

FAQs for “Regulations Governing Reduction and Exemption of Income Tax of Foreign Special Professionals”

【General Principles】

Q1 : What is the legal basis of enacting tax incentives for foreign special professionals? When were they put into practice? And what do they include?

A1 : 1. The tax incentives regulated in Article 9 of the “Act for the Recruitment and Employment of Foreign Professionals” (hereinafter referred to as the “Act”) came into force on February 8, 2018. A qualified foreign special professional can apply for this tax relief from 2018.

2. From 2018, if a foreigner engages in professional work and meets certain requirements, then within 3 years starting from the tax year in which the foreign special professional for the first time meets the conditions of residing in the R.O.C. for 183 days or more, and having a salary income of more than NT\$3,000,000, only the NT\$3,000,000 salary income and half of the amount above the NT\$3,000,000 in each such tax year shall be included in the gross income for the assessment of individual income tax liability. If the foreigner obtains overseas income set forth in the provisions of Subparagraph 1, Paragraph 1, Article 12 of the Income Basic Tax Act in such tax year, such income shall be excluded from the basic income.

【Applicable Subjects and Requirements】

Q2 : What is the definition of “foreign special professionals?”

A2 : The term "foreign special professional" shall refer to a foreign professional who engages in professional work in the R.O.C. and has special expertise needed by the R.O.C. in science & technology, economy, education, culture, arts, sports, and other fields as announced by the central competent authority. The “professional work” mentioned above refers to work set forth in Subparagraphs 1 to 6 of Paragraph 1, Article 46 of the Employment Services Act, or possessing specialized knowledge or skill and approved by the central competent authority in consultation with the Ministry of Education as a teacher of non-academic classes in a short-term tutorial school registered in accordance with the Supplementary Education Act.

Q3 : Who is eligible to apply for the tax incentives for foreign special professionals?

A3 : A foreign special professional, who has been recognized to have the special expertise announced by the central competent authority, has obtained the foreign special professional employment (work) permit document issued by the Ministry of Labor or by the Ministry of Education, or has obtained the Employment Gold Card issued by the National Immigration Agency, Ministry of the Interior and has met all of the following requirements is eligible to apply for the tax incentives:

1. He/she has been approved for the first time to reside in the R.O.C. for the purpose of work.
2. He/she has engaged in professional work related to the recognized special expertise in the R.O.C.
3. During the last 5 years prior to the day of his/her employment engaged in the professional work or the day of obtaining his/her Employment Gold Card, he/she did not have household registration in the R.O.C. and was not an resident individual of the R.O.C. in accordance with the Income Tax Act.

Q4 : Referring to Q3, if a foreigner has been previously approved to reside in the R.O.C. before his/her employment engaged in the professional work, does he/she still meet the requirement of “the first time been approved to reside in the R.O.C. for the purpose of work”?

A4 : If a foreigner has been previously approved to reside in the R.O.C. before his/her employment engaged in professional work in the R.O.C., such approval is not given because of his/her engagement in the professional work (such as residence for study or as dependents); therefore, the foreigner is exempt from the first-time approval limitation.

Q5 : Referring to Q3, what are the specific dates of “the day of employment engaged in the professional work” and “the day of obtaining the Employment Gold Card,” respectively?

A5 : “The day of employment engaged in the professional work” is the first day of the employment period of the foreign special professional employment (work) permit document issued by the Ministry of Labor or by the Ministry of Education, while “the day of obtaining the Employment Gold Card” is the “date of issue” shown on the Employment Gold Card.

Q6 : Referring to Q3, how do we define “an individual who does not have household registration in the R.O.C. and is not a resident of the R.O.C. in accordance with the Income Tax Act”?

A6 : This refers to an individual who has no household registration in the R.O.C. and stays less than 183 days within each year (1/1~12/31).

【Explanation of the computation of income tax relief】

Q7 : Example:

David, a foreign special professional meeting the requirements mentioned in Q3, has a salary income of NT\$8,000,000 related to his special professional work and overseas income of NT\$2,000,000 in the applicable year. How does he calculate his income tax relief?

A7 : 1. Amount of non-taxable salary income = (NT\$8,000,000 – NT\$3,000,000)*50% =NT\$2,500,000

Amount of taxable salary income =
NT\$8,000,000-NT\$2,500,000=NT\$5,500,000

2. Overseas income NT\$2,000,000 is excluded from basic income.

Q8 : What is the applicable scope of “salary income” mentioned in the Act ?

