

Expansion of Tax Legal Principle from the Perspective of Regulation Theory

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Abstract

At present, the reform of the fiscal and tax systems has achieved remarkable results, and the tax legislation work has been steadily promoted, but there are still some problems to be solved in this process. Such as the lack of the tax legal principle in the Constitution, the meaning of the "law" in the tax statutory principle, the imperfect tax legislation, and the lack of tax law enforcement, which seriously hinder the process of reform. In this regard, we should actively promote the process of implementing the principle of tax law, standardize the authorization legislation, and strengthen the ability of tax revenue in accordance with the law. To comprehensively build a law-based country and a legal government, the modern tax system helps.

Keywords

Regulatory Theory; Principles of Tax Law; Authorized Legislation; Tax Enforcement.

1. Introduction

Government regulation is the main means for the government to regulate the market in order to overcome the market failure and maximize the public interests. Tax revenue is one of the most commonly used tools for government social regulation. Government supervision is within the scope of law and is based on laws and regulations. Whether the perfection of laws or regulations directly determines the effectiveness of government supervision. [1] As one of the three basic principles in the field of taxation, the principle of tax law plays an important role in safeguarding the legitimate rights and interests of taxpayers and the national finance while ensuring the effective implementation of government social regulations. While clarifying the connotation of government regulation, it is of great significance to appropriately expand the principles of tax law, which is conducive to deepening the reform of tax collection and administration and improving the market economy.

1.1. The Connotation of Government Regulation

"Regulation", also known as government regulation, is essentially the government's control over the economy to improve market failure and maximize public welfare. The interpretation of the connotation of "regulation" in the New Palgrave's Dictionary of Economics can be divided into a broad and narrow sense. The broad "regulation" involves all aspects of the government's control of the market economy, while the narrow "regulation" only involves the government's regulation of the micro level of the market economy. According to law, "regulation" is administrative procedures and justice. For the control of the behavior of regulatory institutions, the administrative procedures are restricted by legislation, justice and law enforcement, and the behavior of regulatory institutions is implemented within the legal dimension." [2] To define the connotation of regulation" has different focus, but no matter how to define, first to determine the basic elements contained in "regulation", mainly including main body, object, scope, method, the implementation of "regulation" behavior should follow the laws and regulations, its role is according to the relevant laws and regulations directly regulate economic economy or according to laws and regulations. From the perspective of legal research,

standardizing the administrative behavior of tax agencies and strengthening the judicial control of tax agency behavior play an important role in further implementing the principle of tax law.

1.2. The Connotation of the Principle of Tax Law

Tax revenue is an important means of national macro-control. Without tax support, public services and goods cannot be effectively supplied. [3] Therefore, tax revenue plays an important role in a country's system, and the effective development of tax activities cannot be separated from the regulation of law. With the continuous development of the economy, the country's legal system is gradually improved, and the tax principle also came into being. The principle of tax establishment first originated in Britain, and a long struggle between the royal family and the nobility produced the concept of tax law. Tax legal principle in the field of taxation by most people called "imperial principle", it means that the rights and obligations of tax subject must be stipulated by law, constitute the various elements of tax behavior must and only clearly stipulated by the law, the rights and obligation is only based on legal provisions, no legal basis, any subject shall not be tax or exemption. [4] Secondly, the tax law also includes the legal tax procedure, that is, the tax authorities should be carried out according to law, when and where to collect the tax should be in accordance with the provisions of the law. Finally, the taxpayer tax judicial relief should also have laws to follow.

1.3. Problems Existing in the Implementation of the Legal Tax Principle

Since the 18th National Congress of the Communist Party of China, the reform of tax collection and administration has achieved remarkable results, which has been summarized as a "triad" process by scholars. However, while affirming the results of the previous reform, we should objectively understand the shortcomings of the current tax collection and administration, tax laws and regulations system is not sound, low tax law enforcement level restricts the construction of modern market economy, hinder the development of the economy, the main reason is that the tax law principle has not been fully implemented.

