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FOREIGN INCOME

Business Operations in the Republic of China (Taiwan)

by

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This Portfolio revises and supersedes previous versions of 7080 T.M., *Business Operations in the Republic of China (Taiwan).*

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Business Operations in the Republic of China (Taiwan)

PORTFOLIO DESCRIPTION

Tax Management Portfolio, *Business Operations in the Republic of China (Taiwan)*, No. 7080 T.M., describes the forms of doing business in the Republic of China and the relevant tax acts and regulations.

Foreign investments in the Republic of China are subject to the approval of the competent government authorities pursuant to the Statute for Investment by Foreign Nationals, the Statute for Investment by Overseas Chinese, the Statute for Establishment and Administration of Science-Based Industrial Parks, or the Statute for Establishment and Administration of the Export-Processing Zones. The formation and operation of a company are discussed in detail.

Other than a treaty on shipping and air transport income, there is no income tax treaty between the Republic of China and the United States. However, a flat corporate income tax rate (20%) and tax incentives under the Statute for Industry Innovation and other related regulations substantially alleviate the tax burdens of United States investors in the Republic of China. Moreover, the Republic of China has entered into tax treaties with a number of countries, including France, Germany, the Netherlands, Singapore, and the United Kingdom, among others. These treaties provide investors from those jurisdictions with preferential tax treatment.

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DETAILED ANALYSIS

I. The Republic of China (Taiwan) — General Background

A. The Country

The Republic of China (ROC), covering an area of 36,193 square kilometers (approximately 13,900 square miles), consists of a number of islands, including the Island of Taiwan, Penghu, Kinmen and Matsu. The Island of Taiwan is located between Asia and the Pacific Ocean. Its closest neighbor is the People's Republic of China (PRC), situated only some 180 kilometers (112 miles) to the west. Other neighbors are Japan to the northeast, the Philippines to the south, and Korea to the north.

The capital of the ROC is Taipei City. The official language is Mandarin. The population of the ROC is around 23.4 million.

B. The Government and Legal System

1. The Government

The ROC is a democratic country. The President is directly elected by its people. The central government of the ROC is composed of the President and five Yuans — the Executive Yuan, Legislative Yuan, Judicial Yuan, Examination Yuan and Control Yuan.

The Executive Yuan is the highest administrative body, consisting of ministries and commissions such as the Ministry of the Interior, the Ministry of Foreign Affairs (MOFA), the Ministry of National Defense, the Ministry of Finance (MOF), the Ministry of Education, the Ministry of Justice, the Ministry of Economic Affairs (MOEA), the Ministry of Transportation and Communications, the Ministry of Labor, the Ministry of Agriculture, the Ministry of Health and Welfare, the Ministry of the Environment, the Ministry of Culture, the Ministry of Digital Affairs, the Ministry of Sports, the National Science and Technology Council, and the National Communications Commission.

2. Sources of Law

The Legislative Yuan, the congress, is composed of 113 legislators. Among them, 73 are elected from special municipalities, counties and cities; six are elected from aborigines; and 34 are at-large and overseas compatriot members. The legislators, namely, members of the Legislative Yuan, are empowered by the Constitution to review and approve statutory and budgetary bills, bills related to martial law, amnesties, declarations of war or peace, treaties and other important affairs of the country.

3. Court System

The Judicial Yuan is the highest judicial body and is in charge of civil, criminal, and administrative litigations, and cases concerning disciplinary measures against civil servants. The Constitutional Court, which is an organ under the Judicial Yuan, is composed of 15 Grand Justices. The Grand Justices are responsible for interpreting the Constitution and unifying the interpretation of laws and orders.

The Examination Yuan is in charge of matters relating to national examinations of civil servants and professional and technical personnel, as well as the employment, registration, performance rating, scale of salaries, promotion and transfer, security of tenure, commendation, pecuniary aid in the event of death, retirement and old age pension of civil servants.

The Control Yuan has 29 members, who are nominated by the President and confirmed by the Legislative Yuan. The members of the Control Yuan exercise the powers of consent, impeachment, censure and auditing.

4. Arbitration

The Arbitration Act of the ROC (Arbitration Act) sets out the legal basis and the procedural rules of arbitration and governs the enforceability of agreements and arbitration awards in the ROC.

The Arbitration Act was enacted in 1961 and substantially amended in 1998 by reference to the 1985 version of the UNCITRAL Model Law on International Commercial Arbitration (UNCITRAL Model Law). While the Arbitration Act has been further modified on a number of occasions since the 1998 amendment, it has not fully adopted the 2006 version of the UNCITRAL Model Law. For example, unlike the 2006 UNCITRAL Model Law, the Arbitration Act does not include a chapter dealing with interim measures granted by the arbitral tribunal. Additionally, the Arbitration Act provides a wider list of grounds for setting aside domestic awards (Article 40) than the list of grounds for refusing the recognition or enforcement of a foreign arbitral award (Articles 49 and 50). In contrast, in the 2006 UNCITRAL Model Law, the grounds for setting aside a domestic award (Article 34) overlap significantly with the grounds for refusing the recognition or enforcement of a foreign arbitral award (Article 36). To incorporate the developments in the 2006 UNCITRAL Model Law into the Arbitration Act, in 2021 the Chinese Arbitration Association, Taipei, engaged some legislators to propose an amendment to the Arbitration Act. The proposed amendment is currently included in the legislative agenda of the Ministry of Justice of the Executive Yuan for further research and drafting by the Ministry before finalization and submission to the Executive Yuan, and subsequently to the Legislative Yuan.

Under Article 1 of the Arbitration Act, parties to a current or future arbitrable dispute may enter into an arbitration agreement appointing a single arbitrator or an odd number of arbitrators to constitute an arbitral tribunal to adjudicate the dispute. Arbitrable disputes are disputes that can be settled under the ROC law. Disputes considered not suitable for settlement, such as criminal cases or certain disputes relating to legal relationships under family law, are not arbitrable, because they involve the public interest.

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If the arbitration agreement is silent on the number of arbitrators to be appointed, the parties should each appoint one arbitrator, who would then jointly appoint the third arbitrator. After the arbitration commences, the parties should provide statements relating to the facts of the dispute and present their arguments. Their submissions should be supported by evidence. The arbitrators can examine witnesses and appoint experts to provide opinions. If judicial assistance is required to examine the evidence, the arbitrators may ask the court to assist in carrying out the necessary investigations.

One of the most significant advantages of choosing Taiwan as a seat for arbitration is efficiency. Unless otherwise agreed by the parties, the arbitral tribunal must render an award within six months from its composition (although one three-month extension is permitted when necessary). Completion of an arbitration in Taiwan typically requires much less time than in other jurisdictions. The arbitration costs are also considered to be lower than the costs incurred during the course of a litigation.

Arbitral awards have the same legal effect as judgements rendered by the courts. A domestic award can be enforced once a court order permitting such enforcement has been issued. The court issuing such order should refrain from reviewing the merits of the case. It may only refuse to grant such the enforcement order in limited circumstances listed in Article 38 of the Arbitration Act. On the other hand, either party may initiate a lawsuit asking the court to set aside an award on the limited grounds of material defects stipulated in Article 40 of the Arbitration Act.

Although the ROC is not a signatory to the New York Convention, which provides a cross-border platform for the recognition and enforcement of foreign arbitral awards, its Arbitration Act voluntarily adopts grounds similar to those under the New York Convention when it comes to refusing to recognize foreign arbitral awards. Over the years, most courts in Taiwan have taken a pro-arbitration attitude. Thus, foreign arbitral awards will typically be recognized and enforced, unless any of the grounds specified in Articles 49 and 50 of the Arbitration Act apply. For example, if the court of the foreign country in question (the country in which the award is made or the country whose arbitration rules are followed) does not recognize Taiwanese awards, a Taiwanese court may reject recognition of the foreign award.

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II. Operating a Business in Taiwan

A. Foreign Investment Regulation

The Republic of China (ROC) government has adopted various measures to encourage foreign investment in the ROC, and on July 14, 1954, it promulgated the Statute for Investment by Foreign Nationals (SIFN), which was last amended on November 19, 1997. Under the SIFN, foreign investment may consist of a variety of assets, including:

(i) Cash;

(ii) Machineries and/or supplies required for own use;

(iii) Patent rights, trademark rights, copyrights, know-how and/or other intellectual property rights; and/or

(iv) Other assets approved by competent authorities.[1]

Furthermore, forms of investment may include:

(i) The acquisition of stock or contribution of capital to an ROC company;

(ii) The establishment of a branch office, proprietary business, or partnership; and

(iii) The extension of loans for terms of over one year to those invested ROC companies referred to in (i) and (ii).[2]

Foreign investments in the following businesses are prohibited:

(i) Businesses which are in conflict with national security, public order and/or good morals or might have adverse impact on national health; and

(ii) Any type of business for which foreign investments are prohibited by law.[3]

Foreign investments in the following businesses are subject to special approval from the relevant authorities:

(i) Public utilities;

(ii) Financing and insurance; and

(iii) Businesses in which foreign investment is restricted by law. The ROC government permits foreign investment in service industries, such as advertising, department stores, chain stores, financial consulting services, securities-related businesses, and export/import trading.

In 1988, the ROC government promulgated a set of guidelines called the "Negative List," which was last amended on February 8, 2018. These guidelines set forth the sectors of the ROC in which foreign investment is either restricted or prohibited. Those sectors not on the Negative List are open to foreign investment without any restriction. Foreign investors are legally granted the right to remit their entire annual investment return out of the ROC. If a foreign investor transfers its investment upon government approval, the investor is guaranteed by law to repatriate 100% of its total equity investment.[4] The right to remit profits or repatriate capital is non-transferable except to the investor's heir(s), or to a transferee who is a foreign national.[5]

Businesses with foreign investment are treated the same as local businesses of the same nature.[6] Furthermore, if a foreign investor's investment is 45% or more of the total capital of an approved investee enterprise, the enterprise may be exempt from the requirement of having to reserve 10% to 15% of newly issued shares for subscription by its employees.[7] Subject to the SIFN, foreign investors may also be exempt from certain restrictions under the Company Act, the Mining Act, the Land Act, the Merchant Marine Act and the Civil Aviation Act, and these investors are treated the same as the ROC investors.[8]

Specific protection is afforded to foreign investors against requisition or expropriation for 20 years from the commencement of business, so long as foreign capital accounts for 45% or more of the total capital of the investee enterprise.[9] The ROC government has promulgated a separate but similar law to encourage and protect overseas Chinese investors.

According to Article 40-1 of the Act Governing Relations between the People of the Taiwan Area and the Mainland Area (the Cross-Strait Relations Act), a People's Republic of China (PRC) entity is required to obtain approval from the ROC competent authorities and establish a branch or representative in the ROC before it may conduct any business activities in the ROC. The business scope of the ROC branch of a PRC-invested entity is limited to its business scope registered with the Ministry of Economic Affairs (MOEA), subject to the "Positive List," which sets forth the industries that may be invested in by PRC investors as promulgated by the MOEA on June 30, 2009, and last amended on March 30, 2012. Note that the Taiwan government further increased the penalties for violating Article 40-1 of the Cross-Strait Relations Act in 2022. Pursuant to the new amendment, which took effect on November 18, 2022,[10] the person acting in violation of Article 40-1 may be subject to criminal sanctions, including imprisonment for up to three years, or a criminal fine of up to NT$15,000,000.

In determining whether a foreign investor is deemed a PRC investor under the ROC law, the following tests apply.[11]

1. Calculation of PRC Investor's Shareholding

According to the Interpretation of the Standards for Determining whether a Third-Area Company is a PRC Investor, promulgated by the Department of Investment Review (DOIR) of the MOEA (previously known as the Investment Commission (IC) of the MOEA) on December 30, 2020, and a ruling issued by the MOEA on December 26, 2022, a PRC investor's shareholding and the shareholding of a profit-seeking enterprise in a third area invested in by a PRC company[12] are calculated in ac-

[1] SIFN, Art. 6.
[2] SIFN, Art. 4.
[3] SIFN, Art. 7.
[4] SIFN, Art. 12.
[5] SIFN, Art. 11.
[6] SIFN, Art. 17.
[7] SIFN, Art. 15, para. 2.
[8] SIFN, Art. 16.
[9] SIFN, Art. 14.
[10] The amended Cross-Strait Relations Act, Art. 93-2 took effect on November 18, 2022.
[11] "Interpretation of the Standards for Determining Whether a Third-Area Company Is a PRC Investor," promulgated by the DOIR on August 27, 2010 and amended on December 30, 2020 (Ref. No. *Jing-Shen-Zi* 10904606730).
[12] In response to the amendment to the "Regulations Governing Profit-Seeking Enterprise of Mainland China or Profit-Seeking Enterprises that Main-

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cordance with the following criteria (for the sake of clarity and to distinguish it from other third area companies whose shares are taken into account for purposes of the calculation, the third area company whose shareholdings are under examination is referred to below as the "applicant company"):

(i) The shareholding is calculated based on the total capital contribution or the sum of the issued and outstanding shares of the common stock and preferred stock, excluding stock options, call options, bonds, and any other instruments convertible into shares of common stock that are held in the applicant company;

(ii) The direct or indirect shareholding percentage of a PRC investor in (or the percentage of direct or indirect capital contribution made by a PRC investor to) the applicant company is to be calculated using a "Tiered Recognition Calculation Method," as follows:

- Direct PRC shareholder(s) of applicant company: this comprises all shares held in the applicant company by any individual, juristic person, organization or other institution of Mainland China (PRC National);
- Direct third-area company shareholder of applicant company: if the shares in an applicant company are owned or held by a third-area company, the third-area company would be regarded as the Second-tier Shareholder and the applicant company in this scenario would be regarded as the First-tier Shareholder. If more than 30 percent of the shares in a the Second-tier Shareholder are held or controlled by PRC National(s), the Second-tier Shareholder is deemed to be a PRC investor and all its shares in the First-tier Shareholder are to be attributed to the First-tier Shareholder and treated as PRC equity of the First-tier Shareholder; and
- Direct third-area company shareholder of Second-tier Shareholder (Third-tier Shareholder): if more than 30 percent of the shares in the Third-tier Shareholder are held or controlled by PRC National(s), the Third-tier Shareholder is deemed to be a PRC investor and all its shares in the Second-tier Shareholder are to be attributed to the Second-tier Shareholder and treated as PRC equity of the Second-tier Shareholder. In turn, all the shares held by the Second-tier Shareholder are to be attributed to the First-tier Shareholder and treated as PRC equity of the First-tier Shareholder and so on;

(iii) If shares in the third-area company intending to invest in Taiwan or any company named in the shareholding structure of the third-area company are listed on a foreign stock exchange or traded over-the-counter, the shareholding percentage or the percentage of total capital contribution is to be calculated by reference to the number of shares listed in the roster of shareholders as of a specific base date determined after the latest book closure period.

land China Enterprises Invested in a Third Area," the MOEA issued a ruling regarding the calculation of the shareholding of a profit-seeking enterprise in a third area invested by a PRC company, which is similar to the "Interpretation of the Standards for Determining whether a Third-Area Company is a PRC Investor" promulgated by the IC of MOEA on December 30, 2020.

2. Examination of PRC Investor's Controlling Power

According to the MOEA's letter dated December 30, 2020,[13] a PRC investor is deemed to have control over another corporate entity if it:

(i) Has control over the majority of the votes pursuant to an agreement with other investors;

(ii) Has control over the financial, operational, and/or human resource policies pursuant to the law or regulations or contractual commitments;

(iii) Has the right to appoint or discharge a majority of the directors on the board (or any equivalent organization) that has the right to determine or control the company's operations;

(iv) Has control over the majority of the votes of the directors on the board (or any equivalent organization) that has the right to determine or control the company's operations; or

(v) Has other controlling power in other circumstances as defined under the International Financial Reporting Standards (IFRS) or ROC Statements of Auditing Standards.

In practice, under the "controlling power" test, the DOIR will examine whether each level of the shareholding structure involves any PRC investor that may be deemed to have controlling power over the investor or any intermediary company if the qualification of such investor is challenged.

B. Currency and Exchange Controls

1. Background and Liberalization

In the past, investments in the ROC were subject to currency and foreign exchange control. The main governing law is the Statute for Foreign Exchange Regulation (SFER), which was promulgated on January 11, 1949, and last amended on April 29, 2009.[14] The Ministry of Finance (MOF) and the Central Bank of the Republic of China (Taiwan) (CBC) are responsible for the administration of foreign exchange control. The term "foreign exchange" as used under the SFER means foreign currency, negotiable instruments and valuable securities in foreign currency.[15] The currency used in the ROC is the New Taiwan dollar (NT$).

The CBC has introduced extensive reforms, beginning with a major liberalization of its foreign exchange regulations since 1987. This major liberalization prompted greater business opportunities for two-way, direct, and portfolio investments. The ROC's financial services sector is also expanding and is poised to play a more important role in the international financial market.

2. Impact on Inward and Outward Remittances

Since July 1987, the CBC has actively deregulated the foreign exchange controls on capital movement. Among the

[13] Letter issued by the MOEA dated December 30, 2020 (Ref. No. Jing-Shen-Zi 10904606720).

[14] SFER, Art. 3.

[15] Gold and silver were excluded from the SFER on May 14, 1986 (SFER, Arts. 2, 3).

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foreign exchange regulations, the Regulations Governing the Declaration of Foreign Exchange Receipts/Disbursements or Transactions (the Foreign Exchange Declaration Regulations), which were promulgated on August 30, 1995, and last amended on December 26, 2022, are of general interest to all persons doing business with or within the ROC.[16] The Regulations lifted restrictions and provided certain exemptions from the CBC's prior approval for foreign exchange settlements.

Only certain inward and outward remittances, other than items (i) to (v) below and any inward or outward remittances exceeding the monetary limitations noted below, would require the approval of the CBC:

(i) Inward and outward remittances for foreign trades in goods;

(ii) Inward and outward remittances for services;

(iii) Direct investments and portfolio investments approved by the competent authorities;

(iv) Foreign exchange sold by a representative or business office that does not have operating income in Taiwan to cover its office expenses;

(v) Inward or outward remittances made by a company or firm of an aggregate amount not exceeding US$50 million in a calendar year, or by an organization or individual of an aggregate amount not exceeding US$5 million in a calendar year; and

(vi) Inward or outward remittances made by a foreign individual who does not have an alien residence certificate or a person from a jurisdiction not recognized by the ROC government as allowed to do business in the country, of an amount per transaction not exceeding US$100,000.

Any person residing in the ROC who wishes to make an inward or outward remittance of foreign exchange income or expenditure not exceeding the prescribed amount only needs to file a report with a designated bank handling foreign exchange transactions. Once the report has been filed, the above foreign exchange settlement may be processed by the bank without any further approval from the CBC.

C. Trade and Commerce Regulation

1. Imports and Exports

a. Licenses and Quotas

The Foreign Trade Act, which was promulgated on February 5, 1993, and last amended on December 25, 2019, requires that all importers and exporters must register the international trading business as one of their business activities with the MOEA before engaging in international trading businesses.[17] Current regulations favor trade-related foreign exchange transactions. Foreign currency earned from exports of merchandise and services may now be retained and used freely by exporters, while all foreign currency needed for importing merchandise and services may be purchased freely from designated banks handling foreign exchange transactions.[18]

b. Customs Duties and Other Taxes

The MOF administers customs regulations and procedures in the ROC. The Customs Act, which was promulgated on August 8, 1967, and last amended on May 11, 2022, provides that unless otherwise exempt by law, all imported goods are subject to import duties.[19] No duty is leviable on exported goods. Duty can be calculated on either customs value or quantities, calculation on customs value (also known as duty-paid value) being more common under the Customs Import Tariff, which was promulgated on February 21, 1929, and last amended on June 4, 2025. The customs value of imported goods subject to *ad valorem* (percent) duties must be determined and calculated based on the transaction value, which refers to the price actually paid or payable for the imported goods sold from the exporting country to the ROC.[20]

2. General Regulation of Business

The Fair Trade Commission (FTC) is in charge of the enforcement of the Fair Trade Act (FTA). The FTA is the major piece of competition legislation in the ROC. It was promulgated on February 4, 1991, and last amended on June 14, 2017.[21] Before the FTA took effect, business conduct was regulated by the Criminal Code, the Civil Code, and the Company Act, as well as specific laws on trademarks, patents and copyrights.

a. Monopolies

The FTA defines a monopoly as a situation in which an enterprise faces no competition or has such a superior market power that it is able to exclude competition in a relevant market.[22] Two or more enterprises as a whole will be deemed as having the status of a monopolistic enterprise if they do not in fact engage in price competition.[23]

An enterprise meeting any of the following criteria may be deemed a monopolistic enterprise, unless its market share is below 10% or its total sales in the preceding fiscal year are less than the amount announced by the FTC:

(i) The market share of the enterprise in a relevant market reaches 50%;

(ii) The combined market share of the enterprise and other enterprises in a relevant market reaches two-thirds; or

(iii) The combined market share of the enterprise and two other enterprises in a relevant market reaches 75%.[24]

An enterprise which does not meet any of the above criteria may still be deemed a monopolistic enterprise if the establishment of such enterprise, or any of the goods or services

[16] Foreign Exchange Declaration Regulations, Art. 2.

[17] FTA, Art. 3.

[18] Directions Governing Banking Enterprises for Operating Foreign Exchange Business, promulgated on August 6, 2003, and last amended on January 19, 2022.

[19] Customs Act, Art. 2.

[20] Customs Act, Art. 29.

[21] The January 22, 2015, amendments are the most sweeping reform of the FTA since it came into effect in 1991, and cover a wide range of legal provisions under the FTA, such as merger control, cartel enforcement, restrictive competition, and unfair competition.

[22] In defining a relevant market, both the relevant products or services and geographical markets are taken into consideration; FTA, Arts. 5, 7.

[23] FTA, Art. 7, para. 2.

[24] FTA, Art. 8, paras. 1, 2.

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supplied by such enterprise to a relevant market, is subject to legal or technological restraints, or there exists any other circumstances under which the supply and demand of the market are affected and the ability of others to compete is impeded.[25]

While being a monopolistic enterprise is not illegal per se, it is prohibited from abusing its dominant position in any of the following ways:

(i) Using unfair practices to exclude, directly or indirectly, other enterprises from entering the market or competing;

(ii) Improperly determining, maintaining, or changing the prices of goods or services;

(iii) Requiring a trading counterpart to provide preferential treatment without any proper cause; and

(iv) Engaging in any other acts that abuse its dominant market position.[26]

b. Mergers and Combinations

Under the FTA, a pre-combination notice must be filed with the FTC if the combination meets the thresholds prescribed under the FTA.

(1) Types of Notifiable Combination

According to Article 10 of the FTA, a "combination" is defined to include: (a) a merger; (b) the holding or acquisition of at least one-third of the total voting shares of, or interest in, another enterprise; (c) a transfer or lease of all, or a substantial part of, an enterprise's business or assets; (d) having an arrangement with another enterprise for joint operation on a regular, ongoing basis, or the management of another enterprise's business based on a contract of entrustment; or (e) having direct or indirect control over the operation or personnel of another enterprise.

(2) Filing Thresholds

According to Article 11 of the FTA, if any or all of the parties to a combination meet any of the following thresholds, a pre-combination notification must be filed with the FTC prior to the closing of the proposed transaction: (a) as a result of the combination, any of the enterprises will acquire at least one-third (1/3) of the market share; (b) any of the enterprises participating in the combination holds a market share of at least one-fourth (1/4) before the combination; or (c) the preceding fiscal year's turnover of an enterprise participating in the combination exceeded the amount set forth by the FTC.[27]

(3) Extraterritorial Transactions

On June 30, 2023, the FTC issued amendments to the Fair Trade Commission's Guidelines on Handling Merger Filings and abolished the FTC's Disposal Directions on Extraterritorial Mergers. The filing requirements, including the filing thresholds, timeframe, documents required etc., for offshore mergers are the same as those for similar domestic transactions. However, a simplified procedure applies to offshore mergers with a transaction value below NT$2.5 billion.

c. Concerted Actions

A concerted action is the conduct of any competitive enterprises at the same production and/or marketing stage, by means of contract, agreement or any other form of mutual understanding,[28] to jointly determine the price of goods or services, or to limit the terms of quantity, technology, products, facilities, trading counterparts, or trading territory with respect to such goods or services, thereby restricting each other's business activities so as to affect the market function of production, trade in goods, or supply and demand of services. The mutual understanding of a concerted action may be presumed from the presence of factors that provide credible evidence, such as market situations, nature of product or service, consideration of cost and revenue, and economic reasonability of enterprises.[29]

The FTA prohibits all concerted actions, except actions that are beneficial to the national economy as a whole and to the public interest, as well as those actions that fall within one of the following categories that have been approved by the FTC:[30]

(i) Standardizing the specifications or models of commodities or services to reduce costs, improve quality or promote efficiency;

(ii) Jointly researching and developing products, services or markets to upgrade technical skills, improve quality, reduce costs or promote efficiency;

(iii) Engaging in a specialized area of business to achieve the reasonable operation of an enterprise;

(iv) Entering into an agreement with respect to competition in overseas markets to secure or promote exports;

(v) Taking concerted action with respect to the importation of foreign commodities to strengthen trading capability;

(vi) Taking concerted action to establish restrictions on the quantity of production and sales, equipment or prices so as to adjust to demand when enterprises in the same industrial sector are facing difficulties in continuing their business operations or overproducing due to economic recession;

(vii) Taking concerted action to improve the operational efficiency or strengthen the competitiveness of a small or medium-sized enterprise; or

[25] FTA, Art. 8, para. 3.

[26] FTA, Art. 9.

[27] The amendment of January 22, 2015 ("the 2015 Amendment"), which aims to tailor merger control rules appropriate to specific industries, stipulates that the FTC is authorized to publish different turnover thresholds applicable to different industries. For a combination between nonfinancial enterprises, one of the enterprises generated an annual turnover of at least NT$15 billion, while the other enterprise generated an annual turnover of at least NT$21 billion as per a ruling issued by the FTC on March 9, 2015. In addition, when assessing whether a transaction constitutes a combination and whether any filing threshold is met, the 2015 Amendment also prescribes that in addition to the turnovers and shareholding of the party's parent/subsidiary, those of affiliate companies (including brother/sister companies under common control) should also be taken into consideration.

[28] Any other form of mutual understanding means a meeting of minds other than a contract or agreement, regardless of whether it is legally binding or not, which would in effect lead to joint actions. A resolution of an association's or other group's general meeting of members or an enterprise's board of directors meeting to restrict the activities of its member enterprises will also be deemed a concerted action.

[29] FTA, Art. 14.

[30] FTA, Art. 15.

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(viii) Taking other concerted action that is necessary to promote industrial development, technology renovation or operational effectiveness.

In granting its approval, the FTC may impose conditions, restrictions or undertakings. The FTC's approval is valid for up to five years and may be extended by up to another five years.[31]

If any enterprise is found to have violated the cartel regulations under the FTA, the FTC may order it to discontinue the illegal conduct, or set a time limit for it to rectify the conduct or take necessary corrective measures. The FTC may further impose an administrative fine of between NT$100,000 to NT$50 million. If the enterprise fails to comply with the FTC's order, the FTC may issue another order, set another time limit, and impose another administrative fine of between NT$200,000 and NT$100 million, until the enterprise complies with its order. Moreover, in the case of a serious violation, the FTC has the discretion to impose a fine of up to 10% of the enterprise's turnover in the previous fiscal year.[32] If the enterprise fails to comply with the FTC's order or commits the same violation thereafter, the enterprise will face a criminal fine of up to NT$100 million and the persons in charge will face a prison term of up to three years and detention, and/or a criminal fine of up to NT$100 million.[33]

Concerted action profoundly affects market order and consumer's rights, which is why it has come under close scrutiny by regulators around the world. However, given that concerted action is often carried out clandestinely, and evidence of it is difficult to collect, many countries adopt a leniency program to encourage concerted action participants to provide evidence and assist with the investigation in exchange for exemption from punishment. In the ROC, a leniency program was introduced through an amendment to the FTA, which was promulgated on November 23, 2011.

According to Article 35 of the FTA, if a company is involved in cartel activities and consequently violates Article 15, it could submit an application to the FTC to qualify for partial penalty exemption if either of the criteria set out below is met:

(i) Before the FTC becomes aware of the cartel activities or commences any investigation into the cartel activities, the applicant files a written complaint describing the illegal cartel activities it is a part of, evidence of such activities, and assists the FTC with the investigation; or

(ii) During the FTC's investigation, the applicant provides evidence that could prove the illegal concerted action, and also assists the FTC with the investigation.

On January 6, 2012, the FTC published the Regulations on Immunity and Reduction of Fines in Illegal Concerted Action Cases, which was last amended on March 6, 2015 (the Immunity and Reduction Regulations), specifying, among others, qualification and requirements for leniency, maximum number of cartel participants eligible for leniency, fine reduction percentage, required evidence and confidentiality treatment.

Pursuant to the Immunity and Reduction Regulations, only up to five companies may be eligible for leniency in a single case. While only the first applicant qualifies for fine exemption, the fine reduction percentages for the second to the fifth applicant are: 30% to 50%, 20% to 30%, 10% to 20%, and 10% or less, respectively. However, no exemption or reduction would be granted to a participant who has initiated the cartel, forced others to join the scheme, or attempted to conceal evidence or disclosed relevant information to the public before applying for leniency.

To decide which applicant is eligible for fine exemption or which fine reduction applies, a marker system is adopted. If an applicant needs additional time to perfect its leniency application, the applicant will be given a certain period of time to do so. If the applicant perfects its application within the time limit, it can hold its place in the line for leniency.

d. Unfair Trade Practices

In addition to the legal consequences prescribed under the FTA, certain restrictive trade practices are punishable under the Criminal Code as well. For example, a person who obstructs the transportation or sale of agricultural or industrial products and causes a deficiency in market supply is subject to the punishment prescribed under Article 251 of the Criminal Code. Article 252 of the Criminal Code imposes penalties for the intentional impairment of agricultural irrigation work, while Articles 253 and 254 of the Criminal Code penalize persons that manufacture, sell or publicly display counterfeit products that infringe on registered trademark rights. Furthermore, Article 255 of the Criminal Code imposes penalties for misrepresentation on a commodity label, and Article 313 of the Criminal Code imposes penalties for damage to the reputation of another person by the spreading of rumors or other fraudulent means.

Articles 20 to 25 of the FTA impose both criminal and civil sanctions on an enterprise that commits or adopts unfair competition practices, including:

(i) Acts causing another enterprise to discontinue supplies to, purchases from, or other business transactions with a particular enterprise with intent to cause harm;

(ii) Imposing improper restrictions on its trading counterparty's business activities as a condition of transacting business with that counterparty;

(iii) Using a name identical or similar to that of another person, business establishment, corporation or trademark commonly known to the relevant public and causing confusion as regards the same or similar commodities, or selling, transporting, exporting or importing commodities using such symbols, or causing confusion regarding the facilities or activities of the business or service of any other person;

(iv) Using false, untrue or misleading advertising or representation or statements; and

(v) Any other deceptive or obviously unfair acts that are sufficient to affect trading order.

e. Securities Regulation

(1) Administration

Companies that have obtained public company status by filing with the Securities and Futures Bureau, which is under

[31] FTA, Art. 16.
[32] FTA, Art. 40.
[33] FTA, Art. 34.

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the Financial Supervisory Commission (FSC), including companies whose shares are registered on the Emerging Stock Market (ESM) or traded on the ROC Stock Exchange (TWSE) or the Taipei Stock Exchange (TPEx), are subject to:

(i) The Securities and Exchange Act (SEA), promulgated on April 30, 1968 and last amended on August 7, 2024;

(ii) The TWSE Operating Rules;

(iii) The TPEx Rules Governing Securities Trading on the TPEx; and

(iv) Other applicable laws and regulations.

Certain provisions of the SEA are also applicable to foreign issuers whose shares are registered on the ESM or listed on the TWSE or TPEx.[34] The trading of futures is governed by the Futures Trading Act (promulgated on March 26, 1997, and last amended on June 28, 2023).

(2) Foreign Investment in Listed Securities

According to the Regulations Governing Investment in Securities by Overseas Chinese and Foreign Nationals (the Securities Investment Regulations) promulgated by the MOF on May 26, 1983, and last amended by the FSC on February 11, 2014, foreign investors wishing to invest in securities registered on the ESM or listed on the TWSE or the TPEx, or other securities approved by the FSC, must register with the TWSE before making any investment. Such foreign investors are commonly known as foreign institutional investors (FINIs) or foreign individual investors (FIDIs). Generally speaking, investments in ROC listed companies by foreign investors are not subject to any limitation on the amount of investment except for certain industries in which foreign investments are prohibited or restricted by law.

(3) Purchase and Sale of Securities

A few special provisions regarding the purchase and sale of securities of a public company may be noteworthy. The transfer of the shares of a public company by a corporate insider is subject to restrictions in terms of to whom the shares may be transferred, the number of shares to be transferred, and the timing of the transfer.[35] A corporate insider is defined by the SEA to be a director, supervisor, managerial officer, or shareholders holding more than 10% of the total shares of an issuer.[36]

Any person planning to acquire 20% or more of the total issued shares of a public company within a period of 50 days must purchase the shares through a tender offer, unless one of the following exceptions in Article 11 of the Regulations Governing Public Tender Offers for Securities of Public Companies is met:

(i) Transfer of shares between affiliates;

(ii) Shares obtained under the TWSE Regulations Governing Auction of Listed Securities by Consignment;

(iii) Shares obtained under the TWSE Rules Governing Purchase of Listed Securities by On-Market Tender Offer or under the TPEx Rules Governing Purchase of OTC Securities by On-market Tender Offer;

(iv) Shares obtained under Subparagraph 3, Paragraph 1, Article 22-2 of the SEA (i.e., to transfer, within three days following registration with the FSC, by means of private placement to specified persons satisfying the qualifications prescribed by the FSC);

(v) Implementing a share exchange under Article 156-3 of the Company Act or under the Business Mergers and Acquisitions Act, in which new shares are issued to serve as the consideration for acquiring the shares of another public company; or

(vi) Other conditions in conformity with the FSC regulations.

(4) Anti-Manipulation

Insider trading is subject to both civil and criminal penalties.[37] An insider who has knowledge about information that may materially affect the stock price of the company would be deemed to have committed insider trading if he or she purchases or sells the shares prior to the disclosure of such information or within 18 hours after the disclosure. The insider trading provision is also applicable to individuals who receive the information due to professional relations or control over the company. In addition, in the event that an insider of a listed company sells and purchases the stocks of the company within six months after the stocks are sold or purchased, the company may have the disgorgement right to request such insider to return the profit to the company.[38]

3. Licensing and Franchising in the ROC

a. Patents and Industrial Know-How

The Patent Act was promulgated in 1944 and last amended on May 4, 2022.

There are three kinds of patents: Invention, Utility Model, and Design patents. "Invention patent" refers to either an object invention or a method/process invention that is a high-level creation of technical concepts in which natural rules are utilized.[39] "Utility Model patent" means creation or improvement on the form, construction, or fitting of an object.[40] "Design patent" refers to the creation made on the shape, pattern, color, or combination thereof, which can be attributable to visual appraisals.[41]

Inventors, utility model creators, designers, or the assignees, or successors thereof are entitled to file a patent application.[42] An employer is entitled to apply for and own a patent for an invention completed by its employee in the performance of his/her job duties, unless otherwise prescribed by contracts.[43] The term of exclusive rights granted to each type of patent is

[34] SEA, Art. 165-1.
[35] SEA, Art. 22-2.
[36] *Id.*
[37] SEA, Art. 157-1, 171.
[38] SEA, Art. 157.
[39] Patent Act, Art. 21.
[40] Patent Act, Art. 104.
[41] Patent Act, Art. 121.
[42] Patent Act, Art. 5.
[43] Patent Act, Art. 7.

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20 years, 10 years, and 15 years, for Invention patents, Utility Model patents, and Design patents, respectively.[44]

According to the SIFN, a foreign investor may invest in a company incorporated in the ROC with industrial patent rights and/or know-how,[45] including all industrial information, methods or knowledge that are conducive to improving or ameliorating the invested company's ability in terms of research and development, management, production, manufacturing, or sales.

Licensing of a patent can be exclusive or nonexclusive. Sublicensing of a patent is allowed. A license or sublicense cannot be asserted against a third party if it is not recorded at the competent authority.[46] Similar to the patent holder, an exclusive licensee may demand a person who infringes on, or is likely to infringe on, the patent right to stop or prevent such infringement and claim damages for its losses.[47]

b. Trademark and Trade Names

The Trademark Act was promulgated in 1930 and last amended on May 24, 2023. Under the Trademark Act, a trademark is defined as any word, device, symbol, color, sound, three-dimensional shape, or combination thereof. Furthermore, a trademark must be sufficiently distinctive to enable the relevant consumers of goods or services to recognize it as a mark indicating those goods or services, and to differentiate them from goods or services provided by others.[48]

A trademark registered with the Intellectual Property Office (IPO) is protected under the Trademark Act. A party who wishes to obtain trademark rights in order to indicate its own goods or services must apply for registration of a trademark with the IPO. It usually takes about eight to 12 months for the IPO to decide on a trademark registration application.

The Trademark Act provides that a trademark rights holder may license another party to use its trademark with all or part of the designated goods or services.[49] The Trademark Act also states that licenses will be registered with the IPO and that the same will apply where a licensee sublicenses the trademark to another party with the consent of the trademark rights holder.[50] Even if a license is not registered with the IPO, the license is still valid and effective as between the parties prior to registration. However, the licensee cannot assert its rights against third parties.[51]

A trade name/corporate name is the official name under which a company does business. In the ROC, before setting up a company, an application must be filed with the MOEA for the reservation of a Chinese corporate name and scope of business.

According to the Regulations Governing Review of Applications for Reservation of Corporate Names and Scopes, no business may use a corporate name that is the same as another's registered trade name. Whether or not two corporate names are the same depends on an overall view of the "specific parts" of the two names. If the "specific parts" of the two names are not the same, they will be considered different. However, even if two corporate names contain the same "specific parts," they will still be considered different if one corporate name contains other characters indicating a different type of business or any characters distinguishing one corporate name from the other.

When reserving a corporate name, the MOEA will not check whether the proposed name is identical to a registered trademark. In other words, a company may reserve and register a trade name that is identical to a trademark of another. However, if a trademark is a well-known mark, such action may constitute a trademark infringement or a violation of the FTA.

