

Taiwan Tax Update

May 2021

Income Tax

Extension of tax filing and payment deadlines due to COVID-19

In response to outbreak of domestically-transmitted COVID-19 cases, the Ministry of Finance (“MOF”) announced on May 12, 2021 the extension of deadline for filing and payment of FY2020 individual and corporate income tax from May 31, 2021 to June 30, 2021.

In addition, pursuant to Tax Ruling 11004563330 issued by the MOF on May 7, 2021, for tax filing and payment deadlines which fall within the period May 2021 to July 2021, such deadlines may be extended for taxpayers who undergo medical treatment, home isolation or quarantine, or centralized isolation or quarantine due to COVID-19, and therefore are not able to complete tax filing and payment by the prescribed deadline. Salient points are as follows:

1. **Eligibility:** individuals who undergo medical treatment, home isolation, home quarantine, centralized isolation, or centralized quarantine (not applicable for those under self-health management), including
 - (1) Individuals
 - (2) Profit-seeking enterprises, organizations and institutions, tax withholders: responsible person, chief accountant, CPA engaged to perform relevant tax compliance matters, accredited bookkeeper, bookkeeping and tax filing agent.

2. **Key tax items and deadlines**

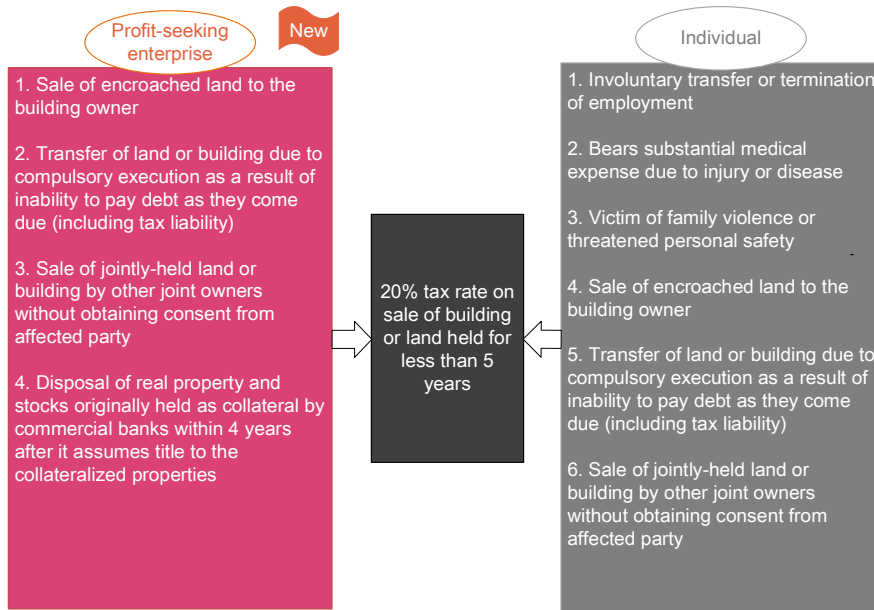
Key Tax Items	Original Deadline	Extended Deadline
House tax	5/31	6/30
Value-added tax (monthly filing)	5/17, 6/15, 7/15	Extended to 5/31, 6/30, and 8/2, respectively
Withholding tax (resident payee)	5/10, 6/10, 7/12	
Withholding tax (non-resident payee)	Within 10 days after taxes are withheld (where original filing deadline falls on or before August 2, 2021)	20-day extension

PwC Reminder:

1. The income tax filing extension announced by the MOF on May 12, 2021 applies to all taxpayers, not just those impacted by COVID-19. No application is required, and no interest will accrue on payment made within the extended period. Moreover, there is no impact on usage of tax loss carried forward from past 10 years. In addition, the application deadline for investment tax credit, such as R&D, 5G, and smart machinery, is also extended to June 30, 2021.
2. Taxpayers impacted by COVID-19 (e.g. profit-seeking enterprises receiving relief or experiencing significant decrease in revenues) who are unable to pay taxes due may apply with the tax authorities to defer tax payment for up to 1 year, or pay taxes due in installments for up to 3 years (with 36 monthly installments), regardless of amount of taxes due.

