



Mandarin Roundtable:

IRS Audit Process and Avoiding Overlooked Tax Rules

中文税务讲座：

国税局对外资企业的审核流程和税务合规要求

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IRS Audit Process

国税局审计流程

Why am I being selected?

为什么我被选中？

- » 被选中审核不代表有问题存在。
- » 美国国税局筛选方式：
 - 随机选择与电脑筛选
 - 相关审核 一例如，合伙人/投资者税表被审核，有可能会牵扯到公司税表被审核。
- » Selection for an audit doesn't suggest there is a problem
- » Methods used by the IRS for selection:
 - Random selection and computer screening
 - Related examination - For example, business partners/investors returns are audited and the entity return is audited as well

How far back can the IRS go in an audit?

国税局能审核几年前的税务申报？

- » 一般情况下，国税局可以审核前三年申报的税表。在有实质错误的情况下，他们可以追溯到前六年的税表。
- » 法令限制期
 - 通常是三年，从税表申报截止日期或申报日期开始。
 - 限制评估附加税或退税的时间期。
- » 在税表还未申报的情况下，没有法令限制期。
- » Generally, the IRS can include returns filed within the last 3 years in an audit. If there is a substantial error, they may go back to the last 6 years.
- » Statute of limitations:
 - Generally three years after a return is due or was filed, whichever is later.
 - Limits the time allowed to assess additional tax or claim a tax refund.
- » If return is not filed, there is no statute of limitations.

What is the process?

流程

- » 收到审核通知
 - » 需要在通知信指定的时间内联系国税局人员
 - » 信息文件索取通知
 - » 与国税局人员的会议
 - » 提议调整
 - » 30天回复通知信
 - » 同意或上诉过程
- » Audit notification is received in mail
 - » You need to contact the agent within a certain number of days according to the letter
 - » Information Document Request (IDR)
 - » Meetings with the agent
 - » Proposed adjustments
 - » 30-day letter
 - » Agree or appeal process

How long does an audit take?

审核需要多长时间？

» 影响审核时间长短的因素：

- 审核类型
- 问题的复杂性
- 信息的可获得性
- 双方安排会面的配合性
- 纳税人是否同意审核结果

» The length varies depending on:

- Type of audit
- Complexity of the issues
- The availability of information requested
- The availability of both parties for scheduling meetings
- The taxpayers agreement or disagreement with the findings

Professional representation

专业代表

- » 审核期间，您可以寻找税务或法律专业代表
 - 专业代表可以减少审计对您的日常业务的影响，并允许时间审查和回答问题。
 - 专业代表可以按国税局的要求来准备和整理材料。
 - 专业代表可帮助您谈判和上诉
- » 2848表格 — 授权委托书

- » You can ask for tax or legal professionals to represent you during an audit
 - A professional allows you to minimize distractions from your day to day business and allows time to review and respond to questions.
 - The professional will organize and present information in a manner that the IRS wants to see.
 - A professional can help you in the negotiation and appeal process.
- » Form 2848 – Power of Attorney

Official Information Document Request (IDR)

正式的文件索取通知书

- » 国税局将提供您书面文件请求列表。
- » 通常请求列表文件包括：
 - 会计软件的电子报告
 - 支持应纳税所得额计算的工作表与文件
 - 源文件 / 工作表： 收据，账单， 注销支票， 贷款协议等。
- » 法律规定，您需要保存至少三年的报税文件与信息记录。一般专业人士推荐保留七年的记录。
- » IRS will provide you with a written request for the specific documents that they want to see.
- » Common documents requested:
 - Electronic reports from the accounting software
 - Schedules/workpapers that support the taxable income calculation
 - Source documents: e.g. receipts, bills, canceled checks, loan agreements and etc.
- » By law, you need to keep records of information used to prepare your returns for at least 3 years (most recommend a minimum of 7 years).

Meeting with the agent

与国税局人员的会议

- » 如果有可能的话，聘请专业人士代表你；或至少让他们帮助您准备面试。
- » 带上所需要的表格/记录，尽最大能力把问题回答好。尽量避免靠记忆回答问题。可以查看文件后再做确切答复，以避免无意的误导。
- » 提供国税局人员他们想要的资料(但没有必要提供多余的资料)。
- » Have a professional represents you if possible or at least have them prepare you for the interview.
- » Bring all the forms/records that you are asked to bring and answer questions to the best ability. Avoid going off memory. Better to check into something with documented support than to inadvertently mislead.
- » Tell the agent what they want to know (**but nothing more**).

