

International Tax Primer

国际税收基础

第二版

[美] Brian J. Arnold
Michael J. McIntyre 著

国家税务总局国际税务司张志勇 等译

王裕康 审校



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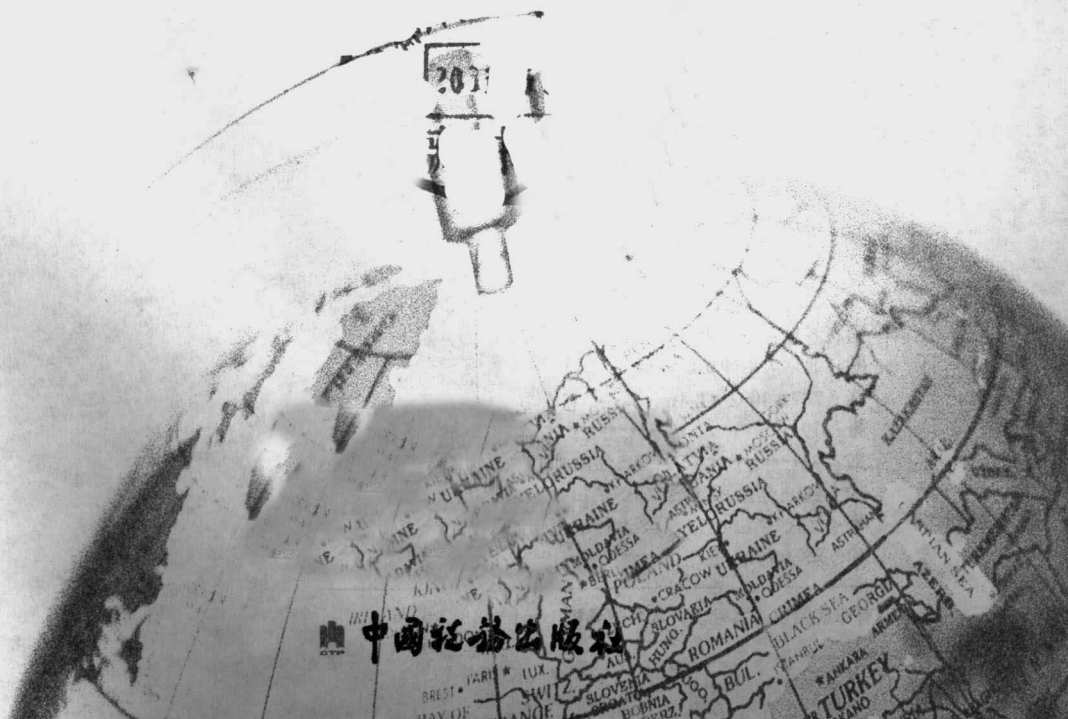
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前 言

按照一种标准字典的定义,“Primer”是“关于基础原理的书籍”(如 a primer on phonetics——语音学基础原理),但也可以定义为“小型专题入门书籍”(如 a primer on chemistry——化学入门)或者是“进行初级指导或者培训的读本”(如 a primer on politics——政治学初级读本)。本书含有以上全部的意思。

本书的主题是国际税收。如书中第一章所述,“国际税收”已经成为通用语言,但并不是理想的表述。本书要讲的是特定国家的所得税收中的国际方面,重点是税收协定,以及此国与其贸易伙伴进行所得税制协调的其他合作安排。

九十年代初我们与经济合作与发展组织(OECD)合作为前苏联和前苏联阵营国家的税务干部举办国际税收研讨会,在此基础上我们出版了本书的第一版。国际税收对这些从中央计划经济向市场经济过渡的国家日益重要。我们想强调本书代表我们自己的观点,如果您读了本书,也就理解其不代表经济合作与发展组织的观点。新版补充了1995年以来的最新发展,对几个专题进行了扩展,并增加一章专门处理一些重要的新兴问题。

