

Q&A for Levying Income Tax on Cross-Border Electronic Services

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ONE. General Rules

Q1: What are the stipulations with respect to levying income tax on a profit-seeking enterprise having its head office outside of the territory of the Republic of China (“R.O.C.”) (hereafter referred to as the foreign profit-seeking enterprise) selling electronic services to domestic buyers within the R.O.C.?

A1: The stipulations are enforced according to the “Income Tax Act,” “Enforcement Rules of the Income Tax Act,” “Directions on the Levying of Business Tax and Income Tax on Online Transactions,” “The Guidelines for the Determination of Sources of Income in the R.O.C. in accordance with Article 8 of the Income Tax Act,” and the Decree Tai-Cai-Shui-Zi No. 10604704390 promulgated by the Ministry of Finance (MOF) on 2 January 2018 (the Decree).

Q2: What are electronic services?

A2:

1. The services used are downloaded via the Internet or other electronic tools and saved to computers or mobile devices (such as smartphone, tablet computer, etc.) for use.
2. The services are used online or via other electronic tools without being saved into any devices, including services used in digital form, like online games, advertisements, audio-visual browsing, voice frequency broadcasting, information contents (such as movies, soap operas, music, etc.) and interactive communications.
3. Other services used are provided through the Internet or electronic tools, e.g., the services provided through online platforms set up by foreign profit-seeking enterprises and used at physical locations.

Q3: What kind of remunerations collected from providing services via the Internet or other electronic tools by foreign profit-seeking enterprises should be recognized as royalties?

A3: Pursuant to Subparagraph 6, Article 8 of the Income Tax Act, remunerations collected from foreign profit-seeking enterprises providing patents, trademarks, copyrights, secret formulas, and franchises for use by other persons within the R.O.C. via the Internet or other electronic devices shall be recognized as royalties not within the scope of selling cross-border electronic services.

Q4: In which situations are foreign profit-seeking enterprises (including foreign organizations, institutions, and entities) subject to income tax for selling cross-border electronic services?

A4: If a foreign profit-seeking enterprise derives any income sources from the R.O.C., it shall be subject to income tax. Whether sales amounts collected from foreign profit-seeking enterprises selling cross-border electronic services are the income from sources in the R.O.C. or not is determined in accordance with the “Guidelines for the Determination of Sources of Income in the R.O.C. in accordance with Article 8 of the Income Tax Act” and the connections between the electronic services and national economy. If the economic connection between the cross-border electronic service transaction and our country is none or minor, for example, the sales of e-books or standard software via the internet, such transaction revenue will not be attributable to our source income; consequently, it will not be subject to our income tax.

Q5: What are the types of foreign profit-seeking enterprises selling cross-border electronic services?

A5: For the purpose of collecting income tax, foreign profit-seeking enterprises selling cross-border electronic services are mainly divided into two types by

the business models and payment method. The two types are described as follow:

1. Foreign Platform Operator (“PO”) means that a foreign profit-seeking enterprise establishes platforms on the Internet (online virtual stores) for both domestic and/or overseas buyers and sellers to conduct transactions via the Internet or other electronic devices as well as collect service fees from platform users. For example, a foreign PO provides booking functions to consumers (buyers) to order accommodation services from hotels (sellers), and collects service fees from one or both parties of buyers and sellers.
2. Foreign Non-Platform Service Provider (“NPSP”) means that a foreign profit-seeking enterprise offers non-platform electronic services to the buyers, e.g., a foreign NPSP via the Internet selling e-books and standardized software, online games, online music and films, online advertisements, cloud storage computation, online courses, online video, social networking site, online consultation, online database, online auction, live broadcast, etc., in the following manners:
 - 2.1 Selling electronic services via the websites set up by itself, and collecting sales revenue from buyers.
 - 2.2 Selling electronic services through foreign POs and collecting sales revenue directly from buyers; either buyers and/or sellers pay service fees to POs.
 - 2.3 Selling electronic services through foreign POs; POs collect sales revenue from buyers and transfer the remaining amounts after deducting their service fees to the aforesaid foreign NPSPs.

Q6: What are the measures of tax levy on an individual or a profit-seeking enterprise within the Mainland Area selling cross-border electronic services and thereby having income sources from the Taiwan Area?

A6: The Decree (No. 10604704390 promulgated by the MOF on 2 January 2018) shall apply mutatis mutandis to an individual or a profit-seeking enterprise within the Mainland Area selling cross-border electronic services and thereby having income sources from the Taiwan Area.

TWO. Recognition of income sources from the R.O.C.

Q1: How can one recognize whether the remunerations collected by foreign POs are income sources from the R.O.C. or not?

A1: Where a foreign PO establishes platforms on the Internet (online virtual stores) on which onshore and offshore sellers and buyers conduct transactions, if one of the transaction parties is an individual, profit-seeking enterprise, organization, institution, or entity (hereafter the term “organization” includes institution and entity) within the R.O.C., the remunerations collected from the seller and buyer shall be recognized as income sources from the R.O.C., e.g., the foreign profit-seeking enterprise A sells electronic services to domestic individuals via the foreign PO B, then the service fees collected by B from A or from domestic individuals are regarded as income sources from the R.O.C.; the domestic profit-seeking enterprise sells electronic services to the foreign individual C via the foreign PO B, then the service fees collected by B from domestic profit-seeking enterprises or C are regarded as income sources from the R.O.C.

Q2: How can one recognize whether the remunerations collected by foreign NPSPs are income sources from the R.O.C. or not?

A2:

1. The electronic service is used without a physical location:

1.1 Where a foreign profit-seeking enterprise produces or manufactures products (e.g., stand-alone software, e-book, etc.) outside of the R.O.C., and after changing the method of presentation of the product, the enterprise transmits, downloads, and saves the product into a computer or mobile device via the Internet or other electronic means so as to offer electronic services to buyers within the R.O.C., the remunerations collected therefrom are not regarded as income from sources in the R.O.C. However, if the product is provided with the assistance and involvement of a person or profit-seeking enterprise of the R.O.C., the remunerations collected therefrom shall be recognized as income from sources in the R.O.C.

1.2 Where, via the Internet or other electronic means, a foreign profit-seeking enterprise offers real-time, interactive, handy, and continuing electronic services (e.g., online games, online films and TV series, online music, online video, online advertisements, etc.) to domestic buyers within the R.O.C., the remunerations collected therefrom shall be recognized as income sources from the R.O.C.

2. The electronic service is used at a physical location:

Where, via the Internet or other electronic means, a foreign profit-seeking enterprise selling services which are delivered by physical locations (e.g., accommodation services, automobile renting services, building repairs, performance and exhibition activities) and the locations of delivering services or running the business are within the R.O.C., the remunerations

collected are regarded as income sources from the R.O.C., pursuant to Subparagraphs 3 and 9, Article 8 of the Income Tax Act, whether it is through the assistance of a foreign PO or not. If the locations of delivering services or running the business are outside of the R.O.C., the remunerations collected therefrom shall not be recognized as income sources from the R.O.C.

Q3: Is the taxation scope of business tax and income tax the same for foreign profit-seeking enterprises selling cross-border electronic services?