MOF announced draft rule governing exemption from heavy taxation under Joint Property Tax System 2.0 for individuals and profit-seeking enterprises who sell building and land held for less than 5 years due to involuntary factors

Summary of involuntary factors mentioned above include:



MOF announced draft amendment to “Regulations Governing Application of Agreements for the Avoidance of Double Taxation with Respect to Taxes on Income”

In response to OECD’s Base Erosion and Profit Shifting (“BEPS”) final reports, model tax convention and commentaries, the MOF announced draft amendments to “Regulations Governing Application of Agreements for the Avoidance of Double Taxation with Respect to Taxes on Income” on April 16, 2021. Salient points of the draft amendment are as follows:

Subject	Highlights of Amendment
Principal Purpose Test (PPT)	Adopt minimum standards outlined by BEPS to prevent treaty abuse.
Tie Breaker Rule	Incorporate definition of PEM under Article 43-4 of the Income Tax Act to determine application guideline of sole tax residency status for treaty purposes.
Fixed Place PE and Minimum Presence Test	Incorporate principles for determining PE and calculating minimum presence or residency period for treaty purposes due to activities performed.
International Transportation	Definition of profit generated from international transportation has been broadened compared to current audit practices.
Royalties	Definition of royalties has been narrowed compared to current audit practices.
Others	Income not subject to withholding tax and filed via a tax agent is

	<p>also eligible for business profit tax exemption application;</p> <p>Issuance of beneficial ownership statement for trusts and investment trust funds for usage of treaty benefits;</p> <p>Income of hybrid contracts should be reasonably segregated and corresponding treaty provision should be applied to each category of income.</p>
Effective date	<p>The amendment will become effective upon formal announcement, whereas amendment to provisions concerning reduced tax rate subject to a limit will be retroactive starting January 1, 2019.</p>

PwC View:

Highlights of the draft amendment include incorporation of Principal Purpose Test and concept of Coherence in determining fixed place PE.

1. Under the PPT, if foreign enterprises undergo fragmentation of onshore economic activities or split up one large contract into numerous smaller contracts, necessity to do so from economic substance perspective should be evaluated, in order to determine eligibility for treaty benefits. Moreover, whether treaty benefits are obtained via a paper company situated in a treaty state is also included as one of the evaluation criteria under PPT. When assessing whether one of the principal purpose of a transaction or arrangement is directly or indirectly obtaining treaty benefits, the relevant facts, circumstances, and commercial rationale of such transaction or arrangement, etc. should be considered.

We refer to an example provided in OECD commentaries to illustrate the above: Foreign Enterprise A, which is a resident of a treaty state, undertakes a construction project in Taiwan, which is expected to last 10 months. Since the construction period exceeds the 6-month construction PE threshold, profits of Foreign Enterprise A from construction project in Taiwan shall be taxable in Taiwan pursuant to the treaty. If the Taiwan counterparty agrees to split the said construction contract into two separate contracts, each with construction period of 5 months; with one contract signed by Foreign Enterprise A, and the other contract signed by Foreign Enterprise A's affiliate (Foreign Enterprise B, also a resident of a treaty state), considering relevant construction period is less than the aforementioned 6-month PE threshold, from a form perspective, Foreign Enterprise A and B should not be deemed to have a PE in Taiwan, and therefore should be eligible for business profit tax exemption treatment in Taiwan. Nevertheless, if PPT is taken into consideration, the tax authorities shall assess relevant facts and circumstances

to determine whether the principal purpose of aforementioned arrangement is to directly or indirectly obtain treaty benefits, or whether there is commercial rationale for such arrangement, e.g. determine if Foreign Enterprise A is jointly and severally liable for the performance of Foreign Enterprise B's contract and underlying contractual obligations, or whether Foreign Enterprise A provides similar guarantee. If after assessing all relevant aspects, in the absence of other facts and circumstances showing otherwise, the tax authorities may conclude that the aforementioned arrangement is made for the principal purpose of obtaining treaty benefit, and deny usage of business profit tax exemption accordingly.

2. The amendment also introduces the concept of geographical and commercial coherence with respect to business activities carried out in a particular location to determine fixed place PE. In other words, whether a foreign enterprise has a fixed place PE in Taiwan will depend on whether there is a fixed site on which the foreign enterprise continuously carries out business activities or provides relevant service.

We refer to an example provided in OECD commentaries to illustrate the above: A consultant of a foreign consulting firm provides customized services under unrelated contracts for a number of unrelated clients in the same office building, with each service contract lasting less than 6 months. Though all services are provided within a geographical area (i.e. the same office building), the lack of commercial coherence with respect to the services performed (i.e. unrelated services provided to unrelated clients), with each individual service lasting for less than 6 months, should not render the office building a fixed place PE of the foreign consulting firm. Assuming the foreign consulting firm does not have a PE under alternative PE definitions, i.e. construction PE, agency PE, or service PE, the foreign consulting firm may be eligible for business profit tax exemption treaty benefits. Notwithstanding the office building may not be considered a fixed place PE of the foreign consulting firm in Taiwan, if the duration of foreign consultants providing services in Taiwan exceeds the service PE threshold defined in applicable tax treaties, e.g. 183 days in any given 12-month period, the foreign consulting firm may still be seen as having conducted business through a service PE in Taiwan, in which case eligibility for business profit tax exemption treatment may be affected.

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