

Cross-border E-commerce Tax Avoidance: Impact and Supervision Suggestions

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Abstract. With the rapid developing of economic globalization and digital economy, cross-border e-commerce has become an important business model. Cross-border e-commerce, a new and productive business model, which has various legal loopholes because it is still in the process of development. MNEs are increasingly avoiding taxes through cross-border e-commerce, excessive tax avoidance leads to tax evasion, affecting the tax interests of various countries, and is not conducive to world economic stability. This research mainly uses the case analysis method, comparative analysis method and literature analysis method, focusing on the tax avoidance methods of cross-border e-commerce and the anti-tax avoidance legal regulation, and finds the shortcomings of cross-border e-commerce in the existing legal norms. At present, many countries do not have legislative documents for cross-border e-commerce, tax legislation on cross-border e-commerce is close to the blank, the types of taxes, taxation methods and tax supervision of various countries are not clear, and there is a lack of a complete and scientific tax mechanism. Cross-border e-commerce of MNEs takes advantage of legal loopholes, mainly adopting tax avoidance methods such as registering companies in international tax havens, transfer pricing and using electronic information technology. WTO, OECD, EU and the US proposed anti-tax avoidance regulations for cross-border e-commerce earlier, which can provide legislative reference for other countries and international organizations. In order to promote the sound development of economic globalization and digital economy, countries should strengthen cooperation, establish a complete tax information exchange mechanism, improve legal norms related to cross-border e-commerce, and adopt a more scientific and effective tax collection and supervision mechanism for tax authorities.

Keywords: Cross-border e-commerce; MNEs; Tax regulation; International trade.

1. Introduction

With the development of economic globalization and digital economy, multinational enterprises (hereinafter referred to as “MNEs”) have developed cross-border e-commerce (hereinafter referred to as “CBEC”) business, and CBEC has become a remarkable business model and a new type of tax avoidance. The development of CBEC is inseparable from electronic information technology. Relying on the convenience of electronic information technology, the transaction information of CBEC is easy to be modified, and it is difficult to define the jurisdiction to tax such transactions. The concealment of CBEC and changes in international exchange rates have also led to difficulties in tax collection and administration. MNEs develop e-commerce in keeping with the changes of the times, and also avoid taxes through the CBEC model. There are many ways to conduct international tax avoidance in CBEC, and one of the most striking is to use international tax havens to avoid taxes.

Alibaba, a typical cross-border enterprise, which registered an offshore company in the Cayman Islands to avoid taxes. As a well-known international offshore financial center and tax haven, the Cayman Islands not only has unique tax advantages, enterprises do not need to pay taxes, but only pay management fees; Moreover, it has a stable political environment and a high degree of confidentiality, which does not require enterprises to disclose too much information, and is conducive to overseas listing and global financing. Alibaba's tax avoidance approach has been emulated by major multinational companies. Like Alibaba, major companies began to register a number of companies in tax havens, forming a complete Variable Interest Entity (VIE) tax avoidance structure through transfer pricing and abuse of tax treaties. At present, the international tax legislation on CBEC is not perfect, and MNEs use tax havens and other methods to avoid taxes, which makes international

tax collection and administration face greater challenges and harms the interests of jurisdictional countries. Excessive tax avoidance becomes tax evasion, and the international community needs to strengthen cooperation, improve legislation, and better solve the problem of e-commerce tax avoidance.

2. An Overview of Abuse of Cross-border E-commerce Tax Avoidance

2.1. The Concept of Cross-border E-commerce

CBEC refers to online transactions under different borders. It relies on Internet technology to complete the introduction of goods or services and electronic payment settlement through the e-commerce platform, and finally deliver goods across borders to a new international trade model. The core of CBEC is "commerce", and "electronic technology" and "Internet" are the means.

CBEC has three characteristics. The first is the global scope of trade, and CBEC entities conduct worldwide trade through online platforms, transcending the limitations of time and space. The second point is the invisibility of the main body of trade. Due to the need for privacy protection and different laws and regulations in various countries, it is difficult to determine the true information of trade entities. The third point is the intangibility of trade content. The development of electronic information technology has made CBEC transactions of rich digital products or hidden information of specific products [1]. These characteristics provide an important reference for MNEs to avoid tax.

