Content

Title：	Directions Governing the Examination of Applications by Foreign Profit-Seeking Enterprises for Income Calculation Pursuant to Paragraph 1, Article 25 of the Income Tax Act Ch
Date：	2023.05.29
Legislative：	1. The full text of 10 articles was promulgated on April 11, 2007, by the Ministry of Finance under Tai-Tsai-Shui Decree No. 09604514270. 2. The full text of 11 articles was amended and promulgated on May 29, 2023, by the Ministry of Finance under Tai-Tsai-Shui Decree No. 11104713420.

Content：

Article 1

These Directions are enacted to examine cases applied for income calculation pursuant to Paragraph 1, Article 25 of the Income Tax Act (hereinafter referred to as "the Act") by foreign profit-seeking enterprises, with their head office located outside the territory of the Republic of China (ROC) (hereinafter referred to as "foreign profit-seeking enterprises").

Article 2

Foreign profit-seeking enterprises that meet the following criteria may apply to the Ministry of Finance for income calculation pursuant to Paragraph 1, Article 25 of the Act:

1. Engaging in any of the following businesses within the territory of the ROC:

(1) International transport.

(2) Construction contracting.

(3) Providing technical services.

(4) Machinery and equipment leasing.

2. The cost and expenses are difficult to allocate and calculate.

The term "foreign profit-seeking enterprises" of the preceding paragraph also includes foreign educational, cultural, public welfare, and charitable organizations or institutions.

Article 3

Foreign profit-seeking enterprises that meet the requirements of the preceding Article, regardless of whether

their business of international transport, construction contracting, providing technical services, or machinery and equipment leasing is conducted by their head office, a fixed place of business outside the territory of the ROC, or a fixed place of business within the territory of the ROC, may apply for income calculation pursuant to Paragraph 1, Article 25 of the Act.

Article 4

A foreign profit-seeking enterprise that meets the criteria of Article 2 and applies for income calculation pursuant to Paragraph 1, Article 25 of the Act (hereinafter referred to as "the applicant") may apply to the following tax authority either on its own or through an agent, such as an individual residing in the territory of the ROC, a profit-seeking enterprise, an organization, an institution, or a school with a fixed place of business within the territory of the ROC:

1. If the applicant has a fixed place of business within the territory of the ROC, the competent tax authority is the National Taxation Bureau where the fixed place of business is located.

2. If the applicant does not have a fixed place of business but has a business agent within the territory of the ROC, the competent tax authority is the National Taxation Bureau where the business agent is located.

3. If the applicant has no fixed place of business but has a business agent within the territory of the ROC, that is not authorized to collect payments under the agreement, the competent tax authority is the National Taxation Bureau where the payer is located.

4. If the applicant has neither a fixed place of business nor a business agent within the territory of the ROC, the competent tax authority is the National Taxation Bureau where the payer is located.

Article 5

When the applicant or its agent applies to the competent National Taxation Bureau specified in the preceding Article for the calculation of income pursuant to Paragraph 1, Article 25 of the Act, the following documents shall be attached:

1. Application for the Calculation of Business Revenue for Foreign Profit-seeking Enterprise in Accordance with the Provisions of Paragraph 1, Article 25 of the Income Tax Act (The

application form format is shown in Appendix 1). In principle, one application form shall be submitted for each contract.

2. A photocopy of the signed and effective contract. Where a marine transport business delegates a shipping agency in the ROC to conduct its operations, a photocopy of the contract with the shipping agency and a photocopy of the approval documents for the agency registration issued by the shipping administration shall also be attached. If the aforementioned documents are in a foreign language, a Mandarin translation must be attached; however, where the submission of a Mandarin summary or an English version has been approved by the competent National Taxation Bureau, such translation is not required.

3. Where an applicant delegates an agent to handle the application, the original power of attorney (a sample power of attorney is shown in Appendix 2) shall be attached. The power of attorney is exempted from authentication by the overseas representative offices of the ROC. If the original power of attorney cannot be attached, the reason shall be stated. For those applying and uploading the power of attorney file online, the original power of attorney must be made available for verification by the competent National Taxation Bureau. However, in the following circumstances, the attachment of a power of attorney shall not be required:

(1) The application is submitted by the applicant’s fixed place of business within the territory of the ROC.

(2) The scope of agency relevant to the application has been stipulated in the business agency contract or shipping agency contract, and a photocopy of the agency contract is attached.

