Taxpayer’s Right Protection in China’s Building Tax Reform

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Abstract
In April 2010, the State Counsel has published <Measures Curbing Excessive Growth in Property Prices in Some Cities> (New Article 10 in short), to deal with the current situation that housing price increase swiftly in some cities, influencing economy and social stability. On May 27th, the State Counsel transmitted National Development and Reform Commission’s <Opinions on Important Points in Deepening the Reform of Economic System in 2010>, pointing out that China would “promote the reform of property tax gradually”. In January, the executive meeting of State Counsel has agreed to levy building tax on individuals in certain cites. In the same month, 28th, Shanghai and Chongqing decided to do that, making the building tax reform a heat-discussed topic.

The traditional taxation concept emphasizes its mandatory and free nature, the right and obligation between the government and taxpayer are far from equity. Due to the opportunity of building tax reform, how to change the traditional concept, guide the legislation by equal theory of tax debt and establish the taxpayer’s right theory in the building tax reform will become a valuable topic.

This essay analyses important points in building tax reform from the perspective of taxpayer’s right protection and raises suggestion on how to establish the taxpayer’s right in the tax law system.

Keywords
Taxpayer’s Right Protection; Building Tax; Reform; Tax Debt Theory

Theoretical Support of Taxpayer’s Right Protection

Definition of Taxpayer’s Right
In a narrow point of view, taxpayer’s right points to the possibility that in the process of fulfilling his obligations as the tax law required, the taxpayer can do or refuse to do certain actions, or ask the authorities to do or not to do certain actions, therefore his legitimate interests can be protected and realized. In other words, taxpayer’s right refers to the entity rights and procedural rights he should enjoy and really enjoy in the field of tax collection, administration and expenditure. This right is realized through the whole process of tax legislation, tax law enforcement and tax justice. It also includes taxpayer’s right to gain relief and compensation when his legal rights are infringed. From a broad perspective, taxpayer’s right is described as the right a taxpayer enjoys in political, economical and cultural aspects of his life. (Du Jian and Liu Rong, 2007)

Theoretical Sources of Taxpayer’s Right Protection

With the improvement of social democracy, market economy and constitutional theory, taxpayer’s right gains more and more attention as the vital part of civic right. This theory is necessary for commodity economy and the natural product of the tax legal system when it reaches certain level. Scholars with background of tax law, civil law and constitution have summarized many theories to support the idea of taxpayer’s right protection. The emphasis of this essay will be focused on the tax statutory principle, debtor-creditor relationship of taxpayer, theory of tax debt and how could these theories support taxpayer’s right protection.

1) Tax Statutory Principle
According to the text mentioned above, the taxpayer’s right is a vital part of civil rights, therefore the former enjoys the basic characteristics of the latter. Since equality deriving from “rule of law” requires an equal position of the government and the taxpayer, the tax statutory principle becomes a basic principle to achieve the balance between taxpayer’s right and the government’s right to collect tax.

Tax statutory principle means that law must regulate the rights and obligations of tax law entity, and all the elements of tax law must be clearly stated by law and by law only. The rights and obligations of taxation subject should be exercised under law. Without legal base, no subject will
collect tax or decide tax reduction and exemption. Generally speaking, the civil right serves as the basic foundation of taxpayer’s right. The citizen’s consent and supervision rights as a taxpayer are the bases of the existence of a country’s right to collect tax.

Based on tax statutory principle, the taxpayer gains his right through the process of the emergence, development and vanishing of certain taxation relationship. Without legal base, a government cannot collect tax and the taxpayer should not be asked of paying. Also, the corresponding law will become the country’s permission and protection of special act and the taxpayer’s right.

2) Tax Debt Relation

German jurist Albert Hensel in the formulation of German Tax Law, 1919, firstly mentioned the theory of tax debt relation. He further developed this theory in his book <Tax Law> and defined the tax debt relation as a full creditor-debtor relationship in public law. The tax debt relation defines the taxation relationship as a relationship in which the country asks the taxpayer to fulfill his obligation of tax. The country is the creditor while the taxpayer is the debtor. Therefore the tax relationship can be described as a creditor-debtor relationship in public law.

The Japanese famous jurist Kaneko Hiroshi and Kitano Hirohisa also believe that the tax relation should be defined as a creditor-debtor relationship on the level of entity. Although they have divergence in the view of monism or dualism in tax relation, they both agree that the acknowledgement of tax debt relation has certain significance, for it becomes the center and core of tax relation.

