

Anti-tax avoidance

Easily grasp
the **CFC** rules
for profit-seeking enterprises
in **5** minutes!



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What are the tax effects before and after the implementation of the CFC rules?

Before

Tax Payable=NTD 0

Company X

R.O.C.



Low-tax country or jurisdiction



100%

CFC

The CFC retains its earnings and does not distribute dividends.

Country A



100%

Company A

To distribute dividends of NTD 200 million

After

Tax Payable=NTD 40 million

Company X

R.O.C.



Deemed distribution
To recognize CFC's investment income of NTD 200 million

Low-tax country or jurisdiction



100%

CFC

The CFC retains its earnings and does not distribute dividends.

Country A



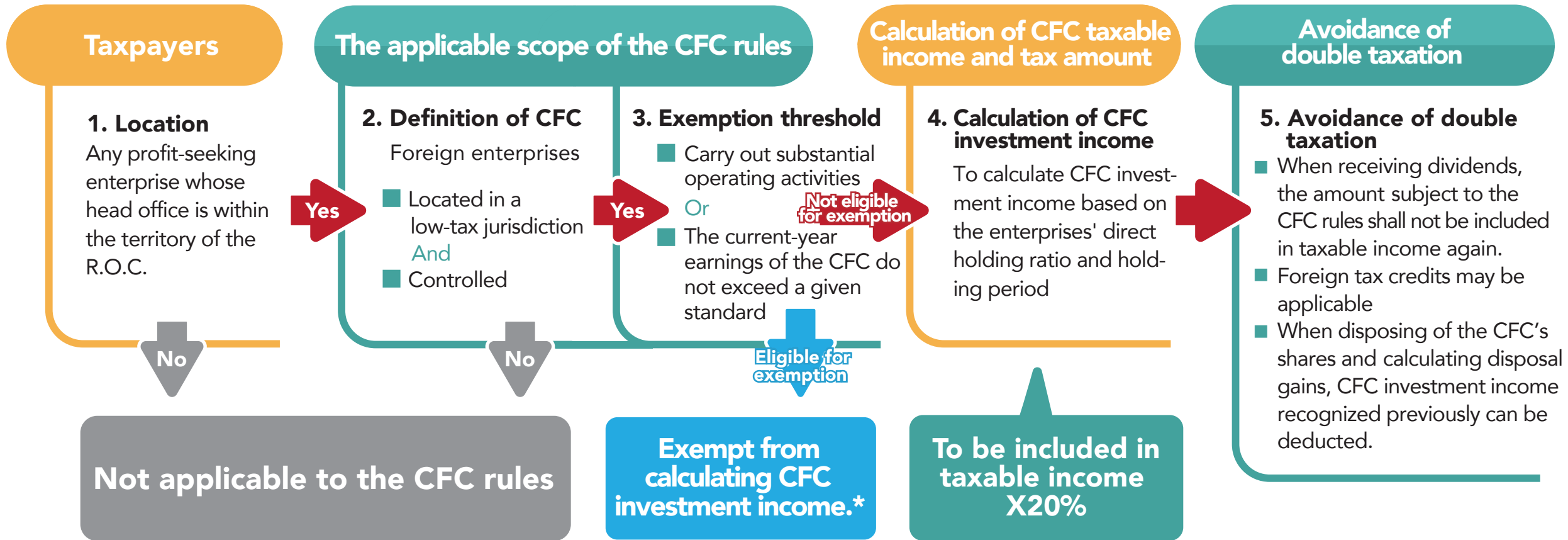
100%

Company A

To distribute dividends of NTD 200 million*

*Note: If the invested enterprises in non-low-tax jurisdictions resolve to distribute the surplus earnings of the fiscal year 2022 and prior years before or on March 31, 2024, then the said resolved amount is exempt from the calculation.

Quick overview of the CFC rules



***Note: The profit-seeking enterprise is still required to disclose the CFC information in the prescribed format and attach relevant documents.**

Definition of CFC

A foreign-affiliated enterprise located in a low-tax jurisdiction

A low-tax jurisdiction meets one of the following conditions:

- **The statutory tax rate of the profit-seeking enterprise income tax in the jurisdiction is not more than 14%.**
- **The country or jurisdiction taxes only on income sourced from it, and foreign-sourced income is not taxed or is taxed only upon actual remittance.**

Applying specific tax rates or tax regimes to the given regions or types of enterprises (i.e., Samoa) is subject to judgment on a case-by-case basis



A profit-seeking enterprise and its related parties have control over the foreign-affiliated enterprise.

