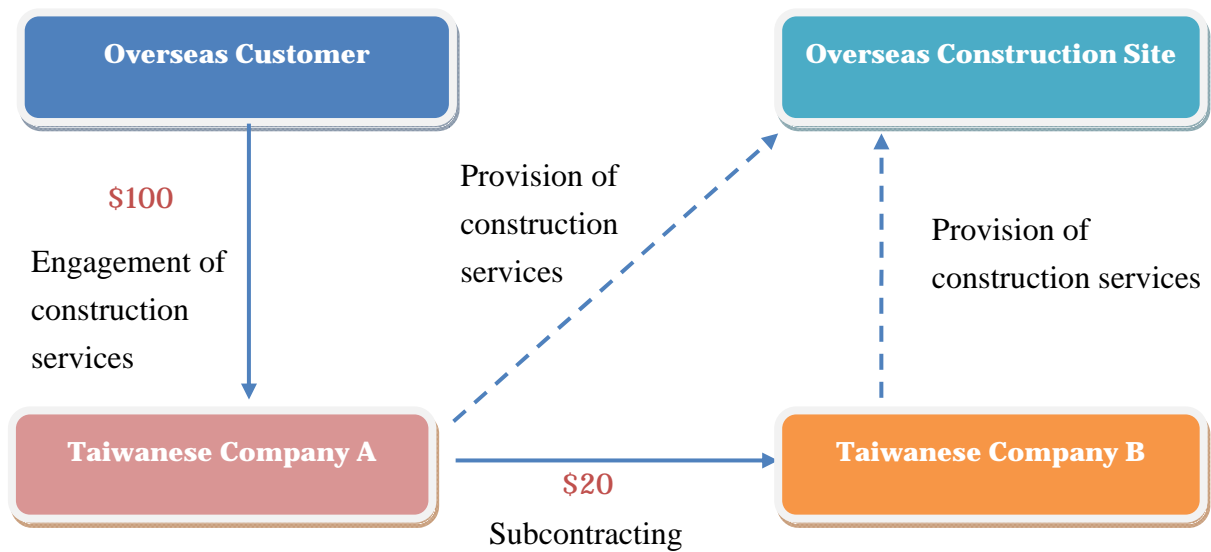
Items	Key Points	Functions Performed by Taiwanese Licensee
Patents	<ul style="list-style-type: none">• Applicable if patents are licensed by foreign enterprises to Taiwanese entities.• In addition to patents registered in Taiwan, patents registered overseas fulfilling the following criteria are also eligible for income tax exemption on royalties paid to foreign enterprises:<ol style="list-style-type: none">1. Patents are registered in accordance with the laws of each respective foreign country;2. Patents are registered in a country which either 1) mutually recognizes right of priority with Taiwan, or 2) is a member of the WTO; and3. Patents provide crucial technology that cannot be obtained from other Taiwanese entities, or even if the same technology can be obtained from other Taiwanese entities, it is insufficient to meet the local licensees' requirement in regards to product specification.• Patents eligible for income tax exemption should be utilized by Taiwanese licensees engaged in one of the 20 designated industries.	<ul style="list-style-type: none">• Manufacturer

