

principally of immovable property situated in a territory, may be taxed in that territory.

(3) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a territory has in the other territory, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other territory.

(4) Gains derived by an enterprise of a territory from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that territory.

(5) Gains from the alienation of any property other than that referred to in paragraphs (1) to (4), shall be taxable only in the territory of which the alienator is a resident.

(6) Where an individual was a resident of a territory for a period of 5 years or more and has become a resident of the other territory, paragraph (5) shall not prevent the first-mentioned territory from taxing under its domestic law the capital appreciation of shares in a company resident in the first-mentioned territory for the period of residency of that individual in the first-mentioned territory. In such case, the appreciation of capital taxed in the first-mentioned territory shall not be included in the determination of the subsequent appreciation of capital by the other territory.

#### Article 14 – Income from Employment

(1) Subject to the provisions of Articles 15 to 18, salaries, wages and other similar remuneration derived by a resident of a territory in respect of an employment shall be taxable only in that territory unless the employment is exercised in the other territory. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other territory.

(2) Notwithstanding the provisions of paragraph (1), remuneration derived by a resident of a territory in respect of an employment exercised in the other territory shall be taxable only in the first-mentioned territory if:

- (a) the recipient is present in the other territory for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
  - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other territory, and
  - (c) the remuneration is not borne by a permanent establishment which the employer has in the other territory.
- (3) The provisions of paragraph (2) shall not apply to remuneration for employment within the framework of professional hiring out of labour.
- (4) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the territory of which the enterprise operating the ship or aircraft is a resident.

#### Article 15 – Directors' Fees

Directors' fees and other similar payments derived by a resident of a territory in his capacity as a member of the board of directors of a company which is a resident of the other territory may be taxed in that other territory.

#### Article 16 – Artistes and Sportspersons

(1) Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a territory as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other territory, may be taxed in that other territory.

(2) Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the territory in which the activities of the entertainer or sportsperson are exercised.



Article 23 – Non-discrimination

(1) Residents of a territory shall not be subjected in the other territory to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which residents of that other territory in the same circumstances, especially with respect to residence, are or may be subjected.

(2) The taxation on a permanent establishment which an enterprise of a territory has in the other territory shall not be less favourably levied in that other territory than the taxation levied on enterprises of that other territory carrying on the same activities. This provision shall not be construed as obliging a territory to grant to residents of the other territory any personal allowances, reliefs and reductions for taxation purposes which it grants only to its own residents.

(3) Except where the provisions of paragraph (1) of Article 9, paragraph (8) of Article 11, or paragraph (6) of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a territory to a resident of the other territory shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned territory. Similarly, any debts of an enterprise of a territory to a resident of the other territory shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned territory.

(4) Enterprises of a territory, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other territory, shall not be subjected in the first-mentioned territory to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned territory are or may be subjected.

(5) The provisions of this Article shall apply to taxes which are the subject of this Agreement.

Article 24 – Mutual Agreement Procedure

(1) Where a person considers that the actions of one or both of the territories result or will result for him in taxation not in accordance

with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those territories, present his case to the competent authority of the territory of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

(2) The competent authority shall endeavour, if the objection appears to it 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 territory, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the territories.

(3) The competent authorities of the territories shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the avoidance of double taxation in cases not provided for in the Agreement.

(4) The competent authorities of the territories may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 25 – Exchange of Information

(1) The competent authorities of the territories shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of a territory, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

(2) Any information received under paragraph 1 by a territory shall be treated as secret in the same manner as information obtained under the domestic laws of that territory and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the



taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

(3) In no case shall the provisions of paragraphs (1) and (2) be construed so as to impose on a territory the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other territory;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other territory;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

(4) If information is requested by a territory in accordance with this Article, the other territory shall use its information gathering measures to obtain the requested information, even though that other territory may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a territory to decline to supply information solely because it has no domestic interest in such information.

