Content

| | |
|---|---|
| Title： | Rules Governing the Applications for Exemption from Income Tax on Royalty and Technical Service Fees Collected by Foreign Profit-Seeking Enterprises from Manufacturing Industries, Technical Service Industries and Power-Generating Industries Ch |
| Date： | 2015.09.25 |
| Legislative： | 1. Amended by Decree No. 05811 issued by the Executive Yuan dated February 18, 1995.<br><br>2. Amended by Decree No. 17354 issued by the Executive Yuan dated May 2, 1997, with revisions to its title and all 8 points in their entirety (Former title: “Rules Governing the Applications for Exemption from Income Tax on Royalty and Technical Service Fees Collected by Foreign Profit-Seeking Enterprises from Manufacturing Industries and Their Related Technical Service Industries”; New title: “Rules Governing the Applications for Exemption from Income Tax on Royalty and Technical Service Fees Collected by Foreign Profit-Seeking Enterprises from Manufacturing Industries, Technical Service Industries and Power-Generating Industries”).<br><br>3. Amended by Decree No. 09604531350 issued by the Ministry of Finance dated July 6, 2007, with revisions to its title and all 11 points in their entirety, effective from July 6, 2007 (Former title: “Rules Governing the Applications for Exemption from Income Tax on Royalty and Technical Service Fees Collected by Foreign Profit-Seeking Enterprises from Manufacturing Industries, Technical Service Industries and Power-Generating Industries”; New title: “Rules Governing the Applications for Exemption from Income Tax on Royalty and Technical Service Fees Collected by Foreign Profit-Seeking Enterprises from Manufacturing Industries, Technical Service Industries and Power-Generating Industries”).<br><br>4. Amended jointly by Ministry of Finance Decree No. 10304503280 and Ministry of Economic Affairs Decree No. 10302600970 dated January 29, 2014, with revisions to all 11 points in their entirety, effective from January 1, 2011; provided, however, that the amended provisions shall apply where a profit-seeking enterprise and a foreign profit-seeking enterprise enter into an agreement after the said effective date.<br><br>5. Amended jointly by Ministry of Finance Decree No. 10404634860 and Ministry of Economic Affairs Decree No. 10404604500 dated September 25, 2015, with revisions to the provisions of Point 8 and Point 11-1, effective from the date of promulgation. |
| Content： | 1.<br>The purpose of these Rules is to govern the approval of applications for exemption from income tax on royalty and technical service fees collected by foreign profit-seeking enterprises from domestic manufacturing industries, technical service industries and power-generating industry.<br><br>2.<br>The terms referred to in these Rules are defined as follows:<br>(1)The term “profit-seeking enterprise” referred to in these Rules shall mean the enterprise as stipulated in Paragraph 2 of Article 11 of the Income Tax Act, as well as the educational, cultural, public welfare and charitable organizations or institutions, as stipulated in Paragraph 4 of Article 11 of the Income Tax Act, which operate the business of selling |

goods or providing services.
(2)The term “foreign profit-seeking enterprise” referred to in these Rules denotes any profit-seeking enterprise or any educational, cultural, public welfare and charitable organizations or institutions operating the business of selling goods or providing services that have their head offices without the territory of the Republic of China ( hereinafter referred to as" the ROC").

3.
The term "technical cooperation" referred to in these Rules shall mean where a foreign profit-seeking enterprise provides a domestic profit-seeking enterprise with its patent right, which may achieve one of the following purposes relevant to the products or services of the domestic profit-seeking enterprise:
(1)To facilitate the production of new products;
(2)To increase the volume of production, improve the quality or reduce the production cost of products; or
(3) To provide new manufacturing technology.
Where a foreign profit-seeking enterprise transfers the ownership of its own patent right to a domestic profit-seeking enterprise, the consideration received for such patent right falls within the category of income from property transaction and is excluded from the application of these rules.

4.
The market for the products made with technical cooperation shall not be limited to the territory of the ROC.

5.
A foreign profit-seeking enterprise that provides industries as stipulated in Paragraph 3 with its own patent right to be exploited by way of technical cooperation, during the validity period of such patent right, and such right having been verified and approved by the Industrial Development Bureau of the Ministry of Economic Affairs on a case-by-case basis for the virtual introduction of such technical know-how which is a key technology that domestic units are unable to provide or able to provide, but its performance can not meet the profit-seeking enterprise’s product specifications, may apply for income tax exemption for the royalties received therefrom in accordance with Subparagraph 21, Paragraph 1 of Article 4 of the Income Tax Act.
The home country of such foreign profit-seeking enterprise as referred to in the preceding paragraph shall be the country which reciprocally allows ROC nationals to claim patent priority, or the member of the World Trade Organization.
The patent as referred to in Paragraph 1 shall be within the scope of the use of following industries:
(1)Precision Machinery and Intelligent Automation Industry
(2)Vehical Industry
(3)High Value-Added Metal Materials Industry
(4)Wind Power Industry
(5)Solar Energy Industry
(6)Next Generation Communications and Smart Handheld Device Industries
(7)Intelligent Electronics and Electronic Components Industry
(8)Display Industry
(9)LED Lighting Industry
(10)Intelligent Living Industry
(11)Cloud Computing Industry
(12)High Value-Added Petrochemical Industry
(13)High Value-Added Textile Industry
(14)Optoelectronic Chemical Materials Industry
(15)Health Foods Industry
(16)Biotechnology Industry
(17)Resource Recycling Industry
(18)Water Reclaim and Reuse Industry
(19)Information Services Industry
(20)Design Services Industry

