

## **XIV. 中美间直接创建实体的规划**

### **XIV. Structuring Entities - Directly Between China and the U.S.**



### **硬币的正反两面**

### **The Other Side of the Coin**

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罗战先生除了是一名律师，注册会计师之外，还在美国丹佛大学法学院任兼职教授。他的观点被包括《福布斯》，《投资人新闻》，《街》《丹佛商业期刊》，《石油天然气投资人》，《苏瀑商业期刊》在内的著名期刊杂志引用过。在成为律师以前，罗战在美国四大会计事务所任职。罗战先生目前任罗战律师事务所的合伙人。

罗战先生每年都在全美范围内的研讨会上公开演讲多次，他受邀演讲过的组织机构包括：

- Regis Campfield' s Notre Dame 税收和遗产规划研究所(2007)和(2009)
- Lonnie McGee 南加州税法及遗产规划论坛(2006)，(2007)，(2009-2011)
- 芝加哥律师协会 (2004)，(2007-2010).

罗战先生还在《美国遗产规划杂志》，《美国实用遗产规划期刊》，以及《史蒂夫·雷姆博格信息服务速递》(Leimberg LISI)上分别发表了系列文章。同时他也和其他作者联合出版过以下著作：

- 《资产保护规划指导》，CCH 出版；
- 《资产保护战略》，美国律师协会出版；
- 《资产保护战略二》，美国律师协会出版

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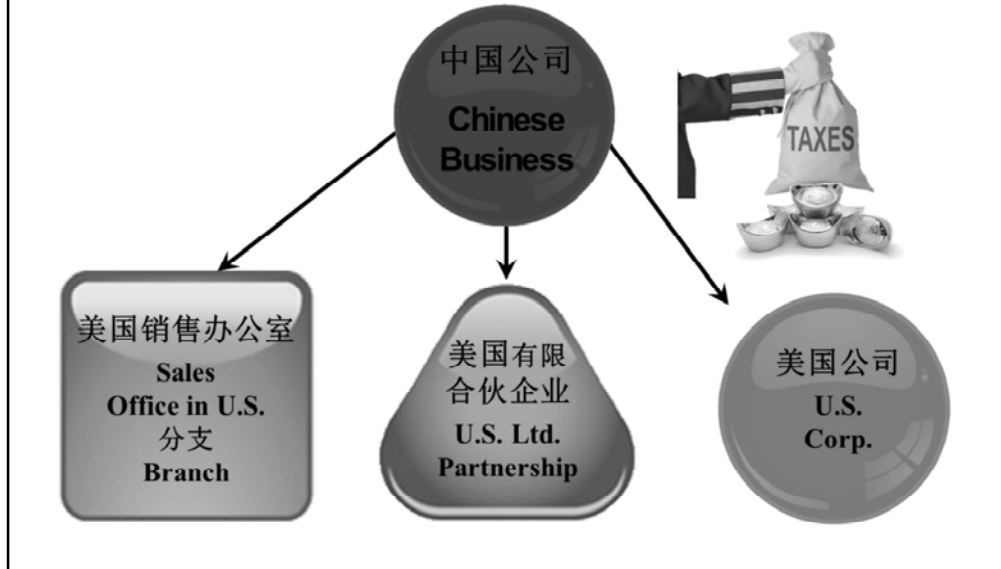
Mr. Merric presents nationwide more than a dozen annually. He is honored to have spoken at:

- Regis Campfield's Notre Dame Tax and Estate Planning Institute (2007) & (2009);
- Lonnie McGee's Southern California Tax and Estate Planning Forum, (2006), (2007), and (2009-2011); and
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Mark Merric has had three, four, and five part series published in Estate Planning Magazine, Journal of Practical Estate Planning, and Leimberg LISI. He is also a co-author of the following three treatises:

- The Asset Protection Planning Guide: A State-of-the-Art Approach to Integrated Estate Planning, Commerce Clearing House (CCH) treatise, first edition;
- Asset Protection Strategies, American Bar Association (two chapters); and
- Asset Protection Strategies Volume II, American Bar Association published Apr. 2005 (MM responsible for 1/5 of the text).

# 被纳入美国所得税的几种公司结构 Structures That Result in U.S. Taxation



## A .在美国的收入税概况

正如前一页幻灯片所提及的，在美国设立一个销售办公室或者工厂将会导致在美国需要缴销售收入税的情况。成立美国股份公司或者合伙制企业也将自动导致美国税收。但是美国股份公司或者合伙企业在美国是需要缴纳全球收入的税的，所以如果一个中国公司要在美国成立股份公司或者合伙制企业的话，建议该美国企业最好只在美国经营业务，否则在美国之外的收入所得也将被纳入美国收入税范围。

## A. Results in U.S. Taxation

As noted on the previous page, opening a U.S. sales office or manufacturing in the U.S. results in U.S. taxation. The formation of a U.S. partnership or a U.S. corporation also automatically results in U.S. taxation. However, a U.S. partnership or U.S. corporation is subject to tax on worldwide income. Therefore, should a Chinese business evolve to the level of opening a U.S. partnership or a U.S. corporation, such entity should only conduct business in the U.S. so that sales outside the U.S. are not taxed by the U.S.

## 减少美国税赋的方法

### **Methods to Reduce U.S. Taxes**

1. 用来产生美国利润的支出可以抵扣  
**Related Party Expenses Charged Against U.S. Income**
2. 选择合适的美国实体  
**Choice of U.S. Entity**
3. 利用控股公司结构实现  
**Holding Company Structures**

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#### **B. 减少美国税收的方法**

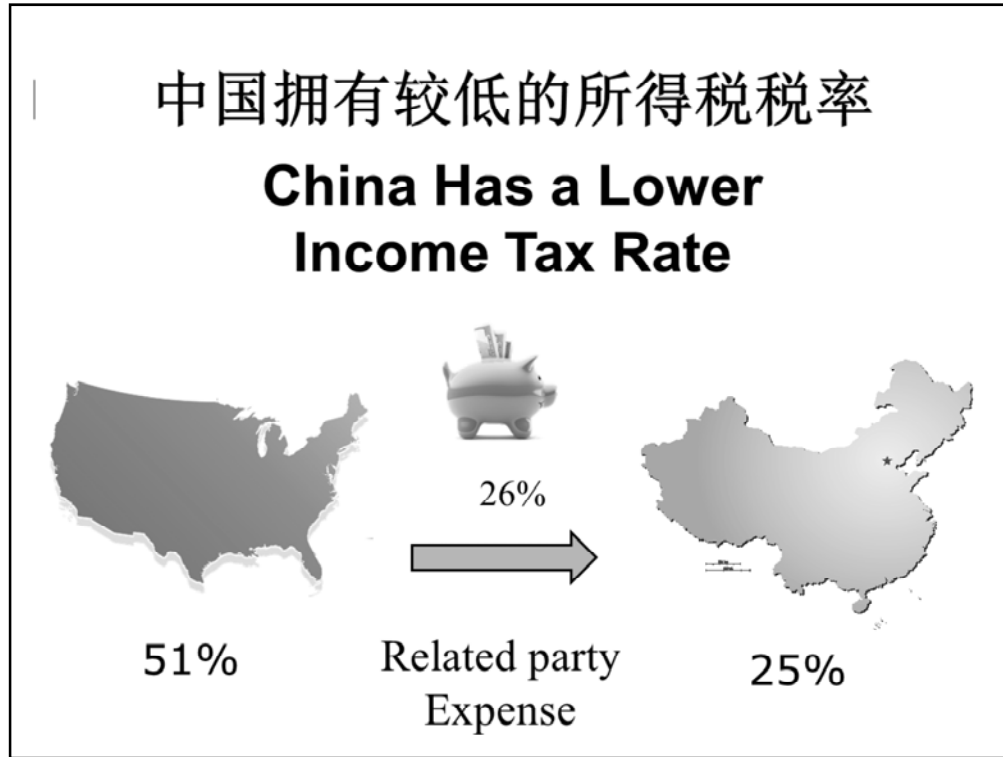
有三种方法可以减少美国税收。第一个是在不高于市场价格的情况下，中国公司可以在公司支出上记上公司之间的支出，比如出售商品成品，利息，管理费用和无形资产使用权费。第二个是选择最佳的美国实体和中国实体。第三个是当公司扩大后，中国公司可以考虑建立一个巩固公司的结构。但关于控股公司的结构较为复杂，我们在此不做更多的分析。

