

关于投资退出时中国税收问题的实务分析与观察

Practical Analysis and Insights into Chinese Taxes on Investment Exits

2011年税务小组讨论续篇

A sequel to 2011's Tax Panel Discussion



中华创业投资财务总监协会

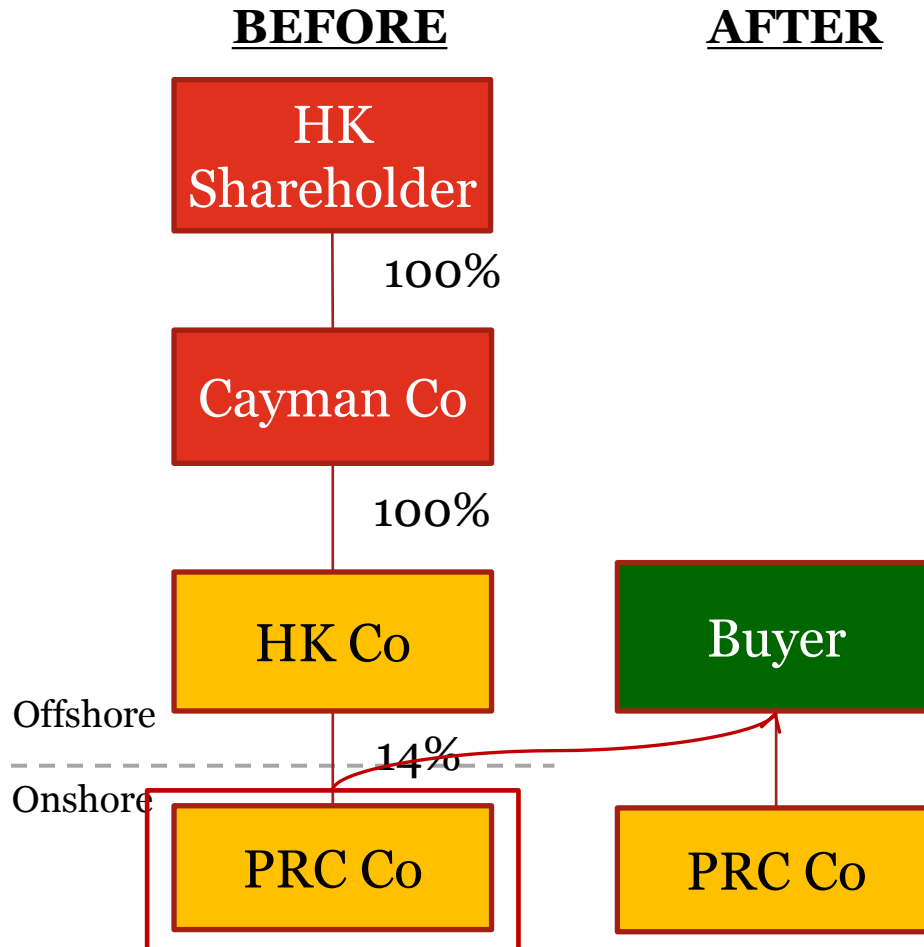
非居民企业所得税收征管信息

Non-resident Tax Collection Information

	2011年收入	同比增长
非居民企业税收 Non residents withholding tax revenue	1025.9亿元 Rmb102.59bn	31.8%
股息红利所得企业所得税 Dividend withholding tax revenue	449.7亿元 Rmb44.9bn	63.6%
股权转让所得企业所得税 Withholding tax on share transfer gain	88.7亿元 Rmb8.87bn	36.03%

失败案例一直接转让

Failure Case in Shenzhen – Direct Transfer (1)



- 香港股东在开曼设立一家公司。开曼公司在**2007**年设立了香港公司，注册资本为 **HK\$10,000**，实际资本为 **HK\$100**。

HK Shareholder set up Cayman Co, which in turn set up HK Co in 2007. HK Co's share capital was HK\$10,000 with issued capital of HK\$100.

