

On the Borrowed Points and Danger Prevention of Cross-Border Tax Planning

-- The example of Apple Inc.

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Abstract: International tax planning can reflect the level of an enterprise's multinational business management, but also relates to the financial cost of growth and decline, is a must for enterprise managers. International tax planning refers to the multinational taxpayers to make in advance, used to reduce the international tax obligations of multinational investment and business plans. With the global inflation, the use of reasonable means to reduce the tax burden in the international tax environment has become a practical need to promote the further development and growth of China's multinational companies, but at present, China's multinational enterprises are still in the initial stage of multinational operations, many managers for the discussion of the international tax planning only stays on the surface. Therefore, this paper analyzes the possibility of international tax planning, tax jurisdiction, policy loopholes, tax avoidance risks and hazard prevention from the perspective of Apple, for example, and analyzes Apple's Irish-Dutch Sandwich tax avoidance structure, which provides certain reference significance to our country's multinational tax planning.

Keywords: Cross-Border Tax Planning, Apple, Tax Avoidance.

1. Company Profile and Tax Avoidance Process

1.1. Introduction to Apple Inc.

Apple Inc. is a high-tech company in the United States, which was founded in 1976 by several people led by Steve Jobs, and was officially renamed Apple Inc. in 2007 by Apple Computer, Inc. with the main business of innovative electronic technology products and headquartered in Cupertino, California. In the high-tech enterprises with its innovative ideas, simple and generous product design, avant-garde features and famous for the world, well-known products are Apple II, Macintosh computers, Macbook laptops, iPod music players, iTunes Store, iMac all-in-one, iPhone and iPad tablet PCs, etc., in 14 years surpassed the Google to become the most valuable brand in the world, with the market capitalization reaching astonishing heights.

1.2. Domestic Tax Avoidance

In the United States, Apple's headquarters is established in California. However, Apple has set up a subsidiary, Braeburn, in Reno, Nevada. Although the company is not responsible for the production or research and development of any products, it has helped Apple avoid the large tax burden incurred in other states because Nevada does not levy corporate income tax.

1.3. Foreign Tax Avoidance

The first step, the establishment of subsidiaries AOI. in order to attract international enterprises, the Irish government stipulates that in principle, as long as the actual operation is located overseas, there is no need to pay taxes, so Apple Inc. registered in foreign subsidiaries established to enjoy preferential zero-percentage tax policy, and at this time, the mother-subsidiary company will sign a cost-sharing contract, together with the right to own and have the right to control the

intangible assets. Because the head office is carrying out research and development of intangible assets before this trip, the subsidiary because of the arrival of the late will need to add some payment to carry out cooperative research and development. The purpose of establishing a cost-sharing contract is to avoid Section 367, this provision is generally in the CFC overseas companies to obtain the parent company that is the head office agreed to give the intangible assets, not to carry out the relevant later work procedures on the public direct foreign sales, this time the company's business sales profits whether or not there is no turn back to the U.S. head office and go in together and collect taxes. Apple's software and other products are intangible assets, precisely because they are intangible assets, so there is a certain degree of speciality, to carry out further research and development is also relatively easy. At this time, Apple's U.S. head office only needs to pay not a lot of tax on the just mentioned increase in the amount of money to pay, and the AOI does not need to mention the royalty withholding tax.

The second step, Establishment of a Dutch subsidiary. Since the new Dutch subsidiary mentioned above is not considered an entity in the U.S., and according to local tax law is not considered a real entity, that is, a fictitious entity, AOI licenses the intangible assets to the Dutch company, which pays a large amount of money to AOI for the royalties, and this amount meets the transfer pricing criteria. Under U.S. tax law, this payment is treated as if it had not been made, because the Dutch company is part of the same legal entity as the Irish holding company as defined by U.S. tax law, and transfers within the same legal entity do not count as taxable income. Because of the above, the special profits and income of the Irish holding company are not defined as income and will not be taxed in the US where the parent company is located. In addition, the actual place of management of the Irish company is elsewhere, that is, according to the Irish tax law, only the entity's place of management is actually in the local situation is required to pay global income tax on its

income, so this special funds do not need to pay tax in Ireland, so the real location of the other places of this situation does not have corporate income tax. Income tax.

