



Taiwan: Tax Treaty with PRC Signed

Background

Following several years of negotiation and discussions, the Cross-straits Agreement for the Avoidance of Double Taxation and the Cooperation of Tax Matters (“the Agreement”) between Taiwan and the People’s Republic of China (“PRC”) was signed on August 25, 2015. The Agreement will officially take effect from January 1 of the year after the year of approval and ratification process from both jurisdictions.

The Agreement utilizes both the OECD’s Model Tax Convention and the UN’s Model Double Tax Convention as blueprints. Each jurisdiction’s respective domestic tax regulations, economic and trade conditions, various income-generating cross-border activities and existing double taxation eliminating relief measures were taken into consideration in finalizing the Agreement, which also seeks to protect Taiwanese investor’s right to fair taxation and competition. The Agreement addresses methods to resolve tax disputes and enhance bilateral economic and investment relations.

The treaty’s key messages are as follows:

Key Summaries of the Agreement

■ Persons Covered by the Agreement

- ◆ Resident: The Agreement is applicable to any persons (including individuals and companies) defined as tax resident under the tax definition of either PRC or Taiwan.
- ◆ Dual Resident: If the taxpayer is a resident of both jurisdictions (i.e. a dual-resident), then their tax status shall firstly be determined based on the location of the person's permanent home, primary centre of vital interest, and common habitual abode.
- ◆ Indirect Investment Route: A third country intermediate holding company is deemed to be a resident of the territory in which its place of effective management ("PEM") is situated. The PEM is located in one jurisdiction if it meets the following conditions:
 1. An individual or enterprise of one contracting state involved in major operation, financial and human management decisions, or the territory whereby the decision-making is located;
 2. Where a company's financial report, accounting books records, board meeting minutes or shareholders meeting minutes are prepared or kept; and
 3. Where major business operations are located.

■ Applicable Taxes

◆ Taiwan:

Corporate income tax; consolidated individual income tax; the income basic tax

◆ PRC:

Corporate income tax; individual income tax

■ Fundamental Concepts

Type of Income	Description
Business Profits	<p>Profits from an enterprise of one jurisdiction will not be taxed by the other jurisdiction if the enterprise does not carry on business through a permanent establishment ("PE") in that other jurisdiction.</p> <p>PE is defined in the Agreement to include:</p> <ul style="list-style-type: none">● Place of management; a branch; an office; a factory; a workplace; a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;● A building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities lasts more than 12 months;● The furnishing of services, including consultancy services, by an enterprise of a contracting state directly or indirectly through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) in the other jurisdiction for a period

Type of Income	Description
	<p>or periods aggregating more than 183 days within any 12 month period; or</p> <ul style="list-style-type: none"> ● A person who, on behalf of an enterprise from one side, regularly concludes contracts in the other side.
Shipping, Air and Land Transportation	<ul style="list-style-type: none"> ● Income and profits derived by an enterprise of one jurisdiction from the operation of ships and air transport vehicles in the other jurisdiction shall be exempt from tax (including business tax, value added tax or the like) in the other jurisdiction. ● The above article shall also be applied to the income and profits derived from participation in joint venture businesses or other business agencies which are under the treaty scope of this treaty ,but only to the extent of the income and profits that are proportional to the shareholding of such business.
Investment Income	<p>Dividends:</p> <p>This is reduced to 5% where the beneficial owner is a company directly owning at least 25% of the capital of the company which pays the dividends, otherwise 10% of the gross amount of the dividend.</p> <p>Interest:</p> <p>If the beneficial owner of the interest is a resident of one state, the tax charged in the other state shall not exceed 7% of the gross amount of the interest.</p> <p>Royalties:</p> <p>If the beneficial owner of the royalty is a resident of one other state, the tax charged in the other state shall not exceed 7% of the gross amount of the royalty.</p>
Income/Gains from property/ Assets	<ul style="list-style-type: none"> ● Taxing rights for the other state are preserved as follows:- <ul style="list-style-type: none"> ➢ Profit gains derived by a resident of one jurisdiction from the use or alienation of immovable property (including agriculture and forestry income) situated in the other jurisdiction may be taxed in that other jurisdiction. ➢ Gains from the alienation of movable property forming part of the business assets of a permanent establishment which an enterprise of a jurisdiction has in the other jurisdiction, or of movable (personal) property pertaining to a fixed base available to a resident of a jurisdiction in the other jurisdiction for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or such a fixed base, may be taxed in that jurisdiction. ➢ Gains derived from the alienation of shares in a company where the assets of which are comprised of, directly or indirectly, 50% or more immovable property situated in one jurisdiction, may be taxed in that jurisdiction. ● Taxing rights preserved in the resident jurisdiction of the alienator are as follows: <ul style="list-style-type: none"> ➢ Gains derived by a company of a jurisdiction from alienation of ships or aircraft transport vehicles operated in shipping and air transport or movable property pertaining to the operation of such ships and aircraft vehicles, shall be taxed in that jurisdiction. ➢ In order to access an exemption on the alienation of shares in the source country, the shareholding may not exceed 25 % in the 12 months preceding the disposal. ➢ Gains derived from the alienation of any property, other than that referred to above, shall be taxable only in the jurisdiction of which the alienator is a resident.
Individual Services	<ul style="list-style-type: none"> ● Salaries, wages and other similar remuneration derived by a resident in the other jurisdiction in respect of employment or independent status may be taxable in that jurisdiction.

