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苏 建◎著

# 跨国公司 转让定价反避税研究

A Research  
on Anti-avoidance  
of Multinational Transfer Pricing



中国经济出版社  
CHINA ECONOMIC PUBLISHING HOUSE



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# 序

转让定价是国际税收领域最突出的问题，也是一个最大的国际税收难题。转让定价影响跨国关联公司间利润的转移，由于这些关联公司位于不同的国家，如果各个国家的税率存在较大的差别，跨国公司出于公司财务战略的目的必然使用转让定价进行跨国避税。由此便引发了跨国税收竞争和跨国征税的问题。

虽然转让定价和避税不能等同，但对于跨国公司和税务当局而言，两者对待转让定价的角度不一样，立场也就不同了。跨国企业的经营目标全球性的，不是从哪一国出发，考虑的是跨国集团整体经营成果。但由于跨国公司跨国交易的内部定价不同于独立企业之间的定价，涉及两个以上的税收管辖权，也必然关联到相关国家的税基大小，对相关国家的国民经济会产生影响。税务当局的想法是从一国出发不是从全球出发，关注的是本国的税收利益，因此无论转让定价的作用是什么，有没有避税的动机，对转让定价的反避税调查都是国家政府税务机关重点关注的问题。这两者立场和利益的冲突如何认识，如何协调是一个很重要的研究课题。

苏建博士对转让定价的税收问题保持着研究兴趣，并能够运用所学的理论去进行分析和思考。《跨国公司转让定价反避税研究》一书运用经济学理论和经济学研究方法对跨国公司转让定价的避税效应进行了深入分析；接着站在世界经济一体化的框架中，从宏观和微观两个视角探讨转让定价的反避税策略；并通过对世界上两大主要经济体（OECD 和美国）的转让定价反避税政策的比较研究总结转让定价反避税制度的发展趋势；最后正视中国经济发展位于世界经济格局变化中新阶段的现实，结合中国的转让定价反避税政策现状，探讨提出了完善我国转让定价反避税制度的政策建议。在深入研究的基础上，他提出的一些较具启

发性的观点，值得关注：（1）解决跨国公司的转让定价避税问题必须置于国际经济发展的大环境下，也就是世界经济一体化的发展中。（2）正视中国国际经济发展的新阶段，增强在国际税收规则制定中的发言权，转变税收协定的谈判立场，在坚持来源国税收管辖权的前提下，应该更加注重居住国的税收利益。（3）加强转让定价反避税的立法建设，包括提高转让定价反避税立法层次，提高转让定价反避税立法层次和建立辅助性制度。（4）修正与完善转让定价反避税制度的内容，包括补充完善无形资产和服务的转让定价规定，细化转让定价反避税的分行业管理，积极推进预约定价制度和加强对电子商务转移定价问题的研究。（5）建立高素质的反避税队伍和引入独立经济学家进行转让定价反避税分析。（6）转移定价避税问题是一个世界性的问题，应该加强国内外税收协调与合作。

苏建博士在转让定价税收研究中投入了很大精力，当然由于转让定价的复杂性与发展性，本书还有不少地方需要进一步研究。例如：跨国公司转让定价避税与反避税的分析仅停留在理论模型层面，结合具体数据的相关实证分析没有进行；缺乏对转让定价反避税的行业研究；对于预约定价和无形资产的转让定价问题没有展开研究。这些问题具有相当的难度，但却很有意义。希望苏建博士能够在以后的研究中进行补充和深化。

苏建博士毕业后在南京财经大学继续进行财税领域的教学科研工作，并且不断进步，我甚感欣慰，希望他“学无止境”，不断努力，取得更大的成绩！

汤贡亮

2012年10月

## 摘 要

转让定价是一个重要的国际税收问题，它导致跨国关联公司之间利润的跨国转移。由于这些关联公司位于不同的国家，如果各个国家的税率存在较大的差别，跨国公司出于公司财务战略的目的必然使用转让定价进行跨国避税。同时由于涉及两个以上的税收管辖权，也必然关联到相关国家的税基大小，对相关国家的国民经济会产生影响，由此便引发了跨国征税和跨国税收竞争的问题。

