Content

Title：	Directions on the Levying of the Income Tax on Cross-Border Electronic Services Transactions Ch
Date：	2018.05.11
Legislative：	Promulgated by Decree No. Tai-Tsai-Shui-1070052287 issued by of Ministry of Finance on May 11, 2018

Content：

1. These directions stipulate the levying of income tax on the source incomes derived from selling cross-border electronic services by a profit-seeking enterprise having its head office outside of the territory of the Republic of China (“R.O.C”) (hereinafter referred to as the foreign profit-seeking enterprise).

2. The terms used in these directions are defined as follows:

2.1 Electronic services:

2.1.(1) The services are downloaded via the Internet or other electronic tools and saved to computers or mobile devices (such as smartphone, tablet computer, etc.) for use.

2.1.(2) The services are used online or via other electronic tools without being saved into any devices, including services used in digital form, like online games, advertisements, audio-visual browsing, voice frequency broadcasting, information contents (such as movies, soap operas, music, etc.) and interactive communications.

2.1.(3) Other services used are supplied through the Internet or electronic tools; for example, the services are supplied through the online platforms set up by a foreign profit-seeking enterprise and used at a physical location.

2.2 Foreign Platform Operator (“PO”) means that a foreign profit-seeking enterprise establishes platforms on the Internet (online virtual stores) for both domestic and/or overseas buyers and sellers to conduct transactions via the Internet or other electronic devices as well as collect service fees from platform users.

2.3 Foreign Non-Platform Service Provider (“NPSP”) means that a foreign profit-seeking enterprise offers non-platform electronic services to purchasers in the following manners：

2.3.(1) Selling electronic services via the websites set up by themselves, and collecting sales prices from buyers.

2.3.(2) Selling electronic services through foreign POs and collecting sales prices directly from buyers; either buyers and/or sellers pay service fees to POs.

2.3.(3) Selling electronic services through foreign POs; platform operators collect sales prices from buyers and transfer the remaining amounts after deducting their service fees to the aforesaid foreign NPSPs.

2.4 Tax authority-in-charge:

2.4.(1) If a foreign profit-seeking enterprise applies the case and files the income tax return by itself, the tax authority-in-charge is the Taxation Bureau where the Central government is seated.

2.4.(2) If a foreign profit-seeking enterprise applies the case and files the income tax return through a tax agent, the tax authority-in-charge is the Taxation Bureau where the tax agent seated.

3. Recognition of revenue sources from the R.O.C.

3.1 According to Article 8 of the Income Tax Act and the Guidelines for the Determination of Income Sources from the R.O.C., by considering the electronic services with the economic connections to R.O.C., the source of revenue of foreign enterprises providing cross-border electronic services shall be determined as follows:

3.1.(1) Foreign POs:

Where a foreign PO provides an Internet-based platform on which onshore and offshore sellers and buyers conduct transactions, if one of the transaction parties is an individual, profit-seeking enterprise, organization, or entity within the R.O.C., the remunerations derived from the seller and buyer shall be recognized as revenue sources from the R.O.C.

3.1.(2) Foreign NPSPs:

3.1.(2).(A) The sales of the electronic service is used without a physical location:

3.1.(2).(A).(a) Where a foreign profit-seeking enterprise produces or manufactures a product (e.g., stand-alone software, e-book, etc.) outside of the R.O.C., and the enterprise transmits, downloads, and saves the product into a computer or mobile device via the Internet or other electronic means so as to offer electronic services to buyers within the R.O.C., the remunerations derived therefrom are not regarded as revenue sources from the R.O.C. However, if the product is provided with the assistance and involvement of an individual or profit-seeking enterprise of the R.O.C., the remunerations derived therefrom shall be recognized as revenue sources from the R.O.C.

3.1.(2).(A).(b) Where, via the Internet or other electronic means, a foreign profit-seeking enterprise offers real-time, interactive, handy, and continuing electronic services (e.g., online games, online films and series, online music, online video, online advertisements, etc.) to domestic buyers within the R.O.C., the remunerations derived therefrom shall be recognized as revenue sources from the R.O.C.

3.1.(2).(B) The sales of the electronic service is used at a physical location:

Where, via the Internet or other electronic means, a foreign profit-seeking enterprise selling services which are delivered by physical locations (e.g., accommodation services, automobile renting services) and the locations of delivering services or running the business are outside of R.O.C., pursuant to Subparagraphs 3 and 9, Article 8 of the Income Tax Act, the remunerations derived therefrom are not regarded as revenue sources from the R.O.C., whether or not it is through the assistance of a foreign PO; if the locations of delivering services or running the business are within the R.O.C., the remunerations derived therefrom shall be recognized as revenue sources from the R.O.C.