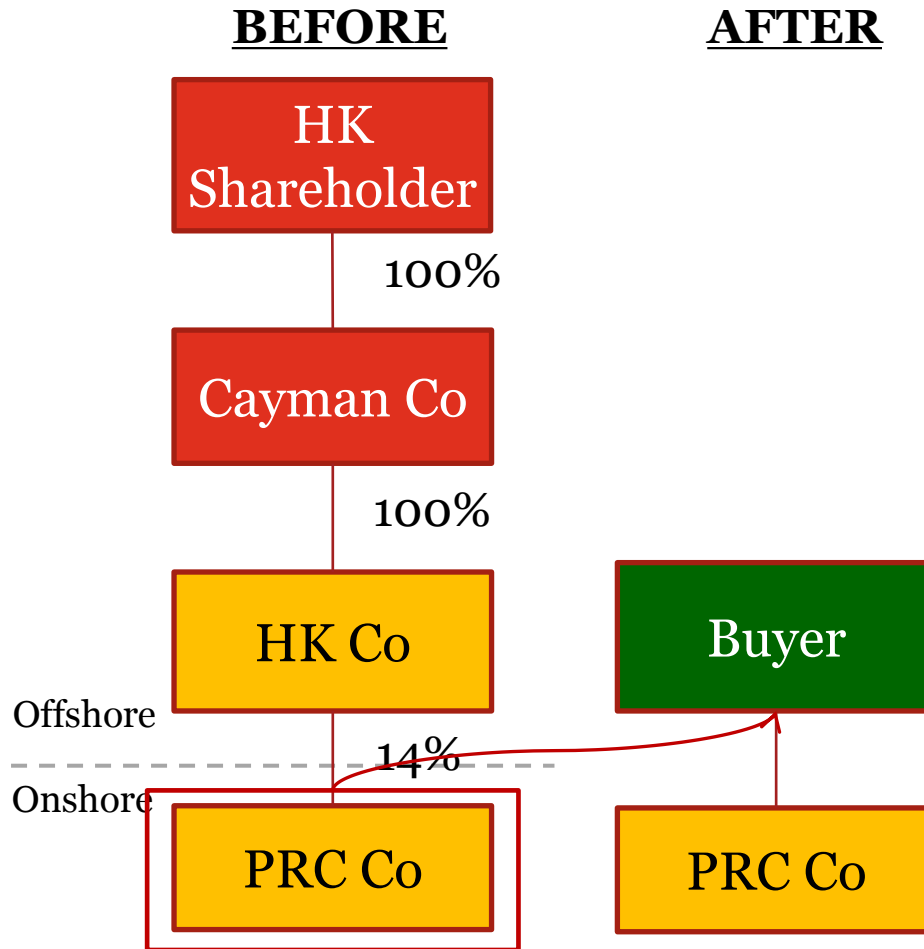
- 香港公司在**2007**年投资一家深圳公司，持股比例为**14%**。
HK Co invested into PRC Co in 2007 and own 14%.

- 深圳公司在**2009**年中小板上市。**2010**年法人股解禁后，香港公司在二级市场减持股份。

PRC Co went IPO in Shenzhen Stock Exchange. HK Co disposed its holdings through secondary market after end of lock-up period.

失败案例一直接转让

Failure Case in Shenzhen – Direct Transfer (2)



- 税局本着“实质重于形式”的原则，驳回税收协定的申请。企业补缴了相应税款**1200**万元。
Tax Bureau did not approve using the China-HK tax arrangement and imposed tax of Rmb12m.

- 失败主要原因：
Main reason for failure:
 - 香港公司的注册资本、经营范围、经营决策、人员结构和实质经营等因素
HK CO's registered capital, operating scope, decision making, personnel composition and actual operations

失败案例一间接转让

Failure Case in Jiangsu – Indirect Transfer (1)

BEFORE



100%

HK Co

Offshore

Onshore

49%

PRC
Shareholder

PRC
OpCo

AFTER



100%

HK Co

49%

PRC
Shareholder

PRC
OpCo

- 境外投资者通过全资香港子公司投资**49%**国内OpCo
Foreign shareholder invested 49% of PRC OpCo via HK Co.
- **2010**年一月，境外投资者将其香港子公司转让给美国收购者。
In Jan 2010, foreign shareholder transferred 100% of HK Co to US Buyer.

