

Investment and Financing Strategy and Tax Effectiveness Plan

投、融资战略与税务有效性方案

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Optimization of asset structure for maximum capital effect is core to investment and financing strategy; therefore, capital operations would inevitably affect ownership relations and may even break through the previous enterprise borders and result in asset transfer and changes in equity relationship, which will in turn exert certain influence on tax strategies of the enterprise.

投融资战略的核心是优化资产结构, 实现资本效用的最大化。因此资本运营不可避免地影响着产权关系, 甚至还会打破原来的企业边界, 实现资产的转移及股权关系的变化。而资产的转移和股权关系的变化又会影响企业的税收战略。

Investment merger and ownership restructuring will change the form of investment organization in a creative way and rapidly optimize equity relationships, and may even reduce the circulation links between affiliated enterprises or between upstream and downstream enterprises, hence circumvent income tax and commodity turnover tax by lawful and reasonable means is the advantage of merger and ownership restructuring.

通过投资并购及产权重组, 可以创造性的改变投资组织形式, 快速实现股权关系的优化, 甚至可以实现关联性企业或上下游企业流通环节的减少, 合理

规避所得税、流转税, 这是并购与产权重组的优势之所在。

In practice, we believe that the effectiveness of tax strategy of investment activities may be planned in three major phases:

在实践中, 我们认为投资活动的税收战略可以从三个主要阶段进行有效性筹划:

- Tax effectiveness in investment entry phase, which involves transaction mode, selection of investor and investee, taxation risk auditing of the investee company, mode and time of payment of investment fund, selection of the date of merger, etc;

投资进入阶段的税务有效性, 包括交易模式、投资与被投资主体的选择、被投资公司税务风险的审计、投资资金支付方式及划拨时点的控制、以及并购日的选择等等;

- Tax effectiveness in investment holding phase, which involves the influence of equity structure on income distribution mode, profiting from preferential taxation policies, capital cost, transfer pricing of related party transaction, etc;

投资持有阶段的税务有效性, 包括股权结构对收益分配方式的影响、税收优惠政策利用、资本成本、以及关联方交易的转移定价等等;

- Tax effectiveness in investment

withdrawal phase, which involves equity transfer, assets stripping, reinvestment of profits, IPO, etc.

投资退出阶段的税务有效性, 包括股权转让、资产剥离、利润再投资, 以及公司上市等等。

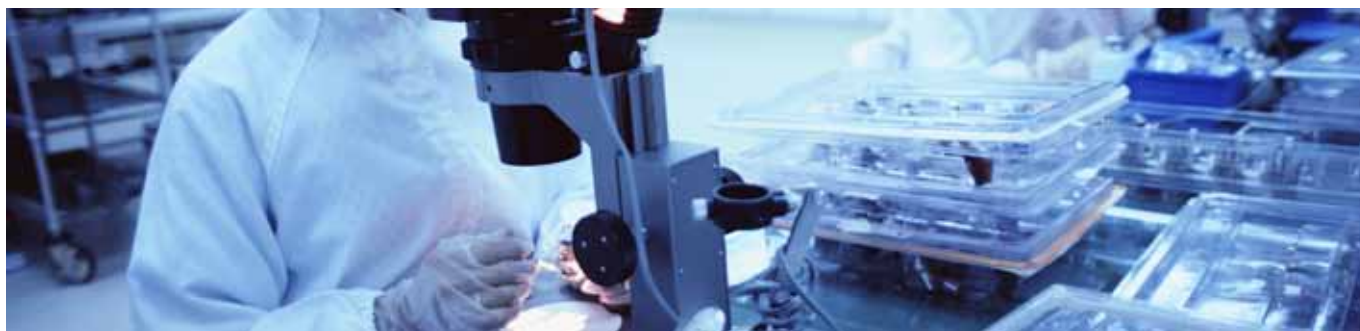
Investment behaviors of different natures in different phases should be addressed in differentiated ways, as different aspects are focused on in equity investment, bond investment, long-term investment, short-term investment, domestic investment and foreign investment, etc, and different situations may overlap or combine. This article shall provide strategic discussions from a methodological perspective only without involving concrete technical proposals.

