



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



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Implementation of Anti-tax Avoidance Rules

PEM Rules

Identify the resident status of an enterprise by the place of effective management

Three-tiered TP Documentation

Enhance the transparency on taxation information of MNEs' controlled transactions

CRS Regimes

Cross-border tax cooperation to implement automatic exchange of financial account information in tax matters

CFC Rules for Individuals

The CFC retained earnings shall be subject to income tax


CFC Rules for Enterprises

The CFC retained earnings shall be subject to income tax



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.
- 



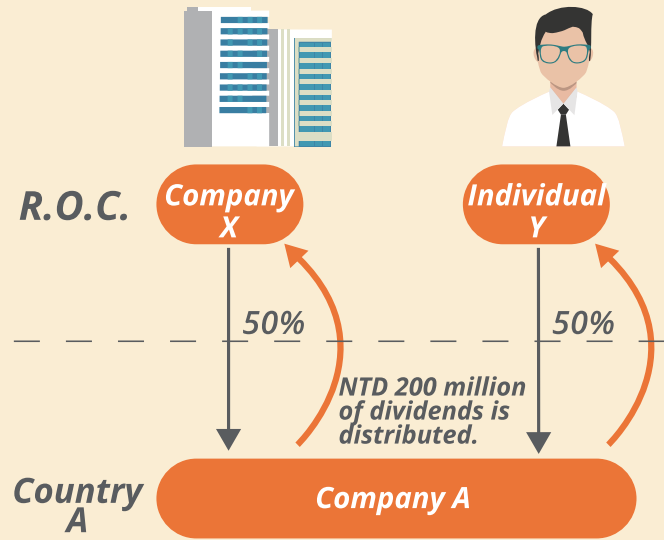
***Complete and comprehensive
anti-tax avoidance rules***

CFC

How does a taxpayer avoid tax via a CFC?

Before planning

- Company X received dividends NTD 100 million from Company A
- Individual Y received dividends NTD 100 million from Company A
- The profit-seeking enterprise income tax is NTD 20 million
- The basic tax of individual is NTD 18.66 million

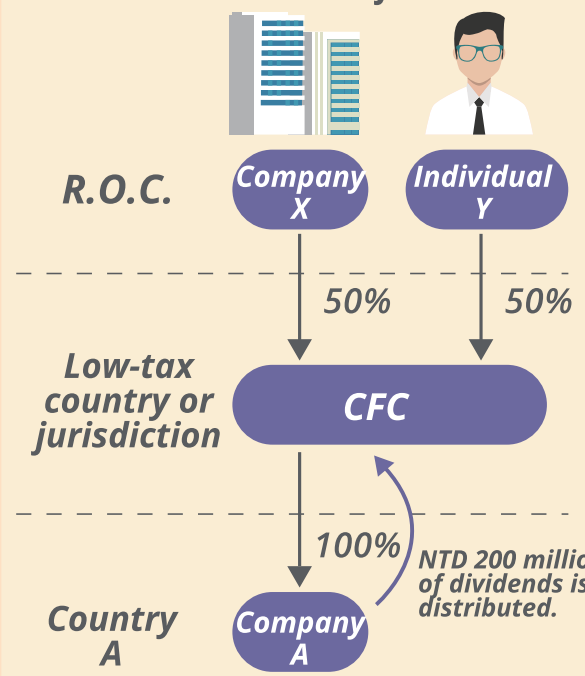


Net income after tax for the current year of Company A amounting to NTD 200 million was resolved to be distributed to shareholders at the shareholders' meeting.



After planning

Company X and Individual Y are not subject to tax.