我们希望借此机会感谢原加拿大财政部的阿兰·肖特(Alan Short)和悉尼大学法律系的理查德·范(Richard Vann),他们为本书的第一版初稿提出了有益的意见。我们也想感谢阿米·贾科布(Amy Jacob)、艾瑞恩·卡利(Erin Carley),特别是卡罗尔·哈格里夫斯(Carol Hargreaves)为第一版的出版所作的高质量的书稿整理工作。在新版的准备工作中,我们感谢卡罗尔·哈格里夫斯和德温·麦金太尔(Devin McIntyre)。我们也互相感谢对方,联合著书向来不易,而我们仅仅是认识对方而已。

| | |
|-------------------|-----------------------|
| 布莱恩·阿诺德 | 迈克尔·麦金太尔 |
| (Brian J. Arnold) | (Michael J. McIntyre) |
| 于加拿大伦敦 | 于美国底特律 |

Preface

According to one standard dictionary definition, a *primer* is a “book of elementary principles” (a~on phonetics). A primer is also defined as “a small introductory book on a specific subject” (a~on chemistry) and as “something that gives or is a means of giving elementary instruction or training (a~on politics). This book is a primer in all of these senses.

The subject matter of this book is international tax. As we explain in the first chapter, the term “international tax,” although commonly used, is a less than ideal term. What the book is about is the international aspects of income taxation in particular countries. We give major emphasis in this book to tax treaties and other cooperative arrangements that help coordinate the income tax systems of particular countries with the tax systems of their trading partners.

The first edition of this book grew out of our work with the OECD during the early 1990s in conducting seminars on international tax for tax officials in countries that were formerly part of the Soviet Union or the Soviet bloc. International tax has become very important to these countries, which are in transition from centrally-planned economies to market economies. We should emphasize the obvious point that this primer reflects our own views and, as a reading of the text shows, not the views of the OECD. This edition updates the book for developments since 1995 and expands our treatment of several topics. We have also added a new chapter to deal with some important emerging issues.

We thank Alan Short, formerly with the Canadian Department of Finance, and Richard Vann of the Faculty of Law at the University of Sydney for their helpful comments on an early draft of the first edition of the primer. We also thank Amy Jacob, Erin Carley, and especially Carol Hargreaves for their outstanding work in preparing the manuscript of the first edition for publication. In preparing this new edition, we offer our thanks to Carol Hargreaves and Devin McIntyre. We also thank each other. Joint authorship is never easy, and we are still on speaking terms.

Brian J. Arnold, Michael J. McIntyre,
London, Canada Detroit, USA

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1 绪论

A. Objectives of this Primer

This primer on international taxation provides the reader with an introductory analysis of the major issues that a country must confront in designing its international tax rules and in coordinating those rules with the tax systems of its trading partners. At one time, international tax issues were important to a rather small circle of tax specialists, primarily the tax advisers of large multinational corporations and their antagonists in the tax departments of a handful of governments. As the countries of the world have become increasingly integrated economically, the importance of these issues has mushroomed. Many small and medium size firms now engage in cross-border transactions that cause them and their tax advisers to face international tax issues rather regularly. And most national governments must care about international tax, both to present a hospitable environment for foreign investment and to protect their revenue base.

Although this primer is intended predominantly for students, government officials and tax practitioners who are confronting international tax for

1.1 本书的目的

《国际税收基础》一书向读者提供了对国际税收主要问题的初步分析，这些问题都是一个国家在设计本国国际税收规则以及与其贸易伙伴进行国际税收规则协调时不可避免要遇到的。曾几何时，国际税收问题仅仅对一小部分税务专家具有重要意义，主要限于大的跨国公司的税务顾问以及他们在少数几个国家的税务机关中的对手。随着世界各国经济一体化的程度越来越高，这些问题变得愈发重要。许多中小规模的公司现在也有跨境交易，使得他们和他们的税务顾问必须定期地处理国际税收问题。与此同时，大部分国家的政府必须重视国际税收，一方面是为了创造一个吸引外资的良好环境，另一方面，也是为了保护本国的税基。

尽管本书主要是面向初步接触国际税收问题的学生、政府官员和税收执业者，我们同时希望

the first time, we fondly hope that those with considerable experience in international tax also will find it useful. In our work, we have many times been forced to return to fundamental principles in analyzing what might appear to be uncomplicated tax issues. In essence, the objective of this primer is to articulate these fundamental principles.

