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Double taxation cases and information exchange between Taiwan and Indonesia

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Taiwan court case 1: Incorrect withholding and double taxation

In this case, Taiwan's Administrative Supreme Court (Docket No. 109-Pan-101) ruled that the commission payment remitted by an Indonesian company to the Taiwanese taxpayer was deemed as a business profit – which taxing right, according to the Taiwan–Indonesia bilateral treaty, belongs exclusively to Taiwan even though the payment was being incorrectly withheld in Indonesia.

Company A is a company incorporated and operating in Taiwan. From 2011 to 2013, Company A had received several commission payments totalling US$1 million from Company B in Indonesia. Company S withheld 20% tax while remitting the commission to Company A. Because the commission payments had been taxed by 20% withholding before remitting to Taiwan, Company A considered the tax liabilities arising from that commission payment resolved and did not disclose them in the annual corporate tax returns in Taiwan. However, the Indonesian Ministry of Finance informed the Taiwan's tax department of such commission and withholding facts. The Taiwan tax bureau then penalised Company A for deficient tax payables.

Company A argued that the corresponding tax liability had been satisfied because of that 20% withholding payment in Indonesia. The Taiwan tax bureau contended that the withholding was wrongfully made, and Taiwan had the exclusive right to tax the commission as a business profit, which means Company A must pay again in Taiwan.

The Tax Senate of the Supreme Court dismissed Company A's argument and ruled that the commission was business profit in nature and should be taxed only by Taiwan according to article 7 of the Taiwan–Indonesia tax treaty. As for the wrongfully withheld payment to the Indonesian tax bureau, Company A cannot deduct it in Taiwan but may claim a refund in Indonesia.

Taiwan court case 2: Dealing through a shell company registered in BVI

The second case also concerns commission payments. The Taipei Administrative High Court (Docket No. 108-Su-328) ruled that commission paid through a British Virgin Islands (BVI) account controlled by a Taiwanese company should be exclusively taxed by Taiwan under the Taiwan–Indonesia tax treaty.

Company C is registered and operating in Taiwan. It performed a mediating role in coal supply transactions between Chinese buyers and Indonesian suppliers. Three Indonesian companies had paid Company C a substantial commission of US$12 million in 2011. That commission was remitted to an Offshore Banking Unit account owned by a shell company registered in BVI. The BVI shell company further applied for business profits non-taxation in Indonesia with reference to the Taiwan–Indonesia tax treaty by claiming to be a nominee of Taiwanese Company C. Taiwan's tax department was later informed by the Indonesian tax bureau and began a tax investigation. It found that the registered directors and business place of both Company C and the BVI shell company were identical. As a result, the commission should be attributed to Company C, along with deficient taxes and administrative penalty for concealing taxable foreign income. However, the whole case was being processed as merely a tax avoidance rather than tax evasion or illicit money laundering, which might result in criminal charges.

Company C argued that the commission was the receiver's (i.e. BVI company's) income. The Taiwan tax bureau contended that, according to the facts, Company C was the real beneficiary behind the shell company.

The Taipei Administrative High Court decided in favour of the tax bureau by applying the principle of 'substance over form', which penetrates the veil of the BVI company and attributes the taxable commission directly to Company C.

Tax information exchange between Taiwan treaty partners

Taiwan has implemented Common Reporting Standards (CRS) and starts automatic exchange of tax information, first with Japan and Australia, in September 2020. According to the Taiwan Ministry of Finance, Taiwan has maintained a functional spontaneous exchange of information (SEOI) with treaty partners, especially with the Netherlands, Luxembourg and Germany. The two commission payment cases described above are clear examples of SEOI conducted in accordance with the Information Exchange clause of the Taiwan–Indonesia tax treaty.

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