A3:

1. There are differences in the scope of taxation between business tax and income tax. The taxation of business tax is based on the principle of place of consumption. A foreign profit-seeking enterprise having no fixed place of business in the R.O.C. and selling electronic services to domestic individuals is subject to business tax because the place of consumption is within the R.O.C. Income tax is based on the fact that foreign profit-seeking enterprises selling cross-border electronic services to domestic buyers (including individuals, profit-seeking enterprises, and organizations) have connections to economic activities locally. This is regarded as derived income sources from the R.O.C. so that income tax shall be levied in accordance with relevant regulations. Consequently, when a foreign profit-seeking enterprise selling electronic services is within the scope of business tax, it may not be necessary to derive income sources from the R.O.C. and therefore be liable to Income Tax. However, if a foreign profit-seeking enterprise selling electronic services is not within the scope of business tax, it may still be possible to derive income sources from the R.O.C. and thus subject to income tax.

2. Examples:

2.1 A foreign NPSP selling e-books to domestic individuals is within the scope of Business Tax. However, if the foreign NPSP can sell e-books without the assistance and involvement of individuals or profit-seeking enterprises within the R.O.C., it has no income sources from the R.O.C. and is not liable to income tax.

2.2 Domestic individuals order accommodation services of foreign hotels via foreign POs and pay to foreign POs. According to the principle of place of consumption, the sales amounts collected by foreign POs (including the fees charged by the POs) is not within the scope of business tax because the hotels are located overseas. However, since the POs provide the platform for buyers and sellers to conduct transactions, they have connections to economic activities locally because the buyer is residing within the R.O.C. The fees charged by the POs are regarded as income sources from the R.O.C. and are subject to income tax.

THREE. Calculation of taxable income

Q1: Is revenue directly subject to taxation when foreign profit-seeking enterprises sell cross-border electronic services and are recognized to derive sources of revenue from the R.O.C.?

A1: When foreign profit-seeking enterprises sell cross-border electronic services and are recognized as deriving revenue sources from the R.O.C., they may be eligible for deducting related costs and expenses from those revenues. Their taxable income source from the R.O.C. may be calculated based on the applicable domestic profit contribution ratio (“DPCR”) and be subject to income tax by applicable tax rate.

Q2: How can one be eligible for deducting costs and expenses from the revenues collected by foreign profit-seeking enterprises which are recognized to derive income sources from the R.O.C.?

A2: The methods for calculating taxable incomes are described as follow:

1. Where accounting books and documents are provided, the taxable income amount shall be calculated by deducting related costs and expenses from the verified gross revenue sources in the R.O.C.
2. Where accounting books and documents are not available, but contracts, major business items, onshore and offshore transaction flows, and other sufficient evidence are provided allowing the taxation authority to verify the applicable major business item:
 - 2.1 Providing non-platform electronic services: the taxable incomes are calculated by gross revenue sources from the R.O.C. multiplied by the Net Profit Ratio (“NPR”) of the profit standard of the same trade concerned applicable to the foreign profit-seeking enterprise
 - 2.2 Providing platform electronic services: the applicable NPR is 30%.
3. For foreign profit-seeking enterprises not applicable to the above Items 1 and 2, their taxable incomes shall be calculated based on an NPR of 30%.
4. If the actual NPR assessed by the taxation authority is higher than the NPR verified based on the above Items 2 and 3, the assessed NPR shall be applied to calculate taxable incomes.

Q3: How can one recognize the domestic profit contribution ratio within the R.O.C. (“DPCR”) for a foreign profit-seeking enterprise selling cross-border electronic services taking place onshore and offshore?

A3:

1. When the whole transaction flow is onshore or the services are both provided and used within the territory of the R.O.C., the deemed DPCR is

100%. For instance, foreign profit-seeking enterprise A sells electronic services via the website set up by itself, and A offers online advertisement services for domestic companies which request to broadcast the advertisement locally.

2. When there are sufficient documents to prove a clear division of the onshore and offshore transaction flows as well as the ratio of the contribution attributed to the services performed within the R.O.C., the DPCR shall be determined based on the supporting documents provided.
3. When the above Item 1 is not met and there is no sufficient document to fulfil the above Item 2, the deemed DPCR is 50%. However, if the actual DPCR assessed by the tax authority is higher than 50%, the assessed DPCR shall be applied.

Q4: Effective from taxable year 2017, foreign profit-seeking enterprises can apply for applicable NPR and DPCR. What are the application procedures, required documents, and the competent tax authority?

A4:

	Net Profit Ratio (“NPR”)	Domestic Profit Contribution Ratio (“DPCR”)
Application Procedures	<p>1. Application in advance: It is allowed for foreign profit-seeking enterprises to make the application by itself or to appoint an agent to make this application. The “Application Form for Net Profit Ratio and Profit Contribution Ratio Applicable to Cross-Border Electronic Services Provided by Foreign Profit-Seeking Enterprise” should be filled out and submitted to the competent tax authority.</p> <p>2. Application together with the declaration: It is allowed for foreign profit-seeking enterprises to make the application together with the declaration of income tax returns. The “Application Form for Net Profit Ratio and Profit Contribution Ratio Applicable to Cross-Border Electronic Services Provided by Foreign Profit-Seeking Enterprise” should be filled out and submitted together with the declaration of the profit-seeking enterprise income tax return to the competent tax authority.</p>	
Required Documents	<p>1. Relevant documents of major business items, e.g., financial reports.</p> <p>2. Sample(s) of relevant contracts.</p> <p>3. Description of business nature as well as onshore and offshore transaction flows</p> <p>4. Other proof documents.</p> <p>5. Power of Attorney (“POA”). (A POA shall be provided when an agent is appointed to make the application).</p>	<p>1. Documents to prove clear division of the onshore and offshore transaction flows as well as the ratio of the contribution attributed to the services performed within the R.O.C., e.g., transfer pricing documentation, work plans, records or reports, other sufficient evidence, etc.</p> <p>2. Sample(s) of relevant contracts, description of business nature, as well as onshore and offshore transaction flows are required.</p> <p>3. Power of Attorney (“POA”). (A POA shall be provided when an agent is appointed to make the application).</p>

The Competent Tax Authority	<ol style="list-style-type: none"> 1. The application is filed by a tax agent: The competent tax authority where the tax agent is located. 2. The application is filed by the withholding agent: The competent tax authority where the withholding agent is located. 3. The application is filed by the foreign profit-making enterprise itself: National Taxation Bureau of Taipei, Ministry of Finance.
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Note 1: The "Application Form for Net Profit Ratio and Profit Contribution Ratio Applicable to Cross-Border Electronic Services Provided by Foreign Profit-Seeking Enterprise" can be downloaded from the website, eTax Portal of MOF, as follows:

<https://www.etax.nat.gov.tw/etwmain/front/ETW118W/VIEW/1066>

Note 2 : For the purpose to make sure that the applicant is a foreign profit-seeking enterprise selling cross-border electronic services, sample(s) of the relevant contracts, description of business nature, as well as onshore and offshore transaction flows are required.

Q5: How can one calculate the taxable income of a foreign profit-seeking enterprise selling cross-border electronic services when applying NPR or DPCR assessed by the competent tax authorities?

