Taiwan Tax Update

January 2018

Income Tax Act

Standard withholding tax rate on dividend for foreign investors increased from 20% to 21% starting from January 1, 2018

On December 29, 2017, the Ministry of Finance announced Tax Ruling No. 10604722530, amending Standards of Withholding Rates for Various Incomes. The withholding tax rate on dividends or earnings from shareholders who are non-resident individuals and companies, including those from Mainland China, (hereinafter "foreign investors") is increased from 20% to 21%, effective from January 1, 2018 onwards. If a foreign investor is a resident of a tax treaty country, the reduced withholding tax rate specified in the tax treaty can still be used.

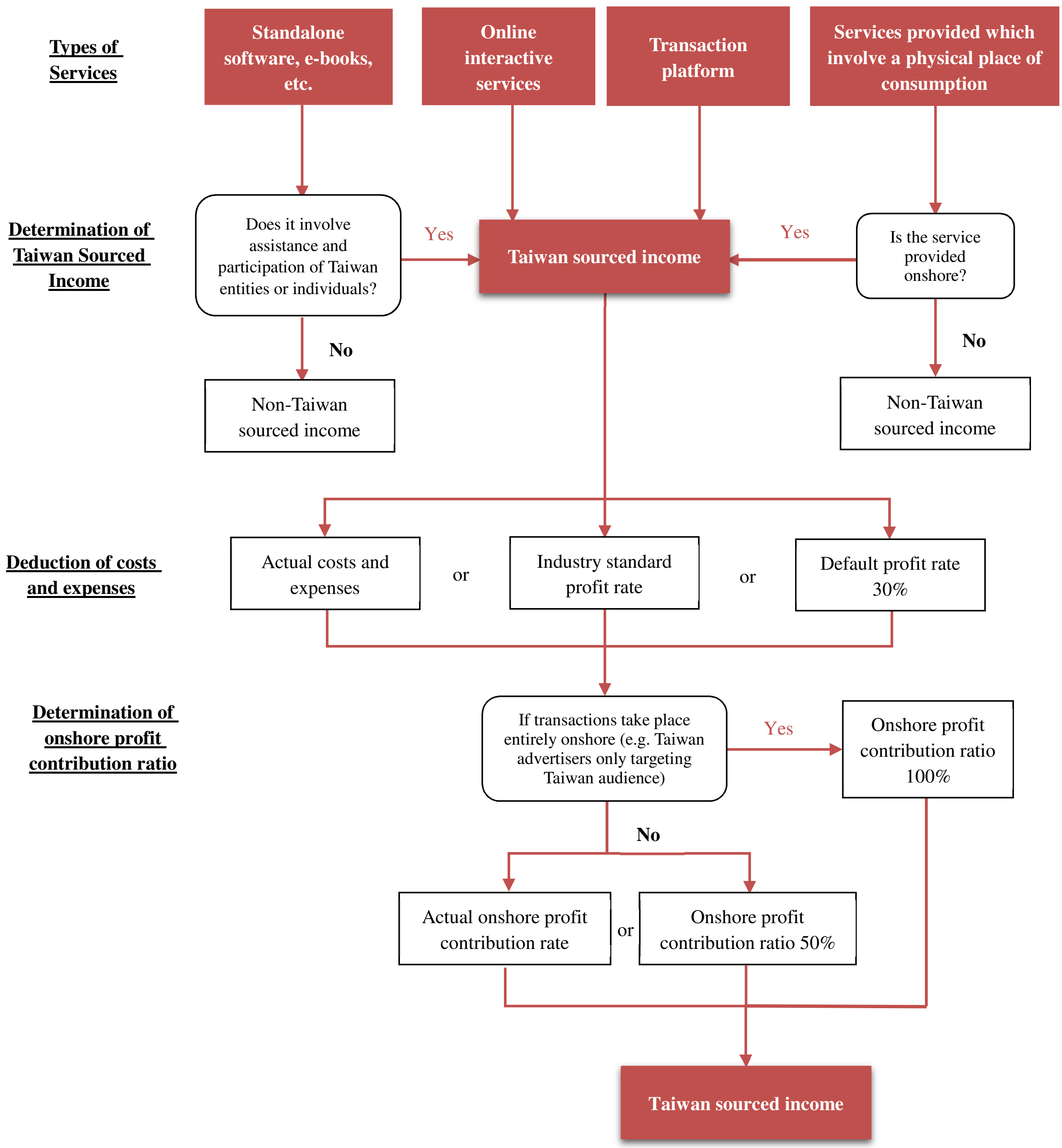
PwC Observation:

Effective from January 1, 2018 onwards, entities should withhold tax from dividend payments to foreign investors at the rate of 21% based on the new tax ruling, where usage of the incorrect withholding rate may result in fines up to one times the withholding tax short withheld.

