



Taiwan Tax Alert

21 January 2010

New tax rules on income generated from structured products

The Taiwan Executive Yuan recently announced the newly enacted article 17-3 of the Enforcement Rules of Income Tax Law to define the term "structured products" used in the Income Tax Law (ITL).

According to article 17-3, structured products refer to hybrid transactions that combine the features of fixed income and financial derivatives products and are undertaken by security firms or banks as trading counterparties in accordance with the GreTai Securities Market Rules Governing Over-the-Counter Trading of Financial Derivatives by Securities Firms and the Directions for Banks Conducting Financial Derivatives Businesses, respectively. Other financial instruments that have the features of structured products issued by securities investment trusts or insurance companies, however, are not included within the definition of structured products under article 17-3 and, therefore, any income derived from such products will be subject to income tax depending on the type of income.

Under the ITL, a 10% withholding tax will be levied on structured products transactions carried out by an individual and whose settlement date is after 1 January 2010. However, the individual is not required to include the income in his/her individual income tax return and any loss incurred on structured products transactions may not be deducted from taxable income. Taxable income from structured products will be the balance of the following income generated during the contract period after the deduction of necessary costs and expenses:

- Income distributed before settlement;
- Amount of early cancellation of structured product transactions; and
- Settlement amount at maturity.

As from 1 January 2010, income derived by profit-seeking enterprises from structured product transactions must be included in the corporate income tax return and will be subject to a 20% income tax. The

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withholding tax can be used as a credit for other tax payable. A 15% withholding tax will be levied on income derived by nonresident individuals or profit-seeking enterprises from structured products.

Since individual taxable income is subject to progressive tax rates and the taxation of various structured products differs, individual investors should evaluate the assets linked to structured products to mitigate the tax burden.

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