

EY Family Office

Succession Forward-looking insights

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Taiwan CFC implications: The next step for offshore trustees

In light of the recent rulings on Taiwan Controlled Foreign Company (CFC) rules issued by Taiwan Ministry of Finance (MOF) on 4 January and 10 July 2024, offshore trustees may be subject to Taiwan CFC reporting obligations starting from 2024 if their Taiwan clients' offshore trusts fall under Taiwan CFC rules. Consequently, it is imperative for offshore trustees to promptly examine the offshore trust structures of their clients in Taiwan and seek professional advice to evaluate their potential exposure to CFC-related risks.

This article intends to depict frequently encountered offshore trust structures and provide insights into the potential risks and uncertainties that offshore trustees may face concerning Taiwan CFC reporting obligations.

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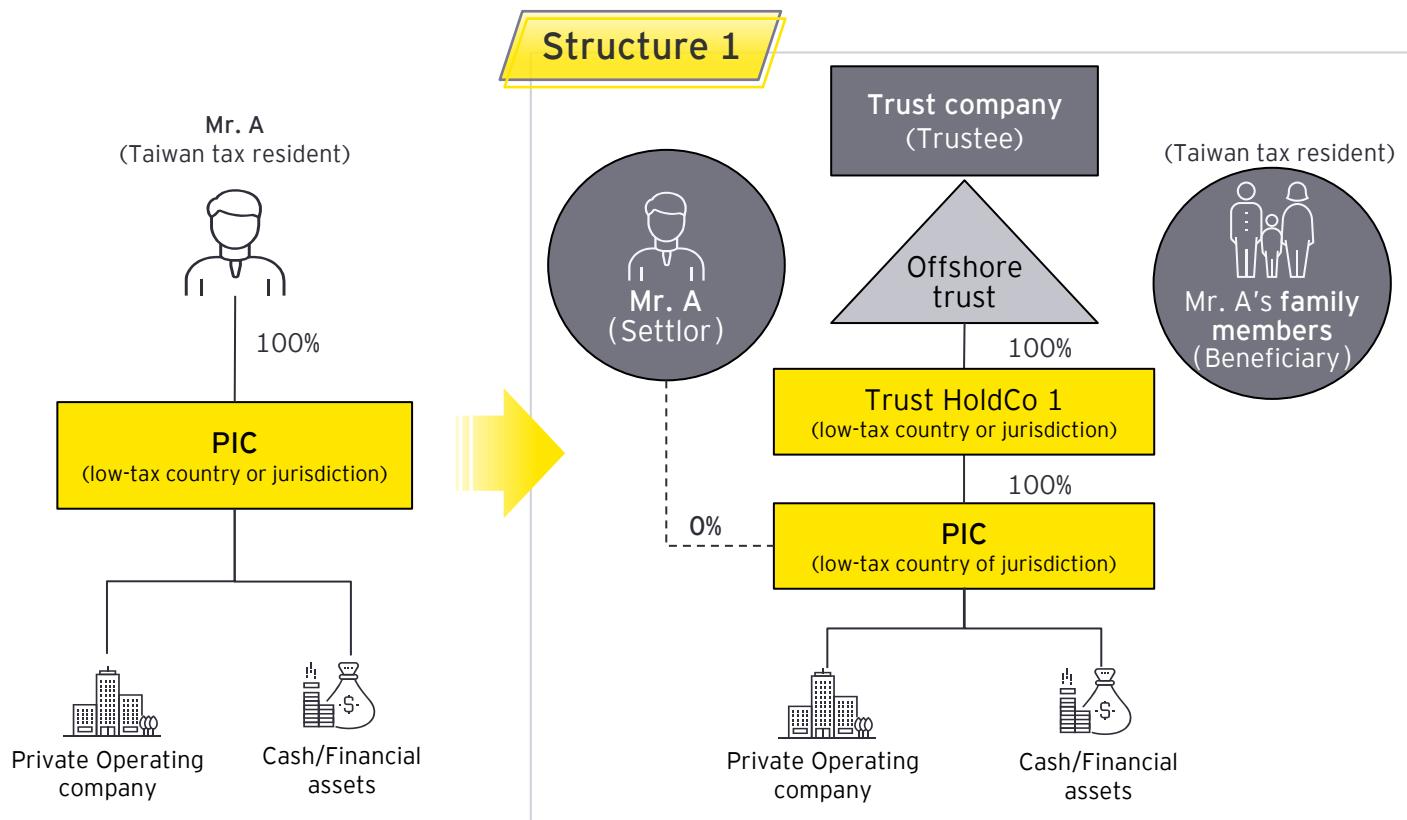
1 CFC definition

Under Taiwan CFC rules, a foreign company is a CFC of individuals if they meet either one of the following criteria:

- 1) Directly or indirectly (through related parties) holding **50%** or more of the shares or capital of a foreign company registered in a low-tax country or jurisdiction, or
- 2) Having **significant influence** on such a foreign company.

The term "significant influence" as stipulated under Taiwan CFC rule refers to the ability to control the personnel, finance, or business operations of a foreign company registered in a low-tax country or jurisdiction.

2 Common offshore trust structures



In Structure 1, Mr. A contributes **his shares in the private investment company** (hereinafter "PIC") to the trust as trust property, and the shares of the PIC are subsequently transferred to Trust HoldCo 1, a holding company newly established and held by the trustee specifically for this purpose.



2 Common offshore trust structures (Cont.)

Structure 1

Implications for offshore trustees

According to the tax rulings issued by the MOF on 4 January and 10 July 2024, there is extremely high risk that the PIC would be considered a CFC of Mr. A and/or his family members, even though they do not directly hold the shares in PIC after the trust's establishment. Moreover, since the trust property contributed by Mr. A includes shares of his CFC, the trustee would consequently be subject to Taiwan CFC reporting obligations, which require trustees to file and disclose information related to the trust, such as details of the trust property, income statement, and distribution statement of trust income.

