

The East is a Delicate Matter or the Taxation in China

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Abstract: The study analyses the modern experience of taxation in China and reveals the main problems of reformation of the corresponding system, suggests the ways of processes improvement of taxation reformation. The study also deals with the problem of necessity of optimization of external RF priorities in the system of which to the strategic ones one should refer the development of international economic relations with China that is gradually renewing the status of a great power and exerting influence on both regional and world process in XXI century. So, the present study covers, the revelation of conceptual and legal basics of taxation in China of related economic players in conditions of globalization who experience improvements during tax reform which has been realized, since January 1 2008 and considering that in its territory there is an overwhelming majority of TNC subsidiary and associated companies, it is actual.

Key words: Taxation, globalization, tax, transfer price, China

INTRODUCTION

In conditions of objectively conditioned underlying transformations in the sphere of international economic relations of Russia, it is required to be implemented a qualitatively different state policy and its legal security including taxation of related economic players in generic sense that are formed, first of all by Transnational Corporations (TNC) and function in the territories of several countries.

RF joining to the World Trade Organization extends opportunities for realization of its export potential as a result of access relief of competitive goods, services and technologies for perspective external markets, both public and private protection owing to using machinery for settling disputes of the WTO.

On purpose of increase in level of consolidated profit that may be at disposal of the TNC, they can use internal juridical, economic, organizing ties for adoption of different mechanisms of corporate tax payment minimization on the whole using various national treatments of taxation to their advantage, the main one among which does not provide the use of so called «transfer prices» (pricetransferring).

MATERIALS AND METHODS

A survey that will allow to determine the degree of China's appreciation and adaptation of the existing in world practice approaches to the problem solving of taxation balancing in the sphere of transfer pricing and

that is conducted in home science of law for the first time, there appear to be sufficient reasons for referring to the researches of individual specialists, among their number Beck (2014), Nepesov and to the elaborations of international organizations that give substantial consideration to improvement of these approaches.

From prognostic viewpoint this study is concentrated not in China's experience copying that would be methodologically unjustified but in defining tax constituent part of economic policy in trajectory of its development in long-term perspective and formation of strategy of mutual progress of two countries under globalization.

In its turn, its results are also important in the sphere of information legal assistance to the home subjects of private law on forming adaptable tactics of entry in the market of China, the component of which is the necessity of reconciliation of such conditions of external economic contracts that will preclude from emerging negative consequences concerning extra charge of tax commitment of corresponding government units of the PRC.

RESULTS AND DISCUSSION

Under intensification of integration economic processes which define the horizontal aspect of globalization, the TNC function in a legal regime being favourable for the realization of its own pecuniary interests that is attained in particular, through the adaptation of legislation of the member country of the WTrO with principles and requirements oriented to

obligatory liberalization of their foreign trade regime on account of minimization of tariff barrier and elimination of illegitimate nontariff barriers in foreign trading and certain related spheres as well.

Besides, it becomes more significant the vertical plane of global transformation convergence which leads to policy economization and economy politicization that is also used in the TNC to their own advantage by reason of raising a support of national authority of the countries that can in latent or official way lobby for interests of corporations on certain conditions, especially multilateral international agreements, when they have problems appearing in the markets of production, services, capital, natural resources, technology and so on.

Synergy of the given processes conditioned the acquisition by the TNC of influential status of the subjects of international economic relations to wide extent as they can have influence on economic policy of the countries, especially on developing countries, determine regional and local priorities for carrying out direct Foreign investments.

By studying multifarious and contradictory phenomenon of globalization and disclosing the ratio of the following interrelated but not identical categories as “globalization”, “globalism” and “universality” the German researcher, professor Ulrich Beck raises one of the key questions. So, he notes that economics, functioning on global scales, undermines the foundations of nation states. Consequently, one dissolves an agreement of distribution of authority of the First modern of industrial society, there has place the growth of authority and power of transnational enterprises, strategic potential of which begins with intrusion into material life arteries of the states, without revolution, without change of legislative base but only in the process of business as usual.

