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The heart of Asia
Doing business in Taiwan

A reference guide for investors entering the Taiwan market for the first time or growing their existing business

June 2013

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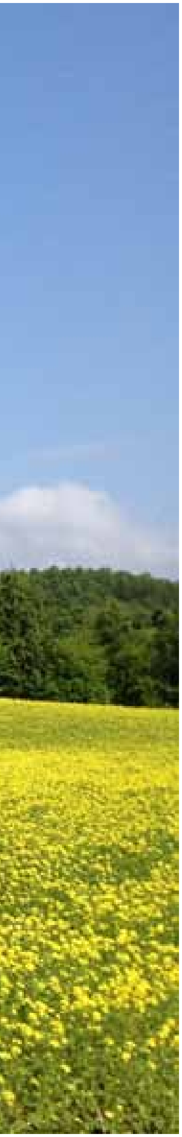
資誠



Welcome

Taiwan's current tourism slogan is "Taiwan—The Heart of Asia," aptly reflecting the island's central location and its people's famously warm welcome. But it could just as easily be applied to Taiwan as an inviting destination for foreign investment, not just tourists, in the heart of the Asia-Pacific region.

Most people know Taiwan as a key player in the global information and communications technology industry, but it also acts as a bridge to the huge Chinese market. This role is becoming ever more important, driven by the marked improvement in relations between Taiwan and China since 2008.

Taiwan's key investment advantages include its developed industrial clusters and supply chains, well-educated workforce and dynamic private sector. Coupled with pro-business government policies, robust intellectual property protection, and one of the lowest corporate tax rates in Asia, it has become a choice location for many multinationals as their regional headquarters or regional hubs.

Taiwan has also done much to improve its business regulatory environment—it ranked 16th out of 185 countries in the World Bank's Ease of Doing Business survey in 2012. The government plans to further reduce investment barriers as part of its efforts to encourage more foreign investment in Taiwan.

This 2013 edition of *Doing business in Taiwan* provides insight into the key aspects of undertaking business in Taiwan, from establishing an entity to dealing with accounting, tax and employee matters.

With over 40 years' presence in Taiwan and eight offices across the island, PwC Taiwan has substantial experience advising foreign companies on doing business in Taiwan. We have over 2,600 people with expertise across all industries ready to provide value-added professional services to suit your needs.

I hope that you find this guide an interesting and useful reference source. For further information on how PwC Taiwan can help you, feel free to contact one of our dedicated FDI team listed on page 91.

Dexter Chang

Dexter Chang
Territory Senior Partner
PwC Taiwan

DOIS foreword

It is my pleasure to introduce this new edition of the *Doing business in Taiwan* guide by PwC Taiwan.

As Director General of the Department of Investment Services (DOIS)of the Ministry of Economic Affairs, I greatly appreciate PwC for its long-term attention to Taiwan's investment environment and provision of practical business information for foreign investors.

Foreign investment is one of the key driving forces behind Taiwan's economic development, and the DOIS has been responsible for promoting Taiwan to foreign investors for more than half a century.

Taiwan's competitive advantages include, among others, its well-developed network of industrial clusters and supply chains, well-educated workforce, and dynamic small and medium-sized enterprise sector. Moreover, with its superior geographic location, and one of the lowest corporate tax rates in Asia, Taiwan is an ideal location for multinational companies to choose as their regional headquarters.

Another key advantage is that foreign firms can use Taiwan as a gateway to access business opportunities in the huge Chinese market, especially after the cross-Strait Economic Cooperation Framework Agreement (ECFA) came into effect from 2011.

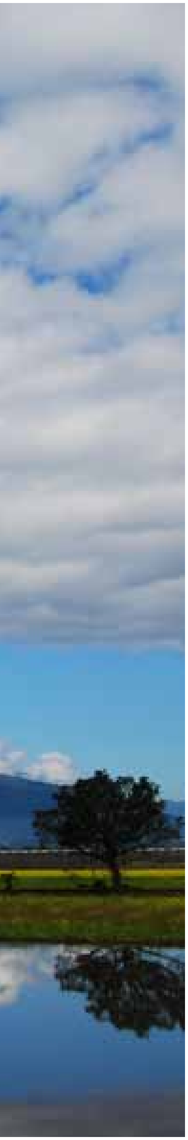
Taiwan has been working vigorously to create a more business-friendly environment through such measures as reducing corporate taxes, simplifying screening procedures for inbound investment projects, and continuing infrastructure development.

Also, the InvesTaiwan Service Center was set up in 2010 to offer one-stop customised services for foreign investors. All these developments have made it easier than ever for foreign investors to establish and develop their business profitably in Taiwan.

I warmly welcome your consideration of Taiwan as an investment location for your business, and wish you every success in your Taiwan endeavours.

Chiu, Yi-cheh

Chiu, Yi-Cheh
Director General
Dept. of Investment Services
Ministry of Economic Affairs



Contents

The information in this guide is up to date as of 30 June 2013. It does not attempt to cover every issue nor does it cover specific tax and regulatory issues relating to particular industries or sectors that might impact on you when doing business in Taiwan. You should always seek independent advice as the guide has been prepared for general guidance on matters of interest only.

Chapter 1
Business environment

Taiwan, officially known as the Republic of China, is strategically located at the heart of the Asia-Pacific region. It is currently ranked as the world's 20th largest economy and 18th biggest trading nation, and consistently scores high in global competitiveness and business environment rankings.

This chapter overviews Taiwan's business and investment climate. Readers are also recommended to consult the Taiwan government's investment promotion website at *http://investtaiwan.org.*

The topics covered include:

- Land and people
- History and government
- Taiwan-China relations
- Economic profile
- Banking and capital markets
- Foreign exchange controls
- International trade
- Foreign investment
- Invest in Taiwan promotion
- Key government bodies

Land and people

Taiwan is an oceanic nation situated in the Western Pacific about 180 kilometres off the southeast coast of China, midway between Japan and the Philippines. It occupies a total area of about 36,000 square kilometres, including the main island of Taiwan, the archipelagos of Penghu, Kinmen and Matsu, and a number of other islets—comparable in size to Holland.

Due to its strategic location along some of the world's busiest trade routes, Taiwan is a key transportation and logistics hub for the Asia-Pacific area, providing direct access to the region's production resources and key consumer markets, China in particular. This makes Taiwan a favoured choice for many multinational companies when looking to locate their regional operational headquarters in Asia.

Home to around 23 million people, Taiwan has one of the world's densest populations at 650 people per square kilometre. Over 95% of the population is of Han Chinese ancestry, and the rest composed of indigenous peoples and recent marriage immigrants from mainland China and Southeast Asia.

In addition to the official language of Mandarin Chinese, large parts of the population speak Taiwanese Hokkien and Hakka. Taiwan shares the same linguistic heritage as China but differs in its continued use of traditional Chinese characters, rather than the simplified ones used on the mainland.

History and government

Taiwan was colonised by the Dutch in the 17th century, followed by a migrating influx of Han Chinese from southeast China. In 1662, Koxinga, the leader of a resistance movement against the Qing Dynasty in China, defeated the Dutch and established a military base on Taiwan. His forces were defeated in 1683 by the Qing government, which went on to rule Taiwan for over two hundred years before ceding the island to Japan at the end of the Sino-Japanese War in 1895.

Taiwan was a Japanese colony from 1895 to 1945. After World War II, it came under the control of the Kuomintang (KMT), or Nationalist Party, which ruled much of China from 1928 until its retreat to Taiwan in 1949 after being defeated by the Communist

Party in the Chinese Civil War. The KMT instituted an authoritarian one-party state on Taiwan and ruled it under martial law up until 1987.

Thereafter, from the late 1980s onwards, a series of constitutional reforms transformed Taiwan into a representative democracy, culminating in its first ever direct presidential election in 1996. Since then, Taiwan has undergone two peaceful transfers of presidential power—in 2000 from the KMT to the Democratic Progressive Party (DPP) after 55 years of KMT rule, and in 2008 back to the KMT again.

Taiwan's executive-led political system consists of a popularly elected president and unicameral parliament. The president, who is elected every four years, nominates a premier to head the Executive Yuan, which comprises the Executive Yuan Council (in effect the Cabinet), various ministries, commissions and other administrative bodies. The Cabinet in turn reports to the Legislative Yuan (parliament), whose 113 members serve four-year terms. Laws, statutes and special acts must be passed by the legislature and promulgated by the president before they come into force.

The main political parties in Taiwan are the KMT and DPP. The dominant political issues continue to be the relationship between Taiwan and China—specifically the question of Taiwan's eventual status—as well as domestic political and economic reform. The KMT's Ying-jeou Ma was re-elected president in January 2012, and his party retained control of the Legislative Yuan in the simultaneous parliamentary election. The next presidential and parliamentary elections are due to be held in 2016.

Taiwan-China relations

Taiwan's unsettled political relationship with China (officially known as the People's Republic of China, or PRC) has long been the cause of friction between the two sides and the subject of heated debate in Taiwan. Although tensions across the Taiwan Strait have eased in recent years, China still actively claims Taiwan as part of its sovereign territory awaiting reunification, by force if necessary.

Because of Beijing's "one China" policy, Taiwan is not recognised by any major country as a sovereign entity separate from the PRC. Taiwan currently has formal diplomatic relations with just 23 small nation states. Despite this, it still enjoys strong and substantive (though unofficial) relations with more than 140 other nations, several of which maintain trade and cultural offices in the capital city of Taipei.

Following his first election in 2008, Taiwan's President Ma expanded engagement with China. He moved quickly to liberalise travel, trade and investment links with China in order to tap the latter's growing economy and to position Taiwan as a gateway to the Chinese market. To date, Taiwan and China have held nine rounds of high-level bilateral talks and signed 19 formal agreements, which have mainly focused on increasing economic exchanges across the Taiwan Strait, while avoiding thornier political issues.

The most significant agreement was the Economic Cooperation Framework Agreement (ECFA), a preferential trade pact signed with China in 2010,

Taiwan is benefiting from closer economic exchanges with China

which is seen as the first step toward creating a free-trade area across the Taiwan Strait. The ECFA provides a legal basis for both sides to gradually reduce tariffs on goods, remove non-tariff trade barriers, open up service sectors and lift investment restrictions.

Taiwan and China signed follow-on economic agreements in August 2012 on investment protection and promotion, as well as customs cooperation. The investment protection pact formally established a mechanism for protecting cross-Strait investors. Also, in June 2013, the two sides signed a bilateral services trade agreement, which will further open their service sectors to each other.

Taiwan’s increased access to the Chinese market under the ECFA has enhanced its attractiveness to multinationals as a business hub and gateway to China. Foreign investors fall under the ECFA’s purview if they incorporate a company in Taiwan or partner with a Taiwan-based business. Taking heed of this fact, many multinationals are re-evaluating Taiwan as an investment destination.

Economic profile

Despite its relative diplomatic isolation, Taiwan has become one of the world’s leading economies due to its manufacturing and exporting prowess, especially in high-tech goods. Taiwan’s economy was the 20th largest in the world in 2012 in terms of GDP purchasing power parity, according to International Monetary Fund data; it ranked 27th in nominal GDP terms. Taiwan also scores high in global competitiveness rankings. The World Economic Forum rated Taiwan the 13th most competitive economy (out of 144 countries) in the world in 2012.

Taiwan's business regulatory environment is also highly regarded. It placed 16th out of 185 economies in the World Bank’s annual "Ease of Doing Business" survey in 2012. Also, the Economist Intelligence Unit ranks Taiwan as the 13th-best place in the world to do business in over the next five years to 2017, according to its latest business environment rankings.

Taiwan has evolved since the 1950s from an agrarian economy to one driven by technology- and knowledge-intensive industries, with the focus now on moving up the value-added and innovation chain. Small and medium-sized enterprises continue to be the engine room of the economy and play a key role in upstream value chains supporting the production and exports of larger-scale corporations.

Local labour-intensive manufacturers began to move their production bases overseas in the late 1980s due to rising costs. Most initially relocated to countries in Southeast Asia, but after the government began to ease cross-Strait business restrictions in the early 1990s, China became their investment location of choice. With cumulative investments there estimated at more than US$200 billion, Taiwanese firms are among the largest sources of foreign direct investment in China.

High-tech companies have since joined their more traditional counterparts in shifting capacity across the Taiwan Strait, and the government has been forced to gradually reduce restrictions on technology transfers to China. Even so, Taiwan remains an important hub for high-tech industries, supported by its superior R&D infrastructure and talent pool. Production of higher-end goods such as semiconductors and LCD panels has largely remained in Taiwan, as have advanced R&D facilities.

As part of its push to establish Taiwan as a major centre for industrial innovation and R&D, the government is encouraging domestic firms to step up their R&D activities by offering subsidies, tax breaks and other support. It also targets foreign companies under a complementary programme to set up their regional R&D centres in Taiwan; multinationals have established some 60 R&D centres in Taiwan to date.

Besides the high-tech sector, which remains the mainstay of Taiwan's economy, other major industries include banking and financial services, chemicals, machinery, metals, plastics and textiles. Also, since 2009, the government has been actively promoting a number of major infrastructure works and emerging industries for priority development and investment (see page 17).

Banking and capital markets

Taiwan's financial services industry held up well during the 2008 global financial crisis and the economic slowdown in 2012. Nevertheless, it remains plagued by low profitability due to overcrowding and intense competition. At the end of 2012, Taiwan had 427 financial institutions, including 39 domestic banks and 30 foreign banks, which compete to serve the island's 23 million population.

The banking, insurance and securities sectors have been liberalised to a certain extent and are open to foreign investment. The government is trying to encourage more bank mergers, led by state-owned banks, but these have proved controversial in the past. A few foreign banks and private equity firms bought into Taiwanese banks in 2006-2008, but foreign entities have shown little further interest in acquiring controlling stakes in local banks, owing to the latter's low profitability.

To survive in Taiwan's highly competitive market, several domestic banks are looking to expand overseas, especially to China. Eleven Taiwanese banks have so far opened branches in China, and others are increasingly exploring making direct investments in their Chinese bank counterparts.

Taiwan is also opening up its banking sector to Chinese lenders and investors. Three major Chinese banks have set up branches in Taiwan to date, and recent rule changes may encourage others to consider the equity investment route. In April 2013, the government raised its cap on investment by Chinese commercial banks to as high as 20% for certain types of Taiwanese banks and financial holding companies.

In another significant development, the signing of a currency-clearing memorandum with China in August 2012 has paved the way for Taiwan to establish itself as an offshore centre for renminbi (RMB) services. Local onshore banks started taking RMB deposits in February 2013, and a few have also since issued the first RMB-denominated bonds in Taiwan, which are locally dubbed "Formosa Bonds."

Taiwan's capital markets are mature and active. The main bourse, the Taiwan Stock Exchange (TWSE), had 809 listed firms at the end of 2012 with a total market capitalisation of US$733 billion, ranking it the world's 20th largest stock market according to World Federation of Exchanges data. Taiwan has two other regulated markets—the GreTai Securities Market (GTSM), the secondary market for bonds and smaller emerging stocks; and the Taiwan Futures Exchange, the principal derivatives market.

Taiwan has made a concerted effort since 2008 to internationalise its capital markets by encouraging foreign companies and Taiwanese businesses abroad to list on the TWSE or GTSM. Several firms, especially those backed by local capital and operating in the Greater China area, have opted to list in Taiwan. By the end of 2012, 57 foreign issuers had launched IPOs or issued Taiwan depository receipts on the TWSE, making it a key market for foreign companies listing in Asia.

Since 2009, Taiwan has allowed China-based qualified domestic institutional investors (QDIIs) to engage in portfolio investment and futures trading in Taiwan. In January 2013, Taiwan and China agreed to significantly relax restrictions on bilateral investment to allow securities brokerages, fund houses and individuals easier access to each other's capital markets. Taiwan also plans to double its QDII investment quota to US$1 billion from the current limit of US$500 million.

Foreign exchange controls

Taiwan's currency, the New Taiwan dollar (NT$), is not fully circulated or convertible in global markets. Therefore, all entities wishing to conduct transactions denominated in NT$ must open onshore accounts. The local dollar is traded as non-deliverable forwards in offshore markets.

