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Improvement of International Taxation Legal System in the Context of Belt and Road

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Abstract: In the critical period of promoting the implementation of the "Belt and Road" initiative, and at the key point of China's construction of a new open economic system, in order to adapt to China's transformation from a capital-importing country to a capital exporting country, it is necessary to strengthen the regulatory function of taxation and establish an international tax legal system oriented to incentivizing the export of capital. Specifically for infrastructure investment, the current tax legal system should be adjusted, the tax credit system in the Enterprise Income Tax Law should be improved to maximize the elimination of double taxation; while improving the network of bilateral tax agreements, the length of time for the recognition of "construction-type" permanent establishments in the tax agreements should be relaxed, and more tax concession credit clauses should be added, so that China's tax interests as a resident country will be safeguarded and the tax benefits of the country will not be affected. At the same time, we need improve the network of bilateral tax treaties, relax the time limit for recognizing "construction-type" permanent establishments in tax treaties, and add tax concessions and credits, so as to safeguard the tax interests of China as a resident country while striving for more tax concessions for enterprises investing in overseas infrastructure.

1. Introduction

In 2015, China's outward foreign direct investment flow amounted to 145.67 billion U.S. dollars, exceeding the amount of China's actual use of foreign capital by 10. 7 billion U.S. dollars, and for the first time it became a net exporter of capital, and outward foreign direct investment made a historic breakthrough, for the first time ranking second in the world, as China's reform and opening up entered a new era. The report of the 19th CPC National Congress clearly pointed out that focusing on the construction of "One Belt, One Road", it will promote the formation of a new pattern of comprehensive opening up. And infrastructure investment is one of the "five links" of the "Belt and Road" construction, which is the priority area and key direction of the "Belt and Road" construction, and is the basis for deepening cooperation among the countries along the line. How to incentivize Chinese enterprises to "go out" for "Belt and Road" infrastructure construction through the adjustment of the international tax legal system, so as to serve the realization of the national strategy, is a major issue that we must think about.[1]

2. Inadequacies of China's international tax legal system in the context of "Belt and Road"

The "Belt and Road" route is a key region for China's capital export, and "Belt and Road" infrastructure construction is a key industry in the key region for capital export. According to the data released by the Ministry of Commerce, Chinese enterprises are enthusiastic to participate in the infrastructure construction of countries along the "Belt and Road", and as of December 2017, they participated in the infrastructure construction of 61 countries along the route, and signed a large number of contracts for foreign contracted projects with a large contract value.

However, on the whole, the overall orientation of China's current international tax legal system still focuses on the fiscal function of taxation, and there are obvious deficiencies in incentivizing the export of capital and promoting in-depth "Belt and Road" infrastructure construction. From the perspective of domestic tax law, this deficiency is mainly reflected in the following two aspects.

Firstly, the single application of the "sub-national non-itemized limit credit law". The tax systems of the countries along the "Belt and Road" are complex and different, and the single application of the "country-specific and non-itemizable credit law" by enterprises regardless of the situation cannot adapt to the situation of the capital outflow of China's infrastructure investment to many countries and regions in the new era.[2]

The second is the restrictive provision that profits and losses inside and outside China cannot be offset. This provision avoids the use of taxable money in China to make up for the losses of enterprises outside the country and ensures the income of the national tax source, but it is easy to increase the tax burden of multinational investors investing abroad, and it is difficult to guarantee the principle of tax neutrality. Especially in the case of infrastructure construction projects, which are inherently risky and prone to losses, it is difficult to guarantee the income of infrastructure investment, which directly inhibits the enthusiasm of "Belt and Road" infrastructure investment.

From the perspective of bilateral tax treaties, the policies and positions reflectedin tax treaties tend to favor the tax interests of source countries and lag behind the country's changing role in the global economy. This is reflected in the following.

First, the number of tax agreements is not comprehensive. By coordinating the distribution of tax rights and interests between contracting parties, bilateral tax agreements can effectively eliminate differences in the international tax system and reduce the tax risks of enterprises investing overseas. However, up to now, there are still 10 countries along the "Belt and Road" route that have not signed tax agreements with China. The lack of tax agreements is likely to create a tax blind spot for enterprises investing in overseas infrastructure.

Second, the content of tax treaties is not perfect. First, the length of time for the determination of "construction-type" permanent establishments is relatively short. The majority of tax treaties provide for the recognition of "construction-type" permanent establishments for a period of less than or equal to 12 months, which makes it easy for Chinese enterprises to be recognized as having a permanent establishment in the overseas source country and thus increases the tax burden of the enterprise in the investment destination. Second, the absence of tax concession credit provisions. At present, most of the bilateral agreements signed between China and the countries along the Belt and Road do not provide for tax concessions and credits, which may prevent investors from enjoying tax incentives in the source countries.[3]

3. Suggestions for improving tax agreements to promote "Belt and Road" infrastructure investment

3.1 Improving tax treaties and eliminating tax blind spots for investments

Bilateral tax agreements are an important basis for harmonizing the distribution of tax rights and

interests between contracting States and for tax cooperation. The absence of agreements with some countries may result in a higher tax burden for enterprises and the risk of double taxation. In addition, without a tax agreement, there is no good consultation mechanism and no channel for enterprises to resolve tax disputes that arise in the course of investment.[4]

At present, China has not signed tax agreements with 10 countries along the Belt and Road, namely, Myanmar, Timor-Leste, Afghanistan, Maldives, Bhutan, Iraq, Jordan, Lebanon, Yemen and Palestine. However, these countries may or are themselves important areas for capital export from China. According to data released by the Myanmar Investment Commission, Chinese investment in Myanmar occupies the top spot of foreign investment in the country, with a cumulative investment size of $18.5 billion. Therefore, in order to safeguard the security of China's infrastructure investment and eliminate the tax blind spot of China's capital export, we should speed up the signing of tax agreements with the countries along the routes and improve the tax agreement network of the Belt and Road Initiative.

