

Anti-abuse Rules In Tax Treaty Under BEPS Action 6-----Based on China

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Abstract. With the globalization of the economy, abusive tax avoidance of tax agreements has emerged, bringing challenges to the tax administration systems of various countries. Preventing the abuse of tax agreements is an important issue in the theory and practice of international tax law, and the BEPS Action 6 provides clear guidance on preventing the abuse of tax agreements, and the relevant provisions have been incorporated into the BEPS MLI, which has been widely used. Against this background, this paper clarifies the concept of tax treaty abuse, summarizes the anti-abuse rules in BEPS MLI and their application in China. Based on this, the paper analyzes the application methods and existing problems of the principal purpose test rule and the limitation of benefits rule. At last, a series of practical suggestions are put forward from the micro and macro perspectives, taking into account China's needs and grasp the core principle of "substance over form".

Keywords: Anti-Abuse Rules, Principal Purpose Test, Limitation of Benefits.

1. Introduction

International tax agreements have eliminated double taxation but have given rise to abusive tax avoidance. The increasing number of agreements has gradually formed a network that provides objective conditions for international tax avoidance by multinational taxpayers¹. Driven by the profit-seeking nature of enterprises, multinational taxpayers abuse tax treaties to avoid tax through various means in order to realize the purpose of implementing tax base erosion and profit shifting. Undoubtedly, this will cause losses to the economic interests of the contracting parties and jeopardize the principle of reciprocity and mutual benefit in signing agreements, which brings new challenges to international tax administration.

2. Overview of tax treaty abuse

To combat this phenomenon, the International Organization for Economic Cooperation and Development (OECD) launched the Base Erosion and Profit Shifting (BEPS) Action Plan in 2013. And the theme of Action 6 is "Prevention of tax treaty abuse", which is dedicated to providing improved ideas and model provisions for anti-abuse clauses. Later, OECD introduced the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (BEPS MLI) in 2016, elevating these methods recommended in the report of the outcome of the action plan, which does not have the force of law, into international law, in order to work together to combat international tax avoidance and safeguard common economic interests. As of January 2024, 102 jurisdictions have signed the BEPS MLI. That means 1,900 bilateral tax agreements in the world have patched up in the form of a multilateral legal instrument.

Nevertheless, due to the special nature of "package agreements" of BEPS MLI, which adopt an inclusive framework and a more flexible and ambiguous formulation of the provisions, different jurisdictions may meet different problems to apply the provisions in practice. Focus on anti-abuse rules, this paper will sort out relative rules involved in BEPS MLI and analyze the adoption situation in China. Then, it will analyze the existing problems of the anti-abuse rules in light of how they are applied in practice and put forward corresponding and helpful advice.

he provisions in tax treaties to avoid or reduce tax obligations by obtaining these tax benefits through improper means when the State has no intention to grant, thus eroding the State's tax base and undermining the State's sovereignty over taxation. The term "taking advantage of provisions in tax agreements" can be broadly understood as taking advantage of differences in the methods of calculating the tax base and tax rates between different countries (regions), the tax benefits granted by the network of international tax agreements and the loopholes in the tax laws of some jurisdictions². Common shady practices include treaty shopping, hybrid entities, and hybrid financial instruments, and more than that.

3. Development of anti-abuse rules under BEPS Action 6

The content of the anti-abuse rules is mainly reflected in articles 6 and 7 of chapter III, "Treaty Abuse" of the BEPS MLI. As for article 6, "Purpose of a Covered Tax Agreement" (mandatory), requires countries to take the position in the preamble of their tax agreements that the tax agreements are concluded not only for the purpose of avoiding double taxation, but also for the purpose of avoiding the minimization or elimination of taxes resulting from tax evasion. This initiative is essential for the practical application of the anti-abuse provisions, because when the existing provisions do not resolve the tax dispute, the legal basis is sought with reference to the objective of the agreement to adopt a solution that is consistent with the intention of the agreement.