The third step was the establishment of ASI in Ireland, a wholly owned subsidiary of AOI again invested in and physically operated in Ireland, which was likewise deemed to be non-existent within the U.S. The Dutch company licensed its intangible assets to the Dutch company. The Dutch company once again licensed its intangible assets to ASI, and in exactly the same way, the Irish main operating company gave the Dutch company a sum of money, which was to be used to pay royalties. ASI used these intangible assets in some of its European operations, and also charged a system to some customers of the unrelated party in question to increase operating profits. (1) Exploiting the loophole of the check-the-box rule, under U.S. tax law, AOI, the Dutch subsidiary, and ASI are affiliated and treated as a whole, and it is precisely because ASI is actually in active operation that the three individuals can be viewed collectively as the whole doing active operations, and can be subjected to the exception of the Controlled Foreign Corporate Enterprise (“CFC”) rules, i.e., the profits remain with AOI and are not deemed to be repatriated as dividends for corporate income tax purposes in the United States. Income tax. In addition to these, because the two are not independent entities, so the Dutch company to ASI to collect royalties, the Dutch company to pay royalties to the AOI according to the U.S. tax law are deemed not to have occurred, will not become Subpart F income. (2) ASI intangible assets used in business activities in Europe, to the European unaffiliated customers to collect advertising fees, royalties and other business income, Ireland ASI in other European countries also do not need to pay taxes or only a small amount of tax. Reason: According to the tax treaty and its domestic tax law, active business income is not subject to tax in the source country unless the Irish operating company has a permanent establishment (e.g., a branch) in the source country; even if it has a permanent establishment in the source country (e.g., in the U.K.), only a small amount of tax will be payable on the active business income after deduction of the royalties payable to the Irish operating company; and the royalties are often taxable only in the country of residence, e.g., under Irish and U.K. tax laws. Royalties are often taxed only by the resident State, for example, under the tax treaty between Ireland and the United Kingdom, royalty income is taxed only in Ireland.

2. International Tax Planning Analysis

2.1. Feasibility Analysis of Cross-Border Tax Planning

First of all, tax planning is a legal right of taxpayers. According to tax-related theories, enterprises take their own interests as the starting point, and plan and arrange their business, investment and financing activities within the scope of reasonable laws, so as to reduce their own tax liabilities and maximize their profits, which are reasonable and legitimate financial activities. When the tax law gives more than one tax program, taxpayers combined with their own conditions to make reasonable decisions and planning, is completely possible, but also for the development of cross-border tax planning to lay a good foundation.

Secondly, the tax rate and tax types will have big differences because of different countries and regions. Comprehensive overall view, the United States income tax

rate greatly exceeds the average level, due to such a huge difference, resulting in the formation of capital flows in different countries, but also for the implementation of cross-border tax planning to provide favorable help.

Thirdly, the government of each country enjoys the absolute dominant right to decide the target group of taxation, the type of taxation, the rate of taxation, and the amount of taxation, which is also called tax jurisdiction. Under the different tax jurisdiction, it can provide certain help for multinational corporations to make corresponding adjustments according to their own situation, thus promoting the operability of multinational tax planning.

Finally, from the perspective of the world, some countries have extremely low tax rates, or even no tax, which makes it easy for multinational enterprises to register in these places, and the corresponding procedures are very simple and less restrictive, which can give multinational corporations a good business and investment and tax environment, and promote multinational tax planning.

2.2. Analysis of the Effectiveness of Cross-Border Tax Planning

At present, the two methods of tax jurisdiction recognized by the international community are “personal” and “territorial”, and most of the countries do not choose one of these principles, but implement both. But they have their own differences, but also because of this proves the effectiveness of multinational corporation’s reasonable tax avoidance.

3. Characteristics of Malicious Tax Planning and Apple's Malicious Tax Hazards

According to relevant media reports, Apple has made hundreds of billions of dollars of gray profits through tax planning in the decades of its overseas expansion, but due to its incredible tax avoidance and reasonable tax rates, it has attracted strong reaction from the society, and the issue of malicious tax planning by multinational corporations has also become a focal point of social concern.

3.1. Characteristics of Malicious Tax

3.1.1. Difference between proper tax planning and malicious tax planning

Generally speaking, legitimate tax planning is based on business authenticity, and its tax cost and economic substance have logical correspondence, while malicious tax planning has no corresponding relationship.

Ordinary proper tax planning is sometimes used only to avoid double taxation, etc., while malicious tax is used to avoid the legal tax liability that the taxpayer would otherwise be liable for.

Proper planning is to plan in advance the targeted business model, activity flow, accounting procedures, etc. in accordance with the tax treatment rules provided by the tax law, in order to reasonably comply with the policy to enjoy the preferential treatment and tax convenience. It has the purpose of promoting the normal implementation of business activities. Malicious taxation, on the other hand, takes tax avoidance as the only central idea, exploits policy loopholes, and amplifies or even abuses tax provisions.

Proper planning is usually to avoid tax risks for the purpose, while malicious tax planning is a kind of short-sighted behavior, only focusing on immediate interests.

3.1.2. Two major features of malicious tax

First, “tax planning that may lead to abuse of tax laws with consequences unforeseen by legislators.” According to the relevant units, this is a risky situation that may be formed due to the fact that the point in time when the tax authorities challenge the tax program and make corrective comments does not coincide with the formation of the tax planning program.

Second, “tax planning in favor of the taxpayer that does not disclose uncertainty about the legality of the existence of material matters related to the tax return.” This is due to the mentality of the relevant beneficiaries to avoid harm and to be exquisitely self-interested, which may conceal the existence of loopholes in the law and not express their views on the risks arising from the uncertainty.

