



TRANSNATIONAL TAXATION NETWORK  
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# Taiwan's Tax Updates 2018

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# Curriculum Vitae

## | Educational Background |

- LLM and jur. Phd of National Taiwan University, College of Law
- regular Visiting Scholar of International Tax Center Heidelberg Uni, International Tax Center of Max Planck Institute Munich.

## | Work Experience |

- Tax Attorney at PwC Taipei Office
- Assistant Professor, Associate Professor, Dean of Faculty of Tax Administration of NTUB 2014-2017
- Senior Consultant at Eternity Law Firm
- Lecturer at Judge's Academy, Finance Academy, IRS, Bar Association, CPA Association.
- Member of IFA Taipei, Deutsche Steuerjurist Gesellschaft

## | Expertise |

- Tax Litigation and Tax Planning
- International Taxation and Practice

## | Journal Column |

- Economic Daily, Tax Journal Magazine

## | Publish |

- Burden of Proof in Tax Litigation, Case Study on Tax Litigation
- Introduction of BEPS and Taxation on E-commerce, etc and 100+ articles

# Taiwan Tax Updates since 2017

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DPP government with absolute majority in parliament-  
tax reforms were always on agenda

1. Dividends Tax Reform-Simplified Withholding System
2. Taxpayer's Right Protection Act(TARP)-More Fair Rights Protection?
3. Cross-border E-commerce Taxation- Fair VAT and Corporate Taxation for MNE?
4. Estate and Gift Taxation- Rich Daddy pays more?
5. Information Exchange and Anti-Money Laundering- Rich Daddy must be aware!

# Dividend Tax Reform

from complicated imputation to  
simplified withholding system

好股利  
滾出大雪球



APPLICABLE FROM 1.1.2018

# Dividends Tax Reform(1)

## Overview

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### Before 2017-The **Imputation** System

- Corporate Tax Rate: 17%,
- Personal Tax Rate: 5~ 40%,and 45%
- 10% for undistributed corporate earnings.
- Ver complicated, not easy to comply
  - ->corporates need to maintain Imputation Credit Account(ICA)

### From 2018 – The **Withholding** System

- Simplified and easy to comply.
- Raise of Corporate Tax Rate:17%->**20%**
- Personal Tax Rate: **45% abolished**
- undistributed earnings: 10%->**5%**
- ICA accounting is abolished

# Dividends Tax Reform(2) for Domestic Personal Investor

## Before 2017-The Imputation System

For domestic personal shareholder:

(1) dividends to be included in personal consolidated tax base, then subject to 5%~ 45% tax rate:

(2) 50% of corporate tax deemed as tax credit (partially imputation)

(3) overall tax burden (corporate and personal income) combined may reach 49.7%! → sparks this Reform!!

## From 2018 – The Withholding System

For domestic personal shareholder:

(1) Dividends shall be subject to 28% flat tax rate, then exclude from consolidated tax base.

(2) Revoke the tax credit for the corporate tax paid.

(3) overall tax burden for domestic personal shareholder reduced to 42.4%!

# Dividends Tax Reform(2) for Domestic Corporate Investor

## Before 2017-The Imputation System

For domestic corporate shareholder:

(1) Participation Exemption- dividends received is 100% excluded from corporate tax base.

(2) Dividends received and kept in retained earning shall subject 10% of undistributed earning tax

## From 2018 – The Withholding System

For domestic corporate shareholder:

(1) Participation Exemption remains unchanged.

(2) Undistributed earning tax cut to 5%.

# Dividends Tax Reform(3) for Foreign Investor (both personal and corporate)

## Before 2017-The Imputation System

For Foreign Investors(no PE, Residence or stay 183 days less):

- (1) Dividends received subject to withholding tax of 20%
- (2) Investors from treaty countries subject to 10% withholding. (Like JP, DE, SG and NL, no LOB clauses)
- (3) Overall tax burden: No-treaty: 33.6%, With treaty: 25.3%
- (4) Gap between domestic and foreign investor: 49.7% vs 33.6% (25.3%) !  
→ Fake foreign Investments also spark this Reform!!

