

Taiwan Tax Updates

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資誠



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Determination of investment cost for tax purpose when shareholders receive capital reserve in cash

Tax Ruling Tai-Tsai-Shuei No. 10100097670 issued on August 17, 2012 stipulates that when a company distributes capital reserve in cash, as long as the cash distributed is “capital contribution in nature”, it shall not be treated as dividend income of the shareholder.

Based on discussions with the Ministry of Finance (“MOF”), the aforementioned tax ruling was issued from the perspective of the company distributing the capital reserve, without further considering whether the shareholders may receive cash in excess of their original contributed capital.

Nevertheless, where shareholders receive cash from distribution of capital reserve in excess of their original capital contribution, clarification should be sought from the tax authority on a case by case basis to mitigate any potential tax exposure due to under-reporting the income.

Tax treatment on sale of shares held in overseas foreign employee collective investment account

The overseas subsidiary or branch of a Taiwanese listed, OTC or emerging company, which qualifies as a foreign institutional investor, may register for an overseas foreign employee collective investment account for either selling the options granted to the foreign employees or corresponding shares obtained from exercising the options.

Tax Ruling Tai-Tsai-Shuei No. 10200644070 issued on November 14, 2013 stipulates that the sale of shares held by overseas foreign employee collective investment account should constitute the sale of shares by overseas foreign employee. From January 1, 2013 onwards, such sale of shares should be subject to 15% tax on capital gain from securities transaction in accordance with Article 14-2 of the Income Tax Act and Article 11 of the Standards Governing Withholding Rates for Various Incomes, and the said tax is to be paid and filed via a Taiwan resident agent/representative in accordance with Article 6 of the Regulations Governing Investment in Securities by Overseas Chinese and Foreign Nationals.

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The materials contained in this publication were assembled in November 2013 and were based on the law enforceable and information available as of October 30, 2013. In the event of any discrepancy between the English information contained in this newsletter and the original Chinese version of the laws or rulings announced by the government or any difference in the interpretation of the two versions, the Chinese version announced by the government shall prevail.

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Appendix

- 日期文號： 中華民國 102 年 11 月 14 日台財稅字第 10200644070 號
- 摘 要： 核釋海外外籍員工集合投資專戶處分股票之課稅規定
- 主 旨： 依金融監督管理委員會 97 年 10 月 8 日金管證八字第 0970044016 號令規定，上市、上櫃及興櫃公司之海外子公司或分公司以境外外國機構投資人之資格，辦理海外外籍員工集合投資專戶登記，該投資專戶僅准賣出海外外籍員工行使認購有價證券權利及因讓受與配發取得之股票，不能從事其他證券買賣交易，該專戶之有價證券為海外外籍員工依民法第 817 條至第 826 條規定分別共有，各共有人得自由處分其應有部分；海外外籍員工如不願採該專戶方式辦理者，可依華僑及外國人投資證券管理辦法，由個別外籍員工以境外外國自然人身分辦理投資專戶登記，執行讓受、認購及配發有價證券之權利及處分所取得之股票。海外外籍員工集合投資專戶處分股票，核屬海外外籍員工個人出售股票，自 102 年 1 月 1 日起應依所得稅法第 14 條之 2 及各類所得扣繳率標準第 11 條規定課徵所得稅，並依華僑及外國人投資證券管理辦法第 6 條規定，委託中華民國境內之代理人或代表人代理申報及繳納稅捐。