

Research on Tax Legal Issues of Virtual Property

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ABSTRACT

The rapid development of virtual property has become an important part of digital economy and virtual economy. The economic activities of virtual property are increasingly prosperous, and the economic benefits brought by virtual property cannot be underestimated. However, while virtual property-related income is growing, it is difficult for them to be included in the scope of tax collection and management by tax authorities. Starting from the analysis of the legal basis of virtual property, this paper explores the essence and classification of the tax law of virtual property, analyzes the problems existing in the current tax law and the difficulties faced by tax collection and management, and explores the construction of Chinese-style modern virtual property tax law norms and collection and management systems from two aspects of legislation and law enforcement.

KEYWORDS

Virtual Property; Turnover Tax; Income Tax; Tax Collection and Administration.

1. CURRENT LEGAL REGULATION OF VIRTUAL PROPERTY

1.1. Current Situation of Civil Law Regulation of Virtual Property

The tax law should be based on civil law, and the legal behavior of civil subject and its economic benefits are the tax object and factual basis of the tax law. At present, China's laws, regulations and normative legal documents on virtual property mainly focus on social guidance and policy guidance, and still stay in the initial stage of concept confirmation and value guidance, and there are few provisions on the specific rights and obligations of virtual property relative to the subject and the legal relationship. The Civil Code officially implemented in 2021 conforms to the needs of China's modernization of the rule of law, and stipulates virtual property as the object of civil law in article 127, which is clearly included in the scope of protection of civil law. This legislation undoubtedly makes up for the current civil law vacancy on the protection of virtual property in our country. However, no matter what interpretation system is applied to article 127, it is impossible to determine what kind of object of civil rights virtual property is. Comparing the legislative provisions of the Civil Code and the General Provisions of the Civil Law, it is not difficult to find that the relevant contents of virtual property have been changed, and the changes in the position of virtual property in the draft General Provisions of the Civil Law indicate that the legislature has not formed accurate opinions on the legal attributes related to virtual property. And the theory of the legal attribute of virtual property has been debated, and there are different views in judicial practice, far from forming a broad consensus.

The Civil Code, which came into effect on January 1, 2021, fully inherits the legislative guiding ideology of the General Provisions of the Civil Law, and provides in the same text of Article 127 of the General Provisions: "Where there are provisions of the law on the protection of data and network

virtual property, the provisions shall be followed." The Civil Code is the first code in the world to regulate virtual property. The legislature still avoids dealing with the legal nature of virtual property, which makes the debate about the legal nature of virtual property more intense. The virtual property right is a kind of traditional real right or a new form of real right, or other kind of right. The theory and practice of defining virtual property according to the current real right theory are slightly inadequate, and other theories are not capable of excluding public discussion, so the legislature adopts vague legislation technology to supplement its legal nature in the future. As there is no practice of issuing legislative reasons in our country, the result of the above conjecture cannot be known. However, we can still look for clues in the legal provisions and observe the arrangement of the Civil Code for the provision of virtual property. Virtual property is stipulated in Chapter 5 "Civil Rights" of the General provisions of the Civil Code, which is preceded by relevant provisions on personal rights and property rights. Article 126 stipulates that: "Civil subjects enjoy other civil rights and interests stipulated by law", is undoubtedly a basic expression, followed by 127 provisions on virtual property. Does the fact that the provision on virtual property is not included in the introductory provision of Article 126, but is chosen to add a separate provision later and not stated in the Property Rights chapter, mean that the Legislature refuses to recognize the property attributes of virtual property? On the other hand, because the legal nature of virtual property is unclear, Article 127 of the Civil Code stipulates that virtual property is protected by law, but this article brings little help to judicial practice. At present, there is still confusion in local courts when filing and hearing cases related to virtual property. The cases of breach of contract and infringement appear at the same time, resulting in the application of contract law or tort law in judgment, and even the judgment of similar cases is completely different.

1.2. Current Situation of Tax Law Regulation of Virtual Property

As mentioned above, in general, the Civil Code stipulates that virtual property should be protected by law. However, this provision is of a higher level and only provides a principled basis for the protection of virtual property, leaving enough space for the subsequent legislation related to virtual property. It does not make specific provisions on the legal nature and specific protection methods of virtual property, but chooses to invoke other legal protection methods. However, at present, China's laws and regulations directly targeting virtual property in the tax field are basically vacant, and the specific measures and applicable rules related to virtual property tax have not been detailed.

