



華東政法大學

East China University of Political Science and Law



# **Current tendencies in Case law on Cross -Border Tax Disputes in China**

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# Cases on Cross-Border Tax Disputes in China

- **China is a civil law country and has no tax court**
- **tax cases in China:**
  - **judicial cases ruled by administrative courts: very few, but influencing treaty interpretation in practice (cases 4 and 5); and**
  - **investigations done by tax authorities: tons of them, but one-sided fact and lack of details (cases 1, 2 and 3)**



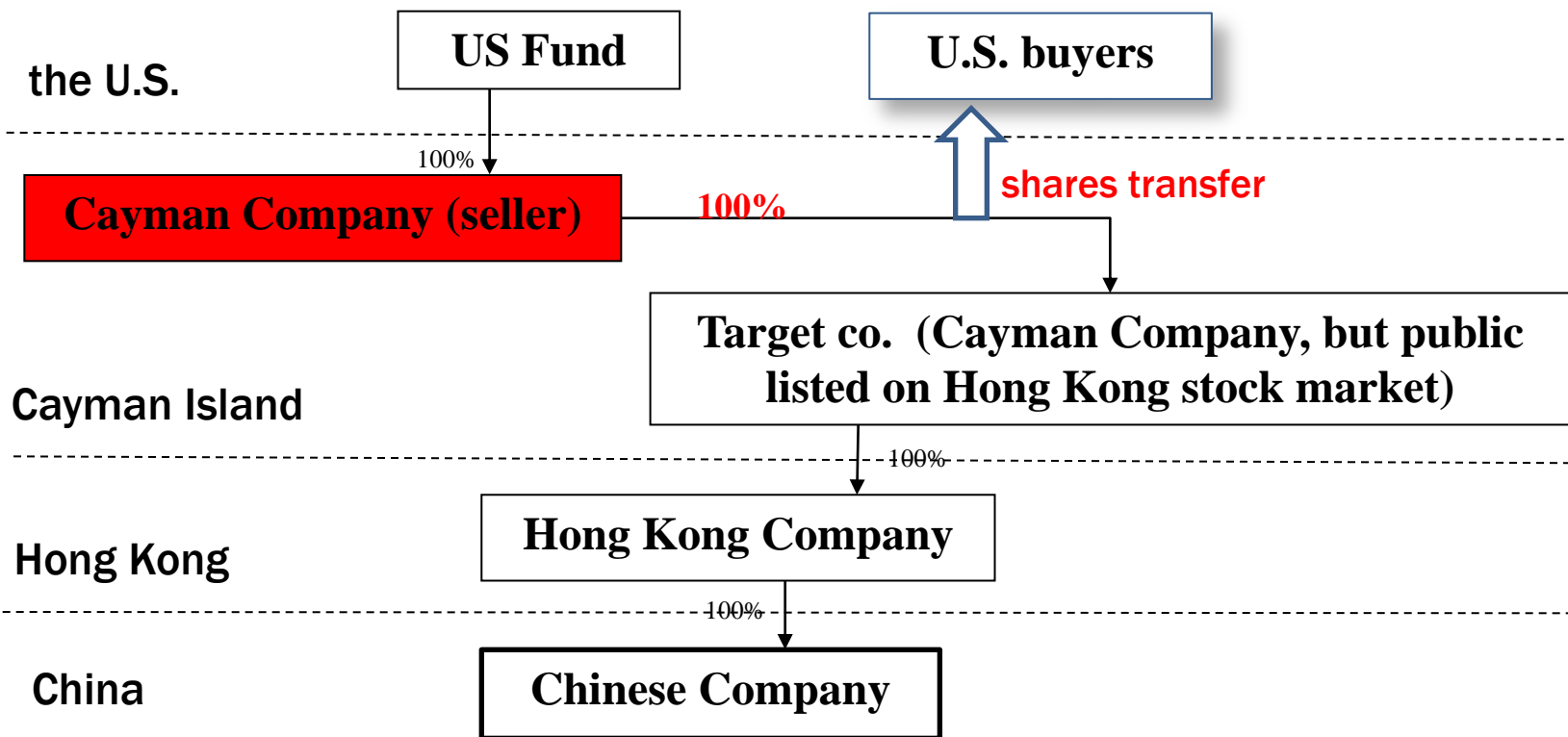
# Cases on Cross-Border Tax Disputes in China