2.2. The Methods and Peculiarities of Such Avoidance

There are three main methods about CBEC tax avoidance. The first method is to use international tax havens to avoid taxes. International tax havens usually refer to countries and regions that have zero or low tax rates or special tax incentives that can help taxpayers in international tax avoidance activities. CBEC enterprises can register offshore companies in international tax havens for tax avoidance [2]. For example, the well-known Alibaba company has registered offshore companies in well-known international tax havens such as the Cayman Islands. CBEC is a transaction through electronic payment. Another way to avoid taxes in international tax havens is to remit your income to online banks set up in tax havens [3].

The second method is transfer pricing. Transfer pricing is an international tax avoidance method often used by multinational companies. Transfer pricing is the price specified when goods are sold, services are provided, and intangible assets are transferred between affiliated companies. Enterprises in countries with high tax rates and affiliated companies in countries with low tax rates set low prices in transactions, and companies in countries with low tax rates and affiliated companies in countries with high tax rates are referred to as setting high prices when trading [4]. Profits are transferred between affiliates to countries with low tax rates by specifying low or high prices. CBEC enterprises can modify transaction information through information technology, exchange rates and market prices are constantly changing, and it is difficult for tax authorities to effectively control the transfer pricing of e-commerce enterprises [1].

The third method is to use electronic information technology to avoid taxes. CBEC is formed by relying on the development of electronic information technology. Electronic information technology has the characteristics of rapid development, convenience and speed, so CBEC transaction information can be modified through electronic information technology [5]. The international exchange rate is constantly changing, the legislative regulations of various countries are also different, and e-commerce enterprises often use electronic technology to modify information such as transaction time, transaction location, and transaction volume to obscure the transaction content. The modification of e-commerce transaction information makes it difficult to define tax jurisdiction and difficult for tax authorities to obtain real transaction documents. These tax avoidance methods are often abused, leading to tax evasion.

2.3. The Impact of such Avoidance

With the development of the electronic information technology, MNEs have made extremely use of CBEC to avoid tax. As the report from OECD, the digital economy poses challenges for international taxation, international tax treaties and national tax policies and interests.

There are two impacts of such avoidance. Firstly, CBEC tax avoidance damages tax interests and has a bad impact on economic development. CBEC enterprises can change the transaction time and transaction location through electronic technology, and if some e-commerce enterprises do not set up a permanent establishment abroad, it is difficult to define the jurisdiction of taxation. The fragmented nature of transaction customers makes it difficult to conduct complete and accurate tax audits.

Second, CBEC tax avoidance challenges traditional tax methods. In the era of rapid development of the digital economy, e-commerce enterprises collect profits from goods through mobile payment and digital currency, and the price and transaction volume of goods are difficult to determine. Digital products are also sold in large quantities on the Internet, digital products are virtualized, and the transaction and online delivery methods of digital products across time zones make it difficult for tax authorities to accurately determine the information of taxpayers and tax recipients [6].

3. Current Regulation on Such Avoidance

3.1. In terms of Domestic Law

China currently has no legislation for CBEC, and the regulations for CBEC include administrative rules and local legal norms, and there is also CBEC content in other laws, but the length is small.

China's legislature only promulgated the "E-commerce Law of the People's Republic of China" related to e-commerce in 2018, which pays more attention to the regulation of business activities themselves, in terms of taxation, mentioning that e-commerce enterprises should pay taxes according to law, there is no detailed regulation on the tax issues of e-commerce enterprises, and there are four regulations on CBEC, mainly focusing on promoting the development of CBEC. The law is progressive and reflects China's emphasis on e-commerce, but it still has some shortcomings. First of all, the provisions on CBEC are relatively vague, and the transaction entities of CBEC cannot clearly understand their rights and obligations. Secondly, CBEC is a very important part of e-commerce, and this law has too little content for CBEC to promote the process of CBEC. At present, there are no judicial interpretations or administrative regulations that refine general provisions. In 2013, the State Administration of Taxation of the Ministry of Finance issued the Notice on Tax Policies for CBEC Retail Exports, in which it mainly refers to the application of value added tax (hereinafter referred to as "VAT") and consumption tax exemptions.

There are few laws and regulations related to CBEC in China, and some administrative rules and local regulations related to CBEC focus on establishing CBEC pilot zones and promoting the development of CBEC [7]. China's current legislation does not clarify the specific connotation and scope of CBEC, and lacks regulations on transfer pricing, permanent establishments, international tax havens, etc. The legislation itself is lagging behind, so the pace of legislation should be accelerated as much as possible for the rapidly developing CBEC content.

