Taiwan Tax Update

June 2017

Amendment to Articles 5-1 and 46-1 of the Tax Collection Act has passed third reading by the Legislative Yuan

In response to increasing global demand for information transparency and to avoid being blacklisted as a non-cooperative tax jurisdiction, the Legislative Yuan passed amendments to Articles 5-1 and 46-1 of the Tax Collection Act on May 26, 2017 to establish the legal basis for implementing the Automatic Exchange of Information (Including Financial Account Information) for Tax Purposes. The salient points of the amendment are as follows:

1. Taiwan Ministry of Finance ("MOF") may enter into agreements or conventions with foreign governments or international organizations with regard to exchange of information for tax purposes and reciprocal tax assistance.

2. The principle of reciprocity shall be the base for the abovementioned agreements or conventions.

3. The MOF or its authorized institutions shall automatically or spontaneously provide the following information to the other party signing the abovementioned agreements or conventions: information regarding assets, income, businesses, tax payments, financial accounts, or other tax related information. Relevant institutions, organizations, or individuals shall cooperate in providing the above mentioned information. Information requiring financial account due diligence or other examinations, such as Common Reporting Standard (CRS), shall be provided after examinations have been conducted, and are not restrained by the confidentiality clauses of financial service regulations and tax laws.

4. The MOF is authorized to collaborate with the Financial Supervisory Commission and other relevant institutions to establish sub-laws, and implementation procedures, etc.

5. Penalties will be levied if any institution, organization, or individual refuses to cooperate with examinations, provide required information, or conduct necessary financial account due diligence.

PwC Observation:

As a result of global economy and increasing emphasis on anti-tax avoidance, information transparency has become a tax trend. It is suggested that enterprises and individuals keep track of impact of regulatory reforms and establish relevant tax management policies to reduce potential tax exposure.

Issuance of Regulation Governing Application of Place of Effective Management

To establish comprehensive anti-tax avoidance rules and maintain taxation fairness, while concurrently ensuring profit-seeking enterprises could access treaty benefits, Article 43-4 of the Income Tax Act was amended on July 27, 2016. A foreign profit-seeking enterprise with a place of effective management ("PEM") in Taiwan shall be deemed as a domestic tax resident subject to corporate income tax assessment, who is able to utilize the existing 32 comprehensive tax treaties signed by Taiwan. To facilitate the implementation of the said rules and compliance of taxpayers and tax offices, the MOF announced on May 23, 2017 "Regulation Governing Application of Place of Effective Management". Salient points are summarised below:

1. Criteria constituting a PEM in Taiwan

All three criteria needs to be fulfilled to constitute a PEM	Description
1. Key managerial decision is made	"Decision maker" is a domestic individual, domestic company or PEM in Taiwan (meeting any one of the below criteria)
● By a "decision maker" who is a A. Domestic individual B. Domestic company C. PEM in Taiwan	1. More than one-half of the directors or executive shareholders are (or are appointed/controlled by) domestic individuals, domestic companies or PEMs in Taiwan; 2. Chairman or general manager making key managerial decision is (or is appointed/controlled by) a domestic individual.
	"Place of execution" is in Taiwan (determined by the aggregate of the following factors)

<table>
<tr><td rowspan="3">● “Place of execution” is in Taiwan</td><td>1. Location where board meetings are held;
2. Location where the chairman/general manager carries out activities;
3. Location where the head office is registered;
4. Location where important functions are performed.</td></tr>
<tr><td>Key managerial decision incorporates</td></tr>
<tr><td>1. Operation：operating strategy, key decision or change in decision concerning significant operation or property;
2. Finance：investment, funding, financing and financial risk (location of decision made concerning where funds are raised, capital is deposited, or funds are transferred is irrelevant);
3. Personnel matters：decision on job appointments, hiring, and determination of salaries, etc.</td></tr>
<tr><td>2. Accounting books are compiled and stored in Taiwan</td><td>Reports, accounting books, minutes of board of director’s meeting/shareholders’ meeting are compiled or stored in Taiwan.</td></tr>
<tr><td>3. Operating activities are performed in Taiwan</td><td>Key operating activities are performed in Taiwan (not performed in the jurisdiction the company is registered)</td></tr>
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Note: Items that comply with Taiwan Stock Exchange Corporation Rules Governing Review of Securities Listings are excluded from the above determination criteria (foreign issuer stock exclusion rules).

2. Method for Determining PEM

	Voluntary application	**Assessed by tax authority**
Determination method	Once adopted, it cannot be changed	MOF approval is required for PEM assessed by the tax office (within 3 years of the implementation date, and can be extended for 3 years if necessary)
Effective date	Voluntary application date or registration date	Registration shall be performed within 1 month of the next day following assessment as PEM

Documentation requirement	1. Registration and incorporation documents of foreign profit-seeking enterprise (including company name, address, business scope, capital amount, list of directors and their address, with said documents authenticated by Taiwan representative office where the foreign company is domiciled) 2. Group organization chart 3. Financial statement of current and preceding year 4. Basic information and address of directors and high-level executives in current and preceding year 5. Minutes of board of director's meeting/shareholders' meeting for the current and preceding year 6. Commitment letter signed by domestic individual or responsible person of domestic company who makes key decisions, stating that they will be responsible for all tax compliance and withholding tax issues.	
Burden of proof	Burden of proof: Foreign profit-seeking enterprise shall bear the burden of proof	1. Burden of proof: The tax authority shall bear the burden of proof. 2. Cooperative obligation: The fixed place of business of the domestic decision maker responsible for making key decisions shall be obliged to cooperate with the tax office.

