

Analysis of the Effectiveness of Tax-Related Commitments of Local Governments

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Abstract: Local government's tax-related commitment is a kind of administrative commitment to attract investment and promote economic development, such as tax preference, exemption, tax refund, etc., but this kind of behavior often violates the principle of tax law and tax neutrality, resulting in damage to tax fairness and market fairness. Therefore, the act's effectiveness has been controversial in practice, as the case summarised in the judicial procedure for the local government tax-related commitment of the determination of the point of the tax is not uniform. There are a lot of the same cases with different judgments. This paper starts with the concept of local government tax-related commitment and chaos. The effectiveness of local government tax-related commitment is analyzed for two key issues. Finally, it puts forward that the local government tax-related commitment is a practical, defective, and ineffective determination of the standard, including the administrative act itself is compelling, follows the principle of protection of reliance, meets the principle of honesty and trustworthiness and is in line with the public interest and other elements.

Keywords: tax relief commitment; validity determination; reliance interest

1. Formulation of the problem

The essential economic support for fulfilling our government's functions comes mainly from local tax revenues. In the general environment of different levels of economic development in other regions of China, local governments have formulated tax incentives over a long period to promote the balanced development of the regional economy. In principle, local governments do not have the right to legislate on taxation, but in practice, local governments generally give substantial tax incentives to enterprises through various modifications. The original intention of local governments' tax-related commitments is to develop the local economy. Still, due to the doubtful validity of their nature, they do not have legal status and thus have triggered a lot of disputes between the government and enterprises. In recent years, the number of judgments related to the tax-related administrative commitments of local governments in judicial practice has been increasing yearly, and the focus of the disputes is mainly on determining the effectiveness of tax-related duties. Due to the various forms and complex contents of tax-related obligations of local governments, the relevant judicial judgments on assessing the efficacy of tax-related obligations are also different. They cannot form a unified judicial decision, triggering a joint discussion between the practical and academic circles.[1]

China has adopted a strict legal doctrine of taxation. According to the relevant laws, the central bodies for formulating tax incentives are the National People's Congress, its Standing Committee, and the State Council. The forms for the formulation of tax incentives differ between the two, with the former taking the form of enacting laws and the latter taking the form of enacting administrative regulations. However, in practice, for the formulation of tax incentives, the local government exists based on the purpose of investment promotion, frequent violation of the "Tax Collection and Administration Law" established by the principle of tax law and the "Legislation Law of the People's Republic of China" (from now on referred to as the "Legislation Law") of the phenomenon, the introduction of several tax incentives for the enterprises to meet the conditions of the tax-related commitments made by the local government, and the local government committed tax-related. Whether the tax-related promises made by these local governments are compelling is the issue that this paper focuses on.

2. Analysis of tax-related commitments of local governments

2.1 Evidence for the Concept of Tax-Related Commitments of Local Governments

The so-called tax-related commitments of local governments refer to the obligations on tax preferences, exemptions, and refunds made by local governments to enterprises or enterprises to attract investments and promote economic development.

According to the type of administrative act, the tax-related commitment of local government belongs to the nature of organizational promise, which is unilaterally made based on its authority. The administrative subject decides whether the object is specific or not. In practice, the tax-related commitments of local governments are generally issued in the form of normative documents, minutes of government meetings, executive agreements, etc. In most cases, they are published for a particular industry or enterprise, often leading to one policy for one enterprise.[2]

2.2 Disorderly Tax-Related Commitments of Local Governments

Although the law stipulates that, except for some exceptions authorized by law, local governments do not have the right to reduce or waive taxes, at the level of tax legislation and law enforcement, local governments are required to abide by the legal doctrine of taxation strictly. In practice, most of the tax-related commitments of local governments are still formulated without legislative authorization, which is obviously against the principle of tax neutrality. According to the direction of tax neutrality, when local governments' tax-related commitments are examined, the tax preferential clauses in the tax-related obligations are superficially favorable to individuals or groups enjoying the preferential provisions. Still, preferential clauses targeting some groups will lead to horizontal inequality, thus undermining tax neutrality. The tax-related commitments of local governments show prominent differentiated designs among regions, and the tax burden of enterprises in different areas and industries also shows gaps, which are not entirely reasonable, and some of the holes may even distort fair competition in the market. The essence of local governments' tax-related commitment is to use the differential treatment of tax burden to benefit specific taxpayers at the expense of tax fairness. Therefore, tax-related commitments by local governments should not be widespread and should be minimized or not used to promote local economic development.[3]

The central government has always taken a negative attitude towards the tax incentives associated with local governments' tax-related commitments, regardless of whether the taxes involved are attributable to the local governments. Since 1977, the central government has required local governments to check and correct the situation of tax exemptions and reductions in their respective areas. The central government has been demanding local governments regulate the use of tax breaks and exemptions. It has taken a series of special rectification and clean-up activities. Still, due to the excellent resistance to centralizing the clean-up of tax break promises by local governments, the clean-up actions have been of little effect. A scientific tax system is a prerequisite for maintaining market stability and optimizing the distribution of resources, so the chaos of local governments' tax reduction and exemption promises should not be left to chance, and systematic governance is a general trend, with the key to exploring and innovating ways of governance.