## From 2018 – The Withholding System

For Foreign Investors: :

- (1) Withholding rate from 20% → 21%
  - (2) 10% withholding for treaty countries remains the same.
  - (3) Overall tax burden: No-treaty: 36.8%, With treaty: 28%
  - (4) Narrow the gap between domestic and foreign investor:
    - 42.4% vs 36.8% (28%)
- Gap from 16.1% → 5.6%



# Taxpayer's Right Protection Act(TARP)



-More Fair Rights Protection?

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APPLICABLE FROM 28.12.2017

# Purpose of Taxpayers' Right Protection ACT(TRPA)

Implementing the constitutional protection of  
Taxpayers' rights of existence, work, property, and other fundamental rights.

Implementing the promise to adopt International Covenant on Economic, Social and Cultural Rights.

Backgrounds of this Legislation:

- Taxpayers have very low chances in tax appeal (c. 20~30%) and litigation(c. 16%, effectively only 6%).
- Even the taxpayers win a case and the administrative courts revoke the tax authorities' dispositions, the case usually return to the original authorities and are subject to another review, which further prolong the whole procedure.

# Focuses of TRPA(1)-Legislative Aspects

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Tax preferential is permitted with reasonable purpose.

Tax incentives shall provide a definite implementation period and shall hold a public hearing and bear a Tax Expenditure and Benefit Analysis. (article 5, 6)

Transparency of Taxpaying Information

The authorities shall make public the information, such as “Income Allocation Brackets”, “Tax Expenditure and Benefit Analysis”, “other information regarding tax equity”. (article 8)

# Focuses of TRPA(2) - Administrative Aspects(1)

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## Taxation according to Tax Laws

Administrative rulings and interpretation can merely explain the original intention of tax laws and cannot increase tax obligation. (article 3)

## Transparency and Review of Tax Rulings

Tax rulings are effective only accessible to the public.

All tax rulings shall be subject to review every four years. (article 9)

## Tax Limitation to Existence Minimum (article 4)

The expense for maintaining taxpayers' and their dependents' basic living shall not be taxed.

The expense for basic living is "60% of the median rate of the disposable income per person"\* in the past year.

\*amount applicable to tax year 2017 is NTD16,6000(USD5,500) per person.

# Focuses of TRPA(3) - Administrative Aspects(2)

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## Tax Avoidance shall not be treated as Tax Evasion (article8)

- Definition of tax avoidance(the so-called “GAAR”): Irregular transaction with the principal purpose to acquire tax benefits is deemed as abusive and shall be adjusted in accordance with actual economic substance.
- Tax Avoidance shall be subject to surcharges and interests.
- Only in case that taxpayers conceal, make false and misleading presentation, or provide incorrect information to material items, a penalty will be imposed on tax avoidance.
- Taxpayer may, before engaging in specific transactions, ask tax authorities for consultation(the “advance ruling”); tax authorities shall reply within six months.

# Focuses of TRPA(4) - Administrative Aspects(3)

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## Due Process during Tax Investigation(article 11, 12)

- The means of investigation must be legal, necessary, and minimizing the intrusion into the taxpayers' rights.
- Tax authorities shall bear the burden of proof for tax assessment and penalty.
- The evidence obtained from illegal investigation shall be excluded from the basis of tax assessment and penalty.
- Taxpayers have a right to statement before the assessment or penalty is made by tax authorities.
- The tax assessment or penalty shall be in writing and state therein its reason and legal basis.
- In the case of an investigation, taxpayers shall be noticed in advance and in writing, stating the purpose and scope of investigation, and may be represented in meetings by an attorney.
- Both taxpayers and tax authorities are allowed to make audio or video recordings during investigation.

# Focuses of TRPA(5) - Administrative Aspects(4)

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## Principles for Tax Estimation (article 14)

- Tax estimation is allowed due to uncertainty or limited resources. The estimation basis and calculation shall be in writing.
- Tax estimation shall be by the means which is nearest to the actual amount when more than two means exist.
- In the case that taxpayers fulfill their obligation to provide assistance, tax authorities shall not impose penalty according to the estimation.

# Focuses of TRPA(6) - Administrative Aspects(5)

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## Principles for Tax Penalty (article 16)

- Taxpayers' acts in breach of are not punishable unless committed intentionally or negligently.
- No taxpayer may be excused from penalty by reason of his ignorance of the law, but the penalty may be reduced or exempted as the situation may justify.
- In the case of tax penalty, consideration shall be given to such factors as the culpability of the taxpayers, the impact resulted therefrom, and the benefits gained from such an act, as well as the financial capacity of the taxpayers.