In terms of Article 7, "Prevention of Treaty Abuse", introduces the Principal Purpose Test (PPT) rule and Limitation On Benefits (LOB) rule. And it should be noted that in order to make the BEPS MLI flexible and inclusive enough to be applied by as many countries as possible, the authors have set two categories of "minimum standards" and "best practices" in the substantive provisions³. The PPT rule in Article 7 is the "minimum standard", which is the default choice of the parties. In addition to this option, jurisdictions can also choose to adopt the simplified LOB (Article 7(8)-(13)) at the same time, or apply the detailed LOB rule alone. In spite of that, as the detailed LOB are too complex to be introduced into the MLI in an inclusive and universal manner, they are not reflected in the rules of the MLI⁴.

4. Adoption of anti-abuse rules in China

For a long time, China has attached great importance to the maintenance of national tax sovereignty and has always actively cooperated with the promotion of the BEPS action plan. For the application of anti-abuse provisions in the BEPS Convention, China is fully implementing the preamble statement (Article 6) and PPT rule (Article 7), while implementing LOB rule for some tax agreements. Since 2007, China has introduced PPT rule in all newly signed or re-amended tax agreements. In addition, China has also tried to apply special anti-abuse rules such as LOB rule in some of the treaty texts to target specific treaty abuses. Following the Protocol signed between China and Mexico in 2005, China has explicitly introduced LOB rule in its tax treaties with Ecuador (2013), Russia (2014) and Chile (2015).

In summary, China has maintained a prudent and flexible attitude in the adoption of the anti-abuse provisions of the BEPS MLI, with the preamble statement and PPT rule as the mainstay and the LOB rule as a supplement. This decision has taken into account the prevailing international practices as well as the implementation capacity of the country's tax authorities and the actual needs of taxpayers. At the same time, China has been exploring the practice of LOB rule with a view to seeking a balance between tax rights and economic interests in the further optimization of anti-abuse provisions. For instance, by adopting a PPT rule supplemented by a LOB rule in its tax treaty with Chile, China get to accumulate practical experience in the wider application of LOB rule in line with the national conditions in the future.

5. Application of anti-abuse rules in China

As mentioned earlier, in terms of the choice of substantive anti-abuse provisions, China has fully adopted the PPT rule, while attempting to introduce LOB rule in some agreements. In practice, the PPT rule and the LOB rule have their strengths and weaknesses.

On the one hand, the PPT rule is highly flexible, has a wide scope of application, is able to provide a generalized denial of various unforeseen abuses of the agreement, is interpreted and adjusted according to the specific circumstances, and is able to serve as a backstop clause. However, precisely to ensure this flexibility, the ambiguity and open structure of the language itself in the PPT rule is amplified, leading to an unclear boundary between legitimate tax planning and abusive agreements, which may expose taxpayers to greater tax uncertainty and more complex tax planning.

On the other hand, the LOB rule is mainly limited to the simplest form of treaty shopping, which has hard and fast rules, based on objective criteria, with clear conditions and greater certainty.

In the following, the two substantive anti-abuse clauses will be sorted out in the order of the PPT rule and LOB rule, with the aim of analyzing the existing problems in practical application of the provisions, so as to clarify the direction of further optimization.

5.1 Principal Purpose Test

By nature, the PPT rule is a general anti-abuse rule (GAAR). According to the BEPS Action 6 Final Report, the PPT clause means that under the framework of an international tax treaty, the tax authorities of a contracting state may determine that a tax treaty is abusive and refuse to grant a tax benefit if, taking into account all the relevant facts and circumstances, it can be reasonably assumed that one of the principal purposes of the taxpayer's transaction or planning is to obtain a tax benefit granted under the tax treaty. Unless it can be demonstrated that the granting of the benefit in such a case is consistent with the object and purpose of the relevant provision of the Agreement. The scope of tax avoidance to be combated under this provision is broader and can include hybrid entities and hybrid financial instruments in addition to treaty shopping.

