

The Legal Analysis of China's Environmental Tax System Reform

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Abstract: Taxation, as the economic lever of macroeconomic control, plays an active role in protecting ecological environment and promoting sustainable development and is a legal and effective law regulating method. America and the OECD countries have successfully implemented environment tax measures. This paper, combining the current environment and resources tax and fee system, puts forward the concept of reform step by step of the existing environmental pollution tax and resource related tax system from a legal point of view, so as to provide a new perspective and idea to solve problems in environment and resources problems.

Keywords: Environment; Legal System; Tax;

Introduction:

Environmental taxes refer to the ones on the development and utilization degree of the environmental resources or the pollution behaviors of all units and individuals developing and utilizing environmental resources (only referring to the exhaust resources) or emitting pollutants to the environment. In the 1970s, some western developed countries began to pay close attention to environmental taxes. Up to today, it has got to the stage of "green" tax system in an all round way. Environmental taxes collected in most of the developed countries are set according to the principles of "payment by polluter", "earmarking" and "neutral tax"; the categories of taxes are thoroughly and carefully set in an all-round way, mostly including resource tax and environmental protection tax. The practice in the developed countries shows that the legal system of environmental taxation can not only promote the internalization of external costs of the enterprises microscopically but also effectively solve the "fair" allocation problems of the environmental resources macroscopically. From the practice of environmental taxes in foreign countries, it can be seen that the environmental tax has reflected the good effect in reducing pollution and protecting the environment.

1. Situation of existing environmental tax system in China

With respect to the existing environmental protection, there is no independent tax on environmental pollution and there are mainly three categories of taxes at present, including resource tax, city and town land use tax and tax on occupation of cultivated land; meanwhile, as to the charging system

in environmental protection, it includes pollutant discharge fee, and pollution treatment fee (wastewater treatment fee and refuse treatment fee), ecologic environment compensation, charge for water resources, mining royalty, mineral resources compensation fees and so on. Thus, the basic pattern of the policy of environmental protection tax in China is: to give priority to fees, taxes for supporting and allowance as cooperation.

The environment tax system in China shall include three aspects, namely resource tax, environmental protection tax and environmental protection system in other categories of taxes.

2. The necessity of reforming environmental tax system in China

Compared with the systematic legal system of environmental protection tax in the western countries and the effective tax system control measures, the existing environmental tax system in China falls vacant from the perspective of control effect and demand on environmental protection development. The problems are mainly represented as: lack of independent environmental pollution taxes, serious absence of environmental taxes; lack of great attention on environmental protection by the related categories of taxes and lack of coordination with each other; random use of environmental protection funds and lack of effective supervision and control; deficiency of pollution discharge charge system with respect to scope of taxation, penalty, taxation basis, charge standards and so on. The environmental tax system established based on public goods and external diseconomy internalization theory, can correct failure of market regulation mechanism to the effective allotment of public goods.

Meanwhile, the social and integral environmental damage caused by enterprise in the process of utilizing environmental resources can be converted into enterprise cost by means of taxation so as to realize legal justice. In addition, since the funds for environmental protection and management are insufficient, it is necessary for China to establish its own environment tax system as a part of the national taxation system.

3. Reform scheme of the environment tax law system in China

According to the situation of China, the measures for environmental protection in existing taxes shall be reformed first. For one thing, the reform can play a role in transition period and help gradually make a green tax system in China; for another, it can cooperate with environmental taxes to be independently implemented in the coming future to form a perfect “green” environment tax system.

3.1 green the existing tax system

3.1.1 VAT

First of all, China should turn the existing production-based VAT into consumption-based value-added tax. Firstly, the provisions shall be added on allowed deduction of amount of income tax of the fixed assets purchased by the enterprises or the materials for environment protection so as to avoid regarding GDP as the most important standard for assessing the performance of the local government, otherwise, it will result in the rapid increase of investment in fixed assets mainly in resources loss sectors with the negative external effect. Secondly, it shall specify “non-taxable items” in Clause 4 “Using self-made or consigned processed goods in non-taxable items” regarded as sales behaviors excludes various behaviors for environmental protection. What’s more, we should expand the range of tax preference measures for VAT and environmental protection tax. Finally, we should reduce and remit the VAT in import link of the import materials and equipment for environmental protection, and encourage the enterprises to import the materials and equipment for environmental protection.

3.1.2 Consumption tax

The new consumption tax, implemented on April 1, 2006, has the following disadvantages in environmental protection: unreasonable adjustment strength of car consumption tax; too low tax rate of the automobile with large displacement. If high consumption tax is collected on the automobile with large displacement, the consumer goods that pollute the environment seriously can be inhibited. In addition, the adjusting objects are disadvantageous in

“managing the small ones while easing control over the large ones”, Its characteristics are reflected in wooden chopsticks and high-grade furniture clearly.