Article 6

The competent National Taxation Bureau stipulated in Article 4, upon receiving the application, shall examine whether the applicant meets the requirements stipulated in Article 2 and whether the parties to the contract are the applicant and the payer. The following matters shall be given special attention:

1. Applicant:

(1) Where the applicant is a practitioner or a business office of such practitioner as stipulated in Paragraph 1, Article 11 of the Act, the application shall not be approved.

(2) Where the applicant is a juristic person, business, institution, or organization of Mainland China, that is, not a profit-seeking

enterprise with its head office outside the territory of the ROC, the application shall not be approved.

(3) Where the applicant is a profit-seeking enterprise established in a tax-free or low-tax country or jurisdiction, attention should be given to whether labor income of an individual is converted into income of a profit-seeking enterprise, or whether any individual or profit-seeking enterprise within the territory of the ROC transfers income abroad to evade or reduce the tax obligations in the ROC under the guise of being foreign profit-seeking enterprises. If such circumstances are verified, the application shall not be approved.

2. Application Deadline:
Where the period between the date of revenue acquisition and the date of application exceeds the prescription of claim rights under Paragraph 1, Article 131 of the Administrative Procedure Act, the application shall not be approved.

3. Contract Content:

(1) Where the contract content involves two or more business items listed in Subparagraph 1, Paragraph 1, Article 2, each item shall be examined separately, and those approvals shall be specified separately in the approval letter.

(2) Where the contract stated that travel expenses, accommodation, and miscellaneous expenses actually incurred by the applicant, or any taxes payable, shall be borne by the payer, such expenses included in remuneration of the contract shall be approved concurrently, and the relevant wording shall be stated in the approval letter. An application for remuneration belonging to royalties stated in the contract shall not be approved, and the approval letter shall state that such portion of the remuneration is not subject to the provision of Paragraph 1, Article 25 of the Act.

(3) The aforementioned "royalties" refers to compensation for granting others the use of rights such as business rights, copyrights, patents, trademarks, enterprise names, brand names, designs or models, plans, secret formulas, trade secrets, information, or expertise related to industrial, commercial, or scientific experience, as well as all franchises, online marketing, client data, and other property rights of value. Secret formulas include various methods, techniques, processes, formulas, programs, designs, or other information that can be used in production, sales,

or operations, which are not known to persons generally involved in such information and have actual or potential economic value.

(4) Where the contract does not specify a definite expiration date or conditions, the competent National Taxation Bureau shall, based on verifiable information available, approve the period during which the applicant may calculate income pursuant to Paragraph 1, Article 25 of the Act, or indicate in the approval letter that if the contract terms are amended, a new application shall be filed and approved before the continued application of such provision.

4. Related parties: Where the parties to the contract are related parties, the approval letter shall indicate to the applicant that the tax authority may proceed with the relevant assessment in accordance with Article 43-1 of the Act.

Article 7

The competent National Taxation Bureau stipulated in Article 4, upon receiving the application, shall examine the business items applied for by the applicant separately in accordance with the following provisions:

1. International transport:

(1) The scope of international transport shall be determined in accordance with Paragraph 2, Article 25 of the Act.

(2) Revenues from international transport business include those obtained from time charters, voyage charters, and the leasing or operation of containers or equipment that are supplementary or incidental to international transport operations. Bareboat charters are deemed as machinery and equipment leasing, and the revenues derived therefrom do not constitute revenues from international transport business.

2. Construction contracting:

(1) The scope of construction contracting includes architectural engineering, installation engineering, mechatronics engineering, and river dredging.

(2) The transaction content covers design, procurement of domestic and foreign equipment, installation, testing, training, and other related services to ensure that all construction phases meet certain quality and safety standards, as well as to introduce relevant technologies and know-how, with payments made according to the progress of the project. In addition, the

materials, equipment, instruments, technicians, relevant technical information
documents, design drawing production, and construction management are all interrelated and indivisible, constituting a turnkey transaction; the total revenue shall be applied for income calculation pursuant to Paragraph 1, Article 25 of the Act, and the portion
of business revenue subcontracted to other subcontractors shall not be deducted from the total revenue.

3. Machinery and equipment leasing:

(1) The scope of machinery and equipment includes machines, tools, transportation equipment, office equipment, ships, aircraft, containers, submarine cables, satellite transponders,
internet circuits and more that are directly or indirectly used in production.