5.1.1 Application

In order to apply the provisions, the first step is to correctly understand the logical structure of the legal provisions. In terms of the logical structure of the application of the PPT rule, the author is more in favor of the "subjective test-objective test"⁵, i.e. the content of the provisions puts forward two tests to determine whether or not the preferences should be granted under the agreement, namely, the subjective test and the objective test. The subjective test determines whether obtaining a tax preference is one of the principal purposes of the transaction or arrangement, and the objective test determines whether granting the preference is consistent with the purpose and object of the relevant agreement provision. If the subjective test is passed, i.e. it is determined that one of the principal purposes of any transaction or arrangement directly or indirectly giving rise to the benefit does not include the obtaining of a tax benefit, then the benefit may be granted, and vice versa, the benefit cannot be granted. But the preference may also be granted if it is subsequently able to pass the objective test, i.e., the granting of the preference is consistent with the object and purpose of the terms of the relevant agreement. The detailed logic can be seen in the following diagram.

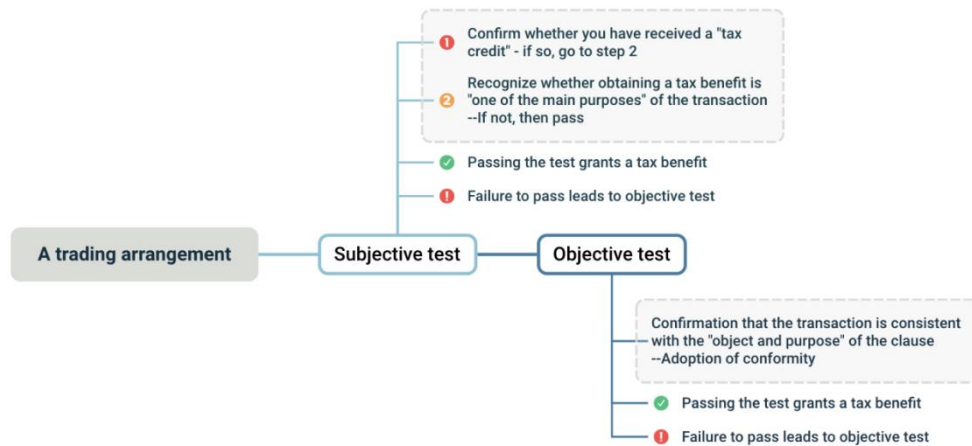


Figure 1. logical diagram of principal purpose test

This applicable logical structure should be understood in conjunction with the burden of proof. Generally speaking, the burden of proof for the subjective test lies with the tax authorities, while the burden of proof for the objective test lies with the taxpayer⁶. The objective test should be understood as a means of relief for multinational taxpayers who fail the subjective test, i.e., the taxpayer may be granted a tax preference if he or she is able to give clear evidence that the transaction or arrangement satisfies both the tax purpose and the treaty purpose (e.g. economic purpose).

At the same time, some scholars put forward the concept of "initiating elements - purpose elements"⁷, which takes the judgment of whether obtaining tax incentives is one of the principal purposes of the transaction or arrangement as the initiating elements, and its conclusion as the intermediate conclusion. Based on that, the tax authorities further determines the objective elements of granting preferential clauses in the agreement, and then judges whether the agreement benefits are consistent with the objects and purpose. The grant of a tax treaty benefit may only be refused if it is found to be inconsistent with the object and purpose (i.e. the purpose element) of the preferential provisions of the agreement. Although the result is similar to the "subjective test - objective test", the content of the clause is divided into "initiating elements" and "purpose elements", requiring the two tests to be combined and analyzed at one time in the application process to reach a desirable conclusion. It would be harder to obtain evidence, and the proof responsibility pressure will be greatly transferred to the tax authorities, and the difficulty of implementation will be significantly increased.

5.1.2 Problems

Although the PPT rule, as a wide-range shot rule for tax treaties that can be widely applied to all countries in the world and effectively combat all kinds of unlawful abusive treaty avoidance behaviors on a large scale. However, due to the difficulty of balancing universality and precision, its broad content and insufficiently specific concepts, there are still many problems in its practical application.

