

Legal Difficulties of China's Anti-tax avoidance Measures and solutions

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Abstract. With the further advancement of economic globalization, multinational corporations contribute more and more to the global economic development nowadays. At the same time, the tax avoidance of multinational corporations has attracted more and more attention from various countries. At present, Chinese domestic scholars have different opinions on the tax avoidance identification standards and proof responsibility in China. Foreign scholars have certain research on the reasons, methods, identification standards and proof responsibility of tax avoidance of multinational corporations. Tax avoidance of multinational corporations has a negative impact on the economic development of various countries. It creates an unfair market environment. This paper is divided into four parts. At present, there are difficulties in the implementation of laws and regulations of anti-tax avoidance measures. China's anti-tax avoidance legislation is not perfect. The rigidity of the system implementation is also insufficient. The reasons behind these problems are the for-profit nature of multinational corporations and the different economic systems of different countries. Based on this, this paper tries to solve the problems above by putting forward the corresponding strategies from the legal level and the system level. This paper uses comparative literature analysis method, comparative analysis method and learn from foreign advanced experience. The aim of the paper is contributing to the current research on tax avoidance behavior of multinational companies.

Keywords: Multinational enterprise; Tax avoidance; International tax laws.

1. Introduction

With the rapid development of global economy, multinational corporations play an increasingly important role in the international economic cooperation. The major decisions and behaviors of large multinational corporations often have a certain impact on the global economy. At present, multinational corporations have spread all over the world. They have gradually integrated into the local social and economic development. They are playing a very important driving role in their economic development. As a developing country with a huge economic volume, China not only needs to vigorously introduce foreign investment to promote the sustainable and healthy development of China's economy, but also needs to prevent multinational corporations from transferring profits to foreign countries effectively. Multinational companies implement various methods to avoid tax because these behaviors result in tax loss and reduce China's fiscal revenue. These behaviors destroy China's economic order and form an unfair market operation environment. They also have a negative impact on the sustainable and stable economic development.

This paper discusses the historical background of tax avoidance of national companies. Then this paper further analyzes the causes of tax avoidance. After that, this paper analyzes the problems existing in China's anti-tax avoidance measures and puts forward corresponding suggestions accordingly. At present, scholars in China and abroad put forward opinions on anti-tax avoidance measures to improve the legal system and strengthen international cooperation and so on.

As for tax avoidance standards in China, academic circles have differences. There are different opinions on the application of reasonable commercial order standards and economic substance standards. Some scholars believe that in order to facilitate practical operation, the economic essence should be determined as the only identification and tax avoidance standard. Besides, the reasonable commercial purpose standard should only serve as the exception standard to exclude the application. They propose that the burden of proof should be distributed. Some scholars also advocate the unity

of subjective and objective identification standards. They think that tax avoidance which is lack of behavior or purpose cannot be established.[1] At present, China's tax law does not mention the burden of proof of tax avoidance. Chinese scholars have different opinions on this, which will not repeat in this article. Foreign countries have a deep research on the reasons and methods of tax avoidance, tax avoidance identification standards, proof responsibility and proof standard of tax avoidance. Foreign scholars have found the reasons why multinational companies tend to avoid tax through research. The multinational companies apply tax treatment methods through different tax avoidance tools in different countries, thus finding that many countries lack preventive measures. Foreign scholars have also studied the distribution of the burden of proof. They believe that the burden of proof of the general anti-tax avoidance clause belongs to the tax authorities. If taxpayers have objections to this, they should respond within the prescribed time.[1] The current research on tax avoidance regulation in China is mainly divided into three types. The first is to conduct research on a specific tax avoidance method (transfer pricing, controlled foreign company). The second is to conduct research on the basic principles of tax avoidance identification (economic essence principle, reasonable commercial purpose principle). The third is the overall framework research on the current tax avoidance regulation system in China.

2. Historical background of tax avoidance by multinational corporations

At present, economic globalization has become the new normal of international economic development. The number of multinational corporations is increasing. Therefore, they gain a higher status in global economic development now. However, its primary purpose is to make its own profit as a company, so multinational corporations adopt various ways in order to expand their profits. Tax avoidance is an important way for multinational companies to gain more profits. It can be learned that tax avoidance is the use of the loopholes or irregularities in tax laws and regulations. [1] Taking advantage of globalization to avoid taxes has become normal for multinational corporations. European Commission President Jose Barroso said that EU countries lose up to 1 trillion euros a year due to illegal cheating and unacceptable tax evasion. China loses 30 billion yuan in tax avoidance a year due to multinational corporations. [2]

In recent years, more and more multinational corporations avoid tax through registering offshore companies, which has become the main part of tax avoidance of multinational companies. It is now generally believed that offshore companies refer to those companies whose investors are not local. They are registered in the offshore places under the offshore places' laws but operate outside the offshore place. [3] Alibaba, which is a famous Chinese Internet marketing e-commerce company, has registered a subsidiary in the Cayman Islands.