#### **B. Methods To Reduce U.S. Tax**

There are primarily three methods used to reduce U.S. taxes. First, to the extent of a fair market value price, a Chinese firm may charge for intercompany expenses such as cost of goods sold, interest, management fee, or royalties. Second, the choice of U.S. entity affects the taxation, as well as the possible choice of the Chinese entity. Finally, as an enterprise grows, the Chinese firm may look at forming a holding company structure. The analysis of holding company structures is quite complex and beyond the scope of this outline.

## 中国拥有较低的所得税税率

### China Has a Lower Income Tax Rate



#### C. 中国拥有较低的收入税税率

美国联邦税的公司税率明细如下：

收入高于	并且低于	相应税率
0	50,000	15%
50,000	75,000	25%
75,000	100,000	34%
100,000	335,000	39%
335,000	10,000,000	34%
10,000,000	15,000,000	35%
15,000,000	18,333,333	38%
18,333,333	--	35%

另外，大部分的州税比联邦税再高出 5%到 9%。因此，综合考虑联邦税和州税之后，公司要缴的收入税率一般在 39%到 48%。

如果一个中国公司直接向美国进行销售，那么同样的收入在中国所隶属的收入税率将比美国低 14%到 24%。因此，如果能够让一笔出口销售交易被纳入中国税收范围而非美国税收范围，那么公司将能够舍却一笔可观的收入税。

虽然中国的税收系统允许外国抵税额可以在之后的五年内被使用（中国税收遵从第 2-1-23 条），基本上公司不可能在它有效期内使用到它，因为美国的税率比中国的税率高出很多。

### C. China Has a Lower Income Tax Rate

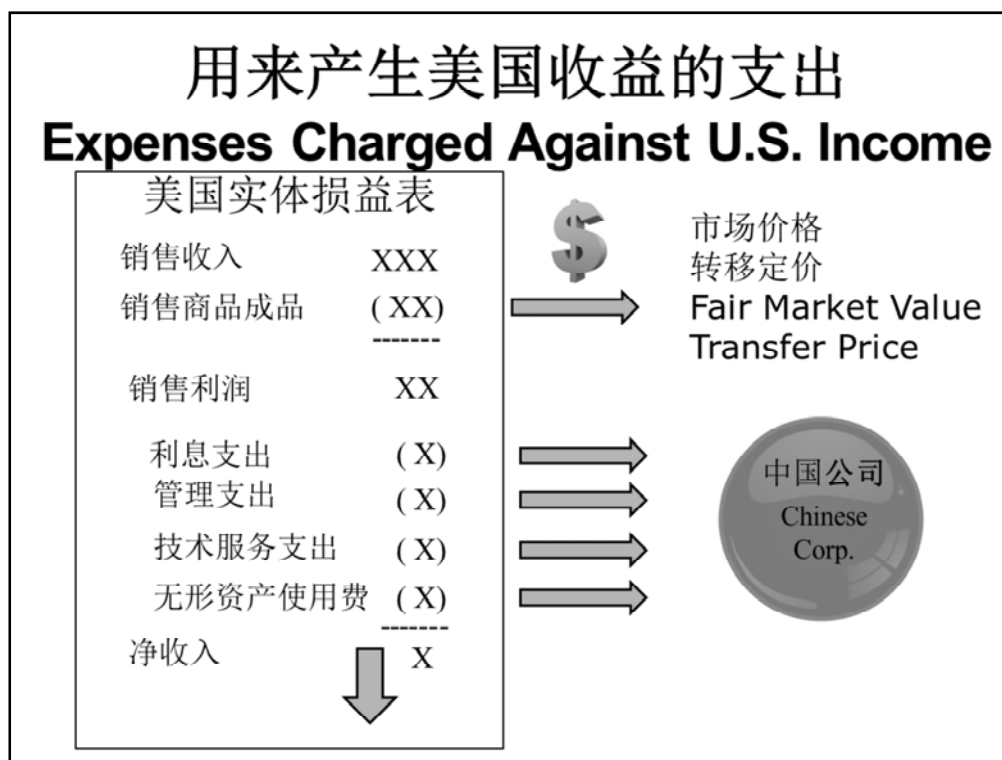
The U.S. federal corporate tax rates are detailed in the table below:

Income Over	But not over	Tax Rate
0	50,000	15%
50,000	75,000	25%
75,000	100,000	34%
100,000	335,000	39%
335,000	10,000,000	34%
10,000,000	15,000,000	35%
15,000,000	18,333,333	38%
18,333,333	--	35%

Most state income tax rates add another 5% to 9%. Therefore, the combined U.S. federal and state income tax rates are typically between 39% to 48%. Conversely, China's enterprise tax is 25%.

If a Peoples Republic of China firm ("PRC Firm") is directly selling to the U.S., then the PRC Firm's income tax rate is approximately 14% to 24% lower than the U.S. federal and state income tax rates. Therefore, if it is possible to have a transaction taxed in China but not in the U.S., it would save the Chinese company a significant amount of U.S. income tax.

While China allows a foreign tax credit to be carried forward for a period of five years, it is unlikely that it will ever be used before it expires. PRC Tax Compliance § 2-1-23. This is because the U.S. tax rates are so much greater than the Chinese tax rates.



#### 1. 能够抵扣美国收入的支出

与在美国的运营有关的支出可以递减来自美国公司分支或是美国合伙企业或是美国子公司的收入。公司支出比分红在税收方面更有利于公司，因为公司支出可以抵扣收入而分红不能。

对于美国分支，转移定价也可以被用来抵扣收入，另外，利息支出、母公司的管理支出也可以。但矿产土地使用权的支出则不能被美国分支用来抵扣收入。对于美国合伙制企业或者美国股份制公司，上述几项支出的市场转移定价都可以被用来抵扣收入。虽然母公司和子公司之间的管理费用在中国不能够被抵扣（企业所得税实施细则-第 49 章），在美国可以被抵扣不超过转移定价（市场价格）的部分。

#### 1. Expenses Charged Against U.S. Income

Expenses attributable to operations in the U.S. may be charged against a branch, a U.S. partnership, or a U.S. subsidiary's income. Expenses are always preferable to paying a dividend since they may be deducted for U.S. income tax purposes.

