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# 欧盟税收协调 法律制度研究

崔晓静◎著



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## 欧盟税收协调法律制度研究

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崔晓静 著

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## 摘 要

欧盟的税收协调法律问题一直是国际税法学界所关注的一个热点问题,欧盟在营建一个以货物、人员、服务和资本自由流动为标志的共同市场时,如何取消各国间的税收壁垒和共同体市场内的税收障碍,长期以来都是欧盟关注的焦点。

本书从税收协调的视角研究欧盟税收法律制度,以分析税收竞争与税收协调基本理论分析为基础,通过对具体税种协调法律制度的历史背景、主要内容的介绍和评述以及在成员国转化适用方式的阐述,试图总结和归纳其在促进货物、人员、服务和资本自由流动中发挥的作用和功能,并提出其中的一些缺陷和不足。在论述过程中,本书结合中国的实际,借鉴欧盟在税收协调方面的经验,对中国现阶段税制改革以及国际税收协调和两岸四地间的税收协调提出了自己的意见和建议。

经过 50 年来的发展,欧盟已经形成了一整套较为完整规范的税收协调法律制度。本书首先研究了国际税收协调基本理论和欧盟税收协调基本法律问题,其次按照税种的分类对欧盟直接税和间接税协调法律制度进行具体研究,其中包括了公司税、利息税、增值税、消费税、环境税、电子商务增值税等主要税种的协调法律制度,最后对欧盟税收情报交换法律制度进行了研究,

从而较为完整地构成了欧盟税收法律制度的主要研究框架。全书共有五章。

第一章对国际税收协调基本理论进行了探讨。欧盟税收协调属于国际税收协调的范畴,因此第一章是本书的总论部分。

第一节对国际税收协调的概念以及内涵和外延,从经济学和法学的角度进行了考量,提出国际税收协调是国家间为解决国际税收利益冲突,实现公平合理的国际税收利益分配,而采取的国家之间在税收政策、税收制度及税收征管方面的全方位合作的法律手段,税收协调从本质上讲是一种法律手段。其中,国际税收利益冲突主要包括税收管辖权冲突、以税收竞争为主要载体的各国争夺税源和税基的冲突以及国家与跨国纳税主体的冲突。而国际税收协调的方式主要有国际税收协定协调、区域税收协调和国际组织协调三个层次。

第二节系统分析了国际税收协调产生与强化的原因。笔者认为,各国税收制度的不同,是国际税收协调产生的客观前提;各国的相互交往、相互联系、相互影响乃至相互依存,是国际税收协调产生的必要条件;各国相互独立、不容侵犯的主权,是国际税收协调产生的关键因素。在当代,国际税收协调进入了一个强化时期,其原因表现为三个方面:经济全球化是国际税收协调强化的客观基础,强化国际税收协调是应对恶性税收竞争的必然选择,区域经济一体化是国际税收协调强化的催化剂。

基于税收竞争已构成当前国际税收利益冲突的主要表现形式,且成因复杂,危害相对较大,笔者在第三节对国际税收竞争含义及表现形式、所起的积极作用和消极作用以及对国际税收竞争进行协调的可能性和必然性进行了重点研究。

第四节从对主权、税收主权的分析入手,指出主权和税收主权都是绝对性和相对性的统一。税收协调是各国税收主权行使的一个重要体现,同时,税收协调客观上又对国家税收主权形成了一定的挑战,分析了税收协定协调、区域税收协调、国际组织协调三种方式对税收主权的影响,并有针对性地提出了对税收协定条款讨价还价、在区域组织中坚持“全体一致”表决原则和敢于向国际组织说“不”等应对措施。

第二章主要是对欧盟税收协调基本法律问题的研究。本章主要是对欧盟税收协调形成发展的历史与经验、协调的最高法律基础、协调的法律渊源、协调依据的层级、效力以及效力冲突的处理等问题进行探讨。

第一节追溯了欧盟税收协调法律制度的形成与发展的历史,探究了欧盟在不同历史阶段的协调举措、重点和目标。在 20 世纪 80 年代,欧盟开始了增值税和消费税的协调,为货物在共同市场的流动扫平了障碍;20 世纪 90 年代开始了公司税的协调;进入 21 世纪又加强了对利息税、利息和特许权使用费的协调,使人员、资本和服务能够在共同体市场中自由流动。