5.1.2.1 Unclear identification criteria

A clear standard is a guarantee of the certainty and predictability of a legal provision, but the subjective test of the PPT rule has a very obvious flaw in this regard⁸. The problem reflected on the lack of clarity in determining whether "one of the principal purposes" of a taxpayer's transaction is to obtain a tax benefit.

At its simplest, a taxpayer may use an arrangement or transaction that is clearly "unnecessary" for the sole purpose of obtaining a tax benefit. However, as the anti-abuse tools continue to be upgraded, in practice, taxpayers will use more sophisticated packaging methods, and a transaction will often have both a commercial and a tax purpose.

Faced with this situation, there is still no clear criterion on how to judge whether the two purposes are secondary (i.e. obtaining tax benefits is not one of the principal purposes) or whether they have equal influence (i.e. obtaining tax benefits is one of the principal purposes).

5.1.2.2 Unbalanced burden of proof

Once entering the objective testing stage, it is still necessary to review the "purpose and objective" corresponding to the PPT clauses. Typically, the burden of proof in objective testing falls on the taxpayer. Unfortunately, there is currently no explicit answer for how to determine the "purpose and objective" based on legal provision or for how to identify the types of evidence required based on this "purpose and objective", nor is there a clear standard for proving the relevance of evidence to the "purpose and objective".

For practitioners in international trade, the true purpose of arranging a transaction is often subjective, and therefore can only be judged based on objective evidence that meets certain criteria⁹. This increases the difficulty for taxpayers in gathering evidence. In contrast, tax authorities only need to make reasonable inferences based on subjective testing, giving them greater discretion.

In this situation, requiring taxpayers to provide explicit evidence under vague standards to demonstrate compliance with the "purpose and objective" could likely result in an imbalance of burden of proof.

5.1.2.3 Unclear legal consequences

Legal norms generally consist of two elements: a pattern of conduct and legal consequences. A legal provision should have the element of legal consequences to provide guidance to the enforcers and predictability to the actors. Unfortunately, the legal consequences articulated in the legal provision of PPT stop at "the possibility of refusing to grant a tax benefit", with no follow-up. If the tax authority refuses to grant the one tax benefit, how should the relevant transaction be taxed; if a taxpayer is entitled to one of the benefits of a treaty but tries to obtain a more favorable tax benefit by applying another provision through the transaction, can the tax authority instead grant the former benefit? For example, in a hybrid financial instrument, where the preferential rate of tax on dividends is not applicable, can the preferential rate of tax on interest be applied instead? There is no clear answer to these questions.

5.2 Limitation of benefits

By nature, LOB rule is a special anti-abuse rule (SAAR) designed to prevent residents of third countries other than the contracting states from obtaining tax benefits, and are specifically targeted at tax avoidance by elective associations. A "benefit limitation", as the name suggests, is a threshold for the granting of certain tax benefits by applying a series of tests to examine whether a taxpayer qualifies for the tax benefit. The underlying logic of the LOB rule is that a taxpayer who meets any of the tests can be deemed to have a real business purpose for the arrangement or a sufficiently strong connection with another contracting state, and that the business purpose or connection must outweigh the purpose of obtaining the tax benefit¹⁰.

5.2.1 Application

Similar to the PPT rule, LOB rule are divided into subjective and objective tests. The subjective tests usually include the active business test, the IRS discretionary test, the operational headquarters test, and the principal purpose test (broadly defined as the LOB test), while the objective tests usually include the qualified resident test, the public company test, the ownership and tax base erosion test, and the derivative interest test.

The LOB rule was born in the United States, where most of the tests were developed, with the qualified resident test being viewed as a simplified version of the LOB clause introduced into (8)-(13) of Article 7 of the BEPS MLI. This test is also often favored in practical applications in China.