Audit conclusion

审计结果

- » 审计结果可能是以下任何一种：
 - 没有变化：所提供的资料能够支持税表，国税局人员对税表没有任何调整。
 - 同意国税局的调整：国税局提出了修改，你明白并同意这些调整。
 - 不同意国税局的调整：国税局提出了修改，你明白，但不同意这些调整。
- » An audit can result in 3 ways:
 - No change: you have provided all support requested and there are no changes
 - Agreed: the IRS has proposed changes and you understand and agree with the changes
 - Disagreed: the IRS has proposed changes and you understand but do not agree with the changes

30-day letter

30天信件

- » 国税局通知信525 – 在税务审计结束后的几周内收到
 - 这封信表明，美国国税局提出了对您的税表的改变或调整。
 - 您通常有30天的时间来决定您是否同意或不同意国税局所做的调整。
- » IRS Letter 525 – received within a few weeks after the conclusion of a tax audit
 - This letter states that the IRS has proposed a change or adjustments to your return
 - You usually have 30 days to decide whether you agree or disagree with the changes the IRS has made

Agree with audit findings

同意审核结果

- » 如果您同意审核结果，则必须在通知日期后30天内签署检查报告，并将签名的报告邮寄给国税局，并附加支票如果有额外纳税
- » If you agree with the findings and result of the audit, you are required to sign the examination report and mail the signed copy to the IRS with additional tax payment (if applicable) within 30 days of the notice date

Disagree with audit findings

不同意审计结果

- » 如果你不同意国税局的审计调整，你可以做以下事情：
 - 要求和国税局的经理会议面谈
 - 通过协调和解：一个非正式，保密，并且灵活的解决争端的程序
 - 通过上诉
- » If you disagree with the changes, you can do the following:
 - Request conference with an IRS manager
 - Go through mediation: an informal, confidential, and flexible dispute resolution process
 - File an appeal

Taxpayer rights

纳税人的权利

» 作为纳税人，你有应有的权利：

- 得到国税局工作人员的专业和礼貌的待遇
- 隐私和保密
- 有权知道为什么要提供信息，他们如何使用这些信息，以及如果没有提供要求的信息会有什么后果
- 由自己或者授权代表来代表自己的权利
- 有权上诉分歧的权利，包括在国税局内部和法院

» As a taxpayer, you have your rights:

- Professional and courteous treatment by IRS agents
- Privacy and confidentiality
- The right to know why the information is asked, how they will use it and what will happen if the requested information is not provided
- The right to representation, by oneself or an authorized representative
- The right to appeal disagreements, both within the IRS and before the courts

Overlooked Tax Rules and Compliance

被忽视的税收规则和合规

Transfer pricing

关联方转让定价

- » 每一个国家的税务机关都希望得到他们应有的那部分利润
- » 关联方交易涉及所有公司内部交易，包括产品、原材料、特许权使用费、服务费和贷款
- » 中国和美国税务局关注来自中国和美国跨国公司之间的交易定价
- » Transfer pricing rules are all about making sure every tax authority gets their “fair share” of income tax from multinational companies
- » Transfer pricing rules govern virtually all intercompany transactions
- » The SAT and the IRS are concerned about transfer pricing for both China-owned and US-owned companies

Transfer pricing example

关联方转让定价例子



- » 中国子公司取得\$1.1千万利润
- » 美国母公司取得\$1百万利润

- » ABC-China is earning \$11M in profits for manufacturing
- » ABC-US is earning \$1M in profit

Transfer pricing example

关联方转让定价例子

美国联邦税务局决定很少部分的利润属于中国子公司：

- 假设应纳税所得额调整是\$1千万
- 应纳税所得额会增加3百50万 (\$1千万 x 35%)
- 再加20%的罚款\$70万
- \$4百20万 + 利息费 + 州税

IRS decides that ABC-China should only earn a small profit.