第二节梳理了欧盟税收协调的法律基础,主要对构成欧盟税收协调法律基础的《欧盟基础性条约》的第 93、94、95 和 96 条进行了深入分析。

第三节介绍了欧盟税收协调的法律渊源,包括指令、决定、条例、通知、建议、报告和决议等,同时介绍了成员国的配合行动。

第四节从成员国这一层面指出,成员国之间还可通过多边协议和行政合作的方式进行税收协调,这也构成了欧盟税收协调的法律基础。

第三章对欧盟直接税协调进行了介绍。本章对欧盟直接税协调的研究主要涉及公司税、利息税及利息和特许权使用费协调。

第一节是关于欧盟公司税协调。为了避免或减少妨碍企业跨境交易的税收体制以及对企业造成损失的双重征税,欧盟理事会颁布了《合并指令》、《母子公司指令》和《欧盟税收仲裁公约》等三个主要的公司税协调法律文件。在对这三个法律文件的主要内容进行介绍后,笔者归纳出欧盟公司税协调的三个特点:由税收竞争走向税收合作,由双边税收协调走向多边税收协调,由传统走向创新;同时,指出了欧盟公司税协调立法在实施中存在的问题和欧盟公司税协调的发展前景;最后,探讨了欧盟公司税协调对我国的借鉴意义。

第二节针对欧盟利息税协调,不仅全面介绍了《欧盟利息税指令》出台的背景和具体内容,还分析了该指令的特点和实施过程中遇到的问题,并结合其经验对中国实践提出了一些建议。

第三节围绕利息和特许权使用费的协调,阐述了《欧盟利息和特许权使用费指令》产生的背景,对指令的主要条款作了逐条分析和评论,介绍了各国转化适用指令的国内立法情况。

第四章对欧盟间接税协调进行了介绍。欧盟间接税协调的税种包括:关税、增值税(包括电子商务增值税)、消费税和能源税(消费税的一种)。

第一节指出关税同盟是欧盟的重要基石之一,同时也是税收一体化的起点。欧盟关税协调不仅包括成员国间的对内关税协调,还包括成员国的共同对外关税协调。在全面介绍关税协调的过程后,本节又指出了共同体法在这个方面的一些例外情形。

第二节介绍评述了从1954年欧盟开始考虑实施增值税开

始,直至今日采取的一系列协调统一增值税的法律方法和原则,指出欧盟目前在增值税协调方面采用的是过渡性方案,该方案允许废除边境税收检查,同时保留原产地和目的地征税两种征税方法。

第三节阐述了欧盟电子商务增值税协调政策及《欧盟电子商务增值税指令》的主要内容,揭示了欧盟电子商务增值税协调政策在执行中的困难,以及对中国的以下两点启示:对电子商务征收增值税是我国的必然选择和对电子商务征收增值税应循序渐进,并由此提出了现阶段我国征收电子商务增值税的对策。

第四节对欧盟消费税协调作了简要介绍。欧盟在协调各成员国之间的消费税税率所取得的成就,以及为取得这一成就所采取的灵活、求实的态度和渐进的步骤,为在世界范围实行消费税国际协调与合作提供了许多有益的经验。

第五节重点介绍了《欧盟能源税协调指令》出台的背景、内容和社会效应,指出能源税的协调能有效调整能源消费结构,提高能源利用效率,实现经济和环境发展的“双重红利”,达到共同体与成员国之间的双赢。针对我国能源安全中存在的主要问题,借鉴欧盟经验,提出了扩大我国能源税的征收范围、提高现有能源税的税率、尽快开征燃油税等推进我国能源税改革的相关建议。

第五章对欧盟税收情报交换法律制度进行了研究。本章具体介绍了欧盟进行税收情报交换的四个法律文件:《直接税协助指令》、《消费税合作条例》、《增值税合作条例》以及《请求补偿的双边协作指令》,同时以 OECD 范本为参考模式,评价了欧盟税收情报交换法律制度,并结合中国实践,对完善我国国税和地税工作的



信息交换制度和我国国际税收情报交换机制,提出了自己的观点和看法,如签订专项合作协定、制定税收情报交换具体操作办法、扩大情报交换的税种范围、构建两岸四地区域间税收情报交换机制以及加强与欧盟和东盟的税收情报交换等。

**关键词:**欧盟税收协调 国际税收竞争 直接税 间接税  
税收情报交换

# **Abstract**

Legal issue of EU tax harmonization has been of concern to the international tax law scholars. In the creation of a European Union of goods, labour, services and the free movement of capital as the hallmark of the common market, the EU member states have long been involved in the dispute on the issues as to how to cancel the tax barriers among nations and how to overcome the community tax obstacles in the market.

