

Research on Tax Avoidance and Anti-Tax Avoidance in Data Asset-Related Transactions: A Perspective on Related Party Transactions within China

Xiaosha He^{1*}

¹ School of Accounting, Guangzhou College of Commerce, 510000, China

Corresponding Email: 65169562@qq.com

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Abstract

Owing to the unique attributes of data assets that distinguish them from conventional elements, with the expansion of China's data asset trading market scale and the increase of connected transactions, the existing tax collection and management system needs to be improved to prevent tax revenue loss. Through the elaboration of the concept and characteristics of data assets, this paper analyzes the types of group enterprises using data asset related transactions to avoid tax and the current anti-tax avoidance regulations of related transactions in China, points out the current anti-tax avoidance difficulties of data asset related transactions in China and puts forward policy improvement suggestions.

Keywords Data asset; Related party transaction; Anti-tax avoidance

1 Introduction

As a new factor of production, data is having a huge impact on the development and transformation of national productive forces and production relations, and profoundly changing the way of social governance. On December 2, 2022, the Central Committee of the Communist Party of China and The State Council issued the Opinions on Building a Data Base System to Better Play the Role of Data Factors (hereinafter referred to as the "Data Article 20"), which requires "building a data base system that is adapted to data characteristics, conforms to the development law of the digital economy, ensures national data security, and highlights the leadership of innovation." Fully realize the value of data elements and promote all people to share the dividends of digital economy development".

To realize the value of data elements, it is necessary to issue relevant guidelines to standardize the accounting recognition, measurement and presentation of data assets in financial statements. On August 1, 2023, the Ministry of Finance of China issued the Interim Provisions on Accounting Treatment of Enterprise Data Resources (Finance and Accounting (2023) No. 11), which standardized the accounting recognition, measurement and presentation of financial statements of data assets and their related transactions, and may further introduce tax policies related to the collection and management of data assets in the future.

China's existing tax system is built on the basis of the characteristics of traditional production factors and transaction characteristics. However, data assets, as a new production factor, have different characteristics from traditional production factors. Therefore, China's existing tax system needs to be further revised and improved according to the characteristics of data assets and transaction characteristics, so as to avoid tax loss in the process of data asset transaction.

With the increasing transaction scale of data assets, the phenomenon of related transactions of data assets in group enterprises also keeps appearing. Related transactions of data assets play a positive role in the operation and financing of group enterprises' data resources. However, if enterprises abuse related transactions of data assets to avoid taxes, it may lead to serious tax loss of the country. Therefore, it is necessary to study the characteristics and tax avoidance mechanism of data asset related transactions, analyze the challenges it brings to China's anti-tax avoidance tax system, and further put forward suggestions to improve it, so as to help China build a more perfect anti-tax avoidance tax system in the context of developing digital economy.

Compared with the existing literature, the characteristics of this paper are as follows: First, from the characteristics of data asset transactions, this paper analyzes the impact of data asset transactions on national tax revenue, which is different from traditional related transactions of production factors; second, different from existing literatures focusing on transnational transfer pricing tax system, this paper mainly analyzes related transactions in China from the perspective of tax avoidance and anti-tax avoidance, which breaks through the limitations of existing studies to a certain extent.

2 Related Party Transactions and Tax Avoidance Types of Data Assets

2.1 The Concept of Data Assets

At present, different scholars and organizations have different expressions about the concept of data assets. In 2020, Chinese scholar Qin Rongsheng (2020) elaborated on the meaning of data assets. He believes that data assets are current data resources controlled by enterprises due to past events, and have the potential to generate economic benefits for enterprises. In September 2023, the Guiding Opinions on Data Asset Evaluation issued by China Asset Evaluation Association defined data assets as "data resources that are legally owned or controlled by specific entities, can be measured in monetary terms, and can bring direct or indirect economic benefits". Combined with the definition and recognition conditions of assets in the Accounting Standards for Enterprises - Basic Standards, this paper holds that data assets are data resources formed by past transactions or events, which are owned or controlled by a specific entity and are expected to bring economic benefits to that entity, and the cost or value of the data resources can be reliably measured.

2.2 Realization of the Value of Data Assets

To realize the value creation of the data elements owned or controlled by an enterprise, it is necessary to go through the process of resource utilization, capital utilization and capitalization of data elements.

Data resourcing

Data resourcing refers to the process of transforming disordered and chaotic original data owned by enterprises into orderly and valuable data resources after collection, cleaning, integration and analysis. The resource of data elements can enable enterprises to have a deeper and more comprehensive understanding of user needs, market trends and business operations, and is the first step for enterprises to realize the value of data elements.

