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BILINGUAL LEGAL TEXTBOOKS FOR HIGH EDUCATION

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英文版

中国税法

CHINA'S TAX LAW

□ 金朝武 著



法律出版社
LAW PRESS

高等学校法学双语教材

Chinese Tax Law

中 国 税 法

By Chaowu Jin
金朝武 著

法律出版社
Law Press

图书在版编目(CIP)数据

中国税法/金朝武著. —北京:法律出版社, 2003. 8
高等学校法学双语教材
ISBN 7-5036-4480-X

I. 中… II. 金… III. 税法—中国—高等学校—
教材—英文 IV. D922.22

中国版本图书馆 CIP 数据核字(2003)第 072835 号

法律出版社·中国

责任编辑/丁小宣 金 云

装帧设计/于 佳

出版/法律出版社

编辑/法律教育出版分社

总发行/中国法律图书有限公司

经销/新华书店

印刷/北京北苑印刷有限责任公司

责任印制/张宇东

开本/787×960 毫米 1/16

印张/24 字数/400 千

版本/2004 年 3 月第 1 版

印次/2004 年 3 月第 1 次印刷

法律出版社/北京市丰台区莲花池西里法律出版社综合业务楼(100073)

电子邮件/info@lawpress.com.cn

电话/010-63939796

网址/www.lawpress.com.cn

传真/010-63939622

法律教育出版分社/北京市丰台区莲花池西里法律出版社综合业务楼(100073)

电子邮件/jiaoyu@lawpress.com.cn

读者热线/010-63939660

传真/010-63939701

中国法律图书有限公司/北京市丰台区莲花池西里法律出版社综合业务楼(100073)

传真/010-63939777

中法图第一法律书店/010-63939781/9782

客服热线/010-63939792

中法图北京分公司/010-62534456

网址/www.chinalawbook.com

中法图上海公司/021-62071010/1636

电子邮件/service@chinalawbook.com

中法图苏州公司/0512-65193110

书号:ISBN 7-5036-4480-X/D·4198

定价:26.00 元

作者简介

金朝武,北京大学经济法博士、执业律师,现任教于中央财经大学法律系。主要研究领域为竞争法、税法、公司法等。曾在《中国法学》、《北大经济法研究》等刊物上发表法学论文十余篇。主要著作有:Competition Law in China (William S. Hein, USA, 2002)、《网络中的法律问题及其对策》(法律出版社,2001年)、《非公有制企业法律保护》(西苑出版社,2002年)等。

同时对法律翻译有比较深入的研究,曾在香港《翻译季刊》、《中国翻译》等刊物上发表法律翻译论文多篇,并曾为全国人大、国务院、香港大学等机构提供同声传译、口笔译服务,主要译著有:《自由市场与社会正义》(中国政法大学出版社2001年)、《法律推理与政治冲突》(法律出版社2004年)、《设计民主——论宪法的作用》(法律出版社,即将出版)、《中国法学》(英文版翻译兼译审)。

Chaowu Jin, J. S. D. (Peking University Law School) and practicing lawyer, now teaching at the Central University of Finance Economics Department of Law. His main interest of research includes: competition law, tax law, and company law. He has published a dozen articles in various academic journals of law, e. g., China Legal Science, Economic Law Research, etc. His main publications include: Competition Law in China (William S. Hein, USA, 2002), Approaching the Internet: Legal Problems and Their Solutions (The Law Press, 2001), The Legal Protection of Non-Publicly-Owned Enterprises (Xiyuan Press, 2002), etc.

He has also done in-depth research in legal translation, and published a number of articles on legal translation in such journals as Translation Quarterly (Hong Kong, 1999), (Chinese Translator's Journal, 2000), etc. and has provided simultaneous translation, oral translation and written translation services to the NPC, the State Council, Hong Kong University, etc. His works of translation include: Free Markets and Social Justice (China University of Political Science and Law Press, 2001), Legal Reasoning and Political Conflict (The Law Press, 2004), Designing Democracy: What Can Constitutions Do? (The Law Press, forthcoming), China Legal Science (translator & English editor), etc.

