

# Safe Harbour Rules in China

中国转让定价相关的安全港规则  
及类似安全港规则简介



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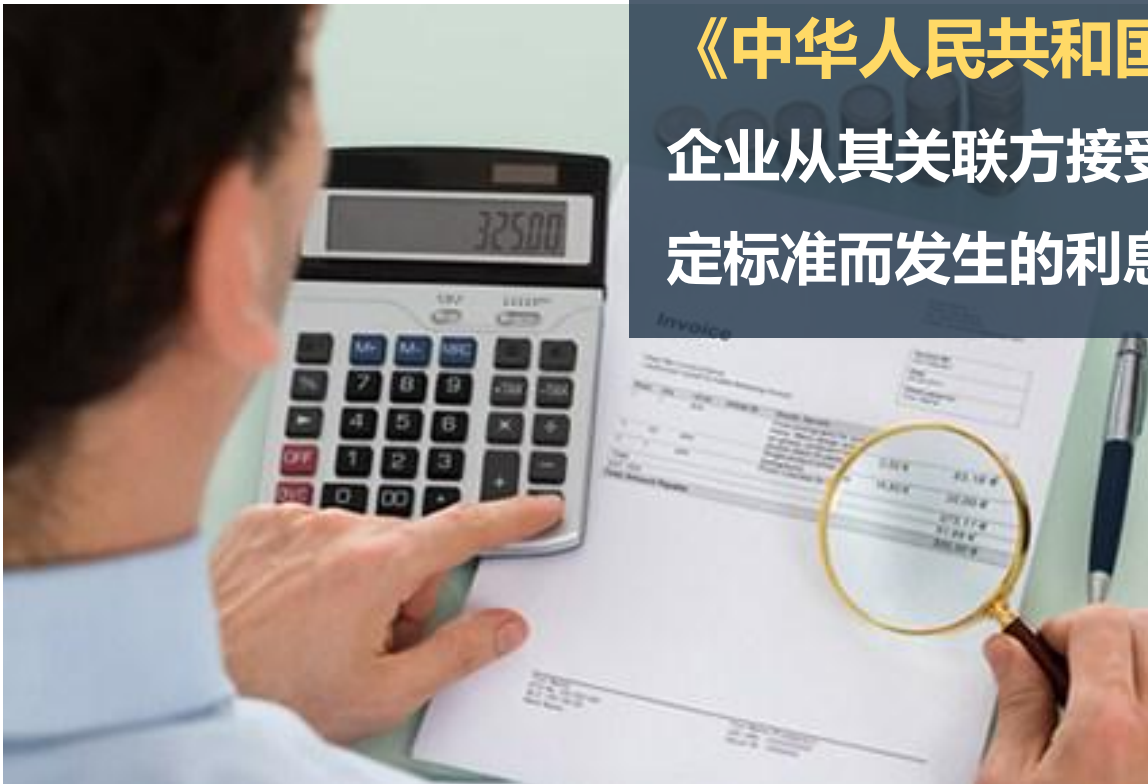
受益所有人

Part 01

资本弱化

**Thin Capitalization**

# 1. 资本弱化 Thin Capitalization



**《中华人民共和国企业所得税法》第四十六条：**  
企业从其关联方接受的债权性投资与权益性投资的比例超过规定标准而发生的利息支出，不得在计算应纳税所得额时扣除。

## **Corporate Income Tax Law of the People's Republic of China**

Article 46: the related party interest expenses is deductible for corporate income tax purposes to the extent that the related party debt to equity ratio does not exceed the prescribed threshold.

# 1. 资本弱化 Thin Capitalization

- 《财政部 国家税务总局关于企业关联方利息支出税前扣除标准有关税收政策问题的通知》（财税【2008】121号）对“规定标准”以“规定比例”的方式给出了安全港规则
- The “prescribed threshold” clarified by the Joint Circular of the Ministry of Finance and the State Taxation Administration on the Tax Policy Issues related to the Deduction of Interest Expense paid to Related Parties (Caishui [2008] No. 121)



# 1. 资本弱化 Thin Capitalization

## 金融企业

如果其接受的关联方债权性投资与其权益性投资比例不超过5:1，其实际支付给关联方的利息准予税前扣除。

## 其他企业：

上述比例是2:1



Financial industry

5:1

Other industries

2:1

Part 02

# 受控外国企业

Controlled Foreign Corporation

## 受控外国企业 Controlled Foreign Corporation



### 《中华人民共和国企业所得税法》第四十五条

由居民企业，或者由居民企业和中国居民控制的设立在实际税负明显低于25%的国家（地区）的企业，并非由合理的经营需要而对利润不作分配或者减少分配的，上述利润中应归属于该居民企业的部分，应当计入该居民企业的当期收入。



### Article 45 of Corporate Income Tax Law of the People's Republic of China

Established in jurisdictions with effective tax rate lower than 25%

Non-distribution and under-distribution of the profit for non-commercial needs

Attribute the profit to the Chinese resident shareholders

Triggering of the CFC regime



1

通知  
Circular

《国家税务总局  
关于简化判定中  
国居民股东控制  
外国企业所在国  
实际税负的通知》  
(国税函【2009】  
37号)



STA's Circular on  
Simplifying the  
Determination of  
Effective Tax Burden of  
a Foreign Corporation  
Controlled by a  
Chinese Tax Resident  
Shareholder  
(Guoshuihan [2009]  
No.37)

2.

## 受控外国企业 Controlled Foreign Corporation

2

### 白名单 White List

美国、英国、法国、德国、日本、意大利、加拿大、澳大利亚、印度、南非、新西兰、挪威



USA, UK, France, Germany, Japan, Italy, Canada, Australia, India, South Africa, New Zealand and Norway

## 3

免于  
Exemption

中国居民企业或居民个人能够证明其控制的外国企业设立在上述12个国家的，可免于将该外国企业不作分配或者减少分配的利润视同股息分配额，计入中国居民企业的当期所得。



Burden of proof

Exemption

Part 03

**受益所有人**

**Beneficial Owner**

### 3. 受益所有人 Beneficial Owner

## 判定“受益所有人” Determination of BO Status



→ 《国家税务总局关于税收协定中“受益所有人”有关问题的公告》

(国家税务总局公告2018年第9号)

→ STA's Public Notice on Beneficial Owner Included in the Context of Double Taxation Agreements (STA Public Notice [2018] No.9)

### 3. 受益所有人 Beneficial Owner

(1) 缔约对方政府 the government of the other contracting state

(2) 缔约对方居民且在缔约对方上市的公司

a company which is resident of and listed in the public exchange of the other contracting state

(3) 缔约对方居民个人

an individual who is a resident of the other contracting state

(4) 一人或多人直接或间接持有**100%**股份且中间层为中国居民或缔约对方居民

an applicant that is **wholly** owned, directly or indirectly, by one or more persons prescribed in (1) – (3) where the intermediary shareholders, if any, are all residents of China or the other contracting state



**THANK YOU !**

**谢谢!**