Data assets

Data capitalization is an important stage to realize data value. It is the process of processing and developing data resources according to specific application scenarios or business purposes, and forming data products that can be used or traded by enterprises themselves. After the data products are evaluated, priced and the value is passed through the transaction, the data value is realized.

Data capitalization

Data capitalization is the expansion of data assets and the advanced stage of realizing data value. Data capitalization is a process of giving data assets more financial attributes and using data assets as collateral for financing and other financial activities on the basis of data capitalization. Through data capitalization, enterprises can attract more capital into the data field, thus promoting the rapid development of the data industry.

2.3 Characteristics of Data Assets

Different from assets formed by traditional production factors, data assets have the following characteristics:

Business dependency

Data assets are derived from the business of the enterprise. When enterprises record various kinds of information in daily business operation, they form data. When the data is collected, cleaned, integrated and analyzed, and further processed and developed into data products for enterprises' own use or external transactions, valuable data assets are formed. Therefore, the value creation process of data assets is closely related to the business of the enterprise.

Non-materiality

The storage of data needs to exist through physical carriers such as books, disks and hard disks, but the data itself has no physical form. The immateriality of data assets allows them to be reproduced indefinitely with virtually no cost. The same data can exist in different carriers and be used indefinitely for the duration of its life.

Shareability

Through data collection, cleaning, integration, analysis, further processing and development of data assets, enterprises can act on their own business decisions, optimize business processes, so as to promote enterprises to reduce costs and increase benefits. On the other hand, within the scope permitted by laws and regulations, when the data owned by the enterprise can be applied by other units, the enterprise can also share it with other units, that is, under the premise of legal compliance, the data can be copied indefinitely and used jointly with different units.

Uncertainty of value

Uncertainty in the value of data assets is a typical characteristic of data assets. The value of data assets is affected by many different factors, including the scale of data, the application scenarios of data, the timeliness of data and the advanced nature of technology. With the passage of time, these factors will continue to change, so that the value of data assets will also continue to change, there is a large uncertainty.

2.4 Main Types of Data Asset Related Transactions

Purchase and sale of data

After one member of the Group resources the data elements, the data set will be sold to the other member at the price agreed by both parties to help the buyer achieve the purpose of precision marketing or product optimization. In this type of transaction, the two parties need to agree on the content of the delivered data, the right to use it, and specify the transaction price.

Authorized use of data

A member of the Group with a large amount of data authorizes the affiliated enterprise of the other party to use the data within a specific period of time and within a specific scope of use. According to the term and scope of use of the authorized enterprise, the two parties shall sign an agreement, and the authorized enterprise may charge corresponding fees.

Data hosting and operation and maintenance services

A member of the Group with professional technology and security facilities shall provide data hosting services for the other member, such as data storage, daily operation and maintenance, server rental, data backup and other services. Both parties shall determine service charges according to specific service contents.

Joint development of data

Different affiliated enterprises within the Group shall, according to their respective advantages, invest data, technology and capital to jointly develop new data products. The parties shall agree in advance on such matters as the proportion of investment, the control of the development process, and the distribution of development income.

2.5 Types of Tax Avoidance in Related Transactions of Data Assets

Abuse of preferential tax policies

For certain types of enterprises within the group, such as high-tech enterprises and technologically advanced enterprises, preferential policies of regular tax reduction or exemption or low tax rate of enterprise income tax may be applied. This leads to differences in tax burdens among different enterprises in the group. Therefore, some affiliated enterprises may abuse tax incentives, that is, transfer the profits of member enterprises with high tax burden to member enterprises with low tax burden through affiliated transactions and transfer pricing, resulting in the loss of national tax revenue. In order to more clearly illustrate this type of tax avoidance, the following is a case study.

A Group consists of B Transportation Enterprise (referred to as "B Enterprise") and C high-tech Enterprise (referred to as "C Enterprise"). The corporate income tax rate applicable to enterprise B is 25%, and the corporate income tax rate applicable to enterprise C is a lower 15%, and there is a 10% tax difference between the two parties. Enterprise B plans to entrust its transportation data to a professional company for hosting and operation and maintenance. According to the workload of the service and

technical requirements, the normal service charge in the market is 1 million yuan per year. Enterprise B plans to entrust Enterprise C to be responsible for the data service. Before the transaction, the total profit of Enterprise B and Enterprise C is expected to be 20 million yuan per year and 8 million yuan per year respectively.