3. Overview of local government tax-related commitment cases

The case search shows that in recent years, the judicial practice of the local government tax-related commitments related to the judgment is not a few. The focus of the controversy is gathered in the form of including tax reductions and exemptions, tax refunds, financial incentives, agreement on the comprehensive tax rate, and other conditions of tax commitment effectiveness of the determination. Due to the variety of forms and complexity of local governments' tax-related commitments, relevant judicial decisions on determining the efficacy of tax-related obligations are also different. They cannot form a uniform judicial decision. Regarding the focus of disputes, the guide mainly includes the scope of acceptance of tax-related cases, the application of relevant laws, the determination of the validity of tax-related commitments, and the protection of taxpayers' reliance interests. In practice, even for the same type of cases, there are contradictory trial results, and different judges often produce different trial results from different perspectives. In such cases, there are many other judgments on the same subject, which makes it necessary to explore the relevant legal issues further to achieve clarity and uniformity in judicial judgments.

In the retrieved cases, the determination of the validity of tax-related commitments of local governments in different circumstances is not uniform. Some patients are determined to be valid and invalid, and some cases avoid the issue of validity and reject the taxpayers' lawsuits based on exceeding the statute of limitations, ineligibility of the subject, and failure of the administrative organ to realize the purpose of attracting investment, among other reasons. In contrast, the issue of determining the effectiveness of local governments' tax-related commitments is far more complex than determining the nature of the case.

In cases where tax-related undertakings were valid, the reasons for the court's judgment varied and could be broadly classified into four categories. From the perspective of determining the validity of a civil contract, some courts held that the tax-related commitment was a true expression of the administrative organ's and the counterparty's intention and that the administrative organ had fulfilled part of the tax-related commitment.

Through in-depth analysis of the cases, it can be found that most of the cases in which the tax-related commitments of local governments were found to be valid were attributed to the scope of civil litigation. Most of the courts in this part of the court hear the effectiveness of civil contract thinking to listen to the point of the local government tax-related commitments. Some courts believe that the two sides of the government and enterprises expressing the true meaning of the tax commitment can be found effective, ignoring the violation of laws and regulations, and mandatory provisions of the contract are invalid legal provisions. There is also a significant loophole in the thinking of some courts that the subject of returning the money is not the tax authority and is not subject to the adjustment of the tax administration law. The tax preferences of returning the money to the taxpayers after levying the tax are produced through the finance. The one-sided view of the tax return link between assessing and replacing the tax money is suspected of evading the adjustment of the tax administration law. It will also lead to misusing the tax preferences of returning the money after levying it.[4]

4. Case Analysis of Local Government Tax-Related Commitments in Focus

4.1 The Case of Xunchi Company in Anqiu City, Shandong Province

4.1.1 Brief description of the case of Xunchi Company in Anqiu City, Shandong Province

To carry out the reconstruction project of Chang'an Road in Anqiu City and the development and construction of houses along the street, the Anqiu City Government and Chint Company, as Party A and Party B, signed the Contract on 13 September 2005 after negotiation. According to the provisions of the Contract, Party A promised to give Party B tax incentives as compensation for the road construction.

In this case, the Anqiu Municipal Government mainly made the tax-related promise of exempting the land tax, business tax, and three years' industrial and commercial tax for Zhengtai Company. After Zhengtai and Tu signed the Contract on 26 October 2005, Xunchi was registered in Anqiu City. By the requirements of the Contract, Xunchi completed the construction of municipal facilities along the commercial street of Chang'an Road in Anqiu City at the end of 2009 and handed it over to the Municipal Administration Office of Anqiu City in May 2010 for operation and management. During the construction of Chang'an Road and the development and construction of houses along the street, XUNCHI paid various taxes and fees. On 12 November 2011, XUNCHI submitted a report to the municipal government requesting the return of the corresponding taxes, but it was unsuccessful. In 2015, the municipal government office gave a telephone reply to XUNCHI's report on the request for the return of the taxes: after study, the amount will not be paid.

