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Anti-tax Avoidance of Multinational Corporations under the Belt and Road Initiative in China

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Abstract: In the context of expanding economic globalization, the numbers of the Multinational Corporation (MNC) have been increasing. "One Belt One Road" promotes the trade corporation between countries. In light of the MNCs implement various tax avoidance strategies, this has significant adverse impact on business environment and tax revenue. This article mainly relies on literature research and comparison of anti-tax avoidance Legal Framework between China and Canada. It explores different measures of anti-tax avoidance. China has experienced challenges with tax avoidance issue in the BRI, including lack of competitiveness of China's Tax Rate, complexity of international taxation environment, and challenges of implementing Organisation for Economic Co-operation and Development (OECD) Pillar II Global Minimum Tax. Furthermore, comparing the anti-tax avoidance legal framework and differences in its GAAR respectively. The purpose is to design a tax system with Chinese characteristics. Effective anti-tax measures is very crucial for ensuring fair taxation and foster competitive business environment, and increase the public trust for China.

Keywords: Tax avoidance, One Belt One Road Initiative (BRI), Multinational Corporations (MNCs), Base erosion and profit shifting (BEPS).

1. Introduction

With the development of economic globalization, China proposed "One Belt, One Road" initiative in 2013, aiming to promote the development of trade cooperation between China and countries along the New Silk Road. The proposal of the "Belt and Road Initiative (BRI)" not only brings developmental opportunities to China and other countries, but also it brings many policies and legal issues, especially the legal issues of international taxation. For example, under the Belt and Road Initiative, Multinational corporations (MNCs) have taken advantages of the complexity and diversity of cross-border business environment to adopt various tax avoidance strategies. Additionally, in view of differentiation and complexity of tax systems among different countries of the BRI, numerous challenges have arisen in anti-tax avoidance measures. Some scholars point out that international tax avoidance by MNCs reduce government fiscal revenue [1]. Tax avoidance has significant negative impact which can create unfair business environment, loss public trust due to vulnerable compliance of tax law and revenue shortfall, etc. Some scholars stated that corporate tax avoidance behavior is implemented when they are not familiar with the taxation of other countries, which bring a variety of tax risks to the company [2]. In particular, MNCs implement tax avoidance including transfer pricing, using international tax heavens, thin-capitalizing, abusing the international tax agreements and other

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measures. For instance, “the US Apple Inc. shifts its profits to Ireland where the tax rate is lower through the splitting of intellectual property rights, to realize the purpose of tax evasion [3].” Developing countries has a slow process implementing the OCED’s Common Reporting Standards (CRS) because of technical issues and complex tax reporting involved [4]. In regards to this, scholars suggested that to improve the tax treaties agreement comprehensively, establishing formal information exchange platform to eliminate tax avoidance [3,5,6]. Pertaining to aforementioned and in context of the BRI, China has been encountering challenges related to tax avoidance in the BRI, including the complexity of the tax environment, risks of revenue shortfalls, an unfair business landscape, and issues with tax compliance. This study focuses on the tax avoidance issues and strategies of multinational companies and explores the effective measures of combating tax avoidance, China as a developing country, should address anti-tax avoidance measures, aiming to provide constructive references and insightful tax management within the “One Belt and One Road” initiative.

2. Research Methods

This study mainly relies on literature research and comparative method. Review the literature related to the tax risks of China's OFDI, comprehensively sort out various strategies tax avoidance of MNCs. Focusing the research scope on the BRI, analyze the status of China's tax law, and present recommendations.

Moreover, this contributes illustrating the various methods of anti-tax avoidance employed by both foreign countries and China, followed by a comparison of their tax systems in terms of transparency, information exchange mechanism, international adaptability, and tax policy flexibility. This analysis also addresses the limitations of both international tax law and China’s tax law.

