Double Tax Avoidance Agreement and Its Legal Regulation: Taking China as an Example

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Abstract. Double tax avoidance agreements (DTAs) play a pivotal role in facilitating international trade, exemplified by China's proactive engagement in 1983 when it signed its first bilateral tax agreement with Japan. Germany and numerous other countries have followed suit, recognizing the importance of these agreements in mitigating tax-related impediments to cross-border commerce. China's commitment to DTAs is clearly manifested in its extensive network of agreements, as corroborated by the OECD's comprehensive list. Remarkably, China has established DTAs with 102 countries and regions, underscoring their global significance not only for China but for nations worldwide. This article comprehensively explores the subject matter. It commences by elucidating the fundamental concepts and principles underpinning DTAs, followed by an examination of their legal regulations and distinctive attributes. Furthermore, it delves into the potential risks inherent in these agreements and their consequential impacts on international trade and fiscal policies. A more concrete understanding is provided through an in-depth analysis of specific DTAs, with a primary focus on the China-US and China-India agreements. By dissecting these pivotal agreements, the article aims to illuminate the legal frameworks that govern international taxation, thus enhancing comprehension of their implications for global economic cooperation and trade.

Keywords: Double tax avoidance agreements; International legal regulation; International treaty; Bilateral agreement.

1. Introduction

A double tax avoidance agreement is an international treaty concluded between countries, which adjusts the basic relationship of international tax distribution based on the taxation relationship between the two contracting parties. Since the implementation of China's reform and opening up policy, establishing double tax avoidance has become an important means of attracting foreign investment. In 1992, China successively signed double tax avoidance agreements with 33 countries, and 26 of them have taken effect [1]. Now China has signed such agreements with 100 countries. Tax treaties, due to China's special one country, two systems system, counting the tax arrangements signed by mainland China, the Hong Kong Special Administrative Region and the Macao Special Administrative Region, there are 102 agreements in total, covering a very wide range, second only to the 120 agreements signed by the United Kingdom [2].

With the gradual expansion of the application scope of double tax avoidance agreements in countries around the world, the defects and risks of double tax avoidance agreements are gradually exposed. Understanding and researching the legal characteristics, operating principles, and risks of double tax avoidance agreements will help people to correctly understand Understanding and implementing such provisions avoids the risks of treaty abuse and other side effects. This paper chooses China as the research object, on the one hand, because of China's current status in the overseas investment market, and on the other hand, because of the huge number of the aforementioned tax avoidance agreements, which make China a typical research sample.

2. The Concept and Rationale of Double Tax Treaties

2.1. Definition of Double Taxation and Treaties

In the process of transnational operation, the source of the income of the transnational operator, that is, the taxpayer, is different from the taxpayer's own location, which will cause overlapping legal claims, and then lead to the problem of double taxation, that is, the problem of double taxation. The double tax agreement is a bilateral tax agreement signed between governments based on the principle of equality and reciprocity based on international law in order to solve the above-mentioned double taxation problem [3].

2.2. The Role of Double Tax Treaties

Problems such as brain drain and economic development caused by double taxation can be effectively resolved through double taxation agreements, which not only reduces the harm of double taxation to the economy, but also strengthens extensive cooperation among various governments.

Whether developing or developed, host or home countries are all beneficiaries of such agreements, especially developing host countries. Based on the "United Nations Model Double Taxation Agreement between Developed and Developing Countries", the double taxation agreement can make the developing host country achieve a balance, although tax concessions will make it lose certain tax benefits, but can still obtain certain tax benefits from subsidiaries operated by multinational companies, and at the same time attract more foreign investment due to tax concessions, creating a good international investment environment. In the long run, more foreign investment the investment can make up for the loss caused by tax concessions, so it is a sustainable development for the developing host country. As far as the home country is concerned, since the double taxation agreement is beneficial to multinational companies, it can legally ensure that the subsidiaries of the home country's multinational companies in the host country benefit from tax concessions, thereby maintaining the overall international status of the multinational company. At the same time, from the perspective of human rights, the double taxation agreement also embodies a principle of national treatment, which treats all taxpayers equally [4].

2.3. Legal Features of Double Taxation

First, in the issue of the scope of use against persons, it generally applies to persons who are residents of one of the Contracting States or both of them at the same time [5]. Second, on the issue of the distribution of taxation rights and interests of property value, taxpayers are given a certain confrontational position to protest the violation of the agreement by the tax authorities of the contracting states. mutual agreement procedure. Third, in terms of treaty interpretation, unlike the interpretation of half of the international treaties, the basis for the interpretation of double taxation agreements is not limited to the contextual meaning, and under certain circumstances, one of the contracting states is allowed to interpret according to the meaning stipulated by the law applicable to this agreement [6,7].

