

 中税出版

# 税权划分的 国际比较研究

孙红梅 ■ 著

*International Comparative Study  
on the Assignment of Taxing Powers*

 中国税务出版社

# 税权划分的国际比较研究

## International Comparative Study on the Assignment of Taxing Powers

孙红梅 著

中国税务出版社

**图书在版编目 (CIP) 数据**

税权划分的国际比较研究/孙红梅著. —北京: 中国税务出版社, 2009. 5

ISBN 978 - 7 - 80235 - 321 - 3

I. 税… II. 孙… III. 税收管理 - 对比研究 - 世界  
IV. F811. 4

中国版本图书馆 CIP 数据核字 (2009) 第 132830 号

**版权所有 · 侵权必究**

---

书 名: 税权划分的国际比较研究

作 者: 孙红梅 著

实习编辑: 乔妮国 张思捷

责任编辑: 刘淑民

责任校对: 于 玲

技术设计: 刘冬珂

出版发行: **中国税务出版社**

北京市西城区木樨地北里甲 11 号 (国宏大厦 B 座)

邮编: 100038

http: //www. taxation. cn

E-mail: taxph@tom.com

发行处电话: (010) 63908889/90/91

邮购直销电话: (010) 63908837 传真: (010) 63908835

经 销: 各地新华书店

印 刷: 北京天宇星印刷厂

规 格: 787 × 1092 毫米 1/16

印 张: 13. 25

字 数: 205000 字

版 次: 2009 年 5 月第 1 版 2009 年 5 月第 1 次印刷

书 号: ISBN 978 - 7 - 80235 - 321 - 3/F · 1241

定 价: 32. 00 元

---

如发现有印装错误 本社发行部负责调换

# 摘 要

政府间财政关系是世界性的研究课题，中外理论界和实务界人士倾注了巨大的热情，形成了众多的研究成果，对各国的经济体制建设发挥了重要的指导作用。税权划分问题作为政府间财政关系的重要组成部分，各国政府同样给予了高度重视。

纵观新中国成立以来的税权划分历史，我们不难发现，中国政府一直在寻找一条适合中国国情的税权划分体制之路上求索。横观中国与其他主要经济发展大国在税权划分体制建设上的差距，从一定意义上说，中国的税权划分体制还处于一个比较原始和开端的状态，还有许多重大的问题需要进行认真的研究和解决。令人欣喜的是，中国政府近几年已经开始高度重视这一问题，并着手进行改革。

经济全球化给各国经济带来了不同程度的影响与挑战，中国也不可避免地置于其中。虽然税权是国家的主权之一，具有独立性和排他性，而且国情因素对各国税权划分体制的影响起决定作用。但是，世界其他国家在税权划分方面的惯常做法以及经验教训，依然可以成为中国在经济转轨时期制定政策的参考。笔者选择“税权划分的国际比较研究”题目，就是希望通过对各国税权划分体制的对比，无论从理论方面还是从实践方面能找到值得借鉴的经验，以期对中国的财税体制改革具有一定的参考作用。

