

Taiwan Tax Update

January 2023

Income Tax Act

Ministry of Finance released sample format of Controlled Foreign Company (“CFC”) income disclosure forms to be incorporated in corporate income tax return

The Ministry of Finance (“MOF”) released sample format of CFC income disclosure forms to be incorporated in corporate income tax return, which includes the following information: filing and disclosure obligation, related party information (including disclosure of controlling or subordinated relationship, and shareholding structure chart and table), CFC earnings calculation schedule and required supporting documents, CFC investment income and foreign tax credit schedule, etc. The CFC income disclosure form is divided into five parts:

1. CFC basic information	Includes CFC name, tax identification number, country or jurisdiction where CFC resides, verification of substantive operation, and whether CFC’s financial statements are audited by a CPA
2. Current year earnings	CFC after tax income (per financial statements) + Other Comprehensive Income (OCI) and amounts transferred from other equity account to retained earnings account - (Investment Income – Investment Loss) recognized via equity method from non-low tax rate countries or jurisdictions + Resolution to distribute earnings from non-low tax rate countries or jurisdictions (or minus realized loss)

3. Loss carry-forward table for past 10 years	CFC losses from 2023 onwards can be carried forward, but losses in 2022 and prior years cannot be carried forward
4. CFC investment income calculation	CFC investment income is calculated as [(CFC shareholding percentage) * (CFC current year earnings - legal reserve - restricted distributable items – prior year CFC loss assessed by the tax office)]
5. Schedule of CFC investment income recognized by profit-seeking enterprise and foreign tax credit	Includes actual dividends received from CFCs, and information on disposal of CFCs etc., to avoid double taxation

PwC Analysis

1. Supporting documents for substantive operation exemption requirement: For CFCs meeting requirements for substantive operation exemption, profit-seeking enterprises shall provide relevant supporting documents when filing CIT returns, such as CPA opinion letter, evidence of title ownership of fixed place of business, lease agreements and rental payment receipts, documents evidencing CFC paying salaries to employees actively engaged in local business activities, documents evidencing CFC carrying out business operations locally.
2. Although CFCs meeting requirements for substantive operation exemption do not need to calculate CFC earnings and CFC investment income subject to tax, CFCs with current year net loss are still required to fill out CFC earnings schedule and loss carry-forward table for past 10 years, in order to utilize loss carry-forward in the future.
3. Another exemption from adoption of CFC rule is if both current year earnings of individual CFCs and aggregate current year earnings of all CFCs do not exceed TWD 7 million. When calculating aggregate current year earnings (or loss) of all CFCs, CFCs with substantive operation can be excluded.

4. Only first tier CFCs directly invested by Taiwan profit-seeking enterprise is required to be disclosed in CFC income disclosure form. One form is required to be filled out for each CFC. Other CFCs held directly or indirectly by first tier CFCs are not required to be disclosed in the CIT return.
5. For Taiwan profit-seeking enterprises that have recognized CFC investment income in accordance with CFC rules and paid corresponding taxes, the 5-year foreign tax credit threshold associated with payment of taxes on dividends or earnings in the country or jurisdiction which the CFC resides, or taxes paid in China, should be noted.

Tax Incentives

Legislative Yuan passed third reading of draft amendments to Article 10-2 of Statute for Industrial Innovation, which is effective retroactively from January 1, 2023

The Legislative Yuan passed third reading of draft amendments to Article 10-2 of Statute for Industrial Innovation (i.e. Taiwanese Chips Act) on January 7, 2023. The final version of the regulations that passed third reading is identical to the draft version sent by the Executive Yuan to the Legislative Yuan for deliberation.

The definition of eligible entities (companies engaged in technological innovation and assuming critical position in global supply chain), eligible R&D expenditure and scale of R&D intensity etc., will be further defined in the sub-regulations to be promulgated by Ministry of Economic Affairs and Ministry of Finance within 6 months. In the future, applications will be reviewed and approved by competent authorities and external experts.

Please refer to December 2022 Taiwan Tax Update for more information:

<https://www.pwc.tw/en/publications/taiwan-tax-updates/ttu-202212.html>

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