(5) In no case shall the provisions of paragraph 3 be construed to permit a territory to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

#### Article 26 – Procedural Rules for Taxation at Source

(1) If in one of the territories the taxes on dividends, interest, royalties or other items of income derived by a person who is a resident of the other territory are levied by withholding at source, the right of the first-mentioned territory to apply the withholding of tax at the rate provided under its domestic law shall not be affected by the provisions

of this Agreement. The tax withheld at source shall be refunded on application by the taxpayer if and to the extent that it is reduced by this Agreement or ceases to apply.

(2) Refund applications must be submitted by the end of the fourth year following the calendar year in which the withholding tax was applied to the dividends, interest, royalties or other items of income.

(3) Notwithstanding paragraph (1), each territory shall provide for procedures to the effect that payments of income subject under this Agreement to no tax or only to reduced tax in the territory in which the items of income arise may be made without deduction of tax or with deduction of tax only at the rate provided in the relevant Articles.

(4) The territory in which the items of income arise may ask for a certificate by the competent authority on the residence in the other territory.

(5) The competent authorities may by mutual agreement implement the provisions of this Article and if necessary establish other procedures for the implementation of tax reductions or exemptions provided for under this Agreement.

#### Article 27 – Application of the Agreement in Special Cases

This Agreement shall not be interpreted to mean that a territory is prevented from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance. If the foregoing provision results in double taxation, the competent authorities shall consult each other pursuant to paragraph (3) of Article 24 on how to avoid double taxation.

#### Article 28 – Protocol

The attached Protocol shall be an integral part of this Agreement.

#### Article 29 – Entry into Force

(1) The Taipei Representative Office in the Federal Republic of Germany and the German Institute in Taipei will inform each other in writing about the adoption of this Agreement in their respective territories. This Agreement shall enter into force on the date of the later of these notifications.

An individual who stays in Taiwan for 300 days or more during a calendar year will be considered a tax resident and is required to file an individual ITR and pay taxes after deduction of personal exemptions and other deductions for income received in Taiwan together with the remuneration paid by his or her foreign employers for services rendered in Taiwan.

| Compensation paid in or recharged to Taiwan  | Compensation paid overseas without a recharged to Taiwan   |
|--|--|
| <ul style="list-style-type: none"> <li>• 100% Taiwan-sourced income</li> <li>• Taxed on progressive tax rate (ranging from 5% to 40%)</li> </ul> | <ul style="list-style-type: none"> <li>• 100% Taiwan-sourced income and no pro-rating</li> <li>• Taxed on progressive tax rate (ranging from 5% to 40%)</li> </ul> |

#### Summary of tax filing obligations

| Days in Taiwan (during a calendar year) | Residence status | Offshore compensation from foreign employer     | Final tax rate on annual tax return |              | Exemptions and reductions claimed on tax return |
|---|------------------|---|-------------------------------------|--------------|---|
|   |                  |   | Salary and separation pay           | Other income |   |
| 1-90                                    | Non-resident     | Non-taxable                                     | N/A                                 | N/A          | N/A   |
| 91-182                                  | Non-resident     | Pro-rated according to number of days in Taiwan | 18%                                 | 20%          | N/A   |
| 183-299                                 | Resident         | Pro-rated according to number of days in Taiwan | Progressive tax rate                |              | Entitled  |
| 300 or more                             | Resident         | 100% taxable in Taiwan                          | Progressive tax rate                |              | Entitled  |

#### ¶2-260 Taxable income

Income that is liable to individual income tax can be classified into the following ten categories:

- Business income;
- Income from professional services;
- Salaries and wages;
- Interests;
- Rentals and royalties;
- Income received from self-undertaking in farming, fishing, animal husbandry, forestry, or mining by individuals or families;
- Income from property transactions;
- Prizes or awards obtained from contests, games or lotteries;
- Separation pay; and
- Other income.

Residents and non-residents in Taiwan are subject to taxes on Taiwan-sourced income which is derived from services rendered in Taiwan. The income includes salaries, interests, dividends, rental income or any other income paid by Taiwan entities or residents. The compensation paid overseas by a foreign employer will also be considered Taiwan-sourced income to residents and non-residents alike, with the exception of non-residents staying in Taiwan for 90 days or less in a calendar year. Taiwan tax is based on the territorial tax system and thus when it comes to compensation, a key consideration for the tax authority when determining the source of income is the place where the services are performed.

