Understand the Five Anti-tax Avoidance Rules in 5 Minutes!

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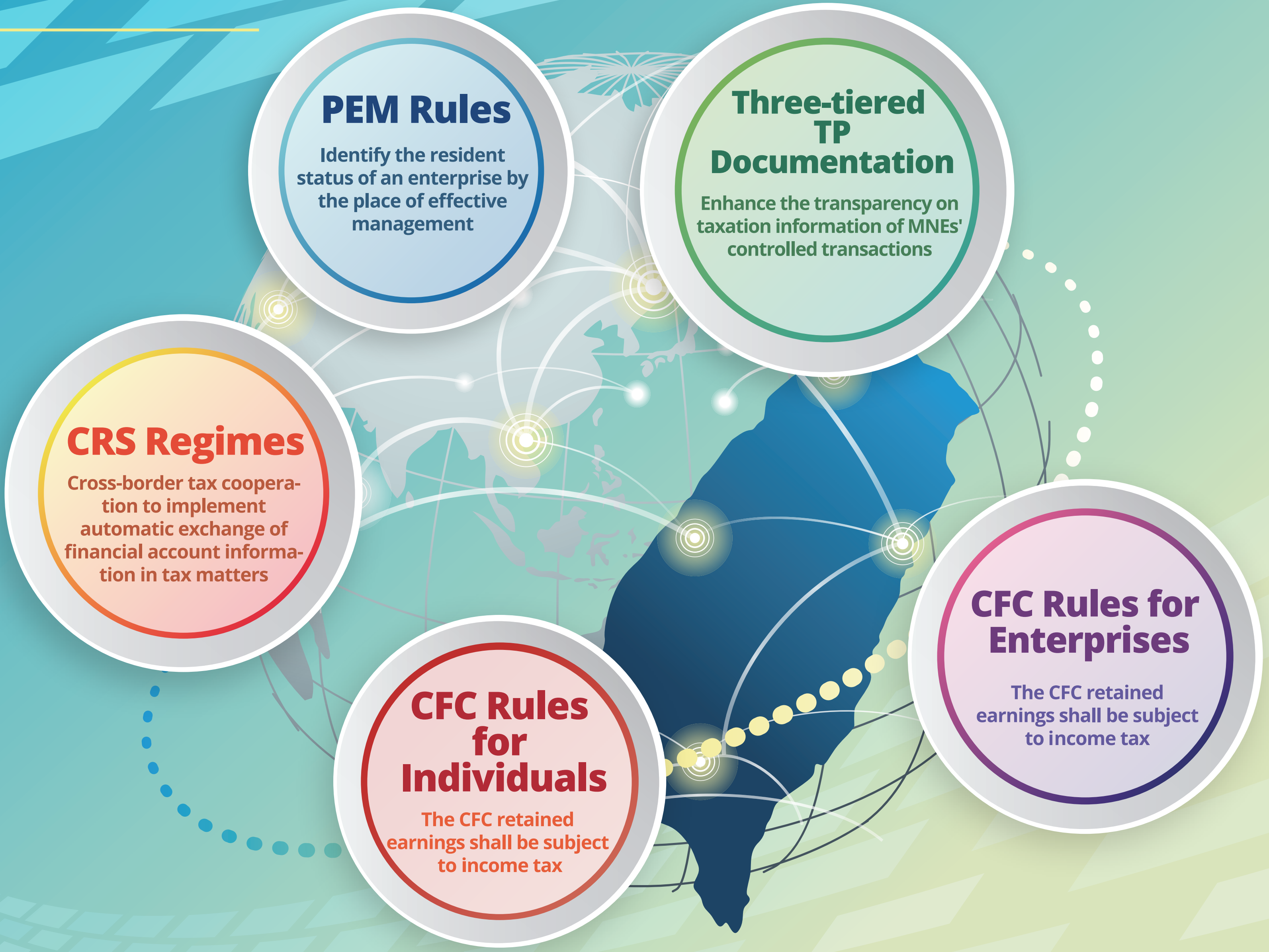
Implementation of Anti-tax Avoidance Rules



CFC Objectives of the Controlled Foreign Company (CFC) Rules

- A CFC refers to a foreign company established in a low-tax jurisdiction (e.g., tax haven) and directly or indirectly controlled by enterprises or individuals of the R.O.C. Profit may be shifted and retained in the CFC by the enterprises and individuals via the control on the CFC dividend policy, and the earnings may not be distributed for the purpose of avoiding tax obligations in the R.O.C.