Items	Key Points	Functions Performed by Taiwanese Licensee
Technical know-how	<ul style="list-style-type: none"> Removed the clause that allows “Technical know-how” provided by foreign enterprises to be deemed as “Special Licensed Rights” eligible for income tax exemption. 	N/A
Trademark	<ul style="list-style-type: none"> Applies to trademark licensed by foreign enterprises to Taiwanese entities. The trademark needs to be registered in Taiwan and licensed before its expiry date. There is no limitation on applicable industries. Taiwanese licensee needs to have its trademark and the licensed trademark both displayed on its products, services, or relevant deliverables. 	<ul style="list-style-type: none"> Manufacturer and related technical service provider.
Computer Software Copyright	<ul style="list-style-type: none"> Applies to copyright licensed by foreign enterprises to Taiwanese entities. Computer software which possesses “copyright” as defined by Article 4 of the Copyright Act is now eligible for income tax exemption. Such copyright needs to be licensed before its expiry date. There is no limitation on applicable industries. 	<ul style="list-style-type: none"> Manufacturer and related technical service provider.
Technical Services for Construction of Factories/ Plants	<ul style="list-style-type: none"> Technical service fees paid to foreign enterprises in relation to construction of factories/plants and design of production methodology can be eligible for income tax exemption. Taiwanese entities utilizing the technical services need to be organized in the form of a "Company Limited by Shares". Taiwanese entities need to be engaged in 18 designated industries. 	<ul style="list-style-type: none"> Constructor of plant.
Technical Services for Construction of Power Plants	<ul style="list-style-type: none"> Technical service fees paid to foreign enterprises in relation to construction of power plants can be eligible for income tax exemption. Taiwanese power plants utilizing the technical services need to be organized in the form of a "Company Limited by Shares". 	<ul style="list-style-type: none"> Constructor of power plants.
Transfer Pricing	<ul style="list-style-type: none"> The costs and expenses reported by Taiwanese entities due to royalty/technical service fees paid to foreign related parties should conform with relevant transfer pricing regulations. 	N/A
Effective Date	<ul style="list-style-type: none"> Applicable to contracts signed after January 1, 2011. 	N/A

Domestic entity and local subcontractor who carry out overseas construction projects may apply 0% VAT on revenues received (Tax Ruling Tai-Tsai-Shuei No. 10200557250)

If Taiwanese Company A is engaged by an overseas customer to provide construction services offshore, and Taiwanese Company A further subcontracts Taiwanese Company B to jointly assign employees to perform services at overseas construction site, the construction services would be deemed rendered onshore, but utilized offshore. Hence, Taiwanese Company A and Taiwanese Company B may apply 0% VAT on the following sales amount by submitting the relevant supporting documents with their VAT returns:

1. Taiwanese Company A should report sales equivalent to the foreign inward remittance received from the overseas customer after deducting the amount paid to Taiwanese Company B. Based on the below example, Taiwanese Company A can apply 0% VAT on the reported sales amount of \$80 (\$100 - \$20).
2. Taiwanese Company B should report sales equivalent to the service income received from Taiwanese Company A. Based on the below example, Taiwanese Company B can apply 0% VAT on the reported sales amount of \$20.



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The materials contained in this publication were assembled in February 2014 and were based on the law enforceable and information available as of January 31, 2014. 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 103 年 1 月 29 日
台財稅字第 10304503280 號
經工字第 10302600970 號
- 摘要： 修正「外國營利事業收取製造業技術服務業與發電業之權利金及技術服務報酬免稅案件審查原則」，並自中華民國一百年一月一日生效，營利事業與外國營利事業於該生效日後簽約者，適用修正後規定。
附修正「外國營利事業收取製造業技術服務業與發電業之權利金及技術服務報酬免稅案件審查原則」
- 主旨： **外國營利事業收取製造業技術服務業與發電業之權利金及技術服務報酬免稅案件審查原則修正規定**
- 一、為審查外國營利事業收取製造業、技術服務業與發電業之權利金及技術服務報酬申請免稅案件，特訂定本原則。
 - 二、本原則用詞，定義如下：
 - (一) 營利事業：指所得稅法第十一條第二項之營利事業及同條第四項之教育、文化、公益、慈善機關或團體，有銷售貨物或勞務行為者。
 - (二) 外國營利事業：指總機構在中華民國（以下簡稱我國）境外之營利事業及教育、文化、公益、慈善機關或團體，有銷售貨物或勞務行為者。
 - 三、本原則所稱技術合作，指外國營利事業提供專利權予營利事業，對該營利事業之產品或勞務有下列情形之一之合作：
 - (一) 能生產或製造新產品。
 - (二) 能增加產量、改良品質或減低生產成本。
 - (三) 能提供新生產技術。外國營利事業以其所有之專利權讓與營利事業所取得之對價，為財產交易所得，不適用本原則之規定。
 - 四、技術合作產品銷售市場，不以我國管轄區域為限。
 - 五、外國營利事業以其所有之專利權，在其專利權有效期間內，以技術合作方式授權第三項規定之產業實施，並經經濟部工業局專案核准確有實質技術引進，且屬關鍵技術而國內無法提供，或國內可提供，

