

Taiwan issues guidance on application of the beneficial owner requirement under Taiwan's tax treaties

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Executive summary

On 24 June 2019, Taiwan's Ministry of Finance (the MOF) issued guidance (the Guidance) to clarify the application of the term "beneficial owner" (BO) for tax treaty purposes.¹ The Guidance is intended to provide greater clarity for taxpayers as it specifies the situations where BO status will be granted or denied and aligns Taiwan's position with the OECD² Model Tax Convention Commentary, MOF practices and approaches taken by other countries.

Detailed discussion

Background

The MOF introduced the Guidance as a result of consensus being reached on BEPS Action 6³ measures to reduce the incidence of treaty abuse, and relevant Commentaries being provided in the OECD Model Tax Convention. The MOF has also considered the positions adopted by the Netherlands, Singapore, the United Kingdom, and the United States.

Summary of the Guidance

Consistent with the OECD approach, the Guidance clarifies that a foreign resident deriving Taiwan source income, and seeking to claim treaty benefits, can identify themselves as the BO for treaty purposes simply by providing a

BO declaration to the MOF. The Guidance also confirms that a qualified fund or trust that is a resident of the treaty country and has invested in Taiwan in the capacity of a foreign institutional investor can apply for BO treatment in the same manner.

Where a foreign recipient of income is acting in the role of an agent, a nominee, a financial conduit entity, or a similar arrangement, the MOF will deny BO status.

Prior guidance regarding the application of BO status to an Australian legal person, a United Kingdom Authorised Unit Trust, or a United Kingdom Open-ended Investment Company will be withdrawn.

Implications

As the Guidance aligns Taiwan's approach with international consensus and practice, taxpayers are expected to benefit from reduced compliance costs, decreased treaty disputes, and a better investment environment.

The impact of the Guidance on existing and proposed structures and investments should be carefully considered.

Endnotes

1. Explanatory Decree No. 10800577770 <https://www.mof.gov.tw/Eng/Detail/Index?nodeid=319&pid=84850>.
2. Organisation for Economic Co-operation and Development.
3. BEPS Action 6: Preventing the Granting of Treaty Benefits in Inappropriate Circumstances.

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