One of the following criteria shall be met:

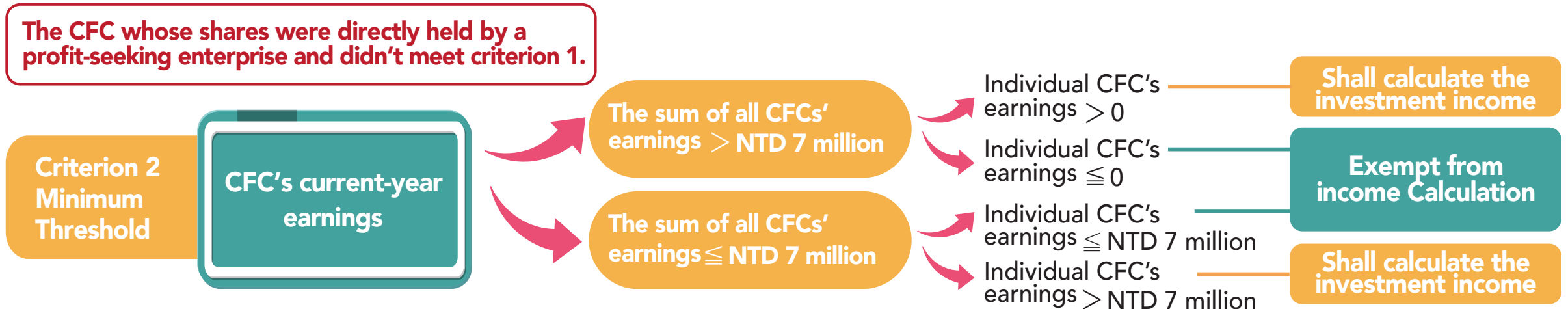
Equity control

Directly or indirectly holding 50% or more of the shares of the foreign enterprise

Substantial control

Having substantial control over the foreign enterprise

Exemption threshold



To whom are the CFC rules for enterprises applicable, and how to calculate CFC's current-year earnings?

Applicable enterprises

▶ Enterprises that directly hold CFC shares

CFC's current-year earnings =

The CFC's net profit (or loss) after tax of the current year and other profit (or loss) items included in the current-year undistributed surplus earnings

+

Adjustment item 1

Investment income (or loss) derived from invested enterprises in non-low-tax jurisdictions recognized under the equity method

+

Adjustment item 2

Options

Financial instruments measured at fair value through profit or loss (FVPL)

Basically, the selected method cannot be changed once chosen.

— Unrealized Investment Income

+

Unrealized Investment Losses (absolute value)

+

The resolved amount of surplus earnings distribution*

—

Realized Investment Losses (absolute value)

+

Adjustment amount for the disposal of shares of invested enterprises

*Note: If the invested enterprises in non-low-tax jurisdictions resolve to distribute the surplus earnings of the fiscal year 2022 and prior years before or on March 31, 2024, then the said resolved amount is exempt from the calculation.

To whom are the CFC rules for enterprises applicable, and how to calculate CFC's current-year earnings?

Applicable enterprises

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+

Adjustment item 1

Investment income (or loss) derived from invested enterprises in non-low-tax jurisdictions recognized under the equity method

+

Adjustment item 2

Options

Financial instruments measured at fair value through profit or loss (FVPL)

Basically, the selected method cannot be changed once chosen.

— Amount of FVPL's fair value changes

+ Adjustment amount for the disposal of FVPL

+ Adjustment amount for the reclassification of FVPL

How to calculate CFC investment income?

Shall be included in the Profit-Seeking Enterprise Income

CFC investment income =

CFC's current-year earnings

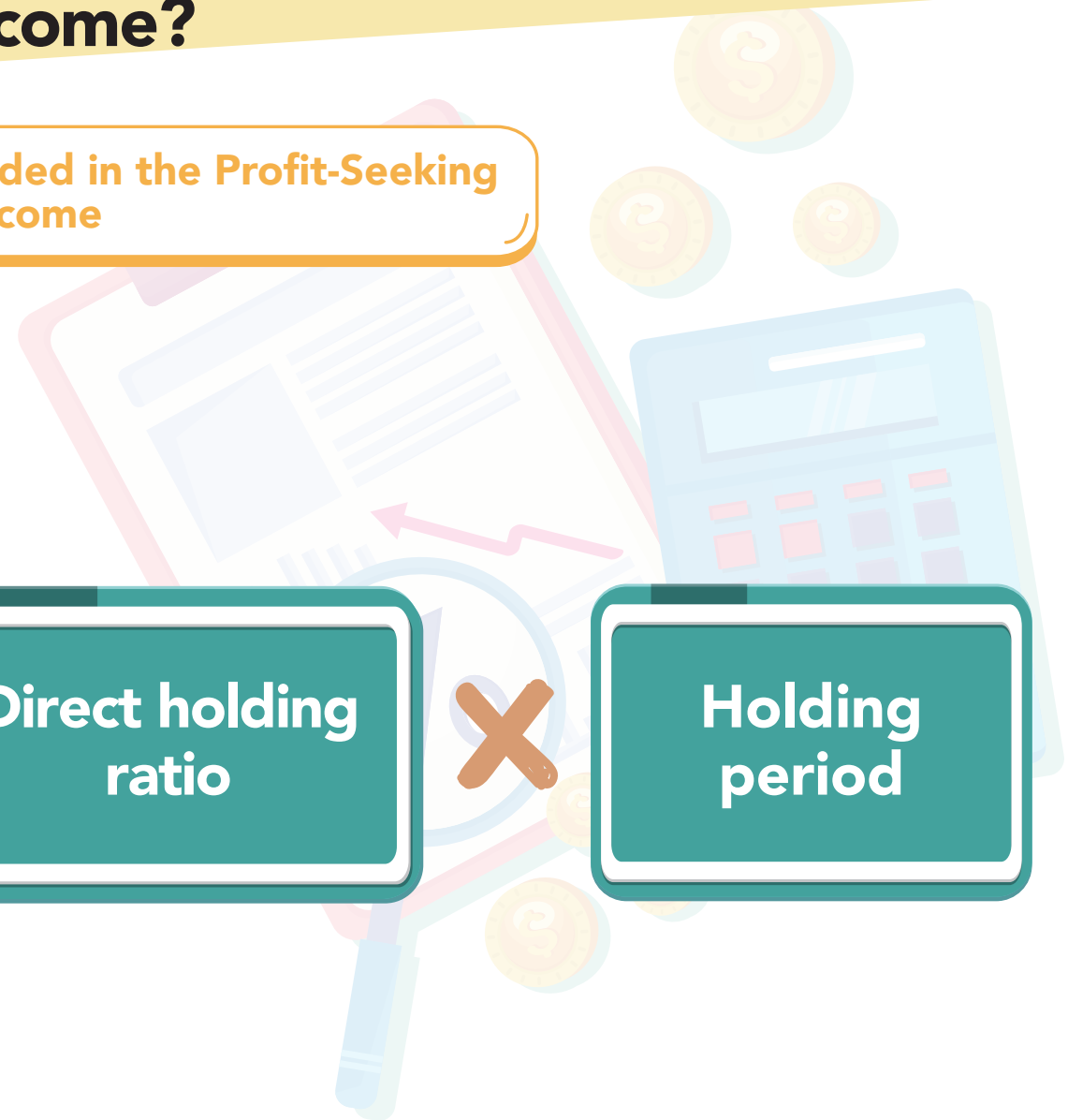
- Legal reserve or restricted distribution of earnings
- Losses of past years assessed by tax authority



