

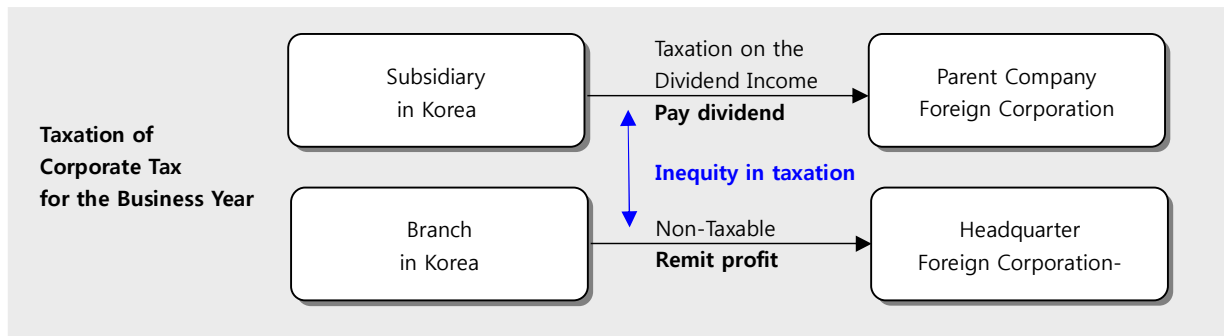
# Taxation of Branch Tax for Foreign Corporation

Sept 15, 2015

## 1. Definition of Branch Tax

In order to pursue the equity in taxation between the business entity type of an incorporated subsidiary and a branch of foreign corporation, the branch profit tax is designed to be imposed additionally on the 'adjusted taxable income' of the Branch of the foreign corporation after the corporate income tax is imposed.

## 2. Taxation by Type of Business Entity of Foreign Corporation



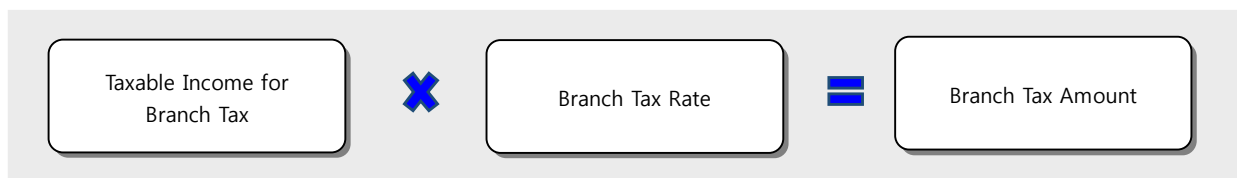
## 3. Taxable Income for Branch Tax

Any domestic place of business of a foreign corporation is required to pay tax amount calculated by applying the tax rate to the taxable income (the amount of remittance prescribed by Presidential Decree when a remittance of profits are taxable) as stipulated in paragraph (2) of Article 96 in Corporate Tax Act in Korea under the tax treaty concluded between Korea and the country where the headquarters or main office of such foreign business corporation is located.

Currently, the number of country with which the tax treaty is concluded with Korea for imposing the Branch Tax is 10, and all other countries are regarded as not being applicable for the Branch Tax.

## 4. Calculation of Branch Tax

### (1) Calculation Structure of Branch Tax



### (2) Calculation of Taxable Income for Branch Tax

The amount of taxable income is the amount computed by subtracting corporate tax, pro rata local income tax and amount which is deemed to be reinvested in the business by the relevant domestic place of business (hereinafter referred to as 'amount deemed reinvested') from the amount of income of the relevant domestic place of business for each business year.