There are many reasons why multinational companies conduct international tax avoidance through registering offshore companies. From the perspective of the laws of offshore countries or regions, the most prominent advantages of the offshore laws are their simple registration procedures. There are few restrictions on capital flows. There is almost no tax on business activities which are not conducted in the registration place. They have good confidentiality. From the perspective of the purpose of corporations, Chinese corporations' profits have been greatly affected during the epidemic period. For their profit purpose, they will choose to maximize their profits. Finding loopholes in the law for tax avoidance is their best choice. Registering offshore companies can meet their needs.

The sharp growth of the number of offshore companies is a kind of abnormal development mode. It will destroy the healthy development of international trade and the normal international investment. It will destroy the normal tax regulations of other countries except the offshore laws, lead to the change of flow of capital, increase the cost of taxes in other countries, and destroy the fair international competition environment.

At present, the international tax avoidance means of multinational corporations are usually divided into the following four types including tax avoidance, registering subsidiaries in offshore lands, the transfer pricing for tax avoidance, capital weakening for tax avoidance and the abuse of tax

agreements for international tax avoidance. Due to the different tax collection and management legal systems between different countries, it provides a convenience for the international tax avoidance of multinational corporations. It makes the international tax avoidance more and more intense. [4]

3. Problems with China's anti-tax avoidance measures

In order to prevent multinational corporations from tax avoidance, achieve sustained and stable economic growth and prevent chaotic capital flow, China has taken a series of measures in aspects of legislation and policy to counter tax avoidance. These measures regulate tax avoidance of Chinese multinational companies to some extent. However, this phenomenon is often repeatedly happened. Anti-tax avoidance should also rely on the laws of other countries. In terms of tax system elements, the tax types, tax bases and tax rates stipulated by different countries are different. Therefore, it provides a necessary premise for multinational companies to plan more favorable tax avoidance means in transnational operation. [5] Specific regulations and process of implementation are usually different, so the results are quite different from expectations. This paper will analyze the causes of this phenomenon from different perspectives.

3.1 There are deficiencies in the laws themselves.

The laws which are mainly applicable to regulate tax avoidance are international tax laws. The international tax laws include international tax laws and domestic laws.

From the perspective of international law, the international tax law is the general term of the laws applicable to adjusting the international tax distribution relationship between countries, the foreign collection and payment relationship between countries and transnational taxpayers. [6] International law mainly includes two parts: international treaties and international customs. The regulations in international treaties which regulate the tax avoidance of multinational corporations are not perfect. For example, *The United Nations Code of Action for Multinational Corporations (Draft)* is the most important guiding principle for international supervision and control of the activities of multinational corporations. The treaty includes six main parts, among which the tax avoidance control for multinational corporations is mainly reflected in chapter III of *Activities and Behavior of Multinational Corporations*. As its regulations on transfer pricing, multinational corporations are required to avoid pricing policies not based on relevant market prices or normal trading principles in internal transactions. This regulation aims to prevent multinational corporations from evading, avoiding tax or evading foreign exchange control measures of the host government. The disputes and confrontation between different interest groups reflected in the process of drafting the code deserve further study. [7]

In addition, Cooperation between countries has not been put in place. Developed countries and developing countries have different attitudes towards tax avoidance of multinational corporations. Developed countries hold a positive attitude towards anti-tax avoidance measures for the direct interests of the country. However, for developing countries, they are more dependent on multinational companies. Therefore, they are more inclined to meet the tax avoidance needs of multinational corporations. However, due to the relatively low labor prices in developing countries and the relatively developed manufacturing industry, large companies in developed countries often choose to set up subsidiaries in developing countries. It is difficult for develop countries and developing countries to negotiate treaties or agreements that fully meet the interests of both sides. This condition leads to multinational companies looking for different laws between the home country and the host country, looking for loopholes to avoid tax directly. Therefore, multinational corporations will implement reverse tax avoidance, which means that multinational corporations avoid the light tax burden of the country where they invest. They make use of preferential tax incentives of developing countries and pay a heavy tax burden on profit income from their domestic residence. [8]

International customs are a universally applicable and legally binding code of conduct for all countries in practice. The international tax practice of regulating tax avoidance of multinational corporations has not yet achieved the effect of universal binding force. It cannot play its due role.

