



# **Personal Income Tax Issues of Taiwan Trusts**

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## **A. Trust and Gift Tax**

The first key point to determine whether a property transfer is subject to gift tax is that: Whether the donor is a Taiwanese citizen and resides in Taiwan continuously. As long as the donor is a Taiwanese citizen and resides in Taiwan continuously, no matter where the property is located, the property transfer is subject to gift tax in Taiwan.

If the donor is a Taiwanese citizen but resides outside Taiwan continuously or who is a non-Taiwanese citizen, in accordance with the Article 3 Para. 2 of the Gift Tax Act, only the property, which is located within Taiwan, shall be subject to gift tax.

With regard to how to determine whether the property is located within Taiwan and the gift tax calculation, please find the details below:

### **a. Residence of the trustee**

In a trust case, when the settlor is not a Taiwanese citizen, the residence of the trustee is significant. According to Article 9 Paragraph 1 (9) of the Gift Tax Act, the office or business place of the trust enterprise determines whether the trust benefit is within Taiwan. If the business place of a trust enterprise is within Taiwan, the trust benefit shall be deemed within Taiwan and subject to gift tax. However, the law does not stipulate how to determine the location of the trust benefit when the trustee is an individual. In practice, the tax authorities determine the location in the light of the residence of the individual trustee. Therefore, where the residence of an individual trustee is outside Taiwan, gift tax shall not be applicable.

### **b. The trustee resides within Taiwan**

If the trustee resides within Taiwan, the trust benefit will be deemed within Taiwan, and gift tax issues may be followed.

## 1. Transfer of trust benefit

Where the settlor and the beneficiary are not identical in a trust deed, gift tax will be involved. Article 5-1 of the Gift Tax Act provides, *“In the case of a person other than the settlor is entitled to the entire or part of trust benefit, it shall be regarded as a transfer of trust benefit by the settlor to the beneficiary and constituted a gift, which is subject to gift tax.”*

## 2. Assessment of trust benefit (gift amount)

As to the assessment of trust benefit for calculation of gift tax, it depends on different types of benefit transfer (Article 10-2 of the Gift Tax Act):

### 1) The beneficiary is entitled to the entire trust benefit:

The trust amount will govern.

EX.1. A setup a trust deed, which stipulates the trust property is 10 million, the trust period is 15 years, and B obtains the accrued interest every year and will obtain TWD 10 million when the trust expires. In this case, A's gift amount, i.e. the trust benefit, is 10 million.

### 2) The trust benefit consists of money other than accrued interest:

The present value of the trust amount discounted from the time of gift to the expiration of beneficial period at the fixed interest rate for one-year term deposit compounded annually as quoted by the Postal Remittance & Savings Bank at the time of gift will govern.

EX.2. A setup a trust deed, which stipulates the trust property is 10 million, the trust period is 15 years, and B will obtain TWD 10 million, when the trust expires. If the interest rate in the Postal Remittance & Saving Bank is 1%, A's gift amount is 8.62 million.

$$A's \text{ gift amount} = 10 \text{ million} / (1 + 0.01)^{15} = 8.62 \text{ million}$$

Formula:

$$\text{Gift Amount} = \text{Present Value} = \text{Future Value} / (1 + X)^N$$

X = Interest Rate, N = Trust Period

3) The trust benefit consists of accrued interest in the trust:

The trust amount less the value computed according to subparagraph 2 will govern.

EX.3. A setup a trust deed, which stipulates the trust property is 10 million, the trust period is 15 years, and B obtains the accrued interest every year. When the trust expires, the trust property, TWD 10 million, will return to A. If the interest rate in the Postal Remittance & Saving Bank is 1%, A's gift amount is 1.38 million.

$$A's \text{ gift amount} = 10 \text{ million} - 8.62 \text{ million} = 1.38 \text{ million}$$

3. Calculation of payable tax amount

Currently the gift tax rate is 10% and the annual exemption is TWD 2.2 million.

$$\text{Ex.1. Payable Tax Amount} = (10 \text{ million} - 2.2 \text{ million}) \times 10\% = 780,000$$

$$\text{Ex.2. Payable Tax Amount} = (8.62 \text{ million} - 2.2 \text{ million}) \times 10\% = 642,000$$

$$\text{Ex.3. Payable Tax Amount} = 0$$

4. Taxpayer

The donor of gifts, i.e. the settlor (Article 7 of the Gift Tax Act).

5. Declaration

Within 30 days of establishment of trust deed (Articles 24 and 24-1 of the Gift Tax Act).

**B. Trust and Income Tax**

The residence of the beneficiary is closely linked to the income tax issues. If the beneficiary resides within Taiwan, the revenue derived from trust property used or invested by the trustee (e.g. accrued interest) shall be included in the annual gross consolidated income of the beneficiary.

If the beneficiary does not reside within Taiwan, where the trustee resides is crucial for withholding tax issue. Where the trustee does not reside within Taiwan, no withholding tax needs to be done when the trustee distributes the trust benefit to the beneficiary.

However, if the trustee resides within Taiwan, the income tax shall be withheld when the trustee distributes the trust benefit to the beneficiary. According to Article 3 of the Standards of Withholding Rates for Various Income, the types of income differentiate the withholding tax rate. Below please find the withholding tax rates starting January 1<sup>st</sup>, 2010:

<b>Income</b>	<b>Withholding Tax Rate</b>
Dividends distributed by a company	20%
Interest	20%
The portion of the pecuniary amount realized by short-term commercial papers at their maturity in excess of the selling price at their initial issuance (短期票券到期兌償金額超過首次發售價格部分之利息所得)	15%
Interest distributed from beneficiary securities or asset-backed securities issued in accordance with the Financial Asset Securitization Act and the Real Estate Securitization Act (依金融資產證券化條例或不動產證券化條例規定發行之受益證券或資產基礎證券分配之利息所得)	15%
Interest derived from repo (RP/RS) trade whereby an individual purchases securities or short-term commercial papers as described in the preceding two paragraphs shall be the net amount of the sale price at their maturity in excess of the original purchase price (以前二款之有價證券或短期票券從事附條件交易，到期賣回金額超過原買入金額部分之利息所得)	15%
Income from transactions in structured products between individuals and securities firms or banks (與證券商或銀行從事結構型商品交易之所得)	15%
Other income	20%

### C. Conclusion

If the donor is a non-Taiwanese citizen or a Taiwanese citizen but resides outside Taiwan continuously, the residence of the trustee then governs whether the trust benefit transfer is subject to gift tax. The assessment of “trust benefit” for calculation of gift tax depends on what the settlor transfers to the beneficiary. If the settlor transfers principal and accrued interest, the present value of the trust property is the gift amount (gift value); if the settlor only transfers principal or only transfers accrued interest, the formula of discount will apply. A simple concept is: Value of principal + Value of accrued interest = Present value of the total amount of trust property.

Moreover, income derived from use or investment of the trust property by the trustee is subject to income tax. If the beneficiary resides within Taiwan, the income shall be included in his gross consolidated income for assessment of annual income tax; if the beneficiary does not reside within Taiwan, where the trustee resides is crucial. If the trustee does not reside within Taiwan, no withholding tax needs to be done when the trustee distributes the trust benefit to the beneficiary. The trustee, who resides within Taiwan, shall withhold tax when he distributes the benefit to the beneficiary. The types of income differentiate the withholding tax rate. In general, the tax rate is between 15% and 20%.

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