For a U.S. branch, a transfer price may be used as a deduction, as well as allocated expenses for interest, management expenses of the parent. Royalties may not be deducted by a U.S. branch. For a U.S. partnership or a U.S. corporation, fair market transfer pricing for all of the above expenses may be deducted. While management fees between parent corporations and subsidiaries in China are not deductible (Article 49 of CIT Implementation Rules), to the extent of a fair market value transfer pricing, they are deductible in the U.S.

## 支出和分红的类型

### Types of Expenses & Dividends

可抵扣税收收入 的支出； 无需代扣所得税 <b>Deductible Expense &amp; No Withholding</b>  出售商品成本 <b>COGS</b>  管理支出 <b>Management Fee</b>  技术服务支出 <b>Technical Service Fee</b>	可抵扣税收收入的 支出； 按 <b>10%</b> 代扣所得 税 <b>Deductible Expense - 10% Withholding</b>  利息支出 <b>Interest</b>  无形资产使用费 <b>Royalties</b>	不能抵扣税收收入 的支出； 按 <b>10%</b> 代扣所得 税 <b>No Deduction 10% Withholding</b>  分红 <b>Dividend</b>
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## 2. 支出和分红的类型

能够抵扣收入的支出有时能够使得公司免去代扣税的部分。比如在有税收协定的国家，实体之间的销售不需要再美国缴税，除非中国公司在美国有常设机构负责销售。管理支出和技术服务支出的服务如果是在中国提供的话，相应的收入也将被归为外国来源。这些都能够抵扣美国分支或实体的收入。

第二种类型的可以抵扣收入的支出是可以被收入者归类为 FDAP 收入（固定数量和固定时间支付的投资收入）的支出。美国对该类收入一般要求 30% 的代扣税。其他的 FDAP 收入包括利息、无形资产使用权和分红。中美 1984 年的税收协定把对于利息收入和矿产土地使用权收入的 30% 的代扣税降低到了 10%。

最后，如果收入不能够抵扣收入的话，那么它在税收系统中将被重新归类为分红的支出性质。它除了不能够抵扣税前收入之外，还被要求代扣另外 10% 的税。（1984 中美税收协定第 9 章）



## **2. Types of Expenses and Dividends**

A deductible expense may result in no U.S. withholding tax. For example, in a treaty country, sales between entities are not taxed in the U.S. unless the Chinese business has a permanent establishment in the U.S. that made the sale. Management fees and technical service fees performed in China, are foreign source income. These may also be charged to the U.S. branch or entity.

The second type of expenses is deductible expenses that are classified as FDAP income to the recipient. The U.S. generally applies a 30% withholding tax to any FDAP types of income. Among other items, FDAP includes interest, royalties, and dividends. The 1984 China-U.S. income tax treaty reduces the FDAP withholding from 30% to 10% for interest and Royalties. Art. 10 Interest; Art. 11 Royalties.

Finally, if an item is not a deductible expense, it is repatriated in the form of a dividend. In addition to being paid after U.S. income tax, a dividend is subject to a second U.S. withholding tax of 10%. 1984 China-U.S. Income Tax Treaty, Art. 9.

## 支出或分红的有效税率 Effective Tax Rate of an Expense or Dividend

	可抵扣税收收入的支出； 无需代扣所得税 <b>Deductible Expense &amp; No Withholding</b>	可抵扣税收收入的支出； 按10%代扣所得税 <b>Deductible Expense - 10% Withholding</b>	分红 <b>Dividend</b>
美国所得税 U.S. Inc. Tax	0	0	45%
美国代扣代缴税 U.S. W/H Tax	0	10%	6%
中国企业税 C.H. EP Tax	25%	25%	14%
可抵扣外国所得税额度 Foreign Tax Credit		(10)%	(14)%
<b>有效税率 Effective Tax Rate</b>	25%	25%	51%

### 3. 支出或分红的有效税率

在上面的计算中最后的应纳税额是以公司收入的百分比来表示的。当可抵扣税前收入的支出直接付给中国母公司时，公司是不用缴纳美国所得税的。当然我们的前提是该收入符合外国收入来源或者说中国公司在美国没有常设机构。与这些在美国能够抵扣收入的支出相关的收入将要在在中国缴纳 25%的中国企业税。

无形资产使用权的支出和利息支出被要求 10%的美国代扣税，但这些代扣税在中国能够成为外国抵税额来抵扣中国所得税。利息收入 and 无形资产使用权收入在中国缴纳 25%的税收。

分红是不能够抵扣税前收入的。因此用来支付这些分红的收益需要缴纳大约 45%的联邦政府和州政府所得税。剩下 55%税后净收入将要代扣 10%的税，相当于原收益的 6%左右。中国公司在中国则需要另外缴纳 25%的企业税，也就是相当于原收益的 14%。但中国公司同时也能够得到这 14%的外国抵税额度。

以上的例子假设了中国的外国税收抵税额在有效期内没有被使用。

### **3. Effective Tax Rate of an Expense or a Dividend**

The above chart computes the final tax liability as a percentage to the Chinese business. When a deductible expense is paid directly to the Chinese parent, there is no U.S. income tax. This assumes that the income is foreign source or the Chinese business does not have a U.S. permanent establishment. The income attributable to the U.S. deduction is reported in China and is subject to the 25% Chinese enterprise tax.

Royalties and Interest incur a second 10% U.S. withholding tax. However, this tax will receive a Chinese foreign tax credit. The interest income or royalty income are then taxed in China at a 25% enterprise rate.

A dividend is not deductible. Therefore, the earnings to generate the dividend are taxed at an estimated 45% (U.S. federal and state) tax rate. The net amount of 55% is then subject to a 10% withholding tax, rounded to 6% above. The Chinese business receives a net of 55% taxed at 25% for another 14% tax. However, the Chinese business also receives a foreign tax credit for the 14%.

The above example assumes that the Chinese foreign tax credit carryovers will expire in five years since China has a significantly lower tax rate than the U.S.

