

Taiwan Tax Update

May 2015

Entities selling business tax exempt goods or services may switch to taxable status retroactively if certain conditions are met

According to Article 8 of the Business Tax Act, any business entity selling VAT exempt goods or services (e.g. business entity selling unprocessed agricultural products) has to apply to the Ministry of Finance (“MOF”) to waive such exemption and compute its business tax before it can issue Government Uniform Invoices (“GUI”) bearing 5% VAT to the purchasers. However, on May 7, 2015, the MOF announced Tax Ruling No. 10304633410 to further elaborate that where the aforesaid entity has never obtained pre-approval to waive its VAT exemption status, but has already issued GUIs bearing 5% VAT and reported the taxable sales amount in VAT returns, on the premise that no business tax evasion is involved, the entity may be approved to waive its VAT exemption status based on guidance received from the competent authority after submitting the required application documents to waive the VAT exemption status. Once an approval is obtained, such waiver may be applied retroactively to the period when the GUIs bearing 5% VAT was first reported. Nevertheless, no changes to taxable status may be made within three years once VAT exemption status is changed to taxable status and approved by the MOF.

Head offices and underlying branches should issue GUIs separately for goods or services actually sold

According to the recently issued newsletter by the tax authority, a head office and its underlying branches are regarded as different business entities, and each entity is obliged to issue GUIs separately to the purchasers for goods or services actually sold; otherwise, penalty will be imposed accordingly.

An example is provided as follows:

Scenario	Penalty
Company A is an entity running franchise shops that sells drinks, and has set up a branch, Branch B. To expand its business, Company A established a new branch, Branch C recently. Due to Branch C being unable to timely complete its business registration, Branch C issued GUIs in Branch B's name when selling drinks to customers.	<ul style="list-style-type: none">✓ Branch C will be imposed penalties for underreporting VAT, or failing to provide GUIs to purchasers, whichever is higher.– Penalties for tax evasion: Pursuant to Article 51 of the Business Tax Act, the taxpayer shall be fined no more than five times the amount of taxes under-reported.– Penalties for failing to provide proper GUIs to purchasers: As Branch C failed to provide GUIs issued in its own name to customers, a fine equivalent to 5% of the total sales amount should be imposed in accordance with Article 44 of the Tax Collection Act.

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Appendix

日期文號： 中華民國104年5月7日台財稅字第10304633410號令

摘 要： 營業人銷售免稅貨物或勞務符合一定條件得追溯適用放棄免稅之規定

主 旨： 營業人銷售免稅貨物或勞務之始未申請核准放棄適用免稅，即開立應稅統一發票並申報應稅銷售額，且未藉應稅、免稅交互開立統一發票規避稅負者，如經主管稽徵機關輔導，已補填具放棄免稅申請書及「營業人申請放棄適用免稅規定銷售額分析表」者，得核准自開始銷售免稅貨物或勞務申報應稅銷售額之當期適用放棄免稅規定，但核准後3年內不得變更。