International tax planning is firmly grounded, if not mired, in the minutiae of a particular country's tax rules. Thus, we are obliged to provide some level of detail on some issues in this primer if our discussion of these issues is to have any practical significance. We would defeat the objective of a primer, however, if we did not focus on general principles and fundamental structure. We balance the needs for the specific and the general by illustrating general principles with frequent references to the actual practices of a variety of countries.

The many examples provided throughout this primer are given for illustrative purposes only and are not meant to be definitive statements about the laws of particular countries. No attempt is made to survey the practices of all countries. We have avoided writing from the perspective of any particular country, including the countries with which we are most familiar, Canada and the United States. Instead we have tried to identify and discuss issues of international tax that are important to many countries.

In section 1, B of this introductory chapter, we describe the meaning of the term "international tax." Section 1, C identifies some worthy goals that should guide countries in designing their inter-

在国际税收方面具有相当经验的人士也能从中获益。在我们的日常工作中,我们经常被迫回到基本原理来分析表面上看起来非常简单的税收问题。实质上,本书的目的就是阐述这些基本原理。

国际税务筹划深深地植根于(如果不是孳生于)某一特定国家的繁琐的税收规章之中。因此,如有实际必要,本书也须就某些问题进行一定程度的详尽的讨论。然而,我们也深知,如果不集中于一般原理和基本架构的话,则会偏离本书的原意。我们经常援引各国的实际做法来阐明一般性原理,通过这种方式来平衡读者在具体性和一般性之间的不同要求。

本书列举的大量的案例,只是用于说明目的,并不是对特定国家的法律的权威陈述。我们也没有试图调查所有国家的实际做法。我们同时也避免以某一特定国家的视角来撰写本书,包括我们最熟悉的国家:美国和加拿大。与此相反,我们试图辨别和讨论对大部分国家都具重要意义的国际税收问题。

在本绪论的第2部分中,我们描述了“国际税收”一语的含义。在第3部分中,我们列出了一些应追求的目标,以指导各国

national income tax rules. Section 1, D describes the role of the tax adviser in planning international transactions and offers a few examples of typical tax planning techniques.

Chapter 2 describes the rules that countries have adopted for defining their jurisdiction to tax. The mechanisms available to mitigate the risks to taxpayers of international double taxation are addressed in Chapter 3. Chapter 4 describes the rules for adjusting intercompany transfer prices to prevent the avoidance or evasion of tax by multinational corporations. Chapter 5 discusses a variety of anti-avoidance rules dealing with international transactions. Chapter 6 provides an overview and analysis of tax treaties. Several important emerging issues that cut across the issues addressed in the prior chapters are addressed in Chapter 7. Those issues include the OECD's initiative against harmful tax competition, the tax aspects of hybrid entities, and the taxation of income derived from electronic commerce.

There is an extensive glossary of international tax terms after Chapter 7. The first time a term included in the glossary is used in the text, it is shown in bold-face type. The definitions of the terms in the glossary reflect their meanings in an international context, although some of the terms may have a slightly different meaning in a domestic context. We have also provided a selected bibliography of reference material dealing with international tax, including a list of periodicals that are devoted to international tax.

