

Guidelines for the Determination of Income from Sources in the Republic of China in Accordance with Article 8 of the Income Tax Act

Revised by Decree No. Tai- Tsai -Shui-11204568350 issued by Ministry of Finance on October 13, 2023

1. These Guidelines are enacted to provide a basis to determine "the income from sources in the Republic of China (hereinafter R.O.C.) in accordance with Article 8 of the Income Tax Act (hereinafter "this Act").
2. The term "dividends distributed by companies incorporated and registered in accordance with the Company Act of the R.O.C. and by foreign companies authorized by the government of the R.O.C. to operate within the territory of the R.O.C. " (hereinafter "within the R.O.C. ") in Subparagraph 1, Article 8 of this Act shall refer to the dividends distributed by a company incorporated and registered in the R.O.C. in accordance with the Company Act, but excluding the surplus earnings remitted by the branch of the foreign company incorporated within the R.O.C.

Where a foreign company incorporated and registered in accordance with foreign law has been permitted by the competent securities authority of the R.O.C. to offer and issue stocks or Taiwan Depositary Receipts (TDRs) in the R.O.C., and to have its securities listed and traded on the securities exchange market of the R.O.C., the dividends distributed by such foreign company shall not be regarded as income from sources in the R.O.C.

3. The term "profits distributed by profit-seeking enterprises organized in the form of a cooperative or a partnership within the R.O.C." in Subparagraph 2, Article 8 of this Act shall refer to the profit distributed by a cooperative incorporated and registered in the R.O.C. in accordance with the Cooperative Act, or to the profit distributed or payable by a sole proprietorship or a partnership incorporated and registered in the R.O.C.
4. The term "remuneration for services rendered within the R.O.C." in Subparagraph 3, Article 8 of this Act shall refer to the salaries and wages,

income from professional practice, or other income from services rendered by an individual in the R.O.C. In the case of a profit-seeking enterprise, the term shall refer to any income from services rendered under any of the following conditions:

- (1) The conduct of rendering services is fully performed and completed in the R.O.C.
- (2) The conduct of rendering services is required to be performed within and outside the R.O.C. before it can be completed.
- (3) The conduct of rendering services is performed outside the R.O.C., but the involvement and assistance of an individual or profit-seeking enterprise residing in the R.O.C. is required before it can be completed.

Where an individual or profit-seeking enterprise outside the R.O.C. renders the following electronic services for another individual or profit-seeking enterprise within the R.O.C., such services shall be regarded as services rendered within the R.O.C.:

- (1) The services used are downloaded via the Internet and saved to computers or mobile devices for use.
- (2) The services are used online without being downloaded or saved into any device.
- (3) Other services used are supplied through the Internet or other electronic tools.

The term "the involvement and assistance of an individual or profit-seeking enterprise residing in the R.O.C. is required before it can be completed" in Subparagraph 3 of Paragraph 1 shall refer to the supply of resources such as equipment, manpower, know-how, or technology, but exclude the service buyers providing basic background information, notification or confirmation required by the rendering of service.

Where the conduct of rendering service in Paragraph 1 is fully performed and completed outside the R.O.C. meets one of the following

conditions, the remuneration obtained by the foreign profit-seeking enterprise shall not be regarded as income from sources in the R.O.C.:

- (1) The foreign profit-seeking enterprise has no fixed place of business or business agent within the R.O.C.
- (2) The foreign profit-seeking enterprise has a business agent within the R.O.C., but such agent is not entrusted the service concerned.
- (3) The foreign profit-seeking enterprise has a fixed place of business, but the fixed place doesn't involve in or assist the service concerned.

Paragraph 2, Point 10 herein shall apply mutatis mutandis to the income calculation for the remuneration obtained for the services rendered in accordance with Subparagraphs 2 or 3 of Paragraph 1.

If a foreign profit-seeking enterprise's conduct of rendering services within the R.O.C. involves operation of industry, commerce, agriculture, forestry, fishery, animal husbandry, mining, or metallurgy enterprises within the R.O.C., such conduct shall be identified in accordance with Subparagraph 9, Article 8 of this Act.

