

Permanent Establishment Issue in Taiwan

Understanding Taiwan's Tax Regulations

In Taiwan, if an enterprise has a fixed place of business or a business agent in Taiwan, then it is seen as having a permanent establishment and must register a legal entity.

Residents / Non-Residents

A foreign profit-seeking enterprise is subject to tax only on income derived in Taiwan. If the enterprise has no fixed place of business or business agent in Taiwan, only a final withholding tax applies. If the enterprise has a fixed place of business or a business agent in Taiwan, then it must register a legal entity. If the enterprise will have taxable business activities (besides sourcing and exchanging information) then it must file a corporate income tax return in Taiwan.

Permanent Establishment

The term "permanent establishment" is not used in the Income Tax Act; the expression "fixed place of business" and "business agent" are used in its place.

Fixed place of business

The term "fixed place of business" means any fixed location for the operation of business, including administrative offices, branch or sub-branch offices, business offices, factories, workshops, warehouses, mining fields, and construction sites. It excludes warehouses or storage sites used exclusively for purchasing

goods and maintenance shops not used for processing or manufacturing products.

Business agent

The term "business agent" carries the same tax implications as a fixed place of business. The Income Tax Act defines the term "business agent" as an agent fulfilling any of the following functions:

- 1) the agent, in addition to representing its principal in the purchase of goods, is authorized to regularly represent the principal in making business arrangements and in signing contracts;
- 2) the agent regularly keeps in store goods of its principal and delivers the same, for its principal, to others; or
- 3) the agent regularly accepts orders of goods for its principal.

Special Rules Relating to E-Commerce Traders (Digital tax)

Effective from 1 May 2017, foreign e-commerce operators having no fixed place of business in Taiwan but who provide services to individuals in Taiwan via the Internet (B2C) must register for tax

if their annual Taiwan sales exceed TWD 600,000 (Approximately USD 18,500).

Double Taxation Agreements

There are a number of double taxation agreements in place between Taiwan and a number of different countries. Most of these agreements have special clauses relating to the recognition of permanent establishment. It would be prudent to check these agreements to see if any special clause or exemption is applicable.

Registration requirement relating to having a permanent establishment in Taiwan

Article 371 of the Company Act :

A foreign company without making branch office registration may not conduct its business operation in the name of a foreign company in the territory of the Republic of China.

A person who violates the provision set out in the preceding paragraph shall be punished with imprisonment for a period of not more than one year, detention, or in lieu thereof or in addition thereto a fine of not more than NT\$150,000 and shall assume on his own the civil liabilities arising therefrom, or shall be jointly and severally liable therefor, in case there are two or more violators. In addition, the company shall be enjoined by the competent authority from using its foreign corporate name.

Investing in Taiwan requires careful planning to avoid hitting any pitfalls. Our Grant Thornton Taiwan team is highly experienced in assisting international investors with tax planning and plan execution. If you have any questions, please do not hesitate to contact any one of our team members.

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