As shown in Table 1, when the transaction pricing of enterprise B and enterprise C is based on the industry standard service fee of 1 million yuan per year and the higher service fee of 2 million yuan per year respectively, the overall net profit of the two companies is considered from the perspective of the group. Since the transaction is an internal transaction of the Group, the total profit before and after the affiliated transaction is 28 million yuan, and there is no change. However, the distribution of the 28 million yuan profit between enterprise B and enterprise C has changed. When the transaction price is 1 million yuan per year, the total profit after the transaction of enterprise B and enterprise C is 19 million yuan and 9 million yuan respectively. When the transaction pricing is 2 million yuan per year, the total profits of enterprise B and enterprise C after the transaction are adjusted to 18 million yuan and 10 million yuan respectively, which causes the profit of 1 million yuan to be transferred from Enterprise B with a tax burden rate of 25% to enterprise C with a tax burden rate of 15%. Therefore, the overall enterprise income tax burden is reduced from 6.1 million yuan to 6 million yuan. Resulting in the loss of tax revenue.

Table 1. Comparison of corporate income tax and net profit for different service charges

Fee for service scheme	Plan 1: 1 million yuan per year			Plan 2: 2 million yuan per year		
	B Enterprise	C Enterprise	Total	B Enterprise	C Enterprise	Total
Gross profit (Before data service transaction)	¥20 million	¥8 million	¥28 million	¥20 million	¥8 million	¥28 million
Data service transaction revenue and expenditure	-¥1 million	¥1 million	¥0 million	-¥2 million	¥2 million	¥0 million
Gross profit (After data service transaction)	¥19 million	¥9 million	¥28 million	¥18 million	¥10 million	¥28 million
Corporate income tax rate	25%	15%		25%	15%	
Enterprise income tax	¥4.75 million	¥1.35 million	¥6.10 million	¥4.50 million	¥1.50 million	¥6.00 million
Net profit	¥14.25 million	¥7.65 million	¥21.90 million	¥13.50 million	¥8.50 million	¥22.00 million

Abuse of investment promotion policies

Some local governments offer tax rebate policies to attract investment. Even if the tax rate policy is consistent among enterprises in the group, if the factor of tax rebate obtained by enterprises after paying taxes is taken into account, the final burden of different enterprises still varies. Therefore, some affiliated enterprises may abuse the investment promotion policy, that is, transfer profits as much as possible to the enterprises that can enjoy the investment promotion policy through affiliated transactions.

Suppose that the enterprise income tax burden rate of enterprise B and enterprise C in the above case is 25%, but the local government of enterprise C gives enterprise income tax refund of 2%. At this time, considering the return factor of income tax, the actual tax burden rate of enterprise C is reduced to 23%. Therefore, some affiliated enterprises may abuse the investment promotion policy and transfer profits as much as possible to enterprises that can enjoy the investment promotion policy through affiliated transactions.

3 China's Current Anti-tax Avoidance Regulations on Related Party Transactions

3.1 Relevant Provisions of the Tax Collection Law

Article 36 of the Law of the People's Republic of China on the Administration of Tax Collection (referred to as the "the Administration of Tax Collection Law") stipulates that "in business dealings between an enterprise or a foreign enterprise established within the territory of China to engage in production and business operations and its affiliated enterprises, the price and fees shall be collected or paid in accordance with the business dealings between independent enterprises; Where the amount of taxable income or income of an independent enterprise is reduced by not collecting or paying the price or fees according to the business transactions between the independent enterprises, the tax authorities shall have the right to make reasonable adjustments."

The Collection and Administration Law provides the tax authorities with the guarantee of the universality of all taxes for the anti-avoidance collection and administration of all taxes. In other words, for business transactions between affiliated enterprises, if the transaction consideration is not determined according to the business transactions between independent enterprises, the tax authorities have the right to make reasonable adjustments to the taxable types.

3.2 Relevant Provisions on Enterprise Income Tax

Article 41 of the Enterprise Income Tax Law of the People's Republic of China (the "Enterprise Income Tax Law") stipulates that "Where business transactions between an enterprise and its affiliated parties do not conform to the principle of independent transactions and reduce the taxable income or income of the enterprise or its affiliated parties, the tax authorities have the right to make adjustments in accordance with reasonable methods."