For example, in 2015, Article 26 "Determination of Eligibility to Enjoy the Benefits of the Agreement" was added to the tax treaty between China and Chile, which provides that, in addition to individuals and persons wholly owned by governmental agencies of either contracting state, persons meeting the following two conditions may also be "eligible persons" to enjoy the benefits of the agreement. The first condition is that more than 50% of the person's beneficial interest must be owned, indirectly or directly, by one or more of the following persons: an individual who is a resident of one of the Contracting States, a company which is a listed resident of one of the Contracting States, or a government agency of one of the Contracting States. The second condition is that less than 50% of the person's gross income for the tax period that includes that point in time is paid to a person who is a resident of the contracting state in a manner that permits pre-tax payment of the tax applicable to the agreement in a way that is not subject to the first condition. Above, the tax authorities determine whether a taxpayer claiming a tax benefit is subject to a benefit limitation by applying a status test to determine whether the tax benefit can be granted.

The other tests in the LOB rule are similar, with precisely understood criteria to test whether the taxpayer meets the threshold for obtaining a tax benefit. In general, the test rules of the LOB clauses are both independent and coordinated, and each country chooses them according to its own national conditions and needs, and each test can be applied individually or in combination with each other in practical application, constituting a combination of anti-abusive agreements on tax avoidance, so as to achieve the effect of "one plus one is greater than two".

5.2.2 Problems

Although the LOB rule can effectively combat treaty shopping by various tests, it still has some deficiencies because it includes complicated rules while practical application in China is still a preliminary trial stage.

5.2.2.1 Over simple test content

The most prominent existing problem is that the test contents are too simple. Compared with countries with mature development in the application of LOB rule, there is still room for improvement in the content of the tests involved in the LOB rule introduced in China's tax treaties with other countries. Although the names of the tests adopted are the same, the degree of refinement under the name rules varies greatly. Taking the qualified resident test mentioned in the previous section as an example, the tax treaty between China and Chile only covers the tests for three types of residents, namely, individuals, publicly traded companies and government agencies, while the tax treaties between Australia and the United States cover eight types of residents on a large scale, and in addition to the above three types of residents include tests for subsidiaries, publicly traded entities, tax-exempt organizations, headquartered companies and other types of residents and so on. For the same reason, the details of other test types are subject to further refinement in practical application.

In the process of judicial practice, judicial precision is the basic character of justice, and is the basis of strength and credibility. The more precise the legal regulation, the more accurate the results of practical application. For the LOB rule, the more perfect the test content of the clauses, the less likely it is to wrongly combat the abusive tax avoidance behavior of the agreement, and the more likely it is to correctly exclude the taxpayers who try to obtain tax benefits through unlawful means. Plus, the increased trust of honest taxpayers in China's tax system can also have a positive impact on China's economic efficiency.

5.2.2.2 Low utilization rate

The actual application rate of LOB provisions in China is low. Only 5 out of 112 tax treaties signed between China and other jurisdictions have adopted LOB rule. Nowadays, when the abuse of tax treaties is becoming more and more rampant, the role of PPT rule is limited, and the reasonable and appropriate introduction of LOB rule will be more conducive to targeting the fight against the behavior of treaty shopping.

5.3 Summary

To sum up, it is not difficult to find that there are certain common problems in the above two anti-abuse rules, that is, the identification standards in the application of the rules are not clear enough, and the application rules are simple. Relevant departments should improve the legal provisions with textual defects as soon as possible, otherwise it may damage the certainty and fairness of the provisions, lead to the imbalance between the rights and interests of taxpayers and the power of tax authorities, taxpayers lose trust in tax authorities, destroy economic order and hinder economic development.

In addition, through the in-depth understanding of the application methods of the above anti-abuse rules, it is easy to draw a common pain point, that is, in the tax review work, to complete a series of tests, requires the tax authorities to master a variety of complex evidence. And how to obtain real, effective and sufficient materials as evidence for review is also a major problem in practical work. In view of this, in order to effectively promote the optimization and application of anti-abuse rules, China should also make more effort to to upgrade more perfect information exchange mechanisms.