In today's international community, there is no bilateral or multilateral tax agreement dedicated to anti-international tax avoidance except in the field of tax information exchange. In this background, the domestic anti-tax avoidance legislation is still playing a major role. However, the effect of domestic legislation is limited. This paper mainly puts forward analytical opinions on Chinese law. Firstly, China has not yet formed a complete anti-tax avoidance legal system. Most of the laws are shown in the form of announcements or regulations. It is too chaotic to play a big role. Secondly, multinational companies implement international tax avoidance through capital weakening, transfer pricing and so on. China lack targeted legal system to regulate it. For example, Chinese laws which aim to regulate the transfer pricing of multinational companies are not yet perfect. The procedural laws on the provisions of retroactive adjustment, punishment and the handling of disputes have not been clarified. The legislation lacks operability, too. In the entity law, the new corporate income tax law has more detailed provisions on transfer pricing. However, the specific operating rules on the use of adjustment methods, the adjustment of intangible assets transfer pricing, the reservation pricing system and other special operating procedures need to be improved. [9] In addition, China is more dependent on multinational companies than developed countries as a developing country to some extent. Therefore, its laws will not impose too many mandatory tax avoidance regulations on multinational companies. This also leads to the tax avoidance of multinational corporations being difficult to be truly regulated in practice.

3.2 The rigidity of the implementation measures is insufficient, and the specific implementation process is insufficient.

From the perspective of the professionals, the number of anti-tax avoidance professionals in China is insufficient. In the face of the increasing tax avoidance of multinational corporations, the current tax professionals in China are insufficient to cope with the existing situation. Some organs do not know enough about the problem of tax avoidance by multinational companies especially at the grass-roots tax authorities. The attention is not enough. Professionals do not have enough sensitivity and response ability to tax avoidance by multinational corporations. When problems occur, it is often difficult for professionals to find the essence of the problem and thus handled improperly.

From the perspective of information channels, tax information channels are not perfect and access for resource is insufficient. Therefore, it is difficult to achieve a complete tax risk assessment for China's multinational corporations. Some large multinational corporations are equipped with special tax planning positions. These staff positions conduct tax avoidance methods for multinational corporations. Their technology belongs to the high-end level. Their staff have specialized personnel tax research. They are sensitive to the changes of tax policies and have a strong sense of planning. These specialized departments have a very high level of research on China's tax system, and sometimes they can compete with the national specialized agencies. This is a question worth more attention. In addition, it is difficult to establish tax information networks in various regions, causing them to deal with this problem alone.

From the perspective of responsibility mechanism, the anti-tax avoidance responsibility distribution mechanism is not perfect. From the regional level, the enterprise development in eastern region far exceeds that in the central region and western region. Regional development is imbalance. From the internal mechanism, management, service and investigation are all not mature. They cannot apply the existing system effectively.

Finally, the tax amount which multinational corporations have avoided is huge. The consequences are more serious. According to the China Tax Information website, multinational companies' total tax avoidance in China reaches 30 billion yuan every year, 60 percent of which is due to transferred profits, or 18 billion yuan because of profit transfers. If we calculate the average income tax rate of

15%, we can calculate the annual transfer profit of 120 billion yuan. This figure is equivalent to 1 / 10 of China's annual economic growth. [9]

4. The reasons that multinational companies avoid taxes

4.1 Reasons for the multinational companies themselves

The essence of multinational corporations is their profit-making. Maximizing economic interests is its main goal. In order to gain more profits, multinational companies will choose a more favorable tax environment to invest. Then they can reduce tax payments, thus reducing costs and increasing profits. The ways for multinational corporations to gain profits include reducing costs and increasing profits. In the case that profits cannot be actually controlled, reducing costs becomes the primary choice of multinational corporations. Tax avoidance is a major measure to reduce costs, so multinational companies are increasingly implementing tax avoidance.