#### Income scope

Taxable income is classified into the following ten categories:

- Business income
  - Any cash or stock dividends distributed to shareholders by corporations;
  - Profits distributed by co-operatives to their members;



- Surplus in gross profits by partnerships to their partners;
  - Profits earned by sole proprietors;
  - Profits from incidental trading activities such as gains earned through the sale or exchange of merchandise by individuals who do not register themselves as business enterprises; and
  - Retail earnings from an individual distributor of a multi-level direct sales business whose total annual purchases exceed NT\$70,000.
- Income from professional services
    - Professional services are services offered by lawyers, certified public accountants, architects, engineers, doctors, pharmacists, midwives, writers, brokers, artisans, performers and persons who make a living by their own profession;
    - Income from professional services is taxable after deduction of office rentals, salaries, necessary transportation fees, and other direct and necessary expenses; and
    - The following items are also considered as income from professional services: written articles, books, musical compositions, musical productions, dramas, cartoons and payment for giving speeches and lectures.
  - Salaries and wages
    - Salaries and wages are defined as any salaries and wages received for labor performed either by civil or private employees or any payments paid for a task or project;
    - Taxable salaries and wages usually include the following:
      - (a) Base salary;
      - (b) Bonuses;
      - (c) Commissions;
      - (d) Allowances;
      - (e) Annuities;

- (f) Awards;
- (g) Other similar substitutes or compensations;
- (h) Education allowance provided to an expatriate and his or her family members is considered to be taxable income;
- (i) Per diem for travelling within Taiwan is exempted from the taxable income if it does not exceed the following limit per day:

| Employees  | Per diem |
|--|----------|
| Chairman, general manager, manager, factory director | NT\$700  |
| Other employees                                      | NT\$600  |

Per diem for overseas travelling is exempted from the taxable income if the amount does not exceed the prescribed limit announced under the profit-seeking enterprise income tax for overseas business travels;

- (j) The voluntary pension contribution and voluntary annual insurance premiums indicated in the *Labor Pension Act* of up to 6% of an employee's monthly wages or salary is exempted from the taxable income; and
- (k) From the legal interpretations announced by the tax authority, an item may be exempted from the taxable income of an expatriate if it is not being provided as an allowance to the expatriate or the allowance is under a defined limit:
  - (i) Housing and other related items such as utilities, cleaning, and repair and maintenance expenses, if the expense is specified in the housing agreement: Housing is provided by the employer and the housing or rental agreement is entered into by the employer and the landlord;

- (ii) Automobile provided by the employer: The automobile is registered under the employer's name. Related expenses such as maintenance, insurance, etc are exempted from the taxable income. If the automobile is being rented, the rental agreement of the automobile has to be entered into by the employer and the owner of the automobile;
- (iii) Moving and relocation expense: Expenses incurred for transportation of household goods and personal effects due to a job transfer are exempted from the taxable income if the amount is being compensated by the employer;
- (iv) Vacation or home leave paid by the employer: Vacation or home leave allowance which is reimbursed by the employer to the expatriate and specified in the assignment contract is exempted from the taxable income for the expatriate. However, if the vacation or home leave allowance is reimbursed to the expatriate's family, the allowance is taxable;
- (v) Overtime payment: The amount is exempted from the taxable income if the total number of hours of overtime work does not exceed 46 hours per month; and
- (vi) Group term life insurance paid by the employer: The amount is exempted if the paid insurance does not exceed NT\$2,000 per month.

- Interests

Interest income is defined as any interest received from bonds (government, corporate or financial), short-term commercial papers, deposits and loans. Government bonds include notes, bonds, securities and certificates issued by the government at all levels.