Taiwan's central bank, officially known as the Central Bank of the Republic of China (Taiwan), oversees and manages a flexible floating regime. The NT$ exchange rate is determined by the market, but the central bank stands ready to intervene in the event of any seasonal or irregular volatility.

Taiwan has progressively deregulated its foreign exchange controls on capital movements involving NT$ transactions. In general, capital can flow freely in and out of Taiwan. The main provisions are as follows:

- No restrictions on inward and outward remittances related to foreign trade in goods and services.
- No restrictions on foreign direct and portfolio investments approved by the competent authorities.
- For other non-trade-related remittances, no prior approval is required if the cumulative amount does not exceed the annual limit of US$5 million for an individual or US$50 million for a company.
- Non-residents can open NT$ bank accounts but remittances are limited to US$100,000 per transaction.

A key recent development was the establishment in January 2013 of a cross-Strait currency clearing mechanism that allows Taiwan and China to freely conduct currency exchanges between the NT$ and RMB.

Bank of Taiwan's Shanghai branch is the NT$ clearing bank in China, while Bank of China's Taipei branch is the clearing bank for RMB transactions on the island. Taiwan currently is one of four offshore markets—along with Hong Kong, Macau and Singapore—able to clear the Chinese currency.

International trade

Taiwan's economy is powered by foreign trade, which represented 140% of GDP in 2012. The World Trade Organisation (WTO) currently ranks Taiwan as the world's 17th largest exporter and 18th largest importer of merchandise goods, and the 26th largest exporter and 28th largest importer of commercial services.

In 2012, Taiwan's top trading partners were China and Hong Kong combined (representing 28% of total trade by value), followed by the ASEAN bloc (15%), Japan (12%), the US (10%) and the EU (9%). Its main export category was electronic goods (28% of total exports), and the largest import item was crude oil and other mineral products (27% of total imports).

Taiwan joined the WTO in 2002 under the title of "The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu," and is treated as a developed economy in the world trading system. Membership in the WTO has further deepened Taiwan's integration into the global economy and opened up its market to more investment and competition. Also, in 2009, Taiwan signed up to the WTO Government Procurement Agreement.

Free-trade agreements (FTAs) have proliferated in the Asia-Pacific area in recent years, with Taiwan's main export rival, South Korea, having secured FTAs with major trading partners. Taiwan has been excluded from this greater economic integration—with the exception of the ECFA signed with China—in part because of its unique political status. So far, it has only been able to sign four FTAs with Central American diplomatic allies, which collectively represent 0.1% of Taiwan's total trade.

The government sees the ECFA as a stepping stone toward more FTA-like deals with other major trading partners, and is also hoping to secure Taiwan's inclusion in the Trans-Pacific Partnership, a US-backed inter-regional trade pact. Taiwan is close to signing preferential trade agreements with New Zealand and Singapore, and is also pursuing negotiations or feasibility studies with a number of other countries for such pacts.

The government is keen to promote Taiwan as a regional logistics hub by leveraging the island's direct shipping and air links with China. Its policy centres around free trade zones (FTZs) offering tax and tariff incentives, as well as relaxed legal restrictions.

Taiwan currently has six FTZs including five seaports (Kaohsiung, Keelung, Suao, Taichung and Taipei) and one airport cargo park (at Taiwan Taoyuan International Airport). Foreign investors located in these areas are accorded national treatment.

In March 2013, the government unveiled plans to establish "free economic demonstration zones" (FEDZs) to promote further trade and investment liberalisation. These FEDZs are intended to boost Taiwan's attractiveness as an FTA partner. The details are not yet finalised, but the six

FTZs have been designated pilot sites for the FEDZ project, which will mainly target the high-end service sector, including smart logistics, international medical services and high-value-added agricultural processing. The government also plans to offer tax breaks to attract foreign talent and investment to the FEDZs.

Foreign investment

Taiwan openly welcomes foreign investment. Foreign investors can invest in any business sector except in a limited number of industries involving national security and environmental protection, such as agricultural production, chemical manufacturing, bus transportation and public utilities.

Prohibitions are implemented through a negative list or, in the case of investment from China, a positive list—available at *www.moeaic.gov.tw*. The government's liberalisation efforts have reduced the negative list to less than 1% of manufacturing categories and less than 5% of service industries.

The government's deregulation policy and streamlining of procedures have helped make Taiwan a more attractive place for foreign investors. This is reflected in Taiwan's much-improved ranking on the World Bank's Ease of Doing Business Index of 185 economies, jumping to 16th place in 2012 from 61st in 2008. Foreigners enjoy the same rights and privileges as local investors, and can avail of the tax and other incentives provided under Taiwan's laws and regulations.

Foreign direct investments currently require advance approval from the Investment Commission of the Ministry of Economic Affairs. The government is in the process of simplifying its screening and approval procedures for inbound investment. A bill to exempt projects involving foreign investment under a certain amount from official screening prior to implementation is currently pending legislative review.

Taiwan has also been relaxing its restrictions on investments from China as cross-Strait relations have improved.

Since 2009, the government has carried out three rounds of opening up Taiwan’s markets to Chinese capital. Following the last liberalisation round in March 2012, 97% of Taiwan’s manufacturing sector and 51% of its services and infrastructure sectors are now open to Chinese investors.

However, due to restrictions limiting percentage of ownership, and restrictions on Chinese investors' participation in Taiwanese business operations, few significant Chinese investments have been made in Taiwan to date. To encourage more cross-Strait investment, Taiwan and China signed a bilateral investment agreement (BIA) in August 2012. Also, the government plans to conduct a fourth round of market opening in 2013, as well as a wider relaxation of regulations for Chinese investors.

Besides China, Taiwan has concluded BIAs with 30 other countries to date. These agreements typically cover investment protection, promotion and liberalisation, and are also regarded as an important step to the signing of FTAs. In 2011, Taiwan signed a BIA with Japan, which is one of the largest investors in Taiwan and a major supplier of technological know-how.

Invest in Taiwan promotion

Taiwan has attracted greater interest from foreign investors since the signing of the ECFA with China. The government has accordingly stepped up its promotion efforts to lure investors from around the world to set up base in Taiwan and to use it as a gateway to enter the Chinese market.

The Executive Yuan established a global investment promotion task force in 2010 to coordinate efforts to solicit investment in Taiwan by foreign multinationals and Taiwanese firms operating overseas. It also set up the InvesTaiwan Service Centre to provide custom, one-stop solutions to investment obstacles encountered by Taiwanese and foreign investors.

The government is promoting a number of flagship programmes, covering major infrastructure works and target industries, for investment promotion at home and overseas:

- **I-Taiwan 12 projects**: This refers to priority public infrastructure projects covering transportation networks, industrial innovation, urban and rural development, and environmental protection.
- **Six emerging industries**: The biotechnology, tourism, green energy, medical care, high-end agriculture, and cultural and creative industries have been targeted for priority development.
- **Four "intelligent" industries**: The government is also looking to expedite the development of cloud computing capabilities, smart electric vehicles, green architecture, and patent commercialization.
- **Ten key service industries**: Other target areas include the development of medical tourism, music and digital content, international logistics, fundraising for high-tech and innovation-oriented industries, urban renewal, international promotion of Taiwanese cuisine, the MICE (meetings, incentives, conferences and exhibitions) industry, the development of WiMAX technology, Chinese-language e-commerce, and the expanded recruitment of foreign students from overseas.

For more information about these priority target sectors, readers are recommended to consult the Taiwan government's investment promotion website at *http://investtaiwan.org*.

Key government bodies

This section highlights some of the more relevant government ministries and agencies for foreign investors undertaking business in Taiwan (see pages 87-89 for contact details).

InvesTaiwan Service Centre: This cabinet-level agency was established in 2010 to provide customized, one-stop solutions to domestic and foreign investors doing business in Taiwan.

Ministry of Economic Affairs: The MOEA is in charge of administering the national economy. Four of its subordinate units are charged with assisting prospective investors:

- **Department of Commerce** handles applications for corporate and business registration, including the establishment of local subsidiaries, branch offices and representative offices of foreign-owned entities.
- **Department of Investment Services** promotes and facilitates foreign investment in Taiwan, and also provides services to Taiwanese companies returning from overseas.
- **Industrial Development Bureau** is responsible for promoting industry upgrading, the development of new industries and assisting businesses to overcome investment obstacles.
- **Investment Commission** is responsible for the approval of foreign investment in Taiwan and outward investment from Taiwan.

Bureau of Foreign Trade: The BOFT is an agency of the MOEA charged with executing trade policies and managing trade-related activities. It is responsible for regulations covering import and export activities, and supervising the import and export of controlled items.

Taiwan Intellectual Property Office: The TIPO is an agency of the MOEA and deals with copyright, patent and trademark matters, and the protection of intellectual property rights.

Ministry of Finance: The MOF is responsible for the administration of the national treasury, customs and taxation, as well as the management of state property. The Taxation Administration is a subordinate unit of the MOF in charge of taxation matters.

Council for Labour Affairs: The CLA is in charge of administering labour policies and regulations covering employee rights, health and safety, labour insurance, and so on. It is also responsible for issuing work permits for foreign professional workers.

Environmental Protection Administration: The EPA is responsible for environmental policy formulation and enforcement, including environmental impact assessments of industrial projects.

Fair Trade Commission: The FTC administers Taiwan's fair trade policies. It investigates business practices involving anti-competitive behaviour, such as monopolies, mergers, cartels and other restraints on competition or unfair trade practices.

Financial Supervisory Commission: The FSC is responsible for regulating and supervising Taiwan's banking, securities and insurance sectors, as well as financial holding companies. It comprises four bureaus, namely Banking, Insurance, Securities and Futures and Financial Examination.

Chapter 2
Set-up and investment

Setting up a business and investing in Taiwan is relatively straightforward, thanks in large part to the government's ongoing deregulation efforts to make it easier to do business on the island.

This chapter highlights some of the key legal considerations that foreign investors and companies should be aware of when setting up a business, investing in a business or expanding an overseas business in Taiwan.

The topics covered include:

- Business formation
- Registration procedures
- PRC investment in Taiwan
- Portfolio investment
- Mergers and acquisitions
- Anti-trust and competition
- Intellectual property rights
- Legal and court system
- Arbitration and arbitral awards

Business formation

There are a number of ways for foreign investors to establish a legal business presence in Taiwan. The main vehicles include companies incorporated in Taiwan, branch offices, representative offices, job-site offices, as well as partnerships and sole proprietorships.

In addition, foreign investors may conduct business in Taiwan through other business relationships with local entities, such as a joint venture, licensing, distributorship or agency.

Taiwan-incorporated company

Taiwan allows four company types: unlimited companies; unlimited companies with limited liability shareholders; limited companies; and companies limited by shares. In practice, foreign investors favour setting up a wholly-owned subsidiary as a company limited by shares.

A company limited by shares is similar to a US corporation, with shareholder liability limited to the capital invested. This type of corporate entity must have at least two individual shareholders or one corporate shareholder, three directors and one supervisor (who has audit rights for all company affairs).

Except for certain industries, such as banking, there is no minimum paid-in capital requirement for a company limited by shares. In general, the initial capital should cover the set-up expenses of the company as certified by a local certified public accountant.

However, if a company wants to hire foreign employees in its first year of operation, it must in general have start-up capital of NT$5 million. This is a work authorisation requirement of the Council for Labour Affairs and is separate from minimum capitalisation requirements for a company set up.

Except in certain restricted industries, foreign investors are generally allowed to establish an incorporated company in Taiwan after obtaining approval from the Ministry of Economic Affairs' Investment Commission (MOEAIC) pursuant to the Statute for Investment by Foreign Nationals (SIFN).

Under the SIFN, a foreign-investment-approved (FIA) company enjoys the right to up to 100% foreign ownership, no limitations on the repatriation of invested capital and remittance of earnings on such capital, and the same access to investment incentives and privileges enjoyed by Taiwanese firms.

Branch office

A foreign company incorporated outside of Taiwan may establish a branch office to conduct business in Taiwan. Unlike the corporate form, a branch office is not an independent legal entity in its own right, and so does not need to comply with the requirements to have shareholders, directors or supervisors. The head office assumes all liabilities left unsettled by the Taiwan branch.

A branch office needs only a representative for litigious and non-litigious matters in Taiwan and a branch manager for day-to-day operations. The legal representative and the branch manager may be the same person and can either be a domiciled Taiwan citizen or a foreign national with Taiwan residence.

To establish a branch office, a foreign company incorporated overseas must first apply for recognition with the Department of Commerce of the Ministry of Economic Affairs (MOEA). It may then complete the procedures for branch office registration, which are similar to those applicable to a FIA company, with the same agency.

There is no minimum working capital requirement for a branch office, but the head office must remit sufficient funds for its operations before establishment. However, if a Taiwan branch office intends to hire foreign employees in its first year of operation, the minimum operating capital is NT$5 million.

In Taiwan, a branch office has certain tax advantages over a wholly-owned subsidiary company. Whereas the Taiwan subsidiary of a foreign company is subject to withholding tax on dividends paid to shareholders abroad, a branch office is exempt from such tax on the repatriation of after-tax profits to its parent company overseas.

Representative office

Many foreign entities prefer to set up a representative office in Taiwan prior to making the more permanent commitment involved in a branch or subsidiary structure. It is one of the easiest ways to establish a presence in Taiwan, but is very restricted in the nature of the activities it can carry out.

While a representative office may operate in Taiwan on behalf of a foreign company, it may not engage in profit-seeking commercial activities or act as a principal in any domestic business transactions. Permitted activities include, for example, conducting negotiations or signing contracts to procure goods on behalf of the parent company, and handling litigious and non-litigious matters.

Only businesses recognised as legally established companies in a foreign country are allowed to establish a representative office in Taiwan. Applications must be filed with the MOEA’s Department of Commerce.

Registering a representative office requires only a legal representative, who can either be a domiciled Taiwan citizen or a foreign national. There is no capital contribution requirement.

Job-site office

A company intending to contract long-term construction work in Taiwan may find it preferable to establish a job-site office to coordinate all aspects of the project, as well as for tax purposes.

This type of entity need only apply to the local tax office for business registration, and once approved is allowed to make purchases and issue government uniform invoices for business operations. A job-site office has the usual tax-withholding obligation and must pay corporate income tax and business tax.

Partnerships and proprietorships

Foreign nationals are also allowed to invest in Taiwan by setting up a general partnership (with one or more other individuals) or a sole proprietorship. There is no minimum capital requirement for partnerships or sole proprietorships, which must first obtain foreign investment approval and then register with the local government and tax authorities for business registration and tax purposes.

Registration procedures

To facilitate and promote foreign investment in Taiwan, the government continues to simplify application and registration procedures to make it easier to start a business on the island.

In recent years, Taiwan has eased the business start-up process by abolishing minimum capital requirements, and implementing an online one-stop shop for business registration. As a result of such reforms, Taiwan’s ranking in the "Starting a Business" category of the World Bank’s annual "Ease of Doing Business" survey jumped to 16th place in 2012, up from 119th in 2008.

Foreign direct investments currently require advance approval from the MOEAIC, but the government plans to simplify the approval process by exempting foreign investment projects under a certain amount from screening prior to implementation. If approved by parliament, the new legislation would merely require the investor to report the investment as a general rule.

The general procedures for investing in Taiwan include approval for foreign investment, corporate registration, business registration (for tax purposes) and other procedures required by law. The MOEAIC screens applications for foreign investment, while the MOEA's Department of Commerce and local government bodies handle applications for corporate and business registration.

To establish a company limited by shares, for example, a foreign investor must first file an application with the MOEAIC. Once investment approval is received, the foreign investor can remit the investment capital and apply to the MOEAIC again for examination of the investment funds, and then apply to the applicable authority for company registration, before finally completing the local incorporation procedures.

