

Research on Risk and Legal Regulation in Transnational Investment: Based on the Comparison of Current Legislation in China and the United States

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Abstract: The enterprise transnational investment is thriving, and our economy is developing rapidly, but facing a shortage of talent, lack of technical development, management is not in place, investment risks, and so on many problems. From the perspective of national investment policies, developed countries have strengthened investment restrictions, and these measures are related to national security such as critical infrastructure and core technologies. Instead, developing countries continue to ease policies to promote investment. At the same time, tax-related investment policy measures taken around the world over the past decade show that tax holidays and reduced corporate income tax (CIT) are the main ways countries attract investors. Using the method of comparative analysis, this paper first analyzes three kinds of risks in transnational investment, namely capital security, environment, and tax issues, and then sorts out the regulations on transnational investment in the current legislation of China and the United States from the aspects of environment and tax, and finally puts forward suggestions to improve China's relevant legislation.

Keywords: transnational investment, investment risk, legal regulation

1. Introduction

Since China acceded to the WTO in 2001, the pace of its enterprises' international operation has been accelerated and good achievements have been made. By the end of 2006, China's overseas investment totaled US \$90.6 billion, among which the net outbound investment reached US \$21.136 billion, nearly 40 times more than the US \$572 million in 2000. There are plenty of failures along with successes. Xiangyang Technology, which raised the largest amount in the first round and had the largest number of co-investors in China, was once selected by the well-known American RedHerring magazine as one of the top 100 private companies in Asia. Its goal is to become the leading provider of next-generation service platforms (NGSP) in the field of communication, and to open a new era of free communication with "free communication without boundaries". Although Shangyang has several good core businesses, such as UU language and letter, ultimately did not seize the market opportunity, in 2006 quit the market. Some of the reasons for failure and solutions, this article makes a discussion.

2. Risk Types in Transnational Investment

2.1. Capital Security

Due to the defects of most enterprises' knowledge, the risk of transnational investment cannot be controlled. Therefore, some independent risks can be independently analyzed to minimize the risk of transnational investment [1].

The blind investment decision will lead to investment behavior can not fit the market well, investment behavior can not complete the company's investment target, and for investment preparation for the capital recovery risk, the company is involved in greater financial risk.

Before launching a transnational investment project, it is important to carry out a detailed economic evaluation of the cash flow and financial situation of the project each year within the investment period [2].

Since the transnational operation of Chinese enterprises is still in the initial stage, only a few enterprises have explored the layout and integration of the global value chain, which leads to the inability of most enterprises to control the marketing process of their products in overseas markets, which greatly restricts their global competitiveness. Because the downstream channels are controlled by people, and the domestic customers can not fully grasp the details, they can not effectively grasp the market changes, let alone put forward forward-looking decisions on products, which makes many enterprises fall into a dead end of being led by the nose and not high profit.

2.2. Capital Security

The main characteristics of tax security in transnational investment are as follows:

First, risk. International tax planning is usually applied to transnational operations, which means that transnational operations, on the premise of not violating laws, make overall arrangements and reasonable planning of corporate tax payment strategies by taking advantage of differences in tax laws and preferential tax policies of various countries, to minimize the tax pressure of enterprises in the process of operation and maximize profits [3].

Have certain risks, the international tax planning and the cause of the problem are: the legitimacy of tax planning in different countries of the world definition does not agree, and countries also have certain differences, if do not conform to the national law in tax planning, will be defined as illegal behavior, is not conducive to the production and operation of an enterprise.

Second, complexity. The complexity of international tax planning is relatively high, and the system is relatively strong, in the process of enterprise tax planning, not only need to consider a variety of tax differences but also need to consider the preferential policies of each country for enterprise tax and the national conditions of each country.

Third, legitimacy. Transnational corporations should strictly follow the tax laws of various countries in tax planning, and make use of the tax differences of various countries to formulate the minimum legal tax payment scheme, to avoid the problem of tax avoidance or evasion and improve the market competitiveness of enterprises.