本书运用经济学理论和经济学研究方法对跨国公司转让定价的避税效应进行深入分析；站在世界经济一体化的框架中，从宏观和微观两个视角探讨转让定价的避税策略；通过对世界上两大主要经济体（OECD 和美国）的转让定价避税政策的比较研究总结转让定价避税制度的发展趋势；在中国经济发展位于世界经济格局变化中的新阶段，结合中国的转让定价避税政策现状，探讨提出了完善我国转让定价避税制度的政策建议，希望有助于解决转让定价这一个国际税收难题，更好地维护国家之间的合法权益，促进国际经济的健康发展。

全书分为五个部分，各个部分的研究内容如下：

第一个部分是导论，涉及第 1 章。该部分主要是对本书的选题背景进行介绍，整理相关的文献和基础理论，确立研究的目标和思路框架，并对研究的成果进行总结。

第二个部分是转让定价的避税效应，涉及第 2 章。该部分系统研究了转让定价的避税效应，包括转让定价避税的成因、转让定价避税形式的发展、跨国公司转让定价避税效应的基本模型、跨国公司转让定价避税效应的一般数量界定和跨国公司转让定价避税效应的实践分析。

第三个部分是转让定价的避税策略，涉及第 3 章和第 4 章。该部分从宏观和微观两个视角研究转让定价的避税策略。宏观视角从世界

经济一体化的角度和国际税收竞争的角度提出了转让定价的反避税策略；微观视角运用博弈论来分析税收征管中的反避税策略。

第四个部分是转让定价反避税制度的国际比较及认识，涉及第5章。该部分对目前世界的两大主要转让定价制度体系作了介绍和评价（即以OECD为核心的转让定价制度体系和以美国为核心的转让定价制度体系），并且回顾了中国转让定价反避税制度的历史和现状，对存在的问题作了剖析，最后总结了转让定价反避税制度的发展趋势及认识。

第五个部分是对中国转让定价反避税制度的政策建议，涉及第6章。该部分主要是针对全书进行总结与概括，提出政策建议。

本书的主要研究结论有：

1. 跨国公司的避税效应：（1）跨国公司转让定价避税主要是指跨国公司利用关联企业内部交易和不同的国际市场达到避税的目的。跨国公司国际避税有其内在动机和外在原因。（2）跨国公司转让定价避税的形式很多，并且随着经济形式、国际贸易交易方法、公司组织结构等的变化不断发生变化。（3）跨国公司最优转让定价不仅取决于子公司的单位变动成本，还与子公司所在国的所得税税率密切相关。因此跨国公司将会利用各国税率的差异，操纵转让定价实现集团整体税负最小化和利润最大化。（4）国际转让定价的全球税收总效应是：税收总量减少了，全球税收净减少的部分等于跨国公司利润净增加的部分，归跨国公司所有。跨国公司净增加的这部分额外转移利润，是跨国公司转让定价的税收诱因。（5）转让定价避税效应对跨国公司、各个主权国家乃至世界经济的发展都产生了影响。

2. 宏观视角的转让定价反避税策略：（1）转让定价与经济一体化的特征和影响有着密切的关系，经济一体化推动了税收的一体化，并且影响着转让定价反避税调整基本原则的变革，即公平独立核算原则和全球利润分配原则的争论。（2）跨国公司通过转让定价转移利润的动机和经济一体化、国家税率差异密切相关，这告诉我们在治理跨国公司利用转让定价反避税的时候，必须将政策放在经济一体化的发展框架中考虑。转让定价税收核算方法的选择主要取决于经济一体化的程度，当经

济一体化推进的时候,转让定价税收制度也要相应发生变化。通过研究发现公式分配法是在经济一体化程度高时的优先选择,而分别核算法是在经济一体化程度低时的优先选择。(3)在转让定价反避税政策制定和争议的协商解决过程中引入独立经济学家,将转让定价置于全球经济发展框架中进行分析,可以更好地协调国家与国家之间、跨国公司与税务当局之间的利益及冲突。(4)高税率国家严厉的转让定价反避税政策可能会促使低税率国家采取进一步降低税率来应对,这将对国税率国家将产生更大的负面效应。因此国家在制度转让定价反避税政策时,应该结合本国和其他国家的税收政策状况,兼顾跨国公司本身的利益,适当给予跨国公司一定的政策空间,让他们通过运用转让定价政策进行“税收套利”,也同时缓解激烈的国际税收竞争。