A5:

1. When accounting books and documents are provided, the taxable income shall be calculated by deducting the verified costs and expenses from the revenues:

$$\text{Taxable Income} = (\text{Net Operating Revenues} - \text{Costs and Expenses}) \times \text{DPCR} + \text{Non-Operating Revenues} - \text{Non-Operating Expenses}$$

2. When accounting books and documents are not available, but foreign profit-seeking enterprises apply for NPR and DPCR assessed by the competent tax authorities:

$$\text{Taxable Income} = \text{Net Operating Revenues} \times \text{Assessed NPR} \times \text{Assessed}$$

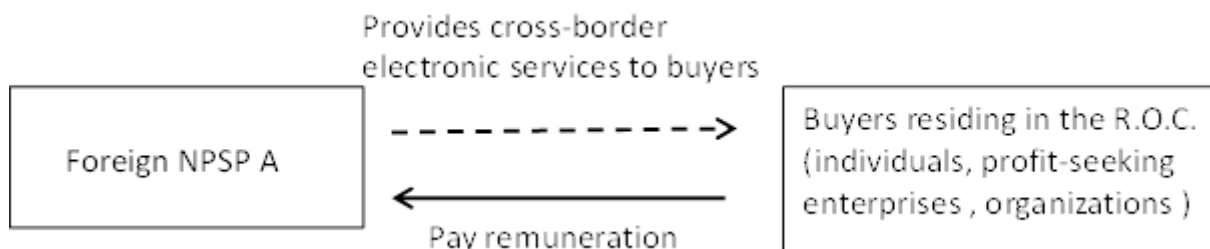
FOUR. Types of transactions and methods of taxation

Q1: What are the methods of levying income tax on foreign profit-seeking enterprises selling cross-border electronic services and deriving their income sources from the R.O.C.?

A1 :

1. For income within the withholding tax scope under Article 88 of the Income Tax Act (e.g., buyers are profit-seeking enterprises or organizations within the R.O.C.), the tax withholder shall withhold the tax at the time of payment with the applicable withholding tax rate (20%) on the "gross payment amount." However, if a foreign profit-seeking enterprise has applied with a competent tax authority and thereby given an applicable NPR and DPCR, its tax payable of the income sources from the R.O.C. shall be calculated based on the given NPR and DPCR and applicable withholding tax rate (20%). The tax withholder shall settle all the taxes withheld for the national treasury and file a withholding tax statement within ten days from the date of withholding.
2. For income not within the withholding tax scope under Article 88 of the Income Tax Act (e.g., buyers are individuals residing in the R.O.C. or foreign individuals or enterprises), pursuant to Subparagraph 1, Article 73 of the Income Tax Act, as well as Article 60 of the Enforcement Rules of the Income Tax, the foreign profit-seeking enterprise shall file an income tax return and make payment in accordance with the regulations concerned by itself or through a tax agent within the filing period for the taxable year.

Q2: What are the methods of levying income tax on foreign profit-seeking enterprise A selling cross-border electronic services (non-platform) via the website set up by itself and collecting remuneration from domestic buyers?



A2: In the above case, if the foreign profit-seeking enterprise A without a fixed place of business or business agent within the R.O.C. sells non-platform electronic services ("NPSP") via websites set up by itself and collects remunerations from buyers, the methods of levying income tax are as follow:

1. The electronic service is provided and used without a physical location or at a physical location in the R.O.C, the method of levying income tax is different depending on the identities of buyers:

1.1 The buyer is an individual residing in the R.O.C. (B to C): When the remunerations collected by A from the individual, it is not within the withholding tax scope. A shall file the income tax return and make payment in accordance with the regulations concerned by itself or through a tax agent within the filing period for the taxable year (A may apply for the applicable NPR and DPCR while filing the income tax return).

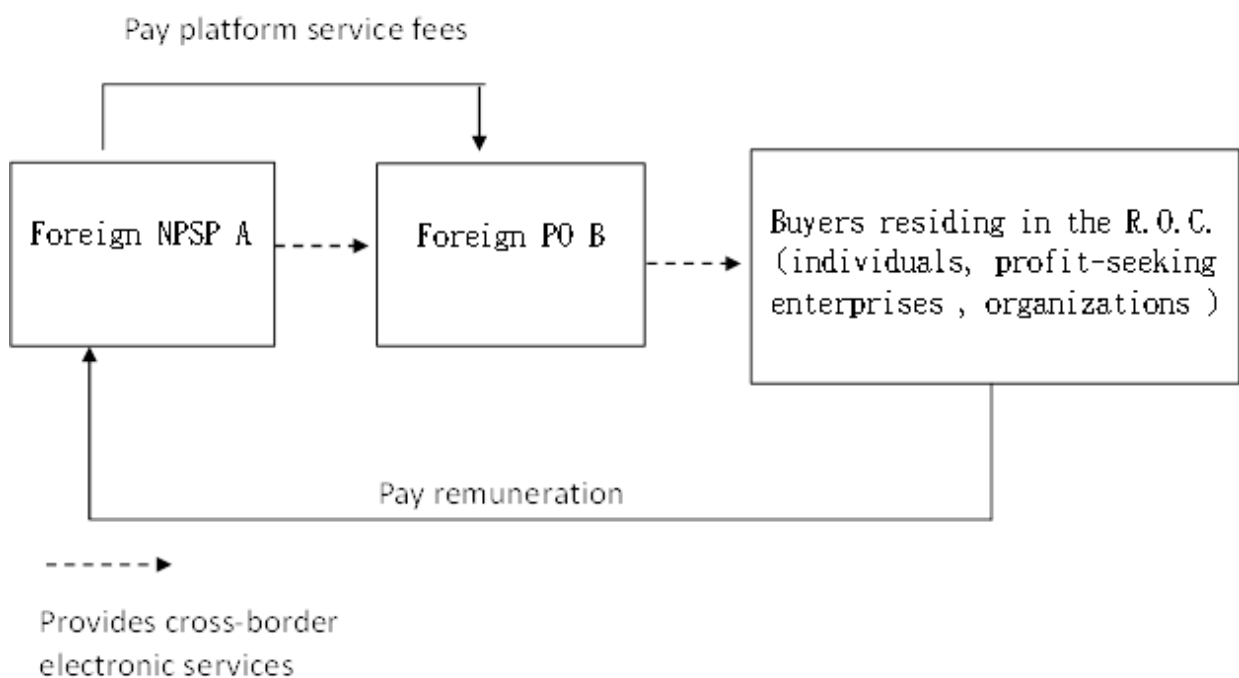
1.2 The buyer is a domestic profit-seeking enterprise or organization (B to B): The remunerations collected by A are within the withholding tax scope. The tax withholder (the domestic profit-seeking enterprise or organization) shall withhold the tax at the time of

payment with the applicable withholding rate (20%) on the "gross payment amount." However, if A has applied with the competent tax authority and thereby given an applicable NPR and DPCR, its tax payable of the income sources from the R.O.C. shall be calculated and withheld based on the given NPR and DPCR.

2. The electronic service is provided and used at a physical location outside of the R.O.C.:

If the services provided and delivered by A at physical locations (e.g., accommodation services, automobile renting services, etc.) are outside of the R.O.C., the remunerations collected therefrom are not regarded as income sources from the R.O.C. A is not obliged to file the income tax return, and the buyers are not required to withhold the tax at the time of payment.

Q3: What are the methods of levying income tax on a foreign NPSP selling electronic services through foreign POs and collecting remunerations directly from domestic buyers?



