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# 内容提要

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转让定价作为经济全球化背景下企业财务管理中重要的一环，其终极目标是服从于企业的目标——股东价值最大化或利润最大化，等等。而减轻税负、调节各子公司利润等具体目标是为企业的最终目标服务的。以趋利为第一动机的企业会利用各国税法及税收管理上的漏洞，采取不与法律相抵触的转让定价手段，通过关联交易实现利益最大化。从征税方的角度讲，会在经济发展的不同阶段，根据不同政策需要，对转让定价采取不同的态度。例如，渴望吸引外资的发展中国家，可能不会对跨国公司的转移定价行为实施严格的监管；国际税收竞争的压力会迫使一些国家加强对跨国公司转让定价的规范。

改革开放以来，越来越多的跨国公司在中国投资举办企业，从事各种经营活动。特别是中国加入 WTO 以后，这种投资的广度和深度、规模和速度，都有逐步提高和加快的趋势。跨国公司在我国的投资经营活动，一方面带来了先进的管理经验、人才和技术，弥补了国内建设资金的不足，对繁荣我国经济、提高我国的技术和管理水平起到了重要的作用；但另一方面，跨国公司为了谋求利润最大化和税负最小化，不仅充分享受了我国政府给予的大量税收优惠政策，还利用我国和别国之间的税制差异以及我国涉外税收制度中存在的漏洞，通过各种不与我国现行法律相抵触的手段，如转让定价等，规避或减少税收负担。跨国公司的避税行为，损害了中方投资者的利益，造成我国税收的严重流失，也破坏了我国境内外商投资企业间的公平竞争，给我国的投资环

境带来负面影响,影响了我国涉外经济的健康发展和国际经济的正常交往。

全球化的深入发展使我国的改革开放进入到一个新阶段,对于外国直接投资的要求已从重数量、规模逐渐演变为重质量、效益。国务院总理温家宝在十届全国人大五次会议上作政府工作报告时强调,要全面提高对外开放水平。注重提高引进外资质量和优化结构,更多地引进先进技术、管理经验和高素质人才。党的十七大报告提出,要拓展对外开放广度和深度,提高开放型经济水平。因此,加强对外商投资企业利用转让定价进行避税活动的研究,有助于提高我国利用外资的质量和效益。本书主要对外商投资企业利用转让定价避税的存在性、动机、影响因素、管理现状等进行了研究,并在此基础上提出如何对其加强监管的建议。

本书从税收角度对在华外商投资企业的转让定价问题展开研究,共分为六章。全书沿着提出问题——理论分析——现状分析——对策建议的思路展开论述,在结构上层层递进,最终目标是对在华外商投资企业的转让定价问题做出客观评价,并就加强和完善对于外商投资企业转让定价的税务管理提出政策建议。

第一章为导论,阐明本书的研究背景、研究目的和主要研究内容,介绍国内外在转让定价领域与本研究相关的部分成果,确立本书的研究基础。

第二章探讨基于税收角度的转让定价所涉及的一些基本问题,包括转让定价的产生和转让定价税收问题的根源,以及转让定价税制的发展。本章通过吸收目前转让定价理论和实证研究中的最新成果,结合国内外实践,立足国际税法基本原则,对转让定价的目标、功能、性质、方法进行了归纳总结,深入分析和界定了转让定价税制中的一些基本概念和基本原则,对转让定价的调整方法进行了客观评价。

第三章利用收集到的我国某城市所有外商投资企业的统计数

据,采用一元线性回归等统计学方法,研究外商投资企业转让定价的存在性以及转让定价的动机。数据分析包括外资方式与利润率之间的相关关系,企业规模与利润率的关系分析,国别与利润率的关系分析,企业平均利润率和母国法定税率的一元线性回归分析,最后验证了外商投资企业转让定价的存在性和避税动机。

第四章根据调查问卷的访问结果,对于外商投资企业转让定价的现状进行研究,调查和分析的内容包括外商投资企业转让定价的目标、影响因素、方法,以及对于税务监管的敏感程度等。本章在参考国外相关文献的基础上,设计出适合中国国情的调查问卷,通过适当的介质发给调查目标并尽可能多地取得反馈,从微观角度对目前外商投资企业转让定价的现状进行全面深入的分析,为转让定价税务管理的研究提供基础信息和依据。