Both the Trademark Act and the FTA provide certain protection specifically for well-known marks: (1) the right to prevent another from registering a similar mark that will likely cause confusion or diminish the distinctiveness or reputation of the well-known mark; (2) the right to prevent another from using a similar mark that will likely cause confusion or diminish the distinctiveness or reputation of the well-known mark; and (3) the right to prevent another from using the distinctive elements of a well-known mark as the corporate name/trade name, domain name or other indication of source if such use will likely cause confusion or diminish the distinctiveness or reputation of the well-known mark.

The ROC does not maintain a separate registration of "well-known marks." Instead, the determination of whether or not a trademark is a well-known mark is made on a case-by-case basis by the IPO, the courts, the FTC, and so on. In 2009, the IPO published a list of marks that are considered to be well known in individual cases decided by these authorities between 2003 and 2008. Thereafter, the IPO has updated the list every five years, with the latest list being published in 2024.

c. Copyright

The Copyright Act was promulgated in 1928 and last amended on June 15, 2022. The term "work" under the Copyright Act means a creation that is within a literary, scientific, artistic, or other intellectual domain.[52] The protection of works is based on "creation" rather than registration, since the copyright registration system has been completely abolished in the ROC. An author has moral rights and economic rights in and to the work, and will enjoy copyright protection upon completion of the work without any registration.

Economic rights endure for the life of the author and 50 years after the author's death.[53] Economic rights in and to works authored by a juristic person endure for 50 years after the public release of the work.[54]

The economic rights holder is entitled to license others to exploit the work. Such license can be exclusive or nonexclusive. Based on the principle of freedom of contract, the economic rights holder (i.e., licensor) is free to agree with the licensee on the territory, term, content, method of exploitation, and other particulars of the license (such as amount of the royalty, and reports from the licensee on the sales of the licensed product(s) for calculation of the royalty) in a license agreement.

[44] Patent Act, Arts. 52, 114, 135.
[45] SIFN, Art. 6.
[46] Patent Act, Arts. 62, 63.
[47] Patent Act, Art. 96.
[48] Trademark Act, Art. 5.
[49] Trademark Act, Art. 39(1).
[50] Trademark Act, Art. 39(3).
[51] Trademark Act, Art. 39(2).
[52] Copyright Act, Art. 3.
[53] Copyright Act, Art. 30.
[54] Copyright Act, Art. 33.

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If any right is not clearly covered under the agreement, it is presumed to have not been licensed.

A nonexclusive licensee may not sublicense the rights inherent in the license to any third party for exploitation without the consent of the licensor. An exclusive licensee may, within the scope of the license, exercise rights in the capacity of an economic rights holder, and may perform litigious acts in its own name. The licensor may not exercise rights within the scope of an exclusive license.[55]

d. Franchising

A franchise system generally refers to a retail sales network through which a franchisor grants a franchisee the right to use its technology, know-how, operating system, trademarks or service marks, and provides necessary assistance and support to the franchisee for the promotion and sales of certain products or services. In return, the franchisee will pay a franchise fee to the franchisor.

Although franchising is a fast-growing business model in Taiwan, Taiwan has no specific legislation on franchising. After research on relevant laws and regulations of developed countries, the FTC promulgated the Disposal Directions (Policy Statements) on the Business Practices of Franchisers (FTC Franchiser Directions) in 1999, which were last amended on August 1, 2018. The FTC Franchiser Directions require franchisors to disclose certain information to the franchisee before signing a franchise agreement. Certain restrictions under the FTA also apply to franchising to prevent unfair competition. For instance, franchisors must not abuse their relative advantageous status based on their franchisees' dependence and, without justifiable reasons, engage in conduct such as discriminatory treatment, tie-in sales, exclusive dealing, restrictions on minimum procurement amount, or any other unfair competition acts.[56] Any of these acts constitutes a violation of the FTA.

If a franchisor violates any of the foregoing provisions, it will be subject to an administrative fine of NT$100,000 to NT$50 million. The fine can be increased to NT$100 million, and fines may be imposed consecutively until the violation is corrected.[57] If a franchisee has suffered any loss or damage as a result of the franchisor's violation of the FTA, the franchisee may claim damages against the franchisor in accordance with the FTA.[58]

D. Immigration Regulations

1. Non-PRC Nationals

a. Visiting the ROC

The Statute Governing Issuance of Visas to Foreign Passport Holders was promulgated on June 2, 1999, and last amended on January 22, 2003. An alien holding a passport from certain countries may apply for visa-exempt entry to the ROC territory, provided that the alien holds a passport that is valid for at least six months, has a confirmed return ticket or visa for the next destination and confirmed seat reservation for departure, has no criminal record, and is not prohibited by the local authorities to enter the ROC territory.[59] Duration of stay for the visa-exempt entry is 90, 30, or 14 days, depending on the country of the alien's nationality, and no extension is permitted.

An alien holding a passport from certain countries may apply for a landing visa to enter the ROC territory, provided that the alien holds a passport that is valid for at least six months, has a confirmed return air ticket or visa for the next destination and confirmed seat reservation for departure, has no criminal record in the ROC, and is not prohibited by the local authorities to enter the ROC territory.[60] Duration of stay for the landing visa is 30 days, and no extension is permitted.

An alien who is not eligible to apply for either visa-exempt entry or the landing visa must apply for a visa with the ROC consulate or designated agencies stationed overseas to enter the ROC territory. Duration of stay for the visitor visa is either two weeks, 30 days, 60 days, or 90 days. Visitor visa holders are not permitted to assume employment in the ROC without authorization.

b. Working in the ROC

Under the Employment Services Act (ESA), which was promulgated on May 8, 1992 and last amended on January 20, 2025, no foreign national may work in the ROC without a work permit, which must be applied for by his or her employer.[61] According to the regulations governing the employment of foreign employees, the employer may apply to the competent authority for a work permit for a foreign employee whose work falls within one of the following categories:

(i) Specialists and/or technical personnel;

(ii) Officers of enterprises invested in by overseas Chinese or foreign nationals, and duly approved by the government authorities;

(iii) The following types of teachers (instructors):

- Instructors in public or private colleges or universities, or in accredited educational institutes for alien residents;
- Qualified foreign language teachers (instructors) in accredited private junior high schools or elementary schools; and
- Study course instructors (teachers) teaching in foreign language departments, bilingual public schools or accredited experimental senior high schools;

(iv) Full-time teachers in short-term, supplementary or extension schools (also known as *bushibans*) duly accredited under the Supplementary Education Act;

(v) Sports coaches and athletes;

(vi) Religious workers and performing artists;

[55] Copyright Act, Art. 37.
[56] FTA, Arts. 20 and 25.
[57] FTA, Art. 40.
[58] FTA, Art. 30.
[59] Enforcement Rules for the Statute Governing Issuance of Visas to Foreign Passport Holders, Art. 2.
[60] *Id.*
[61] ESA, Art. 43.

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(vii) Crew members working on ships and other vessels permitted by the Ministry of Transportation and Communications;

(viii) Persons engaging in ocean fishing;

(ix) Household workers (domestic help);

(x) Workers on important national construction projects, or economic or social development projects; and

(xi) Other specialized personnel who are not available locally and must be recruited from abroad, with the special approval of the relevant authorities.[62]

A work permit application must be submitted to the competent authority by the employer prior to the commencement of the term of the employment stated in the application.[63] Otherwise, the employment must commence on the date of the submission of the application. According to the ESA, the maximum term of a work permit is three years and may be extended, subject to the competent authority's approval.[64]

After the work permit is issued, the foreign employee must apply for a resident visa from the ROC consulate located in the country where he or she resides. The foreign employee may apply for a resident visa from the Ministry of Foreign Affairs (MOFA) if he or she is in the ROC. After obtaining resident visas, the foreign employee and his/her family members may apply to the local immigration office for Alien Resident Certificates, which allow them to leave and re-enter the ROC as many times as needed during the validity of the Alien Resident Certificates.

2. PRC Nationals

PRC nationals may apply for a travel visa if the conditions/requirements for bank deposits, occupation, and foreign residency status stipulated in the Regulations on the Sightseeing Activities in the ROC by People of the Mainland Area (RSAT)[65] are met.

PRC nationals may also apply to enter the ROC for activities including visiting family members, giving speeches, technology research, business research, performing contracts, transfers within a transnational enterprise, short-term business activities and medical check-ups.[66] The requirements imposed on qualifications of the party extending the invitation and the PRC national differ depending on the purpose of the entry. The visa for entering the ROC may be one of the following four types: single entry; multiple entries for a period of one to three years (re-entry permit is required); multiple entry for one to five years; and permit for temporary stay.[67] The application for an entry permit may be denied if any of the conditions in Article 12 of the Regulations on the Entry into the ROC by People of the Mainland Area are met. For instance, the application may be denied if the PRC national is a member or employee of a political, military or administrative agency or organization of the Mainland.

The length of time that the PRC national may be allowed to stay in the ROC varies according to the purpose for entering the ROC. For instance, for performing contracts, the PRC national may not stay in the ROC for more than three months; if the PRC national is transferred to the ROC by a transnational enterprise, he or she may stay in the ROC for up to three years and may apply to extend the stay, if necessary.[68]

E. Labor Relations

The Labor Standards Act (LSA) stipulates the fundamental governmental provisions governing minimum standards and requirements for all employment relationships, which are binding on the employer if the business of the employer is within the purview of the LSA.[69] According to the LSA, the terms and conditions of an employment agreement must not be below the minimum standards provided under the LSA.[70]

The major requirements of the LSA and relevant labor laws and regulations are listed below.

1. Employee Statutory Entitlements

a. Minimum Wage, Working Hours, Rest Days, Public Holidays, Annual Leave and Other Statutory Leaves

(1) Minimum wage: An employee must be paid the wages as agreed upon by and between the employee and the employer, provided, however, that such wages do not fall below the basic wage.[71]

(2) Regular working hours: Regular working hours cannot exceed eight hours a day and 40 hours per week. Upon obtaining the consent of the labor union, or the labor-management conference if there is no labor union, the working hours of a work day in any given two weeks can be spread over the same two-week period, provided that the total number of working hours of each work day over the same two-week period is not increased by more than two hours. For those government-designated entities, working hours can be spread over a four- or eight-week period. The employer must keep sign-in books or time cards for workers to record their attendance on a daily basis up to the minute. These books and cards are to be kept on file for at least five years.[72]

(3) Night shift for female employees: According to Paragraph 1, Article 49 of the LSA, an employer may not make his or her female employees work between 10 o'clock in the evening and 6 o'clock the following morning unless having the consent of a labor union, or, if there is no labor union in a business entity, the approval of a labor-management conference. However, such Paragraph was declared invalid by the Grand Justices' Interpretation No. 807, and therefore the aforementioned consent of a labor

[62] ESA, Art. 46.
[63] ESA, Art. 48.
[64] ESA, Art. 52.
[65] RSAT (promulgated on December 10, 2001, and last amended on April 9, 2019), Arts. 3, 3-1.
[66] Regulations on the Entry into Taiwan by People of The Mainland Area (RET) (promulgated on February 8, 1993, and last amended on July 27, 2021), Art. 3.
[67] RET, Art. 11.
[68] RET, Appendix 1.
[69] LSA, Art. 3.
[70] LSA, Art. 1.
[71] LSA, Art. 22.
[72] LSA, Arts. 30 and 30-1.

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union or the approval of a labor-management conference is no longer required. Notwithstanding the above, it is also required that an employer not force a female employee to work between 10 o'clock in the evening and 6 o'clock in the following morning if such female employee is pregnant, in lactation period or unable to work due to her health conditions or other justifiable reasons.[73]

Note: The entire Article 49 of the LSA, containing five paragraphs, regulates female employees' work at night. Paragraphs 2 to 5 of Article 49 of the LSA were not declared invalid by the Grand Justices' Interpretation. Therefore, it is possible that Article 49 of the LSA will be further amended, but there is currently no schedule for such amendment.

(4) Overtime: An employer may request that its employees work overtime upon obtaining the consent of the labor union, or the labor-management conference if there is no labor union. The maximum number of working hours may not exceed 12 per day (including regular working hours and overtime), and the total number of extended working hours may not exceed 46 per month. If the employer obtains the approval of the labor union or, in the absence of a labor union, the labor-management conference, the maximum number of overtime hours per month may be increased to 54 hours, provided that the maximum number of overtime hours is limited to 138 (46 × 3) per quarter. Moreover, if an employer has more than 30 employees, the employer will be obligated to file a report with the local competent authority.[74]

(5) Overtime pay: Employers must compensate employees for working overtime pursuant to the statutory rates.[75] For a worker's overtime work, work hours and wages on rest days will be calculated according to the worker's actual hours of work. When calculating the maximum number of overtime hours, all the hours worked on a rest day must also be included, except for the overtime hours in the event of a natural disaster, accident or other emergency. The following is the formula for calculating the wage for overtime work:

(a) Where the overtime work does not exceed two hours in a regular working day, workers must be paid their regular hourly rate plus at least one-third of their hourly rate. When the overtime work in a regular work day is more than two hours, but less than four hours, workers must be paid their regular hourly wage plus at least two-thirds of the regular hourly wage.

(b) When a worker agrees to work on a rest day due to business need, work hours and overtime pay are calculated according to the employee's actual hours of work. The following is the formula for calculating overtime pay on a rest day: (i) working for two hours or less: the hourly wage for each of the two hours is at least one and one-third of the regular hourly rate; (ii) working for more than two hours to eight hours: the hourly wage for each of the first two hours is at least one and one-third of the regular hourly rate; for each of the remaining six hours, the hourly wage is at least one and two-thirds of the regular hourly wage; and (iii) working for between eight hours and 12 hours: the hourly wage for each of the first two hours is at least one and one-third of the regular hourly rate; for each of the following six hours, the hourly wage is at least one and two-thirds of the regular hourly wage; for each of the remaining four hours, the hourly wage is at least two and two-thirds of the regular hourly wage.

(c) The Company may require a worker to suspend a fixed day off, annual leave and the rest day in the event of a natural disaster, accident and other emergency that requires continuance of work; provided, however, that the worker concerned receives two times the regular salary for work during the leave period, and is granted a compensated day-off afterwards.

(6) If a worker chooses to accept compensatory time off in lieu of overtime pay and the employer agrees, the hours of compensatory time off will be calculated according to the employees' actual hours of overtime work. The ratio of the overtime work hours and the compensation leave is 1:1. The compensatory leave must be taken based on the sequence of extended working hours or work on rest days. The period for taking compensatory time off may be negotiated between the parties. However, if a worker fails to use up the compensatory time off during the agreed upon period or the employee is terminated before all of the time is used, the unused hours of compensatory time off must be compensated by the payment of salary, which is calculated based on the statutory rates for overtime pay[76] and the employee's wages at the time that the overtime work was performed.[77]

(7) Breaks: Employees must be given a 30-minute break for every four consecutive hours of work, except where a shift system is adopted or the work is of a continuous or urgent nature.[78] For a shift system, a mandatory 11 consecutive hours of rest between working shifts is required for a worker who follows a rotating shift schedule. However, the length of such mandatory rest-period may be shortened to eight consecutive hours, subject to: (i) the announcement of the MOL after the approval of the authority in charge of the company filing the application in consideration of the characteristics of work or special circumstances; and (ii) the approval of the union or the labor-management conference in the absence of a union. Moreover, if an employer has more than 30 employees, the employer is obligated to file a report with the local competent authority if the length of the mandatory rest-period is to be shortened.

(8) Regular rest day(s) and fixed day(s) off: Employees must have two days off (one fixed day off and a rest day)

[73] LSA, Art. 49.
[74] LSA, Art. 32.
[75] LSA, Arts. 24 and 32-1.
[76] LSA, Art. 32-1.
[77] Enforcement Rules of the LSA, Art. 22-2.
[78] LSA, Art. 35.

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every seven-days (or two fixed days off every two weeks for an employer, only if that business entity has adopted a four-week flexible working-hour system). The actual day of the fixed day off and that of the rest day must be jointly decided by the employers and the employees. The common arrangement is to set Sundays as the fixed days off and Saturdays as the rest days.[79] An employer may have more flexibility for the arrangement of the weekly fixed day off. That is, even if an employer is not eligible to adopt a four-week flexible working-hour system, the one fixed day off per week may be adjusted every seven days, subject to (i) the approval of the authority in charge of the employer filing the application, (ii) the employer filing the application falls in the list of industries designated by the MOL, and (iii) the approval of the union or the labor-management conference in the absence of a union, but an employer who has more than 30 employees will be obligated to file a report with the local competent authority if the weekly fixed day off is to be adjusted. In other words, under such adjustment, the one fixed day off may be freely assigned on a given seven-day period.

(9) Public holidays (paid): Commemorative days, Labor Day and other dates designated by the government authorities.[80]

(10) Annual leave:

(a) Three days of annual leave for a worker who has worked for more than six months but less than one year;

(b) Seven days of annual leave for a worker who has worked for one year or more but less than two years;

(c) 10 days of annual leave for a worker who has worked for two years or more but less than three years;

(d) 14 days of annual leave for a worker who has worked for three years or more but less than five years;

(e) 15 days of annual leave for a worker who has worked for five years or more but less than 10 years; and

(f) One additional day for each year of seniority over 10, up to 30 days at most.[81]

While employees have the right to decide when to take their annual leave, employers may negotiate such arrangement with workers in the event of employers' urgent operational demands or employees' personal reasons. Employers must notify employees to arrange a schedule for taking their annual leave when they become eligible for it. Unused annual leave ("deferred annual leave") at the end of a year may be carried forward to the next year (the period is to be agreed by the parties), subject to negotiation and agreement between employers and employees. However, if any portion of the deferred annual leave entitlement remains unused at the end of the next year or the employment contract terminates before the deferred leave is used, the employee is entitled to compensation for the unused portion of the deferred annual leave based on the employee's salary at the end of the year in which the deferred leave accrued. Annual leave that is carried forward into the following year must be extinguished first when the employee requests time off. Employers must document on their payroll roster the amount of annual leave that each employee is entitled to and any remaining balance of annual leave and notify employees of such information in writing every year.

(11) Other Statutory Leaves:

(a) Wedding leave (with pay): eight days.[82]

(b) Funeral leave (with pay):

(i) For the death of a parent, a foster parent, a stepparent, or the spouse of an employee, eight days.

(ii) For the death of a grandparent, a child, or a parent, a foster parent or a stepparent of the spouse of an employee, six days.

(iii) For the death of a great-grandparent, a sibling, or a grandparent (including a maternal grandparent) of the spouse of the employee, three days.[83]

(c) Non-job-related sick leave:

(i) For illness(es) not requiring hospitalization, up to 30 days in one year.

(ii) For illness(es) requiring hospitalization, up to one year in any two-year period.

The total period for (i) and (ii), above, may not exceed one year in any two-year period. Employees are entitled to half pay for up to 30 days of sick leave in one year. If an employee has not recovered after taking all his/her sick leave, annual leave and leave for personal affairs, the employee may apply for a leave of up to one year without pay.[84]

(d) Job-related injury or sick leave is available with pay as long as the employee requires medical treatment or recuperation.[85]

(e) Menstruation leave: Female employees are entitled to one day of menstruation leave per month. If the cumulative menstrual leave does not exceed three days in a year, the leave may not be counted towards sick leave days off. All additional menstrual leave is counted towards sick leave days off. Regardless of whether they are counted towards sick leave days off or not, employees taking menstrual leave are paid half pay.[86]

(f) Maternity leave: Female employees are entitled to eight weeks of maternity leave and four weeks of leave in the event of a miscarriage after being pregnant for at least three months. Qualifying employees are also entitled to receive full pay if employed for at least

[79] LSA, Art. 36.
[80] LSA, Art. 37.
[81] LSA, Art. 38.
[82] Regulations of Leave-Taking of Workers, Art. 2.
[83] Regulations of Leave-Taking of Workers, Art. 3.
[84] Regulations of Leave-Taking of Workers, Arts. 4, 5.
[85] Regulations of Leave-Taking of Workers, Art. 6.
[86] Act of Gender Equality in Employment, Art. 14.

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six months, or half pay if employed for less than six months.[87] When an employee has suffered a miscarriage after being pregnant for more than two months but less than three months, the employee must be permitted to discontinue work and is entitled to one week of unpaid maternity leave. When an employee has suffered a miscarriage after being pregnant for less than two months, the employee must be permitted to discontinue work and is entitled to unpaid leave for five days.[88]

(g) Leave for attending medical check-ups during pregnancy: Seven days with pay.[89]

(h) Pregnancy checkup accompaniment and paternity leave: Seven days with pay.[90]

(i) Leave for handling personal affairs (without pay) may not exceed 14 days in a year.[91]

(j) Family care leave: When an employee's family member is giving birth, suffering from a serious disease or other significant matters that require the employee's personal attention, the family care leave must be granted and calculated as leave for personal affairs, up to seven days maximum. The wage payment for family care leave must be the same as that for leave for personal affairs.[92]

(k) Paid leave for official business is available for as long as the employee is required to take leave by law (e.g., military service, an employee's representatives attending meetings of the Labor Management Conference or Labor Union) or required to do so by his or her employer.[93]

b. Employer's Obligations with Respect to Occupational Injury

If an employee dies or is injured, disabled or becomes sick due to an occupational hazard, his/her heirs are, or he or she is, entitled to certain compensation:

(1) Medical expenses compensation: The amount must be based on the expenses incurred.

(2) Salary compensation during medical treatment period: An employee who is unable to work while undergoing the medical treatment is entitled to receive the regular salary as before. If an employee does not recover after two years of medical treatment and has lost the ability to perform his/her previous duties and is not eligible for the disability compensation below, the employer may provide the employee with compensation in an amount equivalent to 40 months' average salary, and would thereafter be exempt from paying the employee salary compensation.

(3) Disability compensation: An employee who is verified to be disabled upon termination of the medical treatment period is entitled to disability compensation payable according to the Labor Insurance Act.

(4) Death compensation: The heirs of the deceased are entitled to receive death compensation in an amount equivalent to 40 months' average wage plus the compensation of funeral expenses in an amount equivalent to five months' average wage.[94]

2. Statutory Causes for Termination of an Employee's Employment Contract

According to the LSA, an employer is not allowed to terminate an employee's employment contract unilaterally, unless any one of the statutory causes provided in Article 11 or Article 12 exists. To terminate an employment contract according to Article 11 of the LSA (i.e., lay-off), the employer is required to provide severance pay, and serve an advance notice pursuant to the statutory notification period. To terminate an employment contract according to Article 12 of the LSA (i.e., dismissal), the employer is not required to provide severance pay and/or serve an advance notice.[95]

3. Retirement

a. Voluntary Retirement

An employee is entitled to retire if he or she (1) has worked for at least 15 years and attained the age of 55, (2) has worked for 25 years, or (3) has worked for at least 10 years and attained the age of 60 years old.[96]

b. Compulsory Retirement

An employee may be forced to retire if he or she reaches the age of 65 or becomes incapable of performing his/her duties due to mental or physical disability.[97]

c. Retirement Benefits

(1) Old Pension Scheme

Retirement benefits under the Old Pension Scheme provided in accordance with the LSA are calculated as follows: (a) for the first 15 years of service, 200% of the eligible employee's average monthly wage for each full year of service accrued under the Old Pension Scheme; (b) for each additional year of service, 100% of the eligible employee's average monthly wage for each full year of service; (c) any fractional year of service of less than six months is counted as half a year and that reaching six months or more is counted as a full year; and (d) the pension is capped at 45 times the average monthly wage.[98]

An employer must contribute monthly to the Old Pension Scheme as the reserve fund for retirement benefit for the employees subject to the Old Pension Scheme.[99]

[87] LSA, Art. 50.
[88] Act of Gender Equality in Employment, Art. 15.
[89] Act of Gender Equality in Employment, Art. 15.
[90] Act of Gender Equality in Employment, Art. 15.
[91] Regulations of Leave-Taking of Workers, Art. 7.
[92] Act of Gender Equality in Employment, Art. 20.
[93] Regulations of Leave-Taking of Workers, Art. 8.
[94] LSA, Art. 59.
[95] LSA, Arts. 11, 12.
[96] LSA, Art. 53.
[97] LSA, Art. 54.
[98] LSA, Art. 55.
[99] LSA, Art. 56.

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(2) New Pension Scheme

Under the Labor Pension Act (effective July 1, 2005), an employer must contribute at least 6% of each employee's monthly pensionable salary to his/her individual pension fund accounts each month, together with the share voluntarily contributed by employees (up to 6% of their monthly pensionable salary).

The table below details the calculation of the monthly pension contribution.[100]

	Pension Scheme Contribution
Maximum monthly salary for pension contribution	NT$150,000
Maximum voluntary contribution rate by employee	6% of monthly pensionable salary
Minimum mandatory contribution rate by employer	6% of monthly pensionable salary

(3) Choice Between Old Pension Scheme and New Pension Scheme

Employees who were employed before July 1, 2005, may choose to stay with the Old Pension Scheme or transfer to the New Pension Scheme after July 1, 2005. However, if the employees who chose to continue with the Old Pension Scheme changed their employer, they will be automatically governed by the New Pension Scheme from the commencement date of the new employment. For the employees who chose to stay with the Old Pension Scheme, the employer remains obligated to make the pension contributions in accordance with the requirements under the Old Pension Scheme.

4. Hiring of Minor Workers

A minor employee is defined to mean a worker over 15 years old, but less than 16 years old.[101]

No employer may employ a worker below 15 years old, unless the worker has graduated from junior high school or the competent authority has determined that the nature and circumstances of the work are such that no harm will result to the worker's physical and mental health. Employers of workers who are below 16 years old are required to keep the letters of consent from the legal guardians and age certificates of such workers on file.[102]

Minor workers may not work more than eight hours per day. No minor worker is permitted to work on a regular day off. No minor worker is permitted to work between 8 o'clock in the evening and 6 o'clock of the following morning.[103]

5. Sexual Harassment at Workplace

The Act of Gender Equality in Employment (AGEE), promulgated on January 16, 2002, was revised on August 16, 2023, with the amendments taking effect as of March 8, 2024. AGEE is the major legislation governing sexual harassment in the workplace in the ROC.

Based on the principles of "effectiveness," "friendliness" and "reliability," the amendments were introduced to deter harassment, strengthen and simplify the complaints process, expand the scope and applicability of workplace harassment policies and establish an external authority to investigate complaints and provide assistance. The aim of the revised legislation is to create a more friendly and safe working environment for all employees and jobseekers and ensure gender equality in the workplace.

6. Work Rules

An employer hiring 30 employees or more must set up work rules in accordance with the nature of the business, and must publicly display those rules after they have been registered to the local labor authorities. The rules must specify the following subject matters:

(i) Working hours, recess, holidays, annual paid leave of absence and the rotation of shifts for continuous operations;

(ii) Standards, method of calculation and payday of payable wages;

(iii) Length of overtime work;

(iv) Allowances and bonuses;

(v) Disciplinary measures;

(vi) Rules for attendance, leave-taking, awards and discipline, promotions and transfer;

(vii) Rules for recruitment, discharge, severance, termination and retirement;

(viii) Compensation and consolation payment for accident, injury or disease;

(ix) Welfare measures;

(x) Safety and health regulations to be followed and observed by both the employer and the worker;

(xi) Methods for communication of views and enhancement of cooperation between employer and worker; and

(xii) Miscellaneous matters.[104]

7. Penalties

A violation of any protective requirements related to an employer's forcing employees to work overtime or female workers (who are unable to work at night due to health conditions or other justifiable reasons), or those for the hiring of minor workers, carries a criminal sanction with respect to which the violator may be subject to a term of imprisonment up to six months, detention, and/or a fine of up to NT$300,000.[105]

[100] Labor Pension Act, Art. 14.
[101] LSA, Art. 44.
[102] LSA, Arts. 45, 46.
[103] LSA, Arts. 47, 48.
[104] LSA, Art. 70.
[105] LSA, Art. 77.

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Failure to pay severance or retirement benefits exposes the employer to a fine ranging from NT$300,000 to NT$1,500,000.[106]

Failure to appropriate the sufficient retirement reserve fund for the eligible employees' retirement benefits in the following year exposes the employer to a fine ranging from NT$90,000 to NT$450,000.[107]

Failure to pay wages and/or overtime pay exposes the employer to a fine ranging from NT$20,000 to NT$1,000,000.[108]

Failure to comply with the requirements with respect to the minimum wage, working hours, rest days, public holidays, and/or annual leave exposes the employer to a fine ranging from NT$20,000 to NT$1,000,000.[109]

Failure to provide compensation for occupational injury exposes the employer to a fine ranging from NT$20,000 to NT$1,000,000.[110]

If the employer is a legal entity, the above fines may also apply to its responsible person, employee and/or agent who violates the respective provisions of the LSA.[111]

8. Litigation Procedure

The Labor Incident Act (LIA), which was promulgated on December 5, 2018, came into effect on January 1, 2020, and was last amended on December 15, 2023, stipulates the procedural requirements in litigation involving employment-related disputes. Under the LIA, except for certain cases, labor disputes should be mediated by the court before the lawsuit is filed, and the filing of a complaint will be deemed a motion to request mediation when the plaintiff fails to request mediation in advance.[112]

Considering that workers are usually in a disadvantageous position in the litigation process, where the relevant evidence is unilaterally accessible to the employer rather than the worker and thus more difficult for the worker to adduce, the LIA shifts the burden of proof to the employer as follows:

(i) In wage disputes between workers and employers, if it can be proven that the payments received from the employer are based on an employment relationship, such payments will be deemed as the remuneration paid for the work performed.[113]

(ii) The worker will be deemed to have performed his/her duties during working hours with the employer's consent based on the attendance sheet of the worker.[114]

F. Financing the Business

In the ROC, funds can be injected into a company by a number of means.

1. Shareholders' Fund

Shareholders may fund the company by providing equity (capital increase by issuing new shares), credit/financing facilities (e.g., shareholders' loan), or quasi-equity (e.g., convertible bonds).

A decision to increase the share capital must be approved by more than one-half of the total shareholders of a limited company[115] or a board resolution adopted by a majority vote at a board meeting attended by two-thirds or more of the directors of a company limited by shares.[116] Unless otherwise provided by law or approved by a competent authority, a company limited by shares must reserve 10% to 15% of the newly issued shares to be subscribed to by its employees.[117] The existing shareholders have a preemptive right to subscribe to the new shares in proportion to their shareholding.[118]

There is no specific requirement for a shareholders' loan, provided that if the shareholder's offshore loan will be more than US$50 million in a calendar year, the DOIR and the CBC approvals for such shareholders' loan are required.

To issue corporate bonds, a board resolution must be adopted by a majority vote at a board meeting attended by two-thirds or more of the directors.[119] If certain adverse financial situations occur, such as the company being in breach of contract or in default, it may not issue corporate bonds.[120] The total issue amount of secured corporate bonds may not exceed the company's total assets after deducting total liabilities and intangible assets, whereas the total issue amount of unsecured corporate bonds may not exceed 50% of such remainder.[121]

2. Third-Party Loans

Banks may provide short-term, medium-term and long-term loans and other credit facilities to businesses. Security in the form of personal guarantee or collateral, such as real estate property, is commonly required.

If a company desires to borrow money from another ROC company, the lending company may not do so unless any of the following situations is met:[122]

(i) Where an intercompany business transaction requires such lending arrangement; or

(ii) Where an intercompany short-term financing facility (less than one year) is necessary, provided that the amount does not exceed 40% of the net asset value of the lending company.

3. Capital Market

A company whose shares are publicly offered, registered on ESM or listed on TWSE or TPEx may obtain financing from the capital markets by issuing shares or bonds.

[106] LSA, Art. 78.
[107] *Id.*
[108] LSA, Art. 79.
[109] LSA, Art. 79.
[110] *Id.*
[111] LSA, Art. 81.
[112] LIA, Art. 16.
[113] LIA, Art. 37.
[114] LIA, Art. 38.
[115] Company Act, Art. 106.
[116] Company Act, Art. 266.
[117] Company Act, Art. 267.
[118] *Id.*
[119] Company Act, Art. 246.
[120] Company Act, Arts. 249, 250.
[121] Company Act, Art. 247.
[122] Company Act, Art. 15.

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The regulator for the securities market is FSC. TWSE was established in 1961 and has been the primary equities market in the ROC, renowned for having maintained an orderly market and a cost-effective trading capability since its inception, while TPEx was founded in 1994 and has actively assisted companies from emerging and high-tech industries as well as small to medium-sized enterprises in listings and fund raising, greatly expanding the scope of the ROC's securities market. To apply for public offering or listing of the shares, a company must observe the TWSE/TPEx listing rules, the SEA, and other applicable laws and regulations promulgated by the FSC from time to time. Only after obtaining the public offering status of a company may it issue shares or bonds to the public investors by public offering or private placement.

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III. Forms of Doing Business in the ROC

A. Principal Business Entities

There are various forms that foreign entities can use to do business in the Republic of China (ROC).

Note: Amendments of July 6, 2018 (published by the President on August 1, 2018), in effect from November 1, 2018, substantially amend the Company Act. The discussion that follows, setting out the regulatory scheme governing the different forms of business entities in the ROC that a foreign investor may choose from, is based on the Company Act, as amended.

1. Company Limited by Shares

A company limited by shares must be organized by two or more shareholders, except where the company is incorporated by a single corporate or governmental shareholder.[123] The total capital of a company limited by shares is divided into shares, and the liability of each shareholder is limited to the amount of shares owned by the shareholder, except if the shareholder abuses the company's status as a legal entity thereby causing the company to bear specific debts. If such abuse is significant, causing difficulty for the company to pay such debts, the shareholder may be held liable for the debts.[124] Most foreign investors operate through companies limited by shares in the ROC.

2. Limited Company

The liability of shareholders of a limited company extends only to the amount of their capital contributions. A limited company is a close company with one or more shareholders.[125]

3. Closely-Held Company

The closely-held company refers to a non-public company with no more than 50 shareholders and with restrictions on share transfer.[126]

4. Partnership

A partnership is a group of individuals who manage a business as co-owners and share profits and unlimited liability jointly. A partnership is not an independent legal entity and cannot be incorporated. Partners are jointly and severally liable for all the debts incurred as a result of the operation of the partnership.[127]

5. Branch of a Foreign Corporation

A branch office is an extension of a foreign home company conducting business in the ROC. A branch office must be duly established before a foreign company conducts business in the ROC in its name.[128] Since a branch office is not an independent legal entity, the foreign home company is liable for the business conducted by the branch office.

6. Representative Office

A foreign company may also establish a representative office.[129] A representative office is not allowed to conduct business and may merely perform liaison work for its foreign home company. A representative office is sufficient for a foreign company that merely wishes to have a person in the ROC to perform liaison functions short of entering into contracts. Such functions include activities such as market surveys, follow-ups and inspections.

B. Company Limited by Shares

1. Formation

a. Incorporation Procedure

A company limited by shares is required to have at least one juristic or two individual shareholders as its promoters.[130] The company must first reserve a corporate name with the Ministry of Economic Affairs (MOEA). If any of the shareholders is a foreign national, it must apply with the Department of Investment Review for foreign investment approval. Then the shareholders must subscribe for the shares and pay the subscription price. For a company with more than one shareholder, the promoters are required to convene a shareholders' meeting to elect the director(s) and the supervisor(s).[131] If a company has only one corporate shareholder, the sole shareholder must appoint representatives to act as the director(s) and supervisor(s).[132] The director(s) so elected or appointed must then hold a board meeting to elect a person from among them to serve as the chairman of the board. Within 15 days after the chairman is elected, the company must apply for incorporation registration with the MOEA or other competent authority.[133] In addition, a business registration[134] and tax registration[135] must be filed with the local tax authority before the company may commence its business operations. If the company is engaged in a manufacturing business, it must complete the construction of its factory and the registration of its factory before it may commence the manufacturing and processing of its products.[136]

b. Articles of Incorporation

The articles of incorporation of a company need to be approved by the unanimous consent of the promoters.[137] The Chinese version of the articles of incorporation must be registered with the government authority. The amendment thereof must be approved by a special resolution to be adopted by more than one-half of the shareholders present at the shareholders' meeting who represent two-thirds or more of the total issued and outstanding shares.[138]

[123] Company Act, Arts. 2, 128, and 128-1.
[124] Company Act, Art. 154.
[125] Company Act, Art. 98.
[126] Company Act, Art. 356-1–356-14.
[127] Civil Code, Arts. 667–709.
[128] Company Act, Arts. 370–386.
[129] Company Act, Art. 386.
[130] Company Act, Arts. 128, 128-1, and 129.
[131] Company Act, Art. 131.
[132] Company Act, Art. 128-1.
[133] Regulations Governing Company Registration, Art. 2.
[134] Regulations Governing Taxation Registration, Art. 2.
[135] Value-added and Non-value-added Business Tax Act, Art. 28.
[136] Factory Management Act, Art. 10.
[137] Company Act, Art. 129.
[138] Company Act, Art. 277.