2.3. Environmental Problems

Since the 1990s, the scale of international investment has continued to expand [4]. Investors will transfer potentially polluting products or processes to other countries to develop new projects, and at the same time, they will transfer environmental pollution to other countries. As developed countries set higher and higher environmental standards, more companies are turning to develop countries where environmental standards are relatively relaxed. Multinational enterprises from developed countries take advantage of the policies that many developing countries are keen on attracting foreign

investment and ignoring their environmental protection to obtain greater economic benefits and transfer some industries that are strictly restricted or hardly allowed to be established in developed countries to developing countries. "The organization for economic cooperation and development (OECD) study showed that since the 1980 s, harmful to the environment industry especially those resources dependent enterprises constantly shift to low level of environmental protection, the low-income countries, causing pollution-intensive enterprises in developing countries has increased dramatically, and this trend continues to deteriorate [5]. In the process of production and operation, transnational investment has caused direct infringement on the environment. First, transnational investment enterprises have infringed on the environment in the process of establishment. Second, most of the industries that transnational corporations set up in developing countries during the investment process are heavily polluting mostly heavy industries.

3. Regulation of Risks in Transnational Investment in the Current Legislation of China and the United States

3.1. Review of China's Current Legislation

According to the Enterprise Income Tax Law of the People's Republic of China, the scope of the tax credit is limited to the enterprise income tax paid abroad by a resident enterprise on taxable income derived from outside China. The method of the tax credit is to deduct from the tax payable by the enterprise in the current period, and the portion exceeding the credit limit can be offset in the following five years with the balance of the credit limit in each year after deducting the tax payable in the current year. The same amount of income tax should be calculated in different countries. Limited credit, from the enterprise of the current tax year (the same) payable in credit, if the credit of tax exceeds the credit limit, do not place all credits from the business tax payable of the current period, the current credit only to credit limit as the highest amount, but more than part of the can in the later five within the tax year. The balance after deducting the number of tax credits payable in the specific tax year from the limit of tax credits in the subsequent tax year shall be used as the offset. If the amount of tax credits has not been completed within five tax years, the credit shall not be granted anymore. Regulations on the Implementation of the Enterprise Income Tax Law of the People's Republic of China Dividends, bonuses and other equity investment income is the after-tax profit distribution of the invested enterprise. If the full amount of the income is collected from the taxable recipient of the enterprise income tax, there will be double taxation on the income from the same economic source. To avoid double taxation and prevent tax policies from distorting investment methods and financing structure, domestic enterprises are encouraged to "go global".

Administrative detention shall be imposed on serious environmental violations. Administrative detention shall be imposed on four types of violations. First, the construction project has not carried out an environmental impact assessment according to law, and has been ordered to stop construction, but refuses to carry out. Second, those who discharge pollutants without obtaining a pollutant discharge permit violate the law and are ordered to stop discharging pollutants and refuse to carry out the discharge. The third is the illegal discharge of pollutants through dark pipes, seepage Wells, seepage pits, perfusion or tampering and forging monitoring data, abnormal operation of pollution prevention and control facilities, and other ways to evade supervision. Those who produce or use pesticides that are expressly prohibited by the State and are ordered to make corrections, but refuse to make corrections.

3.2. Review of Current American Legislation

By exposing investors to sources of risk other than those associated with traditional investments in the U.S. economy, the new risks can help investors reduce their overall investment losses [6]. The

increasing dependence of the U.S. economy on knowledge assets has likely increased the complexity of the investment decision-making process [7]. Therefore risk can be defined as uncertainty over future developments affecting the investor's future returns because a chosen strategy is irreversible [8].

On the tax side, The Internal Revenue Code is the primary statutory basis for the federal tax code. The Code of Federal Regulations is the Treasury Department's regulatory interpretation of the federal tax laws passed by Congress and, when reasonably interpreted, carries the weight of the law. The tax treaties and case law of the U.S. Tax Court and other federal courts make up the remainder of the U.S. tax code.

In terms of environmental pollution lawsuits, courts consider which party reached a particular community first, the polluter or the landowner claiming harm. The law allows polluters to escape liability as long as it can be shown that the landowner claiming harm knowingly moved next to a preexisting nuisance. The rationale for this defense is that the "disturbed" landowner usually pays less for the property because the nuisance reduces its value. However, courts have increasingly given less weight to the priority of arrival in assessing nuisance claims.

Most cases, however, do not involve nuisance caused by adverse motives. For example, polluters usually produce useful products that are indispensable to the local economy, and the market value of damaged property rarely exceeds the business investment of the polluter.

4. Suggestions for Improving China's Relevant Legislation

4.1. Ensure the Safety of Funds

Starting from the improvement of the internal control system, the work process, examination and approval authority, post responsibility, supervision and management, responsibility investigation, and other content. By adopting the corresponding responsibility system to implement the management measures, the whole fund management system can achieve the ideal implementation effect.

