Technical Update in Taiwan

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Table of Content

Technical Update in Taiwan

1. AOS

Practical considerations for acting as a VAT filing agent for foreign E-Commerce operators:

I. Background

On December 28, 2016, Taiwan amended and promulgated the Value-Added and Non-Value-Added Business Tax Act (the "Business Tax Act"), with the amendments taking effect on May 1, 2017. These changes brought cross-border sales of electronic services within the scope of VAT taxation.

The amendments were introduced in response to the rapid growth of cross-border e-commerce, particularly the increasing frequency with which individuals in Taiwan purchase services from overseas suppliers via the internet. The objective was to safeguard tax neutrality and strengthen the administration of the tax base.

Under the current regime, foreign enterprises without a fixed place of business in Taiwan that sell electronic services online to individuals in Taiwan
are required to complete tax registration and file and pay business tax in accordance with the law.

II. Filing Obligations and Compliance Models

Foreign e-commerce operators may fulfill their business tax obligations through one of the following methods:

- Self-registration for tax purposes and direct filing and payment of business tax; or
- Appointment of a qualified tax filing agent to handle the relevant matters on their behalf.

III. Appointment of a Tax Filing Agent

Eligible tax filing agents for foreign e-commerce operators include:

1. Individuals residing in Taiwan;
2. Enterprises, government agencies, groups, or organizations with a fixed place of business in Taiwan.

Where a foreign e-commerce operator appoints a tax filing agent, it must apply for approval with the competent tax authority having jurisdiction over the agent's location. Any subsequent change of the appointed agent is subject to the same application and approval procedures.

IV. Scope of Agency Services

The scope of services provided by a tax filing agent includes:

- Application for and changes to taxregistration
- Filing and payment of business tax
- Receipt of official tax correspondence and handling related administrative procedures

- Querying and accessing input tax information

It should be specifically noted that where an offshore e-commerce operator only appoints a service provider to issue electronic government uniform invoices, current tax authority practice considers such services outside the scope of tax filing agency services.

Accordingly, an electronic invoice service provider is not deemed to be a tax filing agent of the foreign e-commerce operator. If the operator subsequently needs to make changes to tax registration details or handle other tax matters, such actions must be carried out by the designated tax filing agent (i.e., the party responsible for filing and paying the business tax). Clear delineation of roles among the relevant parties is therefore essential.

V. Considerations Regarding Electronic Invoice Platform Functionality

The system capabilities of electronic invoice platform providers may vary, particularly with respect to foreign currency transaction processing.
Some platforms do not support the issuance of invoices with decimal amounts in foreign currencies, which may result in rounding differences between invoiced amounts and book-recorded sales figures.

These system limitations require careful attention, and appropriate reconciliations should be made between accounting records and tax filings to ensure compliance.

VI. Conclusion

Taiwan's taxation framework for foreign e-commerce operators has gradually matured, and the tax filing agent mechanism plays a critical role in ensuring compliance with local tax laws. Nevertheless, in practical application, businesses should remain mindful of compliance requirements relating to agent appointment and the limitations of electronic invoice systems.

Technical Update in Taiwan

2. Tax

Discussion of Paragraph 1, Article 25 of the Taiwan Income Tax Act

In accordance with the provisions of Paragraph 1, Article 25 of the Income Tax Act, where a profit-seeking enterprise having its head office outside of Taiwan, regardless whether or not it has a branch office or business agent in Taiwan, and being engaged in international transport, construction contracting, providing technical services, or machinery and equipment leasing, etc., in the territory of Taiwan, the cost and expenses for which are difficult to allocate and calculate may apply for approval from the Ministry of Finance ("MOF"), or the MOF may make the decision to consider ten percent of its total business revenue for an enterprise engaged in the

other business.