3.2. Apple's Malicious Tax Harm

3.2.1. Legal level

Apple drilled the tax law for their own huge profits, although from the legal point of view is not really illegal, but there are playing ball behavior, difficult to get the real meaning of legal sanctions, but also highlights the importance of tax planning supervision. If there is no tax planning, it will bring a lot of social problems, not only on the social legal system or the interests of the people of the country have a certain impact.

3.2.2. Economic and Social Level

Apple's malicious tax avoidance involves the problem of the world economy. Due to the huge amount of tax avoidance, it ranks first in the tax avoidance amount of large multinational enterprises in Europe, which seriously jeopardizes the economic interests of other countries. Australia's financial media also reported its decades of income transfer behavior eventually the European Union imposed a fine of up to \$19 billion on Apple, such multinational tax avoidance behavior also had to be characterized as malicious tax.

In less developed economies, taxation is a very necessary way of reallocating resources. In underdeveloped economies, a certain percentage of the population is poor. Because the parents or family are poorly educated, then the probability of their children receiving higher education will also be low, thus confining them to low-demanding and low-paying jobs when they enter the society. Inefficient physical work wastes a lot of time and the improvement of labor capacity becomes very slow. In political economy, this segment of the labor force lacks the ability to expand reproduction and is called the cost of labor reproduction.

Helping this group out of the poverty trap is the first priority of taxation. This portion of the tax, being spent on the poverty trap will have the highest marginal benefit, which is also favorable from a macroeconomic point of view.

The function of taxation changes as economies moves from underdeveloped to developed. The primary function of taxation will become to steer the macroeconomy as the poverty trap is eliminated. This is currently the role of taxation under Keynesianism, through which domestic demand is expanded and consumption is promoted.

At the level of classical economics, the needs of social groups will expand as the economy grows. Keynes, however, argued that taxation is a very necessary way of reallocating resources in less developed economies. This is because in an underdeveloped economy, a certain percentage of the population will be poor. Because the parents or family are

poorly educated, then the probability of the children receiving higher education will also be low and thus will only be able to work in low-demanding and low-paying jobs when they enter the society. Inefficient physical work wastes a lot of time and the improvement of labor capacity becomes very slow. In political economy, this part of the labor force lacks the ability to expand reproduction and is called the cost of labor reproduction.

4. Responding to Malicious Tax Risk Prevention

4.1. Risk Assessment on Cross-Border Taxation in China

Nowadays, China has gradually entered into internationalization development, so tax planning for multinational corporations has become an important strategic content in China's multinational operation. Tax planning needs to be formulated in advance according to its own situation, which involves a lot of contents, such as finance, accounting, auditing, etc., and needs to be closely integrated with the tax law, a small mistake will lead to the failure of the strategy.

Therefore, we need to focus on tax regulation. Including domestic and international regulation, on February 1, 2015, China began to implement the “General Anti-Tax Avoidance Management Measures (Trial)”, which can help the regulator to control and prevent our multinational enterprises from transferring their profits to the British Virgin Islands “best tax havens”.

At the same time, we should focus on policy risks. From the current situation, the international community is mainly anti-avoidance wave, but there are still some countries to promote their own economic interests, encourage foreign investment, set a low tax rate or even completely exempt from tax policy. Therefore, China should fully consider the tax policies of various countries before customizing the international tax planning scheme.

4.2. Implications for China's Cross-Border Tax Planning

First of all, tax planning should not be carried out blindly and should be forward-looking. Relevant managers should strengthen the study of domestic and foreign tax laws, have a deep understanding of the tax difference system, avoid copying the domestic tax policy to the international level, should respect the differences of each country, and arrange the business activities from a global point of view.

Secondly, do a good job of solidifying and developing tax talents. China has a large number of financial talents, but there are few talents who are proficient in internationalized tax laws, therefore, the construction of relevant talents should be strengthened, and the relevant talents can be developed by combining external introduction and internal training.

Finally, it is important to remember that it is forbidden to violate tax laws. No matter in any country, multinational corporations have an insurmountable red line in international tax planning, which is to comply with the law. Only in this way can we create a favorable, safe and efficient tax environment and eliminate tax risks at the root. As citizens of a country, we should have a certain sense of social responsibility, compliance with all aspects of the law, including tax law, is a sense of responsibility that each of us should have, to be refined to the heart of each citizen, to the

enterprise, and then to the entire national level, can not be separated from the efforts of each tiny individual.

5. Conclusion

To summarize, cross-border tax planning, as an effective means for modern enterprises to reduce their tax burden, has a certain degree of legitimacy, but it also faces risks at the legal, economic and social levels in the context of an increasingly complex international tax environment. Through the case study of Apple, we can see that multinational corporations have both successful experiences and disputes caused by malicious tax avoidance in the process of tax planning by utilizing differences in tax jurisdictions. For Chinese enterprises, international tax planning needs to be carried out within a legal framework and pay attention to changes in global tax policies to avoid legal and reputational risks arising from improper planning. Looking ahead, establishing a sound tax compliance system and improving tax transparency will be the key to sustainable development

in the context of globalization.

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