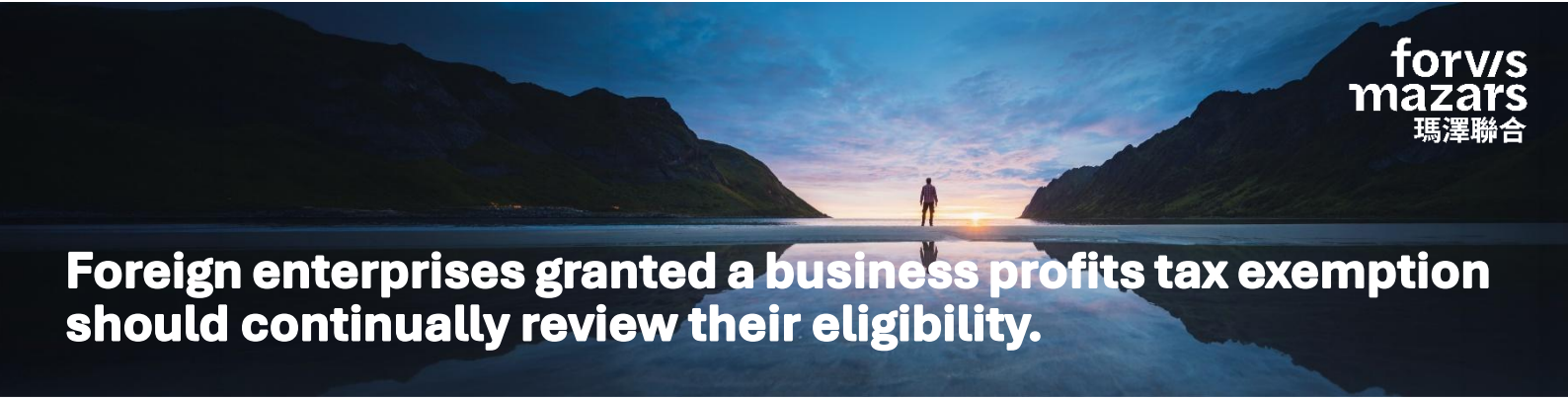




# Foreign enterprises granted a business profits tax exemption should continually review their eligibility.

## Tax Insights and Practical Analysis

### Summary

Under current Double Taxation Agreements (the “Tax Treaties” or “Treaties”) and the *Regulations Governing Application of Agreements for the Avoidance of Double Taxation with Respect to Taxes on Income* (the “DTA Regulations”), foreign enterprises providing services in Taiwan may apply for a business profits tax exemption if certain conditions are met. However, if the aggregate number of days spent providing services in Taiwan exceeds the threshold prescribed under the applicable tax treaty, the foreign enterprise may be deemed to have a permanent establishment in Taiwan, thereby losing its entitlement to the exemption and becoming subject to additional tax liabilities.

### Analysis

Under current Double Taxation Agreements (the “Tax Treaties” or “Treaties”), if a foreign enterprise does not have a permanent establishment in Taiwan, its business profits derived within Taiwan are subject to taxation exclusively by the enterprise’s residence state. Conversely, if the enterprise carries on business in Taiwan through a permanent establishment, Taiwan’s taxing rights are restricted to the profits attributable to that permanent establishment. Consequently, the allocation of taxing rights over business profits depends on whether a permanent establishment exists in Taiwan.

Regarding the determination of a permanent establishment, in addition to a building site, a construction, assembly or installation project or supervisory projects exceeding a specific period under the Tax Treaties, Article 9 of the DTA Regulations further provides that where a foreign enterprise furnishes services in Taiwan through its personnel for a period exceeding the prescribed threshold, it may constitute, or be deemed to constitute, a permanent establishment. Furthermore, formally distinct services belonging in substance to the same or a related project shall have their service days aggregated.

For example: In 2025, Japanese Company A concluded multiple maintenance contracts (“Contract X”) with Taiwan Company B, dispatching technicians to Taiwan from March through December 2025 for an aggregate stay of 160 days and generating NT\$10 million in service revenue. Meeting the criteria under the Taiwan-Japan tax treaty, Company A obtained a tax exemption approval letter. Subsequently, Company B entered into a new contract (“Contract Y”) with Company A for NT\$3 million, and Company A’s personnel provided services in Taiwan from January to February 2026 for an accumulated stay of 35 days.

Since the nature of the work under Contract X and Contract Y is identical and the two contracts are commercially related, the service days attributable to Contract X and Contract Y should be aggregated for purposes of determining whether a permanent establishment exists. Under this premise, Company A’s total service duration in Taiwan reached 195 days (160 + 35 days) within a consecutive 12-month period (from March 2025 to February 2026), which exceeds the 183-day threshold prescribed under the Taiwan-Japan tax treaty. Accordingly, Company A is deemed to have a permanent establishment within Taiwan. In this case, the NT\$3 million service fee under Contract Y would be subject to withholding tax at 20%. More importantly, the NT\$10 million service revenue derived from Contract X would likewise cease to qualify for the business profits tax exemption and would become subject to withholding tax at a rate of 20%, resulting in additional tax of NT\$2 million.

Special reminder to all foreign enterprises: even if a tax exemption approval letter for business profits has already been obtained, enterprises should continue to monitor newly executed contracts, contractual amendments, and the actual duration of personnel providing services in Taiwan and periodically reassess whether the conditions for treaty-based business profits tax exemption continue to be satisfied. If related projects are found, upon aggregation, to have exceeded the applicable permanent establishment threshold during the relevant period, the enterprise should proactively report the matter to the tax authorities and arrange for any required additional tax filings and tax payments in order to mitigate potential tax exposure.

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