2007 Private Income Tax Agreement and Protocol between Switzerland and Taiwan enters into force

Executive summary

On 8 October 2007, the Trade Office of Swiss Industries in Taiwan and the Taipei Cultural and Economic Delegation in Switzerland signed an agreement for the avoidance of double taxation, with respect to taxes on income to be implemented by two jurisdictions (Agreement). The Agreement entered into force on 13 December 2011, and became retroactively effective on 1 January 2011, except for the information exchange provision which became effective 1 January 2012.

The Agreement mainly adopts the current OECD Model Convention provisions with some modifications. Significant provisions in the Agreement include the following:

• Inclusion of a separate supervisory service permanent establishment (PE) in conjunction with a building site, construction or installation project - Article 5
• Reduced withholding taxes on dividend, interest and royalties - Articles 10, 11, 12
• Capital gains tax exemption on share dispositions if not forming a real property interest - Article 13
• Limitation on benefits - Article 26
Detailed discussion

**Definition on supervisory service PE**
In addition to the more common definitions of a service PE under Article 5 of the OECD Model, the Agreement includes the following supervisory service PE conditions under Article 5(4):

a. Supervisory activities for more than six months in connection with a building site or construction or installation project, which are undertaken in the other territory; or

b. During a period or periods exceeding in the aggregate 183 days in any twelve-month period, performs services for the same project or for connected projects through one or more individuals who are performing such services in that territory.

In conjunction with the building site or construction or installation project, the Agreement follows the United Nation (UN) Model Convention by shortening the time period from twelve months to six months.

**Withholding taxes**

**Dividends (Article 10)**
The Taiwan and Swiss domestic withholding tax rates on dividends paid to a nonresident are 20% and 35%, respectively. The Agreement provides for a 10% withholding tax, provided that the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the company paying the dividends. In all other cases, a 15% withholding tax is assessed.

**Interest (Article 11)**
Generally, withholding tax is reduced to 10% but a full exemption is available if interest is paid:

a. in connection with the sale on credit of any industrial, commercial or scientific equipment;

b. in connection with the sale on credit of any merchandise or service by one enterprise to another enterprise,

c. on loans made between banks, or

d. to the other territory or to a subdivision or local authority thereof, or to the central bank of that other territory.

**Royalties (Article 12)**
Royalty payments are subject to a 10% withholding tax and covers payments of any kind received as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

**Capital gains**
Paragraph 5 of Article 13 provides for exclusive resident country taxation on gain arising from the alienation of property that is not specifically described in any other paragraphs in this article. Accordingly, capital gain from disposition of share/interest in an entity situated in one territory will not be taxed in that territory, provided that values of the shares/interest do not represent more than 50% of a direct or indirect real property interest situated therein.

**Limitation on benefits (LOB)**
The LOB provision under Article 26 applies to a conduit arrangement and disallows benefits provided under Articles 10, 11 and 12 if the transaction falls under a conduit arrangement or is entered into primarily to obtain benefits in the Agreement.

**Implications**
While the Agreement provides reduced withholding taxes on dividends, interest, and royalties, the LOB’s anti-conduit requirements must be satisfied before claiming eligibility for benefits. A holding company structure requires careful review to test business and economic substance when interposing intermediary entities to obtain any benefits under the Agreement.
For additional information with respect to this Alert, please contact the following:

Ernst & Young LLP, Swiss Tax Desk, New York
- Alfred Preisig +1 212 773 6475 alfred.preisig@ey.com
- Karen Simonin +1 212 773 8442 karen.simoinin@ey.com

Ernst & Young AG, Switzerland
- Daniel Gentsch +41 58 286 3163 daniel.gentsch@ch.ey.com
- Markus F. Huber +41 58 286 3189 markus-frank.huber@ch.ey.com
- Rainer Haussmann +41 58 286 3193 rainer.hausmann@ch.ey.com
- Jean-Marc Girard +41 58 286 5890 jean-marc.girard@ch.ey.com

Ernst & Young LLP, Greater China Desk, New York
- Sandy Chu +1 212 773 6721 sandy.chu@ey.com

Ernst & Young LLP, Asia Pacific Business Group, New York
- Jeff Hongo +1 212 773 6143 jeff.hongo@ey.com
- Kaz Parsch +1 212 773 7201 kazuyo.parsch@ey.com

Ernst & Young (Taiwan), Taipei
- Sophie Chou +886 2 2720 4000 ext 1610 sophie.chou@tw.ey.com
- Milly Liu +886 2 2720 4000 ext 2704 Milly.Liu@tw.ey.com
- Alice Chung +886 2 2720 4000 ext 1610 alice.chung@tw.ey.com
- Anna Tsai +886 2 2720 4000 ext 1615 anna.tsai@tw.ey.com

Foreign Tax Desks of Ernst & Young LLP in the United States
- Argentina
- Australia
- Austria
- Belgium
- Brazil
- Canada
- China
- Czech Republic
- Denmark
- Finland
- France
- Germany
- Hong Kong
- Hungary
- Iceland
- India
- Ireland
- Israel
- Italy
- Japan
- Luxembourg
- Mexico
- Netherlands
- Norway
- Pan-Africa
- Poland
- Russia
- Singapore
- Spain
- Sweden
- Switzerland
- Taiwan
- United Kingdom
- Asia Pacific Business Group
- Central European Business Group
- Eastern European Business Group
- EMEIA Financial Services
- Latin American Business Center

International Tax Services
About Ernst & Young’s International Tax Services practices
Our dedicated international tax professionals assist our clients with their cross-border tax structuring, planning, reporting and risk management. We work with you to build proactive and truly integrated global tax strategies that address the tax risks of today’s businesses and achieve sustainable growth. It’s how Ernst & Young makes a difference.

www.ey.com
© 2012 EYGM Limited
All Rights Reserved.
EYG no. CM2661

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGM Limited nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advice.