

Taiwan Tax Update

February 2022

Income Tax Act

Executive Yuan announced on January 14, 2022 that the Controlled Foreign Company (CFC) Rules for profit-seeking enterprises and individuals will come into force from January 1, 2023

Salient points of the CFC Rules are as follows:

| Item | Description |
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| CFC Definition | When a profit-seeking enterprise (or an individual) and its related party directly or indirectly own greater than or equal to 50% of shares or capital of a foreign affiliate located in a low tax rate country (jurisdiction), or exercise significant influence (e.g. personnel, financial or operational decision power) over the foreign affiliate, such foreign affiliate should be deemed a CFC. |
| Low Tax Rate Country (Jurisdiction) | <ul style="list-style-type: none"> • Corporate income tax rate is less than 14%, or • Only imposes tax on onshore income. |
| Relevant Tax Regulations | <ul style="list-style-type: none"> • Regardless whether a CFC distributes its earnings, profit-seeking enterprises and individuals should recognize CFC investment income in current year taxable income (effective tax year 2023 for profit-seeking enterprises; effective January 1, 2023 for individuals). However, CFC investment income/loss derived from non-low tax rate jurisdictions should be recognized as taxable income/loss only when CFC's investee company distributes earnings, or when relevant loss is realized. • Corporate shareholders: CFC income is calculated based on direct shareholding percentage and shareholding period. Corporate Income Tax ("CIT") is paid thereon accordingly. • Individual shareholders: If an individual, together with his/her spouse and second-degree relatives, collectively hold more than 10% of the shares of a CFC, the individual should include CFC income as part of offshore |

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| | <p>income in the calculation of his/her alternative minimum tax, based on the direct shareholding percentage and shareholding period.</p> <ul style="list-style-type: none"> • CFC loss assessed by the tax authority can be carried forward for 10 years, and can be deductible from CFC income. • When dividends or earnings of a CFC are actually distributed in the future, duplicate tax will not be levied on the portion of CFC income which has already been taxed. For dividend withholding tax paid in foreign countries, foreign tax credit can be claimed within 5 years from the next day following the annual CIT return filing deadline incorporating such CFC income. Tax refund application can be submitted in case of excess taxes paid, after taking foreign tax credit into consideration in the respective year that CFC income is recognized and taxed accordingly. |
| CFC Taxation Exclusion Criteria | <ul style="list-style-type: none"> • CFC with commercial substance in the country (jurisdiction) where it is domiciled, or with current year standalone and aggregate income (including current year income and loss of all CFCs held by the same profit seeking enterprise or individual) of no more than TWD 7 million, may be excluded from CFC taxation. • The two criteria below needs to be met simultaneously to qualify as having commercial substance: <ol style="list-style-type: none"> 1. Has a fixed place of business in the country (jurisdiction) where the CFC is domiciled, and hires employees to operate its business; and 2. Passive income, including investment income, dividend, interest, royalties, rent, gain from asset sales, etc., for the current year is less than 10% of the aggregate of annual net sales and non-operating income. |
| Required Documents | <ul style="list-style-type: none"> • Investment detail and shareholding structure chart, CFC financial statements, CFC loss carry forward table for previous 10 years, CFC investment income recognition table, tax payment certificate for foreign tax credit purposes, shareholders' consent letter or shareholders' meeting minute of CFC's investee company, supporting documents for capital reduction to make up accumulated deficit, merger, bankruptcy or liquidation of CFC's investee company, etc. • Profit-seeking enterprises should also prepare the following documents for review by the tax authority: |

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| | <ol style="list-style-type: none"> 1. Details of changes in shareholding percentage of profit-seeking enterprise and its related party 2. Financial statements of investee companies located in non-low tax rate countries (jurisdictions). |
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PwC Analysis:

Common types of offshore companies include holding companies, trading companies and financial instrument investment companies, etc. After implementation of the CFC Rules, enterprises (or individuals) may first evaluate if an offshore company is located in a low tax rate country (jurisdiction), and then evaluate whether they directly or indirectly own greater than or equal to 50% of the shares of the offshore company, or whether they can exercise significant influence over the offshore company. If the aforementioned criteria are met, enterprises (or individuals) should further evaluate whether the CFC taxation exclusion criteria is applicable.

Taiwanese enterprises and individuals should review their existing shareholding structure and make necessary adjustments to react to the CFC Rules. Moreover, Taiwanese enterprises should also consider the potential tax impact of global minimum tax (also known as Global Anti-Base Erosion Rules) after it is implemented.

