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中国企业避税治理问题研究

A Study on the Governance for Tax Avoidance  
of the Enterprises in China

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## 内容摘要

本文试图回答三个问题。第一，什么是避税？第二，避税是否可以被规制？第三，怎样规制避税？按照回答这三个问题的逻辑顺序，形成了本文的总体篇章结构，即形式研究框架。

第一章导论，介绍选题意义、进行国内外研究综述并明确避税概念，回答什么是避税的问题。第二章论述避税可规制性，认定避税属于脱法行为并得出企业避税可以通过动态立法或者法律解释渠道被规制的结论，回答了第二个问题。第三章论述了评估企业避税现状的最优方法，并从总体估计、企业规模、避税方法等角度研究了中国企业避税现状。第四章透过现象挖掘本质，对中国企业避税现象的成因进行了探讨。包括企业避税内因及其形成机理，外因及其影响方式。第五章进行了企业避税治理的国际比较。第六章从加强社会税收意识形态建设、完善税收法制和收费制度以及改进税法实施机制等方面提出了治理企业避税的政策建议。

本文主要在以下三个方面有所创新。其一，从西方主流经济学的“经济人假设”中挖掘出形成企业避税内因的四大根源，即“合理的委托——代理机制”等四大机制，并进一步研究了其具体构造以及形成企业避税内因的作用机理，从而勾勒出避税“经济人”——企业的轮廓；同时，将此概念进一步延伸运用于税务机关，描画出反避税“经济人”——税务机关的形象。上述研究构成了本文的实体研究框架，本文有关企业避税激励问题的探讨和避税治理的政策建议，都是在此研究框架下展开的。国内避税研究领域，类似的系统化研究比较少。

其二，立足避税治理的需要，研究了偷税概念的重构问题。第一，从现实角度分析了现行偷税概念造成的偷税“泛化”现象，并分析了这种“泛化”对于避税治理的影响；第二，从税会差异角度指出税法中偷税概念的缺陷。综合前述二者，本文提出了重构偷税概念的命题；第三，给出了重构偷税概念的政策建议，并且结合对转让定价税制等的研究，具体论述了偷税概念重构对于避税治理的影响。

其三，本文还从避税非正式约束、正式约束以及税法实施机制层面，论述了宪法、税收通则法、税法行政解释机制、政府与税务机关绩效考核机制、税务行政管理机制等与避税激励以及避税治理的联系，这些研究同样构成了国内避税研究领域的尝试性探索。

**关键词：**中国企业；避税；治理

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## **Abstract**

The dissertation tries to answer three questions, such as (i) what is the tax avoidance? (ii) whether the tax avoidance can be governed by regulations or not? and (iii) how to govern tax avoidance by regulations. Above three questions constitute the general composition of this paper in terms of their consecution. i.e. the research framework in form.

It has six chapters as follows:

Chapter 1 Introduction, explains the meaning of the subject, carrying on a domestic and international research overview and defines the tax avoidance concept, and answer what is the problem of tax avoidance.

Chapter 2 Regulations of the Tax Avoidance, discusses the possibilities to regulate and control tax avoidance, affirms that tax avoidance belongs to the behavior of taxpayers who take use of the loopholes of the tax law and concludes that tax avoidance can be regulated and controlled by dynamic legislation and/or law interpretation channel. Chapter 2 answers the second question.

Chapter 3 Current Circumstances in Tax Avoidance of the Enterprises in China, discusses the optimal approaches in evaluating the current circumstances, studying the actuality with tax avoidance of enterprises in China in the angle of general evaluation, the business scale of enterprises and the means of tax avoidance etc.

Chapter 4 Analysis on the Motivation with Tax Avoidance of the Enterprises in China, scoops out essence through the phenomenon, explore the causes of formation in tax avoidance of enterprises in China, including the internal factors for tax avoidance and its mechanism formed, external factors and influence ways.

Chapter 5 International Comparison of the Governance with Tax Avoidance of the Enterprises, carry through international comparison as to the governance of tax avoidance of the enterprises.

Chapter 6 Proposals in the Governance with Tax Avoidance of the Enterprises in China, put forward some policies and proposals for the governance of tax avoidance, from several aspects as follows: strengthening the construction of social ideology in taxation, improving the tax legal systems and toll-collection system, reforming the enforcement mechanism of tax law etc.

The dissertation puts forward three innovative opinions as follows:

First, it explored the sources that generate the internal causes of enterprise tax avoidance, i.e. four mechanisms of “rational entrusting----agency mechanism” etc. through the hypothesis of “economic man” that originated in western main economic theory. It further discusses the specific structures of the four mechanisms and the regularity of them generating the internal causes of enterprise tax avoidance, drawing the outline of the “economic man” of the enterprise with tax avoidance. Simultaneously, it also further applies such concept into the tax authority, and describes the “economic man” of tax authority with anti-tax avoidance. The above research consists of the substantial framework of this dissertation.

The policy proposals for the governance of tax avoidance and the discussions concerned with the promotion of tax avoidance are evolved under this framework which is the systematic research attempt in the domestic tax field.

Second, it studies the problem of reorganization of the concept of tax evasion so as to meet the demand of the governance of tax avoidance. (i) From the angle of the reality, it analyzes the phenomenon of tax evasion “extensiveness” arising from the prevailing concept of tax evasion, and the impacts on the governance of tax avoidance due to such kind of “extensiveness”; (ii) From the gap of the tax law and the accounting law, it points out the deficiency of the prevailing concept of tax evasion in tax law. The paper puts forward the proposition of reorganizing the concept of tax evasion combining two aspects mentioned above; (iii) It puts forward a policy proposal of reorganizing tax evasion concept, and specifically discuss the impacts on the governing tax avoidance by reorganizing tax evasion concept, combining with the research on transfer -pricing tax system and so on.

Third, the paper also discusses the relationships among constitution, tax general rules, tax law administrative explanation mechanism, asses mechanism in the government and tax authority, tax administration mechanism and tax avoidance promotion and its governance, from the aspects of formality and informality restriction of tax avoidance and tax law implementation. These studies also become an attempted exploration in the same field domestically.

**Keywords:** Chinese Enterprises; Tax Avoidance ;Governance

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