

Statutory and tax implications for employing staff in Taiwan

Understanding Taiwan Labor Regulations

Before a foreign company can legally hire staff in Taiwan, it must first establish a legal entity in the country. One must also consider statutory and tax implications before performing legal and business transactions.

Statutory Requirement

Before a foreign company can legally hire staff in Taiwan, it must first establish a legal entity in the country. The most common legal entity types include the following:

- representative office
- branch office
- limited company
- closed corporation
- company limited by shares

In general, a branch office is the most tax-efficient entity type in Taiwan. Companies not intending to conduct business transactions from Taiwan may alternatively elect to establish a representative office to satisfy the minimum requirements outlined in the Companies Act, as summarized below.

Article 19 of the Companies Act

A company may not conduct its business operations or commit any juristic act in the name of its company, unless it has completed the procedure for company incorporation registration.

The person who has violated the provision set out in the preceding Paragraph shall be punished with imprisonment for a period of not more than one year, detention, or in lieu thereof or in addition thereto a fine of not more than NT\$ 150,000 and shall assume on his own the civil liabilities arising therefrom, or shall be jointly and severally liable therefore, in case there are two or more violators. In addition, the company shall be enjoined from using its corporate name for doing its business.

Article 386 of the Companies Act

Article 386 of the Companies Act states that Foreign Companies not intending to conduct business in Taiwan by means of forming a branch are still required to establish a legal entity before they can hire or appoint a representative in Taiwan. Such a company must report the following information to the government as part of the application to set up a representative office through which to legally conduct liaison activities in Taiwan:

- name, location, and nationality of the company
- share capital and date of formation of the company

- scope of business and limitation on the activities of the representative office
- name, nationality, and place of residence of the company's legal representative in Taiwan

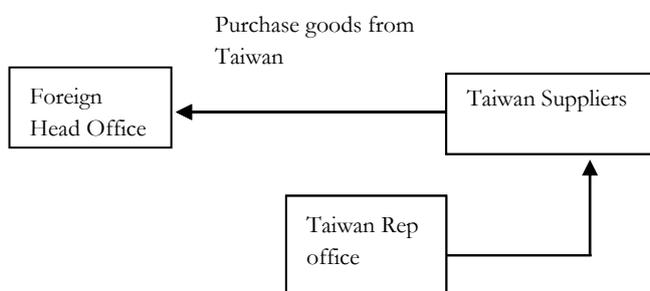
In general, a representative office does not have to file corporate income tax or VAT returns. However, Taiwan's Ministry of Finance has issued various rulings to regulate the income tax of representative offices under different conditions, as outlined below.

Question: What should a foreign company that has no intention to conduct business activity in the R.O.C. do when it needs only a representative delegated to exercise legal acts for its business operations in Taiwan?

Answer: When a foreign company has no intention to conduct business activity in the R.O.C. but needs a representative to exercise legal authority for its business operations, it shall submit a report concerning its representative delegation to the Department of Commerce (under the Ministry of Economic Affairs) in accordance with Article 386 of the Companies Act. If the said delegated representative has to be regularly present in the R.O.C., then an office shall be established in Taiwan in accordance with the same article.

Scenarios and Related Tax Implications

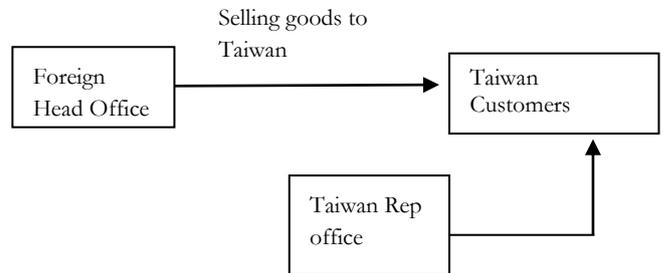
Purchasing Goods and Services from Taiwan



Based on the above scenario, the Taiwan representative office is responsible for sourcing

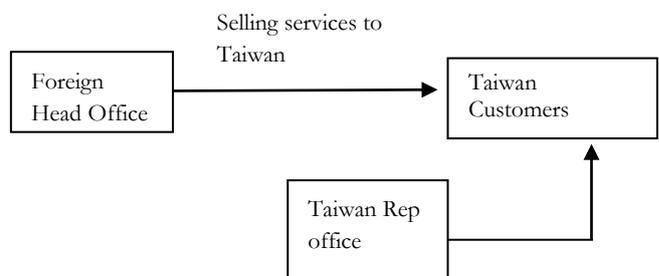
purchasing information for the foreign head office. Operating revenue remitted from the head office to the representative office is not subject to income tax (MOF 75.9.2 7558643).

Selling Goods and Commodities to Taiwan



Based on the above scenario, the Taiwan representative office is responsible for supplying information to local customers. All trading activities are conducted directly with Taiwan customers via the head office. Operating revenue remitted from the head office to the representative office is subject to 5% Value Added Tax. The representative office is required to file an income tax return.

Selling Services to Taiwan



In this scenario, as with the previous scenario, the Taiwan representative office is responsible for supplying information to local customers. The revenue generated by the head office from providing services to Taiwanese customers is deemed as income of the representative office (force of attraction rule). The representative office should be converted into a branch office and should file a corporate income tax return (MOF 76.1.9. 7575300).

*** Please note that Taiwan's tax legislation is complex, and we strongly recommend that you seek professional advice before undertaking business transactions in Taiwan.**

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