A3 : In the above case, if a foreign NPSP A without fixed place of business or business agent within the R.O.C. sells electronic services through the foreign PO B, collects remunerations directly from domestic buyers, and pays service fees to the foreign PO B (for incomes not within the withholding tax scope) the methods of levying income tax are as follows:

1. The electronic service is provided and used without a physical location or at a physical location in the R.O.C.:

1.1 The methods of levying income tax on foreign NPSP A are different depending on the identities of buyers:

1.1(1) The buyer is an individual residing in the R.O.C. (B to C): A collecting remunerations from individuals is not within the withholding tax scope. A shall file an income tax return and make payment in accordance with the regulations concerned by itself or through a tax agent within the filing period for the taxable year (A may apply for the applicable NPR and DPCR while filing the income tax return).

1.1(2) The buyer is a domestic profit-seeking enterprise or organization (B to B): The remuneration collected by A is within the withholding tax scope. The tax withholder (the domestic profit-seeking enterprise or organization) shall withhold the tax at the time of payment in accordance with the applicable withholding rate (20%) on the "gross payment amount." However, if A has applied with the competent tax authority and thereby given an applicable NPR and DPCR, its tax payable of the income sources from the R.O.C. shall be calculated and withheld based on the given NPR and DPCR.

1.2 The method of levying income tax on the foreign PO B: B provides an internet-based platform for onshore and offshore sellers and

buyers to conduct transactions, and one of the transaction parties is an individual, profit-seeking enterprise, or organization residing in the R.O.C. Considering the electronic services with the economic connections to R.O.C., the platform service fees paid by A to B shall be recognized as income sources from the R.O.C. B is obliged to file the income tax return and make tax payment in accordance with the regulations concerned by itself or through a tax agent within the filing period for the taxable year (B may apply for the applicable NPR and DPCR while filing the income tax return).

2. The electronic service is provided and used at a physical location outside the R.O.C.:

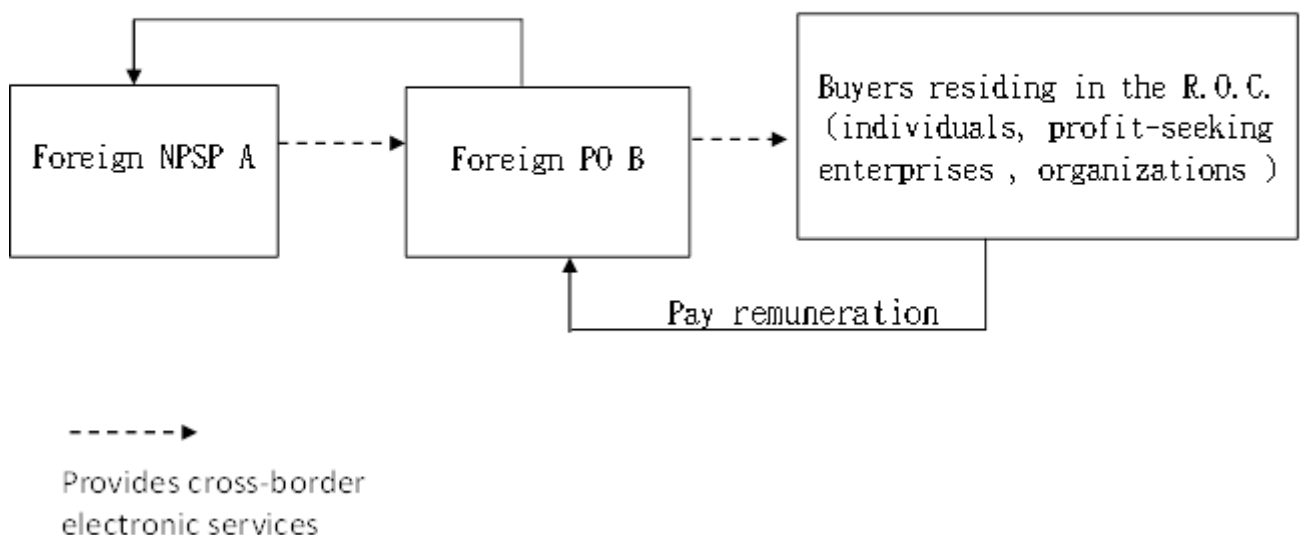
2.1 The method of levying income tax on the foreign NPSP A: When A sells services which are delivered at physical locations (e.g., accommodation services, automobile renting services, etc.) and the locations are outside the R.O.C., no matter who buys the electronic service (an individual, profit-seeking enterprise, or organization within the R.O.C.), the remunerations collected therefrom are not regarded as income sources from the R.O.C. A is not obliged to file the income tax return, and the tax withholder is not required to withhold the tax at the time of payment.

2.2 The method of levying income tax on the foreign PO B: B provides an internet-based platform for onshore and offshore sellers and buyers to conduct transactions, and one of the transaction parties is an individual, profit-seeking enterprise, or organization residing in the R.O.C. Considering the electronic services with the economic connections to the R.O.C., the platform service fees paid by A to B shall be recognized as income sources from the R.O.C. B is obliged to file the income tax return and make tax payment in accordance with

the regulations concerned by itself or through a tax agent within the filing period for the taxable year (B may apply for the applicable NPR and DPCR while filing the income tax return).

Q4: What are the methods of levying income tax on a foreign PO, in the case that a foreign NPSP sells electronic services through a foreign PO and the foreign PO collects remunerations from domestic buyers and then transfers the remaining amounts after deducting their service fees to the foreign NPSP?

Collect remuneration from buyers and transfer the remaining amounts after deducting their service fees



A4: In the above case, the foreign NPSP A selling electronic services through the foreign PO B, and B collects remunerations from buyers then transfers the remaining amounts after deducting their service fees charged to A. The methods of levying income tax on B are different depending on the identities of buyers:

1. The buyers are individuals residing in the R.O.C. (B to C): The remunerations collected by B from individuals are not within the

withholding tax scope. B is obliged to file the income tax return and make tax payment in accordance with the regulations concerned by itself or through a tax agent within the filing period for the taxable year (B may apply for the applicable NPR and DPCR while filing the income tax return).

2. The buyers are domestic profit-seeking enterprises or organizations (B to B): The remuneration collected by B is within the withholding tax scope. The tax withholder (the domestic profit-seeking enterprise) is required to withhold the tax at the time of payment in accordance with the applicable withholding rate (20%) on the "gross payment amount." However, if B has applied with the competent tax authority and thereby given an applicable NPR and DPCR, its tax payable of the income sources from the R.O.C. shall be calculated and withheld based on the given NPR and DPCR.

3. If the foreign POs claim to be taxed on the platform services fees by deducting the transferred amounts to foreign NPSPs from the remunerations collected, the things B shall do, and the documents B shall provide are as follow:

3.1 The remaining amounts received by A are recognized as income sources from the R.O.C. (e.g., the electronic service is provided and used without a physical location or at a physical location in the R.O.C.). When B transfers the remaining amounts to A, B is required to withhold taxes from the payments and settle all the taxes withheld in the previous month for the national treasury within the first ten days of each month by filling out the "Business Income Tax Withholding List (For Platform Operators Declare the Information of Collection and Payment)." B shall report to the competent tax authority with the calculation information of the withheld and paid taxes regarding the transfer of remaining remunerations to A. When the method of levying income tax is applied to the above Item 1 or 2,

the documents B shall provide are as follow:

3.1(1) The buyers are individuals (B to C): B may provide the competent tax authority with the relevant contracts and proofs of the transferred remaining amounts and other details (including the taxpayer's name, taxpayer's BAN or IDN, taxpayer's country code, transferred year, transferred amounts, etc.). In addition, the "Business Income Tax Withholding List (For Platform Operators Declare the Information of Collection and Payment)" assessed by the tax authorities shall also be provided to deduct the transferred amounts on the "Operating Revenue Adjustment Schedule."