3.2 Relaxation of the length of time for the recognition of "building-type" permanent establishments

Permanent establishment is the basic system used in bilateral tax agreements todetermine the right to tax cross-border business profits, i.e., only if the business profits of a cross-border investor in the country of investment destination are realized through a permanent establishment located in the country of investment destination, the country of investment destination has the right to tax this part of business profits. In order to clarify the attribution of business profits of construction-type enterprises, bilateral tax agreements have specifically set up construction-type permanent establishment rules to regulate whether construction investment acts such as construction sites and assembly works of construction enterprises in the investment destination constitute permanent establishments. The core of these rules is the determination of the length of time, i.e., construction investments exceeding the length of time stipulated in the bilateral tax agreement will be considered to constitute a permanent establishment, and the source country's right to tax will arise accordingly.

"Belt and Road" infrastructure construction projects are mainly concentrated in the fields of transportation, energy, communications, housing and power engineering, and are basically large-scale and long-cycle projects. For example, the first whole industry chain "going out" of the Ajisai Railway constructed by Chinese enterprises overseas took 13 months; the Tarigan Dam Power Station in Iran built by China Water Resources and Hydroelectric Construction Company took 46 months; and the Bangladesh Bridge under construction will take three and a half years of construction time to be completed. Although China's revised tax treaties in recent years have generally extended the time standard for "construction-type" permanent establishments to 12 months, statistically, less than 12 months still accounts for 46%. Therefore, it is important to continue to strengthen the revision of this provision, which will not only reduce the amount of foreign taxes paid by enterprises, but also save the compliance costs attached to the payment of foreign taxes.

Chinese enterprises are not the only ones to benefit from the relaxation of the time criteria for recognizing "construction-type" permanent establishments. From the perspective of investment destination countries, most of the countries along the Belt and Road are generally lagging behind in terms of infrastructure, with low per capita ownership, and there is a strong demand for infrastructure improvement and upgrading. For example, Kazakhstan plans to complete the project of connecting highways to all regions of the country and 16,000 kilometers of international highways by 2020; Vietnam vigorously develops hydropower and plans to increase it to 21,600 megawatts by 2020 and 24,600 megawatts by 2025; and Poland plans to develop its telecommunication infrastructure network from 2014-2020 to ensure the establishment of a network covering the entire territory of Poland.

which guarantees the establishment of a broadband network covering the entire territory of Poland.[5] Therefore, appropriately extending the time standard for the recognition of "construction-type" permanent establishments not only meets the willingness of Chinese enterprises to reduce tax burden, but also promotes the investment of Chinese enterprises in countries along the route, which is conducive to the realization of the policy objective of attracting foreign investment in the countries along the route, and helps the development and improvement of their domestic infrastructures, so as to realize a "win-win" situation.

3.3 Addition of a tax concession credit provision

The system of tax concessions and credits is an effective measure to promote international economic cooperation, which is in essence a recognition by the country of residence of the tax incentives of the country of origin, and an important measure to make the tax incentives really go to the investor rather than to the investor's home country. For the source country, the promise of a tax credit stimulates the inflow of cross-border capital. For the country of residence, assuming the obligation of the concession credit can promote the export of cross-border capital.

Only 21 of the existing bilateral tax agreements involve reciprocal or unilateral concessions. The countries with which we have signed reciprocal concessions are: Malaysia, Thailand, Brunei, Vietnam, India, Pakistan, Sri Lanka, Oman, Kuwait, Macedonia, Bulgaria, Slovakia, Bosnia and Herzegovina, Montenegro and Serbia, totaling 15. The countries that have granted unilateral tax concessions to us are: Singapore, the United Arab Emirates, Poland, Syria, Albania and Hungary, totaling 6.

The country only has a "Belt and Road" China has only assumed tax concessions and credits for about one quarter of the countries along the Belt and Road. This was due to China's previous policy of "attracting foreign investment", which generally favored tax concessions for resident investors from the other country, so that our tax incentives could be truly implemented for foreign investors.[6] However, when the investment status of China has quietly changed, we must make appropriate adjustments to the tax treaty rules. Recognizing the tax incentives of source countries and granting credit for concessions does not harm our tax base, but it plays a positive role in promoting our investment to the countries along the route. More importantly, respecting and recognizing the tax incentives of the countries along the routes, just as we hope that other countries will respect and recognize our tax incentives, is not only a basic embodiment of the principle of reciprocity in international law, but also is the proper responsibility of our country as a responsible big country.[7]

4. Conclusion

The "Belt and Road" initiative is a concrete embodiment of socialism with Chinese characteristics entering a new era and of China's active promotion of the building of a community of shared destiny for humankind, as well as an important institutional platform for China to promote changes in the system of global economic governance and to enhance China's institutional discourse, which is of great national strategic significance. Road connectivity is not only one of the "five passes" in the construction of the "Belt and Road", but also a bridge and link to promote policy communication, financial integration, smooth trade and people-to-people communication. China's international tax legal system, which has entered a new era, should also make functional adjustments accordingly, strengthen the macro-control capacity of taxation, actively promote Chinese enterprises to go out and make infrastructure investments, and echo, support and implement the "Belt and Road" initiative as a whole.

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