- tax treaties signed with 104 jurisdictions
- relationship between tax treaties and Chinese domestic law:  
tax treaties prevail
- domestic law: four tax laws vs. numerous circulars issued by  
the State Administration of Taxation(SAT)
- SAT: both a legislative organ and the highest tax authority



# 1. Concept of Chinese Tax Residents

## Jiamusi Case (2013)





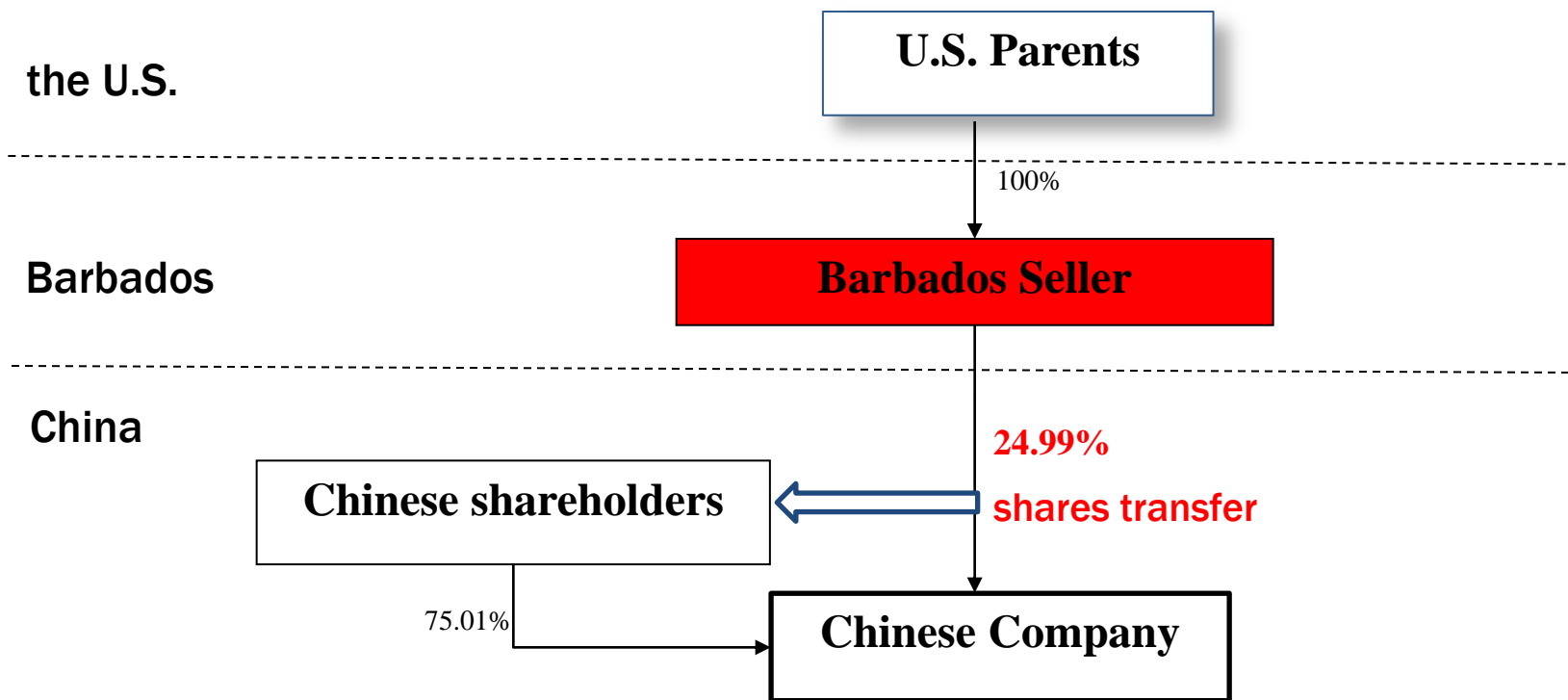
# 1. Concept of Chinese Tax Residents

- **Chinese Tax Resident Enterprises (TRE): (a) enterprises incorporated in China, and (b) companies incorporated outside of China but “effectively managed” in China”**
- **Chinese TRE: worldwide income being taxed in China**
- **place of effective management: multiple criteria**