The amendments are intended to close the gap in the difference in tax treatment on dividend income between domestic and foreign shareholders.

Taxation of Taiwan Sourced Income Earned by Foreign Enterprises Providing Cross Border Electronic Services

The Ministry of Finance promulgated Tax Ruling No. 10604704390 on January 2, 2018, stipulating income tax regulations for cross border electronic service providers and amending the 4^{th}, the 7^{th}, and the 10^{th} point under Guideline for Determination of Taiwan Sourced Income under Article 8 of the Income Tax Act. Effective January 1, 2017, remuneration received by foreign enterprises providing cross border electronic services to onshore buyers (including individuals, profit-seeking enterprises and organizations) should be evaluated to see whether it is Taiwan sourced income according to the types of services provided. If it is deemed as Taiwan sourced income, the taxable income shall be calculated in accordance with relevant rules, and income taxes shall be paid accordingly. The new taxation guideline is illustrated below as a flowchart:



I. Determination of Taiwan Sourced Income

Depending on whether the types of services rendered require Taiwan's involvement and participation, one should evaluate whether the income earned by foreign enterprises providing cross border electronic services is

Taiwan sourced income. The remuneration received from the provision of services listed below is categorized as Taiwan sourced income:

	Types of Services		Examples
a)	**Standalone software, e-books, etc.**	Products manufactured offshore, downloaded from the internet or via other electronic means of transmission for storage into computers or mobile devices, and transformed into electronic services, with the assistance and participation of Taiwan individuals or entities. (Note 1)	Standalone software, e-books
b)	**Online interactive services**	For provision of electronic services to Taiwan consumers via the internet or other electronic means, that are instantaneous, interactive, convenient, and continuous	Online games, online movies or videos, online music, online webcast, and online advertisements
c)	**Transaction platform**	Foreign platform service provider establishes online platform, through which onshore/offshore buyers and sellers can transact, and where both parties or one of the transacting parties are/is an onshore individual, profit-seeking enterprise or organization.	App platform, accommodation booking platform
d)	**Provision of services which involve a physical place of consumption**	Foreign enterprise provides services via the internet or other electronic means, which involves a physical place of consumption, and where relevant services are rendered onshore or the business is being operated onshore. (Note 2)	Accommodation service, car rental service

Note 1: Where services are rendered offshore without the assistance and participation of Taiwan individuals or entities, the earned income is deemed non-Taiwan sourced income.

Note 2: Where services are rendered offshore or the business is being operated offshore, the earned income is deemed non-Taiwan sourced income.

II. Calculation of Taxable Income

Taxable income =
(Taiwan sourced revenues – Costs and expenses) x Onshore profit contribution ratio

If industry standard profit rate and onshore profit contribution ratio is assessed by the tax authority, the formula can be further simplified as follows:

Taxable income =
Taiwan sourced revenues (Note 3) x Industry standard profit rate x Onshore profit contribution ratio

A.	Deduction of costs and expenses	
a)	Supported by accounting books and records	Taxable income is calculated by subtracting actual costs and expenses from revenues
b)	Unable to provide accounting books and records, yet information such as sample contracts and principal activities performed can be submitted	Prior approval to obtain industry standard profit rate for calculation of taxable income (Note 4)
c)	If neither a) nor b)	Default industry standard profit rate provided by tax authority is 30% for calculation of taxable income (Note 5)

Note 3: If a portion of gross remuneration received by foreign platform service provider is subsequently remitted to other foreign non-platform electronic service providers, foreign platform service provider may apply with the tax authority to be taxed based on the difference between gross remuneration received from consumers and amount remitted to foreign non-platform electronic service provider. Relevant proof of outward remittance (e.g. withholding tax statements issued) should be provided.

Note 4: If assessed as foreign platform service provider, the industry standard profit rate is 30%.

Note 5: If, based on available evidence, the tax authority assesses the industry standard profit rate to be higher than that determined in b) or c), the assessed industry standard profit rate shall apply.