3.1(2) The buyers are profit-seeking enterprises or organizations (B to B): After the buyers withhold the tax at the time of payment, B may provide the competent tax authority with the relevant documents mentioned in the above Item 3.1(1) to request a reassessment of the taxable incomes and to refund the excessive withholding tax by itself or through an agent.

3.2 When the remunerations collected by the foreign NPSP A is not regarded as income sources from the R.O.C. (e.g., the electronic service is provided and used at a physical location outside of the R.O.C.), and the method of levying income tax is applied to the above Item 1 or 2, the documents B shall provide are as follow:

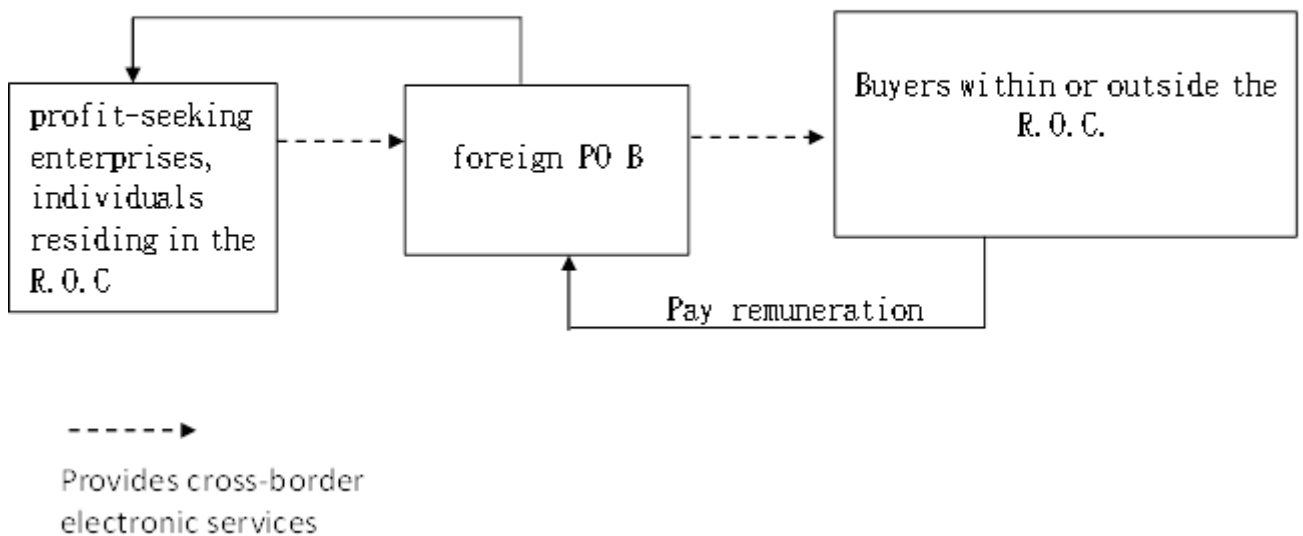
3.2(1) The buyers are individuals (B to C): B may provide the competent tax authority with the relevant contracts and proofs of the transferred amounts and other details (including the taxpayer's name, taxpayer's BAN or IDN, taxpayer's country code, transferred year, transferred amounts, etc.) and deduct the transferred amounts on the "Operating Revenue

Adjustment Schedule.”

3.2(2) The buyers are profit-seeking enterprises or organizations (B to B): After the buyers withhold the tax at the time of payment, B may provide the competent tax authority with the relevant documents mentioned in the above Item 3.2(1) to request a reassessment of the taxable incomes and to refund the excessive withholding tax by itself or through an agent.

Q5: What are the methods of levying income tax on foreign POs in the case that individuals or profit-seeking enterprises residing in the R.O.C. sell electronic services through foreign POs and collect remunerations directly from buyers?

collect sales prices from buyers and transfer the remaining amounts after deducting their service fees



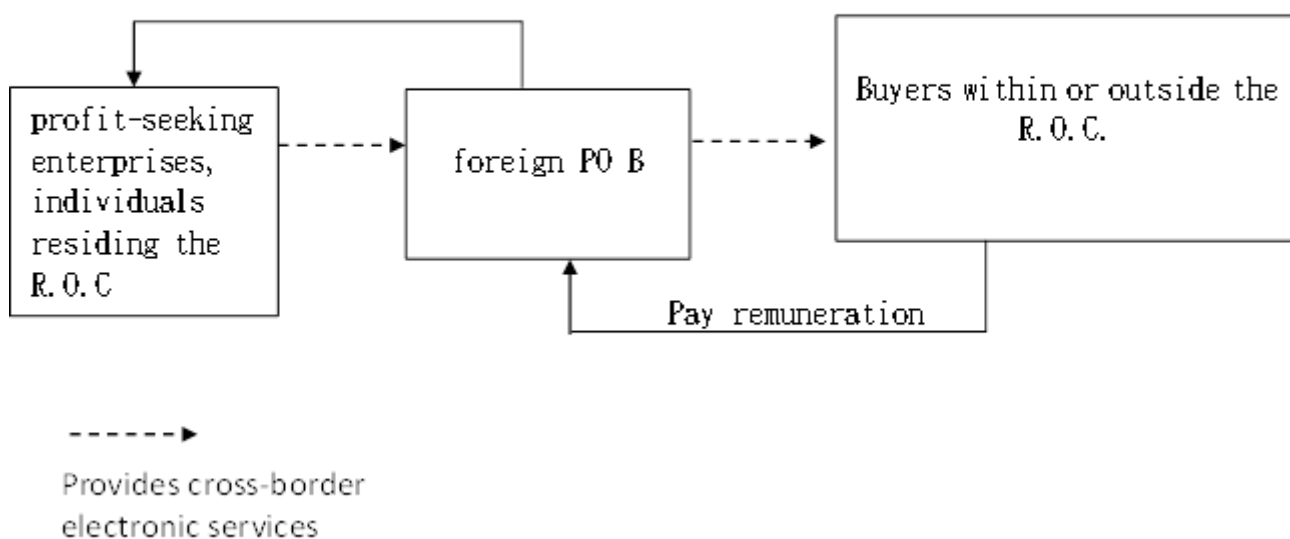
A5: In the above case, profit-seeking enterprises and individuals residing in the R.O.C. sell electronic services through the website or electronic system set up by the foreign PO B, then collect remunerations directly from domestic and foreign buyers, and pay platform service fees to B. Therefore, B provides an internet-based platform for onshore and offshore sellers and buyers to conduct transactions of whom one of the transaction parties is a resident

individual, profit-seeking enterprise, or organization within the R.O.C. Considering the electronic services have connections to local economic activities, the platform service fees shall be recognized as income sources from the R.O.C. The methods of levying income tax on B are different depending on the identities of the service fees payers:

1. The payer is an individual: B is obliged to file an income tax return and make tax payment in accordance with the regulations concerned by itself or through a tax agent (B may apply for the applicable NPR and DPCR while filing the income tax return and making tax payment).
2. The payer is a profit-seeking enterprise: The platform service fees paid to B are within the withholding tax scope. The tax withholder (the profit-seeking enterprise) shall withhold the tax at the time of payment in accordance with the applicable withholding rate (20%) on the "gross service fees." However, if B has applied with the competent tax authority and thereby given an applicable NPR and DPCR, its tax payable of the income sources from the R.O.C. shall be calculated and withheld based on the given NPR and DPCR.

