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# 外商直接投资 税收政策研究

窦清红 ■ 著


*A Research on Tax Policy for Foreign  
Direct Investment*

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作 者: 窦清红 著

责任编辑: 刘淑民

责任校对: 于 玲

技术设计: 刘冬珂

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http: //www. taxation. cn

E-mail: ctpfx@163. com

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# 序 言

窦清红 2000 年考入中国人民大学，在我的指导下攻读博士学位。在此之前，她曾在国家税务总局政策法规司工作多年，后又转至中国税务杂志社做理论栏目编辑。既积累下了丰富的税收工作经验，也同中国税收政策结下了不解之缘。或许正因为如此，当我们坐下来一起讨论她的学位论文选题的时候，她的第一反应，就是做税收政策领域的题目。

然而，税收政策毕竟是一个相对宽泛的领域。可以纳入这个领域的命题很多，究竟选定怎样一个题目做学位论文比较适当，无论她还是我，在当时，都未有十分明确的想法。我们只是约定，先聚焦于税收政策领域的各个焦点、难点和热点，做“拉网”式的探索。待经过一段时间的筛选后，再来确定适当的题目。

很显然，这已经超出了单纯做学位论文的意义。按照这样的工作路线，难度和复杂性自不必说。仅就其要花费的时间、精力而言，也不是做其他方面的选题所能比的。但窦清红怀着为中国税收事业有所贡献的强烈责任感和极大的热情，义无反顾地去做了。而且，踏踏实实地做了 6 年。在这 6 年里，她对中国税收政策的变化轨迹做了尽可能全面的追溯，并广泛涉猎了中国税收政策的方方面面和枝枝蔓蔓，写出了一系列以中国税收政策为主要线索的专题论文。在如此的基础上，她最终将博士学位论文选题确定为《外商直接投资税收政策研究》，对与外商直接投资有关的税收政策做了全面而系统的分析，并以此顺利地通过了答辩。

读者面前的这本书，是作者在其博士学位论文的基础上修改而成的。可以发现，这是一本在清晰把握中国税收政策运行脉络基础上写就的潜心之作。

就我的视野所及，这本书的学术特色或学术贡献可以做如下归结：

从分析外商投资直接投资出现的缘由入手，探讨了外商直接投资与税收政策之间的关系。一般来说，东道国为了吸引外资，都制定有优惠的税收政策。这本书分析了税收优惠政策对外商直接投资的作用机理，从理论上阐述了税收优惠政策对外商直接投资的激励效果。我们知道，任何一个国家的税收优惠政策都是作用于生产经营者或投资者的。而有时候，生产经营者或投资者的不同的税收筹划，则可能使税收优惠政策的作用点、作用力发生改变。通货膨胀与我们的经济生活左右相伴。这一经济生活中的常见因素——通货膨胀，也会因其不同的通货膨胀水平而使税收优惠政策的效果截然不同。此其一。

外商直接投资成为可能与现实，是在19世纪英国实现了工业化之后。这本书纵观历史上早期工业化国家、新兴工业化国家吸引外商直接投资的历史，总结了这些国家税收优惠政策在吸引外商直接投资、促进本国工业化实现的经验，创造性地提出，发展中国家在实现工业化的进程中应根据经济发展阶段的不同而采取不同的税收优惠政策的规律。此其二。

我国吸引外资是在计划经济的前提下进行的。因此，我国外商直接投资税收政策具有特殊性。这本书全景式地描述了我国外商直接投资税收政策的演变进程，分析了不同社会经济发展阶段不同税收政策的特征及效果。并且，以此为基础，对市场经济条件下的外商直接投资税收政策的走向做出了富有远见的判断。此其三。

尽管目前我国外商投资企业的所得税政策已经与内资企业的所得税政策趋于一致，但关于外商投资企业税收政策的研究并没有终结。随着经济社会发展的进程，我国对于外商投资企业的所得税政策还将随之不断调整。有所不同的，只是对于外商投资企业的所得税政策的研究，也将同样适用于我国的内资企业。而且，进一步说，鉴于我国目前的社会经济现状的需要，在有关外商投资企业在流转税以及地方税的某些税收政策上，还难以避免地保留着特殊的税收政策待遇。因此，这本书所搭建的有关外商直接投资税收政策问题

