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Understanding Taxation of Capital Gains in Taiwan

On August 8, 2012, Taiwan's President Ma Ying-jeou approved amendments to the Income Tax Act and the Alternative Minimum Tax ("AMT") Act to introduce taxation rules for capital gains from trading in securities. The amendments, which came into effect on January 1, 2013, were further changed on June 25, 2013. The latest regulations can be summarized as follows:

For individuals, capital gains from trading in securities are taxable if defined criteria are met. For corporations, capital gains from trading in securities are subject to Alternative Minimum Tax (AMT). Foreign institutional investors who do not have a permanent establishment in Taiwan are still exempt from capital gains tax from trading in securities.

Terminology

Capital gains or losses referred to in this article are computed by taking proceeds from sales and subtracting original acquisition costs and related trading expenses.

> Capital Gains/Losses = Selling Price – Original Acquisition Cost – Necessary Expenses

Acquisition cost is computed using the weighted average costing method.

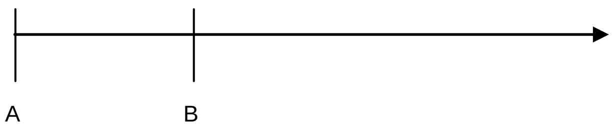
In cases where acquisition cost cannot be determined, deemed cost can be applied. The deemed acquisition cost for listed shares is 85% of the trading price. The deemed acquisition cost for non-listed shares is 80% of the trading price. For shares acquired via stock option, the cost shall be the market price of the share on the exercise date.

Securities include listed stocks, over-the-counter stocks, emerging stocks, or other kinds of stocks; certificates of entitlement to new shares, documents of proof of stock payment, and other types of certificates of proof of entitlement.

Deemed Method – capital gains from trading in securities are computed at 0.1% of the trading price for the period from 2015 onward.

Actual Method (Also known as the Declaration of Net Capital Gains Method) – actual net capital gains are declared at the time of filing a personal income tax return. Net capital gains are taxed separately at a fixed rate of 15%.

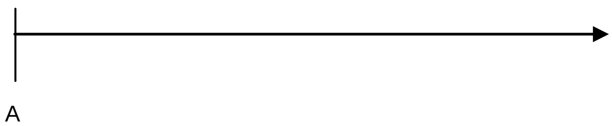
Phased-in Implementation Timeline For Individual Tax Residents:



A: Starting on the effective date (January 1, 2013), tax resident individuals must either qualify as tax exempt or pay tax based on the actual method.

B: Starting on January 1, 2015, one can elect either the deemed method or the actual method approach for paying capital gains tax for trading in securities.

Implementation Timeline for Individual Non-Tax Residents



A: Starting on the effective date (January 1, 2013), only the actual method is available.

Individuals for tax years 2013 and 2014

In any one of the following conditions, only the actual method can be used for paying capital gains tax for trading in securities.

– Stocks not listed and not traded over the counter.
– More than 100,000 shares of emerging stocks sold in a fiscal year.
– Pre-IPO securities acquired that are disposed of after the initial public offering (IPO) or after trading over-the-counter, but excluding:
  - Stocks that were initially offered to the public or started trading over-the-counter before December 31, 2012;
  - Cases where the number of stocks acquired is 10,000 shares or less through underwriting.
– Securities sold by a non-ROC resident.

Under the actual method, if the holding period of securities prior to disposition exceeds 1 year, only half of the net capital gains are taxed. If an individual holds securities before the public offering and continues to hold the securities for more than 3 years after the public offering before disposal, only 25% of the net capital gains are taxed. Capital gains can offset against capital losses. However, net capital losses cannot be carried forward to subsequent years. They expire at the end of the same tax year.

Capital gains tax is exempted for all resident individuals trading in securities in all cases not listed above.

Individuals for tax years 2015 and onward

In any one of the following conditions, only the actual method can be used for paying capital gains tax for trading in securities.

- Listed, over-the-counter or emerging stocks sold for an amount in excess of TWD 1 billion.
- Stocks not listed and not traded over-the-counter.
- More than 100,000 shares of emerging stocks sold in a fiscal year.
– Pre-IPO securities acquired that are disposed of after the initial public offering (IPO) or after trading over-the-counter, but excluding:
  - Stocks that are initially offered to the public or start trading over-the-counter before December 31, 2012;
  - Cases where the number of stocks acquired is 10,000 shares or less through underwriting.
– Securities sold by a non-ROC resident.

