

Research on the Controlled Foreign Corporation

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Abstract

In 1972, Germany became the second country after the United States to establish the Controlled Foreign Corporation (CFC). During this period, it was influenced by the judgments of the EU Supreme Court, the OECD's BEPS action plan, the EU Anti-Tax Avoidance Directive and the opinions of the German Federal Financial Court. It has been revised many times, and the latest version was revised in July 2021. The development and reform of international tax law and EU tax law reflect the legislative process of the CFC in Germany. The key points of the revision of the new German CFC include: the expansion of the application of the CFC, the income from active activities is excluded from the scope of application of CFC, the actual tax burden is used as the basis for determining a low tax burden, the content of counter-evidence is modified into substantive economic behavior and the indirect tax deduction method is adopted as a way to avoid double taxation. Taiwan's CFC, in contrast, there are still many disputes that need to be clarified. Therefore, the development of European Union's and Germany's CFC in terms of dogmatic and trial practice will definitely contribute to Taiwan. Consequently, this article uses Germany's experience and suggests amending Article 43-3 of Taiwan's Income Tax Law, in particular expansion of the scope of application of CFC, passive income is as the scope of tax by CFC, the actual tax burden is used as the basis for determining a low tax burden, substantive operating activities should be added on the applicable elements and exceptions from exceptions, provisions should be added on how to avoid double taxation when establishing interconnected CFC. It is hoped that Taiwan's CFC will be in

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line with international standards as soon as possible and learn the lesson from the European Union and Germany, so that Taiwan can respond to the variation of the international tax system.

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