的理论分析框架，不仅在现实，而且在未来，都是具有理论价值及实践意义的。此其四。

这本书虽然着眼于对于外商直接投资税收政策的研究，但其中的许多成果，如它所揭示的投资与税收之间的关系本质、经济运行的客观规律，不仅适用于外商投资企业，而且适用于内资企业。它是任何企业在投资时需要考虑的，也是所有税收政策的制定者、执行者、研究者需要关注的。因而，书中得出的不少分析与结论，在任何时候都不会有过时之嫌。此其五。

高培勇

2008 年元旦于北京

# 摘 要

改革开放初期，我国采取了以优惠为特征的税收政策，以吸引外商投资，促进我国经济的发展。20 世纪 90 年代中期，随着我国社会主义市场经济体制的建立与不断完善，1994 年，我国统一了内外资企业的流转税制度，外商投资企业的特殊的流转税优惠政策基本上被统一的流转税政策所替代。2007 年，我国又统一了内外资企业的所得税政策，对外商投资企业的特殊的所得税政策也不复存在。那么，我国曾经给予外商投资企业的特殊的税收优惠政策是否必要？对于外商投资企业的税收政策未来取向是什么？外商直接投资与税收之间究竟存在怎样的关系？为了很好地回答这些问题，本文从研究外商直接投资出现的根本原因入手，阐述了外商直接投资税收政策的基本理论，考察了工业化国家的外商直接投资税收政策实践，总结了工业化国家运用外商直接投资税收政策的规律。最后，本文对我国的外商投资企业税收政策进行了分析，对企业所得税政策调整对外商直接投资的影响进行了预测。

1. 外商直接投资的出现，一方面是因为资本的本质是获得高额利润，当资本在本国难以获得高额利润的情况下，必然走向世界，投向可以获得高额利润的其他国家；另一方面是东道国利用外商直接投资促进本国经济的快速发展。税收优惠政策可以增加外商直接投资的税后收益，因此，东道国运用税收优惠政策激励外商直接投资成为必然。

2. 东道国激励外商直接投资的税收优惠政策一般包括流转税与所得税的优惠。流转税的优惠主要体现在：对商品和劳务所课征的营业

税、消费税、增值税以及关税等的减免上。所得税的优惠主要体现在：低税率，税前可列支成本、费用的宽限扣除，以及应纳所得税额的减免等。与流转税优惠的目标一样，所得税的不同优惠方式共同作用于外商直接投资，最终达到激励外商直接投资的效果。

3. 外商直接投资的所得税优惠政策效果会因不同因素受到不同的影响。

(1) 企业的税收筹划，会使东道国的税收优惠政策效果弱化。免税期是最常见的优惠措施，当东道国只对新设立的外商投资企业规定免税期优惠时，就有可能出现现有企业为了享受这一优惠而把资本转到“新”企业，这种经营资本的转移造成新投资的假象。政策效果被打折扣。加速折旧的同时可以结转亏损，会形成大量累积的因税收而导致的亏损，处于亏损状态的企业会把这些税收亏损转给盈利企业，盈利企业再利用转移过来的亏损降低它们在东道国的应交税收，从而形成非激励对象享受激励好处的结果，造成东道国税收收入的流失，而且不能达到最初的激励目标。

(2) 通货膨胀具有弱化或强化税收优惠政策效果的效应。通货膨胀会使东道国提供的低税率、免税期、投资税收扣除、投资税收抵免、加速折旧等优惠，名义上增加，实际上减少，因而优惠政策效果被弱化。当通货膨胀率高到一定水平时，企业的实际有效税率还会高于法定税率。另一方面，东道国提供的融资激励会由于通货膨胀的原因，企业支付的利息增加，税收优惠政策的效果会被强化，国家的税收收入受到影响。