- The addendum to Article 43-3 of the Income Tax Act establishing "The CFC Rules for Enterprises" was promulgated by the President on July 27, 2016.

- The addendum to Article 12-1 of the Income Basic Tax Act establishing "The CFC Rules for Individuals" was promulgated by the President on May 10, 2017.

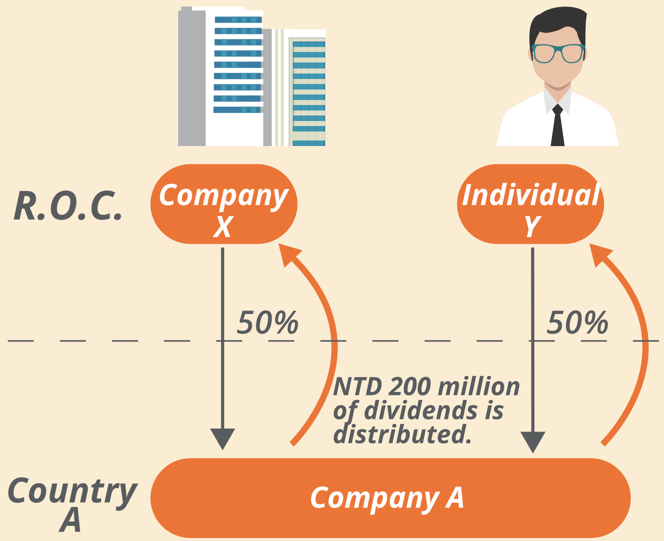
- Enforcement date
  The CFC Rules shall be enforced from taxable year 2023 for enterprises and January 1, 2023 for individuals.

Complete and comprehensive anti-tax avoidance rules

CFC How does a taxpayer avoid tax via a CFC?

Before planning

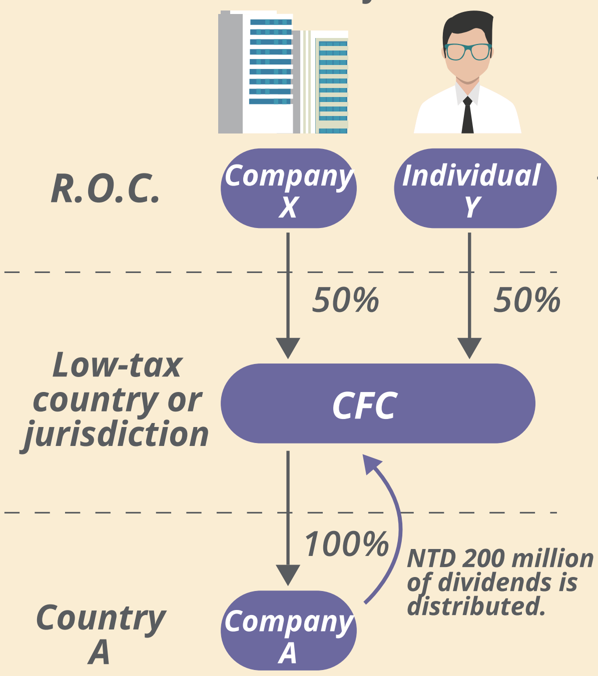
- Company X received dividends NTD 100 million from Company A
- The profit-seeking enterprise income tax is NTD 20 million
- Individual Y received dividends NTD100 million from Company A
- The basic tax of individual is NTD18.66 million



Net income after tax for the current year of Company A amounting to NTD 200 million was resolved to be distributed to shareholders at the shareholders' meeting.

After planning

Company X and Individual Y are not subject to tax.