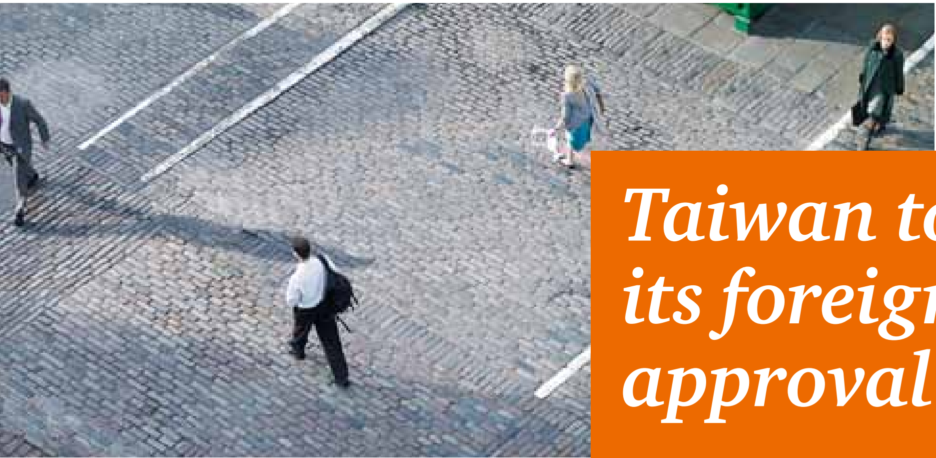
With respect to company names, the foreign investor must conduct an availability search of the chosen Chinese company name with the MOEA's Department of Commerce, then register and file applications for registration of the incorporation under the approved company name with the appropriate local government bodies.

Generally, it takes up to one month for a foreign investor to complete the local incorporation procedures. However, the timeline will vary depending on the complexity of the individual case and the co-operation of the relevant parties.

PRC investment in Taiwan

Taiwan has been gradually relaxing restrictions on direct investments from the People's Republic of China (PRC) as cross-Strait relations have improved in recent years. PRC investment is currently subject to a positive list, which sets forth restrictions for certain industries and the percentage of shareholding or amount of investment.

Chinese investors are subject to a separate set of investment regulations, namely the Act Governing Relations between Peoples of the Taiwan Area and the Mainland Area, and the related enforcement rules in the Measures Governing Investment Permits to the People of the Mainland Area.



Taiwan to simplify its foreign investment approval system

Chinese investors must obtain prior approval from the MOEAIC before investing in Taiwan. They may then apply to the MOEA and other relevant bodies to establish a Taiwan-incorporated company, branch office or representative office, which are subject to different documentation and approval requirements.

Taiwan has eased restrictions on inbound Chinese investments in three stages since 2009. Following the last liberalisation round in March 2012, most of Taiwan's manufacturing industry and half of its services and public construction sectors are now open to PRC investment. Taiwan plans to conduct a fourth round of opening in 2013, as well as a wider relaxation of regulations for PRC investors.

To encourage more cross-Strait investment, in August 2012, Taiwan and China signed a bilateral investment protection and promotion agreement. Taiwan is also further opening up its banking sector to Chinese banks and investors. In April 2013, the government eased rules to allow Chinese banks to buy bigger stakes in local banks and permit more PRC investment in its financial sector.

For more information (in Chinese) about the requirements for PRC investors, please consult our dedicated webpage at *www.pwc.tw/GOTW*, which includes the simplified Chinese guide entitled 陸資企业赴台投資手冊 .

Portfolio investment

In addition to direct investment, foreign investors can also invest in Taiwan-listed companies through portfolio investment, or they may alternatively seek to raise funds in Taiwan through a public listing.

Foreign institutional investors (FINIs) and foreign individual investors (FIDIs) have long been allowed to invest in Taiwan's capital markets, which comprise the Taiwan Stock Exchange (TWSE), the GreTai Securities Market (GTSM) and the Taiwan Futures Exchange. There is no limit on the total investment amount of any FINI or FIDI.

Since 2009, China's Qualified Domestic Institutional Investors (QDIIs) are also allowed to invest in Taiwanese securities and futures, though subject to tighter oversight rules. The government plans to raise its QDII investment quota to US$1 billion from the current limit of US$500 million.

Foreign portfolio investors can invest in Taiwan's stock market after simply registering with the TWSE to obtain an "Investor ID" and a "Tax ID." Once registered with the TWSE, capital flows relating to portfolio investment in Taiwan are liberalized. There are no restrictions on inward and outward remittances by offshore FINIs or FIDIs. However, onshore foreign investors are subject to annual capital flow limits of US$50 million for an organisation and US$5 million for an individual.

There are no limits on aggregate or individual foreign shareholdings in Taiwan-listed companies, except in certain restricted industries. However, in the event that a one-time total investment by a foreign investor exceeds 10% of a TWSE- or GTSM-listed company's outstanding shares, the foreign investor has to submit an application with required documents for registration with the MOEAIC.

The government has taken active steps since 2008 to encourage foreign companies and Taiwanese-owned businesses abroad to list in Taiwan through an initial public offering or a secondary listing via Taiwan depositary receipts. It has relaxed restrictions on the qualifications of foreign issuers and the use of raised funds, which can now be remitted for investment in any offshore territory, including China.

Both the TWSE and GTSM are main board markets with similar trading mechanisms and functions. Companies listed on the TWSE are mostly large, mature firms. The GTSM on the other hand fosters emerging high-tech companies and small and medium-sized enterprises. The Emerging Stock Board, the secondary board of the GTSM, offers a platform for companies preparing for flotation or listing.

For more information about the listing process and requirements for foreign issuers in Taiwan, readers are recommended to consult the PwC publications, *IPO in Taiwan* and *Taiwan Depositary Receipts*, which are available for download on our website at *www.pwc.tw/en/publications.*

Mergers and acquisitions

Merger and acquisition (M&A) activities in Taiwan are mainly governed by the Business Mergers and Acquisitions Act (BMAA). One exception involves financial institutions, which are covered by the Financial Institutions Merger Act (FIMA) and the Financial Holding Company Act (FHCA).

For M&A transactions involving a public company, the Securities and Exchange Act governs the filing requirements and procedures of public tender offers and private placements. Also, stock exchange rules address the various listing and delisting issues that may result from a M&A transaction.

The MOEA is in charge of the interpretation and application of the BMAA rules, and the MOEAIC screens applications for foreign investment, including M&A transactions. The Financial Supervisory Commission oversees the financial industry and securities market in Taiwan, including the M&A activities of financial institutions and listed companies.

Business combinations (including M&As) meeting any of the thresholds laid down in the Fair Trade Act are subject to a prior notification requirement (see the next section).

Business M&A

The BMAA regulates mergers, acquisitions and corporate divisions (such as spin-offs), and also provides certain tax incentives to qualified M&A transactions (see page 67 for details).

Under the BMAA, Taiwanese companies can engage in M&A or spin-offs with foreign companies. Similarly, domestic enterprises can acquire, or be acquired by, foreign firms. A foreign investor wishing to merge with or invest in a Taiwanese company must obtain approval from the MOEAIC.

The BMAA allows for various types of transaction structures, including whale-minnow mergers, short-form mergers, asset and business acquisitions, share exchanges and demergers, among others.

The BMAA also addresses labour protection issues, in conjunction with the Labour Standards Act and the Act for Worker Protection of Mass Redundancy. The procedural requirements of the latter law may, however, complicate some corporate restructurings and reorganisations which involve mass worker lay-offs.

Financial M&A

The FIMA allows banks, insurance companies, securities brokerages and other financial institutions to acquire or merge with related institutions. It also allows foreign banks to acquire or merge with their local counterparts.

The FHCA provides the legal framework for Taiwanese financial institutions to form financial holding companies, in which they may merge with or acquire their rivals. Foreign financial institutions may invest directly in local financial holding companies for up to 100% ownership.

Anti-trust and competition

The Fair Trade Act (FTA) prohibits any business from engaging in unfair competition in Taiwan. The government is in the process of overhauling the Act to strengthen the regulatory and supervisory framework.

The Fair Trade Commission (FTC) administers and enforces the FTA. It may, on its own initiative or upon complaint, investigate cases involving anti-competitive behaviour, including:

- **Restrictive business practices**, which cover monopolies and the abuse of dominance, business combinations, concerted actions, fixing of resale prices and other restrictive business practices.
- **Unfair trade practices**, which cover counterfeiting, false advertisements, wrongful damage to business reputation, illegal multi-level sales and other deceptive or unfair business conduct.

Proposed amendments to the FTA, which are pending legislative review, would grant the FTC new 'dawn raid' powers to investigate anti-competitive conduct. Investigation efforts would also be boosted by a proposed extension of the statute of limitation under the FTA from three to five years.

Monopolies

The FTA permits certain monopolies as long as these do not abuse their market power. This provision applies to enterprises whose monopolistic status is protected or approved by other laws and regulations. Statutory monopolies exist in the electricity, water supply and postal services industries.

A monopoly is considered to exist in any of the following circumstances: one business enterprise has at least a 50% market share; two enterprises have a combined market share of at least two-thirds; or three enterprises have a combined market share of at least three-fourths of the total market.

The FTC determines whether an enterprise has abused its dominant position on a case-by-case basis.

Merger control

The FTC oversees the approval of business combinations to prevent any market in Taiwan from becoming too concentrated. Under Taiwan's merger control regime, a defined combination meeting certain thresholds must notify the FTC at least 30 days prior to consummation of the combination.

Currently, the thresholds of the pre-merger notification are any of the following: the post-acquisition business will have an aggregate market share of one-third or more in a relevant product market; any of the transacting parties has a one-quarter market share or more in a relevant product market; or the annual sales revenue of the transacting parties exceeds threshold amounts prescribed by the FTC.

Other proposed amendments to the FTA, if approved, would simplify the thresholds for pre-merger notification so that only one criterion applies, based on sales revenue rather than market share. As such, a transaction would require to be notified to the FTC when sales of one of the entities in the merger exceeded an amount yet to be determined and publicly announced.

A foreign-to-foreign combination conducted offshore that has a direct, substantial and reasonably foreseeable effect on the Taiwan market is subject to merger control under the FTA.

If the FTC does not object to the proposed transaction after 30 days following the filing date of the combination notification, the transacting parties are free to proceed. The FTC may shorten the 30-day waiting time or extend the period up to 60 days if it deems it necessary.

Cartels

Cartels are named as a “concerted action” under the FTA, which is defined as the conduct of any business enterprise, by means of any form of mutual understanding with any other competing enterprise, to jointly determine the price of goods or services or any other business terms with respect to such goods and services, thereby restricting each other's business activities.

Taiwan does not outlaw collusion among enterprises outright, however. Certain types of concerted action are permissible under the FTA (but they must first be approved by the FTC), or where such an action is considered beneficial to Taiwan's economy as a whole and in the public interest.

In 2012, Taiwan significantly increased fines for serious cartel violations and introduced complementary measures to prompt violators to apply for leniency. The FTC now offers immunity or a reduced fine to companies that self-report involvement in a cartel.

Intellectual property rights

The MOEA's Intellectual Property Office (TIPO) coordinates and administers policies on intellectual property rights (IPR) in Taiwan. It is also responsible for coordinating IPR enforcement efforts with other relevant government bodies.

The legal protection of intellectual property in Taiwan is based on certain statutory laws, including the Patent Act, Trademark Act, Copyright Act, Integrated Circuit Layout Protection Act and the Trade Secrets Act.

As a condition of its accession to the World Trade Organisation (WTO) in 2002, Taiwan committed to complying with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights. Since then, Taiwan has strengthened its IPR legal regime and enforcement mechanisms. Due to these improvements, Taiwan was removed in 2009 from the US Special 301 Watch List for IPR violators.

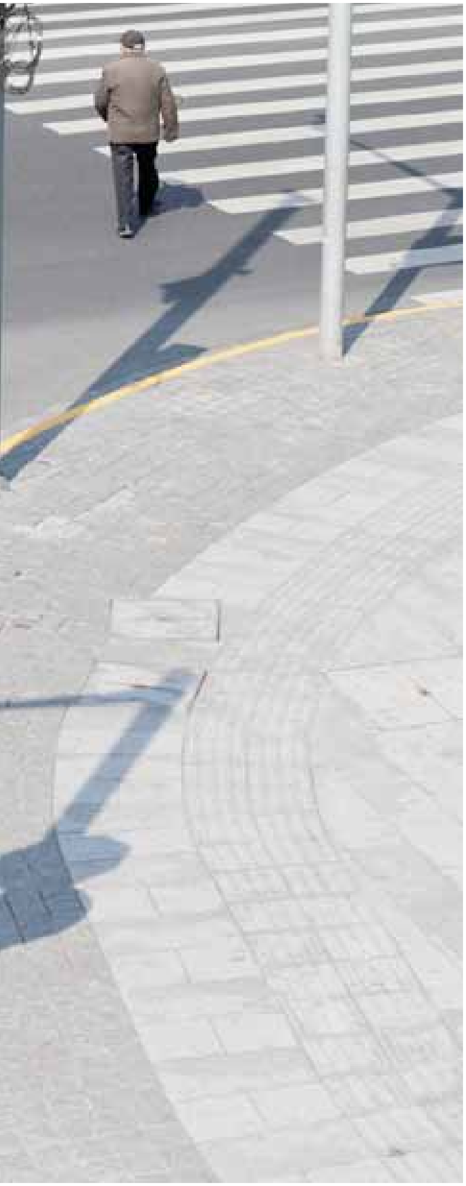
Recent key developments include the establishment in 2008 of a specialised Intellectual Property Court to handle IPR infringement cases. Taiwan has also strengthened cooperation with foreign IPR enforcement agencies, including the signing of an IPR cooperation and protection agreement with China in 2010, as well as Patent Prosecution Highway agreements with the US in 2011 and Japan in 2012.

Furthermore, since 2011, Taiwan has extensively revised its patent and trademark laws and related enforcement rules. The latest revisions bring Taiwan's patent and trademark systems more in line with international standards and provide more expansive protection for patents and trademarks.

Patents

Taiwan operates a first-to-file system for patents, i.e., patents are granted to those who file first with the TIPO even if the filers are not the original inventors. A foreign patent application filed by a person or firm without a business office in Taiwan must be made through an authorized agent.

Taiwan's Patent Act grants protection to three types of patents: invention, new design and new utility model patents. An invention patent has a term of twenty years, a design patent twelve



years and the utility model ten years. Protection for all these patent types may be curtailed if the patent owner fails to pay certain administrative fees or renounces the patent right.

Trademarks

Taiwan operates a first-to-file trademark registration system. When two applications have been filed for similar or identical trademarks, the first one filed will be considered for approval. Taiwan's Trademark Act provides some protection to "well-known" foreign trademarks.

Foreign parties with no place of domicile or business office in Taiwan must use the services of a registered trademark agent to submit an application with the TIPO. The term of trademark protection is ten years from the date of registration, and may be renewed for additional ten year terms.

Trade Secrets

Taiwan's Trade Secrets Act provides for the protection of trade secrets belonging to citizens of both Taiwan and WTO member countries. As a rule, trade secrets belong to an employer if they result from an employee's work during employment or while using resources belonging to the employer.

In January 2013, the law was amended to levy harsher penalties for corporate intellectual property theft, including a maximum five-year jail sentence and a NT$50 million fine, with increased penalties (including up to 10 years imprisonment) for trade secrets taken to other countries, including China.

Legal and court system

Taiwan is a civil law jurisdiction, with the emphasis of the legal system placed on codified statutes rather than case law. If disputes and litigation arise, the courts are the ultimate authorities with the power to interpret and apply the law of the land, with court cases heard and decided by judges, not juries.

Under Taiwan's dual court system, common courts hear civil and criminal cases, while administrative courts adjudicate matters relating to the exercise of public power. Cases involving matters of constitutional law are heard by the Constitutional Court of the Judicial Yuan, which is the highest judicial organ in Taiwan.

The common court system consists of District Courts (court of first instance), High Courts (intermediate appellate court) and the Supreme Court (highest court for appeals). Issues of fact are adjudged by both the District and High Courts, while the Supreme Court considers only issues of law.

The administrative court system is separate from the common courts and has two tiers. High Administrative Courts (courts of first instance) hand down judgements on issues of both fact and law, while the Supreme Administrative Court (appellate court) reviews only issues of law.

Cases involving alleged violations of intellectual property laws and regulations may, under certain conditions and at various stages of litigation, be referred for judgement to the Intellectual Property Court.