Experiencing considerable hardships with security of balance of national economic interests and private interests of the TNC that is characteristic for overwhelming majority of developing countries. China pays considerable attention to the developments of international organizations, first and foremost, the Organization for Economic Cooperation and Development (the OECD), the United Nations Conference on Trade and Development (the UNCTAD) and also the European Union in which the European Commission adopted a number of directives on transfer pricing. Besides with the view of adaptation of the most admissible mechanisms with its specificity there takes place the study of the experience of leading countries in the sphere of taxation of transboundary activity of related subjects of economic management. The system of taxation in the PRC is represented in Fig. 1.

Besides, the tax on economical activity or business-tax was collected at the rate to be represented in Fig. 2.

Besides, the tax on economical activity is used in the following cases: rendering of taxable services, sale of immovable estate, transmission of intangible assets (Fig. 3).

From two main economic and legal doctrines in the spheres of transfer pricing being developed by the OESD and the USA that are based on a general principle of “arm's length” but are at the same time different in content in many aspects, China recognizes the conceptual standpoints of the OESD to be acceptable. Here, it is

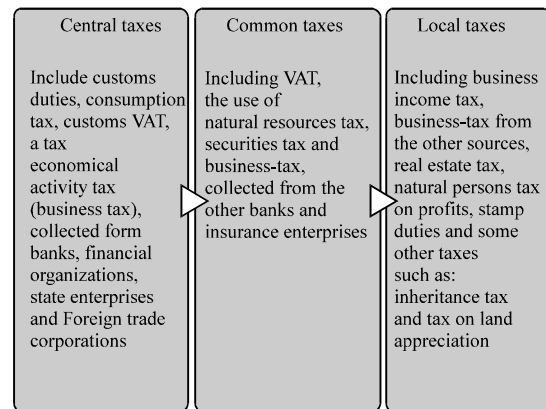


Fig. 1: Taxes in the PRC

This tax is computed on the basis of goods turnover. Its account and frequency of its pay are mothy. The tax rate is differentiated depending on kind of activity at the following rates:								
Transport: 3%	Building, engineering: 3%	Posts and telecom munications: 3%	Culture and sport: 3%	Entertainment industry 5-20% (bars, restaurants: 10%)	Services: 5%	Acquisition of intangible assets: 5%	Sale of immovable property: 5%	Financial activities: 8%

Fig. 2: The Tax on Economical Activity (Business-Tax)

This tax is used in all situations when there takes place:		
Rendering of taxable services	Sale of immovable estate	Transmission of intangible asserts

Fig. 3: Conditions of tax levy on economical activity

reasonable to refer to general provisions of its reference methodological documents to be developed for transnational corporations and tax administrations. So, one should mean by “transfer price” the price at which one associated person realizes goods, intangible assets and renders services to another associated person (Nepesov, 2013).

Indeed by free and purposeful agreement by subsidiary and associated companies of TNC of such condition of external economic contracts as a price and then by their execution-settlement of accounts, there can take place the transaction of major portion of income to another country. Such actions can be conditioned by introduction of more favourable regime of taxation in the form of for example, arrangement of tax holiday or setting of preferential tax rates that remains one of the main preferential policy in the sphere of investment innovative activity in China for a long time.

These positions only partially characterize the different aspects of a single complex phenomenon where its positive constituent part implies the necessity of avoiding conflicts of economic interests of states and transnational corporations and also observing by TNC certain general principles and norms in the framework of peculiar code of conduct as additional international juristically binding instrument of control of their activity.

In so doing, the Management of OECD for transnational corporations that is advisory in nature and addressed to TNC by national governments, provides for the necessity to act in accordance with legislation of the corresponding countries which is to comprise furnishing to tax departments of all necessary information for correct computation of taxes and observance of a key principle mentioned above the arm’s length principle in the sphere of transfer pricing (Anonymous, 2001).

This will allow the governments to provide the realization of a public interest which consists in getting bite of taxes due to them on economic activity income in their territory by associated companies. At the same time, imposing on them the fair tax liabilities and also elimination of double taxation on the basis of appropriate international agreements corresponds to the interests of TNC.