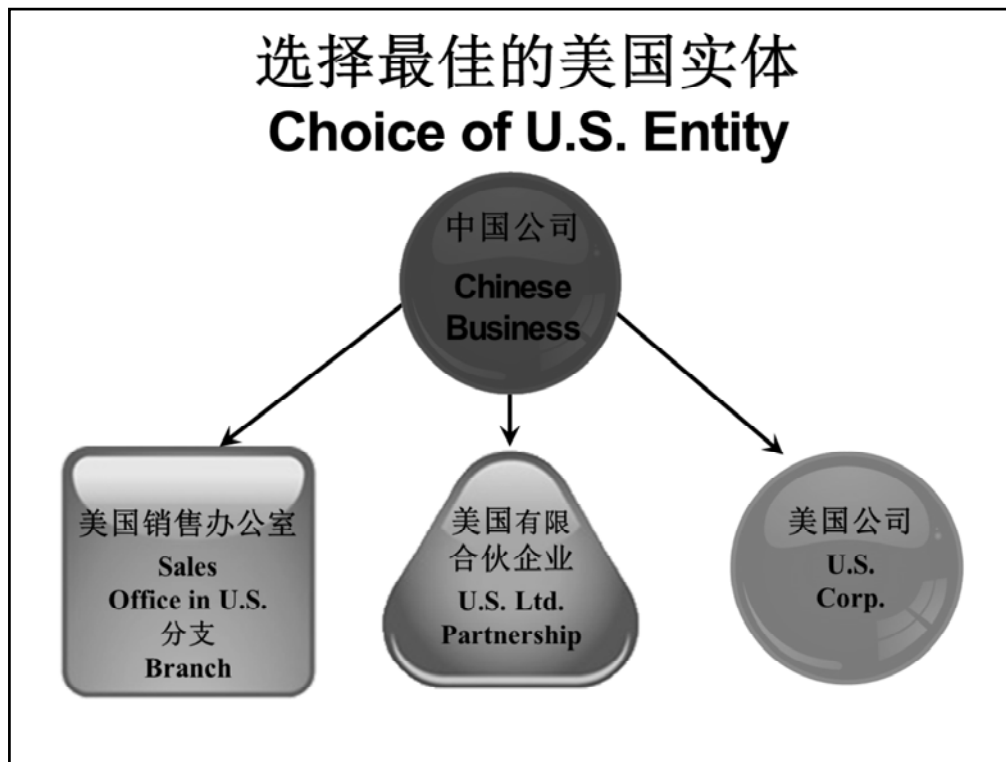
前一张的总结是基于以下计算:

		可抵扣税前收入 并且无需代 扣税的支出	可抵扣税 前收入并 且代扣税 "10%"	分红
<b>美国税收</b>				
收入		100	100	100
支出		(100)	(100)	
		-----	-----	-----
应缴税收入		0	0	100
<b>美国所得税税率</b>	45%	0	0	(45)
		-----	-----	-----
<b>应缴美国所得税</b>		0	0	55
分红		0	0	(55)
		=====	=====	=====
<b>美国所得税总结</b>				
美国收入所得税		0	0	45
美国代扣税	10%		10	6
		-----	-----	-----
美国税收加总		0	10	51
		=====	=====	=====
<b>中国税收</b>				
应缴税收入		100	100	55
		=====	=====	=====
中国企业税	25%	25	25	14
所缴外国税抵扣额			(10)	(14)
		-----	-----	-----
应缴中国税		25	15	(0)
		=====	=====	=====
<b>中美税收加总</b>		25	25	51
		=====	=====	=====

The summary on the previous slide was based on the computation below.

		<b>Deduction No Withholding</b>	<b>Withholding "10%"</b>	<b>Dividend</b>
<b>U.S. Tax</b>				
Income		100	100	100
Deduction		(100)	(100)	
		-----	-----	-----
Taxable Income		0	0	100
U.S. Income Tax	45%	0	0	(45)
		-----	-----	-----
Income Before Dividend		0	0	55
Dividend Amount		0	0	(55)
		=====	=====	=====
<b>U.S. Income Tax Summary</b>				
U.S. Income Tax		0	0	45
U.S. Withholding Tax	10%		10	6
		-----	-----	-----
Total U.S. Tax		0	10	51
		=====	=====	=====
<b>China Tax</b>				
Taxable Income		100	100	55
		=====	=====	=====
Chinese Enterprise Tax	25%	25	25	14
Chinese Foreign Tax Credit			(10)	(14)
		-----	-----	-----
Total Chinese Tax		25	15	(0)
		=====	=====	=====
Total U.S. and Chinese Tax		25	25	51
		=====	=====	=====

## 选择最佳的美国实体 Choice of U.S. Entity

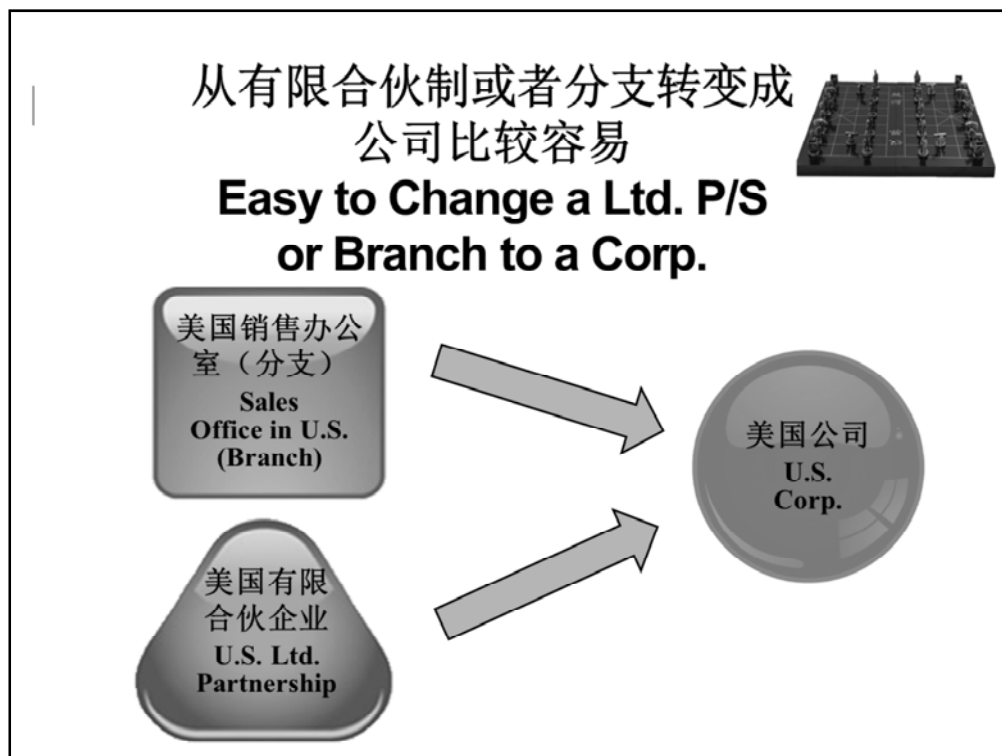


### D. 美国实体选择

中国企业可以选择在美国使用（1）分支；（2）合伙制企业；或者（3）美国股份制公司。其中分支和合伙制企业在美国都使用收入转由股东缴纳的制度，当期收入和支出也都要向中国政府申报。中国企业能够在中国得到不超过中国应纳税额的外国抵税额度。美国股份制公司在中国的税收可以延期至分红被实际支付之后才缴纳。由于美国税率比中国的税率高出很多，而且中国允许企业使用在外国抵税额，该延期缴纳政策其实综合两边来看并没有非常实际的利益体现。

### D. Choice of U.S. Entity

A Chinese firm may choose to do business as (1) a branch; (2) a partnership; or (3) a U.S. corporation. For Chinese purposes, both a branch and partnership result in flow-through taxation, with the income and expenses being reported currently in China. The income is also reported in the U.S. However, the Chinese business receives a foreign tax credit to the extent of the Chinese tax on such income. A U.S. corporation creates a deferral from Chinese taxation until the profit is distributed as a dividend. Since the U.S. tax rate is higher than the Chinese tax rate and since China allows a foreign tax credit, there is no real tax advantage to this deferral when one looks at both sides of the income taxation coin.