全书共分9章，每章内容简要介绍如下：

第1章，导论。主要介绍本书的选题背景和选题意义、研究的内容和方法、国内外研究文献综述以及本书的创新和不足之处。

第2章, 税权划分相关概念界定。由于本书研究所涉及的“税权”, 无论是理论界还是实务界对此都没有一个权威的共识, 因此对税权及相关概念的界定显得尤为重要。本章先对税权作了界定, 笔者认为税权是国家为履行职能而取得税收收入, 依法拥有的、由国家特定机关行使的所有与税收有关的权力的总称。根据宪法和法律关于国家职能、权限的划分以及由此而来的行使税权主体的不同, 可以将税权分为税收立法权、税收征收管理权和税收司法权三大类。为了使税权的研究更加深入与具体, 本书将税收立法权、税收征收管理权所涉及的税收收入归属权专门进行研究。因此, 本书重点对税收立法权、征收管理权、税收司法权和收入归属权进行探讨。不同类型税权具有法定性、国家专属性、不可处分性和可分性的共同特征。本章还对事权、财权和收费权进行了界定。所谓税权划分, 是指税权在相关国家机关之间的分割与配置。税权划分主要包括纵向划分和横向划分两个方面。税权的横向划分主要有独享模式和共享模式, 税权的纵向划分主要有集权模式和分权模式。税权划分的制约因素包括政治体制、经济体制、财政体制、税收制度、法律制度、历史文化传统以及经济全球化等。绝大多数国家都是由多层级政府组成, 多级政府体制的客观存在是中央与地方政府事权、财权划分的制度前提。而且, 体制改革应该按照正确的顺序进行, 政府职能改革应该先于财政收入改革。即应该首先明确中央与地方政府财政支出责任, 然后再决定财政收入的分配。基于这样的考虑, 各级政府事权、支出责任清晰地界定应先于税权划分。

第3章, 国外税权划分理论的历史演进。本章对国外税权划分相关理论按照发生、发展的顺序进行了梳理, 主要包括: 公共物品理论、财政分权理论、财政联邦主义与税权的纵向划分、分权制衡思想与税权横向划分以及税权划分基本原则。

第4章, 税收立法权划分的国际比较。本章先从税收立法权来源与各国宪政发展的关系入手, 通过税收立法权在不同立法主体间划分、立法程序、立法监督机制的国际比较, 得出以下结论: 第一, 税收立法权与各国宪政发展密切相关。第二, 税收立法权在立法机关、行政机关及司法机关之间划分明确。各国的立法机关承担了主要税收立法, 行政机关通过法律的授权, 也参与税收立法。而且, 由于税法的专业性和复杂性, 行政机关授权立法有不断增多的趋势。当然, 各国通过

一些立法监督机制来约束授权立法。普通法系国家的司法机关通过司法判例对立法机关立法监督的同时,也享有一定的立法权。第三,无论是单一制国家还是联邦制国家,主要税种的立法权集中在中央(联邦),只不过联邦制国家的地方政府税收立法权相对于单一制国家地方政府立法权多一些。第四,税种停征和开征权、税率决定权和税基确定权等可以在不同层级政府划分。经济合作与发展组织(OECD)用“税收自主权”指标来衡量地方政府拥有税权的实际情况,使税收研究更进一步深入。

第5章,税收征收管理权划分的国际比较。本章对影响税收征管权划分模式的因素进行了分析,并对主要国家的税收管理模式按照四种类型进行了归类比较,得出以下结论:第一,税务管理模式的选择受多种因素制约,集权管理与分权管理各有理由和优势。第二,设计税务管理模式时要有一定的灵活性,税务管理权力的划分需要在许多相互冲突的标准间进行巧妙的平衡。第三,在税收征管权划分中需要建立中央与地方间的协调机制。第四,对于共享税,集权管理是惯例,分权管理是例外。

第6章,税收司法权划分的国际比较。税收司法权是保障税收立法权、税收征管权有效行使的权力。换句话说,没有税收司法权作为保障,其他税收权行使的效果将大打折扣,税收秩序将会处于无序甚至混乱状态。本章通过对几个典型国家税收司法权的实证考察,得出以下结论:第一,税收司法权非常重要。从一定意义上讲,如果说国家税法运行顺畅的话,税收司法权的保障功不可没。第二,司法体制的独立性应当得到切实的保障。第三,建立司法审查制度。主要发达国家一般都有比较完善的司法审查制度,尤其是违宪审查,这对于保护纳税人权利和监督立法权的行使具有重要作用。第四,设置专门法院审理税务案件。鉴于税务案件的复杂性和专业性,主要发达国家一般都有专门的税务法院或者行政法院等审理税务案件,以保障审理质量。

第7章,税收收入归属权划分的国际比较。前面三章对税收立法权、税收征管权和税收司法权分别进行了比较研究,这其中涉及的税收收入归属问题是目前各国比较重视的议题。鉴于此,本章专门对税收收入归属权的相关问题进行探讨。通过对一些国家税收收入归属权的比较,对税收收入的分配机制进行了分类研究,得出以下结论:第一,税收收入归属应与税源相一致。由于多种原因,税收收入与税源

