

Taiwan Tax Update

July 2021

Income Tax

Ministry of Finance announced amendment to Guideline for Income Tax Filing of Consolidated Income from House and Land Transactions due to introduction of Joint Property Tax System 2.0 effective from July 1, 2021

The salient points of amendment to Guideline for Income Tax Filing of Consolidated Income from House and Land Transactions (the "Guideline") covers the following sections, including definition of Transaction Date, Acquisition Date, Holding Period, and Designated Shares¹, etc.

Transaction Date (Sale)	Principle	Based on title transfer registration date
	Pre-sold Building	Signing date of sales and purchase agreement
	Designated Shares	<ul style="list-style-type: none"> ● Securities (as defined by Securities Transaction Tax Act) --- Sales and purchase settlement date ● Others --- Signing date of sales and purchase agreement
Acquisition Date	Principle	Based on title transfer registration date
	Pre-sold Building	Signing date of sales and purchase agreement
	Designated Shares	<ul style="list-style-type: none"> ● Acquired for consideration: <ul style="list-style-type: none"> ◆ Securities (as defined by Securities Transaction Tax Act) --- Sales and purchase settlement date ◆ Others --- Signing date of sales and purchase agreement ◆ Issuance of new shares for cash, issuance of new shares via public underwriters, or subscription of new shares by promoters or public solicitation --- Date of payment for shares subscribed ◆ Issuance of new shares in exchange for creditor's right, property, or technical know-how --- Date of exchange ◆ Others --- Actual transaction date

Note:

1. Designated Shares refer to "directly or indirectly held majority shares, where more than 50% of value of shares or capital contribution is comprised of building and land within Taiwan"



		<ul style="list-style-type: none"> ● Not acquired for consideration: <ul style="list-style-type: none"> ◆ Issuance of new shares from undistributed earnings or capital reserve --- Ex-dividend date ◆ Others --- Actual transaction date
	Implementer of urban renewal plan and constructor of new buildings due to accelerated reconstruction of unsafe and old buildings	Authorization date of plan for urban renewal and reconstruction of unsafe and old buildings
Holding Period	Principle	Acquisition date ~ Transaction date
	Allocated building received in joint construction project etc.	For allocated building in exchange for self-owned land in joint construction project, or allocated building as a result of urban renewal or accelerated reconstruction of unsafe and old buildings, the holding period for allocated building shall be based on holding period of underlying land.
Filing and Taxation	Profit-seeking enterprises	<ul style="list-style-type: none"> ● Principle: Separate tax calculation but consolidated filing ● Exception: For application of first-time title registration of building acquired with underlying land where the profit-seeking enterprise is the constructor, income from such property transaction shall be consolidated with regular taxable income in corporate income tax return and subject to flat 20% CIT rate, i.e. separate tax calculation but consolidated filing approach does not apply.
	Individuals	<ul style="list-style-type: none"> ● Separate taxation: Income tax return needs to be filed and taxes paid within 30 days following the next day after transaction date, regardless whether transaction gain or loss is involved. ● Taxable income from sales of building and land of sole proprietorship or partnership structured as a profit-seeking enterprise shall be declared in the said title owner's individual income tax return, rather than in its corporate income tax return.

PwC Analysis:

As transfer of Designated Shares is deemed as sales of building and land, the Guideline further stipulates the following:

1. To determine whether criteria for directly or indirectly held majority shares are met, the taxpayer needs to review whether its direct or indirect shareholding percentage in target shares transferred exceed 50% on any day within 1 year prior to the share transfer date (period prior to June 30, 2021 shall not be counted). Since Joint Property Tax System 2.0 is effective from July 1, 2021, the beginning date of such 1 year period shall always be July 1, 2021 onwards, e.g. if shares were transferred on August 1, 2021, the 1 year period prior to the share transfer date would run from August 1, 2020 to July 31, 2021. However, since the period prior to the effective date of Joint Property Tax System 2.0 is not counted, hence, the beginning date of such period is July 1, 2021. In other words, the period for determination of whether directly or indirectly held majority share threshold is breached is from July 1, 2021 to July 31, 2021. In addition, the Ministry of Finance (“MOF”) will announce sub-regulations to define how shareholding percentage of directly and indirectly held shares should be computed. It is anticipated that the MOF will make reference to the current CFC Rules, and include related party shareholding percentage in the calculation.
2. To determine whether more than 50% of value of shares or capital contribution is comprised of buildings and land in Taiwan, the following formula is used: (fair value of property)/(net equity of target company or value of shares assessed by the tax authority, whichever is higher). The numerator of the formula, i.e. fair value of property, is mainly based on market price (e.g. value of property derived from mortgage evaluation by financial institution, or valuation information from real estate appraisers, etc.). In addition, the property captured in the numerator refers to all properties acquired (regardless when they were acquired). The denominator of the formula is in principle net equity of the target company (either net equity of most recent audited financial statement issued within one year of share transfer; or if the target company did not have audited financial statements within one year of share transfer, the net equity of the target company on the share transfer date shall be used instead). However, if the tax authority discovers information which proves the value of the shares are higher than that determined using net equity method, the higher value may be used. This provides flexibility to the tax office in determining the value of the target company. Therefore, when transferring shares of a real property company, individual or corporate shareholders should evaluate the value of the shares of the real property company, and if such value is higher than its net equity, the shareholders may provide relevant supporting documents to the tax authority for verification and assessment.