Q6: What are the methods of levying income tax on the foreign POs in the case that an individual or a profit-seeking enterprise residing in the R.O.C. sells electronic services through foreign POs and engages foreign POs to collect remunerations from buyers?

collect sales prices from buyers and transfer the remaining amounts after deducting their service fees



A6: In the above case, a profit-seeking enterprise or an individual residing in the R.O.C. sells electronic services through the foreign PO B and engages B to collect remunerations from buyers. B transfers the remaining amounts to the profit-seeking enterprise or the individual after deducting platform service fees from the remunerations. The methods of levying income tax on B are different depending on the identities of the buyers:

1. Buyer is an individual residing within the R.O.C. or any non-resident buyer:
For the remunerations collected from an individual residing within the R.O.C. or any non-resident buyer, B is obliged to file an annual income tax return and make tax payment in accordance with the regulations concerned by itself or through a tax agent. If a part of the gross remunerations derived is transferred to a profit-seeking enterprise or an individual residing in the R.O.C., B may provide the competent authority

with the relevant contract, proofs of the transferred payments, and other details (including the taxpayer's name, taxpayer's BAN or IDN, taxpayer's country code, transferred year, transferred amounts, etc.).

2. The buyer is a profit-seeking enterprise or organization residing in the R.O.C.:

2.1 The profit-seeking enterprise or organization residing in the R.O.C shall withhold the tax at the time of payment in accordance with the applicable withholding rate (20%) on the "gross payment amount" and file withholding tax statements.

2.2 The foreign PO B may provide the competent tax authority with the relevant contracts, proofs of the transferred payments, and other details (including the taxpayer's name, taxpayer's BAN or IDN, taxpayer's country code, transferred year, transferred amounts, etc.) to request a reassessment of the taxable incomes and to refund the excessive withholding tax by itself or through a tax agent.

Q7: How can one deal with the types of transactions conducted by foreign profit-seeking enterprises selling cross-border electronic services not mentioned in the above Q2 to Q6?

A7: If the types of transactions conducted by foreign profit-seeking enterprises selling cross-border electronic services to domestic buyers not mentioned in the above Q2 to Q6 but are regarded as deriving income sources from the R.O.C., foreign profit-seeking enterprises are still subject to income tax in accordance with the relevant regulations. If there are any queries, please consult with the competent tax authority.

FIVE. Filing Income Tax Returns and Making Tax Payments

Q1: Under what situations are foreign profit-seeking enterprises selling cross-border electronic services required to file income tax returns?

A1: When a foreign profit-seeking enterprise has no fixed place of business or business agent within the R.O.C. and its cross-border electronic services sold have connections to economic activities locally, the remunerations derived by the foreign enterprise are income sources from the R.O.C. but not within the withholding tax scope under Article 88 of the Income Tax Act (e.g., buyers are individuals residing in the R.O.C. or foreign individuals or enterprises). The foreign profit-seeking enterprise shall file an income tax return and make tax payment in accordance with the regulations concerned by itself or through a tax agent.

Q2: What is the applicable tax rate for foreign profit-seeking enterprises selling cross-border electronic services when filing income tax returns?

A2: According to the Paragraph 1, Article 73 of the Income Tax, as well as Paragraph 3, Article 60 of the Enforcement Rules of the Income Tax Act and Paragraph 1.10, Article 3 of the Standards of Withholding Rates for Various Incomes, the applicable tax rate is 20%.

Q3: When must foreign profit-seeking enterprises selling cross-border electronic services file income tax returns and make tax payments?

A3: The foreign profit-seeking enterprises shall file income tax returns and make tax payments in accordance with the regulations concerned by themselves or through a tax agent within the period from May 1 to May 31 for the preceding taxable year. If the last day mentioned above falls on a Saturday, Sunday, public holiday, or other days off, the following day from said date in

which government administrative agencies are working is taken as the period's last day.

Q4: If foreign profit-seeking enterprises selling cross-border electronic services charge fees in a foreign currency, how can they convert into an New Taiwan Dollar ("NTD") amount to file income tax returns and make tax payments?

A4:

1. If the operating revenue of the enterprise priced in a foreign currency has been converted into NTD when filing the business tax returns, it should use the same total operating revenues in NTD in business tax returns as in income tax returns.
2. As to the operating revenues which are not subject to the scope of business tax, the annual average foreign exchange rate announced by the Bank of Taiwan for the closing prices on the spot buying rate on the last day of every month in the same year of the operating revenue should be used to convert the amounts into NTD. If there is no spot buying rate in currencies listed in the Bank of Taiwan, the cash buying rate shall be adopted. The exchange rate should be rounded to the 5th decimal place.
3. The costs, expenses, non-operating revenues, non-operating expenses, taxable income, and tax payable should use the same exchange rate as the operating revenues adopted to convert into NTD.
4. If the last day mentioned above falls on a Saturday, Sunday, public holiday, or other days off, the following day from said date in which government administrative agencies are working is taken as the period's last day.
5. The annual average foreign exchange rate is announced at eTax portal, Ministry of Finance. Please go to the following website:
<https://www.etax.nat.gov.tw/etwmain/front/ETW118W/VIEW/1126>

Q5: How does a foreign profit-seeking enterprise selling cross-border electronic services file its income tax return and make its tax payment?

A5: The foreign profit-seeking enterprise shall file an income tax return and make payment in accordance with the regulations concerned at eTax portal, Ministry of Finance by itself or through a tax agent within the period from May 1 to May 31 for the preceding taxable year. Please go to the website and check the steps as follows:

<https://www.etax.nat.gov.tw/etwmain/front/ETW118W/VIEW/1064>

1. Select “Apply for Qualification (including the agent) Registration” to complete the qualification registration. If the qualification registration has been done in the previous year, it is not necessary to select this item.
2. After registration is approved, select “Apply for Account Number and Password” to complete the account number and password registration. If the account number and password registration has been done in the previous year, it is not necessary to select this item.
3. Select “File and Pay Profit-seeking Enterprise Income Tax/Entry and Correction of Filing Data” to fill in information and complete the income tax return.

Q6: What are the application procedures and required documents when a foreign profit-seeking enterprise selling cross-border electronic services files its income tax return?