In addition to the provisions of the Administration of Tax Collection Law and the Enterprise Income Tax Law that the pricing of related party transactions should follow the principle of independent transactions, the state has also formulated the Implementation Measures for Special Tax Adjustment (Trial Implementation) (GuOLOfa [2009] No. 2, Referred to as No. 2), "Announcement of the State Administration of Taxation on Matters related to Improving Related Declaration and Management of corresponding data" (State Administration of Taxation Announcement No. 42 of 2016, referred to as "Announcement No. 42"), "Administrative Measures for Special Tax Investigation Adjustment and Mutual Consultation Procedures" (State Administration of Taxation Announcement No. 6 of 2017, Referred to as "Announcement No. 6"), general anti-tax avoidance management measures (trial) (State Administration of Taxation Order No. 32, referred to as "Order No. 32") and a series of regulations on transfer pricing, that is, related transaction pricing of the legal norms. However, this series of legal documents are mainly aimed at the collection and administration of enterprise income tax, and there are certain restrictions on the subject of application. For example, Article 30 of Document No. 2 stipulates that "transactions between domestic related parties with the same actual tax burden, as long as the transaction does not directly or indirectly lead to a reduction in the overall tax revenue of the state, in principle, transfer pricing investigation and adjustment shall not be done." "Order No. 32 specifies the circumstances under which the document is not applicable:" (1) arrangements unrelated to cross-border transactions or payments; (2) suspected tax violations such as tax evasion, evasion of tax arrears, tax fraud, tax resistance and false invoicing."

4 Anti-tax Avoidance Difficulties in Related Party Transactions in China

4.1 Judgment of Independent Transaction Principle

The uncertainty of the value of data assets is a typical characteristic of data assets. In view of the current anti-tax avoidance policies of related party transactions in China, related party transactions must meet the "independent transaction principle". However, in the practice of tax authorities' collection and management, the uncertainty of the value of data assets will inevitably make it difficult for tax authorities to judge whether data asset related transactions comply with the principle of independent transactions. As data assets gradually become strategic assets of enterprises, most enterprises will put data assets under the control of their own enterprises or affiliated enterprises, and rarely carry out transactions between

independent enterprises. Although some data trading institutions have emerged in some cities in China in recent years, the trading platforms are still not mature enough to provide comprehensive transaction reference data. The transaction frequency of data assets is still low, the types are few and the scale is not large, and it is difficult to form a market price that tax authorities can directly refer to.

4.2 Tax Supervision of Cross-regional Related Party Transactions

Different affiliated enterprises in the Group may cross provinces, cities and counties, so they are subject to the jurisdiction of the competent tax authorities in different regions. Therefore, it is difficult for the competent tax authorities of an affiliated enterprise in the group to fully grasp the actual tax burden differences among affiliated enterprises of different enterprises in the enterprise group and the specific circumstances of connected transactions. In addition, the competent tax authorities in the regions that benefit from related party transactions may lack initiative and enthusiasm in anti-tax avoidance responses to related party transactions.

5 Data Assets Anti-tax Avoidance Suggestions of Related Party Transactions in China

5.1 the Reference Basis for Reasonably Determining the Principle of Independent Transactions

At present, China is in the period of vigorously developing the data asset trading market, and the data asset trading market is gradually forming a scale, which can gradually provide the price reference of independent trading principles for data asset trading. However, the specific application scenarios of data asset trading may be different. Therefore, it is necessary to consider the application scenarios of data assets when determining whether connected party transactions comply with the "independent transaction principle". The valuation of different application scenarios is different. On the other hand, due to the multi-scenario and shareability of data assets, value can be created in multiple scenarios. Therefore, the sum of the value of multiple scenarios should be considered in the valuation of data assets.

5.2 Strengthen the Information Means of Data Asset Related Transaction Tax Collection and Administration

On the one hand, in the tax collection and administration system, according to the characteristics of data assets, the collection and administration modules applicable to data assets should be added accordingly. On the other hand, stronger data sharing, that is, strengthen the docking of data platforms at all levels and across regions of the tax collection and management system, as well as the docking of data platforms between the tax collection and management system and other departments, and establish a strict data confidentiality system in the process.

5.3 Improve the Level of Tax Collection and Administration Personnel on Data Asset Transactions

Conduct data asset related knowledge training in the tax system, such as the definition, types, characteristics of data assets, especially the value measurement of data assets. Make tax collection and administration personnel have a clear understanding of data assets. Encourage tax collection personnel to share data asset transaction collection skills and experience, promote mutual learning, and improve the level of collection and management.

Conflicts of Interest

The authors declare no conflicts of interest.

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