

TAIWAN

TAX/REGULATORY DEVELOPMENTS IN TAIWAN FROM MARCH 2008 TO FEBRUARY 2009

Loss carry-forward period extended from 5 years to 10 years

(Amendment to Article 39 of the Income Tax Act)

To increase the competitiveness of Taiwanese companies and to achieve a fair tax system, a new amendment to the Income Tax Act (ITA) was promulgated on 21 January 2009 and became effective from 23 January 2009. The amendment specifies that a company's net operating losses (NOL) can be carried forward for 10 years instead of 5 years, with all other conditions remain unchanged.

The above-said extension applies to NOL incurred before 23 January 2009 but not yet utilised pursuant to the laws. That is, for companies adopting a calendar year-end, their unutilised NOL incurred in 2003 and onwards can be carried forward for 10 years.

Relaxation of beneficial ownership requirement for UK-based Authorised Unit Trusts

(MOF Tax Ruling No.09804505010)

According to tax ruling Tai-Tsai-Shuei 09604514330, reduced treaty rates for Taiwan-sourced dividends and interest generally do not apply to foreign institutional investors unless otherwise specified in the tax treaties. Tax ruling Tai-Tsai-Shuei 09804505010 further relaxing the beneficial owner requirement for UK Authorised Unit Trust (AUT) was issued by the Ministry of Finance (MOF) on 17 January 2009.

The ruling states that if a UK AUT can present the certificate of tax residency and documents proving that it has failed to pass the qualifying investments test under the Authorised Investment Funds (Tax) Regulations, and its distribution is registered as "dividends", the AUT can be viewed as the beneficial owner of dividends or interest from Taiwan.

Other UK-based AUTs, which do not fulfil the above-mentioned requirements, should follow the guidelines currently provided under tax ruling Tai-Tsai-Shuei 09604514330 for application of reduced dividend withholding tax rate at source or reclaim of over-paid withholding tax. In such case, the reduced withholding tax rate can only apply to the proportion of fund units invested/held by qualified UK tax residents over the total fund units held by all investors.

Tax ruling regarding the new transfer pricing safe harbour rules

(MOF Tax Ruling No.09704555160)

Taiwan's MOF released a tax ruling (MOF Tax Ruling No.09704555160) on 6 November 2008 increasing the thresholds for safe harbour rules. The safe harbour rules were implemented to allow taxpayers to prepare other evidential documentation to support their inter-company transfer pricing positions instead of preparing contemporaneous transfer pricing report when prescribed conditions are met.

According to the new tax ruling, a taxpayer engaged in related party transactions can prepare other evidential documents instead of a transfer pricing study report if:

1. The taxpayer's total income (net operating revenues plus non-operating income) is under NT\$300 million (previously NT\$100 million);
2. The taxpayer's total income equals to or is greater than NT\$300 million but not more than NT\$500 million (previously NT\$100 million but not more than NT\$300 million) and the taxpayer does not (a) enjoy any tax incentives; (b) have any loss carryforwards; and (c) does not enter into any transactions with related parties/affiliated enterprises outside of Taiwan; or
3. The taxpayer's total amount of controlled transactions is not more than NT\$200 million (previously NT\$100 million).

New 5-year tax holiday offered for investments made during 1 July 2008 to 31 December 2009

(Amendment to Article 9-2 of the Statute of Upgrading Industries)

To encourage investments in the manufacturing industry and the associated technical service industry (the Prescribed Industries), the Presidential Office promulgated an amendment to Article 9-2 of the Statute for Upgrading Industries on 23 January 2009. The amendment stipulates that investments made for the purpose of incorporating a new company or increasing capital of an existing company in the Prescribed Industries during the period from 1 July 2008 to 31 December 2009 may be entitled to a 5-year tax holiday upon approval of the Industrial Development Bureau.

Nonetheless, a company can make only one application for the 5-year tax holiday during the said period in accordance with the terms of the investment plan, i.e., if the capital increase is done in instalments, one application may be made summarising the total of all capital increases originally proposed in accordance with the investment plan. In addition, the reduced tax resulting from the tax-exempt income under the 5-year tax holiday shall be capped at the total investment amount.