
Taiwan Tax Update

April 2018

Guidance for recognition of goodwill and required supporting documents

On March 30, 2018, the Ministry of Finance (“MOF”) announced Tax Ruling No. 10604699410, stipulating the guideline for recognition of goodwill and required supporting documents. The salient points are summarized as follows:

1. Criteria for recognition of goodwill:

- Transaction has reasonable commercial purpose;
- generated due to merger or acquisition in accordance with “Business Mergers and Acquisitions Act (“M&A Act”)” or “Financial Institution Merger Act”;
- cost of merger or acquisition > fair value of net identifiable assets acquired

2. Companies shall provide relevant supporting documents for goodwill recognition, and fill out “Goodwill verification checklist” for tax office’s review

3. Goodwill cannot be recognized for tax purpose in the following situation:

- Where accounting guidance provided in “IFRS3 Business Combinations” and “EAS7 Business Combinations and Controlling Investments” states that goodwill shall not be recognized;
- Goodwill generated as a result of artificial arrangement, which utilizes the legal form of corporate merger & acquisition, but lacks reasonable commercial purpose, with ultimate goal to intentionally circumvent or reduce tax liability;
- Where supporting documents for acquisition cost and valuation of net identifiable assets acquired are not provided.

PwC observation

Mergers and acquisitions are one of the strategies which may be adopted to pursue business growth or transformation. However, given constant tax dispute on

goodwill recognition as a result of business merger & acquisition in recent years, the tax authorities have provided guidance defining criteria for recognition of goodwill, and required supporting documents to be provided, to allow taxpayers to self-assess deductibility of goodwill amortization in corporate income tax returns and ensure compliance.

Prior to engaging in merger & acquisition transactions, companies shall take into consideration the aforementioned guideline, and retain appropriate documents for tax management purpose.

Additional taxes due and penalties to be levied for excessive distribution of ICA credit

1. From January 1, 2015 onwards, only half of the imputation credit account (“ICA”) balance can be deductible against individual income tax due or dividend withholding tax. The MOF previously defined calculation method for additional taxes due and penalties to be levied for excessive distribution of ICA credit. On March 28, 2018, the MOF announced Tax Ruling No. 10604687570 to redefine the calculation method. The difference between guidance provided in the old and new tax rulings are summarized as follows:

Additional taxes due and penalties to be levied for excessive distribution of ICA credit		
Type of Stockholder	Old tax ruling (Abolished)	New tax ruling
Resident individual	50% of excessive ICA credit distributed	Regardless of type of stockholder, 50% of excessive ICA credit distributed.
Domestic corporation	100% of excessive ICA credit distributed	
Non-resident individual and foreign corporations	100% of excessive ICA credit distributed	

The new tax ruling also stipulates that once additional taxes due is made up for excessive distribution of ICA credit, twice the amount of taxes made up shall be included in the ICA credit account at the time of payment.

2. An example is provided as follows:

Type of Stockholder	ICA credit distributable (correct)	Actual distribution of ICA credit (incorrect)	Excessive ICA credit distributed	Additional taxes due		Penalties to be levied	
				Original tax ruling	New tax ruling	Original tax ruling	New tax ruling
Resident individual	60	64	$\frac{2}{2} = (64-60) \times 50\%$	2	2	2	2
Domestic corporation	60	64	4	4	2	4	2
Non-resident individual and foreign corporation	60	64	4	4	2	0 (Note)	0 (Note)

Note: In accordance with Article 7 of Standard Governing Reduction or Exemption of Penalties for Tax Violation, excessive distribution of ICA credit to foreign shareholders are exempt from penalties.

3. Cases which have not yet been assessed can adopt the new tax ruling. If distribution of dividends after January 1, 2015 results in excessive distribution of ICA credit, and additional taxes levied equivalent to 100% of excessive ICA credit distributed has been fully paid, where the CIT return for the underlying year has not been assessed yet (or is undergoing administrative remedy), the company can apply for tax refund based on the new tax ruling.

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