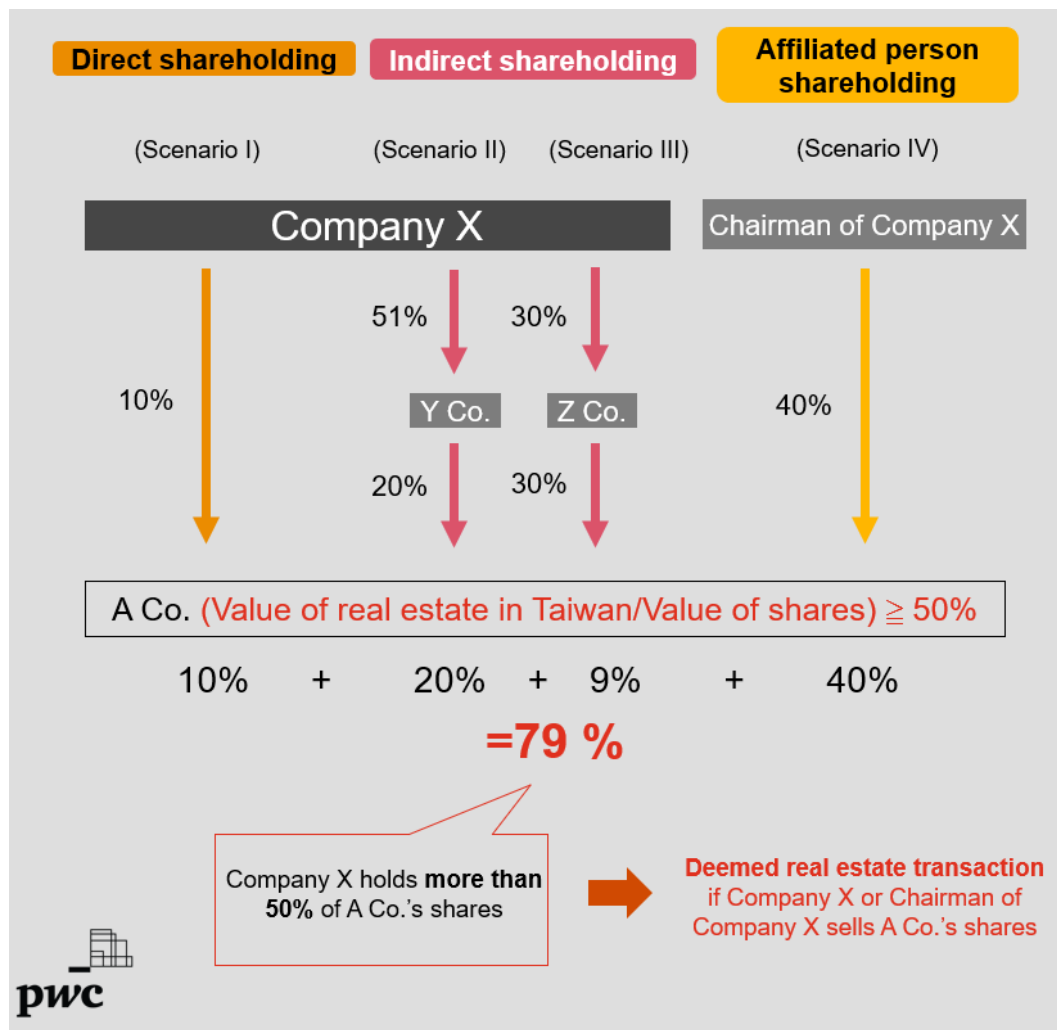
Ministry of Finance announced definition of “Qualifying Shares” under Joint Property Tax System 2.0 on January 25, 2022

Joint Property Tax System 2.0 deems the transfer of “Qualifying Shares” as sale of buildings and land. “Qualifying Shares” refer to majority (over 50% shareholding) shares directly or indirectly held by corporate or individual shareholders, where 50% or more of value of shares or capital contribution is comprised of buildings and land within Taiwan.

The definition of direct and indirect shareholding announced by the Ministry of Finance (“MOF”) are as follows:

1. Direct Shareholding (Scenario I): determined by shareholding percentage
2. Indirect Shareholding:

- (1) Holds more than 50% of shares of an affiliated company, or can exercise significant influence over affiliated company, which in turn holds property-rich company (Scenario II): determined by shareholding percentage of affiliated company in lower-tier property-rich company
- (2) Holds less than or equal to 50% of shares of an affiliated company (Scenario III): calculated by multiplying shareholding percentage of each lower-tier investee company
3. Shareholding of affiliated person (Scenario IV): calculated by adding direct shareholding and indirect shareholding following the respective rules mentioned above.