4.2 Reasons of different national economic policies

Countries around the world have different levels of economic development and different economic policies. Developed countries usually take active action against tax avoidance to prevent multinational corporations from using legal loopholes to avoid tax. Due to the backward domestic economic development level, developing countries are more dependent on multinational companies. In order to attract multinational companies, these countries will formulate many preferential tax policies and take attracting investment as a higher goal. In recent years, countries increasingly strengthen the management of international tax with the further development of economic globalization. For example, national tax authorities have strengthened the domestic enterprises and tax avoidance enterprise transaction price monitoring. Objectively, it causes the behaviors of taxpayers obtaining tax benefits reducing through international tax sources. Then the transfer tax motivation will weaken, making multinational companies to seek maximum economic interests and adopting new indirect and hidden means, namely "tax avoidance" means. [10]

5. Suggestions on China's anti-tax avoidance measures

In view of the above analyzed problems, in order to further improve the anti-tax avoidance measures in China, achieve the balance of economic development and anti-tax avoidance measures, this paper puts forward the following suggestions.

5.1 Further improve the general anti-tax avoidance provisions of domestic laws and implement the responsibility distribution system in the implementation process.

Firstly, establishing a complete anti-tax avoidance legislation system is very important. Chinese measures for regulating tax avoidance of multinational companies are almost through announcements or other forms. They are scattered and hard to implement. Therefore, the legislators should establish a complete tax avoidance legislation system and make the process of implementations to regulate tax avoidance can be based on law. Then the power of the authority and personnel can be exercised. The punishment measures can be implemented. In judicial practice, we can learn from the practices of the United Kingdom, the United States, France and other countries. We can analyze and interpret the typical cases through using the demonstration effect of the cases, and then implement them in the specific cases.

Secondly, improving the relevant department law is significant, too. Lawgivers should improve the company law. In terms of company law, attention should be more paid to standardizing the association relationship of parent and subsidiaries. Besides, we should improve the financial law. The transfer pricing of multinational corporations mainly depends on the company law. The operability provisions on the regulation of transfer pricing should be added in the law. In addition, they should improve the accounting law. Enterprises should be required in the accounting information disclosure

standards to disclose the basic elements of related party transaction transfer pricing in detail in their financial reports to improve the transparency of disclosure. [11]

In practice, anti-tax avoidance is a complex, systematic and difficult work. The law cannot consider all aspects. We need enough regulations in practice. In addition to the improvement of laws and regulations, legislators should also attach importance to the role of judicial interpretation. The responsibility distribution system shall be implemented in assessing tax risks, supervising the tax payment of multinational corporations and investigating the responsibility. The problems in specific implementation process, such as difficult to blame, improper regulation methods, improper distribution of personnel responsibilities need to be solved. Preventing low efficiency and endless cases or other problems is also important. With the deepening of economic globalization and the growing development of China's economy, multinational corporations are playing a more and more important role in the international economic development. The implementation of the responsibility distribution system in the implementation process is an important part of improving the efficiency of anti-tax avoidance measures. At present, China's anti-tax avoidance measures responsibility distribution is not perfect. It needs to be solved urgently.

Of course, the company also plays a very important role in the work of national anti-tax avoidance, especially in the judicial practice of the burden of proof. In civil litigation, China generally follows the principle of "who claims, who provides proof". In the practice of anti-tax avoidance, although China has also strengthened taxpayers' declaration obligation in the transfer pricing tax system, there are no mandatory provisions on taxpayers' obligation to prove whether the payment of related companies is reasonable. In practice, the obligation of strengthening the burden of proof should be considered. [12]

5.2 Establish complete information management system and strengthen international tax cooperation.

With the continuous development of modern technology, modern science and technology can provide effective help for multinational companies to analyze tax risk. Thus, reducing the tax avoidance of multinational corporations.

Relevant state organs can set up a tax risk management platform to realize tax risk early warning. They can dock with the data of the local systems and build a national tax risk management platform under the unified deployment of the State Administration of Taxation. With the continuous development of modern science and technology, this measure can also be carried out through modern science and technology. For example, an information sharing system across the country can be established to provide technical support for multinational companies to implement risk assessment and build a national information-sharing network. Then they can provide technical support for multinational corporations to implement risk assessment.