3.1.3 Enterprise income tax

Corporate Income Tax Law, newly issued in 2007, specifies the deduction and exemption of tax to be enjoyed in the future on the investment in energy-saving and environmental protection by the enterprises or on the income from the energy-saving and environmental protection projects, however, the prevailing measures for tax preference and deduction and exemption in environmental protection and energy-saving in the world have not been adopted. Therefore, we hold the following provisions shall be added: firstly, the equipment purchased for treatment of pollutants adopts accelerated depreciation; secondly, the measures for tax preference such as deduction and exemption shall be given to the investment in adjusting the product structure, reforming the process and improving the equipment to control the pollution.

3.1.4 Tariff

There are problems in international environmental pollution transfer, especially in international trade. So nowadays many countries formulate environmental duties to protect their ecological environment. In general, environmental duty includes import environmental tariffs and export environmental tariffs. The author holds that attention shall be paid to some of the following problems when environmental duty is collected in China: ①The rate of environmental duty shall be based on the tax rate of the corresponding domestic environmental tax of taxation. The rate shall not be too low or too high and shall not be fixed without any change; it shall be properly adjusted with the marginal cost change of the environmental control in China;②In order to achieve the actual effect of environmental cost internalization, how to reasonably determine the standard of environmental cost internalization through the implementation of environmental duty policy?

3.2 Perfection of resource tax

The current Provisional Regulations on Resource Tax in China are mainly aimed at taxes related to the land like resource tax and salt tax, and the resource tax related to the mine with respect to the resource tax system. According to the situation that the collection scope of resource tax is narrow, it is necessary for us to reform and perfect the current environmental resource tax.

3.2.1 Expanding the collection scope of environmental resource tax.

Viewed from the collection scope of resource tax

in the world, the items of resource tax involve mineral resources, land resources, water resources, forest resources, grasslands resource and marine resources, geothermal resources, animal and plant resources and so on, among which mineral resources, land resource and the forest resources are the main items. Obviously the collection scope of the current resource tax is too narrow, some resources in national legislation and the renewable resources destroyed and wasted severely at present shall be included in it. Readjust the scope of the current resource tax, incorporate the land holding tax and tax on occupation of cultivated land as well as charge for water resources in the resource tax as one tax item of resource tax so as to establish an ecological material resource tax system with proprietary nature. Meanwhile, the new single environment resources tax can be added.

3.2.2 Perfecting taxation basis

China could change the taxation basis of resources tax from the one of sales volume or in-house volume into the one of output. In this way, the resources over-stocked due to being unsold after exploitation or the resources not used by itself shall become the taxable resources to make the enterprise save the resources to maximize the benefits and avoid the excessive exploitation. At the same time, the value and scarcity of resource shall be taken into account. According to the different types of re-

sources and different regions, combined with the standard of ad valorem, it can reflect the identity and confirmation of value of resources.

3.2.3 Adjusting rate of recourse tax

Currently, resource tax per unit can reach up to RMB 60 Yuan per ton(solid salt) and the minimum is RMB 0.3 Yuan per ton (coal), and it is not adjusted with the change in resources market and deviates from the requirements of the market mechanism (the coal price has risen above RMB 200 per ton at present). In addition, the average rate of mineral resources compensation is only 1.18%, but in fact, through measurement and discussion by the expert, the reasonable rate of resource compensation shall be 8% ~ 10% on average. It is very necessary to increase resource tax collection standard. According to the actual situation of the resource enterprises in China, the average rate of the consolidated resource tax can be preliminarily adjusted as 4%-5% on average. Considering the different impacts of the resources in development and utilization on the environment, differential tax rates can be adopted for the resources with different degree of pollution. The heavy duties shall be collected on the non-regenerative, non-substitute and especially scarce resources.

To sum up, based on the above-mentioned reform and perfection measures, preliminary concept of the system is shown in the following table in details:

Table of new recourse tax system

| Element of resource tax system | Design |
|--------------------------------|---|
| taxpayers | The state-owned enterprises, collective enterprises, private enterprises, joint-stock enterprises, foreign invested enterprises, foreign enterprises and other enterprises, institutions or administrative units, military units, social organizations and other units and individual operators and other individual that exploit the minimal resources within China. |
| Object of taxation | 1. Mineral resources tax (7 kinds of resource taxes and fuel tax formerly); 2. Land resource tax (land holding tax, tax on occupation of cultivated land and tax on high quality cultivated land); 3. Tax on water resources; 4. Forest resource tax; 5. Meadow resource tax; 6. Marine resources; 7. Geothermal resource tax; 8. Animal resource tax. |
| Taxation basis | Combine with quantity (based on output) and price |
| Tax rate | 4-5% on average |
| Tax preference | The provincial government takes into consideration the circumstances to reduce the tax or exempt the tax on the taxpayer suffering from the great losses due to the accident or natural hazard in exploiting or producing the payable products. In order to protect the existing resources in China, the former Provisional Regulations of Resources Tax and other preferential tax measures in finance and tax law documents specified will not be implemented temporarily.) |
| Collection management | Temporarily as taxes shared by the central government and local governments, the proportion is that the central accounts for 30% while the local accounts for 70% (The local can not share ocean petroleum and other special resources tax), when the conditions is mature, turn the resources tax into central tax. |

3.3 Collection of environmental pollution tax

In view of the disadvantages of environmental charge system, China shall moderately expand the scope of taxation based on the environmental charge system, and improve the standard of taxation, and

immerge into the environmental tax system.