Establish the guarantee mechanism in advance, and close the fund operation from the source. Establish and improve the cash management system for the use of cash; because of the problems existing in the fund management, such as multiple account opening and fund dispersion, the centralized fund management system is established and improved. The daily supervision and inspection system has been established and improved given the nonstandard behaviors such as random funds and random lists in the process of fund management. Because of the problems such as the lack of timely information and the lack of foresight in fund management, the fund budget system has been established and improved. Given the problems of the fund management of individual units, such as no order, no ban, and so on, we have established and improved the assessment, reward, and punishment system.

Standardize in-service payment procedures to ensure the safe and effective operation of funds. Firstly, through the comprehensive analysis of the annual capital expenditure amount and the number of expenditures of the enterprise, according to the different amounts of capital, different management authority, and different responsibility, implement the management responsibility system of successive signing, step by step. The second is the principle that the responsibility of joint signature examination and approval belongs to the person. Based on clarifying the amount of capital joint signing, a clear person responsible for joint signing shall be stipulated for each level of the joint signing agency, and the list of the person responsible shall be submitted to the supervision department of the unit for examination and filing, to facilitate comparative inspection when a large amount of capital expenditure occurs. Finally, establish the fund dynamic report system. Through the daily, weekly, and dynamic reporting system of capital, the important information of capital management

is brought into the vision of the first manager of the enterprise, the problems found can be solved quickly, and the rapid reaction mechanism of information transmission is established.

Strengthen post-information feedback to prevent the occurrence of capital risks. We should fully understand the importance of post-accounting information feedback work, accounting system construction, accounting personnel quality improvement, and accounting foundation work as important affairs to grasp. Equipped with high-quality full-time accounting post-inspection personnel. Through the reconfirmation of the authenticity, compliance, and integrity of banks, cash, and bills involving funds, hidden dangers can be found in time, errors can be reduced, risks can be effectively avoided, and a strong guarantee can be provided for the safety of funds.

To ensure the safety of the unit's funds, the function of financial supervision must be strengthened. First, strengthen internal supervision. All levels of fund management departments and personnel must have a high degree of risk prevention awareness. Financial personnel must comply with the internal containment system, incompatible positions separated from each other, such as cashier, accounting positions must be set up separately, effectively achieve mutual supervision and mutual restriction; Adhere to the network bank double key, double authorization management system; Adhere to the regular or irregular inspection of cash on hand and bank deposit balances and other systems, to find out the reasons for unidentified funds and differences in time, clarify the context, and effectively achieve the accounts, accounts, accounts, and accounts consistent.

Secondly, external supervision should be strengthened and various forms of inspection should be combined. Special inspection of funds should be carried out regularly. Take the form of an on-the-spot inspection or business joint examination. For example, taking inventory of cash on hand and randomly checking the use of bank funds during a period, so that funds and personnel are always under monitoring. We will also strengthen audit supervision. Audit departments should include the fund management audit as an important part of the audit work in the annual audit work plan and arrangement, and, in combination with the economic responsibility audit of leading cadres, inspect and supervise the fund management of different types of units step by step and with emphasis. Objective evaluation of capital security risks, timely notification of major problems found in the audit, and one-vote rejection of the management performance of unit leaders.

Finally, strengthen the supervision of the masses and establish a full monitoring system. Make full use of the office network and other modern information communication platforms, widely publicize the laws and regulations of fund management, and popularize the knowledge of financial and economic management. Work with the Commission for Discipline Inspection and other departments to create a feedback window for information on fund management. Improve the enthusiasm of employees to participate in the supervision of fund management, encourage supervision of unit fund management and use, and report violations of laws and disciplines. Enhance the transparency of fund management, effectively plug loopholes in management, to ensure the safety of unit funds.

Pay attention to talent construction and improve the comprehensive quality. High-quality financial personnel is the human guarantee to prevent capital risks and improve capital security. First, improve the comprehensive quality of financial personnel. It is necessary to strengthen professional ethics education and strengthen legal awareness so that they can resist all kinds of temptation and prevent the risk of self-fund management due to the lack of ethics. To strengthen the training of professional ability. Provide a practical training platform combining theory and practice for financial supervision personnel, often carrying out business exchanges, so that financial personnel constantly learn and master new knowledge, and new methods, to adapt to the requirements of different financial supervision projects, to achieve a high level of supervision effect. Second, enhance the awareness of financial risk prevention. Financial personnel should bear in mind their dual identity, through the post responsibility system and incentive mechanism and other methods, enhance the financial personnel

to create a "risk is loss, the loss is dereliction of duty, dereliction of duty will be punished" atmosphere, enhance their risk prevention awareness, and then ensure the safety of funds.