In October 2008, the State Administration of Taxation issued the Reply on the Issue of Levying Individual Income Tax on the income obtained from the sale of Virtual currency by Individuals through the Internet (hereinafter referred to as the "Reply"), answering the Beijing local tax "Request on the issue of levying Individual Income tax on the income obtained from the sale of virtual currency through the Internet" []. It is mentioned in the "Reply" that the income obtained from the purchase of players' virtual currency by individuals through the network and the sale of it to others after increasing the price belongs to the taxable income of individual income tax, which shall be calculated and paid in accordance with the item of "property transfer income". The "Reply" is the first official document to publicly levy personal income tax on online transactions of virtual currencies. However, due to the low effectiveness level of this document, the degree of application limitation is large, and this normative document only regulates virtual currencies in virtual property. Virtual property such as online game equipment and NFT, which are also subject to personal income tax, has not been included in the scope of discussion. Therefore, the "Reply" can not fully and effectively provide sufficient legal basis and protection for the collection of personal income tax on the income generated by virtual property transactions. Moreover, in practice, the transactions of virtual property between individuals have problems such as fragmentation and offline transactions, as well as the low proportion of individuals voluntarily reporting, and the difficulty in determining the tax payable, etc., so the "Reply" has been basically put on hold since it was made public, and has not achieved the expected effect.

China's Notice of the State Administration of Taxation of the Ministry of Finance on Comprehensively Promoting the Pilot Project of Replacing Business Tax with Value-added Tax (Finance and Taxation (2016) No. 36) attached to the "Sales Services, Intangible assets, real estate Notes" clearly stipulates that virtual props in online games are a kind of intangible assets, which are specifically intangible assets of equity. This is the first time that the asset value of virtual property is recognized at the tax level. The above-mentioned "Reply" and the "General Principles of Civil Law" and "Civil Code" adopted by subsequent legislation also confirm the property attributes of virtual property. At present, however, the academic and practical circles have different views on the application of the principle of bipartite property rights and debts in the Civil Code on virtual property, and five mainstream views have been described in the introduction. In this paper, regardless of whether the legal attribute of virtual property is real right or creditor's right, whether it is independent or exclusive, the focus of the study is around the tax law evaluation of virtual property-related transactions.

2. TAX-RELATED LEGAL ISSUES OF VIRTUAL PROPERTY

2.1. Legal Issues of Turnover Tax on Virtual Property

Under the current tax system of our country, turnover tax mainly includes two main taxes: value-added tax (general consumption tax) and consumption tax (specific consumption tax). The object of VAT collection has always been the goods or services that generate value-added value in the process of circulation. In the process of virtual property circulation as a commodity, its production and sales have added value or added value based on the principle of VAT.

According to the provisions of Article 1 of the Provisional Regulations of the People's Republic of China on Value-added Tax (hereinafter referred to as the Provisional Regulations on Value-added Tax), units and individuals selling intangible assets within the territory of the People's Republic of China are VAT taxpayers and shall pay VAT in accordance with these Regulations. In the Implementation Measures for the Pilot Reform of Business Tax to Value-added Tax (Finance and Taxation 2016 No. 36) (hereinafter referred to as the Pilot Measures for the Reform of Business Tax to Value-added Tax) on sales services, intangible assets, and real estate annotations, intangible assets include virtual props in online games []. According to this explanation, the online game virtual props in the virtual property should pay VAT in accordance with the provisions of the sale of intangible assets, but the part of the virtual property except the online game virtual props, and how to deal with it, the current laws and regulations do not have direct relevant provisions, the relationship between online game virtual props and virtual property and what is the particularity of it. It is doubtful whether it also conforms to the provisions of intangible assets and is adjusted by the value-added tax law.

The original intention of tax collection, on the one hand, is to adjust the country's industrial structure, on the other hand, is to guide the direction of consumption. On the basis of the general levying of value-added tax on commodities, tax authorities choose specific consumer goods to levy consumption tax for special adjustment according to the provisions of the law. There are two types of consumption tax objects: high-end luxury goods and high pollution and high energy consumption goods. Raising consumption tax on high-end luxury goods is conducive to limiting the consumption quantity and amount of high-end luxury goods, encouraging more funds to invest in construction and production, and promoting social and economic growth. At the same time, taxing consumption tax on high-end luxury goods can also make the income flow of high-income and high-consumption groups, which can be transformed into public financial resources and achieve the revenue coordination role of consumption tax. On the one hand, increasing consumption tax on high pollution and high energy consumption goods will help reduce the consumption of such goods; On the other hand, consumption tax will encourage enterprises to improve the level of production technology or improve the production structure, so as to reduce costs and increase efficiency, achieve the purpose of energy