3.3.1 Tax payers of environmental pollution tax

Taxpayers are temporarily determined as the enterprises, enterprise system units and individual operators engaged in taxable pollution discharge and

producing taxable packings except the individual temporarily. But some tax payers shall include individual, such as the garbage tax levied in some countries in the world.

3.3.2 The object of environmental pollution tax.

The object of environmental pollution tax shall be the behavior directly polluting environment and the products resulting in environmental pollution in consumption. At the beginning of taxation, the scope of taxation shall not be too wide, and taxation shall be carried out step by step. At present, the

taxes to be included in the scope of environmental pollution tax include: (1).Product tax, mainly on the harmful environmental products produced by the industrial enterprise. (2) Pollution tax, mainly on the pollutants (waste water, waste gas and waste residue) discharged by the industrial enterprises in production and industrial refuse. Referring to the experience abroad, combining the national conditions, the specific design for environmental protection tax is shown in the following table:

Table of environmental pollution tax items

| | Atmospheric pollution tax | SO ₂ tax,CO ₂ tax |
|---------------|---|---|
| Pollution tax | Water pollution tax Solid waste tax Noise tax | Industrial waste water, agricultural wastewater, domestic sewage Waste tax |
| Product tax | Lubricant, old tires, phosphorus detergent, detergent, one-time, foam tableware, plastic bags, the rat medicine do harm to the environment, pesticides, poisonous chemicals, fireworks, toxic chemicals | |

3.3.3 The rate and basis of environmental pollution tax

(1) For product tax, it can be collected based on the taxable sales income of taxpayers pro rata, in addition, it also can be levied as per fixed rate based on sales volume. It shall design the different tax rated according to the pollution of the different products to determine the specific tax rate.

(2) For pollution tax, it shall be collected based on actual discharge amount of pollutants and adopt the way of combining fixed rate and progressive tax rate. For the one with actual discharge amount hard to determine, the discharge amount can be measured and calculated as the taxation basis according to the related indexes such as equipment production capacity and actual output of the taxpayer measuring emissions as tax basis. In view that China collects the tax in form of charge on pollution discharge and charge on over-standard as per the kinds and amount of the pollutants, it is suggested that the pollution tax should distinguish the amount and kinds of pollutants and make a reasonable quality standard of emission. Within this standard, it can adopt low fixed rate. In case of being beyond the standard, it can adopt high progressive tax rate. To the same kind of pollutant, it is necessary to determine the differential tax rate according to its different contents of harmful substances.

The general principles of collecting environmental pollution tax is that the tax rate shall not be too low, as to the discharge of “three-waste”, it shall be higher than the current charge standard of the

current pollution discharge fee. But at the beginging of collecting environmental pollution tax, for easy implementation, the taxation items shall not be too meticulous and the tax rate structure shall not be too complicated.

3.3.4 Preferential policies of environmental pollution tax.

Since the environmental pollution tax is a special kind of behavior tax; its preferential policies must be completed with other taxes. For those units and individuals who produce and use energy-saving equipment, pollution control and treatment equipment, and actively research and use anti-pollution and pollution control technology and reuse “three-waste” and other environmental pollutants shall be given a certain tax deduction and exemption. The tax deduction and exemption of environmental pollution tax can adopt the several international forms: investment deduction and exemption, accelerated depreciation, tax exemption and tax return.

3.3.5 Collection management of environmental pollution tax and relevant problems

(1) The environmental pollution tax is a kind of special object tax, its revenue shall be used as the special fund. It shall strictly implement the earmarking system and put all into control over pollution and environmental protection.

(2)The collection management of environmental pollution tax can refer to the international practice, as the taxes shared by the central government and local governments.

(3) Since the system design and collection management of environmental pollution tax involve science and technology of environmental protection, thus, in the tax legislation and the process of collection management, tax authorities shall strengthen contact and cooperation with the environmental protection department. It also can set up the special environment monitoring institutions if necessary, to cultivate specialized technical personnel and create the necessary prerequisite for implementing of environmental tax.

4. Conclusions:

It is of great theoretical and practical significance to establish environment tax law system to reasonably utilize resources, protect the environment and control the pollution. This paper, combining the actual situation of China, analyses the current situation of environmental tax system from the viewpoint of environment and law, puts forward the suggestions on reforming the existing tax law system, establishing environmental tax law system formed by the resource tax and environmental protection tax and other environmental protection measures. Combining the background of the strategy of sustainable development and the development trend of the environmental tax law system, in establishing environment tax law system in China, it shall use foreign successful experience for reference, protect the environment, utilize the resources reasonably and restrain the pollution as the core to advance the establishment of environment tax law system step by step.

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