



**Notice of the State Administration of Taxation  
Regarding Interpretation and Recognition of “Beneficial Owner” under Tax Treaties  
国家税务总局关于如何理解和认定税收协定中“受益所有人”的通知**

**Guo Shui Han [2009] No. 601  
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To: the State Taxation Bureaus and Local Taxation Bureaus of the Provinces, Autonomous Regions, Directly Administered Cities, Cities Directly under State Planning and Yangzhou Taxation Institution:

各省、自治区、直辖市和计划单列市国家税务局、地方税务局，扬州税务进修学院：

In accordance with relevant provisions under various Avoidance of Double Taxation Treaties entered by PRC government, regarding application for treatment under dividend, interest and royalty provisions etc., it is hereby notified that the status of “beneficial owner” should be decided as follows:

根据中华人民共和国政府对外签署的避免双重征税协定（含内地与香港、澳门签署的税收安排，以下统称税收协定）的有关规定，现就缔约对方居民申请享受股息、利息和特许权使用费等条款规定的税收协定待遇时，如何认定申请人的“受益所有人”身份的问题通知如下：

I. “Beneficial owner” refers to any person who owns or has control over certain income or any rights or assets which give rise to such income. A “beneficial owner” should generally be engaged in substantial business activities, and it could be an individual, a corporation or any other entities. An agent or a conduit company is not a “beneficial owner”.

一、“受益所有人”是指对所得或所得据以产生的权利或财产具有所有权和支配权的人。“受益所有人”一般从事实质的经营活动，可以是个人、公司或其他任何团体。代理人、导管公司等不属于“受益所有人”。

Conduit Company means a company incorporated for the purposes of evasion or reduction of tax, transfer or accumulation of income/profits. This type of companies are not engaged in substantial business activities such as manufacturing, distribution or management, but merely register in the other contracting countries to fulfill the legal requirement of organizational form under the laws of those countries.



导管公司是指通常以逃避或减少税收、转移或累积利润等为目的而设立的公司。这类公司仅在所在国登记注册，以满足法律所要求的组织形式，而不从事制造、经销、管理等实质性经营活动。

II. In the assessment of status of “beneficial owner”, it is not sufficient to understand from a technical perspective or domestic law point of view, the purpose of tax treaty which is to prevent double taxation and tax-evasion shall be taken into consideration as well. The “substance-over-form” rule shall be applied to every specific case for assessment and evaluation. Generally, the following factors will have adverse impact with respect to the application of “beneficial owner” status of an applicant:

二、在判定“受益所有人”身份时，不能仅从技术层面或国内法的角度理解，还应该从税收协定的目的（即避免双重征税和防止偷漏税）出发，按照“实质重于形式”的原则，结合具体案例的实际情况进行分析和判定。一般来说，下列因素不利于对申请人“受益所有人”身份的认定：

1. The applicant has the obligation to pay or distribute all or substantive part of its income (e.g., more than 60%) to a third country resident within a prescribed time (e.g., within 12 months after receiving such income);

（一）申请人有义务在规定时间内（比如在收到所得的 12 个月）内将所得的全部或绝大部分（比如 60%以上）支付或派发给第三国（地区）居民。

2. The applicant has no or almost has no other business activities other than holding the assets or interests based on which such income are derived;

（二）除持有所得据以产生的财产或权利外，申请人没有或几乎没有其他经营活动。

3. The applicant is an entity (such as a company), and its assets, size and personnel is relatively small and not commensurate with the income it derives;

（三）在申请人是公司等实体的情况下，申请人的资产、规模和人员配置较小（或少），与所得数额难以匹配。

4. With respect to income or assets or rights based on which income are derived, the applicant has no or almost has no right of control or disposal towards them, and it does not assume any risks or rarely assume risks;



(四) 对于所得或所得据以产生的财产或权利，申请人没有或几乎没有控制权或处置权，也不承担或很少承担风险。

5. Certain income are non-taxable or exempted from tax in the other contracting country, or taxed at a very low effective rate;

(五) 缔约对方国家（地区）对有关所得不征税或免税，或征税但实际税率极低。

6. Apart from the loan agreement based on which interest payment obligation arises, there is other loan or deposit agreements between the creditor and a third person with similarity in the amount, interest rate and time of conclusion etc;

(六) 在利息据以产生和支付的贷款合同之外，存在债权人与第三人之间在数额、利率和签订时间等方面相近的其他贷款或存款合同。

7. Apart from the use right transfer agreements of copyright, patent or technology etc. base on which royalty payment obligation arises, there are other agreements for the use right or ownership transfer of copyright, patent or technology etc. between the applicant and a third person.

(七) 在特许权使用费据以产生和支付的版权、专利、技术等使用权转让合同之外，存在申请人与第三人之间在有关版权、专利、技术等的使用权或所有权方面的转让合同。

Depending on the nature of income, a comprehensive analysis (by the tax authorities) based on the above factors shall be made. Where Article 1 of this Notice is not satisfied, the applicant shall not be recognized as the “beneficial owner”.

针对不同性质的所得，通过对上述因素的综合分析，认为申请人不符合本通知第一条规定的，不应将申请人认定为“受益所有人”。

III. To apply for the treaty benefits, a taxpayer should provide documents evidencing its status of “beneficial owner” and other materials in relation to factors under Article II hereunder.

三、纳税人在申请享受税收协定待遇时，应提供能证明其具有“受益所有人”身份的与本通知第三条所列因素相关的资料。

When processing applications for treaty treatment from non-residents, local authorities should follow the aforesaid provisions to recognize the status of “beneficial owner” and verify materials via information exchange mechanism if necessary. Local authorities should review



and summarize experiences timely during the implementation. Any issues or difficulties should be reported to State Administration of Taxation (International Taxation Department) for further decision.

各地在审批非居民享受税收协定有关条款待遇的申请时，要按照上述规定处理“受益所有人”的身份认定问题，必要时可通过信息交换机制确认相关资料。各地在具体执行中应及时总结经验、发现问题，对于疑难案例可层报税务总局（国际税务司）解决。