Type of Income	Description
	<ul style="list-style-type: none"> ● Remuneration derived by a resident of one jurisdiction in respect of an employment exercised in the other jurisdiction shall be taxable only in the first-mentioned jurisdiction if all 3 conditions are satisfied: <ul style="list-style-type: none"> ➤ The recipient is present in the other jurisdiction for a period or periods not exceeding an aggregate of 183 days in any 12-month period commencing or ending in the taxable period concerned. ➤ The remuneration is paid by, or on behalf of, an employer who is not a resident of the other jurisdiction. ➤ The remuneration is not borne by a permanent establishment which the employer has in the other jurisdiction.
Transfer pricing for related parties	If a jurisdiction has made any adjustments upon transactions between associate enterprises, the reasonable adjustments should also be made in the other corresponding jurisdiction.

■ Mutual Agreement Procedures

Where a person believes that the tax levied from one of both jurisdictions results or will result in taxed being levied not in accordance with the provisions of the Agreement, the person may, irrespective of the remedies provided by the domestic laws of that jurisdiction, present his case to the competent authority of the jurisdiction of his residency. The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with the provision of this Agreement.

The above-mentioned competent authority shall endeavour, if the objection appears to be justified and if it is not itself able to arrive at a satisfactory solution to resolve the case by mutual agreement with the competent authority of the other jurisdiction with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented, notwithstanding, any time limits in the domestic laws of both jurisdictions.

■ Exchange of Information

Any information received by one jurisdiction shall be treated as confidential and shall be disclosed only to persons or authorities concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use the information only for prior mentioned purposes and shall not use the information on any criminal cases.

KPMG Commentary

The Agreement has enabled both jurisdictions to provide more attractive investment options in terms of taxation. Investors can now enjoy lower withholding taxes on dividends, interests, and royalties; and gains from property transactions may be taxed in one jurisdiction only (subject to

certain conditions). The Agreement also provides a clearer definition on determining what constitutes a permanent establishment. In the case where a corporation is not considered to have a permanent establishment in one jurisdiction, such as a Taiwanese company providing services (e.g. management, data processing, technology, and research and development services) to a Chinese company outside of the PRC, the profit or income received may be exempt from the PRC's corporate income tax.

The Agreement also provides shipping and air transport businesses with more opportunities to enhance their operational efficiency. Dual resident individuals (such as individuals with a household registered in Taiwan under the Household Registration Act, but who have worked in the PRC for more than 5 years consecutively and have become a PRC tax resident) and corporations will be taxed based on a tie-breaker that allocates taxing rights to one jurisdiction, and effectively, prevent taxation in both jurisdictions.

Taking into account the tax treaties between Taiwan and other contracting states and the practical implications, the Agreement may potentially bring into consideration the following from a corporate tax management perspective:

■ Review of Investments and Operating Structures

Indirect investment through offshore holding companies with place of effective management in Taiwan may apply the provisions of the Agreement. Indirect investments taking place after June 30, 2002, where limitation was lifted on direct investment, may still apply the provisions of the Agreement.