### 1. 将分支或合伙企业改为股份制公司

美国税法系统中有一个很简单的打勾选择制度，一个合伙企业只要在税表 8832 上选择按照股份公司制度缴税即可，而美国分支本质上便可以将资产转移至美国股份制公司。因此一个中国公司很容易的便能够将将在美国设立的分支或合伙企业转变为股份公司的性质缴税。

### 1. Changing a Branch or partnership Into a Corp

The U.S. has a simple procedure known as check-the-box for U.S. tax purposes. By filing Form 8832, a partnership may elect to be taxed as a corporation. A U.S. branch may naturally transfer its assets into a U.S. corporation. Therefore, should a Chinese business wish to start operations as a branch and later change to a corporation, it may easily do this.



## 2. 将股份制公司转为分支或合伙企业

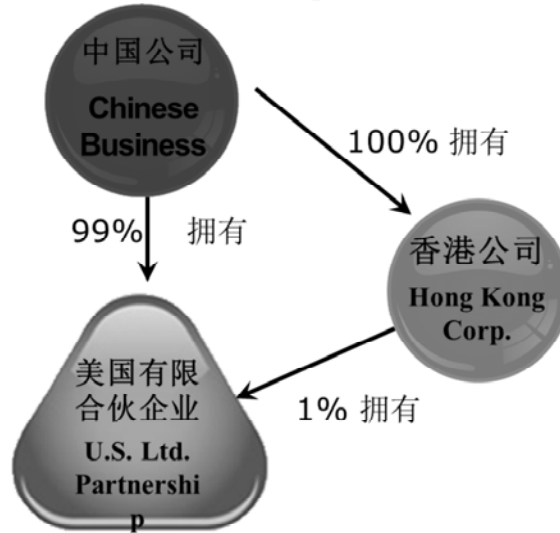
但需要注意的是，在将分支或合伙企业转为股份公司时无需缴纳任何所得税，反之却并非如此。如果一个美国股份制公司想要清算，然后将资产转移至一个合伙企业或是责任有限公司，那么它将被认为是将资产按照市场价格出售，因此由此产生的收益将需要缴纳美国收入所得税。

## 2. Changing a Corporation to a Branch or Partnership

Please note, while it is easy for a branch or partnership to be taxed as a U.S. corporation without incurring an income tax on formation, the reverse is not true. Rather, if a U.S. corporation is liquidated and the assets transferred to a partnership or LLC, it shall be deemed as a fair market value sale of all of its assets. Any deemed gain, shall result in U.S. income tax.



## 美国有限合伙制企业的结构 U.S. Ltd. Partnership Structure



合伙制企业必须有两个以上的合伙人。有时，人们会不理解这一项规定，他们以为中国企业必须有一个美国公民合伙人，但其实是不需要的。很多时候，中国企业会成立一个香港公司，中国公司拥有美国合伙企业 99%的所有权，而该香港公司拥有 1%的所有权。

A partnership must have two partners. Sometimes, seminar participants get confused with this at least two partner requirement. They are under the mistaken impression that the Chinese firm must partner with a U.S. partner. This is not required. Rather, many times the Chinese corporation will form a Hong Kong corporation (i.e. subsidiary). The Chinese corporation will own 99% of the U.S. partnership and the Hong Kong corporation will own 1% of the U.S. partnership.

## + 和-的含义 Plus or Minus Difference



在税赋上有利于公司  
Positive Point



在税赋上不利于公司  
Negative Point

### E. +和-在此的含义

在比较几种不同的情况时，我们使用“+”来代表在税收方面会对公司产生有利结果的情况，用“-”来代表相反的情况。

### E. Positive or Negative Point

As used in this outline, the “+” sign means that it is a positive result when compared to the different alternatives. The “-” sign means that it is a negative result when compared to the other alternatives.

## 一般公司的三个阶段 Time Periods of a Business



起步阶段  
Start Up



出售阶段  
Succession



运营阶段  
Operations

### F. 公司发展的几个阶段

不同的经营实体，包括分支、合伙企业和股份公司在公司发展的不同阶段会面临不同的税收情况，这几个阶段大致可以分为（1）起步阶段；（2）运营发展阶段；（3）合并或出售阶段。

### F. Time Periods

The different entities of a branch, corporation, or a partnership may have different tax advantages depending on the stage of a U.S. business: (1) start up; (2) operations; or (3) merger or acquisition, referred to as business succession.

# 起步阶段的损失 Start Up Losses



## 分支 Branch

⊖ 在分支盈利前  
损失不可在税前抵扣  
Losses suspended  
until income

## 有限合伙制企业 Ltd. Partnership

⊖ 在有限合伙盈利前  
损失不可在税前抵扣  
Losses suspended  
until income

## 公司 Corp

⊖ 在公司盈利前  
损失不可在税前抵扣  
Losses suspended  
until income

### 1. 起步阶段

当公司开始在外国运营时，通常会有一个亏损阶段。不幸的是，中国企业税收实施准则第 17 章规定，外国分支实体的亏损将要滞留不能抵扣母公司收入直到该分支开始盈利。同样的，如果是美国子公司，亏损将要被滞留直到该子公司开始盈利。相类似的是，美国合伙企业的亏损只能和中国母公司将来收到的来自该合伙企业的收入相抵。（财税 [2008] 第 159 号第 5 章）

### 1. Startup

When a company begins doing business in a foreign country, typically there is a period where there are losses incurred in the foreign country. Unfortunately under China law, if a branch entity is used, these losses are suspended until there is income. Article 17 of the CIT implementation rules. The same is true for losses of a U.S. subsidiary. Similarly, losses of a U.S. partnership may only be used by a Chinese corporation against future income of that partnership. Article 5 of Cai Shui [2008] No. 159.

# 运营阶段 Operations



## 有限合伙制企业 Ltd. Partnership

**+** 平均节省1%至4%税赋  
Avg. 1% to 4% tax savings

## 公司或分支 Corp. & Branch

**-** 所得税税率更高  
Greater income tax

## 2. 运营阶段

### a. 较低的所得税税率

当收入在 335,000 至 1,000,000 美金之间时，合伙制企业的缴税制度相比于美国分支或股份制公司的缴税制度将能够省去 1%至 4%的税。如果收入小于 335,000 美金或大于 1,000,000 美金时，能够省去的所得税更高一些。

### b. 合伙制企业代扣税

美国合伙制企业的不利的方面是所得税必须按季度按照最高的公司边际税率 39.6 代扣。如果中国公民在申报美国个人年税时所在的个人所得税率区间比 39.6 小的话，那么它能够拿到税款返还。