Under the actual method, if the holding period of securities prior to disposition exceeds 1 year, only half of net capital gains are taxed. If an individual holds securities before the public offering and continues to hold the securities for more than 3 years after the public offering before disposal, only 25% of net capital gains are taxed. Capital gains can offset against capital losses. However, net capital losses cannot be carried forward to subsequent years. They expire at the end of the same tax year.

Capital gains tax for all resident individuals trading in securities in all cases not listed above will be computed by the tax office using a deemed method.
Taxpayers can elect to accept the computed deemed amount or elect to pay capital gains tax using the actual method. Under the deemed method, tax is computed based on 0.1% of the value of the securities sold in excess of TWD 1 billion per annum.

Changes Affecting Corporations

Net capital gains are added back to compute income subject to AMT. Effective from 2013, the AMT basic deduction amount is reduced to TWD 0.5 million, and the AMT tax rate is increased to 12%. If the holding period of stocks prior to disposition exceeds 3 years, only half of net capital gains are taxed. Net capital losses can be used to offset against net capital gains. Net capital losses can be carried forward for 5 years.

Examples

Scenario 1: Transactions involving a single type of security for one individual taxpayer

Example I

If an investor (ROC resident) sold 200,000 non-listed shares at TWD 10 per share, the selling price is TWD 2 million. If the original purchase price is TWD 1 million and related transaction expenses are TWD 20,000, then net capital gains tax can be computed as follows:
capital gains tax = (2 million – 1 million – 20,000)*15% = 147,000.

Example II

In 2013, if an investor (ROC resident) sold 99,000 shares of emerging stocks at TWD 6 per share in the Gre Tai Securities Market (GTSM), the computed selling price is TWD 594,000. No capital gains tax is payable, as the total number of shares of emerging stocks sold is less than 100,000 shares.

Scenario 2: Transactions involving different types of securities for one individual taxpayer

A taxpayer (Investor A) sold 200 non-listed stocks in 2013. Per regulations, only the actual method can be used to pay tax on net capital gains for this category of transaction. In the same year, Investor A also sold 99,000 shares of emerging stocks in the market. Given that the first category of transaction is subject to the actual method, the second category of transaction must follow suit and be taxed under the same method.

These two transactions must be declared together using one tax filing before the filing deadline, which is 31 May 2014.

Tax computation for companies in respect of stocks sold after 2013

Please refer to the appendix for a quick guide.

Capital gains by corporate taxpayers are subject to Alternative Minimum Tax (AMT). AMT is calculated as follows:

(Income subject to AMT - TWD 0.5 Million)* AMT tax rate of 12% = Alternative Minimum Tax

Example

Assume a company has the following income:

1. Regular Taxable Income of TWD 7 Million
2. Capital gains of TWD 3 Million
3. Investment Incentive Tax Exempt Income of TWD 2 Million

Regular tax payable is computed as 7 million *17% = 1.19 million.
Income subject to AMT is 7 million + 3 million + 2 million = 12 million.
AMT is computed as (12 million – 0.5 million)*12% = 1.38 million.

The company needs to pay either AMT or corporate income tax, whichever is higher. In this example, the amount of tax payable is 1.38 million.

Compliance with Regulations

Net capital gains are taxed separately at a fixed rate of 15%. The rate can be further reduced depending on the period of holding and other circumstances described above. Given that the tax rate applicable for capital gains is much lower than the top bracket for personal income tax, which is 40%, the rate is still considered to be acceptable by the business community in Taiwan.

In order to comply with the new regulations and protect one's interests, Grant Thornton Taiwan suggests that both individuals and domestic corporations shall keep proper records when buying and selling securities in order to properly file tax returns for capital gains and defend against any possible tax investigation.

If you require assistance, please contact our tax division partner Jay Lo.

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Appendix

Capital Gains Tax Comparison Table for Corporations

Item	YR2012	After YR2013
Type of Taxation	● Income Tax Exempt ● Subject to Alternative Minimum Tax	● Income Tax Exempt ● Subject to Alternative Minimum Tax
Tax Rate	10% ~ 12% (Set at 10%)	12% ~ 15% (Set at 12% and subject to change)
Standard Deduction	TWD 2 million	TWD 0.5 million
Holding Period Prior to Disposition	None	If holding period is 3 years or longer, half of net capital gains are tax exempt
Loss Deductibility	Net capital losses can be carried forward 5 years to offset against future net capital gains.	Net capital losses can be carried forward 5 years to offset against future net capital gains.