(3) 居住国对外国来源所得的税收政策有可能弱化东道国税收优惠政策的效果。居住国对来源于外国的直接投资所得，一般采取限额抵免政策。当东道国的税收负担等于或高于居住国的税收负担时，外商投资企业的总体税收负担没有增加。而作为吸引外资的东道国，一般会采取优惠的税收政策，当东道国的税收负担低于居住国的税收负担时，外商投资企业在东道国少交的税款补交到了居住国的国库，总体税收负担并没有减少。在这种情况下，如果居住国与东道国签署有包括税收饶让条款的税收协定，那么，东道国对外商投资企业所给予的税收优惠就会由投资者得益。

4. 工业化国家在不同发展阶段对外商直接投资的税收政策不尽相同。



19 世纪中叶英国实现工业化之后,外商直接投资成为可能与现实。英国之后的其他国家(如美国、日本等)在实现工业化的进程中,充分运用外商直接投资加快了本国工业化的进程。尽管当时的政府对经济推行的是不干预政策,但依然运用了优惠关税等政策,间接激励外商直接投资。新兴工业化国家(如新加坡、韩国等)实现工业化的进程中,国家干预经济思想已经盛行,这些国家充分运用税收优惠政策,根据不同发展阶段的经济发展战略,调整流转税与所得税的优惠内容,发挥外商直接投资对本国工业化建设的促进作用。

当工业化实现以后,新兴工业化国家依然运用税收优惠政策进一步吸引外资,提高本国科技在国际上的先进度;而早期工业化国家由于本国的科技水平就比较高,所以对内资企业与外资企业采取同样的优惠政策,实现国家稳居世界先进水平的政策目标。

一个共同点是:不论是早期工业化国家,还是新兴工业化国家,国家干预经济思想盛行之后,都注重税收优惠政策的针对性和目的性。

借鉴工业化国家对外商直接投资的税收政策经验,当代发展中国家在实现工业化的进程中,应根据不同阶段的经济特点、发展目标,采取不同的外商直接投资税收优惠政策。初级阶段,应采取普遍性优惠的税收政策,提供比较宽泛的税收优惠;发展阶段,应实行以产业为导向的税收优惠政策,并与国家的产业政策调整及经济发展战略协调一致;起飞阶段,应将税收优惠集中于高新技术产业或领域的投资。

5. 我国目前处于工业化进程中的经济起飞阶段,对外商投资企业的税收优惠政策应集中于高新技术产业或领域的投资。

改革开放初期,基于吸引外资的战略,在 20 世纪 80 年代我国建立了以优惠为重要特征的外商投资企业税收政策体系。随着改革开放的不断深化,20 世纪 90 年代初我国对外商投资企业的所得税政策进行了调整,但仍然坚持了优惠的原则。税收优惠政策在吸引外商直接投资、促进我国经济持续稳定发展中发挥了重要作用。

随着我国社会主义市场经济体制的建立与完善,1994 年我国统一了内外资企业的流转税制度,实行了内外资企业统一的流转税政策,将对外商投资企业的普遍性流转税优惠政策调整为仅对特殊投资的流转税优惠。1994 年我国内外资企业的流转税政策统一以后,虽然短期内对外商投资有一定的影响,但从长期来看,来华的外商直接投资仍然在稳步增长。

然而,20世纪90年代初制定的外商投资企业所得税政策,随着十多年来我国的社会经济形势发生的重大变化,已经不适应社会经济发展的要求。主要体现在:(1)改革开放20多年来,我国的GDP总量已经位居世界前列,短缺经济时代已经结束,对生产性外商投资企业的所得税“普惠”政策,不适应商品供求关系变化的经济形势需要,也不适应生产力水平进一步提升的要求。而且,随着我国投资环境的重大变化,对生产性外商投资企业的所得税“普惠”政策已没有必要。(2)对经济特区、东南沿海地区的税收优惠政策加剧了地区经济差距,不适当当前区域经济协调发展战略的需要。(3)内外资企业所得税政策的差异,无异于对内资企业的一种税收歧视,特别是2001年我国加入WTO以后,外资企业在更多的领域与内资企业竞争,外资企业在所得税方面大大优于内资企业的政策,更加剧了内资企业在竞争中的不利地位。