The characteristics of Paragraph 1, Article 25 are as follows:

- The tax payer could claim difficulty in the calculation and allocation of costs and expenses.
- Greater discretion power by tax authorities
- The provisions of Paragraph 1, Article 25 shall not apply to practitioners of professions or their firms as defined in Paragraph 1, Article 11 of the Income Tax Act, nor shall they apply to legal entities, enterprises, institutions, or organizations of China.
- According to the laws and regulations, the statutory period for application is ten years from the date of receipt of the income.

In practice, the tax payment models for foreign enterprises are as follows:

1. For an enterprise having a branch office in Taiwan, the branch office computes the tax for annual settlement, makes payment of the same and files an annual income tax return.
2. For an enterprise without a branch office but having a business agent in Taiwan, the business agent shall be responsible for withholding the tax or paying tax through filing the annual income tax return.
3. For an enterprise having neither branch office nor business agent in Taiwan, the payer shall withhold the tax at the time of payment.

The Applicability of Paragraph 1, Article 25 to Turnkey Contracts

In cross-border transactions involving engineering, equipment supply, or system implementation, foreign enterprises frequently adopt turnkey project structures, which makes Forvis Mazars Taiwan CPAs them face high levels of uncertainty regarding the characterization of income for Taiwan income tax purposes. Paragraph 1, Article 25 of the Income Tax Act is one of the key provisions most frequently invoked by tax authorities in practice, and it is also one of the critical articles that foreign enterprises must evaluate cautiously.
A turnkey project typically involves multiple integrated components, such as:

- Supply of equipment, software systems
- Design, system integration, and testing
- Installation, commissioning and acceptance
- Training, project management, and technical support

From the foreign contractor’s perspective, the transaction may be structured as a single contract with an itemized price list. However, tax authorities often view such arrangements as a single, integrated business activity performed in Taiwan.

In administrative practice, the common assessment practice by the tax authorities includes:

- If the final goods delivery or project acceptance occurs in Taiwan
- If on-site installation, testing, or commissioning is required
- If foreign personnel participate in key stages of the project
- If the various components are highly interdependent and non-severable

Under such circumstances, even if a foreign enterprise has not established a fixed place of business in Taiwan, it may still be deemed to be engaged in profit-seeking activities within the territory of Taiwan, thereby subjecting the total contract value to taxation under Paragraph 1, Article 25 of the Income Tax Act.

The feature of Paragraph 1, Article 25 lies in its fact-intensive and discretionary nature. For many foreign enterprises, the issue is not whether Taiwan taxation applies, but rather how the income will be characterized and assessed.

Accordingly, foreign enterprises engaging in turnkey projects should:

- Conduct tax risk assessments at the project planning stage
- Ensure alignment between contractual arrangements and actual execution
- Prepare contemporaneous documentation supporting transaction structure
- Evaluate potential Article 25 exposure alongside treaty considerations

Forvis Mazars has extensive experience advising foreign enterprises on turnkey projects, cross-border service arrangements, and Paragraph 1, Article 25 tax disputes, assisting clients both in transaction structuring and in managing assessments, appeals, and administrative litigation.

Technical Update in Taiwan

3. Audit

Comparison of Profitability Criteria for Listed and OTC Companies under No-Par Value, Flexible Par Value, and Par Value Share Regimes

As Taiwan's capital market framework continues to evolve, listed and OTC companies are permitted, in accordance with applicable laws and regulations, to issue **par value shares, no-par value shares,** or adopt a **flexible par value share regime.** Beyond differences in capital structure and equity attribution, the choice of share regime may also affect the **profitability criteria applied in regulatory reviews**, particularly in connection with initial listings, capital increases, spin-offs, or corporate restructurings.

This technical update provides a comparative overview of the key differences in the recognition and assessment of profitability under the three share par value regimes, with the aim of assisting management teams and investors in understanding the relevant regulatory considerations.

I. Profitability Criteria under the Par Value Share Regime

Regime Overview

Par value shares are issued with a stated nominal value per share (most commonly NT$10 per share).

A company's registered capital is calculated based on the par value multiplied by the number of issued shares.

