

Chinese Enterprises "Go globally" Tax Legal Risk Prevention in the Context of "The Belt and Road"

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Abstract: "Go globally" is an important way for Chinese enterprises to integrate deeply into the value chain of the world economy, and the tax system has the dual effect of promoting and suppressing. "The Belt and Road" along the tax environment is complex, the enterprise's own tax risk prevention ability and other comprehensive factors may lead to enterprises involved in tax risks. International taxation issues such as international double taxation, international anti-avoidance, and controlled foreign company rules should not be underestimated. The state and enterprises need to promote the joint promotion, strengthen the enterprise tax risk prevention and control coordination, to ensure that enterprises "Go globally" legitimate tax benefits.

1. Introduction

In 2014, Chinese President Xi Jinping proposed at the G20 summit in Brisbane that "strengthening international tax cooperation, combating international tax evasion and helping developing countries and low-income countries improve their tax collection and management capacity", the first time a Chinese leader has put forward a "three-point proposition" on international taxation, which has caused important international repercussions. "The Belt and Road" strategy as an important grasping hand in the implementation of the above-mentioned international tax proposition, in April 2015, the State Administration of Taxation formulated the introduction of "The Belt and Road" development strategy of 10 tax measures, as a service to Chinese enterprises in the "The Belt and Road" along the country to carry out business in an important guarantee. In this context, in May 2016, the State Administration of Taxation held a tax collection and administration forum (FTA), during which 11 international tax cooperation agreements were signed with many countries and regions along "The Belt and Road". On April 25, 2019, Xi Jinping pointed out that the 2nd Belt and Road International Cooperation Summit will continue to broaden the open areas and strengthen international tax cooperation.

Each step of an enterprise's overseas investment is closely related to tax policy, which can promote overseas investment as well as hinder overseas investment. In the tax system of the countries along the line, which is favorable to the enterprise, which local tax system and enterprise interests are contrary, we all need to do a good job in the collection and risk assessment of the relevant national tax system information, in order to improve the risk prevention strategy, hedge the potential tax risks of the countries along the line. Through the three-dimensional multi-disciplinary and coordinated promotion, the establishment of a multi-level tax treaty system, improve the efficiency of tax dispute settlement, strengthen the tax department's capacity-building, promote enterprises to improve the tax risk prevention mechanism, for enterprises to "Go globally" escort.

2. Types of tax risks of enterprises "Go globally"

(1) Double taxation

International double taxation includes double taxation in the legal sense and double taxation in the economic sense, and only international double taxation in the legal sense is discussed here. Legal

international double taxation refers to two or more countries that impose the same or similar taxes on the same taxpayer over the same period [1]. The frequent flow of factors of production, such as transnational funds, technology and people, leads to the emergence of transnational taxpayers and transnational taxation, and the problem of double taxation is accompanied by the conflict of tax jurisdiction between the source and the country of residence and the conflict of the criterion of the identification of the connecting factor of the residents. Most of the transnational tax collection by countries along "The Belt and Road" uses double standards in their places of residence and countries of origin. In addition, the overseas investment of enterprises necessarily involves the identification of permanent institutions, "The Belt and Road" along the national identification criteria from 183 days to 24 months. The above differences of unilateral tax measures will inevitably lead to double taxation.

Double taxation is a legal issue, but it has the essence of economic problems, it is the conflict of interest between economic sovereignty and taxation between countries, it is the overlapping of the exclusive economic power of sovereign countries in the process of transnational taxation, and it is the inevitable stage problem in the process of economic globalization. Double taxation is also a violation of the basic tax principles such as universal taxation, equal taxation and energy taxation, which is not in line with the basic principle of economics of "equal profits should be obtained for equal capital investment" and has a dampening effect on the flow of transnational capital, technology, personnel and other factors of production.

(2) International Anti-Avoidance

International tax avoidance refers to the conscious exploitation of the difficulties and loopholes in international tax administration by multinational taxpayers, the act of concealing, lying, misrepresenting and other illegal means from the relevant tax authorities to evade the tax obligations under the relevant national tax laws or tax treaties, or failing to perform such obligations by negligence or negligence [2]. Transnational taxpayers mainly move international tax through the transnational movement of tax subjects, cross-border movement of tax objects and abuse of tax agreements. Because of the profit-oriented enterprise, transnational taxpayers evade the tax due by legal but unreasonable means, which cause serious erosion to the tax base of various countries and destroy the tax environment. The Organisation for Economic Co-operation and Development (OECD) launched the Tax Base Erosion and Profit Shift action plan (Base Erosion and Profit Shifting) in June 2013. In October 2015, the OECD issued a public announcement on 25 outcomes of the BEPS action plan, correcting and re-engineering international tax rules, particularly for international tax avoidance, which could lead to companies being involved in anti-avoidance investigations.