3. Literature Review

In the context of the complex international tax environment, there are enormous opportunities for MNCs to engage in tax avoidance. Ma Caichen and Shan Miao indicated that there are multiple tax risks caused by “One Belt One Road” countries geographically vast that also different in the culture, ethnicity and other factors. Moreover, they indicated that all countries adopt the proportional tax system except Mongolia uses the progressive tax system in BRI [3]. This leads to the China’s Outwards Foreign Direct Investments increased tax evasion. Moreover, Sebastian Beer et al. verified that empirical evidence proved that many MNCs using the following methods to avoid taxation: Transfer Mispricing, Re-locating the IP profit, international debit shifting, Avoidance of Residence Country Taxation and tax deferral, Tax Deferral [6]. Various tax avoidance methods create more complex tax environment.

Furthermore, Ma Caichen and Shan Miao illustrated that China has a higher cooperation tax rate compare to other countries in BRI. “All other countries of the corporation tax rate is more competitive to China. All other countries 10-20% but China is 30% [3].” Scholar scrutinized the tax system and tax rate among countries that in the BRI. China’s corporation tax rate is not competitive compare to other countries as it has other higher tax rate [3]. According to the World Bank Group research illustrated the tax heaven list that including the following countries which participate in the “One Belt One Road”: Malaysia, Panama, Lebanon, Bahrain, Jordan, Singapore, Maldives and Austria [4]. This creates tax avoidance opportunities for MNCs.

Some scholars indicated that the bilateral tax agreement can eliminate tax difference and reduce tax risk between countries. However, there are still 10 countries didn't sign the tax agreement with China. Moreover, the bilateral agreements are lack of the tax concession and credit provisions [5]. Other scholars also mentioned that the content of the agreement should be improved as it is unfriendly for MNCs to apply [2]. This attribute also leads to increase tax evasion. Due to the complication and

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different of the tax system, it is challenging for the companies adopting China's infrastructure investment to many countries. The provision is restricted the China's companies to use the domestic profit to offset the overseas losses. This increases tax avoidance opportunities for MNCs [5].

In addition, Axel Prettl states there is extensive evidence of tax-motivated profit shifting strategies within MNCs [7]. BRI participating countries has been encountering higher risk of the Base Erosion and Profit Shifting (BEPS) in light of the capability of developing countries to overcome this challenge. As different rules of transfer pricing that provide numerous chances for MNCs to avoid tax [3].

As stated above varied tax avoidance by MNCs in the international trade context, it is very complex and required personnel who have acquired sophisticated international taxation skills. China should nurture personnel for international anti-avoidance audit these tax avoidances. Liwen Sun emphasized the personnel is required not only expertise in various professional accounting skills but also require multiple skills in law, economy, international taxation law and English, in which means it is rare to find [1].

In this evolving economic globalization, MNCs are facing vigorous competition and pursuing less tax liabilities. Multiple scholars suggested that China establishes sounded bilateral agreement and strengthen the coordination of taxation between countries [1]. Establishing taxation information exchange platform for preventing double taxation and tax avoidance, other scholar stated should establish third party to proceed assessment and auditing independently can improve transparency [1,3].

Previous literature that has largely relied on specific anti-tax avoidance strategies in the complex global tax landscape. In contrast, this study distinguishes itself by comparing the anti-tax avoidance strategies of China and other countries or international organizations involved in the BRI. This comparative analysis highlights similarities and differences, providing a broader context of understanding anti-tax avoidance in international setting, which offering constructive implication for legislators.

4. Current Taxation Issues and Challenges

4.1. Lack of Competitiveness of China's Tax Rate

The corporation tax rate in China is uncompetitive compare to other 16 BRI countries. Furthermore, the tax systems are differential among all BRI countries that derives the international tax environment complexity. Some scholar found that the taxable income tax among countries are similar but using various tax methods on dividend income and capital gain among BRI countries [3]. The statutory corporate tax rate in China is 25% which it is considered as high among many BRI countries [8]. Additionally, the Global Minimum Tax (GMT) rate at 15% is much lower and induces the Chinese capital to transfer overseas [9]. The China's general dividend tax rate taxed is 20% [10]. In contrast, other BRI countries apply lower dividend tax rates.

As shown in the Table 1, it illustrates the tax differences among some countries in the BRI:

Table 1: Corporate Income Tax for Some Countries Along the BRI [3].

