

Taiwan Tax Update

September 2022

Income Tax

Ministry of Finance updated FAQs on Controlled Foreign Company (“CFC”) rules

As Taiwan CFC rules are expected to come into force in 2023, the Ministry of Finance (“MOF”) updated Frequently Asked Questions (“FAQs”) on the CFC rules to provide additional clarification and address queries raised by the general public. Salient points of the latest FAQs are summarized as follows:

1. Foreign affiliates with effective tax rate exceeding 70% of Taiwan’s statutory CIT rate may not be directly exempt from the CFC rules

- 1) Basic principle: A low-tax country or jurisdiction is determined on the basis of its “statutory CIT rate”, or whether it adopts “territorial basis of taxation”, rather than using effective tax rate.
- 2) Incorporation of effective tax rate under GloBE rules: Certain countries on the low-tax country or jurisdiction list announced by the MOF are recently discussing incorporation of Global Anti-Base Erosion (“GloBE”) rules into their domestic tax law. According to FAQs on the CFC rules, these countries will not be removed from the aforementioned list directly. Instead, the determining criteria is whether the effective tax rate of “individual” companies reach 15% following amendments to the particular country’s tax law. In other words, if a company is exempt under the safe-harbor provision of the GloBE rules, or is an affiliate not included in the consolidated group financial statements, it would still be considered as a foreign entity registered in a low-tax country or jurisdiction under the CFC rules, since it does not need to bear additional minimum tax.

2. CFCs with a branch office in Taiwan will still be subject to the CFC rules

If the CFC has a branch office in Taiwan, regardless whether earnings of the



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Taiwan branch is repatriated to the CFC, they are considered part of current-year earnings of the CFC, and cannot be deducted therefrom, unless the CFC meets one of the safe-harbor thresholds specified in the CFC rules (i.e. the CFC carries out substantial operating activities in its registered country or jurisdiction, or current-year earnings of the CFC are less than TWD 7 million).

3. CFCs with an investee enterprise carrying out substantial operating activities are not exempt from CFC rules

CFCs must meet the following requirements for exemption from CFC rules due to having substantial operating activities: CFC shall have a fixed place of business in its registered country or jurisdiction, where it hires employees to carry out business operations locally, while its annual passive income is less than 10% of its total annual net revenues and non-operating income. The CFC rules would apply even if the investee enterprise of the CFC undertakes substantial operating activities. For instance, if a Taiwan company holds a BVI CFC which invests in a Hong Kong company (with substantial operating activities), the substantial operating activities of the Hong Kong company will not be taken into account when determining whether the BVI CFC meets the aforementioned requirements for substantial operating activities.

4. Current-year earnings of a CFC cannot exclude investment income derived from its investee enterprise located in a low-tax country or jurisdiction even if said enterprise carries out substantial operating activities

Exclusion from current-year earnings of a CFC is determined based on whether the investee enterprise is located in a non-low-tax country or jurisdiction, regardless whether the investee enterprise carries out substantial operating activities. For instance, if a Taiwan company holds a BVI CFC which invests in a Hong Kong company, the earnings of the Hong Kong company cannot be excluded from the investment income of the BVI CFC, even if the Hong Kong company carries out substantial operating activities.

5. CFC rules are not applied retroactively, with the exception that if the investee



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enterprise of a CFC is located in a non-low-tax country or jurisdiction and realizes investment loss or distributes earnings of FY2022 or prior years in 2023 and future years, such realized loss and distributed earnings shall still be included in CFC investment income calculation

As the CFC rules will take effect in 2023, these rules do not apply retroactively to earnings of FY2022 or prior years. Similarly, losses of FY2022 or prior years cannot be carried forward to offset earnings of FY2023 and future years. Note that in determining the timing of earnings distribution or investment loss of an investee enterprise in a non-low-tax country or jurisdiction for the purpose of CFC investment income calculation, the year in which resolution was reached to distribute earnings or realize investment loss shall govern, as opposed to the year in which such earnings or loss was generated.

6. Profit-seeking enterprises shall still file CFC disclosure forms even if the CFC is eligible for exemption under the safe-harbor rules

When filing annual CIT returns, profit-seeking enterprises shall disclose CFC related information in prescribed format. If a CFC is eligible for exemption, supporting documents shall be provided to evidence that the exemption criteria are met.

PwC Analysis:

1. The latest FAQs on CFC rules have incorporated the concept of the global minimum effective tax rate, however, considering relevant laws and regulations are still unclear, even though concern over double taxation for MNC enterprises arising from implementation of the GloBE rules in the future have been alleviated to a certain extent, the implementation of the GloBE rules in each country and impact on MNC group's effective tax rate shall still be closely monitored.
2. Currently, majority of Taiwan-based overseas listed companies and Cayman Islands ("KY") companies listed in Taiwan are either held directly by Taiwanese companies or individuals, or indirectly through a CFC. The current CFC rules does not exclude such overseas listed companies or KY companies. Therefore, when an investee enterprise of an overseas listed company carries out substantial operating

activities in a low-tax country or jurisdiction and generates earnings, or when the subsidiary of the overseas listed company distributes its earnings, such earnings are still deemed as current-year earnings subject to tax under the CFC rules by Taiwanese companies or individuals, even if the overseas listed company has not yet distributed its earnings.

Other Regulations

MOF released amendments to Regulations Governing Tax Registration and other relevant regulations

On 8 August 2022, the MOF announced amendments to Regulations Governing Tax Registration and Rules Governing Tax Authority's Management of Accounting Books and Documents of Profit Seeking Enterprises, which states that effective from 1 January 2023, where a business entity solely sells goods or services via an online platform, mobile device application ("APP") or other electronic means (hereinafter referred to as "online sales") or concurrently via other offline methods, the domain name and IP address, as well as member account, shall be included in the business entity's tax registration. The business entity should also clearly disclose its company name and 8-digit company ID on its online sales website and relevant transaction APPs, etc.

In accordance with amended regulations, business entities engaging in online sales who have already completed tax registration on or before 31 December 2022 shall amend their tax registration and include required information related to online sales from 1 January 2023 to 15 January 2023. In order to allow sufficient time to complete necessary amendment registration procedures, the MOF has set a grace period from 1 January 2023 to 30 April 2023 (4 months in total), during which business entities that fail to comply with aforementioned regulations would not be subject to penalties. After the grace period expires (i.e. starting from 1 May 2023), business entities that fail to comply with aforementioned regulations shall be levied penalties in accordance with Paragraph 1 of Article 46 of the Value-added and Non-value-added Business Tax Act due to non-compliance with amendment registration requirements.

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