The anti-avoidance risks faced by "Go globally" companies are more complex than the risks posed by a lack of knowledge of tax treaties or host country tax regimes. Under the background of BEPS, the relevant countries constantly improve their domestic tax legislation and make more stringent restrictions on tax avoidance under the digital economy model, thus reducing the space for corporate tax planning, resulting in increased uncertainty in the tax environment, and the adjustment of corporate tax planning may be adjusted by the anti-avoidance investigation of the host country. Companies under investigation and adjustment face the risk of high tax and even fines. In addition, the BEPS Action Plan does not provide a set standard for anti-avoidance-related measures, and the discretion of the relevant tax subjects is greater, which may result in the misuse of tax treaties, excessive fines, etc.

1) Transfer pricing investigated

The so-called transfer pricing refers to the multinational affiliates in accordance with the global strategic objectives, between the parent company and subsidiaries, between subsidiaries and subsidiaries between the transaction price of goods, capital, technology, services, etc. this internal price is also referred to as "Transfer Price" or "Appropriate Price" [3]. Determined by the nature of enterprise profit-oriented, transfer pricing as a way of profit distribution is a method often used by international tax avoidance, to a certain extent, can avoid a country's high tax, in the international environment of increasing economic uncertainty, there is the role of avoiding inflation and foreign exchange control and other adverse factors. The BEPS Action Plan has improved international

transfer pricing, requiring tax authorities to analyze and evaluate transfer pricing on the basis of simultaneous submissions, and to forcibly disclose information on malicious or abusive tax planning schemes, which obviously strengthens the review and management of international transfer pricing [4]. When transfer pricing reduces the interests of the enterprise as a whole or a branch to a certain extent, it may be subject to anti-avoidance investigation by the local tax authorities.

2) Thin capitalization is adjusted

Capital weakness, also known as "capital hiding" or "share hiding", means that enterprises, in order to achieve tax avoidance or other purposes, in the choice of financing methods, reduce the proportion of equity capital, increase the proportion of liabilities, thereby increasing interest to obtain more pre-tax deductions. A form of tax avoidance that reduces income tax [5]. Enterprise financing is generally divided into equity financing and debt financing, equity financing in the form of dividends, subject to the amount of taxable income to pay corporate income tax. Debt financing is flexible and can be deducted from taxable income as financial expenses, in other words, there is no tax burden on debt capital. The weakening of capital often becomes one of the means of tax avoidance, investors through high debt, low investment form, reduce the tax burden. In order to prevent the loss of tax revenue, countries will have the relevant regulations unreasonable capital weakening behavior. Countries along "The Belt and Road" have made provisions for pre-tax deductions, but they have not made clear provisions for capital weakening or have not clearly defined the criteria. Countries will improve their regulations based on the urgent need to protect their tax base. Enterprises should go out to do a good job of the host country's relevant provisions of the information collection, so as not to be because of the differences in laws and regulations to the investment tax risks.

3) Controlled foreign companies

The tax arbitrage theory is the theoretical basis for controlling the tax avoidance of foreign companies. Tax arbitrage refers to the use of different countries by multinational taxpayers the act of obtaining tax benefits from tax differences between different taxable objects in the household tax system. In essence, controlled foreign companies are using the asymmetry and inconsistency of tax treatment of the same economic behavior to carry out international tax avoidance. Controlled Foreign Companies (CFC) is designed to prevent taxpayers with subsidiary control from transferring the profits of their parent companies to subsidiaries that are not engaged in actual business activities and at low tax rates, manipulating the distribution of profits and deferring taxes for long periods of time, the essence of CFC rules is anti-avoidance rules. In the digital economy, it also applies to non-entity companies or permanent establishments that essentially use controlled companies to evade taxes and avoid taxes. The CFC rules of the "The Belt and Road" countries are not perfect, protect the tax base from erosion, guarantee the effectiveness of tax revenue, and will also carry out rule-building in order to provide equal tax benefits for domestic and foreign investors and promote the sustainability of trade and investment.