6. Suggestions

After recognizing the existing problems of the two anti-abuse rules, this section will put forward optimization suggestions for the application of these rules under the premise of coordinating the main contradiction between the use of sovereignty and tax coordination in international tax relations.

6.1 Optimizing principles

In considering proposals to optimize the refinement of anti-abuse provisions, the following two principles should be followed. The first principle is to balance the needs of anti-avoidance and the needs of economic development; the second principle is to balance the rights and interests of taxpayers and the power of tax authorities. In the author's opinion, balancing the second principle is the foundation of the first principle, only if the taxpayers' rights and interests are treated fairly and reasonably, can we better pursue the balance of tax rights and interests and economic benefits.

With regard to the first principle, the general anti-abuse rules in many developed jurisdictions tend to target only transactions where tax avoidance is the "sole and dominant purpose" of the transaction, as there is no economic benefit to the transaction, and concessions by the tax authorities in terms of tax benefits are meaningless. For example, the U.S. analyzes whether a transaction arrangement can generate sufficient economic benefits based on the "profitability possibility" criterion, thus ignoring the slight loss of tax benefits; the EU, which advocates the freedom of trade, also allows taxpayers to maximize the benefits of a tax system that is more advantageous to them while retaining their economic substance. It can be seen that in optimizing the application of anti-abuse rules, we should adhere to the concept that "the economy determines taxation and taxation reacts to the economy", and when it is foreseen that a transaction can bring about more obvious economic benefits, we can appropriately relax the criteria for the application of anti-abuse provisions, so as to encourage cross-border trade exchanges and bring about revenue generation for the national treasury on the whole.

As far as the second principle is concerned, it needs to be made clear that the target of anti-avoidance is not reasonable tax planning, but rather false arbitrage in its empty form. The power of the tax authorities in scrutinizing the relevant transactions cannot be unrestricted, and when challenging and refusing to grant tax concessions, the subjective inferences made need to be backed up by clear objective evidence, preferably presented on the basis of quantifiable criteria. At the same time, the tax authorities and taxpayers should, as far as possible, bear the burden of proof in a balanced manner, which can be achieved by balancing the difficulty of obtaining evidence with the amount of work involved.

6.2 Suggestions for Principal Purpose Test

In order to make the PPT provisions better serve the anti-abuse review, the criteria for recognizing "one of the principal purposes" of the PPT provisions and the standard of proof should be clarified as soon as possible.

6.2.1 Clarification of the criteria

When the tax authorities judge the principal purpose of a transaction arrangement, they can infer from the impact of achieving the purpose and the alternative scheme. In the judgment of the influence of the purpose, it generally leads to the commercial purpose and the tax purpose, and makes a comparison between them. In this process, the most direct quantifiable criteria should be adopted, and the business purpose should be refined to economic benefit. Because the business planning behind any transaction arrangement is to maximize economic benefits, which is one of the essence of business. In business decisions, the amount of benefits is usually used to evaluate the benefits. In the test, we should try to compare the amount of profits with the amount of tax incentives received, and set a certain difference as a limit. When the amount of economic benefits is significantly lower than the amount of tax incentives, it can be considered that the taxpayer fail to pass subjective test.

At the same time, alternative comparison is used to examine whether there is an alternative that is simpler and economically equivalent (what is "equivalent", the criteria also need to be quantified), but with reduced tax benefits. It should be noted that the alternative should stand in the perspective of ordinary businessmen, and should be a business planning scheme that taxpayers can easily think of in the context of the environment. If the transaction arrangement reviewed is found to be significantly "unnecessary" when compared with the alternative, it may be considered that the taxpayer fail to pass subjective test. The final conclusion shall be comprehensively judged by the tax authorities according to the specific test situation under the consideration of balancing economic benefits and tax interests.