- Income received from a raffle-savings account in excess of the amount of savings shall be deemed as interest income;
- Interest paid by government, corporate or financial bonds to an individual is withheld separately at the rate of 10% and exempted from the consolidated income; and
- The following interest income paid to an individual is withheld at the rate of 10% and exempted from the consolidated income:
  - (a) The excess amount of short-term commercial papers at their maturity and the selling price at their first issuance is considered to be interest paid;
  - (b) Interest distributed from beneficiary securities or asset-backed securities issued in accordance with the *Financial Asset Securitization Act* and the *Real Estate Securitization Act*; and
  - (c) Interest derived from the excess of the original purchase price of a repo (repurchase agreement/reverse sell agreement (RP/RS)) trade of the aforementioned bonds, securities or short-term commercial papers and the sale price at their maturity.
- Rentals and royalties
 

Rentals and royalties income is defined as income received from leasing property, utilization of money obtained as the price of a lien on property, or royalties on patents, registered trademarks, copyrights, secret formulas and all kinds of franchise made available for use by others.

  - Any income derived from long-lasting tenant rights and superficies created for fixed terms is deemed as income from lease;
  - Money received in the form of rental deposit or other similar forms for leasing property, and for money received as the price of a lien created on property, the deposit multiplied by the one-year term deposit interest rate is deemed as rental income;



| Scenario VI                                  | Calculation (NT\$) |
|--|--------------------|
| Total taxable basic income                   | 12,894,000         |
| Less: Fixed exemption of NT\$6 million       | 6,894,000          |
| Tax rate                                     | 20%                |
| Total individual income tax/income basic tax | 1,378,800          |
| Less: Foreign tax credit                     | 0                  |
| Income basic tax                             | 1,378,800          |
| Final Tax payable                            | 2,352,600          |
| Less: Total of net withholding tax           | (400,000)          |
| Tax balance due                              | 1,952,600          |

Since the regular individual income tax amount of NT\$2,352,600 (see Scenario III) is higher than the income basic tax amount of NT\$1,378,800, the individual will be liable to pay the higher amount which is the regular individual income tax of NT\$2,352,600.

• Scenario VII

- Tax status: Resident individual who will stay in Taiwan for more than 300 days in the calendar year 2013;
- Marital status: Married with two children (under 20 years old) as dependants;
- Calculating tax payable jointly;
- Standard deduction is adopted for the estimated tax calculation;
- Taxpayer's salary income from withholding statements of NT\$8,500,000;
- Total of net withholding tax of NT\$400,000;
- Overseas dividend income of NT\$12,000,000.

| Scenario VII                                 | Calculation (NT\$) |
|--|--------------------|
| Total Taiwan-sourced income (gross)          | 8,500,000          |
| Less: Exemptions and deductions:             |                    |
| Personal exemption (NT\$85,000 × 4)          | (340,000)          |
| Standard deduction                           | (158,000)          |
| Special deduction for salary                 | (108,000)          |
| Total exemptions and deductions              | (606,000)          |
| Net taxable income                           | 7,894,000          |
| Add overseas dividend income                 | 12,000,000         |
| Total taxable basic income                   | 19,894,000         |
| Less: Fixed exemption of NT\$6 million       | 13,894,000         |
| Tax rate                                     | 20%                |
| Total individual income tax/income basic tax | 2,778,800          |
| Less: Foreign tax credit                     | 0                  |
| Income basic tax                             | 2,778,800          |
| Final tax payable                            | 2,778,800          |
| Less: Total of net withholding tax           | (400,000)          |
| Tax balance due                              | 2,378,800          |

In this scenario, the regular individual income tax amount of NT\$2,352,600 (see Scenario III) is less than the income basic tax amount of NT\$2,778,800. The individual will be liable to pay: NT\$2,352,600 + (NT\$2,778,800 - NT\$2,352,600) = NT\$2,778,800.

• Scenario VIII

- Tax status: Resident individual who will stay in Taiwan for more than 300 days in the calendar year 2013;
- Marital status: Married with two children (under 20 years old) as dependants;
- Calculating tax payable jointly;

- Standard deduction is adopted for the estimated tax calculation;
- Taxpayer's salary income from withholding statements of NT\$8,500,000;
- Total of net withholding tax of NT\$400,000;
- Overseas dividend income of NT\$12,000,000;
- Foreign taxes paid during tax year 2013 amounting to NT\$1,000,000.

