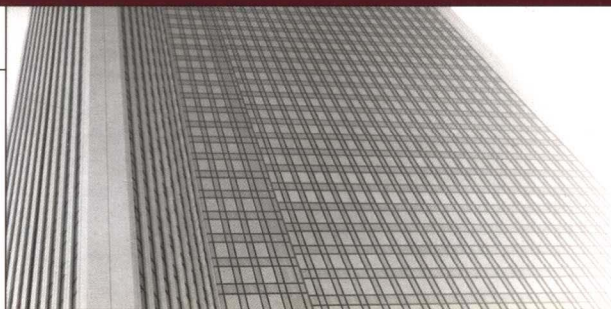


税法学研究文库 总主编 刘剑文

# 电子商务课征增值型 营业税之法律探析



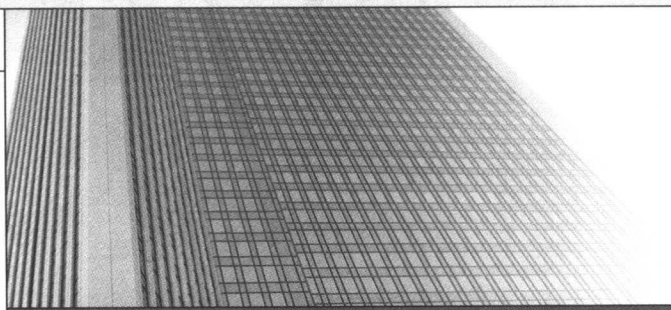
邱祥荣 ○ 著



北京大学出版社  
PEKING UNIVERSITY PRESS

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北京大学出版社  
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税法学研究文库

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交流所带来的信息可以使我们站在巨人的肩膀之上俯瞰整个学科的发展,进而推动该领域学科的发展壮大。我国台湾地区的税法研究已经较为成熟,但目前大量读者还不易直接在内地购买台湾地区书籍,而大量复印又有违著作权法的有关规定。在这种情况下,承蒙北京大学刘剑文教授和台湾大学葛克昌教授的大力支持,使我们得以引进了一些已经在我国台湾地区出版的、优秀的税法学著作。我们希望通过这种方式给内地读者提供一个获取信息的捷径,从而可以比较迅速地了解各个地区的教学和学术成果,为深入学习和研究打下更坚实的基础。

我们引进这些学术著作,目的主要在于介绍我国台湾地区有关税法、财政法的理论和方法,推动学术交流,促进学科发育,完善教学体系,而其著作者的出发点和指导思想、基本观点和结论等,则完全属于由读者加以认识、比较、讨论甚至批评的内容,均不代表北京大学出版社。

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2004年7月

## 总 序

《税法学研究文库》是继《财税法系列教材》、《财税法论丛》和《当代中国依法治税丛书》之后由我主持推出的另一个大型税法研究项目。该项目的目的不仅在于展示当代中国税法研究的最新成果,更在于激励具有创新精神的年轻学者脱颖而出,在传播、推广税法知识的同时,加快税法研究职业团队的建设 and 形成。

税法学是一门年轻、开放、尚处于成长期的新学科。谓其年轻,是因为它不像民法学和刑法学一样拥有悠久的历史渊源;谓其开放,是因为它与经济学、管理学以及其他法学学科等存在多方面的交叉与融合;谓其成长,是因为它的应用和发展空间无限广阔。在我国加入世界贸易组织之后,随着民主宪政、税收法治等先进理念的普及和深入,纳税人的权利意识越发强烈,其对税收的课征比任何时期都更为敏感和关心。税法学的存在价值,正在于科学地发现和把握征纳双方的利益平衡,在公平、正义理念的指导下,实现国家税收秩序的稳定与和谐。

长期以来,我一直致力于税法学的教学和研究,发表和出版了一系列论文和专著,主持了多项国家级科研课题,对中国税法学的发展以及税收法制建设做了一些力所能及的工作。然而,不容否认,中国税法学的研究力量仍然十分薄弱,有分量的研究成果也不多见,税法和税法学的应有地位与现实形成强烈的反差。我深深地感到,要想改变这种状态,绝非某个人或单位力所能及。当务之急,必须聚集和整合全国范围内的研究资源,挖掘和培养一批敢创新、有积累的年轻税法学者,在建设相对稳定的职业研究团体的同时,形成结构合理的学术梯队,通过集体的力量组织专题攻关。惟其如此,中国税法学也才有可能展开平等的国际对话,而税法学研究的薪火也才能代代相传,生生不息。