A8 : 1. The term "salary income" in the Act shall refer to the amount of aggregate salaries which may be calculated in the gross amount of income paid by domestic and offshore employers for the foreign special professional's engagement of professional work. Other salary unrelated to the foreign special professional's special expertise shall not be applicable to the tax incentives.

2. The above-mentioned salary income shall be applied to the tax incentives in the taxable year. For instance, according to Article 19-1 of the Statute for Industrial Innovation, where an individual who acquires stocks as an employee's bonus, he/she may opt to include the salary income in the gross income and declare their income tax in the year of transfer or book-entry transfer. So if a foreign special professional receive the salary income of stocks acquired as an employee's bonus according to Article 19-1 of the Statute for Industrial Innovation and opt to declare their income tax in the year of transfer, such income shall be calculated in salary income and applied to the tax incentives in the year of transfer.

Q9 : How do we define the specific point of time for counting the “first 3 years” when a foreign special professional's salary income exceeds NT\$3,000,000 and is eligible for the tax incentives?

A9 : The term "first 3 years" in the tax incentives shall start from the year when the foreign special professional has resided in the R.O.C. for 183 days or more for the first time, and has an annual salary income over NT\$3,000,000. The taxpayer can not choose the starting year and applicable years as he/she wishes.

Q10 : Example:

David, obtaining the foreign special professional employment permit in 2018 and meeting the requirements mentioned in Q3, stays in the R.O.C. for 183 days or more and has an annual salary income over NT\$3,000,000 derived from his special professional work in 2018, 2019, and 2020. What is the applicable period of his tax incentives?

A10 : Year 2018 is the first applicable year and David can apply for the tax incentives from 2018 to 2020.



Q11 : Referring to Q9, if in the second or third year from the tax incentives applicable year, a foreign special professional does not reside in the R.O.C. for 183 days or his annual salary income does not exceed NT\$3,000,000, may the tax incentives be deferred?

A11 : If a foreign special professional does not reside in the R.O.C. for 183 days or his/her annual salary income is less than NT\$3,000,000 within the first three-year period of tax incentives, the tax incentives may be deferred to other employment periods in the R.O.C. for the year when he/she meets the requirements. The total number of years eligible for the tax incentives shall be limited to 3 years, and the deferral period shall start from the first qualified year and continue without interruption for a period not over 5 years.

Q12 : Example:

David, obtaining the foreign special professional employment permit in 2018 and meeting the requirements mentioned in Q3, stays in the R.O.C. for 183 days or more and has an annual salary income over NT\$3,000,000

derived from his special professional work in 2019, 2021, and 2023 (his salary income is less than NT\$3,000,000 or the total days of his stay in the R.O.C. are less than 183 days in 2018, 2020 and 2022). What is the applicable period of his tax incentives?

A12 : Since David's salary income is less than NT\$3,000,000 or the total days of his stay in the R.O.C. is less than 183 days in 2018, the year 2019 shall be the first qualified year of the tax incentives, year 2019 is the first applicable year. In addition, since David also has salary income less than NT\$3,000,000 or the total number of days of his stay in the R.O.C. is less than 183 days in both 2020 and 2022, the tax incentives may be deferred within the following 5 years (from 2019 to 2023). Therefore, the applicable years for David's tax incentives are 2019, 2021 and 2023.



Q13 : Referring to Q11, what are "other employment periods in the R.O.C."?

A13 : The term "other employment periods in the R.O.C." shall refer to the period a foreign special professional is engaged in professional work and the extension period of his/her foreign special professional work permit.

1. For those obtaining the foreign special professional employment (work) permit, it shall refer to the period of the employment (work) permit and the extensions applied by the employer upon the expiration of employment (work) permit.
2. For those obtaining the Employment Gold Card, it shall refer to the period in which the foreign special professional is engaged in professional work within the valid period of the Employment Gold Card.
3. The foreign special professional, who has obtained the foreign special professional employment permit and then applied for obtaining the Employment Gold Card to engage in professional work during the deferral period, or who had obtained the Employment Gold Card to engage in professional work and then applied for the foreign special professional employment permit issued by the Ministry of Labor or by the Ministry of Education to continuously engage in professional work, is still eligible for the tax incentives.

【The Application Procedure of the Tax incentives】

Q14 : If a foreign special professional would like to apply for the tax incentives, when shall he/she apply? What kinds of supplementary documents are required?