| Scenario VIII                                  | Calculation (NT\$) |
|--|--------------------|
| Total Taiwan-sourced income (gross)            | 8,500,000          |
| Less: Exemptions and Deductions:               |                    |
| Personal exemption (NT\$85,000 × 4)            | (340,000)          |
| Standard deduction                             | (158,000)          |
| Special deduction for salary                   | (108,000)          |
| Total exemptions and deductions                | (606,000)          |
| Net taxable income                             | 7,894,000          |
| Add overseas dividend income                   | 12,000,000         |
| Total taxable basic income                     | 19,894,000         |
| Less: Fixed exemption of NT\$6 million         | 13,894,000         |
| Tax rate                                       | 20%                |
| Total individual income tax / income basic tax | 2,778,800          |
| Less: Foreign tax credit                       | (426,200)          |
| Income basic tax                               | 2,352,600          |
| Final Tax payable                              | 2,352,600          |
| Less: Total of net withholding tax             | (400,000)          |
| Tax balance due                                | 1,952,600          |

Calculation of foreign tax credit:

Total foreign tax credit amount that may be claimed = (Income basic tax amount – Regular income tax amount) × Total foreign income ÷ (Taxable basic income amount – Regular taxable income)

$$(NT\$2,778,800 - NT\$2,352,600) \times NT\$12,000,000 \div (NT\$19,894,000 - NT\$7,894,000) = NT\$426,200$$

With the application of a foreign tax credit, the individual will be liable to pay the regular income tax of NT\$2,352,600 since the income basic tax amount is the same as the regular income tax amount.

#### Taxation of stock option, RSU and ESPP

| Type                | Stock Option  | RSU  | ESPP   |
|---------------------|---|--|--|
| Critical date       | (1) Grant date<br>(2) Vesting date<br>(3) Exercise date | (1) Grant date<br>(2) Vesting/<br>release date | (1) Grant date<br>(2) Purchase date  |
| Tax year            | Year of exercise  | Year of vesting/<br>release                    | Year of vesting/<br>release  |
| Calculation formula | Taxable other income = Total income*                    |  | Total days in Taiwan between (1) and (2)<br><br>Total days between (1) and (2) |

#### Example

- (1) Grant date: 1 January 2010; Vesting date: 1 June 2011; Exercise date: 1 June 2012
- (2) Granted: 2,000 shares; Exercised: 1,000 shares
- (3) Exercise price: NT\$1,000 per share; Fair market value (FMV) on exercise date: NT\$3,000 per share
- (4) Period of Taiwan assignment is from 1 January 2011 to 1 January 2012
- (5) The individual was physically present during the whole Taiwan assignment



|  |
|--|
| Total income: 2,000 (FMV – Exercise price × 1,000 = NT\$2,000,000)   |
| Taxable other income = NT\$2,000,000 × $\frac{152 \text{ days (1/1/2011 – 6/1/2011)}}{517 \text{ days (1/1/2010 – 6/1/2011)}}$ |
| = NT\$588,007  |

## ¶2-300 Interest and penalties

### Default by taxpayer in compliance matters

An individual taxpayer may be penalized for:

- failure to file the individual ITR and the tax authorities discover that he or she has received taxable income;
- submitting returns with annual incomes that fail to disclose or omit certain parts of the income; or
- failure to pay any amount of income tax due by the prescribed deadline.

In such instances, the tax authorities will order the taxpayer to remedy the situation within a specified time and a penalty of up to twice or triple the amount of the tax due can be imposed, depending on the reason behind the short payment, additional tax due or missed report.

### Consequences of late-filing

Under Art 108 of the ITA, individual taxpayers will not be subject to penalties imposed because of late or failure to file the individual ITR, ie there is no late-filing penalty for individual taxpayers. However, if taxpayers owe any taxes they are obliged to pay, they will be subject to up to twice or triple the amount of the tax due as penalty under Art 110 of the Act.

### Paying short and missed reporting

“Paying short” occurs when taxpayers filed an annual ITR in accordance with the provisions of the Act but the reported income does not match the tax authority’s record and which resulted in an additional tax due. In this case, the penalty will be up to twice the amount of the additional tax due.

On the other hand, “missed reporting” happens when taxpayers did not file an annual ITR in accordance with the provisions of the Act but was discovered by the tax authority, and it led to a tax due. In this case, the penalty will be up to triple the amount of the tax due.