(3) Imperfect mechanism for the resolution of international tax disputes

International tax dispute settlement is based on tax agreements and is usually settled through negotiation. However, there is uncertainty among the relevant national tax authorities as to whether the specific tax disputes should be resolved by the consultation procedure, and the international consultation procedure is time-consuming, inefficient, low in participation, and the enterprise's claims cannot be fully fed back. Moreover, the reluctance of States to compromise in order to protect their own interests could lead to a stalemate in the consultation process. Finally, the outcome of the negotiation is not binding, cannot be enforced, and even if an agreement is reached, it may be impossible to achieve. After the tax dispute occurs, the law generally requires a short period of time to resolve the dispute, enterprises need to have a precise understanding of the laws and regulations of the host country, but in practice, due to "The Belt and Road" along the national legal system, the lack of comprehensive high-quality foreign-related lawyers, enterprises can't understand the legal response strategy in a timely manner, more inclined to break the financial disaster, The benefits of legal and negotiated tax disputes are low.

3. Reasons for Enterprises to "Go globally" Tax Risk

(1) The overseas investment environment is complex and the tax policy is uncertain

Protectionism in advanced economies is heating up, and developing countries are attracting capital inflows by reducing taxes, tax concessions and reducing non-tariff barriers to trade in order to stimulate economic growth. There is fierce competition between investment from developing countries and retention in developed countries. At the same time, the rapid development of digital economy has had a great impact on the traditional international economy, and the weight of intangible assets in the value chain has increased dramatically, becoming the main driving force of value creation. The digital economy lacks physical carrier, flexibility, investment security is more difficult to control, and traditional international tax rules are weak. In February 2019, the OECD released a public consultation paper on tax base erosion and profit transfer projects: the tax challenge to digitalizing the economy. Low-Taxed Income, or GILTI, aims to internationally anti-avoidance by encouraging the return of profits from investments outside the United States. Germany and France have proposed special CFC rules, the "income inclusion rule", based on GILTI, which allows for a tax on the profits of multinationals that have moved to low-tax countries.

It is not difficult to infer from historical experience that GILTI, a penetrating rule, will have a significant impact on OECD member countries along "The Belt and Road", and the new changes in the international tax system will seriously affect the tax pattern of Chinese enterprises' overseas investment. The global economic governance system is changing but the outlook is uncertain, and a variety of factors are stacked on the limits of enterprises' overseas investment. From the point of view of legal economics, the essence of tax problem is economic problem, and the reform of tax system is rooted in the change of economic system. The tax system of the host country is the most important factor that leads to the tax risk of enterprises, and the uncertainty of the economic environment determines the complexity of the tax environment.

(2) The tax system of the countries along "The Belt and Road" is not perfect

Most of "The Belt and Road" along the belt and road are developing countries, economic development is at different stages, the national conditions are complex and diverse, there are huge differences in the tax system. First of all, "The Belt and Road" involves a large number of countries, in the division of tax jurisdiction, although most countries in the world apply the standard of double taxation of residence and origin, but due to differences in investment flows, developed countries prefer to tax according to the jurisdiction of residence, developing countries prefer to tax according to the jurisdiction of origin. At the same time, there are differences in the criteria for determining the elements of the connection between residents in the tax jurisdiction. The internationalization of the income from transnational investment and the conflict of tax jurisdiction together give rise to the risk of double taxation. Second, "The Belt and Road" countries have relatively large tax system differences and lack of multilateral tax agreements adapted to multilateral economic activities. At present, there are two main problems in the aforementioned tax treaty: First, the bilateral tax agreements signed are large but have a large time span, and are relatively old, which is not compatible with the current economic development. Second, with the multi-circular flow of international economic factors, the spillover effect of tax policies of sovereign countries is becoming more and more significant. However, the multilateral tax treaty coverage of the countries along "The Belt and Road" is low, the network of tax agreements has not been formed, and lags behind the development process of economic globalization. Finally, "The Belt and Road" is mostly developing countries, the tax collection and management capacity is insufficient, the tax procedure is complex, the tax dispute resolution mechanism is inefficient, and even there is tax discrimination.

(3) Inadequate awareness and communication skills in corporate tax risk prevention

The awareness of tax risk prevention and control and reasonable tax planning of enterprises is an important guarantee to avoid tax risk. In practice, the lack of co-ordination consciousness of foreign-related investment of enterprises, focusing on the positive factors, lack of reasonable tax planning, ignoring the difficulty of cooperation between international and domestic tax authorities, and the follow-up implementation steps after tax payment, may lead to high overseas investment

costs, resulting in project losses. 2. Although China has signed many tax agreements with countries along "The Belt and Road", which will help to simplify the difficulty of dealing with cross-border fiscal and taxation issues, it is difficult for enterprises to communicate with the host country's tax authorities, the lack of legal personnel for enterprises involved in foreign investment composite, and insufficient access to information, making tax policy in a vague state, Businesses are not actively able to enjoy the tax incentives set out in the tax agreement.