In China, scholars also accept the theory of tax debt relation. From the perspective of taxation procedures law, it is based on the country’s executive power. From the perspective of taxation entity law, the center of tax relation will lay on tax debt relation. Therefore, in the process of defining the character of specific tax relation, different cases should be valued according to the practical situation. When scholars define the abstract tax relation, it can be defined as a tax debt relation.

Chinese scholar, based on the preceding theories, has raised the “theory of layer relation”. It means that the tax relation will be evaluated into two layers, the abstract and the specific. On the abstract layer, the tax relation as a whole can be described as a debt relation in public law; while on specific layer, the tax relation consists of debt relation and power relation.

Based on tax debt relation, relative theories on obligation law can be adduced in tax law, if the latter is included in public law. “The debt tax relation theory arouses heated discussion in China’s school of Law of Tax and Finance, especially after the Chinese Tax Collection and Administration Law was modified in 2001, in which the subrogation right and cancellation right of tax authority is established. The traditional tax administration theory, which focuses on administrative act has been challenged greatly.” (Zhou Gangzhi, 2010)

The tax relation has the characters of debt of public law, therefore, the obligation of taxpayer derives from the entitative taxation condition and the possibility of authority’s random collection can be avoided.

3) Tax Liability

The Institutes of Justinian has mentioned “Debt is the juris vinculum that constrained us to certain payment according to the law”. The tax debt is similar to the debtor-creditor relationship in private law, when a legal fact of certain person fulfills the constitutive requirements required by the tax law, it will naturally bear the realistic tax liability. In other words, he has the obligation to pay certain amount of tax to the tax collector, and the collector also has the right to assess tax from him.

When it comes to the so-called tax debt, it refers to the legal relationship between the country and local government as tax creditor and the taxpayer as debtor, in which the debtor pay tax as monetary payment.

There is no clear regulation in tax law about when the tax debt comes into being. In theoretical research, there are two main theories, the discipline time and the constitutive requirements time. The discipline time theory states that tax debt exists when the administration comes to collect tax, the fulfillment of constitutive requirements only does not equal to tax debt, on the contrary, the collection of tax by authority brings the real tax debt. “The constitutive requirements time theory holds that tax debt comes into being when all legal constitutive requirements are fulfilled, the collection by
authority only specifies the exact number of debt, playing the role of publicity.” (Liu Jianwen, 2010)

In practice, the theory of constitutive requirements time helps more in the protection of taxpayers’ rights and practical needs. First of all, the action of collecting rights belongs to the procedure of tax law and serves to make sure that the tax debt can be really fulfilled. Collection of tax cannot influence the legal entitative relation of the tax debt. Moreover, if people stick to the discipline time theory, the collection of tax and the payment of tax debt do not arise at the same time, the conflict of time may generate many problems. For example, taxpayer may encounter unfair treatment; it may not be easy to find the exact time of tax debt in the process of tax relief, etc.

Therefore, tax as the legal obligation comes into being when the legal constitutive requirements are fulfilled. Once exists, it cannot be retrospectively changeable and eliminative, which is a necessary demand by tax legalism. “On the other hand, tax levy bases on taxable facts (trade, import, transfer, revenue realization, possess property, etc.), the taxable facts are the factual course of event in business. Once the factual life events arise, it cannot be changed retrospectively. Whatever has already occurred, it is existed.”

**Characteristics and Reform Points of Building Tax**

**Characteristics of Building Tax**

1) **Characteristics of Chinese Building Tax**

“Building tax” is a kind of property tax levied worldwide. Its object of taxation is the real estate and mainly focuses on the ownership instead of the circulation, which is the target of current Chinese building tax policy. The main object of building tax is house, and this tax is “a property tax paid by those who has ownership or user right of a house.” (Zhang Shouwen, 2010)

According to the first clause of < The interim regulations on building tax of the People’s Republic of China > in 1986, houses located in city, county, organic town, industrial and mining area would be levied building tax yearly. Due to the fact that it was the first time of building tax levied in China, the reform of housing system did not progress in the meantime. Also, private owned houses were quite rare in cities and counties, the income of citizens was relatively low, and the real estate market was not commercialized. All these attributed to the small number of commodity house owned by individuals. Therefore, the fifth clause of < The interim regulations on building tax > stated that non-operating houses owned by individuals were tax-free, the regulation only targeted at commercial and operating house.