saving, emission reduction and pollution prevention, improve the current situation of environmental pollution, and enhance economic and social welfare. Since the emergence of virtual property, it is accompanied by two negative evaluations: first, the value trend of investment virtual property violates the law of the real commodity economy, and can surge hundreds of times in the short term, making investors easily obtain excess property value, making "speculators" rich overnight, but their property acquisition is not equal to the labor paid. Second, the acquisition mechanism of virtual currency in virtual property (commonly known as "mining") requires huge computing power, which brings excessive energy waste.

2.2. Virtual Property Income Tax Legal Issues

At present, Article 2 of China's Individual Income Tax Law stipulates the income subject to individual income tax, including: Paragraph 7 property lease income and paragraph 8 property transfer income [], Article 6 of the Implementation Regulations of the Individual Income Tax Law interprets the above articles 7 and 8 as follows: The term "income from the lease of property" refers to income obtained by individuals from the lease of real estate, machinery and equipment, vehicles and vessels and other property. The term "income from the transfer of property" refers to income obtained by individuals from the transfer of securities, stocks, shares of property in a partnership, real estate, machinery and equipment, vehicles and ships, and other property. It can be seen that personal virtual property is not within the scope of the above positive listing of property income, so whether personal virtual property transaction income can fall within the scope of property income stipulated in paragraphs 7 and 8, the current laws, regulations and normative legal documents do not give a clear and specific answer. According to the principle of statutory taxation, it is difficult for tax authorities to collect income from virtual property transactions when the tax law is not clear about the collection of virtual property.

Article 6 of the Enterprise Income Tax Law stipulates that the total income of an enterprise shall be derived from various sources in monetary and non-monetary forms. Includes: provision for income from transfer of property (3), rental income (6) and other income (9) []. According to Article 16 of the Regulations on the Implementation of the Enterprise Income Tax Law, the term "income from transfer of property" as mentioned in item 3 of Article 6 of the Enterprise Income Tax Law refers to the income obtained from the transfer of fixed assets, biological assets, intangible assets, equity, creditor's rights and other property by an enterprise. Article 65 of the Regulations on the Implementation of the Enterprise Income Tax Law also explains intangible assets, which refer to non-monetary long-term assets without physical form held by enterprises for the production of products, the provision of services, leasing or operation and management, including patent rights, trademark rights, Copyrights, land use rights, non-patented technologies, goodwill and so on. For the virtual property involved in the operation of the enterprise, whether the provisions in Items 3 and 6 of the Enterprise Income Tax Law should be applied; if yes, whether the corresponding category is intangible assets or the category that cannot be enumerated in detail; if no, whether the other income in Item 9 can include virtual property; At present, there are neither detailed and accurate laws and regulations nor relevant judicial cases to give guidance.

3. CONSTRUCTION OF LEGAL SYSTEM RELATED TO VIRTUAL PROPERTY TAXATION

3.1. Improve the Civil Law Norms Related to Virtual Property

As the starting point of legal thinking, legal concept is not only the most basic unit of legal logical thinking, but also the core issue of general legal theory []. The essence of civil law is to promote trade and develop economy by regulating trade. The current Civil Code stipulates the rules and principles that civil subjects such as natural persons, legal persons and illegal organizations should follow when engaging in civil and commercial activities. Although the network virtual property is included in the

scope of protection in Article 127, the current theoretical disputes and practical problems urgently need to be solved are put on hold. The phenomenon of different judgments in the same case caused by the absence of legislation not only damages judicial credibility, but also hinders the development and innovation of the digital economy, so it is necessary to improve the relevant system of virtual property. First of all, we should clarify the legal attribute of virtual property, which relates to the specific protection mode of virtual property and determines the final effect of legal protection of virtual property. Secondly, the ownership of virtual property should be made clear. The definition of the ownership of virtual property can not only end the current chaotic judicial situation, but also help to clarify the identification of tax subjects in the tax collection law. In addition, China's current legal restrictions on virtual currency can not prevent a large number of virtual currency-related transactions, the opposite attitude in relevant international fields and the progress of Internet technology, the future policy should lift restrictions on virtual currency-related activities, into the market, finance and taxation and other aspects of comprehensive supervision, to help China build a Chinese digital economy development road. To sum up, this paper believes that the civil law disputes related to virtual property can be gradually solved through the introduction of corresponding judicial interpretations, administrative regulations and departmental rules, and then the current Civil Code can be amended when the time is ripe to establish a complete set of virtual property civil law system.