3. 微观视角的转让定价反避税策略:(1)在不考虑反避税成本,也不考虑跨国公司的转让定价避税成本的转让定价税企博弈基本模型中,税务机关的税收流失就是跨国公司的避税所得。跨国公司和税务机关的得失之和为零,两者是零和博弈。(2)引入概率因素的转让定价税企博弈模型中,对跨国公司避税的处罚力度与税务反避税检查概率呈负相关关系。随着反避税检查概率的减小,对避税的罚款倍数应相应增大。最优税收反避税检查概率的确定必须满足税收流失与反避税成本之和最小这一条件。在反避税实践中可以根据避税罚款倍数公式对跨国公司的避税行为进行处罚,这样理性跨国公司便没有避税的积极性了。(3)引入反避税检查正确率的转让定价税企博弈模型中,在最优反避税检查概率的基础上,为确定跨国公司能够承受的罚款倍数,使罚款可以真正到位,就需要努力提高税收反避税检查准确率。(4)引入成本因素的转让定价税企博弈模型中,只要税务机关以最优概率  $x = (1 - \beta) / (1 + a)$   $k < 1 / (1 + a)$   $k$  对跨国公司进行抽样反避税检查时,税务机关的期望收益最大(税收流失与反避税成本之和的期望值最小)。而此时,跨国公司以概率  $\delta / (1 + a)$  选择避税  $(p - P)$   $(t_1 - t_2)$ 。如果跨国公司存在转让定价避税成本时,就会更加选择不避税。(5)引入税款时间价值的转让定价税企博弈模型中,对跨国公司避税行的罚款倍数与跨国公司避税率无关,仅与最优税务反避税检查概率、



税务反避税检查准确率、以日计算的税款滞纳金征收率及跨国公司滞纳税款时间（以日计算）的均值相关。当在法定税款滞纳金征收率、最优税收反避税检查概率及税收反避税检查准确率已知的情况下，跨国公司滞纳税款时间的均值决定避税罚款倍数的大小。

4. 转让定价制度国际比较的总结：（1）目前 OECD 转让定价指南在世界上居于主导地位，世界上大多数国家包括大多数的东欧、西欧国家以及印度等许多发展中国家都以 OECD 准则为基础来制定它们的相关转让定价法律。而加拿大、韩国等国家则是以美国为参考对象来制定相关法律。（2）中国的转让定价反避税制度目前存在的问题主要有：法律规范的效力层级较低，而且立法散乱，缺乏完整体系；转让定价反避税的相关规定的可操作性差；无形资产、服务、成本分摊等新形式的反避税规定的可操作性差；转让定价反避税管理投入不足；转让定价管理反避税制度的激励不足；地方政府对转让定价反避税工作存在认识误区；国际税收协调困难。（3）近年来，国际转让定价不断出现新的变化，需要对转让定价有新的认识。主要有：正确认识转让定价反避税制度的两派分歧；正确认识跨国公司转让定价避税和转让定价其他合理动机；正确认识转让定价造成的各国税收利益重新分配；正确认识转让定价反避税调查成本和税收流失取舍的关系。

5. 转让定价反避税的政策建议：（1）解决跨国公司的转让定价避税问题，必须将它置于国际经济发展的大环境下，也就是世界经济一体化的发展中，将本国的转让定价反避税实践与国际规则和其他国家的制度规定结合起来，既促进本国转让定价反避税工作的成效，又不影响世界经济贸易的健康发展。（2）正视中国国际经济发展的新阶段，增强在国际税收规则制定中的发言权，转变税收协定的谈判立场，在坚持来源国税收管辖权的前提下，应该更加注重居住国的税收利益。（3）加强转让定价反避税的立法建设，包括提高转让定价反避税立法层次和建立辅助性制度。（4）修正与完善转让定价反避税制度的内容，包括补充完善无形资产和服务的转让定价规定，细化转让定价反避税的分行业管理，积极推进预约定价制度和加强对电子商务转移定价问题的研究。（5）建立高素质的反避税队伍和引入独立经济学家进行转让定价反避