Direct holding ratio



Holding period



Avoidance of double taxation (1/2)

- An enterprise receives dividends or earnings from its CFC:

No double taxation on income

CFC investment income has been recognized in accordance with the CFC rules



Shall not be included in the taxable income of the distribution year

Foreign tax credits

Not from the Mainland Area



income tax paid on dividends or surplus earnings by CFC

From the Mainland Area



CFC corporate income tax

+

income tax paid on dividends or surplus earnings by the CFC and invested enterprises in Mainland

Such paid taxes may be credited against the tax payable of the year in which the investment income is recognized and included in the taxable income, within five years starting from the following day of the expiration of the filing period of the aforesaid year; any overpaid tax is refundable.

Fiscal Year of 2023

Company X



Company X shall declare CFC investment income of NTD 10 million in the 2023 income tax return in May 2024.

Deemed distribution



100%



The net profit on the financial statements is NTD 10 million.

Fiscal Year of 2027

Company X



Company X receives dividends of NTD 10 million. ✗

The amount of the tax paid overseas is NTD 1 million. ✗
The deadline for applying for the correction of the 2023 income tax return and tax refund shall be no later than May 31, 2029.

Dividends distributed

100%



In 2027, dividends of NTD 10 million (from the surplus earnings of the fiscal year 2023) were distributed, with withholding tax of NTD 1 million.

Example:



Avoidance of double taxation (2/2)

When an enterprise disposes of CFC shares

The disposal gain (or loss) =

Revenue from
the disposal

Original
acquisition
cost

The balance of
the recognized
CFC's investment
income on the
disposal date

×

Disposal ratio

Declaration forms and the documents to be attached with the filing

Declaration forms

The statement of the shareholding of the profit-seeking enterprise and its related parties



The statement of the CFC income



The documents to be attached with the filing

CFC Financial statements*



Tax payment certificates issued by the tax authorities of the source jurisdictions



Documents of shareholders' consents or minutes of shareholders' meetings of the CFC's invested enterprise



Certification documents of investment loss of the invested enterprises of CFC



*Note:

- 1 The financial statements of a CFC shall cover the same accounting period as the profit-seeking enterprise's annual income tax return.
- 2 The financial statements shall be audited and certified by a Certified Public Accountant from the CFC's jurisdiction, or from the R.O.C., or substituted with other documents validated by the tax authorities.
- 3 If enterprises are unable to provide CFC financial statements to the tax authority before the deadline of the filing period, they could apply for a six-months extension to provide such documents before the filing deadline.

Documents for investigation



Deadline

The documents shall be provided to the tax authority within one month from the next day of the delivery date of a written investigation letter.
If the profit-seeking enterprise is unable to provide such documents before the prescribed deadline, it shall state the reasons and apply for a one-month extension to provide such documents to the tax authority before the said deadline.

Documents to prepare:

01



Details of the changes of the shareholding of the profit-seeking enterprise and its related parties

02



Financial statements of the invested enterprises in non-low-tax jurisdictions

03



Documents proving that the CFC carried out substantial operating activities

04



The audited report by a CPA on the holding, measurement, and disposition of financial instruments of the CFC.