ISSN 2616-7433 Vol. 5, Issue 7: 37-42, DOI: 10.25236/FSST.2023.050707

Tax Analysis of Cross-border M&A and Equity Investment

Yijin Bao

Guangdong Mingsi Law Firm (Fang&Fang Law Firm), Guangzhou, 510630, China

Abstract: *In order to achieve long-term and stable development, the firm must constantly innovate its business development model, and cross-border mergers and acquisitions and equity investment are one of the most important ways. Under the current international economic situation, many companies are engaged in cross-border mergers and acquisitions. The current international situation provides more opportunities for the development and implementation of cross-border mergers and acquisitions and equity investment, but it also faces many risk factors. Therefore, companies should reduce the risk of M&A and create favorable conditions for cross-border M&A and equity investment.*

Keywords: *cross-border mergers and acquisitions; equity investment; taxation*

1. Introduction

With the improvement of China's socialist market economic system and the opening of financial markets, derivative financial instruments have entered a new stage of development. The merger and acquisition of domestic companies by non-resident companies has an increasing economic and social impact. More and more non-resident companies participate in the business activities of domestic companies through investment. When implementing the merger and acquisition strategy, China companies often go public through foreign financing, which is a challenge to the existing tax policy. There is relatively little research on the tax theory of derivative financial instruments, cross-border mergers and acquisitions and equity investment in China. Therefore, only by perfecting the national legislation and implementing the corresponding tax system for resident companies can we exercise the corresponding tax jurisdiction and safeguard the country's tax rights and interests. As a result, it is urgent to learn from the experience of developed countries and regions, and combine the above-mentioned specific situation in China to study and discuss the tax policy and management system suitable for China's national conditions.

2. The concept and status of cross-border mergers and acquisitions

2.1 The concept of cross-border mergers and acquisitions

There are two forms of cross-border M&A: merger and acquisition. Cross-border M&A means reorganizing two companies from different countries into new companies. "Cross-border acquisition" refers to the acquisition of assets or shares of a foreign company of the other party and the acquisition of control of the company.

2.2 The status quo of cross-border mergers and acquisitions

In 2016, China became the largest cross-border M&A buyer in the world, accounting for 16.4% of the global market. According to the latest data released by ThomsonReuters and PricewaterhouseCoopers, in 2016, the cross-border M&A transactions of China companies increased by 14.2%, and the total transaction volume increased by 24.6%, reaching a record $221 billion. The total volume and quantity of cross-border M&A transactions in China continued to increase year by year, but the growth was slow in 2014 and 2015, and rapid in 2016.

3. Reasons for the Upsurge of Cross-border M&A.

In 2016, the cross-border mergers and acquisitions of China companies were so fierce, the main reasons are as follows:

3.1 Simplify the examination and approval of foreign investment.

Cross-border mergers and acquisitions are supported by the government's "the belt and road initiative" initiative and "going abroad" initiative, and the strategy of encouraging companies to invest abroad is implemented, which greatly relaxes the conditions for the state to approve cross-border mergers and acquisitions, simplifies the contents of licenses, and speeds up the overseas investment process of companies.

3.2 RMB depreciation and internationalization accelerate the pace of M&A.

RMB depreciation and internationalization are also the key reasons for China companies to accelerate international mergers and acquisitions. At the same time, the RMB weakened further last year, and the exchange rate dropped from 6.4 to nearly 7. The depreciation of the RMB led to a decline in China's domestic investment income. In order to find new ways to increase the cost of capital, some companies focus on foreign markets, such as buying foreign real estate, getting intermediate dividends from the price difference between home and abroad, and hedging the risk of RMB depreciation.

3.3 Looking for new economic growth points

In recent years, the company's products are saturated in the domestic market, and technology has become a bottleneck. Therefore, many companies are looking for new economic growth points overseas. For example, a few years ago, there was still a huge market demand for household appliances in China. However, due to the rapid development of urban-rural integration in recent years, the rural household appliances industry has improved, so the domestic market demand is weak at present, and it is seeking new breakthroughs overseas to maintain its position. For example, the acquisition of KukaCompany, an American robot manufacturer, has shifted from ordinary home appliances to intelligent high-tech home appliances, and Haier has opened up business channels around the world through the acquisition of GE home appliances business.

4. Advantages of Ccross-border Mergers and Acquisitions

Cross-border mergers and acquisitions will become the main tool for companies in developing countries, because cross-border mergers and acquisitions have many benefits. Specifically, cross-border mergers and acquisitions have the following advantages.