- Assume a total taxable income adjustment of \$10 million
- Additional income tax owed - \$10 million x 35% = \$3.5 million
- Plus non-deductible penalties of 20% on tax owed \$700,000
- **\$4.2m + interest + state taxes**

Transfer pricing example

关联方转让定价例子

- » 美国母公司对子公司收取费用和零部件交易的调整会导致中国子公司的利润大幅度下降
- » 中国税务局会有何反应?
 - 中国子公司的零部件销售价格调整将不予承认
 - 中国税务局将质疑子公司支付的服务费
 - 中国税务局将质疑子公司支付的特许权使用费
- » ABC-China profits would be greatly reduced after all adjustments from ABC-US
- » How would the SAT respond?
 - SAT would not agree with the sales price adjustment on products
 - SAT would challenge service charges paid by China subsidiary
 - SAT would challenge royalties paid by China subsidiary

Transfer Pricing

关联方转让定价

下列情况有可能导致税务审计-适用于中美

- 子公司长期亏损
- 子公司大额盈利
- 无法提供服务费计算依据
- 无法提供特许权使用费的支付依据

Typical Transfer Pricing Audit Trigger – both IRS and SAT

- Operating losses for subsidiaries
- Large profits earned by the subsidiaries
- Unclear how service fee is calculated
- Unclear why company pays a royalty

Transfer Pricing

关联方转让定价

- » 关联方交易申报文件通常包括，
 - 企业生产经营活动的描述
 - 企业所处行业地位以及市场竞争环境的分析
 - 企业财务状况以及关联方交易分析
 - 可比性分析
- » Transfer pricing documentation includes
 - Description of business operations
 - Analysis of market position and competitive environment
 - Analyze financial information and intercompany transactions
 - Comparability analysis

Transfer Pricing

关联方转让定价

在中国, 关联方交易文件在以下情况是必须的:

- 年度供销金额 大于2亿元人民币(约两千九百万美元); 或
- 服务费以及特许权使用费大于4千万人民币(约五百八十万美元)

2014年2月, 联邦税务局颁布关联方交易规则以帮助其雇员开展工作

- 在审核期间请求文件
- 纳税人有30天的时间提供文件

In China, documentation is required for:

- Goods transactions over 200 million RMB (~US\$29 million); or
- Services or Royalties over 40 million RMB (~US\$5.8 million)

IRS released a guide in regards to transfer pricing in Feb 2014 to help the IRS agents

- Request documentation during audit
- Taxpayers have 30 days to provide documentation

Earnings stripping

收益剥离

- » 通常由跨国公司通过让美国公司向属于较低税收管辖区的外国人支付利息来最小化美国税收
- » 联邦税法 § 163(j) 旨在防止“资本稀薄”的公司的收益和利润以利息形式被“不用在美国纳税的外国人”吸走
- » Commonly used by multinational corporations to minimize US tax by having a US corporation pay interest expense to a foreign person who falls in a lower tax jurisdiction
- » IRC § 163(j) is designed to prevent the earning and profits of “thinly capitalized” corporations from being drawn away, in the form of interest, by a person that is exempt from US tax.

Earnings stripping – disqualified interest

收益剥离-不符合资格的利息

- » 不符合资格的利息包括
 - 利息付给不用在美国上税的关联方
 - 利息付给不用在美国上税的外国非关联方，但债务是由在外国的关联方或是在美国免税的关联方担保的
- » Disqualified interest include:
 - Interest to a “related person” that is exempt from U.S. tax
 - Interest to a foreign unrelated person that is exempt from U.S. tax **and** the debt is guaranteed by a “related person” who is a foreign person or exempt from U.S. income tax.

Earnings stripping

收益剥离

- » 如果有以下情况，联邦税法 § 163 (j) 不允许抵扣“不符合资格的利息”：
 - 公司债务与权益比率在税收年度最后一天超过1.5: 1 以及
 - 公司所在税收年度有超额利息费用
- » § 163 (j) disallows disqualified interest expense if:
 - Corporation's debt to equity ratio exceeds 1.5:1 on the last day of the tax year AND
 - Corporation has excess interest expense for the tax year