The term " domestic units " referred to in Paragraph 1 shall mean the ROC government agencies or institutions, individuals residing in the ROC, profit-seeking enterprises having head offices within the territory of ROC and education, culture, public welfare, or charity institutions or organizations.

6.
A foreign profit-seeking enterprise that licenses manufacturing industries and related technical services industries by way of technical cooperation to use its trademark which is registered with the Intellectual Property Office of the Ministry of Economic Affairs during the validity period of such trademark as recorded with the Intellectual Property Office of the Ministry of Economic Affairs, and with such trademark being displayed in parallel with the trademark of the domestic technical cooperation industry on the commodity, service or other related items, may apply to the Industrial Development Bureau of the Ministry of Economic Affairs for income tax exemption on the royalties received therefrom in accordance with Subparagraph 21, Paragraph 1 of Article 4 of the Income Tax Act.

7.
A foreign profit-seeking enterprise that licenses manufacturing industries and related technical services industries by way of technical cooperation as approved by the Industrial Development Bureau of the Ministry of Economic Affairs to exploit its computer programs which may enjoy copyright under Article 4 of the Copyright Act during the term of protection of such computer programs, may apply for income tax exemption on the royalties received therefrom in accordance with Subparagraph 21, Paragraph 1 of Article 4 of the Income Tax Act.

8.
The patents, trademarks, and copyrights of computer programs as referred to in Articles 5, 6, and 7 are limited to those for self-use by domestic profit-seeking enterprises only.
Application for the approval to use the rights as referred to in the preceding paragraph can be given only by the competent authority on a case-by-case basis during the validity period of the contract.

9.
Where a company limited by shares specially approved by the Industrial Development Bureau of the Ministry of Economic Affairs as in conformity with industries specified in Subparagraph 1 to 18, Paragraph 3 of Articles 5 of these Rules, engages a foreign profit-seeking enterprise to render technical services, including the production method, the process design, the basic or detailed engineering design and/or the machinery/equipment design, which are needed prior to the construction and start-up of its factory, being verified and approved as such by the Industrial Development Bureau of the Ministry of Economic Affairs on a case-by-case basis, the technical service fees received therefrom by the foreign profit-seeking enterprise may be exempted from income tax in accordance with Subparagraph 21, Paragraph 1 of Article 4 of the Income Tax Act.

10.
Where a power-generating enterprise incorporated in the form of a company limited by shares engages a foreign profit-seeking enterprise to render technical services, including the construction planning, basic or detailed engineering design and the machinery/equipment design, which are needed prior to the construction and start-up of its plant, being verified and approved as such by the Bureau of Energy, Ministry of Economic Affairs on a case-by-case basis, the technical service fees received therefrom by the foreign profit-seeking enterprise may be exempted from income tax in accordance with Subparagraph 21, Paragraph 1 of Article 4 of the Income Tax Act. The power-generating enterprise as referred to in the preceding paragraph shall mean a power-generating company engaging in generating electric power energy.

11.

| | |
|---|---|
| | Any profit-seeking enterprise pays its foreign affiliated enterprises the royalties or technical service fees which may be exempted from income tax in accordance with Subparagraph 21, Paragraph 1 of Article 4 of the Income Tax Act, shall evaluate whether such costs or expenditures are at arm's-length in accordance with the "Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing". If the profit-seeking enterprise evaluate that such costs or expenditures are not at arm's-length and would result in an evasion or reduction of their tax liabilities within the ROC, he shall voluntarily adjust them based upon the results of the arm's length transactions. The amount in excess of the results of the arm's length transactions shall not be considered as costs or expenditures.<br><br>11-1.<br>Any profit-seeking enterprise which pays foreign enterprises royalties or technical service fees may be exempted from income tax in accordance with Subparagraph 21, Paragraph 1 of Article 4 of the Income Tax Act, the approved exemption period shall be limited to 3 years. However, if a foreign profit-seeking enterprise applies for a shorter period of authorization or construction of a factory, approval shall be based on the above period for exemption.<br>Before the expiration of the approved exemption period as referred to in the preceding paragraph, a foreign profit-seeking enterprise may apply again in accordance with Subparagraph 21, Paragraph 1 of Article 4 of the Income Tax Act.<br>The amended Article 11-1 came into force on September 25, 2015 and shall apply to cases in which foreign profit-seeking enterprises have applied but have not yet been approved by the competent authority before the above effective day. |

Data Source：Ministry of Finance, R.O.C. Laws and Regulations Retrieving System