4. Enterprises "Go globally" tax law risk prevention

(1) Prevention of tax-related risks at the national level

1) Improving the international tax treaty system

The tax treaty is a repeated game of the distribution of international tax benefits and an agreement on the distribution of tax power. Having the effect of taking precedence over domestic law is the most important legal basis. Tax agreements can effectively reduce tax conflicts, which is unique to tax agreements an important function. There are three specific proposals for improving the international tax treaty system:

First, based on the existing tax system of OECD, WTO and other international organizations, we should serve the economic globalization pattern and build a two-way fair tax treaty network system based on the principle of "common construction and sharing". Supporting enterprises to "go global" from a service perspective while helping less developed countries to improve their tax revenue capacity, integrate and guide the economic and social development of the invested countries in a wedge-oriented way, and lay a good tax environment for China's foreign investment.

Second, in accordance with the BEPS action plan and "The Belt and Road" development strategy as the basic guidance for the revision of tax agreements, to strengthen support for key national industries, improve tax concessions, dividends, interest, royalties and other provisions, unified the standards of recognition of permanent institutions, and updated the mutual assistance treaty on tax collection and management. We will strengthen the study of the tax system in the context of digital economy, and revise and perfect the relevant provisions.

Third, promote the promotion of the deterministic terms of abstract generalization in the rules of international tax governance, and guarantee the reasonable expectations of foreign investment subjects. We will implement the tax law, promote taxation in accordance with the law, pay taxes according to law, limit the arbitrary power of tax authorities in various countries, form a rigid and stable tax environment, and avoid "Go globally" enterprises into anti-avoidance risks.

2) Strengthen the construction of international tax collection and management cooperation mechanism

In April 2019, the first "The Belt and Road" tax collection and management cooperation forum was held in Wuzhen, Zhejiang Province, the relevant countries, and 34 countries, including China and Kazakhstan, formally joined the mechanism. International tax collection and management cooperation is an important part of the international tax governance system, and the mechanism of tax collection and management cooperation plays the role of "soft law" in international tax administration. It helps to reduce tax disputes and resolve tax conflicts at a low cost. The specific measures of the International Tax Collection and Management Cooperation Mechanism are recommended as follows:

First, to carry out the automatic exchange of tax information between tax authorities in different countries and regions, and to improve the transparency of tax information. Add Strong tax information exchange, provide tax collection and management assistance, and in the process pay attention to the protection of taxpayers' rights and interests. The introduction of peer evaluation mechanism, multi-dimensional protection of tax information transparency.

Second, speed up the implementation of abstract and general theoretical plans into practice, and formulate practical cooperative action plans. To avoid countries on transfer pricing, capital weakening, controlled foreign companies and other tax rules of the provisions are too general, the host country in the anti-avoidance investigation is too subjective, so that foreign investment

enterprises in the tax risk. In the context of the digital economy, the international tax focus transition from the elimination of double taxation to international tax avoidance requires the strengthening of tax information exchange and the provision of tax collection and administration assistance.

Third, establish a long-term mechanism for tax collection and management to promote sustainable regional economic development. The construction of international tax cooperation mechanism should be adapted to the development goal of "The Belt and Road", based on the model tax governance of major international economic organizations such as WTO and OECD, and the innovative development of "The Belt and Road" economic development goals, rather than abandoning the existing international tax governance rules and "starting a new way".

3) Focus on the use of international tax arbitration mechanisms in tax disputes

The international tax arbitration mechanism is an effective complement to the consultation mechanism. Up to now, China has not yet introduced the tax arbitration mechanism, mainly out of concern about tax sovereignty. Respect for the agreement reached by the competent authorities on autonomy, with the aim of improving the efficiency of tax dispute resolution, rather than limiting tax sovereignty. As international tax disputes often involve non-resident taxpayers or foreign governments, the fairness of domestic law relief channels is often difficult to be recognized, and the mutual consultation procedure can't be well resolved due to the defects discussed in this paper, arbitration procedure can be considered in the tax treaty in china as a supplement to mutual agreement procedure [6]. But the introduction of international tax arbitration mechanism must be prudent. The purpose of introducing this supplementary arbitration mechanism is to urge the competent authorities of the Contracting States to resolve the backlog of cases as soon as possible and to improve the efficiency of the resolution of tax disputes, and therefore the commencement conditions of the arbitration proceedings, the scope of the case, the selection of arbitrators, and the rules of arbitration must be reasonably designed. In particular, the maximum period for pre-consultation spree between the competent authorities must be strictly limited, with reference to the two-year period recommended by the EU Arbitration Convention and the OECD model; Moreover, the scope of the case is not too broad, those involving china and the countries along the line of tax agreement should be interpreted and implemented disputes, often need to apply the domestic law and interpretation methods of the Contracting Parties, will be more controversial, it is advisable to temporarily do not act as an arbitral matter. However, the transfer pricing in related transactions has accumulated a great deal of experience, and the transfer pricing adjustment of the State Party will also cause the corresponding adjustment problem of China as a resident country, so it can be used as a priority arbitration [7].