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The articles of incorporation of a company must specify the following:

(i) The company name;

(ii) The business scope;

(iii) The total number of shares and the par value per share, if the company issues shares with a par value, or only the total number of shares, if the company issues shares with no par value;

(iv) The location of the headquarter;

(v) The number of directors and supervisors and their term of office; and

(vi) The date of adoption of the articles of incorporation.[139] A Chinese version of the articles of incorporation must be signed by or affixed with a chop of all the incorporators and registered with the MOEA or other competent authority.

c. Costs of Incorporation

The government fee for incorporation registration is NT$1 per NT$4,000 of the authorized capital or NT$1,000, whichever is higher.[140]

2. Operations

a. Shares

To increase the flexibility of the operation of non-public companies, shares may be issued with or without par value.[141] Non-public companies may issue preferred shares with multiple voting rights, veto power, restrictions on the shareholders being elected as a director or a supervisor or with a guaranteed number of director or supervisor seats, and/or share transfer restrictions, etc.[142]

b. Special License

Depending on the nature of the business, a special license may be required for conducting the business. For example, a company engaged in the insurance, securities or banking business is required to obtain a special license from the relevant competent authority. If a specific license is required, a company must obtain the license before it may apply for incorporation registration or registration of the related business item(s).

c. Increases and Reductions of Capital Stock

The total authorized number of shares of a company may be issued in different tranches. There is no minimum capital requirement except for: (1) certain regulated businesses (such as banks, insurance companies and securities firms); or (2) companies that would hire expatriates to work in the ROC.[143] A company may increase its capital by issuing new shares in exchange for cash or a contribution in-kind.[144]

d. Acquisition of Own Stock

A company cannot purchase its own shares, except for: (1) the redemption of preferred shares;[145] (2) a private company's transfer of treasury shares to its employees within three years;[146] (3) a public company's transfer of treasury shares to its employees, in exchange for convertible bonds, preferred shares or securities of a similar nature carrying the right to subscribe for new shares, or cancellation of shares to maintain the company's credit and the shareholders' equity;[147] (4) in the case of a merger/demerger or certain material change in a company's operations as defined under Articles 185 and 316 of the Company Act that a shareholder exercises his/her appraisal right to ask the company to repurchase the shares at a fair market price;[148] (5) a company's transfer of treasury shares to its employees as an employee's bonus as specified in the company's articles of incorporation, or (6) where a corporate shareholder is liquidated or an individual shareholder is bankrupted, repurchase of the shares at current market price in payment for the debts owed to the company before the liquidation or bankruptcy.[149]

e. Director(s) and Supervisor(s)

A public company must have at least five directors.[150] A company owned by a single corporate shareholder may have no supervisor and have one or two directors in lieu of a board of directors. A non-public company that is not owned by a single corporate shareholder may have one or two directors in lieu of a board of directors, if so specified in its articles of incorporation, but it must have at least one supervisor.[151] The directors may be shareholders, independent third parties or representatives designated by a corporate shareholder (in the case of a single-shareholder company).[152] A company with a board of directors must elect a chairman of the board and may also elect managing directors, if the number of directors is more than nine, and the company may delegate certain functions to the board of managing directors. If a company so wishes, a vice chairman of the board may also be elected from among the directors at the board meeting. The supervisor may also be a shareholder, an independent third party or a representative designated by a corporate shareholder (in the case of a single-shareholder company), but cannot be a director, managerial officer or an employee of the company. Where a company has more than one supervisor, each supervisor may exercise the powers independently.[153]

f. Board Meetings

With the exception of matters that require a resolution at a shareholders' meeting, the transaction of company business is governed by resolutions of the board of directors.[154] Resolutions are adopted by a simple majority vote of the directors attend-

[139] Company Act, Art. 129.

[140] Regulations Governing Collection of Company Registration Fees, Art. 4.

[141] Company Act, Art. 156.

[142] Company Act, Art. 157.

[143] In such case, the company limited by shares is required to have an authorized capital of more than NT$5 million.

[144] Company Act, Arts. 156 and 272.

[145] Company Act, Arts. 158 and 167.

[146] Company Act, Arts. 167 and 167-1.

[147] Securities and Exchange Act, Art. 28-2.

[148] Company Act, Arts. 167, 186, 235-1, and 317.

[149] Company Act, Art. 167.

[150] Securities and Exchange Act, Art. 26-3.

[151] Company Act, Arts. 128-1, 192.

[152] Company Act, Arts. 27, 192.

[153] Company Act, Art. 221.

[154] Company Act, Art. 202.

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ing in person or by proxy, who represent more than half of all the directors,[155] except in the case of certain major corporate decisions, which require a simple majority vote of two-thirds or more of the directors.[156] Board meetings can be held within or outside the territory of the ROC, and can be conducted through video conferencing.[157] If so specified in the company's articles of incorporation, the board may adopt written resolutions by unanimous consent of all directors.[158] A director who is unable to attend a board meeting may appoint another director as his or her proxy for the meeting, and only a director may act as a proxy for another director.[159] At a board meeting, the votes are calculated according to the number of directors present.[160]

g. Shareholders' Meetings

Only companies with more than one shareholder have shareholders' meetings; in the case of single-shareholder companies, the functions of shareholders' meetings are assumed by board meetings.[161] The board must convene an annual shareholders' meeting within six months after the close of each fiscal year and may convene special shareholders' meetings at any time when necessary. Resolutions are adopted by a simple majority, provided shareholders representing more than one-half of the total number of voting shares are present.[162] Major important decisions, however, must be adopted by a majority of those present at a meeting where shareholders representing two-thirds or more of the total number of voting shares are present. The election of directors and supervisors, amendments to the articles of incorporation, disposals of major assets or businesses, and the dissolution or merger of the company also require super majority votes of a shareholders' meeting.[163]

Shareholders who are unable to attend a shareholders' meeting may appoint proxies, who may or may not be shareholders, to vote on their behalf at the meeting.[164] At a shareholders' meeting, the votes are calculated according to the number of shares held by each shareholder (and proxy) present.[165]

A shareholders' meeting may be conducted via video conference. Shareholders who are unable to attend in person may also participate virtually.[166]

Shareholders of a non-public company may also enter into shareholders' voting agreements or voting right trust agreements.[167]

h. Financial Statements

After the close of each fiscal year, the board of directors is required to prepare a business report, financial statements and a proposal for the distribution of profits or plans to make up losses and submit the statements, report and proposal or plans to the supervisor(s) for examination before the shareholders' meeting. Once the financial statements are approved at the shareholders' meeting, the liability of the directors and supervisor(s) is released, except where any of the directors or supervisors is involved in any activity that violates the law.[168]

i. Dividends, Other Distributions of Profits and Reserves

If so provided in the company's articles of incorporation, the distribution of surplus earnings or the offsetting of losses of a company may be conducted at the end of every quarter or every half fiscal year by resolution of the board.[169] A company may not pay dividends or bonuses unless its losses are covered and a legal reserve of 10% of its profits has been set aside.[170] Unless otherwise prescribed in the articles of incorporation, dividends and bonuses must be paid in proportion to the number of shares held by each of the shareholders. The articles of incorporation must explicitly prescribe the percentage of bonus payable to employees when dividends are distributed to shareholders. In addition, employee bonuses may be distributed to employees of affiliates of the company, subject to certain conditions as determined by the articles of incorporation. The Company Act does not provide a maximum or minimum percentage for the employee bonus and this may, therefore, be decided by the shareholders at their sole discretion. The employee bonus must be distributed when the company distributes dividends to shareholders.[171] If special stocks (preferred or deferred) are issued, the company may, in accordance with its articles of incorporation, provide a different order, amount or ratio for the allocation of dividends and interest on special stocks.[172] Dividends received by a foreign investor are subject to ROC withholding income tax at a rate of 21%, unless a lower rate applies under a tax treaty.[173]

3. Dissolution

A company may be dissolved due to any one of the following statutory causes:

(i) The conditions for dissolution specified in the articles of incorporation of the company are satisfied;

(ii) The business for which the company is established is completed or is no longer feasible;

(iii) The resolution for dissolution has been adopted by a majority vote of the attending shareholders representing two-thirds or more of the total shares issued and outstanding at a shareholders' meeting;

(iv) The number of the shareholders of the company falls below the statutory requirement;

[155] Company Act, Art. 206.
[156] Company Act, Arts. 156-3, 167-1, 167-2, 185, 208, 235-1, 246, 266, 282, and 316-2.
[157] Company Act, Arts. 205 and 208.
[158] Company Act, Art. 205.
[159] Company Act, Art. 205.
[160] Company Act, Arts. 206 and 208.
[161] Company Act, Art. 128-1.
[162] Company Act, Arts. 170, 171, and 174.
[163] Company Act, Arts. 185, 192, 216, 277, 315 and 316.
[164] Company Act, Art. 177.
[165] Company Act, Art. 179.
[166] Company Act, Art. 172-2.
[167] Company Act, Art. 175-1.
[168] Company Act, Arts. 228, 230 and 231.
[169] Company Act, Art. 228-1.
[170] Company Act, Arts. 232 and 237. A company is required to set aside the legal reserve until the total amount of the reserve equals the total amount of the company's paid-in capital.
[171] Company Act, Art. 235-1.
[172] Company Act, Art. 157.
[173] Standards of Withholding Rates for Various Incomes, Art. 4; Income Tax Act, Art. 124. *See* XV.B., below.

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(v) The company is merged into another company or spun off;

(vi) The company goes bankrupt; and

(vii) The competent authority (such as MOEA) or the court orders the company to be dissolved.[174]

In the case of (i), above, a company may amend its articles of incorporation, and in the case of (iv), above, it may increase the number of its registered shareholders, in order to constantly carry on its business rather than to be dissolved.[175]

4. Liquidation

A dissolved company must be liquidated, unless the dissolution is caused by a merger, a demerger, or bankruptcy.[176]

Unless a different person is elected by the shareholders at the shareholders' meeting, designated in accordance with the articles of incorporation, or appointed by the court at the request of an interested party, the liquidator must be one of the directors.[177] Once the liquidator is appointed, the authorities and obligations of the board of directors of the company are discharged.[178] Individual and public notices of the liquidation are required. A period of at least three months must be provided for creditors to register their rights. The liquidator cannot pay off any debt during the three-month period, except for secured debt subject to the court's approval. The liquidator must, within 15 days after completion of liquidation, prepare an income and expenditure statement and a statement of profit and loss, and, together with all statements and records of accounts, forward these to the supervisor(s) for examination and subsequently submit them to the shareholders' meeting for ratification. The income and expenditure statement and the statement of profit and loss must be submitted to the court within 15 days after approval at a shareholders' meeting.[179]

Special liquidation may be initiated by an order of the court when the liquidation process encounters difficulties. Every special liquidation is under the supervision of the court.[180] A creditors' meeting may be called to elect a liquidation supervisor to oversee the liquidation process. The court may also examine the business and property of a company undergoing special liquidation and make appropriate dispositions when necessary. If creditors of a company, undergoing special liquidation, cannot reach an agreement under the special liquidation process, the court will declare an adjudication of bankruptcy in accordance with the Bankruptcy Act.[181]

The liquidation must be completed within six months after the liquidator(s) has reported to or registered with the court unless the court approves the extension of the deadline.[182] When all the liquidation procedures have been completed, a custodian must be appointed to keep the books, records, and financial statements for 10 years, and a report is made to the court to report the appointment of the custodian.[183]

5. Reorganization

In the event that a company with publicly issued shares or bonds encounters financial difficulty, suspends operations or may have to cease its operations, the following parties may file a petition with the court for reorganization of the company:[184]

(i) The company itself, provided that a resolution on the filing of a petition for reorganization has been adopted by a majority vote at a board meeting attended by two-thirds or more of all the directors of the company;

(ii) Shareholders holding 10% or more of the total issued shares of the company for at least six consecutive months;

(iii) Creditors whose claims against the company are equivalent to the value of 10% or more of the total issued shares of the company;

(iv) An enterprise labor union, or an industry union in which more than half of the company's employees are members, or an occupational union in which more than half of the company's employees with the same profession are members; or

(v) More than two-thirds of the company's employees.

The reorganization must be conducted by a reorganizer, usually a member of the board of directors. However, the court may also designate a reorganizer from among creditors, shareholders, or experts recommended by the proper authorities. The reorganizer carries out the reorganization under the supervision of a reorganization supervisor appointed by the court. When a company receives an order of reorganization, its business management must be turned over to the reorganizer. All legal proceedings involving the company's property are suspended during an order of reorganization. The reorganization plan submitted by the reorganizer is subject to the approval of a committee of the concerned parties, consisting of creditors and shareholders of the company.[185] This committee must oversee the execution of the approved plan.

Reorganization must be completed within one year after the court approves the reorganization application, unless otherwise approved by the court upon application for extension by the reorganizer. On completion of the reorganization, the reorganizer must apply for a court order to declare the completion of the reorganization. After the court order is obtained, the reorganizer must call a shareholders' meeting and elect new directors and supervisors of the company. The newly elected directors and supervisors must complete registration or an amendment to the registration with the competent authorities.[186]

C. Limited Company

A limited company is a company whose capital is paid up by its shareholders. A limited company is managed by the directors elected among the shareholders and the profits are

[174] Company Act, Art. 315, para. 1.
[175] Company Act, Art. 315, para. 2.
[176] Company Act, Art. 24.
[177] Company Act, Art. 322.
[178] Company Act, Art. 324.
[179] Company Act, Arts. 327, 328, 330 and 331.
[180] Company Act, Art. 338.
[181] Company Act, Arts. 341, 345, 351 and 352–355.
[182] Company Act, Arts. 87 and 334.
[183] Company Act, Art. 332.
[184] Company Act, Art. 282.
[185] Company Act, Arts. 282, 289, 290, 293, 294 and 300–306.
[186] Company Act, Arts. 304 and 310.

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shared among the shareholders. The liability of shareholders is limited to the extent of the capital contributed by each of them, except if the shareholder abuses the company's status as a legal entity thereby causing the company to bear specific debts. If such abuse is significant, causing difficulty for the company to pay such debts, the shareholder may be held liable for the debts.[187]

1. Formation

A limited company must have at least one shareholder.[188] There is no nationality restriction on the shareholder(s).

There is no minimum capital requirement, but the capital of a limited company must be fully paid up by the shareholders; the capital cannot be paid by installments.[189] A company can determine any capital amount as long as such amount is sufficient to cover the cost of the incorporation of the company. A CPA's audited report is required when the company applies for the incorporation registration.[190] If the paid-in capital amount is insufficient to cover the cost of the incorporation of the company, the government authority will not approve the incorporation registration.[191]

2. Administration

The articles of incorporation of a limited company must specify the following: (1) the company name; (2) the business scope; (3) the names of the shareholders; (4) the total amount of capital and the capital contribution of each of the shareholders; (5) the ratio or standard for distributing profits or allocating losses; (6) the location of the company; (7) the number of directors; (8) the events for dissolution, if any; and (9) the date of adoption of the articles of incorporation. The articles of incorporation of a limited company must be approved by the unanimous consent of the shareholders upon incorporation, and any subsequent amendment will be subject to the consent of shareholders representing two-thirds of the votes.[192]

In principle, each shareholder has one equal vote regardless of the amount of capital contributed by the shareholder. However, the articles of incorporation of a limited company may stipulate that votes can be allocated to the shareholders in proportion to their respective contribution to the capital.[193]

a. Director

A limited company must have at least one and not more than three directors elected by two-thirds or more of the shareholders from among themselves to conduct business and represent the company. If there is more than one director, the articles of incorporation of a limited company may stipulate that a chairman be elected from among the directors by a majority of the directors, who is the responsible person of the company.[194] There is no requirement for a limited company to hold meetings of board of directors.

b. Shareholders' Meeting

A limited company is not required to hold shareholders' meetings. All decisions requiring approval of the shareholders can be made by obtaining the shareholders' written consent.[195]

c. Supervision

Each of the shareholders who does not conduct business (i.e., not being a director) may exercise the right of supervision to request the company to provide information on the business condition of the company and examine its assets, documents, books and statements from time to time.[196]

d. Managers

Managers of a limited company are appointed by more than half of all the shareholders of the company.

3. Dissolution

A limited company is dissolved if any of the following circumstances occurs:

(i) The occurrence of the conditions for dissolution stipulated in the articles of incorporation;

(ii) The accomplishment or impossibility of accomplishment of the purpose for which the company has been formed;

(iii) A resolution made by the shareholders representing two-thirds or more of the total number of voting shares;

(iv) The reduction of the number of shareholders to a number below the prescribed minimum number;

(v) Consolidation or merger with another company;

(vi) Bankruptcy; or

(vii) Order or judgment for dissolution.[197]

After a limited company is dissolved, it must be liquidated, unless such dissolution is caused by consolidation or merger, split-up, or bankruptcy.[198] The purpose of the liquidation process is to:

(i) Wind up all pending business;

(ii) Collect all outstanding debts and to pay off all claims;

(iii) Allocate surplus or loss; and

(iv) Allocate the residual assets.[199]

Unless otherwise provided in the articles of incorporation or unless liquidators are otherwise appointed by a resolution adopted by the shareholders, liquidation of a limited company must be undertaken by all of its shareholders.[200]

In case a liquidator or liquidators cannot be determined, the court may, upon application by a concerned party, appoint a liquidator or liquidators.[201]

[187] Company Act, Art. 99.
[188] Company Act, Art. 98.
[189] Company Act, Art. 100.
[190] Company Act, Art. 7.
[191] Company Act, Art. 388.
[192] Company Act, Arts. 98, 101, and 113.
[193] Company Act, Art. 102.
[194] Company Act, Art. 108.
[195] Company Act, Arts. 98, 106, 108 and 111–113.
[196] Company Act, Art. 109.
[197] Company Act, Arts. 71 and 113.
[198] Company Act, Art. 24.
[199] Company Act, Arts. 84 and 113.
[200] Company Act, Arts. 79 and 113.
[201] Company Act, Arts. 81 and 113.

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Upon assuming office, the liquidator(s) must immediately examine the financial condition of the company, prepare a balance sheet and an inventory of property, and deliver the same to all shareholders for review.[202] The liquidators must complete the examination within a period of six months; if the examination cannot be completed within the foregoing six months, the liquidators must file an application, with good cause stated therein, for extension of the deadline with the competent court.[203] Where the aggregate of the assets of a company is insufficient to satisfy its liabilities, the liquidators must file an application for declaration of bankruptcy.[204] The distribution of residual assets, unless otherwise stipulated in the articles of incorporation, is based on the ratio of net contribution of each shareholder after allocation of profit or loss.[205] The liquidators must prepare a final statement to be submitted to shareholders for approval within 15 days after winding up the company.[206]

The liquidation process is officially completed after the liquidators file a report with the court within 15 days after the shareholders approve the completion of the liquidation of the company.[207]

D. Closely-Held Company

A closely-held company is a private company that may stipulate in its articles of incorporation a restriction on share transfers and can have no more than 50 shareholders.[208] Closely-held companies are designed to encourage the growth of startups, particularly tech startups and small and medium-sized enterprises, by granting more operational flexibility.[209]

1. Formation

The promoters of a closely-held company are required to subscribe to all of the shares of the first issue. The contribution of capital may be in cash, properties needed by the company, technical know-how and services without being subject to the restrictions imposed on other forms of companies under Articles 132 to 149 and 151 to 153 of the Company Act. However, contributions in technical know-how and services must be approved by all shareholders and the total shares that are issued in consideration of the contributions of service must not exceed: (i) 50% of the total issued and outstanding shares of a closely-held company with paid-in capital of less than NT$ 30 million, or (ii) 25% of the total issued and outstanding shares of a closely-held company with paid-in capital of NT$ 30 million or above.[210]

2. Operation

a. Shares

To maintain the "lock-out" feature of a closely-held company, restrictions on share transfer must be specified in the company's articles of incorporation, share certificates, or relevant transaction documents.[211]

In principle, a closely-held company is not allowed to issue or offer securities publicly. However, it is permitted if the public issuance or offering is conducted through an equity crowdfunding platform operated by licensed security firms. Nevertheless, the restrictions on the number of shareholders and share transfers still apply in such case.[212]

There is no specific limit for closely-held companies issuing corporate bonds, convertible bonds, and equity warrant bonds through private placement. However, the restrictions on the number of shareholders and share transfer still apply when the convertible bonds are converted or the equity warrant bonds are exercised.[213]

When issuing new shares, the contribution of capital may be in the form of cash, properties needed by the company, technical know-how and services and the debt of the company. In addition, the requirements for the retention of a portion of the newly issued shares to employees and the preemptive rights of existing shareholders will not apply when a closely-held company issues new shares, which are otherwise applicable to non-closely-held companies under Article 267 of the Company Act.[214]

b. Shareholders' Meetings

A shareholders' meeting may also be conducted through video conferencing or other means as announced by the competent authority. If so specified in the company's articles of incorporation, a written resolution is permissible with approvals of all shareholders.[215]

Shareholders of a closely-held company may also enter into shareholders' voting agreements or voting right trust agreements.[216]

c. Accounting

If so provided in the company's articles of incorporation, the distribution of surplus earnings or the offsetting of losses of a closely-held company may be conducted at the end of every quarter or every half fiscal year by resolution of the board.[217]

3. Transformation of Corporate Form

A closely-held company may be converted to other types of companies by passing a special resolution of a shareholders' meeting.[218] A private non-closely-held company may be converted into a closely-held company with the approval of all

[202] Company Act, Arts. 87 and 113.
[203] Company Act, Arts. 87 and 113.
[204] Company Act, Arts. 89 and 113.
[205] Company Act, Arts. 91 and 113.
[206] Company Act, Arts. 92 and 113.
[207] Company Act, Arts. 93 and 113.
[208] Company Act, Art. 356-1.
[209] A closely-held company is a corporate form added under the amendments to the Company Act of June 15, 2015.
[210] Company Act, Art. 356-3.
[211] Company Act, Arts. 356-2 and 356-5.
[212] Company Act, Art. 356-4.
[213] Company Act, Art. 356-11.
[214] Company Act, Art. 356-12.
[215] Company Act, Art. 356-8.
[216] Company Act, Art. 356-9.
[217] Company Act, Art. 228-1.
[218] Company Act, Art. 356-13.

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shareholders. The company shall notify all the creditors upon obtaining such approval for transformation of corporate form.[219]

E. Partnership

A partnership is a group of individuals who manage a business as co-owners and share profits and unlimited liability jointly. A partnership is not an independent legal entity and cannot be incorporated. Partners are jointly and severally liable for all the debts incurred as a result of the operation of the partnership.[220]

1. Contribution

A partnership is constituted through a contract whereby two or more persons agree to make contributions in common to a collective enterprise. The contribution may consist of money or other rights over property or of services, credit or other interests. The amount of contribution other than money is assessed at the value of the contribution. If it is not assessed, the average amount/value of the contribution of the other partners is deemed the amount/value of the contribution.[221] The contributions of the partners and all other properties of the partnership are held in common by all the partners.[222] Unless otherwise agreed upon by the partners, a partner is not bound to provide a contribution in excess of what has been agreed upon, nor, if his contribution has been reduced by losses, to make good such losses.[223]

2. Administration

Concerning resolutions of the partnership, each partner entitled to vote is presumed to have one vote only, irrespective of the amount of his/her contribution.[224] The resolutions of the partnership are made by the unanimous consent of all the partners. The resolutions of the partnership can be passed by more than one half of all partners or more than a certain number of partners if it has been agreed upon in the partnership contract, provided, however, that the matters related to the amendment to the partnership contract or the change of the business operation of the partnership are agreed by two-thirds or more of all the partners.[225]

Unless otherwise stipulated in the partnership contract or by resolution, the matters related to the partnership are managed by all the partners in common. If it is agreed upon or by resolution that the matters related to the partnership are to be managed by certain partners, these matters must be managed in common by these partners. The ordinary matters related to the partnership may be managed individually by each partner who has the right of management, but, in such a case, every partner who has the right of management may oppose and stop the action of any other partner.[226]

If the allocation of profits and losses of the partnership among the partners is silent in the contract, the allocation is made in proportion to the value of the contribution of each partner to the partnership.[227]

3. Withdrawal

If no period has been fixed for the duration of the partnership, or if the partnership has been formed for the lifetime of any of its partners, each partner may withdraw from the partnership, provided that the other partners have been notified two months in advance. Nevertheless, even if a period has been fixed for the duration of the partnership, a member may give notice of withdrawal for causes not attributable to the partner intending to withdraw.[228]

In addition to the above, withdrawal of a partner can take place in any of the following situations:

(i) A partner's death, except if it is stipulated in a contract that the partner's heirs may inherit the deceased partner's rights;

(ii) A partner is declared bankrupt or is subject to an order for the commencement of guardianship; and

(iii) A partner is dismissed from his duty.[229]

A partnership is dissolved in any of the following cases:

(i) When the prescribed duration of the partnership has expired;

(ii) When the partners unanimously decide to dissolve the partnership; and

(iii) When the business objective that forms the partnership is accomplished, or becomes impossible to accomplish.[230]

F. Branch of a Foreign Corporation

1. Registration

If a foreign company desires to do business in the ROC, it must establish a branch office in the ROC. To establish a branch office in the ROC, the foreign company must apply for branch registration, business registration and tax registration before it may start to conduct business in the ROC.[231] Usually, it will take about five to seven weeks to complete all the necessary registrations.

2. Liability

The establishment of a branch office means that the foreign company is permitted to do business in the ROC through its ROC branch. A foreign company, subject to statutory restrictions, has the same rights and obligations as a company incorporated under ROC law.[232] For example, the ROC branch will be liable for all taxes payable as an independent tax person like all other ROC companies.[233] If the head office of the ROC branch has any ROC-sourced income (excluding income gen-

[219] Company Act, Art. 356-14.
[220] Civil Code, Art. 681.
[221] Civil Code, Art. 667.
[222] Civil Code, Art. 668.
[223] Civil Code, Art. 669.
[224] Civil Code, Art. 673.
[225] Civil Code, Art. 670.
[226] Civil Code, Art. 671.
[227] Civil Code, Art. 677.
[228] Civil Code, Art. 686.
[229] Civil Code, Art. 687.
[230] Civil Code, Art. 692.
[231] Company Act, Art. 371.
[232] Company Act, Art. 4.
[233] Income Tax Act, Art. 41.

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erated from international trade), the ROC branch is obligated to consolidate the ROC-sourced income of the head office into its account when filing the corporate income tax return in the ROC.[234] Being a part of the foreign company, all the liabilities of the ROC branch will be extended to the foreign company if the assets of the ROC branch are not sufficient to satisfy all of its debts.

3. Branch Manager and/or the Litigious and Non-Litigious Agent

A foreign company is required to appoint a representative of its branch office in the ROC as the responsible person in the ROC.[235] If the branch manager is a foreigner, a work permit must be applied for and approved before the branch manager may start to work in the ROC.[236]

[234] Income Tax Act, Art. 3.
[235] Company Act, Art. 372.
[236] ESA, Arts. 42–62.

G. Representative Office

If a foreign company has no intention to establish a branch office or a subsidiary for conducting business in the ROC initially, it may appoint a representative and register a representative office to conduct certain juristic acts in the ROC on its behalf.[237] An application needs to be filed with the MOEA for registration of the representative office.

Given that a representative office is not allowed to conduct business for profit, such an office is not exposed to any tax liability in the ROC. However, the representative office must handle the withholding tax on the local employees' salaries as well as office rental payments, as applicable, and report these matters to the tax authority.[238]

[237] Company Act, Art. 386.
[238] Income Tax Act, Art. 88.

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IV. Principal Taxes

A. *Sources of Authority in Tax*

1. Legislative

a. Organization of the Tax Law

The Republic of China (ROC) does not adopt a single tax code system but uses separate tax acts to collect different taxes.

b. Other Legislative Documents that Can Be Used to Interpret the Law

The legislative history of a tax bill, including the grounds and rationale for the legislation, as well as the deliberation made thereof during the sittings of the Legislative Yuan, can be referred to when interpreting the law. In addition, the enforcement rules, directives and rulings issued by the Ministry of Finance (MOF), as well as the judgments made by the administrative courts, can also be used to interpret the law.

c. Legislative Process

The procedures for passing and promulgating tax bills are summarized as follows:

(1) Delivery of Draft Bills

Draft tax bills may either come from the Executive Yuan (the cabinet)[239] or be proposed by at least 15 legislators of the Legislative Yuan (lawmakers).[240]

Draft bills are first forwarded to the Procedure Committee of the Legislative Yuan, which determines the order in which the draft bills will be deliberated in the Legislative Yuan sitting. Draft bills of a similar nature may be deliberated together.[241]

(2) Readings of Draft Bills

Three readings are required for review and passing draft bills.

(a) First Reading

In the Legislative Yuan sitting, draft bills will be listed on the bill agenda. The First Reading is deemed to be completed when the title of the draft bill is read aloud by the legislators in the sitting.[242]

After the First Reading, a draft bill will be immediately referred to the appropriate committees for perusal, or be brought up for the Second Reading if it is proposed and voted for by any legislators present in the sitting with the consensus of at least 20 other legislators.[243]

During the perusal of a draft bill, the committees may invite government officials and the public concerned to attend committee meetings and to explain or to provide ideas for the legislators' deliberation.[244]

(b) Second Reading

At the Second Reading, the title of the draft bill will be read aloud followed by a general discussion and an article-by-article discussion. After thorough discussion, the draft bill may be passed and proceed to the Third Reading, or encounter revision, reexamination, revocation, or withdrawal.[245]

(c) Third Reading

A draft bill that has completed the Second Reading undergoes the Third Reading in the subsequent Legislative Yuan sitting. However, it may proceed to the Third Reading at the same sitting following the resolution of the Second Reading if it is proposed and voted for by any legislators present in the sitting with the consensus of at least 15 other legislators.[246]

Unless a draft bill is found self-contradictory, unconstitutional or is in conflict with other laws, only rephrasing can be done to a draft bill in the Third Reading.[247]

(3) Promulgation by the President

The Legislative Yuan will have a bill that has completed the Third Reading sent to the Executive Yuan, which will then forward the bill to the President for promulgation. The President must either promulgate the bill within 10 days of receiving it, or have the Executive Yuan return the bill to the Legislative Yuan for reconsideration.[248]

d. Constitutional Challenge

According to the doctrine of taxation by law, people have the duty of paying taxes in accordance with the law, which means when the government imposes a tax on its people, it must clearly specify, in the law, the taxpayer, the object to be taxed, the tax base, the tax rate, and how and when the tax is to be paid. The tax authorities may issue enforcement rules, directives or rulings only for detailed or technical secondary matters necessary for the enforcement of the law.[249]

2. Administrative

The MOF issues tax rules, directives or rulings from time to time to provide guidance for and compliance by tax officials and taxpayers. In addition, a taxpayer may file an application with the MOF for its review and issuance of a tax ruling.

3. Courts

a. Court System

The administrative litigation system for tax matters adopts a three-level and two-instance system. The recent reform of the court system, taking effect on August 15, 2023, changed the organizational structure of the administrative courts and the division of labor between instances such that the three-level system now refers to the District Administrative Litigation Division of High Administrative Court, the High Administrative Litigation

[239] The Constitution, Art. 58.
[240] Rules of Procedure of the Legislative Yuan, Art. 8.
[241] Law Governing the Legislative Yuan's Power ("LY's Power"), Arts. 8(2) and 12(2).
[242] LY's Power, Art. 8(3).
[243] LY's Power, Art. 8(2).
[244] LY's Power, Arts. 54 and 56.
[245] LY's Power, Art. 9.
[246] LY's Power, Art. 11(1).
[247] LY's Power, Art. 11(2).
[248] The Constitution, Art. 72.
[249] The Constitution, Art. 19.

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Division of High Administrative Court and the Supreme Administrative Court. The two-instance system continues to refer to the first instance findings of facts and the last instance concerned with the review of the law.

b. Procedure for Tax Controversies

For summary proceedings (i.e., cases where the amount of tax in dispute is less than NT$500,000),[250] the District Administrative Litigation Division of High Administrative Court is the court of the first instance, with the High Administrative Litigation Division of High Administrative Court being the court of the last instance.[251]

For ordinary proceedings, the High Administrative Litigation Division of High Administrative Court is the court of the first instance. However, the District Administrative Litigation Division of High Administrative Court is the court of the first instance for tax cases where the assessed amount of tax does not exceed NT$1,500,000.[252] The Supreme Administrative Court is the court of the last instance.[253]

c. Precedential Value of Court Decision

The judges must try cases independently in accordance with the law.[254] The preceding court cases may not bind the judges in the latter court cases. However, in practice, the subordinate administrative courts, the MOF and the tax authorities always respect the Supreme Administrative Court's precedents or resolutions.

B. Income Tax

1. General Principle

In general, ROC domestic corporations are subject to income tax on their worldwide income, and foreign corporations are subject to income tax on their ROC-sourced income only.[255]

ROC resident individuals are taxed only on their ROC-sourced income. Non-ROC resident individuals are subject to withholding tax on their ROC-sourced income.[256]

Corporate income is subject to a flat rate of 20% on taxable income, while individual income is subject to a progressive tax rate of 5%, 12%, 20%, 30%, and 40%.[257] See X.E., below, for details.

In addition, the income tax is supplemented by the basic income tax (also known as alternative minimum tax, or AMT). If the amount of regular tax for an ROC resident individual or enterprise is greater than or equal to the amount of basic tax, the income tax of the current year for that individual or enterprise must be calculated in accordance with the Income Tax Act (ITA) and other relevant laws. Whereas if the amount of regular income tax is less than the amount of basic tax, the amount of income tax payable must also include the balance of the amount of basic tax and regular income tax, in addition to the amount as calculated in accordance with the ITA and other relevant laws.[258]

The amount of the basic tax of an enterprise is the amount of basic income reduced by a deduction of NT$600,000 and then multiplied by the tax rate prescribed by the Executive Yuan. The tax rate may not be less than 12% or more than 15%. The current applicable tax rate is 12%.[259]

The amount of the basic tax of an individual is the amount of basic income reduced by a deduction of NT$7,500,000 and then multiplied by a tax rate of 20%.[260]

2. Income Tax on Capital Gain

Taiwan does not have a capital gains tax. In general, capital gain would be subject to income tax, except for capital gain from sale of land and Taiwan securities and futures.

a. Capital Gain from the Sale of Land

Although capital gain from the sale of land is exempt from income tax, it is subject to land value increment tax (LVIT). The LVIT rate is 20%, 30% or 40% of the increment in government-assessed value (usually lower than the actual transaction value) during the period from the date of purchase to the date of sale of the land. In addition, in cases where the owner possesses the land for a period of 20 years or more, a tax reduction provided by related regulations is applicable.[261]

With effect from January 1, 2016, capital gain from the sale of buildings and/or land acquired after January 1, 2016 is subject to income tax.[262]

See IV.F. and V., below for details.

b. Capital Gain from Securities Transactions

Starting from January 1, 2016, capital gains generated from the sale of Taiwan shares are exempt from income tax, regardless of the status of the seller (an individual, a Taiwan business entity, a foreign business entity with or without a branch or business agent in Taiwan), and the types of securities for sale.[263] However, domestic corporations and foreign corporations with a fixed place of business or a business agent in the ROC, may be subject to the AMT.[264]

Capital gains generated from the sale of bonds are exempt from income tax, regardless of the status of the seller.[265] However, domestic corporations and foreign corporations with fixed places of business or a business agent in the ROC may be subject to the AMT.[266]

Capital gains generated by corporations from the disposal of bonds and securities issued by the ROC companies are ex-

[250] Administrative Litigation Act (ALA), Art. 229.
[251] ALA, Art. 263-1.
[252] ALA, Art. 104-1.
[253] ALA, Art. 238.
[254] The Constitution, Art. 80.
[255] Income Tax Act (ITA) (enacted on February 17, 1943, and last amended on April 28, 2021), Art. 3.
[256] ITA, Art. 2.
[257] ITA, Art. 5.
[258] Income Basic Tax Act (IBTA) (enacted on December 28, 2005, and last amended on January 27, 2021), Art. 4.
[259] IBTA, Art. 8.
[260] IBTA, Art. 13.
[261] Land Tax Act (enacted on July 14, 1977, and last amended on June 23, 2021), Arts. 31, 33.
[262] ITA, Art. 4-4.
[263] ITA, Art. 4-1.
[264] IBTA, Art. 7.
[265] ITA, Art. 4-1.
[266] IBTA, Art. 7.

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empt from income tax.[267] However, domestic corporations and foreign corporations with fixed places of business or a business agent in the ROC may be subject to the AMT. Under such circumstances, these corporations should include the capital gains in calculating their basic income for the purpose of calculating their AMT. If the amount of the AMT exceeds the annual income tax calculated pursuant to the AMT Act, the excess becomes their AMT payable. Any capital losses verified by the tax collection authority may be carried forward over five years to offset against capital gains of the same category of income for the purposes of calculating their AMT.[268]

For a foreign company without a branch or business agent in the ROC, its capital gains from such sales are exempt from income tax and AMT.[269]

C. Estate and Gift Tax

1. Estate Tax

Estate tax is payable on the estate of a deceased person who was an ROC citizen and had resided in the ROC constantly, regardless of whether the estate is located within or outside of the ROC. In a case where the deceased was an ROC citizen but did not reside in the ROC constantly or was not an ROC citizen, estate tax is payable only on the estate located within the ROC.[270]

Estate tax is payable at the following progressive rates on the net amount of an estate after subtracting any and all deductions and exemptions.[271]

Net Amount of Estate (NT$)	Rate or Amount
0–50 million	10% of the net amount of estate
50 million–100 million	NT$5 million, plus 15% of the net amount of estate exceeding NT$50 million
Over 100 million	NT$12.5 million, plus 20% of the net amount of estate exceeding NT$100 million

See XII.A., below for details.

2. Gift Tax

Gift tax is payable on any gift from a donor who is an ROC citizen and resides in the ROC constantly, irrespective of whether the gift is located within or outside of the ROC before being given. With respect to a gift from a donor who is an ROC citizen but resides outside of ROC constantly or a non-ROC citizen, gift tax is payable only if it is located within the ROC before being given.[272]

Gift tax is payable at the following progressive rates of the total amount of gifts. However, an annual exemption of NT$2,440,000 can be deducted from the total amount of gifts for each donor.[273]

Total Amount of Gifts (NT$)	Rate or Amount
0–25 million	10% of the total amount of gifts
25 million–50 million	NT$2.5 million, plus 15% of the total amount of gifts exceeding NT$25 million
Over 50 million	NT$6.25 million, plus 20% of the total amount of gifts exceeding NT$50 million

See XII.B., below for details.

D. Sales Tax

1. Tax Scope

For further research on Taiwan's VAT system, see the VAT Navigator.

a. General Principle

Pursuant to the ROC Value-added and Non-value-added Tax Act (Business Tax Act or BTA), business tax is imposed on the sale of goods or services within the territory of the ROC and the importation of goods. There are two forms of business tax: (i) value-added tax (VAT); and (ii) gross business receipts tax (GBRT).[274]

b. Tax Exemptions

The following cases are not subject to VAT:[275]

(i) The sale of land;

(ii) The supply of water for farmland irrigation;

(iii) The provision of medical services, pharmaceutical products and patient lodgings and meals by hospitals, clinics and sanitariums;

(iv) Government-commissioned social welfare services and other social welfare services provided by social welfare organizations, institutions and labor organizations approved by the government;

(v) The provision of educational services and government-commissioned cultural services by schools, kindergartens and other educational and cultural institutions;

(vi) The publication of textbooks by publishers approved by the government authorities in charge of educational administration to be used at schools of various levels, and important, specialized academic works encouraged by the government in accordance with the law;

(vii) The sale of goods or services by student-run shops in vocational schools that are not open to the public;

[267] ITA, Arts. 4-1, 4-2.
[268] IBTA, Art. 7.
[269] IBTA, Art. 3.
[270] Estate and Gift Tax Act (EGTA) (enacted on February 6, 1973, and last amended on January 20, 2021), Art. 1.
[271] EGTA, Art. 13.
[272] EGTA, Art. 3.
[273] EGTA, Arts. 19 and 22.
[274] Value-added and Non-value-added Business Tax Act (Business Tax Act or BTA) (enacted on June 13, 1931, and last amended on August 7, 2024), Art. 1.
[275] BTA, Art. 8.