The valid building tax is carried under < The interim regulations on building tax > issued by the State Counsel, in which the object of tax is house; the ambit of charges is limited to commercial house or leased house in cities and counties. The nature of commercial or leased differs in the taxation base and rate.

2) **Characteristics of US Building Tax**

Building tax is a very important type of property tax, which is levied in many countries around the world. Usually it is called building tax or real estate tax and is used as local government’s revenue. For example, about 50 states in US collect building tax, 49 of which appoint local government to do that. Also, Japan, Canada, UK, Hong Kong, Taiwan, many countries and districts treat personal property tax as the major tax collected by local government.

The basic principle of US building tax is “Wide tax base, few category”. Wide tax base means that the base of building tax is quite wide, besides real estate of public, religious organizations and charities, all real estate must be levied to guarantee the stability of fiscal revenue. Few categories mean that there are very few kinds of taxation. In the stage of possession of real estate, a property tax only is levied, avoiding double taxation due to complex categories of tax. (Chen Ya, 2011)

The US differs from China in many aspects, such as form of government, resource ownership, values, etc. The mature US building tax can be a vivid reference in the reform of Chinese building tax, especially in the field of characteristics of system and rules of development.

Firstly, Chinese building tax can learn from the US to settle a dominant position in the local revenue. In most countries, building tax belongs to a local tax and serves as a vital resource of state revenue. “The US building tax represents about 50%-80% of the national tax revenue.” (Qiao Lei, 2010) Take the data of 2007 as an example, “The total sum of US
building tax revenue is 376.95 billion dollars, taking a proportion of 44.9% of local fiscal revenue and 71.7% of total tax revenue. This proportion level has been stable for a quite long time. “(Liu Hongyu, 2011) From the data published by the tax department of Chinese Ministry of Finance and the Chinese State Taxation Administration, the building tax takes up only 1.5% of the Chinese local tax revenue.

Secondly, the reform of building tax can establish the taxation principle of “wide tax base, low tax rate.” From the situation of experimental unit of building tax in Shanghai and Chongqing, the tax effect is not quite satisfactory. In these two cities, the tax base is relatively narrow, for Chongqing mainly focuses on upscale housing and Shanghai only taxes on newly increased normal residences. The administration can widen the tax base and expand the tax object from upscale residences to normal houses. When conditions permit, the tax area can be broadened from developed cities to the whole country. Also, a low tax rate helps to ease citizens’ tax pain and avoid conflict. Combined wide base and low rate together, the building tax will play a very effective role in regulation of the over-high housing consumption.

Reform Points of Building Tax

1) Current Situation of the Reform

In April 2010, the State Counsel has published <Measures curbing excessive growth in property prices in some cities>(New Article 10 in short), to deal with the current situation that housing price increases swiftly in some cities, influencing economy and social stability. On May 27th, the State Counsel transmitted National Development and Reform Commission’s <Opinions on important points in deepening the reform of economic system in 2010>, pointed out that China will “promote the reform of property tax gradually”. In January, the executive meeting of State Counsel has agreed to levy building tax on individuals in certain cites, in the same month, 28th, Shanghai and Chongqing decided to do that, making the building tax reform a heat-discussed topic. (Wang Hui, 2012)

Since Chongqing and Shanghai government has decided to collect building tax from individual residences on January 28th 2011, it was a very important step in the reform of Chinese building tax, for it was the first time in history that personal house became the taxation object of building tax. This regulation has been helpful in regulating income distribution, guiding rational consumption of house, promoting effective use of house. However, from the perspective of taxation object, tax base, tax rate, tax deduction and exemption, use of revenue, etc., it carries more features as a policy instrument to regulate the market. This tax has yet to progress in aspects like equity, sufficiency, effectiveness, feasibility and so on. Tax law, as an individual law department, plays many roles besides macro-control.

2) Reform Points

Firstly, improve the relevant supporting measures of building tax.

Price evaluation is a vital stage in the collection of building tax. However, the deficient evaluation system has weakened the effectiveness of building tax’s imposition. Considering the situations of other countries that enjoy sound building tax collection, their effectiveness of imposition should be attributed to an efficient price evaluation system. Following their examples, developing a price evaluation system compatible with China’s situation will also help to strengthen the imposition of building tax besides improving legislation of building tax.