The judgements of foreign courts with jurisdictional authority are enforced in Taiwan by local courts on a reciprocal basis. Per the Compulsory Execution Act, a party seeking to enforce a final foreign judgement in Taiwan must file a civil action in a local court for permission to enforce that judgement.

Arbitration and arbitral awards

Arbitration as an alternative dispute resolution method is also available in Taiwan under the Arbitration Act, which closely follows the UNCITRAL Model Law on International Commercial Arbitration.

Most arbitration cases in Taiwan are referred to the Chinese Arbitration Association, Taipei (CAA). This government-appointed non-profit organisation has 30 cooperation agreements with other arbitration institutions across the globe, including

China, and handles more than 200 domestic and international cases each year. The working languages of the CAA are Chinese and English.

To file for arbitration, disputants in a case must enter into a written agreement with each other to determine the rules governing the arbitral proceedings, as well as the place and language of arbitration. An arbitral tribunal may be composed of one or an odd number of arbitrators.

A domestic arbitral award is binding on both of the contending parties and has the same legal force and effect as a final court judgment in Taiwan. A foreign arbitral award, however, may may not be enforceable in Taiwan unless it is further recognised and granted by a Taiwan court.

Chapter 3
Labour and employment

Taiwan has a comprehensive body of laws and regulations addressing the rights and obligations of employees and employers. This chapter highlights the key statutory requirements.

The topics covered include:

- Employment terms and conditions
- Worker insurance programmes
- Employee retirement benefits
- Termination of employment
- Work permits for foreigners

Employment terms and conditions

The Council of Labour Affairs (CLA) is the highest administrative body dealing with labour matters at the national level in Taiwan. It is responsible for drafting and enforcing the regulations dealing with all employment issues including labour conditions, welfare, insurance and occupational health and safety.

Similar bodies exist at the municipal and county levels to deal with local labour issues or to act as the local arm of the CLA for the inspection and enforcement of workplace standards.

Labour Standards Act

Taiwan's Labour Standards Act (LSA) establishes minimum standards for employment terms and conditions, mandatory benefits, retirement programmes and severance pay. It applies to almost every line of work.

New amendments to the LSA, effective from June 2012, introduced stronger financial penalties for employers who violate work regulations under the law. The amendments also empowered the CLA to create and maintain a public blacklist disclosing the names of employers who violate the LSA.

Working hours

Regular working hours are eight hours a day or a total of 84 hours every two weeks. Employees are entitled to a 30-minute rest break for every four consecutive hours of work and at least one day off with pay every week. The public sector and most private sector firms follow a five-day work week.

An employer covered by the LSA may request employees to work beyond regular working hours by agreement with the labour union or labour-management conference if there is no union. The maximum permissible amount of overtime work is four hours per day and 46 hours per month.

The LSA prohibits pregnant women and new nursing mothers from working between 10pm and 6am.

Certain categories of workers (such as managerial and professional employees) are exempt from LSA restrictions on working hours, annual

holiday, leave and overtime, and also from the rules against pregnant women and new mothers working past 10pm. Employers must get approval from their local labour authority and obtain written consent from employees before being granted the exemption.

Compensation

Taiwan has a minimum wage system. An employee may not be paid less than the statutory minimum level of pay, which is determined by the Basic Wage Commission. The minimum wage is currently set at NT$19,047 (about US$635) per month, or NT$109 (about US$3.63) per hour, for all industries.

An employer is required to pay for any overtime worked by employees. For the first two hours of overtime on a normal working day, the overtime rate is 133% of the regular pay rate. For the second two hours of overtime on a normal working day, the overtime rate is 166%. An employee who agrees to work during his or her vacation time or on a public holiday is entitled to be paid at 200% of the regular pay rate.

Holidays and annual leave

Employees are entitled to time off with pay on public holidays. Many organisations follow the annual national holiday schedule set by the Executive Yuan’s Directorate-General of Personnel Administration.

Employees are entitled to annual paid leave of seven days after one to two years of continuous service, 10 days for three to four years of service, 14 days for five to nine years of service, and up to 30 days for service longer than 10 years (the legally required number of days increases by one day per year).

Other leave

Employees may take leave with full pay for marriage (up to eight days), funerals (3-8 days, depending on the relationship to the deceased), medical care and recovery from occupational accidents (granted on a case-by-case basis), and legally required public service (also on a case-by-case basis).

Employees may take up to a total of 30 days sick leave at half pay each year. Additional sick days are not compensated. Female workers may request menstruation leave of one day per month, which is included in the regular sick leave tally, also at half pay.

For sickness or injury other than occupational accidents, outpatient sick leave may not exceed 30 days per year, and hospitalisation sick leave is not to exceed one year every two years. The combined total of outpatient and hospitalisation leave may not exceed one year within a two-year period.

Also, employees may take up to 14 days unpaid leave each year in order to attend to any personal business.

Maternity leave and childcare

Female employees are entitled to eight weeks of paid maternity leave, though at half pay if employed for less than six months. In the case of a miscarriage, a female worker may also take leave, with the duration and pay rate dependent on how long she was pregnant before the miscarriage.

In addition to maternity leave, the Gender Equality in Employment Act (GEEA) mandates other types of leave related to family responsibilities, such as paternity, childcare and family care leave. Other statutory requirements include the provision of infant nursing time and childcare arrangements.

Female employees with babies less than one year old are permitted to take two 30-minute breaks at work every day for breastfeeding. This time is counted as regular working hours.

Employers with more than 250 workers are required under the GEEA to establish child care facilities or provide for such services, and can receive financial assistance from government agencies for this purpose.

Sex discrimination and harassment

The GEEA also provides protection in the workplace against discrimination on the basis of gender identity or sexual orientation. For instance, employers cannot terminate employment at will if an employee becomes married or pregnant, or requests leave for childbirth or childcare related reasons.

The GEEA outlaws sexual harassment in the workplace, and companies with 30 or more employees must draw up and publicly display measures to prevent and punish such offences.

Employee welfare funds

The Employee Welfare Funds Act requires firms with more than 50 workers to contribute monthly to a welfare fund for their employees. The fund is administered by an employee welfare committee and is used to provide subsidies to employees, including for education, leisure activities and childcare, etc.

Workplace privacy

Amendments to Taiwan's Computer-Processed Personal Data Protection Act, renamed the Personal Information

New expanded rules on personal data protection

Protection Act (PIPA), were approved in 2010 and partly came into effect from October 2012. The Act imposes responsibilities on employers with respect to the collection, processing and use of personal data of employees.

The revised PIPA broadens the scope of “personal data” that is protected and expands the obligations of companies subject to the PIPA. For example, data subjects must be informed of their rights and of how their data will be used; and in many cases, written consent of the data subject is required.

Labour health and safety

A recent spate of high-profile industrial incidents in Taiwan has aroused more awareness of the need to improve the local working environment. In part response, the government has made major changes to the Labour Safety and Health Act (now renamed the Occupational Safety and Health Act) that will impact all employers.

The revised law was approved by parliament in June 2013. The key changes include, among other things, expanding the scope of the law to all workers and workplaces, requiring employers to take precautionary measures that protect workers from overwork, work-related diseases and occupational hazards, and protecting workers in high-risk envronments.

Labour inspections

Inspection agencies established by the CLA or delegated local authorities share responsibility for carrying out inspections of workplace conditions to ensure the well-being of workers.

Workplace inspections carried out under the Labour Inspection Act may include, but not are limited to, work health and safety matters, labour insurance, employee welfare funds and the hiring of foreign national workers.

Worker insurance programmes

Taiwan operates three worker insurance programmes providing social security, unemployment and medical care benefits. Insurance premiums are determined by the government based on an employee's monthly insured salary, and are borne by the employer, the employee and the government.

Labour insurance

Taiwan's labour insurance programme is governed by the Labour Insurance Act (LIA) and administered by the Bureau of Labour Insurance (BLI). Participation is compulsory for all workers in the 15-65 age group working in an establishment with five or more personnel. Employees working in companies or industries not specifically covered by the insurance scheme may join on a voluntary basis.

The LIA programme provides monetary compensation to insured workers in the case of non-occupational and occupational illnesses or injuries, including maternity, death, disability, old-age and medical benefits.

The ordinary labour insurance premium is calculated as a percentage of an employee's monthly insured salary from NT$19,047 up to NT$43,900. The current premium rate is set at 8% and is jointly paid by the employer (70%), the employee (20%) and the government (10%).

Amid concerns about the financial sustainability of Taiwan's Labour Insurance Fund, in April 2013, the government put forward legislative proposals that, if passed, would increase the LIA premium rate by 0.5 percentage points every year until it reaches the current set ceiling of 12% in 2021. However, if the insurance fund is deemed not able to meet its payout obligations for another 20 years, the premium rate will continue to be raised by 0.5 percentage points annually until it reaches 18.5%.

Occupational accident insurance only applies to certain industries. The premium ranges from 0.06% to 1.06% of an employee's monthly insured salary and is paid by the employer.

Employment insurance

The Employment Insurance Act (EIA) provides monetary benefits to involuntarily unemployed workers, as well as measures to counter unemployment. The BLI is the EIA programme insurer and administrator.

The EIA programme covers all Taiwanese workers in the 15-65 age group. Foreign, Chinese, Hong Kongese and Macanese spouses of

Taiwanese citizens who are legally working in Taiwan are also allowed to participate in the EIA programme.

Subject to certain requirements, unemployed workers can receive 60% of their average insured salary for the last six months before unemployment for up to six months (nine if over 45 or disabled). Payments can be extended for up to 12 months in certain circumstances. Individuals on benefits are not required to contribute to National Health Insurance premiums.

The EIA premium is calculated as a percentage of an employee's monthly insured salary from NT$19,047 up to NT$43,900. The current premium rate is set at 1% and is jointly paid by the employer (70%), the employee (20%) and the government (10%).

National health insurance

Taiwan's National Health Insurance (NHI) programme provides universal medical care coverage and works in tandem with the LIA and EIA insurance schemes. The Bureau of National Health Insurance, an agency of the Department of Health, is the programme insurer and administrator.

Participation is compulsory for almost all Taiwanese citizens as well as foreign nationals legally residing in Taiwan for more than four months, or legally employed, and their dependents.

The NHI provides comprehensive healthcare benefits to insured enrollees, including hospitalization, outpatient care, prescription drugs, physical therapy, childbirth, emergency care, and dental and vision care. Co-payments are required on most inpatient and outpatient services.

The NHI premium rate for each insured person is currently set at 4.91% of an employee's monthly insured salary from NT$19,047 up to a ceiling of NT$182,000. Payment is split between the employer (60%), the employee (30%) and the government (10%).

From 1 January 2013, a supplementary NHI premium of 2% is imposed on other income received by an insured person, including part-time income, rental income, interest income, dividends, income from a professional practice, and high bonuses. The starting level for the extra income subject to the supplementary NHI premium is set at NT$5,000 and the maximum threshold is NT$10 million.

Employee retirement benefits

The mandatory retirement age for insured workers in Taiwan is 65. Depending on the applicable retirement plan, an employee may receive retirement benefits under the provisions of the LSA or the newer Labour Pension Act (LPA). In addition, an insured employee is entitled to receive old-age benefits under the LIA, which are managed independently from the LSA or LPA retirement plans.

Between 1 July 2005 and 30 June 2010, employees had the option of switching to the new LPA pension scheme or continuing their coverage under LSA's retirement provisions. The choice to join the LPA is irrevocable. Individuals joining the workforce or changing employers on or after 1 July 2005 are automatically enrolled in the LPA plan. However, foreigners are not eligible to join this pension scheme.

Labour Standards Act

Businesses covered by the LSA must pay retirement benefits upon both voluntary and mandatory retirement for employees who choose to remain subject to LSA's retirement provisions.

Voluntary retirement is possible at age 55 with 15 years of service, at any age with 25 years of service, though service must be with the same employer, or at age 60 with 10 years of service. Employers may compel employees to retire at age 65 or at any age if they are physically or mentally incapacitated.

Under the LSA system, an employee will receive a lump-sum payment from their employer upon retirement, based on the employee's pensionable salary and years of service. To fund the LSA-mandated retirement benefits, employers are required to make monthly contributions in the range of 2% to 15% of an employee's salary to a designated pension account at the state-owned Bank of Taiwan.

Labour Pension Act

The LPA, effective from 1 July 2005, created a mandatory retirement system of portable, defined contribution pension accounts to replace the LSA retirement benefits system.

Under the LPA, employers must contribute at least 6% of an employee's monthly salary, ranging from NT$1,500 up to NT$150,000, to an individual pension account managed by the BLI. Employees may also voluntarily contribute up to 6% of their monthly salary to their portable pension accounts, which may be deductible from their individual taxable income in the year concerned.

An employee covered by the LPA plan may receive monthly pension payments if age 60 or older with more than 15 years of service. An employee with less than 15 years of service may receive a lump-sum pension payment of the principal and accrued dividends in their individual pension account.

Termination of employment

Most employment relationships in Taiwan are subject to the LSA restrictions on the termination of employees and are therefore not "at will." The LSA specifies the grounds upon which an employee may be terminated and whether advance notice and severance pay is required.

Any dismissal must be for a justified reason, such as where a company ceases operations, suffers operating losses or a contraction of business, suspends operations for over a month due to force majeure, the nature of the business changes requiring a reduction in the workforce and the workers cannot be reassigned, or where an employee is clearly incapable of undertaking the assigned work.

Under the above circumstances, an employer is required to give notice as follows: 10 days for those employed for more than three months to one year, 20 days for those employed one to three years, and 30 days for those employed longer than three years. During the notice period, employees are entitled to two days' paid leave per week to search for another job. Payment in lieu of notice is allowed

Except where termination is for cause (such as fraudulent misrepresentation, gross misconduct or a serious breach of contract by employees), the LSA obliges employers to pay severance benefits due to terminated employees.

Under the LSA system, employers must provide severance pay equal to one month's average pay over the prior six months for each full year of service with their employer. The benefit is pro-rated for a service period of less than one year, and service of less than one month is counted as one month.

Employees who joined the LPA scheme on or after 1 July 2005 retain their right to severance benefits accrued under the LSA (assuming they remain with the same employer) for employment service prior to the implementation of the LPA. For periods of employment service after 1 July 2005, severance benefits are equal to 50% of the employee's average monthly wage per year of service up to a maximum of six months' pay.

Collective dismissals

Mass employee lay-offs are regulated under the Act for Worker Protection of Mass Redundancy (AWPMR). This labour law provides procedural protections for workers facing redundancy, as well as formal sanctions against employers who close their enterprises or execute mass lay-offs without settling employee wages.

The AWPMR is triggered when employers with 30 or fewer employees intend to dismiss more than 10 workers within a 60-day period; when employers with 30 to 200 employees intend to lay off more than 20 in a day, or one third of the labour force in 60 days; when employers with 200 to 500 employees intend to lay off more than 50 in a day, or one fourth of the labour force within 60 days; and when employers with more than 500 employees intend to lay off one fifth of the labour force within 60 days.

A 60-day notice period is mandated when the AWPMR is triggered. At the beginning of the notice period, employers must notify the relevant government authority, labour union and employee representatives of the labour-management conference, and also publicly announce the proposed redundancies. Employers are also required to consult with employee representatives on matters such as wages, severance pay, retirement pay and termination dates within 10 days of the mass lay-off notification.

Work permits for foreigners

Foreign nationals wishing to work in Taiwan must obtain the necessary employment authorization (work permit) and the appropriate visas and residence permits to enter and stay in Taiwan. In general, a foreign national can work legally in Taiwan if hired by a local employer and that employer obtains approval from the relevant government agency (principally the CLA) to employ the foreigner.

With the exception of permanent residents, individual foreigners cannot obtain permission to work in Taiwan by themselves. They must first find an employer to sponsor them for a work permit. Generally, a sponsoring employer must meet certain registered capital or revenue requirements depending on the type of company and the work the employee will be hired to perform (see Chapter 2 for details).

Work permit applications must be submitted by a sponsoring employer to the appropriate government agency in accordance with the provisions of the Employment Services Act. The duration of a work permit cannot exceed three years subject to renewal on application. It takes up to 10 working days to process an application if the supporting documents are in order. However, the process from preparation of the required documents through to issuance of the work permit typically takes at least two months.