制定对所得的国际征税规则。第4部分描述了税务顾问在筹划国际交易中的作用,并提供了几个典型的有关税收筹划技巧的例子。

第2章描述了各国在定义税收管辖权时所采用的规则。第3章讲述了纳税人为降低和消除国际双重征税的风险可以采用的机制。第4章描述了公司间转让定价调整的规则,以防止跨国公司逃税和避税。第5章讨论国际交易中的各种反避税规则。第6章对税收协定进行了纵览和分析。以前各章所没有涉及的一些新出现的重要问题在第7章进行了讨论。这些问题包括经济合作与发展组织(OECD)针对有害税收竞争所采取的举措,双性实体的税收问题,以及对电子商务所得的征税。

第7章之后是一个详尽的国际税收术语词汇表。词汇表中的术语在书中第一次出现时使用粗体字。词汇表中对术语的定义反映其在国际环境中的含义,有些术语在国内环境中使用时的含义可能会与其在国际环境中使用时的含义有细微的差别。书的最后还提供了—个所引用的部分国际税收书目,包括专门研究国际税收问题的期刊。

B. What is International Tax?

The term “international tax” may be considered a misnomer. What we refer to here for convenience as international tax law is more correctly referred to as the international aspects of the income tax laws of particular countries. With minor exceptions, tax laws are not “international.” They are creations of sovereign states. Nor is there an overriding international law of taxation, arising either from the customary practice of sovereign states or from the actions of some international body such as the United Nations (UN) or the Organisation for Economic Co-operation and Development (OECD).

Tax treaties are perhaps the most obvious “international” aspect of a country’s income tax system. Most developed countries have entered into tax treaties with their major trading partners, and often with their minor trading partners as well. Many developing countries also have extensive treaty networks. The growth of tax treaties over the past decade has been exponential. There are now over 2,000 bilateral tax treaties in existence. These treaties impose significant limitations on the taxation powers of the treaty partners. Tax treaties, however, do not generally impose tax; in most countries, they are exclusively relieving. Although tax treaties are binding agreements between sovereign states, they generally do not have any effects on taxpayers unless they are specifically incorporated into a country’s tax law by domestic statute.

1.2 什么是国际税收

“国际税收”一语可谓用词不当。我们这里为方便所称的国际税法其实称为特定国家的所得税法的国际方面更为恰当。除少数特例外，税法并不是国际性的。他们是主权国家的产物。也不存在因为沿袭某些主权国家的惯例，或是由联合国或经济合作与发展组织等国际组织的共同行动而产生的高于一切的国际税收法律。

税收协定可能是一个国家的所得税制中最明显的“国际”方面了。大部分发达国家都已经与它们的主要贸易伙伴签订了税收协定，有的还与非主要贸易伙伴签有协定。很多发展中国家同样也有广泛的协定网络。过去10年中税收协定一直以几何级数发展，现在有超过2000个双边税收协定。这些税收协定对协定双方的征税权都做出了重大限定。然而，税收协定一般不开征税，在大部分国家中，协定被专门用于免除税收。尽管税收协定是主权国家之间具有约束力的协定，但除非国内法律专门将其纳入国内税法，一般对纳税人无效力。

The scope of what we are calling international tax in this primer is extremely broad. It encompasses all tax issues arising under a country's income tax laws that include some foreign element. The income tax aspects of cross-border trade in goods and services is one important category of international tax. Another is cross-border manufacturing by a multinational enterprise. A third is cross-border investment by individuals or by investment funds. A fourth category is the taxation of individuals who work or do business outside the country where they usually reside. An activity falling within one of these categories usually presents an international tax issue under the tax laws of at least two countries.

Some international tax issues arise out of extremely complex situations. The reorganization of a multinational corporation with foreign subsidiaries in several countries is an example. Other situations may be quite simple. For example, an international tax issue would arise under the tax laws of most countries if a resident individual attempts to claim a deduction for the support of a dependent spouse or child residing in a foreign country.

The international tax law of a country has two broad dimensions:

(1) the taxation of resident individuals and corporations on income arising in foreign countries, and

(2) the taxation of nonresidents on income arising domestically.