不一定相匹配,产生“背离”现象,所以才需要按照税收公平的原则对税收收入归属进行明确。第二,税收归属权划分机制多种多样。绝大多数国家都是综合运用分税种、分税率、收入分配比例、附加税、收入分配协定、分配公式等多种分配机制确定税收收入归属,而不是简单地采用某一种方法。第三,对于如何保证税收收入归属数额的准确性和分配的及时性是各国面临的问题。第四,各国在实施财政均衡政策的过程中,通常都将一般性转移支付和专项转移支付两种方式结合起来使用。第五,税收收入归属权的调整一般在法律规范框架内进行。

第8章,中国税权划分体制的完善。通过对一些国家税收立法权、税收征收管理权、税收司法权和税收收入归属权的对比研究发现,虽然各国无论其政治体制还是国家权力结构形式会有所不同,但是在税权划分上还是有一些共性:宪政和法定主义是各国税权划分的根本约束、明确各级政府事权和支出责任是税权划分的前提,中央层级政府在税权划分方面居于主导地位、地方政府享有一定的税收自主权、税收征收管理权集权与分权各有利弊、归属到中央政府的税收收入占绝对优势、发达国家都有比较完善的税收司法保障机制、财政转移支付填补了地方政府事权与其税收收入的缺口、财政分权是趋势而实质进展不大。

本书在此基础上提出了完善中国税权划分体制的建议:第一,转变理念,统一思想认识。第二,改革要按照正确的顺序进行,即先进行各级政府职能划分,确定其支出责任,然后再进行税权划分。第三,要有一个完整的改革设计方案。第四,确定完善中国税权划分体制的指导思想和税权划分的基本原则。第五,税收立法权、税收征收管理权、税收司法权和税收收入归属权的具体完善内容。

第9章,结语。本章对全文做了一个简短的总结。同时,在论文的写作过程中,逐渐感觉到还有些问题有待进一步的研究,例如:如何对税权从法律上加以确定、一国的历史文化对税权划分的影响、对税收授权立法的限制与监督、地方政府税收自主权、共享税的分配机制以及地方政府间税收收入归属机制、税权协调机构的建立等问题。

**关键词:** 税权; 税权划分; 国际比较

# Abstract

Intergovernmental Fiscal Relationship (IFR) is a worldwide research issue. Chinese and foreign scholars and experts from academic and practical fields pay huge passion on it and have made many research productions, which have instructed the establishment of each national economic system. As one important part of IFR, the assignment of taxing powers (ATPs) is also emphasized by each nation.

Through the history of ATPs of new China, it is not hard to find that Chinese government is always on the road of adjusting the system of ATPs suitable to Chinese situation. Comparing China's ATPs with other developed countries', from a point of view, China's ATPs system is on the primary phase. There are a lot of important issues to be researched and solved. To our exciting, Chinese government has started to concern on this issue and prepare to reform it.

Economic globalization brings different effects and challenges to every country, also to China. Although the taxing power is one of national sovereignties which are independent and exclusive. Furthermore, some factors of national situation play the crucial role on ATPs. Some countries' experience and lessons may be references to China's making-policy during economic transition. The book aims at providing some suggestions for fiscal and tax reform of China from theory to practice through comparing some countries' ATPs system.



The book consists of nine chapters, the contents of each chapter are as follows:

Chapter 1 is the introduction. This chapter explains the research's background and significance, framework and methodology. It introduces the present situation and reviews domestic and foreign literatures of research on ATPs. Then, it summarise the innovation and insufficiency of this book.