前 言

在法律学习过程中,通过英文原版材料学习英美法固然重要,而且肯定受益匪浅,但是,我认为,对于将来主要在中国境内执业的中国法律院系学生而言,他们更多地将是适用中国法律。随着中国经济国际化程度的日益加深,熟练利用外语从事法律服务将能更好地为国内外客户提供服务。这样看来,学会用外语表达具有中国特色的中国法律思想也就显得非常重要了。为了做到这一点,许多学校都开设了法律英语专业。这门课程解了许多学生的燃眉之急,对于学生提高专业外语水平起到了很好的作用。但是由于课时有限,学生所能接触到的材料也极其有限,大多数做法是从国外的教科书当中摘选若干段落,内容涉及法学的各个分支学科,然后加上注解,供学生学习。这样做实际上是为了提高学生对英文材料的阅读理解能力,而对于培养学生用英文表达中国法律思想的能力恐怕帮助不大。为了全面提高学生运用外语从事专业服务的能力,国家教育部于2001年颁布了《关于加强高等学校本科教学工作,提高教学质量的若干意见》,其中指出:“本科教育要创造条件使用英语等外语进行公共课和专业课教学。对高新技术领域的生物技术、信息技术等专业,以及为适应我国加入WTO后需要的金融、法律等专业,更要先行一步,力争三年内,外语教学课程达到所开课程的5%—10%。”

基于以上考虑,法律出版社组织部分专家学者编写了英文版的中国法律系列丛书,目的是既使读者能够学到中国法律知识,又能熟练掌握专业英语,为将来使用英语从事专业化服务奠定基础。因此,本丛书既可以作为双语教学用的专业课教材,也可以作为学生深入学习某个法律部门的专业英语教材。本书就是其中的一本。内容大致可以分为两大部份:第一至第七章主要从我国的税法演化以及纳税人权利义务的角度进行讨论,第八至二十一章主要是介绍中国的税制。通过这样学习,读者就能对我国的税收法律制度有个比较完整的了解。为了方便读者理解,对某些在一般词典上无法找到相对应中文或者容易产生误解的法律术语和表达,笔者都在其后的括号内加上了相应的中文及拼音;同时,在所有中国法律法规以及地方规章的名称后面也加上了相对应的中文拼音和汉字,以方便读者查找相应的原文。

在本书的撰写过程中,笔者阅读并参考了大量的专家学者的著述,有的未能一一注明出处,在此向所有使笔者受益的作者们表示感谢。同时,在本书的撰写过程中,法律出版社的丁小宣老师一直给予了极大的支持和鼓励。本人博士生导师盛杰民教授、北京大学法学院副院长、税法学博士生导师张守文教授、北京大学税法学

2 前言

博士生导师、财税法学会副会长刘剑文教授、中央财经大学法律系甘功仁教授、中国政法大学博士生导师张楚教授等,也对本人给予了极大地鼓励和帮助,在此一并表示感谢。

由于本人才疏学浅,因此谬误之处在所难免,如蒙各位专家学者以及各位读者不吝指正,本人将深表感激。

金朝武
2004年1月于北京

Table of Contents

| | | |
|-------------|---|--------|
| Chapter I | The Evolution and Development of the Chinese Taxation System | (1) |
| I | Historical Development of the Taxation System of China | (1) |
| II | Analysis of China's Tax System | (7) |
| III | Reforming the Taxation System for the Market Economy | (10) |
| Chapter II | Types of Taxes and the Basic Structure of Chinese Tax Law | (12) |
| I | Types of Taxes | (12) |
| II | The Turnover Taxes | (16) |
| III | The composition of tax law | (19) |
| IV | The Structure of Chinese Tax Law | (20) |
| V | The Characteristics of Chinese Tax Law | (24) |
| Chapter III | Tax Legislation and Tax Agencies | (27) |
| I | The Legislative System of Taxation | (27) |
| II | The system of tax collection and tax administration | (32) |
| Chapter IV | Tax Collection and Tax Administration | (36) |
| I | Ways of Tax Collection | (36) |
| II | Tax Administration | (38) |
| III | Agency in Taxation | (42) |
| IV | Administration of Invoices | (47) |
| Chapter V | Tax Administrative Punishment | (51) |
| I | A Brief Introduction to Tax Administrative Punishment ("TAP") | (51) |
| II | Types of TAP | (52) |
| III | The Enforcer of TAP and the Jurisdiction of TAP | (53) |
| IV | Application of TAP | (54) |
| V | Procedures for TAP | (57) |
| Chapter VI | Tax Administrative Indemnification | (61) |
| I | Tax Administrative Indemnification | (61) |
| II | The Scope of TAI | (62) |
| III | Petitioners for TAI and the Organs Liable for TAI | (64) |
| IV | The Procedures for TAI | (65) |
| V | Ways of TAI payment and standards of TAI | (67) |