5. The term "interest obtained from governments of various levels of the R.O.C., from juristic persons within the R.O.C. and from individuals residing in the R.O.C." in Subparagraph 4, Article 8 of this Act shall refer to the interest obtained from public debts, company bonds, financial bonds, various kinds of short-term commercial papers, deposits, beneficiary securities, or asset-backed securities issued in accordance with the Financial Asset Securitization Act and the Real Estate Securitization Act, and other loans.

Where a foreign company incorporated and registered in accordance with foreign law has been permitted by the competent securities authority of the R.O.C. to offer and issue securities in the R.O.C., or to have its foreign company bonds issued in accordance with foreign law traded on the over-the-counter markets in the R.O.C., the interest income distributed from the foreign company bonds shall not be

regarded as income from sources in the R.O.C.

6. The term "rental obtained from lease of property situated within the R.O.C." in Subparagraph 5, Article 8 of this Act shall refer to the rental obtained based on the following properties in the R.O.C.:

(1) Real Estate: The real estate within the R.O.C., such as buildings and land.

(2) Movable Property:

I. The movable property registered and recorded in the R.O.C., such as a vessel, aircraft, vehicle, and so on; or securities offered/issued or traded on the securities exchange market, as permitted by the competent securities authority of the R.O.C., such as stocks, bonds, Taiwan Depositary Receipts, and other securities.

II. The properties provided directly or indirectly for use by an individual, profit-seeking enterprise, institution or organization within the R.O.C., such as machinery, transportation facilities (vessels, aircraft, vehicles), office facilities, satellite transponders, the Internet, and so on.

7. The term "royalty obtained from patents, trademarks, copyrights, secret formulas, and franchises by virtue of their being made available for use by other persons within the R.O.C." in Subparagraph 6, Article 8 of this Act shall refer to the royalty or investment capital contribution obtained from licensing the following intangible assets to individuals, profit-seeking enterprises, institutions, or organizations for their own use or for others to use within the R.O.C.:

(1) Intangible assets such as a copyright, and other registered or recorded patent, trademark, business right, trade name, brand name, and so on.

(2) Intangible assets such as unregistered or unrecorded secret formulas and know-how: including secret prescription or process,

design or model, plan, trade secret, or information or proprietary knowledge related to the industrial, commercial, or scientific experience, franchise, Internet marketing, client information, channel distribution, and other valuable rights. The term "secret formulas" shall include the methods, technology, processes, formulas, programs, designs, and other information to be applied in production, marketing, or operation, any of which is not widely known to ordinary persons involved in the same trade, and has actual or potential economic value.

Where a profit-seeking enterprise within the R.O.C. has been licensed with any intangible assets above, the royalty payable for using such intangible assets during the course of the contracted processing, manufacturing, or research outside the R.O.C. shall be regarded as income from sources in the R.O.C. However, if a profit-seeking enterprise within the R.O.C. is contracted by a foreign profit-seeking enterprise for processing or manufacturing work, and for such work the foreign profit-seeking enterprise's licensed intangible assets are used without the need to pay royalty, there is no income from sources in the R.O.C.

Where the intangible assets in Paragraph 1 are provided via the Internet or other electronic means for the use of others within the R.O.C. which are not electronic services rendered or sold under Paragraph 2, Point 4 and Paragraph 2, Point 10, the provision above shall be applied.

8. The term "profits from the transaction of properties within the R.O.C." in Subparagraph 7, Article 8 of this Act shall refer to the income generated from the following property transactions within the R.O.C.:
 - (1) Real Estate: The real estate within the R.O.C., such as buildings and land.
 - (2) Movable property:
 - I. The movable property registered and recorded in the R.O.C., such as a vessel, aircraft, vehicle and so on; or securities

offered/issued or traded on the securities exchange market, as permitted by the competent securities authority of the R.O.C., such as stocks, bonds, Taiwan Depositary Receipts, and other securities (i.e., HK Exchange Traded Fund traded in Taiwan), but excluding securities permitted by the competent securities authority of the R.O.C. to be traded offshore (i.e., Taiwan Exchange Traded Fund).

II. Movable property other than those in the preceding item:

- i. Where delivery of the movable property requires transportation, the departure takes place within the R.O.C.
- ii. Where delivery of the movable property does not require transportation, the location is within the R.O.C.
- iii. Where the movable property is disposed of through an auction, the auction takes place within the R.O.C.