4.1 The accumulation of intangible assets

With the economic growth, the company's previous advantages gradually lost. Cross-border M&A is an effective means to quickly increase value, improve industries and achieve core competitiveness. For example, brand influence is an abstract, powerful and stable advantage of enterprise competition, which can reflect the cultural value of brand and consumers' willingness to buy and use brand products[1].

4.2 Expand the production scale and reduce the cost.

Through cross-border mergers and acquisitions, the company can effectively expand the scale of production and operation, realize economies of scale and reduce the transaction costs of enterprises. On the other hand, companies can create strong synergies through horizontal and vertical mergers and acquisitions of competitors. By acquiring competitors in the same industry, we can effectively save publicity costs and improve cost performance. At the same time, with the expansion of the scale, the company's influence is greater, and it can complement each other in different customer positions to form a synergistic effect [2].

4.3 Explore overseas markets and expand market share.

Generally speaking, the company is in a leading position in industry, technology and market, and hopes to expand the external market through cross-border mergers and acquisitions to obtain more profits. For example, Guangdong ceramic manufacturers recognize the demand of the Middle East market and take the lead in expanding their production lines in the Middle East. Due to the slow development of local ceramic industry in Middle East countries and the shortage of raw materials, Guangdong ceramics has a very competitive price advantage in the Middle East. In addition, China's manufacturing industry has mastered the core technology, and foreign companies use China's technology to produce products, realizing the transformation to a high-tech and high-efficiency business model. For example, in the process of acquiring Toshiba's home appliance business in the United States and vizio, an American TV manufacturer, relevant China companies opened up overseas markets and realized brand globalization.

4.4 Enterprise transformation, diversification to reduce risks.

The market of some industries is in a depressed or saturated state, and some companies have accumulated a large amount of surplus funds. Choosing to find overseas investment projects outside the existing industries, transforming companies and diversifying investments can reduce investment risks. The goal of cross-border M&A of listed companies in China is essentially to seek global resource integration, find favorable resources to improve competitiveness and maintain the company's sustainable development. The acquired company can obtain expanded R&D funds and bring employment and tax revenue to the host country, which is a win-win market behavior.

5. Factors Affecting Cross-border Mergers and Acquisitions of Enterprises

5.1 Policy factors

Due to the restriction of anti-monopoly policy, China companies have to spend a lot of money on foreign mergers and acquisitions. In the process of merger and acquisition, legal measures are taken to protect trade, which disrupts the overseas investment and trade activities of China companies and leads to various problems in foreign trade of China companies.

5.2 Industry regulations

When companies conduct cross-border mergers and acquisitions, they sometimes encounter operational interference. Cross-border management is limited because companies can't apply for support for layoffs or intervene in company personnel changes before mergers and acquisitions.

5.3 Legal factors

No matter whether it is acquisition or operation, foreign laws will bring some risks to the company. Every country has laws governing the merger and acquisition of foreign companies. Based on the premise of protecting its own interests, China will take a series of intervention measures against foreign companies, which may hinder the company's operation and make it difficult to realize the expected profits.

5.4 Financing risk

With the change of international interest rate, the devaluation of the currency does little harm to the company, but investors may suffer great economic losses in the process of mergers and acquisitions because of the devaluation of stocks or bonds. In the field of financing, companies use various financing channels to obtain financing. In addition to bank loans, they can also raise funds by issuing bonds, stocks and other means.

6. Risk Analysis and Preventive Measures in Cross-border Mergers and Acquisitions

6.1 M&A Motivation Risks and Preventive Measures

M&A risk is also called M&A decision risk. In cross-border M&A, many China companies do not consider what they want [3]. For example, a China company wants to buy an American chip testing company, but in order to prevent the same technology from being stolen by China competitors, the company must participate in the cross-border acquisition between China and the United States. The

ISSN 2616-7433 Vol. 5, Issue 7: 37-42, DOI: 10.25236/FSST.2023.050707

acquisition failed because the driver was ambiguous. In fact, American sellers value not only the price, but also the acquisition motivation. In view of the above analysis, China companies need to formulate a comprehensive acquisition strategy, focusing on integrating existing business departments and achieving seamless communication with foreign companies. At the same time, it is necessary to make clear the motivation of M&A, formulate a global development strategy and extend it to the whole industry. Seek government support, support international mergers and acquisitions in financing and policies, further improve the competitiveness of the company, and play a leading role in transactions and negotiations.