When collecting the tax burden on multinational enterprises, China should also integrate the information of multinational enterprises, clarify the relevant information of enterprises, and carry out the review of the information provided by related parties. To review the internal assets of multinational corporations and introduce the principle of independent transaction, multinational enterprises need to provide corresponding information and relevant information on the principle of independent transaction after the occurrence of related transactions. They need to supplement the corresponding cost sharing agreement to avoid capital weakening. [13]

Using modern information sharing technology to establish a complete information sharing system with other countries on the basis of international cooperation, they can provide effective technical support for anti-tax avoidance in practice. It requires more tax cooperation among countries.

China has signed international tax agreements with more than 50 countries and regions, but the limited number of agreements is easy to be used by multinational companies and become a harbor for tax avoidance. [14] Countries can improve tax policies by signing bilateral treaties or other forms. They can reduce legal loopholes, improve the implementation efficiency of anti-tax avoidance measures, negotiate and explore a friendly tax cooperation mechanism between the two sides. They

can deal with the tax avoidance problem of multinational corporations jointly, reduce the gaps at the legal level and the technical level. Strengthening international cooperation is an important part of regulating the international tax avoidance of multinational corporations. Among them, it is particularly important to attach importance to strengthening the tax cooperation mechanism with the countries along the "Belt and Road". On this basis, China can import its anti-tax avoidance measures to other countries along the belt through the "Belt and Road". China has signed tax agreements with many countries along the "Belt and Road", which can further strengthen international tax cooperation with countries along the "Belt and Road". It is effective to control tax risks and consider the common interests of China and the host countries. Considering the large investment of Chinese enterprises in countries along the Belt and Road, China's tax authorities should negotiate with the corresponding institutions of the host countries to revise the bilateral treaties, so as to facilitate the prevention and control of tax risks for Chinese enterprises. In short, tax authorities should improve the tax agreement policies and the systems related to enterprises' overseas investment. They should further standardize the institutional environment of cooperation between Chinese enterprises and countries along the "Belt and Road". For example, government departments can also set up reward and punishment measures at different levels to further strengthen the normal development of "going global" policy. Then they can actively guide these enterprises to operate more legally and efficiently.

5.3 Increase the awareness of this problem nationwide and foster a social anti-tax avoidance atmosphere.

At present, Chinese professionals and personnels from specialized institutions lack the deep understanding of the problem of tax avoidance of multinational companies. Even if they know this phenomenon, there is not enough attention to this phenomenon, which leads to the low attention of the domestic environment. Only when the domestic environment is improved and the government and society have enough attention to this problem can we really concentrate on solving this problem.

When the whole society deepens its understanding of anti-tax avoidance issues, there are certain conditions to establish a complete training system for anti-tax avoidance professionals and increase professionals in the international tax field, because professionals play an important role in order to carry out a reasonable and effective anti-tax avoidance. Today's multinational companies are all knowledge-intensive and capital-intensive enterprises. Their operation mode, management mode, final product resistance and product operation mode are all integrated into advanced technology and modern management concepts. Many multinational companies themselves are high-tech products. [15] In order to adapt to this development trend, China must pay more attention to the training of professionals. The training of professional talents needs the joint efforts of the state and the society. First of all, the country should strengthen the education of the professional knowledge of tax personnel. The educational institutions can establish a systematic training method appropriately. For example, the government can encourage colleges and universities to establish the corresponding subject education or set up some specialized educational institutions and so on. In addition, there should be special professionals in multinational companies to deal with tax avoidance problems. Accordingly, accounting firms should also play their role correctly. In this regard, the country can provide certain help to implement the talent training system as well. China's policy of "going out", the continuous development of multinational corporations and the trend of economic globalization all reflect the importance of professional talents. Professional talents are the basis of implementing the anti-tax avoidance regulations. Without professionals, the legal provisions and many measures cannot play their role correctly.

6. Conclusion

The main problems studied in this paper are the historical background of tax avoidance of multinational companies, the reasons and the shortcomings of anti-tax avoidance measures in China. Then the paper proposes the corresponding solution measures. Due to the corresponding problems in

both legal and implementation level, this paper proposes the following solutions. The first point is to further improve the general anti-tax avoidance provisions of domestic laws and implement the responsibility distribution system in the implementation process. The second one is to establish complete information management system and strengthen international tax cooperation. The third point is to increase the awareness of this problem nationwide and foster a social anti-tax avoidance atmosphere. The measures proposed in this paper aim to alleviate the difficulties of the current anti-tax avoidance measures, make up the legal loopholes and enhance the rigidity of the system of implementation. The future research can conduct a further study on the difficulties of law and system implementation, so that the society can have a deeper understanding of this problem.

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