第五章在阐述我国转让定价税制发展历史的基础上,分析外商投资企业转让定价的税务管理现状,探讨我国转让定价税务管理相对弱化、转让定价税制不健全的深层原因,并对现行转让定价税制的主要内容作了评析。

第六章为对策研究。在经济全球化和我国加入 WTO 的现实背景下,结合上述实证研究的结果,基于税收制度的进一步完善和税收征收管理的科学化、精细化建设,从健全法律法规、提高税收征管能力、改革管理体制、优化税收环境、加强国际协调等方面提出政策建议。

本书的主要结论如下:

- 跨国公司利用转让定价避税与国际税法原则相抵触,而各国税务当局也对此负有重要的责任。这是由于各国主权派生出的全面税收管辖权引致各国税收制度的差异性和多样性,从而产生了国际税收分配关系中的国家间冲突。对于转让定价扭曲正常交易行为的纠正,如果没有扩展为相关国家的共同行动,则会从征税方引发对国际税法原则的挑战。所以,基于维护国际税法原

则、规范国际税收秩序的目的，征纳双方对于消除不当转让定价行为均负有义务。

- 转让定价具有避税的性质。在税务管理实践中，税务部门并不关注转让定价动机如何，如其违反正常交易原则，偏离正常交易值域，则认定其避税，并加以规制。因此，我们所讲的转让定价具有避税的性质，仅指具有关联关系，违背正常的市场原则交易，由此减少或免除了纳税义务的转让定价行为。转让定价的避税性质决定了税务部门对其的管理不同于对逃税的管理。

- 间接证明了外商投资企业转让定价行为的存在。我国外商投资企业的亏损情况相当严重，各年中都有半数以上的企业处于亏损状态，纳税比例非常低，并且没有改善的趋势，这与我国经济快速增长的趋势是不相符合的，说明外商投资企业利用转让定价避税的现实存在性。

- 外商投资企业中的外方投资者所在国的所得税税率与企业的利润率及纳税比例呈正相关关系，即外方所在国的税率越高，则外商投资企业转让定价的动机越弱，企业的利润率和纳税比例越高，验证了我国外商投资企业转让定价的避税动机是存在的。

- 投资来源于我国台湾地区的外商投资企业的利润率、纳税比例显著低于我国香港地区，验证了外商投资企业转让定价的动机中有规避政治风险的因素。

- 当前影响我国外商投资企业转让定价的诸多因素中，最重要的三个因素分别是：“两国的所得税税率差”、“监管部门有关转让定价和海关方面的相关规定”以及“公司的利润”，而“通货膨胀率”、“保持足够流动资金的需要”、“对当地资金的需求”、“转让产品的数量”等都是属于重要性较低的因素。

- 多数外商投资企业转让定价的目的是公司整体利润的最大化和合理衡量本公司的业绩，而减少税负并不是企业进行转让

定价最首要的目的。

● 环境因素对外商投资企业转让定价税务管理的效率高低起着极为重要的作用。从一定程度上讲,对于税务管理的影响甚至要大于因税务部门自身不足引致的影响。这些因素包括:以区域经济增长为绩效目标的地方政府对引进外资的片面追求;跨国公司的内部化优势与国际税收竞争的结合;其他管理部门不同的利益诉求对政策协调和信息共享的效率影响。

针对外商投资企业利用转让定价避税的现状,笔者反对将转让定价的非税动机和税务动机区别对待的观点,只要转让定价行为损害到国家的税基,对于税务管理形成实质性的挑战,无论其动机如何,税务部门都应依据税收管辖权对其实施管理。而完善我国的转让定价税务管理体系,不仅要以实现税收负担公平和维护国家权益为目标,更要着眼于经济全球化下优化我国的投资环境、提高外国直接投资效率、改善经济运行质量等宏观目标。

对于转让定价的规制,一是通过提高转让定价税制的法律级次,程序法和实体法并重,各个层次的法律规范相互补充,并协调民法、商法中与转让定价相关的内容,建立起统一、规范、系统、全面的转让定价法律体系。二是应结合我国投资环境的改善,在管理机构的设置、税源监控的实施、税务检查的方向、税收情报的交换、国际协调等方面进行综合治理。