| | | |
|--------------|---|---------|
| Chapter VII | Tax Dispute Resolution Mechanisms | (69) |
| I | Settling Tax Disputes by Tax Administrative Reconsideration | (69) |
| II | The Acts That Can Be Accepted As A Case of TAR and the Jurisdiction of TARs | (70) |
| III | Application for TAR | (73) |
| IV | Acceptance of Applications for TAR | (74) |
| V | Hearing and Ruling of TARs | (75) |
| VI | Settling Tax Disputes by Tax Administration Litigation | (78) |
| VII | The Scope and jurisdiction of litigation | (79) |
| VIII | The participants in TAL | (81) |
| IX | The Filing of TAL and Case Acceptance | (83) |
| X | The Hearing of a TAL and Judgment Making | (84) |
| XI | Appeal and Enforcement in TAL | (87) |
| Chapter VIII | Value Added Tax Law | (90) |
| I | Taxpayers | (90) |
| II | Scope of application | (91) |
| III | Definition of Ordinary Taxpayers and Small Taxpayers | (92) |
| IV | Tax rates | (95) |
| V | Calculation of the Tax Amount Payable | (96) |
| VI | Output Taxes and Input Taxes | (97) |
| VII | The calculation of taxes payable | (102) |
| VIII | The Calculation of the Amount of Taxes Payable by Small Taxpayers | (104) |
| IX | The Refund and Exemption of VAT from Exported Goods | (105) |
| X | Administration of the refund (exemption) of taxes for the export of goods | (114) |
| XI | Taxation of Imported Goods | (119) |
| XII | Time Limit for Tax Payment | (121) |
| XIII | The Usage and Administration of Special VAT Invoices | (122) |
| Chapter IX | Business Tax Law | (130) |
| I | Evolution of the Business Tax | (130) |
| II | Taxpayers | (131) |
| III | Application of the Business Tax Law | (131) |
| IV | Business Tax Rates and the Calculation of the Taxes Payable | (135) |
| V | Preferential Policies | (140) |
| VI | Time limit for tax payment | (145) |

| | | |
|--------------|---|-------|
| VII | Tax filing and venue of tax payment | (147) |
| Chapter X | Consumption Tax Law | (148) |
| I | General Introduction to the Consumption Tax | (148) |
| II | Taxpayers and tax items | (150) |
| III | Tax Rates | (161) |
| IV | Calculation of the Consumption Taxes Payable | (164) |
| V | Refund (Exemption) of Taxes for the Export of Taxable Consumer Goods | (167) |
| VI | Time Limit for Tax Payment | (169) |
| VII | Tax Filing and Venue of Tax Payment | (170) |
| Chapter XI | Tariff Law | (172) |
| I | Tariff and Tariff Law: A Historic Description | (172) |
| II | Object of Tariff Collection and Tariff Payer | (174) |
| III | Import and Export Tariff Policies | (174) |
| IV | The rule of place of origin | (182) |
| V | Dutiable value | (183) |
| VI | Computation of Tariffs Payable | (190) |
| VII | Tariff Deduction and Exemption | (191) |
| VIII | Collection and administration of tariffs | (195) |
| Chapter XII | Enterprise Income Tax Law | (198) |
| I | Taxpayer and the object of taxation | (199) |
| II | Tax Rate | (200) |
| III | Computation of taxable income | (201) |
| IV | The taxation treatment of assets | (207) |
| V | Computation of EIT Payable | (211) |
| VI | Preferential Policies of EIT | (213) |
| VII | Tax Credit of the Taxes Paid Abroad | (217) |
| VIII | Tax filing and payment | (219) |
| Chapter XIII | Foreign-funded Enterprise and Foreign Enterprise Income Tax Law | (222) |
| I | Taxpayer, Tax Rate and Object of Taxation | (222) |
| II | Taxable income | (225) |
| III | Tax Treatment of Assets | (233) |
| IV | Preferential Tax Policies | (237) |
| V | Tax Issues of Associated Enterprises | (247) |
| VI | Tax Filing and Payment | (248) |
| Chapter XIV | Individual Income Tax Law | (253) |
| I | A Brief Introduction to the Individual Income Tax | (253) |

