

Taiwan's ESG Development and Consequences of Violations

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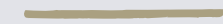


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JD, Washington University School of Law

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Introduction to ESG in Taiwan

Regulatory Requirements: Taiwan's ESG regulations focus on corporate **sustainability reports**, carbon management, and the disclosure of climate-related information.





Sustainability Report Requirements

- Starting in 2023, all publicly listed companies in Taiwan with paid-in capital of around USD 66 million or more are required to prepare sustainability reports. These reports must follow international standards, such as those from the Sustainability Accounting Standards Board (SASB), and disclose key financial and sustainability information relevant to their industry. Companies must also include details of their carbon reduction targets, strategies, and specific action plans.
- Starting from 2025, planning to require all Taiwanese listed companies to prepare sustainability reports.
- Standards? Taiwanese authorities are focusing on GRI, but referring to SASB and TCFD (Task Force on Climate-related Financial Disclosures).



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Climate-Related Information Disclosures

Since 2023, listed companies must disclose climate-related information in their annual reports, including **greenhouse gas inventory data**. Implementation will be phased in based on company size (in accordance with Article 4-1 of the "Regulations Governing the Preparation and Filing of Sustainability Reports by Public Companies" issued by the Taipei Exchange)





Phases of Climate-Related Disclosures

- Phase 1: In 2023, financial institutions, steel companies, cement companies, and companies with paid-in capital exceeding around **USD 328 million** must disclose climate information.
- Phase 2: By 2025, companies with paid-in capital between **USD 164 million and USD 328 million** must comply.
- Phase 3: By 2026, companies with paid-in capital **below USD 164 million** will also be required to comply.



Carbon Management Strategies

With the global challenges of climate change, carbon management strategies have become increasingly important. Taiwanese companies are expected to enhance their management of carbon emissions, particularly those affected by the European Union's Carbon Border Adjustment Mechanism ("CBAM"). These companies must disclose the carbon emissions from their manufacturing processes and take carbon reduction measures to minimize associated costs and risks.



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Carbon Trading and Fees

With the establishment of **Taiwan's carbon exchange** and the implementation of carbon fee policies, managing carbon emission costs has become critical for businesses. Many companies have begun considering internal carbon pricing (ICP) in their decision-making processes to drive their net-zero goals.





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Corporate Governance & Stakeholder Communication

Corporate governance and stakeholder communication are key aspects of ESG development. The Financial Supervisory Commission (Taiwanese SEC; “FSC”) has introduced **stricter governance requirements** for listed companies, including early disclosure of shareholders' meeting agendas and annual reports, and strengthened regulations on large shareholding disclosures.



Consequences for Violations

- Tax benefits under tax laws will be suspended and called back
- Tax incentives under other laws will be suspended and called back
- More strict laws in 2024: Enterprise's name will be disclosed





Tax benefits will be suspended and called back

Article 48, Paragraph 2 of the Tax Collection Act: "When a taxpayer violates laws related to environmental protection, labor, or food safety and the violation is serious, **the central authority for tax incentives must notify the Ministry of Finance to suspend and recover the tax incentives granted for the year in which the violation occurred.**"





Tax incentives under other laws will be suspended and called back

Article 48, Paragraph 2 of the Act and Article 15, Paragraph 2 of the Enforcement Rules, if a taxpayer violates laws related to environmental protection, labor, or food safety and the violation is serious, the Ministry of Finance, after being notified by the central authority for the relevant tax incentive law, must suspend and recover the tax incentives granted for the year of the violation.



More strict laws in 2024

Enterprise's name will be disclosed

On July 4, 2024, the Ministry of Finance amended the "Operational Guidelines for the Suspension and Recovery of Tax Incentives Under Article 48 of the Tax Collection Act." The key revision clarifies that if the tax authority suspends and recovers a taxpayer's (enterprise's) tax incentives according to the regulations, the Ministry of Finance must, between July 1 and December 31 of the year following the final decision, **disclose the taxpayer's name**, the year of the tax incentive, and the tax category. For serious violations related to environmental protection, labor, or food safety, the Ministry of Finance is also required to disclose the name of the central authority for the tax incentive law.



Example

In 2022, Company A enjoyed tax incentives under Article 31 of the "Culture and Arts Reward and Promotion Act," which provided for a reduction in business tax, and under Article 10-1 of the "Statute for Industrial Innovation," which allowed for a deduction of corporate income tax.

Where the environmental protection agency reported that Company A had committed a serious violation by dumping mercury sludge, which endangered the environment. Based on notifications from the central authorities responsible for the tax incentive laws (the **Ministry of Culture** and the **Ministry of Economic Affairs**), the **Ministry of Finance** suspended and recovered Company A's tax incentives granted under such other laws, including the reduction in business tax under the "Culture and Arts Reward and Promotion Act" and the deduction of corporate income tax under the "Statute for Industrial Innovation."



Other Penalties

- While there are currently no specific penalties but global and local regulatory bodies continue to tighten ESG requirements, we are expecting more concrete penalties for non-compliance may emerge in the future.
- Criminal punishment for false sustainability report under Securities Regulations?
 - Theoretically, yes, but which regulations shall be applied is still an issue (§171 or §174 of Securities Exchange Act).
 - Who shall be held responsible? President of the listed company? Or all the directors of the listed company?
 - Won't the potential punishment be too harsh? **Up to ten years in prison??**
 - How to determine **materiality**?
 - In practice, no such case has emerged.



Fun Fact

- In Taiwan, **accountants** other than lawyers are dealing with ESG reporting and compliance issues.
- **Recommendation:** Can lawyers play roles like **gatekeepers** when accountants are preparing ESG reports?
- What will happen then?





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Thank you for listening

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