

# Taiwan Tax Updates

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資誠



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## **Amendment of exemption threshold for analyzing individual controlled transaction in transfer pricing report**

On February 2, 2015, the Ministry of Finance (“MOF”) issued Tax Ruling No. 10304578300 to amend Tax Ruling No. 09704555160 issued on November 6, 2008, which adjusted the exemption threshold for analyzing individual controlled transaction in the transfer pricing report. The comparison table below summarizes the transfer pricing analysis exemption threshold before and after the amendment.

<b>Before Amendment (effective prior to and including FY2013 corporate tax return filed)</b>	<b>After Amendment (effective as of FY2014 corporate tax return filed)</b>
<ol style="list-style-type: none"><li>1. Controlled transactions pertaining to operating income or operating cost items, with annual aggregate transaction amount no more than NT\$10 million;</li><li>2. Controlled transactions pertaining to non-operating income or non-operating cost items, with annual aggregate transaction amount no more than NT\$5 million.</li></ol>	<ol style="list-style-type: none"><li>1. Regardless of operating income or operating cost items, and non-operating income or non-operating cost items, the revised exemption threshold of the annual aggregate transaction amount is NT\$10 million for the same type of controlled transaction;</li><li>2. Where the annual aggregate transaction amount of the same type of controlled transaction exceeds NT\$10 million, but the transaction amount with the same related party does not exceed NT\$5 million, no individual controlled transaction analysis is required.</li></ol>

**Draft amendment to the “Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing”**

On January 7, 2015, the MOF announced the draft amendment to the “Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing” (“TP Assessment Regulations”). The table below summarizes the proposed amendments.

Proposed Amendments	Reference
<p>Add disclosure and transfer pricing analysis requirements for profit-seeking enterprises involved in “corporate restructuring”* activities in the current year;</p> <p><i>*Refers to reallocation of functions, assets, and risks, and adjustments to contract terms and arrangements between related parties, instead of corporate re-organization.</i></p>	<p>Article 9-1 of TP Assessment Regulations</p>
<p>Include cases where “each participant is deemed to have valuable and unique contribution to the controlled transaction” as cases applicable for usage of the Profit Split Method;</p>	<p>Article 19 of TP Assessment Regulations</p>
<p>Include dissolution income tax return into the scope of the TP Assessment Regulations where a company undergoes dissolution and liquidation, discontinuance, merger, or transfer of ownership;</p>	<p>Articles 21 and 22 of TP Assessment Regulations</p>
<p>Amend Advance Pricing Agreement application procedure and threshold;</p>	<p>Article 23 of TP Assessment Regulations</p>
<p>Where profit-seeking enterprises fail to provide required transfer pricing documentation, and the competent tax authorities have not found relevant costs or expenses data for the purpose of calculating taxable income, the taxable income may be computed based on the profit standard of the same trade.</p>	<p>Article 33 of TP Assessment Regulations</p>

**PwC Observation**

The primary focus of the proposed amendment is to add disclosure and transfer pricing analysis requirements for corporate restructuring activities. Companies contemplating



future restructuring should consider the impact of the draft amendment on the proposed restructuring activities, and prepare relevant documentation to comply with tax management objectives.

Considering the draft amendment does not include disclosure requirements in transfer pricing documentation and country-by-country reporting proposed in OECD's "Base Erosion and Profit Shifting" ("BEPS") action plan, it is expected that further amendments will be made to align local transfer pricing regulations with global tax practices.

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**Deemed dividends realized by the parent company in a merger with its subsidiary are excluded from the calculation of non-deductible input VAT ratio and corresponding VAT adjustment**

On January 21, 2015, the MOF issued Tax Ruling No. 10304608280, which states that in a parent-subsiary merger, the dissolved subsidiary's net asset value acquired by the surviving parent company in excess of the parent company's contributed capital in the dissolved subsidiary should be treated as deemed dividends, which is excluded from the year-end calculation of tax exempt revenues, non-deductible input VAT ratio and corresponding VAT adjustment.

As such, in a merger where the net assets of the dissolved subsidiary are acquired by the surviving parent, any deemed dividends realized therefrom are exempted from VAT filing, irrespective of the parent company's shareholding percentage in the subsidiary.

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## Appendix

日期文號： 中華民國104年2月2日台財稅字第10304578300號令

摘要： 修正本部97年11月6日台財稅字第09704555160號令第2點第3款有關免再就受控交易進行個別分析之金額標準

主旨： 本部97年11月6日台財稅字第09704555160號令第2點第3款規定有關免再就受控交易進行個別分析之金額標準，修正如下：「受控交易屬於營利事業之營業收入或營業成本項目，且其同一類型受控交易之全年交易總額在新臺幣1千萬元以下；其非屬營業收入或營業成本項目之金額標準以二分之一計算。自103年度營業事業所得稅結算申報案件起，本款規定變更為同一類型受控交易之全年交易總額在新臺幣1千萬元以下；同一類型受控交易超過新臺幣1千萬之營利事業，其與同一關係企業之同一類型全年受控交易總額在新臺幣5百萬元以下之交易。」

日期文號： 中華民國104年1月21日台財稅字第10304608280號令

摘要： 母公司合併子公司取得視同股利收入免併入免稅銷售額計算不得扣抵比例及調整稅額

主旨： 一、公司與子公司合併，合併存續之母公司於合併時，就其持有子公司股權，取得消滅子公司淨資產之價值超過其對消滅子公司出資額之視同股利收入部分，免併入當年度最後一期之免稅銷售額計算當年度不得扣抵比例及調整稅額。

二、廢止本部97年6月19日台財稅字第09704526820號令。