

2009 Guidelines for Determining of Taiwan- sourced Income

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Guidelines for determining of Taiwan-sourced income

Article 8 of the Income Tax Act stipulates eleven types of income that should be considered as Taiwan-sourced and subject to 20% withholding tax if the income receiver has no domicile or no fixed business place within Taiwan. However, the tax administrations historically has always taken a more than broad view for interpretation of these eleven types of income, resulting in a general principle close “all is taxed” regardless the literal meanings in the article, and thus caused a large number of disputes with taxpayers.

In order to avert controversies, and upon strong lobbying by the various business chambers, the Ministry of Finance, on September 3rd, 2009, promulgated the “Guidelines for Determining of Taiwan-sourced Income under Article 8 of the Income Tax Act” (the “Guidelines”), which provides several significant new principles. First, whether remuneration for services is Taiwan-sourced shall merely be determined by the location of “rendering”. The place of “utilization” does not affect the decision (as was the case in the past, which lead to an overly broad taxation). Therefore, as long as the service is rendered and accomplished outside Taiwan and the fixed business place in Taiwan (if any) is not involved, the remuneration for the service is not considered Taiwan-sourced income. Second, for business profits, where the business operations are partly carried out onshore and offshore, only the profits attributed to the onshore part is deemed as Taiwan-sourced income if the enterprise is able to provide evidential documentation. Third, the fees for R&D cost sharing may not be considered as Taiwan-sourced income, if all participants jointly own the intellectual property, obtain reasonably anticipated profits and no payment of royalties or tax avoidance is involved. Fourth, the Guidelines provide a chance to foreign enterprises, whose incomes are subject to withholding tax in Taiwan, to apply for tax refunds by way of deduction for costs and expenses within five years of the dates of payments.

Corporate and individual income tax rates decrease

Currently the corporate income tax rate is 25%; and the individual progressive income tax rates are 6%, 13%, 21%, 30% and 40% respectively. Beginning 2010, the corporate

income tax rate will decrease to 20%; and the individual progressive income tax rates will (very slightly) decrease to 5%, 12% and 20% respectively, while the income tax rates for the higher brackets, i.e. 30% and 40% will remain the same.

With the decrease of the corporate income tax to 20%, Taiwan strives to remain competitive in the region, having a lower tax rate than China, while still being slightly higher than the two low-tax jurisdictions Singapore and Hong Kong.

Individual offshore income to be taxable under the Income Basic Tax Act

According to Article 2 of the Income Tax Act, individual income tax shall be levied only on the income derived from sources in Taiwan. However, in view to increase perceived tax equity as well as in order to (hopefully) increase tax revenues, the Income Basic Tax Act was promulgated in December 2005, whereas offshore income would be included, under certain circumstances and subject to certain thresholds as listed below, into the total amount of individual's income, by the year 2010.

In the Income Basic Tax system, if the aggregate of offshore income in a filing unit is less than TWD 1 million, it may be excluded from the basic income. Further, the basic income with a deduction of TWD 6 million and then multiplied by the tax rate of 20% is the basic income tax amount. Where the basic income tax amount is greater than the regular income tax amount, the taxpayer shall pay up the balance.

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