

EY Family Office

Succession Forward looking insights

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Trustee of foreign trust:

Taiwan Ministry of Finance issued a tax decree clarifying the trust income reporting obligations for trustees

Following Tax Decree No.11204665340 issued by the Taiwan Ministry of Finance (MOF) on 4 January 2024, which clarified the tax implications of the shares or capital of foreign affiliated enterprises registered in a low-tax burden country or jurisdiction that are settled as the trust properties under the Controlled Foreign Company (CFC) regimes in Taiwan, the MOF further issued Tax Decree No.11304525870 (the "Directive") on 10 July 2024 to supplement and clarify the trust income reporting obligations for trustees for fiscal year 2024 and subsequent years.

After the issuance of the Directive, it is crucial for trust settlors, beneficiaries, and trustees to be aware of their respective tax filing and reporting obligations and take timely action to adhere to the CFC regimes in Taiwan.

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Key summary of Tax Decree No. 11304525870

► Who is liable for the trust reporting obligations under the Taiwan CFC regimes

If a trust meets both of the following conditions, the trustee shall be subject to the obligations to report to the Taiwan tax authority.

- ① The settlor settles the shares or capital of foreign affiliated enterprises registered in a low-tax burden country or jurisdiction as the trust properties (the "Trust Shareholding"); and
- ② The settlor or beneficiaries are subject to the Taiwan CFC tax regulations (e.g., Article 43-3 of the Income Tax Act and Article 12-1 of the Basic Income Tax Act) for the Trust Shareholding.

► Reporting years

The trustee is required to report trust benefit attributed to the settlor or the beneficiaries for fiscal year 2024 and subsequent years.

► Required reporting information

The trustee shall report the required information of the entire trust properties (including properties other than the Trust Shareholding) under the same trust, which includes the inventory of trust property, the revenue and expenditure statements, the statement of trust benefits accrued and payable to trust beneficiaries, etc.

► Apply to competent tax authority for tax code numbers

The trustee shall apply for a tax code number of tax withholder for trust purposes with the competent tax authority specified below based on the identity of trustee:

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► Apply to competent tax authority for tax code numbers (Cont.)

Identity of trustee	Competent tax authority
Individual resident of Taiwan	<ul style="list-style-type: none"> • Having household registration: Where the household registration is located • Not having household registration: Where the residence is located
The profit-seeking enterprise having its head office within Taiwan	Where the head office is registered
The profit-seeking enterprise not having its head office within Taiwan, but having a fixed place of business (FPB) within Taiwan	<ul style="list-style-type: none"> • Sole FPB: Where the FPB is registered • Two or more FPB: Where the FPB designated is registered
The profit-seeking enterprise not having its head office or FPB within Taiwan, but having a business agent (BA) authorized to handle the aforementioned trust matters	Where the BA is registered
For trustees not identified under any of the preceding four categories	<ul style="list-style-type: none"> • Filing by trustee itself: Where the central government of Taiwan is located. • Filing by an agent appointed by the trustees: Where the agent is located. • The qualification of an agent: <ul style="list-style-type: none"> - An individual residing within Taiwan, or - An enterprise, institution, group, or organization with a FPB within Taiwan

Trustee of foreign trust: Taiwan Ministry of Finance issued a tax decree clarifying the trust income reporting obligations for trustees



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“ In practice, offshore trust companies rarely have a FPB or a BA in Taiwan. Consequently, they will be limited to either performing this reporting work in-house or engaging an agent to assist with it. Handling this work in-house can be challenging for offshore trust companies due to the complexity of tasks involved, such as the calculations of CFC income, preparations of the necessary documents, and correspondence with the tax authority. Therefore, it is recommended to engage a local CPA firm, such as EY Taiwan, to assist with the reporting requirements. ”



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The Directive provides a clear explanation of the reporting obligations that trustees have under the Taiwan CFC regimes. It is important for settlors, beneficiaries, and trustees to be fully aware of the implications that arise with the issuance of the Directive. They should take timely action to understand the requirements and prepare for compliance with the reporting obligations as soon as possible to ensure adherence to the updated tax laws and regulations.

Action required for trustees

- ▶ **Examine if the trust property includes the Trust Shareholding**
 - If the trust property includes the Trust Shareholding, trustees should be aware of and understand the trust reporting obligations under the Taiwan CFC regimes.
 - According to the Directive, the trust reporting obligations are not limited to trustees located in Taiwan. **Both Taiwanese and foreign trustees, including foreign trust companies, are included within the scope of the Directive and thus subject to the reporting obligations.**

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Insight from EY family office (Cont.)

Action required for trustees (Cont.)