4.1.2 Summary of the case of Xunchi in Anqiu, Shandong Province

According to the opinion of the Supreme Court, this case is a dispute over an administrative agreement, and the core of the argument is whether the contract book in question is invalid or some of its clauses are null and whether the execution of the contract is detrimental to the public interest of society. The dispute over the execution of the contract in this case is mainly related to Article 4, Item 2, and Item 3 of the Contract Book. Article 4, item 2 of the contract is about the exemption of land deed tax, land value-added tax, and land use tax agreement. The agreement is the Anqiu municipal government with the tax concessions as the Xunchi company road construction of the consideration, the nature of the contract consideration, and the meaning of the true. According to the relevant provisions of the State Council, the preferential policies in the contract signed with the enterprise continue to be effective; the part that has been honored will not be retroactive. The tax-related commitment clause of Anqiu Municipal

Government is in line with the above provisions and should be a valid agreement.

4.2 Henan Zhoukou Huilin Company case

4.2.1 Brief description of the case of Henan Zhoukou Huilin Company

Zhoukou Municipal Government wanted to build two roads. Still, due to financial difficulties, it proposed to Henan Zhoukou Huilin Real Estate Co., Ltd. (from now on referred to as Huilin) that it advance funds for repairs. (from now on, referred to as Huilin). The actual controller of Huilin was Fan Mou.

In October 2006, Zhoukou Municipal Government decided at the 61st executive meeting to let Huilin Company invest in the south section of the Dazha Road project, and wrote in the minutes of the meeting, with Huilin Company's tax payable gradually pay off its investment, and signed an investment agreement; after the road was repaired, the Municipal Audit Bureau verified that Huilin Company had advanced a total of 24,930,000 yuan of investment money. Afterward, Huilin requested the Zhoukou Local Taxation Bureau to offset the investment amount offered by its tax payable by the content of the decision of the minutes of the meeting. Still, the Zhoukou Local Taxation Bureau did not give a clear reply.

In 2007, Huilin company faced financial difficulties because the Zhoukou city government did not repay the debt according to the contract. After paying part of the tax, no longer tax declaration, the competent tax authorities knew this situation and agreed to extend the principle. Huilin company on the 2008 annual business tax for zero indication is also by Zhoukou City local tax bureau staff tips to fill out. In September 2007, Fan Mou was investigated by the public security organs on suspicion of tax evasion and bribery offenses. Coercive measures were taken against him. After the Zhoukou Chuanhui District Procuratorate filed a public prosecution, Fan Mou and Hui Lin Company were accused of guilt in tax evasion, bribery, and unit bribery.

4.2.2 Summary of the case of Henan Zhoukou Huilin Corporation

Although the minutes of the executive meeting of the Government, in this case, are only a record of the Government's deliberations and are not an administrative act in form, they are by nature a specific administrative act, which has an impact on the rights and obligations of the Government itself and its administrative counterparts. First of all, its role is to prove the municipal government entrusted the company to invest in the construction of the highway facts, and the municipal government how to repay the company to advance the investment debt. Secondly, its content reflects the nature of the administrative commitment, i.e., the city government's commitment to "offset the debt with tax."

Because the administrative commitment behavior of the proof of effectiveness is not because of its commitment itself beyond the authority of the problem and produces defects, the local government still has to timely, full repayment of investment funds advanced by the company, and according to the provisions of the same period plus bank interest.

As seen from the above two cases, the effectiveness of the local government's tax-related commitment depends on many factors. A few defective tax incentives are not necessarily invalid. According to the "National Development [2015] No. 25 Circular of the State Council on Taxation and Other Preferential Policies on Matters Related to Preferential Policies", the existing tax incentives for the local government shall be implemented by the period of the provisions, the establishment of a transition period, continue to be effective, and non-retroactive. There are other rules for disposing of classified information. These rules address the problem of local governments exceeding their power in creating tax policies and consider the principle of good faith. This principle ensures that taxpayers' interests are protected, and their reliance on the tax system is supported.

5. Analysis of the Effectiveness of Tax-Related Commitments

5.1 Determination of the Effectiveness of Tax-Related Commitments of Local Governments

Taking into account the previous cases, the following elements should be present if the tax-related commitment of the local government is to be valid.