Structure 1

Action to take

◆ Preparation for the upcoming first reporting deadline

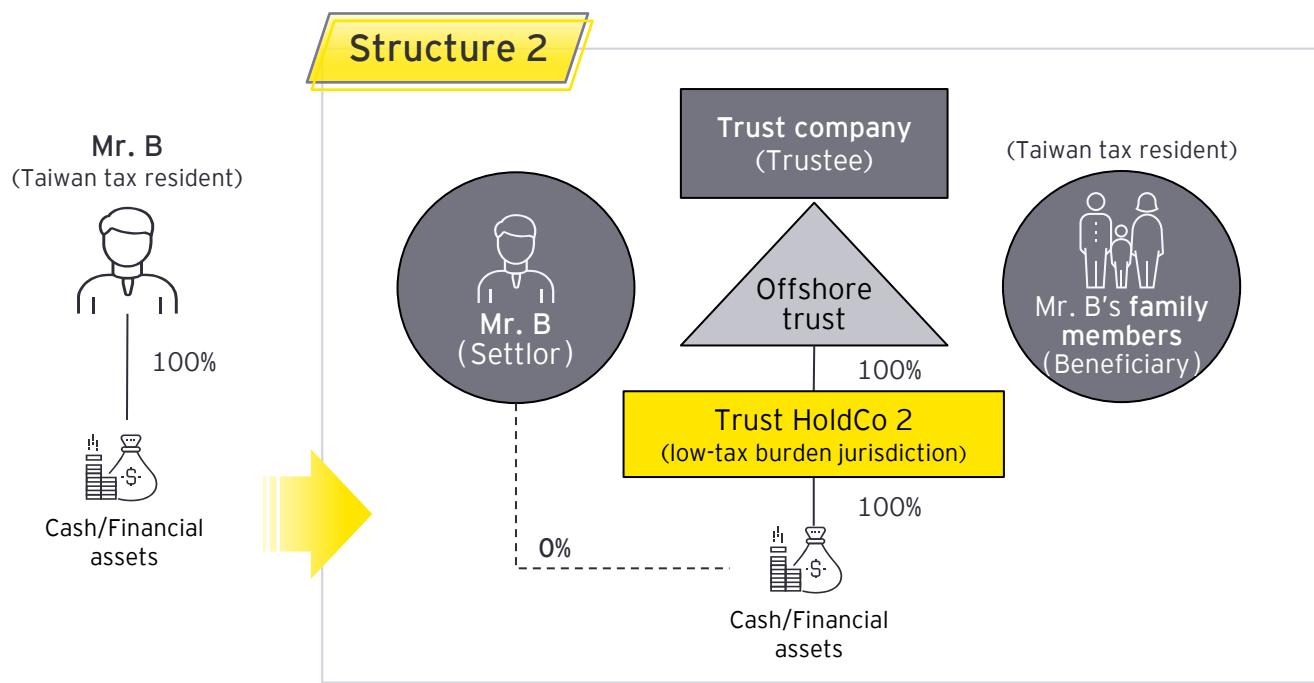
Considering that the reporting deadline for fiscal 2024 is 31 January 2025, offshore trustees may find the reporting process challenging. It is crucial for trustees to take immediate actions to meet the compliance requirements, particularly if they need to engage the services of a professional local CPA firm for assistance with compliance.

◆ Consideration of possible approaches to mitigate the implications

Trustees operating under Structure 1 would face a relatively high risk of being subject to Taiwan CFC reporting obligations. It is imperative for trustees to assess whether to maintain operations through such a structure or to explore alternative restructuring options to reduce the potential risk of non-compliance with Taiwan CFC rules.



2 Common offshore trust structures (Cont.)



In Structure 2, Mr. B contributes only cash and/or financial assets to the trust as trust property. These assets are subsequently deposited into a bank that is newly opened by Trust HoldCo 2, a holding company established and held by the trustee specifically for this purpose.

Structure 2 Implications for offshore trustees

Under Structure 2, there is an issue regarding whether Trust HoldCo 2 would be considered a CFC of Mr. B and/or his family members. Although Mr. B does not hold any shares in Trust HoldCo 2 before or after the trust's establishment, there is still a possibility that the tax authorities will consider Trust HoldCo 2 as a CFC of Mr. B and/or his family members if there is evidence suggesting that Mr. B or his family members have significant influence on Trust HoldCo 2. Additionally, given that the trust property contributed by Mr. B consists only of cash and/or financial assets, it is uncertain whether the trustee is required to comply with Taiwan CFC reporting rules. Therefore, a detailed case-by-case analysis is essential to determine the trustee's specific responsibilities.



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2 Common offshore trust structures (Cont.)

Structure 2 Action to take

In practice, under Structure 2, the following circumstances may exist, and whether these circumstances will affect the trustee's CFC reporting risks is uncertain:

- ◆ **Individuals with investment powers within the trust are related parties to the settlor or beneficiaries.**
- ◆ **The directors of Trust HoldCo 2 or its subsidiary (if any) are related parties to the settlor or beneficiaries.**
- ◆ **The trust deed permits the distribution of shares in Trust HoldCo 2 to the settlor or beneficiaries upon revocation or termination of the trust.**

Trustees must carefully review the terms outlined in the trust deed with respect to offshore trust structures of their Taiwan-based clients and discuss the potential implications with their tax counsel. Due to the complexity of Taiwan CFC rules, it is highly recommended that trustees seek professional advice to ensure compliance and to minimize potential risks related to CFC reporting obligations.

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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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