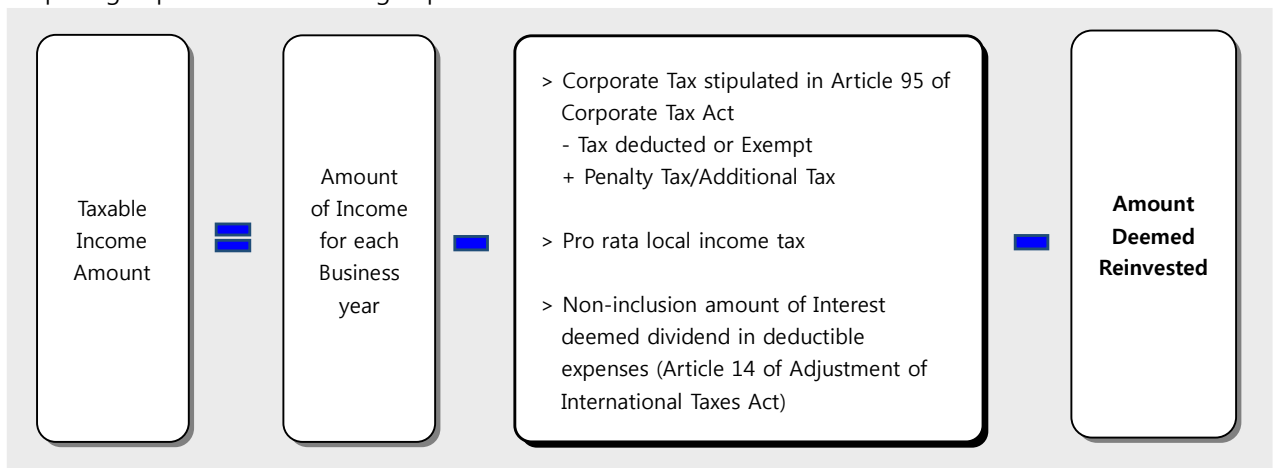
The amount deemed to be reinvested means all of the amount falling under any of the following subparagraphs, and where the amount of capital funds as of the first day of the relevant business year is in excess of the amount of capital funds as of the last day of the relevant business year, the amount in excess

(hereinafter referred to as "capital funds reduction amount") shall be added to the income amount for the relevant business year. In such cases, the sum amount shall not be in excess of the untaxed accumulated reserve income (limited to the case where such income is not a negative number) as of the last day of the immediately previous business year.

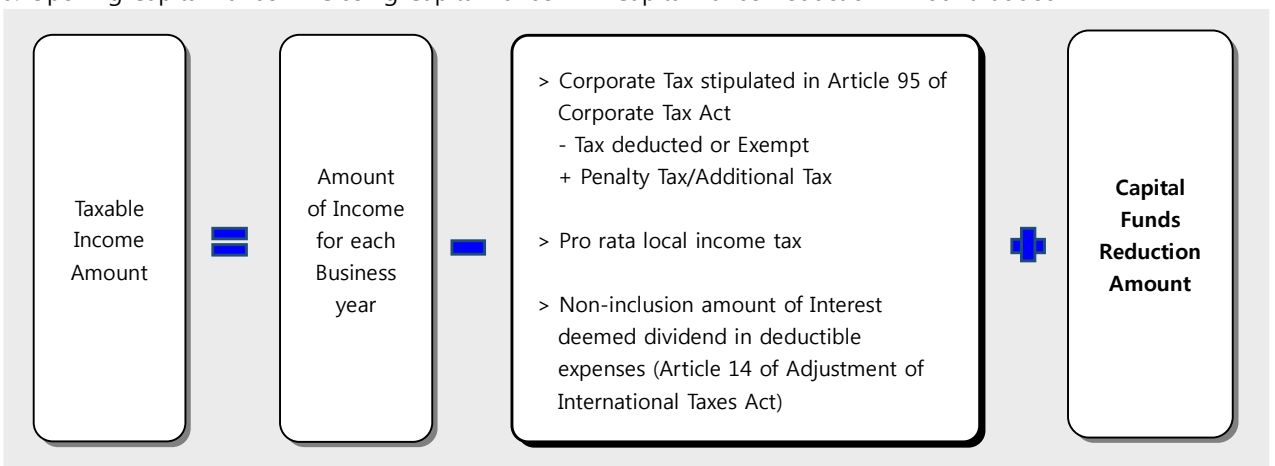
- ① The amount of capital funds as of the last day of the relevant business year in excess of the amount of capital funds as of the first day of the relevant business year (hereinafter referred to as the "capital funds increase amount")
  - ② The amount calculated by removing negative sign from the untaxed accumulated reserve income (limited to the case where such income is a negative number): Provided, That such amount shall be limited to the amount calculated by subtracting the amount in Article 96 (2) 1, 2 and 4 of the Act and the capital funds increase amount from the income amounts of each business year of a domestic place of business.
- This regulation shall apply from the first report to be filed for the business year which includes the date, March 31, 2011.

※ **Calculation Structure of Taxable Income for Branch Tax (in summary)**

a: Opening Capital Funds < Closing Capital Funds → 'Amount Deemed Reinvested' subtracted



b: Opening Capital Funds > Closing Capital Funds → 'Capital Funds Reduction Amount' added



※ When a branch in Korea of foreign corporation is dissolved, the amount equivalent to capital as of the last day of the business year shall be deemed "zero", and the amount equivalent to profits will be deemed to be remitted in full on the last day of the fictitious business year, in calculating the income amount subject to taxation of the fictitious business year,

## 5. Tax Rate for Branch Tax

When tax rates are separately stipulated by the tax treaty concluded between Korea and the country of residence of the relevant foreign corporation, the treaty shall be complied with despite the Branch Tax rate is 20% as per the subparagraph 3 of Article 98 in Corporate Tax Act.