(2) The remuneration received for providing celebrity wax figures, artistic, literary, and scientific works as exhibits whether directly authorized or sublicensed for use, shall be
deemed as royalties, and the application shall not be approved.

4. Providing technical services:

(1) The scope of technical services includes planning, design, installation, testing, maintenance, trial runs, consultation, auditing, supervision, certification, personnel training,
and other service types.

(2) Matters requiring special attention during the examination:

A. Where the copyright of any reports or documents produced through the provision of services belongs to the author, the royalties derived from the use of such reports or documents
shall be divided from the contract remuneration, and such portion shall not be approved for applicability.

B. The transmission of program signals, as well as services for signal uplink and download, are considered technical services; however, if the service content involves authorization
for the use of program tapes or videos, the remuneration obtained shall be deemed as royalties, divided from the contract remuneration, and such portion shall not be approved for applicability.

C. Chef catering services are considered technical services; however, if the service content involves the provision of special

recipe formulations, the remuneration obtained shall be deemed as royalties, divided from the contract remuneration, and such portion shall not be approved for applicability. If the employment of chefs or related personnel support services is identified as personal services or personnel dispatch services, the remuneration obtained shall not be deemed as technical service remuneration and shall be divided from the contract remuneration, and such portion shall not be approved for applicability.

D. Market research services are considered technical services; however, if the models and software used to create the research reports are provided for the use of the service purchaser, the remuneration obtained shall be deemed as royalties and shall be divided from the contract remuneration; such portion shall not be approved for applicability.

E. Educational and training services are considered technical services; however, if the training materials or course content involve the provision of proprietary technical information or secret formulas, the remuneration obtained shall be deemed as royalties and shall be divided from the contract remuneration; such portion shall not be approved for applicability.

F. Group management services, including accounting systems, management systems, marketing strategies, inventory operations, legal affairs, goal setting, control procedures, asset management, warehouse management, engineering management, debt and credit control, and service quality control, shall be examined item by item for specific service evidence. If such services are identified as general administrative affairs, the remuneration obtained shall not be deemed as technical service remuneration and shall be divided from the contract remuneration; such portion shall not be approved for applicability. Additionally, if the profits of domestic affiliated enterprises are transferred abroad by means of service contracts, or if the services involve internal control and decision-making within the corporate group, or if they involve the adoption of management models or procedures of affiliated enterprises, the related revenue shall not be deemed as technical service remuneration and shall not be approved for applicability.

G. Where foreign underwriters or depository institutions obtain underwriting fees or handling fees from companies within the territory of the ROC issuing securities or from their shareholders, an application may be made, with respect to the portion of revenue attributable to technical services, for the applicability of Paragraph 1, Article 25 of the Act. However, remuneration or bonuses that have the nature of intangible assets,

or
revenue unrelated to the level of services rendered, shall not be deemed as technical service remuneration and shall not be approved for applicability.

Article 8

If the transactions for which the applicant applies involve special transactions, the competent National
Taxation Bureau shall pay attention to the following matters:

1. Revenue related to electronic data transmission (EDP) shall be handled in accordance with the following principles:

(1) Electronic data processing and storage fees:

A. For facility room rental, if the fee is charged based on the duration of use or the space utilized, the revenue obtained shall be deemed as revenue from leasing machinery and equipment.

B. For data processing and local area network usage, if services are provided based on user demand and the fee is calculated according to the volume of usage, or priced on a cost-sharing basis or a reasonable cost-plus basis, the remuneration obtained shall be deemed as technical service remuneration.

C. For providing customer lists, business information, or other proprietary information, the remuneration obtained shall be deemed as royalties.

(2) System development and maintenance:

A. For licensing of systems/application software and source codes, the remuneration obtained shall be deemed as royalties.

B. For customized system development, if the ownership of the system belongs to the purchaser (or is jointly owned) and the purchaser is not required to pay any further usage fees, the remuneration obtained shall be deemed as technical service remuneration. If the ownership of the system belongs to the seller, or if remuneration is charged based on production quantity or sales amount, the remuneration obtained shall be deemed as royalties.

C. For technical consulting, system management, maintenance and testing, and employee training, the remuneration obtained shall be deemed as technical service remuneration.