Countries	Standard Tax Rate	Dividend Withholding Tax Rate
Kazakhstan	20	15
India	30	0
Mongolia	10/25	20
Ukraine	18	0

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Majority of the countries in BRI are developing countries and they tend to have a lower corporation tax rate or favorable tax credits to attract foreign investment or stimulate economic growth [3].

In addition to the global tax reforms of the OECD Pillar 2, a global minimum tax rate of 15% is implemented by many countries, China may face challenges in remaining the competitive of taxation [11]. Especially if other regions or countries offer business-friendly tax structures, for example, Kazakhstan offers tax exemption could decreases the competitiveness of China's tax rate [3].

4.2. Complexity of Tax Environment

Ma and Shan highlight that all countries adopt a proportional tax rate except Mongolia adopts a progressive tax rate [3]. Diverse tax systems and tax rates across BRI countries contribute to the tax environment complexity. In addition, the tax treaty is uncomprehensive in taxation to deal with all the complex tax environment. Some scholar indicated that the contents of the tax treaties are not renewed that is lack of the tax base erosion and profit shifting because most of the tax treaties are signed around 21st century [3].

OCED has established a bilateral tax information exchange system. However, there are still 12 countries not capable to share info due to the legislation and inefficiency of the tax system [3].

BRI primary agreements challenges in substantive rule inconsistency and ambiguity that leads uncertainty and reliably issues [12]. Moreover, various level of tax administration efficiency and compliance across all BRI countries. Frequently changes in tax policies and tax adjustments are unpredictable in many BRI countries in various reasons of boosting the specific economic development or tax collections purposes. It should also be noted that majority of the BRI legal issues is not within scope of WTO rules, FTAs and BIT [12].

4.3. Challenges of Implementing OECD Pillar II Global Minimum Tax

Pillar Two "Global Minimum Tax" (GMT) is designed for the BEPS Action Plan. Some scholars have indicted the upcoming negative impact if China employs the Pillar Two. It increases tax deduction for international investments activities. China's corporate income tax rate is 25% [9]. Implementing the "Pillar II" also reduces tax advantages of economic strategy for Guangdong-Hong Kong- Macao-Greater Bay Area. Regarding the Hainan Free Trade Port, the tax exemption will not able to implemented substantively as it will be deducted by IIR in the Pillar II. Simply, cooperate tax of 15% under the IIR compare to this tax incentive port tax rate is not less than 5% [13].

5. Causes of Tax Avoidance Issues in China

5.1. Lack of Expertise in Anti-tax Avoidance in China

An international tax avoidance expert demonstrates competent in taxation knowledge, proficiency in multiple foreign languages, legal skills and also accounting skills [1]. Highly skilled talents in multiple fields are scarce and required longer period of time to be trained. Belt and Road Initiative Tax Administration Cooperation Mechanism (BIRTACOM) reported in 2024, China is empowering individuals or tax authorities to be multi-skilling with the aim of meeting the high capacity of taxation inquires in BRI [14]. BRITACOM is in charged by the State Taxation Administration (STA) [14]. BRITACOM perceives China is lack of expertise in anti-tax avoidance. Cultivating talents in BRI anti-tax avoidance enhance taxation efficiency for China's government.

5.2. Inactivity in CRS Tax Information Exchange Among BRI Countries

The goal of Common Reporting Standard (CRS) combats tax evasion and enhance the tax transparency. Sixty-six countries have signed the agreement of reporting country-to-country as of

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2018, in which 12 countries lack of the capacity in tax collection and sharing information according to OCED bilateral tax info exchange [3].

Additionally, majority of the BRI countries are developing countries face the challenges of the advanced technology and are not able to meet the capacity in exchanging the tax information. These result in inactive and insufficient tax information exchange across BRI countries, contributing to the China's tax collection shortfall and it is very complicated to address. "Transparency has great potential as a domestic revenue mobilization instrument" [15]. In short, China faces challenges in insufficient tax transparency across the BRI countries that requires the government employs appropriate actions.