本书的创新表现在以下四个方面:第一,在国内目前的研究成果中,对于转让定价的存在性、转让定价动机的研究,绝大部分为定性研究,缺乏数据的佐证,因而缺乏说服力,仅有徐海康(2002)和陈屹(2005)的研究是定量分析,但是他们的研究结论并不一致。本书借鉴了前人的研究思路,选择最新的外商投资企业样本数据进行更为严谨的定量研究,以期获得更有说服力和更有价值的结论,为税务部门有针对性地实施转让定价税务管理提供依据。第二,在国外有关转让定价的实证研究中,很多使用



了问卷调查或访问的方式,而在国内,仅有何玉润(2005)采取过此种方式。本书借鉴 Tang(2002)的调查问卷内容,设计出体现我国转让定价税务管理背景与现状的问卷,就外商投资企业转让定价行为的目标、方法、影响因素、对转让定价税务管理的敏感程度等进行调查分析,以获得较为真实的研究目标的信息,从而丰富了国内在转让定价方面的实证研究。第三,对国内外关于转让定价的研究文献进行了系统梳理,特别是对有关转让定价的实证研究成果,从具体研究方法、研究结论等方面进行了全面细致的归纳总结,而国内由于相关实证研究较少,在这方面还缺乏系统的文献总结。第四,本书同时采取了利用样本数据回归和问卷调查两种实证研究方法,这在国内有关转让定价的相关研究中尚属首次。而且,本书根据实证研究的结论提出对外商投资企业转让定价税务管理的政策建议,因而更具针对性和说服力。

本书的研究局限表现在两个方面。一是数据来源的局限性。本书第三章的数据来源于2000~2005年我国中部某省会城市外商投资企业所得税汇算清缴数据,有可能无法代表我国外商投资企业的整体情况,如果能够掌握更全面的外商投资企业数据和有可比性的内资企业的数据,所得结论的可靠性将更强。二是研究方法的局限性。本书第四章的调查问卷内容和形式是在借鉴了 Tang 的问卷模板,并结合我国现状形成的。调查问卷法虽具有结果容易量化、便于统计处理与分析、可以进行大规模调查等优点,但由于本问卷内容涉及外商投资企业的敏感问题,且本人能力所限,回收的有效问卷仅47份,虽然达到了统计学中大样本的要求,但难以代表外商投资企业的总体情况。另外,问卷调查者的主观性会影响调查问卷的信度和效度,从而影响研究结果。

# Abstract

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Transfer pricing is one important link of corporate financial management against the background of economic globalization, its ultimate goal is to be subordinated to the goal of enterprises—maximizing shareholders' value or profits, and the concrete goals such as reducing tax burden, coordinating profits among different subsidiaries etc are in the service of the ultimate goal of enterprises. Motivated by making profits, enterprises are bound to make use of loopholes of tax law and taxation management, adopting illegal means to maximize their profits. From the perspective of tax collectors, they will, in accordance with the requirements of different policies, hold different attitudes towards transfer pricing in different stages of economic development. For instance, the developing countries that are eager to invite foreign investment, are probably reluctant to impose strict supervision upon transfer pricing of multinational corporations; however, tax pressures from the international competition will force some countries to tighten the standardization of transfer pricing of multinational corporations.

Since the policy of reform and opening up, more and more multinational corporations have been investing in China to establish enterprises engaged in various business lines. After China's accession to WTO, in particular, this kind of investment is witnessing an ever increasing tendency in range, depth, scale and speed. The investment activities of multinational corporations in China brings us, on the one

hand, advanced managerial experience, talents and skills, making up fund shortage of China's economic development, which plays a significant role in promoting China's economic prosperity and raising our technical and managerial skills; however, on the other hand, in order to maximize their profits and minimize their tax burdens, multinational corporations not only fully enjoy a lot of favorable tax policies offered by the Chinese government, but also take advantage of the differences between China's tax system and the tax systems of other countries, the loopholes of China's foreign-related tax system, and resort to all sorts of means that contravene China's existing law in order to avoid or reduce their tax burdens. The tax avoidance of the multinational corporations harms the interests of Chinese investors (In Sino-foreign joint ventures and cooperative businesses), gives rise to loss of China's tax revenue, does great damage to the fair competition among foreign-funded companies within China's territory, adversely affects China's investment environment and interferes with the healthy development of China's economic relations with foreign countries and exchange among international economies.