近年来,我先后主编《财税法系列教材》、《财税法论丛》、《当代中



国依法治税丛书》，这三项计划的开展，不仅使税法学研究的问题、方法和进程逐渐为法学界所熟悉和认同，同时也推动了税法学界的交流与合作。在此过程中，我既看到了新一代税法学者的耕耘和梦想，更感受到了他们在研究途中跋涉的艰辛。这群年轻的学者大多已取得博士学位，或已取得副教授职称，且至少熟练掌握一门外语。最为重要的是，他们对专业充满热忱，愿意为中国税法学贡献毕生精力。正是在他们的期待和鼓励下，为了展示中国税法学的成长和进步，激励更多的优秀人才加入研究队伍，我与北京大学出版社积极接触、多次磋商，终于在 2002 年达成了本文库的出版协议。

衷心感谢北京大学出版社对中国税法学的积极扶持。如果没有对学术事业的关心和远见，他们不会愿意承担该文库出版的全部市场风险，更不会按正常标准支付稿费。此举的意义，远远溢出了—种商业架构，事实上为中国年轻的税法学提供了一个新的发展机遇。正是他们的支持，才使得主编可以严格按照学术标准组织稿件，也使得作者可以心无旁骛，潜心研究和创作。若干年之后，当人们梳理中国税法学进步的脉络时，除了列举税法学人的成果和贡献，也应该为所有提供过支持的出版机构写上重重的一笔。这里，我还要代表全体作者特别感谢北京大学出版社副总编杨立范先生，他的知识和筹划，是本文库得以与读者见面不可或缺的重要因素。

本文库计划每年出版 3—5 本，内容涉及税法哲学、税法史学、税法制度学；税收体制法、税收实体法、税收程序法；税收收入法、税收支出法；国内税法、外国税法、国际税法、比较税法等多重角度和层面。只要观点鲜明，体系严密，资料翔实，论证有力，不管何种风格的税法专著都可成为文库的收录对象。我们希望，本文库能够成为展示税法理论成果的窗口，成为促进税法学术交流的平台。如果能够由此发现和锻炼更多的税法学人，推动税法理论与实践的沟通和互动，我们编辑文库的目的就已经实现。

刘剑文

2003 年元旦于北京大学财经法研究中心

中国财税法网([www.cftl.cn](http://www.cftl.cn))

中国税法网([www.cntl.cn](http://www.cntl.cn))

## General Preface

*Works of Research on Taxation Law Theories* is another large research project on taxation law study presided by me after the publications of *Textbooks Series of Fiscal Law & Taxation Law*, *Fiscal Law & Taxation Law Review* and *Rule Taxation by Law in Modern China*. Rather than demonstrating the latest achievements on the theoretical study of taxation law, this project focuses more on inspiring the scholars with innovative spirit showing themselves. While promulgating the knowledge of taxation laws, a group of professionals studying on taxation law theories is forming and developing.

Taxation law is a rising, open and growing subject. It is rising because it has not so long a history as civil law or criminal law. It is open because it intersects with economics, management and other law subjects. It is growing because it has promising future for its application and development. The taxpayers will be greatly awakened to their rights on the course of tax levying with China's entering into WTO and the popularization of the ideas of democracy and rule the tax by laws. The value of theoretical study on taxation law exists in scientifically finding a balance spot between the taxpayers and levier, which would help to realize a stable and harmonious taxation system among the whole country with the direction of equity and justice ideas.

For a long period of time, I had been dedicated to the teaching and studying of the taxation law. Many theses and monographs had been published and many national research projects presided by me, which were all what I could do to the development and construction of the theoretical study on taxation law of China in my own power. However, we should not neglect that neither researching ability nor influential achievements have been satisfactory. They could not match up the corresponding positions of taxation law and the theoretical study on it.

I came to realize that any individual or organization would never be able to better the situations. At present, the most urgent thing is to congregate all the researching resources around the country in conformity and cultivate a group of young but erudite scholars on taxation law. Thus, a relatively stable group of professionals would be organized to form the academic ladders with reasonable structure. We could depend on the collective powers to study on some specified topics respectively. I think it is the only way to equalize the domestic study on taxation law with international study. Also by this way, the study on taxation law would continue generation by generation and never cease.