3. For transfer of Designated Shares, even if the shareholder only sells a portion of the Designated Shares (less than 50%), relevant capital gain of shares sold should still be calculated in accordance with Joint Property Tax System 2.0. When determining the applicable tax rate based on holding period, such holding period refers to the period when shareholders hold the target company's shares.

MOF announced tax ruling to provide flexibility to Taiwan tax authority when negotiating cross border Bilateral or Multilateral Advance Pricing Agreement to test actual controlled transaction result against arm's length range

Where the Taiwan tax authority is negotiating bilateral or multilateral advance pricing agreement ("BAPA") with the competent authority in the other Contracting State, both parties may mutually agree to use either the controlled transaction result of each year within the covered period, or the average of all years within the covered period, to test whether the controlled transactions are at arm's length. If the controlled transaction result fall outside of the arm's length range, a downward or upward adjustment shall be made to any point within the arm's length range for each respective year covered by BAPA, or as a lump-sum adjustment to taxable income in the last year.

An example is provided for your reference below:

A Company ("A Co.") is a Taiwan entity, and its affiliate, B Company ("B Co."), is a profit-seeking enterprise of the other Contracting State. A Co. and B Co. separately apply to the Taiwan tax authority and the competent authority of the other Contracting State respectively, to include 2021 to 2025 controlled transactions under the BAPA application. Subsequent to negotiations by the Taiwan tax authority and the competent authority of the other Contracting State, it is agreed that A Co. is the tested party, Return on Sales ("ROS") is the profit level indicator, and the arm's length range of ROS is 3% to 8%. Further, it is mutually agreed that the evaluation and adjustment process will consist of:

1. Test whether the ROS of A Co in each year from 2021 to 2025, or whether the average ROS of A Co. from 2021 to 2025, falls within the arm's length range of ROS (3% to 8%) mutually agreed in the BAPA application.
2. If the ROS of A Co. is not within the arm's length range, a downward or upward adjustment shall be made to either the floor or the ceiling of the arm's length range (i.e. 3% or 8%), or to any point within the arm's length range.

3. Adjustment shall be made to the taxable income of A Co. on an annual basis from 2021 to 2025 respectively. Alternatively, the sum of all adjustments from 2021 to 2025 can be made as a lump-sum adjustment to the taxable income of A Co. in 2025.

Companies that distribute earnings from retroactive increase to beginning balance of 2018 retained earnings due to changes in accounting principle during the period Special Act for COVID-19 is in force may deduct said earnings distribution from tax base of 2018 ARE tax

For companies that distribute earnings from retroactive increase to beginning balance of 2018 retained earnings due to amendment of IFRS or Enterprise Accounting Standards (“EAS”), or conversion from EAS to IFRS, the said dividend or earnings distribution may be treated as a deduction item from the tax base of 2018 ARE tax during the period January 15, 2020 to June 30, 2022.

PwC Analysis:

The tax ruling was originally announced in May 2020. Due to extension of effective period of Special Act for COVID-19, the effective period of the said tax ruling has also been extended in 2021. Where companies distribute earnings from retroactive increase to beginning balance of 2018 retained earnings due to amendment of IFRS 9 and IFRS 15 between the period July 1, 2021 to June 30, 2022, an amended 2018 ARE tax return can be submitted to obtain ARE tax refund.

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資誠

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