

Tax Analysis Report: Tax Incentives and Compliance Risk Assessment for Foreign Enterprises in Taiwan



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Part I: Analysis of Taiwan’s Taxation System on Cross-Border Electronic Services (Foreign Digital Businesses)

Taiwan has established a specific taxation and reporting framework for foreign enterprises engaging in cross-border electronic services (commonly referred to as offshore digital businesses), effective from 2017. This regime aims to simplify cost calculations and profit attribution.

1. Tax Incentives and Simplified Income Determination

INCENTIVE / SIMPLIFIED ITEM	REGULATORY DETAILS	COMPLIANCE HIGHLIGHTS
DETERMINATION OF TAIWAN- SOURCED INCOME	When a foreign enterprise provides real-time, interactive, convenient, and continuous electronic services (such as online gaming, streaming, or advertising), the income is regarded as Taiwan-sourced. Fees charged by platform operators to buyers and sellers, whether domestic or overseas, also qualify.	It is necessary to distinguish single-download software or e-books that do not require participation or assistance from individuals or entities within Taiwan, as these are not considered Taiwan-sourced income.
DEEMED NET PROFIT RATE (SIMPLIFIED COST DEDUCTION)	If accounting books and supporting documents are unavailable but contracts and major business documents can be provided, taxable income may be calculated using	For businesses providing platform-based electronic services, the deemed profit rate is 30%. If full accounting records can be presented, actual

	the industry standard deemed profit rate. Otherwise, the tax authority will apply a 30% deemed profit rate.	costs and expenses may still be deducted.
DOMESTIC PROFIT ATTRIBUTION RATIO	If part of the transaction occurs outside Taiwan and documentation clearly identifies the contribution ratio, it may be verified accordingly. If documentation is lacking, 50% of profits will be deemed Taiwan-sourced.	Where all activities or service use occur within Taiwan (e.g., domestic online advertising), the contribution ratio is 100%.
TAX REFUND MECHANISM	If the tax withheld exceeds the amount calculated under these simplified rules, the foreign enterprise may apply for a refund within 10 years from the date the income was received.	Applications for cost deduction or deemed profit rate confirmation must be supported by a CPA-certified audit report.

2. Tax Risk Assessment and Compliance Strategies

- Risk: Ambiguity in Income Classification

Assessment: The nature of digital service payments may fall between electronic service income (business profit) and royalty income. For instance, granting software licenses involving reproduction rights may be regarded as royalty income (under Article 8, Subparagraph 6 of the Income Tax Act) instead of electronic service income (under Subparagraph 9).

Strategy: Carefully assess whether the payment represents “real-time, interactive, convenient, and continuous” services or merely compensation for the use of intangible property rights. For mixed transactions, identify and classify each type of income appropriately.

- Risk: Rejection of Simplified Profit Rate

Assessment: If the tax authority determines that the actual profit margin or the domestic contribution ratio exceeds 30% or 50%, the income will be reassessed accordingly.

Strategy: If the enterprise’s actual cost ratio or offshore contribution is higher, proactively maintain accounting records, documentation, and transfer pricing reports to apply for verification-based deductions and avoid being subject to higher deemed rates.

- Risk: Artificial Legal Arrangements

Assessment: If the tax authority discovers that the business structure is an artificial arrangement designed primarily to avoid or reduce tax, it will recharacterize the transaction based on its true substance.

Strategy: All arrangements should have legitimate commercial purposes and genuine economic substance, avoiding structures set up solely for tax avoidance.

Part II: Application of Article 25, Paragraph 1 of the Income Tax Act (Deemed Profit Method)

For foreign enterprises with headquarters located outside Taiwan, if they engage in specific types of business and find it difficult to accurately allocate or calculate their costs and expenses, they may apply to use Article 25, Paragraph 1 of the Income Tax Act, under which their taxable income in Taiwan may be calculated as 10% (or a prescribed percentage) of their gross revenue.

1. Scope of Application and Tax Incentives

This provision applies to the following four types of business activities:

1. International transportation services:
Including time charter or voyage charter, but excluding bareboat charter, which is considered equipment leasing.
2. Contracting of construction or engineering projects:
Including turnkey contracts that cover design, procurement, installation, and other integrated and inseparable services.
3. Provision of technical services:
Such as planning, design, installation, consulting, or personnel training.
4. Leasing of machinery and equipment:
Such as ships, aircraft, containers, and submarine cable circuits.

2. Tax Risk Assessment and Compliance Strategies

- Core Risk: Exclusion of Royalties
Assessment:

If the remuneration stipulated in the contract constitutes a royalty payment, it is not eligible for Article 25 application. The term “royalty” has a broad definition — it includes payments for goodwill, copyrights, patents, secret processes, and information or know-how relating to industrial, commercial, or scientific experience.

Strategy:

- Distinguish between technical service and royalty payments:
In technical service agreements (such as training, market research, or system maintenance), if the service involves providing proprietary technical information, secret methods, or deliverables in which the intellectual property rights belong to the service provider, that portion of income will be classified as royalty and is not eligible for Article 25 treatment.
The enterprise should clearly define the nature of the remuneration in the contract or ensure that the services provided do not involve the transfer of proprietary technology rights.
 - Exclude labor dispatch and administrative services:
Labor dispatch, routine administrative, or management services (such as group internal control or decision-making) are not covered by Article 25. These types of income should not be misclassified as technical service fees.
- Compliance Strategy: Application Procedures and Validity
 - Application period and renewal:
The applicant must submit a copy of the signed and effective contract (along with a Chinese translation, if the original is in another language) to the competent tax authority for approval. The approved period is limited to five years, or the duration of

the contract if it is shorter. Upon contract expiration, a new application must be filed for renewal.