Recent years, I have successively presided three projects including editing *Textbooks Series of Fiscal Law & Taxation Law*, *Fiscal Law & Taxation Law Review* and *Rule Taxation by Law in Modern China*. During the process, the topics, methodologies and procedures of the theoretical study on taxation law had been gradually acquainted and accepted by the academic circles and the exchange and cooperation among them had also been greatly promoted. During the course, I not only observed that the new generation of scholars on taxation law study worked hard and cherish beautiful dream to the future, but also their hardships in research. Most of the young scholars have acquired PH. D. degrees or become the associate professor, and at least fluently master a foreign language. Their zealousness shall be more important, and they are willing to devote their whole life to the career. It is under their expectation and encouragement that more and more excellent talents participate in the career. After my positive communications and constant consultations with Peking University Press, a publication agreement has finally come to for this *Works* in 2002.

I sincerely express my gratitude to Peking University Press here for their support to the theoretical study on taxation law in China. They would neither take risks to publish all the works nor pay the authors' remunerations according to market standard if they were short-sighted to the academic project, which are far from a business activity and provide a good opportunity for the young scholars of taxation law

study. It is their support that the editor in chief could select the works strictly according to the academic standard and the authors could dedicate to their research and composition. I believe that many years later while reviewing the developing history of the theoretical study on taxation law in China, they will not only remember the scholars and their achievements, but also remember the contributions from Peking University Press. Here, on behalf of all the authors, I shall thank Mr. Yang Lifan, Vice Editor in Chief of Peking University Press, for his wisdom to and design for the *Works*, or they would never be published.

Annually, 3 to 5 books will be published to affiliate the *Works*. The contents of these books mainly concerns about philosophy of taxation law, history of taxation law, study on taxation law system, taxation law system, taxation law, taxation procedure law, taxation income law, taxation expenditure law, domestic taxation law, foreign taxation law, international taxation law and comparative taxation law. All the monographs with various styles could become members of this *Works* if they are of clear point of view, rigorous logic, accurate documents and strong reasoning. We hope that the *Works* could become a window to demonstrate the theoretical achievements of taxation law study and a platform for academic exchanges. If more scholars on taxation law study could be discovered and the practice and theories of taxation law could be exchanged and co-developed simultaneously with the publication of the *Works*, our targets to edit the *Works* are fundamentally achieved.

Liu Jianwen

On New Years' Day of 2003

In Research Center of Fiscal Law and Taxation Law  
Peking University

## 序

虽然电子商务这几年的整体成长趋缓,但是网上消费在美国目前仍不断地蓬勃发展。许多有趣的营业税课征议题,因为电子商务的兴起而引发广泛的重视。以在美国两大书店 Amazon.com(没有实体书店)以及 Barnes & Noble(拥有美国最多的书店)买书为例。如果在 Amazon 网络书店购物或是与其合作的其它网络书店购物时,消费者不需要缴纳营业税;相反的,如果是在 Barnes & Noble.com 买东西的话,就必须负担营业税。为什么同样是电子商务,买同样的物品,竟有购物必须缴税,和完全不必缴纳任何税负的极端情形发生呢?

买书,是有形商品的消费,如果是无形商品的消费时,会不会因为消费的商店是网络店面或实体店面,而有不一样的结果呢?以计算机软件为例,在美国的商店内买盒装的 Acrobat 软件,必须缴纳当地的营业税;但是透过网络直接购买并下载该软件时,消费者不需要负担营业税。为什么同样是买电体软件,在营业税的征收上又有不同的处境呢?

美国消费者在 Amazon.com 上买书或是选择购买 Acrobat 的网络下载版时,均不须负担营业税。相反地,台湾的政策是,不论是在商店购买书籍和盒装计算机软件或是在网络商店购买该书籍或该软件的网络下载版的话,依台湾的加值型及非加值税营业税法,都要缴纳台湾的营业税。因为美国与台湾对于电子商务采取不同的租税政策,所以会发生同一个消费者,在同一个网络书店上购物,也可能会因为所在地不同而在税法上有截然不同的待遇的结果。比如说,台湾的消费者在 Amazon.com 上买书时,海关对于超过相当金额的书籍,会代征台湾的营业税;如果是美国的消费者想要透过网络直接下载台湾制的防毒软件 Pccillin2002,则必须负担台湾的营业税(因为台湾的商品标价内已含营业税,而且消费者还必须填写发票的网页以完成购物程序)。

