

# Taiwan Tax Updates

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資誠



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### **Proposal to tax capital gain on sale of real estate as a whole based on actual transaction value**

In accordance with a news release on July 3, 2014, the Ministry of Finance (“MOF”) is planning a tax reform to impose income tax on capital gains derived from transfer of real estate as a whole based on actual transaction value. Seminars will be held in the near future to obtain different opinions from the general public, and to reach a consensus as to how to tax real estate as a whole reasonably.

The current proposal is summarized in the table below:

Object	Current tax system	Tax issue	Proposed tax reform
Land	Land value incremental tax is levied.  (Sale of land by a profit-seeking enterprise is exempt from income tax in accordance with Article 4 of the Income Tax Act.)	1. Difference between actual sales price of land and government assessed current land value is not taxed.  2. If purchase and sale of land is completed in the same year, land value incremental tax is not imposed since the government assessed current land value remains unchanged between purchase and sales.	To compute capital gain on real estate as a whole, based on the difference between actual transaction value at the time of sale and purchase.  (Income tax on sale of land is currently proposed. However, land value incremental tax may be deductible from income tax on capital gain from sales of land).
Building	Capital gain derived from sale of building is subject to regular income tax.	Income tax from sales of building can be evaded by increasing the sales price of land, and decreasing the sales price of building, while at the same time, increasing building construction costs and expenses.	

### **Profit-seeking enterprises qualifying under Safe Harbor Rules should still prepare other supporting documentation to secure arm's-length status**

The tax collection agency reiterated that the safe harbor rules are implemented to allow qualified profit-seeking enterprises to provide other supporting documentation, instead of a transfer pricing report, to substantiate that their controlled transactions comply with the arm's-length principle, thereby reducing the cost and burden for the taxpayer. Other supporting documentation which may serve as a substitute for a transfer pricing report should be prepared to avoid being assessed unfavorably or fined by the tax collection agency due to lack of documentation.

Other supporting documentation includes evaluation of the arm's-length range based on the internal comparable uncontrolled transactions between the profit-seeking enterprise and its unrelated parties. Where there is no similar transaction with unrelated parties available in a particular year, the profit-seeking enterprise may reference/adopt the comparable uncontrolled transaction information from public tender, current pricing information, appraisal report from independent a real estate appraiser or notary public, etc. Where a foreign related entity is involved in the controlled transaction with the Taiwan profit-seeking enterprise, its transfer pricing report prepared in accordance with the said jurisdiction's transfer pricing requirements may also be referenced for analyses.

### **Withholding tax implication on compounded interest**

In accordance with tax ruling no. 04135 issued by the MOF in 1959, when a debtor is unable to repay monthly accrued interest to a creditor on a timely basis, and the terms of the loan are modified or renewed after the creditor's approval to compound interest, the accrued interest which is rolled over into principal is deemed actually paid to the creditor. The tax withholder involved shall withhold tax at the time of payment as per the prescribed tax rates and withholding procedures, and pay the tax withheld accordingly within the stipulated deadline.

### **Deadline for submission of supporting documents required for claiming input VAT deductions extended to 10 years**

To be consistent with the amendments made on May 24, 2013 to Article 131 of the Administrative Procedure Act ("APA"), "where the claimant is the people, time limit of right to claim under public law is extinguished by prescription if not exercised within 10 years", amendments to Article 29 of Enforcement Rules of the Business Tax Act ("BTA") was simultaneously announced on May 2, 2014. Pursuant to the amendments to the Enforcement Rules of the BTA, the time limit for submission of supporting documents required to claim input VAT deductions has also been extended from 5 to 10 years.

The aforementioned amendments to the Enforcement Rules of the BTA apply retroactively from May 24, 2013 (i.e. effective date of amendment to Article 131 of the APA). Therefore, the time period for submission of supporting documents required to claim input VAT deductions obtained after May 24, 2013, or the time period for submission of supporting documents required to claim input VAT deductions obtained before May 23, 2013, but are still within the original 5-year time limit which falls on a date prior to May 24, 2013, can be extended to 10 years.



Examples are illustrated below:

Scenarios	Time limit for deduction of Input VAT
Business entity A fails to submit supporting documents required to claim input VAT deductions incurred in March and April 2008 when filing VAT return on May 15, 2008.	Business entity A may only defer submission of the input VAT supporting documents to May 15, 2013, as Article 131 of the APA has not been amended yet as of the original 5-year submission time limit.
Business entity B fails to submit supporting documents required to claim input VAT deductions incurred in May and June 2013 when filing VAT return on July 15, 2013.	Business entity B may defer submission of the input VAT supporting documents for 10 years until July 15, 2023, as the current reporting deadline (i.e. July 15, 2013) falls after May 24, 2013, i.e. can automatically apply the amended Article 131 of the APA.
Business entity C fails to submit supporting documents required to claim input VAT deductions incurred in May and June 2008 when filing VAT return on July 15, 2008.	Business entity C may defer submission of the input VAT supporting documents for 10 years until July 15, 2018, as the original 5-year submission time limit (i.e. July 15, 2013) falls after May 24, 2013, i.e. can automatically apply the amended Article 131 of the APA.

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