

Taiwan Tax Update

June 2023

Income Tax

Ministry of Finance (“MOF”) announced draft amendments to Regulations Governing Assessment of Profit-seeking Enterprise Income Tax

Salient points are summarized as follows:

1. Draft amendments are made in response to amendments to International Financial Reporting Standards (“IFRS”), International Accounting Standards (“IAS”), and Enterprise Accounting Standards (“EAS”), which is effective from 2023 onwards:

| Item | Explanation |
|---|---|
| Leased assets and sales and leaseback transaction | <ul style="list-style-type: none">● Revise recognition of finance lease and relevant accounting treatment in accordance with the adoption of IFRS 16.● For companies adopting IFRS 16, tax treatment of a sale and leaseback transaction shall be determined based on whether the transfer of the underlying asset qualifies as a sale:<ul style="list-style-type: none">■ If transfer of asset qualifies as a sale, gain or loss (i.e. difference between the sales price (market price) and the undiscounted carrying amount) that relates to the rights transferred from the seller (lessee) to the buyer (lessor) shall be recognized as profit or loss immediately;■ If transfer of asset does not qualify as a sale, such sale and leaseback transaction shall be accounted for as a financing arrangement, whereby the seller (lessee) shall not derecognize the transferred asset on its balance sheet. In addition, the seller (lessee) shall recognize proceeds received from the sale as a financial liability, and subsequent lease payments shall be recognized as interest expense and repayment of loan principal. |

| Item | Explanation |
|--------------------|---|
| Asset depreciation | <ul style="list-style-type: none"> ● Where a leased asset is depreciated over the useful life of the asset in accordance with generally accepted accounting principles, the underlying lease shall be deemed acquisition of fixed assets. In the case of a lease of a passenger car, the depreciable basis (subject to tax limit), calculation of tax depreciation, and calculation of gain or loss upon sale or disposal of asset shall follow guidance provided under relevant regulations. ● Buildings held as investment properties should be depreciated over a period no shorter than the minimum useful lives stipulated in the Fixed Assets Useful Life Schedule. |

2. Draft amendments are made in response to existing tax rulings issued by the MOF and relevant regulations:

| Item | Explanation |
|--|---|
| Supporting documents for allocation of general and administrative (G&A) expenses no longer require authentication by the Taiwan embassy or trade representative office | <p>G&A expenses allocated from a foreign head office or regional headquarter to a Taiwan branch shall be supported by the financial statements of the foreign head office or regional headquarter, which is certified by a local CPA where the foreign head office or regional headquarter is domiciled, or other evidentiary documents. The existing regulations require the aforesaid documents to be authenticated by the Taiwan embassy or trade representative office.</p> <p>The draft amendment abolishes the requirement for documents to be authenticated.</p> |
| Relax requirement on supporting documents for certain travel expenses | <p>(1) For international airfare, a boarding certificate issued by the airline, stating the full name of the passenger, date of flight and port of departure and arrival, can serve as an alternative proof of flight itinerary and travelling abroad for tax deduction purposes.</p> <p>(2) For a day trip using Taiwan High Speed Rail, a declaration made by the employee who travelled can serve as an alternative document for tax deduction purposes.</p> |

| Item | Explanation |
|---|---|
| <p>Amend regulations for claiming tax deductible donation</p> | <p>(1) Include donations made to dedicated accounts set up by the Ministry of Education under Article 26-2 of Sports Industry Development Act as tax deductible expense</p> <p>(2) The formula for calculating tax limit for deductible donation expense as a certain percentage of taxable income is shown as follows:</p> $\frac{\text{Gross revenues} - \text{various costs/expenses/losses}}{(1 + \text{Tax limit } \%)}$ <p>The draft amendment extends the scope of “various costs/expenses/losses” that can be deducted from gross revenues for tax limit calculation purposes to include additional tax deduction or double deduction for qualified expenses defined under relevant regulations (e.g. Statute for Industrial Innovation, Act for Development of Small and Medium Enterprises, Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens, Sports Industry Development Act, Act Governing Preferential Treatment for Recalled Reservists, etc.).</p> |
| <p>Amend recognition principle of interest on loan used to purchase buildings or land</p> | <p>For construction or purchase of buildings or land that are treated as inventory and not used for business purposes (such as idle assets), relevant loan interest shall be recognized as deferred expense, and shall be expensed when the buildings or land are sold.</p> <p>Note: The existing regulations only require loan interest relating to purchase of land that is not booked as fixed assets to be recognized as deferred expenses.</p> |
| <p>Interest accrued when income tax is paid in instalments can be claimed as tax deductible expense</p> | <p>Profit-seeking enterprises that apply to pay income tax in instalments in accordance with Article 26-1 of the Tax Collection Act shall be liable for interest accrued daily from the next day following the original deadline for tax payment to the date actual taxes are paid.</p> |

