



TAIWAN

This article highlights a few recent key tax developments in Taiwan.

TAIWAN-BELGIUM TAX TREATY

The tax treaty signed between Taiwan and Belgium on 13 October, 2004 (the Treaty) had been ratified by both governments. The Treaty entered into force on December 14, 2005 and took effect on 1 January 2006 for withholding taxes and other income taxes.

Under the Treaty, the withholding tax rate will be reduced from 20% to 10% for dividends and royalties paid by Taiwan entities to Belgium residents. Withholding tax on interest income will also be reduced to 10% with exemptions for: interest paid on loans between banks; interest paid to a public entity of a territory or a central bank of that territory; and interest paid in respect of a loan or credit granted, guaranteed or insured by certain approved organisations promoting export.

Unlike other tax treaties concluded by Taiwan, the Treaty has incorporated a Limitation on Benefits clause. Essentially similar to the moniker “treaty shopping”, the clause states that the benefits of the Treaty are not available if the main objective (or at the very least one of the main objectives) of such resident or a person connected with such resident is to obtain the benefits of the Treaty.

TRANSFER PRICING REGULATIONS – THE SAFE HARBOUR RULES

Almost a year after the enactment of the transfer pricing regulations by the Taiwan Ministry of Finance (MOF), the safe harbor rules were officially implemented on December 30, 2005 by the MOF. The basic objective of the safe harbor rules is to reduce the taxpayers’ burden of complying with the transfer pricing regulations by providing assurance to certain taxpayers that the transfer price received or paid will be accepted by the tax authorities without further review. This should also relieve the tax authorities’ burden of conducting further examination and audits with respect to the transfer pricing issues. The safe harbor rules are essentially put in place to relieve certain taxpayers from certain obligations otherwise imposed by Taiwan’s contemporaneous transfer pricing documentation requirement (e.g. preparation of a transfer pricing report) by substituting the obligations with less stringent requirements.

In Taiwan, the safe harbor rules are set at categorical brackets denoted by certain dollar amounts. Under the rules, a company with total amount of operating and non-operating income (the total income) under NT\$100 million is not required to prepare a transfer pricing report. For a company with total income of NT\$100 million or above but under NT\$ 300 million, a transfer pricing report is not required if certain conditions are satisfied (e.g. it is not enjoying certain tax incentives) or if its total amount of controlled transactions is under NT\$100 million.

However, if a Taiwan company’s total income is NT\$300 million or above or if its total amount of controlled transactions is NT\$100 million or above, the safe harbour rules do not apply and the company must prepare a transfer pricing report together with other supporting documentation to the tax authorities.

The requirement of a transfer pricing report will thus be determined on the categorical bracket the taxpayer belongs to and the stipulated conditions (if any). In cases where a taxpayer is not required to prepare a transfer pricing report, “other supporting documentation” will however be required.

The Taiwan MOF has issued a tax ruling Tai Tsai Shui # 09404587590 on 30 December 2005 to clarify what are required under “other supporting documentation”. In the cases where a transfer pricing report is not required, a company is expected to furnish the following “other supporting documentation” to justify the arm’s length pricing of the transaction:

1. Public tendering documentations and information in respect of the comparable uncontrolled transactions;
2. Market price information;
3. Valuation Reports provided by independent real estate appraisers or legal organisation bodies;
4. Transfer pricing report of one of the participants (from a foreign country) of the controlled transaction (however, the contents must be amended to accord to Taiwan’s transfer pricing regulations); and
5. Other proper documentations in compliance with the “comparable” rules as stated in Taiwan’s transfer pricing regulations.

The collection of “other supporting documentation” may seem to be contemporaneous per se and can impose similar burden as that of preparing a transfer pricing report. In the situation where the safe harbor rules are satisfied, the predicament is to decide which course of action (i.e. transfer pricing report or “other supporting documentation”) is less frivolous and onerous to the taxpayer. In some cases, a taxpayer may just decide to prepare a transfer pricing report.

ALTERNATIVE MINIMUM TAX

The Alternative Minimum Tax (AMT) proposed by the MOC, which is said to be predominantly designed and introduced to preserve Taiwan’s revenue basis, came into effect on 1 January 2006. The AMT is an extra tax imposed on certain taxpayers in addition to regular income tax obligations. It provides an alternative set of rules for calculating income tax liability and applies to both enterprise and individual taxpayers. In theory, these rules determine the minimum tax liability of a taxpayer based on the corresponding income level

With the enactment of the AMT Law in 2006, individual taxpayers classified as Taiwan tax residents are compelled to determine the tax liability under the AMT Law in addition to calculating the regular tax liability in accordance

with the Income Tax Act. Likewise, for corporate taxpayers, an “alternative minimum taxable income” (AMI) has to be calculated and reported collectively with the income tax return of a given year by the prescribed filing deadline.

1. Calculating the AMT for Individual Taxpayers

When preparing the 2006 Taiwan individual income tax returns, individuals shall compare the regular tax liability with AMT amount. The higher of the regular tax liability and the AMT amount will be deemed as the individual’s income tax liability. The calculations are as follows:

Regular Tax Liability	= Net Taxable Income x Tax Rate (6% ~ 40%) – Progressive Differences – Tax Withheld/ Tax Credit
AMT	= (AMI – NT\$6 million) x 20%

2. Calculating the AMT for Corporate Taxpayers

According to Article 7 of the AMT Law, the tax base is referred to as “alternative minimum taxable income”; and the minimum tax liability is calculated by subtracting the AMT exemption from the alternative minimum taxable income, and applying the AMT tax rate to arrive at the AMT amount. The AMT rate for corporate taxpayers shall be no less than 10% and no more than 12%. The applicable tax rate would be further determined and announced by the Executive Yuan.

For corporate taxpayers, AMT is calculated as follows:

AMT	= (Alternative Minimum Taxable Income – AMT Exemption) x AMT Tax Rate (10% ~ 12%)
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If the regular tax amount is greater than or equal to the AMT amount, the regular tax shall be settled by the taxpayers. Conversely, if the regular tax amount is less than this minimum tax liability, the taxpayers shall make up the difference by paying the AMT amount instead.

As the AMT has a very wide application, taxpayers (both corporate and individual) are encouraged to review their existing tax structures in order to determine the possible AMT implications for them. Only upon a thorough analysis of the AMT implications could the taxpayers be able to evaluate and implement any mitigation approaches that may be available (e.g. application of tax treaties).