3.2. Bring Virtual Property into the Framework of Tax Law

Tax law plays the role of carrying out the balance of national economic interests and the interests of tax payers. Currently, there is no unified tax law in China. The revision of the current Income Tax Law, Provisional Regulations on Value-added Tax and Tax Administration Law, etc. should reflect the connotation of the Civil Code and integrate the provisions of the Civil Code on virtual property. As a kind of electromagnetic data with property value, the legal attribute of virtual property has not yet been determined, and the identification of virtual property by different taxes is not completely unified. Therefore, it is necessary to unify the legal provisions of virtual property in various tax legislation, and adopt separate legislation or detailed enumeration to clarify the position of virtual property in the tax law. After the civil law determines the legal attribute of network virtual property, it clarifies the tax legal attribute of virtual property and lays the premise and foundation of tax collection and management of virtual property.

In view of the legal problems of the virtual property transaction tax, the legislature can give priority to improving the current tax law in our country and fill in the related part involving the virtual property tax. For example, if the virtual property has a value-added share in the circulation process, it will involve the payment of value-added tax. China currently does not have a value-added tax law, the legislature should give priority to the improvement of the relevant provisions of the "Provisional Regulations on Value-added Tax" in the network virtual property, the current intangible assets of "online game virtual property" replaced by "network virtual property", in order to meet the needs of the current digital age. Then consider the improvement of value-added tax law. For another example, when the legislature takes into account the increase in high income and high consumption brought by virtual property exchanges, it can amend the Consumption Tax Law to regulate the transactions of virtual property. For another example, the income obtained from the sale of virtual property will involve the adjustment of income tax. According to the legal attributes and ownership of network virtual property determined by the revised Civil Code, the corresponding provisions of the individual income Tax law and the enterprise income Tax Law are amended to include their transactions.

At present, all countries are actively exploring the virtual property tax regulations that adapt to the development of The Times, and focus on the virtual currency with the most extensive investment. Different from China's conservative attitude towards virtual currency, most developed countries in the world basically recognize the legal status of virtual currency and support the use of virtual currency for network payment and settlement. These countries have also begun to study and explore the tax collection and management of virtual property. Although there are differences in the legal

attributes and policy formulation of virtual property, they have adopted separate legislation or revised the current tax law to solve the tax law problems arising from virtual property exchanges. Therefore, China also needs to re-examine the economic status of virtual currency, and truly connect with the provisions of network virtual property in the Civil Code.

4. SUM UP

From the Internet economy to the digital economy, virtual property has completed the development process from the initial simple to complex, while the new social wealth is created, the tax legal system is also facing new opportunities and challenges. In this paper, the civil law of taxation of virtual property transactions is analyzed. Article 127 of the Civil Code, as the civil law foundation of virtual property, makes an advocate for the protection of virtual property, but there are problems of unclear legal attribute and ownership. The study of the tax law system related to virtual property transactions, the lag of the relevant provisions and the fuzziness of the provisions, is one of the reasons why the tax authorities fall into the dilemma of tax collection and management of virtual property. The legal problems of virtual property transaction turnover tax and income tax in our country are: the list of intangible assets in value-added tax is incomplete, the effect of non-normative legal documents stipulating virtual currency is low and does not adapt to the development and change of social and economic environment, and the application of income tax provisions to virtual property is difficult. To solve the above problems, first of all, formulate relevant judicial interpretations or introduce administrative regulations and departmental rules on the legal attributes and ownership of virtual property in the Civil Code, so as to solve the current judicial chaos as soon as possible, and revise the Civil Code when mature to meet the needs of the digital economy era. Secondly, China should levy value-added tax and income tax on virtual property. In the short term, the provisions on property in the Provisional Regulations on Value-added Tax, the Individual Income Tax Law and the Enterprise Income Tax Law can be amended to include virtual property in the clear form to avoid the continued loss of tax sources. In the long run, the Value-added Tax Law or Tax Code can be formulated to provide a higher level of effectiveness to regulate the taxation of virtual property.

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