The first dimension we refer to in this primer as the "taxation of foreign income." We refer to the second dimension as the "taxation of nonresi-

在本书中我们所称的国际税收的范围是非常宽泛的,包括根据一个国家的所得税法所发生的任何具有外国要素的税务问题。对货物和服务的跨境贸易的所得税是国际税收的一个重要类别。另一类别是跨国企业的跨境加工制造。第三类是个人或投资基金的跨境投资。第四类是对那些在其经常居住国之外工作或者进行营业的个人的征税。符合上述四个类别之一的活动就可能根据两个以上国家的税法产生国际税收问题。

某些国际税收问题产生于极端复杂的情况之中。在几个国家拥有子公司的跨国公司的重组就是一个例证。其他的情况可能很简单。例如,一个国家的居民个人要求扣除其居住在外国的被赡养的配偶或者儿女的赡养费时,根据大部分国家的税法就会产生国际税收问题。

一个国家的国际税法包含两大部分:

(1) 对居民个人和公司从境外取得的所得的征税;

(2) 对非居民从境内取得所得的征税。

在本书中我们将第一部分称为“对境外所得的征税”。第二部分我们将其称为“对非居民的征

dents.” Obviously, what is the taxation of foreign income for one country (generally referred to as the residence country) is the taxation of nonresidents for another country (generally referred to as the source country).

A transaction involving the export of capital or other resources from a country is often referred to by tax analysts as an outward-bound or “outbound” transaction. Conversely, the term inward-bound or “inbound” transaction is commonly used to refer to a transaction involving the import of capital or other resources from a foreign country. A transaction that a country considers to be an outward-bound transaction typically involves its rules for taxing the foreign income of resident taxpayers. Inward-bound transactions, in contrast, typically invoke a country’s rules for taxing nonresidents on domestic income. In some circumstances, a single transaction may have consequences under both sets of rules. An example is the liquidation of a foreign affiliate into a domestic parent corporation.

International tax extends beyond the income tax. It may include estate taxes, gift taxes, inheritance taxes, general wealth taxes, sales taxes, customs duties, and a variety of special levies. The international aspects of estate and gift taxes are particularly important. For example, such wealth transfer taxes have important international implications when a resident receives a bequest or gift from a nonresident or non-domiciled individual or when a person dies owning property in a foreign country. These important issues are beyond the scope of this book, which is restricted to international aspects of income tax law.

税”。很明显，一国（一般称为居民国）对境外所得的征税，就是另一国对非居民的征税（一般称为来源国）。

涉及资本和其他资源从一国输出的交易一般被税收分析人员称为“出境”交易。相反，“入境”交易一般涉及资本或其他资源从某一外国输入到本国。一国所认定的出境交易将典型地涉及对居民纳税人的境外所得进行征税的规则。相反，入境交易将典型地涉及对非居民纳税人的境内所得的征税规则。在某些情况下，一项交易可能会涉及全部两套规则。例如，将外国关联公司清算至境内的母公司。

国际税收不仅限于所得税，也可包括地产税、赠与税、遗产税、一般财产税、销售税、关税以及各种特别的税费。地产税和遗产税的国际方面特别重要。例如，当一国居民从非居民或者无住所的个人取得遗产或赠与，或者死亡时在外国拥有财产时，这些财富转让税种就具有重要的国际税收意义了。这些重要的问题超出了本书讨论的范围，本书将严格限定于讨论所得税法的国际方面。

C. Goals of International Tax Rules

In the design of its international tax rules, a country should seek to advance the following four goals. Some of these goals can be pursued effectively through unilateral action. To achieve all of these goals, however, a country must cooperate with its major trading partners.

Getting its fair share of revenue from cross-border transactions. A major goal of international tax rules should be to provide each country of the world with its fair share of the tax revenues available from income generated by transnational activities of domestic and foreign taxpayers. To achieve this goal of inter-nation equity, a country must protect its domestic tax base. That is, it must develop good domestic tax rules, and it must avoid entering into tax treaties that inappropriately limit its right to tax its domestic-source income.