| | | |
|---------------|---|-------|
| II | Taxpayer | (255) |
| III | Determination of the Sources of Income | (256) |
| IV | Taxable Items | (257) |
| V | Tax Rates | (260) |
| VI | Taxable income | (263) |
| VII | Computation of IIT payable | (266) |
| VIII | Preferential Policies | (273) |
| IX | Tax credit of IIT paid abroad | (276) |
| X | Tax Filing and Payment | (278) |
| Chapter XV | Land Value Added Tax Law | (283) |
| I | Brief Introduction | (283) |
| II | Taxpayer | (284) |
| III | Determination of the scope of taxation | (284) |
| IV | Determination of the Taxable Income | (285) |
| V | Deductible Items | (286) |
| VI | Determination of the Amount of Added Value | (288) |
| VII | Tax Rates and Computation of Taxes Payable | (288) |
| VIII | Preferential Policies | (289) |
| IX | Tax Filing and Payment | (291) |
| Chapter XVI | Urban Construction and Maintenance Tax Law | (294) |
| I | Brief Introduction | (294) |
| II | Taxpayer and application | (294) |
| III | Tax rates and tax base | (295) |
| IV | Computation of taxes payable and administration of UMCT | (296) |
| V | Tax filing and payment | (298) |
| VI | Defects of the UMCT law and suggestions for improvement | (299) |
| Chapter XVII | Property Tax Law | (301) |
| I | A Brief Introduction to the Property Tax Law | (301) |
| II | House Tax Law | (302) |
| III | Urban Real Estate Tax Law | (305) |
| Chapter XVIII | Resource Tax Law | (309) |
| I | The Resource Tax | (309) |
| II | Urban Land Use Tax Law | (314) |
| Chapter XIX | Conduct Tax Law | (319) |
| I | A Brief Introduction to the Conduct Tax Law | (319) |
| II | Stamp Tax Law | (319) |
| III | Vehicle and Vessel Use Tax Law | (326) |
| IV | Deed Tax Law | (330) |

| | |
|--|-------|
| Chapter XX Foreign-Related Tax Law | (334) |
| I The Forms of Doing Business in China | (334) |
| II The Establishment of the Foreign-Related Tax System: A Historical Perspective | (337) |
| III Features of China's Foreign-Related Preferential Tax Policies | (341) |
| IV Analysis of the Defects with China's Foreign-Related Preferential Tax Policies | (343) |
| V Suggestions for the Reform of China's Foreign-Related Tax Policies | (346) |
| Chapter XXI Tax Avoidance & Anti-Avoidance | (349) |
| I Tax Avoidance, Evasion, and Tax Planning | (349) |
| II What Makes Tax Avoidance Possible? | (351) |
| III Cheat for the Refund of Export Taxes | (352) |
| IV Techniques of Tax Avoidance by Domestic Business Firms | (356) |
| V The Emergence of International Tax Avoidance | (360) |
| VI The Ways of International Tax Avoidance | (362) |
| VII Anti-avoidance Measures | (367) |

Chapter I The Evolution and Development of the Chinese Taxation System

I Historical Development of the Taxation System of China

The origins of China's tax law could be dated back to the slavery era over 2,000 years ago. During the Xia, Shang and Zhou Dynasties, there was no difference between gong (tributes) and fu (tax).^[1] At those times, the tax system was very simple, with levies on land as the principal type of tax. During the Warring States Period (zhanguo shiqi, 战国时期) between 403—221 BC, China entered into a feudal society and the tax system was gradually improved by means of enactment of statutory provisions. In 316 BC, Qin Xiaogong (秦孝公) succeeded to the throne. During his reign, Shang Yang (商鞅), as prime minister of the State of Qin, conducted two political reforms with an effort to make the state more powerful. Though the reforms were targeted at abolishing the nine-square system (jingtian zhi, 井田制), they were also for the purposes of making land private, abolishing the hereditary privileges of the nobility, encouraging farming and taking up arms for the country, and setting up a unitary administrative system down to household registration at the grass roots level.