### Late-payment surcharge

Taxpayers are obligated to pay their tax dues by the filing deadline, 31 May of each year. If a taxpayer fails to pay any amount of income tax due by the deadline, the taxpayer is subject to a late-payment surcharge. The surcharge is calculated at 1% of the tax amount due for every two days of delay, up to 15% of the tax amount due (ie up to 30 days). If the taxpayer fails to pay the deficiency within the 30-day period, the tax authority will refer the case to the court for enforcement.

### Late-payment interest

In addition to the penalties mentioned above, a late-payment interest will be incurred starting from the first day following the filing deadline. The late-payment interest will be calculated on a daily basis at the prevailing deposit interest rate adopted by the post office for a one-year term deposit. Conversely, if taxpayers voluntarily file and make necessary payments covering the tax amount that they failed to pay to the tax authority before the tax authority discovers the shortfall, the taxpayers may be exempted from the late-payment penalty. However, taxpayers shall still pay the amount due plus the said late-payment interest.

### Tax evasion through transfer or concealment of property

A taxpayer is regarded as having been involved in tax evasion if he or she avoids tax or pays less than the amount of tax actually payable. If a taxpayer has received the tax payment notice but avoided to pay tax by transferring or concealing property, the following penalties may be imposed:

- The tax authorities may issue a statement of detailed facts and apply to the court for an attachment on the taxpayer’s properties. The taxpayer may be exempted from guarantee against attachment; and

### ¶3-160 Required documents for import and export

Upon declaration of importation, an import declaration form shall be filled out and submitted along with a bill of lading, invoice, packing list and other relevant documents required for importation.

Upon declaration of exportation, an export declaration form shall be filled out and submitted along with the loading lists, booking notes, packing list, as well as export permits and other relevant documents required for exportation.

The packing list, import/export permits and relevant documents required for examination may be supplemented prior to the release of the goods (Art 17).

#### Correction of declaration form

The duty-payer or exporter may file an application with Customs to correct the declaration forms together with the required supporting documents.

Prior to the release of the goods, the duty-payer or exporter may file an application with Customs to correct the declaration forms, and shall be exempt from penalties under the *Customs Act* or the *Customs Anti-Smuggling Act* in case the matters to be corrected involves violation of the Acts, if the application is made before Customs decides to inspect the goods, finds any unconformity or receives a confidential report of smuggling.

After the release of the goods, the duty-payer or exporter may file an application with Customs to correct the declaration forms, and shall be exempt from penalties under the *Customs Act* or the *Customs Anti-Smuggling Act* in case the matters to be corrected involves violation of the Acts, if the application is made before Customs finds any unconformity, receives a confidential report of smuggling or gives a notice for post-clearance audit.

### ¶3-170 Customs value

Customs value = Transaction value + Freight + Insurance

### Calculation of customs value

#### Transaction value as basis

The customs value of imported goods subject to ad valorem duties shall be determined and calculated on the basis of the transaction value. Transaction value means the price actually paid or payable for the imported goods.

The following expenses shall be added into the calculation of the customs value, provided that such an amount is not already included in the price actually paid or payable for the imported goods:

- Commissions (not including fees paid by the buyer to his or her agent for purchase of the imported goods abroad), brokerage, and the cost of containers and packing incurred by the buyer;
- The value, apportioned as appropriate, of the following goods and services supplied by the buyer to the seller free of charge or at reduced cost for use in connection with the production or sale for export of the imported goods:
  - Materials, components, parts and similar items incorporated in the imported goods;
  - Tools, dies, molds and similar items used in the production of the imported goods;
  - Materials consumed in the production of the imported goods; and
  - Engineering, development, artwork, design, plans and similar items undertaken elsewhere than in Taiwan and necessary for the production of the imported goods;
- The royalties and license fees (including payment to acquire the patent, exclusive rights of trademark, copyright or other intellectual property rights protected by legislation related to the imported goods but excluding charges for the right to reproduce imported goods in Taiwan) related to the goods paid by the buyer as a condition of the sale of the goods;
- The proceeds for use or disposal of the goods by the buyer accruing to the seller;



- The transport cost of the imported goods to the port or place of importation, and loading, unloading and handling charges associated with the transport; and
- The cost of insurance.