税分析。(6) 转移定价避税问题是一个世界性的问题, 应该加强国内外税收协调与合作。

本书在研究中取得的主要进展有:

1. 较为系统地阐述了转让定价避税的成因、转让定价避税形式的发展、跨国公司转让定价避税效应的一般数量界定和跨国公司转让定价避税效应的实践分析, 有助于全面认识转让定价的避税问题。

2. 指出跨国公司通过转让定价转移利润的动机和经济一体化、国家税率差异密切相关, 告诉我们在治理跨国公司利用转让定价反避税的时候, 必须将政策放在经济一体化的发展趋势中考虑, 当经济一体化推进的时候, 转让定价税收制度也要相应发生变化。

3. 建议在转让定价反避税政策制定和争议协商过程中引入独立经济学家, 将转让定价置于全球经济发展框架中进行分析, 可以更好地协调国家与国家之间、跨国公司与税务当局之间的利益及冲突。

4. 指出高税率国家严厉的转让定价反避税政策可能会促使低税率国家进一步降低税率来应对, 这将对高税率国家将产生更大的负面效应。国家在制定转让定价反避税政策时, 应该结合本国和其他国家的税收政策状况, 兼顾跨国公司本身的利益, 适当给予跨国公司一定的政策空间, 让他们通过运用转让定价政策进行“税收套利”, 也同时缓解激烈的国际税收竞争。

5. 运用博弈论来分析税收征管中的反避税策略, 在转让定价反避税基本模型的基础上, 通过不断拓展假设条件使之更加接近实践, 共得到五个转让定价反避税模型: 转让定价税企博弈基本模型、引入概率因素的转让定价税企博弈模型、引入反避税检查正确率的转让定价税企博弈模型、引入成本因素的转让定价税企博弈模型和引入税款时间价值的转让定价税企博弈模型。这些模型的结论对于指导转让定价反避税实践具有指导作用。

6. 对目前世界的两大主要转让定价制度体系作了介绍和评价, 并且对中国转让定价反避税制度存在的问题作了剖析, 总结了转让定价反避税制度的发展趋势及认识。

7. 提出了完善中国转让定价反避税制度的政策建议, 并且指出要

## 跨国公司转让定价反避税研究

正视中国国际经济发展的新阶段，增强在国际税收规则制定中的发言权，转变税收协定的谈判立场，在坚持来源国税收管辖权的前提下，应该更加注重居住国的税收利益。

**关键词：**跨国公司 转让定价 反避税 策略 政策

## Abstract

Transfer pricing is an important international tax issues, it leads to cross – border profit – shifting between multinational companies. As these affiliate company are located in different countries, and if each country's tax rate is different, the multinational companies would use transfer pricing to avoid tax for the purpose of financial strategy. as it relates to two or more tax jurisdiction, and is Inevitably associated with the size of the country's tax base, and have an impact on the national economy, Which have led to international taxation and cross – border tax competition.

This paper uses economic theory and Economics Research Methods to analyze tax avoidance of Multinational transfer pricing; standing in the framework of economic integration in the world, it discusses anti – avoidance strategies of transfer pricing from the macro perspective and micro perspective; it concludes the trends of anti – avoidance policy of transfer pricing through the comparative study on anti – avoidance policy of transfer pricing of the two major economies ( OECD and the United States ) in the world; Combining with China's anti – avoidance situation of transfer pricing policy and the new stage of China's economic development in the world, It proposes many suggestions of China's anti – avoidance policy of transfer pricing, and hope to help resolve the transfer pricing problems of international tax, and better protect national legitimate rights and interests, and promote the healthy development of the international economy.