Chapter 2 is the definition of related concepts of ATPs. At present, there is no common recognized concepts on taxing powers. So, it is especially necessary to define them. The taxing powers are all powers related taxing which are possessed by nation and implemented by special national agencies in order to raise tax revenue to fulfill governmental responsibilities. According to responsibilities and powers sharing under constitution and law and different subjects of implementing the taxing powers, the taxing powers are divided into three sorts: tax legislative power, tax collecting and administrative power and tax judicial power. In order to deeply research taxing powers, tax attributive power related to legislative power and collecting and administrative power will be specified in one chapter. So, this book focuses on tax legislative power, tax collecting and administrative power, tax judicial power and tax attributive power. The characteristics of these taxing powers are legal, exclusive, non-disposable and dividable. This chapter also defines governmental responsibilities, fical power and charging power. ATPs is defined that the taxing powers are divided and shared between different national agencies. It includes vertical and horizontal aspects. The horizontal division maily includes independent and shared models. The vertical division maily includes centralized and decentralized models. The factors affected ATPs include political system, economic system, fiscal system, tax system, law system, historical cultural tradition and economic globalization. The system reform should take under the right order, i. e., first, clearly assigning responsibilities to central and local governments; then, fiscal expenditure responsblitites; last, ATPs. Based on these points, clearly defining governmental responsibilities and fiscal expenditure responsibilities should be earlier than ATPs.

Chapter 3 states the historical evolution of foreign ATPs theories.

According to these theories' development process, this chapter introduces public goods theory, fiscal decentralization, fiscal federalism and vertical ATPs, powers balancing and horizontal ATPs, basic principles of ATPs.

Chapter 4 is international comparison of the division of tax legislative power. Firstly, this chapter introduces the relationship between the source of tax legislative power and each national constitutional system. Secondly, it compares different aspects of tax legislative power, such as power division between different legislative bodies, legislative procedure, legislative supervised system. Finally, some conclusions are as follows: first, taxation system is correlative to constitutional system. Second, tax legislative power is clearly divided between legislative, executive and judicial agencies. The legislative agency of each country is mainly responsible for tax legislation, while the executive agency also does it after empowered by law. Furthermore, there is a trend that more and more tax laws are enacted by executive agency because tax law is specific and complicated. Of course, each country may control tax empowered legislation through some legislative supervised constitutions. The judicial agency of countries of common law system supervises tax legislation through tax cases' decision, meanwhile it also obtains tax legislative power. Third, for either unitary countries or federal countries, their tax legislative power of main taxes is taken by central (federal) government, local governmental tax legislative power of federal countries is more than unitary countries'. Fourth, powers of introducing a new tax, abolishing a kind of tax, adjusting tax rate and defining tax base may be shared between different level governments. Organization of Economy Cooperation and Development (OECD) applies "tax autonomy" to measure taxing powers of local governments, it develops the research of ATPs.

Chapter 5 is international comparison of the division of tax collecting and administrative power. This chapter analyzes factors affected tax collecting and administrative power and compares four kinds of tax administrative models. There are some conclusions: first, tax administrative models are affected by many factors, centralized and decentralized models have different advantages. Second, it is necessarily flexible to design tax administrative model. Dividing tax administrative power needs to balance many conflicting

factors. Third, it is necessary to establish the coordinated system. Forth, as for sharing taxes, centralize administration is general, decentralized administration is exceptive.

Chapter 6 is international comparison of the division of tax judicial power. The tax judicial power is a power to efficiently ensure the implementation of tax legislative power and tax collecting and administrative power. In other words, effects of other taxing powers will decrease and tax order will be on chaos' status without tax judicial power. Some conclusions are as follows: first, tax judicial power is very important. Second, the independence of judicial system should be guaranteed. Third, there is a sound judicial checkup system in main developed countries, especially unconstitutional checkup. It plays an important role on protecting taxpayer's right and supervising legislative power. Forth, there is specified courts to judge tax cases, such as tax courts or executive courts, which aim at ensuring judgement's quality.