PwC Analysis:

1. The inclusion of affiliated person's shareholding percentage in determination of Qualifying Shares takes into consideration the related party definition in the CFC Rules. Related party should include affiliated enterprises and affiliated persons, such as spouse, second degree relatives, or controlling interest in educational, cultural, public welfare, or charitable organizations. According to the provisions of Joint Property Tax System 2.0, the calculation of majority (over 50%) shareholding is based on direct or indirect shareholding percentage held by an affiliated person or affiliated enterprise. Therefore, taxpayers should pay special attention to the affiliated person definition and necessity to aggregate shareholding percentage. Furthermore, shares held by nominee shareholders should also be included in the calculation.
2. For Qualifying Shares transactions, the holding period refers to the period shares are actually held by the shareholders, rather than the holding period of the real estate. Furthermore, whether the shares are obtained before or after January 1, 2016 is irrelevant, i.e. if both shareholding percentage and value of real estate breach the 50% threshold when shares are sold, this is deemed a real estate transaction and taxed accordingly. In addition, based on MOF interpretation, regardless whether real estate is acquired before or after January 1, 2016, all real estate owned by the company should be included in the calculation to determine if value of real estate has breached the 50% threshold. As such, even if real estate held by Company A was acquired in 2011, transfer of Company A's shares may still be subject to income tax based on Joint Property Tax System 2.0.
3. If a domestic or foreign parent company, through multiple layers of domestic or foreign subsidiaries, indirectly holds Taiwanese real estate, where the shareholding percentage and value of real estate breach the 50% threshold, thus meeting the definition of Qualifying Shares, sales of a subsidiary's shares by the parent company will be subject to Joint Property Tax System 2.0, even if the shares sold belong to an offshore company.
4. Individual shareholders who sold shares or transferred ownership of share capital meeting the Qualifying Shares definition above, but who did not report Joint Property Tax may voluntarily report and make up income tax payable and accrued interest before March 31, 2022 based on Article 48-1 of the Tax Collection Act, in order to waive penalties associated with non-compliance.

PwC Taiwan Contacts

Corporate Income Tax and Indirect Tax Services

Jason Hsu (Leader)
+886-2-2729-5212
jason.c.hsu@pwc.com

Li-Li Chou
+886-2-2729-6566
li-li.chou@pwc.com

Rosamund Fan
+886-2-2729-6077
rosamund.fan@pwc.com

Sam Hung
+886-2-2729-5008
sam.hung@pwc.com

Jack Hwang
+886-2-2729-6061
jack.hwang@pwc.com

Pei-Hsuan Lee
+886-2-2729-5207
pei-hsuan.lee@pwc.com

Alvis Lin
+886-2-2729-5028
alvis.lin@pwc.com

Yen-Tan Tsai
+886-2-2729-6997
yen-tan.tsai@pwc.com

Ying-Hsun Liu
+886-2-2729-6258
ying-hsun.liu@pwc.com

Luke Huang
+886-2-2729-5955
luke.huang@pwc.com

Audrey Chen
+886-2-2729-5696
audrey.chen@pwc.com

International Tax Services

Elaine Hsieh
+886-2-2729-5809
elaine.hsieh@pwc.com

Patrick Tuan (China Tax)
+886-2-2729-5995
patrick.tuan@pwc.com

Peter Su (US Tax)
+886-2-2729-5369
peter.y.su@pwc.com

Paulson Tseng (EU Tax)
+886-2-2729-5907
paulson.tseng@pwc.com

Shing-Ping Liu (ASEAN Tax)
+886-2-2729-6661
shing-ping.liu@pwc.com

CY Hsu (China Tax)
+886-2-2729-5968
cy.hsu@pwc.com

Transfer Pricing & BEPS Services

Lily Hsu
+886-2-2729-6207
lily.hsu@pwc.com

Elliot Liao
+886-2-2729-6217
elliott.liao@pwc.com

Hsiang-Chin Fan
+886-2-2729-6669
hsiang-chin.fan@pwc.com

Financial Services

Richard Watanabe
+886-2-2729-6704
richard.watanabe@pwc.com

Jessie Chen
+886-2-2729-5360
jessie.chen@pwc.com

Mergers & Acquisitions Tax

Elaine Hsieh
+886-2-2729-5809
elaine.hsieh@pwc.com

Shing-Ping Liu
+886-2-2729-6661
shing-ping.liu@pwc.com

Family Business & Private Wealth Services

Sam Hung
+886-2-2729-5008
sam.hung@pwc.com

Tax Litigation Services

Alvis Lin
+886-2-2729-5028
alvis.lin@pwc.com

Corporate Secretarial Services

Jack Hwang
+886-2-2729-6061
jack.hwang@pwc.com

Outsourcing and Accounting Services

Rosamund Fan
+886-2-2729-6077
rosamund.fan@pwc.com

Sam Hung
+886-2-2729-5008
sam.hung@pwc.com

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