

e-Tax alert

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New amendment to Article 15-1 of TSI Guidance & Income Taxation on Cross Border Electronic Services

Under current Taiwan Tax regime, for the Taiwan sourced service income or business profit paid to foreign companies, the Taiwan payers are obligated to make withhold on such payments. Considering the fact that it is difficult for foreign companies to claim actual costs and expenses in Taiwan, the Taiwan Ministry of Finance (MOF) has introduced tax treatments for foreign companies to apply an pre-approval for calculating their taxable income by adopting Deemed Profit Ratio (DPR) and Contribution Ratio (CR). For the detailed introduction, please refer to [e-Tax alert Issue 102](#) and [Issue 134](#).

On December 16, 2021, MOF announced amendments to the tax rules relevant to applying for DPR/CR. To be more

specific, previously, only foreign companies are eligible to act as applicants for DPR/CR application with Taiwan tax authorities. However, MOF has observed that some Taiwan service recipients as the obligated withholders are bearing the actual withholding tax (WHT) cost. Due to the fact that foreign companies have no related tax burden, it is common that foreign companies are uninterested in assisting Taiwan service recipients in applying, which then resulted in unfair taxation with Taiwan withholders. MOF has thus amended the tax rules allowing Taiwan withholders who borne or will bear the WHT on the Taiwan sourced income (TSI) received by foreign companies to apply for DPR/CR and the key amendments are summarized as follows:

Item	E-service income paying to foreign e-service suppliers*	Service income or business profits paying to other foreign companies**
Applicant	The obligated Taiwan tax withholder who actually borne or will bear WHT	
In-charge Tax Authority	The Tax Bureau where the obligated tax withholder is located	
Effective Date	December 16, 2021	
Applicable Ratio	DPR & CR	DPR
Documents Required	<ul style="list-style-type: none"> — An application form; — Documents proving the obligated tax withholder borne/will bear the WHT; — Signed contracts related to the underlying transactions; — Description of the foreign entity's operation or business items; — Description of the onshore and offshore transaction flows; — Other relevant supporting documents per request. 	<ul style="list-style-type: none"> — Documents proving the obligated tax withholder borne/will bear the WHT; — Signed contracts related to the underlying transactions; — Description of the foreign entity's operation or business items; — Other relevant supporting documents per request.

* Amended Income Taxation on Cross Border Electronic Services 外國營利事業跨境銷售電子勞務課徵所得稅規定

** Amended Directions of the Levying of the Income Tax on Cross-Border Electronic Services Transactions 外國營利事業跨境銷售電子勞務課徵所得稅作業要點

** Amended Article 15-1 of TSI Guidance 所得稅法第八條規定中華民國來源所得認定原則第15條之1

** Promulgated Directions for Tax Withholders Applying for Issuance of Assessment Permission of Applicable Net Profit Ratio for Payments made to Foreign Profit-seeking Enterprises regarding Service Remuneration or Business Profits 扣繳義務人給付外國營利事業勞務報酬或營業利潤申請核定適用淨利率作業要點.

KPMG Observations

For foreign companies who have already applied for DPR/CR with Taiwan tax authorities and shared approval letters with their local obligated tax withholders, the amendments mentioned above would have no effect.

For Taiwan service recipients, the main benefit of the amendment rules is that it offers Taiwan withholders who bears the WHT the opportunity to act as the CPR/CR applicants without the need to seek consent/assistant from the foreign service providers for such applications.

It should be noted that in order for Taiwan withholders to be eligible under the amended rules, the Agreements signed between foreign companies and Taiwan service recipients should stipulate clearly that the Taiwan contractors are to bear the WHT.

In terms of the review practice, based on our experience, tax authorities tend to focus on what is the foreign company's operation and whether the desired DPR is appropriate. In such case, tax authorities often request for foreign entities' internal documents, e.g. financial statements and organization chart for investigation purpose. For foreign companies, such supporting documents may be too sensitive to provide to Taiwan withholders. As a result, it is still unclear and hence deserves further observations on what other supporting documents will be required and accepted by the tax authorities when a Taiwan withholders become the applicants. Besides, foreign companies should be aware that Taiwan withholders may contact the companies for assistance if there are questions raised by the tax authorities that they are unable to address.

Further, please note that under Article 15-1 of the TSI Guidance tax regime, only foreign companies are eligible to apply for CR used to determine taxable income. That is, Taiwan withholders are not able to apply for CR as only foreign service suppliers have relevant information and supporting documents regarding how much Taiwan assistance is involved when the services are provided to Taiwan service recipients.

Overall, permitting local obligated tax withholders to apply for the applicable DPR/CR without power of attorney from foreign entities would make the WHT levied more in line with the regulating purpose of such taxation rules. Going forward, the parties may consider and discuss the bearer of WHT and compliance cost on applying DPR/CR with Taiwan tax authority to reach maximum efficiency.



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