6.2 Information asymmetry risk and preventive measures.

At this stage, the international financial structure is quietly changing, and companies need to accurately record M&A information and conduct cross-border M&A properly. In order to cope with this risk, in cross-border M&A transactions, China companies must first ensure efficient communication and exchange, and clarify each other’s M&A methods to reduce the waste of resources, and must emphasize their role in the actual competition stage. Secondly, ensure the security and reliability of information sources, and on this basis, integrate information sources, and determine the accuracy of information sources through field research and other methods.

6.3 Financing risks and preventive measures

In 2008, the American financial crisis spread to the whole world with immeasurable breadth and depth, which had a certain impact on the cross-border mergers and acquisitions of China companies. Although the financial crisis has passed for many years, it still has a significant impact on the world economic structure. In view of the continuous depreciation of the US dollar, China Gold Company is facing the problem of maintaining and increasing the value of foreign exchange assets, which has caused some restrictions on the smooth development of cross-border mergers and acquisitions. The financial crisis in the United States has had a profound impact on the world economic structure, and also warned about the centralized issuance of US dollar bond investment in China. Therefore, only by constantly creating sustainable and diversified investment portfolios can China companies reduce investment risks and make cross-border mergers and acquisitions a reliable choice.

7. The equity investment tax analysis

7.1 The significance of tax planning

Tax planning refers to taxpayers under the existing tax system, through reasonable financial coordination and organic accounting treatment, using various tax preferences, under legal conditions, skillfully making tax planning plans and carrying out tax-related economic activities, with the aim of maximizing after-tax profits. The implementation of tax planning will help to increase after-tax profits and improve the competitiveness of enterprises. Its main impacts include [4].

Reduce tax costs, save costs, improve the company’s investment income, directly increase the company's profits, and then increase the company's available income.

Through correct investment, production and operation decisions, the shareholders of the company achieve the maximization of after-tax profits, effectively improving the level of corporate governance and financial management.

7.2 The misunderstanding of tax planning in enterprise equity investment

7.2.1 Lack of scientific knowledge and understanding of tax planning.

In terms of investment, some companies lack accurate and comprehensive understanding of tax planning. In some companies, tax planning is regarded as tax evasion. Under the guidance of this misunderstanding, some companies involved in financing and investment evade taxes in the name of tax planning, which has a very negative impact. There are obvious differences between tax planning and tax evasion. The former is a series of legal economic activities under the premise of observing tax laws and regulations, while the latter is a serious violation of laws and regulations and must be stopped. Tax planning is a plan made by the company to provide appropriate tax avoidance within the scope permitted by law.

ISSN 2616-7433 Vol. 5, Issue 7: 37-42, DOI: 10.25236/FSST.2023.050707

7.2.2 Lack of risk control in tax planning.

Equity investment is a long investment process with a long cycle, that is to say, the tax planning of investment depends on many factors in the long-term investment process, and it is easy to deviate from the company's current profit forecast. If the planned profit deviates from the expected target, it will not only damage the company's return on investment, but also bring many potential risks to investment. When investing in equity, many company managers are sensitive to the advantages and risks of the change in return on investment, but ignore the hidden risk factors that cannot be accurately controlled. For example, in the case of investment, not knowing the tax benefits or the risk that they cannot be used due to abuse, or the change of objective conditions supporting the implementation of the tax plan may affect the expected income of the plan. The failure of tax planning means that the company must bear the corresponding economic and reputation risks. Research shows that the lack of risk control in corporate tax planning hinders the effectiveness of proper tax avoidance.

7.3 The feasibility of tax planning in enterprise equity investment countermeasures

7.3.1 Choose the right proportion of equity investment.

The proportion of investment structure directly affects the tax planning of investment companies. Document No.59 [2009] of the Ministry of Finance and State Taxation Administration of The People's Republic of China clearly stipulates the special tax treatment for holding companies that meet special requirements. Therefore, the company can carefully refer to the relevant provisions of the document and choose a scientific participation ratio for investment. If the equity investment is not less than 25% of the equity of the invested project company, and the payment rate exceeds 85%, the shareholder investment company can enjoy corresponding tax preferences in accordance with the provisions of relevant laws and regulations. As long as the stock payment rate of the invested company exceeds 85%, the company and the invested company can be exempted from income tax in the process of merger and acquisition to achieve a win-win situation.