The further development of globalization brings China's reform and opening up into a new stage which is characterized by the shift from the focus on quantity to that on quality and benefits required of foreign direct investment. Chinese Premier Wen Jiabao emphasized in his report on government work at the Fifth Session of the Tenth National People's Congress that, China should further open itself to the outside world in an all-round way. Lay stress on improving the quality of foreign investment and optimizing structure and bring in more advanced technologies, managerial experience and high-quality talents. Therefore, enhancing researches on foreign-funded enterprises' tax

avoidance by transfer pricing is beneficial to improving quality and benefits of China's utilization of foreign funds. This paper mainly studies the existence, motivation, influencing factors and management situation of foreign-funded enterprises' tax avoidance by transfer pricing and then puts forward suggestions of how to reinforce supervision.

This paper is divided into six chapters focused on the main theme of tax issue of transfer pricing of foreign-funded companies in China. The whole thesis follows the thread of raising the issue—*theoretical analysis—current situation analysis—recommended countermeasures* going forward progressively in structure, and its final goal is to make an objective assessment of the issue of transfer pricing of foreign-funded companies in China and to raise policy suggestions of how to strengthen and improve tax administration of foreign-funded companies.

Chapter One—Introduction, expounds background, purpose and major contents of the research, presents part of results both home and abroad related to this thesis on the issue of transfer pricing and establishes the research foundation for this paper.

Chapter Two approaches some basic questions related to transfer pricing from the perspective of tax including the birth of transfer pricing, the root-cause of tax problems of transfer pricing and the development of transfer pricing tax system. By absorbing the latest results in the fields of transfer pricing theories and case research, combining the practices home and abroad and based on the fundamental principles of international tax law, this chapter also sums up the objective, function, nature and methods of transfer pricing, makes an in-depth analysis and definition of some basic concepts and fundamental principles of transfer pricing tax system and makes an objective appraisal of the adjustment methods of transfer pricing.

Chapter Three makes use of the collected statistics of all the foreign-funded enterprises in a certain city of China to study the existence and motivation of transfer pricing of foreign-funded companies by adopting statistical methods of simple linear regression and so on. Data analysis includes relations between foreign investment pattern and profit margin, between enterprise's scale and profit margin, between nationalities and profit margin and simple linear regression analysis of enterprises' average profit margin and tax rate differences between China and the host countries of the foreign-funded enterprises, finally proving the existence of transfer pricing and tax avoidance motivation of foreign-funded enterprises.

Chapter Four will, according to the interviewed results of questionnaires, study the current situation of transfer pricing of foreign-funded enterprises. The contents of the investigation and analysis include the goal, influencing factors, methods and sensitiveness to tax supervision of transfer pricing of foreign-funded enterprises. This paper, based on referring to foreign related literature, designs the questionnaires geared to China's actual conditions, receives as much feedback as possible by distributing the questionnaires to the investigated objects through proper media and makes a comprehensive in-depth analysis of the current situation of transfer pricing of foreign-funded enterprises from micro perspective to provide basic information and foundation for research on tax administration of transfer pricing.

Chapter Five will, on the basis of elaborating the development history of China's tax system of transfer pricing, analyze the tax administration situation of transfer pricing of foreign-funded companies, probe into the underlying reasons for the weak tax administration of transfer pricing in China and unsound tax system of transfer pricing

and make an evaluation and analysis of the major contents of the existing tax system of transfer pricing.

Chapter Six focuses on the study of countermeasures. Under the background of economic globalization and China's entry into WTO, combining the aforesaid case research results, and based on the improvement of tax system and the development of tax collection management in a scientific and meticulous manner, this chapter will put forward policy suggestions in terms of perfecting laws and regulations, enhancing the abilities of tax collection and management, reforming management system, optimizing tax collection environment and strengthening international coordination and so on.

Main conclusions are as follows:

1. Transnational corporations take advantage of transfer pricing to avoid tax, which goes against the principles of international tax law and at the same time, tax authorities of all the countries concerned are also responsible for it because the comprehensive tax jurisdiction derived from the sovereignty of various countries brings about differences and diversities of tax systems in different countries thus leading to conflict among countries in international tax distribution relations. In correcting the behavior of distorting normal transactions by transfer pricing, if it doesn't extend to common actions taken by relevant countries such as international tax cooperation or coordination, then the tax collectors will challenge the principles of international tax law. Therefore, both the tax payers and payees are under the obligation to eliminate the illegal transfer pricing actions in a bid to uphold the principles of international tax law and standardize the orders of international tax law.