Once the work permit application is approved, the foreign employee must apply for a resident visa for employment purposes from a Taiwan consulate or embassy or Taipei Economic and Cultural Office overseas. Employees who have already entered Taiwan on a visitor visa can apply to the Bureau of Consular Affairs at the Ministry of Foreign Affairs to have it changed to a resident visa. The processing times for the visas can vary from one day to one week or more, particularly where applying overseas.

The entry, departure and residence of foreign nationals working in Taiwan are supervised by the National Immigration Agency (NIA). A foreigner granted a resident visa to stay in Taiwan for more than six months must apply to the NIA within 15 days after entering Taiwan for an Alien Resident Certificate (ARC). It usually takes about 10 working days to complete the ARC application process if the supporting documents are in order.

PRC Chinese nationals fall into a special category handled by different government agencies according to the purpose of their stay. Chinese nationals must meet certain requirements to be allowed to enter Taiwan for business purposes. Other rules apply to residents of Hong Kong and Macau.

The material above contains general information about the requirements for foreign nationals to stay and work legally in Taiwan. Readers should contact our International Assignment Services team for professional advice regarding the particular facts and circumstances involved in their case.

For further guidance on expatriate assignment issues in Taiwan, readers are recommended to consult the PwC publications, *Immigration Guide: Taiwan* and *Taxation of International Assignees: Taiwan*, which are both available for download on our website at *www.pwc.tw/en/publications*.

Chapter 4
Accounting and audit

Companies in Taiwan are required to maintain accounting records and prepare financial statements in accordance with local accounting laws and Taiwan Generally Accepted Accounting Principles (GAAP), which are largely aligned with International Financial Reporting Standards (IFRS).

The topics covered include:

- Key governing bodies
- Accounting record keeping
- Statutory financial audit
- Auditor responsibilities
- IFRS adoption in Taiwan
- Corporate governance

Key governing bodies

The main regulatory and supervisory bodies responsible for accounting and auditing matters in Taiwan are:

Ministry of Economic Affairs

The MOEA issues accounting rules for both private and public companies, and also regulates Taiwan practicing accountants in accordance with the Certified Public Accountant (CPA) Act.

Financial Supervisory Commission

The FSC's Securities and Futures Bureau (SFB) sets the financial reporting requirements for public companies. It also supervises the work of auditors on listed companies.

Accounting Research and Development Foundation

The ARDF sets the financial accounting standards followed by companies in Taiwan. It also translates IFRS into traditional Chinese, in cooperation with the IFRS Foundation, and issues related local application guidance. The ARDF is an endowed private institution, but supervised by the FSC.

Accounting record keeping

Companies in Taiwan maintain accounting records and prepare financial statements in accordance with the provisions of the Business Entity Accounting Act and related regulations, as well as in compliance with Taiwan GAAP requirements.

Accounting period. Companies generally use the January-December calendar year as their financial year, which is the same as the Taiwan fiscal year for tax reporting purposes. However, a company may, with the approval of the tax authority, adopt a non-calendar year as its fiscal year.

Bookkeeping currency. Accounting books must be denominated in the New Taiwan dollar (NT$), which is the functional currency for most companies in Taiwan. If the accounts are maintained in a foreign currency due to business needs or different functional currency considerations, such currency must be translated into NT$ in the closing financial statements.

Bookkeeping language. All accounting books, records and financial statements prepared by a company should be in traditional Chinese, but may also be written concurrently in a foreign language.

Accounting basis. Companies must follow the accrual basis of accounting in performing recognition, measurement and reporting for accounting purposes. If a business ordinarily uses the cash basis of accounting, adjustments using the accrual basis must be made when preparing their final accounts.

Financial statements. The basic financial statements required are a balance sheet, income statement, cash flow statement, statement of changes in owners' equity and notes to the financial statements, along with comparative data for the previous year.

Reporting format. The format of the financial statements is set forth in the Statements of Financial Accounting Standards (SFAS) issued by the ARDF. Public companies are also required to follow the format and guidance prescribed by the SFB.

Statutory financial audit

Private companies with paid-in capital of NT$30 million or more are required to have their financial statements audited and certified by a Taiwan-licensed CPA. Public companies and financial institutions must also be audited by a CPA, as well as meet other reporting requirements of the FSC.

Listed companies must have their annual financial statements audited by a CPA within three months of their financial year-end. They must also have their interim financial statements reviewed by a CPA within 45 days after the close of each interim period.

Auditor responsibilities

Auditors in Taiwan examine a company's financial statements in accordance with the Regulations Governing Auditing and Attestation of Financial Statements by Certified Accountants and the Statements of Auditing Standards issued by the ARDF. Generally speaking, the auditing standards and procedures followed in Taiwan are similar to those of the International Standards on Auditing.

Auditor independence is key to the integrity of the financial audit process. In Taiwan, an auditor is prohibited from becoming a director or officer of an audited company, or having a direct or indirect financial interest in the company under audit. At present, audit firm rotation is not compulsory in Taiwan, but seven-year audit-partner rotation has been mandatory for public listed companies since 2009.

The independent auditor's report may conclude with an unqualified opinion, modified unqualified opinion, qualified opinion, disclaimer of opinion or an adverse opinion. An auditor's report containing an auditing opinion other than unqualified must specifiy the reasons for such "negative" opinion.

Sample audit report

Below is the typical language used in an unqualified audit report on financial statements prepared and presented in accordance with Taiwan GAAP:

“We have audited the accompanying balance sheets of ABC Company as of December 31, 20XY and 20XZ, and the related statements of income, changes in shareholders’ equity and cash flows for the years then ended. These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements based on our audits.”

“We conducted our audit in accordance with the Regulations Governing Auditing and Attestation of Financial Statements by Certified Public Accountants and generally accepted auditing standards in the Republic of China. Those rules and standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.”

“In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of ABC Company as of December 31, 20XY and 20XZ, and the results of its operations and its cash flows for the years then ended in conformity with the Regulations Governing the Preparation of Financial Statements by Securities Issuers, requirements of the Business Entity Accounting Act and the Regulations on Business Entity Accounting Handling with respect to financial accounting standards, and generally accepted accounting principles in the Republic of China.”

IFRS adoption in Taiwan

The FSC announced in 2009 a road-map for IFRS adoption in Taiwan in two phases starting from 2013. The ARDF translates and issues traditional Chinese IFRS, in accordance with the IFRS Foundation's set translation process. The translated IFRS, together with local interpretive and application guidance issued by the FSC and ARDF, are collectively referred to as T-IFRS.

From 1 January 2013, listed companies and financial institutions supervised by the FSC (excluding credit cooperatives, credit card companies and insurance intermediaries) are all required to prepare their financial statements in compliance with T-IFRS. In the second phase, starting from 1 January 2015, unlisted public companies, credit cooperatives and credit card companies will follow T-IFRS.

Frst-time adopters in 2013 are required to follow the Traditional Chinese 2010 Red Book (i.e., the 2010 version of IFRS). The FSC has postponed the effective dates of new and amended standards issued by the International Accounting Standards Board (IASB) after 2010. The ARDF will continue to translate new IFRS issued by the IASB, and the FSC will determine the effective dates for local companies.

Reporting requirements for private companies, including the Taiwan subsidiaries and branch offices of foreign companies, still follow Taiwan GAAP. However, proposed

Mandatory adoption of IFRS in Taiwan commenced in 2013

amendments to the Business Entity Accounting Act, if approved by parliament, will allow private companies to choose whether to voluntarily adopt T-IFRS or to continue to apply current Taiwan GAAP.

Readers should be mindful that, although Taiwan GAAP is largely aligned with IFRS, significant differences still exist in areas such as: consolidation; revenue recognition; transactions with non-controlling interests; employee benefits; business combinations; accounting for real construction contracts; accounting for taxation; and financial statements presentation and disclosure.

Corporate governance

Taiwan has made incremental improvements to its corporate governance regime in recent years. Even so, it still has some way to go to match global standards—Taiwan ranked sixth among 11 Asian markets in the "CG Watch 2012" report on corporate governance in Asia.

A key governance issue in Taiwan is the fact that many local listed companies continue to be family-controlled, with board of director positions filled largely by senior executives and representatives of controlling shareholders or founders.

Unlike other major stock markets, independent directors and audit committees are still not mandatory for all listed companies in Taiwan. Instead of audit committees, many companies rely for their checks and balances on the statutory supervisor system—an institution that is widely perceived as too close to board members and faces considerable challenges in being effective. In view of the continuing criticism of the supervisor system, the FSC is broadening and strengthening the role of independent directors.

Taiwan introduced an independent director system in 2006. Initially, large listed companies and financial institutions with paid-in capital of NT$50 billion or more, as well as newly listing corporations, were required to allocate at least two seats, and no less than one-fifth of total board seats, to independent directors. In 2011, the FSC expanded the independent-director requirement to encompass listed companies and financial institutions with paid-in capital of NT$10 billion or above.

Taiwan also introduced new rules in 2006 requiring listed companies to establish either an audit committee or a supervisory system. An audit committee must have no fewer than three persons and all must be independent directors. In January 2013, the FSC announced a new requirement for financial service providers and non-financial companies with paid-in capital of NT$50 billion or more to establish audit committees to replace their statutory supervisors.

Another significant development was the 2011 requirement for all listed companies in Taiwan to establish a compensation committee. It must comprise at least three professionals and/or independent directors, who have to stipulate the performance evaluation and compensation policy of board directors, supervisors and senior executives at least two times a year.

Chapter 5
Corporate taxation

This chapter provides a comprehensive overview of the corporate tax system in Taiwan. All information contained in this chapter, unless otherwise stated, is up to date as of 30 June 2013.

For updates on tax developments in Taiwan, readers are recommended to consult PwC's monthly tax newsletter, which is available for download at *www.pwc.tw/en/publications.*

The topics covered include:

- Corporate income tax
- Income determination
- Tonnage tax regime
- Capital gains
- Dividends
- Alternative minimum tax
- Tax administration
- Withholding tax
- Double taxation relief
- Transfer pricing
- Other anti-avoidance rules
- Tax incentives

Corporate income tax

In Taiwan, business entities are subject to profit-seeking enterprise income tax under the Income Tax Act and related regulations. As the principal taxpayers are profit-seeking enterprises organised as companies, the tax is more commonly referred to as corporate income tax, or CIT.

The Taxation Administration of the Ministry of Finance (MOF) is the governing tax authority in Taiwan. Five tax collection agencies are also under the supervision of the MOF.

Basis

All companies operating within Taiwan must pay CIT, except where exemptions are provided by law. A company's tax residence status determines how and at what rate the corporate income tax is levied.

Residence

The residence of a company for Taiwan tax purposes is determined in accordance with its place of incorporation or the location of its company seat (i.e., normally where its corporate head office is situated).

A company which is incorporated in accordance with Taiwan's Company Act (such as a foreign subsidiary) or has its head office in Taiwan is considered a tax resident. It is subject to CIT on its worldwide income, but a tax credit is available for foreign income tax paid by the company.

A company with its head office outside Taiwan but having a fixed place of business (FPOB) or business agent in Taiwan (such as a branch office of a foreign company) is considered a non-tax resident. It is subject to CIT only on its Taiwan-sourced income, but at the same rate as for resident companies.

A company with no FPOB or business agent in Taiwan is also a non-tax resident. However, it is just subject to withholding tax on its Taiwan-sourced income. Depending on the type of income, the applicable withholding tax rate may be reduced under certain available double taxation agreements.

Readers should note that the MOF plans to introduce a change to the definitions of tax residency to include "place of effective management" criterion as part of new anti-avoidance measures (see page 67 for details).

Tax rate

Currently, CIT is payable at a fixed rate of 17% on total annual taxable income over NT$120,000. The CIT payable may not exceed 50% of the taxable income in excess of NT$120,000.

Corporate income tax rate

Taxable income	Tax rate
Up to NT$120,000	Exempt
NT$120,001 and over	17%

In addition, resident companies and non-resident companies with a FPOB or business agent in Taiwan are also subject to alternative minimum tax (AMT) under the Income Basic Tax Act (see page 58 for further details).

Income determination

Taxable income

A Taiwan resident company is taxed on the basis of its net income, which is defined in the Income Tax Act as gross annual income after the deduction of all costs, expenses, losses and taxes. Except for certain exempt items, income from all sources, both onshore and offshore, is subject to CIT.

To determine a company's taxable income, its accounting income is adjusted for tax purposes by taking into account non-taxable income, non-deductible expenses, allowable provisions and loss carry-forwards.

Taiwan-sourced income

A non-resident company is only taxed on its Taiwan-sourced income. Article 8 of the Income Tax Act and related guidelines define the income types regarded as Taiwan-sourced income.

Under the "Guidelines for Determining Taiwan-Sourced Income under Article 8 of the Income Tax Act," issued by the MOF in 2009, service fees received by a foreign company for services performed entirely outside of Taiwan are exempt from CIT. For services rendered both onshore and offshore, only the remuneration for services rendered onshore is deemed Taiwan-sourced income and subject to CIT.

For certain categories of Taiwan-sourced income, costs and expenses are allowed as deductions to arrive at net taxable income, subject to supporting evidentiary documents. Tax refunds are available for withholding tax previously applied on gross revenues after necessary approvals are obtained.

Non-taxable income

Certain income items are exempt from CIT, as specified in the Income Tax Act. These include, but are not limited, to proceeds from land sales and domestic securities and futures transactions, certain approved royalties and technical services, and approved international transportation services.

Deductions

In general, expenses or losses incurred during the ordinary course of business are deductible for tax purposes, except where these are not substantiated by adequate and acceptable documents.

For domestic purchases, all profit-seeking enterprises in Taiwan—except for small-scale businesses with monthly sales less than NT$200,000 and certain professional service providers—are required to issue government uniform invoices (GUIs) to buyers of goods and services. These invoices are the main form of documentation necessary to support the deduction of business-related expenses for tax purposes.

For overseas purchases, suitable documentary evidence may include commercial invoices from suppliers, customs duty receipts, import declarations and remittance slips.

Non-deductible items

Expenses and losses unrelated to the business operations of a company are not deductible for tax purposes.

Unrealised expenses and losses are not tax deductible except for certain allowances and provisions, as specified in the Income Tax Act and other laws or specially approved by the MOF.

To qualify for tax deductibility, allowances and provisions (bad debts, depreciation, etc.) must be recorded in the accounting books, i.e., not made off the books for tax purposes only.

Tax losses

Assessed tax losses may be carried forward for ten consecutive years if the taxpayer meets certain criteria, including the maintenance of sound accounting books and records, and the timely annual filing of a '"blue" tax return or an ordinary tax return certified by a Taiwan-licensed CPA. Tax losses cannot be carried back.

Tonnage tax regime

From 2011 onwards, a company which has its head office in Taiwan and is engaged in marine transportation may apply to the tax authority to be taxed under the tonnage tax regime.

Shipping companies that meet certain criteria can choose to calculate income derived from marine transportation on the basis of the net tonnage of qualifying vessels or on the amount of actual regular income. Once the choice is made and approved, however, it will be binding for a period of ten years. In addition, loss carry-forwards and tax incentives are not eligible under the tonnage tax regime.

Tonnage tax only applies to maritime transportation income. Other taxable income is taxed in the normal manner.

Deemed profit is used to calculate income from marine transportation under the tonnage tax regime, based on the net tonnage of the qualifying vessels. Tonnage tax is computed with reference to the daily deemed profit per 100 net tonnes, multiplied by 365 days and the prevailing CIT rate.

Daily deemed tonnage profit

Net tonnage of ships	Fixed profit
Up to 1,000 tonnes	NT$67
From 1,001 to 10,000	NT$49
From 10,001 to 25,000	NT$32
Above 25,000 tonnes	NT$14

Capital gains

Taiwan does not impose a separate capital gains tax, as all gains on the disposal of capital assets, unless specifically exempt by law, are assessed as part of a company's regular taxable income and subject to CIT.

Gains on land sales and the disposal of domestic securities and futures are exempt from CIT assessment, but subject to land value increment tax (LVIT) and AMT, respectively.