The paper is divided into five parts, and the research contents of each part are as follows:

The first part is the introduction, related to Chapter 1. This part is to in-

introduce the background, the compilation of relevant literature and the basic theory, and establish the framework of goals and ideas, and summarize the results of the research.

The second part is the effect about tax avoidance of transfer pricing, related to Chapter 2. This part studies the effect about tax avoidance of transfer pricing, including the causes of tax avoidance of transfer pricing, the development of transfer pricing forms, the basic model of tax avoidance of multinational transfer pricing, how to define the general quantity of tax avoidance of transfer pricing, and the practice of tax avoidance of transfer pricing.

The third part is anti – avoidance strategy of transfer pricing, involving Chapter 3 and Chapter 4. This part introduces anti – avoidance strategy of transfer pricing from the macro perspective and micro perspective. Macro – perspective includes the perspective of world economic integration and international tax competition, and proposes anti – avoidance strategies; microscopic perspective use game theory to analyze the tax collection in the anti – avoidance strategy.

The fourth part is international comparison and understanding about anti – avoidance of transfer pricing in the world, related to Chapter 5. This part introduces two major transfer pricing system in the world and evaluates them respectively (ie OECD transfer pricing system and the United States transfer pricing system), reviewed the history and current situation of anti – avoidance of transfer pricing and analyze existing problems in China, finally summarize the development trend and the understanding about anti – avoidance of transfer pricing.

The fifth part is policy and suggestions about China's anti – avoidance policy of transfer pricing, related to Chapter 6. This part summarizes the whole paper and proposes the policy suggestions.

The main conclusions of the paper include:

1. The effect on tax avoidance of multinational corporations:

- (1) tax avoidance in transfer pricing of multinational corporations Mainly

refers that multinational corporations use related internal transactions and various international markets to achieve the purpose of tax avoidance. Multinational corporations have their intrinsic motivation and external reasons about international tax avoidance.

(2) Multinational corporations have many forms of tax avoidance in transfer pricing, and they are changing with the changes of economic activities, international trade practices and corporate structure etc.

(3) The optimal transfer pricing of multinational corporations not only depends on variable costs, but also is related income tax rate of the host country. Therefore, multinational companies will use the differences in national tax rates, manipulate transfer pricing to achieve the objective of group's overall tax minimization and profitmaximization.

(4) Gross effect on total tax revenue of international transfer pricing: total tax revenue decreases, the net reduction of the global tax equals to the net profit increase of multinational companies, which is owned by transnational corporations. The net profit increase of multinational companies belongs to the tax incentives of transfer pricing.

(5) the tax avoidance in transfer pricing of multinational corporations has produced many effect on multinational corporations, each sovereign country and the world economy.

## 2. Anti – avoidance strategy of transfer pricing from Macro perspective:

(1) Transfer pricing is closely related to the characteristics and effects of economic integration, economic integration promotes the integration of tax and affects the adjustment of the basic principles of anti – avoidance in transfer pricing, i. e. the debate of arm's length principle and global profit distribution principle.

(2) Transfer pricing is closely related to economic integration and differences of tax rate, so controlling anti – avoidance in transfer pricing, we must consider the trend of economic integration. The choice of tax accounting method in transfer pricing depends on the degree of economic integration. With the

changes of economic integration, transfer pricing tax system must change accordingly. We found that the formula allocation method is a preference choice in high degree of economic integration, and separate accounting method is the preferred option in the low level of economic integration.

(3) Independent economists will help us better understand anti – avoidance in transfer pricing, and place transfer pricing in global economic development framework for analysis, which can be better coordinate the interests and conflict between countries and countries, multinational corporations and tax authorities.

(4) high – tax countries’ stringent anti – avoidance policy in transfer pricing may encourage low – tax countries to further reduce tax rates, which will have a greater adverse effects rate to high – tax countries. So Countries’ anti – avoidance policy in transfer pricing should combine with local and other countries’ tax policies and take into account the interests of multinational companies themselves, give some multinational corporations the appropriate policy space to let them through transfer pricing policies to get “tax arbitrage”, and also ease the fierce international tax competition.