4) Improve the construction of domestic and foreign-related tax system

First, give full play to the macro-guidance role of government enterprises in foreign-related investment. China's economy continues to develop, the economic structure is constantly changing, the trend of overseas investment is surging, enterprises follow the trend of investment phenomenon. It is necessary for the state to play a macro-guidance role and strengthen the control of foreign-related investment risks. Tax authorities through auditing, anti-avoidance and other means, enhance the enterprise tax compliance review, regulate investment, to avoid corporate tax losses.

Second, build a high-level tax information service platform. Through continuous attention to the tax needs of foreign-related investors, according to the different types of foreign-related taxpayers to provide targeted tax services, timely update of foreign-related tax guidelines and national investment tax guidelines, the establishment of efficient and convenient tax service platform, the establishment of cooperation between the government and enterprises. Improve the current tax reporting system, for key projects to introduce pre-determination, credit evaluation mechanism. Establish a full-caliber, full-process database of foreign investment information-related tax, and carry out risk response management on this basis.

Third, actively use "big data" and "Internet plus" to serve "The Belt and Road" economic development. The era of big data can make full use of the "Internet plus", tax and legal information sharing platform, the information of various departments to share together, through innovative management model to promote "The Belt and Road" tax system. On the basis of information sharing,

promote the establishment of horizontal links with the overall planning departments such as the Development and Reform Commission, and establish policy links between customs cargo supervision and export tax rebates, foreign exchange balance-of-payments management and cross-border tax administration, border control personnel entry and exit management and international taxation of natural persons, securities trading supervision and tax administration of cross-border financial transactions. We will jointly exert the government-led effect, fully reduce the risk of "The Belt and Road" construction, and form a joint force in service management.

(2) Prevention and control of the enterprise's own tax-related risks

From the enterprise level, the most important thing is the awareness of tax risk prevention, so as to improve their own risk response capacity, reduce the Dependence on household policy, forming a sound tax risk response mechanism.

First, to understand the tax laws of the investment countries, pay attention to the tax investigation of the investment country, and engage the tax experts of the investment country to analyze the tax affairs professionally. Take into account the overall consideration, consider the positive factors at the same time, strengthen the importance of the budget, pay attention to the pre-investment project survey, to avoid the lack of understanding of other countries' information caused by blindness. Optimize the financing structure, diversify investment, and diversify the tax risk of specific industries. Understand China's foreign investment tax policy, in the host country can obtain the income in the domestic credit or tax rebate, etc, to ensure that enterprises enjoy the tax host country tax benefits at the same time, can get China's tax concessions.

Second, make full use of the principle of transfer pricing of related enterprises to carry out tax planning. Legal use of related enterprise transfer pricing can reduce the burden of corporate acceptance on the basis of a comprehensive understanding of the host country's tax system and adherence to the principle of fair trade. At the same time, we must adhere to the legitimacy of tax planning, can't have a lucky mentality. Cost-benefit-risk analysis principles must be applied throughout the overall international tax planning.

Third, find out whether there is a tax treaty between our country and the investor state, and the content of the tax treaty. Tax agreements, which have priority over domestic law, are the most important legal basis for the agreements signed by two sovereign states on transnational tax benefits. In the event of a tax dispute, an application may be made to the state tax authorities in a timely manner in accordance with the procedures stipulated in the Notice of the State Administration of Taxation on the Implementation of the Procedure for the Implementation of the Procedure for The Administration of Taxation Agreements. To resolve tax disputes and safeguard legitimate tax interests through the consultation process of intergovernmental tax authorities.

In addition to the macro-political and economic pattern, it is also necessary to consider the choice of investment countries, financing methods and enterprise acquisition schemes, investment capital swing, exit mechanism and other micro-factors. Some enterprises have no strategic orientation of the overall budget management objectives, short-term budget objectives, need to have a global strategic awareness. Strengthen the importance of budgeting and the role of non-financial indicators in the entire value chain.

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