In the meantime, the government could also “strengthen the registration system of house property right, develop a computer-based database of registration, evaluation and tax collection. By strengthening the effective management and usage of information, the validity and seriousness of building tax collection would be improved.” A national real estate registration database has many advantages. It would effectively prevent tax evasion in building tax collection. In addition, those taxpayers who own many houses in different cities will have a regulated income due to the national database.

Second, change the tax base to property appraised value.

Currently China “uses the residual value of house or rent as tax base, in which the residual value is calculated by a deduction of 10% to 30% from the original value; without the original value, the tax bureau will refer to houses of the similar kind.” (Zhang Shouwen, 2010) The residual value is determined by past economical status and
regulation so that it fails to reflect the current market value of houses, thus unable to play a regulatory role in the appreciation in the ownership phase. If the tax base is changed to appraise value, different type of houses will be appraised under different standards, when house value increased, the tax will increase as well. Therefore, it can guarantee a stable growth of fiscal revenue; solve the grading differential income problem in different districts and make sure the equity in tax collection.

The Necessity to Emphasize Taxpayer’s Right Protection in Building Tax Reform

Demonstration effect

The building tax reform would demonstrate the importance of taxpayer’s right protection in the tax law system. “Almost all the textbooks about science of tax law and science of taxation emphasize that the government participates in distribution by means of political power. They also stress the mandatory and free nature of tax and the unbalanced status of the government and taxpayer’s right and obligation. Besides, the country is regarded as subject of right in legislation while the taxpayer is viewed as subject of duty. The aim of tax law is to guarantee the national fiscal revenue and to regulate the economy. When it comes to regulating the behavior of country in taxation, the topic of taxpayer’s right protection receives little concern and attention.” (Liu Jianwen, 2002)

Based on the tax debt theory, the building tax reform is a chance for the government to relocate the arrangement of government’s tax right and taxpayer’s property right. Owing to the tax debt, the government has its obligation to protect taxpayer’s right, which is expressed in the legislation, enforcement and judicial stage of tax collection and use. In the above stages of building tax, sticking to the equity of tax debt theory, the relevant right of taxpayer will be secured. Also, it will be hard for government and tax bureau to collect tax beyond their legal rights. These improvements can be expanded to other tax gradually.

“The basic nature of tax debt theory is to implement principle of equality in tax law, protecting both the government and the taxpayer equally, and pay more attention to the latter in specific legal system.” (Liu Jianwen, 2004) If the tax debt theory is implemented in China’s tax law system, the tax statutory principle and tax equity principle will be emphasized, proving that tax debt is the consideration to enjoy public goods. If the taxpayer’s right fails to restrict government’s tax right in the building tax reform, there will be no external force to restrain the government, turning its right into vicious expansion.

China’s Status Quo

In the Chinese tax law system, very few kinds require the natural person taxpayer to declare tax. The majority of tax is collected from the producer or seller directly and then hidden in price bared by natural person customer. Or it will be withheld and remitted by natural person’s enterprise or institution. Owing to that, the house owners will face a tough problem for they lack knowledge and experience of building tax when the reform is finished and the owners of nonprofit housing are included into taxpayer’s range. In addition, the building tax is one of the direct tax, requiring direct payment which the natural person has difficulty in adaption.

Since the taxpayer lacks knowledge and experience, the tax bureau would be faced with difficulties in tax collection; also, the former could not protect his right effectively. The current tax law popularization and knowledge publicity by tax bureau are far from enough for taxpayer to protect his right.

Conclusion

China is a democratic socialist country, where the taxpayer serves as the provider of national tax and the smooth functioning of society. Therefore the taxpayer naturally has right to know issues like how to collect tax, the amount of tax, its usages, and the effectiveness of usages. This is also the requirement of participation and democratic supervision of politics. (Song Li, 2002)

In the process of building tax reform, the government could also adopt the following measures:

Firstly, strengthen the information disclosure and public participation. It should be emphasized in the whole process of reform. From preliminary plans of reform to specific implementation, the taxpayer should be offered methods of participation and information acquisition.

Secondly, a special procedure law can be legislated to guarantee building tax collection. The building tax is one of the main tax categories in China, with the swift development of China’s economy, it will surely become a vital part of national tax revenue. Without a matched procedural law, there will be difficulties to secure the efficiency of tax usage, resulting in a waste of resource
and fiscal revenue.

This essay adopts the theory of taxpayer’s right protection, analyzes the characteristics and important points of building tax reform, pointing out that the taxpayer’s right protection has a vital significance in the reform, both theoretically and practically.

REFERENCES