6.2.2 Introduction of guidelines on proof

It is necessary to provide multinational taxpayers with a clearer and more precise guide to proof in the objective test. A two-step analysis is generally recommended for taxpayers to identify the "object and purpose" in practice: first, a legal text analysis, where the taxpayer has to identify the object and purpose of the PPT rule in light of the objectives pursued by the agreement; and second, an economic substance analysis, where the taxpayer has to prove that the transaction arrangement is consistent with the object and purpose of the PPT rule in question. When the tax authorities require taxpayers to shoulder the responsibility of proof, they shall provide guidance on the types of evidence and reasoning logic, and may give examples when necessary.

6.2.3 Clarification of legal consequences

The legal consequences of PPT rule should be clearly regulated. Legal consequence is an important part of legal provisions. From the practice of most jurisdictions with developed tax systems, it is generally believed that the anti-abuse rules have a reconstruction function, and the tax authorities have the right to penetrate the private law form of the economic arrangement involved and directly reclassify it according to its economic essence according to the commercial logic, and carry out tax collection work according to the reconstructed transaction structure. The PPT rule applicable in China should also have this function. After invoking the PPT clause, the tax authority shall, on the basis of taking into account general commercial logic and legality, reconstruct the economic activity concerned and levy the tax in the form of the reconstructed transaction. On this basis, taxpayers can better predict their tax liabilities, and their rights and interests can be more reliably protected.

6.3 Suggestions for Limitation of benefits

In order to develop LOB rule with Chinese characteristics, China should be as specific as possible in the application of LOB rule and maintain its detailed integrity. When the OECD borrowed from the US LOB clause and incorporated it into the model, it sacrificed the complexity of the test rules in

order to make the clause more acceptable to more countries. However, in the practical application of LOB clause, a set of detailed and comprehensive rules is the most important thing to exert its maximum effectiveness. The more detailed the content of the rules, the more maneuverable and determinable, which is good for the tax authorities and taxpayers.

Therefore, when introducing LOB rule into tax treaties, China, as an independent jurisdiction, can take the essence and dross of other countries' LOB rules on the basis of absorbing test rules that meet the needs of China's economic development and have the characteristics of the Times and reference value.

It should be noted that more complex provisions will undoubtedly put forward higher requirements for the implementation ability of tax authorities. China can gradually improve the LOB rule in the early stage of development, by applying the simplified version of the provisions more frequently while make reference to the detailed version of the provisions.

6.4 Overall suggestions

Different anti-abuse rules have different contents, and the problems that can be improved are also very different. The above analysis mainly focuses on the existing problems of the two anti-abuse rules, and gives practical suggestions from a micro perspective. However, in addition to improving the normative details of the provisions of the single rule, it is also crucial to find the right way in the general direction of the application of the provisions and build a more standardized rule system. Accordingly, a series of optimization suggestions for the overall application of the two anti-abuse rules will be put forward in the following paragraphs from a macro perspective.

6.4.1 Introduction of technical explanatory documents

Currently, when China signs tax treaties with other countries, it mainly refers to the OECD or the US model and its notes, but the OECD is an international organization after all, and the US is another independent country with completely different national conditions from China. Even though the two parties have achieved remarkable results in the development of their tax systems, it is still difficult to fully apply them for the reference of tax authorities and taxpayers. Nor does it reflect China's special needs in the negotiation of international tax treaties. Therefore, it is necessary for the State Administration of Taxation to produce a Chinese version of the technical interpretation document that clarifies the complex terminology, applicable circumstances and relevant rules in the anti-abuse clause. Such explanatory documents can simplify the negotiation process, provide clear guidance to both parties to the agreement, increase predictability and certainty of the outcome of tax incentives, and reduce the pressure on tax authorities to conduct anti-avoidance reviews.

The technical interpretation document shall take full account of China's national conditions and economic development needs, and may also draw on technical explanations and notes from other jurisdictions or international organizations to prepare relevant explanatory documents and explain in detail the test determination standards to further improve the applicable rules. In addition to the above suggestions, China can also divide the anti-abuse clauses into "clauses that must be added" and "optional clauses according to the willingness of the parties" to improve the flexibility of practical application.

