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Taiwan Tax Update

December 2023

Income Tax

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

On December 11, 2023, the MOF announced amendments to Regulations Governing Assessment of Profit-seeking Enterprise Income Tax. In addition to the items already highlighted in the draft amendment announced in May (please refer to June 2023 edition of Taiwan Tax Update for more information), salient points are summarized as follows:

1. The tax limit of meal allowance, either in the form of direct payout to employees or employer-provided meals, has been increased from NT$2,400 to NT$3,000 per person per month, effective from January 1, 2023. Meal allowance within said tax limit can be claimed as tax deductible expense by profit-seeking enterprises, and is non-taxable to employees.

2. For a profit-seeking enterprise utilizing tax losses carried forward over the past 10 years, any tax-exempt investment income obtained from domestic investee company stipulated under Article 42 of the Income Tax Act ("ITA"), or tax-exempt income provided by other relevant regulations, e.g. Article 28 of the Statute for Encouragement of Private Participation in Transportation Infrastructure Projects, Article 36 of the Act for Promotion of Private Participation in Public Infrastructure Projects, etc., which increases tax loss in a certain year, shall first be deducted from the tax loss assessed by the tax authorities for the respective year, and any residual tax loss can then be credited against current year taxable income. However, for tax-exempt income derived from land transactions, securities transactions, and futures transactions; tax-exempt income stipulated under Article 44 of the Business Merger & Acquisition Act; tax-exempt income earned by Offshore Banking Unit ("OBU"), Offshore Securities Unit ("OSU") and Offshore Insurance Unit ("OIU"), which increases tax loss in a certain year, such tax-exempt income do not need to be deducted from assessed tax loss for the respective year. Conversely, since tax exempt income from aforesaid transactions increase tax loss in a certain year, corresponding loss shall reduce tax loss due to reciprocal treatment.

PwC Reminder:

With regard to the increase in tax limit of meal allowance, profit-seeking enterprises may opt to increase the actual payout to employees, or merely adjust the amount of taxable vs. non-taxable income reported for each employee. Since the amendment is retroactively effective from January 1, 2023, if a profit-seeking enterprise intends to apply the increased tax limit retroactively (i.e. from January to November 2023), please be mindful that amendment of relevant accounting records (salaries vs meal allowance amount), reporting of employee's taxable salary income, and negotiation or mutual agreement with employees may be required to effectuate the proposed retroactive amendment.

MOF released Tax Ruling No. 11204681100 addressing income tax implication on sales of international carbon credits from reduced emissions under credited quotas traded on the Taiwan Carbon Solution Exchange ("TCX") by foreign profit-seeking enterprises

Remuneration derived from sales of international carbon credits from reduced emissions under credited quotas traded on the TCX by a foreign profit-seeking enterprise shall be considered Taiwan-sourced, which is subject to Taiwan corporate income tax ("CIT") assessment. Salient points are summarized as follows:

1. Calculation of taxable income
   (a) Where accounting books and records are in place, actual costs and expenses incurred may be deducted from gross remuneration received from sales of international carbon credits to calculate taxable income on an actual basis; or
   (b) Where accounting books and records are unavailable or insufficient to calculate taxable income on an actual basis, taxable income can be calculated on a deemed profit basis using profit rate of 10%.

2. Method of taxation
   (a) Where a foreign profit-seeking enterprise has a fixed place of business ("FPOB") in Taiwan:
   The FPOB shall calculate relevant taxable income, file CIT return, and pay taxes due on behalf of the foreign profit-seeking enterprise.

(b) Where a foreign profit-seeking enterprise does not have a FPOB in Taiwan:

i. TCX shall be appointed to calculate the foreign profit-seeking enterprise's taxable income using 10% profit rate, and 20% withholding tax ("WHT") shall be applied thereon to determine final taxes due. The WHT due shall be deducted from total remuneration payable to the foreign profit-seeking enterprise, whereby TCX shall file a CIT return on behalf of said foreign profit-seeking enterprise, and remit taxes withheld to the tax authorities.

ii. The foreign profit-seeking enterprise can, within 10 years from receiving such remuneration, submit an application with accounting books and records to the district tax office where TCX is domiciled, and apply to deduct relevant costs and expenses from above-mentioned remuneration, recalculate actual taxable income, and request for refund of excess taxes paid.

PwC Reminder:

While the MOF has ruled that sales of international carbon credits traded on the TCX shall be considered Taiwan-sourced income, the said tax ruling does not provide guidance on income categorization of international carbon credits. It is currently unclear whether remuneration paid by a Taiwan enterprise to acquire international carbon credits traded on an offshore carbon exchange shall also be deemed Taiwan-sourced income. Taiwan enterprises shall remain mindful of tax burden associated with trading of international carbon credits, and may consider applying for a private tax ruling to ascertain tax treatment where required.

Value Added Tax

MOF released Tax Ruling No. 11204662230 stipulating that late payment interest charged by business entities in accordance with Paragraph 1 of Article 233 of the Civil Code due to buyers' failure to make timely payment for purchase of goods or services shall not constitute "sales amount" for VAT purposes

This Tax Ruling is based on the spirit of Resolution No. 655 issued by Supreme Administrative Court in 2020, whereby the term "sales amount" refers to total consideration received by business entities for sales of goods or services, which shall include any other fees charged by

said business entities in addition to sales price of underlying goods or services sold, but are limited to those arising from exchange relationship between buyers and sellers in a buy-sell transaction. As both parties are unable to foresee whether buyer will fail to make timely payment at the time the transaction price is agreed, the statutory late payment interest shall not count towards the consideration for exchange of goods or services, and thus does not meet the definition of “sales amount” laid out in the Business Tax Act.

Furthermore, the statutory late payment interest referred to in this Tax Ruling includes interest calculated using either the statutory interest rate stipulated under Paragraph 1 of Article 233 of the Civil Code, or agreed interest rate determined by consent of both parties. For your information, Paragraph 1 of Article 233 of the Civil Code stipulates that in case of default on payment obligation involving cash settlement, creditors are entitled to late payment interest calculated using the statutory interest rate. However, where the agreed interest rate is higher, the higher interest rate shall apply.

PwC Reminder:

The MOF has concurrently repealed the former VAT ruling which states that late payment interest shall be considered “sales amount” for VAT purpose. From the date of issuance of the new Tax Ruling, the tax withholder shall be responsible for WHT payment and filing obligations upon settlement of late payment interest.

Furthermore, in accordance with Paragraph 1 of Article 1-1 of the Tax Collection Act, the new Tax Ruling can apply to any cases pending final assessment by the tax authorities. Therefore, for business entities that have already reported late payment interest as sales amount for VAT purpose based on guidance provided by former VAT ruling, if tax assessment has not yet been completed for the impacted period, the business entity concerned can apply for amendment of VAT filing position, and necessary WHT payment and filing procedures shall be performed instead.

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