Research on Information Protection System of Automatic Exchange of Tax Information in China

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Abstract: In the process of automatic exchange of tax intelligence, the balance of state power and the protection of taxpayer personal information rights should be emphasized.In order to improve the problem of China's personal information rights focusing on the realization of state public power and insufficient protection of taxpayers, the protection of taxpayers' personal information rights should be strengthened in the design of automatic tax information exchange system.The taxpayers 'right to know should be clearly introduced, and the relief for the protection of taxpayers' rights should be strengthened.

Keywords: Intelligence exchange; Personal information protection; Tax collection and management law; The right to know

1. Problems existing in the concept and system of automatic exchange of tax intelligence in China

The exchange of tax intelligence is a unique concept of the international tax law, which refers to the process of the exchange of tax authorities with each other for the purposes of tax collection and administration.Since carrying out the automatic exchange of tax intelligence in China, its tax practice is mainly based on the —— Working Regulations for the Exchange of International Tax Intelligence issued by the State Administration of Taxation.Although the working procedure stipulates that the Tax Collection and Administration Law and its implementation rules, the core goal of its makers is only to state the fact that the automatic exchange of tax intelligence cannot be separated from the basic framework of China's tax system and practice, such as tax subject, tax structure, etc.Tax, currently in force The Collection and Administration Law (amended in 2015) also does not add relevant regulations for the automatic exchange of tax intelligence.Under this situation, the Working Rules for International Tax Intelligence Exchange at the departmental regulation level is still the institutional basis for China to carry out the automatic tax intelligence exchange and information disclosure work.However, the system level of this working procedure is relatively low, so it is difficult to provide a top-level design perspective on the automatic tax intelligence exchange of information disclosure from the macro level.

2. The EU: Give high standards of protection in tax intelligence disclosure

The EU tax intelligence automatic exchange information protection practice has a long history, with the earlier tax intelligence exchange organization and tax cooperation system.As early as 1988, the European Commission and OECD jointly issued the Multilateral Convention on Mutual Assistance in Tax Collection and Management and was open to Member States parties, and in its preamble provided for the protection and confidentiality of personal information in the exchange of tax intelligence with articles 21 and 22.Now, in order to further improve the level of international tax cooperation and combat cross-border tax supervision issues such as international tax evasion, this multilateral tax collection and management cooperation convention has been opened to all sovereign countries worldwide.

Looking at the relevant laws under the European legal system, the broad European law should include the international legal system under the framework of the European Commission and the European Union law, which contains multiple institutional provisions on personal information and data protection. Firstly, the 1950 European Convention on the Protection of Human Rights and Basic Freedoms was a regional international human rights treaty for the protection of personal information and private rights under the European Commission legal framework. Article 8 clearly stipulates that private information and the privacy of personal family life should be fully respected and protected by the government and others.In 1981, the European Commission issued the Convention on the Protection of Personal Rights in the Automatic Processing of Personal Information This Convention is the only multilateral international convention focused specifically on the protection of personal information and data.The Convention stipulates the personal information collection processing procedures and information collection purposes, and requires the relevant information behavior to meet the correlation criteria for information accuracy and the purpose of collection.Secondly, the Personal Data Protection Directive is a legislative directive under the EU legal framework, adopted by the European Parliament and the Council in 1995.Later, in response

to the risk of online infringement in the Internet era, the European Commission revised it in 2012 and then published the General Data Protection Regulations (GDPR).The ordinance against Personal data protection has a comprehensive and strict provisions, the violation of the regulations of the punishment, become the international community the most strict personal data information protection regulations, make the EU path and way of personal information protection reached the global high level standards, is the model of national legislation to learn and reference.

The automatic tax intelligence exchange of EU countries has a profound historical accumulation, which makes its tax intelligence exchange practice fully developed, and the degree of personal information protection is also at a high level in the international community.Because the EU is of a supranational nature, its Member States are subject both domestic and to their obligations and regulation within the legal framework of European law.Under EU law, Member States cannot refuse to meet the provisions of European law because of their domestic law.Based on this, in the field of automatic tax intelligence exchange of tax information, the protection of personal information and personal data during tax intelligence information disclosure should be compared under the domestic laws of Member States and European law Choose the way and path of higher standard protection.

3. Improving measures of China's automatic tax intelligence information exchange protection system

3.1 Formulate specialized laws at higher levels

The current automatic intelligence exchange system is mainly based on the Working Regulations for International Tax Intelligence Exchange, and its effectiveness level is relatively low.In this regard, China can formulate higher-level laws to automatic intelligence exchange.For example, the automatic information exchange information protection system is added to the Tax Collection and Administration Law, special chapters are set up to stipulate the information protection requirements in the automatic tax information exchange in China, and the relevant rules are detailed to carry out a detailed system design for the above contents, so as to achieve and maintain a good implementation effect.

3.2 Strengthen the protection of personal information during the automatic exchange of tax information

3.2.1 Clearly specifies the statutory obligation of notification to taxpayers

Article 27 of the Regulations for International Tax Information Exchange stipulates that the tax authorities can inform the tax information rather than "shall inform", that is, our country does not stipulate the legal obligation of the exchange of tax information to other tax authorities, inform or not depends on the discretion of the domestic tax authorities, and cannot fully and effectively protect the rights and interests of taxpayers in our country.Based on this, China should clearly stipulate the legal obligation of the competent tax authorities to inform the taxpayers in the Regulations, so as to ensure the taxpayers' full right to know.

3.2.2 Takes a high standard of protection against tax intelligence

Compared with the countries or regions of the United States and the EU, China's protection of personal information is still at a relatively low level.In the case of unequal personal information protection level and the United States, the European Union and other countries or regions, even if our tax authorities are invited to routinely exchange taxpayers to the relevant state parties, these countries or regions with high level of personal information protection will still refuse to provide tax-related information to our tax authorities for the low level of personal information protection of taxpayers, thus hindering the automatic exchange of tax information The development process. On October 21,2020, the Personal Information Protection Law of the People's Republic of China (draft) (hereinafter referred to as the "draft") was announced.The publication of the draft has improved the level of personal information protection in China to a certain extent and provided certain institutional support for the protection of personal information in international tax information exchange.However, it should still draw lessons from the legal system of the United States and the EU, increase the punishment for violations of the personal information protection system, and substantially promote the development of reciprocal tax information automatic exchange of information disclosure through higher standards of tax-related information protection.

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