2.4. How Double Tax Treaties Work

The essence of a double tax treaty is to divide the tax jurisdiction between the host country and the home country. As far as the bilateral taxation system has been established worldwide, the "ORCD Tax Agreement Draft" and the "United Nations Model Double Taxation Agreement between Developed and Developing Countries" provide the framework for most bilateral agreements. The basic content of the Convention is generally similar, but there are still some differences: the OECD advocates taxation by the taxation jurisdiction of residents, while the "United Nations Model Double Taxation Convention between Developed and Developing Countries" is more inclined to use the source of income Taxing jurisdictions levy taxes [4].

3. Legal Rules and Characteristics of International Double Taxation

3.1. International Tax Principles and Guidelines

The principles of international taxation need to solve the two problems of taxation on the income of cross-border transactions and how to allocate tax rights among relevant countries in cross-border transaction activities, including the principle of single taxation, the principle of benefit and international taxation Neutral principle [8].

The principle of single taxation means that income generated from cross-border transactions should only be levied one tax and at least one tax should be levied.

The principle of beneficiary refers to the standard that taxpayers allocate the tax burden according to the size of the benefit they get from the government's public expenditure. The international tax rules mainly give the taxation rights of positive income in cross-border transactions to the country of residence, which can better balance the tax benefits of the source country and the country of residence.

The principle of international tax neutrality means that international tax rules should not affect the location selection of foreign-related taxpayers' transnational business activities and the organizational form of enterprises.

The content of the benefit principle is the fundamental basis for adopting the resident tax jurisdiction to levy taxes in the OECD agreement.

3.2. Scope of Application of Double Tax Treaties

The scope of application can be roughly divided into the scope of the subject and the scope of the object. The scope of the subject generally refers to the nationals of both contracting parties, that is, the natural or legal persons who are residents. The agreement generally stipulates that nationals of third countries or non-contracting parties cannot claim tax rights based on the agreement, that is, the application of most-favored-nation treatment to double taxation agreements is excluded, because this is a bilateral agreement, the effect is limited to between contracting parties and cannot be extended to States other than Contracting States. The scope of objects covers income tax, local tax with income tax nature and profit remittance tax, etc. Specifically, it can be divided into common law system and civil law system for discussion [9]. In common law countries, the object of bilateral tax agreements only included income tax, because these countries generally have no property tax, only a single income tax system, while in the civil law system, the object of double tax avoidance agreements is in addition to property tax and income tax, including chattel and inheritance taxes. It can be seen that the scope of the object of the double tax avoidance agreement is mainly based on the specific analysis of the requirements of the domestic tax system of the contracting states [10].

4. Risks and Effects of Double Tax Treaties

4.1. Bilateral Tax Treaties Can Lead to Unfair Tax Distribution

In the process of cross-border economic activities at this stage, bilateral tax agreements may lead to unfair tax distribution, especially for developing countries that are mainly sources of tax revenue. In order to avoid the tax burden brought by the double taxation of the country of source and the country of residence to multinational operators, without increasing the overall tax burden of multinational operators, bilateral tax agreements often adopt the method of sacrificing the tax jurisdiction of the country of source [11]. Tax revenues are distributed more to the country of residence. As early as the very beginning, transnational business activities mainly took place between developed countries, which means that the double tax avoidance agreement was originally applicable to developed countries. The economic level and trade input and output gaps among developed countries are not large, so the unfair distribution will not have a particularly large impact. For example, in the process of signing a double tax avoidance agreement with country B, country A sacrificed part of the tax revenue as the source of capital input, but this part of the income can be recovered by

signing double tax avoidance agreements with other countries. The country of residence has signed a double tax avoidance agreement with country C. In this agreement, country A will receive more tax revenue to make up for the part lost in the agreement with country B. However, with the development of economic globalization, many developed countries have signed double tax avoidance agreements with developing countries. Due to their relatively backward economic characteristics, developing countries are mostly capital importing countries, that is, source countries, so they are often in a weak position of sacrificing tax jurisdiction in double tax avoidance agreements. It can be seen that the double tax avoidance agreement is unfair to the developing country of origin. Therefore, in the "United Nations Model Double Taxation Agreement between Developed and Developing Countries", the resident tax jurisdiction adopted by the OECD is abandoned, and it is more inclined to use the tax jurisdiction of the source of income for taxation, so as to better Protect the rights and interests of developing countries.

4.2. Abuse of Double Tax Treaties

The abuse of double tax avoidance agreements refers to the fact that some taxpayers try to use the loopholes in the agreement, the loopholes in the domestic tax laws of various countries, and the delay or error in information exchange between countries to achieve the purpose of not paying taxes to the country of residence or to the country of source, so as to evade their original purpose. the tax burden that should be borne. The BEPS Action Plan Report released in 2014 roughly divides the abuse of tax treaties into the following two categories: a) attempts to circumvent the restrictions stipulated in the double tax avoidance agreement itself; b) attempts to use the treaty to avoid cases stipulated by domestic court laws. Because extreme rights are the greatest injustice, the abuse of rights has extremely negative impacts on both individuals and society, and will destroy the normal order of human production and living activities, and the normal order of transnational business activities cannot be destroyed. Therefore, it is very necessary to prohibit taxpayers from abusing double tax avoidance rights by improving the double tax avoidance agreement, which not only protects the tax revenue of the source country and the country of residence, but also regulates and guarantees the normal operation order of transnational activities.