Yet the core of the two reforms was the reformation of the tax system. Through the reforms, a land tax (tianfu, 田赋) and a poll tax (rentou shui, 人头税) were levied. During the reign of Emperor Wudi (汉武帝) of the Han Dynasty (206 BC-220 AD), a system of monopolized sale of salt, iron and wine was practiced, which helped to increase revenue for the government. During the Northern Wei Dynasty

[1] Gong (贡), also called "tu gong (land tributes, 土贡)" or "gongfu (贡赋)", is the tax on native products levied by the ancient kings against his liegemen and seigniors. It is the primitive form of tax in China, while fu (赋), which is also referred to as fushui (赋税), is the tax levied by the governments on various levels on the basis of land or population. It originated in the gong as levied by the kings against his liegemen and seigniors. Since the end of the Qing Dynasty, it has become the general term for all kinds of taxes. Jin Xin (金鑫), Liu Zhicheng (刘志城) & Wang Shaofei (王绍飞) (Editors-in-chief), Encyclopedia of Chinese Tax (zhongguo shuiwu baike quanshu, 中国税务百科全书), Beijing: Economy and Management Press (jingji guanli chubanshe, 经济管理出版社), December 1991, p. 104.

(386—534), Emperor Xiao Wendi (孝文帝) employed an equal-field system (juntian zhi, 均田制) which helped to balance the tax burden of the farmers. This equal-field system remained effective through the Sui Dynasty (581—618) to the Tang Dynasty (618—907), though the tax system of zu yong tiao was employed.^[2] In the final phase of the Tang Dynasty, the two-tax system (liangshui fa, 两税法) was adopted, under which tax was levied both in summer and in autumn. The two-tax system was practiced all through the Song Dynasty (960—1279), Yuan Dynasty (1279—1368) to the Ming Dynasty (1368—1644).

In 1581, Zhang Juzheng (张居正), a famous economist of the Ming Dynasty and Secretary of the Grand Council^[3], at the same time as reducing the tax burden of the farmers, also carried out political reform of the single tax in silver (yi tiaobianfa, 一条鞭法), changing the practice of levying tax and imposing corvee labor concurrently. Under the new tax system, farmers did not have to do corvee labor at the same time as paying tax. Instead, they were levied tax by means of silver for the corvee labor otherwise due on the basis of the acreage of land which they owned. This system simplified the procedures for the collection and administration of taxes.

Commencing with the Opium War (1840—1842) of the Qing Dynasty, China was systematically rendered into a semi-colony under the control of western powers. The Qing Government lost its power in the legislation and collection of customs duties, and the salt tax was also usurped by the western powers. Therefore, there is little to be mentioned with regard to the tax system of the Qing Dynasty.

The tax system of the Kuomintang Government, prior the founding of the People's Republic of China in 1949, was largely influenced by that of the western industrialized countries. Accordingly, in the KMT constitutions at different stages there were provisions concerning taxation. The right to taxation was consolidated, and a Law on the System for the Collection and Expenditure of Public Revenue (caizheng shouzhi xitong fa, 财政收支系统法) was enacted. Apart from this, some few other specific laws and regulations concerning taxation were drafted, revised or formulated. Previously, during the reign of the Northern Warlords (1912—1927), the tax system of industrial countries had been borrowed and some specific tax laws were promulgated.

[2] Under this tax system, every adult male shall pay two hectoliters of grain to the government, which was referred to as zu (tax, 租); every adult male had to do corvee labor for a term of twenty days, which was referred to as yong (庸), and pay two zhang (about 6.75 meters) of ling (damask silk), juan (thin tough silk) and shi (coarse silk fabric) respectively, which was referred to as tiao (调).

[3] Secretary of the Grand Council, referred to in Chinese as daxueshi (大学士), was the highest rank of China's imperial hierarchy.