1.3.1. Whether the Principle of Tax Law in the Constitution is Controversial

Tax jurisprudence first originated in the capitalist country of Britain to limit the form of tax power. Since then, most countries have written the principle of tax law into the Constitution, and gradually identified the tax law principle as the basic principle of the Constitution. However, it remains disputed whether our Constitution establishes the principle of statutory taxation. Some scholars believe that the principle of legal taxation has been established in our Constitution. Mainly according to Article 56 of China's Constitution, the citizens of the People's Republic of China have the obligation to pay taxes according to law. It means that Chinese citizens pay taxes according to law, which is the legal tax. Some scholars believe that the principle of tax law has not been fully established in our constitution. The main reason is that Article 56 of the Constitution fails to fully reflect the spirit and connotation of the tax law principle. From the analysis of content and structure, Article 56 stipulates the obligations of citizens, and the legal tax includes not only the obligations of taxpayers, but also involves the tax authorities should collect tax according to law. From the perspective of the tax authorities collecting tax according to law, Article 56 does not show that the principle of legal tax has been established. Secondly, from the structural point of view, Article 56 is located in the second chapter that stipulates the basic rights and obligations of citizens, which is not consistent with the original intention of restricting the exercise of state tax power when the principle of tax law is established. Finally, from the perspective of the realization of tax legislation, the existing tax legal system is not constructed in accordance with the legislative purpose of the National People's Congress, but a modern tax system gradually established according to the development of the actual situation of China. Another scholars believe that Article 8 of the Legislative Law of 2015 was amended to read: "The following matters can only be formulated...

basic tax establishment, tax rate determination, and tax management...".In combination with Article 56 of the Constitution, it can be said that the statutory principle of taxation has been preliminarily established at the constitutional level, but the principle of tax law is still lacking in the Constitution.

1.3.2. The Connotation of "Law" in the Principle of Tax Law is Controversial

Government supervision is mainly to formulate policies and regulations within the scope of laws and regulations, and the understanding of the "law" in the tax principle is still controversial. Some scholars believe that "law" refers to the law in a narrow sense. For example, Shi Zhengwen (2015) pointed out that the "law" in the tax law only refers to the narrow law enacted by the legislature, reflecting the principle of legal retention. [5] Professor Liu Jianmin (2019) believes that there are still concept misunderstandings in China's tax legislation. First, the definition of the tax law is too broad. There are very few tax laws in China, and a large number of normative documents such as rules and administrative regulations exist, leading to a gradual increase of violations of administrative legislation. [6] Understanding "law" as a narrow law helps to prevent government overregulation. Some scholars understand the "law" as a broad law. Guo Changsheng (2021) believes that it is inappropriate to interpret the law of tax law in a narrow sense. He mainly elaborated that the "law" should be understood from the basic content of the principle of tax taxation, the practice of tax legislation, the Legislation Law and the Law on Regional Ethnic Autonomous Government, the role of tax, the practice mode of the principle of tax taxation and other aspects. It is reported that it believes that the tax law is divided into tax legal principles, the tax law that directly affects the tax burden of taxpayers and the designated elements of the tax law, which does not affect the tax burden of taxpayers and the designated tax collection and administration procedures. Issues concerning the substance of taxation shall be strictly determined by the National People's Congress and its Standing Committee in legal form; issues involving tax collection and administration procedures may be determined through administrative regulations and rules. [7] If the "law" in the principle of tax taxation is understood in a broad sense, it is easy to appear problems such as excessive government supervision and unbalanced local tax competition in practice. In addition, in a broad sense, "law" is to take tax as a tool of macro-control, It should be a means of government to regulate the economy and can be used at will. The core position of the law as the embodiment of the civil will will weaken the importance of the tax law in the social rule of law. However, from the practice of tax legislation in China, the legislative work of the legislature is relatively heavy, and the National People's Congress and its Standing Committee have carried out authorized legislation twice. It is difficult to complete High-quality legislation in a short period of time. On the basis of legitimacy and rationality, appropriate expansion of authorization legislation can be an effective measure.

