

传统母公司-子公司结构 Traditional Parent-Subsidiary



6. 传统的香港控股公司结构

a. 母公司-子公司结构

在该结构中，中国母公司在香港设立一个完全控股的股份公司。如果母公司是制造业公司，那么香港子公司可以进行市场营销和分销的经营活动。

根据中国企业所得税法第 41 条，中国母公司应向香港子公司以市场价格销售产品。香港子公司再将商品销往国际市场并将留存收益留在香港。

香港子公司一般会再将收益用于其他国际分布的运营和投资。

6. Traditional Hong Kong Holding Company Structures

a. *Parent-Subsidiary*

With a parent-subsidiary structure, the parent Chinese corporation forms a Hong Kong corporation that is 100% owned by the parent. Generally, the parent Chinese corporation is a manufacturer. The Hong Kong company is a marketing and distribution subsidiary.

The Chinese manufacturer parent sells goods to the Hong Kong distribution subsidiary at a fair market distribution price. Enterprise Income Tax Law Article 41 (“EITL”). The Hong Kong distribution subsidiary sells the goods internationally, and retains the profit in Hong Kong.

The Hong Kong subsidiary generally invests the profits in other international operations or investments.

很多涉及国际交易的中国公司会选择在香港建立控股公司，这些香港控股公司一般是通过每一笔国际交易收取一定的佣金或者按成本加价的价格出售商品来赚取利润。这样利润就转移到了香港控股公司。很多情况下，这些控股公司的作用只在于累计资金。

中国在2007年的时候通过了中国企业或中国居民控制的外国公司的法律（参见2007年发布的《中华人民共和国企业所得税法》（主席令 第63号）第45条）。在该法律下，任何非由于合理的经营需要而未做分配的累计起来的利润将计入该居民企业的当期应纳税收入。目前，大部分的中国企业在设立了香港控股公司之后并没有能够严格按照法律制度报税，但这不是合适的规划商业结构的方法。

Many Chinese persons form Hong Kong Holding Companies to conduct international operations. These Hong Kong Companies typically make money by charging a commission on the international sales or by selling the goods at a marked up price over the factory price. The result is that this profit moves to the Hong Kong holding company. Most of the time, the holding company does nothing but accumulate money.

In 2007, China adopted controlled foreign corporation law. [2007] No. 63, EIT Law. Under this law, any profits that are not accumulated for the reasonable expansion of the business are subject to tax in China. At present, most Chinese that create Hong Kong holding companies simply don't follow the law. Unfortunately, this is not a proper way one should structure their business.



b. 成功案例

相对于忽视中国的税法，中国公民应选择设立一个境外信托来应对中国的所得税。境外信托可以持有境外股份公司。在上面的例子中，我们可以使用新加坡信托来持有新加坡股份公司。中国公民将对信托有很大的控制能力。当信托做分配的时候，基本按照 20% 缴纳中国所得税。

王先生在世界各个国家拥有 20 多家酒店，他出生于中国，后来移居到了英国。英国的税收体系不是全球范围的收入，并且只对英国的居民征收所得税。在很多国家，要成为税法居民必须要在一年内住满 183 天。王先生一年大约在法国居住 1/3 时间，在英国居住 1/3 时间，然后剩余 1/3 时间是在其他国家的酒店居住。

王先生的境外信托持有很多个控股公司，然后由这些控股公司持有这 20 家酒店。当酒店的利润分配给这些控股公司的时候，这些利润是不用在任何国家缴纳所得税的。

我们大部分的中国客户都是中国公民。因此适合他们的规划结构有所不同。中国客户的愿望通常是能够设立一个不被视为是中国居民控制的外国企业的境外公司，并能够递延所得税直到利润被返还中国境内。而上面这个结构正是能够达到此目的的一个有效的结构。

b. Success Story

Rather, than ignore Chinese income tax laws, a Chinese person should look at the creation of an offshore trust. The offshore trust would own an offshore corporation. In the above example, we used a Singapore trust with a Singapore corporation. The Chinese person would have a large degree of control over the trust. When there is a distribution from the trust, it is probably taxed at a 20% rate.

Mr. Wang owns twenty hotels through the world. He was born in China, but became a citizen of the United Kingdom. The United Kingdom does not have world-wide taxation. Rather, the United Kingdom only taxes citizens that are resident in the United Kingdom. To be a resident in many countries requires that you are there more than 183 days a year. Mr. Wang resides in France for about 1/3 of the year; in the United Kingdom about 1/3 of the year, and travels to visit his hotels the other 1/3 of the year.

Mr. Wang's foreign trust owns a series of holding companies. These companies then own the 20 hotels throughout the world. Once the profits from the hotels have been distributed to the holding companies owned by the trust, they are not subject to tax in any nation.

Most Chinese clients are Chinese nationals. So their purpose in creating the above structure is different. Rather, these Chinese wish to design a structure where the offshore corporation will not be considered a controlled foreign corporation and delay taxation until the funds are remitted to China. The above structure may effectively accomplish this.

控股公司设立地点的选择

Choices of holding company's place

协约国 Contracting- Country/Region	股东持股25%及 以上的中国预 提所得税税率 Direct Dividend Rate	股东持股低于 25%的中国预 提所得税税率 Other Dividend Rate	税收协定 Authority
1. 巴巴多斯 Barbados	5%	5%	China-Barbados 2000 Income Tax Treaty-Article 10
2. 新加坡 Singapore	5%	10%	China-Singapore 2007 Income Tax Treaty-Article 10
3. 香港 Hong Kong	5%	10%	China-Hong Kong 2006 Income Tax Treaty-Article 10
4. 卢森堡 Luxembourg	5%	10%	China-Luxembourg 1994 Income Tax Treaty-Article 10
5. 塞舌尔 Seychelles	5%	5%	China-Seychelles 1999 Income Tax Treaty-Article 10
6. 毛里求斯 Mauritius	5%	5%	China-Mauritius 1994 Income Tax Treaty-Article 10

c. 选择控股公司设立地点的关键因素

在为一个有实质运营活动的控股公司选择设立地点时，其中一个重要的考虑因素是所得税税收协定，包括控股公司设立点和中国之间的税收协定以及和其他国家的税收协定。上图的表格中显示了中国公司在向控股公司支付股息时，不同的国家所要求的股息代扣税率。

除了所得税税收协定之外，还有以下几个重要的选择设立地点的考虑因素：

1. 结构属于中国入境构架（即离岸信托持有控股公司，控股公司持有中国公司）还是中国出境构架（即中国股东持有中国公司，中国公司持有离岸控股公司）；
2. 控股公司属于有实质经营活动的公司还是投资性公司(即只持有其他公司的股权)；
3. 控股公司所在地去的所得税税率；
4. 保密性。

c. One of the Factors in Determining the Jurisdiction of the Holding Company

For an active operating holding company, one of the key factors in determining the holding companies place of formation and operation are income tax treaties. There is the issue of income tax treaties between China and the holding company jurisdiction, as well as income tax treaties between the holding companies jurisdiction and other nations. The above table shows the dividend withholding rate when a dividend is paid from a Chinese corporation to an active operating holding corporation in the above jurisdictions.

In addition to the use of income tax treaties, other major factors determining which jurisdiction are:

1. Whether the transaction is inbound (i.e. the offshore trust owns the holding company that owns the Chinese corporation) or outbound (i.e. the Chinese person owns the Chinese corporation that owns the holding company);
2. Whether the holding company is an active operating company or a passive company (i.e. it only holds stock in other companies);
3. The tax rate of the holding company; and
4. Confidentiality.