Withholding tax on FDAP income

FDAP收入预扣税

- » FDAP（固定的，可确定的，年度的，定期的）付款。例如付给外国个人，团体，或是实体的利息，股息，租金，使用费，服务费等。
- » FDAP规则：“在美国”是指：
 - 利息 – 借款人是在美国
 - 股息 – 公司是在美国
 - 服务 – 在美国提供
 - 特许权使用费 – 无形资产在美国使用
 - 租金 – 固定财产在美国
- » FDAP (fixed, determinable, annual, periodical) payments – e.g. interest, dividends, rent, royalty, service fee and etc. to foreign parties, individuals or entities
- » FDAP Rules - “In the US” means:
 - Interest – borrower is U.S.
 - Dividends – corporation is U.S.
 - Services – performed in the U.S.
 - Royalties – intangible property used in the U.S.
 - Rents – property is in the U.S.

Withholding tax on FDAP income

FDAP收入预扣税

- » 除非外国人有资格享受税务条约或法定救济，否则FDAP付款需要30%的预扣税。
- » 美国付款人必须在付款时扣缴税款，并按特定时间向国税局汇款。
- » 预扣款减免需要有文件支持（表格W-8BEN-E）。
- » 预扣不合规会导致美国付款人承担预扣税。
- » U.S withholding tax @ 30% is required on FDAP payments, unless the foreign person is eligible for treaty or statutory relief
- » The U.S. payor is required to withhold tax at the time the payment is being made and remit taxes to the IRS at a particular schedule
- » Withholding relief must be supported by documentation (Form W-8BEN-E)
- » Withholding non-compliance results in secondary liability for the withholding agent

Filing Forms 1042 & 1042-S

申报表1042 & 1042-S

当向外国人支付“美国收入来源”的FDAP付款时（不论是否需要预扣税），扣缴代理人（美国付款人）必须提交：

- 表格 1042-S 给国税局.
- 收款人声明（表格1042-S的复印件B）.
- 表格1042的年度报税表.

When a payment of U.S. source FDAP income is made to a foreign person (regardless of whether or not withholding was required), the withholding agent must file:

- Information returns on Form 1042-S to the IRS.
- Recipient statements (Copy B of Form 1042-S).
- An annual tax return on Form 1042.

Filing Forms 1042 & 1042-S

申报表1042 & 1042-S

- » 表格1042-S和1042的申报不迟于每年3月15日，即使是财政年度纳税人也一样
- » 如果要延期提交表格1042-S，需要提交表格8809申请30天的延期
- » 对于表格1042-S的收款人副本需要单独提交30天的延期请求
- » 如果要延期提交表格1042，需要提交表格7004申请6个月的延期
- » Forms 1042-S and 1042 Returns are due no later than March 15, even for FYE taxpayers
- » Filing Form 8809 to request a 30-day extension for filing IRS copies of Form 1042-S
- » A separate 30-day extension request is required for recipient copies of Form 1042-S
- » An automatic 6-month extension for filing Form 1042 can be requested by filing Form 7004

Form 5472 reporting

申报表格5472

一般来说，如果报告公司与外国或国内关联方在纳税年度内有交易，则必须提交表格5472

所有关联交易的基本披露 -

- 即转让定价，包括但不限于：

应收/应付贷款，利息/租金/特许权使用费/服务费收入/费用，销售/购买商品等.

In general, a **reporting** corporation must file Form 5472 if it had reportable transaction with a foreign or domestic related party during a tax year.

Reportable transactions:

- Essentially disclosure of all the related party transactions – i.e. Loans receivable/payable, interest / rent / royalties / service fee income/expense, sales/purchase of goods, and etc.

Form 5472 reporting

申报表5472

适用于以下公司：

- 25%的外资拥有的美国公司，或
- 在美国境内从事贸易或业务的外国公司

未申报罚款:\$10,000 一份表格.

“Reporting Corporations” which are either:

- A 25% foreign owned US corporation, or
- A foreign corporation engaged in a trade or business within the U.S

Failure to file form 5472: penalty is \$10K per form.

Form 926 reporting

申报表格926

» 以下交易可能会导致表格926的申报:

- 财产转移给控股的外国子公司，以换取该公司的股份，而不确认财产转移的损益。
- 把美国子公司的资产以免税收盘交易转到外国母公司。
- 在某些免税重组或拆迁中，把资产转让给外国公司。

» Transactions might trigger Form 926 filing requirement:

- Transfers to a controlled foreign subsidiary in exchange for stock in that corporation without recognizing gain or loss for the transfer of property.
- Transfers in a liquidation of a U.S. corp. into a foreign parent in a tax-free transaction.
- Transfers to a foreign corp. in certain tax-free reorganization or spinoffs.

