

Research on the Legal Issues of Transfer Pricing of Transnational Corporations from the Perspective of Chinese Law

Jingzhuo Chi

*Beijing Wuzi University, Beijing, China
chijingzhuo2025@163.com*

Abstract: Under the background of economic globalization and the increasingly frequent transnational business activities of enterprises, transfer pricing has become a common means of resource allocation and profit adjustment of related enterprises. China's transfer pricing regulation is of great significance to safeguard tax fairness, safeguard national tax revenue and create a fair competition environment. However, the current transfer pricing regulation in China has some problems, such as imperfect laws and regulations, imperfect information disclosure system, shortage of professional talents, and prominent contradiction between supply and demand of compound talents. In order to improve China's transfer pricing regulation, it is necessary to constantly improve laws and regulations, refine adjustment methods, optimize selection mechanism, update and formulate special regulations in time. It is committed to strengthening the management of information disclosure system, building a platform and strengthening supervision. We should pay attention to the training and introduction of professional talents, and promote the training of professional education in colleges and universities and the introduction of external talents. Strengthen international cooperation and exchanges, actively learn from international experience and participate in the formulation of international rules, and strengthen cross-border information exchange and collection and management cooperation. By solving existing problems, China has continuously optimized its regulatory system to adapt to the new situation of economic globalization and promote the sustained, healthy and stable development of China's economy.

Keywords: multinational enterprise, Transfer pricing regulation, revenue

1. Introduction

Multinational enterprises are those companies that have large-scale production or operations in multiple countries or regions around the world [1]. With the deepening of economic globalization, multinational enterprises have become an active force on the world economic stage. But with the rapid development of multinational enterprises, the problem of tax avoidance becomes more obvious. On the one hand, due to the complex international tax rules, different countries are different in tax rates, preferential tax policies, tax collection and management methods, which provides a gap in the system for multinational enterprises to avoid tax. On the other hand, with the increasing competitive pressure in the global market, multinational enterprises need to pursue profit maximization by

reducing costs for the purpose of strategic operation [2], and tax, as an important cost, has become the object of multinational enterprises' efforts to reduce.

In order to avoid paying income tax, multinational enterprises adopt many ways, and transfer pricing is one of the important ways [3]. The transfer pricing of multinational enterprises is manifested by the systematic deviation of intra-firm transaction prices from fair transaction prices [4]. According to some studies "the internal transfer pricing of transnational corporations is not affected by the supply and demand relationship in the market, let alone the product cost, but mainly meets the business strategic needs of transnational corporations on a global scale" [2]. A form of tax avoidance in which multinational enterprises shift profits from high-tax countries to low-tax countries by artificially setting prices for goods, services or intangible assets. According to the research of some scholars, multinational enterprises set up subsidiaries in different countries and regions and use transfer pricing to help subsidiaries establish a good corporate image and expand their market share. By reducing the transaction prices of raw materials, semi-finished products and finished products, transferring technology and talents at low prices, or providing low-interest loans to subsidiaries, the parent company indirectly improves the market competitiveness of its subsidiaries in the host country, making the subsidiaries occupy the market share of the host country with its highly competitive commodity prices. The parent company can also improve the market competitiveness of the subsidiary by purchasing the finished products of the subsidiary at a high price, injecting capital into the subsidiary to expand the scale of production and operation, etc., so that it can show good operating efficiency and reputation, and further facilitate the financing and other behaviors of the subsidiary [2]. This price is not determined based on the principle of fair competition in the market, but an artificial price set according to the overall strategy and tax planning objectives of multinational enterprises.

Although transfer pricing brings tax advantages to multinational enterprises to a certain extent, it also brings harm that cannot be ignored. Transfer pricing erodes the tax base of various countries, leading to the reduction of tax revenue in countries with high tax rates, disrupting the fiscal balance of payments of various countries, and affecting the development of public services and infrastructure construction in various countries. Developing countries, with their relatively immature tax systems, suffer the greatest erosion. In addition, transfer pricing has also led to inequality in the global economy and affected the level playing field of the market. The transfer of profits by multinational enterprises to low-tax countries through transfer pricing is not only detrimental to the economic development of high-tax countries, but also gives multinational enterprises an unfair competitive advantage in market competition compared with other enterprises. Finally, transfer pricing also increases the difficulty of tax supervision. The hidden and complicated tax avoidance methods of transfer pricing make it difficult for tax authorities of various countries to carry out effective supervision, which increases the difficulty of tax collection and administration as well as the cost of tax supervision.

