

PEM

Objectives of the Place of Effective Management (PEM) Rules

Prevent a resident enterprise of the R.O.C. from changing to a non-resident by incorporating and registering in a low-tax jurisdiction for avoiding taxation on a worldwide basis.



The addendum to Article 43-4 of the Income Tax Act establishing “The PEM Rules” was promulgated by the President on July 27th, 2016.

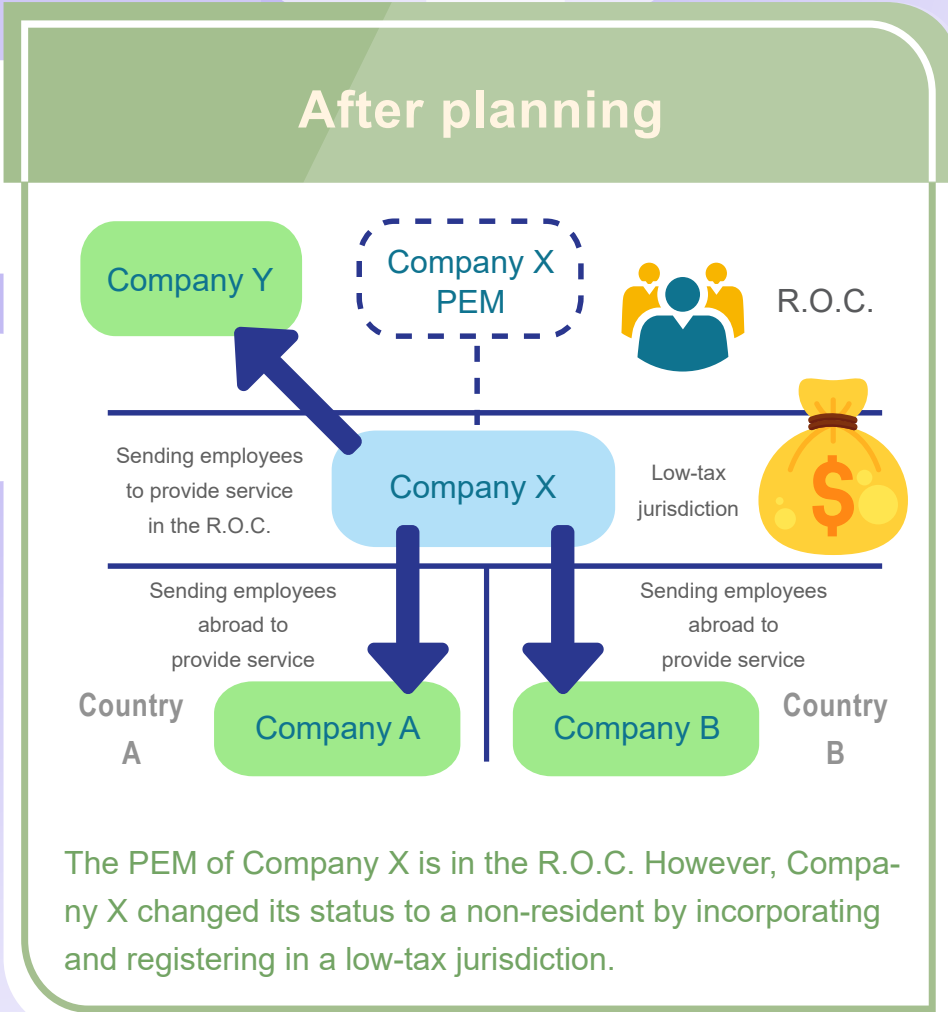
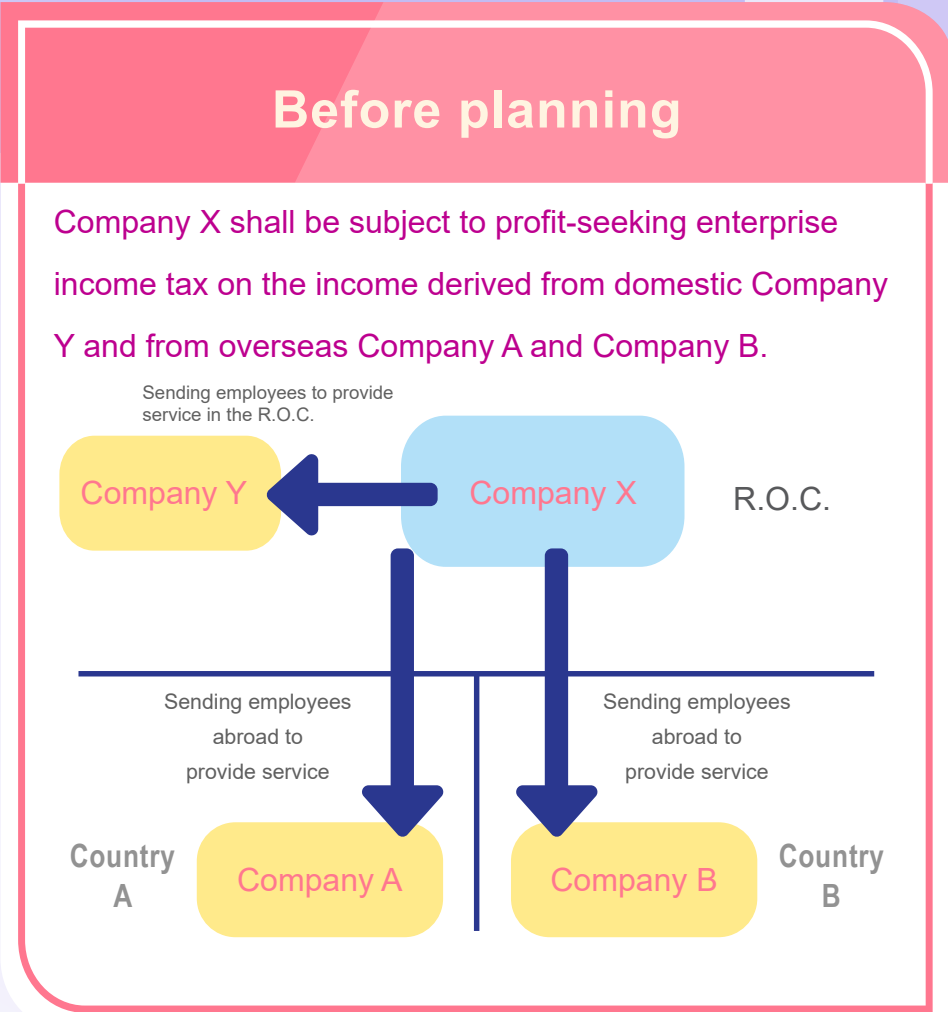
Enforcement date