## 2. Procedures of Application of Tax Treaties

### Xinjiang Case (2008)





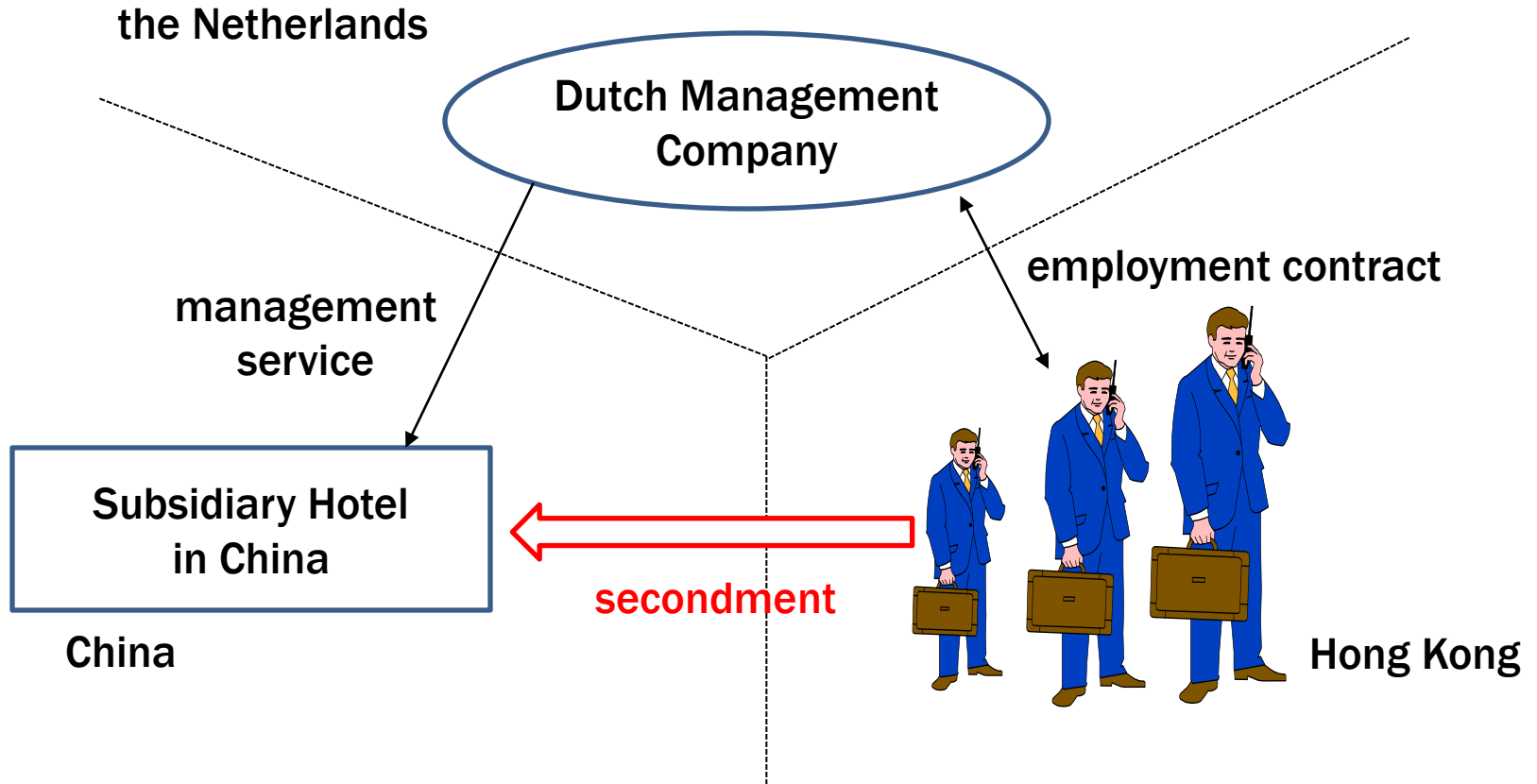
## **2. Procedures of Application of Tax Treaties**