For China, in recent years, the number of multinational companies has shown a continuous growth trend, and the scale of companies has also been expanding. These multinational enterprises cover a wide range of fields such as science and technology, manufacturing, energy and finance. Companies such as Huawei, Alibaba, Tencent, petrochina and Sinopec have become global industry leaders. In addition, many small and medium-sized enterprises also through the "going out" strategy, gradually emerge in the international market and show the development potential cannot be underestimated. The status of Chinese multinational enterprises in the global economy has increased significantly. With strong capital, advanced technology and excellent management, Chinese multinational enterprises allocate resources, organize production and sales activities on a global scale, and become a key force to promote global economic growth. These companies not only dominate the domestic

market, but also expand their business areas globally through internationalization strategies, and their influence is growing.

The adverse impact of transfer pricing has become an increasingly focused issue in China. From an international perspective, the world and various countries have taken a series of measures to deal with the adverse impact, and China is no exception, but there are still problems that have not been completely solved. In the context of the new era, the continuous development of information and communication technology (ICT) has brought the world into the era of digital economy, and transfer pricing is facing new challenges. The widespread use of ICT can reduce the production cost of digital companies, improve production efficiency, and help develop standardized processes. Business models that rely on the development of the digital economy can be constantly iterated and innovated [5]. One of them is the e-commerce industry, whose new business operation mode has brought negative impact on the traditional business economic management mode and method to a certain extent, the current tax collection and administration faces new challenges, and also impacts the international tax rules system designed based on the traditional economic model. Goods and services are being traded in the form of information technology, and new trading models are emerging in an endless stream, which also leads to new problems, and the tax rules and collection management under the traditional economic model are difficult to adapt to the new form of the digital economy. According to the research, the problems of transfer pricing management of digital enterprises under the digital economy are manifested in the gradual weakening or even disappearance of tax entities in tax sovereign countries, the difficulty in recognizing and distributing the value of intangible assets, and the uncoordinated international tax administration [6]. Therefore, the transfer pricing of transnational corporations also brings new problems to be solved urgently. This paper aims to focus on the problem of regulating the transfer pricing of transnational corporations from the perspective of Chinese law, and points out the solutions, which are conducive to improving the legal policies of regulating the use of transfer pricing by transnational corporations to avoid tax, and avoid the harm brought by the transfer pricing of transnational corporations to China's economy.

2. Manifestations of transfer pricing and the necessity of regulation in China

2.1. Manifestations of transfer pricing

The transfer pricing methods of transnational enterprises mainly include strategic pricing, intangible asset transfer pricing and other forms of transfer pricing when transnational enterprises transact commodities with related parties [4].

2.1.1. Commodity transaction

In the operation of multinational enterprises, multinational enterprises complete the purpose of transferring profits by manipulating commodity raw materials and commodity prices. Chinese subsidiaries buy raw materials at high prices from overseas affiliates and export finished products to their parent companies at below-market prices, squeezing profits at home. This pattern is particularly prevalent in manufacturing, where a car company, for example, undercuts the export price of components to shift profits to low-tax subsidiaries in Southeast Asia, eroding China's tax base.

2.1.2. Transaction of intangible asset

Intangible asset is one of the most important assets owned by an enterprise. It refers to the exclusive economic resources that exist mainly in the form of knowledge and do not have physical form. Referred to as intangible fixed assets, intangible fixed assets can provide certain rights, advantages or create benefits for the owner, including intellectual property rights, business honors, franchise

rights and information secrets. This is of great value in today's business competition [4]. The transaction contracts signed between transnational enterprises, including intangible assets such as business license and technical support, raise or lower the transaction price according to the needs of enterprises, so as to achieve the purpose of profit transfer or adjustment. When transferring non-patented technologies, trademark rights and concessions between enterprises, there is no clear market price for such assets, so the price can be adjusted or the payment can be directly exempted in the transaction contract, so that the tax burden of the host country can be reduced or even avoided.

2.1.3. Other forms

In addition to the above, multinational enterprises also transfer profits through service fees, capital loans, leasing and other ways. The foreign parent company reduces profits in China by charging affiliated services to the Chinese subsidiary, such as management consulting and technical support fees. Or through affiliated lending, the Chinese subsidiary can borrow money from overseas affiliated enterprises and pay high interest, thereby transferring profits.