On the sale of land, the difference between the current assessed land value at acquisition and the value at subsequent disposal is subject to LVIT (see Chapter 7 for further details).

Resident companies and non-resident companies with a FPOB or business agent in Taiwan must include any profits from securities and futures transactions in their AMT calculation. Net capital losses can be carried forward for up to five years, but only applied against future net capital gains. Also, 50% of the capital gains will be exempt if the securities and futures are held for more than three years.

In addition, the gross proceeds from securities and futures transactions are subject to respective transaction taxes (see Chapter 7 for details).

Dividends

Dividend distributions between Taiwan companies are exempt from CIT. The imputation tax credit distributed with such dividends cannot be used by the recipient companies. It must be recorded in a shareholder imputation credit account and passed on to resident individual shareholders in future dividend distributions. The imputation tax credit is not available to non-resident shareholders.

Dividends received by a resident company from its non-resident subsidiaries are taxable for CIT. In such cases, any foreign tax paid may be claimed as a credit against the company's Taiwan income tax liability.

Dividends paid by a resident company to non-resident companies and individuals are subject to withholding tax of 20%. This rate may be reduced under certain available double taxation agreements (see page 63 for details).

Imputation tax system

Taiwan operates an imputation tax system in relation to the taxation of dividend income. When a domestic company distributes its after-tax profits as dividends to resident individual shareholders, the company also allocates the income tax paid at the corporate level to shareholders as an imputation credit. The shareholder can use the imputation tax credit to offset against their income tax liability.

Profit retention tax

In addition to the regular CIT imposed on a company's profits, a 10% profit retention tax is imposed on any current after-tax earnings (after setting aside statutory reserves) that are not distributed as a dividend. The rule also applies to the Taiwan subsidiaries of foreign companies. The profit retention tax paid may be used by both resident individual shareholders and non-resident shareholders to offset against their Taiwan income tax liability.

For non-resident shareholders, the profit retention tax may be credited against dividend withholding tax once the company distributes dividends from earnings already subject to the surtax in subsequent years. It is not a dollar-to-dollar credit but based on a set formula and subject to a ceiling.

Branch income

Where a non-resident company has a branch in Taiwan, CIT is assessed only on branch profits. It may remit after-tax profits to its overseas head office without triggering any further tax.

Alternative minimum tax

In addition to the regular CIT assessment, Taiwan resident companies, as well as non-resident companies with a FPOB or business agent in Taiwan, are subject to a separate AMT calculation under the Income Basic Tax Act if they have certain income that is tax exempt or enjoy certain tax incentives.

The annual "basic" income of a company is calculated in accordance with the formulae below, with an annual deduction of NT$500,000. From 2013, the AMT rate is 12%.

- Income subject to AMT = Regular taxable income + add-back items
- AMT = (Income subject to AMT - NT$500,000) x 12%

Add-back items include approved exempt income under the Income Tax Act and other laws and regulations, capital gains from securities and futures transactions, and tax-exempt income of offshore banking units.

If the AMT amount is greater than the regular CIT amount, AMT is payable. Conversely, if the regular CIT amount is greater than the AMT amount, only the regular CIT amount is payable.

Tax administration

Taxable period

The tax year in Taiwan runs from 1 January to 31 December. A company may, with the prior approval of the tax authority, adopt a non-calendar year-end other than 31st December.

Tax returns

Annual CIT returns are filed on a self-assessment basis and are due no later than five months after the close of the tax year (i.e., before 31 May) or the close of a non-calendar fiscal year.

Taxpayers must file using either an ordinary tax return (generally used by all types of profit-seeking enterprises) or a "blue" return (used by enterprises with a record of honest filing of tax returns, subject to prior approval). Companies filing a "blue" return enjoy certain advantages, which include the carry forward of prior year losses and a higher tax limit on the amount of deductible entertainment expenses.

Group enterprises qualifying under the Business Mergers & Acquisitions Act and Financial Holding Company Act may file a consolidated CIT return. For other enterprises, group taxation is not permitted. The Taiwan parent company is eligible to file a consolidated return if it holds at least 90% of the outstanding issued shares of domestic subsidiaries for 12 consecutive months during a tax year.

Certain companies—including banks and insurance companies, public listed companies, and other companies whose annual net revenues and non-operating income exceed NT$100 million—are required by law to have their annual CIT returns examined and certified by a Taiwan-licensed CPA.

Payment

CIT is paid on a self-assessment basis in two instalments. The first payment is based on 50% of the income tax liability of the prior year's tax return, and is made in the ninth month of the company's fiscal year. However, a taxpayer meeting certain requirements may self-assess the provisional tax based on its taxable income for the first half of the current fiscal year. The second CIT payment is made when a company files its annual return.

Assessments

The tax authority reviews CIT returns before issuing an official assessment. If it comes up with a different tax assessment, it will issue a formal notice to the taxpayer, who can opt to pay the tax as assessed or follow the administrative remedy procedures provided under the relevant laws.

Additional tax assessments may be made within five years of the return filing date if the return is filed on time. Where a taxpayer fails to file a CIT return within the statutory deadline or evades tax by fraud or any other unrighteous means, the statute of limitation is extended to seven years.

Taiwan does not have a fixed audit cycle. A tax audit can be carried out any time prior to the expiration of the statute of limitation, as above. Corporate taxpayers may be selected for audit based on certain criteria.

Penalties

The tax authority imposes penalties for late filing and failure to file an annual CIT return by corporate taxpayers.

Failure to file a CIT return, including the undistributed earnings return, within the prescribed deadline, is subject to a late filing surcharge of 10% of the income tax amount payable and may not exceed NT$30,000 or be less than NT$1,500. The delinquent reporting surcharge may be increased to 20% of the tax amount payable, and may not exceed NT$90,000 or be less than NT$45,000, if the taxpayer fails to file a CIT return after receiving a reminder notice from the tax office.

A late payment penalty of 1% of the unpaid amount calculated every two days, up to a maximum of 15% of the unpaid amount, will apply. Late payment interest will begin to accrue 30 days after the due date at a rate set by the Directorate-General of the Postal Remittances and Savings Bank.

For under-reported taxable income, a maximum penalty of two times the underpaid tax amount applies and may be increased to three times the unpaid amount if a CIT return is not filed.

Rulings

A taxpayer can apply to the tax authority for a ruling to confirm its tax position or clarify a tax issue. The MOF also publishes a list of tax rulings that can be referenced by other taxpayers.

Withholding tax

In addition to filing a final CIT return, certain items of income derived by companies (and individuals) in Taiwan are subject to withholding tax, some of which are shown on the next page.

For a non-resident company with no FPOB or business agent in Taiwan, the withholding tax is final. For certain categories of Taiwan-sourced income, however, it may appoint a tax agent in Taiwan to claim a tax deduction for costs and expenses incurred, subject to providing supporting evidentiary documents, and apply for a tax refund within five years of the payment date.

Withholding tax rates

Type of income	Resident individuals (%)	Resident companies (%)	Non-resident individuals and companies (%)
Dividends	N/A	N/A	20
Commission	10	N/A [a]	20
Rental	10	N/A [a]	20
Interest	10	10	15, 20 [b]
Royalties	10	N/A [a]	0, 20 [c]
Technical service fees	10	N/A [a]	0, 3, 20 [d, e]
Prizes and awards [f]	10, 20	10, 20	20
Professional fees	10	N/A	20

(a) Commission, rental income, royalties and technical service fees received by resident companies that issue GUIs are exempt from withholding tax.

(b) For non-resident companies, a 15% withholding tax applies to interest income derived from short-term bills, securitised certificates, corporate bonds, government bonds or financial debentures, as well as interest derived from repurchase transactions involving these bonds or certificates. The rate in all other cases is 20%, unless reduced under a double taxation agreement.

(c) Royalties received by non-resident companies that are specially approved in advance by the competent authority are exempt from income tax.

(d) Technical service fees received by non-resident companies in relation to the construction of power plants for power generation companies and approved in advance by the competent authority are exempt from income tax.

(e) A 3% withholding tax rule may be applicable in certain circumstances if approved in advance by the tax authority.

(f) For prizes or payments won in contests and games of chance, the withholding tax rate is 10% for resident individuals and companies and 20% for non-resident individuals and companies. Cash awards less than NT$2,000 from government-issued lottery tickets are not subject to withholding tax, while those in excess of that amount are subject to a 20% withholding tax.

Double taxation relief

Resident companies (including the local subsidiaries of foreign companies) are subject to CIT on all of their worldwide income, regardless of whether that income was derived inside or outside of Taiwan.

Foreign tax credit

Taiwan uses the tax credit method to avoid or mitigate double taxation of income. Foreign taxes paid on foreign-sourced income may be credited against a company's Taiwan income tax liability. The credit is limited to the incremental taxes derived from foreign-sourced income.

Bilateral tax agreements

Taiwan currently has in force 25 double taxation agreements (DTAs) and 14 international transportation income tax agreements. The DTAs generally follow the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention and cover corporate and individual income taxation. The transportation income tax agreements relate to certain earnings from the operation of ships and/or aircraft.

The MOF's "Regulations Governing the Application of Agreements for the Avoidance of Double Taxation with Respect to Taxes on Income" provide guidance for the application of DTAs.

In general, tax reduction benefits or exemptions provided under DTAs will only be granted to the actual ultimate beneficial owner. The concept of substance-over-form is laid out in the DTA guidelines for the tax authority to adopt when assessing the applicability of a DTA benefit and other related regulations.

The withholding tax rates on dividends, interest and royalties may be reduced if the income recipient is a tax resident of one of the DTA countries and the agreement provides for a reduced rate (see next table).

Withholding taxes under DTAs

Country	Dividends (%)	Interest (%)	Royalties (%)
Australia	10, 15 [(a)]	10	12.5
Belgium	10	10	10
Denmark	10	10	10
France	10	10	10
Germany	10	0, 10, 15 [(b)]	10
Gambia	10	10	10
Hungary	10	10	10
India	12.5	10	10
Indonesia	10	10	10
Israel	10	7, 10 [(c)]	10
Macedonia	10	10	10
Malaysia [(d)]	12.5	10	10
Netherlands	10	10	10
New Zealand	15	10	10
Paraguay	5	10	10
Senegal	10	15	12.5
Singapore	[(e)]	Not prescribed	15
Slovakia	10	10	5, 10 [(f)]
South Africa	5, 15 [(g)]	10	10
Swaziland	10	10	10
Sweden	10	10	10
Switzerland	10, 15 [(h)]	10	10
Thailand	5, 10 [(i)]	0, 10, 15 [(j)]	10
United Kingdom	10	10	10
Vietnam	15	10	15

(a) The 10% rate applies to dividends paid to a company (other than a partnership) holding directly at least 25% of the capital of the payer. The 15% rate applies to other dividends.

(b) A tax exemption applies to interest paid to public institutions of the other territory. The 15% rate applies to interest paid by a real estate investment trust or a real estate asset trust based in Taiwan. The 10% rate applies in all other cases.

(c) The 7% rate applies to interest on bank loans. The 10% rate applies in all other cases.

(d) The withholding tax rate on technical service fee payments is reduced to 7.5%.

(e) The withholding tax on dividends and the corporate tax payable on the profits of the payer may not exceed 40% of the income out of which the dividends are paid.

(f) The 5% rate applies to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment. The 10% rate applies in all other cases.

(g) The 5% rate applies if the beneficial owner of the dividends holds directly at least 10% of the capital of the payer. The 15% rate applies to other dividends.

(h) The 10% rate applies if the beneficial owner of the dividends holds directly at least 20% of the capital of the payer. The 15% rate applies to other dividends.

(i) The 5% rate applies if the beneficial owner of the dividends holds directly at least 25% of the capital of the payer. The 10% rate applies to other dividends.

(j) A tax exemption applies to interest paid to the government or the central bank of the other territory. The 10% rate applies to interest paid to a financial institution (including insurance companies). The 15% rate applies in all other cases.

Transfer pricing

Taiwan's transfer pricing regime requires that transactions between related parties be conducted based on arm's length terms. The governing legislation is the "Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's Length Transfer Pricing" (known as TP Assessment Rules).

For applicable companies, if certain thresholds are met, the disclosure of related-party transactions in their annual income tax returns and the preparation of a transfer pricing report and other relevant documents are required. In the event of a tax audit, a company must provide the tax authority with all of the required documents within one month of a formal request for such documents.

For more detailed information and practical advice on the key transfer pricing issues and requirements in Taiwan, readers are recommended to consult the PwC publication, *International Transfer Pricing*, which is available for download on our website at *www.pwc.tw/en/publications*.

Assessment rules

In addition to a 20% equity ownership threshold, the MOF follows the "substantive management and control" and "material influence" concepts to define what constitutes a related party. The types of transactions covered by the TP Assessment Rules include the transfer or use of tangible or intangible assets, rendering of services, the use of funds, and other types of related-party transactions prescribed by the MOF.

The transfer pricing methods accepted for tangible asset transactions include comparable uncontrolled price, resale price, cost plus, comparable profits, profit split and other methods approved by the MOF. In addition, the profit level indicators prescribed by the TP Assessment Rules include return on operating assets, return on sales, Berry ratio and full cost mark-up.

Penalties

The tax authority can adjust the income of taxpayers whose controlled transactions fall outside acceptable ranges, and penalties may be imposed for failure to comply with the arm's length principle and documentation requirements. The TP Assessment Rules provide for a maximum penalty of 200% of the tax shortfall resulting from improper transfer prices.

Advance pricing agreements

Taiwan allows companies meeting certain criteria to apply with the tax authority for an an advance pricing agreement (APA). An application should be made in the prescribed form before the end of the first fiscal year of the controlled transactions which are to be covered by the APA.

An APA is generally valid for between three to five years. Where a company's business nature has not materially changed, a one-time APA extension of up to five years can be requested.

Other anti-avoidance rules

Taiwan's main anti-avoidance regulations include substance-over-form rules. Besides the transfer pricing rules, Taiwan also has thin capitalisation rules. More recently, the government announced plans to introduce new anti-avoidance measures in the near future.

In early 2013, the MOF put forward proposed amendments to the Income Tax Act to introduce controlled foreign company (CFC) rules and a change to the definitions of tax residency to include '"place of effective management" criterion. Subject to parliamentary approval, these two new provisions are expected to take effect from 1 January 2015.

Thin capitalisation rules

Taiwan has thin capitalisation assessment rules that cap tax deductible interest expenses on inter-company debt at a prescribed inter-company debt-to-equity ratio of 3:1.

Except where safe harbour rules apply, applicable companies are required to disclose information related to their inter-company debt when filing their annual tax returns.

The thin capitalisation rules apply to resident companies and non-resident companies with a FPOB or business agent in Taiwan (including a subsidiary or branch office of a foreign company), except for companies in the financial industry, including holding companies, banks, insurance companies, etc.

Taiwan is planning to introduce new anti-avoidance rules

Controlled foreign company rules

Taiwan currently does not have CFC rules. According to existing regulations, a Taiwan company investing in an offshore company is only taxed on foreign income when dividends are repatriated to Taiwan, or where the parent company disposes of an overseas investment at a gain.

To prevent a Taiwan parent company from indefinitely retaining profits in affiliates located in so-called tax haven countries, and circumventing Taiwan CIT assessment by not distributing dividends, the MOF has referenced CFC rules in other countries to prepare its proposed legislative amendment.

The rule, if approved, will stipulate that Taiwan companies investing in affiliated enterprises in tax havens should recognize foreign investment income using the equity method and include its share of taxable profits in its taxable income for in current year, instead of deferring taxation until actual distribution of dividends.

Place of effective management rules

The MOF has also proposed the introduction of a new rule regarding the tax residency status of companies. This rule, if approved, will stipulate that companies registered outside of Taiwan, but with a "place of effective management" in Taiwan, will be deemed to have its head office and subject to Taiwan CIT accordingly.

Tax incentives

The principal income tax incentive for companies in Taiwan is the investment tax credit provided for innovation-related R&D expenses under the Statute for Industrial Innovation (SII).