(3) Intangible Assets:

- I. Intangible assets such as a copyright, patent, trademark, business right, trade name, or brand name registered or recorded in accordance with the laws of the R.O.C.
- II. Intangible assets other than those specified in the preceding item whose proprietary holder is an individual or head office of a profit-seeking enterprise residing in the R.O.C., but excluding intangible assets registered or recorded in accordance with foreign law.

9. The term "remuneration for services performed by personnel sent abroad by the government of the R.O.C. on overseas missions and for services rendered abroad by employees in general" in Subparagraph 8, Article 8 of this Act shall refer to the remuneration for the services rendered by personnel at the place of his/her stationed country, which can be exempt from income tax in that country.

10. The term "profits from operation of industry, commerce, agriculture,

forestry, fishery, animal husbandry, mining, and metallurgy enterprises within the R.O.C." in Subparagraph 9, Article 8 of this Act shall refer to business profit derived from the business conduct of selling products and rendering services within the R.O.C.

A profit-seeking enterprise selling electronic services outside the R.O.C. to individuals or profit-seeking enterprises within the R.O.C. under Paragraph 2, Point 4 herein is engaged in business conduct within the R.O.C. in the preceding paragraph. However, if the sold electronic service meets any of the following conditions, the profit derived from such conduct is not the income from sources in the R.O.C.:

- (1) The electronic service (e.g., stand-alone software and e-book) produced or manufactured outside the R.O.C. is transmitted, downloaded, and saved into a stand-alone computer or mobile device via the Internet or other electronic means, and without the involvement or assistance of an individual or profit-seeking enterprise within the R.O.C.
- (2) The electronic service sold via the Internet or other electronic means has the physical location outside the R.O.C. to offer the service.

Where the business conduct mentioned in Paragraph 1 is carried on both within and outside the R.O.C., if the profit-seeking enterprise can provide supporting documents showing clear division of the transaction processes within or outside the R.O.C. as well as the profit contribution ratio of the offshore or onshore processes (such as financial statements audited and certified by CPAs, Transfer Pricing documentation, work planning records or reports, etc.), its income from sources in the R.O.C. will be assessed and determined by the taxation authority based on the supporting documents provided. However, if such business conduct of the profit-seeking enterprise is fully performed and completed outside the R.O.C. and meets any of the following conditions, the remuneration collected by the foreign profit-seeking enterprise is not regarded as income from sources in the R.O.C.:

- (1) The foreign profit-seeking enterprise has no fixed place of business or business agent within the R.O.C.
- (2) The foreign profit-seeking enterprise has a business agent within the R.O.C., but such agent does not offer the service concerned.
- (3) The foreign profit-seeking enterprise has a fixed place of business, but the fixed place doesn't involve in or assist the service concerned.

Where a foreign profit-seeking enterprise sells goods to an individual, profit-seeking enterprise, institution, or organization within the R.O.C. and meets any of the following conditions, the general rules of international trade shall apply with respect to determining the income from sources in the R.O.C.:

- (1) The head office of the foreign profit-seeking enterprise directly sells physical goods to customers within the R.O.C.
 - (2) The foreign profit-seeking enterprise sells to customers within the R.O.C. directly or through a domestic profit-seeking enterprise (not acting as an agent) the standard software (not customized or modified software), including downloaded software via the Internet, shrink wrap software or packaged software that are stored on a disc, and other standard software; neither the buyer nor the said domestic profit-seeking enterprise is allowed to reproduce, modify, or publicly display the standard software.
 - (3) The foreign profit-seeking enterprise without a fixed place of business or business agent within the R.O.C. directly sells physical goods to customers within the R.O.C. via the Internet; the buyer declares and picks up the physical goods at Customs.
11. The term "awards or grants obtained from participating in various skill contests, games, or lotteries, etc. within the R.O.C." in Subparagraph 10, Article 8 of this Act shall refer to the awards or grants obtained from skill contests, games, or lotteries that take place within the R.O.C.