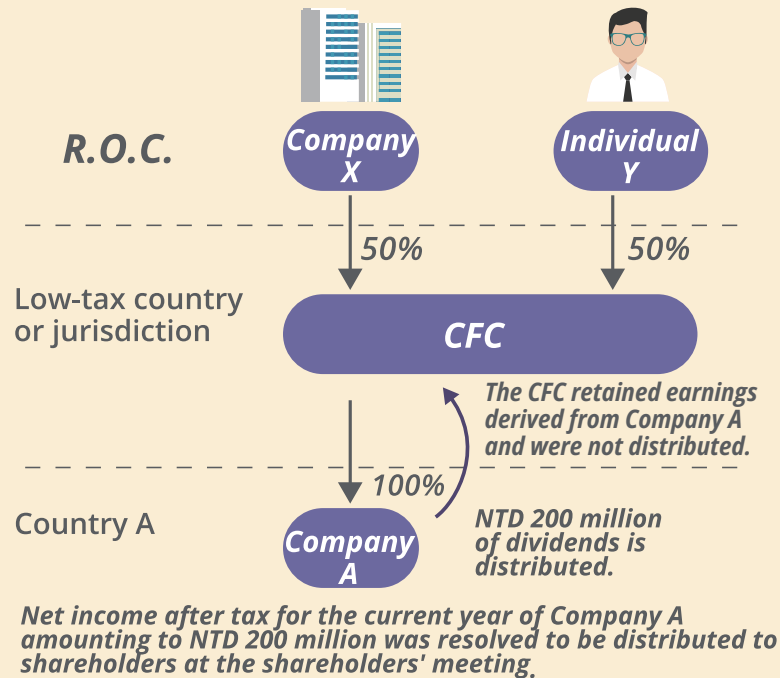
Establishing a CFC in a low-tax jurisdiction, and retaining dividends derived from Company A in the CFC to avoid tax of the R.O.C.

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

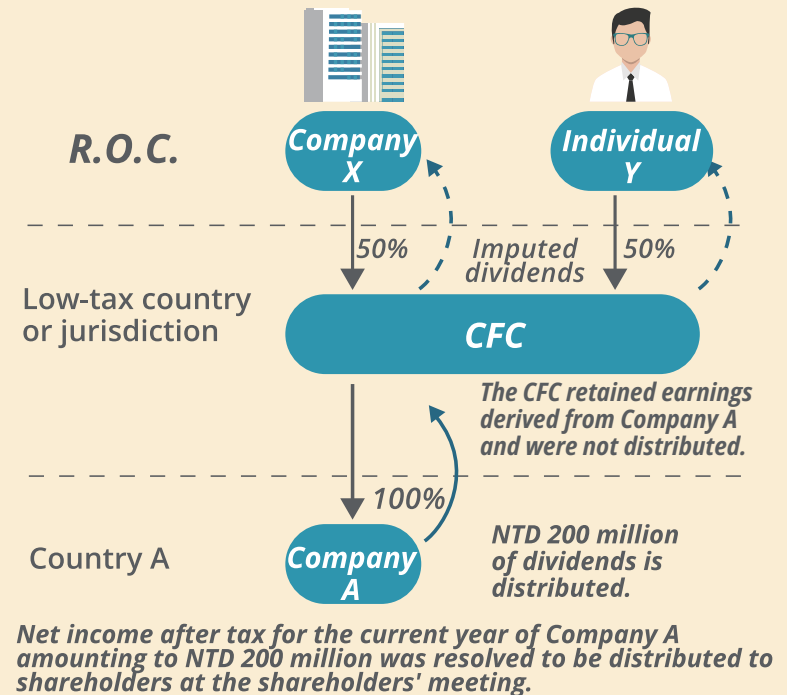
The effects of tax before and after the implementation of the CFC rules

Before



Company X and Individual Y are not subject to tax.