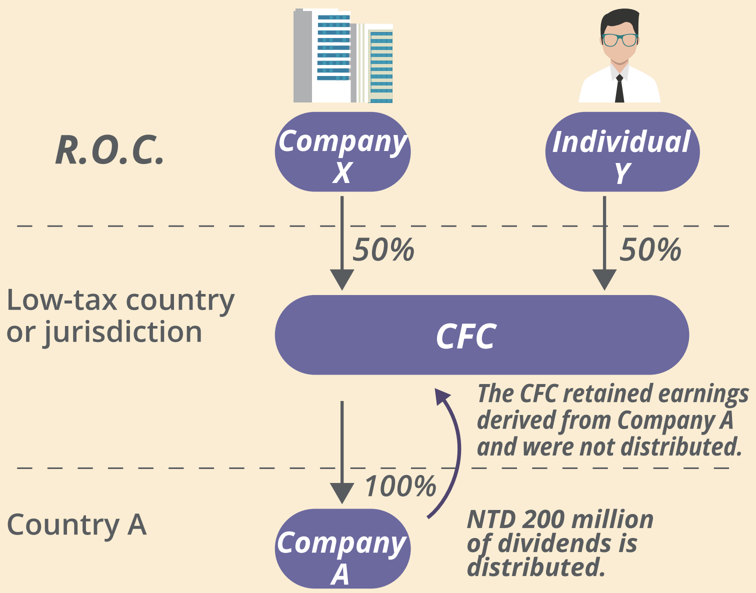


Establishing a CFC in a low-tax jurisdiction, and retaining dividends derived from Company A in the CFC to avoid tax of the R.O.C.

Net income after tax for the current year of Company A amounting to NTD 200 million was resolved to be distributed to shareholders at the shareholders' meeting.