失败案例一间接转让

Failure Case in Jiangsu – Indirect Transfer (2)

BEFORE



100%

HK Co

Offshore

Onshore

49%

PRC
Shareholder

PRC
OpCo

AFTER



100%

HK Co

49%

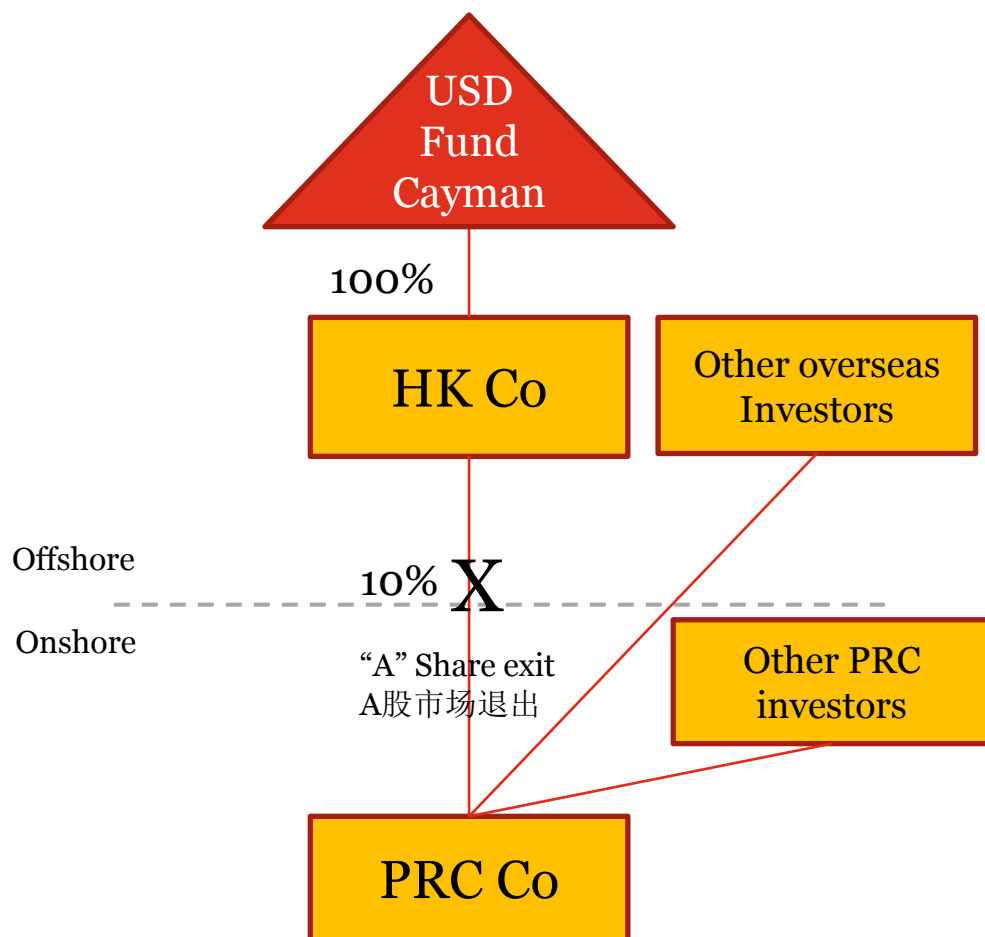
PRC
Shareholder

PRC
OpCo

- 税局觉得实质上是转让**PRC OpCo**的外方股权，应在国内负有纳税义务；在**2010年5月**，征收**1.73亿元**税款。Tax Bureau imposed tax of Rmb173m in May 2010 on the basis that the transfer was a transfer of PRC OpCo by its foreign shareholder to U.S. Buyer. The HK Co was disregarded in this case.
- 失败主要原因：
Main reason for failure:
 - 香港公司无资产、无雇员、无负债、无其他资产、无经营业务等。HK Co has not assets, no personnel, no liabilities, no other assets, no operations.