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(viii) The sale by newspaper and magazine publishers, news agencies, television stations, and broadcasting stations registered in accordance with the law of their own newspapers, publications, news releases, advertisements, and programs shown or broadcast, except advertisements sold by newspaper publishers or commercials broadcast by television stations;

(ix) The sale of goods or services by cooperatives operated in accordance with the law to their members and businesses consigned by the government;

(x) The sale of goods or services to members of, and government-consigned activities of, farmers' associations, fishermen's associations, labor unions, commercial associations and industrial associations operated in accordance with the law;

(xi) The sale of goods in auctions or charity sales or performances given for charitable purposes by charity and relief organizations organized in accordance with the law, where the proceeds are to be entirely used by those organizations after deduction of all the necessary expenses incurred for the auctions, charity sales, or charitable performances;

(xii) The sale of goods or services by employee welfare organizations of government agencies, government-owned enterprises, and civic organizations organized and operated in accordance with the law and not open to the public;

(xiii) The sale of goods or services by prison factories and sales outlets for the products of the inmates;

(xiv) Businesses operated by postal and telecommunications agencies in accordance with the law and business carried on by such agencies under a government commission and with government approval;

(xv) The sale of monopolized goods by government-operated monopoly enterprises, and the sale of monopolized goods at regulated prices by businesses authorized to sell monopolized goods;

(xvi) The provision of services in connection with the sale of revenue stamps and postage stamps under government authorization;

(xvii) The sale of goods or services by street peddlers and hawkers;

(xviii) The sale of unprocessed animal feeds, as well as products and by-products, by farmers, or agricultural, forestry, fishery, and ranch operators;

(xix) The sale of fish and shellfish by the fishermen who catch them;

(xx) The sale of rice and flour and the process of husking rice;

(xxi) The sale by businesses that are subject to GBRT rather than VAT on the fixed assets in their possession that are not regularly purchased or sold;

(xxii) Insurance coverage promoted by the government for military personnel, public servants and educators such as labor insurance, student insurance, farmer and fisherman insurance, export insurance, and compulsory automobile third-party liability insurance undertaken by insurance companies, premiums ceded to pay for reinsurance policies, and liability reserves set aside by life insurance companies (excluding the revenue received and the liability reserves recovered as a result of the termination of life, annuity and health insurance);

(xxiii) The sale of bonds issued by various levels of government and securities subject to the assessment of securities transactions tax in accordance with the law;

(xxiv) Surplus or abandoned materials auctioned off by various levels of government agencies;

(xxv) The sale of weapons, naval vessels, aircraft, tanks, and warfare-related reconnaissance and communications supplies to ROC national defense units for their use;

(xxvi) The sale of fertilizers, pesticides, medicine for animal husbandry, farm machinery, and equipment and handling vehicles used on farmland to farmers for their use, as well as the fuel and electricity used by farmers;

(xxvii) The sale of fishing boats, machinery, and equipment used for fishing boats, fishing nets, and fuel to fishermen for coastal and inshore fishing;

(xxviii) Interest earned on internal fund transactions between the principal office and branches of a banking enterprise; trust income derived from trust funds by trust investment enterprises, of which the investment policy is designated by the grantor and any profit generated or loss incurred therefrom is also borne by the grantor; and any unclaimed articles sold by pawnbrokers at a price not exceeding the sum of the principal and interest due and payable;

(xxix) Gold bars, gold nuggets, gold foil, and gold coins;

(xxx) The provision of research services by academic and scientific research institutions established pursuant to the approval of government authorities; and

(xxxi) Sales proceeds derived from operations in derivatives products, corporate bonds, financial debentures, New Taiwan dollars interbank loans, and foreign currency interbank loans; commissions and service charges associated with these operations are excluded.

2. Definitions

a. Sale of Goods

A sale of goods is broadly defined to include any transfer of ownership of goods to another person for consideration.[276]

Any of the following transactions is deemed to be a sale of goods (i.e., a constructive sale) for the purpose of computing business tax:[277]

(i) An enterprise's own use or the transfer to another person without consideration of goods produced, imported, or purchased by the enterprise for sale;

[276] BTA, Art. 3(1).
[277] BTA, Art. 3(3).

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(ii) The use of goods to redeem debt or the distribution of goods to shareholders or investors when an enterprise is dissolved or shut down;

(iii) The purchase of goods by an enterprise under its own name on behalf of a third party and the delivery of those goods to the third party;

(iv) The sale of goods by a third party on behalf of an enterprise at the enterprise's request; and

(v) The sale by an enterprise of consigned goods.

Either of the following circumstances constitutes a sale of goods within the territory of the ROC:[278]

(i) Where the delivery of goods sold requires transportation from a place of shipment located within the territory of the ROC; or

(ii) Where the delivery of goods requires no transportation and the goods are located within the territory of the ROC.

b. Sale of Services

Rendering services or supplying goods to others for consideration constitutes a sale of services, but this does not include the provision of services by a professional practitioner or an individual employee. The "constructive sale" principle discussed in the above paragraph applies to constructive services as well.[279]

Any of the following circumstances constitutes a sale of services within the territory of the ROC:[280]

(i) Where the services sold are rendered or used within the territory of the ROC;

(ii) Where an international transportation enterprise carries outgoing passengers or cargo from a place within the territory of the ROC; or

(iii) Where a foreign insurance enterprise underwrites reinsurance for an insurance enterprise located within the territory of the ROC.

c. Importation of Goods

Either of the following circumstances constitutes an importation of goods:[281]

(i) Where goods enter ROC territory from abroad, except that bonded goods shipped to a bonded area are excluded; or

(ii) Where bonded goods enter other areas within the territory of the ROC from a bonded area.

d. Business Operators

A business operator is, in turn, defined as follows:[282]

(i) A profit-seeking enterprise that is government owned, privately owned or jointly owned by the government and a private enterprise;

(ii) A nonprofit enterprise, agency, association or organization that sells goods or services;

(iii) A fixed place of business within the territory of the ROC of a foreign enterprise, agency, association or organization; and

(iv) A foreign enterprise, institution, group or organization that has no fixed place of business within the territory of the ROC but sells electronic services over the internet or another digital network to an individual in the territory of the ROC.

e. Taxpayers

A business tax liability is imposed on the following taxpayers:[283]

(i) Business operators that sell goods or services;

(ii) Consignees or holders of imported goods;

(iii) Purchasers of services sold by a foreign enterprise, agency, association or organization that does not have a fixed place of business within the territory of the ROC, except that, in the case of a foreign enterprise engaged in international transportation without a fixed place of business but maintaining an agent within the territory of the ROC, the agent is the taxpayer; and

(iv) Persons in possession of fuel for use by agricultural and fishery industries, who transfer or utilize such fuel for other purposes. If the identity of such a person is unknown, the person who keeps or holds such fuel will be the taxpayer.

3. Business Tax Rate and Calculation of VAT

a. Tax Rates in General

The current rate of VAT is 5% for most VAT operators.[284]

The GBRT rate applicable to trust and investment enterprises, securities and futures enterprises, short-term bills and commercial paper enterprises, and pawn shops is 2% of the gross amount of their exclusively authorized business income and 5% of the gross amount of their nonexclusively authorized business income, except that the business tax rate for the reinsurance premium income of insurance enterprises is 1%.[285]

The GBRT rate applicable to banking and insurance enterprises is 5% on their revenue, except that non-life insurance enterprises may deduct the amount of retained claims from the gross amount of their exclusively authorized business income when calculating the 5% business tax.[286]

b. Calculation of VAT

(1) General Principle

A business subject to VAT calculates its VAT liability by deducting the amount of taxes on purchases (input VAT) from the amount of taxes on sales (output VAT) for each two-

[278] BTA, Art. 4(1).
[279] BTA, Art. 3(2).
[280] BTA, Art. 4(2).
[281] BTA, Art. 5.
[282] BTA, Art. 6.
[283] BTA, Art. 2.
[284] BTA, Art. 10.
[285] BTA, Art. 11.
[286] BTA, Art. 11.

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month period.[287] The amount of input VAT is the amount of the business purchases multiplied by the applicable VAT rate. The amount of output VAT is calculated similarly by multiplying the amount of sales by the VAT rate. For example:

(i) NT$10,000 × 5% = NT$500

(Purchases) (VAT rate) (input VAT)

(ii) NT$12,000 × 5% = NT$600

(Sales) (VAT rate) (output VAT)

(iii) NT$600 − NT$500 = NT$100 (VAT liability)

In the calculation above, the NT$100 VAT liability represents the VAT (5%) on the value added (NT$12,000 − NT$10,000 = NT$2,000).

(2) Situations Where Input VAT Cannot Be Applied to Reduce VAT Liability

A business entity may not deduct the input VAT from the output VAT where:[288]

(i) The business entity fails to obtain and retain as required the invoices for goods or services purchased;

(ii) Goods or services are purchased not for use in the principal or subsidiary activities of the business, except goods or services purchased to assist in the building up of national defense or in connection with activities for troop entertainment, or for charitable contributions to the government;

(iii) Goods or services are purchased for social and entertainment activities;

(iv) Goods or services are purchased for rewarding employees; or

(v) Small passenger automobiles are purchased for personal use.

c. Zero Rate of Tax

There are certain instances where a zero rate may be applicable. Note that a business entity that is eligible for the zero rate is still allowed to use its input VAT to offset its output VAT to arrive at its VAT payable.[289] A zero rate may apply in the following cases:

(i) Goods for export;

(ii) Export-related services or services rendered in the ROC for use abroad;

(iii) Goods sold by duty-free stores, established in accordance with law, to passengers in transit or departing from the territory of the ROC;

(iv) Goods or services sold to a business operator in a bonded area for the operations purpose;

(v) International transportation business (this applies only in the case of a foreign transportation enterprise conducting international transportation business within the territory of the ROC, where the foreign enterprise's home country provides equal treatment or similar tax exemption privileges to international transportation enterprises of the ROC);

(vi) Vessels and aircraft used in international transportation business and ocean fishing boats;

(vii) Goods or repair and maintenance services sold to and used on vessels and aircraft used in international transportation business and ocean fishing boats;

(viii) Goods sold by a business operator in a bonded area to another business operator in a tax-levying area, but are exported directly without being delivered to the tax-levying area; and

(ix) Goods sold by a business operator in a bonded area to another business operator in a tax-levying area for export purposes, and goods stored in a bonded warehouse or logistics center in a free trade zone or under the administration of the Customs.

4. Government Uniform Invoices

When selling goods or services, businesses are required to issue and deliver to their buyers government uniform invoices (GUIs) in accordance with the Table of Limitations for Issuing Sales Invoices by Businesses under the Business Tax Act. However, businesses that have operations of a special nature or enterprises classified as small businesses may be exempt from issuing GUIs. Instead, they may issue ordinary receipts for sales.[290]

5. Declaration and Payment of Business Tax

Generally, regardless of whether it has made any sales, a business entity is required before the 15th day of each alternate month (January, March, May, July, September and November) to declare to the tax office where it is located the amount of sales for the last two months and the amount of business tax payable or overpaid in the previous two months, by preparing and submitting a report with other relevant documents. Any amount of outstanding business tax must first be paid to the National Treasury; the receipt for the tax payment may then be submitted together with the report to the tax office for examination.[291]

Business tax on imported goods is levied by Customs. With respect to the collection procedures and administrative relief for business tax, the provisions of the Customs Act and the Customs Smuggling Prevention Act govern.[292]

6. Services Rendered by Foreign Enterprises

a. General Regulation

In the case of a foreign enterprise, agency, association or organization that does not have a fixed place of business but sells services within the territory of the ROC, the buyer of the services is generally required to calculate the amount of business tax due on the consideration payable for the services in ac-

[287] BTA, Art. 15.
[288] BTA, Art. 19.
[289] BTA, Art. 7.
[290] BTA, Art. 32.
[291] BTA, Art. 35.
[292] BTA, Art. 41.

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cordance with the applicable tax rate and to pay the relevant tax before the 15th day after the end of each period in which the consideration for the services is paid. If the buyer is a GBRT operator, the business tax rate of 3% in general applies. If the buyer is a VAT operator, and if the services it purchases are used exclusively to produce taxable goods or services, the services are exempted from the business tax.[293]

Public and private schools at any level or educational or research institutions purchasing services provided by a foreign enterprise, agency, association or organization that does not have a fixed place of business within the territory of the ROC, to be used for education, research or experimentation, are not required to pay business tax.[294]

The business tax payable by a foreign entertainment enterprise performing within the territory of the ROC must be declared and paid to the tax collection authorities with jurisdiction over the place of the performance before the 15th day after the end of each period, provided, however, that, if the duration of the performance at the same place is less than 30 days, the enterprise must declare and pay the relevant business tax within 15 days after the completion of the performance. A foreign entertainment enterprise that has to depart from the territory of the ROC must declare and pay the business tax before its departure.[295]

b. Special Regulation for Foreign E-Commerce Operations

With the fast-growing digital economy, while many foreign e-commerce operators (FEOs) provide electronic services to Taiwanese individuals, most, if not all, do not establish any fixed place of business in Taiwan. Instead, they either engage an affiliate or a third party to provide "auxiliary or soliciting services." As such, under current regulation, the VAT on the service fees generated by these foreign e-commerce operators should be paid by the Taiwanese individuals; however, in practice, individuals rarely pay 5% VAT on the service fees that they pay to the foreign e-commerce operators. This non-payment of VAT not only means a loss to the national coffers but is also unfair to Taiwanese e-commerce operators as they are required to pay 5% VAT on their sales revenue while foreign e-commerce operators without a fixed place of business in Taiwan are not.

The MOF proposed amendments to the Business Tax Act, most of which are based on the recommendations made by the Organisation for Economic Cooperation and Development (OECD) and the approaches adopted by the EU Member States, Korea and Japan. On December 9, 2016, the Legislative Yuan passed the amendments to the Business Tax Act, which require foreign e-commerce operators that are selling electronic services to Taiwanese individuals to file tax registrations and pay business tax in Taiwan. The amendments took effect on May 1, 2017.

The Amendments include the addition of three provisions and revisions to nine provisions. The key points of the Amendments are as follows:

(i) An FEO without a fixed place of business in Taiwan that sells electronic services to Taiwanese individuals is deemed to be a business operator and a VAT taxpayer in Taiwan;[296]

(ii) The term "Business Registration" is replaced by the term "Tax Registration;"[297]

(iii) An FEO must file a tax registration with the Taiwan tax authorities (like a Taiwanese business operator), file VAT returns and pay the VAT payable in due course if its annual sales meet the NT$480,000 (approximately US$16,000) threshold, or engage a tax agent to do so on their behalf;[298]

(iv) The VAT exemption for service fees under NT$3,000 is abolished;[299] and

(v) A penalty is to be imposed on the tax agent of an FEO if the agent fails to file, on behalf of the FEO, a tax registration or a VAT return or fails to pay VAT.[300]

The Legislative Yuan correspondingly amended the Enforcement Rules of the Business Tax Act with effect from May 1, 2017. Under Article 4-1 of the enforcement rules, the term "electronic services" refers to services that satisfy one of the following criteria:

(i) The services used are downloaded via the Internet and saved to computers or mobile devices for use;

(ii) The services are used online without being downloaded and saved into any devices; or

(iii) The services are supplied through the Internet or other electronic tools.

Under the MOF announcement effective April 7, 2025, cross-border electronic services are also governed by the following administrative requirements:

(i) An FEO without a fixed place of business in Taiwan that provides the electronic services to Taiwanese individuals through the Internet or other digital means is defined as a business operator.

Such an offshore e-commerce taxpayer must apply for an MOF portal account, issue cloud invoices and complete VAT filings online via the MOF Cross-Border E-Commerce Taxation Portal.

(ii) The annual sales threshold is increased from NT$480,000 (approximately US$16,000) to NT$600,000 (approximately US$20,000).

(iii) If consideration is denominated in foreign currency, the sales amount and the VAT due/overpaid must be converted into NTD using the Bank of Taiwan spot buy rate (or cash buy rate if unavailable) for the prescribed date; VAT must be paid in NTD and any remittance/handling fees are borne by the offshore supplier.

[293] BTA, Art. 36.
[294] BTA, Art. 36-1.
[295] BTA, Art. 37.
[296] BTA, Arts. 2-1 and 6.
[297] BTA, Art. 28.
[298] BTA, Art. 28-1; Announcement issued by Ministry of Finance on April 7, 2025.
[299] BTA, Art. 36.
[300] BTA, Art. 49-1.

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E. Capital Investment Tax

1. Securities Transaction Tax

a. General

The term "securities" means government bonds, share certificates, and debentures issued by an ROC company and other securities approved by the government that will be issued to the public. Except for transactions in government bonds, transactions in (i.e., the buying and selling of) all other securities are subject to the securities transaction tax.[301]

b. Tax Rates

Securities transaction tax (STT) is payable at the rate of 0.3% of the transaction price in the case of share transfers and at the rate of 0.1% in the case of bond transactions.[302] However, trading in corporate bonds or financial bonds is exempt from STT from January 1, 2010, to December 31, 2026. In addition, trading in beneficiary certificates of bond exchange-traded funds (ETF) (excluding beneficiary certificates of leveraged bond ETF or inverse bond ETF) is exempt from STT from January 1, 2017, to December 31, 2026. The targets for investment in bond ETF are limited to government bonds, corporate bonds, financial bonds, bonds trade with repurchase (reverse repurchase) agreements, bank deposits and bond futures agreements.[303]

The tax rate for day trading of shares is 0.15% for one year from April 28, 2017 through April 27, 2018. On April 27, 2018, the President promulgated an amendment which extends the application of the 0.15% STT from April 28, 2018 to December 31, 2021. On December 29, 2021, the President promulgated a subsequent amendment that further extends the application of the 0.15% STT from December 31, 2021 to December 31, 2024. On January 2, 2025, the President promulgated another amendment further extending the application of the 0.15% STT for the day trading of listed and OTC shares until December 31, 2027. The tax rate for call (put) warrants approved by the competent authority is 0.1%.[304]

c. Tax Collection Procedure

The seller is responsible for the STT. However, the purchaser is the statutory tax withholding agent and is required to withhold tax from the purchase price and pay it to the National Treasury (bank) on the day following the transaction date. If a securities dealer sells securities held by it, no statutory tax withholding by the purchaser is applicable; in this situation, the securities dealer must pay securities transaction tax to the National Treasury on the day following the transaction date.[305]

When paying STT to the bank, the purchaser must fill out a STT payment form by stating the following information, among others, therein:[306]

- The names of the seller and the purchaser;
- The name of the issuing company whose shares are transferred; and
- The number of shares transferred, the par value and transfer price per share, and the total transfer price.

After the STT is paid, the bank affixes a stamp on the STT payment form (each with three copies), gives one copy to the payer (purchaser) as a receipt, keeps one copy, and forwards one copy to the National Treasury, which then forwards it to the tax authorities.

The purchaser needs to present the STT payment form to the issuing company for registering the change of shareholder. The issuing company must keep a photocopy of the STT payment form and change the name of the shareholder on its shareholders' roster.

In addition, taxes, surcharges and penalties notice of which is given by the tax authority must be paid within 10 days after the payment notice is served.[307]

2. Futures Trading Tax

a. General

Futures trading tax is imposed on trading in futures within the territory of the ROC.[308]

b. Tax Rates

In the case of stock price index futures contracts, the lowest rate is 0.0000125% and the highest rate 0.06% per contract price for each transaction; the current applicable rate is 0.002%.[309]

In the case of interest rate futures contracts, the lowest rate is 0.0000125% and the highest rate is 0.00025% per contract price for each transaction; the current applicable rate for interest rate futures contracts is 0.0000125% for 30-day commercial paper, and 0.000125% for 10-year ROC government bonds.

In the case of stock price index futures option contracts and stock price option contracts, the lowest rate is 0.1% and the highest rate 0.6% per royalty amount for each transaction; the current applicable rate is 0.1%.

In the case of other futures contracts, the lowest rate is 0.0000125%, and the highest rate is 0.06% per contract price for each transaction. For gold futures contracts, the tax rate is 0.00025%. For exchange rate futures contracts, the tax rate is 0.0001%.

c. Payment

Futures trading tax is levied on both the buyer and the seller of futures transactions. It is withheld by futures commission

[301] Statute for Securities Transaction Tax (SSTT) (enacted on June 19, 1965, and last amended on January 2, 2025), Art. 1.

[302] SSTT, Art. 2.

[303] SSTT, Art. 2-1.

[304] SSTT, Arts. 2-2, 2-3.

[305] SSTT, Art. 3.

[306] SSTT, Art. 3.

[307] SSTT, Art. 12.

[308] Statute for Futures Trading Tax (enacted on June 20, 1998, and last amended on August 6, 2008), Art. 1.

[309] Statute for Futures Trading Tax, Art. 2; Letters issued by the Executive Yuan on December 30, 2005, March 22, 2006, December 30, 2015, January 22, 2018, January 7, 2018, and December 28, 2018 (Ref. Nos.: *Yuan-Tai-Tsai*-0940061443, *Yuan-Tai-Tsai*-0950012112, *Yuan-Tai-Tsai*-10400731300, *Yuan-Tai-Tsai*-10700511940, *Yuan-Tai-Tsai*-10704578910 and *Yuan-Tai-Tsai*-10704698870).

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merchants on the date of trading and paid to the National Treasury on the following day.[310]

F. Tax on Real Property

1. Income Tax

The MOF proposed an amendment to combine the tax treatment in relation to the sale of buildings and the sale of land by imposing income tax on the total amount of gain (Consolidation of Building and Land Taxes System). The amendments were approved by the Legislative Yuan (the Parliament) and the effective date of the amendments is January 1, 2016.

The Legislative Yuan of the R.O.C. passed the third reading of amendments to the Income Tax Act on April 9, 2021, covering the Joint Property Tax System 2.0, which went into effect on July 1, 2021, whereby buildings and land acquired post January 1, 2016 and sold after July 1, 2021, will be subject to the tax rate stipulated under the Joint Property Tax System 2.0. The salient points of the amendment are as follows:[311]

(i) Heavy taxation on short-term arbitrageurs: Extend the holding period for the high tax rate applicable to short-term real estate speculation by individuals.

(ii) Enterprises are taxed separately at different tax rates the same as individuals (45%, 35%, 20%) during the holding period to prevent individuals from establishing short-term transactions for profit-making enterprises to avoid tax.

(iii) Two additional taxation targets are added to prevent tax avoidance through transformation: Sale of post-January 1, 2016 acquired land, buildings, pre-sold buildings, and underlying land, or majority (over 50% shareholding) shares of directly or indirectly held foreign or domestic profit-seeking enterprises where more than 50% of the value of shares or capital contribution is comprised of buildings and land within Taiwan, but excluding sale of listed/OTC or emerging stock.

The formula for calculating the tax base (taxable net gain) under the Consolidation of Building and Land Taxes System is as follows:[312]

Taxable net gain = Total sale price − costs − expenses − increment in value of land during the period from the date of acquisition to the date of sale.

Tax rates[313]

For Taiwan residents:

• 45% for buildings and/or land owned for less than two years prior to the sale.

• 35% for buildings and/or land owned for two years or more but less than five years prior to the sale.

• 20% for buildings and/or land owned for five years or more but less than 10 years prior to the sale.

• 15% for buildings and/or land owned for 10 years or more prior to the sale.

For non-Taiwan residents:

• 45% for buildings and/or land owned for less than two years prior to the sale.

• 35% for buildings and/or land owned for two years or more prior to the sale.

For Taiwan business entities:

• The tax rates and the ownership periods are the same as for Taiwan residents, except for the 15% tax rate, which is not applicable.

For non-Taiwan business entities:

• 45% for buildings and/or land owned for less than two years prior to the sale.

• 35% for buildings and/or land owned for two year or more prior to the sale.

2. Land Value Increment Tax

Land value increment tax (LVIT) is levied on the increased value of land as a result of a title transfer. LVIT is calculated based on the increment in value during the period from the date of purchase to the date of subsequent sale. The formula for calculating the increment in value and the applicable LVIT rates is as follows:[314]

• Land value increment = reported transferred land value of the land transferred:

— (land value reported by the seller on purchasing the land × consumer price index); and

— (land improvement cost + cost of works beneficial to public + land rezoning cost).

• LVIT rates are applied as follows:[315]

— 20% on the first 100% over the original value;

— 30% on the second 100% over the original value; and

— 40% on the amount over 200% over the original value.

3. Land Tax

An annual land tax is payable by landowners registered with the Land Registry Office as of August 31 of each year. It is assessed in November of each year, based on the total Declared Land Value of the land owned by the landowners in the same city or county and the Starting Cumulative Value of land in that city or county.

Land tax rates are applied as follows:[316]

• At progressive rates from 1% to 5.5% in the case of commercial and residential land;

[310] Statute for Futures Trading Tax, Art. 3.
[311] ITA, Art. 4-4.
[312] ITA, Art. 14-4.
[313] ITA, Art. 14-4.
[314] Land Tax Act, Art. 31.
[315] Land Tax Act, Art. 33.
[316] Land Tax Act, Arts. 14–18.

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• A flat rate of 1% where the land is used for a special purpose (e.g., industrial, mining industry, parking, religious building, etc.); and

• A flat rate of 0.2% for self-residential purpose.

4. Deed Tax

A deed tax is leviable when a person purchases, receives "Dian"[317] of, exchanges, receives donation of, or divides a building, or becomes the owner of a building by taking possession of it.[318] The tax is calculated as follows:[319]

(i) For purchases: 6% of the purchase price

(ii) For Dian: 4%

(iii) For exchanges: 2%

(iv) For donations: 6%

(v) For divisions: 2%

(vi) For possession: 6%

5. Building Tax

An annual building tax is payable by building owners for the number of months of building ownership in the taxable year. The tax is assessed in May of each year and is calculated based on the Government-assessed Current Building Value (after depreciation) of the building, at the rate decided by the city or relevant county government. Building tax rates apply as follows:[320]

(i) In the case of residential buildings, the tax rate ranges from 1% to 4.8% (0.6% to 3.6% for residential buildings in Taipei);

(ii) For commercial buildings, the tax rate ranges from 3% to 5% (3% for commercial buildings in Taipei); and

(iii) The city and county governments set differential tax rates based on the total number of taxable buildings held by the taxpayer in the whole country. A taxpayer holding taxable buildings located in a city or county must pay building tax based on the total number of the buildings the taxpayer holds in the whole country at the corresponding rates set by the city or county government correlating to where the buildings are located.

G. Specifically Selected Goods and Services Tax

1. General Description

To promote social justice and to curb the excessive speculation on land and the rising prices of consumer products in the domestic market, the Specifically Selected Goods and Services Tax Act (also known as the Luxury Tax Act) was enacted and came into effect on June 1, 2011. The specifically selected goods and services tax (also known as luxury tax) is imposed on the sale, manufacture, or import of specifically selected goods or the sale of specifically selected services within the ROC.[321]

2. Tax Scope

a. Specifically Selected Goods

The specifically selected goods that are subject to luxury tax are as follows:[322]

(i) Buildings and land: Any unit of a building and the share of land associated with the unit, or any urban land for which a construction permit may lawfully be issued, that has been held for a period of no more than two years, unless otherwise exempted. This provision was abolished on January 1, 2016.[323]

(ii) Passenger cars: Any passenger car that, including the driver's seat, has nine seats or less and a selling price or taxable value of not less than NT$3 million.

(iii) Yachts: Any yacht with a hull of not less than 30.48 meters.

(iv) Airplanes, helicopters, and ultra-light vehicles: Any airplane, helicopter, or ultra-light vehicle with a selling price or taxable value of not less than NT$3 million.

(v) Turtle shells, hawksbill, coral, ivory, furs, and their products: Any of the aforesaid items that has a selling price or taxable value of not less than NT$500,000, excluding those that are not protected species under the Wildlife Conservation Act, or products made from them.

(vi) Furniture: Any item of furniture with a selling price or taxable value of not less than NT$500,000.

b. Specifically Selected Services

Specifically selected services mean any membership rights with a selling price of not less than NT$500,000, except when in the nature of a refundable deposit.[324]

3. Tax Rate

The tax rate for the specifically selected goods and services tax is 10%, except for buildings and land, where the holding period is less than one year before the sale, with respect to which the tax rate is 15%.[325]

4. Taxpayers and Time of Taxation

The luxury tax is imposed on the following taxpayers:[326]

(i) In the case of the manufacture of specifically selected goods, the taxpayer is the manufacturer, and the tax is collected upon release from the factory.

[317] The term "Dian" is a unique type of right *in rem* under the ROC law. The person who receives Dian over another person's real property by paying the price for Dian and taking possession of the real property has the right to use the real property and to collect profits from it.

[318] Deed Tax Act (enacted on May 15, 1943, and last amended on May 5, 2010), Art. 2.

[319] Deed Tax Act, Art. 3.

[320] Statute for Building Tax (enacted on March 11, 1943, and last amended on January 3, 2024), Art. 5.

[321] Specifically Selected Goods and Services Tax Act (Luxury Tax Act) (enacted on May 4, 2011, and last amended on June 24, 2015), Art. 1.

[322] Luxury Tax Act, Art. 2(1).

[323] Luxury Tax Act, Art. 6-1.

[324] Luxury Tax Act, Art. 2(2).

[325] Luxury Tax Act, Art. 7.

[326] Luxury Tax Act, Art. 4.

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(ii) In the case of imported specifically selected goods, the taxpayer is the consignee or the holder of the bill of lading or of the goods, and the tax is collected upon importation.

(iii) In the case of an auction or sale, by a court or other institution, of specifically selected goods for which the tax has not been paid, the taxpayer is the winning bidder, the purchaser, or the assumer of the goods, and the tax is collected at the time of the auction or sale.

(iv) In the case of a tax-exempt specifically selected good that loses its tax-exempt status due to a transfer or a change in purpose of use, the taxpayer is the person initiating the transfer or the change in purpose of use or the holder of the good, and the tax is collected at the time of the transfer or the change in purpose of use.

(v) In the case of the sale of specifically selected services, the taxpayer is the business entity making the sale, and the tax is collected at the time of sale.

H. Stamp Tax

1. General

A stamp tax is imposed on certain documents executed within the ROC.[327] The instruments currently subject to stamp tax are:[328]

(i) Receipts with respect to monetary payments, such as receipts, slips, releases, bank books and payment records issued to show monetary payments. "Monetary payments" refers to cash payments. Payments in lieu of checks, promissory notes, or drafts are not deemed to be "cash payments";

(ii) Deeds for the sale of movables;

(iii) Work-for-hire agreements: agreements executed for the performance and completion of specific work or tasks, such as, construction contracts, printing contracts and original-equipment manufacturing contracts; and

(iv) Deeds or contracts for the sale, gratuitous transfer, partition, or exchange of real property or pledge of lien on real property to be submitted to government agencies for registration.

2. Taxpayers for Stamp Tax

For stamp tax purposes, the taxpayer varies depending upon the category of documentation in question. In principle, the person who executes the contract, deed or receipt is subject to the levy of stamp tax.[329]

3. Tax Rates for Stamp Tax

The rates of stamp tax are as follows:[330]

(i) Monetary receipts: taxed at the rate of 0.4% of the amount received, except for money deposited by bidders, which is taxed at 0.1%.

(ii) Contracts for the sale of movables: taxed at NT$12 per item.

(iii) Work-for-hire agreements: taxed at 0.1% of the contract price.

(iv) Deeds or contracts for the sale, gratuitous transfer, exchange, or partition of or pledge of lien on real property: taxed at 0.1% of the contract price or value of the real property.

I. Commodity Tax

1. General Description

All commodities, whether locally produced or imported, that are listed in the Commodity Tax Act are taxed according to the rates fixed by the law.[331]

2. Taxpayers

For taxable commodities manufactured locally, the respective manufacturers or producers are the taxpayers. Manufacturers that are paid for manufacturing taxable commodities are also liable for payment of a commodity tax. The consignees or holders of the bills of lading or holders of taxable commodities imported from abroad are also taxpayers.[332]

3. Taxable Commodities and Tax Rates

Taxable commodities and tax rates are as follows:[333]

(i) Rubber tires: 15% (10% if used by buses and trucks).

(ii) Cement: NT$280–600 per metric ton, depending upon the category (such as different colors).

(iii) Beverages: 15% (8% for diluted fruit or vegetable juices).

(iv) Sheet glass: 10% (exemption for glass used exclusively for domestic manufacture of photovoltaic modules).

(v) Oil/Gas:

- Gasoline: NT$6,830/kl.
- Diesel oil: NT$3,990/kl.
- Kerosene: NT$4,250/kl.
- Fuel oil for aircraft: NT$610/kl.
- Fuel oil: NT$110/kl.
- Solvents: NT$720/kl.
- Liquefied petroleum gas: NT$690/mt.

(vi) Electrical appliances:

- Refrigerators: 13%.

[327] Stamp Tax Act (enacted on December 8, 1934, and last amended on May 15, 2002), Art. 1.
[328] Stamp Tax Act, Art. 5.
[329] Stamp Tax Act, Art. 12.
[330] Stamp Tax Act, Art. 7.
[331] Commodity Tax Act (enacted on August 16, 1946, and last amended on June 14, 2023), Art. 1.
[332] Commodity Tax Act, Art. 2.
[333] Commodity Tax Act, Arts. 6–12-6.

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• Televisions: 13% (color televisions only).

• Air conditioners: 20% (15% for central air-conditioning systems).

• Dehumidifiers: 15%.

• Video-tape recorders: 13%.

• Record players: 10%.

• Tape recorders: 10%.

• Sound systems: 10%.

• Ovens: 15%.

(vii) Vehicles:

• Passenger automobiles with no more than nine seats: 25% for those with engine capacities not exceeding 2,000cc and 100% electric automobiles propelled by 208.7 maximum HP or 211.8 maximum PS electric motors or less; and 30% for those with engine capacities exceeding 2,000cc and 100% electric automobiles propelled by 208.8 maximum HP or 211.9 maximum PS electric motors or more. If a passenger automobile with engine capacity not exceeding 2,000cc is bought and registered between January 19, 2009 and December 31, 2009, the commodity tax on the automobile will be reduced by NT$30,000. If a 100% electric passenger automobile is bought and registered between January 28, 2017 and December 31, 2021, the commodity tax on the automobile will be exempted.

• Trucks, buses, and other automobiles: 15%. Low-chassis buses, natural-gas buses, diesel-electric hybrid buses, electric buses, and buses for physically and mentally disabled people bought and registered between June 5, 2014 and December 31, 2024 are exempt from commodity tax. A reduction of the commodity tax payable of NT$50,000 is available to taxpayers who scrap trucks that had left the factory at least 10 years ago, provided a replacement vehicle is purchased and duly registered. Between August 18, 2017 and December 31, 2026, a reduction of the commodity tax payable of NT$400,000 will be available to taxpayers who scrap their buses, heavy trucks, huge passenger-cargo dual-purpose cars, substitutional buses or big-sized specially constructed vehicles manufactured:

◦ Before September 30, 2006; or

◦ Between October 1, 2006 and December 31, 2006, which obtained the issuance of vehicle model's emission Certificate of Conformity by the Environmental Protection Administration, Executive Yuan in accordance with the Vehicular Air Pollutant Emission Standards effective from July 1, 1999 or January 1, 2004, provided that such taxpayers purchased and duly registered appropriate replacement vehicles.

• Motorcycles: 17%. If a motorcycle with engine capacity not exceeding 150cc is bought and registered between January 19, 2009 and December 31, 2009, the commodity tax on the motorcycle will be reduced by NT$4,000.

• Dual fuel automobiles: if a diesel dual fuel automobile is bought and registered within five years from December 30, 2011, the commodity tax on the automobile will be reduced by NT$25,000.

4. Computation of Taxable Value

Commodity tax is calculated on the basis of the taxable value of the commodity. The term "taxable value" means:[334]

(i) In the case of locally manufactured commodities, the computation of the taxable value is as follows:

Taxable Value = Selling Price − [Gross Profit/(1 + tax rate)]

A certain amount of gross profit for wholesalers may be deducted from the selling price if there is no wholesaler between the manufacturer and the dealer.

(ii) In the case of imported commodities, the taxable value is composed of the duty-paying value (transaction price) and import duty.

5. Returns and Payments

Commodity tax for each month must be paid on goods manufactured domestically on or before the 15th of the following month. Commodity tax on imported goods is collected at the time customs duties are levied.[335]

6. Exemptions

Commodities listed in the Commodity Tax Act may be exempt from tax if they are:[336]

(i) Used as raw materials for another taxable commodity;

(ii) Exported;

(iii) Entered in an exhibition and not for sale;

(iv) Donated to the military; or

(v) Sold for military use with the approval of the Ministry of National Defense.

J. Customs Duty

1. General

Only certain imported goods are subject to customs duty.[337] Consignees and holders of bills of lading or commodities are responsible for import duty and dues.[338] Except in the case of goods or importers eligible for duty exemption, import duty and dues are calculated based on duty-paying value according to the prescribed tariff rates.

[334] Commodity Tax Act, Arts. 13 and 18.
[335] Commodity Tax Act, Art. 23.
[336] Commodity Tax Act, Art. 3.
[337] Customs Act (enacted on August 8, 1967, and last amended on May 11, 2022), Art. 2.
[338] Customs Act, Art. 6.

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2. Duty-Paying Value

The "duty-paying value" is in general calculated based on the transaction price of the imported goods. The "transaction price" is the price actually paid or payable on imported goods that are sold in, or exported to, the ROC. The transaction price includes the following:[339]

(i) Commissions, handling charges, and container and packaging costs agreed to be paid by the buyer;

(ii) The amount of the reasonable value or the discount given by the seller to the buyer relating to:

- Raw materials, components, parts, and similar products used to make the imported products;
- Tools, molds, models, and similar articles for the production of the imported goods;
- Materials consumed in connection with the production of the imported goods; and
- Engineering, development, technical services, design, and similar services for producing the imported goods in a foreign country;

(iii) Royalty payments for patent or other licensing arrangements to be borne by the buyer;

(iv) The actual payment or amount payable by the buyer for the use or disposition of the imported goods;

(v) Freight, handling charges and carriage on arrival at the port of importation; and

(vi) Insurance.