| Item | Explanation |
|---|---|
| | The draft amendment allows such interest expense to be claimed as tax deductible expense. |
| Stipulate tax loss assessed by the tax authorities that can be used to offset against future taxable income | For a profit-seeking enterprise that utilizes tax losses carried forward over the past 10 years under Article 39 of the Income Tax Act (“ITA”), any tax-exempt domestic investment income earned in the year the tax loss occurred shall first be deducted from the amount of tax loss assessed by the tax authorities for the respective year, and any residual tax loss can then be used to credit against current year taxable income. |
| Recognition of Controlled Foreign Company (CFC) investment income | Recognition of CFC investment income and calculation of gain or loss from disposal of CFC shall comply with the applicable CFC regulations. |

MOF announced amendments to Rules Governing Assessment of Application for Usage of Article 25 of the Income Tax Act by Foreign Profit-Seeking Enterprises (“Article 25 Assessment Rules”)

In accordance with Article 25 of the ITA, where a foreign profit-seeking enterprise with its head office located outside of Taiwan engages in provision of international transportation, construction project, technical services, or machinery and equipment rental in Taiwan, and the costs and expenses related to such services cannot be reasonably determined, an application can be submitted to utilize a deemed profit rate of 10% for international transportation or 15% for the remaining categories of services to calculate taxable income in Taiwan. The MOF has amended the Article 25 Assessment Rules, with salient points summarized as follows:

1. **Extend application period to 10 years from receipt of payment by foreign profit seeking enterprise:** The Article 25 Assessment Rules originally stipulated that the application date shall not exceed 5 years from the date revenue was received (i.e. a 5-year statute of limitation) by the foreign enterprise. The amendment extends the application period to 10 years to be in line with the 10-year statute of limitation as stipulated under the Administrative Procedure Act for exercise of a claim under public law.
2. **Approval can be granted for a maximum period of 5 years:** The Article 25 Assessment Rules originally did not specify the maximum period for which approval for usage of deemed profit method under Article 25 of the ITA can be granted. The amended Article 25 Assessment Rules now explicitly stipulates that the approval period shall be capped at 5 years. However, if the contract term is less than 5 years, the approval period will be in line with the contract term.

PwC Reminder:

The amended Article 25 Assessment Rules came into force from May 29, 2023. Foreign profit-seeking enterprises can apply for usage of the deemed profit method based on the amended Article 25 Assessment Rules if the statute of limitation for exercise of claim has exceeded 5 years, but is less than 10 years, including resubmission of any application which was previously rejected by the tax authorities due to 5-year statute of limitation has expired.

MOF announced that profit-seeking enterprises opting to file a provisional income tax return can exclude CFC investment income when calculating taxable income for the first 6 months of the current tax year

A profit-seeking enterprise adopting a calendar year-end shall pay provisional income tax equal to 50% of the income tax liability declared for the previous year in September of the current tax year. However, if the profit-seeking enterprise meets certain criteria (maintains complete set of accounting books and records, uses blue returns or has its provisional income tax return certified by a CPA, and files the provisional tax returns within the stipulated deadline), it can opt to file a provisional income tax return and pay provisional income tax based on taxable income for the first 6 months of the current tax year.

The MOF issued a Tax Ruling stating that where a profit-seeking enterprise opts to file a provisional income tax return and pay provisional income tax accordingly, it does not need to account for CFC investment income when calculating taxable income for the first half of the current year.

PwC Analysis:

The CFC Rules has been implemented from 2023 onwards. According to the Rules, profit-seeking enterprises shall recognize CFC investment income as current year taxable income. However, as determination of whether profit-seeking enterprise is subject to CFC tax regime (e.g. shareholding percentage, exclusion criteria, current year income of CFCs, etc.) shall be made based on full year data, it is not feasible to determine or calculate CFC investment income in the middle of the year. Therefore, for profit-seeking enterprises opting to file a provisional income tax return and pay provisional income tax accordingly, CFC investment income can be excluded.

Whereas, for profit-seeking enterprises that pay 2024 provisional income tax based on 50% of the income tax liability declared for the previous year (i.e. 2023), please note that the so-called “income tax liability declared for the previous year” shall include taxes levied on CFC investment income recognized in 2023.

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