A6:

	A foreign profit-seeking enterprise which has conducted the taxation registration pursuant to the provisions of the Business Tax Act (with Tax ID number)	A foreign profit-seeking enterprise which has not conducted the taxation registration pursuant to the provisions of the Business Tax Act (without Tax ID number)
Login path	Please go to the following website to apply for qualification registration at eTax portal, Ministry of Finance and use “the business tax account number and password”: https://www.etax.nat.gov.tw/etwmain/front/ETW118W/VIEW/1112	Please go to the following website to apply for qualification registration at eTax portal, Ministry of Finance and fill in all necessary information: https://www.etax.nat.gov.tw/etwmain/front/ETW118W/VIEW/1112
Information required to be filled in	<ol style="list-style-type: none"> Information about the tax agent (if a tax agent is appointed): Tax ID number/ID card number, Name, Correspondence address, Telephone number, E-mail address, duration of appointment, scope of appointment and name of representative person. (If the tax agent is an individual, it is not required to be filled in.) Bank account information. 	<ol style="list-style-type: none"> Basic information: Name, Name of representative person, Domain name, and Website address. Contact information: Telephone number, Correspondence address, and E-mail address. Registered country (area) information: Registration country (area), Registration name, and Registration number. Information of the tax agent (if a tax agent is appointed): Tax ID number/ID card number, Name, Correspondence address, Telephone number, E-mail address, duration of appointment, scope of appointment, and name of representative person. (If the tax agent is an individual, it is not required to be filled in.) Bank account information.

<p>Documents required to be submitted</p>	<p>Required documents (E-files upload needed): The appointed tax agent shall submit the power of attorney, the letter of commitment, and other related documents.</p>	<p>1. Official approval or permission of qualification registration from the competent authorities of a foreign government should be notarized (verified/validated) by the embassy/consulate/representative office of the R.O.C or other institutions recognized by the R.O.C. in a foreign country where the foreign profit-seeking enterprise is located, the local court or notary public, the embassy/consulate/representative office in the R.O.C. of a foreign country where the foreign profit-seeking enterprise is located, or be notarized (verified/validated) according to the Notarization Law in the R.O.C.; a Chinese translation shall be attached with any document listed above.</p> <p>2. Required documents (E-files upload needed): The appointed tax agent shall submit the power of attorney, the letter of commitment, and other related documents.</p>
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Q7: When can a foreign profit-seeking enterprise apply to modify any changes in registration?

A7: When there is any change in registration (including change of a tax agent, duration of appointment, or scope of appointment), the foreign profit-seeking enterprise shall, within fifteen days from the occurrence of the facts, apply for modification registration at eTax portal, Ministry of Finance, at the following website and select “Apply for Qualification (including the agent) Registration”:

<https://www.etax.nat.gov.tw/etwmain/front/ETW118W/VIEW/1112>

Q8: How does a foreign profit-seeking enterprise or its tax agent apply for an account number and password after receiving an approval for qualification registration?

A8:

1. Foreign Profit-seeking Enterprise:

1.1 If a foreign profit-seeking enterprise which has conducted the taxation registration pursuant to the provisions of the Business Tax Act (with Tax ID number), the “business tax account number and password” can be used. It is not necessary to apply again.

1.2 If a foreign profit-seeking enterprise which has not conducted the taxation registration pursuant to the provisions of the Business Tax Act (without Tax ID number), the foreign profit-seeking enterprise shall apply for the account number and password registration after receiving an approval of qualification registration from the competent authorities at eTax portal, Ministry of Finance. Please go to the following website and select “Register for Account Number and Password”:

<https://www.etax.nat.gov.tw/etwmain/front/ETW118W/VIEW/1112>

2. The Tax Agent:

After receiving an approval of qualification registration from the competent authorities, the tax agent shall apply for the account number and password registration at eTax portal, Ministry of Finance. Please go to the following website and select “Register for Account Number and Password”:

<https://www.etax.nat.gov.tw/etwmain/front/ETW118W/VIEW/1112>

Q9: How does foreign profit-seeking enterprise selling cross-border electronic services pay income tax? Is it allowable to fill the tax return and pay income tax in a foreign currency?

A9:

1. Foreign profit-seeking enterprises selling cross-border electronic services with a tax agent can choose one of the following payment methods:

1.1 Cash payment: In the taxation registration platform of the Ministry of Finance (<https://www.etax.nat.gov.tw>), please select “Pay at Counter” and print out the tax bill with barcodes. The income tax can be paid at any commissioned bank in cash or by check. A tax bill under NT\$20,000 can be paid at a convenience store in cash.

1.2 Remittance payment: taxpayers should pay for remittance fees and related processing fees.

2. Foreign profit-seeking enterprises selling cross-border electronic services without a tax agent can choose to pay by a designated bank account remittance and pay for remittance fees and related processing fees by themselves. Please refer to the following website for detailed descriptions and select “Download Document and File”:

<https://www.etax.nat.gov.tw/etwmain/front/ETW118W/VIEW/1066>

If foreign profit-seeking enterprises are unable to pay tax in NTD via an overseas remittance bank, the aforesaid remittance bank should contact Bank of Taiwan, Cheng Chung Branch (BKTWTWTP045) by telegram (SWIFT Message type: MT103) to request the equivalent tax due converted from NTD to foreign currencies. Bank of Taiwan, Cheng Chung Branch will inform the taxpayers about the currency exchange rates and charge relevant service charges. Please plan enough time for international telegram transfer to avoid late tax payments.

Q10: What documents should be submitted when foreign profit-seeking enterprises file their income tax returns?

A10:

1. Qualifications and tax agent-related documents: Please go to the following website at eTax portal, Ministry of Finance, to upload attachment files:
<https://www.etax.nat.gov.tw/etwmain/front/ETW118W/VIEW/1112>.
2. Filing income tax return-related documents: For the application or approval of a foreign profit-seeking enterprise with the applicable NPR and DPCR, operating revenue adjustment schedule, declaration of foreign profit-seeking enterprise having no fixed place of business, and business agent, please go to the following website and select “Declaration and correction within the statutory period” at eTax portal, Ministry of Finance, to upload attachment files:
<https://www.etax.nat.gov.tw/etwmain/front/ETW118W/VIEW/1114>
3. All uploaded files must have filled in the contents of the file. The types of uploaded qualifications, tax agent-related files are limited to doc, docx, xls,xlsx, odt, ods, zip, rar, pdf, jpg, tif, or gift. The number of uploaded qualifications, tax agent-related documents is limited to five files each time, and the total file size cannot exceed 8MB. The types of uploaded income tax return-related files are limited to pdf and every file size of income tax return-related documents cannot exceed 10MB.

Q11: How does a foreign profit-seeking enterprise make corrections to the contents of the income tax return?

A11:

1. Declaration and correction within the statutory period:
Please go to the following website and select “Entry and Correction of Filing Data/Declaration and correction within the statutory period” to

correct the filing data at eTax portal, Ministry of Finance, and to re-upload filing data:

<https://www.etax.nat.gov.tw/etwmain/front/ETW118W/VIEW/1114>

2. Declaration and correction beyond the statutory period:

Please go to the following website and select “Entry and Correction of Filing Data /Declaration and correction beyond the statutory period” to correct the filing data at eTax portal, Ministry of Finance, and to re-upload filing data:

<https://www.etax.nat.gov.tw/etwmain/front/ETW118W/VIEW/1114>

SIX. The Tax Agent

Q1: What are the qualifications of a tax agent for a foreign profit-seeking enterprise?

A1: Any of the following persons approved by the competent tax authorities can be appointed as a tax agent by foreign profit-seeking enterprises:

1. An individual residing within the territory of the R.O.C.
2. An enterprise with a fixed place of business within the territory of the R.O.C.