6.4.2 Improvement of Exchange of Information Mechanism

China should learn from the experience of international information exchange and take the current reform of international tax system as an opportunity to speed up the improvement of the defects of tax information exchange in international tax treaties, so that the tax information exchange system can better meet the needs of anti-tax avoidance work.

Firstly, establish a regional tax information exchange network to expand the scope of tax authorities that can conduct information exchange. At present, the international tax treaties signed by China stipulate that "the National Tax Administration or its authorized representative" is the competent authority for the exchange of tax information, but in practice, the National Tax Administration does

not authorize any other agency to authorize the exchange of tax information. For China, with its vast hinterland, this limits the exchange of tax information to a certain extent.

Therefore, it is suggested that China actively emulate the practical experience of Russia, France, Germany and other countries, and grant local tax authorities the right to exchange information, so as to improve the efficiency and effect of tax information exchange. The authorized representative agencies can be comprehensively evaluated from the aspects of economic development, tax collection and administration level, and cross-border economic and trade cooperation level, and a group of local tax authorities with mature conditions can be selected to undertake tax information exchange.

On this basis, the tax information exchange center can be established to sort out and summarize the international market information, trade information, tax collection and management information and tax policy information of various countries, and establish an effective information database for the share of information between tax departments.

Secondly, the time of tax information exchange should be limited to improve the efficiency of international information exchange. In most of the international tax treaties signed by China, there are no explicit provisions on the limitation of tax information exchange and the time of request reply. This will certainly lead to the phenomenon that some countries or regions delay or do not cooperate in the process of tax information exchange. In this regard, the BEPS MLI only stipulates that the question of the enforceable period of tax claims should be decided by the law of the requesting country, and the way of reply is only stipulated as "as soon as possible". In order to improve the efficiency of the international tax information exchange, the author suggests that the provisions of the time limitation of tax information exchange, request reply time, etc. should be clearly set out in the corresponding clauses, so as to promote the perfection of the tax information exchange system positively.

Finally, a mandatory disclosure mechanism should be introduced. Mandatory disclosure of tax information by taxpayers can effectively prevent tax avoidance by taxpayers or tax planning parties and maintain a fair and just cross-border trade and investment environment. For large multinational enterprises with complex and high profitable business activities, the scope of disclosure can be expanded to cover more transactions, activities and entities to cover more possible tax avoidance or evasion behaviors. Apart from that, it can be mandatory to submit regular corporate revenue reports and business planning rationality analysis for the tax authorities to carry out supervision.

7. Conclusion

Economic globalization not only promotes the vigorous development of international trade activities, but also brings the transnational tax problem to the fore. Tax collection is related to the important foundation of national finance, which is closely related to national sovereignty and should not be eroded. In the formulation of China's international tax system, the government should not only guide multinational enterprises to contribute to the development of China's socialist market economy in the process of "bringing in" and "going out", but also should set warning line for these transnational taxpayers, grasp the bottom line of national tax laws, resolutely safeguard China's tax sovereignty, and avoid the loss of national fiscal revenue¹¹.

On a winding up, the application of the anti-abuse rules in China is mainly based on the principal purpose test, supplemented by the limitation of benefits. In the application of the provisions, there are still problems such as unclear identification standards and over simple rules, and the unclear meaning of legal provisions is likely to make the application effect greatly discounted. In this regard, a series of scientific and reasonable technical interpretation documents should be issued as soon as possible to assist the application of the provisions. Besides, taxpayer information as the basis for the application of anti-abuse provisions is also very critical, so the information exchange mechanism should be improved as soon as possible, to improve the speed, precision and accuracy of tax review.

International theories and practices have provided China with great inspiration. It is necessary for China to base itself on its basic national conditions, firmly grasp the core principle of "substance over form", gradually optimize anti-abuse provisions of agreements in a planned and phased manner, and effectively crack down on selective tax avoidance. It is believed that with the joint efforts of China and other countries and international organizations, the anti-abuse provisions of tax treaties will gradually improve, develop in coordination with other anti-tax avoidance rules, and become a powerful weapon to maintain the tax administration order.

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