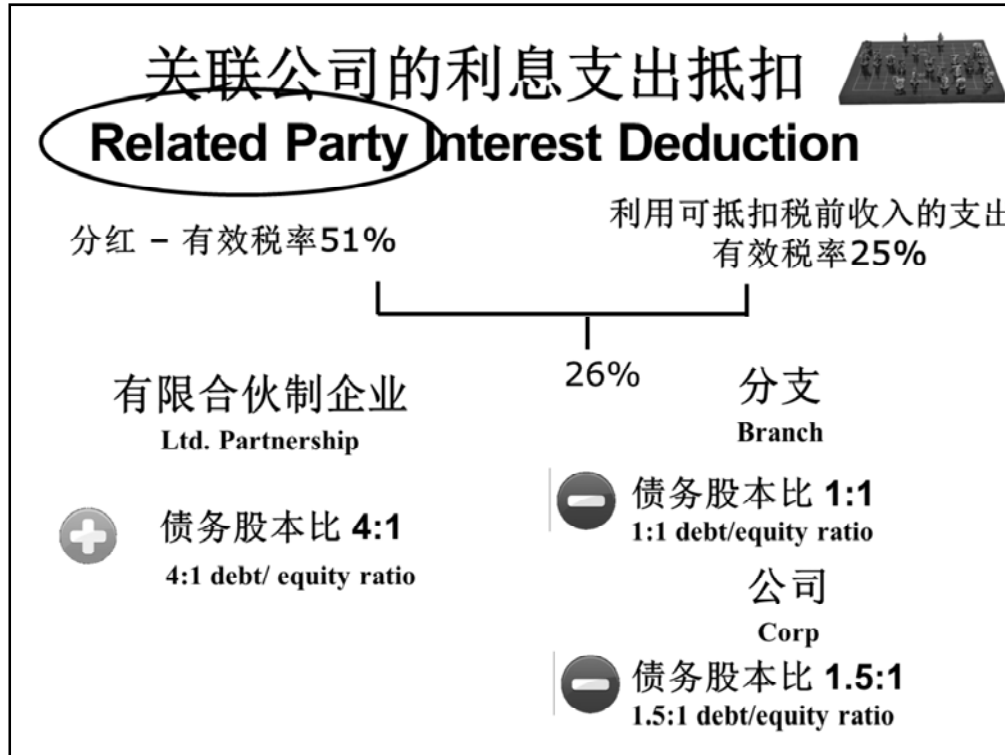
## 2. Operations

### a. Lower Income Tax Rate

For net income between \$335,000 to \$1 million, a partnership will save between 1% to 4% in U.S. income tax when compared to a U.S. branch or a U.S. corporation. If the income is less than \$335,000 or greater than \$1 million, then the income tax savings will be a few points higher.

### b. Partnership Withholding

The negative side of a U.S. partnership is that the income tax must be paid quarterly at the highest marginal tax rate of 39.6% for business income. If a Chinese person's U.S. income tax rate is lower when he or she files her annual U.S. income tax return (1040 NR), then he or she will receive a refund.



**c. 更高的关联方债务**

正如我们在前几页提到的，如果利用能抵扣美国税前收入的支出来将资金从美国转至中国，那么有效税率是 25%。如果分红是由子公司支付的话，那么有效税率是 51%。因此中国公司利用关联方贷款和利息支出抵扣税前收入的方法将能够节省 26% 的税收。美国允许在股本比例达到 1:1 的情况下，利息支出能够抵扣税前收入。股份制公司一般达到 1.5:1 的股本比，而合伙企业一般达到 4:1 或 5:1 的股本比，这将使得合伙企业能够以 26% 更低的税率将资金转制中国。

**c. Greater Related Party Debt**

As noted in a previous slide, if a deductible expense is used to move money from the U.S. to China, the effective tax rate is 25%. If a dividend is paid by a subsidiary, the effective tax cost is 51%. Therefore, a Chinese corporation saves 26% in tax by using related party loans and an interest deduction. The U.S. allows only a 1:1 debt equity ratio for interest to be deductible. With a corporation, the earnings stripping rules in general limit an interest deduction to 1.5:1. However, a partnership may typically use a 4:1 or possibly even a 5:1 debt equity ratio. This allows a partnership to move more money to China at a 26% lower tax cost.

# 运营阶段 Summary Operations



## 有限合伙制企业 Ltd. Partnership

⊕ 平均节省1%至4%税赋  
Avg. 1% to 4% tax  
savings

⊕ 债务股本比 4:1  
4:1 debt/ equity ratio

## 出售阶段 Succession



### 出售资产 Asset Sale



### 出售股票 Stock Sale



### 3. 公司出售阶段

当公司决定被出售时，公司可以选择资产出售或者股票出售。在中国，中国股份公司通常会选择出售股票。在美国，由于税收上不利的政策，收购者通常会选择买公司资产。如果出售方只愿意出售股票，那么出售方将需要以低于资产出售的价格来达成股票出售的交易。

### 3. Succession

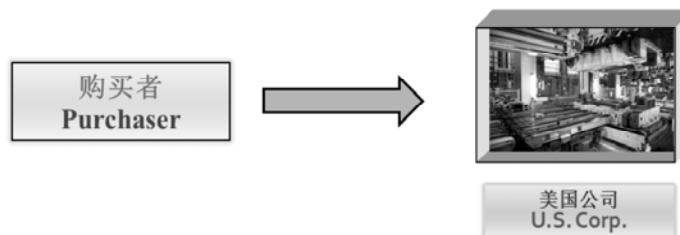
When a business is sold, it is either as a sale of the company's assets ("asset sale") or the sale of the company's stock ("stock sale"). In China, Chinese corporations primarily sell by a stock sale. In the U.S., due to the negative business and tax issues, almost always a purchaser wishes to buy assets. If the seller will only sell stock, then the seller will almost always have to sell at a much lower value than an asset sale.



# 美国资产出售 Sale of U.S. Assets



- 收购者通常更愿意购买资产  
Purchaser will want to buy assets



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## a. 购买资产

相比于购买股权，购买者通常更愿意购买资产本身。

主要有三个理由，首先，按照美国现行法律，资产购买者可以以购买价格来折旧资产，即使是商誉也能购折旧 15 年。

其次，大部分的股份公司都有一些不明确的债务，如果购买资产的话，这些债务不会从出售资产的公司转移到购买者身上。但由一个例外是在环境保护责任方面，房地产的购买者将负有责任清理资产。

第三，购买股票的人同时也会面临将来他们出售时的税务问题。对于大部分的矿产权益，该税收问题通常会高达销售价格的 25%到 30%，这将迫使出售者降低销售价格 25%到 30%来出售股权而非资产本身。

*a. Purchase of Assets*

A purchaser will almost always prefer to purchase assets, rather than owning the stock. First, under U.S. law, the purchaser may almost always depreciate the purchase price. Even goodwill may be written off over fifteen years.

Second, many times a corporation has some unknown liabilities. If assets are purchased, these liabilities generally stay with the corporation and do not flow to the purchaser. A major exception to this general rule is environmental liabilities. Under U.S. law, any purchaser of real property that has an environmental issue is also liable for the cleaning up the property.

Third, whoever purchases the stock also purchases the tax problem when they go to sell the assets in the future. With many mineral interests, this tax problem may be as high as 25% to 30% of the sales price. This forces the seller to reduce their sales price by this 25% to 30% if the purchaser wishes to purchase stock.

## 收购者通常更愿意购买资产 Purchaser Will Want to Buy Assets



1. 因为资产可以折旧  
Depreciate the purchase price
2. 并且，不会涉及不明确的债务  
Does not buy unknown liabilities
3. 再者，20%的所得税问题  
Income Tax Problem 20%

### b. 购买资产

相比于购买股权，购买者通常更愿意购买资产本身。

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# 出售资产 Asset Sale



公司  
Corp.