Q2: What are the application procedures and who is the competent tax authority for a foreign profit-seeking enterprise applying for an approval of a tax agent?

A2:

1. Application Procedures:

A foreign profit-seeking enterprise can apply for an approval of qualification registration at eTax portal, Ministry of Finance, at the following website and select “Apply for Qualification (including the agent) Registration” by uploading the commitment letter or engagement letter.

When changing the tax agent, the procedure is the same.

<https://www.etax.nat.gov.tw/etwmain/front/ETW118W/VIEW/1112>

2. The competent tax authority:

2.1 Commissioned by individuals: It is the competent tax authority in the location where the individual's correspondence address is.

2.2 Commissioned by profit-seeking enterprises: It is the competent tax authority in the location where the profit-seeking enterprise's registered address is.

SEVEN. Withholding

Q1: How does one file the withholding tax when domestic profit-seeking enterprises or organizations pay for the use of cross-border electronic services provided by foreign profit-seeking enterprises?

A1:

1. When domestic profit-seeking enterprises or organizations are the buyers and make remunerations to foreign profit-seeking enterprises for the use of cross-border electronic services (including foreign NPSPs and foreign POs), if the income is sourced from the R.O.C., the gross payments are subject to a withholding tax of 20% at the time of payment. If a foreign profit-seeking enterprise selling cross-border electronic services has applied with the competent tax authority in accordance with the above regulations and thereby given an applicable NPR and DPCR, the net taxable income shall be calculated based on the given NPR and DPCR and subject to a withholding tax of 20%.
2. When domestic profit-seeking enterprises or organizations sell cross-border electronic services via foreign POs and collect remunerations from buyers by themselves, the platform service fees paid by domestic

profit-seeking enterprises or organizations to the foreign POs are subject to a withholding tax of 20%. If the foreign PO has applied with the competent tax authority and thereby given an applicable NPR and DPCR, the taxable income shall be calculated based on the given NPR and DPCR and subject to a withholding tax of 20%.

3. Domestic profit-seeking enterprises or organizations sell cross-border electronic services via foreign POs but do not collect the remunerations by themselves: The foreign POs collect the remunerations from buyers and transfer the remaining amounts after deducting platform service fees to domestic profit-seeking enterprises or organizations. The domestic profit-seeking enterprises or organizations are not obliged to withhold the tax from the platform services fees derived by foreign POs.

Q2: What are the application procedures when foreign POs claim to be taxed on the platform service fees and submit proof of income tax paid in the R.O.C.?

A2: If the foreign POs claim to be taxed on the platform service fees by deducting the transferred amounts to foreign NPSPs from the remunerations collected, the transferred amounts are regarded as income sources from the R.O.C. The foreign POs need to withhold the taxes from the transferred amounts and pay all the taxes withheld in the previous month to the national treasury within the first ten days of each month. The “Business Income Tax Detailed Withholding Tax Return (For Foreign Platform Operators Declare Collection and Transfer Information)” shall be filled out and reported to the competent tax authority.

Q3: How does one convert the amount of withholding tax into NTD when the transferred amounts from foreign POs to foreign NPSPs are priced in a

foreign currency?

A3:

1. If the amounts that the foreign POs transferred to foreign NPSPs are priced in a foreign currency, the amounts should be converted into NTD by using the foreign exchange rate announced by the Bank of Taiwan for the closing prices on the spot buying rate on the last day of the month that the amounts were transferred. If the last day falls on a Saturday, Sunday, public holiday, or other days off, the foreign exchange rate on the following day from said date in which government administrative agencies are working shall be taken. If there is no spot buying rate in currencies listed in the Bank of Taiwan, the cash buying rate shall be adopted.
2. Foreign exchange rates are announced at eTax portal, Ministry of Finance. Please go to the following website and select “Introduction and download of Exchange rate”:

<https://www.etax.nat.gov.tw/etwmain/front/ETW118W/VIEW/1126>

Q4: How does one refund the overpaid tax on the taxable incomes derived by foreign profit-seeking enterprises selling cross-border electronic services?

A4: Effective from 2017, if the withholding tax amount of a foreign profit-seeking enterprise selling cross-border electronic services is different from the income tax payable amount assessed by the competent tax authorities by applying NPR, DPCR, or transferring ratio, it may file an application for a refund of the excessive tax to the competent tax authority by itself or through an agent within a period of five years starting from the date the income is received. The competent tax authority will transfer the application to the respective local Taxation Bureaus to refund the excessive tax. The competent tax authority, application procedures, and required documents are as follow:

1. Competent Tax Authority:

1.1 Foreign profit-seeking enterprises making application by itself: It is the National Taxation Bureau of Taipei, Ministry of Finance.

1.2 Foreign profit-seeking enterprises engage a tax agent to make application: It is the competent tax authority where the tax agent is located.

2. Application Procedures: The taxpayers should collect all the withholding tax data from the local Taxation Bureaus and prepare a summary of refundable excess withholding tax amounts by withholding units and by the local Taxation Bureaus. The total refundable excess taxes shall be calculated and reported to the competent tax authority to claim refunding the excessive tax.

3. Required Documents:

3.1 Application letter.

3.2 Power of Attorney. (Not necessary for self-applicants).

3.3 Copies of the approval letters issued by the competent tax authorities to assess the taxable income by NPR and DPCR.

3.4 If foreign POs apply the taxable incomes with the platform service fees by deducting the transferred amount from the remunerations collected from buyers to refund the excessive tax, and the amount is transferred to foreign NPSPs, domestic profit-seeking enterprises or individuals, the relevant contracts, transfer payment certificate, and other transfer details shall be submitted (included the taxpayer's name, tax identification number, the country code, and the transferred year and the transferred amount, etc.). If the amount transferred to foreign NPSPs is regarded as income sources from the R.O.C., the proof of income tax payment shall be submitted, e.g., the declaration of "Business Income Tax Detailed Withholding Tax

Return (For Foreign Platform Operators Declare Collection and Transfer Information)” assessed by the competent tax authorities. If the amount transferred to foreign NPSPs is not regarded as income sources from the R.O.C. or the transferees are domestic profit-seeking enterprises or individuals, it is not required to submit the proof of income tax payment.

3.5 Contract (copy).

3.6 Payment Request Proof (copy).

3.7 Business Income Tax Withholding Statement (the 2nd copy).

3.8 Summary for applying refund of the excess withholding taxes. (This is not required if there is only one withholding unit.).

EIGHT. Penalty Provisions

Q1: In the case of a taxpayer who has filed an income tax return in accordance with the relevant provisions, what are the penalties if there is any omission or under-reporting of income taxable?

A1: According to Paragraph 1, Article 110 of the Income Tax Act, the penalties are no more than two times the amount of tax evaded.

Q2: In the case of a taxpayer who fails to file an income tax return in accordance with the relevant provisions, what are the penalties if there is any omission or under-reporting of income taxable?

A2: According to Paragraph 2, Article 110 of the Income Tax Act, the penalties are no more than three times the amount of tax evaded.

Q3: What are the penalties if a tax agent has failed to file income tax returns and pay the income taxes for a foreign profit-seeking enterprise within the

time limit?

A3: According to Article 113 of the Income Tax Act, the penalties for taxpayers are applicable to the tax agents who violate the relevant provisions of the Income Tax Act.