适应社会经济形势变化的需要,2007年我国统一了内外资企业所得税制度,在统一内外资企业所得税制的框架内,调整了对外商投资企业的所得税优惠政策,于2008年1月1日起施行。

内外资企业所得税制的统一,既包括税前扣除范围及标准的统一,又包括税率和税收优惠内容的统一。针对外商投资企业来说,在税收优惠方面的变化主要是:(1)取消了外商投资企业的“普惠制”政策;(2)取消了出口型外商投资企业的所得税优惠政策。(3)取消经济特区、东南沿海地区的地区性税收优惠,保留了“西部大开发”战略实施以来的西部地区税收优惠政策。(4)保留并强化了国家需要鼓励的产业、行业、领域的投资的税收优惠政策。(5)对基础设施投资的税收优惠政策进行了调整。(6)内外资企业所得税统一后,过去只适用于内资企业的税收优惠政策,现在也适用于外资企业。

由于我国整体国力的提高,整体投资环境的改善,从长期来看,外商直接投资不会因企业所得税政策的调整受到影响。适应我国当前社会经济发展需要的新的企业所得税政策,将提高我国外商直接投资的质量,进一步加快我国实现工业化的进程。

我国外商投资企业的税收政策正在向着与内资企业的税收政策一体化的方向发展,但税收优惠仍将存在。

关键词:外商直接投资;税收政策

# Abstract

Since the initiation of economic reform in the late 1970s, China's tax system has evolved to better suit the needs of a market economy. At the beginning of reform and opening-up, the tax policy was characterized by tax preference to attract foreign investment to promote the economic development. In the middle of 1990s, with the establishment and improvement of its socialist market economic system, China has implemented a unified turnover tax system for domestic and foreign invested enterprises since 1994, which replaced fundamentally the specialized preferential turnover tax policy for foreign-invested enterprises. Also, China made a unified income tax policy for domestic and foreign invested enterprises in 2007. This means that the special income tax policy for foreign-invested enterprises has been abandoned. As a result, is there any necessarily for China to apply the specialized preferential tax policy to foreign investors? What's the future thrust of China's tax policy for foreign-invested enterprises? What relationship does stand between FDI and taxation? In response to these issues, this paper starts with the source of FDI to present the fundamental principle on tax policy for FDI. And it makes a review on the practices in some industrialized countries to find out the common guideline of their practices. Finally, this paper analyzes China's tax policy on FDI and makes a fundamental forecasting on the impact on FDI imposed by the adjusted tax policy in China.

1. Why FDI occurs? On the one hand, the nature of capital aims at

generating high profits. When it is difficult for capital to gain high profits in home country, it will move towards the world and try to invest in other countries where it may generate high profits. On the other hand, host country needs to exploit FDI to accelerate its economic development. Moreover, the preferential tax policy can increase after-tax benefit derived from FDI, therefore, host country naturally utilizes tax privileges to encourage FDI.

2. In general, host country uses turnover tax and corporate income tax concessions to attract FDI. Turnover tax concessions mainly embody in lowering/exempting sales tax, business tax, consumption tax, value-added tax as well as tariff which are imposed on goods and services. The preferential treatments of corporate-level income tax embody in reductions in the statutory corporate income tax rate; enriched capital cost allowances, including accelerated and enhanced write-offs for qualifying capital costs; lowering the calculation of taxable profit, etc. Just as the same objectives of turnover tax concessions, various corporate tax incentive measures will stimulate FDI. Eventually, host country achieves the goal to encourage FDI.

3. Efficiencies of corporate income tax incentives are weakened or enhanced by alternative factors.

(1) Tax planning of an enterprise can weaken the efficiency of corporate income tax incentives. Tax holidays remain a popular form of tax incentive. Where a tax holiday is targeted at newly-established foreign-owned enterprises, it is possible for the already existing businesses to transfer their own capital to qualified new firms in order to benefit from the tax relief. This “churning” of business capital for tax purposes can lead to the false impression that new investment has taken place, when in fact the introduction of “new” productive capacity merely reflect a reduction in operating capital elsewhere in the economy. Policy effect has been given a discount.