3.2 Transactions where foreign profit-seeking enterprises provide patents, trademarks, copyrights, secret formulas and franchises for use by other persons within the R.O.C. via the Internet or other electronicdevices are not within the scope of selling cross-border electronic services, pursuant to Subparagraph 6, Article 8 of the Income Tax Act, the remunerations derived therefrom shall be recognized as royalties.

4. Rules of calculating the taxable income

Pursuant to the criteria set forth above, in the case of foreign profit-seeking enterprises selling cross-border electronic services, the following rules may be eligible to calculate the taxable income by deducting related costs and expenses from the revenue sources from the R.O.C. based on the applicable profit contribution ratio:

4.1 Calculation of the taxable income

4.1.(1) Where the accounting books and documents are provided, the taxable income amount shall be calculated by the deduction of related actual costs and expenses from gross revenue sources in the R.O.C.

4.1.(2) Where the accounting books and documents are not available, but contracts, major business items, onshore and offshore transaction flows, and other sufficient evidence can be provided allowing the tax authority to verify the applicable major industry category of the foreign profit-seeking enterprise, the taxable income amount shall be calculated by multiplying the standard Net Profit Ratio ("NPR") of the industry category to revenue sources from the R.O.C. Where the business type of the foreign profit-seeking enterprise is recognized as the type of "POs" the applicable NPR is 30%.

4.1.(3) For foreign profit-seeking enterprises not meeting the 4.1.(1) and 4.1.(2) above, their taxable amount shall be calculated based on a deemed NPR of 30%.

4.1.(4) If the actual net profit ratio assessed by the tax authority is higher than the ratio applicable based on the first and second item above, the assessed NPR shall be applied.

4.2 Where a part of the transaction processes of a foreign profit-seeking enterprise selling cross-border electronic services takes place outside of the R.O.C., the profit contributionratio within the R.O.C. ("Domestic

Profit Contribution Ratio" or "DPCR") shall be determined in accordance with the following:

4.2.(1) Where such foreign profit-seeking enterprise can provide documents supporting a clear division of the onshore and offshore transaction flows as well as the ratio of the contribution attributed to the services performed within the territory R.O.C. (such as the financial statements audited and certified by CPAs, transfer pricing documentation, work planning records or reports, etc.), its actual DPCR shall be determined based on the supporting documents provided.

4.2.(2) Where the whole transaction flow is onshore or the provision and use of services are both within the territory of the R.O.C., e.g. internet advertisement services, the DPCR is deemed to be 100%.

4.2.(3) For a foreign profit-seeking enterprise not meeting the 4.2.(1) and 4.2.(2) above, its DPCR is deemed to be 50%. However, if the actual DPCR assessed by the taxation authority is higher than 50%, the assessed DPCR shall be applied.

4.3 Calculation of the taxable income in the R.O.C.

4.3.(1) Foreign profit-seeking enterprises apply for deducting relevant actual costs and expenses and/or applying actual DPCR:

Taxable Income = (Net Operating Revenue – Cost and Expense) × Actual DPCR + Non-Operating Revenue – Non-Operating Expense

4.3.(2) Foreign profit-seeking enterprises apply for assessed NPR or DPCR by tax authorities:

Taxable Income = Net Operating Revenue × Assessed NPR × Assessed DPCR + Non-Operating Revenue – Non-Operating Expense

5. Rules for applying NPR and DPCR

5.1 Application Procedures

The foreign profit-seeking enterprise can fill out the "Application Form for Net Profit Ratio and Profit Contribution Ratio Applicable to Cross-Border Electronic Services Provided by Foreign Profit-Seeking Enterprise" and apply for the applicable NPR and DPCR to in-charge tax authority by itself or through an individual residing in the R.O.C. or a profit-seeking enterprise having a fixed place of business within the R.O.C. the tax authority-in-charge shall inform the result of the assessment to the applicant and the tax collection authorities in other areas.

5.2 Required Documents

5.2.(1) Applying for applicable NPR:

Relevant contracts, nature of business as well as descriptions of onshore and offshore transaction flows, relevant documents of major business items and other sufficient evidence.

5.2.(2) Applying for applicable DPCR:

5.2.(2)(A) For foreign profit-seeking enterprises meeting the 4.2.(1) above, relevant contracts, nature of business as well as descriptions of onshore and offshore transaction flows, and sufficient documents supporting a clear division of

the onshore and offshore transaction flows as well as the ratio of the contribution attributed to the services performed within the R.O.C. are required, such as transfer pricing documentation, work plan, records or reports.

5.2.(2)(B) For foreign profit-seeking enterprises meeting the 4.2.(2) and 4.2.(3) above, relevant contracts, nature of business as well as descriptions of onshore and offshore transaction flows are required.

5.2.(3) Power of Attorney in case an agent is appointed to make this application.