不同性质的投资行为在不同投资阶段均应区别对待, 例如股权投资、债权投资; 短期投资、长期投资; 对内投资、对外投资等, 其侧重点会有较大差异, 并且往往是各种情况混合在一起。本文将仅从方法论角度进行策略性探讨, 不涉及具体的技术性建议。

Focusing on Investment Size and Progress

关注投资规模及投资进度

Investment merger may expand the border of companies and transform deals between companies into internal deals. As neither transfer of commodity ownership





nor verification of labor transaction is involved in internal deals within the company, such deals do not constitute circulation in its legal sense and therefore do not incur commodity turnover tax.

投资并购等方式可以扩大公司的边界，将原本属于公司之间的交易，转换为公司的内部交易。由于公司内部交易没有商品所有权的转移和劳务交易的确认，在法律形式上就不构成流通环节，也就不存在流转税负担。

Besides, there exist major differences between the taxation policies applied to property rights transaction and those applied to assets transaction in investment merger: assets transactions generally incur the burden of commodity turnover tax while the transfer of property rights of a company is essentially different from such corporate behaviors as selling real property or goods, or transfer of intangible assets as the former does not belong to the scale of either business tax or value-added tax. Transformation of assets transaction into property rights transaction enables packing sale of assets and liabilities hence avoids the commodity turnover tax in assets transfer. We believe that both the investor and the investee shall benefit from the reduction of overall tax burden.

另外，投资并购中的产权交易与资产交易所适用的税收政策有着较大差异：一般资产交易都需要交纳流转税，但公司产权的转让与企业销售不动产、销售货物及转让无形资产的行为完全不

同，它既不属于营业税征收范围，也不属于增值税征收范围。通过把资产交易转变为产权交易，往往可以实现资产、负债的打包出售而规避资产转让环节的流转税。我们相信整体税负的降低，投资方和被投资方都将是受益者。

The investor and the investee become related parties after the investment is done. Transfer pricing may serve as a tax moderator between related entities to a degree. However, it should be noted that anti-tax-avoidance measures are adopted in many countries targeted at transfer pricing by related parties, which may incur extra cost of tax management cost in related party transactions; for instance, Chinese tax authorities require that contemporaneous documents of related party transactions shall be prepared and kept for at least 10 years for the scrutiny by tax authorities.

投资之后与被投资公司形成关联方。转移定价可以在一定程度上起到关联主体之间的税收调节作用。但需要注意的是，许多国家都有针对关联方转移定价的反避税措施，这将导致关联方交易可能需要承担额外的税务管理成本，例如中国税务机关要求准备关联交易的同期文档并保存10年，以应对税务机关的检查。

Choosing Forms of Investment in Mergers **选择并购出资方式**

Investment and funding mergers are usually categorized into merger by asset purchasing with currency, equity purchasing with currency,


exchanging equity for assets and exchanging equity for equity. For shareholders of the target company, it is usually unnecessary to verify the capital gains from the exchange in "equity-for-equity" merger, and even if income tax on these capital gains is incurred in selling these shares later, a tax deferral has already become possible. However, the last two years are marked with increasing concern by Chinese tax authorities of tax payment on equity transfer gains, especially in such cases where domestic equity transfer is enacted by overseas shareholders.

通常的投融资并购行为，按出资方式可分为以货币购买资产式并购、以货币购买股权式并购、以股权换取资产式并购、以股权换取股权式并购。对目标企业股东来说，“股权置换式并购”往往不需要立刻确认其因交换而获得的资本利得，即使在以后出售这些股票仍旧需要对资本利得缴纳所得税，也已起到了延迟纳税的效果。但近两年以来，中国税务机关对股权转让收益的纳税问题日趋关注，特别是涉及境外股东转让境内股权问题。

The party eventually assuming the tax burden is usually determined during investment negotiations, and tax cost transfer through transaction prices may be considered with mutual agreement of both parties.

投资谈判时往往会确定税收负担最终应由哪方承担，如果双方认可，可考虑通过交易价格进行税收成本转移。

Focusing on Financial Leverage **关注财务杠杆**



Interest cost incurred by debts is income-tax-deductible as such expenditures may be deducted from profits of the same term. Therefore, the merger company may opt for appropriate debt financing forms with the strength of financial leverage of the company itself taken into consideration to collect the funds necessary for merger, hence increasing the overall debts and benefiting from stronger effect of tax-deductible interests.