If any of the following circumstances exist, the transaction price of imported goods may not be used as the duty-paying value:[340]

(i) The buyer's use or disposition of the imported goods is subject to restrictions, except where the restrictions are imposed by ROC laws and regulations or are related to the area for resale or where the restrictions do not materially impact the price;

(ii) The transaction regarding the importation is subject to conditions that make the determination of the price impossible;

(iii) Pursuant to the terms of the transaction, a portion of the buyer's revenue resulting from the use or disposition of the goods belongs to the seller, and the amount of this revenue is unclear; or

(iv) A special relationship between the buyer and the seller affects the transaction price. The "special relationship" may be described as any of the following:

- The buyer is the manager, director, or supervisor of the seller, or vice versa;
- The buyer and the seller are partners in the same enterprise;
- The buyer and the seller have an employment relationship;
- Either the buyer or the seller controls directly or indirectly more than 5% of the voting stock of the other;
- Either the seller or the buyer controls the other directly or indirectly;
- The buyer and the seller are jointly controlled directly or indirectly by a third party;
- The buyer and the seller jointly control a third party directly or indirectly; or
- The buyer and the seller are relatives within the third degree or are spouses.

3. Tariff Rates

Tariff rates for imported goods are provided in the Customs Import Tariff and Import and Export Commodity Classification of the ROC. According to the Customs Import Tariff and Import and Export Commodity Classification of the ROC, tariff rates are categorized into three different types and listed in three columns. The first column applies to goods imported from World Trade Organization (WTO) members or from countries or areas that grant reciprocal treatment with respect to goods imported from the ROC. The second column applies to specified goods imported from specified least-developed or developing countries or areas, or from those countries or areas that have signed Free Trade Agreements with the ROC. When there is no suitable rate in the first and second columns for the imported goods, the rate in the third column will apply.

4. Exemptions

The following goods are exempt from import duty and dues:[341]

(i) Articles imported for use by the President and Vice President of the ROC;

(ii) Articles imported for official or personal use by diplomatic and consular officials of foreign embassies and consulates stationed in the ROC, and articles imported by other organizations and personnel entitled to diplomatic privileges, provided the foreign governments concerned extend reciprocal privileges to the ROC;

(iii) Mail pouches imported by diplomatic missions and articles for personal use brought in by officials of government organizations returning from their overseas posts on expiration of their terms of office. The scope and categories of these items are prescribed by the MOF;

(iv) Arms and ammunition, military equipment, vehicles, vessels, aircraft, and related accessories, as well as supplies imported solely for military use by the military authorities and the armed forces;

(v) Imported or donated relief articles received by government organizations, public welfare, and charitable societies conducting relief work;

[339] Customs Act, Art. 29.
[340] Customs Act, Art. 30.
[341] Customs Act, Art. 49.

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(vi) Articles necessary for educational, research or experimental purposes imported by public and private schools of all levels or by other educational or research institutions compatible with the respective nature of their establishments; and athletic equipment required by sports organizations necessary for training and participating in international athletic contests, provided the articles and equipment are finished products;

(vii) Decorative medals, insignia and other similar articles for use as tokens of commendation conferred by foreign governments or organizations;

(viii) Official and private documents;

(ix) Advertising material and samples with no commercial value or a value less than the value set by the MOF;

(x) Fish and sea products caught at sea by fishing boats off the ROC or marine products obtained at sea and shipped back in a permissible quantity under MOF regulations; if the fishing boat concerned is originally registered in the ROC but owned by an overseas company with investment by ROC nationals, the approval of the government must be obtained;

(xi) The wreckage of vessels and aircraft, and their equipment salvaged from the sea;

(xii) Vessels bearing ROC national registration that have been engaged in trading for at least two years and that are permitted to be dismantled on account of being over a certain age or for any other reason; non-fixtures that are articles and tools for a ship's on-board use, stocks of foreign goods, bunker coal and oil are, however, not exempt from import tariffs;

(xiii) Fuel and materials solely for use on ships, aircraft, and other vessels of international trade; in the case of international foreign-registered carriers, the granting of the duty-free privilege is subject to the foreign government providing similar or reciprocal treatment for ROC carriers;

(xiv) Personal effects carried by passengers for their own use, the scope and categories of which are to be defined by the MOF;

(xv) Imported parcels that contain a petty amount of articles, the scope and categories of which are to be defined by the MOF;

(xvi) Pharmaceutical products or medical equipment imported by government agencies or offered by others to prevent epidemics;

(xvii) Equipment and articles imported by government agencies or offered by others to relieve an emergency or disaster-situation and equipment, tools, animals, and articles imported and brought in by foreign emergency relief crews;

(xviii) Articles for personal use brought in by ship crews of ROC nationality; and

(xix) Athletic equipment or articles imported by or offered by others to government agencies for hosting international athletic competitions.

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V. Taxation of Domestic Corporations

A. What Is a Domestic Corporation?

A corporation duly incorporated pursuant to the ROC Company Act is considered a domestic corporation and is subject to the Republic of China (ROC) laws and regulations, regardless of whether it is wholly or partially owned by foreign investor(s).

B. Corporate Income Tax

1. Taxation of Worldwide Income

Domestic corporations are subject to a flat rate of 20% for 2020 for their worldwide taxable income exceeding NT$120,000 in a fiscal year, to the extent that the income tax payable does not exceed 50% of the portion of the taxable income exceeding NT$ 120,000.[342]

2. Accounting

a. General

Domestic corporations must keep accurate and adequate account books, vouchers, and records for the calculation of its total income. Detailed rules are prescribed under the Regulations Governing the Accounting Books and Records of Business Enterprises promulgated by the Ministry of Finance (MOF).[343]

b. Accounting Periods

The standard fiscal year of a domestic corporation commences on the first day of January and ends on the 31st day of December of each calendar year. A domestic corporation may adopt a different accounting period provided that prior approval is obtained from the competent tax authorities.[344]

c. Accounting Methods

The accounting method of a domestic corporation must be on an accrual basis.[345]

d. Inventories

Inventories, including merchandise, raw materials, supplies, unfinished goods, finished goods and by-products, must be evaluated on the basis of actual cost. Where the cost is higher than the net realizable value, the domestic corporation may adopt the net realizable value for evaluation purposes, and treat the difference between the cost and the net realizable value (i.e., the loss of price deduction) as the cost of goods sold.[346]

The cost of inventory can be determined by using the specific identification method, first-in first-out method, weighted average method, moving average method, or other methods approved by the competent authority, depending on the classifications or the characteristics of the inventory.[347]

e. Reserves

Reserves are not deductible for tax purposes, except for the following items:[348]

(i) Inventory loss reserve resulting from the cost over the market value of the inventory;[349]

(ii) Investment evaluation loss reserve resulting from the cost over the market value of marketable securities held for short-term investment purposes;[350]

(iii) Bad debt reserve, not exceeding 1% of the total balance of accounts receivable and notes receivable;[351]

(iv) Employees' retirement fund reserve;[352] and

(v) Other reserves prescribed under other laws or specially approved by the MOF.

3. Calculation of Net Income

a. General

A domestic corporation's net income is derived after deducting all costs, expenses, losses, and taxes from the gross annual revenue.[353]

In general, all income is subject to corporate income tax, unless exempt under law, as discussed under b. to f., below.

b. Capital Gains

(1) Capital Gains from Sale of Land

Prior to December 31, 2015, capital gains from the sale of land were exempt from income tax, but were subject to land value increment tax. From January 1, 2016, however, sales of the following buildings and/or land are subject to the Consolidation of Building and Land Taxes System:[354]

(i) Buildings and/or land acquired after January 1, 2016;

(ii) Buildings and/or land acquired after January 1, 2014, and owned for less than two years prior to sale.

The calculation for capital gains is as follows:

Tax base (taxable net gains) = (revenue of building based on actual sale prices + revenue of land based on actual sale prices) – costs – expenses – incremental government-assessed value of the land based on the Land Tax Act (for the purpose of avoiding double taxation).

Domestic corporations should report the taxable net gains in their annual income tax returns and pay income tax at a flat rate of 20%.

[342] ITA, Arts. 3(2), 5(5).
[343] ITA, Art. 21.
[344] ITA, Art. 23.
[345] ITA, Art. 22.
[346] ITA, Art. 44(1); Income Tax Audit Rules, Art. 50.
[347] ITA, Art. 44(2); Income Tax Audit Rules, Art. 51.
[348] Income Tax Audit Rules, Art. 63.
[349] ITA, Art. 44(1).
[350] ITA, Art. 48.
[351] ITA, Art. 49; Income Tax Audit Rules, Art. 94.
[352] ITA, Art. 33; Income Tax Audit Rules, Art. 71.
[353] ITA, Art. 24.
[354] ITA, Art. 4(16), 4-4, 24-5.

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(2) Capital Gains from Sale of Securities and Futures

Capital gains from the sale of securities issued by a domestic corporation, and capital gains from the trading of futures that are subject to futures transaction tax, are exempt from income tax.[355] However, a domestic corporation is required to include such capital gains as part of its basic income in calculating AMT. See V.C.1., below.

c. Dividend Income

Dividends received by a domestic corporation for its investments in other domestic corporations are not included as its taxable income.[356]

d. Income from Foreign Sources

Income from foreign sources must be included in a domestic corporation's taxable income for calculating its income tax liability. Income tax paid to the source country may be applied as foreign tax credit. See V.B.7.a., below.

e. Stock Options

If a domestic corporation exercises the stock options that it holds, the excess of the market value of the shares exercised over the exercise price is deemed to be its investment income and included in its taxable income for calculating the income tax payable.

f. Other Inclusions in Gross Income

All income generated by a domestic corporation is included in its annual taxable income and subject to income tax accordingly, unless the laws provide otherwise. See V.B.3.b. and c., above.

On September 26, 2023, the Financial Supervisory Commission (FSC), the competent authority for digital assets responsible for the supervision and regulation of the crypto sector, issued the Guidelines for the Administration of Virtual Asset Service Providers (the Guidelines). The new measures are intended to strengthen Virtual Asset Service Providers' (VASPs') internal control frameworks and enhance protections for the rights and interests of customers. VASPs will be required to establish an industry association and adopt self-regulatory rules in compliance with the Guidelines. The competent authorities have not yet issued specific guidance regarding the taxation of cryptocurrencies and other digital assets.

4. Business Expenses

a. General

Subject to certain limitations, in general, expenses that are attributable to the corporation's ordinary or auxiliary operations are deductible.[357] The tax law does not define "ordinary or auxiliary operations." Nonetheless, the tax authorities generally refer to the registered business scope and allow as tax deductible those expenses incurred from conducting the activities within the registered business scope and those from generating revenue, provided that the documentary proof of the payments is available upon a tax audit and that the other applicable criteria under tax laws and regulations are met.

b. Organizational Expenses

Organizational expenses are deductible in the year in which they were incurred.[358]

c. Travel and Entertainment Expenses

(1) Travel

Travel expenses incurred by the employees of a domestic corporation are deductible, but there are limitations on accommodation and miscellaneous expenditures, and the limitations vary according to the level of the employees. For deduction of travel expenses, reports on the business trips, proof of the deduction amount, and other documentary proof such as payment receipts, uniform invoices, and so on must be properly kept.[359]

(2) Entertainment

Entertainment expenses are deductible up to a certain percentage of annual sales revenue and purchases. Corporations that have been granted the privilege of filing the Blue Return (a privilege that is granted to a domestic corporation with a sound accounting system and a good tax record)[360] or those with tax returns that have been audited by certified public accountants (Qualified Tax Returns) are entitled to deduct a higher percentage of entertainment expenses.[361] The percentage varies according to the type and volume of the particular business. Generally, the deductible percentages of entertainment expenses are regressive and are summarized in the following table:

Amount (annual sales revenue/ purchases)	Deductible Percentage of Annual Sales	Deductible Percentage of Annual Purchases
Below NT$30 million	• 0.45% for normal tax returns	• 0.15% for normal tax returns
	• 0.6% for Qualified Tax Returns	• 0.2% for Qualified Tax Returns
From NT$30 million to NT$150 million	• 0.3% for normal tax returns	• 0.1% for normal tax returns
	• 0.4% for Qualified Tax Returns	• 0.15% for Qualified Tax Returns
Over NT$150 million up to NT$600 million	• 0.2% for normal tax returns	• 0.05% for normal tax returns
	• 0.3% for Qualified Tax Returns	• 0.1% for Qualified Tax Returns
Over NT$600 million	• 0.1% for normal tax returns	• 0.025% for normal tax returns
	• 0.15% for Qualified Tax Returns	• 0.05% for Qualified Tax Returns

[355] ITA, Arts. 4-1, 4-2.
[356] ITA, Art. 42.
[357] Income Tax Audit Rules, Art. 62.
[358] ITA, Art. 64(2).
[359] Income Tax Audit Rules, Art. 74.
[360] *See* V.B.9.a., below.
[361] Income Tax Audit Rules, Art. 80; ITA, Art. 37.

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Note: Different percentages apply to domestic corporations in certain industries, such as the transportation industry, hotel industry, leasing industry, and the movie industry.

d. Interest and Royalties

(1) Interest

Interest on loans for non-business operations is not a tax-deductible expense.[362] Interest on capital is considered a distribution of profits and thus is not deductible.[363] Proof of interest payments are as follows:

(i) For interest payment to a financial institution lender, the proof of interest payment is the statement of account or other evidentiary document issued by the financial institution.

(ii) For interest payment to a non-financial institution lender, the proof of interest payment is the receipt issued by the lender.

(iii) For interest payment to foreign lenders, in addition to the receipt issued by the foreign lender, the foreign exchange settlement document or document evidencing the remittance issued by the bank concerned is also required.[364]

The maximum interest rate permitted under the Civil Code is 20% per annum. If the interest rate on a loan extended by a non-financial institution is higher than the rate set by the MOF (15.6% per annum or 1.3% per month for 2015), the portion of the interest payment exceeding that rate cannot be declared as a tax-deductible expense.[365] There is no limit on the interest rate on loans from financial institutions.

The ROC has thin capitalization rules that apply to related party debts for non-financial institutions.[366] If the ratio of a corporation's debts (to its related party) to its equity exceeds three-to-one (3:1), the interest expense arising out of the portion of the debts exceeding that ratio is nondeductible.[367]

(2) Royalty

Royalty payments are deductible provided there is clear documentary evidence for the payments, such as the relevant contract or other supporting documents. If the payee is a foreign company or a nonresident individual, proof of the royalty payment, such as a certificate of foreign exchange settlement or a certificate of foreign exchange remittance issued by the bank concerned, must be provided.[368]

e. Taxes

Unless the laws provide otherwise (as explained in the next paragraph), all tax payments, including business tax (gross business receipts tax or value added tax), land value tax, building tax, and stamp tax, are deductible expenses.[369]

Land value increment tax is treated as an expense that is deductible from the sale price of the land for corporate income tax purposes. However, in the case of the sale of a house and land as specified in Paragraph 1 of Article 4-4 of ITA, the land value increment tax paid in accordance with the Land Tax Act is not treated as a deductible expense, except to the extent the tax paid is prorated to reflect the part of the total amount of land value increment that is not deducted from the amount of taxable income. Commodity tax paid on purchased materials and customs duty paid on imported goods must be included as part of the cost of the goods concerned, and not treated as deductible expense. Penalties, fines and surcharges for late reporting, non-reporting, underestimation, and late payment are not deductible.[370]

f. Depreciation and Amortization

(1) Depreciation

The following methods may be adopted for depreciating fixed assets. Where the assets belong to different categories, the depreciation may combine the computation based on the respective categories:[371]

(i) Straight-line method;

(ii) Fixed percentage on diminishing book value method;

(iii) Sum-of-years-digits method;

(iv) Production method;

(v) Working-hour method; or

(vi) Other depreciation methods approved by the MOF.

The service life of various types of fixed assets is prescribed under regulations. However, the service life of equipment installed for the prevention of water or air pollution may be accelerated to two years.[372]

(2) Amortization

Amortization applies to intangible assets if they are paid for, and their amortization periods are as follows:[373]

(i) Business right: 10 years;

(ii) Copyright: 15 years;

(iii) Trademark, patent, and other licensed rights: legally entitled period after the acquisition; and

(iv) Goodwill: five years (minimum).

g. Obsolete Equipment

If fixed assets that have been completely depreciated are destroyed or become obsolete upon the expiration of their prescribed service life, the difference, if any, between the previously estimated residual value and the proceeds from the sale thereof as scrap must be treated as a gain or loss for the current year. If the proceeds from the sale as scrap exceed the residual value previously estimated, the difference must be accounted

[362] Income Tax Audit Rules, Art. 97(2).
[363] ITA, Art. 29.
[364] Income Tax Audit Rules, Art. 97(18).
[365] Income Tax Audit Rules, Art. 97(14).
[366] ITA, Art. 43-2.
[367] Regulations Governing Companies' Declaration of Interest Owed to Related Parties as Expenses or Losses.
[368] Income Tax Audit Rules, Art. 87.
[369] Income Tax Audit Rules, Art. 90.
[370] Income Tax Audit Rules, Art. 90.
[371] ITA, Art. 51(1).
[372] ITA, Art. 59(2).
[373] ITA, Art. 60; Income Tax Audit Rules, Art. 96(3).

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for as income for the current fiscal year; otherwise, there will be a deductible loss.[374]

Where fixed assets are destroyed or become obsolete due to specific causes at any time before the end of their prescribed service life, their undepreciated value may, upon submission of evidentiary documents, be treated as losses for the current fiscal year, provided that the proceeds from the sale of scrap, if any, are treated as income.[375]

h. Charitable Contributions

The amount deductible with respect to donations to government agencies, national defense construction, troop support, the Medium and Small Enterprises Development Fund and other projects approved by the MOF is unlimited. Deductions for donations to other qualified educational, cultural, public welfare or charity organizations are limited to 10% of the income of the donor. Donations to political parties and candidates for official elections are limited to 10% of the donor's income, up to a maximum of NT$500,000.[376]

i. Capital Losses

Capital losses are deductible if and when the losses are actually realized. This can be demonstrated by evidentiary documents such as certificates of liquidation, bankruptcy, merger or capital reduction of the invested company. In a case where the invested company suffers a loss, but the amount of the original capital contribution is not reduced, a capital loss is not realized and thus not deductible.[377]

Capital losses from the sale of securities that are issued by a domestic corporation, or a sale of futures which is subject to futures transaction tax, are not deductible.[378]

j. Casualty Losses

Casualty loss resulting from *force majeure* is deductible, provided that the documentation evidencing the loss is provided to the competent tax authorities for their review and verification within 30 days of occurrence of the loss. For an air or sea disaster, the 30-day reporting requirement does not apply. The portion of such loss covered by insurance is not deductible. Moreover, if the amount of casual loss is significant, it may be amortized over five years as deductible loss.[379]

k. Reserve Accounts

Reserves are not deductible for tax purposes unless the laws provide otherwise. See V.B.2.e., above.

l. Bad Debts

Bad debts that meet either of the following conditions are deemed realized and deductible in the year in which they were incurred:[380]

(i) If a receivable is wholly or partially uncollectible by reason of the debtor's insolvency, escape, restructuring, settlement, or adjudication of bankruptcy, or other causes; or

(ii) If the outstanding amount has remained due for over two years, and neither the principal nor the interest could be collected after taking actions for payment.

m. Inventory Write-Downs

Inventory losses are deductible if a list of losses is filed with the competent tax authorities within 30 days after the losses are incurred, or an inventory count is issued by a certified public accountant supported by documents explaining the reasons for the loss claim.[381]

If documentary support for an inventory loss is difficult to obtain because of the unique nature of the inventory, the loss may still be deductible provided that the domestic corporation maintains a sound accounting system and the percentage of loss by physical count is less than 1% of the inventory.[382]

n. Rent

Rental cost is a deductible expense, provided that the amount claimed does not exceed the amount stated under the lease agreement. Taxes and other fees and surcharges paid by the lessee on behalf of the landlord in accordance with the lease agreement are treated as rental cost and tax deductible.[383]

o. Salaries and Wages

Salaries and wages paid to employees, including year-end bonuses, awards, pensions, severance pay, annuities, regular transportation fees, subsidies for room and board, and various other subsidies and payments are deductible.[384]

Salaries and wages paid to the directors and supervisors are also deductible, provided that they are not contingent on business profits of the corporation and that they are authorized under the articles of incorporation or at a shareholders' meeting of the corporation.[385]

p. Repair and Maintenance

The purchase prices and maintenance costs of equipment, machinery, and other small quantity purchases are deductible in the fiscal year that they are incurred, provided that the amount per item is less than NT$80,000, or the service life of the equipment is less than two years. In the case of a bulk purchase, if the service life of each of the fixed assets is more than two years, and the payment for each asset is less than NT$80,000 but the total payment exceeds NT$80,000, the total payment is deemed as a capital expenditure.[386]

5. Capital Expenditures

The costs of major repairs to, replacements of, or improvements to equipment, machinery, and other assets that result in

[374] ITA, Art. 57(1).
[375] ITA, Art. 57(2).
[376] ITA, Art. 36; Income Tax Audit Rules, Art. 79.
[377] Income Tax Audit Rules, Art. 99.
[378] ITA, Arts. 4-1, 4-2.
[379] ITA, Art. 35; Income Tax Audit Rules, Art. 102.
[380] ITA, Art. 49(5); Income Tax Audit Rules, Art. 94(5).
[381] Income Tax Audit Rules, Art. 101(2).
[382] Income Tax Audit Rules, Art. 101(3).
[383] Income Tax Audit Rules, Art. 72.
[384] ITA, Art. 32(1); Income Tax Audit Rules, Art. 71(1).
[385] ITA, Art. 32(1); Income Tax Audit Rules, Art. 71(2).
[386] Income Tax Audit Rules, Art. 77-1.

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an increase in their value or efficiency that cannot be exhausted within two years are considered capital expenditures and must be depreciated over the remaining service life of the assets concerned.[387]

Interest on a loan for the purchase of fixed assets (including land) and houses used for business operations or a construction project must be capitalized.[388]

6. Loss Carryforwards and Carrybacks

A domestic corporation may carry forward its losses incurred in a fiscal year to offset against its taxable income for the subsequent 10 years provided that the following conditions are met:[389]

(1) It keeps a complete set of accounting records;

(2) It uses the Blue Returns[390] in the year of incurring such loss and in the year of declaring such loss; or the tax returns for these years have been duly certified by a certified public accountant; and

(3) It has filed these tax returns within the prescribed time period.

The carryback of losses is not permissible under the ITA.

7. Tax Credits

a. Foreign Tax Credit

If income tax has been paid to the source country for income generated abroad, the tax paid may be deducted from the amount of income tax payable by the domestic corporation, i.e., as a foreign tax credit, up to the amount of the ROC income tax that the domestic corporation would have had to pay if all its foreign-sourced income was included.[391]

The formula for calculating the maximum amount of foreign tax credit is as follows:

(1) (domestic income + foreign-sourced income) × applicable tax rate income tax payable on;

(2) worldwide income;

(3) domestic income × applicable tax rate income tax payable on domestic income;

The maximum amount of foreign tax credit = (1) – (2).

b. Investment Tax Credit

A domestic corporation may choose one of the following methods to calculate research and development (R&D) credits:

(i) Up to 15% of the company's qualified R&D expenditure for the current year, with credits limited to the same year; or

(ii) Up to 10% of the company's qualified R&D expenditure for the current year, which can be carried forward for two years.

The maximum amount of tax credit is capped at 30% of the corporate income tax payable by the domestic corporation for that year. In addition, to be eligible for the investment tax credit, the company could not have committed any material violation of any law on environmental protection, labor or food safety and sanitation in the past three years.

A company engaged in technological innovation in Taiwan and playing a key role in international supply chains may choose to credit up to 25% of the forward-looking innovative R&D expenditure against its corporate income tax payable for the taxable year concerned, provided:

(i) The amount of the tax credit claimed does not exceed 30% of the corporate income tax payable for that year;

(ii) The amount of the company's R&D expenses and the ratio of such expenses to the company's net operating revenues for the same taxable year reach certain thresholds;

(iii) The effective tax rate applicable to the company in the then-current year is not lower than a certain percentage; and

(iv) The company has not committed any severe violation of any environmental protection, labor, or food safety and sanitation laws in the past three years.[392]

A company that invests in brand-new hardware, software, technology or technical services in connection with brand-new smart machines, the introduction of 5th-generation mobile networks, cyber security products or services, artificial intelligence (AI) products or services, or energy conservation and carbon reduction for its own use between January 1, 2025 and December 31, 2029 by spending at least NTD 1 million and up to NTD 2 billion in a single taxable year may be eligible for new credits against their current year corporate income tax payable as follows:

(i) Up to 5% of the expenditure may be credited against the profit-seeking enterprise income tax payable in the then-current year; and

(ii) Up to 3% of the expenditure may be credited against the profit-seeking enterprise income tax in each of the three years payable following the then-current year.

The creditable amount may not exceed 30% of the taxpayer's corporate income tax payable for the year. Other limitations apply.[393]

A domestic corporation that generates income from transferring or licensing intellectual property that it developed may claim a deductible expense equivalent to 200% of its total expenditure on R&D in that year. A domestic corporation may choose to apply either this 200% tax credit or the 15%/10% tax credit provided for in Article 10 of the Statute for Industrial Innovation.[394]

A domestic corporation participating in a major infrastructure project may credit 5% to 20% of the following expenditures incurred against its income tax payable for the then current year; if the amount of the income tax payable for the then

[387] ITA, Art. 34.
[388] Income Tax Audit Rules, Art. 97(7), (8), (9).
[389] ITA, Art. 39.
[390] *See* V.B.9.b., below.
[391] ITA, Art. 3.
[392] The Statute for Industrial Innovation (promulgated on May 12, 2010, and last amended on June 28, 2023), Arts. 10, 10-2.
[393] The Statute for Industrial Innovation, Art 10-1.
[394] The Statute for Industrial Innovation, Art. 12-1.

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current year is less than the amount of the creditable expenditures, the balance thereof may be credited against the income tax payable in the four ensuing years:[395]

(i) Capital expenditures invested in the building, operation equipment or technology;

(ii) Capital expenditures invested in the procurement of pollution control equipment or technology; and

(iii) Capital expenditures invested in research and development, as well as personnel training.

Where a domestic corporation subscribes for registered shares issued by another domestic corporation participating in a major infrastructure project upon its incorporation or expansion, and has held the registered shares for a period of four years or more, the domestic corporation may credit up to 20% of the subscription price against its income tax payable for the then current year. In case the amount of the income tax payable for the then current year is less than the amount creditable, the balance thereof may be credited against the income tax payable in the four ensuing years.[396]

The amount of investment tax credit that can be offset against the income tax payable in each year, as described in the preceding two paragraphs, may not exceed 50% of the income tax payable by the domestic corporation for that year, except in the last year of the four-year period, when the restriction does not apply.[397]

c. Deferred Income

If a domestic corporation transfers or licenses self-developed intellectual property to another domestic corporation that is listed or traded over the counter for new shares to be issued by the latter corporation, the former corporation may defer the income tax payable on the shares to (i) the fifth year after the year of subscription of said shares, or to (ii) the year in which the shares are transferred. If the domestic corporation in receipt of the intellectual property is not listed or traded over the counter, the income tax payable on the shares may only be deferred to the year in which the shares are transferred.[398]

Companies applying income-tax deferral under the Statute for Industrial Innovation must file a roster of transferred, book-entry or transferred shares with the competent tax office by January 31 of the following year (extended to February 5 if January includes three or more consecutive public holidays). Late, missing or false filings are subject to administrative fines.[399]

8. Tax Rates and Calculation of Taxable Income

Corporate income tax rates for 2020 are as follows:[400]

Taxable Income	Applicable Rate	Amount of Tax
NT$0–NT$120,000	0%	None
Over NT$120,000	20%	20% of total taxable income, but not exceeding 50% of the amount over NT$120,000.

The amount of taxable income is computed by deducting from the annual gross revenue all costs, expenses, losses and taxes; that amount is then further modified by making all necessary adjustments where there are inconsistencies with the provisions of the tax laws.[401] The formula below is then adopted to compute the supplementary tax payment or tax refund:

(1) Amount of taxable income = income for the whole year − deductions of any losses in the last ten years − various taxes − tax-exempt income;

(2) Tax payable = amount of taxable income × tax rate;

(3) Income tax owed/to be refunded = tax payable − provisional payment − unused credit or withholding tax.

9. Filing and Assessment

a. Provisional Tax Payment and Filing

A domestic corporation must within one month, i.e., from September 1 to September 30 of each year, take one-half of the amount of tax payable as declared in its income tax return filed in the preceding year as the amount of provisional payment of tax, pay that to the National Treasury and file with the local tax office a declaration for provisional payment of tax on a prescribed form along with the receipt of the provisional payment.[402]

However, in the case of a corporation that has not made use of any investment tax credit, refundable tax from administrative remedy or withholding tax to offset the amount of provisional tax payment described in the preceding paragraph, it will be exempt from filing a provisional income tax return if it pays the provisional tax to the public treasury.[403]

Notwithstanding the above, a corporation that keeps a complete set of account books and evidential documents, uses the Blue Return[404] or entrusts a certified public accountant to examine and certify its provisional tax return, and files the return within the prescribed period may alternatively compute the amount of provisional tax payment, which is based on the operating income incurred for the first six months of the current year, under the relevant provisions of the ITA and apply the current year tax rate.[405]

b. Annual Tax Returns Filing

Domestic corporations with a fiscal year from January 1 to December 31 must file two tax returns during May each year

[395] The Act for Promotion of Private Participation in Infrastructure Projects, Art. 37(1).
[396] The Act for Promotion of Private Participation in Infrastructure Projects, Art. 40(1).
[397] The Act for Promotion of Private Participation in Infrastructure Projects, Arts. 37(2), 40(2).
[398] The Statute for Industrial Innovation, Art. 12-1.
[399] The Statute for Industrial Innovation, Art. 67-1.
[400] ITA, Art. 5(5).
[401] ITA, Art. 24(1).
[402] ITA, Art. 67(1).
[403] ITA, Art. 67(2).
[404] *See* V.B.9., above.
[405] ITA, Art. 67(3).

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(e.g., in year 3): (i) an annual income tax return for the previous year (i.e., Year 2 income);[406] and (ii) an undistributed retained earnings tax return for the year before the previous year (i.e., Year 1 Income) (UET Return).[407]

There are two forms of income tax returns:[408]

(i) Ordinary Return — for use by corporations other than those authorized to use the Blue Return; and

(ii) Blue Return — for use by corporations duly authorized by the tax authorities. The Blue Return refers to the tax return printed in the prescribed form on blue paper and designed for encouraging enterprises to make an honest declaration of their income.

c. Assessment

Where all relevant account books and documentary evidence relating to income have been presented as required and the records are complete, the amount of income will be determined in light of the evidence. Where such account books and documents are not produced, the tax authority may determine the amount of the corporation's income based on the available taxation data or the profit standard of the same trade concerned.[409]

The tax authority must, on the basis of its findings, work out and serve upon the corporation a notice showing the amount of tax leviable as determined as well as the tabulation of amounts of various items that make up the tax.[410]

10. Audit Process and Statute of Limitations for Assessment and Collection of Taxes

a. Audit Process

After corporations file their income tax returns, the tax authorities proceed to determine their income tax and tax payable on the basis of the returns, relevant account books, and documentary evidence. However, owing to limited human resources and to encourage honest reporting, tax returns that meet certain conditions will be assessed by means of a paper review.[411] Nonetheless, paper review does not apply to some cases, e.g., tax returns involving real estate transactions.[412]

(1) Paper Review

Tax returns that satisfy one of the following criteria are eligible for paper review:

(i) Tax returns with respect to income exceeding the standard income for the industry concerned. The standard is set by the MOF based on a sampled investigation of the industry.[413] In short, the standard contains the following three criteria:[414]

- The total amount of business and non-business revenue is less than NT$30 million;
- The tax return is submitted along with all the necessary documents; and
- The ratio of net income to net sales revenue as indicated in the tax return reaches the prescribed threshold, and the taxpayer has made the full tax payment.

(ii) Tax returns that are entrusted to a certified public accountant for checking, certification, and filing.[415]

(iii) Blue Returns with no irregularities.[416]

(2) Assessment Through Auditing

Tax returns that meet any of the following conditions are subject to auditing:

(i) Tax returns selected for auditing by computerized sampling;

(ii) Tax returns selected for auditing by the tax authorities manually, based on the revenue, budgetary or manpower collection situation;

(iii) Tax returns that should have been but have not been entrusted to a CPA to check, certify, and report;

(iv) Tax returns that have been found during preliminary checking as failing to meet the requirements for paper review;

(v) Tax returns that have been found during paper review to have certain irregularities; and

(vi) Tax returns that have been listed for auditing according to the provisions on the random checking of paper review cases.

In addition, the tax authorities will select an appropriate sample of the paper review tax returns for on-the-spot auditing based on all relevant information. The selection of an appropriate sample must be determined by the chief of the tax authorities in accordance with the manpower available for auditing and the total number of paper review cases. However, tax returns that were certified by a certified public accountant must be sampled at a reduced rate or be exempted for auditing.[417]

b. Statute of Limitations for Assessment

If a domestic corporation has duly filed its income tax return within the prescribed time period, and has no intention to evade tax by fraud or any other illegal means, the statute of limitations for assessment is five years, starting from the date of filing the income tax return.[418]

If a domestic corporation failed to file the income tax return within the prescribed time period, or has intentionally evaded tax by fraud or any other unrighteous means, the statute of limitations for assessment is seven years, starting from the

[406] ITA, Art. 71.
[407] ITA, Art. 66-9. *See* V.C.3., below.
[408] ITA, Art. 77.
[409] ITA, Art. 83.
[410] ITA, Art. 81.
[411] ITA, Art. 80.
[412] Enforcement Rules Governing the Expanded Paper Review of Tax Returns, Art. 9.
[413] ITA, Art. 80(3).
[414] Enforcement Rules Governing the Expanded Paper Review of Tax Returns, Art. 2.
[415] Rules Governing the Handling of Income Tax Matters by CPAs, Art. 14.
[416] Enforcement Rules of Blue Returns, Art. 16.
[417] Rules Governing the Sampling Check of Tax Returns Eligible for Paper Review, Art. 4.
[418] TCA, Arts. 21(1), 22(1).

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date following the expiration date of the period for filing the income tax return.[419]

c. Statute of Limitations for Collection of Taxes

The period for collecting income tax payable by a corporation is five years after the date following the deadline for payment of the tax. Any tax which is collectible but has not been collected during the period for tax collection will no longer be collectible, unless a request for compulsory execution has been forwarded to Administrative Enforcement Agency, or a declaration for participation in distribution has been filed with the court in accordance with the Compulsory Execution Act, or a claim has been filed in accordance with the Bankruptcy Act and is pending.[420]

11. Consolidated Returns

A domestic corporation may elect to file a consolidated tax return with its subsidiary of which it holds 90% or more of the total number of issued shares or subscribed capital for the entire tax year. However, other tax matters must be handled separately by the domestic corporation and its subsidiary.[421]

12. Reorganizations

a. Change of Legal Form

Changing the form of a domestic corporation, e.g., from a limited company to a company limited by shares, does not incur any tax liability.

b. Mergers, Spin-offs, Etc.

If a domestic corporation is dissolved after a merger/acquisition, it must prepare an income tax return up to the date of dissolution, and file it with the tax authority within 45 days after the competent government authority approves the dissolution.[422]

c. Cross-Border Transactions

For domestic corporations that engage in cross-border transactions, the ITA applies to the calculation of their taxable income and income tax liability. In addition, the tax provisions prescribed under the Business Mergers and Acquisitions Act (BMAA) apply if the cross-border transaction concerned meets the conditions prescribed thereunder.[423]

d. Liquidation

Within 30 days from the date of completion of liquidation, the liquidator of a domestic corporation is required to file an income tax return for the period from the date of dissolution to the date of completion of liquidation.[424]

13. Advance Rulings

A domestic corporation may, before engaging in a specific transaction, provide relevant documents to the tax authority for consultation; the tax authority must reply within six months.[425]

C. Other Taxes

1. Income Basic Tax

To modify the tax revenue loss and unfairness resulting from those tax incentives that benefit only a small percentage of enterprises and individuals, the Income Basic Tax Act, also known as the Alternative Minimum Tax Act (AMT Act), was promulgated on December 28, 2005, and took effect on January 1, 2006. The AMT Act introduced a minimum tax obligation for domestic corporations and individuals.

Effective 2015, when preparing an income tax return, a domestic corporation is required to calculate and declare the amount of AMT payable. In August 2024, Taiwan's MOF proposed a draft amendment to raise the AMT rate from 12% to 15% for MNE groups meeting the OECD's Pillar Two threshold. This increase was expected to apply with effect from 2025. A company calculates its AMT liability by deducting a fixed amount of NT$500,000 from its basic taxable income and then multiplying that amount by 12% or 15%.[426] If the amount of AMT is higher than the ordinary corporate income tax liability calculated under the AMT Act, the excess amount will be the AMT payable by the domestic corporation to the National Treasury in addition to its ordinary corporate income tax liability under the ITA.[427]

2. Pillar Two

Further to the OECD/G20 Inclusive Framework's agreement on the two-pillar solution to address the challenges arising from the digitalization of the economy, many jurisdictions have already taken significant steps toward the implementation of Pillar Two (i.e., the introduction of the global minimum tax). Accordingly, the Global Anti-Base Erosion Rules (GloBE rules) started coming into effect in January 2024.

While not a member of OECD/G20, the ROC closely monitors the latest international tax developments.

In August 2024, the MOF proposed a draft amendment to raise the AMT rate from 12% to 15% for MNE groups meeting the OECD's Pillar Two threshold. This increase was expected to apply with effect from 2025. The next step will be for the ROC to decide whether or to introduce a qualified domestic minimum top-up tax (QDMTT) based on the international standards developed by the OECD. Finally, the MOF will determine whether to introduce the global minimum tax by assessing the outcome of its implementation. So far, a timeline for this process has not been published.

3. Undistributed Earnings Tax

If a domestic corporation does not distribute its net earnings generated in a fiscal year (Year 1) by the end of the fol-

[419] TCA, Arts. 21(1)(3), 22(2).