- **China - Barbados Tax Treaty: Article 13(5) - residence state's exclusive taxing right**
- **changes on procedures for claiming entitlement to treaty benefits: from pre-approval (2009) to a post-tax filing and self-assessment mechanism (2015)**
- **tax authorities' selective examination approach: targeting on low effective tax rate jurisdictions**



# 3. Taxing Permanent Establishment

## Suzhou Case (2010)







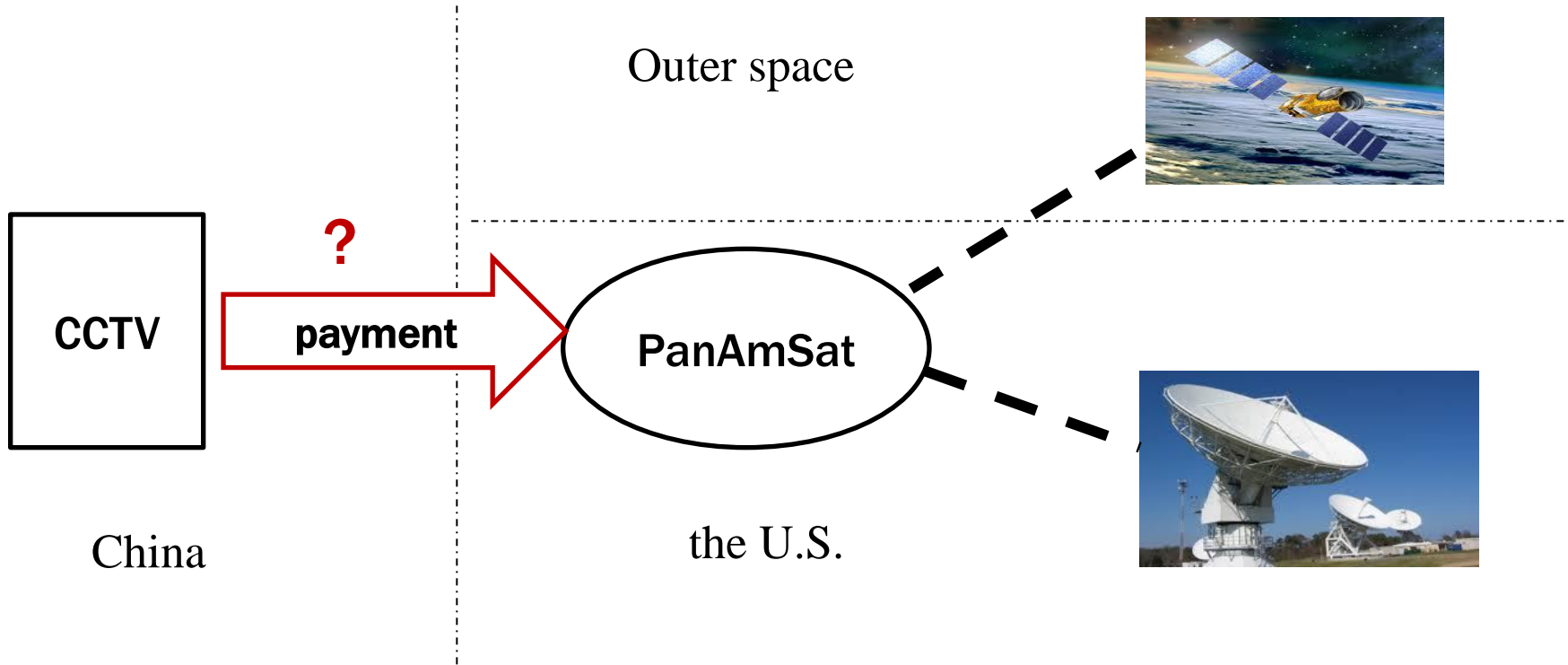
### **3. Taxing Permanent Establishment**

- **key issue: whether cross-border secondment may constitute a PE of the Dutch Company in China?**
- **changes in SAT's interpretation approach: from responsibility and risk analysis (2000) to consider whether the remunerations received by the seconded employees are taxed in China (2013)**