6. Rules for reporting and paying taxes

6.1 Where a foreign profit-seeking enterprise has no fixed place of business or business agent within the R.O.C., its cross-border electronic services sold are subject to the tax calculations set forth above, and the income tax shall be collected in accordance with the first part of Paragraph 1, Article 73 of the Income Tax, as well as Article 60 of the Enforcement Rules of the Income Tax Act as follows:

6.1.(1) For income within the withholding tax scope under Article 88 of the Income Tax Act, the tax withholder shall withhold the tax at the time of payment in accordance with the withholding ratio of the "payable amount." However, if a foreign profit-seeking enterprise has applied with the taxation authority in accordance with the above criteria and thereby given an applicable NPR and DPCR, its payable tax of the income sources from the R.O.C. shall be calculated and withheld based on the given NPR and DPCR.

6.1.(2) For income not within the withholding tax scope under Article 88 of the Income Tax Act (e.g., buyers are individuals residing in the R.O.C. or foreign individuals or enterprises), the foreign profit-seeking enterprise shall file the annual income tax return and make payment in accordance with the regulations concerned at eTax portal, Ministry of Finance (http://www.etax.nat.gov.tw) by itself or through a tax agent within the period from May 1 to May 31 for the preceding taxable year.

6.2 Where a foreign profit-seeking enterprise is a PO, the total remunerations it derives shall be subject to the income tax in accordance with 6.1 above. If a part of the gross remunerations derived is transferred to a foreign NPSP, a domestic profit-seeking enterprise or an individual, it may provide the taxation authority with the relevant contracts and proofs of the transferred payments and details (including the taxpayer's name, taxpayer's BAN or IDN, taxpayer's country code, transferred year, transferred amounts, etc.). If the payments transferred are recognized as a foreign NPSP's income sources from the R.O.C., proofs showing the income tax has been paid (such as a certificate of withholding tax) shall also be provided. After deductions of the transferred payments, the net platform service charges shall be subject to the income tax and tax withholding requirements above.

6.3 When the foreign PO withholds taxes, the withholding tax amount may be calculated based on the NPR and DPCR assessed by the tax authority, and settle the taxes withheld pursuant to 6.1.(1) above.

7. Declaration of applicable exchange rate

7.1 When the foreign profit-seeking enterprise files Profit-seeking Enterprise Income Tax Return pursuant to 6.1.(2) above, if the operating revenue of the enterprise is priced in a foreign currency and the enterprise has filed the Business Tax Returns, the total sales amounts in Business Tax Returns should be used to calculate. As to the operating revenues which are not subject to the scope of business tax levy by the R.O.C, the annual average foreign exchange rate announced by the Bank of Taiwan for the closing prices on spot buying rate on the last day of every month in the same year of the operating revenue should be used to convert its amounts into New Taiwan dollars. If there is no spot buying rate in currencies listed in the Bank of Taiwan, cash buying rate shall be adopted. The annual average foreign exchange rate should be rounded to the 5th decimal place. As to the costs, expenses, non-operating revenues, non-operating expenses, taxable income and tax payable, the same exchange rate as the operating revenues should be adopted to convert each amount into New Taiwan dollars.

7.2 If the last day mentioned above falls on a Saturday, Sunday, public holiday or other days off, the following day from said date in which government administrative agencies are working is taken as the period's last day.

7.3 The annual average foreign exchange rate mentioned in 7.1 is announced at eTax portal, Ministry of Finance.

8. When the foreign PO withholds taxes pursuant to 6.2 above, the declaration and payment of withholding taxes are as follows:

8.1 The foreign PO shall settle all the taxes withheld in the previous month for the national treasury before the 10th day of each month, and fill out "Business Income Tax Detailed Withholding Tax Return (For Foreign Platform Operators Declare Collection and Transfer Information)" to report the calculation information of the withheld and paid taxes regarding the transferred payments to the tax authority-in-charge.

8.2 If the payment that the foreign POs transferred to POs is priced in a foreign currency, the foreign exchange rate announced by the Bank of Taiwan for the closing prices on spot buying rate on the last day of the payment transferring month shall be used to convert the amount into New Taiwan dollars. If the last day falls on a Saturday, Sunday, public holiday or other days off, the foreign exchange rate on the following day from said date in which government administrative agencies are working shall be taken. If there is no spot buying rate in currencies listed in the Bank of Taiwan, cash buying rate shall be adopted.

8.3 The applicable foreign exchange rate mentioned in 8.2 is announced at eTax portal, Ministry of Finance.

9. Application for qualification registration

9.1 A foreign profit-seeking enterprises who has not conducted the taxation registration pursuant to the provisions of the Value-Added and Non-Value-Added Business Tax Act (hereinafter referred to as the Business Tax Act), before filing the income tax return pursuant to 6.1.(2), shall provide the following materials and apply for qualification registration at eTax portal, Ministry of Finance:

9.1.(1) Information required:

9.1.(1)(A) Basic information: name, name of representative

person, domain name and website address.

