

CHAPTER IV

INCOME BASIC TAX ACT

I. General Description

In order to modify the tax revenue loss and unfairness resulting from the use of tax incentives which benefited only a small minority of enterprises and individuals, the MOF advocated the adoption of a minimum income tax system by referring to the experiences of the USA, Canada, and Korea so as to maintain equality in the bearing of the fiscal burden and to promote social justice. The Income Basic Tax Act (hereinafter referred to as the IBTA) imposes a basic tax similar to an alternative minimum tax and the implementation of this Act will enforce payment of a certain amount of basic taxes on high-income individuals and enterprises that have previously paid disproportionately low taxes or even none. The Act was passed by the legislature on 9th December, 2005 and announced by the President on 28th December, 2005. The new law took effect on 1st January, 2006.

In order to correspond to the enactment of the IBTA, the MOF issued “The Enforcement Rules of the Income Basic Tax Act” and “The Regulations for the Calculation of the Amount of Basic Income of an Individual Derived from Transactions of Securities” on 5th June, 2006. Furthermore, the MOF also issued “The Directions for the Filing and Investigation of Income Derived from Sources Outside the ROC and from Sources in Hong Kong and Macau to Be Included in the Amount of Individual Basic Income” on 22nd September, 2009.

The reason behind the introduction of the IBTA is to uphold tax equity, to ensure tax revenue for the country, and to establish the basic requirements of individuals in regard to their obligation to fulfill their income tax burden as a contribution to public finance.

II. Tax Scope

If the amount of regular income tax for a profit-seeking enterprise or an individual is greater than or equal to the amount of basic tax, the income tax of the current year for the said enterprise or individual shall be calculated in accordance with the Income Tax Act and other relevant laws. Whereas the amount of regular income tax is less than the amount of basic tax, the amount of income tax payable shall also include the balance of the amount of basic tax and regular income tax, in addition to the amount as calculated in accordance with the Income Tax Act and other relevant laws.

A. The Calculation of the Basic Tax of Profit-Seeking Enterprises

The amount of basic income of a profit-seeking enterprise shall be the sum of the taxable income as calculated in accordance with the Income Tax Act and such income as may fall under the provisions of the following subparagraphs:

1. The amount of income exempted due to suspension of income tax in accordance with Articles 4-1 and 4-2 of the Income Tax Act.
2. The amount of income exempted from profit-seeking enterprise income tax in accordance with Article 9, Article 9-2, Article 10, Article 15, and Article 70-1 of the abolished Statute for Upgrading Industries.
3. The amount of income exempted from profit-seeking enterprise income tax in accordance with Article 8-1 of the abolished Statute for Upgrading Industries before the revision of 31st December, 1999.
4. The amount of income exempted from profit-seeking enterprise income tax in accordance with Article 28 of the Statute for the Encouragement of Private Participation in Transportation Infrastructure Projects.
5. The amount of income exempted from profit-seeking enterprise income tax in accordance with Article 36 of the Act for Promotion of Private Participation in Infrastructure Projects.
6. The amount of income exempted from profit-seeking enterprise income tax in accordance with Article 18 of the Act for the Establishment and Administration of Science Parks.
7. The amount of income exempted from profit-seeking enterprise income tax in accordance with Article 15 of the Act for the Establishment and Administration of Science Parks before the revision of 20th January, 2001.
8. The amount of income exempted from profit-seeking enterprise income tax in accordance with Article 37 of the Business Mergers and Acquisitions Act.
9. The amount of income exempted from profit-seeking enterprise income tax in accordance with Article 13 of the Offshore Banking Act. However, the amount of income under this exemption does not include the total revenue derived from a credit extension that shall be taxed at the prescribed withholding rate in accordance with Article 73-1 of the Income Tax Act.
10. The amount of income that is entitled to reduction or exemption from profit-seeking enterprise income tax or that is excluded from the income tax base as may be provided for in such laws as may be promulgated after the implementation of the IBTA and thereafter announced by the MOF.

