

Taiwan Tax Update

December 2021

Tax Collection Act

Legislative Yuan passed third reading of amendment to Tax Collection Act on November 30, 2021

Salient points of amendment to Tax Collection Act (“TCA”) are summarized as follows:

Item	Before Amendment	After Amendment
Tax assessment letter may be given via public notice	N/A	For tax returns which are assessed as filed, the tax assessment letter may be given via public notice, rather than printed out individually and delivered.
Reduce late payment surcharge	Surcharge is 1% of the tax owed for every two days in arrears, up till the 30th day (capped at 15%)	Surcharge is 1% of the tax owed for every three days in arrears, up till the 30th day (capped at 10%)
Eligibility to submit application for paying taxes due in installments with interest imposed thereon	<ul style="list-style-type: none"> Article 26 of TCA stipulates that a taxpayer may apply for tax deferral or paying taxes due in installments where it is unable to pay taxes in full within the stipulated deadline: <ol style="list-style-type: none"> Due to natural disaster, accident, force majeure, or being economically disadvantaged. Eligible to all tax categories. Statutory period of tax deferral or installment payments shall not exceed 3 years. 	<ul style="list-style-type: none"> No amendment to Article 26 of TCA. Newly enacted Article 26-1 of TCA, which stipulates that a taxpayer may apply for paying taxes due in installments where it is unable to pay taxes in full within the stipulated deadline: <ol style="list-style-type: none"> Taxpayer suffers from financial difficulty due to objective cause (limited to income tax); assessed taxes payable is massive (applicable to all tax categories); in line with cause eligible for paying local taxes due in installments

	<p>4. No need to impose interest on tax deferral or installment payments.</p>	<p>approved by the local government.</p> <p>2. Statutory period of installment payments shall not exceed 3 years.</p> <p>3. Late payment interest shall be imposed on installment payments, or authorized for determination by local government.</p>
<p>Amendment to cause eligible for tax refund application and statutory period for submitting application</p>	<p>Cause: excess taxes paid due to mis-application of tax regulations or incorrect calculations.</p> <p>Statutory period for tax refund application:</p> <ul style="list-style-type: none"> ● Excess taxes paid due to taxpayer's mistake: 5 years ● Excess taxes paid due to tax authority's mistake: no deadline 	<p>Cause: excess taxes paid due to mis-application of tax regulations; mis-judgement of underlying facts; incorrect calculations; or other reasons.</p> <p>Statutory period for tax refund application:</p> <ul style="list-style-type: none"> ● Excess taxes paid due to taxpayer's mistake: 10 years ● Excess taxes paid due to tax authority's mistake: 15 years
<p>Reduce ratio of tax payment for temporary suspension of compulsory execution of taxes due</p>	<p>Where taxpayer has filed tax appeal and paid one-half of assessed taxes due during tax recheck phase, the tax authority may temporarily suspend referral of compulsory execution of taxes due to Administrative Enforcement Agency.</p>	<p>Where taxpayer has filed tax appeal and paid one-third of assessed taxes due during tax recheck phase, the tax authority may temporarily suspend referral of compulsory execution of taxes due to Administrative Enforcement Agency.</p>
<p>Increase fine and penalty for tax evasion due to fraud or other unrighteous means</p>	<p>Subject to imprisonment of no more than 5 years, detention, or in lieu thereof, or in addition thereto, imposed with a fine of no more than NT\$60,000.</p>	<p>1. Subject to imprisonment of no more than 5 years, and in addition thereto, imposed with a fine of no more than NT\$10 million.</p> <p>2. Where an individual evades tax of NT\$10 million or more, or an enterprise evades tax of NT\$50 million or more, the</p>

		taxpayer shall be subject to imprisonment of 1 to 7 years, and in addition thereto, imposed with a fine ranging from NT\$10 million to NT\$100 million.
Provide flexibility on fines imposed on behavioral punishment	Where a profit-seeking enterprise fails to provide, obtain, or retain supporting documents as required by law, a fine of 5% of the sales amount shown on relevant documents verified by the tax office shall be imposed on such enterprise.	Where a profit-seeking enterprise fails to provide, obtain, or retain supporting documents as required by law, a fine of no more than 5% of the sales amount shown on relevant documents verified by the tax office shall be imposed on such enterprise.