Will be determined by the Executive Yuan.



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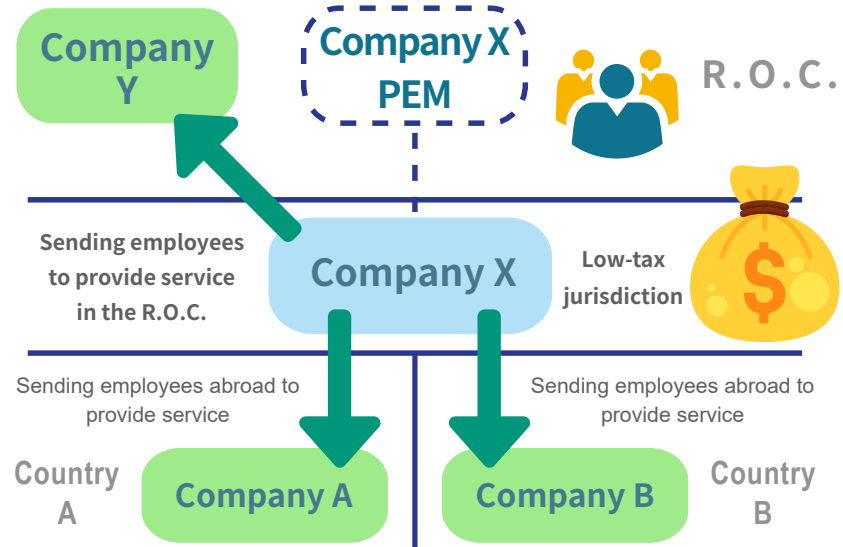
How does an enterprise with a PEM in the R.O.C. avoid tax in the R.O.C.?