From the perspective of the EU tax legal system, based on the analysis of the basic theories of tax competition and tax harmonization, and through a historical background introduction to the history of a specific harmonization law along with the comments on the application of the legal documents and a illustration of how the laws could be applied in member countries, this paper summarizes the role and function of the tax harmonization which stimulates the free movement of the goods, labour, service and the capital, points out that functions of tax harmonization have their own shortcomings and deficiencies, and eventually the paper makes an attempt to put forward some views and suggestions on tax reform in terms of the situation in China.

This paper is composed of five parts; Chapter I Basic Theory of the Tax Harmonization.

Tax harmonization was generated in the context of the international tax harmonization. Here the chapter offers a systematic analysis of the reasons that how international harmonization tax originated, which can be perceived as an introduction to the whole paper. The reasons are as follows: economic globalization is an objective international tax basis of harmonization, international taxation harmonization is a natural choice in the process against harmful tax competition, and regional economic integration accelerates the formation of tax harmonization. The paper also studies the concept of international taxation as well as its connotation and denotation from the perspective of economics and law respectively, and puts forwards the view that tax harmonization is one of the means to resolve international conflict resulted from the unbalanced international tax benefit distribution. In order to achieve an equal and fair distribution of the international tax interest, tax harmonization is an all-around cooperative legal measure taken by the states in the field of the tax policy, tax system and tax collection. Finally, the relationship between international tax harmonization and state tax sovereignty has been represented from the two aspects: On the one hand, tax sovereignty faces up to the serious challenges of the tax harmonization, in which the tax agreement, regional tax harmonization and international tax harmonization weaken the tax sovereignty; on the other hand, developing countries were aware of their weakened tax sovereignty, and

they have taken appropriate measures so that tax revenue sovereignty in the harmonization have been strengthened, such as; bargaining the tax clauses in the tax treaty, persisting in the unanimous voting principle and saying “no” to international organizations.

Chapter II, Basic Legal Problems of the Tax Harmonization of EU.

This chapter traces the origin of the tax harmonization of EU and lays out the measures, the focus and objectives of the tax harmonization in different historical stages of the harmonization, during the different historical period of EU. In the 1980's, EU began to harmonize the VAT and consumption tax, which swept off the obstacles for goods move in the community market. In the 1990's, the company tax harmonization activated. In the 21 century, EU strengthened the harmonization of savings tax, interest and royalty payment so that labour, capital and service can move freely in the community market. Moreover, this chapter arranges the articles related to the tax harmonization of the basic treaties of EU which are Article 93, Article 94, Article 95 and Article 96, summarizes the legal instruments of the secondary legislation of EU which includes directive, decision, regulation and recommendation, opinion, report and resolutions, and introduces the cooperation activities among member states. .

Chapter III, The Direct Tax Harmonization of EU. The direct tax harmonization includes company tax, saving tax, interest and royalty payment.

First, in order to prevent the reduction / elimination of cross-

border business transactions and to prevent the loss of double taxation resulted from the corporate tax system, the EU Council promulgated the three company harmonization tax legislation, and they are: The Merger Directive, The Parent and Subsidiary Directive and The EU Tax Arbitration Convention. This chapter makes an analysis of the above legal documents, and then conducts an overall evaluation of the tax harmonization of EU corporates, hence sums up the following three characteristics: 1. There is a shift from tax competition to tax harmonization; 2. There is a shift from bilateral harmonization of tax toward multilateral harmonization; 3. There is a shift from the tradition to innovation. In addition to this conclusion, problems occurred in the enforcement of The Merger Directive and The EU Tax Arbitration Convention are made clear. Moreover, the prospects of the EU interest tax harmonization have been explored and the meaning of which to China is suggested. Second, targeting at the saving tax harmonization, this chapter introduces not only the background and the content of The EU Saving Tax Directive, but also lays out the core of the system, withholding tax, an information exchange system and transitional period provisions. Still it analyzes the characteristics of this directive and the problems encountered in the process of its implementation. Some suggestions are put forward in considering the Chinese practices. Third, in relate to interest and royalties harmonization, this chapter presents the economic and historical background of EU Interest and Royalty Payment Directive, analyzes and comments on the articles of the directive. The basic principle is that: when the company pays the