Expenses added to the customs value in accordance with the preceding paragraph should be added on the basis of objective and quantifiable information.

According to Art 11 of the *Enforcement Rules of the Customs Act*, the transaction value shall not include the following expenses, customs duty and other taxes, provided that they are distinguished from the price actually paid or payable for the imported goods:

- Expenses for construction, erection, assembly, maintenance or technical assistance undertaken after importation of the imported goods such as industrial plants, machinery and equipment;
- The cost of transport after the importation;
- The deferred interest on a transaction with deferred payment terms; and
- Customs duty and taxes on the imported goods.

Except for the royalties and license fees related to the goods paid by the buyer as a condition of the sale of the goods, expenses paid by the buyer for his or her own benefit shall not be considered as a payment to the seller, even though they might be regarded as being beneficial to the seller.

#### *Transaction value not to be used as basis*

The transaction value shall not be used as the basis for determining and calculating the customs value of imported goods under any of the following circumstances:

- Where there are restrictions as to the use or disposition of the goods by the buyer other than restrictions which:
  - Are imposed or required by law or public authorities in Taiwan;

- Limit the geographical area in which the goods may be resold;
- Do not substantially affect the value of the goods;
- Where the sale or the price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
- Where part of the proceeds of any subsequent use or disposal of the goods by the buyer will accrue to the seller, but where such an amount cannot be determined; and
- Where the buyer and seller are related and such relationship influences the transaction value.

For the purpose of the last limb of the preceding paragraph, the buyer and seller shall be deemed to be related only if:

- One of them is a manager, board director or supervisor of the other's business;
- They are legally recognized partners in business;
- They are employer and employee;
- One of them directly or indirectly owns, controls or holds 5% or more of the outstanding voting stocks or shares of the other's business;
- One of them directly or indirectly controls the other;
- Both of them are directly or indirectly controlled by a third person;
- Together they directly or indirectly control a third person; or
- They are spouses or relatives within a third-degree family relationship.

#### **Exceptions**

##### *Transaction value of identical goods sold (Art 31)*

If the customs value of the imported goods cannot be determined by transaction value, the customs value shall be determined by Customs

- Where the goods are re-exported in their original condition as approved by Customs;
- Where the authority having originally issued the permit or certificate transfers the case to Customs, and the goods are re-exported in their original condition as confirmed by Customs; or
- Where the transferee satisfies the conditions for duty reduction or exemption.

### ¶3-190 Administrative remedies

#### Review application

A duty-payer who is dissatisfied with the decision of Customs on the tariff classification, customs value, amount of duty to be made up, or special duty, of the imported goods, may, within thirty days following the date of receipt of the duty memo, file with Customs in the prescribed form a request to review the case, and withdraw the goods after paying the entire duty amount or providing an appropriate guarantee.

Customs shall make a determination on the review and issue a statement within two months following the date of receipt of the application. Customs may, if necessary, extend the time limit and it shall notify the duty-payer of such extension. The time limit may be extended once and such extension shall not exceed two months.

The original statement shall be delivered to the duty-payer within fifteen days following the date of determination.

#### Appeal application

The duty-payer, who is dissatisfied with the determination statement by Customs may file an appeal and then enter into administrative litigation according to the law.

#### Refund of duty

If any duty is refunded as a result of an irrevocable determination given on a review, appeal or in administrative litigation, Customs shall refund it within ten days following the date of the final determination. The refund shall include duty plus interest payable for the period

beginning on the day following the date on which duty was paid by the duty-payer up to the date on which a refund notice or treasury check is issued, calculated on a daily basis according to the annual interest rate of a one-year fixed savings in Postal Savings which is effective on the date on which the duty was paid.

#### Recovery of duty

If any duty is recoverable as a result of an irrevocable determination given on a review, appeal or in administrative litigation, Customs shall issue a memo for the recoverable duty and notify the duty-payer to repay the duty, within ten days following the date of the final determination. The duty to be recovered shall bear interest for the period beginning on the date following the prescribed tax or duty payment period up to the date on which the memo for the recoverable duty is issued, calculated on a daily basis according to the annual interest rate of a one-year fixed savings in Postal Savings which is effective on the date on which the duty was due.