B.	Determination of onshore profit contribution ratio	
a)	Determination of contribution of onshore and offshore activities to total profits as supported by evidentiary documents	Actual onshore profit contribution ratio
b)	Transactions take place entirely onshore, or services are both provided and utilized onshore (Note 6)	100%
c)	Neither a) nor b) applies. (Note 7)	50%

Note 6: For example, if advertisement is produced and broadcasted onshore, the onshore profit contribution ratio is 100%.

Note 7: If, based on available evidence, the tax authority assesses the onshore profit contribution ratio is higher than 50%, the assessed onshore profit contribution ratio shall apply.

III. Methods of Taxation

Income is subject to withholding	Withhold income tax from gross remuneration at payment using prescribed withholding tax rate. (Note 8)
Income is not subject to withholding	The foreign enterprise shall, by itself or appoint a tax agent, file income tax return and pay taxes due before the stipulated deadline.

Note 8: The industry standard profit rate and onshore profit contribution ratio assessed by the tax authority may be used for calculation of withholding tax due.

PwC Observation:

The parties that may be affected by the tax ruling described above which provides guidance on taxation of Taiwan sourced income earned by foreign enterprises providing cross border electronic services may include the following:

1. Foreign enterprises that are already tax registered in Taiwan for VAT purposes in relation to B2C cross border electronic services;
2. Foreign enterprises that are not tax registered in Taiwan for VAT purposes in relation to B2C cross border electronic services, since they fall under the safe harbour threshold where annual sales is less than NTD 480,000;
3. Foreign non-platform electronic service provider using foreign platform service providers to sell cross border electronic services to Taiwan consumers directly;

4. Foreign enterprises engaged in B2B cross border electronic services previously subject to withholding tax on gross remuneration;
5. Taiwanese enterprises purchasing B2B cross border electronic services who bear 20% withholding tax on behalf of the foreign taxpayer.

Taxpayer Rights Protection Act to take effect starting from December 28, 2017, where basic cost of living for FY 2017 amounts to TWD 166,000 per person

The Taxpayer Rights Protection Act ("the Act", please refer to Taiwan Tax Update - December 2016 for the salient points of the Act) took effect on December 28, 2017. Under Article 4 of the Act, the basic cost of living paid by a taxpayer shall not be taxable. As authorized by the Act, the Ministry of Finance announced that the basic cost of living for FY 2017 amounts to TWD 166,000 per person, which was promulgated in Tax Ruling 10604676540 released on December 22, 2017.

PwC Observation:

The below calculation depicts whether the taxpayer, who is the wage or salary earner, has a spouse and three dependent children, totalling five family members, can claim higher deductible expenses when calculating individual income tax due using guidance provided by the Act:

	Item	Option 1 (Standard deduction)	Option 2 (Itemized deduction)
A	Total basic cost of living (TWD 166 thousand per person×5 persons)	TWD 830 thousand	TWD 830 thousand
b1	Tax exemption (TWD 88 thousand per person×5 persons)	TWD 440 thousand	TWD 440 thousand
b2	Basic tax deduction (either choose standard deduction or itemized deduction)	(Standard) TWD 180 thousand	(Itemized) TWD 300 thousand

	Item	Option 1 (Standard deduction)	Option 2 (Itemized deduction)
b3	Special tax deduction - income from salaries/wages	TWD 128 thousand	TWD 128 thousand
B (b1+b2+b3)	Total tax exemption and deductions	TWD 748 thousand	TWD 868 thousand
A-B=C	Deductible from total consolidated income	TWD 82 thousand (TWD 830 thousand -TWD 748 thousand)	TWD 0 (TWD 830 thousand <TWD 868 thousand)

In accordance with the FY2017 announcement, the basic cost of living per person of TWD 166,000 multiplied by the total number of family members (which includes taxpayer, spouse, and dependents) equals total basic cost of living (A) (TWD 166,000 per person multiplied by 5 persons = TWD 830,000).

The sum of tax exemption (b1), basic tax deduction (b2), and special tax deduction - income from salaries/wages (b3) equals total tax exemption and deductions (B) TWD 748,000 (assuming usage of standard deduction option in the above table). The difference between (A) and (B) equals (C) (i.e. TWD 830,000 - TWD 748,000 = TWD 82,000), which may be additionally deducted from total consolidated income.

Conclusion:

The taxpayer can claim the higher of “total basic cost of living” (A) and “total tax exemption and deductions” (B) in the FY2017 individual tax return. Taxpayers shall choose whichever option is more beneficial.

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