分支和有限合伙制企业  
Branch & Ltd. Partnership

⊖ 资本收益按普通收益缴  
税-税率 48%  
Capital gain converted to  
ordinary income 48%

⊕ 美国联邦政府和州政府  
的资本收益税 28%  
U.S. + state Capital gain rate  
28%

## i. 美国股份制公司的资产出售

当中国公司在美国设立股份制公司并且选择出售资产时，资本收益将被转为普通收益的性质来征税，这使得税率从 28% 提高到了 48% 左右。中国的企业税也是 25%。中国将只允许企业使用在美国缴纳的 48% 的所得税中的 25% 作为在中国的外国抵税额。这样最终的结果是，和分支实体或合伙企业相比较，股份制公司在出售资产时要多缴纳 15% 的所得税。

## ii. 分支或合伙企业

如果中国公司选择使用美国分支实体或美国合伙制企业并出售资产，那么有效税率将相当于在中国应缴纳的税率 25%。

### i. *U.S. Corporation Asset Sale*

If the U.S. Corporation sells its assets, capital gain is converted to ordinary income. This increases the U.S. taxation from 28% to approximately 48%. China's enterprise tax is also 25%. China will only allow a foreign tax credit of 25% of the U.S. 48% tax. The result is that the income tax on the gain is increased by 15% when compared to the branch or partnership alternative.

### ii. *Branch and Partnership*

Conversely, if the Chinese corporation had conducted business through a U.S. branch or U.S. partnership, the effective tax rate would only be the Chinese tax of 25%.

# 出售股票 Stock Sale



公司  
Corp.

分支和有限合伙制企业  
Branch & Ltd. Partnership

⊕ 无需缴纳美国税  
No U.S. tax

⊕ 可能无需缴纳美国税  
Probably, No U.S. Tax

⊖ 中国企业税 25%  
China Enterprise Tax 25 %

⊖ 中国企业税 25%  
China Enterprise Tax 25 %

## c. 美国股票出售

当中国公司在美国设立股份制公司并且选择出售股票时，在美国无需缴纳任何税收。但在中国需要缴纳 25% 的税。如果设立的是分支实体或者合伙制企业并且出售所有权权益，那么在美国需缴纳约为 25% 的税，然而该税率将会被中国税收部分作为外国抵税额减少至 0。然后企业在中国还需缴纳中国企业税 25%。因此出售分支和合伙企业所有权权益的最终税率是 25%。

## c. *U.S. Stock Sale*

When a Chinese corporation sells the U.S. corporation's stock, no tax is paid in the U.S. However, the Chinese enterprise tax will impose a 25% tax. If the branch or a partnership interest is sold, the U.S. tax will be approximately 25%. However, the Chinese foreign tax credit will reduce the U.S. tax to zero. Then, the Chinese enterprise tax of 25% will be applied. The net result is that the sale of a branch or partnership interest results in a 25% tax.

# 实体选择总结

## Summary Choice of Entity



起步阶段  
Start Up



运营阶段  
Operations



出售阶段  
Succession

有限合伙制企业  
**Ltd. Partnership**

有限合伙制企业  
**Ltd. Partnership**

No difference  
between the  
entities



平均节省**1%至4%**税赋  
Avg. 1% to 4% tax savings



节省至少  
**15%**所得税  
Saves at  
least 15%  
income tax



债务股本比 **4:1**  
4:1 debt/ equity ratio

#### 4. 运营阶段

##### a. 较低的所得税税率

当收入在 335,000 至 1,000,000 美金之间时，合伙制企业的缴税制度相比于美国分支或股份制公司的缴税制度将能够省去 1%至 4%的税。如果收入小于 335,000 美金或大于 1,000,000 美金时，能够省去的所得税更高一些。

##### b. 合伙制企业代扣税

美国合伙制企业的不利的方面是所得税必须按季度按照最高的公司边际税率 39.6 代扣。如果中国公民在申报美国个人年税时所在的个人所得税率区间比 39.6 小的话，那么它能够拿到税款返还。

#### 4. Operations

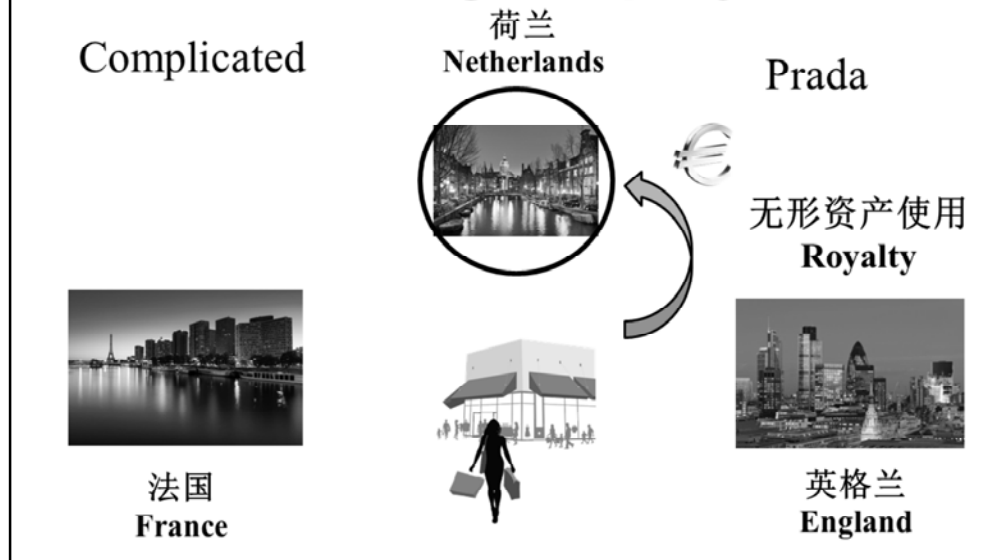
##### a. Lower Income Tax Rate

For net income between \$335,000 to \$1 million, a partnership will save between 1% to 4% in U.S. income tax when compared to a U.S. branch or a U.S. corporation. If the income is less than \$335,000 or greater than \$1 million, then the income tax savings will be a few points higher.

##### b. Partnership Withholding

The negative side of a U.S. partnership is that the income tax must be paid quarterly at the highest marginal tax rate of 39.6% for business income. If a Chinese person's U.S. income tax rate is lower when he or she files her annual U.S. income tax return (1040 NR), then he or she will receive a refund.

### 3. 控股公司 Holding Company



Holding companies. This is where transactions get very complicated.

In Europe, there are primarily two nations that are used as holding companies: Netherlands or Luxembourg. For example, the following companies have moved their principal headquarters to the Netherlands: Volkswagen, IKEA, Gucci, Prada, Mittal Steel, Fujitsu-Siemens, and Pirelli.

Using Prada as an example, assume that Prada charges each one of its retail stores in France and England a two percent fee to use its name. This type of fee would be classified as a royalty as it is the use of Prada's intellectual property.

All European Union treaties reduce the royalty withholding rate to zero. Therefore, France and England would not tax the royalty fee.

The Netherlands will tax the royalty when received by Prada's Netherlands holding company. However, the rate of tax is very low, typically below 10%.

This is one of the methods that Prada moves profits throughout the world to be taxed at a lower income tax rate.

# 香港控股公司 Hong Kong Holding Company



Let's move to a Hong Kong holding company. Most Chinese firms do not use Netherlands or Luxembourg for a holding company, rather they form a Hong Kong company.

However, Hong Kong does not have an income tax treaty with the U.S. If a U.S. corporation pays a Hong Kong corporation interest, dividends, or royalties, there is a 30 % withholding tax.

