

The Taxation of Offshore Indirect Transfer in China

离岸间接转让税收的中国做法

2020.10.27





Outline

1. Is the gain from offshore indirect transfer taxable in China?

1. 非居民间接转让财产是否征税？

2. How to assess ‘reasonable commercial purpose’?

2. 如何判断合理商业目的？

PART 1



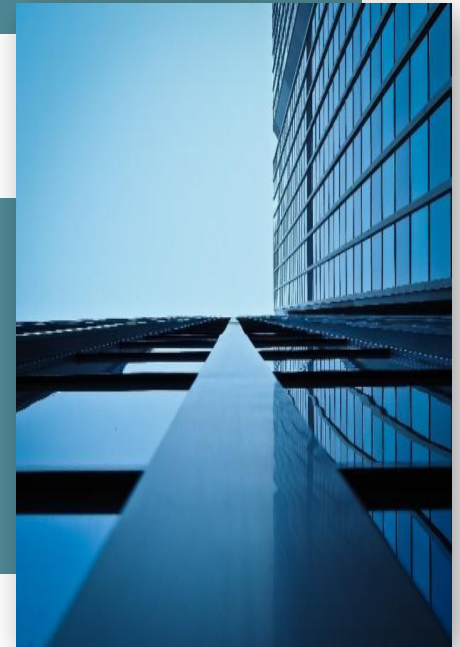
Where a non-resident enterprise indirectly transfers the equity in a Chinese resident enterprise and other properties in China through the implementation of a scheme without a reasonable commercial purpose and resulting in the avoidance of enterprise income tax liability, such indirect transfer should be re-characterized as a direct transfer of the equity in Chinese resident enterprise and other properties in China.

非居民企业通过实施不具有合理商业目的的安排，间接转让中国居民企业股权等财产，规避企业所得税纳税义务的，税务机关重新定性该间接转让交易，确认为直接转让中国居民企业股权等财产。

PART 1

‘Equity in Chinese resident enterprise and other properties in China’ shall refer to properties of an institution or establishment in China, immovable properties in China, equity investments in a China resident enterprise, etc. owned directly by the non-resident enterprise and the gain derived by direct transfer of these properties would be subject to enterprise income tax in accordance with the provisions of the tax laws in China.

中国居民企业股权等财产，是指非居民企业直接持有，且转让取得的所得按照中国税法规定，应在中国缴纳企业所得税的中国境内机构、场所财产，中国境内不动产，在中国居民企业的权益性投资资产等。



PART 1



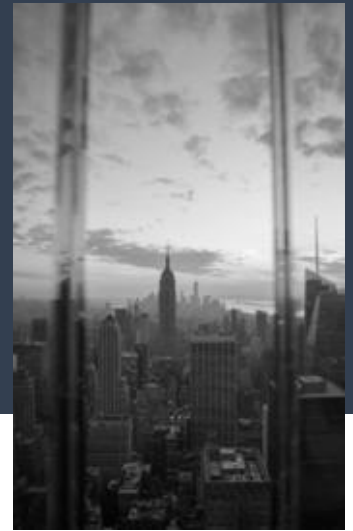
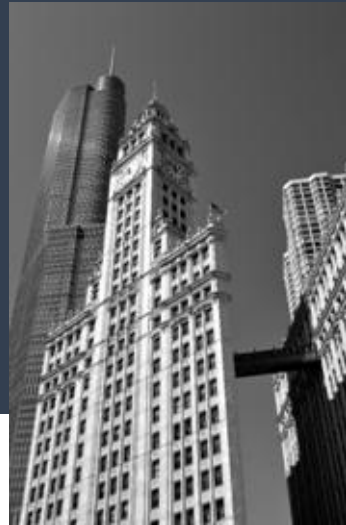
The ‘indirect transfer of taxable properties in China’ shall refer to the non-resident enterprise, through the transfer of the equity and other similar rights of an overseas enterprise which directly or indirectly owns taxable properties in China, generates the same or similar substantive outcome as compared with a direct transfer of taxable properties in China, including change in the shareholder of an overseas enterprise resulting from restructurings of the non-resident enterprise.

间接转让中国应税财产，是指非居民企业通过转让直接或间接持有中国应税财产的境外企业股权及其他类似权益，产生与直接转让中国应税财产相同或相近实质结果的交易，包括非居民企业重组引起境外企业股东发生变化的情形。

PART2

How to assess ‘reasonable commercial purpose’?

如何判断合理商业目的？



PART2

Whether the main value of the equity of the overseas enterprise is derived directly or indirectly from Taxable Properties in China.

境外企业股权主要价值是否直接或间接来自于中国应税财产。

Whether a majority of the assets of the overseas enterprise is directly or indirectly comprised of investments in China, or whether a majority of its income is directly or indirectly derived from China.

境外企业资产是否主要由直接或间接在中国境内的投资构成，或其取得的收入是否主要直接或间接来源于中国境内。



PART2

Whether the actual functions performed and risks undertaken by the overseas enterprise and its subsidiaries which directly or indirectly hold the Taxable Properties in China can substantiate the economic substance of the corporate structure.

境外企业及直接或间接持有中国应税财产的下属企业实际履行的功能和承担的风险是否能够证实企业架构具有经济实质。



The existence duration of the shareholders, business model of the overseas enterprise and related organizational structure.

境外企业股东、业务模式及相关组织架构的存续时间。

PART2

The situation regarding overseas income tax payment for the indirect transfer of Taxable Properties in China.

间接转让中国应税财产交易在境外应缴纳税情况。

Whether the indirect investment or the indirect transfer of the Taxable Properties in China by the equity transferor can be substituted by a direct investment or a direct transfer of the Taxable Properties in China.

股权转让方面间接投资、间接转让中国应税财产交易与直接投资、直接转让中国应税财产交易的可替代性。

The information regarding whether tax treaties or tax arrangements can apply to the income from indirect transfer of Taxable Properties in China.

间接转让中国应税财产所得在中国可适用的税收协定或安排情况。



Other related factors.

其他相关因素。

THANK YOU!