惟其效能無法滿足營利事業產品規格要求者，其因而取得之權利金，得依所得稅法第四條第一項第二十一款規定免納所得稅。

前項外國營利事業所屬之國家，應以與我國有相互承認優先權或其屬世界貿易組織會員者為限。

第一項專利權以提供符合下列產業使用為範圍：

- (一) 精密機械及智慧型自動化產業。
- (二) 車輛產業。
- (三) 高值化金屬材料產業。
- (四) 風力發電產業。
- (五) 太陽能產業。
- (六) 新世代通訊及智慧手持裝置產業。
- (七) 智慧電子及零組件產業。
- (八) 顯示器產業。
- (九) **LED** 照明產業。
- (十) 智慧生活產業。
- (十一) 雲端運算產業。
- (十二) 高值化石化產業。
- (十三) 高值化紡織產業。
- (十四) 光電電子用化學材料產業。
- (十五) 保健食品產業。
- (十六) 生技產業。
- (十七) 資源再生產業。
- (十八) 水再生利用產業。
- (十九) 資訊服務產業。
- (二十) 設計產業。

第一項所稱國內，指我國政府機關（構）、我國境內居住之個人、總機構在我國境內之營利事業及教育、文化、公益、慈善機關或團體。

六、外國營利事業以其經經濟部智慧財產局註冊有案之商標，在其商標權有效期間內，授權屬製造業及其相關技術服務業之技術合作廠商

使用，並經經濟部智慧財產局登記之，且與我國技術合作廠商之商標併列於商品、服務或其有關之物件者，得向經濟部工業局申請專案核准，其因而取得之權利金，得依所得稅法第四條第一項第二十一款規定免納所得稅。

七、外國營利事業以其依著作權法第四條規定享有著作權之電腦程式著作，在其著作權存續期間內，以技術合作方式授權製造業及其相關技術服務業利用，並經經濟部工業局專案核准者，其因而取得之權利金，得依所得稅法第四條第一項第二十一款規定免納所得稅。

八、第五點至前點規定之專利權、商標權及電腦程式著作權，以提供營利事業自行使用者為限。

九、經經濟部工業局專案核定符合第五點第三項第一款至第十八款產業之股份有限公司者，於工廠開工以前洽請外國營利事業提供建廠所需之生產方法、製程設計、工程所需基本設計或細部設計及機器設備設計之技術服務，經經濟部工業局專案核准者，該外國營利事業因而取得之技術服務報酬，得依所得稅法第四條第一項第二十一款規定免納所得稅。

十、發電業屬於股份有限公司者，於電廠開工以前洽請外國營利事業提供建廠所需之規劃、工程基本設計或細部設計及機器設備設計之技術服務，經經濟部能源局專案核准者，該外國營利事業因而取得之技術服務報酬，得依所得稅法第四條第一項第二十一款規定免納所得稅。

前項所稱發電業，指生產電能之發電業。

十一、營利事業支付其外國關係企業之權利金或技術服務報酬經核准依所得稅法第四條第一項第二十一款規定免納所得稅者，應依營利事業所得稅不合常規移轉訂價查核準則規定評估其所列報之成本或費用金額是否符合常規；其經評估不符合常規，且有規避或減少我國納稅義務者，應自行按常規調整，其超過常規部分之金額，不得列為成本或費用。



資誠

- 日期文號： 財政部 1030108 台財稅字第 10200557250 號
- 摘 要： 國內營業人接受國外客戶委託承攬境外工程，並轉委託國內營業人共同派員赴境外場地施作工程之交易型態，其營業稅課徵規定
- 主 旨： 國內營業人（甲）接受國外客戶委託承攬境外工程，並轉委託國內營業人（乙）共同派員赴境外場地施作工程之交易型態，營業人（甲）自國外客戶收取之收入，應按減除轉付營業人（乙）後之差額，檢附外匯證明文件、工程合約及付款證明文件等相關交易資料，依加值型及非加值型營業稅法第 7 條第 2 款規定，申報適用零稅率；至營業人（乙）自營業人（甲）取得之收入，可檢附工程合約及收款證明文件等相關交易資料，依上開規定申報適用零稅率。