e-Tax alert

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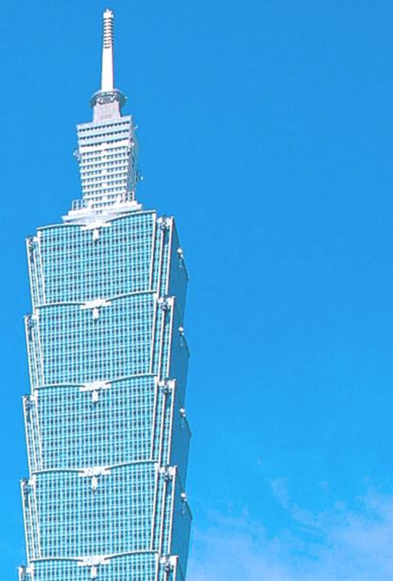

E-services income tax regime

Following the implementation of the VAT regime on e-services provided by foreign e-services providers in 2016, the Ministry of Finance has recently promulgated the relevant income tax regime. Similar to the VAT regime, the income tax regime focuses on the revenue received by foreign e-services providers from their e-services provided to onshore Taiwan customers.

The main points of the income tax regime are as follows:

1. What types of transactions are addressed under the Income tax regime?

Similar to the VAT regime, the following types of activities are addressed under the income tax regime as well: "Sale of e-services" and "Services that are utilized with specified physical location within Taiwan".

For "sale of e-services", it refers to either: services that are provided and utilized through internet download or other electronic transmission to computer equipment or mobile devices, or services that are provided and utilized online or other electronic means (e.g. online game, online ads, and streaming services).

While "services that are utilized with specified physical location within Taiwan" refers to: services that are provided through the internet or via other electronic means and utilized at a physical place such as hotel/lodging booking , car rental services.

2. The determination and calculation of Taiwan sourced income

In accordance with the Taiwan income tax rule, foreign entities would only be subject to Taiwan income tax on income derived that are Taiwan sourced.

Under the context of the income tax regime on e-services, the following types of income are considered as Taiwan sourced:

a. For "sale of e-services" type of transaction, income derived from services that are provided entirely offshore but requires onshore individual or enterprise's assistance to complete the provision.

b. For "services that are utilized with specified physical location within Taiwan": if the location where the services is utilized is onshore.

In terms of the calculation of the taxable income, the income tax regime allows the foreign e-services providers to claim actual costs and expenses incurred or adopt a deemed profit ratio. However, the use of deemed profit ratio would require pre-approval from the authority.

In addition, the tax regime also allows the taxpayers to claim a contribution ratio, which determines how much of revenue derived is attributable to onshore activities and offshore activities. Similar to the utilization of deemed profit ratio, the use of contribution ratio would also require pre-approval from the tax authority.

3.When will the income tax regime become effective and what period will be covered?

The income tax regime would be effective starting from January 1st, 2017, and the first self-reporting would need to be made during the month of May 2018 and before May 31st, 2018.

For your ease of understanding, an illustration of the flow of the income tax regime is illustrated below.

KPMG Observation

1. If foreign e-service providers (including both platform providers and non-platform providers) wishes to adopt deemed profit ratio and contribution ratio in the calculation of their taxable income, pre-approval from the tax authority would be required.

2. While platform providers may apply with the tax authority and be subject to withholding based on the net amount of the payment they received, e.g. the relevant transaction/services fee which they charge to the actual e-service providers, however, under such scenario the platform providers would need to make withholding on the portion of the payment (received from the Taiwan services purchasers) which they pay to the actual e-services providers, and pay the withholding tax amount collected to the tax authority.

3. The utilization of the deemed profit ratio and contribution ratio will only be applied to income received starting from 2017. Nonetheless, for income received prior to and including 2016, the foreign e-service may still claim actual costs and expenses incurred.

4. Foreign e-service providers may apply for refund of any excess tax payment arising under the implementation of the e-service income tax regime, within 5 years after the date with the payment is received.

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Is it Taiwan sourced income?

For foreign entity with no fixed place or business agent in Taiwan

Services that are provided and utilized through internet download or other electronic transmission to computer equipment or mobile devices	Provided entirely offshore, without onshore individual or entity's assistance and insignificant connection with Taiwan	✗
Services that are provided and utilized online or other electronic means (e.g. online game, online ads, and streaming services)	Services purchaser is onshore	✓
Services that are utilized with specified physical location (e.g. hotel/lodging booking, car rental)	The location where the services is utilized is onshore	✓
Foreign e-services platforms where onshore and offshore parties may transact	Either seller or purchaser is located in Taiwan	✓

Calculation of taxable income

(Revenue − actual cost/expenses or Revenue x deemed profit ratio) × B × tax rate ＝ tax amount

A: claiming costs and expenses

01 Actual cost and expenses

provide relevant accounting records and supporting documentation

Or

02 Deemed profit ratio

1. Where the supporting accounting documentation are not available, taxpayers may adopt the applicable deemed profit rate for their business operation (for the platform providers, the deemed profit ratio is 30%)
2. If neither accounting record nor proof of the main business operation item is available, the deemed profit rate will be 30%.
3. If the actual net profit ratio is higher than 30%, then the higher ratio will be adopted.

Does the transaction have the following traits?

1. The entire transaction flow happened onshore, **or**
2. the place where the services is provided and utilized is both onshore

B: segregation of onshore/offshore contribution ratio

If either one of the traits exists:

Onshore contribution ratio will be:

100%

If neither traits exists:

Actual contribution ratio

Provide supporting documentation such as CPA certification report, TP documents, work plan/report,

Or

Deemed contribution ratio

If no supporting documentation cannot be provided, then a deemed contribution ratio of 50% will be adopted, if the actual contribution ratio as determined by the tax authority is higher than 50%, then the higher ratio will be adopted.

Tax payment

Foreign e-service providers

(without fixed place of business or business agent in Taiwan)

Whether income is subject to withholding

Subject to withholding → **Tax payment method:** Withhold based on :
1. gross amount paid or
2. gross amount x contribution ratio x deemed profit ratio

Or

Not subject to withholding → Self report or through tax agent

Platform providers

(without fixed place of business or business agent in Taiwan)

Income calculation

based on the gross amount received → Self-report or through tax agent, based on the gross amount

Or

based on net(after seeking approval from the authority) amount → The platform provider may self-report based on net amount, if the platform providers makes withholding on the payment made to the actual services providers.

Note: Taxpayers may apply for pre-approval for utilization of the deemed profit ratio and contribution ratio for determination of taxable income prior to withholding, or may apply for such approval after withholding has been made and apply for refund after.

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