9.1.(1)(B) Contact information: Telephone number, correspondence address and e-mail address.

9.1.(1)(C) Registered country (area) information: registration country (area), registration name and registration number.

9.1.(1)(D) Information of the tax agent: (if the tax agent is appointed)

9.1.(1)(D)(a) An individual residing in the R.O.C.: name, ID card number, correspondence address, telephone number, e-mail address, duration of appointment, and scope of appointment .

9.1.(1)(D)(b) A profit-seeking enterprise having a fixed place of business within the R.O.C.: name, address, tax ID number, name of representative person, telephone number, e-mail address, duration of appointment, and scope of appointment.

9.1.(1)(E) Bank account information.

9.1.(2) Required documents: (E-files upload needed)

9.1.(2)(A) Official approval or permission of qualification registration from the competent authorities of foreign government should be notarized (verified/validated) by the embassy/consulate/representative office of R.O.C or other institutions recognized by R.O.C. in foreign country where the foreign profit-seeking enterprise is located, the local court or notary public, the embassy/consulate/representative office in R.O.C. of foreign country where the foreign profit-seeking enterprise is located, or be notarized (verified/validated) according to Notarization Law in R.O.C.; a Chinese translation shall be attached with any document listed above.

9.1.(2)(B) The appointed tax agent shall submit the power of attorney, the letter of commitment and other related documents.

9.1.(3) The foreign profit-seeking enterprise or the tax agency shall apply for account number and password at eTax portal, Ministry of Finance after receiving the notice of the qualification registration approved by tax authority. The other affairs, e.g. the change of registration and filing profit-seeking enterprise income tax return, can be processed through the eTax portal.

9.2 A foreign profit-seeking enterprises who has already conducted the taxation registration pursuant to the provisions of the Business Tax Act, before filing the income tax return pursuant to 6.1.(2), may use “the business tax account number and password” to apply for qualification registration at eTax portal, Ministry of Finance:

9.2.(1)Registered item required:

9.2.(1)(A) Information of the tax agent: (if the tax agent is appointed)

9.2.(1)(A)(a) An individual residing in the R.O.C.: name, ID card number, correspondence address, telephone number, e-mail address, duration of appointment, and scope of appointment.

9.2.(1)(A)(b) A profit-seeking enterprise having permanent establishment within the R.O.C.: name, address, tax ID number, name of representative person, telephone number, e-mail address, duration of appointment, and scope of appointment.

9.1.(1)(B) Bank account information.

9.2.(2) Required documents: (E-files upload needed)

The appointed tax agent shall submit the power of attorney, the letter of commitment and other related documents.

9.3 Where there are any changes in registration (including changes in a tax agent, duration of appointment, or scope of appointment), the foreign profit-seeking enterprise shall, within fifteen days from the occurrence of the facts, apply for modification registration at eTax portal, Ministry of Finance.

10. Application for a refund of the excessive tax

Effective from taxable year 2017, if the withholding tax amount of a foreign profit-seeking enterprise selling cross-border electronic services is different from the actual taxable income amount, NPR, DPCR, or transferring ratio assessed by the tax authority, it may file an application for a refund of the excessive tax to the tax authority-in-charge and collect the data from the regional Taxation Bureau where the tax withholder is seated by itself or through an agent within a period of five years starting from the date the income is received, and the authority-in-charge will transfer the application to the regional Taxation Bureau to refund the excessive tax.

11. Other

11.1 A foreign profit-seeking enterprise shall pay income tax in terms of New Taiwan Dollars, and if the payment is done through remittance, the enterprise shall be responsible for the remittance fee and relevant processing fee.

11.2 In order to investigate the data on the levying of tax, the competent tax authority or the Taxation Administration of the Ministry of Finance may designate tax investigator(s) to conduct an investigation pursuant to Article 30 of the Tax Collection Act, and the foreign profit-seeking enterprise has the obligation to assist in this matter.

11.3 If a foreign profit-seeking enterprise is involved in the violation of provisions in the process of taxation registration or filing and paying income tax, penalties will be imposed in accordance with the Tax Collection Act, the Income Tax Act, and other relevant regulations.

11.4 These directions shall apply mutatis mutandis to profit-seeking enterprises within the Mainland Area selling cross-border electronic services and thereby deriving income sources from Taiwan Area.

11.5 If any profit-seeking enterprise, organization, or entity having its head office within the territory of the R.O.C. has abused its legal form and made false arrangements in order to be eligible for such taxation rules under these directions with the intention of avoiding or reducing its tax liability, the tax authorities will reassess the enterprise's income tax accordingly with the actual transactions and economic facts.

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