5.1.1 Administrative Act is valid

The administrative act of making tax-related commitments by the local government is legal and practical. To attract investment and promote economic development, the provincial government makes

tax-related commitments to some enterprises, which is essentially an administrative act with legal effect. To make the executive action legal and practical, it must satisfy four legal elements, i.e., the subject, authority, content, and procedure are legal. Only when the local government's behavior of making tax-related commitments meets these four lawful elements can the lawful validity of its administrative behavior be guaranteed.[5]

5.1.2 Adherence to the principle of reliance protection

Reliance interest refers to one party's belief that a specific legal act is valid. If the legal action is invalidated or revoked due to the occurrence of particular points, it can ask the other party to give appropriate compensation. In the field of tax law, it should be asserted that the taxpayer's reliance interest should be appropriately protected, not in the sense of absolutely prohibiting the maker of a tax relief promise from failing to fulfill or the central government from revoking the contract but in the mind that the taxpayer can demand that the maker of the promise give compensation for economic benefits. To protect the reliance interests of taxpayers, administrative authorities may not revoke an administrative act unless the beneficiaries have not relied on the validity of the executive action or their reliance interests are less than the public good protected by the revocation of the administrative action.

5.1.3 Satisfaction of the principle of honor and integrity concerning the lawfulness of its content

The principle originated in the field of private law, but it is equally valid in the area of public law and has been called an imperial clause. Unlike the subject of the application in personal direction, the principle of honesty and integrity in administrative law mainly applies to administrative organs. Article 8 of China's Administrative Licensing Law provides that administrative organs shall be compensated when they change or withdraw their administrative licenses by the law because of the needs of the public interest, which is the confirmation of the status of the principle of good faith in the field of administrative law in China.

When a taxpayer makes a lawful business strategy based on the promise of tax relief made by the local government, the local government shall abide by the principle of honesty and good faith and shall not break its promise by breaching the reasonable expectations of the other party, nor shall it deny the promise of tax relief on the pretext that the previous commitment of tax relief was wrong.

5.1.4 Consistency with the Public Interest

In layperson's terms, the public interest is the interest of the majority. Public interest is the common denominator of the interests of an indeterminate number of subjects in a specific social environment or field, which is different from national interest and group interest. It was supposed that a tax-related commitment made by a local government violates the public interest of the locality or even society. In that case, the policy should be considered invalid regardless of whether it meets the other elements.

5.2 Determination of Effectiveness Defects of Tax-Related Commitments Made by Local Governments

The local government makes a tax-related commitment based on legal authorization, but due to procedural irregularities or the tax-related commitment exceeding the charge, i.e., the tax-related duty of the local government has validity defects, at this time, the tax-related commitment itself is not necessarily invalid. It needs to be considered according to the degree of procedural violations and the degree of exceeding the authorization. If the procedure is seriously violated or far exceeds the charge, then the administrative act belongs to the serious abuses and is invalid. On the contrary, it can be found valid from the perspective of protecting enterprises' trust interests. On the other hand, the tax-related commitment can be deemed effective from the standpoint of protecting the enterprise's reliance interests.

5.3 Determination of the Invalidity of Tax-Related Commitments of Local Governments

The tax-related commitment will be invalid if the original administrative contract is invalid. The invalidity of the agreement between the local government and the enterprise will inevitably lead to the invalidity of the promise of tax-related concessions from the outset, ipso facto invalid and definitively invalid. The government's tax-related commitment does not hinder the enterprise's right to request confirmation of the contract's invalidity. In specific cases, whether the People's Court recognizes the People's Government's tax-related commitment to the enterprise as an administrative or civil contract, the administrative relative and the interested party can request the People's Court to confirm the contract's invalidity. The difference between the different determinations is that if the tax-related preferential commitment falls within the scope of administrative litigation, the enterprise may choose between

applying for reconsideration to a higher administrative organ or suing in the people's court.

6. Conclusion

As one of the elemental powers of the taxing power, the right to make tax incentives must be prescribed by law or authorized by the central legislature, and the local government can make preferential policies or sign investment promotion cooperation agreements with specific taxpayers within its legal authority. Tax-related commitments made by local governments under legal control are valid, and local governments must honor their previous commitments and bear the responsibility for financial compensation for their breach of obligations. Even if the authorized authority decides to revoke a commitment with defective legal effect, there should be sufficient grounds to prove it, and the trust interests of taxpayers should be appropriately protected. If a local government exceeds its authority in formulating a tax-related commitment or if a tax-related commitment is slightly defective due to other reasons, it should not be concluded that the policy is necessarily invalid. When the responsibility has only minor defects, such as procedural matters, based on the principle of honesty and credit, priority should be given to protecting the investor's trust interests, which will be more conducive to safeguarding the security and stability of the enterprise investment. If the original administrative contract of the tax-related commitment made by the local government is invalid, the tax-related commitment is, of course, also weak.

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