Key Features of Profitability Assessment

Under the par value share regime, regulators typically focus on the following aspects when conducting listing or OTC application reviews:

- Overall operating results and profitability
- Earnings per share (EPS), calculated based on the stated par value
- The reasonableness of the relationship between capital scale and profit levels

Given the fixed par value, the relationship between earnings and capital is relatively straightforward.

This regime has long been the most familiar and widely adopted framework in the market.

II. Profitability Criteria under the No-Par Value Share Regime

Regime Overview

No-par value shares do not carry a stated nominal value per share. A company's registered capital is determined based on the portion of issuance proceeds allocated

to capital surplus and share capital, rather than by reference to a fixed par value.

Key Features of Profitability Assessment
Under the no-par value share regime, the focus of profitability assessment shifts toward:

- Overall profitability and earnings stability
- Net income after tax and operating performance
- The reasonableness of capital formation and actual capital invested

As share capital is no longer measured by par value under this regime:

- Traditional EPS is no longer the sole core performance indicator
- Greater emphasis is placed on substantive operating results and the soundness of the financial structure

This regime provides enhanced capital flexibility and is particularly suited for start-ups or high-growth enterprises seeking to align capital structures with actual fundraising needs.

III. Profitability Criteria under the Flexible Par Value Share Regime

Regime Overview
The flexible par value share regime lies between the traditional par value and no-par value systems.
Companies are permitted to adjust share par value in accordance with applicable regulations, such as through share splits or share consolidations, to accommodate capital management and market considerations.

Key Features of Profitability Assessment
When assessing profitability under the flexible par value regime, regulators typically consider:

- Historical profitability and recent operating results
- Continuity of share capital and earnings before and after par value adjustments
- Whether par value changes distort financial metrics or performance indicators

Regulatory and market reviews focus on determining:

- Whether the par value adjustment is merely a formal or technical change
- Whether the company continues to demonstrate substantive profitability and sustainable operations

Accordingly, while the flexible par value regime offers capital adjustment flexibility, companies are still required to provide **consistent and reasonable explanations of profitability.**

IV. Comparative Summary of the Three Regimes

Items	Par Value Shares	No-Par Value Shares	Flexible Par Value Shares
Basis for Capital Calculation	Fixed Par Value x Number of Shares	Actual Capital Invested	Par Value Adjustable
Importance of EPS	High	Relatively Reduced	Traditional Metrics Require Adjusted Interpretation
Profitability Review Focus	Earnings Relative to Capital	Substantive Operating Results	Earnings Continuity and Reasonableness
Capital Flexibility	Low	High	Moderate
Typical Applicable Companies	Mature Enterprises	Growth-stage / Start-up Enterprise	Companies with Capital Restructuring Needs

V. Key Practical Considerations for Companies

When evaluating or adopting a particular share regime, companies should consider not only capital operations and market perception, but also carefully assess the following:

1. Whether the presentation of profitability metrics will change
2. The comparability of historical financial data
3. The impact on listing or OTC reviews, investor communications, and corporate governance
4. Future flexibility for fundraising, M&A activities, or capital adjustments

No single share regime is inherently superior. The appropriateness of each regime depends on its alignment with the company's stage of development, growth strategy, and capital market planning.

Conclusion

The adoption of no-par value and flexible par value share regimes reflects Taiwan's capital market trend toward greater flexibility and a focus on substantive business performance. Compared to the traditional par value regime, profitability assessment has gradually shifted from form-based indicators toward a broader evaluation of overall operating capability and sustainability.

Companies are encouraged to assess, at an early stage, the potential impact of different share regimes on profitability reviews and financial presentation, and to engage proactively with professional advisors and capital market stakeholders to ensure that the

chosen structure effectively supports long-term development objectives.