7.3.2 The payment method of consideration for equity acquisition should be scientific.

As far as capital investment is concerned, the investment methods chosen by the company include various investment forms, such as monetary capital, physical assets, intangible assets, stock exchanges, bonds and so on. Companies should carefully study the characteristics of various investment forms and choose more effective investment methods when choosing the payment methods for purchasing stocks. If investors only invest in cash, the company will not be able to achieve the purpose of tax reduction. However, in the introduction of some specific issues about value-added tax, there are specific exemption provisions for the value-added tax and other related investment contents of qualified corporate entities. If a company invests in real estate assets and transfers the real estate to the company that invests as the object of asset transfer, the relevant corporate investors can be exempted from property tax temporarily. In addition to physical investment, companies that adopt the stock exchange investment method can also reduce taxes when necessary. According to the Finance and Tax Law, the two companies participating in the stock exchange investment only need to pay capital transfer tax and stamp duty, not other taxes stipulated by law.

7.3.3 Pay attention to the cultivation of professional talents.

Investment companies urgently need to improve the training of tax planners. Some problems in enterprise tax planning are not only caused by the ignorance of senior executives, but also by the lack of understanding and professionalism of financial personnel in some companies. At present, some company leaders pay special attention to management and operational control, while tax planning, risk assessment and prevention awareness need to be improved. Therefore, investors must increase their investment in capital, technology and talents, and tax planning must become a strategic plan for the long-term development of enterprises.

7.4 Tax planning should highlight the comprehensive characteristics.

If the tax base between different departments of the company is not properly handled, the increase of tax base in tax planning will be greater than the decrease of tax base, which may lead to a substantial increase in company costs. Therefore, tax planning must consider various factors, such as tax saving and tax advantage compensation, and focus on balancing the tax burden between companies. On the other hand, the company should comprehensively study the tax system, and make tax planning objectives according to the actual situation of the tax system and business development. The purpose of

ISSN 2616-7433 Vol. 5, Issue 7: 37-42, DOI: 10.25236/FSST.2023.050707

tax planning is not to save a certain amount of tax revenue, but to maximize the economic benefits of the company, which is the starting point and foundation. In the actual implementation process, information technology should be integrated into the tax planning strategy, and the tax saving advantages of specific taxes and the performance balance of several taxes should be fully considered in order to fully understand tax planning. On the other hand, to predict the national fiscal and taxation policy, we should not only consider the existing tax system and regulations, but also predict the future changes of the national tax policy, look to the future and make a comprehensive positioning.

7.5 Constantly improve and perfect the equity management system.

Equity management refers to a series of activities such as selling, controlling and managing unit stocks in accordance with relevant national laws and regulations and according to their own development and internal organizational rules. Investment management contains many elements, and investment, strategy, finance, income and other aspects must be included in the investment management framework. When planning tax revenue, the company should fully consider the contents of investment management. Specifically, the company should improve the stock management system. In accordance with the provisions of laws and regulations, combined with regional tax incentives, improve tax collection and management, optimize the environment, and expand the development scope of enterprise tax planning [5].

8. Conclusion

To sum up, in the actual investment process, enterprises must have a correct scientific understanding of cross-border mergers and acquisitions and equity investment taxation. Then, without violating the provisions of the tax law, it analyzes and coordinates the relevant factors of equity investment, such as controlling the proportion of equity investment, choosing the payment method of stock purchase price, making use of investment opportunities, reducing the tax burden of capital transfer and improving the return on investment. Tax incentives vary from region to region, and companies should make rational use of investment tax incentives to ensure the full implementation of investment tax planning and maximize the economic benefits of taxation.

References

[1] Wang Yun (2014). Cross-border mergers and acquisitions and equity investment tax research [J]. Chinese and foreign corporate culture (next issue), no.6, p. 152.
[2] Yang Li, Zhou Shuang (2011). Analysis of foreign investors' merger and acquisition of domestic enterprises by equity [J]. China Commerce and Trade, no. 34, pp. 211-212.
[3] Tang Erhui (2016). An empirical study on the discount rate of private equity in cross-border M&A investment in China [D]. Shanghai: Shanghai Jiaotong University.
[4] Hao Jiaying (2020). Study on the influence of cultural distance on cross-border equity investment [D]. Beijing: university of international business and economics.
[5] Chen Silin (2019). Research on the influence of ownership structure on the performance of China's A-share listed companies after cross-border mergers and acquisitions [D].Shanghai: Shanghai University of Finance and Economics.