The year 1949 saw the founding of the People's Republic of China. Subsequent to its founding, the development of the PRC's legal system of taxation could be divided into five phases:^[4]

1. The nationwide unification of tax policies in 1950

In order to satisfy the demand for nationwide political unification and rapid recovery of the economy subsequent to the civil war, the Government Administration Council (zhengwuyuan, 政务院), the Central Government of the newly founded Republic, promulgated its first tax statute—Rules for the Nationwide Implementation of Tax Policies (quanguo shuishou shizheng yaoze, 全国税收实施要则), which marked the establishment of a new, nationally-unified socialist tax system. The Rules for the Nationwide Implementation of Tax Policies was a comprehensive statute of taxation, according to which not only agricultural tax but also 14 other taxes including a goods tax, industrial and commercial tax, salt tax, customs duties, salary income tax, depository income tax, stamp tax, legacy tax, trading tax, livestock slaughtering tax, housing tax, land tax, special consumption act tax, and tax for the use of vehicle and vessel licenses, etc. were levied. This new statute also provided for a highly concentrated system for the administration of taxation, to wit, the power of legislation for taxation and the power to start and cease the levying of taxes of all kinds, as well as the readjustment of tax items and tax rates, remained with the Central Government, as did the power to reduce or exempt tax. On the basis of this statute, the Government Administration Council successively promulgated interim regulations concerning the various taxes excluding the transaction tax, and thus a unified tax system was established in the new Republic.

2. 1953 amendment of the tax law

The task of the newly established government for recovery of the national economy was basically accomplished by 1952. At the end of 1952, the Government Administration Council issued a Public Announcement Regarding Some Amendment to and the Effective Date of the Tax System (guanyu shuizhi ruogan xiuzheng ji shixing riqi de tonggao, 关于税制若干修正及实行日期的通告). In the meanwhile, it had promulgated the Measures for the Trial Implementation of the Commodity Circulation Tax (shangpin liutong shui shixing banfa, 商品流通税试行办法) and a number of other regulations and rules concerning taxation. These regulations and rules constituted the amendment to the industrial and commercial tax system that was

[4] Liu Jianwen (刘剑文), Public Finance and Taxation Law (caizheng shuishou fa, 财政税收法), Beijing: the Law Press (falü chubanshe, 法律出版社), Dec. 1997, pp. 191—195.

previously in effect. According to these regulations and rules, the commodity circulation tax was levied on a trial basis, the procedures for the collection of goods tax were simplified, the business tax system was revised, the special consumption act tax was abolished, and the trading tax was superseded by the livestock trading tax, and so on.

3. The 1958 reform of the industrial and commercial tax system and the nationwide consolidation of the agricultural tax law

With the accomplishment of the socialist reform of the private ownership of production materials in 1956, the economic structure of China was translated into one of socialist public ownership. In September 1958, an important reform was carried out to the original industrial and commercial system. The commodity circulation tax, goods tax, business tax and stamp tax were consolidated into the consolidated industrial and commercial tax. The procedures for levying tax were simplified, and so were the methods for paying tax. After this reform, the tax system was also simplified to a large degree. In June 1958, the Standing Committee of the National People's Congress ("NPC") adopted the Regulation on Agricultural Tax, providing that the agricultural tax would be levied on the basis of proportionate tax rates which were to be different in different regions. Through this reform, only 11 tax categories were actually kept: the consolidated industrial and commercial tax, industrial income tax, livestock trading tax, tax for the use of vehicle and vessel licenses, urban real estate tax, livestock slaughtering tax, marketplace trading tax, deed tax, salt tax, customs duties, and agricultural (animal husbandry) tax. This tax system remained effective until 1973.

4. 1973 reform of the industrial and commercial tax system

The tax reform of 1973 was made according to the principle of "consolidating tax categories, simplifying the procedures for levying tax and reforming the unreasonable industrial and commercial tax system". The basis of this tax reform was the Regulation on the Industrial and Commercial Tax (Draft). After this reform, the consolidated industrial and commercial tax and surcharges thereof, the urban real estate tax, the tax for the use of vehicle and vessel licenses, and the livestock slaughtering tax were incorporated into the industrial and commercial tax. The tax items and tax rates were simplified accordingly. The tax collection system was also reformed. Subsequent to this reform, there were only 11 categories of tax in China for a long period of time: industrial and commercial tax, industrial and commercial income tax, urban real estate tax, tax for the use of vehicle and vessel licenses,

livestock slaughtering tax, livestock trading tax, marketplace trading tax, customs duties, salt tax, deed tax, and agricultural (animal husbandry) tax.