► Be mindful of the reporting deadlines

- Trustees are required to report the previous year's trust information by the end of January each year. Thus, trustees must complete the reporting for fiscal year 2024 by the end of January 2025. In the event trustees are unable to manage the reporting on their own, they should promptly arrange for an agent to assist in the process.

Action required for settlors and beneficiaries

► Review the existing trust structure and assess personal tax risks

Starting from 2025, trustees are required to report trust information for the previous year as stipulated under the Taiwan CFC regimes. When the tax authority receives the reporting data from the trustees, it will be able to verify if the settlor or the beneficiaries has complied with the tax filing requirements for CFC income. Settlors and beneficiaries are advised to review their existing trust structures and evaluate their potential tax risks. For those who have not complied with the CFC income filing requirements, they should be aware of the increased tax risks going forward and seek assistance from professional accountants in the reporting process.

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If you have any questions or need for further advice after reading the article, we sincerely welcome you to email us to describe your needs. Upon receiving your email, we will contact you as earliest as possible and schedule an appointment.

Ernst & Young Family Office looks forward to receiving your email!! familyoffice@tw.ey.com

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Appendix : Decree No. 11304525870 issued by the Ministry of Finance on 10 July 2024

Supplement to Decree No.11204665340 issued by the Ministry of Finance on 4 January 2024

When a settlor settles the shares or capital of a foreign affiliated enterprise registered in a low-tax burden country or jurisdiction (hereinafter referred to as “Shares of Affiliated Enterprise in Low-tax Burden Region”) as trust properties, and when the settlor or the beneficiaries are subject to Article 43-3 of the Income Tax Act and Article 12-1 of the Income Basic Tax Act for the Trust Shareholding, the settlor or the beneficiary shall comply with Paragraphs 1 and 2 of the Decree No.11204665340 issued by the Ministry of Finance on 4 January 2024. The trustee shall also follow the guidance listed below in accordance with Paragraph 3 of the same decree for the trust reporting obligation of fiscal year 2024 and subsequent years:

1. The entire trust property of the same trust (including properties other than Shares of Affiliated Enterprise in Low-tax Burden Region) shall follow the Income Tax Act, including Article 6-2 (establishment of separate accounting books, recording the details of the collection and disbursement transactions, and obtaining certificates), Article 89-1 (being exempted from withholding tax or to withholding the difference in tax payable, and issuance of withholding certificates), and Article 92-1 (submission of the inventory of property, revenue and expenditure statements, statement of trust benefits accrued and payable to trust beneficiaries and the statement of withholding tax and other relevant documents, trustees shall also issue withholding certificates or withholding exemption certificates, relevant certificates and receipts to taxpayers.)
2. The trustee shall apply for a tax code number of tax withholder for trust purposes with the competent tax authority specified below based on the identity of trustee:
 - 1) If the trustee is an individual residing in Taiwan, the application shall be submitted to the competent tax collection authority where the household registration is located; for those without household registration, the application shall be submitted to the competent tax collection authority where the residence is located.
 - 2) If the trustee is a profit-seeking enterprise having its head office within Taiwan, the application shall be submitted by the head office to the competent tax collection authority where the head office is registered.

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Appendix : Decree No. 11304525870 issued by the Ministry of Finance on July 10, 2024

Adding explanation on Decree No. 11204665340 issued by the Ministry of Finance on January 4, 2024. (Cont.)

- 3) If the trustee is a profit-seeking enterprise having its head office outside Taiwan but having a fixed place of business within Taiwan, the application shall be submitted by the fixed place of business to the competent tax collection authority of where it is registered; if the profit-seeking enterprise has two or more fixed places of business within Taiwan, one of the fixed places of business may be designated to submit the application.
 - 4) If the profit-seeking enterprise having its head office outside Taiwan, and it has no fixed place of business within Taiwan but does have a business agent authorized to handle the aforementioned trust matters, then the application shall be submitted by the business agent to the competent tax collection authority where the business agency is registered.
 - 5) For trustees not identified under the preceding four categories, the application shall be submitted to the competent tax authority where the central government is located.
3. If the trustee specified in Subparagraph 5 of the preceding paragraph, who cannot handle the matters according to the preceding Paragraphs 1 and 2 on their own, they shall appoint domestic individuals or profit-seeking enterprises, institutions or organizations with a fixed place of business within Taiwan as agents on their behalf. The agent shall fill out a power of attorney, attach identification documents, and file the application to the competent tax collection authority where the agent is registered for approval. The agent is responsible for applying for a tax code number of tax withholder for trust purposes and handling the trust reporting obligation matters.

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