PwC Analysis:

1. The newly enacted Article 26-1 of TCA stipulates various criteria where a taxpayer may apply to pay taxes due in installments with interest imposed thereon. One of the criteria which allows taxpayer suffering from financial difficulty due to objective cause to pay taxes due in installments is limited to income tax, with rationale for such limitation defined in Tax Ruling No. 09804545380 issued by the Ministry of Finance (“MOF”) in 2009. Whereas, for the following taxes, i.e. VAT, commodity tax, tobacco and alcohol tax, securities transaction tax, and futures transaction tax, etc. which are collected or withheld by agents, since the taxpayer does not actually bear such taxes, hence, the relevant taxpayer shall not be eligible to pay taxes due in installments. Apart from the above, implementation rules to determine whether the taxpayer suffered from financial difficulty with objective cause, and threshold for massive taxes evaded, etc. will be separately defined by the MOF.
2. Where excess taxes are paid due to taxpayer’s mistake, if the statute of limitation for right to claim tax refund has not exceeded 5 years (calculated from the payment date), such statute of limitation can be extended to 10 years in accordance with the amended TCA. Whereas, if the statute of limitation for right to claim tax refund has exceeded 5 years, since relevant right to claim tax refund has expired under the previous version of the TCA, the extended deadline under the amended TCA is no longer applicable. Where excess taxes are paid due to tax authority’s mistake, the taxpayer may claim tax refund within 15 years from the implementation date of the amended TCA.
 However, the following cases are not eligible for tax refund,
 - a. Where tax assessment issued by the tax authority is confirmed by judgement on the merits by the Administrative Court, out of respect of the binding force of such



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judgement, the taxpayer may no longer claim tax refund of excess taxes paid. Whereas, if submission of a tax recheck application is judged as overdue and thus overruled by the Administrative Court, as this is not considered judgement on the merits, relevant excess taxes paid are still eligible for tax refund.

- b. Excess taxes paid due to fraud or other unrighteous means, e.g. purchase or sale of fictitious Government Uniform Invoices (“GUIs”); fictitious reporting of revenues to borrow loan from banks; registration certificate of construction company provided to others for bidding and issuance of GUIs, etc, whereby relevant excess taxes paid are not eligible for tax refund.

Income Tax Act

Tax treaty signed by Taiwan and Saudi Arabia applicable for usage starting January 1, 2022

The tax treaty between Taiwan and Saudi Arabia (“TW-SA tax treaty”) was signed on December 2, 2020, and ratified by both parties after completion of mutual notification procedures, which allowed the TW-SA tax treaty to come into force on November 1, 2021, and applicable for usage starting January 1, 2022. The TW-SA tax treaty is Taiwan’s 34th comprehensive tax treaty which came into force, and the first comprehensive tax treaty concluded with an Islamic country in the Middle East.

The applicable parties who can use the TW-SA tax treaty are tax residents as defined by domestic tax regulations of Taiwan and Saudi Arabia, including individuals and enterprises. The applicable tax category regulated by the TW-SA tax treaty is income taxes (which also includes religious duty, also known as Zakat, in Saudi Arabia tax regulations). Salient points of preferential tax treatment and mutual agreement procedure offered by the TW-SA tax treaty are summarized below:

Item	Contents
Business Profits	Business profits of an enterprise of Taiwan or Saudi Arabia shall be exempt from income tax in the other territory where the enterprise does not carry on business in the other territory through a permanent establishment situated therein.
Investment Income	1. Dividends: shall not exceed 12.5%. 2. Income from debt-claims (interest): shall not exceed 10%; specific types of interest are exempt from income tax.

	3. Royalties: shall not exceed 4% for royalties paid for the use of, or the right to use, industrial, commercial, or scientific equipment; shall not exceed 10% for royalties paid in all other cases.
Capital Gains	Capital gains derived by a resident of a territory from the alienation of shares of a company which is a resident of the other territory may be taxed in that other territory, if shares owned by the alienator amount to at least 25% of the total issued shares of such company at any time during the 7-year period immediately preceding the alienation of such shares. Capital gains derived from the alienation of shares in all other cases shall be exempt from income tax.
Mutual Agreement Procedure	<p>If a resident of Taiwan or Saudi Arabia encounters the following:</p> <ol style="list-style-type: none"> 1. Dispute regarding usage of TW-SA tax treaty 2. Transfer pricing corresponding adjustment mechanism 3. Application of bilateral advance pricing arrangement mechanism to reduce subsequent audit risk and increase tax certainty for related party transactions <p>Then such resident may apply with the competent authority of either territory for usage of mutual agreement procedure within a specific time frame to resolve or prevent cross border taxation issues.</p>

PwC Reminder:

Starting from 2022, if a Taiwan resident derives relevant income from Saudi Arabia, e.g. technical or management service fee, dividends, interest, or royalties etc., an income tax exemption application or usage of reduced withholding tax rate application under the TW-SA tax treaty may be submitted to the Saudi Arabia tax authorities. If excess taxes are paid in Saudi Arabia due to Taiwan enterprises failing to apply treaty benefits, foreign tax credit will be denied by Taiwan tax authority for excess taxes paid where treaty benefits have not been availed.

Tax treaty signed by Taiwan and South Korea

The tax treaty between Taiwan and Korea (“TW-KR tax treaty”) was signed on November 17, 2021. After ratification by both parties following completion of domestic formalities and mutual notification in writing, the TW-KR tax treaty will come into force, and will be applicable for usage on January 1 of the following year. Subsequent to Taiwan-Japan tax treaty, the TW-KR tax treaty is Taiwan’s second comprehensive tax treaty signed with a Northeast Asian country.

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