After



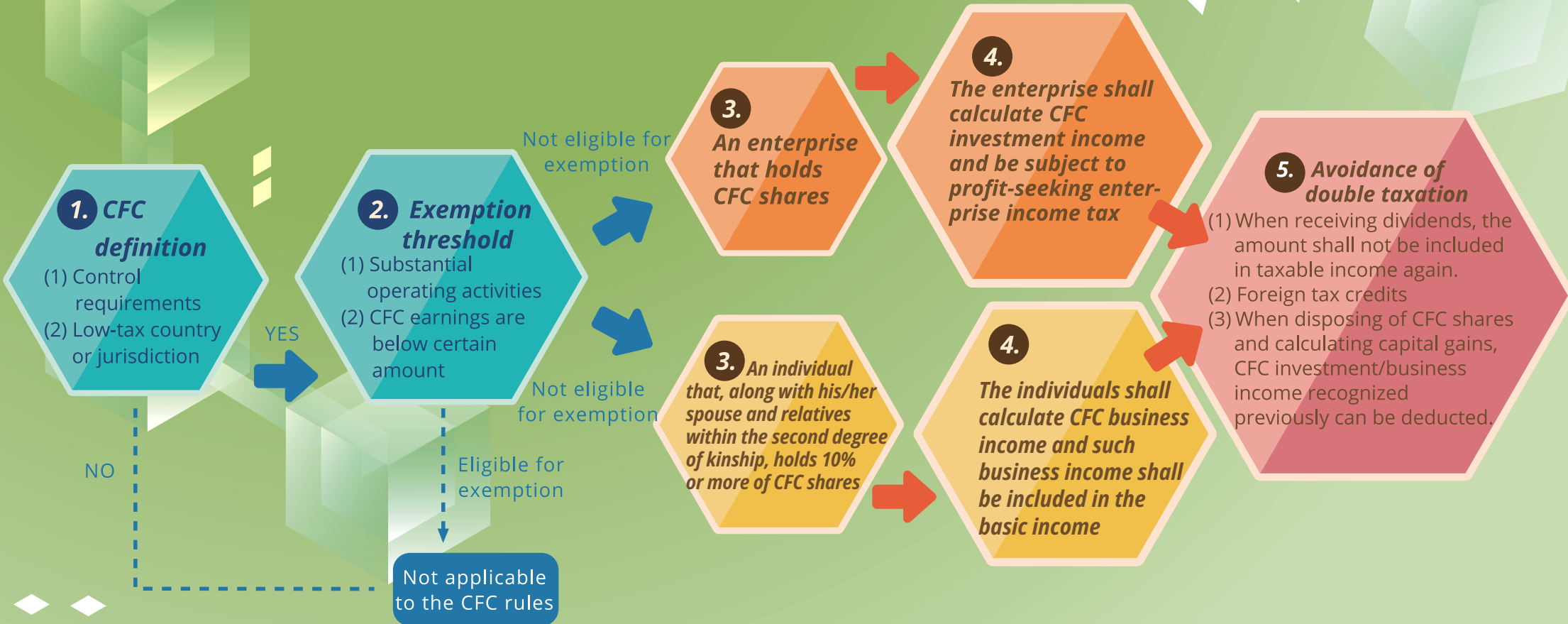
- Company X shall recognize CFC investment income pursuant to Article 43-3 of the Income Tax Act, and be subject to profit-seeking enterprise income tax amounting to NTD20 million (=NTD200 million x 50% x tax rate 20%).
- Individual Y shall calculate CFC business income pursuant to Article 12-1 of the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



CFC

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

CFC exemption threshold for enterprises

1. A CFC conducting substantial operating activities (i.e., it meets both criteria below) is exempt from the CFC rules.

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

(2)

**Investment income + dividends +
interest + royalties + rental income
+ gain on sales of assets - A - B - C**

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

C. Where a CFC is engaged in banking, securities, futures, or insurance business in the place where it is registered, the core business income

2. 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 same R.O.C. enterprise exceeds NTD 7 million, the current-year earnings of each CFC shall be subject to the CFC rules for enterprises.



CFC

To whom are the CFC rules for enterprises applicable, and how to calculate CFC investment income?

Applicable enterprises

An enterprise that holds CFC shares



CFC Investment Income



CFC Current-Year Earnings

- Legal reserve or restricted distribution of earnings
- Losses of past years assessed by tax authority



Enterprise direct holding ratio



Holding period ratio



CFC

Avoidance of double taxation

✓ When an enterprise receives dividends or earnings from a CFC

- No double taxation

The amount that has been recognized as CFC investment income, and has been included in the taxable income of the current year, shall not be included in the taxable income of the distribution year.

- 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 investment income was recognized previously, be applicable for a deduction or refund.

✓ When an enterprise disposes of CFC shares

Capital gains/losses

- Revenue from the disposal

- Original acquisition cost

- The balance of the recognized CFC investment income on the disposal date × Disposal ratio