企业因负债而产生的利息费用可以抵减当期利润，从而减少所得税额的支出。因此，并购企业对所需资金进行融资规划时，可以结合公司本身的财务杠杆强度，选择适当的负债融资方式筹集并购所需资金，提高整体负债水平，以获得更大的利息抵税效应。

Although return on investment (ROI) after tax tends to increase with rising debt financing proportion of the company, investors must carefully consider the relationship between return on investment and ration of debts to assets, i.e. the

principle of returns matching risks.

尽管税后投资回报率往往会随着公司债务融资比例的上升而上升，但投资方必须权衡投资回报率和资产负债率二者的关系，即收益和风险匹配原则。

If foreign debts are involved in the investment and financing plan, special consideration must be given to other factors such as operability risk of the plan under China's foreign exchange control, exchange rate risk, differences in inflation, etc.

如果投融资方案涉及外债，还需要特别关注方案在中国外汇管制下的可操作性风险、以及汇率风险和通货膨胀差异因素。

Accounting on Date of Acquisition

并购日的会计处理

Accounting of investment behavior is required on the date of acquisition where normally two possible methods exist for merger companies to choose from on

the basis of their reality: pooling of interests and purchasing, of which the latter is most commonly applied in the practice of corporate mergers as it helps to reduce tax burden from the perspective of taxation.

并购日需要对投资行为进行会计处理。一般有两种会计处理方法：权益结合法与购买法。并购企业可根据具体情况进行选择。在公司合并实践中普遍应用的是购买法。从税收的角度看，购买法可以起到减轻税负的作用。

The model of income distribution may influence the level of tax burden to a certain extent as changes in property rights relations resulting from investment may be passed on along the chain of return distribution while casting a direct influence on the taxation of company.

收益分配模式在某种程度上也会影响税负水平。因为投资导致的产权关系变动，会循着收益分配的链条而传递，并直接影响着公司税收。

Company Spin-Off and Assets Stripping 公司拆分与资产剥离

Further discussion on company spin-off and assets stripping is necessary as investor needs to make sure that core assets of the target company may be stripped at a relatively low cost in partial acquisitions while investee is in more need to face this issue.

我们有必要对公司拆分和资产剥离进行进一步讨论，因为在非整体收购时，投资方需要确定目标公司的核心资产能够被相对低成本的剥离。而被投资企业更需要面对这问题。

Company spin-off and assets stripping is also an important form of property right reform and assets restructuring. Property and income can usually be divided among two or more subjects of tax payment, which may play the advantages of specialization and division of labor to the full and therefore improve the production and business competence of the company on one hand and effectively enable tax planning and reduce the tax burden of the company on the other.

企业拆分及资产剥离也是企业产权变革、资产重组的重要形式。一般可以实现财产和所得在两个或多个纳税主体之间进行分割，一方面可以发挥专业分工优势，促进企业生产经营能力的提高；另一方面可以有效开展税收筹划，减轻企业税负。

For example, business at low tax rate or exempted from tax payment may be separated in dual-status operations or mixed sales through spin-off, or subjects of progressive tax may be divided into two or more subjects of lower tax rates.

例如，可以利用分拆手段将兼营或混合销售中的低税率业务或免税业务独立出来；或者将适用累进税率的纳税主体分化成两个或多个适用低税率的纳税主体。

However, we firmly believe that tax effectiveness must be based on the satisfaction of business demands with cost benefit principle taken into consideration. Besides, reasonable pricing must be noted if spin-off of goods or labor is involved, otherwise tax authorities may enact taxation adjustments based on fair market

value.

但我们始终认为税务有效性必须是在满足业务需求的基础上，并兼顾成本收益原则。另外，如果涉及货物与劳务的剥离，还需要注意定价的合理性。否则主管税务机关可以按照市场公允价值进行纳税调整。

Summary 总结

Tax effectiveness plan is an organic component of investment and financing strategy and is intrinsically in accordance with the financial goals of the company and therefore must comply with strategic goals of investment and financing. The optimal balancing point must be located between tax burden reduction and tax risk control. Therefore, comprehensive consideration must be given to external taxation laws and regulations and internal financial status in tax effectiveness planning so that it may better serve the investment and financing strategy.

税务有效性方案是投融资战略的一个有机组成部分，与公司财务目标有着内在的一致性，并服从于投融资战略目标。投资方必须在降低税收负担与控制税收风险之间找到最佳平衡点。因此制定税务有效性方案需要综合考虑外部的税收法律法规，以及内部的财务状况，以使税收筹划行为更好的服务于投融资战略。

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