2.2. Necessity of regulating transfer pricing of transnational enterprises in China

2.2.1. It is conducive to maintaining the stability of China's tax revenue

National tax is an important source of national fiscal revenue and plays a key role in the country's economic construction, social development and public service provision. According to relevant media, China's annual tax loss due to cross-border tax avoidance by enterprises is as high as 30 billion yuan, and China is facing a serious problem of tax base erosion brought by multinational enterprises [7]. The unreasonable transfer pricing behavior of multinational enterprises leads to a large number of profits transferred to low-tax areas abroad, which directly reduces China's tax revenue. This not only affects the government's fiscal budget and tax plan, but also weakens the government's ability to invest in infrastructure construction, education, health care and other fields, damaging the country's economic interests and the level of public services. Through the regulation of transfer pricing, it can ensure that the connected transactions of multinational enterprises in China are carried out at a reasonable price, prevent tax loss, protect the tax rights and interests of the state, and provide stable financial support for the sustainable development of the country.

2.2.2. It is conducive to the standardization of business behavior of enterprises

The necessity of regulating transfer pricing is also reflected in guiding Chinese multinational enterprises to establish mature internal management mechanisms and standardized financial management systems. Reasonable transfer pricing requires enterprises to follow the principle of independent transactions and truly reflect the economic essence of connected transactions, which will help enterprises pay more attention to their own management and financial management, and improve their operational efficiency and transparency. At the same time, regulating transfer pricing can enhance the reputation of enterprises, establish a positive image of enterprises, avoid losses caused by tax problems as much as possible, and then promote the long-term and stable development of enterprises. From a macro point of view, it also plays a positive role in enhancing the competitiveness of Chinese multinational corporations in the international market and promoting the implementation of the "going out" strategy of Chinese enterprises.

2.2.3. It is conducive to maintaining the international tax order

Regulatory transfer pricing can adapt to the trend of international tax cooperation. With the deepening of economic globalization, international tax cooperation has become the trend of The Times. In order

to prevent multinational enterprises from international tax avoidance through transfer pricing, various countries constantly strengthen the supervision of transfer pricing and actively carry out international tax information exchange. As an important participant in the world economy, China actively participates in international cooperation and continuously strengthens the regulation of transfer pricing for multinational enterprises. This will not only help safeguard China's tax sovereignty and safeguard its economic interests, but also promote tax exchanges and cooperation between China and other countries, jointly deal with the impact of international transfer pricing and other tax avoidance activities of multinational enterprises, and promote the establishment of a fair and reasonable international tax order.

3. Current problems and solutions of transfer pricing regulation in China

3.1. Regulatory issues

3.1.1. Legal aspects

China's laws and regulations on transfer pricing adjustment methods lack certain clarity and operability. In practice, the tax department often needs to adopt the approved rate of profit to supervise the tax of multinational enterprises, but the determination of the approved rate of profit often requires some empirical data and estimation, which is difficult to accurately reflect the real market conditions of each connected transaction and the actual operation of multinational enterprises. The results obtained by this method are highly likely to contradict the normal transaction principles. It may lead to unreasonable adjustment of the pricing of multinational enterprises, thus affecting their normal operation and development prospects.

In China's current Regulations on the Implementation of the Enterprise Income Tax Law, four reasonable methods and the order of selection of transfer pricing are prescribed for tax authorities' right to adjust transfer pricing through reasonable methods [8]. In order to avoid the adjustment method being too mechanized, the State Administration of Taxation Announcement No. 42 of 2016 emphasizes that the tax authorities should choose the most appropriate method according to the actual situation, rather than mechanically following the sequence [8]. However, the lack of clarity and operability of such provisions makes the tax authorities unable to choose the most appropriate adjustment method according to the specific transaction situation, which reduces the efficiency and accuracy of tax collection and administration, and the adjustment effect may be poor.

With the deepening of economic globalization, there are complex and changeable related party transactions in practice, while the laws and regulations are relatively simple, and the tax authorities and multinational companies lack detailed provisions for reference in the actual implementation process. New transactions such as cross-border service transactions in the field of digital economy are emerging in an endless stream, and new pricing based on big data analysis is also emerging. Under these new phenomena, existing laws and regulations have a certain lag, which makes it difficult to effectively and timely regulate and supervise these emerging transactions and pricing methods.

3.1.2. Imperfect information disclosure system

Multinational enterprises pursuing the purpose of maximizing their own interests may have inadequate and inaccurate disclosure of related party transaction transfer pricing information. Some multinational enterprises may seek benefits by deliberately concealing key transaction information or making vague treatment of pricing basis, which will lead to the failure of tax authorities to accurately judge the rationality and compliance of transactions, and also lead to the failure of investors, creditors and other stakeholders to fully understand the real financial status and operating results of multinational enterprises. It is not conducive to the transparency and fairness of market competition.