Under SII, a company may claim a tax credit of up to 15% of qualified R&D expenses incurred, with the maximum amount of credit capped at 30% of the tax payable for the year in which the expenses were incurred. Unutilised R&D credits will be forfeited and cannot be carried back or carried forward.

Taiwan also has special tax regimes for specific designated areas or industries. Certain tax incentives are available to companies located in prescribed areas, such as export processing zones, industrial parks, free trade zones, and so on. Other tax credits are granted to qualifying companies that invest in certain industries promoted by the government, such as the biotechnology and new pharmaceuticals sector.

For more information about the various tax incentives available in Taiwan, readers are recommended to consult the Taiwan government's investment promotion website at *http://investtaiwan.org*.

M&A tax incentives

A number of other tax incentives are also available under the Business Mergers and Acquisitions Act to encourage M&A activities in Taiwan.

Certain transfer taxes—including business tax, deed tax, land value increment tax, securities transaction tax and stamp tax—may be exempted or deferred in acquisitions, mergers or corporate divisions (including spin-offs) that meet certain conditions.

For more information about the key tax issues in doing M&A deals in Taiwan, readers are recommended to consult the PwC publication, *Understanding Mergers and Acquisitions Tax in Asia*, which is available on our website at www.pwc.tw/en/publications.

Chapter 6
Personal taxation

This chapter provides a comprehensive overview of the personal tax system in Taiwan. All information contained in this chapter, unless otherwise stated, is up to date as of 30 June 2013.

For updates on tax developments in Taiwan, readers are recommended to consult PwC's monthly tax newsletter, which is available for download at *www.pwc.tw/en/publications*.

The topics covered include:

- Individual income tax
- Taxable personal income
- Exemptions and deductions
- Capital gains
- Dividends
- Alternative minimum tax
- Tax administration

Individual income tax

The tax liability of individuals in Taiwan, including foreign nationals, depends on the source of their income and the number of days they are present in Taiwan in a calendar year.

Basis

Resident and non-resident individuals are subject to individual income tax on income earned from Taiwan sources, unless exempt under the provisions of the Income Tax Act and other laws.

Residency

An individual is considered resident in Taiwan for tax purposes if domiciled or ordinarily residing in Taiwan, or not domiciled but residing in Taiwan for 183 days or more in a calendar year.

From 1 January 2013, an individual with household registration in Taiwan, but residing in Taiwan for less than 31 day in a calendar year and not having their centre of vital interests in Taiwan, is considered non-resident for tax.

Foreigners who reside in Taiwan for less than 183 days in a calendar year are considered tax non-residents.

The calculation of residency days is based on the entry and exit dates stamped in an individual's passport. If the person enters and departs Taiwan several times in a calendar year, the number of days are accumulated.

Tax rates

The amount of income tax payable is calculated as a percentage of net taxable income (i.e., gross income less eligible exemptions and deductions) less a "progressive difference" for each tax bracket. For 2013 tax returns, the applicable tax rates for resident taxpayers range from 5% up to 40%.

In addition, tax resident individuals, including qualifying foreign nationals, are subject to alternative minimum tax (AMT) under the Income Basic Tax Act (see page 75 for further details).

Individual income tax rates (effective from 1 January 2013)

Taxable income (NT$)	Tax rate	Progressive difference
0 - 520,000	5%	0
520,001 - 1,170,000	12%	36,400
1,170,001 - 2,350,000	20%	130,000
2,350,001 - 4,400,000	30%	365,000
4,400,001 and above	40%	805,000

Taxable personal income

Taxable income includes salaries and wages, professional service income, interest income, rentals and royalties, gains from property transactions, prizes or awards won from contests or lotteries, severance and retirement payments, and other inome categories specified in the Income Tax Act.

Certain items of income received from Taiwanese entities are subject to withholding tax, which is withheld by the payer at the time of payment at various rates. The withholding tax rates are different for resident and non-resident individuals and range from 5% to 20% (see page 61).

Employment income

In general, all remuneration and benefits received by an employee for services rendered in Taiwan are considered taxable income, regardless of where such payments are made.

For a taxpayer receiving salary income, the employer must withhold tax payable at the time of payment. The tax rates applied to salaries and wages (including allowances, bonuses or similar compensation) are 5% for residents and 18% for non-residents.

Non-resident taxpayers staying in Taiwan for more than 90 days but less than 183 days in a calendar year are

subject to withholding tax of 18% on their Taiwan-sourced employment income, including any compensation received from an offshore employer for services performed in Taiwan.

Foreign nationals staying in Taiwan for no more than 90 days in a calendar year are subject to 18% tax on income received from an onshore employer for services performed in Taiwan. Remuneration from a non-resident employer is exempt from income tax.

Fringe benefits

Benefits in kind provided to a foreign employee in Taiwan in the form of cash allowances via payroll—such as an employer-provided housing allowance and other allowances for living expenses, education and transportation—are taxable regardless of the nature of the benefits.

Non-cash benefits provided to a foreign employee in Taiwan are also taxable unless the employee qualifies for preferential tax treatment for assignment-related benefits.

As there are numerous tax rulings on fringe benefits in Taiwan, readers are recommended to consult our International Assignment Services team for advice on the particular facts and circumstances in their case.

Exemptions and deductions

Resident individual taxpayers are allowed to claim certain exemptions and deductions on their annual income tax returns. Non-resident individual taxpayers are not eligible for any personal exemptions and deductions.

A resident taxpayer may deduct personal exemptions, and either the standard deduction or itemised deductions, whichever is higher, as well as special deductions, from gross income to arrive at net taxable income.

The following details the various personal exemptions and deductions allowed for the 2013 tax year.

Exemptions

For 2013, an individual is entitled to personal exemptions of NT$85,000 each for the taxpayer, his or her spouse and each qualified dependent. If the taxpayer, his or her spouse, or any lineal ascendant dependent is more than 70 years of age, the amount is increased to NT$127,500 per person.

Qualified dependents include the relatives of a taxpayer who are more than 60 years old, children under the age of 20 and children over that age who are in school and being supported by the taxpayer, in addition to relatives aged 20 and over who are disabled or incapable of earning a daily living.

Standard deductions

For 2013, an individual taxpayer may claim a standard deduction instead of itemised deductions. Currently, the standard deduction is NT$79,000 for a single taxpayer and NT$158,000 for a married couple filing jointly.

Itemised deductions

The following specific deductions are available to individual taxpayers:

- **Charitable contributions** to Taiwan-registered non-profit organisations generally are allowable up to 20% of the taxpayer's gross taxable income.
- **Insurance premiums**, up to NT$24,000 per person per year, paid by the taxpayer, his or her spouse or lineal dependents for life insurance, labour insurance and government employee insurance. There is no limitation for national health insurance premiums.
- **Unreimbursed medical and maternity expenses** incurred and paid by the taxpayer, his or her spouse or dependents to public hospitals or approved private hospitals or clinics.
- **Losses caused by natural disasters** are deductible when not otherwise compensated by insurance or other benefits.
- **Mortgage interest** paid on loans extended by financial institutions for the purchase of a self-use residential dwelling (limited to one) in Taiwan is deductible up to NT$300,000 per income tax return. The interest deductible is reduced by the amount of the special deduction for interest income.
- **Rental expenses** paid by the taxpayer, his or her spouse and/or lineal dependents for a self-use residence located in Taiwan is deductible up to NT$120,000 per income tax return. However, the deduction will be disallowed for taxpayers who already claim mortgage interest expenses.

Special deductions

An individual taxpayer is also entitled to the following special deductions:

- **Salary and wage income**: The lesser of either total salaries and wages earned or NT$108,000 is deductible by each salary and wage earner included in the same return.

- **Property losses**: Losses realised from the sale of property by the taxpayer, his or her spouse and dependents are only deductible to the extent of gains from the sale of property in the same tax year. Any remaining losses may be carried forward for three years.
- **Savings and investments**: Up to NT$270,000 for each tax filing unit is deductible for income received from a savings trust fund and for interest earned on deposits with financial institutions.
- **Disabled or handicapped individuals**: Up to NT$108,000 is allowed for each taxpayer, spouse or dependent who meets the definition of a person who is physically or mentally disabled.
- **Dependent child tuition**: A taxpayer may claim an annual deduction up to NT$25,000 per each dependent child attending an approved college or university where government subsidies or scholarships are not obtained.

- **Pre-school children**: Starting from 2012, a taxpayer may claim NT$25,000 for each dependent child who is five years of age or younger. The deduction is not allowed if the taxpayer's annual net taxable income after the deduction is subject to an income tax rate of 20% or higher, or their annual basic income under AMT exceeds the NT$6 million deduction.

Capital gains

Capital gains generally are subject to income tax, but gains from land sales are subject to land value increment tax. Gains on the sale of other properties are subject to regular income tax.

From 1 January 2013, capital gains derived from the disposal of Taiwanese securities are subject to income tax. Securities transaction tax is also imposed on the gross proceeds from qualified domestic securities transactions at a rate of 0.3%.

Domestic securities

Capital gains from securities transactions realized in 2013 and 2014 will be subject to either 15% income tax on the actual capital gain, or a 20% withholding tax on the imputed gain from the securities transaction, depending on the types of securities and the number of shares involved.

From 1 January 2015, a 15% income tax rate will be imposed on gains regardless of the type of securities involved (unless where the capital gain is exempt). In addition, capital losses can be deducted from capital gains in the current year for the sale of shares, but cannot be carried forward.

Non-resident individuals may only use the actual profit method. Capital gains from the sale of all types of Taiwanese securities will be subject to 15% income tax on actual capital gains.

Readers should note that, at the time of publication, the above tax rules were being revised by parliament, including a proposed exemption of capital gains tax on securities traded on the local bourse in 2013 and 2014. As the changes are not yet finalised, our monthly tax update, available at *www.pwc.tw/en/publications*, will provide more up-to-date and detailed information on this in due course.

Overseas securities

For residents, capital gains from overseas securities transactions are subject to AMT at a rate of 20%.

Dividends

For resident individuals, dividends received from a Taiwan company are not subject to withholding tax. The gross dividend received is included in the individual's taxable income, and the imputed tax credit can be used to offset their income tax liability. Any excess credit is refundable to residents.

Dividends from foreign companies received by a resident individual may be subject to AMT at a rate of 20%, if certain conditions are met.

For non-resident individuals, dividends received from a Taiwan resident company are subject to 20% withholding tax. This rate may be reduced under certain double taxation agreements (see page 63 for details).

Alternative minimum tax

In addition to regular income tax calculations, a separate AMT is imposed under the Income Basic Tax Act on individuals who are tax residents in Taiwan (including foreigners who stay in Taiwan for 183 days or more in a calendar year). Non-tax residents are not subject to AMT.

New capital gains tax on stock trading from 2013

An individual taxpayer with AMT taxable income of more than NT$6 million is subject to AMT at a flat rate of 20%. Taxpayers calculate both the tax payable due under the regular income tax system and the AMT rules, based on the following formulae, and pay the higher of the two amounts.

- Income subject to AMT = Regular taxable income + add-back items
- AMT = (Income subject to AMT - NT$6 million) x 20%

The add-back items include foreign-sourced income totalling NT$1 million or more in a tax year, qualifying insurance benefits, capital gains from the disposal of beneficiary certificates of privately-placed securities trust funds, deductions claimed for non-cash charitable donations, and other items prescribed by the MOF.

From 1 January 2010 onwards, the overseas income of resident individuals has been included in the AMT calculation. Any foreign taxes paid on such income may be credited against AMT payable, with certain limitations.

Tax administration

Returns

The tax year in Taiwan is the calendar year. Taxpayers are required to file an income tax return and pay any tax due by 31 May of the following year. No extensions are allowed.

Married couples must file joint tax returns except for the first year of marriage and the year of divorce, when they may choose to file either as single or as married. However, a working spouse may choose to separately compute tax on his or her salary income. The income of any dependents for whom the resident taxpayer has claimed a personal exemption must also be included in the joint tax return.

The following are the tax filing procedures for foreigners, depending on their length of stay in Taiwan:

- In general, an individual staying in Taiwan for 90 days or less in a tax year is only subject to withholding tax on income received from a Taiwan entity, and does not need to file an income tax return. However, capital gains from property sales or securities transactions and other income not subject to withholding tax must be declared and any tax due paid before final departure.
- An individual present in Taiwan for longer than 90 days but less than 183 days in a tax year must either file an interim income tax return before final departure, or appoint a tax guarantor. If the individual is in Taiwan at the end of the year, he or she must file an annual tax return.
- An individual staying in Taiwan for 183 days or longer must file an annual income tax return. However, an individual intending to leave and not return to Taiwan within the same year, must file an interim income tax return before departure or appoint a tax guarantor.

Tax payment

Income tax is withheld on salaries paid in Taiwan. Any additional tax due must be paid before the annual return is filed. Thus, a tax payment receipt must be obtained before filing a return.

Penalties

For late filing, interest is charged on the outstanding tax balance due on a daily basis from 1 June to the actual date of tax settlement. The charge is based on the prevailing one-year time deposit interest rate set by the Directorate General of the Postal Remittances & Savings Bank. Interest charges assessed by the tax authority may be waived if less than NT$1,500.

If a taxpayer is found to have understated or omitted reportable income on the return filed, the tax authority may assess a penalty of up to two times the amount of additional tax due. If the taxpayer fails to file a return, a penalty of up to three times the tax payable may be imposed.

Chapter 7
Other taxes

This chapter highlights the other key taxes levied on companies and individuals in Taiwan. All information in this chapter, unless otherwise stated, is up to date as of 30 June 2013.

For updates on tax developments in Taiwan, readers are recommended to consult PwC's monthly tax newsletter, which is available for download at *www.pwc.tw/en/publications*.

The topics covered include:

- Business tax
- Commodity tax
- Customs duty
- Estate and gift tax
- Land and property taxes
- Luxury tax
- Securities transaction taxes
- Stamp tax

Business tax

Business tax is imposed on the sale of goods and services within Taiwan, as well as on the importation of goods. Taiwan has two business tax systems: valued-added tax (VAT) and non-value-added tax (also known as the gross business receipts tax, or GBRT).

Taxpayers

Business entities selling goods or services in Taiwan are required to pay business tax and must issue government uniform invoices (GUIs) to purchasers on all taxable sales, unless the law provides otherwise.

Business tax is also levied on the consignee or holder of imported goods, and the buyer of services supplied by a foreign enterprise with no fixed place of business in Taiwan. However, if the service is purchased by a VAT business entity solely engaged in the supply taxable goods or services subject to 5% or 0% VAT, no tax shall be owed.

Tax systems and rates

The VAT system applies to most non-financial businesses at a standard rate of 5%, except for sales that are zero-rated or qualify for VAT exemption.

Under the VAT system, the seller collects output VAT from the buyer at the time of sale, deducts input VAT paid on purchases from output VAT collects on sales, and remits the net VAT payable to the local tax office.

The GBRT system applies to financial institutions, small businesses and certain restaurants on the basis of their gross business proceeds at rates ranging from 0.1% to 25%. Financial institutions are taxed at 2% on their core business revenue, and at 5% on their non-core business revenue.

An input tax credit is available under the VAT system if the input tax is greater than the output tax. Overpaid VAT is refundable in certain circumstances. A credit or refund is not available under the GBRT system.

Business tax on imported goods is calculated at 5% of the total dutiable value and customs duty, plus any applicable commodity tax, tobacco and alcohol tax, or health and welfare surcharge on tobacco products.

Zero-rating and exemptions

Taiwan allows a limited range of goods and services for zero-rated VAT treatment, as specified in the Business Tax Act. These include export sales of goods and export-related services, goods sold by duty-free shops, goods or services sold to a bonded zone businesses entity for its operational use, international transportation, and certain goods and services used for international transportation.

Additional transactions subject to zero-rated VAT transactions include goods sold by a bonded zone business entity to taxable zone business entity that are for direct export, or placed in a bonded warehouse or logistics centre administered by the Customs.

Under current tax rules, 32 categories of goods or services are exempt from business tax, including the sale of land, medical services, etc. Certain imported goods or services are also exempt. The related input tax is not refundable for entities engaging solely in the sale of tax-exempt goods or services.