- Related-party transactions:
If the contracting parties are related entities, the tax authority may require compliance with Article 43-1 of the Income Tax Act (transfer pricing regulations). The enterprise must maintain proper documentation supporting the arm's-length nature of its income.
- Low-tax jurisdiction risk:
If the applicant is established in a **tax haven or low-tax jurisdiction**, the tax authority will closely scrutinize whether the structure aims to convert personal income into business income or otherwise evade taxation.

Part III: Analysis of the Application of Double Taxation Agreement (DTA) Regulations (Treaty Benefits)

Double Taxation Agreements (DTAs) provide mechanisms for residents of contracting states to obtain tax relief or exemption from income tax in Taiwan.

If the treaty provisions are more favorable than those under Taiwan’s domestic tax laws or other relief measures, the most beneficial rule shall apply.

1. Tax Incentives and Conditions for Application

INCENTIVE MECHANISM / RELIEF ITEM	REGULATION DETAILS	COMPLIANCE REQUIREMENTS
RESIDENT STATUS AND SCOPE OF APPLICATION	DTAs apply only to residents of Taiwan or the contracting partner country. Enterprises of the contracting state must provide a certificate of tax residency to verify their status.	Both individuals and entities must follow the treaty-specific criteria for determining a single country of residence.
PERMANENT ESTABLISHMENT (PE) EXEMPTION	If a resident enterprise of the contracting state does not have a permanent	Confirm that there is no fixed place of business in Taiwan and that construction, installation, or

	establishment in Taiwan, its business profits are exempt from Taiwan income tax.	similar projects do not exceed the treaty's time threshold (including preparatory and subcontracted work).
REDUCED WITHHOLDING TAX RATES	Residents of the contracting state who receive dividends, interest, royalties, or technical service fees without a PE in Taiwan may have tax withheld at the treaty's maximum rate.	The income recipient must provide a residence certificate and a beneficial ownership declaration issued by the foreign tax authority.
ELIMINATION OF DOUBLE TAXATION	Taiwan residents who pay taxes on income earned in the contracting state may claim foreign tax credits under the treaty or domestic law to avoid double taxation.	The taxpayer must submit a tax payment certificate issued by the foreign tax authority showing the income year, income type, amount, and tax paid.

2. Tax Risk Assessment and Compliance Strategies

- Core Risk: Permanent Establishment (PE) Determination

Assessment:

Service activities, construction projects, or operations using automated equipment may constitute a PE if they satisfy conditions of

permanence, continuity exceeding six months, and control or use by the enterprise. If a PE is established, all or part of the enterprise's business profits will be taxable in Taiwan.

Strategy:

Closely monitor the actual number of days personnel are present in Taiwan to prevent creating a service PE. For related or similar projects, the number of days must be aggregated for calculation purposes.

- Risk: Treaty Abuse

Assessment:

If one of the principal purposes of a transaction or arrangement is to avoid or reduce taxation or to obtain treaty benefits contrary to the treaty's intent, the tax authority may deny treaty benefits under the anti-abuse provisions.

Strategy:

When applying for treaty benefits, the enterprise must demonstrate the genuine economic substance of the transaction and the true ownership of income. Adequate documentation must be maintained to support such claims.

- Compliance Strategy: Income Calculation and Documentation

- Profit Attribution to PE:

The PE must be treated as an independent enterprise, and profits should be calculated on an arm's-length basis in accordance with transfer pricing principles. Proper transfer pricing documentation must be retained to substantiate the profit allocation.

- Income from Service Activities:

If part of the business activity occurs outside Taiwan, the enterprise may apply to be taxed only on income derived from activities performed within Taiwan. Supporting contracts and detailed income calculations must be provided.

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- Application and Refund Deadlines:
Applications for treaty-based tax relief or refunds must be filed within 10 years from the date of tax payment.

Part IV: Comprehensive Compliance Strategy

Recommendations

Corporate decision-makers should establish a proactive and well-structured tax compliance framework to effectively utilize tax incentives while mitigating compliance risks.

1. Contract Design and Income Allocation (Risk Minimization)

- Optimize Contract Terms:

For cross-border service transactions, contracts should be carefully drafted to clearly distinguish between technical service fees, equipment rental payments, and royalty income.

In particular, for applications under Article 25 of the Income Tax Act, any portion of remuneration that could be regarded as royalties or administrative services should be segregated from technical service income.

- Define Service Location:

For electronic services, both the place of service provision and place of use should be clearly documented to determine the domestic profit attribution ratio. Supporting documents should be retained to substantiate the portion of activities and value creation conducted outside Taiwan.

2. Documentation and Substantiation (Regulatory Compliance)

- Prioritize Verified Reporting:

Whether for taxation of electronic services or profit calculation of a permanent establishment, if accounting records, supporting evidence, CPA-audited reports, or transfer pricing documentation are available,

enterprises should opt for verified deductions instead of relying on the default deemed profit rate (e.g., 30%).

- **Treaty Documentation Preparedness:**

When applying treaty benefits, enterprises must obtain the certificate of tax residence and beneficial ownership declaration issued by the foreign tax authority before the transaction or withholding occurs. These documents are essential to apply the reduced withholding rates for dividends, interest, royalties, or technical service fees.

3. Time Management and Retroactive Claims (Protection of Rights)

- **Track Deadlines:**

Enterprises should regularly review cases where tax has been over-withheld.

Foreign enterprises that overpaid taxes due to simplified calculation or treaty provisions have up to ten years to apply for a refund. This mechanism should be actively utilized to safeguard company interests.

- **Proactive Approval Applications:**

Before earning income, foreign enterprises are advised to apply in advance for official approval of deemed profit rates and domestic profit attribution ratios.

This allows withholding agents to apply a lower taxable base at the source, reducing cash flow pressure and preventing unnecessary fund retention.