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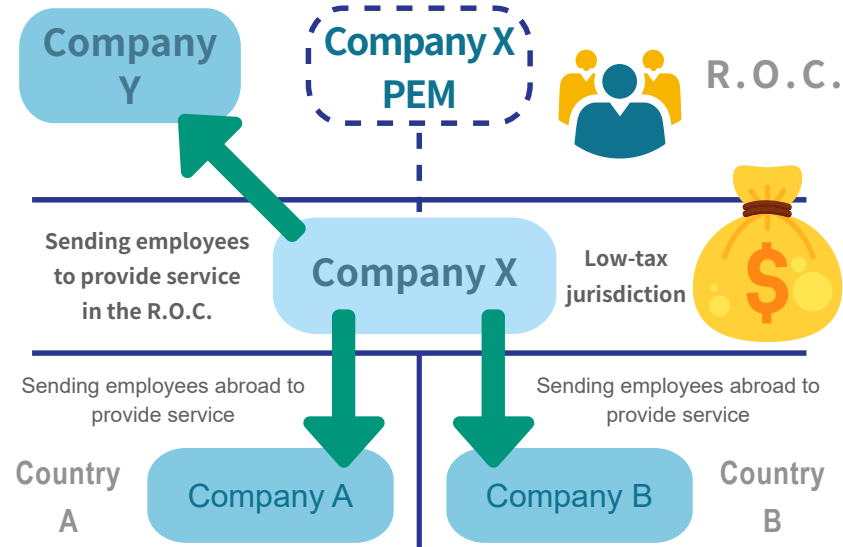
The effects of tax before and after the implementation of PEM rules

Before



Company X is only subject to profit-seeking enterprise income tax on the service income derived from domestic Company Y. Company X is not subject to tax on the service income derived from overseas Company A and Company B.

After



Since the PEM of Company X is in the R.O.C., under Article 43-4 of the Income Tax Act, it is deemed as a profit-seeking enterprise having its head office in the R.O.C. and shall therefore be subject to profit-seeking enterprise income tax on the service income derived from domestic Company Y and from overseas Company A and Company B.



PEM

How to identify whether an enterprise has a PEM in the R.O.C.?

Requirements of identifying a PEM

Any foreign enterprise that meets all of the three requirements below is regarded as an enterprise with a PEM in the R.O.C.

The decision maker who makes significant decisions is a resident individual or a profit-seeking enterprise in the R.O.C., or the place where significant decisions are made is in the R.O.C.

Financial statements, records of accounting books, or minutes of meetings are prepared or stored in the R.O.C.

Major business activities are carried on in the R.O.C.

PEM

What is the effect when the PEM Rules are applicable to a foreign enterprise?

Applicable enterprises

Any foreign enterprise incorporated under foreign law but with a PEM in the R.O.C. shall be deemed as a profit-seeking enterprise having its head office in the R.O.C.

Applicable effects

The foreign enterprise shall be subjected to profit-seeking enterprise income tax; withhold income tax on various income payments; submit withholding (exemption) certificates, dividend vouchers, and other relevant certificates to the tax authorities; and issue the certificates to the taxpayer in accordance with the Income Tax Act and other relevant laws (e.g., The Basic Tax Act, etc.).

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How dose a foreign enterprise apply the PEM Rules ?

Application

- The foreign enterprise shall provide relevant evidence.
- The foreign enterprise shall appoint a responsible person in the R.O.C. who is “a resident individual” or “the responsible person of a resident enterprise” making significant management decisions.
- The foreign enterprise shall apply to a tax authority to determine whether its PEM is in the R.O.C.

Review, Approval/Rejection, and Registration of PEM

- The tax authority reviews the relevant evidence to determine whether the foreign enterprise meets the PEM requirements, and issues the approval /rejection letter.
- The foreign enterprise shall file for the PEM registration within one month from receiving the approval letter, and such registration shall take effect on either the filing date or registration date of the applicant's own choice.

Go through filing tax returns, settling tax payment, withholding income tax, etc.

Eligible to apply tax treaties as a R.O.C. resident

If there is any change in the PEM registration, a foreign enterprise is dissolved, abolished, merged, or transferred, or the PEM rules have not been applicable to it, it shall propose an application for the change or cancellation of registration and make a final report and liquidation report.



PEM

How to determine whether a foreign enterprise is applicable to the PEM rules by the tax authority?



Investigation taken by the tax authority

- The tax authority is obligated to propose relevant evidence while undertaking the investigation.
- The maker of significant management decisions has the obligation to provide assistance.

Notification of filing for PEM registration

- A foreign enterprise which is recognized by the tax authority to be eligible for PEM rules shall appoint a responsible person in the R.O.C who is “a resident individual” or “the responsible person of a resident enterprise” making significant management decisions, and file for the PEM registration within one month from receiving the recognition letter. Such registration shall take effect on the date of registration.

Go through filing tax returns, settling tax payment, withholding income tax, etc.

Eligible to apply tax treaties as a R.O.C. resident

If there is any change in the PEM registration, a foreign enterprise is dissolved, abolished, merged, or transferred, or the PEM rules have not been applicable to it, it shall propose an application for the change or cancellation of registration and make a final report and liquidation report.