5. All-round reform of the tax system after 1979

The year 1978 marks a major turning point for the People's Republic of China. In this year, the Third Plenary Session of the Eleventh Central Committee of the Communist Party of China ('CPC') was convened, at which it was decided that China was to pursue the policies of 'economic reform and opening to the outside world'. The guiding principles for this reform were: the establishment of some new tax categories, so as to satisfy the various economic distribution relationships; rationalization of the revenue distribution relationship between the Central Government and local governments by means of substituting profit delivery to the State with tax payments by state enterprises; the establishment of a foreign-related tax system to meet the demands of opening to the outside world; and division of the tax streams into taxes payable to the Central Government, those payable to the local governments and taxes shared by both the Central Government and local governments.

During the years between 1979 and 1993, a fairly equitable tax law system was established in China, including the turnover tax law, the income tax law, the property tax law, the conduct tax law, and the law on the administration of tax collection.^[5] Through this comprehensive reform of the PRC industrial and

[5] In China, the laws enacted by the NPC or the Standing Committee thereof always carries the word "law" in the name of the legislation enacted, while the various branches of the study of law are also referred to as "law". The latter is a system consisting of the various theories and legal provisions regarding that aspect. For example, the branch of study of law-income tax law-is not merely a law enacted by the NPC; it is rather a scientific system consisting of the theories about the individual income tax as well as all the pertinent legal provisions governing individual income tax. In order to make a distinction between a law enacted by the legislature and the branch of the study of law, the initial letters in the name of a "law enacted by the legislature are capitalized, while when the law is used as a branch of study, the initial letters are not capitalized. For example, when I use Individual Income Tax Law, I mean the Individual Income Tax Law of the People's Republic of China which was adopted at the third session of the Fifth NPC on September 10, 1980, as amended for the first time at the fourth meeting of the Standing Committee of the Eighth NPC on October 31, 1993 and amended for the second time at the eleventh meeting of the Standing Committee of the Ninth NPC; while when I use the term individual income tax law, I mean it is a branch of the study of the individual income taxes, which is a general term for the scholastic theories about the individual income taxes and all the legal provisions concerning the individual income tax. The relevant provisions of the individual income tax do not merely come from the Individual Income Tax Law, they come from other sources as well, such as the Regulation for the Implementation of the Individual Income Tax Law of the People's Republic of China which was issued by the State Council in 1994 as well as the ministerial rules of the Ministry of Finance, the State Administration of Tax, and the local legislations governing the individual income tax.

commercial tax system, a foreign-related tax system was established. Thus, the tax system of China was changed from a basically singular tax system into a multi-tax category, multi-link, and multi-layer compound tax system.

6. The tax reform of 1994

As China has pursued the 'opening-up' policy since 1978, it has achieved rapid economic development and a socialist market economic system has been basically established. Although the tax reform after 1979 has to a large extent accomplished the goal of government tax policies and greatly contributed to economic development, new circumstances which have arisen during the ensuing years have made it necessary to conduct a complete reform of the tax system, so as to bring it more in line with that of other countries. The guidelines for the sweeping tax reform of 1994 were motivated by a desire on the part of the government to consolidate the tax laws, make the tax burden fairer, simplify the tax system, rationalize the distribution of power, rationalize the relationship of tax distribution between the Central Government and local governments, to regulate the methods of distribution so as to ensure the state's revenue, and establish a tax system that meet the requirements of the socialist market economy. Thus, the tax reforms of 1994 consists of four parts:

(1) Reform of the turnover tax system

After the reform, the turnover taxes consist of the value added tax, the consumption tax and the business tax, and they apply to both domestic and foreign-funded enterprises. The consolidated industrial and commercial tax, which was levied upon foreign-funded enterprises and foreign enterprises, was abolished. Value added Tax is universally levied on the production, wholesale, retail and import of commodities, and consumption tax is levied concurrently upon some of the consumer goods, while business tax is levied upon the labor services and tertiary industry where the value added tax is not levied.

(2) Reform of the income tax system

After the reform, state-owned enterprise income tax, the collective enterprise income tax and the private enterprise income tax were consolidated as the domestic enterprise income tax, and the original state-owned enterprise income tax was abrogated. The rate of enterprise income tax is lower, at a flat rate of 33%. The pretax deduction items and standards are prescribed by way of statutory provisions.

The individual income tax law, individual income tax regulations and the urban and rural industrial and commercial household income tax were consolidated as the individual income tax law. The monthly deduction of expenses from the taxable amount is set at 800 yuan. The income tax over salaries and wages is levied at 9 progressive tax rates in excess of specific amounts; whilst that over the income of enterprises and public institutions arising from