

PEM FAQ

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I. What is “Place of Effective Management (PEM)”?

According to the legislative intent, the PEM rules, in principle, were developed and implemented under the commentaries of Paragraph 24, Article 4 of the 2014 OECD Model Tax Convention Commentary, and Paragraph 10, Article 4 of the 2011 UN Model Double Taxation Convention Commentary as well as the context of the Cross-Strait Tax Agreement.

On 27th July 2016, the rules of PEM were promulgated under Article 43-4 of the Income Tax Act. A foreign profit-seeking enterprise meeting the following provisions at the same time will be recognized as a PEM in the territory of the R.O.C.

1. Either the decisive policies of the foreign profit-seeking enterprise are made by tax residents, or where the decisive policies are made in a place in the territory of the R.O.C.;
2. The financial statements, relevant financial records, and the minutes of shareholders' meetings or the minutes of the meetings of the board of directors of such a foreign profit-seeking enterprise are stored in a place in the territory of the R.O.C.; and
3. The main business activities of such a foreign profit-seeking enterprise are effectively carried out in the territory of the R.O.C.

II. What is the application subject of PEM?

Enterprise resident is recognized by the place of registration according to the R.O.C. Income Tax Act. Following international development and the domestic laws of nearby countries, such as Korea, China, and Singapore, the PEM rules were applied to identify resident identification. In order to deter Multinational Enterprises (MNEs) from setting up paper companies in low-taxed countries or jurisdictions and avoiding R.O.C. tax duties by changing resident identification, the PEM rules were promulgated under Article 43-4 of the Income Tax Act to protect the R.O.C. tax base and to maintain tax justice.

III. What are the legal effects of a foreign enterprise applying PEM rules in the territory of the R.O.C.?

- A. According to Article 43-4 of the Income Tax Act, a foreign profit-seeking enterprise with its PEM in the territory of the R.O.C. will be deemed an R.O.C. enterprise resident.
- B. Scope of application
 - 1. The above-mentioned foreign profit-seeking enterprise would be subject to tax on its worldwide income according to the Income Tax Act and relevant regulations.
 - 2. The obligation of a tax withholder, based on the regulations, would be binding on such a foreign profit-seeking enterprise.

IV. What are the obligations and rights after a foreign profit-seeking enterprise is recognized as a PEM in the territory of the R.O.C.?

Any foreign profit-seeking enterprise incorporated according to foreign law but with a PEM in the R.O.C. shall be deemed as a profit-seeking enterprise in the territory of the R.O.C. The above-mentioned foreign profit-seeking enterprise shall file tax returns and pay tax, but is also entitled to tax incentives derived from tax treaties between the Republic of China and other countries. If the foreign profit-seeking enterprise is recognized as a tax resident from both countries and results in double taxation, it is entitled to apply for a mutual agreement procedure to solve double taxation issues.

V. When will the PEM rules come into force?

According to the legislative intent, the CFC and PEM rules will be implemented under the conditions that the Cross-Strait Tax Agreement is effectuated, the OECD's Common Reporting and Due Diligence Standard (CRS) for the automatic exchange of information of financial accounts is widely implemented internationally, and the relevant sub-regulations of the CFC and PEM rules have been adequately enacted and properly advocated. After assessment of previous conditions, the date to put PEM rules into effect will be determined by the Executive Yuan according to Article 126 of the Income Tax Act.