# Focuses of TRPA(7) –Tax Remedies(1)

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Tax appeal committee shall consist of members with ratio of scholars and experts from outside the civil service not be less than two-thirds. (article 17)

## Tax Senates in Administrative Courts (article 18)

- High and Supreme Courts will set up the “Tax Senates” to handle tax litigation.
- The judges of tax senates are obliged to attend training courses or seminars on tax laws annually in order to keep their capacity up to dates.

*Issues: Taiwan tax judges’ selection is usually based on seniority than their qualifications. Therefore, the tax senates are criticized for incompetency in tax practice and the very sympathy for tax authorities. Tax litigation is not recommended as the final resort.*

# Focuses of TRPA(7) –Tax Remedies(2)

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Tax senate shall decide the exact amount of tax payable within the scope of taxpayer's complaint, except for complex cases which facts are difficult to be clarified.  
(article 21-3)

Tax payable arising from those cases which are filed for recheck or re-assessment and then revoked as result of litigation or appeal shall be determined within 15 years. Otherwise the tax payable may not be assessed again.  
(article 21-4)

# Focuses of TRPA(8) –Taxpayers' Rights Protection Advisory Committee

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Ministry of Finance shall set up 'Taxpayer's Rights Protection Advisory Committee', carrying out following missions (article 19):

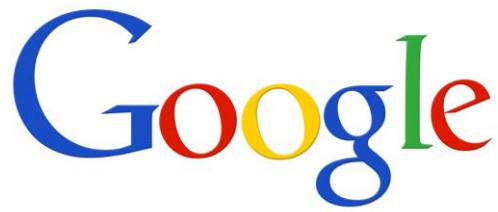
- Research and proposal of policies and mechanisms concerning taxpayers' rights protection.
- Research, proposal, revision, and review of the effect of plans concerning taxpayer rights protection.
- Education, training, and promotion of taxpayer rights protection.
- Coordination among every agency in relation to matters of taxpayers' rights protection.
- Review of implementation of tax preference and information which must be disclosed in accordance with TRPA.

# Focuses of TRPA(9) –Taxpayers' Rights Protection Advocates

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Each tax authority shall appoint “Taxpayers’ Rights Protection Advocates”, carrying out following missions (article 20):

- The assistance to taxpayers to communicate and coordinate tax disputes.
- The acceptance of complaints or petitions of taxpayers, and propositions of recommendations for improvement.
- When taxpayers seek remedy, the Advocate shall provide essential consultation and assistance.
- Reporting of the results of work on taxpayer rights protection every year.
- The Advocate may conduct an investigation if necessary, when dealing with taxpayer rights protection matters.
- The name and contact of the Advocates shall be disclosed.



# Cross-border E-Commerce Taxation

-Fair VAT and Corporate Taxation for Multi-National Enterprise?

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VAT APPLICABLE FROM 1.5.2017

CORPORATE TAXATION APPLICABLE FROM 1.1.2017

# Simplified VAT Regimes for cross-border E-commerce 1.5.2017

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- Applicable for sales of digital services to domestic consumer. (Sales of physical goods via digital platform are subject to low value exemption.)
- Foreign enterprise, which has no PE in Taiwan but conducts cross-border sales of electronic services to local consumers, shall be VAT taxpayer and liable to VAT for sales arising therefrom.
- Registration Threshold: annually sales of NT480,000 (US16,000)
- Tax compliance (return filing and payment) shall be conducted on a bimonthly basis.

# Practice of E-commerce VAT in Taiwan

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- E-Commerce Business registered
  - 75 business registered (end of Jan 2018)
  - Big Digital Players registered: Netflix(NL), Agoda(SG), E-bay(CH), Google Asia(SG), Expedia(SG), Valve(US), Apple Distribution(IE), Amazon(US, LU, JP), Alibaba(SG), Uber(NL), Facebook(IE) Airbnb(IE).
  - Nationalities of registered business:
    - Ireland, USA, Singapore, Netherland, Switzerland, Japan and others.
    - Taiwan has tax treaties with NL, SG and CH.
- VAT Revenue from cross-border digital sales:
  - expected 2 billion NT (US60 million) in 2017(May to Dec).
  - VAT rate 5%

# Practice of E-commerce VAT in Taiwan-old VAT pending litigation



## The Uber VAT case:

- From **2013-2016**, Uber BV(NL) was regarded to conduct transport service to Taiwanese consumers with the assistance of locally established Uber Taiwan Ltd.
- Tax authorities apply the “substance over form” principle(so-called “GAAR”) to **deem the Uber Taiwan responsible for the related VAT.**
- Uber Taiwan was assessed with NT 50 million VAT payable **plus 1.5 times of tax penalty.**
- The case was decided against Uber Taiwan in first instance and now repealed to supreme administrative court.