Filing and payment

Business tax returns are generally required to be filed bi-monthly by the 15th of the following month. A return must be filed even if no sales occurred during the two-month period. A business eligible for zero-rated VAT may apply to file a monthly return. Any tax due must be paid prior to filing.

The head office and other fixed places of business of the same enterprise based in Taiwan must file separate returns with their local tax offices. Subject to certain requirements, a business entity may file a consolidated tax return to the tax office concerned at the location of the head office.

For imported goods, the amount of business tax payable is levied and collected by the customs authority.

Commodity tax

Commodity tax is a single-stage excise duty levied on certain types of commodities, both locally made and imported, at the time when such goods are dispatched from the manufacturer's factory or are imported from abroad.

Seven categories of commodities are subject to tax under the Commodity Tax Act: rubber tyres, beverages, cement, plate glass, oil and gas, electric appliances and vehicles. (Tobacco and alcohol products, whether locally manufactured or imported, are subject to a separate tobacco and liquor tax).

Commodity tax is payable by the local producer or importer. For domestic-made goods, the taxable value is the manufacturer's selling price less the commodity tax included in the price. For imported goods, the taxable value is the total value subject to customs duty plus the duty levied. Different tax rates, ranging from 8% to 30%, apply to different types of commodities and are based on the value of the goods. For certain goods, commodity tax is levied on the volume of the goods.

Manufacturers must file excise tax returns and pay tax due to the relevant authorities by the 15th of the month following the month the goods left their premises. For imported taxable commodities, the taxpayer files with the Customs and pays the commodity tax along with the customs duty.

Customs duty

Taiwan's customs system follows the World Trade Organisation's rules on customs valuation and the World Customs Organisation's Harmonized Commodity Description and Coding System for imports classification.

Customs duty is levied on all imported goods except those exempted under Taiwan's Customs Act and related regulations, i.e., goods imported into designated bonded areas.

Customs duty is payable by the consignee, or the holder of the bill of lading, or the holder of the taxable commodities imported from abroad, and is based on the dutiable value or the volume of the goods imported. The dutiable value is mainly calculated on the basis of the "true" transaction price.

Taiwan's customs duty rates fall into two categories: a general tariff rate, or a special rate applied to goods imported from territories that offer reciprocal treatment to Taiwan.

The duty-payer must declare the imported goods to the customs authority within 15 days following the date of arrival of the means of transportation on which the goods were brought into Taiwan. Payment of the applicable customs duty must be made within 14 days following the date of the customs declaration.

Estate and gift tax

Inherited estates and gifts are taxed in Taiwan under the Estate and Gift Tax Act. All the worldwide assets of a decedent or donor who was a citizen of and continuously resided in Taiwan are subject to estate and gift tax. In cases where the decedent or donor was a foreigner or a Taiwanese citizen who resided outside of Taiwan continuously, only those assets located in Taiwan are subject to the taxes.

Estate tax (inheritance tax) is levied at a flat rate of 10% on the transfer of the estate of a decedent. The tax is based on the prevailing value of property at the time of death, less exclusions, exemptions and other deductions. A standard tax exemption of NT$12 million is allowed for each decedent.

Gift tax is also imposed at a flat rate of 10% on gifts made by a donor who is a Taiwanese citizen or who owns property in Taiwan. Taxable gifts are taxed based on the prevailing value of the gift at the time of the donation, less exclusions, exemptions and other deductions. An annual tax exemption amount of NT$2,200,000 is allowed for each donor of taxable gifts.

Land and property taxes

In Taiwan, land and buildings are annually assessed for tax based on their officially assessed values as determined by the relevant government agencies.

The land tax rate ranges from 1% to 5.5%, and is based on a comparison of the starting cumulative value and the current government-assessed land value of all pieces of taxable land owned by the owner in the same municipality or county (city). The tax is payable annually to the municipal or local county (city) authorities.

House tax is assessed annually on all buildings and houses in Taiwan. The rate ranges from 1.2% to 3% of the current government-assessed value of the property, depending on the type of use. Commercial properties are currently taxed at a rate of 3%, and residential buildings are taxed at 1.2%.

Other related taxes are payable on the sale and transfer of real estate, including land value incremental tax (LVIT), deed tax and stamp tax.

LVIT is imposed on the sale of real estate. It is based on the increase in the government-assessed value of the land component of the property during the ownership period, adjusted for inflation. LVIT is levied at regular progressive rates from 20% to 40%, depending on the amount of appreciation in the government-assessed value, or at special rates.

Deed tax is levied on the transfer of title to real estate through sale, acceptance of a dien right, exchange, donation, sub-division or occupancy, except where LVIT applies. Different rates apply for different forms of exchange from 2% to 6%. Deed tax is payable at the time of the transfer.

Stamp tax is charged on contracts for the sale, transfer and partition of real estate. The tax is 0.1% of the property contract price or the government-assessed value of the real property and is usually paid by the purchaser.

Luxury tax

Taiwan enacted the Specifically Selected Goods and Services Tax Act in 2011 amid public concern about housing affordability and a widening wealth gap. The luxury tax targets short-term real estate transactions and certain high-end expensive goods.

Property resold within two years of purchase is taxed at 10% of the actual transaction price of the property, or at 15% if the holding period is less than a year. It is a special tax payable by sellers in addition to the regular taxes payable on a property sale.

Besides property, luxury cars, yachts and private jets valued at NT$3 million or more are taxed at 10%. Preserved wildlife products (turtle shells, hawksbill, coral, ivory, furs etc.), furniture and non-refundable memberships worth NT$500,000 or more are also taxed at the 10% rate.

Securities transaction tax

Securities transaction tax is imposed on the sale of certain types of domestic securities. The rate is 0.3% of the gross proceeds from the sale of shares, and 0.1% for corporate and financial bonds (which are temporarily exempt from tax until after 2016) and other securities approved by the government. The tax is levied on the sellers of marketable securities and withheld and paid by collection agents.

Futures transaction tax is imposed on the trading of futures on the Taiwan Futures Exchange at a rate not less than 0.0000125% and not more than 0.6%, based on the contract value.

Stamp tax

Stamp tax is imposed on certain documents and contracts executed in Taiwan. Monetary receipts are taxed at 0.4% of the receipt amount, with the exception of 0.1% for money deposited by bidders. Sales contracts for movable property are taxed at NT$12 per copy, regardless of contract value. Service contracts are taxed at 0.1% of the contract value. Contracts for the sale, transfer and partition of real property are taxed at 0.1% of the contract value or the government-assessed value of the real property.

New luxury tax introduced in 2011

Appendices

Government contacts

This appendix lists some of the key ministries and agencies in Taiwan. The information provided here is correct as of 30 June 2013, but may change as a result of the government's streamlining program, which is due to be completed by the end of 2014.

InvesTaiwan Service Center, Executive Yuan

8F 1 Xiangyang Rd.
Taipei 10026, Taiwan
Tel: 886-2-2311-2031
www.invest.org.tw

Ministry of Economic Affairs (MOEA)

15 Fuzhou St.
Taipei 10015, Taiwan
Tel: 886-2-2321-2200
www.moea.gov.tw

Department of Commerce, MOEA

15 Fuzhou St.
Taipei 10015, Taiwan
Tel: 886-2-412-1166
http://gcis.nat.gov.tw

Department of Investment Services, MOEA

8F, 71 Guanqian Rd.
Taipei 10047, Taiwan
Tel: 886-2-2389-2111
www.dois.moea.gov.tw

Bureau of Foreign Trade, MOEA

1 Hukou St.
Taipei 10066, Taiwan
Tel: 886-2-2351-0271
www.trade.gov.tw

Industrial Development Bureau, MOEA

41-3 Xinyi Rd., Sec. 3
Taipei 10675, Taiwan
Tel: 886-2-2754-1255
www.moeaidb.gov.tw

Intellectual Property Office, MOEA

3F, 185 Xinhai Rd., Sec. 2
Taipei 10637, Taiwan
Tel: 886-2-2738-0007
www.tipo.gov.tw

Investment Commission, MOEA

8F, 7 Roosevelt Rd., Sec. 1
Taipei 10092 Taiwan
Tel: 886-2-3343-5700
www.moeaic.gov.tw

Ministry of Finance (MOF)

2 Aiguo West Rd.
Taipei 10066, Taiwan
Tel: 886-2-2322-8000
www.mof.gov.tw

Customs Administration, MOF

13 Tacheng St.
Taipei 10341, Taiwan
Tel: 886-2-2550-5500
www.customs.gov.tw

Taxation Administration, MOF

2 Aiguo West Rd.
Taipei 10066, Taiwan
Tel: 886-2-2322-8000
www.dot.gov.tw

Ministry of Foreign Affairs (MOFA)

2 Kaitakelan Blvd.
Taipei 10048, Taiwan
Tel: 886-2-2348-2999
www.mofa.gov.tw

Bureau of Consular Affairs, MOFA

3-5F, 2-2 Jinan Rd., Sec. 1
Taipei 10051, Taiwan
Tel: 886-2-2343-2888
www.boca.gov.tw

Ministry of the Interior (MOI)

5 Xuzhou Rd.
Taipei 10055, Taiwan
Tel: 886-2-2356-5000
www.moi.gov.tw

National Immigration Agency, MOI

15 Guangzhou St.
Taipei 10066, Taiwan
Tel: 886-2-2388-9393
www.immigration.gov.tw

Ministry of Transportation and Communications (MOTC)

50 Renai Rd., Sec. 1
Taipei 10052, Taiwan
Tel: 886-2-2349-2900
www.motc.gov.tw

Tourism Bureau, MOTC

9F, 290 Zhongxiao East Rd., Sec. 4
Taipei 10694, Taiwan
Tel: 886-2-2349-1500
www.taiwan.net.tw

Central Bank of the Republic of China (Taiwan)

2 Roosevelt Rd., Sec. 1
Taipei 10066, Taiwan
Tel: 886-2-2393-6161
www.cbc.gov.tw

Council for Economic Planning and Development, Executive Yuan

3 Baoqing Rd.
Taipei 10020, Taiwan
Tel: 886-2-2316-5300
www.cepd.gov.tw

Council of Labor Affairs (CLA), Executive Yuan

9F, 83 Yenping North Rd., Sec. 2
Taipei 10346, Taiwan
Tel: 886-2-8590-2866
www.cla.gov.tw

Bureau of Employment and Vocational Training, CLA

83 Yenping North Rd., Sec. 2
Taipei 10346, Taiwan
Tel: 886-2-8590-2567
www.evta.gov.tw

Bureau of Labor Insurance, CLA

4 Roosevelt Rd., Sec. 1
Taipei City 10013, Taiwan
Tel: 886-2-2396-1266
www.bli.gov.tw

Department of Health (DOH), Executive Yuan

36 Tacheng St.
Taipei 10341, Taiwan
Tel: 886-2-8590-6666
www.doh.gov.tw

Bureau of National Health Insurance, DOH

140 Xinyi Rd., Sec. 3
Taipei 10634, Taiwan
Tel: 886-2-2706-5866
www.nhi.gov.tw

Food and Drug Administration, DOH

161-2 Kunyang St.
Taipei 11561, Taiwan
Tel: 886-2-2653-1318
www.fda.gov.tw

Directorate General of Budget, Accounting and Statistics, Executive Yuan

1 Zhongxiao East Rd., Sec. 1
Taipei 10058, Taiwan
Tel: 886-2-3356-6500
www.dgbas.gov.tw

Environmental Protection Administration, Executive Yuan

83 Zhonghua Rd., Sec. 1
Taipei 10042, Taiwan
Tel: 886-2-2311-7722
www.epa.gov.tw

Fair Trade Commission, Executive Yuan

12-14F, 2-2 Jinan Rd., Sec. 1
Taipei 10051, Taiwan
Tel: 886-2-2351-7588
www.ftc.gov.tw

Financial Supervisory Commission, Executive Yuan

18F, 7 Xianmin Blvd., Sec. 2
New Taipei City 22041, Taiwan
Tel: 886-2-8968-0899
www.fsc.gov.tw

Mainland Affairs Council, Executive Yuan

15F, 2-2 Jinan Rd., Sec. 1
Taipei 10051, Taiwan
Tel: 886-2-2397-5589
www.mac.gov.tw

National Communications Commission, Executive Yuan

50 Renai Rd., Sec. 1
Taipei 10052, Taiwan
Tel: 886-800-177-177
www.ncc.gov.tw

Public Construction Commission, Executive Yuan

9F, 3 Songren Rd.
Taipei 11010, Taiwan
Tel: 886-2-8789-7500
www.pcc.gov.tw

How PwC can help

About us

PwC Taiwan helps organisations and individuals create the value they're looking for. We're a member of the PwC network of firms in 158 countries with more than 180,000 people. We're committed to delivering quality in assurance, tax and advisory services. Tell us what matters to you and find out more by visiting us at *www.pwc.tw*.

With over 40 years' presence in Taiwan and eight offices islandwide, PwC has substantial experience advising foreign companies on doing business in Taiwan. We have over 2,600 people with expertise across all industries ready to provide value-added professional services to suit your needs.

What we offer

We intimately understand Taiwan's business and regulatory environment and combine this with our specialist assurance, tax and legal, and advisory knowledge to provide you with an outcome that best suits your business requirements.

We can help you with each step of your investment decision. This includes guiding you through all the business start-up procedures, including tax, regulatory, accounting and legal issues, and helping you to design the optimal corporate structure and business model for your business needs.

Our experience includes working with a variety of domestic and international clients across a diverse range of sectors including technology and financial services, as well as new emerging industries such as biotech and green energy.

We would be delighted to meet with you to discuss how Taiwan can be used as a platform for expanding your business. Please see our contact details on the next page.

PwC Taiwan offices

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Chungli 32070, Taiwan
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Fax: 886-3-422-4599

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Hsinchu Science Park
Hsinchu 30075, Taiwan
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Fax: 886-3-577-7985

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Hsinchu Science Park
Hsinchu 30078, Taiwan
Tel: 886-3-500-7077
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31F, 345 Taichung Port Road,
Section 1
Taichung 40309, Taiwan
Tel: 886-4-2328-4868
Fax: 886-4-2328-4858

Tainan
12F, 395 Linsen Road, Section 1
Tainan 70151, Taiwan
Tel: 886-6-234-3111
Fax: 886-6-275-2598

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Room C, 2F-1, 17 Nanke 3rd Road
Tainan 74147, Taiwan
Tel: 886-6-234-3111
Fax: 886-6-505-0808

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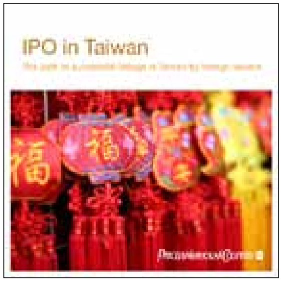
Further reading

Other useful English publications from PwC Taiwan are available for download at *www.pwc.tw/en/publications*.

Events & Trends

PwC perspectives on current business issues and trends.

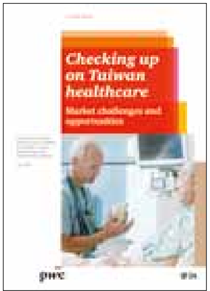


IPO in Taiwan

Introductory guide to primary stock market listings in Taiwan by foreign issuers.

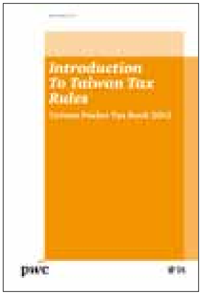
Taiwan Depositary Receipts

Introductory guide to secondary market listings in Taiwan by foreign companies.



Taiwan Healthcare

Introductory guide to Taiwan's healthcare industry.



Taiwan Pocket Tax Book

Reference guide to Taiwan's corporate and personal taxes.

Taiwan Tax Updates

Monthly newsletter on the latest tax developments in Taiwan.

Recycled Paper

By using one tonne of post-consumer recycled fibre in lieu of virgin fibre can offer the following benefits to the environment:

- 31.48 trees were preserved for the future
- 90.93 lbs of waterborne waste was not created
- 13,373 gallons of wastewater flow were saved
- 1479 lbs of solid waste was not generated
- 2913 lbs net of greenhouse gases was prevented
- 22,299,750 of BTUs energy not consumed

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