

Applying for an Advance Ruling under Article 4 of the Income Tax Act

Understanding Taiwan's Tax Regulations

Taiwanese resident corporations are subject to income tax on their worldwide income. Non-resident corporations, by contrast, are subject to income tax only on income derived from sources within Taiwan, generally through a branch, agent, or other taxable presence.

Article 4 Tax Exemption Regime

Article 4, Paragraph 1, Subparagraph 21 of Taiwan's Income Tax Act provides an income tax exemption for certain royalty and technical service payments made to foreign enterprises. The relevant provision states, in part:

The following categories of income shall be exempted from income tax:

21. Royalties paid to a foreign enterprise for the use of its patent rights, trademarks, and/or various kinds of special licensed rights in order to introduce new production technology or products, improve product quality, or reduce production cost under the approval of the competent authority as a special case, as well as remuneration paid to a foreign enterprise for the provision of technical services in construction of a factory for an important productive enterprise

determined and approved as such by the competent authority.

To implement this provision, the Ministry of Finance has promulgated the Rules Governing the Applications for Exemption from Income Tax on Royalty and Technical Service Fees Collected by Foreign Profit-Seeking Enterprises from Manufacturing Industries, Technical Service Industries, and the Power-Generating Industry (the "Assessment Rules").

Under the Assessment Rules, qualifying royalties may include consideration paid for the use of the following intellectual property:

- Patent rights¹
- Trademarks (which must be registered with the Intellectual Property Office of the Ministry of Economic Affairs)

¹ The patent must obtain patent registration with Taiwan IPO or any foreign countries. Home country needs to reciprocally allow Taiwan nationals to claim patent priority or the home country needs to be a member of WTO.

- Computer programs (treated as copyrighted works under Article 4 of the Copyright Act)²

Implications

Where approval under Article 4 is granted, the relevant royalty income or technical service fees earned by the foreign enterprise from Taiwan sources may be exempt from income tax. As a result, the approved income may generally be remitted offshore in full, without Taiwan income tax withholding.

Application and Two-Step Approval Process

An Article 4 application must first be submitted to the Industrial Development Bureau (the "IDB") of the Ministry of Economic Affairs on a case-by-case basis for technical assessment. Once approved by the IDB, the application will be forwarded to the National Taxation Administration (the "NTA") for final tax approval.

In the case of patents, the relevant use must fall within the scope of one of the following designated industries:

1 Precision Machinery and Intelligent Automation Industry

² Article 4 of Taiwan Copyright Act states: Works of foreign nationals that comply with one of the following conditions may enjoy copyright under this Act; provided, where the terms of a treaty or an agreement that has been ratified by resolution of the Legislative Yuan provide otherwise, such terms shall govern:

- (1) Works that are first published in the territory under the jurisdiction of the Republic of China, or are published in the territory under the jurisdiction of the Republic of China within thirty days after their first publication in territory outside the jurisdiction of the Republic of China; provided, this shall only apply where the country of such foreign national extends protection under identical circumstances to the works of persons of the Republic of China, and such protection has been verified.
- (2) Where by treaty or agreement, or under the domestic acts, regulations, or standard practice of the home country of the foreign national, works of persons of the Republic of China enjoy copyright in such country.

- 2 Vehicle Industry
- 3 High Value-Added Metal Materials Industry
- 4 Wind Power Industry
- 5 Solar Energy Industry
- 6 Next-Generation Communications and Smart Handheld Device Industries
- 7 Intelligent Electronics and Electronic Components Industry
- 8 Display Industry
- 9 LED Lighting Industry
- 10 Intelligent Living Industry
- 11 Cloud Computing Industry
- 12 High Value-Added Petrochemical Industry
- 13 High Value-Added Textile Industry
- 14 Optoelectronic Chemical Materials Industry
- 15 Health Foods Industry
- 16 Biotechnology Industry
- 17 Resource Recycling Industry
- 18 Water Reclaim and Reuse Industry
- 19 Information Services Industry
- 20 Design Services Industry

List of Required Documents for Application

The following documents are required when applying for an advance ruling:

- 1 A brief description of both companies involved, including their registered addresses
- 2 A copy of the Taiwan customer's statutory registration records, including its factory permit
- 3 A Power of Attorney (Form POA-S4), signed by the foreign company and printed on the foreign company's letterhead
- 4 A license agreement setting out the fee structure and payment terms, the term of the agreement, intellectual property rights, and other relevant patent-related information. If the agreement is in a foreign language, a

Chinese translation must be provided to the tax authorities (the translated version does not need to be signed)

- 5 A description of the patent or trademark, together with a copy of the patent or trademark registration certificate

Proof of the patent or trademark's registration with Taiwan or foreign authorities (e.g., the Intellectual Property Office of the Ministry of Economic Affairs) In addition, supporting documents must be provided to demonstrate that the licensed patent or technology can result in one of the following:

- A. A new product
- B. Improved production quality or reduced production costs
- C. A new production technology

Timeline

Review by the IDB: approximately 2–6 months

Review by the NTA: approximately 2–4 months

Our Approach

In practice, both the IDB and the NTA place significant emphasis on the location where the licensed intellectual property is actually utilized. Where a Taiwan entity pays royalties to a foreign licensor, but the licensed technology is primarily used to manufacture products outside Taiwan, the authorities are likely to deny the exemption.

Article 4 applications are generally subject to intensive scrutiny. Accordingly, depending on the specific factual circumstances, it may be prudent to evaluate alternative advance ruling options as part of a broader tax planning strategy.

As part of our approach, we conduct a preliminary assessment of the application's likelihood of success by reviewing the proposed transaction structure and supporting materials. Based on this analysis, we provide tailored recommendations to assist clients in formulating an efficient and defensible tax strategy for complex cross-border royalty and technical service arrangements.

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