12. The term "any other income obtained within the R.O.C." in Subparagraph 11, Article 8 of this Act shall refer to any other income that cannot be specifically categorized according to Subparagraphs 1 to Subparagraphs 10, Article 8 of this Act.

13. The comprehensive service provided by a foreign profit-seeking enterprise within the R.O.C. shall refer to the service involving transactions (e.g., patent used, rendering of services, and equipment leasing) generating multiple types of income. The taxation authority shall identify each type of income involved in each transaction and categorize the income appropriately according to its nature; it shall not determine the income as other income under Subparagraph 11 without identifying the type of income.

The comprehensive service in the preceding paragraph is business conducted involving operation of industry, commerce, agriculture, forestry, fishery, animal husbandry, mining, or metallurgy enterprises within the R.O.C.; such business conduct shall be identified in accordance within Subparagraph 9, Article 8 of this Act. If it is not identified as business conduct under Subparagraph 9, but its remunerations obtained have features under Subparagraphs 3, 4, 5, 6, 7, or 11, Article 8 of this Act, the taxation authority shall identify and categorize each type of income in accordance with the subparagraphs.

14. Where a profit-seeking enterprise jointly develops a technology with a foreign enterprise, and all the co-developers are entitled to intellectual property rights of the technology and paid for the research and development expense in accordance with the joint-development contract, if the co-developers are confirmed to share the joint-development costs, and each co-developer is to obtain a reasonable benefit not involving royalty payments or undue evasion of taxes, such remuneration shall not be regarded as income from sources in the R.O.C.

15. Where an individual not residing in the R.O.C. or a profit-seeking enterprise whose head office is outside the R.O.C. has any income from sources in the R.O.C. under Article 8 of this Act shall file the tax return

in accordance with this Act, or withhold the taxes in accordance with the required withholding ratio.

Where a foreign profit-seeking enterprise without fixed place of business or business agent within the R.O.C. obtains remuneration for services under Subparagraph 3, rental income under Subparagraph 5, business profit under Subparagraph 9, awards or grants derived from contests, games, or lotteries under Subparagraph 10, or other income under Subparagraph 11 of Article 8 of this Act, the tax withholders shall withhold the taxes in accordance with the required withholding ratio at the time of payment. However, within **ten** years after receipt of the revenue, the foreign profit-seeking enterprise can delegate a business agent (an individual residing or a profit-seeking enterprise with a fixed place of business within the R.O.C.) to apply to the taxation authority for deduction of the costs and expenses related to its revenue, and henceforth for reassessment of its taxable income. The taxation authority will reassess the taxable income of the foreign profit-seeking enterprise based on the accounting books and relevant documents or the financial statements audited and certified by CPAs provided by the foreign profit-seeking enterprise, and refund excessive withheld tax.

Applications for reassessment of the taxable income in the preceding paragraph may be filed one by one each time, or may be filed together on a yearly basis.

When the amendment to these Guidelines comes into effect on October 13, 2023, according to the provisions of this Point before the amendment takes effect, if the five-year application period has not expired, the provisions of Paragraph 2 shall apply; if the application period has expired, the provisions before the amendment shall still apply.

- 15-1. Foreign profit-seeking enterprises without a fixed place of business or business agent within the territory of the R.O.C. deriving the remuneration for services stipulated in Subparagraph 3 or the business profit stipulated in Subparagraph 9 of Article 8 of this Act, can provide relevant documents to the tax authority to apply for the

adoption of net profit ratio and the contribution of the domestic transaction process to the total profit of all trading processes before receiving payments, in order to calculate the taxable income while filing their tax returns in accordance with this Act, or have their taxes withheld by the tax withholder in accordance with the required withholding ratio.

A tax withholder paying income of a foreign profit-seeking enterprise from sources in the R.O.C. specified in the preceding paragraph and actually affording the withholding tax of the income, can provide relevant documents to the tax authority to apply for the applicable net profit ratio before paying, in order to calculate the taxable income and to withhold tax in accordance with the required withholding ratio.

16. These Guidelines shall apply *mutatis mutandis* to where the individual, juristic person, organization, or other institution of the Mainland Area has income from sources in the Taiwan Area under Article 25 of the Act Governing Relations between the People of the Taiwan Area and the Mainland Area.