The amount of income which is added back in accordance with Subparagraph 1 and Subparagraph 9 of the preceding paragraph shall be income arising after the coming of the IBTA into force. In the case that a loss has incurred instead, and it has been assessed by the collection authority-in-charge, such loss may be carried forward in the next following five years.

Where any profit-seeking enterprise sells, starting from the fiscal year 2013, the stocks which have been held for a period of three years or more, only one-half of the balance shall be added into the current year's income derived from securities transactions.

The amount of income exempted from profit-seeking enterprise income tax in accordance with Article 22-7 of the Offshore Banking Act shall be counted towards the amount of basic income of a profit-seeking enterprise starting from the fiscal year 2013.

B. The Calculation of the Basic Tax of Individuals

The amount of basic income for individuals is the sum of the net taxable income as calculated in accordance with the Income Tax Act and the amounts of the next following categories:

1. Overseas income, including income the source of which is not from the ROC and is excluded from gross consolidated income, as well as the income exempt from gross consolidated income according to Paragraph 1, Article 28 of the Act Governing Relations with Hong Kong and Macau, shall be included. If the total amount is not over NT\$1,000,000 per filing unit, the amount shall be excluded. Overseas income shall not be included until 1st January, 2010. In the case where income tax has been paid on the overseas income, such tax paid may be credited against the basic tax, to the extent that such tax credit shall not exceed the amount of basic tax as may be increased in consequence of the inclusion of such income.
2. Insurance payments of life insurance or annuity received by beneficiaries who are not the proposers are included. Such payments as are received in the event of death and are to an amount equal to or less than NT\$33,300,000 per filing unit may be excluded.
3. Income derived from transactions of privately-placed securities investment funds is included. The loss incurred may be deducted from income derived from securities transactions performed in the same year. However, if no income or sufficient income is deducted, the loss may be carried forward to the next three years following the year of loss. For the purpose of auditing income derived from securities transactions, regulations governing the recognition of the price, costs, and expenses of securities transactions, as well as the assessment of such in the case of failing to file or present the actual transaction price or the original cost shall be issued by the MOF.
4. The amount of non-cash donations or contributions deductible from the gross consolidated income according to the Income Tax Act and other related laws.

III. Taxpayers

A. Profit-Seeking Enterprises

A profit-seeking enterprise shall pay income tax in accordance with this Act, with the exception of cases coming under the following conditions:

1. A profit-seeking enterprise organized in the form of sole proprietorship or partnership.

2. An organization or society which is established for educational, cultural, public welfare, or charitable purposes in accordance with the Income Tax Act.
3. A consumer cooperative established in accordance with the Income Tax Act.
4. A public-utility enterprise owned by governments of various levels in accordance with the Income Tax Act.
5. A profit-seeking enterprise having no fixed place of business or business agent within the territory of the ROC in accordance with the Income Tax Act.
6. A profit-seeking enterprise filing its income tax return due to liquidation or bankruptcy in accordance with the Income Tax Act.
7. A profit-seeking enterprise that does not apply for any investment tax credit in accordance with the laws and does not have any income within the scope of the provisions of any of the subparagraphs of Paragraph 1 of Article 7 of the IBTA (see II.A.) in its annual income tax return or current income tax return.
8. A profit-seeking enterprise whose basic income as calculated in accordance with the IBTA is less than NT\$500,000.

B. Individuals

Income basic tax shall be levied on the consolidated income with the addition of the prescribed items after deducting NT\$6,700,000 with the exception of cases under the following conditions:

1. An individual has not applied for any investment tax credits for which application may be made in accordance with the laws and for any income within the scope of the provisions of any of the subparagraphs of Paragraph 1 of Article 12 of the IBTA (see II. B.) in his or her annual income tax return.
2. The sum of the consolidated income with the prescribed items is less than NT\$6,700,000.
3. An individual who is not a resident in the territory of the ROC.

In the case that a resident individual, whose annual gross consolidated income does not exceed the sum of the amount of exemption plus the standard deduction, is exempted from filing his or her annual income tax return, he or she shall still calculate, file, and pay income tax in accordance with the IBTA under the condition that his or her basic income exceeds NT\$6,700,000.