From practical point of view, neither imperative demands of national legislation nor voluntary nature of existing codes of conduct in TNC do not protect from tax minimization or tax credit not being one of the central purposes and then the result of investment, financial, manufacturing operations and also their reorganization. In this context, there appear to be sufficient reasons for

noting that in the course of tax reform in China in the years 2007-2008 it takes place the formation qualitatively another mechanism system of security and protection of interest of both government and competing transactors which is put into effect two-way:

- Further improvement of monitoring mechanism of external economic operations of related persons and in the presence of grounds, correction of tax liabilities with their unfair using of transfer prices
- Introduction of a number of important economic and legal innovations to be given at the end of the article as requiring of independent system analysis from now on

According to the common rule being consolidated at legislative level in China is not wide-spread rule-making practice in the world; the related persons should carry out operations in compliance with the principle of “arm’s length”. At that it is considered to be observed if prices of supplied goods, rendered services and also production of objects of the right of ownership royalty are just and satisfy normal commercial practice, i.e., correlate with the level between independent and informed parties.

Using the regulatory uncertainties inefficiency administration system of imposition of taxes, joint ventures and other enterprises with foreign investments residents of the PRC were drawn to realization of schemes of delinquency in tax payment that are widely known in advanced countries, besides, applying transfer prices can be recognized the most widespread phenomenon (Anonymous, 2012).

As a result of not sufficient fast response of government that can be explained by absence of necessary experience, manipulation of prices has assumed the nature of dangerous tendency, one manifestation of which is de-jure avowal of more enterprises with Foreign investments of damage, at that de-facto, the majority of them has gained profit.

In so doing, the scales of taxation evasion through transfer pricing between subsidiary and associated companies of transnational corporations create threats to economic interest of China both in official and private-law spheres.

Norm system on transfer prices acquired more integral but still unaccomplished form in 1991 when the law “About income taxing of foreign investment enterprises and foreign enterprises” was adopted in China, the provision of which in particular, the main principle of realization of operations between associated

companies and criteria of recognition by the government the legal status for parties of the external economic contracts for taxation purposes, suffered derivative development after regulatory legal act to be adopted in 2007 (Anonymous, 2007).

In spite of the fact that, as a rule, such corrections, in their nature, are compensatory, it is necessary noting that since January 1, 2008 in China, except payment of extra accrued income tax on transactors, there has been provision for imposing of financial sanction the size of which accounts for extra five percent greater than the refinancing rate of the People's Bank of the PRC in that period.

One of the newest mechanism to be provided by law and oriented to avoidance of conflicts between the government and foreign investors concerning operation taxation between associated companies is the Advance Price Agreement being known in the developed countries, about transfer prices, the parties of which would be taxing authority of the PRC and the transactors where the latter are entitled to initiate its conclusion with the aim of methods coordination of such pricing.

CONCLUSION

The China's experience on legislative introduction and permanent improvement of legal instrument being oriented to security and protection of its economic interests does not allow to support generalizations to the full about sovereign right of the national government to tax disposition as a result of taxation evasion by transnational corporations, being more topical.

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REFERENCES

- Anonymous, 2001. Transfer Pricing: History-State of the Art-Perspectives/Ad Hoc of Experts on International Cooperation in Tax Matters. Tenth meeting, Geneva (10-14 September 2001). ST/SG/AC.8/2001/CRP.6, pp: 4.
- Anonymous, 2007. Enterprise Income Tax Law of the People's Republic of China. (Adopted at the 5th Session of the 10th National People's Congress of the People's Republic of China on March 16, 2007 [Electronic resource]. www.fdi.gov.cn/pub/FDI_EN/Laws.html).
- Anonymous, 2012. Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign. Laws and Regulations of the People's Republic of China Governing Foreign-Related Matters (1999): The China Legal System Publishing House. Beijing China, pp: 915.
- Beck, U., 2014. What is Globalization? Translated from German by A. Grigoriyev and V. Sedelnik (Eds.) Philippov, M.: Progress-Tradition, pp: 276.
- Nepesov, K.A., 2013. Tax Aspects of Transfer Pricing: Comparative Analysis of Russia's and Foreign Countries' Experiences. Nepesov, K.A. (Eds.), M.: Wolters Kluwer, pp: 370.