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

Before



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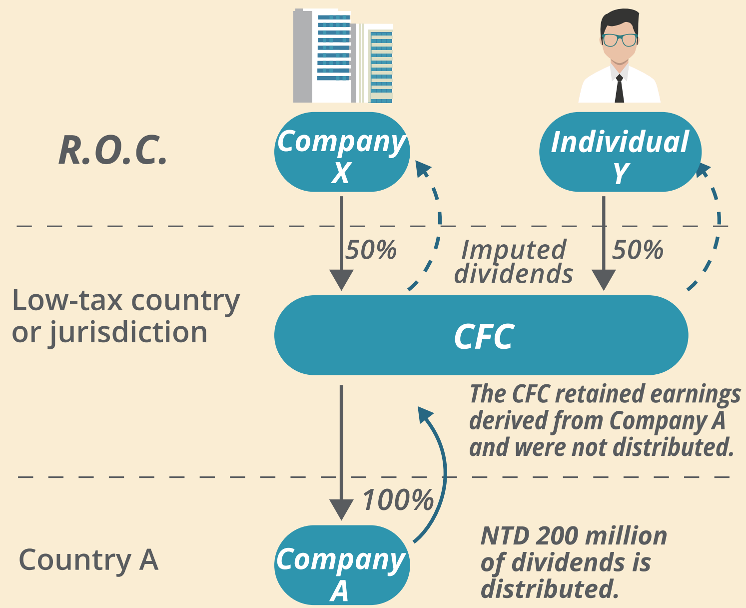
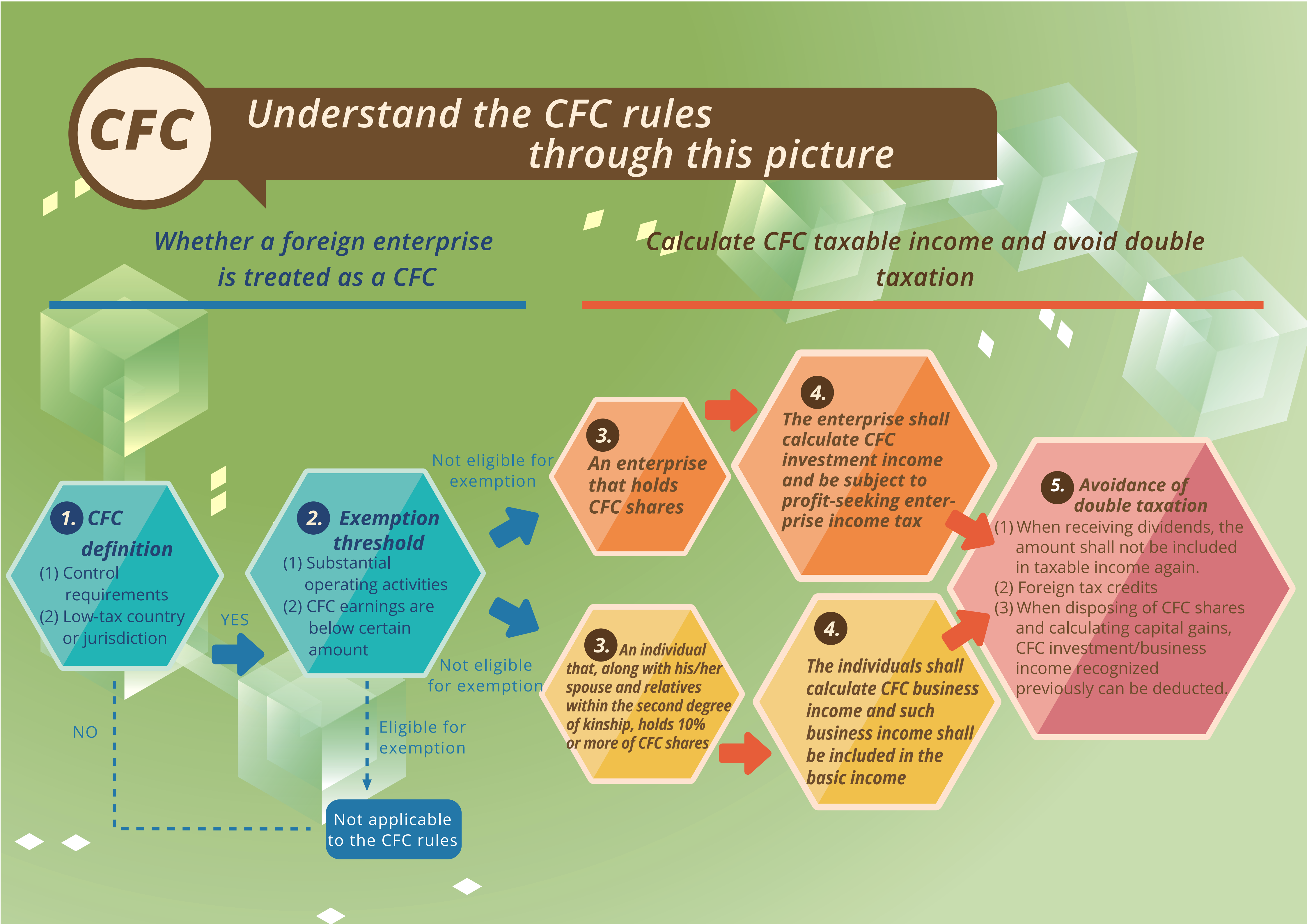
After



Net income after tax for the current year of Company A amounting to NTD 200 million was resolved to be distributed to shareholders at the shareholders' meeting.

- ***Company X shall recognize CFC investment income pursuant to Article 43-3 of the Income Tax Act, and be subject to profit-seeking enterprise income tax amounting to NTD20 million (=NTD200 million x 50% x tax rate 20%).***
- ***Individual Y shall calculate CFC business income pursuant to Article 12-1 of the Income Basic Tax Act, and be subject to the basic tax amounting to NTD18.66 million [= (NTD200 million x 50% -NTD6.7 million) x tax rate 20%]***


CFC
Understand the CFC rules through this picture
Whether a foreign enterprise is treated as a CFC
Calculate CFC taxable income and avoid double taxation
1. CFC definition
(1) Control requirements
(2) Low-tax country or jurisdiction
YES
NO
2. Exemption threshold
(1) Substantial operating activities
(2) CFC earnings are below certain amount
Eligible for exemption
Not applicable to the CFC rules
Not eligible for exemption
Not eligible for exemption
3. An enterprise that holds CFC shares
4. The enterprise shall calculate CFC investment income and be subject to profit-seeking enterprise income tax
3. An individual that, along with his/her spouse and relatives within the second degree of kinship, holds 10% or more of CFC shares
4. The individuals shall calculate CFC business income and such business income shall be included in the basic income
5. Avoidance of double taxation
(1) When receiving dividends, the amount shall not be included in taxable income again.
(2) Foreign tax credits
(3) When disposing of CFC shares and calculating capital gains, CFC investment/business income recognized previously can be deducted.