Under the digital economy, the rapid development of information technology and the highly virtualized characteristics of digital products increase the difficulty of tax authorities in obtaining tax-related information [9]. China lacks an open and efficient platform for information exchange. In determining transfer pricing, multinational enterprises cannot obtain fair external market prices or highly comparable uncontrolled transaction prices as pricing benchmarks. In the same way, it is difficult for tax authorities to accurately verify the transfer pricing behavior of transnational enterprises due to lack of relevant information. This kind of information asymmetry greatly increases the difficulty of multinational enterprises' compliance and the cost of tax authorities' supervision, and reduces the effectiveness of transfer pricing regulation.

3.1.3. Talent supply level

The field related to transfer pricing is highly professional and complex, involving the professional knowledge of taxation, accounting, law and other disciplines. At the same time, practitioners are required to be familiar with the internationally accepted transfer pricing rules and practices, and have a deep understanding of China's national conditions and tax policies. However, at present, China's professional talent reserve in this field is relatively insufficient, which is difficult to meet the growing business needs of multinational enterprises and tax authorities.

The shortage of talent is also hurting multinational enterprises and tax authorities. For tax authorities, the lack of professional talents leads to many difficulties in tax collection and transfer pricing adjustment. When faced with complex related party transactions and transfer pricing strategies of multinational enterprises, tax personnel may be unable to accurately judge whether the pricing of multinational enterprises is reasonable due to incomplete professional knowledge in individual fields, and cannot effectively identify and deal with tax avoidance behaviors, thus affecting the quality of tax collection and administration and the guarantee of national tax revenue. For multinational enterprises, the lack of professional talents means that various tax risks and compliance requirements cannot be fully considered when formulating transfer pricing strategies, which makes the pricing strategies less scientific and reasonable, increases the risk of tax investigation and punishment, and is not conducive to the long-term and stable development of multinational enterprises.

3.2. Solution

3.2.1. Improving laws and regulations

In order to better regulate the transfer pricing of multinational enterprises, it is necessary to strengthen the understanding of multinational enterprises, understand the background and business of multinational enterprises, and improve the transfer pricing tax system, adjust the current transfer pricing legislation, and ensure the perfection of legislation[10]. China should actively learn from the advanced regulations of the Organization for Economic Cooperation and Development (OECD) on transfer pricing adjustment and make clear and detailed regulations on transfer pricing adjustment methods in light of China's actual conditions. Clarify the specific applicable conditions and accurate calculation methods of the transaction profit law in different industries and different transaction types. For the related transactions of manufacturing enterprises, it stipulates how to reasonably determine the profit index and distribution method according to the cost structure, asset scale, market share and other factors. For service enterprises, it focuses on the application of transaction profit method considering service characteristics, customer groups, operating costs and other factors. Through such detailed provisions, the operability of the adjustment method is enhanced, so that the tax authorities and multinational enterprises have clear guidance in practical application.

Further refine the reasonable method of transfer pricing adjustment and the selection sequence to provide guidance for tax authorities. If the multinational enterprise or tax authority can demonstrate

that the adjustment method used is consistent with normal transaction principles and that the price determined by the method reflects the price level of transactions between independent enterprises under the same or similar conditions, it may be used. This flexible selection mechanism can better adapt to the complex and changeable actual situation of connected transactions and improve the accuracy and rationality of transfer pricing adjustment.

China should pay close attention to new situations and new problems in the process of economic development, so as to constantly establish and improve laws and regulations, especially for emerging transaction types and pricing methods, and timely revise and improve relevant laws and regulations. Experts and scholars, staff of tax authorities and representatives of multinational enterprises are regularly organized to conduct discussions, solicit suggestions from all parties, and provide sufficient basis for the revision of regulations. To ensure that laws and regulations are always timely and forward-looking, can effectively regulate and guide all kinds of connected transactions, and maintain tax order and a fair market competition environment.

3.2.2. Establish and improve information disclosure management

China should continuously improve the information disclosure system and require multinational enterprises to disclose detailed, accurate and comprehensive information about transfer pricing of related party transactions in their financial reports. In addition to the basic transaction content, pricing basis, and the difference from the market price, multinational enterprises should also be required to disclose the background of the transaction, the purpose, the impact on the financial position and operating results and other information. Develop uniform information disclosure formats and standards to facilitate analysis and comparison by tax authorities and other stakeholders.

China can build a nationwide open information exchange platform, establish a powerful connected transaction information database, and widely collect and collate all kinds of market price information, including raw material prices, product sales prices, and service charging standards in different regions and industries. Tax authorities can use the platform to supervise the transfer pricing behavior of multinational enterprises, detect abnormal transactions in a timely manner, and investigate and verify them. In addition, the platform can also provide guidance services such as interpretation of relevant policies and regulations and case analysis to help enterprises better understand and comply with transfer pricing regulatory requirements.