IV. Tax Rates

- A. The amount of the basic tax of a profit-seeking enterprise shall be the amount of basic income with a deduction of NT\$500,000 and then multiplied by the tax rate prescribed by the Executive Yuan. The tax rate shall not be more than 15% or less than 12%. The rate of imposition is prescribed by the Executive Yuan in view of economic circumstances. The current applicable tax rate is 12%.

B. The amount of basic tax to be paid by an individual shall be the amount of basic income with a deduction of NT\$6,700,000 and then multiplied by the tax rate of 20%.

V. Regular Income Tax and Income Basic Tax

The amount of the regular income tax shall be the balance of the tax payable in accordance with the Income Tax Act, after subtraction of investment tax credits in accordance with the provisions of other laws.

In the case where the amount of regular income tax calculated above is greater than or equal to the amount of income basic tax, the income tax shall be calculated in accordance with the Income Tax Act and other relevant laws. Whereas, in the case where the amount of regular income tax is less than the amount of basic tax, the amount of income tax payable shall also include the balance of the amount of basic tax and regular income tax, in addition to the amount as calculated in accordance with the Income Tax Act and other relevant laws.

VI. Indexation

If the total increase in the consumer price index has reached a figure of 10% or higher as compared to the index of the year of previous adjustment, the amount of the deduction shall be adjusted accordingly.

The adjusted amount shall be calculated in units of NT\$100,000, and an amount less than NT\$100,000 shall be calculated in units of NT\$10,000 and then rounded to the nearest NT\$100,000 using the traditional method.

VII. Tax Returns and Payments

A taxpayer shall calculate, file and pay income basic tax at the same time as for an annual income tax return, within the period from 1st May to 31st May of each year, with the local tax collection authority-in-charge. In the case that an individual is exempted from filing his or her annual income tax return, he or she shall still calculate, file and pay income basic tax if his or her basic income exceeds NT\$6,700,000.

VIII. Penalties

In the case of a taxpayer who has calculated and filed his or her basic income in accordance with the provisions of the IBTA, any omission or evasion of the basic tax due to omission or under-reporting shall be subject to a fine of no more than twice the amount of the tax evaded.

In the case of a taxpayer who fails to calculate and file his or her basic income in accordance with the provisions of the IBTA, and who is found by the collection authority-in-charge to have taxable income hereunder, the collection authority-in-charge shall, in addition to determining the tax payable in accordance with the IBTA, impose a fine of no more than three times the amount of tax determined as payable.

CHAPTER V

INCOME TAXATION OF TRUSTS

I. General Description

The term “trust” refers to the legal relationship in which the settlor transfers or disposes of a right to property, thereby allowing the trustee to administrate or dispose of the trust property according to the stated purpose of the trust either for the benefit of a beneficiary or for a specified purpose. The Trust Act was promulgated on 26th January, 1996. The MOF also augmented stipulations to the Income Tax Act in order to address income taxation problems resulting from the trust system, so as to supply more force to the provisions of the Trust Act to create a complete and stable trust system. The stipulations were revised and published on 13th June, 2001.

II. Taxation Principles of Trust Benefits

A. Creation of a Trust

Where the settlor of a trust deed is a profit-seeking enterprise and the beneficiary of the whole or any part of the trust benefits designated is not the settlor him, her, or itself, then the said beneficiary shall include the value of his, her, or its entitlement to such trust benefits in the aggregate amount of his, her, or its annual income for income tax assessment under the Income Tax Act in the year the trust deed takes effect.

B. Change of Beneficiary

Where the settlor of a trust deed is a profit-seeking enterprise and the designated beneficiary of the whole or any part of the trust benefits is the settlor him, her, or itself, in the case that the beneficiary is replaced by a person other than the settlor during the term of such a trust relationship, the new aforesaid beneficiary shall include the value of his, her, or its entitlement to such trust benefits in the aggregate amount of his, her, or its annual income for income tax assessment under the Income Tax Act in the year such a change of beneficiary takes place.