CFC definition

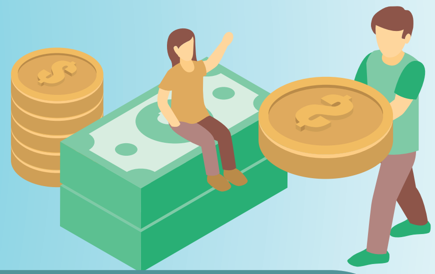
Whether a foreign enterprise constitutes a CFC

- Enterprises or individuals and their related parties directly or indirectly hold 50% or more of shares or capital of a foreign enterprise registered in a low-tax country or jurisdiction (Equity control), or
- Enterprises or individuals have a significant influence on a foreign enterprise（Substantial control）.

A low-tax country or jurisdiction

- The tax rate of the profit-seeking enterprise income tax or a similar tax in the country or jurisdiction where the foreign enterprise is located is not more than 70% of the tax rate of the R.O.C. (i.e., the tax rate is not more than 14%); or
- The country or jurisdiction where the foreign enterprise is located imposes taxes on a territorial basis, and does not impose taxes on offshore income or only imposes taxes when incomes are remitted back.

CFC exemption threshold for individuals



A CFC conducting substantial operating activities is exempt from the CFC rules.

A CFC has a fixed place of business and recruits employees to conduct business in the country or jurisdiction where it is registered, and

$$\frac{\text{Investment income + dividends + interest + royalties + rental income + gain on sales of assets} - A - B}{\text{Net sales + other revenues} - A} < 10\%$$

A. The revenue and income of its overseas branches
B. Where a CFC researches and develops intangible assets, or develops, builds, and produces tangible assets in the place where it is registered, the royalty income, rental income, and sales profits derived from such assets

A CFC with the current-year earnings of no more than NTD 7 million is exempt from the CFC rules.

However, if the sum of the current-year earnings or losses of all of the CFCs under the control of the individual, his/her spouse, and dependents who file a joint consolidated income tax return in accordance with the Income Tax Act exceeds NTD 7 million, the current-year earnings of each CFC shall be subject to the CFC rules for individuals.

CFC To whom are the CFC rules for individuals applicable, and how to calculate CFC business income?

Applicable individuals

- A resident individual who holds 10% or more of CFC shares.
- A resident individual who holds less than 10% of CFC shares but whose holding combined with his/her spouse and relatives within the second degree of kinship reaches 10% or more.

CFC Business Income =

CFC Current-Year Earnings
— Legal reserve or restricted distribution of earnings
— Losses of past years assessed by tax authority

✕

Individual direct holding ratio

✕

Holding period

CFC business income shall be calculated together with the amount of the overseas income (i.e., income derived from sources outside the R.O.C. and is excluded from gross consolidated income, as well as income derived from Hong Kong and Macau) and included in the individual's basic income of the current year. However, if the sum of the income in a filing unit is less than NTD 1 million, it shall be excluded from the basic income.

CFC *Avoidance of double taxation*

✓ When an individual receives dividends or earnings from a CFC

- No double taxation
  The amount that has been calculated as CFC business income and subject to tax shall not be included in the basic income again.

- Foreign tax credits
  The taxes paid on the dividends or earnings in accordance with tax laws of the source jurisdictions may, within 5 years starting from the following day of the expiration of the filing period of the year that CFC business income was included in the individual's basic income previously, be applicable for a deduction or refund.

✓ When an individual trades CFC shares

Capital gains/losses
＝Revenue from the transaction
－Original acquisition cost
－The balance of the calculated CFC business income on the transaction date × Transaction ratio