成功案例一直接转让

Success Case in Beijing 1 – Direct Transfer (1)



- 一家设立于开曼的美元基金于**2007**年在香港设立一家控股公司。X香港公司的注册资本为**HK\$10,000**,实际资本为**HK\$10,000**。

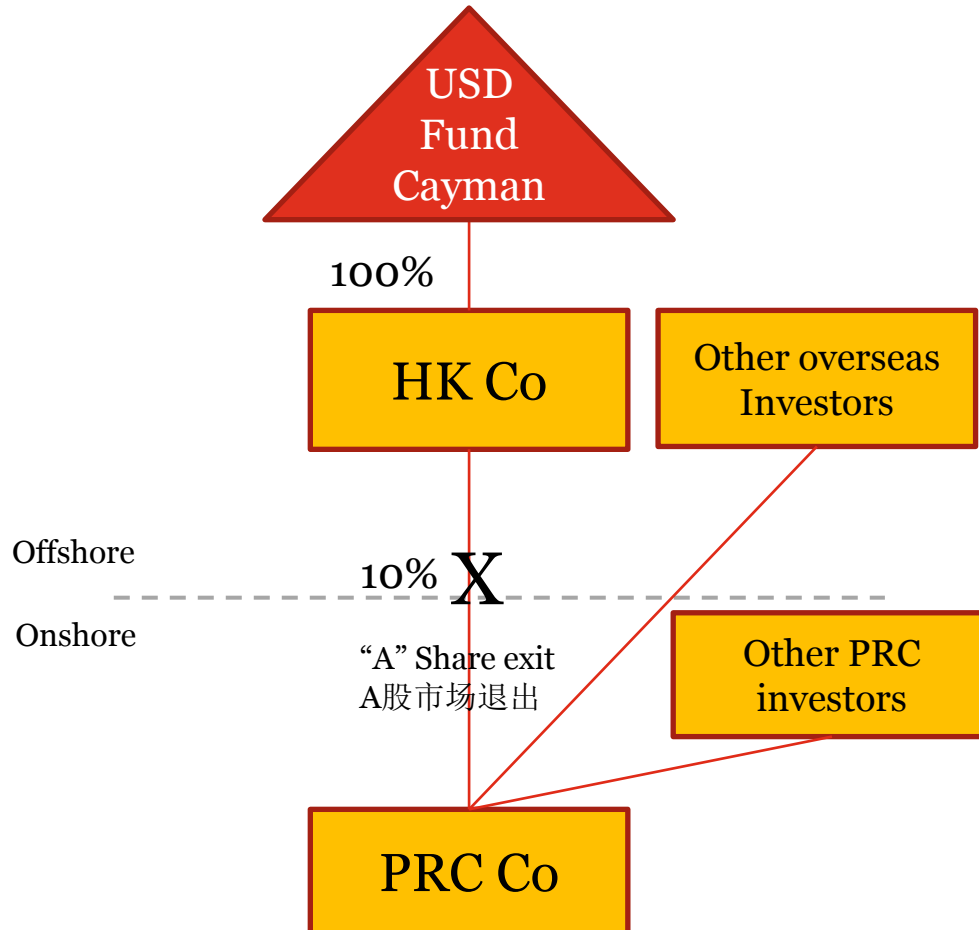
A USD Fund in Cayman set up a HK Co, in 2007. HK Co's share capital was HK\$10,000 with issued capital of HK\$10,000.

- 香港公司在**2008**年投资一家北京公司，持股比例约为**10%**。
HK Co invested into PRC Co in 2008 and own 10% approximately.

- 深圳公司在**2010**年深圳证交所上市。**2011**年法人股解禁后，香港公司在二级市场减持股份。
PRC Co went IPO in Shenzhen Stock Exchange. HK Co disposed its holdings through secondary market after end of lock-up period.