3.2. In Terms of International Law

3.2.1 Regulation of the WTO

At the Second Trade Ministers' Meeting in 1998, the WTO formed a declaration on temporary duty-free measures for CBEC. This declaration was not put into practice because of different opinions among countries, but it promoted the development of national tax policies on CBEC. In fact, it is not feasible for all countries to adopt tax exemptions, and the development situation of each country is different, and China has not yet joined the WTO at this time. With the development of economic globalization, countries can seek common ground while reserving differences, strengthen

international cooperation, and create a good environment for the development of cross-border e-commerce.

3.2.2 Regulation of the OECD

The OECD has specific regulations on transfer pricing, abusive tax treaties and international tax havens. In 1979, the OECD issued Transfer Pricing and Transnational Corporations, which clarified the method of normal transaction prices and proposed a comparative analysis of information asymmetry. For China, China has just carried out reform and opening up, and may not have made clear regulations on transfer pricing, but with the rapid development of China's digital economy, there are more and more transfer pricing tax avoidance in CBEC, and it is necessary to learn from relevant international regulations and formulate laws related to transfer pricing tax avoidance as soon as possible. In the face of the abuse of tax treaties to avoid taxes, the OECD calls for international cooperation in the exchange of tax information. Faced with the use of international tax havens for tax avoidance, in 2019 the OECD issued the Guidelines on Automatic Exchange of No or Only Nominal Tax Jurisdictions, which requires tax havens to exchange tax information with the tax authorities of the taxpayer's home country. In the Ottawa Declaration issued by the OECD, it is pointed out that CBEC should be taxed within the existing tax system, without setting up separate taxes, which promotes tax cooperation among countries and promotes the unification of taxation of CBEC.

3.2.3 Regulation of the EU

The EU has many member states and different tax policies which propelled the EU to become the first region in the world to levy VAT on e-commerce. In 1998, the EU presented its Report on Protecting VAT Revenue and Promoting E-commerce, which imposed different VAT on EU and non-EU businesses [8]. The current EU requirement that all e-commerce websites should provide the same goods and purchase services to residents in any region and country in the EU is very innovative and more comprehensive. The EU also taxes digital products in CBEC, and the legislation of many countries around the world does not pay attention to the taxation of digital products, so the EU move provides a reference for other countries.

3.2.4 Regulation of the US

The United States did not initially impose a tax on CBEC, because the United States hoped to protect the development of CBEC in the United States through taxation and gain stronger competitiveness in the international market. Obviously, this way has promoted the development of CBEC in the United States, and the famous CBEC enterprises Amazon and e-Bay are from the United States.

In 1998, the United States promulgated the Internet Tax Exemption Act, which not only expressed the position of the United States not to tax e-commerce, but also promoted the exemption of CBEC from tariffs in countries around the world. With the continuous development of CBEC, the scope of offline transactions has gradually narrowed, and the non-taxation of CBEC has greatly affected the taxation of the United States. In 2016, South Dakota appealed to the U.S. Supreme Court to tax retailers with annual sales of more than \$100,000, and the U.S. Supreme Court ruled that states can force all e-commerce sellers to collect excise taxes on consumers.

4. Suggestions on Tax Avoidance

The e-commerce tax avoidance of MNEs is increasing, and excessive tax avoidance has had a negative impact on economic globalization and taxation of different countries. At present, the anti-tax avoidance methods of the international community are different, international cooperation needs to be strengthened, and there are some loopholes in the way tax jurisdiction is conducted. In view of the above situation, some suggestions are put forward.

4.1. Strengthen International Anti-tax Avoidance Cooperation

Enhanced international cooperation and effective exchange of tax information among countries are essential to protect their tax interests. The existing international legal norms are still constantly improving, and the treaties and initiatives related to CBEC issued by international organizations provide effective references for national legislation. In terms of tax avoidance regulation of CBEC, the legislative process in developing countries is generally slow. Strengthening international cooperation has many aspects. First, countries are better defining jurisdictional issues of taxation by exploring conflicting norms. Second, countries have improved legislation to define the scope of taxation on representative issues in CBEC. For example, how to tax electronic music and electronic books that use the Internet as a medium and do not need physical objects as a carrier; What is the definition of the permanent establishment issue and how to regulate enterprises that use international tax havens to avoid taxes; How to prevent e-commerce enterprises from using electronic information technology to construct false tax information and so on. The third point is that all countries should strengthen the communication of tax information. While preventing enterprises from excessive tax avoidance, they can also avoid double taxation in multiple countries, and jointly promote the development of e-commerce and the flow of wealth.