[420] TCA, Art. 23.

[421] Business Mergers and Acquisitions Act (BMAA) (enacted on February 6, 2002, and last amended on June 15, 2022), Art. 45; Financial Holding Company Act (FHCA) (enacted on July 9, 2001, and last amended on January 16, 2019), Art. 49.

[422] ITA, Art. 75(1).

[423] BMAA, Art. 46.

[424] ITA, Art. 75(2).

[425] Taxpayer Rights Protection Act, Art. 7(9).

[426] AMT Act, Art. 8.

[427] AMT Act, Art. 4.

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lowing year (Year 2), a 5% undistributed earnings tax (UET) will be imposed thereon (in May, Year 3.)[428] This 5% UET reduces the retained earnings available for future distribution by the domestic corporation. Such net earnings refer to the amount of "net income" reflected in the income statement of the corporation; hence, it may often be different from the amount of "net income" for income tax return purposes.[429]

As a result, while an ROC parent company is not subject to income tax on the income generated by an offshore subsidiary until the offshore subsidiary distributes dividends to its ROC parent company, an ROC parent company, however, is required to record and include the annual income generated by its 100%-owned subsidiaries in its income statement in accordance with the ROC accounting principles. If the ROC parent company does not distribute its annual income by the end of the year (i.e., before the end of Year 2) following the year when the income is generated (Year 1), it will have to pay a 5% UET in Year 3.

The tax rate for the UET was 10% through December 31, 2017. Through December 31, 2018, if, the ROC parent company declares dividends to its foreign shareholders out of retained earnings on which the previous 10% UET had been imposed, a proportionate amount of the UET levied (up to half of the EUT) can be taken as a credit to offset the withholding tax imposed on the dividends distributed to foreign shareholders of the ROC parent company.[430]

As such, although an ROC parent company may delay the distribution of dividends by its offshore subsidiaries and thereby defer the income tax payable on those dividends, an ROC parent company would be subject to a 5% UET on the income that is generated by its foreign subsidiary but not distributed to its shareholder(s) before the end of the following year.[431]

4. Dividend Tax

Dividends (whether in cash or common shares) distributed by domestic corporations out of retained earnings and paid out to non-ROC shareholder are normally subject to ROC income tax collected by way of withholding at the time of distribution.[432] The current rate of withholding for non-ROC shareholders is 21% of the amount of the distribution in the case of cash dividends or the par value of the common shares distributed in the case of stock dividends, unless a lower withholding rate is provided under a tax treaty between the ROC and the jurisdiction where the non-ROC shareholder is a resident.[433]

5. Business Tax

a. General

Business tax is imposed on the sale of goods or services within the territory of the ROC and the importation of goods.[434] There are two forms of business tax: (i) value added tax (VAT); and (ii) gross business receipts tax (GBRT).[435]

Business entities under seven industries, namely, banking, insurance, investment trust, securities, futures and commercial papers businesses and pawnshops, are subject to GBRT. Other business entities are subject to VAT.[436]

VAT is a noncumulative tax imposed at each stage of the sales process and distribution chain. Each taxpayer pays VAT on the amount of value added to the product. In practice, the seller (supplier or distributor) collects VAT from the buyer (secondary manufacturer, distributor or end-user). The buyer, when reselling the product, will then credit the VAT it paid to the seller against the VAT it collects from its buyer.

GBRT is a tax imposed on gross business receipts at the prevailing rate.

b. Filing Procedure

VAT and GBRT returns must be filed as bimonthly business tax returns on each alternate month beginning from January (i.e., January, March, May etc.) prior to the 15th day for the prior two months' sales related information (e.g., filing from January 1 to January 15 for the sales-related information for November and December of the previous year). However, business entities that are eligible to apply a 0% tax rate (see IV.D.3.c., above) may choose to file the return on a monthly basis.[437]

c. Standard Tax Rates

The Executive Yuan has set the initial rate of VAT at 5% for most businesses.

GBRT rates for entities that operate banking, insurance, investment trust, securities, futures and commercial papers businesses, as well as pawnshops, are as follows:[438]

(i) 5% on revenue generated from non-exclusively authorized businesses (for example, rental income derived by a bank from leasing buildings);

(ii) 2% on revenue generated from businesses that do not fall into the category of non-exclusively authorized businesses (for example, the underwriting income of a securities firm); however, the revenue that an entity in the banking or insurance industry generates from its core businesses (for example, interest income derived by a bank) is subject to 5% GBRT; and

(iii) 1% on reinsurance premium income of an insurance company.

6. Employee Stock Option Plans

Employee stock options are a common form of compensation granted by companies to their employees. The Taiwan corporate income tax treatment is summarized as follows:

(i) A Taiwanese parent company that grants stock options to its own employees may recognize the salary expenses in its accounts. These salary expenses should be recognized based on IFRS 2, "Share-based Payments" or Enterprise Accounting Standards (EAS) 23, "Share-based Pay-

[428] ITA, Art. 66-9(1).
[429] ITA, Art. 66-9(2).
[430] ITA, Art. 73-2, repealed on February 7, 2018, with effect from January 1, 2019.
[431] ITA, Art. 66-9.
[432] ITA, Art. 88.
[433] The Standards of Withholding Rates for Various Incomes, Art. 3.
[434] BTA, Art. 1.
[435] BTA, Art. 2.
[436] BTA, Art. 11.
[437] BTA, Art. 35.
[438] BTA, Art. 11.

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ments". Recognized salary expenses are deductible for corporate income tax purpose.[439]

In contrast, employee stock options granted to employees of domestic or foreign subsidiaries are not considered operating expenses of the parent company. Such costs cannot therefore be treated as deductible expenses or losses under Article 38 of the Income Tax Act.

(ii) If a Taiwanese parent company grants stock options to employees of its Taiwanese subsidiary, the subsidiary may recognize the related salary expenses in the period during which the employees earn the income. The subsidiary must recognize these expenses in accordance with IFRS 2, "Share-based Payments" or EAS 23, "Share-based Payments." These expenses are deductible in the subsidiary's corporate income tax return.[440]

(iii) If a Taiwanese subsidiary company grants stock options to employees of its Taiwanese parent company, the parent company may recognize the related salary expenses in the period in which the employees earn the income. Such expenses must also be recognized under IFRS 2, "Share-based Payments" or EAS 23, "Share-based Payments." Such expenses are deductible for corporate income tax purposes.[441]

(iv) If a Taiwanese subsidiary/branch/representative office provides stock options issued by a foreign company, the subsidiary/branch/representative office may recognize the cost of such stock options as salary expenses in the year in which the employees exercise their stock options, in accordance with Article 71 of the Profit-Seeking Enterprise Income Tax Audit Standards.[442]

(v) If an employee fails to meet the required service years or conditions under a stock option plan, and the stock options granted are forfeited or expire, the company must include the salary expense previously recognized as taxable income in the year of forfeiture or expiration.[443]

[439] MOF Rulings No. 0930451437 and No. 09704515210.
[440] MOF Ruling No. 10701031420.
[441] MOF Ruling No. 11204517390.
[442] MOF Ruling No. 09404528910.
[443] MOF Rulings No. 0930451437.

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VI. Taxation of Foreign Corporations

A. What Is a Foreign Corporation?

A corporation that was incorporated under laws other than those of the Republic of China (ROC) is considered a foreign corporation from the ROC tax aspect.

B. Determination of Taxable Income

1. Taxable Income in General

A foreign corporation is subject to the ROC income tax on its ROC-sourced income only. ROC-sourced income is defined as including the following:[444]

(i) Dividends distributed by a corporation incorporated and registered in accordance with the ROC Company Act;

(ii) Profits distributed by a profit-seeking enterprise organized in the form of a cooperative or a partnership within the territory of the ROC;

(iii) Remuneration for services rendered within the ROC;

(iv) Interest obtained from various levels of the ROC government, juridical persons within the territory of the ROC and individuals residing in the ROC;

(v) Rents obtained from the leasing of property situated within the territory of the ROC;

(vi) Royalties obtained from patents, trademarks, copyrights, secret formulas, and franchises by virtue of their availability for use by other persons within the territory of the ROC;

(vii) Profits from the transaction of property within the ROC;

(viii) Profits from the operation of an industrial, commercial, agricultural, forestry, fishery, animal husbandry, mining, or metallurgic enterprise within the ROC;

(ix) Awards or grants obtained from participating in a contest, game or lottery within the territory of the ROC; and

(x) Any other income obtained within the territory of the ROC.

2. Deemed Taxable Income

A foreign corporation that is engaged in international transport, construction contracting, providing technical services, or machinery and equipment leasing, etc., in the territory of the ROC, and has cost and expenses associated with the activity that are difficult to calculate, may apply for approval from the Ministry of Finance (MOF), or the MOF may make the decision, to consider 10% of the total business revenue (for a foreign corporation engaged in international transport business), or 15% of the total business revenue (for a foreign corporation engaged in any other businesses), as its income derived within the territory of the ROC regardless of whether or not it has a branch office or business agent in the territory of the ROC. An application shall be filed within 10 years of the date the revenue is derived. The tax authorities (on behalf of the MOF) grant approval on a case-by-case basis. If approval is granted, tax may be withheld at 2% (10% of taxable income × 20% withholding tax rate for a foreign corporation engaged in international transport business) or 3% (15% of taxable income × 20% withholding tax rate for a foreign corporation engaged in any other businesses) of the gross payment.[445]

A foreign motion picture corporation generates revenue from leases of motion pictures in the ROC if it has a fixed place of business in the ROC.[446] In such cases, 45% of the revenue may be accounted for as the cost of the leased motion picture. Hence, the fixed place of business may claim 45% of revenue as cost and deduct that cost and other incurred expenses from revenue in calculating the foreign corporation's taxable income. If the foreign corporation has no fixed place of business but leases its motion pictures through a business agent,[447] 50% of the revenue from the lease of the motion picture is deemed to be income within the ROC and subject to income tax of 20%.[448]

3. Exemptions

a. Royalty Income

Royalties receivable by a foreign corporation for providing its patents and/or trademarks to an ROC entity are, in general, subject to withholding income tax, which the ROC entity must withhold upon making the payment.[449] However, if the patent rights licensed are within their valid period and are licensed to an ROC entity in any of the 20 industries listed below for its use by way of technical cooperation, tax exemption could be granted, provided that the MOEA grants a special approval and confirms that the underlying technology is indeed critical to the ROC entity but unavailable in the ROC, or the technology available in Taiwan is not compatible with the Taiwan entity's product specifications:[450]

(i) Precision machinery and intellectual automation industry;

(ii) Motor vehicle industry;

(iii) High-value metal materials industry;

(iv) Wind-power generating industry;

(v) Solar energy industry;

(vi) New generation telecommunications and smart handheld gadgets industry;

(vii) Smart electronics and parts industry;

(viii) Displayer industry;

(ix) LED lighting industry;

[444] ITA, Art. 8.

[445] ITA, Art. 25.

[446] *See* VI.D.1., below.

[447] *See* VI.D.2., below.

[448] ITA, Art. 26.

[449] ITA, Art. 88.

[450] ITA, Art. 4(1)(21); Rules Governing Applications for Exemption from Income Tax on Royalty and Technical Services Fees Collected by Foreign Profit-Seeking Enterprises from Manufacturing Industries, Technical Service Industries and the Power-Generating Industry (Tax Exemption Rules), Art. 5.

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(x) Smart living industry;

(xi) Cloud computing industry;

(xii) High-value petrochemical industry;

(xiii) High-value textile industry;

(xiv) Photoelectric chemical materials industry;

(xv) Healthcare food industry;

(xvi) High technology industry;

(xvii) Resource recycling industry;

(xviii) Water recycling and utilization industry;

(xix) Information services industry; and

(xx) Design industry.

In addition, the royalties paid to a foreign corporation by an ROC entity in the manufacturing or technical service industry for the latter's use of the former's computer programs by way of technical cooperation are exempt from income tax, provided that the jurisdiction where the foreign entity is incorporated affords copyright protection to the works of Taiwan individuals and entities, the copyright of the computer program is within the valid period, and the MOEA's confirmation has been obtained.[451]

b. Interest Income

Interest income derived from loans extended to government or legal entities within the ROC by foreign governments or international financial institutions for the purpose of economic development, and interest derived from financing provided by foreign financial institutions to their branch offices or other financial institutions within the ROC, is exempt from income tax.[452]

Interest derived from loans extended to legal entities within the ROC by foreign financial institutions for financing important economic construction projects, approval for which must be obtained from the MOF, may also be exempt from income tax.[453]

Finally, interest derived from export loans bearing favorable interest rates offered to or guaranteed for legal entities within the ROC by foreign government institutions and foreign financial institutions may also be exempt from income tax.[454]

C. Method of Taxation

1. Investment Income and Passive Payments

In general, passive payments (e.g., rent, interest and royalties) are subject to withholding income tax at the rate of 20% (unless a preferential rate or exemption is provided otherwise in the laws or the tax treaty that the ROC has entered into with the jurisdiction where the foreign recipient is incorporated) on the gross amount, which will be withheld by the ROC payor upon making the payments.[455] The foreign corporation need not take any further action. Since January 1, 2018, dividends are subject to a withholding income tax rate of 21% (increased from 20%).

However, a foreign corporation may, at its sole discretion, engage a tax agent and file an income tax return, claim costs and expenses relevant to the income concerned, calculate the income tax payable (at the rate of 20%) based on the net taxable income, and apply for a refund of the income tax that was overwithheld, within ten years of the date the income is earned.[456] For the rates of source country taxation applying to investment income, services income and capital gains under Taiwan's domestic law and tax treaties and the context for the application of those rates, see the Withholding Tax Chart.

2. Business Income

Technically, if business activities of a foreign corporation are conducted and completed entirely outside of the ROC, the business income generated therefrom can be deemed entirely non-ROC-sourced income. Accordingly, if any part (regardless of how trivial it may be) of the business activity is conducted in the ROC, at least a portion of the business income generated therefrom will be deemed ROC-sourced income.[457]

In practice, the tax authorities have been very aggressive in rejecting any assertion that the services rendered by a foreign corporation but used by an ROC entity were entirely provided offshore. Hence, there is a fairly low chance of successfully asserting that the service fees (business income) received by a foreign corporation from an ROC entity should not be subject to ROC income tax. In addition, in the absence of specific interpretation under the income tax regulations on how to divide a payment between ROC-sourced and non-ROC-sourced income, what portion of a payment to a foreign company should be treated as ROC-sourced income remains uncertain. As a result, unless confirmation can be obtained from the tax office where the payer is located, the full amount of the payment, for the sake of prudence, is generally treated as ROC-sourced income in calculating ROC income tax liability.

The method of paying the income tax liability (either the payor withholds tax or the recipient files an income tax return) will depend on whether the recipient (foreign corporation) has a fixed place of business (e.g., branch) or business agent in Taiwan, or whether the jurisdiction where it was incorporated has entered into an income tax treaty with Taiwan. Details are explained in VI.D., below.

D. Filing and Assessment

The tax treaty concept of "permanent establishment" (PE) is explained in XV.B.3., below. The ITA does not explicitly use the term "permanent establishment" in its provisional context.

In practice, the fixed place of business (FPB) and business agent concepts stipulated in Article 10 of the ITA are sometimes used as a close substitute for the PE concept. However, it should be noted that neither the FPB nor the business agent is conceptually equivalent to a "permanent establishment." The

[451] Tax Exemption Rules, Art. 7.
[452] ITA, Art. 4(1)(22)(1).
[453] ITA, Art. 4(1)(22)(2).
[454] ITA, Art. 4(1)(22)(3).
[455] ITA, Art. 88; The Standard Withholding Rates for Various Incomes, Art. 3.
[456] Guidelines for Determining ROC-source Income under Article 8 of the Income Tax Act, Art. 15.
[457] Guidelines for Determining ROC-source Income under Article 8 of the Income Tax Act, Art. 10.

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filing of income tax returns and the payment of tax by an FPB and by a business agent are dealt with at VI.D.1. and VI.D.2., below, respectively.

1. Filing and Payment by Fixed Place of Business

An ROC entity making a payment to a foreign corporation with an FPB in the ROC need not withhold tax on making the payment (unless the payment is an the interest payment, which is subject to withholding tax at the rate of 10%).[458] The FPB, however, is required to include the foreign corporation's ROC-source income in its taxable income when filing its annual income tax return, and to calculate and pay income tax at 20% on the consolidated net income accordingly.[459]

The term FPB refers to a fixed place for the operation of business, which includes administrative offices, branches, subbranches, business offices, factories, workshops, warehouses, mines, and construction sites; it excludes warehouses and storage sites exclusively for the purchase of products and facilities for maintaining but not for processing or manufacturing products.[460]

2. Filing and Payment by Business Agent

In the case of a foreign corporation that has no FPB, but has a business agent in the ROC, the business agent is responsible for filing a separate income tax return on behalf of the foreign corporation and paying income tax at the rate of 20% on the net income.[461]

A business agent means an agent that meets any of the following requirements:[462]

(i) The agent, in addition to representing its principal in the purchase of goods, is authorized regularly to represent the principal in making business arrangements and signing contracts;

(ii) The agent regularly keeps its principal's goods in storage and delivers the goods, for its principal, to others; or

(iii) The agent regularly accepts, for its principal, orders for goods.

3. Withholding and Payment by ROC Payor

ROC entities are required to withhold income tax on making payments to a foreign corporation without a FPB or a business agent in the ROC if such payments constitute ROC-source income (except for property income),[463] pay this withholding tax to the National Treasury and file a withholding tax statement with the tax authorities within 10 days from the date of payment in the ordinary course.[464] No further action is required from the foreign corporation. The withholding tax rates are as follows, unless a tax exemption or a lower rate (as prescribed by law or under an applicable tax treaty) applies:[465]

(i) Dividends: 21%;

(ii) Rent and royalties: 20%;

(iii) Interest on short-term commercial paper, beneficiary securities and asset-backed securities: 15%;

(iv) Other types of interest income: 20%; and

(v) Service fees, business income and other income: 20%.

With the approval of the MOF, a foreign corporation engaging in construction projects, the provision of technical services, or machinery and equipment leasing may have 15% of its total business revenue deemed to be its taxable income in the ROC. In this way the withholding income tax rate can be reduced to 3% (deemed profit of 15% times the profit-seeking enterprise income tax rate of 20%).[466]

4. Filing and Payment by Foreign Corporation

A foreign corporation with neither an FPB nor a business agent in the ROC that receives any ROC-source income where there is no statutory tax withholder (for example, because the payor is an individual or another foreign entity) must file a tax return and pay tax at the rate of 20% accordingly. The foreign corporation may appoint a tax agent to file its tax return and make the tax payment on its behalf.[467]

[458] ITA, Art. 88.
[459] ITA, Art. 41.
[460] ITA, Art. 10(1).
[461] ITA, Art. 41.
[462] ITA, Art. 10(2).
[463] ITA, Art. 88.
[464] ITA, Art. 92(2).
[465] The Standards of Withholding Rates for Various Incomes, Arts. 3 and 4.
[466] ITA, Art. 25.
[467] The Standards of Withholding Rates for Various Incomes, Art. 11; ITA, Art. 73; Enforcement Rules of the Income Tax Act, Art. 60.

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VII. Taxation of Branches of Foreign Corporations

A. Determination of Taxable Income

A Republic of China (ROC) branch of a foreign corporation is subject to ROC corporate income tax for its ROC-sourced income only. ROC-sourced income is defined under Article 8 of the Income Tax Act. The Ministry of Finance (MOF) issued the Guidelines for Determining the ROC-sourced Income under Article 8 of the Income Tax Act on September 3, 2009 (last amended on October 13, 2023), to clarify the criteria for determining ROC-sourced income.[468]

B. Method of Taxation

A branch is subject to a 20% corporate income tax rate on its net taxable income, which is the same for domestic corporations,[469] except that:

(i) A branch is taxed only on its ROC-sourced income, while a domestic corporation is taxed on its worldwide income; and

(ii) A branch is required to consolidate the ROC-sourced income generated by its foreign head office,[470] while a domestic corporation is not responsible for its parent company's income.

C. Filing and Assessment

A branch with a fiscal year from January 1 to December 31 must, in September of each year, make a provisional tax payment to the National Treasury and file a declaration with the local tax office for the provisional tax payment along with the receipt for the payment, which is the same as for domestic corporations.[471]

A branch with a fiscal year from January 1 to December 31 must file its annual income tax returns during May of the following fiscal year, which is the same as for domestic corporations.[472]

The tax authorities will issue a tax assessment to a branch, stating the amount of tax leviable as well as the computation of such amount. This applies to domestic corporations as well.[473]

D. Subsidiary vs. Branch

1. Subsidiary

The after-tax profits of a subsidiary are subject to a 10% legal reserve. A mandatory employee compensation is required to be set aside out of the before-tax profits at the rate prescribed in the subsidiary's articles of incorporation.[474]

Profits of the current year not distributed in the following year are subject to a 5% undistributed earnings tax.[475]

The dividends declared by a subsidiary to its foreign shareholders are subject to a withholding income tax at 21% or a lower rate if provided under an applicable tax treaty.[476]

2. Branch

If a branch's foreign head office has any ROC-sourced income, the branch must consolidate the ROC-sourced income of the foreign head office into its taxable income when filing its annual income tax return and pay income tax thereon accordingly.[477]

The repatriation of after-tax profits by a branch to its foreign head office is not subject to any withholding tax.[478]

The requirements regarding a subsidiary, including the allocation to the legal reserve, the appropriation of employee compensation and the payment of a 5% undistributed earnings tax do not apply to a branch.

A branch's foreign head office may allocate a portion of its administrative expenses to the branch,[479] while a parent company may not allocate its administrative expense to its subsidiary.

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[468] *See* VI.B., above.
[469] *See* V.B.8., above.
[470] ITA, Art. 41.
[471] See V.B.9.a.
[472] See V.B.9.b.
[473] See V.B.9.c.
[474] Company Act, Arts. 235-1 and 237.
[475] See V.C.3.
[476] See V.C.4.
[477] ITA, Art. 41.
[478] MOF Ruling: Tai-Tsai-Shui-7586738, March 9, 1987.
[479] Income Tax Audit Rules, Art. 70.

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VIII. Taxation of Partnerships

The income of partnerships is taxed directly at the level of the partners in the form of individual income tax.

A. Small-Scale Partnership

Effective January 1, 2018, small-scale partnerships are no longer required to file an annual income tax return. Prior to that date, they were required to file a tax return in the same form as corporations, although no income tax was paid at the partnership level. A small-scale partnership is a partnership with average monthly sales of less than NT$200,000.[480]

The tax authority will assess the share of partnership income to which a resident partner in a small-scale partnership is entitled, regardless of any distributions, and the resident partner must pay income tax accordingly.[481] Nonresident individual partners[482] are subject to income tax withheld at source by the partnership at the rate of 21% of the share of partnership income to which they are entitled, unless a reduced withholding rate or tax exemption is provided under a tax treaty.[483]

B. Regular-Scale Partnership

A partnership with average monthly sales of NT$200,000 or more is required to file an annual profit-seeking enterprise tax return, which is the same form used by corporations, but no income tax is paid at the partnership level. Instead, resident partners must declare the share of partnership income to which they are entitled, regardless of any distributions, and must pay income tax accordingly.[484] Nonresident individual partners are subject to income tax withheld at source by the partnership at the rate of 21% of the share of partnership income to which they are entitled, unless a reduced withholding rate or tax exemption is provided under a tax treaty.[485]

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[480] Sales Volume Standards for Using Government Uniform Invoices (MOF Ruling: *Tai-Tsai-Shui*-7526254, July 12, 1986).

[481] ITA, Art. 71(2).

[482] See XI.A.

[483] ITA, Art. 88; The Standards of Withholding Rates for Various Incomes, Art. 3.

[484] ITA, Art. 71(2).

[485] ITA, Arts. 71(2), 88; The Standards of Withholding Rates for Various Incomes, Art. 3.

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IX. Taxation of Other Business Entities: Sole Proprietorships

The income of sole proprietorships is taxed directly at the level of the sole proprietors in the form of individual income tax.

A. Small-Scale Sole Proprietorship

Effective January 1, 2018, small-scale sole proprietorships are no longer required to file an annual profit-seeking enterprise income tax return, which is the same form used by corporations. A small-scale sole proprietorship is a sole proprietorship with average monthly sales of less than NT$200,000.[486]

The tax authority assesses the income generated by the sole proprietorship and the tax thereon is subject to income tax at the level of the resident sole proprietor.[487] If the sole proprietor is a nonresident individual, the sole proprietorship will withhold income tax at source at the rate of 21% of the sole proprietorship income, unless a reduced withholding rate or tax exemption is provided under a tax treaty.[488]

B. Regular-scale Sole Proprietorship

A sole proprietorship with average monthly sales of NT$200,000 or more is required to file an annual profit-seeking enterprise tax return, which is the same form used by corporations, but no income tax is paid at the sole proprietorship level. Instead, a resident sole proprietor of a sole proprietorship must declare the income generated from the sole proprietorship and must pay income tax accordingly.[489] If the sole proprietor is a nonresident individual, the sole proprietorship will withhold income tax at source at the rate of 21% on the sole proprietorship income.[490]

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[486] Sales Volume Standards for Using Government Uniform Invoices (MOF Ruling: *Tai-Tsai-Shui*-7526254, dated July 12, 1986).

[487] ITA, Art. 71(2).

[488] ITA, Art. 88; Standard Withholding Rates for Various Incomes, Art. 3.

[489] ITA, Art. 71(2).

[490] ITA, Art. 88; Standard Withholding Rates for Various Incomes, Art. 3.

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X. Taxation of Individuals — Residents

A. Scope of Taxation

Resident individuals are subject to income tax only on their income sourced in the Republic of China (ROC).[491] While resident individuals are not subject to income tax on their non-ROC-sourced income, such income may be subject to an alternative minimum tax (AMT) (see X.H., below, for details).

The term "ROC-sourced income" includes the following categories of income:[492]

(i) Dividends distributed by a company incorporated and registered in accordance with the ROC Company Act;

(ii) Profits distributed by a profit-seeking enterprise organized in the form of a cooperative or a partnership within the territory of the ROC;

(iii) Remuneration for services rendered within the ROC;

(iv) Interest obtained from various levels of the ROC government, juridical persons within the territory of the ROC, and individuals residing in the ROC;

(v) Rent obtained from the leasing of property situated within the territory of the ROC;

(vi) Royalties obtained from patents, trademarks, copyrights, secret formulas, and franchises by virtue of their availability for use by other persons within the territory of the ROC;

(vii) Profits from the transaction of property within the ROC;

(viii) Remuneration for services performed by officials and employees sent abroad by the government of the ROC on overseas missions;

(ix) Profits from the operation of an industrial, commercial, agricultural, forestry, fishery, animal husbandry, mining, or metallurgic enterprise within the ROC;

(x) Awards or grants obtained from participating in a contest, game or lottery within the territory of the ROC; and

(xi) Any other income obtained within the territory of the ROC.

B. Resident

1. Definition

Resident individuals are defined as individuals who (i) have domicile in the ROC and regularly reside in the ROC, or (ii) have no domicile but have resided in the ROC for a period of 183 or more days, on a cumulative basis, during a calendar year.[493]

2. MOF's Interpretation

In determining whether an individual should be considered as "a person who has domicile in the ROC and regularly resides in the ROC," the tax authorities used to refer only to an individual's household registration whereby an individual was treated as an ROC resident for tax purposes as long as he or she was registered under an ROC household registration. This gave rise to many disputes in cases where individuals holding an ROC passport, but not residing in the ROC, were treated as ROC residents simply because they were registered under the ROC household registrations.

On September 27, 2012, the Ministry of Finance (MOF) issued a directive[494] that sets forth the Principles for the Determination of Individuals Residing in the Republic of China (Residing ROC Principles). According to the Residing ROC Principles, in addition to the household registration, the tax authorities must consider the following facts to reach their determination as to whether an individual should be treated as an ROC resident for tax purposes:

(i) Whether the individual has resided in the ROC for at least 31 days in total in a tax year; or

(ii) If the individual has resided in the ROC for one day or more but less than 31 days in a tax year, whether the individual's social and economic activities were primarily conducted in the ROC.

The Residing ROC Principles also provide that the tax authorities must evaluate the totality of factors, such as family ties, occupation, place of employment, business and properties. They must take into account whether the individual is insured under the ROC national health insurance and/or labor insurance scheme, and whether his/her spouse and/or any child under the age of 20 resides in the ROC, to deem an individual as having his/her social and economic activities primarily conducted in the ROC.

C. Determination of Gross Income

1. General Principle

The gross income of a resident individual is the aggregate of all of the individual's ROC income for the whole year, which is classified into the following 10 categories:[495]

(i) Business income;

(ii) Income from professional practice;

(iii) Salaries and wages;

(iv) Interest;

(v) Rent and royalties;

(vi) Income received from self-undertakings in farming, fishing, animal husbandry, forestry or mining by individuals or families which are not in the form of a business enterprise;

(vii) Income from property transactions;

(viii) Prizes or awards obtained from contests, games, or lotteries;

(ix) Retirement and termination payments; and

[491] ITA, Art. 2.
[492] ITA, Art. 8.
[493] ITA, Art. 7(2).
[494] Ref. No.: *Tai-Cai-Shui-Zi*-10104610410.
[495] ITA, Art. 14(1).

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(x) Other income.[496]

2. Exemptions

There are provisions for full or limited exemptions where the income is excluded from the consolidated gross income. For example, compensation for death or injury and payments received under life insurance, labor insurance, or the insurance covering military personnel, civil servants, or teachers are fully exempted. Income derived from musical compositions, musical productions, dramas, cartoons, or speeches, up to NT$180,000 per annum, is exempt.[497]

Exemption for retirement pay, pensions, and severance pay is calculated as follows:

(i) If the payment is received in a lump sum:

- An amount equal to or less than NT$198,000 times the number of service years is non-taxable;
- Half of the amount in excess of NT$198,000 times the number of service years, but less than NT$398,000 times the number of service years is taxable; and
- The amount in excess of NT$398,000 times the number of service years is fully taxable.

(ii) If the payment is received in installments, the taxable amount is the total amount received in one year, with a deduction of NT$859,000 for 2025.

(iii) If the payment is received in a combination of a lump sum and installment payments, the taxable amount is to be calculated on a *pro rata* basis.

Example: Assuming that an employee receives a total pension or termination lump sum payment of NT$5 million for 10 years of service, his or her tax liability would be as follows:

Payment Bracket	Amount of Payment (NT$)	Amount Taxable (NT$)	Amount Nontaxable (NT$)
NT$1,980,000 or under	1,980,000	0	1,980,000
NT$1,980,001 to NT$3,980,000	2,000,000	1,000,000	1,000,000
Over NT$3,980,000	1,020,000	1,020,000	0
Total	5,000,000	2,020,000	2,980,000

3. Employee Stock Option Plans

a. Tax Treatment of Employee Stock Options

Employees who receive employee stock-based compensation are, in principle, subject to income tax in the year the shares are acquired. However, to encourage companies to retain outstanding talent and to promote employee participation in company operations, Article 19-1 of the Industrial Innovation Statute provides a tax deferral incentive. Under the incentive, an employee (defined below) who receives employee stock-based compensation may elect to exclude from his or her taxable income the total amount of shares with a market price not exceeding NT$5 million in the year of acquisition or the year in which the shares become disposable. If the shares are transferred or are delivered by book-entry transfer to a securities custody account, income tax is payable in the year of transfer or book-entry transfer based on the market price at the time of transfer or book-entry transfer. Once made, an election to defer income tax cannot be changed.[498]

In the case of an employee who chooses to defer the income tax payable and who holds the shares concerned from the date of acquisition and continues to serve the company cumulatively for two years, the income tax payable is calculated based on the lower of: (i) the market price on the date on which the shares are acquired or become disposable; or (ii) the transfer price.

For purposes of determining an employee's continued service at a company cumulatively for two years, the employee's continued service at: (i) a company over 50% of whose total issued voting shares or total capital is held by the company granting the stock-based employee compensation; or (ii) a company that holds over 50% of the total issued voting shares or the total capital of the company granting the stock-based employee compensation, may be cumulatively counted as part of the employee's service period.

For the above purposes, the term "employee" refers to an employee of: (i) the company granting the stock-based employee compensation; (ii) a company over 50% of whose total issued voting shares or total capital is held by the company granting the stock-based employee compensation; or (iii) a company that holds over 50% of the total issued voting shares or the total capital of the company granting the stock-based employee compensation. However, an employee does not include a director or supervisor of the company granting the stock-based employee compensation.

b. MOF Ruling

The MOF has issued a ruling clarifying the tax treatment of individuals acquiring shares in a close company by contributing services. The ruling stipulates that the following principles apply in the case of an individual who, after the promulgation of the ruling (i.e., after December 24, 2024), acquires shares in a close company as defined in Article 356-1 of the Company Act by contributing services: (i) income tax will be levied on the date on which the shares are acquired based on the amount of capital contribution specified in the company's articles of incorporation; and (ii) depending on the nature of the services provided by the individual, the income will be classified as either income from professional practice under Category 2, Paragraph 1, Article 14 of the Income Tax Act (ITA), or salaries and wages under Category 3, Paragraph 1, Article 14 of the ITA. At the time the individual acquires the shares, the

[496] "Other income" refers to income not listed in the above-mentioned categories and is taxable on the gross income less the necessary costs and expenses incurred in connection with such income.

[497] ITA, Art. 4.

[498] Industrial Innovation Statute, Art. 19-1.

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company will withhold income tax and file statements in accordance with Articles 88 and 92 of the ITA.[499]

D. Allowable Allowances, Deductions and Credits

1. Allowable Allowances

For tax year 2025, the allowable allowance is NT$97,000 for a single taxpayer. In addition, an allowable allowance of NT$97,000 may be claimed for each qualified dependent.[500] When the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer reaches the age of 70, the amount of allowable allowance is increased by 50% to NT$145,500.

2. Deductions

Taxpayers may elect to claim either the standard deduction or itemized deductions.

Standard Deduction or Itemized Deductions (for Year 2025)		
Standard Deduction	NT$131,000 for a single taxpayer (NT$262,000 for a taxpayer and his/her spouse)	
Itemized Deductions	Contributions and donations	Up to 20% of the total amount of the gross consolidated income
	Insurance premiums	Up to NT$24,000 per person per year
	Medical and childbirth expenses	Unlimited
	Losses from disasters	Unlimited
	Interest on a residential mortgage	Up to NT$300,000 per year per tax return

In addition to the standard deduction or the itemized deductions, taxpayers are entitled to the following special deductions:

Special Deductions (for Year 2025)		
(i)	Losses on property transactions	Unlimited
(ii)	Income from salaries or wages	Up to NT$218,000
(iii)	Qualified savings and investments	Up to NT$270,000 per year per tax return
(iv)	Special disability deduction	NT$218,000 per year per person
(v)	Educational expenses	NT$25,000 per person
(vi)	Special deduction for preschool children	NT$150,000 for the first child and NT$225,000 for each additional child per year
(vii)	Special deduction for long-term care	NT$120,000 per person, subject to certain conditions
(viii)	Rent for housing	Up to NT$180,000 per year per tax return, subject to certain conditions

With respect to the special deduction for salary and wages (NT$218,000 for year 2025), the Council of Grand Justice ruled on February 8, 2018 that capping the amount of deductions for income tax purposes is unconstitutional as it violates the principle of fairness, and instructed the MOF to revise the relevant income tax provisions within two years.[501] The MOF subsequently announced that it would examine how to stipulate the deductible amount for salary/wage earners. A bill for amending Article 14 of the ITA was approved by the Legislative Yuan on July 24, 2019. The bill allows for the deduction (capped at 3% of annual salary or wage income) from salary or wages received in a fiscal year of costs and expenses incurred by a taxpayer with respect to special clothing, education/training and professional tools/equipment that are pertinent to the job concerned, if the costs and expenses exceed the applicable special deduction.

As regards the amendment of the special deduction for preschool children from the 2024 tax year, the applicable age is raised from five to six, the deduction for the first child is increased to NT$150,000 and the deduction for the second and subsequent children is increased by 50%, resulting in a deduction of NT$225,000 for each child. Furthermore, for 2023 and earlier tax years, where any of the following high-income criteria were satisfied, the taxpayer was ineligible for the special deduction for preschool children: (i) the annual income of the taxpayer or the taxpayer's spouse as declared, after deducting the amount of special deductions, was subject to tax at a 20% or higher rate; (ii) the taxpayer opted for a single tax rate of 28% on the total amount of his or her dividends and earnings calculated separately from annual income; or (iii) the amount of the taxpayers' basic income calculated in accordance with the IBTA was higher than the amount of the deduction provided for in Article 13 of the IBTA (NT$6.7 M for the 2023 tax year).

With regard to the deduction of rent for housing, this is classified as a special deduction rather than an itemized deduction, with effect from the 2024 tax year.[502]

3. Credits

An integrated tax system that utilizes an imputed credit method took effect on January 1, 1998. When a company distributes dividends to its shareholders who are resident individuals, the corporate income tax paid is allocated and allowed as a credit against the individual consolidated income tax of the shareholders. Prior to January 1, 2015, the full amount of the corporate income tax could be credited. However, effective January 1, 2015, only 50% of the corporate income tax paid may be credited,[503] and, furthermore, as of January 1, 2019, the imputed credit method is totally abolished pursuant to an amendment to the ITA on February 7, 2018. This amendment provides that, starting from 2019, the aforesaid corporate income tax will no longer be allowed to be used as a credit against the individual consolidated income tax of the shareholders.

[499] MOF Ruling: Tai-Tsai-Shui-11304652000, dated December 24, 2024.

[500] MOF directive (Ref. No.: *Tai-Cai-Shui-Zi*-11204674210), dated November 23, 2023.

[501] Grand Justices' Interpretation No. 745.

[502] The Presidential Decree (Ref. No.: Hua-Zong-Yi-Jing-Zi-11200115321), dated January 3, 2024.

[503] ITA, Art. 66-6 (deleted in February 7, 2018 amendment).