1.3.3. Tax Legislation is Not Sound

The premise of tax law requires a complete tax legal system. At present, after years of construction and improvement of China's tax legal system, a legal tax system has been initially formed. However, we need to make an objective analysis and realize that there are still many problems in the construction of China's tax legal system. First of all, the comprehensive tax legislative task has not yet been completed, and the tax law is not sound. At present, most tax types are stipulated in the form of administrative regulations and other documents, and individual tax types that are even confirmed and regulated by normative documents and administrative rules have no strong legal effect. Secondly, the tax collection and management methods are constantly innovative, but the supporting legal provisions are lacking. For example, in recent years, the tax authorities have actively implemented the tax digitalization, and the tax authorities have mastered more and more information about taxpayers, but the relevant supporting laws have not been yet sound, so China should step up the revision of the relevant

laws on tax collection and management. Thirdly, China's tax legislative power is highly concentrated on the central government, which is not conducive to China's social and economic development. China's large land area and different economic development conditions of different provinces and cities. The simple and crude tax legislative power on the central government and the implementation of unified tax laws, it is difficult to take into account and reconcile the actual situation of inconsistent economic development in various regions. Finally, the operability of tax legislation needs to be improved. The implementation of a tax law often requires the customs, the State Administration of Taxation, the Ministry of Finance and other departments to issue multiple explanations, which greatly increases the cost of the implementation of the tax law, and also increases the compliance cost of taxpayers' paying taxes according to law.

1.3.4. The Principle of Tax Law in Tax Law Enforcement

The premise of implementing the principle of tax law is to have good laws, but the life of the law lies in the implementation. The principle of tax law should be deeply rooted in the hearts of the tax department to enforce the law in law enforcement, so that every citizen can feel fairness and justice in the process of tax law enforcement. At present, the implementation of the tax legal principle in China's tax procedure law is not optimistic. First, tax enforcers abuse their rights, due to the greater discretion of tax enforcement agencies. For example, in the process of determining the qualification of the subject of tax payers, determining the application of tax reduction or exemption, and verifying the amount of tax, tax authorities abuse their rights. Secondly, the tax paying subject has a weak awareness of paying taxes according to law. For a long time, tax enforcement agencies have enforced the state, which is regarded as a strong party by taxpayers. Taxpayers who pay taxes in accordance with the law, assume more obligations than the rights to enjoy, and are in the vulnerable party. In this context, taxpayers in the process of tax law enforcement supervise whether tax personnel enforce the law less, and the awareness of safeguarding their rights and interests in accordance with the law is weak.

1.4. Whether the Principle of Tax Law in the Constitution is Controversial

1.4.1. Whether the Principle of Tax Law in the Constitution is Controversial

At present, there is still a controversy over whether the principle of legal tax law is established in China's Constitution, but as the fundamental law of China, the Constitution has the highest legal effect, and any substantive changes will have a profound impact on the operation of its own society. Therefore, the adjustment of the principle of tax law in the Constitution will certainly be regarded as the revision of the Constitution, thus affecting the fundamental nature of national political decisions and the basic order of society. Zhang Xu (2020) believes that the necessity of the constitutional principle of tax law should be based on the status of the Constitution as the fundamental law. [8] On the one hand, the Constitution standardizes and restricts the arbitrary exercise of public power, on the other hand, it guarantees and leads the free exercise of citizens' legitimate rights. The incorporation of tax law can support the formulation of the tax law from a higher legal level, or provide legitimacy for the control of tax power. It is the key to fully realizing the rule of law and deepening the reform of the financial system; it is an effective way to reasonably limit government regulations. In the process of introducing the principle of tax law, the following points should be paid to the Constitution: first, the principle of tax law considers the stability of the constitution, the second is to ensure the comprehensive and complete expression of the principle of tax law. [9] The principle of legal tax system can be adopted in two ways if the constitution. One is to adjust Article 56 of the existing Constitution to stipulate that Chinese citizens should pay taxes according to law and enjoy rights in accordance to law. Second, the principle of tax taxation is directly written into the Constitution, parallel with the existing principles of the Constitution and jointly as the basic principle of the implementation of the Constitution.