While offering accelerated depreciation plus loss carry-forward provisions, the enhanced depreciation allowances combined with flexible loss carryover rules can lead to a significant build-up of unutilized “tax losses”. According to the policy-makers’ original purpose, tax losses can be earned by taxable firms to offset tax in future years. But the fact is that the existence of large balances of unused tax-losses creates incentives for firms in a loss

position to “sell” tax-losses to non-qualified firms that are profitable and able to use transferred losses to reduce their host country tax liability. This causes that the outside untargeted group may enjoy the tax incentives and the host country loses tax revenue and fails to reach the initial targeting goal. As theory suggests, host governments, on the one hand, will ensure that rules and administrative practices are in place to limit transnational corporations’ tax avoiding behaviors which can cause unconventional influences on the efficiency of tax incentives. On the other hand, according to the needs of host country’s policy goal as well as the characteristics of alternative tax incentives, they must be cautious in the use of mix of tax incentives to reach the target investment activities.

(2) Inflation can weaken or enhance the efficiency of tax incentives. The efficiency of tax incentives introduced by host country, such as a reduction in tax rate, tax holidays, investment tax credits, investment tax deduction and accelerated depreciation will increase namely but decrease actually for the reason of inflation. When inflation rate is in a certain high level, the actual effective tax rate of enterprises will be higher than a statutory corporate income tax rate. In this situation, tax incentives fail to achieve the designed goal. On the other hand, financing incentives offered by host country may enhance the efficiency of tax incentives because inflation will make firms pay more interests. This can lead to a significant reduction in host country tax revenue.

(3) Home country tax on foreign source income can weaken the efficiency of host country tax incentives. Home country usually applies limited foreign tax credits to foreign source income. Where host country taxation on a foreign investor’s income generated in its territory is equal to (or more than) current home country taxation on foreign source income, there is no increase in the total (combined host and home country tax) tax imposed on the foreign investor’s income generated in a host country. However, in order to attract foreign capital, host country normally introduces a given tax incentive. Where host country taxation on a foreign investor’s income generated in its territory is lower than current home country taxation on foreign source income, there is no decrease in the total (combined host and home country

tax) tax imposed on the foreign investor's income generated in a host country. The effect is a transfer of tax revenue margin from the host country treasury to the home country treasury. Under this condition, if home country has signed agreements including provisions such as tax sparing agreements, with host country, tax incentives offered by host country for FDI will provide a "windfall gain" to investors.

4. Tax incentives for FDI across industrialized countries show a remarkable degree of diversity in approaches. Following UK who had realized industrialization through the industrial revolution in the earliest period, other countries, such as America, Japan etc., had also raised the tide of industrialization. In the process of realizing industrialization, at that time, governments of these countries had still utilized policies such as preferential tariff to encourage FDI indirectly, though they carried out a kind of policy on government not intervening in economy. On the contrary, while emerging industrial countries, such as Singapore, South Korea etc., were propelling industrialization, the fact that state was intervening in economy was prevailing. Therefore, these states took full advantage of preferential taxation policies to give play to the promotive role of FDI on the road to industrialization. They adjust continuously the preferential content of turnover tax and corporate income tax in line with alternative form of national economic development strategy at development stages. After accomplishing industrialization, emerging industrial countries keep on introducing tax incentives to attract foreign capital further to uplift their national science and technology to be in a leading position in the whole world. By contrast, early industrial countries, which are high developed in science and technology, implement unified preferential taxation policies in domestic enterprises and foreign invested enterprises to achieve the policy target aiming for being in an advanced standard in the world all the time. This shows a common point that both early industrial states and emerging industrial countries pay close attention to the preferential taxation policy targets and objectives after the fact that state was intervening in economy was prevailing.

Referring to the policy experiences of industrial countries for FDI, the present-day developing countries in the process of industrialization must offer

alternative preferential taxation policies for FDI on the basis of their own economic characteristics and development goals at various stages. At a start-up stage, generalized preferential taxation policies must be offered to provide more widespread tax incentives; at a developing stage, industry-oriented preferential taxation policies, which are consistent with adjustment of the national industrial structure and economic development strategy, must be offered; while at a take-off stage, preferential taxation policies must be concentrated on investment in high-tech sectors and fields.