In terms of tax information exchange, the OECD has published the BEPS program, which requires national tax authorities to exchange signed secret tax rulings, but only sets out minimum disclosure obligations. Countries can use the OECD platform to strengthen cooperation in practice and exchange more tax information while protecting taxpayers' privacy.

4.2. Countries Taxed Income from E-commerce by Category

Current laws in many countries do not clearly define income derived from e-commerce. E-commerce income should have different classification standards according to different sources, and countries should adopt different tax rates and separate taxation for different types of e-commerce income.

Many e-commerce enterprises avoid taxes by obscuring the nature of the transaction gains, and such problems can be avoided if national legislation clearly divides the income from e-commerce. There are various criteria for dividing income from e-commerce: such as sales income, franchise royalties, etc. There are still many gaps and vague concepts in the current tax legislation on e-commerce. how transactions for digital products should be attributed; Issues such as how to determine who is taxed for transactions carried out in different time zones need to be addressed. Many CBEC enterprises did not set up a permanent establishment in a country other than their home country in the early days of their establishment, or often changed their office locations to achieve the goal of tax avoidance [9]. The permanent establishment of a CBEC enterprise should be redefined in the legislation, or a permanent establishment should be given a different name to determine the income of the enterprise. In the case of enterprises incorporated in tax havens, countries with jurisdiction should legislate more definitively on the nature of the proceeds of such transactions.

Different tax rates are adopted for taxation according to different incomes, which can effectively encourage the sustainable development of e-commerce enterprises. For example, some countries can guide e-commerce companies to promote the export of products with their own characteristics through taxation; countries around the world can set high tax rates for products that are harmful to the environment. At present, the legislation on taxation of e-commerce income in the world is not perfect, and a few countries such as the United States and Japan have relatively more legislation on e-commerce, which can provide reference for other countries.

4.3. Countries Should Establish a Scientific Tax Collection and Management System

The intangibility of e-commerce poses challenges to the tax system and the tax collection and administration system.

First of all, because many platforms do not mandate buyers and sellers located in different countries to register or authenticate at the time of sale, it is difficult for jurisdictional countries to

accurately identify the time and place of transactions for taxation. Second, because the information is subject to confidentiality clauses or other laws and regulations, countries with jurisdiction cannot obtain transaction information from third parties. Therefore, in the context of the increasing development of CBEC, it is necessary to establish a scientific CBEC tax collection and management platform, and integrate banks, buyers and sellers of CBEC platforms and tax authorities on one management platform to facilitate tax registration. China and many developing countries are not perfect in terms of tax legislation for CBEC, so they can gradually communicate with other countries in the world to establish a better tax collection and administration platform on the basis of improving the legal system [10].

A scientific CBEC tax collection and administration platform requires international tax information exchange and cooperation, as well as more complete scientific and technological development and legal constraints.

5. Summary

This research focuses on CBEC tax avoidance and anti-tax avoidance regulations, expounds the methods, particularities and impacts of e-commerce tax avoidance, and summarizes three main tax avoidance methods. This compares and analyzes the typical anti-tax avoidance regulations of CBEC in four different international organizations or countries, and finds that there is insufficient international cooperation in the existing international legal regulations, unclear types of CBEC tax collection and management, and unscientific taxation systems, and puts forward suggestions for the shortcomings of anti-tax avoidance regulations. Although CBEC is a new product of social development, it has a rapid development trend, which requires countries and international organizations to continuously improve legislation, not only to prevent CBEC tax avoidance methods from being abused, but also to provide a better development platform for CBEC and promote the development of economic globalization. In order to promote the balanced development of international trade, most developing countries have imperfect tax legislation on CBEC, and developing countries can actively learn from the existing international legislative experience to regulate the tax avoidance of CBEC. In the face of changing tax avoidance methods, the research needs to keep pace with the times, constantly understand the CBEC tax avoidance measures of multinational companies, and provide new suggestions for international cooperation and legislation in a timely manner.

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