Taiwan Tax Updates

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Taxes paid overseas are eligible as foreign tax credits against provisional income tax payable in Taiwan

The Ministry of Finance ("MOF") promulgated Tax Ruling No. 10300588330 on August 27, 2014, which states that beginning from 2014, profit-seeking enterprises in Taiwan that elect to pay provisional income tax based on actual income during the first 6 months of the taxable year can deduct income taxes paid overseas (including taxes paid in Mainland China) against its provisional income tax payable. The foreign tax credits need to originate from income tax paid overseas due to overseas income earned during the first 6 months of the taxable year, and should be evidenced by relevant tax payment receipts authenticated by the consulate or overseas representative offices of Taiwan.

Surviving entity in a merger cannot utilize the remaining balance in the imputation credit account of the merged entity

In accordance with a newsletter issued by the tax authority on August 25, 2014, for mergers conducted after January 1, 2009, Tax Ruling No. 10100536790 issued on June 4, 2012 stipulates that the merger consideration received in excess of the capital contributed by the shareholders (i.e. the merged entity's paid-in capital and additional paid-in capital, etc.) shall be treated for tax purposes as deemed dividends. The balance in the imputation credit account ("ICA") on the merger date will be distributed to shareholders in accordance with Article 66-6 of the Income Tax Act. If there is a positive balance in the ICA after the distribution of the aforementioned deemed dividends, because the retained earnings of the merged entity prior to the merger have already been distributed to shareholders in the form of deemed dividends, the merged entity will no longer possess retained earnings. Consequently, the surviving entity in a merger cannot continue to utilize the remaining balance of the merged entity's ICA.

PwC Observation

The aforementioned tax ruling does not mention a situation whereby the merger consideration received by shareholders of the merged entity is less than the net book value of the merged entity, and thus deemed dividends is less than the accumulated retained earnings of the merged company. In this situation, since the merged entity still has retained earnings after the merger, can the remaining balance of the merged entity's ICA be utilized by the surviving entity?

Based on a verbal discussion with the MOF, our understanding is that the tax authority deems all accounts of the merged entity to zero out upon conclusion of the dissolution tax return; therefore, the surviving entity cannot utilize the remaining balance of the merged entity's ICA.

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