Companies are recommended to evaluate its current investment structure and ways to improve efficiencies by comparing the benefits that may arise from direct investment to the implementation of signed Cross Strait Agreement, offshore holding companies that have effective management located in Taiwan, potential tax risk, China and Hong Kong tax treaty, Taiwan's potential implementation of Controlled Foreign Corporation ("CFC") rules, PEM rules, or other related tax-avoidance provisions. They should also measure the overall impact of tax after adjusting the investment and operational structures.

■ Lowering Risks for Double Taxation

◆ Mutual Negotiations

Under the Agreement, should the conduct of businesses between a Taiwanese company and a related Chinese company lead to issues with respect to transfer pricing adjustments in the PRC to increase the Chinese company's taxable income, the companies are entitled to a tax dispute opportunity and may request for a Mutual

Agreement Procedure with Taiwanese tax authorities concerning the right of taxation, effectively eliminating double taxation.

◆ **Bilateral Advanced Pricing Agreement**

After the Mutual Agreement Procedure, Taiwanese company and Chinese company may approach the respective tax authorities to apply for a bilateral Advanced Pricing Agreement, which, once a consensus is reached and approved, not only will comprehensively address and resolve any potential transfer pricing disputes for the relevant years, but will also minimize scrutiny from the tax authorities from either contracting jurisdictions in reviewing or making post transactional adjustments.

By Stephen Hsu, Tax Partner and Betty Lee, Director

Contact us

Head of Tax

Jessie Ho

Partner
T: +886 (2) 8101 6666
E: jessieho@kpmg.com.tw

Corporate Tax Advisory Services

Willis Yeh

Partner
T: +886 (2) 8101 6666
E: wyeh@kpmg.com.tw

Stephen Hsu

Partner
T: +886 (2) 8101 6666
E: stephenhsu@kpmg.com.tw

Kevin Chen

Partner
T: +886 (2) 8101 6666
E: kchen4@kpmg.com

Sherry Chang

Partner
T: +886 (2) 8101 6666
E: schang1@kpmg.com.tw

Global Transfer Pricing Services

Sherry Chang

Partner
T: +886 (2) 8101 6666
E: schang1@kpmg.com.tw

Willis Yeh

Partner
T: +886 (2) 8101 6666
E: wyeh@kpmg.com.tw

Stephen Hsu

Partner
T: +886 (2) 8101 6666
E: stephenhsu@kpmg.com.tw

Kevin Chen

Partner
T: +882 (2) 8101 6666
E: kchen4@kpmg.com.tw

Indirect Taxation Services

Willis Yeh

Partner
T: +886 (2) 8101 6666
E: wyeh@kpmg.com.tw

Stephen Hsu

Partner
T: +886 (2) 8101 6666
E: stephenhsu@kpmg.com.tw

Kevin Chen

Partner
T: +886 (2) 8101 6666
E: kchen4@kpmg.com

Sherry Chang

Partner
T: +886 (2) 8101 6666
E: schang1@kpmg.com.tw

Tax Agent Services for Foreign Institutional Investor (FINIs)

Jessie Ho

Partner
T: +886 (2) 8101 6666
E: jessieho@kpmg.com.tw

Vivia Huang

Partner
T: +886 (2) 8101 6666
E: viviahuang@kpmg.com.tw

Family (Individual) Estate Tax Advisory Services

Willis Yeh

Partner
T: +886 (2) 8101 6666
E: wyeh@kpmg.com.tw

Stephen Hsu

Partner
T: +886 (2) 8101 6666
E: stephenhsu@kpmg.com.tw

Kevin Chen

Partner
T: +886 (2) 8101 6666
E: kchen4@kpmg.com

Sherry Chang

Partner
T: +886 (2) 8101 6666
E: schang1@kpmg.com.tw

Global Mobility Services

Stephen Hsu

Partner
T: +886 (2) 8101 6666
E: stephenhsu@kpmg.com.tw

Investment and Registration Services

Vivian Ho

Partner
T: +886 (2) 8101 6666
E: vivianho@kpmg.com.tw

Accounting, Tax and Payroll Outsourcing Services

Eric Wu

Partner
T: +886 (2) 8101 6666
E: ewu2@kpmg.com.tw

Vivia Huang

Partner
T: +886 (2) 8101 6666
E: viviahuang@kpmg.com.tw

kpmg.com/tw

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

© 2015 KPMG, a Taiwan partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name, logo and "cutting through complexity" are registered trademarks or trademarks of KPMG International.