interest and royalty to other member states, the source country exempts from the withholding tax. Fourth, the paper introduces the transformation of the directives into national legislation.

Chapter IV, The EU Indirect Tax Harmonization. the EU harmonization of indirect tax includes: tariffs, value-added tax, consumption tax and energy tax (a consumption tax).

First, the customs union is an important cornerstone of the EU. It is also the starting point for tax integration, the EU tariff harmonization among the member countries include not only the domestic tariff harmonization but also include members of the common external tariff harmonization. After a comprehensive introduction of the process of harmonization of tariffs, this chapter points out some exceptions against the Community law and then introduces and comments on value-added tax. The review of the VAT dates back to 1954, until today EU has adopted a series of uniform value-added tax law methods and principles. At present, the EU's current transitional programme allows tax-abolished border checks while retaining two ways of levying the origin and destination of tax revenues. This chapter also clarifies the EU e-commerce tax policy, the difficulties in whose implementation, as well as the two inspirations to China. One is that imposing a capital gains tax on e-commerce in China is a natural choice, the other is that for the establishment of a registration system for e-commerce taxation, efforts should be made to enhance tax on the main control and to expand VAT taxation of e-commerce taxation. To have a clear target is of vital importance. Finally, after a brief introduction to the

harmonization of the consumption tax, more detailed information is given to the background, context, and social effect of Energy Tax Directive of EU. The energy tax harmonization can adjust the consumption structure of the energy, improve energy efficiency, achieve the “double dividend” of economic and environmental development, and reach the Community and win-win situation between the member states. In view of main energy security problems in China, this paper suggests that; boost the economy reform of China, take the measures of tax reduction and tax exemption, encourage the development of the renewable energy, protect the competitive capacity of the energy-intensive enterprises, and introduce the fuel tax and other related proposals.

Chapter V, EU Tax Information Exchange on the Legal System. This chapter focuses on specific EU tax information exchange, especially Direct Tax Directive, Cooperation In the Consumption Tax, Value-Added Tax Cooperation Ordinance, and Requested Compensation for Bilateral Collaboration Instructions four legal documents. In a comparison with OECD Model treaty, the paper comments on the evaluation of the EU tax information exchange. In accordance with China's practice, the paper also makes some suggestions to the improvement of the work of the IRS and tax information exchange system and to China's international tax information exchange mechanism. Those suggestions are to sign special agreements on cooperation, to develop specific tax information exchange to operate, to expand the scope of information exchange on

## **Abstract**

taxe , to build cross-strait three inter-regional tax information exchange mechanism , and to strengthen the European Union and ASEAN tax information exchange.

**Key words:** EU Tax Harmonization International Tax Competition  
Direct Tax Indirect Tax Tax Information Exchange



# 目 录

摘 要 .....	( 1 )
Abstract .....	( 1 )
引 言 .....	( 1 )
第一章 国际税收协调基本理论 .....	( 6 )
第一节 国际税收协调的界定 .....	( 6 )
一、国际税收协调的定义 .....	( 6 )
二、国际税收利益冲突 .....	( 9 )
三、国际税收协调的主要方式 .....	( 13 )
第二节 国际税收协调产生与强化的原因 .....	( 19 )
一、对国际税收协调产生原因的基本分析 .....	( 19 )
二、当前国际税收协调强化的原因 .....	( 21 )
第三节 国际税收竞争 .....	( 27 )
一、国际税收竞争的含义及表现形式 .....	( 28 )
二、税收竞争的两面性 .....	( 32 )
三、对国际税收竞争进行协调的可能性和必然性 .....	( 38 )
第四节 税收主权与税收协调 .....	( 39 )
一、主权 .....	( 39 )