C. Addition of Trust Property

Where the settlor of a trust deed is a profit-seeking enterprise, in the case that any person other than the settlor is added thereto as a beneficiary to the trust benefits, thereby resulting in an increase in the value of the trust property during the term of the trust relation, the new said beneficiary shall include the increased portion of the value of his, her, or its entitlement to such trust benefits in the aggregate amount of his, her, or its annual income for income tax assessment under the Income Tax Act in the year the increase in the value of the trust property takes effect.

D. A Non-Specific or Non-Existent Beneficiary

Where a beneficiary of a trust deed is non-specific or non-existent, the trustee shall be considered as the taxpayer for that trust deed and shall include the value of the entitlement to such trust benefits, as calculated in accordance with the applicable withholding tax rate (20%), in his or her annual income tax return, filed within the fixed period under the Income Tax Act in the year the trust deed, a change of the beneficiary, or the increase to the value of the trust property takes effect.

III. Exemption for Trust Deeds

Where the trust property is transferred or otherwise disposed of based on any of the following trust relationships, such a trust property shall be exempt from income tax:

- A. Between the settlor and a trustee, due to the creation of a trust deed;
- B. Between the original trustee and a new trustee, upon a transfer of the trustee during the term of the trust relationship;
- C. Between a trustee and a beneficiary, upon delivery of the trust property by the trustee according to the purposes of the trust stated during the term of the trust relationship;
- D. Between the settlor and the trustee or between the trustee and the beneficiary, due to the termination of the trust relationship; or
- E. Between the settlor and the trustee due to a failure of establishment of the trust deed, or invalidation, cancellation, or nullification of the trust deed.

IV. Taxation of Income Arising from Trust Property

The income arising from the management or disposal of the trust property by the trustee shall be subject to the following income tax assessment:

- A. Separate accounting books and records shall be established and maintained by the trustees for use in keeping details of the received and disbursed transactions. Each disbursement must be supported by the appropriate documents or receipts.
- B. With regard to the revenue derived from the trust property, the trustee shall calculate the amount of various categories of income accrued and to be payable to each trust beneficiary in the year of such income derivation, following deductions for costs, necessary expenses, and losses incurred. Each beneficiary shall include the portion of the trust benefits in his, her, or its annual income tax return for income tax assessment.
- C. Where there are two or more beneficiaries entitled to the trust benefits, the trustee shall calculate the amount of such income to be distributed to beneficiaries in accordance with the proportions for distribution as explicitly stated in the trust deed or the deductive proportions. However, if the proportions to be distributed are either unknown or cannot be deduced, the income derived from the trust property shall be calculated on an average basis.

- D. Where the beneficiary is non-specific or non-existent yet, the taxpayer for the amount of income derived from the trust property for that year shall be the trustee of the trust property, and a withholding tax shall be paid at the applicable withholding rate and declared in the annual income tax return filed within the fixed period under the Income Tax Act. With regard to the withholding tax already declared and paid, the amount of such tax withheld may be deducted from the amount of income tax payable by the taxpayer.
- E. In the case where a trustee fails to comply with the provisions set out in the preceding Sub-Sections B through D, the collection authority-in-charge shall assess the amount of income of the trust beneficiary concerned based on the relevant information available, and levy the income tax accordingly.
- F. With regard to a charitable trust conforming to the requirements set out in the Income Tax Act (see V. below), the benefits from the trust actually distributed to the trust beneficiaries shall be included in their respective annual incomes for income tax assessment for the year such benefits were distributed.
- G. With regard to mutual trust funds, securities investment trust funds, futures trust funds, or any other trust funds approved by the Financial Supervisory Commission, Executive Yuan, the trust benefits actually distributed to the trust beneficiaries shall be included in their respective annual incomes for income tax assessment for the year such benefits were distributed.

V. Stipulations for Charitable Trusts

- A. Where a profit-seeking enterprise provides property for the purpose of formation, contribution, or participation in any of the following charitable trusts, the value of the beneficiaries' entitlement to the benefits under the said charitable trust shall be exempt from income tax assessment:
 - 1. The trustee is a trust business operator as defined by the Trust Business Act.
 - 2. A charitable trust shall not pay special benefits in any manner to any specific person or to any person who may be designated as a specific person, except for payment of expenses which must be made to an incorporated enterprise, in order to meet the objective of the said charitable trust.
 - 3. Trust property which, according to the provisions of the trust deed thereof, shall be transferred to a government authority at a specific level, a public jurist or a charitable trust having a similar objective, upon cancellation or termination of such a trust deed.
- B. With regard to the property provided by any individual or profit-seeking enterprise for creating, contributing to, or participating in a charitable trust conforming to the applicable requirements, the provisions for donations in the Income Tax Act shall govern.