Technical Update in Taiwan

4. COSEC

Business Structures and Registration Practice for Foreign Companies in Taiwan: Conversion of a Representative Office into a Branch Office

To clarify the types of business structures available to foreign companies investing in Taiwan and the procedures for converting between such structures, as well as to streamline administrative processes in response to practical needs, the Ministry of Economic Affairs (MOEA) has introduced amendments and provided guidance on the relevant regulations and registration procedures.

Depending on the scope of business activities and legal nature, foreign companies investing in Taiwan may establish their presence in the form of a subsidiary, a branch office, or a representative office, each of which is subject to different registration requirements and documentation.

A subsidiary is a company incorporated under Taiwan law and is a separate legal entity; accordingly, it bears its own rights and obligations independently. In contrast, a branch office is an extension of a foreign company in Taiwan and does not have separate legal personality; its rights and obligations are borne by the foreign head office.

A representative office, on the other hand, is limited to engaging in specific activities, such as liaison, contract negotiation, bidding, quotation, procurement, and price negotiation, and is not permitted to conduct profit-generating business operations.

Previously, where a foreign company intended to expand into profit-generating activities in Taiwan by converting its representative office into a branch office, it was required to first deregister the representative office and separately apply for the establishment of a branch office. This process was relatively complex and increased administrative burdens. In addition, during the transition, employees of the representative office could encounter issues arising from the change of the insured entity, including potential disruptions in employment and the carryover of labor insurance and national health insurance coverage.

In response to these practical concerns, the MOEA amended Table 6 of Article 5 of the Regulations Governing Company Registration on April 23, 2021, introducing a new registration item for the “conversion of a representative office into a branch office,” along with the corresponding required documentation.

Under the amended rules, a foreign company that has already established a representative office in Taiwan may, where

business needs arise, directly apply for its conversion into a branch office without the need to
separately deregister the representative office. The required documentation for such conversion is aligned
with that for the establishment of a branch office.

Furthermore, upon conversion, the branch office may retain the same registration number originally assigned to the representative office. This facilitates a smoother transition and helps reduce administrative costs and burdens associated with employee arrangements and the continuity of labor insurance and national health insurance coverage.

This amendment significantly simplifies the administrative procedures for converting business structures of foreign companies in Taiwan, enhances overall registration efficiency, and provides greater operational flexibility, allowing companies to adjust their investment structures in Taiwan in line with their evolving business needs.

Technical Update in Taiwan

5. Payroll

Updated "Regulations of Leave-Taking of Workers"

The Ministry of Labor officially announced a revised version of the "Regulations of Leave-Taking of Workers". The new rules stipulate that employers must not violate the principle of proportionality when deducting attendance bonuses. The regulations will take effect in 2026.

Regarding attendance bonuses, the rules specify that employers must not make disproportionate deductions or completely withhold the bonus for workers who take sick leave within a month, in order to prevent workers from being discouraged from taking sick leave.

The amendment adds that if a worker takes no more than 10 days of ordinary sick leave within a year, the employer must not impose unfavorable treatment due to such leave. It also specifies that any deduction of attendance bonuses must be calculated proportionally based on the number of sick leave days taken.

For example, if an employee's monthly salary is NT$33,000, including an attendance bonus of NT$3,000, and the employee takes one day of sick leave in a given month while attending all other working days, the deduction from the attendance bonus must not exceed NT$100 (NT$3,000 ÷ 30 days).

For workers who take more than 10 days of sick leave, employers must still consider overall factors such as work ability, attitude, and actual performance when conducting personnel evaluations, and must not base their assessment solely on the number of sick leave days.

Since workers already incur a loss of half

their salary when taking sick leave, the Ministry of Labor discussed with industry associations and concluded that proportionally deducting attendance bonuses based on sick leave days is reasonable. The new system aims to prioritize workers' health, recognizing that physically and mentally healthy workers are more productive.

In addition to revising sick leave rules, the regulations also stipulate that workers who personally care for family members may take personal leave on an hourly basis. Employers must not treat this as absenteeism or use it to affect attendance bonuses.

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