Treaty Country	Tax Limit	Tax Base	Provision
Morocco	5%	Taxable Income Amount	Article 10-6
Brazil	15%	Taxable Income Amount	Article 10-5
Indonesia	10%	Taxable Income Amount	Article 10-6
Kazakhstan	5%	Taxable Income Amount	Article 10-6
Canada	5%	Taxable Income Amount	Article 10-6
Philippines	10%	Actual Profit Remitted	Protocol Article 5
France	5%	Taxable Income Amount	Article 10-7
Australia	15%	Taxable Income Amount	Article 10-6
Thailand	10%	Taxable Income Amount	Article 10-6
(applicable for Taxable year after Jan. 1, 2008)			
Panama	2%	Taxable Income Amount	Article 10-6
(applicable for Taxable year after Jan. 1, 2013)			

## 6. The Relative Statute

### Corporate Tax Act

#### Article 96

(Special Cases concerning Taxation on Domestic Place of Business of Foreign Corporation)

- (1) Any domestic place of business of a foreign corporation (excluding non-profit foreign corporations) shall add the amount calculated by applying the tax rate provided in paragraph (3) to the taxable income provided in paragraph (2) (where a remittance of profits are taxable under the tax treaty concluded between Korea and the foreign country where the foreign corporation is located, the taxable income shall be the amount of remittance prescribed by Presidential Decree) to the corporate tax calculated under Article 95 and pay it under the tax treaty concluded between Korea and the country where the headquarters or main office of such foreign business corporation is located (hereinafter referred to as "country of residence"): Provided, That the same shall not apply where the country of residence of such foreign corporation does not impose the tax on the overseas place of business of a Korean corporation located in the such country of residence.
- (2) The amount of taxable income referred to in paragraph (1) shall be the amount computed by subtracting each of the following amounts from the amount of income of the relevant domestic place of business for each business year: <Amended by Act No. 11128, Dec. 31, 2011>
  1. The amount of corporate tax calculated under Article 95 less the amount referred to in item (a) but plus the amount referred to in item (b):
    - (a) Tax credits granted under Article 57 (1) 1, and Article 58 that are applied mutatis mutandis under Article 97 (1), and the amount of tax deducted or exempted under other Acts;
    - (b) Penalty tax provided in Article 76 of this Act and Articles 47-2 through 47-5 of the Framework Act on National Taxes or tax paid additionally under this Act or the Restriction of Special Taxation Act;
  2. Pro rata local income tax;
  3. The amount prescribed by Presidential Decree, such as an amount deemed to be reinvested in the business

- by the relevant domestic place of business;
4. The amount not included in deductible expenses under Article 14 of the Adjustment of International Taxes Act.
- (3) The tax rate applied under paragraph (1) shall be the tax rate provided in Article 98 (1) 3, and where tax rates are separately stipulated by the tax treaty concluded between Korea and the country of residence of the relevant foreign corporation, the treaty shall be complied with.
- [This Article Wholly Amended by Act No. 10423, Dec. 30, 2010]

## **Corporate Tax Act**

### **Article 98**

(Special Cases concerning Withholding or Collection from Foreign Corporations)

(1) Where any person pays a foreign corporation the amount of domestic source income provided in subparagraphs 1, 2, and 4 through 10 of Article 93 (excluding any resident or non-resident who pays the amount of income provided in subparagraph 7 of Article 93) which is not substantially related to the domestic place of business of the foreign corporation or does not revert to the domestic place of business of the foreign corporation (including an amount paid to a foreign corporation with no domestic place of business), he/she shall withhold, as the corporate tax, the following amounts from the income of the relevant foreign corporation for each business year, and pay it at the tax office, etc. having jurisdiction over the place of tax payment, as prescribed by Presidential Decree, by the tenth day of the month following the month in which the date of withholding falls, notwithstanding Article 97: Provided, That the same shall not apply to income provided in subparagraph 5 of Article 93 which is taxable as domestic source business income under the applicable tax treaty: <Amended by Act No. 11607, Jan. 1, 2013>

1. Income provided in subparagraphs 4 and 5 of Article 93: 2/100 of the amount paid;
2. Income provided in subparagraph 6 of Article 93: 20/100 of the amount paid;
3. Income provided in subparagraphs 1, 2, 8, and 10 of Article 93: 20/100 of the amount paid (or the amount prescribed by Presidential Decree in cases of the income specified in subparagraph 10 (c) of Article 93): provided that it shall be 14/100 of the amount paid in the case of the interest income accrued from bonds issued by the State, a local government, or a domestic corporation among the income specified in subparagraph 1 of Article 93;