3. Tax compliance obligations for Taiwan PEM

Tax compliance scope	Commencement date for filing income/ expense	Description
• Pay provisional income tax/ file annual CIT return/ loss carry forward for 10 years • File profit retention tax	Application date/Registration date Next day following deadline expiry date	Where Taiwan sourced income is received, a PEM approval letter should be presented to the payer, so the payer can conduct withholding in accordance with relevant tax regulations.

Tax compliance scope	Commencement date for filing income/ expense	Description
• File alternative minimum tax ("AMT")	(For those that did not register before the deadline)	
• Conduct withholding • File withholding tax statement/ dividend statement		1. For dividends distributed by the PEM to shareholders, only dividends distributed from earnings accrued after the PEM was established will be Taiwan sourced income. 2. For dividends distributed from earnings accrued before the PEM was established: if the shareholder is a Taiwan individual, the offshore income needs to be included within individual AMT calculations subject to 20% tax rate; if the shareholder is a Taiwan company, the foreign investment income is subject to corporate income tax assessment using 17% tax rate. 3. Where a shareholder of a PEM disposes its shareholding in said PEM (excluding foreign issuer stock), any capital gain from property transaction will be subject to Taiwan income tax assessment. 4. Effective tax treaties signed by Taiwan can be used.
• Registration amendment • De-registration (dissolution, closure, merger,		Where a foreign profit-seeking enterprise is assessed as PEM by the Taiwan tax authority, if the nature of the transaction has changed in the future, the PEM can apply for registration amendment with the

Tax compliance scope	Commencement date for filing income/ expense	Description
ownership transfer)		Taiwan tax authority within 15 days of said change being effected.

PwC Observation

In response to international and domestic anti-tax avoidance trend, Taiwan multinational enterprises should re-examine the adequacy of their group investment structures and transaction models. In addition, future tax management principles will place additional emphasis on ensuring consistency between tax policies and business models, as well as to ensure that the company's value chain reflects adequately its transfer pricing policies, in order to successfully manage group tax exposure.

MOF announces amended draft Regulations Governing Controlled Foreign Companies

After the announcement of the draft Regulations Governing Controlled Foreign Companies ("CFC") in late 2016, the MOF announced an amended draft of the CFC regulations on June 8, 2017.

There are 10 clauses in total. The amended draft includes a minor adjustment to the CFC income calculation formula, and the addition of an anti-tax avoidance clause. The salient points are summarized below:

Article	Amendments/ Key points amended
2	With regard to determining the CFC shareholding percentage of a profit seeking enterprise and its affiliates, if any share transfer was conducted for tax avoidance purpose, the timing for determination of CFC shareholding percentage will shift from financial year end date to any day within the current year.
4	"Low tax rate jurisdiction" is primarily determined by the statutory tax rate of the country where the CFC is located, including jurisdictions which only tax domestic sourced income. Specific exclusions are not

Article	Amendments/ Key points amended
	available. The MOF will soon announce a “list of low tax rate jurisdictions” (blacklist).
5	1. CFC exemption criteria: • Commercial substance and operations: passive income must be lower than 10% of total income; financial institution exclusion requirement and calculation formula has been established. • Current year income below stipulated threshold: CFCs with current year income of no more than TWD 7 million are exempt. However, if the aggregate current year income and loss of all CFCs held by a profit seeking enterprise exceeds TWD 7 million, none of the CFCs will qualify for the exemption. 2. When calculating the current year income of CFCs, dividends declared by subsidiaries located in non-low tax rate jurisdiction countries shall be included. If the non-low tax rate jurisdiction is not China, the CFC income included shall be net income, i.e. tax withheld at payment by the source country shall be deducted from the CFC income calculation to avoid double taxation. 3. After implementation of the CFC rules, the dividends declared by investee companies from non-low tax rate jurisdictions from earnings accrued prior to the implementation of CFC rules shall still be included in the calculation of current year CFC investment income. However, distribution of dividends prior to the CFC implementation date are excluded from CFC income calculation. 4. For Taiwan tax filing purposes, another option which involves other supporting documents is provided, which may replace CFC financial statements audited by a Taiwan CPA or domestic CPA, which is prepared in accordance with Taiwan financial accounting principles.
6	1. After becoming a CFC, CFC losses can be carried forward for 10 years and offset against CFC current year income; however, losses incurred before the implementation of CFC rules or before the investee company became a CFC cannot be carried forward.

Article	Amendments/ Key points amended
	2. Even if a CFC qualifies for tax exemption in the current year, prior year losses will still need to be offset against current year income (i.e. cannot be carried forward).

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