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中外资本弱化税制比较和借鉴

A Comparative Study on International Thin Capitalization

Rules and Their Chinese Counterpart and the Former's

Value of Reference for the Latter

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摘要

资本弱化是指基于避税的目的，在企业融资方式的选择上，故意降低股本的比重，提高负债的比重，以负债方式替代募股方式进行的融资。资本结构表现出负债比例超常大于股本比例。

世界多数国家制定资本弱化规则，限制以避税为目的的资本弱化安排。各国基于本国经济发展需要立法，因此具体规制存在差异性。中国在 2008 年 1 月开始实施的《中华人民共和国企业所得税法》中首次规制资本弱化，后续又以条例形式对其解释和细化。与发达国家的规制相比，中国资本弱化税制的完整性和可操作性还需完善。目前实践中也没有引起征纳双方的重视，规制效果还未体现。

本文通过对资本弱化基本概念和理论的研究，对比国际上采用的主要规制方法，详细分析了中国资本弱化规制要素，结合中国税务机关的征管现状、征管能力和纳税人税法遵从度，提出可操作建议，以期完善规制，规范征管。

本文除摘要外，共分四个部分：

第一章，分析资本弱化的渊源，主要是分析资本弱化的含义和产生原因，归纳各种影响，是文章的基础概念部分。

第二章，介绍各国资本弱化规制的主要模式。主要归纳为四类：单独采用固定比例法的模式、正常交易法为主的模式、固定比例法和正常交易法相结合的模式以及其他不典型的模式。结合具体国家的实践，详细研究了第一类和第三类模式。

第三章，对资本弱化税制的主要因素进行国际比较，包括适用范围、计算方法和因素、资本结构判断标准、违反规则的后果等。以剖析中国资本弱化规制为线索，通过国际间对比，分析中国规制的发展和未来。

第四章，探讨中国资本弱化税制可能存在的问题并提出建议。包括分析了中国资本弱化税制与中外税收协定中有关条款规定的冲突问题，提出协调方法；讨论执行中的可操作性问题，提出有利完善实际操作的建议。

关键词：资本弱化；固定比例法；正常交易原则；中国资本弱化税制；税收协定

Abstract

Thin capitalization represents the practice of raising capital through incurring debts instead of floating stocks, as the chosen corporate mode of financing. It is specifically reflected in the deliberate reduction of the proportion of share capital and increase of the proportion of debt. Its underlying purpose lies in tax avoidance. As a result, the capital is made up of a much greater proportion of debt than that of equity.

Most countries in the world have developed thin capitalization rules which are aimed at restricting the abuse of tax arrangements for the purpose of thin capitalization. As national economic legislation is based on country-specific economic circumstances, there are regulatory differences between nations in this respect. Through the "PRC Enterprise Income Tax Law", China began to implement its thin capitalization rules in January 2008, and issued specific regulations for their interpretation later. Compared with those in the developed countries, there is still room for improvement for the Chinese thin capitalization rules in terms of integrity and operability. In practice so far, the rules have not received due attention from the tax authorities or the tax payers, and haven't, thus, produced much effect.

This paper is a research into the basic concepts and theories of thin capitalization. It compares the major international restrictions of thin capitalization with one another, analyzes in detail the regulatory elements, and, in connection with the Chinese tax authorities' status of collection and capacity of collection, as well as the Chinese taxpayers' compliance with tax laws, puts forward actionable propositions designed to improve the rules and regularize tax collection.

This paper is composed of four parts, in addition to its abstract.

Chapter One covers the basic concepts contained in this paper. It

analyzes the origin of thin capitalization, focusing on its definition and the causes for its creation and summarizing its implications.

Chapter Two describes the main modes of thin capitalization rules in different countries. It lists the following four modes:

- 1) The sole use of fixed proportions
- 2) The use of regular transactions as the main practice
- 3) The integration of the two modes mentioned above
- 4) The mode of atypical methods

In connection with country-specific practices, this Chapter looks closely into the first and the third mode.

Chapter Three is an international comparison between the major factors in thin capitalization rules, covering the definition of the borrower and the lender, the calculation methods and factors, capital structure criteria, and the consequences of violating the rules. Through the international comparison, it proceeds to an analysis of the present and future development of the Chinese thin capitalization rules.

Chapter Four explores the weaknesses of the Chinese thin capitalization rules and proposes possible solutions. It covers an analysis of the conflicts between the Chinese thin capitalization rules and certain provisions of the tax agreements between China and other countries and the proposals for their harmonization. It also discusses the issue of operability and presents some ideas for improving operability.

Key Words: Thin Capitalization; Fixed Ratio & Arm's Length Principle; China Thin Capitalization Rules; Tax Treaties

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导言

资本弱化是对企业资本结构的一种描述，是投资者在对被投资公司的融资过程中，不恰当地提高贷款融资比重而相应地降低股本融资的比重，增加被融资公司的利息支出，从而获得更多的税前扣除，以减少应纳所得税的一种避税形式。

资本弱化有经营性和收益性动因。收益性动因来源于税法上对利息和股息的扣除限额的差别待遇产生的税收利益，利息可以税前列支，股息是在税后分配。资本弱化是资本逐利的自然选择，特别是各国税制间的差异，吸引了跨国资本利用这些差异谋取税收利益，逃避税收责任，减损了各税收东道国的税收收益，违反了税收公平和税收中性原则。

各国先后制定了资本弱化税制来约束资本弱化行为，2008年1月1日起施行的《中华人民共和国企业所得税法》（以下简称《企业所得税法》）首次对资本弱化税制做出了明确规定，对于规制资本弱化避税行为，维护国家税收权益，强化税收调控作用，实现公平竞争将起到重要作用。我国的资本弱化税制起步晚，但从我国的税收征管现状看，起点较高。税企双方的认识和执行的可操作性上还有待完善和细化，本文就此问题进行研究，希望通过与世界各国已有的、较有代表性的规制相比较，全面认识和理解我国资本弱化税制，对完善我国资本弱化税制提出自己的观点。

本文在写作中主要采用了比较分析、规范分析、历史分析、实证分析等方法，从法律角度对中外资本弱化税制进行比较分析，从而提出完善中国资本弱化税制的建议。

本文的研究成果主要体现在第四部分，分析了与税收协定可能存在的冲突，即是否造成双重征税和是否违反无差别待遇（非歧视待遇）的规定。肯定了可能出现的双重征税的结果，提出协调方法；否定了出现违反无差别待遇（非歧视待遇）的可能性，并阐述论据。对中国资本弱化税制的可操作性提出了完善的建议：对于固定比例的规定过严，应适当放宽；分析

如何审核判断独立交易的举证资料；提出如何在中国各不同层级的税务机关落实资本弱化税制，以及如何监督执法。

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