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4. Indexation

The amounts for allowable allowance, standard deduction, special deductions for salary or wages, and special deduction for the disabled or handicapped are adjusted according to the consumer price index if the total increase of the index has reached a figure of 3% or higher compared to the index of the year in which the previous adjustment was made. In addition, the criteria for these deductions and the exemption are evaluated every three years according to income levels and the changes in basic living expenditures.[504]

E. Rates and Calculation of Taxable Income

The amount of taxable income is arrived at by subtracting all the allowable allowances, and deductions from the taxpayer's consolidated gross income.[505]

A progressive tax rate system has been adopted for purposes of individual income tax. The tax rates for tax year 2025 are structured as follows:[506]

Taxable Income Brackets (NT$)	Rate
1–590,000	5%
590,001–1,330,000	12%
1,330,001–2,660,000	20%
2,660,001–4,980,000	30%
4,980,001 or higher	40%

Dividends received by resident individuals are taxed in accordance with either (i) the aforesaid progressive tax rate system, by incorporating such income into the gross income of the same year and allowing 8.5% of such income to be applied as a tax credit, or (ii) subjecting them to a fixed rate of 28%, which need not be consolidated into the gross income of the same year.[507]

F. Filing and Assessment

1. Consolidated Tax Returns

Resident individuals must consolidate the income earned by them, their spouses, and qualified dependents in their income tax returns.[508]

2. Deadline and Procedures

Resident individuals must, between May 1 and May 31 each year, file an annual income tax return and an AMT return, if applicable, with respect to their income received in the preceding year. They must make the payments of their income tax and/or AMT payables, voluntarily to a bank that is authorized to collect the tax payments before filing the annual income tax return. No extension is allowed in any event.[509]

In the event that the resident individual waives his/her residence in the ROC and departs, an income tax return must be filed by him/her before departure. However, if the spouse of the departing taxpayer continues to be a resident of the ROC, then, instead of filing an income tax return before departure, the resident spouse must file a joint income tax return that includes the income of the departing taxpayer for the prescribed period.[510]

3. Cases Exempt from Filing Tax Return

In the event that the consolidated income received by a resident individual does not exceed the aggregate amount of the exemption and standard deduction, he or she may be exempted from filing an annual income tax return; however, a resident individual who wishes to apply for a tax refund is required to file an income tax return.[511]

4. Forms of Tax Returns

There are two forms for filing a resident individual's annual income tax return:

(i) Simplified Form: to be used by those who choose a standard deduction and no tax credit, and receive only wages, dividends, interest and income from writing articles of up to NT$180,000; and

(ii) General Form: to be used by those who are not qualified to use the simplified form.

5. Assessment

After receipt of the income tax returns, the tax authorities assess the income tax returns and issue assessment notices accordingly.[512] In practice, it takes around one to two years after filing to receive the tax authorities' assessment notice. However, under Article 81.3 of the ITA, the tax authorities may issue a public notice in lieu of an assessment notice in the following circumstances:

(i) The tax refund due to the taxpayer is in line with the amount which appears on the consolidated income tax return filed by the taxpayer;

(ii) There is no additional tax to be paid or refunded by or to the taxpayer; or

(iii) The amount of tax to be paid or refunded is below the collection or refund threshold.

G. Statute of Limitations for Assessment and Collection of Taxes

1. Statute of Limitations for Assessment

The statute of limitations for assessing additional income taxes may vary in different scenarios, as follows:[513]

(i) For an annual income tax return or AMT return filed in accordance with the tax regulations without involving any willful misrepresentation or any other illegal means,

[504] ITA, Art. 5.
[505] ITA, Art. 17.
[506] ITA, Art. 5.
[507] ITA, Art. 15(4) and (5).
[508] ITA, Art. 15.
[509] ITA, Art. 71(1).
[510] ITA, Art. 71-1.
[511] ITA, Art. 71(3).
[512] ITA, Art. 80.
[513] Tax Collection Act, Arts. 21 and 22.

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the time period is five years commencing from the actual filing date; and

(ii) For an annual income tax return or AMT return which was not filed in accordance with the tax regulations or involves willful misrepresentation or other illegal means, the time period is seven years commencing from the date following the expiration date of the statutory period of filing.

2. Statute of Limitations for Collection of Taxes

The statute of limitations for collecting taxes is five years commencing from the date following the expiration date of the period for payment of the tax. Any tax that is collectible but has not been collected during the period for tax collection is no longer collectible, except in the following cases: (i) the tax for which a request for compulsory execution has been forwarded to the Administrative Enforcement Agency; (ii) a declaration for participation in distribution has been filed with the court in accordance with the provisions of the Compulsory Execution Act; or (iii) a claim has been filed in accordance with the Bankruptcy Act and is pending.[514]

With regard to the tax for which a request for enforcement has been forwarded to the Administrative Enforcement Agency, the statute of limitations for foreclosing the delinquent taxpayer's asset (for tax collection purposes) is generally five years from the last day of the five-year statute of limitations period for collecting tax; provided, however, that the aforesaid enforcement is completed within 10 years.[515]

H. Alternative Minimum Tax

Resident individuals are required to consolidate their: (i) non-ROC-source income (unless the total of such income in a calendar year is less than NT$1 million); (ii) certain ROC-source income that is exempted from income tax; (iii) donations-in-kind that are deductible for income tax purposes; (iv) dividends and earnings separately calculated and taxed at the single rate of 28%; and (v) other deductions from gross income announced by the MOF. (for example, investments in domestic high-risk innovation companies, limited partnerships or projects under Article 27-2 of the Development of the Cultural and Creative Industries Act)[516] into their net taxable income (for income tax purposes) in calculating their basic income for purposes of determining the amount of AMT.[517] Effective January 1, 2021, capital gains realized on the sale of shares in non-publicly listed companies supported by share certificates or documents of titles are also included in calculating basic income. The amount of AMT is arrived at by subtracting NT$7.5 million from the total basic income, and multiplying the balance by a flat rate of 20%.[518] If the amount of the AMT exceeds the annual income tax calculated pursuant to the AMT Act, the excess becomes their AMT payable.[519]

On May 10, 2017, an amendment was made to the AMT Act to introduce the individual Controlled Foreign Company (CFC) rule (which took effect on January 1, 2023), which is principally based on the CFC rule applicable to local corporations as set forth in Article 43-3 of the ITA.[520] Under the individual CFC rule, a resident individual who directly owns an aggregate shareholding of 10% or more in a CFC either alone or with his or her spouse and relatives within the two degrees of kinship must include his or her *pro rata* share of the CFC's taxable profits as business income in the gross basic income for purposes of calculating the AMT payable. The definition and exemption of CFCs are consistent with Article 43-3 of the ITA. Upon the receipt of dividends distributed by the CFC, the amount that has been calculated into the resident individuals' gross basic income can be deducted, and the remainder of the dividends (if any) should be deemed as the non-ROC-sourced income of such resident individuals.

The steps for calculating the AMT payable are set forth below:

(i) Step 1: Calculate the amount of gross basic income (A)

A = Net taxable income pursuant to the ITA

+ Non-ROC-source income (unless the sum in a calendar year is below NT$1 million)

+ ROC-source income that is exempted from income tax (insurance payments from life insurance or annuities, unless the amount is below NT$37.4 million)

+ Capital gains realized from selling shares in a non-publicly listed company supported by share certificates or documents of title

+ Donations in kind (which is deductible for income tax purposes)

+ *Pro rata* share of CFC's taxable profits (unless the total in the calendar year is less than NT$1 million)

+ Dividends and earnings separately calculated and taxed at the single rate of 28%

+ Other deductions from gross income announced by the MOF. (for example, investments in domestic high-risk innovation companies, limited partnerships or projects under Article 27-2 of the Development of the Cultural and Creative Industries Act)

(ii) Step 2: Calculate the amount of AMT

AMT = (A − NT$7.5 million) × 20%

(iii) Step 3: Determine whether AMT is payable

If the amount of AMT exceeds the amount of income tax payable, then the excess is the AMT payable.

Example 1: Assumptions: A Taiwan tax resident has net taxable income of NT$3 million (with no exempted ROC-source income or donations-in-kind) and NT$10 million of non-ROC-source income in tax year 2025 and must pay income tax in the amount of NT$486,300. The calculation of the AMT payable is as follows:

[514] Tax Collection Act, Art. 23(1).

[515] Tax Collection Act, Art. 23(4).

[516] MOF directive (Ref. No.: Tai-Cai-Shui-Zi-11304557590), dated May 13, 2024.

[517] AMT Act, Art. 12.

[518] AMT Act, Art. 13.

[519] AMT Act, Art. 4.

[520] AMT Act, Art. 12-1; see XIV.B.1., below.

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(i) Step 1: A (amount of gross basic income) = NT$3 million + NT$10 million = NT$13 million

(ii) Step 2: AMT = (NT$13 million − NT$7.5 million) × 20% = NT$1,100,000

(iii) Step 3: AMT payable = NT$1,100,000 − NT$486,300 = NT$613,700. As the amount of AMT (NT$1,100,000) is greater than the amount of income tax payable (NT$486,300), the excess becomes the amount of AMT payable.

Example 2: Assumptions: A Taiwan tax resident has net taxable income of NT$13 million (with no exempted ROC-source income or donations-in-kind) and NT$10 million of non-ROC-source income in tax year 2025 and must pay income tax in the amount of NT$4,288,300. The calculation of the AMT payable is as follows:

(i) Step 1: A (amount of gross basic income) = NT$13 million + NT$10 million = NT$23 million

(ii) Step 2: AMT = (NT$23 million − NT$7.5 million) × 20% = NT$3,100,000

(iii) Step 3: As the amount of income tax payable (NT$4,288,300) is greater than the amount of AMT (NT$3,100,000), no AMT is payable.

On the other hand, a resident individual may credit foreign income tax paid against his or her AMT payable, subject to a cap. The taxpayer must claim the foreign tax credit (FTC) in the annual AMT return and attach a tax payment certificate issued by the source-country tax authority to the filing package. In practice, foreign taxes paid in a foreign currency must be converted into NTD using the exchange rate on the date the foreign income tax was paid:

FTC limit for overseas income = (the amount of AMT − regular income tax payable under the ITA − tax payable on dividends taxed separately) × total overseas income ÷ (gross basic income − regular net comprehensive income under the ITA − dividends subject to separate taxation).

Example: Overseas income (non-ROC-source income): NTD 5,000,000

Regular net comprehensive income under the ITA: NTD 5,000,000

Specified insurance payouts: NTD 1,000,000

Trading gains on fund beneficiary certificates: NTD 1,500,000

Non-cash donations: NTD 500,000

Gross basic income: NTD 13,000,000

AMT amount (B): (13,000,000 − 7,500,000) × 20% = NTD 1,100,000

Regular income tax (D): NTD 1,035,000

Difference (E): B − D = NTD 65,000 (this is before the application of the individual FTC)

Assuming foreign income tax paid = NTD 200,000, the individual FTC limit will be:

(B − D) × [total overseas income ÷ (gross basic income − regular net comprehensive income under the ITA − dividends subject to separate taxation)] = (1,100,000 − 1,035,000) × [5,000,000 ÷ (13,000,000 − 5,000,000)] = NTD 40,625.

Therefore, after the application of the individual FTC, the final AMT payable = 65,000 − 40,625 = NTD 24,375

I. Tax Treatment of Cryptocurrencies

The Central Bank and the Financial Supervisory Commission regard cryptocurrencies as highly speculative "digital virtual commodities" rather than currencies. As such, the MOF currently considers the income generated by an individual trading cryptocurrencies as income from property transactions under Subparagraph 7, Paragraph 1, Article 14 of the ITA. Accordingly, such income is treated as subject to income tax. Losses on property transactions can be reported as special deductions and deducted from the income gained. Any income obtained by a Taiwan resident individual from trading cryptocurrencies outside the ROC will be subject to the AMT.

However, it should be borne in mind that, under the tax ruling (Ref. No. Tai-Cai-Shui-Zi No. 10900005070) issued by the MOF on April 16, 2020, securities transaction tax (STT) would be payable at the rate of 0.1% of the transaction price in the case of a security token offering (STO) approved by a competent authority. Such STO would be exempt from income tax.

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XI. Taxation of Nonresident Individuals

A. General

Nonresident individuals (i.e., persons who do not meet the definition of ROC tax residents)[521] are subject to the Republic of China (ROC) income tax on their ROC-sourced income unless a tax exemption is otherwise provided under a tax law or a tax treaty.[522] In general, such income tax is withheld by the payor, provided that the payor is a statutory tax withholder (i.e., a corporation or organization incorporated under ROC law).[523] Nonresident individuals are not subject to the alternative minimum tax (AMT).[524]

B. Business Income

1. General Principle

Salaries and wages, commissions, and practitioner fees in general are subject to ROC income tax. The payor (being a statutory tax withholder) is required to withhold income tax at the prescribed withholding rate, as set forth below, upon making the payment to the nonresident individuals, unless otherwise prescribed under a tax law or a tax treaty:[525]

(i) salaries and wages: 18%;

(ii) commissions and practitioner fees: 20%; and

(iii) winnings from contests or lotteries: 20%.

2. Exclusion

Remuneration received by a nonresident individual who stays in the ROC for 90 days or less in a calendar year from an employer outside the ROC is excluded from ROC-source income.[526]

3. Exempted Income

The following categories of income earned by a nonresident individuals may be exempt from ROC income tax:[527]

(i) Income received by foreign diplomatic personnel stationed in the ROC;

(ii) Salary paid by foreign governments and certain organizations to foreign technicians and professors who render services in the ROC, provided there is a reciprocal agreement between the relevant foreign government and the ROC government; and

(iii) Allowances, benefits and monetary awards granted by the ROC or a foreign government, or a public or private source to encourage advanced study, research or publication in scientific journals, and professional training. This exemption does not apply to payments for services rendered.

C. Investment Income

Dividends, rentals, royalties, and interest in general are subject to ROC income tax.

The payor (being a statutory tax withholder) is required to withhold income tax at the prescribed withholding rate, as set out below, upon making the payment to the nonresident individuals, unless otherwise prescribed under a tax law or a tax treaty:[528]

(i) dividends: 21%;

(ii) rental, and royalties: 20%;

(iii) interest from short-term commercial paper, beneficiary securities and asset-backed securities: 15%; and

(iv) other types of interest income: 20%.

D. Capital Gains

A nonresident individual is subject to ROC income tax on capital gains generated from the sale or disposal of property located within the ROC. Capital loss incurred therefrom can be deducted from capital gains in calculating the net capital gain and income tax liability, but cannot be carried forward to a subsequent year.[529]

In general, capital gains are taxed at a flat rate of 20%.[530] However, capital gains generated from securities transactions and futures transactions are exempt from income tax.[531] In addition, capital gains generated from the sale or disposal of real property are taxed at a flat rate of 45% if the non-tax resident individual holds the property for a period of less than two years, or at a rate of 35% if the non-tax resident individual holds the property for two years or longer.[532]

E. Method of Taxation

In general, a nonresident individual is exempt from having to file an annual income tax return as the income payments are subject to withholding at source by the ROC payor upon making the payment.

However, if a nonresident individual has any ROC-source income that is subject to ROC income tax but no tax was withheld from the income (such as remuneration paid by a non-ROC employer for services rendered in the ROC and capital gains), the individual must file an income tax return no later than May 31 of the following year and pay income tax accordingly on the net taxable income.[533]

To enhance the efficiency of the income tax withholding system, the MOF has amended certain provisions related to withholding tax under the ITA. The amendments were approved for implementation from tax year 2024 onwards[534] and may be summarized as follows:

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[521] ITA, Art. 7(3); see X.B., above.
[522] ITA, Art. 2.
[523] ITA, Art. 7(5).
[524] IBTA, Art. 3.
[525] The Standards of Withholding Rates for Various Incomes, Art. 3.
[526] ITA, Art. 8(3).
[527] ITA, Art. 4(8), (9), (10), (11).
[528] The Standards of Withholding Rates for Various Incomes, Art. 3.
[529] ITA, Art. 14(1)(7).
[530] The Standards of Withholding Rates for Various Incomes, Art. 11(5).
[531] ITA, Art. 4-1.
[532] The Standards of Withholding Rates for Various Incomes, Art. 11(1).
[533] ITA, Art. 73(1).
[534] The Presidential Decree (Ref. No.: Hua-Zong-Yi-Yi-Zi-11300069611), dated August 7, 2024.

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(i) Non-departmental public bodies and trustees are included as tax withholders.[535]

(ii) The scope of the withholding obligation has been changed so that it no longer applies to natural persons such as the person in charge of an enterprise, or the head of an organization's or institution's withholding unit but, respectively, to the enterprise, the organization or the institution itself.[536]

(iii) The withholding tax payment, filing and issuance deadlines for nonresident individuals are extended by five days in the event of a national holiday of more than three consecutive days.[537]

(iv) The existing penalty for failure to file or issue withholding tax statements in accordance with the regulations, which is based on a fixed amount or a fixed ratio, is amended so as to introduce a penalty that can be imposed within the upper and lower limits, depending on the severity of the irregularity concerned.[538]

[535] ITA, Art. 88.
[536] ITA, Art. 89.
[537] ITA, Art. 92.
[538] ITA, Arts. 111, 112, 114 and 114-3.

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XII. Estate and Gift Tax

Both estate tax and gift tax in the Republic of China (ROC) are governed by the Estate and Gift Tax Act (EGTA).[539]

A. Estate Tax

1. Liable Persons

The payors of estate tax are:[540]

(i) Executor of the will;

(ii) Heir(s) or legatee(s), in case no executor is appointed; or

(iii) The administrator appointed in accordance with the law, in case there is no executor or heir(s).

2. Territorial Scope of Tax

The territorial scope of estate tax depends on whether the decedent was an ROC citizen and whether he/she resided in the ROC constantly prior to his/her death. For a decedent who was an ROC citizen and resided in the ROC constantly prior to his/her death, estate tax is payable on his/her worldwide property. For a decedent who was an ROC citizen and resided outside the ROC constantly (as defined below) prior to his/her death, or who was a non-ROC citizen, estate tax is payable on the decedent's property located within the ROC.[541]

"Resided in the ROC constantly" means that the decedent (i) had maintained a domicile in the ROC within the two years prior to his/her death, or (ii) had stayed in the ROC for more than 365 days within the two years immediately prior to his/her death (not applicable to a decedent who was employed by the ROC government and had only stayed in the ROC for a specific period of time).[542]

3. Taxable Base

a. Taxable Property

(1) Estate

The term "estate" refers to all movables, real property and other rights and interests having value that belonged to a decedent prior to his/her death.[543]

The location of the estate determines whether it is an estate located inside or outside of the ROC for estate tax purposes, namely:[544]

(i) For movables, immovables and attachments, the physical location will govern. However, for ships, automobiles and aircraft, the location of the agency where the ships, automobiles and aircraft are registered will govern;

(ii) For mineral rights, the physical location of the mines or mining area will govern;

(iii) For fishing rights, the location of the relevant administrative agency will govern;

(iv) For patents, trademarks, copyrights and publishing rights, the locations of relevant registration agencies will govern;

(v) For business rights, the place of business will govern;

(vi) For deposits received by financial institutions, the business address of the financial institution will govern;

(vii) For rights of claim, the constant residence or the place of business of the debtor will govern;

(viii) For bonds, corporate debentures, stocks and equity investments, the principal place of business of the issuing body or invested enterprise will govern;

(ix) For trust benefits, the place of operation of business of the trust enterprise will govern; and

(x) In the event of any difficulty in determining the location of other property, the decision of the Ministry of Finance (MOF) will govern.

(2) Constructive Estate

In general, a gratuitous transfer that is subject to gift tax can be exempted from estate tax. However, if a gift is made by the decedent two years before his/her death, and the donee is the surviving spouse of the decedent, or a legal heir or the spouse of the legal heir of the decedent, the gift should be included as part of the gross estate of the decedent and be subject to estate tax in due course.[545] Under such circumstances, the amount of gift tax paid thereon by the decedent may be offset against the estate tax payable.

The term "legal heir" refers to the decedent's:[546]

(i) lineal descendants by blood;

(ii) parents;

(iii) brothers and sisters; and

(iv) grandparents.

(3) Evaluation of Estate

The value of the estate is determined at the prevailing value at the time of death. The prevailing value of land and buildings means the government-assessed value of the land and buildings.[547]

(4) Exempt Property

The following types of property are exempt from estate tax:[548]

(i) Property donated to government agencies at any level or to public educational, cultural, public welfare and charitable organizations;

[539] EGTA, Art. 1.
[540] EGTA, Art. 6.
[541] EGTA, Art. 1.
[542] EGTA, Art. 4(3).
[543] EGTA, Art. 4(1).
[544] EGTA, Art. 9.
[545] EGTA, Art. 15.
[546] Civil Code, Art. 1138.
[547] EGTA, Art. 10.
[548] EGTA, Art. 16.

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(ii) Property donated to public organizations or businesses fully owned by the government;

(iii) Property donated to private incorporated educational, cultural, public welfare, charitable or religious organizations, or ancestor worshipping entities that meet the criteria prescribed by the Executive Yuan;

(iv) Inherited cultural, historical or artistic books and articles that have been reported to and duly registered with the competent tax authority. However, the estate tax will become payable if the books or articles are transferred;

(v) Inherited copyrights, patents, and artistic works created by the decedent;

(vi) Inherited apparatus and appliances for household use by the decedent with a gross value of less than NT$1,000,000;

(vii) Inherited apparatus for professional use by the decedent with a gross value of less than NT$560,000;

(viii) Forests with respect to which logging has been banned or restricted by law. However, the estate tax will become payable if the prohibition is lifted;

(ix) Insured amount paid under a life insurance to the designated beneficiary at the death of the insured, and insured amount and mutual funds paid under the insurance policies for soldiers, civil servants, teachers, laborers, or farmers;

(x) Property on which estate tax has been levied within five years prior to the death of the decedent;

(xi) Property originally or specifically owned by the spouse or children of the decedent, provided ownership can be proved through registration or other supporting documentation;

(xii) Land of the deceased designated by the government to be used for public roads or land provided without consideration for public roads, provided this can be verified by the competent government authorities; and

(xiii) Rights and other claims of the deceased that are proved to be unexercisable or uncollectible.

b. Exempt Transfers

Property donated to a charity trust that was already established at the time of death of the decedent is exempt from estate tax provided that the following requirements are met:[549]

(i) The trustee is a trust enterprise established pursuant to the Trust Enterprise Act;

(ii) Except for expenditures necessary for conducting activities for which the trust is established, the charity trust does not accord any special benefit to any specific party by any means; and

(iii) The trust deed stipulates that upon the cancellation, termination or extinction of the trust, the trust property will be transferred to a government agency or a charity legal entity or trust with similar objectives.

[549] EGTA, Art. 16-1.

c. Deductible Liabilities

Debts owed by the decedent are deductible against estate tax provided that there is proof of such debts.[550]

d. Personal Allowances and Deductions

An allowance of NT$13.33 million may be deducted from the gross estate of the decedent. The allowance is doubled if the decedent was a soldier, police officer, civil servant or teacher who died in the performance of duty.[551]

4. Tax Rate

The gross amount of the estate after subtracting deductions and allowance is the taxable estate. Estate tax is payable on the taxable estate multiplied by the applicable tax rate. Estate tax is imposed at the following progressive rates on an inheritance occurring between May 12, 2017 and December 31, 2024: 10% on the portion of the estate up to NT$50 million; 15% on the portion exceeding NT$50 million but not exceeding NT$100 million; and 20% on the portion exceeding NT$100 million (before May 12, 2017, estate tax was imposed at a flat 10% rate). Estate tax is payable at the following rates on an inheritance occurring on or after January 1, 2025: 10% on the portion of the estate up to NT$56.21 million; 15% on the portion exceeding NT$56.21 million but not exceeding NT$112.42 million; and 20% on the portion exceeding NT$112.42 million.[552]

B. Gift Tax

1. Liable Persons

The donor of a gift is liable for gift tax. However, the donee is also liable for gift tax under any of the following circumstances:[553]

(i) The donor's whereabouts are unknown;

(ii) The donor fails to pay the gift tax within the time limit and does not have any property in the ROC for enforcement; or

(iii) The gift tax has not been assessed by the time of death of the donor.

2. Territorial Scope of Tax

The territorial scope of the gift tax depends on whether the donor is an ROC citizen and whether he or she resides in the ROC constantly.[554] A donor who is an ROC citizen and resides in the ROC constantly is subject to gift tax on any property given away, irrespective of whether the property is located within or outside the ROC.[555]

A donor who is an ROC citizen but resides outside the ROC constantly or who is a non-ROC citizen is subject to gift tax only to the extent that the property given away is located within the ROC.[556]

[550] EGTA, Art. 17.
[551] EGTA, Art. 18.
[552] EGTA, Art. 13.
[553] EGTA, Art. 7.
[554] EGTA, Art. 3.
[555] EGTA, Art. 3(1).
[556] EGTA, Art. 3(2).

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"Resides in the ROC constantly" means that the donor (i) has maintained a domicile in the ROC within the two years prior to giving the gift, or (ii) has stayed in the ROC for more than 365 days within the two years immediately prior to giving the gift. (This is not applicable to a donor who was employed by the ROC government to render a service and had only stayed in the ROC for a specific period of time.)[557]

3. Taxable Base

a. Taxable Property

(1) Gift

The term "property" includes all movables, real property and other rights and interests having value.[558]

In general, a donor is subject to gift tax upon giving away any property to a third party without consideration.[559]

(2) Deemed Gift

The transfer of property in any of the following circumstances is regarded as a gift and subject to gift tax:[560]

(i) To forgive or assume debts without receipt of any consideration or compensation while the right of claim is still valid; the debts forgiven or assumed are subject to gift tax.

(ii) To transfer property, forgive or assume debts for substantially less than an adequate and full consideration; the difference between the market value of property or debts forgiven or assumed and the value of consideration received is subject to gift tax.

(iii) To purchase property in favor of others with own funds without receipt of any consideration; the funds paid for the purchase of property or the real estate so purchased are subject to gift tax.

(iv) To purchase property in favor of others with own funds, where substantially less than an adequate and full consideration is received from the beneficiary/nominee; the difference between the purchase price and the value of consideration received is subject to gift tax.

(v) Property purchased in the name of a person having no or restricted legal capacity is deemed a gift from the statutory agent or guardian, unless evidence clearly indicates that the purchase payment came from the funds of the beneficiary/nominee.

(vi) Sales of property between relatives within second degree of kinship, unless evidence clearly indicates a bona fide sale for an adequate and full consideration in money or money's worth and the money thus paid did not come from a loan from the seller or a loan for which the seller furnished a guarantee.

b. Exempt Transfers

Exclusions from total amount of gifts include the following:[561]

(i) Property donated to government agencies at various levels or public educational, cultural, public welfare, charitable or religious organizations;

(ii) Property donated to public organizations or businesses fully owned by the government;

(iii) Property donated to private incorporated educational, cultural, public welfare, charitable or religious organizations, or ancestor worshipping entities that meet the criteria prescribed by the Executive Yuan;

(iv) Living, educational and medical expenses defrayed in favor of the dependents of the donor;

(v) Total value of crops and farmland given to the heir(s) provided under Section 1138 of the Civil Code. If the donee fails to use the farmland for agricultural purposes constantly for five years from the date of gift and fails to resume farming before the deadline set by the competent authority, or has resumed the use of farmland for agricultural purposes before the aforesaid deadline but subsequently fails to farm again, tax will be due retroactively, unless the disuse of farmland for agricultural purposes is due to the fact that the donee has died, or that the land is requisitioned by the government, or the zoning has been changed to non-farming purposes pursuant to law;

(vi) Gifts made between spouses; and

(vii) Wedding gifts given by parents to the extent of NT$1 million.

c. Deductible Liabilities

Liability transferred together with a gift may be deducted from the amount of gift for calculating gift tax payable.[562]

d. Personal Allowances

An annual allowance of NT$2,440,000 may be deducted from the total amount of gift by each donor.[563]

4. Tax Rate

Gift tax is payable on taxable gifts (after the deduction of the annual allowance (see XII.A.3.d., above) multiplied by the applicable tax rate). Gift tax is imposed at the following progressive rates on a gift made between May 12, 2017 and December 31, 2024: 10% on the portion of the gift up to NT$25 million; 15% on the portion exceeding NT$25 million but not exceeding NT$50 million; and 20% on the portion exceeding NT$50 million (before May 12, 2017, gift tax was imposed at a flat 10% rate). Gift tax is payable at the following rates on a gift made on or after January 1, 2025: 10% on the portion of the gifts up to NT$28.11 million; 15% on the portion exceeding NT$28.11 million but not exceeding NT$56.21 mil-

[557] EGTA, Art. 4(3).
[558] EGTA, Art. 4(1).
[559] EGTA, Art. 4(2).
[560] EGTA, Art. 5.
[561] EGTA, Art. 20.
[562] EGTA, Art. 21.
[563] EGTA, Art. 22.

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lion; and 20% on the portion exceeding NT$56.21 million. If a donor gives multiple gifts in a calendar year (whether to the same donee or different donees), gift tax payable on each gift must be calculated based on the aggregated sum of all the gifts made year-to-date; gift tax already paid in the same year on earlier gifts can be offset against gift tax payable on the aggregated amount.[564]

[564] EGTA, Art. 19.

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XIII. Transfer Pricing

A. Transfer Pricing Regulations

For further discussion of the Taiwan transfer pricing system, see Chapter 170 of 6975 T.M., Transfer Pricing: Rules and Practice in Selected Countries (T–Z).

Article 43-1 of the Income Tax Act provides that, in the event that an entity is discovered to have engaged in certain non-arm's-length transactions or arrangements with another entity (i) with which the former has a subordinating relationship, or (ii) in which the former has a direct or indirect controlling interest, to reduce or evade tax, the tax authorities may apply for approval from the Ministry of Finance (MOF) to make necessary adjustment(s) in the tax assessment in line with regular business practice.

Moreover, to align the income tax system of the Republic of China (ROC) with international standards, and for determining arm's-length pricing or profit of related parties' transactions in a fair and reasonable way, the MOF promulgated the Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing (Transfer Pricing Regulations), which took effect on January 1, 2005. The Transfer Pricing Regulations adopt the principles and methods governing the related party transactions of the Organisation for Economic Cooperation and Development (OECD) and U.S. models.

The Transfer Pricing Regulations require each and every entity that transacts with any of its affiliates meeting the definition of an "affiliate" under the Transfer Pricing Regulations (including the foreign head office and its Taiwan branch) to establish a transfer pricing policy compliant with the Transfer Pricing Regulations and provide a transfer pricing report on its transfer pricing policy.[565] Any failure to comply with the Transfer Pricing Regulations, thereby resulting in a reduction or evasion of any Taiwan income tax liability, would entitle the tax authorities, with the MOF's approval, to make necessary adjustments in assessing Taiwan income tax liability.[566]

To be aligned with Action 13 of the OECD Action Plan on Base Erosion and Profit Shift, the MOF has amended the Transfer Pricing Regulations to incorporate a three-tiered documentation requirement, including the Master File, the Country-by-Country (CbC) Report, and the Local File. The amendments, released by MOF on November 13, 2017, will be effective for fiscal year 2017 and onward.

Taiwan's MOF released a new tax ruling (Tai Tsai Shui #10804629000) on November 15, 2019, further lifting the limitation on one-off transfer pricing (TP) adjustments. From 2020, enterprises can make such adjustments before year-end if prescribed requirements are met. In addition, all corresponding taxes, such as customs duty, value-added tax (VAT), and commodity tax, should be paid, and withholding tax obligations should be fulfilled based on the related regulations.

Furthermore, enterprises conducting one-off TP adjustments under said tax ruling must still comply with Article 43-1 of the Income Tax Act and the Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing (TP Assessment Rules) when filing annual corporate income tax returns.

B. Adjustment of Intercompany Prices

1. Scope of the Provision

The types of transactions that are subject to the Transfer Pricing Regulations include the following:[567]

(i) transfer of tangible assets;

(ii) use of tangible assets;

(iii) transfer of intangible assets;

(iv) use of intangible assets;

(v) provision of services; and

(vi) use of funds.

2. Determination of Arm's-Length Price

When filing an income tax return, business enterprises should evaluate whether the results of their controlled transactions are at arm's length, or determine the arm's-length results of controlled transactions in accordance with the Transfer Pricing Regulations. The Transfer Pricing Regulations also apply when the tax authorities conduct investigations and assessments on non-arm's-length transfer pricing cases.[568]

a. Transfer Pricing Principles

When business enterprises and tax authorities evaluate whether the results of controlled transactions are at arm's length, or determine the arm's-length results of controlled transactions, the following principles apply:[569]

(i) the comparability principle;

(ii) the adoption of the most appropriate transfer pricing method;

(iii) the evaluation on a specific transaction basis;

(iv) the use of current year data;

(v) the adoption of an arm's-length range;

(vi) the analysis of reasons for losses; and

(vii) the evaluation of revenues and expenditures separately.

b. Transfer Pricing Methods

Business enterprises and the tax authorities should determine which of the following is the most appropriate arm's-length method for the type of transaction:[570]

(1) Transfer and use of tangible assets:[571]

(i) The comparable uncontrolled price method;

[565] Transfer Pricing Regulations, Art. 2.
[566] Transfer Pricing Regulations, Art. 36.
[567] Transfer Pricing Regulations, Art. 5.
[568] Transfer Pricing Regulations, Art. 6.
[569] Transfer Pricing Regulations, Art. 7.
[570] Transfer Pricing Regulations, Art. 9.
[571] Transfer Pricing Regulations, Art. 10.

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(ii) The resale price method;

(iii) The cost-plus method;

(iv) The comparable profit method;

(v) The profit split method; and

(vi) Other arm's-length method approved by the MOF.

(2) Transfer and use of intangible asset:[572]

(i) The comparable uncontrolled price method;

(ii) The comparable profit method;

(iii) The profit split method; and

(iv) Other arm's-length method approved by the MOF.

(3) Provision of services:[573]

(i) The comparable uncontrolled price method;

(ii) The cost-plus method;

(iii) The comparable profit method;

(iv) The profit split method; and

(v) Other arm's-length method approved by the MOF.

(4) Use of funds:[574]

(i) The comparable uncontrolled price method;

(ii) The cost-plus method; and

(iii) Other arm's-length method approved by the MOF.

3. Documentation Requirements

a. Transfer Pricing Report and Other Required Documents

A business enterprise undertaking controlled transactions should prepare the following documentation when filing its annual income tax return, and submit such documentation to the tax authorities within one month of initiation of examination by the tax authorities:[575]

(i) A comprehensive business overview;

(ii) An organization chart;

(iii) A summary of controlled transactions;

(iv) A transfer pricing report;

(v) Associated Enterprises Statements and Consolidated Reports of the associated enterprises and other materials as required under Article 369-12 of the Company Act; and

(vi) Other documents regarding related parties or controlled transactions, which may affect pricing, if any.

b. Master File and Country-by-Country (CbC) Reporting

A business enterprise undertaking controlled transactions must prepare the Master File and the CbC report when filing its annual income tax return, and submit such documentation to the tax authorities by the end of the following year.[576]

c. Safe Harbor Rules

Under the Safe Harbor Rules, if any of the following conditions is met, a business enterprise undertaking related-party transactions may submit, instead of a transfer pricing report, other evidentiary document(s) to prove that its related-party transactions are in line with the arm's-length principle. The MOF, however, did not specify which "other documents." In the authors' opinion, any documents issued by any third party that can prove that the related transactions are in line with the arm's-length principle should serve the purpose:[577]

(1) If the business enterprise's total revenue is less than NT$300 million in a year;

(2) If the business enterprise's total revenue is NT$300 million or more, but less than NT$500 million in a year, and meet both of the following two conditions:

(a) the business enterprise does not apply any tax incentives in that year, nor does it apply for any loss carried forward from prior years, unless the tax incentives applied are under NT$2 million or the application of loss carried forward is under NT$8 million; and

(b) if the business enterprise is a financial holding company or its subsidiary, a company prescribed under the M&A Act or its subsidiary, or another Taiwan business enterprise, which do not transact with their offshore related parties; or

(3) If the total value of the business enterprise's related-party transactions in a year is less than NT$200 million.

4. Availability of Advance Pricing Arrangement on Pricing

To avoid any potential dispute over the audit of non-arm's-length transactions, the mechanism of an Advance Pricing Arrangement (APA) is prescribed under the Transfer Pricing Regulations.[578]

a. Criteria for Applying for an APA

If the transactions undertaken by a business enterprise with related parties satisfy the following criteria, the enterprise may file an application for an APA with the tax authorities:[579]

(1) The total amount of the transactions, for which an APA is being applied, is no less than NT$500 million or, the annual amount of such transactions is no less than NT$200 million;

(2) No material tax evasion was committed in the past three years; and

(3) Documentation as required under the Transfer Pricing Regulations for an APA has been properly prepared.

[572] Transfer Pricing Regulations, Art. 11.
[573] Transfer Pricing Regulations, Art. 12.
[574] Transfer Pricing Regulations, Art. 13.
[575] Transfer Pricing Regulations, Art. 22.
[576] Transfer Pricing Regulation, Arts. 21-1 and 22-1.
[577] Tax directive issued by the MOF on November 6, 2008 (Ref. No.: *Tai-Tsai-Shui*-09704555160).
[578] Transfer Pricing Regulations, Art. 23.
[579] Transfer Pricing Regulations, Art. 23.

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b. Required Documents for Applying for an APA

The following documents and reports are required for applying for an APA:[580]

(1) An organization chart;

(2) Relevant information on the related parties involved in the transactions for which an APA is being applied;

(3) Relevant information on the transactions for which an APA is being applied;

(4) A transfer pricing report;

(5) The pricing information of the same or similar transactions with other related parties;

(6) The annual forecast of the operation results and business plans for the effective period of the APA;

(7) Upon filing the application, the explanations or conclusions on issues related to the transfer pricing method adopted that have occurred or are currently under discussion with local or foreign competent authorities, or an APA that has been agreed to with foreign competent authorities;

(8) Whether there are potential issues with double taxation and whether an APA between/among bilateral or multilateral tax treaties may be triggered; and

(9) Other information requested by the tax collection authorities.

c. Determination of an APA

The tax authorities will review, assess and reach a conclusion within one year (with a maximum 12-month extension) from its receipt of the documents and reports submitted by the applicant or its agent. This review timeframe and extension period do not apply to an application involving a bilateral or multilateral APA under tax treaties.[581]

d. Effective Period of APA

Once an APA is signed, the APA is valid for three to five years from the year in which the application is filed. However, if the period of the related transaction is shorter, the period specified in the application will apply.[582]

5. Competent Authority

The tax authorities, i.e., the five National Tax Administrations in Taiwan, handle the investigation and assessment of related-party transactions and the review of the applications for APAs. However, the tax authorities must seek the MOF's approval before making any transfer pricing adjustments.[583]

[580] Transfer Pricing Regulations, Art. 24.