Chapter 7 is international comparison of the division of tax attributive power. First, tax attributive revenue should be consistent with tax resource. Because of many reasons, tax revenue may not be match with its resource, i. e. "mismatch" phenomenon. Therefor, tax attributive power should be shared under equity principle. Second, there are many kinds of attributive mechanisms of tax revenue. Most countries synthetically apply these methods, such as divided taxes, divided tax rate, divided tax revenue proportion, additional taxes, tax revenue agreement and assignment formula. Third, it is a problem faced by most countries that how to ensure the attributive tax revenue's accuracy and in time. Forth, most countries always combine general purpose transfer payment with specified purpose transfer payment in order to implement fiscal equilibrium policy. Fifth, adjustment of tax attributive power is limited in scope of law framework.

Chapter 8 is perfecting ATPs' system of China. Based on forestated chapters' contents, there are common characteristics of ATPs in different countries: constitutional system and legalism are the radical control, clearly defining responsibilities and fiscal expenditure of each level government are the base of ATPs, central government is on dominant status on ATPs, local governments possesse certain tax autonomy, centralization and decentralization

of tax collecting and administrative power have their own advantages and disadvantages, the ratio of central governmental tax revenue to national tax revenue is relatively higher, tax judicial guaranteed system of developed countries is relatively sound, fiscal transfer payment offsets the gap between responsibilities of local governments and their tax revenue, fiscal decentralization is a trend but the progress is not great.

This chapter provides some suggestions: first, unifying ideology related ATPs. Second, the reform should be taken under right order, i. e. allocating each level governmental responsibilities, defining their fiscal expenditure responsibilities, dividing taxing powers. Third, there should be a whole reform plan. Forth, defining guideline and basic principle of perfecting ATPs system of China. Fifth, some details of perfecting ATPs system of China.

Chapter 9 is the brief conclusion. Meanwhile, there are some issues to deeply study. For example, how to regulate ATPs under law, historical culture effects on ATPs, how to limit and supervise tax empowered legislation, local government's tax autonomy, tax revenue assignment's mechanism, establishing the coordination's organizations of taxing powers, etc.

**Key Words:** taxing powers; assignment of taxing powers; international comparison

# 目 录

---

<b>第1章 导论</b>	<b>1</b>
1.1 选题的背景和意义	1
1.2 研究的内容和方法	4
1.3 文献综述	5
1.4 创新和不足	7
<b>第2章 税权划分相关概念界定</b>	<b>10</b>
2.1 税权概念的界定	10
2.2 税权划分概念的界定	16
2.3 政府层级与事权划分	20
2.4 政府支出责任	27
<b>第3章 国外税权划分理论的历史演进</b>	<b>36</b>
3.1 公共物品理论	36
3.2 第一代财政分权理论	38
3.3 第二代财政分权理论	43
3.4 财政联邦主义与税权纵向划分	45
3.5 分权制衡思想与税权横向划分	49
3.6 税权划分原则	50

<b>第4章 税收立法权划分的国际比较</b>	<b>53</b>
4.1 税收立法权来源与各国宪政发展的关系	53
4.2 税收立法权在不同立法主体间的划分	56
4.3 税收立法程序的比较	67
4.4 税收授权立法的监督机制比较	69
4.5 税法要素的税收立法权划分	74
4.6 总结性分析与启示	78
<b>第5章 税收征收管理权划分的国际比较</b>	<b>80</b>
5.1 税收征收管理权划分的目标与约束条件	80
5.2 税收征收管理权划分模式的实证比较	85
5.3 集权管理与分权管理的比较	94
5.4 总结性分析与启示	96
<b>第6章 税收司法权划分的国际比较</b>	<b>99</b>
6.1 研究税收司法权的必要性	99
6.2 美国的税收司法权	101
6.3 英国的税收司法权	107
6.4 法国的税收司法权	110
6.5 德国的税收司法权	112
6.6 日本的税收司法权	113
6.7 总结性分析与启示	114
<b>第7章 税收收入归属权划分的国际比较</b>	<b>116</b>
7.1 税收收入分配类型	116
7.2 税收收入归属权划分机制	117
7.3 财政转移支付	128
7.4 总结性分析与启示	133
<b>第8章 中国税权划分体制的完善</b>	<b>135</b>
8.1 中国税权划分体制的演进历程	135
8.2 中国税权划分现状的分析与评价	146