5. Comparative analysis of the Important Provisions of the China-US and China-Indian Double Tax Avoidance Agreements

The full name of these two agreements are Agreement between the Government of the People's Republic of China and the Government of the United States of America for the Avoidance of Double Taxation and Agreement between the Government of the People's Republic of China and the Government of the Republic of India for the Avoidance of Double Taxation. After a comparative reading of the two texts of the agreement, it was found that the frameworks of the two documents were roughly the same, with slight changes in the content. Some of these provisions have effectively alleviated the problem of unfair distribution of tax rights. The difference between the two documents mainly depends on some differences between India and the United States.

5.1. Agreements' Similarities

First, according to Article 6, Paragraph 1, Article 7, Paragraph 1, Article 13, Paragraph 1, Article 16, and Article 17, Paragraphs 1 and 2 of the China-India Agreement, and China and the Article 6, paragraph 1, Article 7, paragraph 1, Article 12, paragraph 1, Article 15 and Article 16 of the China-USA Agreement can be learned that for real estate income, business profits and property acquired through a permanent establishment benefit, the tax jurisdiction will be assigned to the country of origin [12,13]. Second, according to the China-India Agreement, Article 4, Paragraph 1 and Article 15, Paragraph 1, and the China-US Agreement, Article 13, Paragraph 1 and Article 14 Paragraph 1 of Article 1 shows that for independent personal service income or non-independent personal service income not obtained through a permanent establishment, the country of residence shall exercise

exclusive tax jurisdiction, but if the service income obtained through a permanent establishment is exercised by the source country Exclusive tax jurisdiction [12,13]. Third, according to Articles 10, 11 and 12 of the China-India Agreement, and Articles 9, 10 and 11 of the China-US Agreement, the source country shares the income with the country of residence, and the contracting parties negotiate to determine the limited tax rate. The source country will give priority to taxation according to the limited tax rate, and the country of residence will pay the tax difference according to the withholding tax rate of the country.

5.2. Agreements' Differences

5.2.1 Tax information exchange

According to Article 26 of the China-India Agreement and Article 25 of the China-US Agreement, although the content of the two agreements is the same in writing, due to the limitations of the principle of sovereignty and the principle of reciprocity, the two agreements This still needs to be specifically regulated by a special administrative agreement [9,12,13].

5.2.2 Standards of tax treatment

According to Article 24 of the China-India Agreement and Article 25 of the China-US Agreement, non-discriminatory treatment is adopted to ensure that the main taxation is based on the treatment of nationals of the other contracting party not lower than that of nationals of this country [12,13]. However, there is a special interpretation in paragraph 4 of Article 24 of the China-India Agreement[qw]: "This article shall not be construed to mean that any deduction, preference and relief granted by one Contracting State to residents of that Contracting State due to their civil status or family burden must also be granted to the other Contracting State. Residents of one of the contracting parties." Since the civil status of civil subjects in China is equal, there is no "any deduction, preference and relief" for residents of the contracting party due to civil subjects. Therefore, this clause should be due to India's special national conditions. Special interpretation of settings.

6. Conclusion

6.1. Summary of Comparative Analysis Results

First of all, in terms of the overall framework and behavioral structure of the agreement, except for the special addition of Article 8 "Sea and Air Transport" clauses in the China-India agreement, there is not much difference between the two agreements. It mainly includes the determination of the scope of persons and types of taxes, definitions of various concepts, tax jurisdiction and other specific regulations for different items, treatment standards, negotiation procedures, information exchange and other auxiliary information. Secondly, for some special nuances, it mainly includes the exchange of tax information and differences in tax treatment standards. The exchange of tax information requires the signing of specific administrative agreements based on the different national conditions and administrative regulations of each country. However, as early as the signing of the agreement, such administrative agreements have not yet been signed and effective, which brings certain risks to the specific implementation of the double tax avoidance agreement. and challenge. At the same time, the differences in tax treatment standards mainly exist in the differences in the status of civil subjects in the China-India Agreement. This inconsistency has little impact on international trade as a whole. Respecting the culture and national conditions of other countries is an important factor for the smooth progress of international trade. foundation.

6.2. Outlook for the Future Development of Double Tax Treaties

Double tax treaties may continue to develop in the future to address cross-border tax issues. With the deepening of global economic cooperation, international tax cooperation will become more important. Due to the development of the Internet of Things and block-chain, future double tax avoidance agreements may more widely cover emerging areas such as the digital economy and cross-

border e-commerce to adapt to changes in economic development. From the comparative analysis, it can be seen that since the United Nations promulgated the United Nations Double Taxation Agreement between Developed Countries and Developing Countries, the tax agreements of various countries are gradually improving the problem of unfair distribution of tax rights. In addition, future double tax avoidance agreements may also strengthen the coordination of tax rules to reduce inconsistencies among multiple countries, thereby promoting investment and trade.

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