5.3. Inadequate Framework General Anti-Tax Avoidance Rule in China

GAAR of China implementing the substance over the doctrine can be abusively because the Chinese Implementation Rule is not given detail guidance [16]. GAAR in the Chinese legal framework is lack of effective in tax disputes. Studies show that most of the entities end in settlement and the decisions of the SAT are rarely appealed due to the Chinese traditional cultural background seeks conflicts avoidance and unconditionally submissive, in addition to the court proceeding lack of judges have taxation knowledge and has a tendency considering the opinion of the ITA [16]. Some international taxpayers may not file in court just the costs of dispute, all these drawbacks of GAAR trigger the MNCs to seek more complex tax strategies.

Mantian Xie analyzes and evaluates the effectiveness of GAAR in reducing tax avoidance by MNCs. The result reveals that the anti-tax avoidance rule implemented in 2016 and 2017 has reduced the tax avoidance in thin capitalization but no significant impacts on MNCS through profit transferring and intellectual property [17].

Additionally, domestic GAAR counter BEPS is not function as a balance mechanism. low legal authority. GAAR provides ambiguous wording and unclear guidance and high uncertainty to tax payers that tax authority enjoys the discretion. Moreover, developing a balanced approach the taxpayers' interest and tax authorities in terms of the non-tax and tax purpose test [16].

5.4. Legislative Lag Behind

The nature of the legislative process is delay in creation or modification in response to the evolving economy needs in technological advance, any emerging and complex tax issues. Furthermore, the tax treaties agreements in BRI had singed but be effective in few years later, some content of the agreement may not able to meet the expectation of the rapid changing global economy and also tax reforms policy. For instance, Ma, et al. mentioned China and Russia have signed the new tax treaty in 2014, which it began implementation 2017 [3]. Considering the gap between signing and implementing the tax treaties in the rapidly changing international tax environment, outdated tax treaty agreement is insufficient to tackle the tax strategies of MNCs.

5.5. Digitization Economy

Embracing the innovative technology, the traditional technology is adequate in tax capacity and risk management. BRITACOM utilizes the Artificial Intelligence (AI) and robot chat in the tax administrative has increased the taxation efficiency. However, Grant Wardell-Johnson and Conrad Turley both are from KPMG indicate that using AI in taxation may result in privacy breach and insecure in terms of risk management even it provides substantial befits. Grant and Conrad also proposed more than 20 principals for tax authorizes [14]. China ITA should focus on the building tax transparency, commutation, data protection and cyber-security, etc. [14].

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6. Comparison of anti-tax avoidance Legal Framework between China and Canada

6.1. Centre of Tax Policy and Administration of OECD vs the BRIACOM

OECD established the Centre for Tax Policy and Administration; BRITA established the Belt and Road Initiative Tax Administration Cooperation Mechanism (BRITACOM) in 2019 [14]. BRITACOM is in charged by the State Taxation Administration (STA) [14] and this organization is an emerging entity in tax field for BIR, it is still in the early stages of growth and development.

From BRITACOM perspective, STA is focusing on the online tax inquiries and nurturing multidisciplinary tax experts. Launched an internationalized e-tax portal for all taxpayers for preferential policies to taxpayers and potential risks via inquires [14]. However, it does not provide public information about these tax matters or the jurisdiction-specific tax guides, which reduces tax transparency.

On the other hand, OECD offers Pillar II GMT implementation information in different languages [11]. This eliminates the misinterpretation of complex tax knowledge due to languages different along with the enhanced transparency comparing to the BRITACOM's non-public tax guides.

6.2. China's Enterprise Income Tax Law (EITL) and Canada Income Tax Act (ITA)

Enterprises Income Tax Law (EITL) of China and Canada Income Tax Act (ITA) both outline rules for the transfer pricing the anti-avoidance measures. The major concern of the tax erosion in international taxation is transfer pricing.

Canada Revenue Agency (CRA) outlines how to follow the OECD guidelines, especially in transfer pricing and the Country-to-Country Reporting (CbCR). Taxation transparency has increased by OEDC establishing of CbCR for the MNCs' ultimate parent corporation with income threshold of 750 million EUR [18].