Under the China treaty, the rates are reduced to 10%. So using a Hong Kong holding company to directly own the U.S. company actually increases the withholding tax.



# 香港控股公司 Hong Kong Holding Company

香港  
Hong Kong



卢森堡  
Luxemburg



美国  
United States



香港-卢森堡  
税收协定  
Hong Kong  
Luxembourg  
Treaty

卢森堡-美国  
税收协定  
Luxembourg  
U.S. Treaty



➤ 香港公司是上市公司?  
HK Publicly Traded?

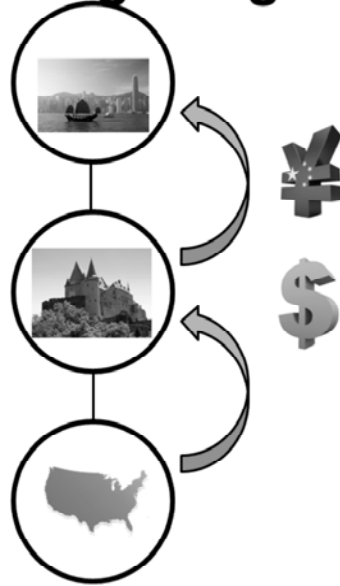
The question becomes can a Hong Kong company “hop scotch” into America. Hop scotch is a game where you achieve the same objective by going indirectly, rather than directly?

For example, Hong Kong has an income tax treaty with Luxembourg. Can we form a corporation in Luxembourg, and then use the Luxembourg U.S. treaty?

This becomes a very difficult analysis that may well require the Hong Kong company to be a publicly traded company when dealing with the U.S.

# 香港控股公司 Hong Kong Holding Company

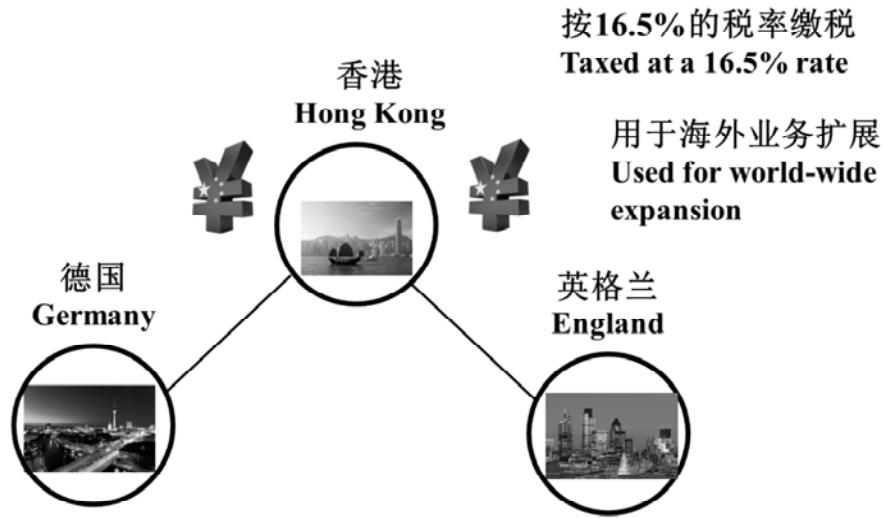
用于海外业务扩展  
Used for world-wide expansion



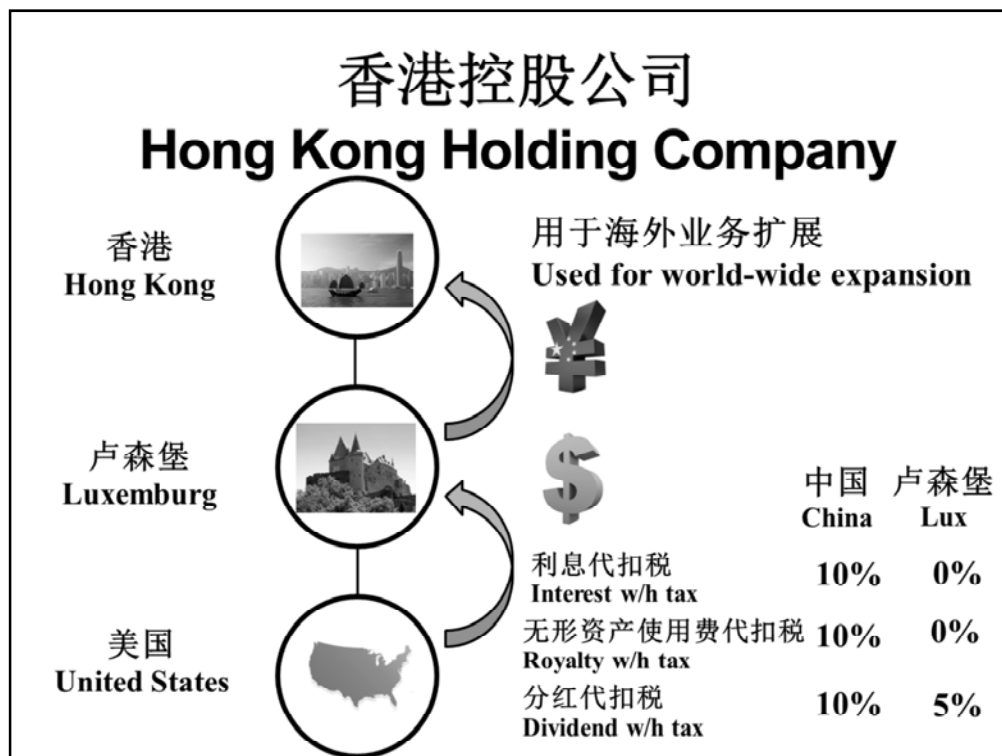
	中国 Hong Kong	卢森堡 Lux
利息代扣税 Interest w/h tax	30%	0%
无形资产使用费代扣税 Royalty w/h tax	30%	0%
分红代扣税 Dividend w/h tax	30%	5%

If we are able to hop scotch into the U.S. through Luxembourg, notice the reduced withholding rates when interest, royalties, or dividends are paid to Luxembourg. The money may then be remitted from Luxembourg to Hong Kong.

# 香港控股公司 Hong Kong Holding Company



Once the money is remitted to Hong Kong, it is generally taxed at Hong Kong's 16.5% tax rate. From Hong Kong it may now be used for world-wide expansion. For example, the money may be used to capitalize a new German subsidiary or a new English subsidiary.



虽然香港和美国之间没有税收协定，其他国家，例如卢森堡，和美国之间有非常有利的税收协定。根据卢森堡和美国的税收协定，公司分红、矿产土地使用权和利息支出如果从美国公司支付给卢森堡公司，那么将不需任何代扣税。为此，如果中国公司利用卢森堡协定在卢森堡做一个中间点的话，那么原先的按照中美协定需要缴纳的 10% 的税也将变成 0。

While Hong Kong does not have a treaty with the U.S. Luxembourg and some other possible favorable nations do have a treaty with the U.S. Under the Luxembourg treaty, dividends, royalties, and interest paid from a U.S. corporation to a Luxembourg corporation have no U.S. withholding tax. Conversely, the China treaty amount is reduced from 10% on a transaction directly with China, to 0% when a Luxembourg treaty is used in the middle of the transaction.