8.3 税权划分的共性与趋势	152
8.4 中国税权划分体制的完善建议	157
<b>第9章 结语</b>	<b>168</b>
9.1 简短的结论	168
9.2 有待进一步研究的问题	171
<b>附录:税权在各级政府间的分配: 澳大利亚的实践</b>	<b>173</b>
<b>参考文献</b>	<b>184</b>
<b>后 记</b>	<b>193</b>

# 第 1 章

---

## 导 论

---

### 1. 1

---

#### 选题的背景和意义

---

##### 1. 1. 1 选题的背景

政府间财政关系是世界性的研究课题，中外理论界和实务界人士倾注了巨大的热情，形成了众多的研究成果，对各国的经济体制建设发挥了重要的指导作用。其中的税权划分问题是政府间财政关系的重要组成部分，各国政府对此都给予了高度重视。

纵观新中国成立以来税权划分历史发展进程，我们不难发现，中国政府一直在寻找一条适合中国国情的税权划分体制的道路上前行。中国税权划分体制虽然经历了分分合合，但是在不断地完善。尤其是 1994 年实行了分税制财政管理体制以后，中央与地方政府间的财政关系比较顺畅了，税权划分比较科学和规范了，中央政府财权和财力大大增强了。横观中国与其他主要经济发展大国在税权划分体制建设的差距，从一定意义上说，中国的税权划分体制还处于一个比较原始和开端的状态，还有许多重大的问题需要进行认真的研究和解决，改革的道路还很长，需要政府、学者以及社会各界长期的努力。令人欣喜



的是,中国政府近几年已经开始高度重视这一问题,并在重要文件中进行了相应的阐述。例如,中国共产党十六届三中全会通过的《中共中央关于完善社会主义市场经济体制若干问题的决定》,确定了我国今后税制改革的主要任务,其中一项即“在统一税政前提下,赋予地方适当的税政管理权”。十六届五中全会通过的《中共中央关于制定国民经济和社会发展第十一个五年规划的建议》中又明确指出:“合理界定各级政府的事权,调整和规范中央与地方、地方各级政府间的收支关系,建立健全与事权相匹配的财税体制。”十七大报告中指出:“深化财税、金融等体制改革,完善宏观调控体系。围绕推进基本公共服务均等化和主体功能区建设,完善公共财政体系。深化预算制度改革,强化预算管理和监督,健全中央和地方财力与事权相匹配的体制,加快形成统一规范透明的财政转移支付制度,提高一般性转移支付规模和比例,加大公共服务领域投入。完善省以下财政体制,增强基层政府提供公共服务能力。实行有利于科学发展的财税制度,建立健全资源有偿使用制度和生态环境补偿机制。”这些文件表明,健全中央和地方财力与事权相匹配的体制是今后中国财税体制改革的方向和主要内容。

经济全球化给各国经济带来了不同程度的影响与挑战,中国也不可避免地置于其中。虽然税权是国家的主权之一,具有独立性和排他性,而且国情因素对各国税权划分体制的影响占有重要地位,但是世界其他国家在税权划分方面的惯常做法以及经验教训依然可以成为中国在转轨时期制定政策的参考。邓小平同志曾说过,中国的改革是“摸着石头过河”,走前人没有走过的路。而“摸着石头过河”也被世界银行副行长林毅夫看做是中国经济改革成功的经验、对世界经济发展的贡献。历史和事实证明,中国必须走自己的发展之路。但是,我们也应理性地认识到,“摸”也要循规律,“过河”也要快速过。也就是说,借鉴他国的经验,吸取他国的教训,依然是中国制定政策的基本原则之一。

因此,在这样的背景下,对于税权划分的国际比较研究是适时和必要的。

### 1.1.2 选题的意义

当前,我国正处于经济转轨时期,在政府间财政关系方面还存在一些问题,迫切需要解决。比如,我国政府层级较多,事权划分不够