## **ENFORCEMENT DECREE OF THE CORPORATE TAX ACT**

### **Article 134**

**(Calculation of Income Amount Subject to Taxation of Domestic Place of Business)**

- (1) "Amount prescribed by Presidential Decree such as amount deemed as the amount to be reinvested for the business by the relevant domestic place of business" in Article 96 (2) 3 of the Act means all of the amount falling under any of the following subparagraphs, and where the amount of capital funds as of the first day of the relevant business year is in excess of the amount of capital funds as of the last day of the relevant business year, the amount in excess (hereinafter referred to as "capital funds reduction amount") shall be added to the income amount for the relevant business year. In such cases, the sum amount shall not be in excess of the untaxed accumulated reserve income (limited to the case where such income is not a negative number) as of the last day of the immediately previous business year: <Amended by Presidential Decree No. 22577, Dec. 30, 2010; Presidential Decree No. 22812, Mar. 31, 2011>
1. The amount of capital funds as of the last day of the relevant business year in excess of the amount of capital funds as of the first day of the relevant business year (hereinafter referred to as the "capital funds increase amount");
  2. The amount calculated by removing negative sign from the untaxed accumulated reserve income (limited to the case where such income is a negative number): Provided, That such amount shall be limited to the

amount calculated by subtracting the amount in Article 96 (2) 1, 2 and 4 of the Act and the capital funds increase amount from the income amounts of each business year of a domestic place of business.

- (2) "Amount equivalent to capital" in paragraph (1) means the amount that is obtained by deducting the total amount of debts (including any money appropriated and excluding any unpaid corporate tax) from the total amount of assets on the balance sheet as of the end of the relevant business year. <Amended by Presidential Decree No. 18706, Feb. 19, 2005>
- (3) "Untaxed accumulated reserve income" in paragraph (1) shall mean the portion of the income amount for each business year which was not taxed under the provisions of Article 96 of the Act, which is the amount of subparagraph 1 minus the amount of subparagraph 2: <Amended by Presidential Decree No. 22812, Mar. 31, 2011>
1. The sum of the income amounts for each taxable year until the business year immediately preceding the relevant business year minus both the sum of the losses for each business year until the business year immediately preceding the relevant taxable year and the sum of the corporate tax and income-proportional local income tax on the income for each business year until the business year immediately preceding the relevant business year;
  2. The sum of the income amount subject to taxation under the provisions of Article 96 of the Act for each business year until the business year immediately preceding the relevant business year.
- (4) The provisions of paragraph (1) shall apply mutatis mutandis to the calculation of the income amount subject to taxation under Article 96 (1) of the Act where losses are generated for the relevant business year: Provided, That for the relevant business year, where the capital funds reduction amount is in excess of losses, the amount in excess shall be the income amount subject to taxation, up to the limit of the untaxed accumulated reserve income under paragraph (3).
- (5) "Remittance amount prescribed by Presidential Decree" in the main sentence of Article 96 (1) of the Act means profits actually remitted from among incomes earned in each business year (in case that profits actually remitted in each business year are in excess of the income amount subject to taxation of the immediately preceding business year under Article 96 (2) of the Act, the limit thereof shall be the untaxed accumulated reserve income provided for in paragraph (3) until the immediately preceding business year from among the excess amount). <Newly Inserted by Presidential Decree No. 17457, Dec. 31, 2001; Presidential Decree No. 22951, Jun. 3, 2011>
- (6) Where a foreign corporation comes to have no domestic place of business, the amount equivalent to capital as of the last day of the business year referred to in Article 8 (4) of the Act (hereafter in this Article referred to as "fictitious business year") shall be deemed "zero", in calculating the income amount subject to taxation of the fictitious business year pursuant to paragraphs (1) through (4). <Newly Inserted by Presidential Decree No. 19891, Feb. 28, 2007>
- (7) Where a foreign corporation comes to have no domestic place of business, the amount equivalent to profits not yet remitted by the last day of the fictitious business year shall be deemed to be remitted in full on the last day of the fictitious business year, in calculating the income amount subject to taxation of the fictitious business year pursuant to paragraph (5). <Newly Inserted by Presidential Decree No. 19891, Feb. 28, 2007>

(Reference: No.10, 외국법인의 지점세 과세여부 \ 외국투자기업의업무사례 \ 신고&세무실무  
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