# 4. Dispute Concerning Taxing Passive Income

## PanAmSat Case ( 2001 )





## 4. Dispute Concerning Taxing Passive Income

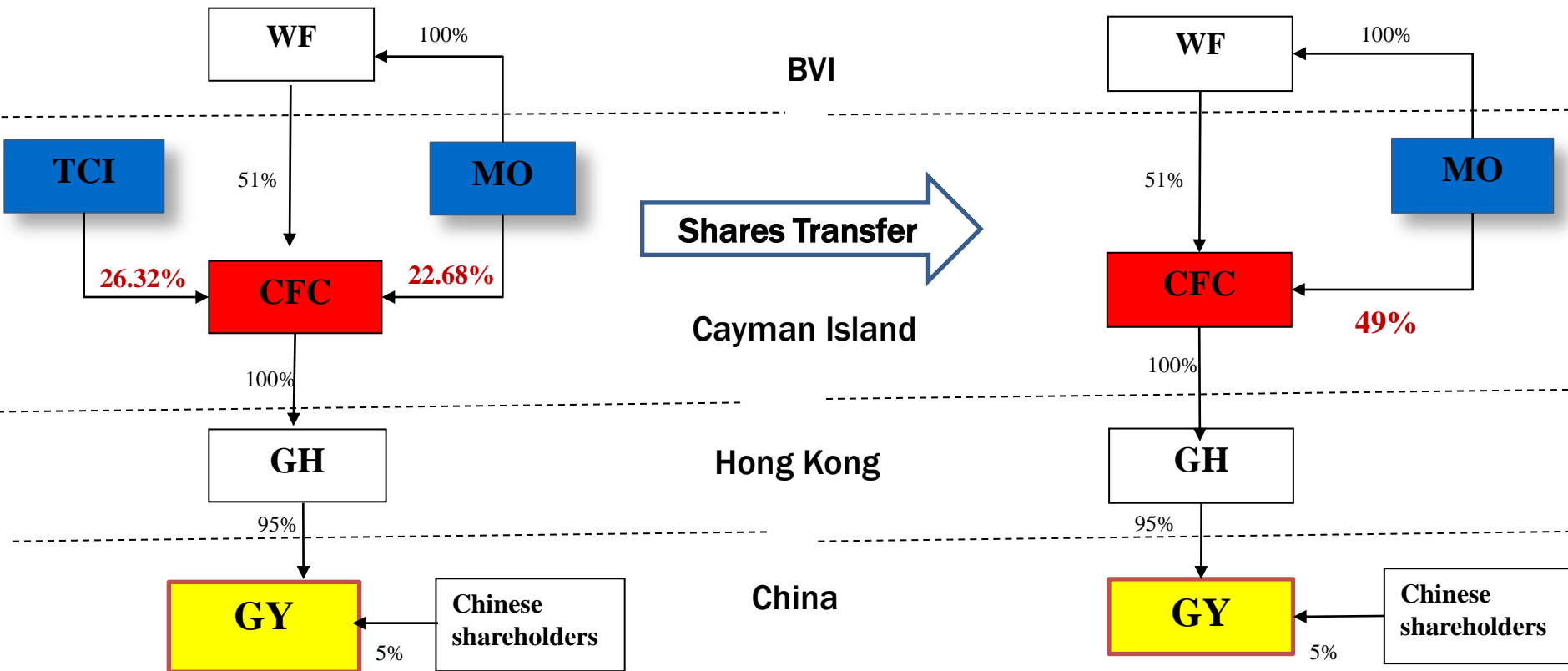
### PanAmSat Case ( 2001 )

- conflict of qualification: business profit vs. royalties
- China – U.S. tax treaty: definition of royalties – “payments of any kind received as consideration ... for the use of, or the right to use, industrial commercial or scientific equipment .....”
- role of the SAT in a judicial case



# 5. Taxing Indirect Shares Transfer

## TCI Case (2015)





## **5. Taxing Indirect Shares Transfer**

- **“reasonable business purpose” test: from SAT Circular 698 (2009) to SAT Notice 7 (2015)**
- **obligation on non-Chinese tax residents to disclose the shares transfer transaction to Chinese tax authorities**
- **“place for value creation” principle – quoted from BEPS Action reports**



## **Summary and Observations**

- **tax disputes in China cover a broad range of transactions**
- **judicial cases are still of limited numbers**
- **SAT plays an important role in both judicial cases and investigations carried out by tax authorities**
- **more tax disputes might arise with Chinese tax authorities' enforcing anti-avoidance measures on cross-border transactions**



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**Thank you!**

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