Promoting fairness. The primary advantage of an income tax over other potential taxes is fairness. In general, fairness is achieved by imposing equal tax burdens on taxpayers with equal income, without reference to the source of the income, and by making those burdens commensurate with the ability to pay of taxpayers. For a group of related corporations, the goal should be to impose on the entire business enterprise the same burden that would be imposed on a single corporation engaging in comparable activities.

For domestic taxpayers operating abroad, fairness requires the full taxation of both domestic and foreign-source income; moreover, foreign-source

1.3 国际税收规则的目标

一国在设计国际税收规则时,应尽力推动以下四个目标。其中有些目标可以通过单边行动来达到,但要达到所有的目标则须与其主要贸易伙伴进行合作。

从跨境交易中取得合理份额的税收收入。国际税收规则的一个主要目标应为世界各国从其国内和国外纳税人的跨境交易所得中取得合理份额的税收收入。为达到这个国家间公平,一国应保护其国内税基。也就是说,它必须制定完好的国内税收规则,避免签订过分限制其对来源于境内的所得进行征税的权利的协定。

促进公平。与其他税种相比,所得税的一个主要优点是其公平性。总体来讲,对具有相同所得的纳税人无论其所得来源如何,施以相同的税收负担,并且使其税收负担与其缴纳能力相对称,方可获得公平性。对一组相关联的公司来讲,目标应该是对关联公司全部业务的税负,应和从事相同业务的单个公司的税负一样。

对于存在境外经营活动的国内纳税人,公平性目标要求我们对其境内所得和境外所得全面征

income must be taxed whether the income is earned directly or through some foreign entity. No country has the power to impose a fairness standard on nonresidents operating within its borders because it cannot tax the income of nonresidents arising outside its borders. For example, an individual resident in Country A may earn income in Country A, Country B and Country C. Country B has jurisdiction to tax only the income arising in Country B. It will not have any information about, and cannot take into account, the individual's income earned in countries A and C. A country can promote fairness, however, by contributing to the development of fair and appropriate international tax standards, by imposing tax burdens that are consistent with these standards, and by otherwise cooperating with foreign countries in the assessment and collection of tax on their residents and nationals.

Enhancing the competitiveness of the domestic economy. Every country should care about the welfare of nonresidents. Each country has a primary duty, nevertheless, to advance the economic interests of its citizens and residents. To this end, a country should avoid tax measures that undermine its competitive position in the world economy.

In the international context, a country's competitiveness is best enhanced by removing the provisions of the tax law that tend to draw capital and jobs out of the country or that discourage the importation of capital and jobs. In the medium and long run, a country's competitiveness is not enhanced by tax incentives and other beggar-thy-neighbor policies that invite a retaliatory response by foreign governments. Such policies simply erode

税;另外,对境外所得不论是直接取得或者通过境外的某种实体取得都应征税。无一国家有权对在其境内经营的非居民纳税人适用公平性标准,因为该国对非居民纳税人来源于该国境外的所得不能征税。例如,A国的居民个人可以在A国、B国和C国取得所得。B国只能对在B国境内产生的所得有税收管辖权。B国无法得知,也不能考虑此个人在A国和C国取得的所得。然而,各国可以通过促进公平的和适当的国际税收规则的发展、施加符合这些标准的税收负担,以及在对居民和国民进行核定和征税时与外国合作,来促进公平。

提高国内经济的竞争力。每个国家都应关心非居民的福利。尽管如此,其主要任务还是促进其公民和居民的经济利益。为此,各国都应避免采用可能削弱其在水世界经济中的竞争地位的税收措施。

在国际背景下,一国的竞争力主要是通过取消税法中可能导致资本和就业外流、或者限制资本和就业输入的规定来得以提高的。从中长期来看,一国的竞争力并不能通过税收优惠以及其他会导致外国政府报复的恶性竞争政策得到提高。这些政策会侵蚀政府对流动资本所得进行公正、