(3) Telecommunications service fees:

A. For telecommunication transmission, if services are provided based on user demand and the fee is calculated according to the volume of usage, or priced on a cost-sharing basis or with a reasonable cost-plus basis, the remuneration obtained shall be deemed as technical service remuneration.

B. For the rental of hardware such as facility rooms and pipelines, the revenue obtained shall be deemed as revenue from leasing machinery and equipment.

C. For line installation, including setup and assembly, the remuneration obtained shall be deemed as technical service remuneration; however, where pipeline materials are also provided, such remuneration shall be deemed as revenue from construction contracting.

(4) Services that do not involve the provision of professional skills and knowledge, such as providing a database for troubleshooting, data extraction, and information transmission, shall not be deemed as technical services.

2. Personnel dispatch services are not applicable under Paragraph 1, Article 25 of the Act. Whether a service constitutes personnel dispatch services shall be determined based on a comprehensive assessment of the following circumstances:

(1) The dispatched personnel are primarily directed, supervised, or evaluated by the domestic engaging entity.

(2) The foreign dispatching entity are not be liable for damages arising from defects in the personnel's services (such liability being borne by the engaging entity or the employee, or relevant liability insurance has been purchased).

(3) The contract regarding the service content is not clearly defined.

(4) The dispatched personnel must be approved by the domestic engaging entity before being dispatched to the service location.

(5) The foreign dispatching entity, in the course of contract performance, only plays the role of administrative coordination and intermediary, without providing technical assistance.

Article 9

After the competent National Taxation Bureau has examined the application in accordance with the provisions of Articles 2 through 7, regardless of whether it is approved or rejected,

it shall draft a letter of decision on behalf of the Ministry of Finance, notify the applicant or its agent of the examination result, and provide copies to the parties specified under
the following provisions:

1. The applicant has a fixed place of business in the territory of the ROC: the fixed place of business and the National Taxation Bureau where the fixed place of business is located
shall be notified. If the matter involves stamp tax, copies shall also be provided to the local tax collection authority where the fixed place of business is located.

2. The applicant does not have a fixed place of business but has a business agent within the territory of the ROC: the business agent and the National Taxation Bureau where the business
agent is located shall be notified. If the matter involves stamp tax, copies shall also be provided to the local tax collection authority where the business agent is located.

3. The applicant has no fixed place of business but has a business agent within the territory of the ROC not authorized to collect payments under the agreement: the payer and the
National Taxation Bureau where the payer is located shall be notified. If the matter involves stamp tax, copies shall also be provided to the local tax collection authority where the payer is located.

4. The applicant has neither a fixed place of business nor a business agent within the territory of the ROC: the payer and the National Taxation Bureau where the payer is located
shall be notified. If the matter involves stamp tax, copies shall also be provided to the local tax collection authority where the payer is located.

Article 10

Where an applicant has been approved by the competent National Taxation Bureau to calculate its income
pursuant to Paragraph 1, Article 25 of the Act, and the contract originally approved for application is subsequently amended, the applicant shall comply with the following provisions:

1. Where the contracting party changes its name or undergoes consolidation, merger, division, or acquisition pursuant to relevant laws: the approved application shall remain valid,
and the relevant supporting documents shall be attached for verification by the tax authority when filing the withholding tax return or the annual income tax return.

2. Where the contract is amended: if the changed business scope exceeds

	the originally approved scope, the excess portion must be submitted for re-approval before it may be applied; if the changed business scope is less than the originally approved scope, the original approval letter shall remain valid without the need for re-approval; and if the changed business scope does not fall within the applicable scope stipulated in Paragraph 1, Article 25 of the Act, the contract shall not be applied. 3. Where the contract is extended after expiration: the extension shall be subject to application and approval before it may be applied. **Article 11** Where a foreign profit-seeking enterprise is approved to calculate its income pursuant to Paragraph 1, Article 25 of the Act on or after May 29, 2023, the approval period shall not exceed five years; however, where the contract term is shorter, the shorter period shall prevail. Upon expiration of the approved application period prescribed under the preceding paragraph, an application may again be submitted pursuant to Paragraph 1, Article 25 of the Act.
Attachments：	Appendix 1- Application for the Calculation of Business Revenue for Foreign Profit-seeking Enterprise in Accordance with the Provisions of Paragraph 1, Article 25 of the Income Tax Act.pdf Appendix 2- A sample power of attorney.pdf

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