Controlled group tax limitations – types of controlled group

受控集团税收限制 – 受控组的类型

母公司控股集团：

- » 一个或多个通过股权连接的公司拥有共同的母公司，并且共同的母公司拥有其至少80%的股权

兄弟姐妹控股集团：

- » 由五个或更少的个人，遗产或信托人拥有两个或两个以上的公司，并且拥有每家公司超过50%的股权

A parent-subsiary controlled group:

- » one or more chains of corporations connected through stock ownership with a common parent **corporation** that the common parent owns at least 80% of the other corporations

A brother-sister controlled group

- » two or more corporations if the same five or fewer persons who are individuals, estates, or trusts own more than 50% of each corporation

Types of controlled group – example

受控集团的类型 – 例子

- » 国内公司P拥有国内公司A的所有股份。国内公司A拥有国内公司B的全部股份。公司P，A和B是受控集团的组成成员。
- » Domestic corporation P owns all of the stock of domestic corporation A. Domestic corporation A owns all of the stock of domestic corporation B. Corporations P, A, and B are component members of a controlled group.

Controlled group tax limitations – filing of schedule O

受控集团税务限制 – 提交附表O

- » 作为受控集团的组成部分的公司必须使用附表O报告应纳税所得额的分配，以及该集团所有组成成员之间的某些税收优惠的分配。
- » 共同税收优惠项目的分配：
 - 应纳税所得额税率
 - AMT豁免金额
 - 累计盈利信用
- » A corporation that is a component member of a controlled group must use Schedule O to report the apportionment of taxable income, and certain tax benefits between all component members of the group.
- » Apportionment of common tax benefit items:
 - Taxable income brackets
 - AMT exemption amount
 - The accumulated earnings credit

§ 263A – uniform capitalization

联邦税法263A – 库存费用资本化

联邦税法263A – 作为1986年“税法改革法”的一部分

- 在生产有形动产和不动产的过程中，为所有直接成本和部分间接成本提供全面的资本化规则。
- 例如，纳税人不仅要资本化制造过程中产生的直接成本（如生产员工工资和材料成本），还要资本化任何间接成本（如间接人工管理成本）。

§ 263A - Enacted as part of the Tax Reform Act of 1986

- Provides comprehensive capitalization rules to all direct costs and a portion of indirect costs that incur in the production of real or tangible personal property that are allocable to that property.
- For example, a taxpayer would have to capitalize not only the direct costs that they incur with manufacturing products (e.g. plant workers wages and material costs), but also any indirect costs, such as indirect labor cost / G&A costs

§ 263A – uniform capitalization

联邦税法263A – 库存费用资本化

适用者：

- 制造商：动产或不动产的生产商；构建，建造，安装，制造，开发或改善财产的纳税人
- 经销商：作为分销商，零售商或批发商收购有形和无形财产以进行转售的纳税人；然而，如果经销商的平均年度销售额为一千万美元以下（1,000万美元包括受控集团层面的所有成员），则此规则不适用。

Key players:

- **Producers** of real or tangible personal property; taxpayers who constructs, builds, installs, manufacturers, develops, or improves property
- **Resellers**: taxpayers who acquires as a distributor, retailer, or wholesaler both tangible and intangible property for resale; however, this rule does not apply if a reseller's average annual gross receipts are 10M or less (\$10M includes all members GR at the controlled group level)

Summary

总结

- » 任何纳税人的税表随时都有可能被国税局审核
- » 您的日常工作可以确保审核顺利：
 - 保持良好记录
 - 了解/监督要上报的税表
 - 了解国税局雇员在审核期间要寻找的信息
 - 聘请专业人士来代表您
- » Any taxpayer could be selected for an IRS audit at any time
- » Your daily efforts will ensure a smooth audit:
 - Keeping good records
 - Understand/oversee the returns that were filed
 - Knows what an IRS agent is looking for during an audit
 - Hire a professional to represent you

问答时间  Questions & Answers



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