4.2. Alleviate Tax Problems

First, under the premise of the personal tax system, the tax credit method should be adopted for overseas investment income, but the restriction on the level of credit should be abolished. From the perspective of the overseas strategic layout of "going global" enterprises, many multinational groups have set up a multi-layer structure, and the credit policy should benefit all levels. The creation of virtual tax credits in domestic tax law is a special credit system developed based on credit law. Its purpose is to make the source country use foreign capital tax preferential policies and measures to receive practical results. After the reform, the calculation method of credit limit is more flexible, which can be changed from only using the sub-country credit method to choosing the sub-country credit method or the comprehensive credit method [9].

The second is to explore the establishment of "the principle of territory-oriented, personal principle as a supplement" taxation model. Reference portfolio according to the practical circumstances in our country, the neutral theory, draw lessons from the United States and other countries tax reform experience, our country should establish perfect", belongs to the people on the principle of territoriality principle is complementary "mode of taxation, tax resident outside of the positive income tax law, tax resident outside the negative income tax credit.

4.3. Prevention and Control of Environmental Problems

Strengthen government supervision. First of all, improve and relevant laws and systems, strengthen the supervision and inspection of law enforcement departments, so that pollution will be investigated, law enforcement will be strict, fair, and reasonable. Secondly, to strictly foreign enterprises' access to the green environmental protection audit system, strict implementation of accessibility standards. In addition, it is necessary to establish a perfect incentive mechanism for transnational corporations to fulfill their corporate responsibilities in China, to ensure that the rewards and punishments are in proportion, encourage transnational corporations to take active measures to assume their corporate responsibilities in China, and order them to withdraw from China for persistent enterprises.

Raise public awareness of environmental protection. Instead of relying solely on government regulators, we will enable the general public to voluntarily supervise enterprises that fail to meet pollution standards. By increasing the efforts of environmental protection publicity, more people with environmental awareness and social responsibility should be trained to form a public supervision system, so that they can establish a sense of safeguarding their rights and make good use of legal weapons to protect their rights and interests while contributing to environmental protection.

Vigorously promote enterprises to adopt new clean technologies. Domestic and foreign enterprises are advocated to adopt domestic and foreign existing clean technologies and promote the development of clean production technologies in our country. We should vigorously promote the upgrading and transformation of traditional high-pollution industries, provide them with technical, financial, or policy support, eliminate high-pollution and difficult enterprises; Promote industrial parks, gather various means of production, realize industrial agglomeration development, optimize its function layout; We will accelerate the development of cleaner production models and increase ecological efficiency. We will increase support for strategic emerging industries such as new materials and new energy.

Strengthen environmental approval of investment and environmental law enforcement. China's environmental pollution situation is still serious, enterprises exceed the standard discharge pollutants, illegal disposal of hazardous waste and other environmental pollution issues are still

outstanding, which has led to the legislation has not achieved the expected effect. To effectively prevent the transfer of pollution by multinational companies, it is necessary to control the pollution from the source, and the environmental protection approval and environmental impact assessment of foreign-funded projects are the focus of this prevention and control work [10]. However, due to the strong externality, slow investment effect, and uncertain economic benefits of environmental protection investment, enterprises often lack the willingness to independently invest in environmental protection under the pressure of effective environmental regulation.

5. Conclusion

To sum up, when transnational investment is made, the budget results will have a great impact on the planning work. Therefore, if the accuracy of the budget results is relatively low, any mistakes in the process will easily cause the failure of enterprise tax planning. If an enterprise does not fully understand the consumption concept of the investing country, if the enterprise does not do a good job of market research, and cannot grasp the preferences of consumers, the sales of products and the interests of the company will be adversely affected, and even lead to the failure of a transnational investment. In tax planning, to master the national conditions and tax law; Proficient in the financial accounting system. It can not only effectively control the financial risk, but also reduce the tax as much as possible. Products consume a lot of energy in the production process, such as pollution discharge, noise, radiation, and other pollution will cause serious problems to the environment, and the deterioration of the environment seriously affects the health of the people.

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