A14 : A foreign special professional meeting the requirements of tax incentives shall apply for the tax incentives to the competent tax authority when filing his/her annual income tax return in May every year or the departure income tax return before leaving the R.O.C.

1. For those obtaining the foreign special professional employment (work) permit, the required documents are as follows:

- (1) Application for Exemption from Income Tax for Foreign Special Professionals.
- (2) The supporting document of the first-time approval to reside in the R.O.C. for the purpose of work (i.e.: a photocopy of ARC with cause of work); in the case a foreign special professional had been previously approved to reside in the R.O.C., the supporting document showing the previous approval not related to the engagement of the professional work is also required (i.e.: a photocopy of ARC for study or as a dependent).
- (3) A photocopy of the foreign special professional employment (work) permit document issued by the Ministry of Labor or by the Ministry of Education.
- (4) An employment contract or another supporting documents showing the employment engaged in professional work is related to the recognized special expertise.

2. For those obtaining the Employment Gold Card, the required documents are as follows:

- (1) Application for Exemption from Income Tax for Foreign Special Professionals.
- (2) A photocopy of the Employment Gold Card with the first-time approval to reside in the R.O.C. for the purpose of work; in the case a foreign special professional had been previously approved to reside in the R.O.C., the supporting document showing the previous approval not related to the engagement of the professional work is also required (i.e.: a photocopy of ARC for study or as a dependent).
- (3) An employment contract or another supporting documents showing the employment engaged in professional work is related to the recognized special expertise.

【Others】

Q15 : May the “tax incentives for foreign special professionals” in accordance with the Act and the “tax preferences provided to foreign professionals” regulated in “The Scope of Application for Tax Preferences Provided to Foreign Professionals” be applicable at the same time?

A15 : 1. According to “The Scope of Application for Tax Preferences Provided to Foreign Professionals” (promulgated by Decree No. 09804119810 and issued by the Ministry of Finance on March 12, 2010), if an employer hires a foreign professional qualified for the tax preferences, the payment made in accordance with the content of an employment contract may be declared as operation expenses by the employer, such as the round trip air fare of the foreign professionals and his/her family, home leave vacation pay according to the contract, home moving expenses, utility bills, cleaning bills, telephone bills, house rentals, repair costs for place of residence, and educational scholarships for children and such items may be excluded from the taxable income of the foreign professionals.

2. The “tax preferences provided to foreign professionals” can be applied during the entire employment period. However, the “tax incentives for foreign special professionals” are restricted to the applicable year and with threshold of salary income. Although the content of “tax incentives for foreign special professionals” and “tax preferences provided to foreign professionals” are different, as long as a foreign special professional meets the requirements of these two tax benefits, he/she can apply for both tax benefits simultaneously. In other words, if a qualified foreign special professional also meets the requirements of “tax preferences provided to foreign professionals,” his/her taxable salary income can be calculated in accordance with the “The Scope of Application for Tax Preferences Provided to Foreign Professionals,” and his/her taxable salary may be also calculated based on the Act.

Q16 : Are residents in Hong Kong or Macau areas eligible to apply for the tax incentives for foreign special professionals?

A16 : In accordance with Article 20 of the Act, the provisions apply mutatis mutandis to residents of Hong Kong and Macau areas. In other words, Hong Kong or Macau residents are also eligible to apply for the tax incentives for foreign special professionals as regulated by Article 9 of the Act.

Q17 : Does a foreign special professional meeting the requirements of the tax incentives for foreign special professionals need to file his/her income basic tax return?

A17 : If a foreign special professional meeting requirements mentioned in Q3 obtains the income set forth in Subparagraph 1, Paragraph 1, Article 12 of the Income Basic Tax Act in such applicable tax year, such income may be excluded from the income basic tax. However, if he/she obtains other kinds of basic income other than overseas income (such as income derived from transactions of beneficiary certificates of privately-placed securities investment trust funds), and the sum of such income and the net taxable income exceeds the threshold (NT\$6,700,000 from the tax year 2018), he/she shall still file the income basic tax return.

Q18 : What will happen if a foreign special professional has applied for the tax incentives pursuant to the regulations, but is found to be not in compliance with the regulations by the tax authority afterwards?

A18 : If a foreign special professional has applied for the reduction or exemption of the consolidated income tax and income basic tax pursuant to the regulations, but was found not to be in compliance with the conditions stipulated in relevant regulations by the tax authority afterwards, his/her case shall be subject to supplementary tax payable and/or penalty in accordance with the relevant regulations.