5. At present, China is at a take-off economic stage in the course of industrialization. Therefore, its preferential tax policies for foreign-invested enterprises shall be concentrated on the investors in high-tech sectors and fields.

In 1980s, China had established a system of tax policy for foreign-invested enterprises featured by preference under its foreign capital-attracting strategy during its initial reform and opening-up strategy. With deepening ever-increasingly its reform and opening-up strategy, in the beginning of 1990s, China had made a series of adjustments to its income tax policy for foreign invested enterprises, but still the preferential principle has ever been remained. China's preferential tax policy has been playing a significant role in attracting FDI and promoting its economy to develop in the sustained and steady fashion.

China unified its turnover tax system for domestic enterprises and foreign-invested enterprises in 1994 as its socialist market economic system had been established and improved. Since then, a consolidated turnover tax policy has been applying to either domestic enterprises or foreign-invested enterprises. The general preferential policy with respect to turnover tax for foreign investor was adjusted into the preferential turnover tax only for special ones. China's FDI has been still growing steadily in the long term, though there may be some impact on foreign investors in the short term, because of its consolidated turnover tax policy.

However, the existing corporate income tax incentives for foreign invested firms had been established in the beginning of 1990s. In recent 10 years plus, China's social and economic situation has been changing greatly,

there are many aspects unsuitable to meet demands of the objective social and economic development in the existing corporate-level income tax incentives. The aspects unsuitable as follows: (1) China has been reforming and opening up to the outside world for more than 20 years, its total gross domestic product (GDP) amount has ranked in the leading place. This shows the fact that China has moved out of a shortage economic era. Thus, generalized preferential income taxation policies granted to foreign invested productive enterprises does not meet the needs of economic situation caused by the commodity supply-demand relation, and does not meet the requirements to promote productive standard further, either. Moreover, with the ever increasingly significant change of the investment climate in China, it is unnecessary to grant generalized preferential income taxation policies to foreign invested productive enterprises. (2) The preferential taxation policies in special economic zones, southeast coastal regions have aggravated regional economic gap, which do not meet the requirements of the coordinated development regional economies. (3) The discrepancy of the income tax policy between domestic enterprises and foreign invested enterprises is unfavorable to the development of domestic enterprises. Compared with the overseas firms, domestic enterprises are in a discriminative position. Especially, after China's entry into WTO in 2001, foreign invested enterprises will be able to compete with domestic enterprises in more fields; the foreign invested enterprises enjoy more tax incentives in corporate income tax aspect than domestic enterprises. This will make domestic enterprises be in a more unfavorable position in market competition.

In 2007, China adopted a consolidated income tax system for both domestic enterprises and foreign-invested enterprises to meet the requirements of change in its social and economic conditions. The preferential income taxation policies for foreign investors had been adjusted within the framework of the consolidated income tax system to come into effect as of January 1, 2008.

For the purpose of the unified enterprises income tax system, both the pre-tax deduction scope and criterions and the tax rate and tax preferential incentives had been unified. Changes in preferential tax for foreign-invested enterprises are listed as follows: (1) The generalized preference policies for



foreign-invested enterprises abandoned; (2) The preferential income taxation policies for export-oriented foreign-invested enterprises abandoned; (3) The local preferential taxation policies for special economic zones and southeast coastal regions abandoned, on the contrary, those for western regions since the Western Development Strategy retained; (4) Those for encouraged industries, sectors and fields retained and strengthened; (5) Those for infrastructure investment adjusted; (6) Those only for domestic enterprises in the past can be applied to foreign-invested enterprises as well.

Adjustments in the income taxation policies for foreign-invested enterprises may impose some impact on China's FDI in the short term. However, in the long term, this will become less because of rising overall national strength and improvement in investment environment. We are confident that the newly-adopted enterprise income taxation policies meeting the requirements of China's current social and economic development will contribute to improve China's FDI quality and promote its industrialized progress further.

China's tax policy for foreign-invested enterprises is being developed toward the direction of its integration with that for domestic enterprises, but tax incentives for foreign-invested enterprises shall still be remained.

**Key Words:** Foreign Direct Investment; Tax Policy