成功案例一直接转让

Success Case in Beijing 1 – Direct Transfer (2)



- 税务机关批准了香港公司享受税收协定待遇的申请，香港公司股权转让行为不在中国大陆征收所得税。

Tax Bureau approved the application for enjoying China-HK tax treaty benefit and grant tax exemption treatment to HK Co.'s capital gain.

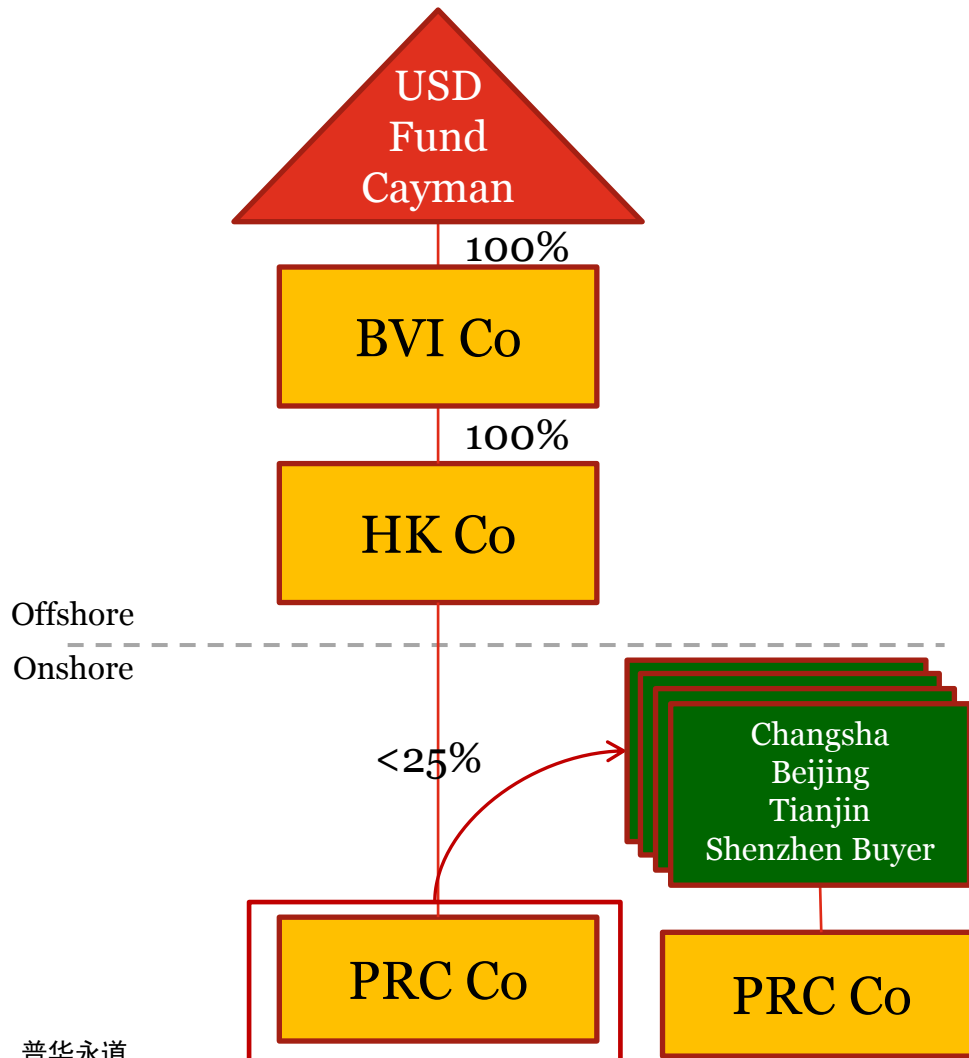
- 成功的主要原因：

Main reason for success:

- 成功的策略以及有效的管理
Strategy and management
- 强大的税务专业知识及实践经验基础
Insightful technical knowledge and rich practical experience
- 与税务机关的良好沟通
Sufficient communication with tax bureau
- 充分的文件资料准备
Appropriate documentation preparation