[581] Transfer Pricing Regulations, Art. 26.

[582] Transfer Pricing Regulations, Art. 27.

[583] Transfer Pricing Regulations, Art. 2(2).

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XIV. Special Provisions Relating to Multinational Corporations

A. Foundation

1. Applicable Laws and Regulations

The establishment and operation of a foundation in Taiwan are governed by the Civil Code,[584] as well as the Foundations Act (promulgated on August 1, 2018, and effective from February 1, 2019) and the guidelines set by the relevant government agency. The objectives of a foundation dictate the government agency with which the donor(s) must apply for approval. For example, the establishment of a foundation for the promotion of public health and social welfare requires approval from the Ministry of Health and Welfare, and the establishment of a foundation for the promotion of educational and cultural affairs requires approval from the Ministry of Education. After obtaining approval from the relevant government agency, the foundation is required to register itself with the district court where the foundation is located.

While the guidelines may vary among the government agencies, the key requirements for the establishment of a foundation are the same, as explained below.

2. Procedures

a. Timeline

The major steps for the establishment of a foundation include:

(i) Select a name (in Chinese) for the foundation;

(ii) Draft the Articles of Endowment and an operation plan;

(iii) Hold a donor(s) meeting to approve the Articles of Endowment and the operation plan and to appoint the directors for the initial term;

(iv) Hold the first board meeting and elect the chairman of the board;

(v) File an application with the relevant government agency for the approval to establish the foundation;

(vi) File an application with the district court for the registration of the foundation as a legal entity;

(vii) Deposit the contributed fund to the foundation's account (Initial Fund) and apply with the district court for a Certificate of Foundation;

(viii) Apply to the local tax authority for a tax identification number and the foundation's tax exemption status; and

(ix) Report the completion of registration with the district court to the relevant government agency.

The establishment of a foundation usually takes one to two months if all required documents and funds are made available.

b. Minimum Amount of the Initial Fund

The minimum amount of the Initial Fund that the donor(s) is/are required to contribute to form a foundation ranges from NT$3 million to NT$30 million, depending on the requirements set forth by the relevant government agency.

A government agency may reject an application for the establishment of a foundation if it deems that the amount of the funding to be contributed by the donor(s) is insufficient for serving the purpose(s) for which the foundation is to be established, even if that amount meets the minimum amount of Initial Fund required.

c. Articles of Endowment

The Articles of Endowment of a foundation should include, among others, the following:

(i) name and objective(s) of the foundation;

(ii) location of the foundation including any branch;

(iii) type, value and utilization method of the donated properties;

(iv) operation and management mechanism;

(v) number of directors and supervisor(s), method of their appointment or election, term of office;

(vi) organization, authority and resolution method of the board; and

(vii) distribution of residue assets upon the liquidation of the foundation.

d. Board of Directors and Supervisor(s)

A foundation is required to have a board of directors that manages its operations. It is not mandatory for a foundation to appoint a supervisor, unless required under the foundation's Articles of Endowment. Moreover, depending on the guidelines of the relevant government agency, the following restrictions on the board of directors may be prescribed:

(i) A foundation must have an odd number of directors, and may have an odd number of supervisors;

(ii) The term of office of the directors/supervisor(s) may not exceed three years;

(iii) The number of directors/supervisor(s) who are elected from the donor(s), their spouses and/or relatives within the first three degree of kinship must not exceed one-third of the total number of directors/supervisor(s);

(iv) Foreign nationals can act as directors/supervisor(s); provided, however, that the number of directors/supervisor(s) of foreign nationality may not exceed one-third of the total number of directors/supervisor(s) of the foundation; and

(v) None of the directors and supervisor(s) may receive any remuneration from the foundation.

e. Required Documents

In general, the following supporting documents are required to be submitted along with an application for the estab-

[584] Civil Code, Arts. 59–65.

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lishment of a foundation, subject to each government agency's documentation requirements:

(i) Articles of Endowment;

(ii) Operation plan and explanations;

(iii) Minutes of the donor(s) meeting for the approval of the Articles of Endowment and the operation plan and the appointment of the board of directors and supervisor(s), and minutes of the first board meeting for the election of the chairman of the board;

(iv) List of directors and supervisor(s) and identification cards (for Taiwan citizens) or passports or alien resident certificates (for foreign nationals);

(v) A letter of consent issued by each director and supervisor for acting as a director or supervisor;

(vi) Imprints of the chop of the foundation and the chops of the directors and supervisor(s);

(vii) List of donor(s), list of property (Initial Fund) and their supporting documents;

(viii) Annual operation plan and annual budget;

(ix) A letter of consent issued by the owner of the premises where the office of the foundation is located for the foundation's use of the office; and

(x) A letter of undertaking issued by the donor(s) for the contribution of the Initial Fund to the foundation.

f. Government Fee

There is no government fee for applying to establish a foundation. The fee for registering a foundation as a legal entity with the district court is NT$1,000.

3. Use of Initial Fund and Income Generated

In general, the use of the Initial Fund is subject to the relevant government agency's guidelines and approval. However, a foundation may use up to 30% of its Initial Fund to invest in the securities issued by a donor (a corporation), provided that such usage is approved by the board of the foundation and that a report on the mechanism for investment evaluation, management and timing for cutting losses has been filed with the relevant government agency for record.

The use of income generated from using the Initial Fund is also subject to rigid rules set by the relevant government agency. In general, any income generated from using the Initial Fund can be:

(i) Deposited with financial institution(s);

(ii) Used to conduct activities for achieving the objectives stated under its Articles of Endowment;

(iii) Used for purchasing government bonds, corporate bonds, financial bills, treasury bills, negotiable time deposits, commercial promissory notes guaranteed by banks and bill financial companies; and

(iv) Used for purchasing real estate for the foundation's use.

In any event, a foundation cannot distribute any income to its donor(s).

4. Annual Reporting Obligations

In general, an annual operating plan and budget for the current fiscal year, and an annual report and the list of property for the previous fiscal year, must be filed with the relevant government agency for record every year.

5. Tax Exemption Criteria

A foundation, like any enterprise, is required to file an annual income tax return. Except for any income generated from the sale of goods or services, the income of a foundation is exempt from income tax, provided that the foundation meets the following criteria:

(i) The foundation is duly registered with the relevant government agency and district court;

(ii) Other than the necessary payments for conducting activities for the purpose of achieving its objectives, the foundation does not make any pecuniary payment to the donor(s) or their related parties that would amount to distribution of dividends in nature;

(iii) The Articles of Endowment of the foundation provide that upon dissolution, the residual assets of the foundation belong to the local government where the foundation is located, or to an institution or organization designated by the relevant government authority; this criterion does not apply to a foundation that will dispose of its residual assets in line with the foundation's objectives and purposes of its establishment, or pursuant to the related laws and regulations, with the MOF's approval;

(iv) The foundation does not conduct any activities unrelated to the objectives and purposes of its establishment;

(v) The Initial Fund and all income, except for petty cash, are deposited at financial institutions, or used for purchasing government bonds, corporate bonds, financial bills, treasury bills, negotiable bank time deposits, commercial promissory notes guaranteed by banks or bill financial companies, listed stocks, stocks traded over the counter, beneficiary certificates issued by trust companies, or other items approved by the relevant government agency. However, currently, up to 80% (the exact percentage is subject to the rules set forth by each relevant government authority) of the funds donated by a corporation may be invested in the stocks issued by that corporation;

(vi) The number of directors and supervisor(s) of the foundation who are the main donor(s), their spouses, or relatives within the first three degrees of kinship does not exceed one-third of the total number of directors and supervisor(s) of such foundation;

(vii) The foundation has no irregular financial or business connection or relationship with its donor(s), director(s), or supervisor(s);

(viii) The total amount of cost and expense of conducting activities for achieving the objectives and purposes of the foundation accounts for at least 60% of the total annual income of such foundation. However, this provision does not apply if (i) the annual net receipt is not more than NT$500,000, or (ii) the annual net receipt is more than

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NT$500,000 but has been allocated to conducting activities for the purpose of the foundation for the next four fiscal years and approved by the MOF; and

(ix) The foundation issues, secures and maintains legitimate documentation proving its income and expenditure, and maintains accounting records, the accuracy of which should be certified by the tax authority.

If a foundation with annual income exceeding NT$100 million wishes to claim tax exemption, it must, in addition to meeting the above criteria, engage a certified public accountant to certify its annual income tax return.

6. Tax Deduction of a Donation to a Foundation

An individual donor can claim tax deduction of donation(s) in an amount not exceeding 20% of his/her total annual income of that year.[585] A corporate donor is allowed to treat donations as deductible expenses to the extent of 10% of its annual income.[586]

B. Tax Haven Operations and Important ITA Amendments

Under existing Taiwanese tax laws, the Republic of China (ROC) corporations are required to pay ROC income tax on their worldwide income, including on all dividends received from their offshore subsidiaries.[587] As a result, some ROC corporations keep their offshore income with offshore affiliates so as to defer the income tax liability in the ROC. In addition, under the current tax laws, offshore corporations are subject to Taiwanese income tax only on their Taiwan-sourced income. As such, some investors have established offshore companies in low-tax jurisdictions, yet have their primary business operations in Taiwan.

In line with the international tax regime and to mitigate tax avoidance, and in light of the offshore corporate tax avoidance trends exposed by the Panama Papers scandal, the ROC Legislative Yuan on July 12, 2016, passed amendments to the Income Tax Act (ITA Amendments) to include two important international tax rules: the Controlled Foreign Corporation (CFC) rule and the Place of Effective Management (PEM) rule. Subsequent to the ITA Amendments, the AMT Act was amended on May 10, 2017, to introduce the individual CFC rule, which is principally based on the CFC rule set forth in Article 43-3 of the ITA.[588]

1. Controlled Foreign Company Rules (Article 43-3 of the Income Tax Act)

a. Definition of a Controlled Foreign Company

Offshore subsidiaries that are: (i) at least 50%[589] owned (directly or indirectly) or controlled by Taiwanese corporations; and (ii) established in low-tax jurisdictions (jurisdictions where the corporate income tax rate is lower than 14% or taxes are levied only on domestic-source income or are levied only on actual remittance) will be defined as CFCs of their Taiwan parent corporations.

For the latest reference list of low-tax jurisdictions published by the MOF on December 27, 2024, see the Reference List of Low-Tax Countries or Jurisdictions under the CFC Regime.[590] The list includes 31 jurisdictions (Anguilla, Barbados, etc.) whose corporate income tax rate is lower than 14%, and 48 jurisdictions (Belize, Brunei Darussalam, etc.) that levy tax only on domestic-source income or only on actual remittances of income.

b. Safe Harbor Rule

The CFC rule does not apply to the following CFCs that have substantial overseas operations or that have earnings below a certain level (NT$7 million per annum).[591]

c. Taxation Under CFC Rule

Taiwan parent corporations must declare their *pro rata* share of their CFCs' taxable profits as their investment income in their annual tax returns.

d. Avoidance of Double Taxation

After the adoption of the CFC rule, when the earnings of offshore subsidiaries are distributed to Taiwanese parent corporations in the form of dividends, such dividends will not be subject to Taiwanese income tax again. In other words, there will be no double taxation issue.

2. Place of Effective Management Rules (Article 43-4 of the ITA)

a. Definition of Place of Effective Management

Place of Effective Management (PEM) refers to the place where the substantive management and commercial decisions of corporations are made. More specifically, corporations in the following situations will be deemed as having their PEM in Taiwan:

(i) Corporations whose major business decision-makers are Taiwanese residents, whose head offices are located in Taiwan, or whose major business decisions are made in Taiwan;

(ii) Corporations whose financial statements, accounting books, board resolutions, and/or shareholder resolutions are produced and/or stored in Taiwan; and

(iii) Corporations whose main business operations are in Taiwan.

[585] ITA, Art. 17.
[586] ITA, Art. 36.
[587] See V.B.1.
[588] See X.H.
[589] Unless otherwise stated, references to shares or capital are not limited to voting shares or capital.
[590] See https://www.dot.gov.tw/download/e066073643544096926 93a6d2fd1d682.
[591] The safe harbor rule applies where the current year earnings of each CFC "individually" do not exceed NT$7 million. However, in the case of CFCs whose shares or capital are held "directly" by the same profit-seeking enterprise and that do not satisfy the substantial overseas operations criterion, if the sum of their current year earnings and losses is a positive number exceeding NT$7 million, those CFCs with current year earnings will still be subject to the general CFC rule and the safe harbor rule will have no application.

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b. Taxation Under PEM Rule

Corporations incorporated in low-tax jurisdictions with their PEM in Taiwan will be regarded as Taiwanese corporations for income tax purposes. Such corporations will be taxed in accordance with the Taiwan Income Tax Act and relevant tax regulations, making them subject to taxation on a worldwide income basis at the rate of 20%.

c. PEM Rule Supersedes CFC Rule

Offshore corporations with their PEM in Taiwan will be subject to the PEM rule instead of the CFC rule.

3. Effective Date of the CFC and PEM Rules

To give corporations time to make the necessary adjustments after the implementation of the PEM and CFC rules, lawmakers authorized the Executive Yuan to determine the effective date of the ITA Amendments. The Executive Yuan confirmed that it will take the following factors into consideration before setting the effective date of the CFC and PEM rules:

(i) The implementation of the Cross-Straits Tax Agreement;

(ii) The implementation of the automatic exchange of financial account information as regards tax matters under the OECD's Common Reporting Standards (CRS); and

(iii) The establishment of rules for the enforcement of the CFC and PEM rules.

With respect to item (iii) above, the MOF had promulgated the Regulations for Applying CFC Rules and the Regulations for Applying PEM Rules on September 22 and May 23, 2017, respectively. These Regulations provide more detailed guidance on the determination of a CFC/PEM and the voluntary filing/payment process.

On January 14, 2022, the Executive Yuan announced that the CFC rules for corporations (Article 43-3 of the ITA), as well as the CFC rules for individuals, would come into effect on January 1, 2023. The Regulations Governing the Application of Accrued Income from Controlled Foreign Companies for Profit-Seeking Enterprises (the "Enterprise CFC Regulations") and the Regulations Governing the Application of the Calculation of Income from Controlled Foreign Companies for Individuals (the "Individual CFC Regulations") issued by the MOF also came into effect on January 1, 2023. To provide further clarification, the MOF had amended and promulgated the Enterprises CFC Regulations and the Individuals CFC Regulations on December 21 and 22, 2023, respectively. The main amendments may be summarized as follows:

(i) Definition of control over a CFC;[592]

(ii) Identification of related parties: offshore trust consisting of shares or capital of an affiliated enterprise in a low-tax jurisdiction;[593]

(iii) Implementation of the safe harbor rule;[594] and

(iv) Recognition/calculation of current year earnings from a CFC.[595]

4. Authors' Comments

The inclusion of the CFC rules into the ITA should eliminate the deferral of taxation on earnings generated by offshore subsidiaries of Taiwanese corporations and should encourage them to regularly distribute their retained earnings to the Taiwanese parent corporations in the form of dividends.

As the CFC rules became effective on January 1, 2023, investors (whether Taiwanese or non-Taiwanese) whose existing business structures involve Taiwanese corporations with offshore subsidiaries should re-evaluate the necessity of having subsidiaries located in low-tax jurisdictions, and may need to consider adjusting their corporate structures accordingly.

In view of the complexity of applying the CFC rules to circumstances involving offshore trusts, the MOF has issued supplementary rulings dealing with situations in which individuals or profit-seeking enterprises and their related parties that directly or indirectly hold 50% or more of the shares or capital of an affiliate enterprise in a low-tax country or region outside Taiwan (Shares of Affiliate Enterprises in Low-Tax Burden Areas), and those in which Shares of Affiliate Enterprises in Low-Tax Burden Areas are held as trust property by trustees through an offshore trust established by a Taiwanese tax resident or in which a Taiwanese tax resident could benefit from such a trust.

From the guidance and calculation method provided by the MOF for reporting CFCs of offshore trusts, the Shares of Affiliate Enterprises in Low-Tax Burden Areas will be deemed the shares "directly" owned by the settlor or by the beneficiaries (depending on the terms of the trust provisions). Such deemed ownership will make it easier for individuals and their spouses and relatives within the second degree of kinship to directly hold together the threshold amount of shares or capital of a CFC. The above ruling applies to any settlor or beneficiaries of an offshore truss with respect to Shares of Affiliate Enterprises in Low-Tax Burden Areas held within the, trust and imposes the reporting obligation under Article 92-1 of the ITA on the trustee holding such trust property (this reporting obligation also applies to offshore trustees).

In addition, the MOF has issued another tax ruling that provides guidance on the reporting and registration procedures and obligations for onshore and offshore trustees. This ruling clarifies matters relating to trustees' reporting and registration requirements and obligations with respect to the settlor or the beneficiaries' CFC trust income starting from the year 2024.[596] Since the MOF ruling clarifies the specific methods of reporting trust income for both onshore and offshore trustees, offshore trustees will also be subject to the relevant reporting and registration requirements. The effect of the MOF rulings is that offshore trustees are now required to review the offshore asset structure of their Taiwanese clients and assess the relevant CFC risk and their own reporting and registration obligations to avoid any risk of non-compliance.

[592] Enterprise CFC Regulations and Individual CFC Regulations, Art, 2.
[593] Enterprise CFC Regulations and Individual CFC Regulations, Art, 3.
[594] Enterprise CFC Regulations and Individual CFC Regulations, Art, 5.
[595] Enterprise CFC Regulations and Individual CFC Regulations, Art, 6.
[596] MOF ruling (Ref. No.: Tai-Cai-Shui-Zhi 11204665340), dated January 4, 2024. MOF ruling (Ref. No.: Tai-Cai-Shui-Zhi 11304525870), dated July 10, 2024. MOF ruling (Ref. No.: Tai-Cai-Shui-Zhi 11304678970), dated February 4, 2025.

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The PEM rule should discourage Taiwanese corporations from forming subsidiaries in low-tax jurisdictions simply to avoid Taiwanese income tax.

It is also worth noting that the PEM rule will likely have a favorable impact on the Taiwanese companies to which it applies since such companies may be entitled to benefits under the treaties that Taiwan has signed with other tax jurisdictions. For those investors (whether Taiwanese or non-Taiwanese) that formed an offshore subsidiary as a vehicle for doing business with China, once the Cross-Straits Tax Agreement between Taiwan and China takes effect, investors to which the PEM rule will apply will be able to enjoy the tax benefits under this Agreement. The Cross-Straits Tax Agreement provides more favorable benefits than those of other tax treaties that China has signed with other countries.

Comment: As stated in XIV.B.3., item (i), above, the effective date of the PEM rules is subject to the implementation of the Cross-Straits Tax Agreement. Although this Agreement was executed by the competent government authorities in Taiwan (MOF) and China in August 2015, it will take effect when ratified by the Legislative Yuan. The Executive Yuan submitted the executed Agreement to the Legislative Yuan for ratification in February 2016, but withdrew the submission in June 2016. The Executive Yuan is not likely to resubmit it to the Legislative Yuan for ratification. Hence, the implementation of the PEM rules is not expected for several years.

C. Alternative to Meeting the Common Reporting Standard

Although Taiwan is not an OECD member and cannot participate in the CRS Multilateral Competent Authority Agreement (CRS MCAA) as a result of political obstacles, the MOF has committed to following the OECD's rules and implementing an alternative to the CRS. This entails the amendment of the Tax Collection Act to authorize the MOF to effect, based on mutual administrative assistance, the automatic exchange of tax and bank account information as regards tax matters with other jurisdictions.

The amendments to the Tax Collection Act provided the MOF with the legal grounds for instructing financial institutions to collect individuals' financial information and submit it to the tax authorities, as well as for the MOF to exchange tax information with the authorities of other jurisdictions. Accordingly, the MOF drafted (i) the Operation Rules for the Financial Institutions Performing Joint Reporting and Due Diligence Review, and (ii) the Operation Rules for the Exchange of Tax Information Under Taxation Agreements, and released them in August and September 2017, respectively, for public opinion to be submitted within the statutorily prescribed 60-day period. The MOF subsequently finalized and promulgated the Joint Reporting and Due Diligence Review rules on November 16, 2017, with immediate effect. As of October 31, 2025, the ROC has exchanged individual taxpayers' financial information with three countries: Japan, Australia and the United Kingdom.

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XV. Avoidance of Double Taxation

A. *Foreign Tax Credits*

A domestic corporation may deduct from its Republic of China (ROC) tax liability the amount of the foreign income tax paid on its foreign-source income in accordance with the tax laws of the country in which the foreign-source income was generated if:

(i) It provides proof of such tax payment for the same tax year issued by the tax authorities of the country in which it generated the foreign-source income; and

(ii) The proof of payment has been certified by the embassy or consulate of the ROC located in the foreign country, or by another organization located in that country and duly recognized by the ROC.

In no event may the amount of the foreign tax credit (FTC) exceed the amount of ROC tax liability that would have otherwise resulted from the inclusion of the foreign-source income.[597]

In procedural terms, the FTC is claimed in the annual corporate income tax return (which is generally filed between May 1 and May 31 of the following calendar year) and the above supporting documents (including the proof of tax payment) must be included with the return package. In practice, when calculating the FTC, any foreign taxes paid in a foreign currency must be converted into NTD using the exchange rate prevailing on the date on which the foreign income tax was paid.[598]

Example: Assume that, the taxable income shown in Taiwan A Company's FY2022 corporate income tax return is NTD 10,000,000, so that the income tax payable would be NTD 2,000,000 (i.e., 10,000,000 × 20%). However, Taiwan A Company has net foreign-source income of NTD 400,000 from the Philippines and has paid NTD 200,000 Philippine income tax. In this case, the FTC limit would be computed as follows:

(i) ROC income tax payable **excluding** foreign-source income = NTD 9,600,000 (Taiwan-source income) × 20% (corporate income tax rate) = NTD 1,920,000.

(ii) ROC income tax payable **including** foreign-source income = NTD 10,000,000 × 20% = NTD 2,000,000.

(iii) The Difference of NTD 80,000 is the FTC limit.

Accordingly, Taiwan A Company's final ROC corporate income tax payable is NTD 1,920,000 (original income tax payable of NTD 2,000,000 minus the FTC limit of NTD 80,000). In other words, only NTD 80,000 out of the NTD 200,000 Philippine income tax may be claimed as a foreign tax credit.

[597] ITA, Art. 3.

[598] MOF directive (Ref. No.: *Tai-Cai-Shui-Zi*-10200074100), dated October 1, 2013.

B. *Tax Treaties*

The ROC has concluded tax treaties for the avoidance of double taxation and the prevention of tax evasion with more than 30 countries. Generally, the tax treaties entered into by the ROC follow the Organisation for Economic Cooperation and Development (OECD) Model Convention. The ROC's treaties take two forms: (i) treaties concerning income tax; and (ii) treaties concerning international transportation.

Prior to the 2024 tax year, the ROC had signed tax treaties with 34 jurisdictions: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, France, Gambia, Germany, Hungary, Indonesia, India, Israel, Italy, Japan, Kiribati, Luxembourg, Macedonia, Malaysia, New Zealand, the Netherlands, Paraguay, Poland, Saudi Arabia, Senegal, Singapore, Slovakia, South Africa, Swaziland, Sweden, Switzerland, Thailand, the United Kingdom and Vietnam. Additionally, an tax treaty was signed with South Korea and became applicable with effect from January 1, 2024. These treaties contain preferential tax treatment (including tax exemptions and preferential withholding tax rates) for various kinds of income derived by residents of the ROC and of the treaty-partner jurisdictions.

The ROC has also signed treaties concerning international transportation with the following jurisdictions: Canada; Germany; Japan; Korea; Luxembourg; Macau; the Netherlands; Norway; Sweden; Thailand; the United States; and the European Union. These treaties contain preferential tax treatment (including tax exemptions and preferential income tax rates) for income generated from providing international transportation services.

For the texts and status of Taiwan's tax treaties, see International Tax Treaties.

1. *Tax Treaty Negotiation and Ratification Process*

Tax treaty negotiations are conducted by MOF officials. However, a tax treaty must be signed by the representative of the ROC Taipei Economic and Cultural Office or a similar institution in the jurisdiction with which the treaty will be entered into and ratified by the ROC Executive Yuan in order to be put into force.[599]

2. *Procedure to Claim Reduced or No Withholding, or Refund*

On January 7, 2010, to improve the effectiveness of tax administration with regard to double taxation agreements, the MOF issued the Regulations Governing the Application of Agreements for the Avoidance of Double Taxation with Respect to Taxes on Income (the "Treaty Guidelines"), last amended on April 8, 2025. The Treaty Guidelines include detailed guidance on the determination of residency status, the issuance of a resident certificate and income tax statement, the exclusion of a joint-filing requirement, the application of limited tax rates and tax exemptions, the refund of overpaid taxes, the reporting of FTCs, and the procedures for mutual agreement and the exchange of information.

To claim a reduced withholding tax rate on dividends, interest or royalty payments from an ROC payor, a foreign re-

[599] TCA, Art. 5.

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cipient must provide the following two documents to the ROC payor of such payments: (i) a tax resident certificate; and (ii) an affidavit confirming that it is the beneficial owner of such payment. The foreign recipient's claim for a reduced withholding tax rate is not subject to the ROC tax authorities' prior approval.[600]

To apply for tax exemption on payments (business profits) from an ROC payor, a foreign recipient must file an application along with the following documents with the tax authorities where the ROC payor is located for prior approval: (i) a tax resident certificate; (ii) relevant documents which prove that the foreign recipient has no permanent establishment (PE) within the ROC or does not carry on its business through a PE within the ROC; and (iii) relevant documents providing information about the payment.[601]

To apply for a tax refund for overpayment or over-withheld taxes paid by an ROC payor, a foreign recipient must, no later than ten years from the date of payment (where the applicable tax treaty provides otherwise, the provisions of the treaty will prevail), file an application along with the following documents with the tax authorities: items (i) to (iii), as stated in the preceding paragraph; and documents evidencing the payment of the tax.[602]

3. Taxation of Business Income

a. Permanent Establishment

(1) General Principle

A permanent establishment (PE) refers to a fixed place of business through which an enterprise carries on its business in whole or in part. Where an enterprise of the other contracting state has a place of business that meets the following criteria in the ROC, the enterprise will be deemed to have a PE in the ROC:[603]

(i) It is a fixed place, including the building, equipment or installations affixed to the land or maintained in a specific location. Automated equipment maintained by an enterprise of the other contracting state through which that enterprise carries on business also qualifies.

(ii) It is a fixed place where (I) the enterprise has continually carried on business for six months or more at that place, or (II) if the enterprise has continually carried on business at such place for less than six months, it has regularly carried on business there.

(iii) It is a fixed place that is used or controlled by an enterprise of the other Contracting State.

If the fixed place mentioned above is solely for the purpose of carrying on activities of a preparatory or auxiliary nature, that place of business does not qualify as a PE.[604]

(2) Construction PE

If an enterprise of the other contracting state has carried on construction, building, installation or assembling beyond a certain period of time, causing the enterprise to be deemed to have a PE in the ROC in accordance with the provisions for PE under the double tax agreement concerned, the calculation of the period of presence starts from the date on which the contractor begins the building, construction, installation or assembling (including any preparatory work) until the work is completed or permanently terminated. Seasonal or other temporary interruption should be included when determining such period. If the work is subcontracted to subcontractors, the time spent by a subcontractor is included for calculation of the period of presence.[605]

(3) Deemed PE for Services Rendered or Practice of Profession over a Period of Time

Where an enterprise of the other contracting state is deemed to have a PE in the ROC due to the fact that the enterprise has provided management or supervisory services for building, construction, assembly or installation projects, or renders services for the same or related projects through its employees or other employed personnel (including natural persons and legal persons), for over a certain period of time, the period of the enterprise's presence is calculated based on the total number of days of actual presence and service provision by its employees' or other employed personnel (including natural persons and legal persons) in the ROC. However, the tax authorities may include the days on which the enterprise has conducted activities outside the ROC (including the preparation for rendering services in the ROC) when calculating the period of presence if the activities are highly relevant to the services rendered in the ROC.[606]

The same rules apply for the calculation of the period of presence in the ROC in case a resident of the other contracting state has stayed in the ROC for a certain period, whether constantly or in aggregate, because of rendering professional services or conducting other independent activities and the income derived from such activities is subject to ROC income tax.[607]

The term "period of presence" starts from the day following the relevant person's entry into Taiwan to the day of his/her departure, including holidays, national holidays, vacation, personal leave, sick leave, bereavement leave, and temporary absences due to strikes or training. If more than one person renders services in the ROC at the same time, the overlapping portion of their periods of presence is counted only once.[608]

(4) Agent PE

The term "a person who has and habitually exercises an authority to conclude contracts in the ROC in the name of an enterprise of the other contracting state" under the provisions of the double tax agreement concerned refers to an individual or a company or organization that is often authorized to conclude contracts or other binding documents, or to negotiate the terms

[600] Regulations Governing the Application of Agreements for the Avoidance of Double Taxation with Respect to Taxes on Income (the "Treaty Guidelines"), Art. 25.
[601] Treaty Guidelines, Art. 23.
[602] Treaty Guidelines, Art. 34.
[603] Treaty Guidelines, Art. 7.
[604] Treaty Guidelines, Art. 11.
[605] Treaty Guidelines, Art. 8.
[606] Treaty Guidelines, Art. 9(1).
[607] Treaty Guidelines, Art. 9(2).
[608] Treaty Guidelines, Art. 9(3).

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and conditions of a contract on behalf of the enterprise of the other contracting state. However, a person carrying on preparatory or auxiliary activities only or is acting as an agent of an independent status is excluded.[609]

An agent of an independent status under the preceding paragraph refers to an agent who performs work in the ordinary course of business while acting on behalf of an enterprise of the other contracting state.[610]

b. Industrial or Commercial Profits

For industrial or commercial profits generated in the ROC by a foreign enterprise incorporated in a jurisdiction where it has signed a tax treaty with the ROC, such business profits may be exempt from ROC income tax, provided that the foreign enterprise does not have a PE in the ROC.

c. Planning to Minimize Taxation of Business Income Under the Treaty

It is advisable to conduct the transactions with the ROC payor through a foreign enterprise incorporated in a jurisdiction where it has signed a tax treaty with the ROC. However, it should be noted that the ROC tax authorities adopt the "substance-over-form principle" in reviewing whether the beneficiary owner of business income is qualified for the tax treaty benefits. To enjoy the tax treaty benefits, a foreign taxpayer must be the actual beneficiary owner of the business income.

According to the Principal Purpose Test, when the tax authority reviews an application for obtaining a tax benefit under a certain tax treaty, such application will not be granted by the tax authority if it is reasonable to conclude that obtaining such tax benefit was one of the principal purposes of any arrangement or transaction.[611]

4. Taxation of Investment Income

a. What Is Investment Income

In general, investment income refers to profits generated through an investment vehicle of any kind, including dividends, interest payments, capital gains collected upon the sale of securities or other assets.

b. Withholding Rates

The preferential tax rates provided under the current tax treaties for dividends, interest and royalty income can be found in the Withholding Tax Chart.

5. Administrative Measures Dealing with Tax Treaty Provisions

The Treaty Guidelines contain guidance on the interpretation of tax treaties. In the case of difficulties or doubts arising from the interpretation of a term not explicitly defined in a tax treaty, such agreement should be interpreted in line with the Treaty Guidelines.

In addition, the Treaty Guidelines set out the principles governing the Mutual Agreement Procedure (MAP).[612] The MOF has also issued the Directions Governing the Application of Mutual Agreement Procedures of Agreements for the Avoidance of Double Taxation with Respect to Taxes on Income (the "MAP Directions"), last amended on November 25, 2020, establishing the standardized operational requirements for the MAP. The MAP Directions specify the subjects eligible for the MAP, the persons to whom the MAP is applicable, the relevant periods, the information to be provided by the applicant, the procedures for applying for a MAP and the procedures for the competent authorities' examination and approval. All 35 currently in force tax treaties concluded by Taiwan include MAP provisions.

6. Treaty Interpretation

Tax authorities and courts of the ROC generally interpret tax treaties in accordance with the Treaty Guidelines and, when terms of tax treaties are not clearly defined, supplement the interpretation with the relevant provisions of the Income Tax Act. Both the Treaty Guidelines and the Income Tax Act have domestic legal effect. Where the provisions of the Income Tax Act are more favorable than the wording of a tax treaty, the more favorable provisions shall prevail.

In general, the OECD Model Tax Convention on Income and on Capital (OECD Model Tax Convention) serves as a point of reference during tax treaty negotiations and is not binding law (unlike tax treaties). As such, it does not supersede domestic tax laws.

The tax authorities and courts may refer to the OECD Model Tax Convention and the accompanying Commentary at their discretion when interpreting tax treaties and resolving disputes related to the interpretation and application of tax treaties. If the wording of a tax treaty is the same as the wording of the OECD Model Tax Convention, the tax authorities and courts would adopt the meaning of the relevant terms under the OECD Model Tax Convention and the Commentary.

C. Tax Treaties with the United States

1. Income Tax Treaty

There is currently no tax treaty between the ROC and the United States. While the U.S. Senate Committee on Finance approved the United States-Taiwan Expedited Double-Tax Relief Act on September 14, 2023, the U.S. House Committee on Ways and Means approved that Act on January 20, 2024, and the U.S. House of Representatives passed that Act on January 15, 2025, the Act has not yet entered into effect.

On October 29, 2024, the United States and the ROC began negotiating a tax treaty to address double taxation. The treaty provisions are expected to be based on the U.S. Model Income Tax Convention.[613]

2. Estate and Gift Tax Treaty

There is no estate and gift tax treaty between the ROC and the United States.

[609] Treaty Guidelines, Art. 10(1).
[610] Treaty Guidelines, Art. 10(2).
[611] Treaty Guidelines, Art. 4(5).
[612] Treaty Guidelines, Arts. 40, 41.
[613] See new release by the U.S. Department of the Trasury: https://home.treasury.gov/news/press-releases/jy2693.

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3. Other International Transportation Income Tax Agreement

The ROC and the United States signed the International Transportation Income Tax Agreement that waives income tax for the revenue generated from the ROC by the shipping and airline industries of the United States and vice versa.

D. BEPS/MLI Position

The ROC is neither a member of the OECD Inclusive Framework on Base Erosion and Profit Shifting (BEPS) nor a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). However, the ROC amended many of its domestic laws in response to the recommendations of the BEPS Project in order to comply with the new international tax standards.

1. BEPS Action 1 — Addressing the Tax Challenges of the Digital Economy

The ROC introduced the income tax system for offshore e-commerce platforms and the accompanying Regulations Governing Income Taxation on Cross-Border Electronic Services.

2. BEPS Action 3 — Designing Effective Controlled Foreign Company Rules

The ROC introduced the controlled foreign company (CFC) rules for corporations and individuals and the accompanying Regulations Governing the Application of Accrued Income from Controlled Foreign Companies for Profit-Seeking Enterprises and Regulations Governing the Application of the Calculation of Income from Controlled Foreign Companies for Individuals. The CFC regime was implemented on January 1, 2023.

3. BEPS Action 5 — Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance

The ROC introduced Article 5-1 of the TCA on June 14, 2017, laying the foundation for the exchange of tax information.

4. BEPS Action 6 — Preventing the Granting of Treaty Benefits in Inappropriate Circumstances

Article 4 of the Treaty Guidelines was amended on August 12, 2021 to introduce a Principal Purpose Test.

5. BEPS Action 13 — Guidance on Transfer Pricing Documentation and Country-by-Country Reporting

Transfer Pricing Assessment Rules were amended on November 13, 2017 to introduce the three-tier documentation framework for transfer pricing documentation (i.e., the master file, local file, and country-by-country (CbC) report).

6. BEPS Action 14 — Making Dispute Resolution Mechanisms More Effective

The ROC introduced the Directions Governing the Application of Mutual Agreement Procedures of Agreements for the Avoidance of Double Taxation with Respect to Taxes on Income on June 25, 2018.

7. BEPS 2.0 — Global Minimum Tax

In response to BEPS 2.0 (in particular, the Global Minimum Tax (GMT), which is based on the Global Anti-Base Erosion (GloBE) Model Rules (Pillar 2)), a draft amendment to the basic tax rate of profit-seeking enterprises under the IBTA was announced on August 28, 2024 (IBTA Draft Amendment) for public comment by October 28, 2024.[614] According to the MOF's public statement in September 2025, the IBTA Draft Amendment has been submitted to the Executive Yuan for approval.

In accordance with Article 8 of the IBTA, the basic tax rate applicable to enterprises is between 12% and 15%, the actual rate being set by the Executive Yuan in light of economic conditions. Currently the basic tax rate for all enterprises is 12%.

In the event that the effective tax rate (ETR) calculated in accordance with the GMT rules for a member of a multinational enterprise (MNE) operating as a profit-seeking business in Taiwan is less than 15%, a GMT top-up tax will be incurred. However, as Taiwan has not yet implemented the GMT rules, any country or region with which Taiwan has close trade and investment relations that has implemented the GMT rules will levy this top-up tax on the MNE. In the absence of any countermeasures, Taiwan will be "losing" tax to those other countries.

In light of the above, the IBTA Draft Amendment stipulates that, with effect from the year 2025, an MNE that meets the applicable GMT thresholds will be subject to an AMT basic tax rate of 15% with respect to its profit-seeking enterprises in Taiwan. The basic tax rate for other enterprises (i.e., members of MNEs that have not reached the 750 million euro consolidated revenue threshold) will remain at 12%.

The MOF has indicated that, with a view to connecting with the international community and following the global rules, it will continue to monitor developments at the OECD and observe the progress of major international countries or regions in promoting the GMT rules. The immediate goal is to increase the basic tax rate for profit-seeking enterprises to 15% for AMT purposes.

In the medium term, the MOF will assess the feasibility of introducing a Qualified Domestic Minimum Top-up Tax (QDMTT) that meets international standards to avoid the tax being levied by other countries.

In the longer term, the official introduction of the GMT rules will be considered, depending on their implementation status in other countries and regions.

[614] Ref. No.: Tai-Cai-Shui-Zi-11304622450; see MOF official webpage: https://law-out.mof.gov.tw/DraftOpinion.aspx?id=76423&KW=.

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