VI. Withholding

- A. With regard to revenue arising from trust property, the withholding agent shall name the trustee of the said trust deed as the taxpayer at the time of payment and complete the tax-withholding process. However, for trust benefits, except for interest from short-term commercial papers and prizes received from government-sponsored lotteries paid by the withholding agent with respect to a charitable trust, such payments shall be exempt from the withholding tax.
- B. When making a withholding tax statement, the trustee of a trust deed shall take the amount of tax withheld from various categories of the trust income accrued and to be payable to a trust beneficiary as the amount of tax withheld for the said trust beneficiary; provided, however, that in the case that there are two or more trust beneficiaries, the trustee shall calculate the tax withheld by each trust beneficiary in accordance with the proportions cited in IV. C above.
- C. Where the trust beneficiary is a non-resident individual or a non-resident foreign business having no fixed place of business in the ROC, the trustee of the said trust deed shall be regarded as the withholding agent, and tax shall be withheld from various income payments to the said trust beneficiary at a withholding rate of 20%; however, withheld tax already paid by the trust beneficiary may be deducted from the withholding tax payable by such trust beneficiary.
- D. When distributing trust benefits to a charitable trust or a trust fund, the trustee shall be considered as the withholding agent who shall complete the withholding process.
- E. The trustee of a trust deed shall, prior to the end of January of each year, prepare documents prescribing the inventory of property, revenue, and expenditure statements, statement of trust benefits accrued and payable to trust beneficiaries, statement of withholding tax, and other relevant documents and submit copies to the collection authority-in-charge. In addition, the withholding (non-withholding) tax statement and relevant vouchers shall be prepared and issued to the relevant taxpayers prior to 10th February of each year. In the case that three national holidays occur in immediate succession in January, the period for the submission of documents shall be extended to 5th February and the period of the issuance of the withholding (non-withholding) tax statement and the relevant vouchers shall be extended to 15th February.

VII. Penalty Provisions

- A. Where the trustee of a trust deed is found to have under-declared or omitted a declaration of any revenue accrued on the trust property, or made a false declaration of any relevant costs, necessary expenses or losses, thus causing an under-calculation of the trust beneficiaries' income; or has failed to accurately categorize the beneficiaries' income, thus causing a reduction in the trust beneficiaries' tax-paying obligations, the trustee shall be liable to a fine in an amount equal to 5% of the amount of under-declared or evaded income of the trust beneficiaries, or the amount of incorrectly categorized income of such

beneficiaries. However, the maximum amount of the fine shall not be more than NT\$300,000, and the minimum amount shall not be less than NT\$15,000.

- B. Where the trustee of a trust deed fails to calculate the amount of trust beneficiaries' income from different categories of income in accordance with the cited proportions, the said trustee shall be liable to a fine in an amount equal to 5% of the deficit between the income amount calculated by the trustee and the income amount calculated in accordance with the applicable proportions. However, the maximum amount of the fine shall not be more than NT\$300,000, and the minimum amount shall not be less than NT\$15,000.
- C. Where the trustee of a trust deed fails to file prior to the deadline, file an accurate withholding tax return, or prepare and issue the relevant documents or withholding (non-withholding) tax statement or any other relevant vouchers, the said trustee shall be liable to a fine in the amount of NT\$7,500; in addition, the said trustee shall be required to file a tax return or to issue the relevant documents within a prescribed time limit. Failure to file or issue prior to the prescribed deadline shall result in a fine imposed on the trustee in an amount equal to 5% of the income accrued on the trust property in the then current year. However, the maximum amount of the fine shall not be more than NT\$300,000, and the minimum amount shall not be less than NT\$15,000.