### 3. Anti – avoidance strategy of transfer pricing from micro perspective:

(1) Without the cost of anti – tax avoidance and the cost of transfer pricing of multinational companies, the basic tax avoidance game model obtains the conclusions: the tax loss of the tax authorities is tax avoidance income of multinational corporations. The gains and losses are zero between tax authorities and multinational corporations, they are zero – sum game.

(2) Considering the probability, the game model obtains the conclusions: it is a negative correlation between the punishment to anti – avoidance on multinational corporations and the check probability of tax authorities. With the decrease of the probability of anti – avoidance checks, the penalty on tax avoidance should increase. Optimal check probability of tax authorities is determined by tax erosion and the cost of the anti – avoidance, the sum of them is minimal. In practice, if tax authorities execute penalties according

with the formula of penalties for tax avoidance, multinational companies would have no rational motivation to avoid tax.

(3) Considering the accuracy of anti – avoidance checking, the game model obtains the conclusions: on the basis of the optimal probability of anti – avoidance checking, we need to raise checking accuracy of anti – avoidance.

(4) Considering the cost of transfer pricing, the game model obtains the conclusions: as long as the tax authorities check transfer pricing with probability of  $x = (1 - \beta) / (1 + a) k \leq 1 / (1 + a) k$ , tax authorities have the maximum expected profit (the minimum of tax loss and costs of anti – avoidance). By this time, multinational corporations will select the probability  $\delta / (1 + a)$  to avoid tax  $(p - P)(t_1 - t_2)$ . if there are some cost of avoidance, multinational corporations will not select avoidance.

(5) Considering the time value of the tax, the game model obtains the conclusions: the tax penalty has nothing with the probability of tax avoidance, only with the optimal checking probability, the checking accuracy to tax anti – avoidance, the rate of levy to delinquent tax and delinquent tax time (in days).

#### 4. The summary about international Comparison:

(1) OECD Transfer Pricing Guidelines dominant in the world, most of the countries in the world, including most of Eastern Europe, Western Europe and many developing countries such as India develop transfer pricing guidelines based on the OECD. Canada, Korea and other countries develop transfer pricing guidelines based on the United States.

(2) The existing problems of China's anti – avoidance in transfer pricing system: low level legal norms and scattered legislation, the lack of a complete system; the operability of transfer pricing anti – avoidance provisions is poor; the operation of anti – avoidance provisions about intangible assets, services, cost sharing and other new forms are poor; investment of management on transfer pricing anti – avoidance is inadequate; incentives for anti – avoidance system on transfer pricing management is insufficient; local governments have



misunderstanding about transfer pricing anti – avoidance; there are many difficulties in international tax co – ordination.

(3) In recent years, there are many new changes on international transfer pricing, it is necessary to have an new understanding to transfer pricing; correct understand the differences between the two factions; correct understand motive of tax avoidance and other reasonable motive of transfer pricing; correct understand the redistribution of tax in transfer pricing; correct understand relationship between the cost of anti – avoidance investigation on transfer pricing and loss of tax revenue.

5. Policy and recommendations to anti – avoidance of transfer pricing:

(1) to solve the problem of tax avoidance in multinational transfer pricing, we should placed it in the development of international economic environment, that is, the development of world economic integration, combine the country's anti – avoidance practice of transfer pricing with international rules and regulations of other countries, not only promote the work of their anti – avoidance effectiveness in transfer pricing, but do not affect the healthy development of world economy and trade.

(2) Correctly face China's new stage in international economic development, enhance the voice in the international tax rules, change the position in tax treaty's negotiating, while adhere to the premise of tax jurisdiction according the origin country, pay more attention to the tax interests of residence.

(3) Strengthen legislation construction on anti – avoidance in transfer pricing, including raising the level legislation of anti – avoidance in transfer pricing and establishing other supporting systems.

(4) The amendment and improvement about anti – avoidance in transfer pricing system, including improving the provisions of intangible assets and services, detailing sub – industry management, actively promote Advanced Pricing System and transfer pricing issues about e – commerce.

(5) Establish a high – quality anti – avoidance team and introduce independent economists.