这些有趣的现象凸显了“新兴”电子商务遇上了“传统”税法时

不相平衡之处。对于相同的电子商务消费行为,竟给予完全不同的效果,很可能会影响人们的消费行为,而侵蚀了向来税法上所强调的税捐公平及竞争中立性原则。

为了深入剖析因电子商务而衍生的营业税的议题,并提供解决方案,本书首先介绍网际网络的特性及电子商务的兴起。在让读者熟悉电子商务之特性之后,进一步地介绍美国、欧盟对于网络消费发展后产生的各形各样的不同的消费方式的课税态度及难题之初步解决方式,以及 OECD 等国际组织,致力于消弭各国间对于网上购物采取的不同的租税政策。最后,我对于几项极富争议的议题提出己见。

希望藉由本书深入浅出的说明,能使读者了解当前网上购物的营业税议题以及继续研究的课题,并引发读者探索电子商务的兴趣。

邱祥荣

2004 年 11 月

## Abstract

The e-commerce has been ceaselessly developing since the late 1990s although the overall growth has slowed down over the past several years. Many interesting tax issues, especially those with respect to sales tax, have emerged due to the boom of online shopping, however.

First, transactions of identical items occurring in cyberspace or in the real world may be subject to different sales tax treatments. For example, consumers in the U. S. need to pay sales tax when shopping for books in Barnes & Nobles, the largest physical bookstore company in the U. S., while they do not need to pay tax when they purchase books from Amazon.com or its associated online bookstores.

In addition, products with the same functions but different forms (tangible or intangible) may also have different results in sale tax. Computer software is the best example. It can be either directly downloaded from the official website of a software company or be purchased in the physical stores. In the U. S., for instance, consumers can save the sales tax if they purchase and download software such as Acrobat through the Internet, but they will pay state sales tax when they get Acrobat software on a CD or disk in the neighborhood computer stores.

Third, customers in different countries may be treated differently in regards to sales tax when they purchase items in the very same on-line store. For example, in Taiwan, sales tax is required to be paid wherever consumers purchase a product. While the U. S. consumers are exempt from sales tax when they buy books on Amazon.com, Taiwanese consumers will be charged value-added tax (VAT), Taiwan's sales tax, even when they order books from Amazon.com. (The Taiwanese Customs, on behalf of tax institutions, will charge Taiwanese buyers the VAT when the books are imported into Taiwan). Such differences will also happen on the transactions with respect to computer

software. When Taiwanese computer users buy and download Acrobat from a U. S. website, no U. S. sales tax will be levied. On the contrary, the U. S. computer users are required to pay Taiwan's VAT when they want to purchase and install Pc-cillin2002, a famous Taiwan-made anti-virus software. (The VAT is included within its price, and consumers are asked to fill out an invoice web page before the completion of the online purchase).

These aforementioned phenomena fully show the conflicts between the "novel" e-commerce and the "traditional" tax rules. These different tax treatments will inevitably alter buyers' consumption behavior because consumers can save their money when they purchase items online. This imbalance will possibly undermine the fundamental principles of sales tax such as fairness and neutrality and cause the loss of tax revenue for a government.

In order to thoroughly examine the problems of sales tax resulting from this new type of commerce and find out practical solutions, I divided this book into three parts. First, I introduce the readers to some background knowledge such as the characteristics of the Internet and the rise of e-commerce. Then, I explain in detail how the U. S. and European Union look at the issue of whether online shopping is taxable under their rules of sales tax, as well as how international organizations such as OECD make efforts to eliminate the disagreements on e-commerce sales tax. Finally, I provide my views on these controversial issues.

I hope that I can, through this book, evoke the readers' interests in exploring the world of e-commerce and help them be aware of the current agendas and on-going issues regarding sales tax on online transactions.

Hsiang-Jung Chiu  
November 2004



## 税法学研究文库

### 已出版及近期计划出版书目

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- ◆ 刘剑文主编:《WTO 体制下的中国税收法治》(已出版)
- ◆ 刘剑文、熊伟:《税法基础理论》(已出版)
- ◆ 刘永伟:《转让定价法律问题研究》(已出版)
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