成功案例一直接转让

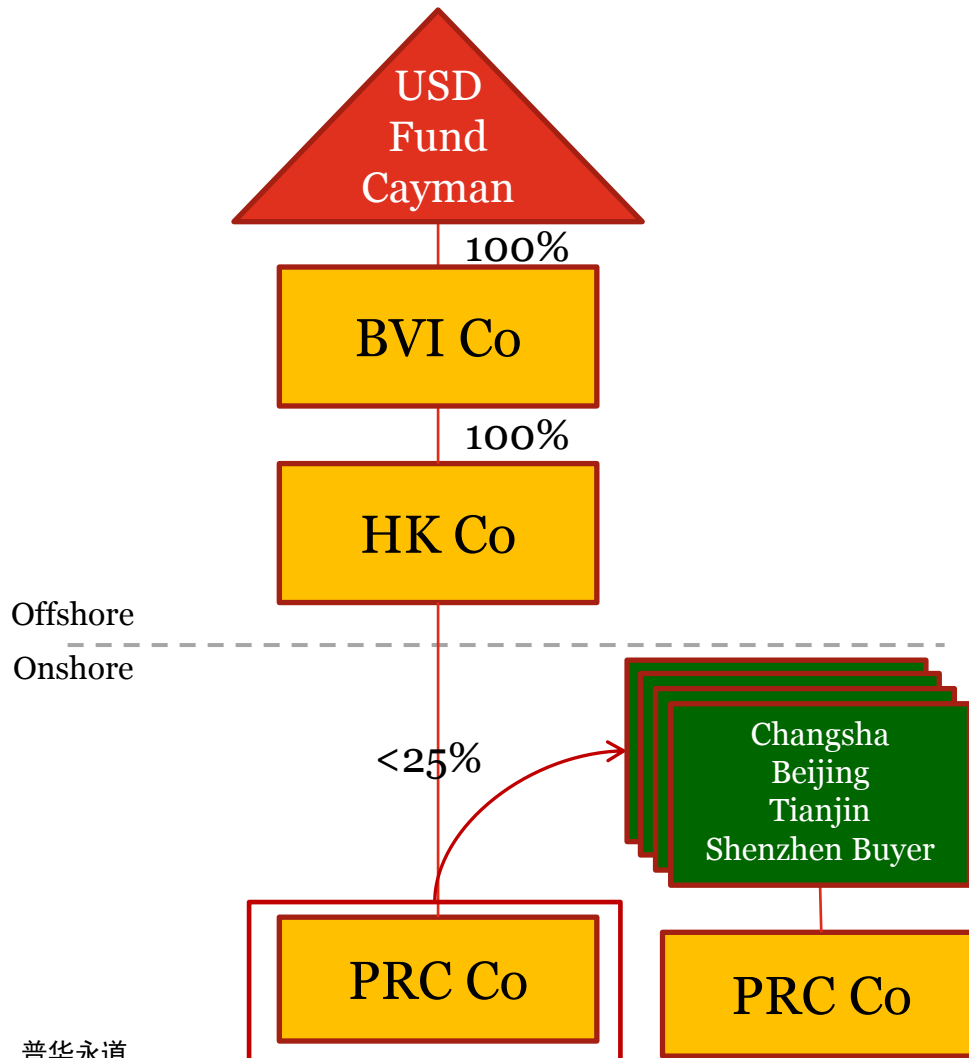
Success Case in Beijing 2 – Direct Transfer (1)



- 一家位于开曼的美元基金通过其BVI子公司设立了一家香港控股公司。
A USD Fund in Cayman set up a HK Co via its 100% subsidiary in BVI.
- 香港公司在投资一家中国公司，持股比例小于**25%**。
HK Co invested into PRC Co and own less than 25% equity.
- 香港公司在将中国公司的股权转让给位于内地长沙、北京、天津和深圳的买方。
HK Co sold the equity of the PRC Co to Buyers of Changsha, Beijing, Tianjin and Shenzhen.

成功案例一直接转让

Success Case in Beijing 2 – Direct Transfer (2)



- 税务机关批准了香港公司享受税收协定待遇的申请，香港公司股权转让行为不在中国大陆征收所得税。

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谢谢！