

# Taiwan Source Income Defined

## Understanding Taiwan Tax Regulations

Taiwan's Ministry of Finance released a number of important tax rulings relating to the source of income. This article summarizes the content of the rulings.

### Background

Taiwan's Taxation Administration has a reputation for arguing that, with the exception of a few clearly-defined exceptions, just about all payments made by Taiwan entities for services purchased from overseas profit-seeking enterprises are deemed Taiwan source income. Taiwan's court system generally upholds the views of the Taxation Administration, resulting in many foreign profit-seeking enterprises being taxed in Taiwan on fees derived from services they performed abroad.

Taiwan's Ministry of Finance, recognizing the source of income controversy, issued the "Guidelines for the Determination of Income from Sources in the Republic of China in Accordance with Article 8 of the Income Tax Act" in 2009 which allows taxpayers to apply for an advance ruling to determine Taiwan source income ratios and net profit ratios ahead of carrying out actual transactions.

### Summary of the tax rulings

1 Remuneration for services rendered within the territory of the Republic of China is deemed to be Taiwan source income if any one of the following conditions applies:

a All services are carried out and completed within the Republic of China.

- b Parts of the services are carried out within the Republic of China, and parts of the services are conducted outside the Republic of China.
- c Although the services are carried out abroad, there is involvement from an individual or profit-seeking enterprise within the Republic of China to help complete the assignment (e.g. to provide equipment, manpower, technical knowhow, or resources).

For items (b) and (c) above, if the taxpayer is able to provide supporting documentation (such as a CPA-signed audit report, transfer pricing document, work plan, job record, or similar document) showing that the profits attributable to those activities carried out in Taiwan can be allocated from the overall profits, then the tax officer may elect to assess tax only on profits attributable to Taiwan.

2 Remuneration received by a foreign enterprise for services rendered fully and completely outside the territory of the Republic of China can be deemed to be foreign source income if any one of the following conditions applies:

a The foreign enterprise has no fixed place of business and no business agent in the Republic of China.

- b The foreign enterprise has an agent in the Republic of China, but the agent did not act as an agent for the services concerned.
  - c The foreign enterprise has a fixed place of business in the Republic of China, but the fixed place of business was not involved in the services concerned.
- 3 In the case of a joint international research project carried out by a Taiwan entity together with overseas organizations, payments for the Taiwan entity's share of the research costs can be deemed to be non-Taiwan source income if all of the following conditions are met:
- a Any intellectual property right derived from the project is shared jointly between all parties involved.
  - b Payments made by the Taiwan entity are limited to Taiwan's share of the allocated costs.
  - c The project is likely to result in reasonable benefits for the Taiwan entity.
  - d There is no royalty payment or other scheme involved to evade income tax.
- 4 Profits from the operation of industry, commerce, agriculture, forestry, fishery, animal husbandry, mining, and metallurgy enterprises within the territory of the Republic of China are treated as follows:

In the case that activities are carried out both in Taiwan's territory and overseas, if a foreign profit-seeking enterprise is able to provide documentation (such as a CPA-signed audit report, transfer pricing document, work plan, job record or similar document) showing that profits attributable to the activities carried out in Taiwan can be split out from the overall profits, then the tax officer may elect to assess tax only on profits attributable to activities carried out in Taiwan.

If all activities are conducted outside of Taiwan, income earned can be deemed foreign source income if any one of the following conditions applies:

- a The foreign enterprise has no fixed place of business and no business agent in the Republic of China.
  - b The foreign enterprise has an agent in the Republic of China, but the agent did not act as the agent for the activities concerned.
  - c The foreign enterprise has a fixed place of business in the Republic of China, but the fixed place of business was not involved in the activities concerned.
- 5 Companies and individuals from Mainland China with Taiwan source income can also enjoy the benefits listed above.

## Comments

Grant Thornton Taiwan holds the view that the rulings mentioned above can help to provide guidance to profit-seeking enterprises dealing with source of income issues. However, the rulings are not a quick remedy to all practical problems and leave room for debate in certain areas. Areas that may remain under debate include:

- It may be difficult for taxpayers to prove, to the satisfaction of tax officers, that all services in question were performed outside of Taiwan.
- It may be difficult for taxpayers to prove, to the satisfaction of tax officers, that profits attributable to activities carried out in Taiwan have been split out and computed fairly, given that accounting records and vouchers are kept overseas.

An advance ruling application can be a solution that can also be used to reduce Taiwan's source income tax risk. In addition to the advance ruling application, taxpayers can also look at other

solutions. These include the Article 4 full income tax exemption application, the Article 25 advance ruling application for withholding tax reduction, and, where applicable, double tax agreements can also be used to lower or exempt withholding tax. Our tax division can assist you in determining which route to take to best address tax planning for your organization.

---

## Contact



### **Jay Lo**

Managing Partner

T +886 2 2789-0887 ext. 1314

E [jay.lo@tw.gt.com](mailto:jay.lo@tw.gt.com)

[www.grantthornton.tw](http://www.grantthornton.tw)