1.4.2. Whether the Principle of Tax Law in the Constitution is Controversial

At present, China's economy is developing rapidly, and it is not realistic to submit all tax-related matters to the NPC and its Standing Committee in a short period of time. Because of this reason, in order to solve the characteristics of high professionalism, strong complexity and great flexibility, our legislature has adopted the way of authorized legislation on tax matters. Authorization legislation must be conducted under the principle of tax law, which is not a denial of the principle of tax law, but on the contrary, it is an extension and extension of tax law. According to the relevant provisions of the Legislation Law, laws can only be formulated for matters related to the basic tax system. When laws have not yet been formulated and the conditions for formulating laws are not ripe for social and economic development, the NPC and its Standing Committee have the right to authorize the State Council to currently formulate administrative regulations on some matters. Authorized legislation has the characteristics of the attribute and limitation, the source of power, legal rank and legal effect, and the limited legislative subject and content, which can meet the current situation of China's financial system reform, relieve the legislative burden of the legislature, and make up for the shortcomings of the legislature. Special attention should be paid to the influence of authorization legislation on the stability and authority of the law itself. First, the authorization subject should be standardized, then the authorization content should be clarified, and finally, to supervise and restrain the authorization legislation suggestions, regulate the behavior of the authorized organs, prevent the occurrence of administrative dominance and offside phenomenon, and prevent blank authorization. Adhere to the premise of implementing the principle of tax law, adhere to the main position of tax law, carry out legislation on authorization, [10] and gradually reduce and even prohibit tax authorization legislation when conditions are ripe.

1.4.3. We Will Accelerate Steady Progress in High-quality Legislation

First of all, we should accelerate the promotion of tax legislation work, and pay attention to the top-level design. There are 18 taxes in China, and some major taxes have not yet been legislated, which directly restricts the implementation of the principle of tax law. To design tax laws in line with Chinese characteristics based on the actual situation of the tax rule of law, on the one hand, we should properly grasp the formulation of new laws on individual taxes, absorb various administrative laws and tax policies that are in line with China's national conditions and are tested by practice, and transform them into laws. On the other hand, attention should be paid to improving the legislative level of individual separate laws, take into account the integrity of tax legislation, and constantly enhance the authority of the tax law. [11] We will ensure that the National People's Congress has absolute tax legislative power and strictly implement the principle of tax legislation in the process of formulating tax laws. Strengthen the review of the lower law, and establish a dynamic review mechanism. The State Administration of Taxation shall assume the main responsibility, regularly review and clean up all kinds of standard documents, and strictly examine whether it violates the upper law. The tax review and filing system will be introduced to record potential or normative documents that do not consistent with the actual development of society so as to handle them in a timely manner.

1.4.4. We Will Improve Our Ability and Awareness of Law Enforcement

In order to bring the principle of legal tax system to enter the hearts of the people, it requires every staff member of the tax authority to enforce the law in the tax law enforcement process and actively popularize the law. First, strengthen the legal training of tax law enforcement personnel, and establish the first front of tax law enforcement. On the one hand, advanced technology can be used to keep real-time video recording of the whole process of tax law enforcement, so that when tax law enforcement disputes arise, they can be consulted. On the other hand, an electronic display screen for tax enforcement will be set up to make the progress of tax enforcement public in accordance with the law, so that the tax process is "visible" and

that taxpayers can supervise tax enforcement. Second, strengthen tax publicity-related laws to enhance taxpayers' legal awareness. We will carry out special activities to popularize tax law, so that taxpayers can know the rights they enjoy according to law in the process of tax revenue. In the process of handling tax business, publicize tax-related knowledge, and gradually enhance the authority of the law in the hearts of taxpayers.

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