## ◦ The Agoda VAT case:

- Almost the same situation as Uber case. This case is pending in tax appeal.
- Agoda International (SG) had a liaison office in Taipei, seeking cooperation with local hotels. Tax authorities regarded this office as PE and assessed 10 million VAT plus 1 times of penalty.

agoda.com



smarter hotel booking



# Simplified Corporate Tax Regime for cross-border E-commerce

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- Promulgated on 2.1.2018 but being **effective retroactively from 1.1.2017**
- Taxable Base Calculation by conducting inbound online digital sales, without PE in Taiwan:
  - **Net Income=Net Sales \*30%**(Net Profit Rate)
  - **Net Taxable Income=Net Income \*50%** (Contribution Rate)
  - MNE shall file application in advance for the above mentioned “Net Profit Rate” and “Contribution Rate”
  - Applicable corporate tax rate: 17% in 2017, 20% from 2018
- **B2B sales: local enterprise shall withhold 20%** of Net Taxable Income when making the purchase
- **B2C sales: the MNE shall file corporate tax return in June**, stating and calculating the Net Sales to consumers, Incomes and tax payable and make payment.

# Serious Legal Issues of the Simplified Corporate Tax Regime

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Issue 1: Promulgated on 2.1.2018 by Ministry of Finance but **being effective retroactively** from 1.1.2017?

Issue 2: Taiwan's income **tax law does not regulate** or authorize the finance ministry to decide:

- foreign business, **which has source income but no fixed business place in Taiwan**, shall bear the tax responsibilities arising from cross-border B2C sales.

These two legal issues are to be discussed in coming months.

# Estate and Gift Taxation

- Rich Daddy pays more?

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APPLICABLE FROM 12.5.2017

# Tax Rate Raised double and progressively

## Before 11.5.2017-Flat Rate System

- Estate Tax: basic exemption NT12 million, plus other deductions.
- Gift Tax: annually exemption NT 2.2 million
- immovables are assessed with a favorable standard
- Net taxable estate as well as taxable gift are subject to a flat rate of 10%.

## From 12.5.2017 - slightly Progressive

- basic and annual exemptions remain the same.
- Introduce progressive tax rate of 15% and 20%**
  - (1) taxable estate: 10% for >50M, 15% for 50M<~<100M, 20% for >100M
  - (2) taxable gift: 10% for >25M, 15% for 25M<~<50M, 20% for >50M
- increased revenue is designated to support health care.
- Rich family planned in advance and avoid the increased tax rate.



# Information Exchange and Anti-Money Laundering Measures

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-Rich Daddy must be aware!

CRS EFFECTIVE IN 2019

NEW ANTI-LAUNDERING APPLICABLE FROM 28.6.2017

# Taiwan's CRS and Due Diligence schedule

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- Taiwan is not labeled by EU as non-cooperative tax haven due to promise of implementing CRS and to exchange information.
- **Taiwan's CRS(common reporting standard) will be effective from 2019.**
- Tax Information will be automatically exchanged with countries with tax treaties from June 2020.
- **High value financial accounts(over US 1M) shall be subject to due diligence review in 2019.**
- Low value financial accounts(over US 0.25M-1M) shall be reviewed in 2020.

# Strict Anti-Money Laundering Controls since 28.6.2017

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- Withdraw, deposit or wire cash for more than **NT500,000 from personal accounts shall be subject to bank's review**
- **Lower the threshold for declaration at border controls:** passenger with foreign currency over US 10,000 and gold over US 20,000 shall make declaration.
- Lawyers, CPA, notary, bookkeeper, land agent **shall review money laundering risk** while conducting property transactions.
- Using nominee in property arrangement without justified reason **will be prosecuted for tax evasion and complicit of money laundering.**->according to regulations and court decisions

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Thank you  
For the Attention