Finally, strengthen the supervision of the information disclosure system of multinational enterprises, establish a strict information disclosure review mechanism, incorporate the quality of information disclosure of multinational enterprises into the credit evaluation system, and conduct regular review. Those who disclose information inadequately or inaccurately or intentionally withhold information shall be severely punished according to law. Restrict the market access and financing of multinational enterprises with bad credit, and improve the quality and consciousness of information disclosure of multinational enterprises.

3.2.3. Training and introducing professional talents

Regularly organize relevant personnel to conduct professional training, covering transfer pricing laws and regulations, the latest international rules and practices, and actual case analysis. Through holding seminars and academic lectures, inviting domestic and foreign experts and practitioners to give lectures and share experience, it builds a platform for relevant personnel to learn and update knowledge, and broadens the horizon and ideas of training personnel. Finally, through the establishment of the training effect evaluation mechanism, the learning results of the training personnel are evaluated and evaluated to ensure the quality and effect of the training, and effectively improve the professional quality and business ability of the existing personnel.

Universities are encouraged to set up special transfer pricing related course modules or professional directions in tax, accounting, law and other related majors. Focus on the combination of theory and practice, in addition to teaching the basic theoretical knowledge of transfer pricing, increase practical teaching links, such as case analysis, simulated tax audit, enterprise field research, etc., to cultivate students' practical operation ability and interdisciplinary thinking ability. Strengthen the cooperation between colleges and universities and practical departments such as enterprises and tax authorities, establish internship bases, and provide more practical opportunities for students.

Through the formulation of attractive talent introduction policies, a group of experienced and highly qualified transfer pricing professionals from abroad will be introduced to bring international advanced concepts, technologies and practical experience to China's transfer pricing regulation work, and improve the overall level of China's transfer pricing regulation work. At the same time, it will attract overseas students and professionals with international experience to come back to work, provide them with a good working environment and development space, encourage them to actively participate in the construction and improvement of China's transfer pricing regulation system, and inject new vitality and innovation impetus into China's transfer pricing regulation.

3.2.4. Strengthening international cooperation and exchanges

China should actively participate in the formulation and revision process of international transfer pricing rules, and fully express China's interests and positions in the field of transfer pricing through participation in the formulation of international rules, so as to make international rules more fair and reasonable, and meet the actual needs of China's economic development. At the same time, it also actively shares China's experience to enhance China's influence and voice in the field of international transfer pricing.

China should pay close attention to the advanced experience and innovative practice of other countries in transfer pricing regulation, and organize regular delegations to conduct field research and study exchanges abroad. We will have an in-depth understanding of the successful experience and effective measures of different countries in the construction of laws and regulations, information disclosure management, professional personnel training, and international cooperation, and make innovative applications based on China's national conditions. Establish an international experience exchange and sharing mechanism, invite foreign experts and practitioners to share experience in China through international seminars and academic exchange activities, and promote knowledge exchange and technical cooperation in the field of transfer pricing regulation at home and abroad.

China should establish a stable and efficient information exchange mechanism with tax authorities of other countries by strengthening intelligence exchange and coordination in tax collection and administration, break down cross-border information barriers, and improve the transparency of tax collection and administration. We will strengthen cross-border tax collection and administration coordination, and jointly investigate and crack down on transfer pricing tax avoidance by multinational enterprises. Establish joint working groups to share intelligence information, coordinate tax audits and investigations, form joint forces in international tax collection and management, effectively curb transfer pricing tax avoidance by multinational enterprises, and safeguard national tax sovereignty and tax interests.

4. Conclusion

With the deepening of economic globalization and the emergence of new economic models and transaction modes, transfer pricing, as one of the common means for multinational enterprises to avoid tax, exposes a series of problems that need to be solved urgently. The legal dimension needs to be refined to accommodate new types of transactions. The information disclosure system is not

perfect, the enterprise disclosure is not sufficient, and the lack of information exchange platform leads to information asymmetry. Professional talents are relatively scarce, and it is difficult to meet the needs of enterprises and tax authorities.

In view of the above problems, this paper puts forward some ideas to improve China's transfer pricing regulation system and make it better adapt to the needs of economic development. The improvement of transfer pricing regulation in China is a long-term and systematic process, which needs the joint efforts of government departments, enterprises, universities and all sectors of society. China should constantly improve its laws, strive to strengthen the management of information disclosure system, attach importance to training and introducing professional talents, and actively participate in international cooperation and exchanges so as to continuously optimize the transfer pricing regulatory system. Looking forward to the future, improving and regulating transfer pricing can enable China to adapt to the new situation of economic globalization, safeguard China's tax revenue, and promote the sustainable and healthy development of China's economy.

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