#### Default on payment of customs duty, delinquent fee or fine

##### *Seized cargo or security provided*

In case of a default on the payment of customs duty, delinquent fee or fine by the duty-payer or the penalized person, Customs may notify the relevant authorities to prohibit the duty-payer or the penalized person from transferring, or creating other rights on, the property within the extent of his or her liability. Where the defaulter is a profit-seeking enterprise, Customs may advise the relevant authority to further restrain it from causing a reduction in capital or canceling registration.

##### *Personal seizure*

Where the cargo of a duty-payer or a person liable to a penalty has not been seized, nor has the necessary security been provided, Customs may, after the delivery of the duty memo or penalty notice, request the court for a personal seizure of the property or take other protective measures to the extent that may cover the duty, delinquent fee or fine payable without there having been a guarantee provided, in order to prevent the duty-payer or person liable to a penalty from evading compulsory execution through hiding or transferring his or her



- (18) Articles for personal use brought in by sailors holding citizenship of Taiwan and a domestic household registration, returning from foreign countries or disembarking.

Except for the goods referred to in the preceding paragraph, the accumulated customs value of the imported goods in the same shipment, if with a value not more than the prescribed ceiling announced by the MOF, shall be exempt from customs duty. However, this prescription is not applicable to such special goods as are prescribed and announced to the public by the MOF. The regulations governing the scope, items, quantities and ceiling of customs exemptions referred to in (2) to (6), (9), (14), (15), and (18) above and the clearance procedures and other required matters concerning the goods listed therein shall be prescribed by the MOF.

In addition, the *Customs Act* also provides various situations in which customs duty is exempt. Some examples are:

- Items re-exported abroad within six months (Art 52)

Dutiable samples, articles for scientific research, experiments and/or exhibition, costumes and paraphernalia of entertainment troupes, cinematographic equipment and supplies for making movies and/or television films, instruments and tools needed for installation and repair of machines, containers used for importing cargo, finished products imported for repair and maintenance, and other articles approved by the MOF shall be exempt from customs duty, provided that they are to be re-exported abroad within six months following the date of importation or within the time limit approved by the MOF.

- Items re-imported within one year (Art 53)

Samples, articles for scientific research, engineering machinery, cinematographic equipment and supplies carried by professionals engaged in making motion pictures and/or television films, instruments and tools needed for installation and repair of machines, articles for exhibition, artwork, containers used for importing cargo, costumes and paraphernalia of entertainment troupes, copies of motion pictures and video tapes mailed abroad by government agencies and other similar articles approved by

the MOF, which are re-imported within one year following the date of exportation or within the time limit approved by the MOF, shall be exempt from customs duty.

- Items intended for export (Art 56)

Raw materials imported for use in manufacturing articles intended for export may be exempt from duty if they are re-exported within one year following the date of release for entry, and are approved by the MOF within one year following the day on which the raw materials were released for entry.

#### **Bonded warehouse**

Imported goods may, prior to being picked up, be applied to Customs to store such goods in a bonded warehouse. Such goods re-exported or exported after reassembly within the time limit prescribed for storage in a bonded warehouse may be exempt from the payment of duty (Art 58).

#### **Bonded factories**

Export processing factories may be registered, with the approval of Customs and under its supervision, as bonded factories. Raw materials imported and stored by bonded factories for manufacturing or processing into exported products shall be exempt from customs duty.

Finished products processed or manufactured by bonded factories, and raw materials exempted from customs duty in accordance with the provisions of the preceding paragraph, shall not be moved out of bonded factories, unless approved by Customs and unless duties have been paid on products or raw materials in the form when they were moved out of bonded factories (Art 59).

#### **Logistic center**

Firms operating in a bonded location in regard to the storage, transportation and distribution business of bonded goods may apply to Customs for registration of its location as a logistics center.

Goods stored in a logistics center, if required for the operation referred to in the preceding paragraph, may be reconditioned or be subjected to simple processing.