Comparing to China, China currently doesn't have a valid quantitative analysis system accessing base erosion. EITL focuses on requiring the MNCs to abide the arm's length principle in the inter-company. However, the tax authority has high discretion using the arm's length. Haiyuan Xu suggested it is vital to find the balance using discretion between taxpayer and tax authority. There are still significant improvement opportunities in collaborating with OECD member in practicing the transfer pricing regulation [18].

6.3. General Anti-Avoidance Rule (GAAR) and Enforcement Discretion

6.3.1. GAAR of China

Tax management system is not sound because when employing the domestic GAAR counter BEPS, not function as a balance mechanism: low legal authority.

Article 47 of the EIT Law: "Where an enterprise earns less taxable income or amount of income because it implements plans other than the ones designed to achieve reasonable business objectives, the taxation authority shall have the right to make adjustment in a reasonable way [13]."

This provision is primarily designed for tax avoidance to disregard transactions that lack of substantial economic purposes. However, it provides high discretion to the tax authorities and it does not outline the specific details as the Canada ITA Section 245.

6.3.2. GAAR of Canada

Section 245 of the ITA: This provision allows the Canada Revenue Agency (CRA) to challenge transactions that are seen as tax avoidance schemes, regardless of their technical legality. Moreover, the GAAR considers whether a transaction has economic substance.

China's EIT Law and accompanying regulations provide a specific legal basis for anti-avoidance measures, but with a more discretionary application of GAAR. In contrast, Canada's ITA provides a clearer, structured framework that emphasizes both compliance and the substance of transactions. Canada's GAAR has a broader interpretation that includes transactions lacking economic purpose and even calculations of penalty. Thus, ITA is more structured, with clearer criteria for evaluation, providing a more predictable legal environment for anti-tax avoidance along with the approach is more collaborative [10].

6.3.3. Summary

Overall, the legislative systems are very different between two countries. Canada combines with federal tax and provincial tax system. However, the China tax law is more macro perspective and provide definition. For instance, on evaluating the economic; unlike Canada Income Tax Act not only provide the definition but also illustrates how to implement it in calculations and provide penalty details. In terms of the enforcement and compliance, both China and Canada employ rigorous enforcement of tax compliance. Whereas, Canada's is more educational and high transparency to pubic and provide clear guidance. Mantian Xie evaluates the effectiveness of the GAAR of China and proposes enhancing the anti-tax avoidance regulation continuously [17].

Lastly, regarding the current status of the tax avoidance issues based on the literature review, proposes strategies for China to address anti-tax avoidance strategies and measures. For instance, strengthen tax system to ensure a fair and equitable tax system in terms of combat tax avoidance and promoting fair taxation for BRI countries through the following measures: (1) Increase the transparency of taxation, expand the CRS information exchange. (2) Establish a complete and updated tax legal system. (3) Implement talent training mechanism. (4) Establish detail job duties of each department and improve the supervision of the tax authorities. (5) Adjust the tax incentive when the Pillar-II (GMT 15%) will be effective.

7. Conclusion

The "One Belt One Road" imitative has built up a community of cross-border trading system. Increasing the global economic competence is very substantial for China to implement the national strategic legal tax management and strengthen the "One Belt One Road" Initiative. The nature of this international anti-tax avoidance is interdisciplinary that intersects with economics, finance, law, accounting and policy planning in which requiring personnel in multiple disciplines to conduct related research further professionally. The government of China acknowledges the importance of the tax avoidance in the BRI that would improve the tax managerial systems including establishing the tax information exchange platform and it can alert tax avoidance. Setting up the tax avoidance or evasion whistler-blower on the platform and updating bilateral agreement timely regarding related relaxation can eliminate tax avoidance effectively. Effective anti-tax measures is very crucial for ensuring fair taxation and foster competitive business environment, and increase the public trust for China. However, the limitation of this research may neglect the influence of cultural and behavioral factors and ethical concerns on tax compliance and planning, and also the geopolitical impact of China.

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