2. Transfer pricing is of tax avoidance in kind. In tax administra-

tion practices, the tax administration doesn't pay attention to the motivation of transfer pricing, but if it runs counter to the Arm's Length Principle and deviates an Arm's Length range, then it will be thought to be tax avoidance and should be regulated. Thus, when we say that transfer pricing is of tax avoidance in kind, we mean the act of transfer pricing that has incidence relations, conducts transactions against market principles and thereby reduces or escapes the obligation to pay tax. The tax avoidance nature of transfer pricing determines that tax avoidance management by the tax administration is different from that of tax evasion.

3. The foreign-funded companies suffer great losses, almost half of them running at a loss; besides, their tax payment proportion is very low and there is no tendency to improvement. This does not accord with China's rapid economic development and indirectly proves the existence of transfer pricing of foreign-funded companies in China.

4. The income tax rate of the host countries of the foreign-funded companies bears a positive correlation with enterprises' profit margin and tax payment proportion, that is to say the higher the tax rate of the host countries of the foreign-funded companies is, the weaker the motivation of transfer pricing of the foreign-funded companies is and the higher enterprises' profit margin and tax payment proportion are, which proves that the tax avoidance motivation of transfer pricing of the foreign-funded companies does exist.

5. The profit margin and tax payment proportion of those foreign-funded companies from Taiwan are significantly lower than those from Hong Kong, which proves that tax avoidance motivation of transfer pricing of the foreign-funded companies involves the factor of avoiding political risks.

6. Among various factors which influence the transfer pricing of the foreign-funded enterprises in China, the most important three are: the income tax rate differences between the two countries, regulations of the supervisory bodies and customs in relation to transfer pricing and firms' profits. However, inflation rate, maintaining sufficient circulating funds, needs for local capital and quantity of transfer products are factors of minor importance.

7. The objectives of transfer pricing for most foreign-funded enterprises are to maximize their overall profits and make a rational judgment of their performance, however, reducing tax burdens isn't their primary objective of transfer pricing.

8. The Environmental factors play an extremely significant role in determining the efficiency of tax administration of foreign-funded enterprises. To a certain degree, their influence on tax administration is even greater than the deficiencies of the tax department itself. These factors include: undue emphasis on the invitation of foreign investment placed by local governments where regional economic growth is taken as the performance goal; the combination of transnational corporations' interiorization advantages and international tax competition; influence of other administrations' interests on the efficiencies of policy coordination and information sharing.

In view of the existing situation of foreign-funded enterprises making use of transfer pricing to avoid tax, this thesis is opposed to the viewpoint of making a difference between non-tax motivation and tax motivation. As long as the act of transfer pricing harms national tax collection basis and poses a substantive challenge to tax administration, no matter what the motivation is, the tax administration should impose management in accordance with tax jurisdiction. While, to im-



prove our country' tax administration system of transfer pricing, we should not only aim to make tax burdens fair and maintain national interests, but more importantly, optimize our country's investment environment from the angle of economic globalization, raise the efficiency of foreign direct investment, improve economic running quality and other macro-objectives.

As to the supervision of transfer pricing, firstly, we should increase the legal status of transfer pricing tax system, lay equal stress on adjective law and substantive law, complement laws and regulations at all levels, coordinate transfer pricing related contents in civil law and commercial law and establish a unified, standard, systematic and all-inclusive transfer pricing legal regime. Secondly, we should carry out comprehensive administration in terms of the setup of management institutions, the implementation of tax source control, the direction of taxation checkup, the exchange of tax information and international coordination as well as improve China's investment environment.

The originalities of this paper are revealed in the following four aspects. Firstly, among the current domestic research results, the vast majority of the researches on the existence and motivation of transfer pricing are qualitative, lack the evidence of data and therefore are not so convincing. Although the only researches conducted by Xu Haikang (2002) and Chen Yi (2005) are quantitative, their conclusions are not consistent with each other. Drawing upon the research tread of the predecessors, this paper selects the up-to-date sample data from foreign-funded companies to conduct more rigorous quantitative research, hoping to come to more convincing and valuable conclusions to provide bases for the tax administration to manage