

ON THE LEGAL SYSTEM OF TAX VOLUNTARY DISCLOSURE BASED ON TAX COMPLIANCE

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Abstract: To encourage taxpayers to voluntarily disclose their illegal tax acts such as tax evasion and evasion and perform their tax obligations, the tax authorities implement tax voluntary disclosure to encourage them. Tax voluntary disclosure not only increases fiscal revenue, improves the information management ability of tax authorities, but also improves the tax compliance of taxpayers. The United States, Germany, and Australia have all established tax voluntary disclosure systems, and have gained some experience. The Tax Collection and Management Law is being revised, and it is also intended to establish the rule of law for tax voluntary disclosure. Based on China's tax practice and drawing on the advanced experience of other countries' tax voluntary disclosure laws, this article attempts to provide suggestions for improving China's relevant legal systems: (i) clarify the applicable situations of permanent and temporary tax voluntary disclosure; (ii) Provisions on strengthening early communication between tax authorities and taxpayers; (iii) Standardize the content of voluntary disclosure by taxpayers, including supplementing and correcting information that was not reported or not truthfully reported in previous years, and disclosing tax related information such as overseas financial accounts, assets, offshore structures, etc. as required; (iv) Provide for voluntary disclosure of the legal consequences of tax violations, namely, making up the tax owed and paying the tax interest incurred due to delayed tax payment, but with administrative and criminal liability concessions; (v) Strengthen the construction of supporting systems, mainly including the protection of taxpayers' tax related information and the strengthening of tax law enforcement.

Keywords: Tax Compliance; Tax Voluntary Disclosure; Tax Administration Law; Self-inspection and Self-correction; Voluntary Disclosure by Customs.

1. Introduction

Tax collection management has many administrative characteristics, relatively insufficient law enforcement resources, tax evasion and other phenomena that exist objectively. In order to encourage taxpayers to voluntarily disclose their illegal tax

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acts such as tax evasion and evasion and perform their tax obligations, tax authorities often take incentive measures for them, which is the legal system of voluntary tax disclosure. Through the implementation of voluntary tax disclosure, the information management ability of tax authorities can be improved without expanding law enforcement resources. [1] It has therefore increased fiscal revenue. [2] More importantly, it can reduce the negative psychology of taxpayers and promote harmonious tax collection relations. All countries have generally strengthened the legal construction of voluntary tax disclosure and incorporated it into their own tax compliance strategic system. Self-examination and self-correction in the practice of tax collection and management in China have some attributes of voluntary disclosure of taxes. The construction of the legal system of voluntary disclosure by customs is being promoted. The second paragraph of Article 99 and the second paragraph of Article 124 of the revised draft of the tax collection and management law (Draft for comments) in 2015 also try to provide for voluntary disclosure of taxes. This article explains the significance of tax compliance with voluntary tax disclosure, draws on the advanced experience of other countries, and based on the practice of our country, puts forward suggestions to establish and improve the legal system of voluntary tax disclosure.

2. Tax Compliance Significance of Tax Voluntary Disclosure

Allingham and Sandman, drawing on Becker's theory of criminal economics and Arrow's theory of risk and uncertainty, put forward the concept of tax compliance in 1972 and made pioneering research. [3] The outline of the strategic planning for China's tax collection and management from 2002 to 2006 introduced the concept of tax compliance in China's official documents for the first time, "guide taxpayers to consciously pay taxes according to law and improve their awareness of tax compliance".

Tax compliance can be divided into three types: (1) defensive compliance, that is, tax compliance behavior that taxpayers have to carry out due to fear of strict law enforcement by tax authorities and severe punishment provisions of tax laws; (2) Institutional compliance, that is, taxpayers' unconscious tax compliance due to the comprehensive provisions of the tax law and the careful law enforcement of the tax authorities; (3) Loyal compliance means that taxpayers highly recognize tax obligations and tax regulations and actively perform tax obligations. Tax noncompliance can also be divided into three types: (1) emotional tax noncompliance, where taxpayers consciously evade their tax obligations because they are dissatisfied with government behavior and fiscal expenditure or do not recognize tax fairness and tax services; (2) Selfish tax non-compliance, and taxpayers' intentional tax evasion due to their own selfish interests; (3) The taxpayer fails to perform the tax obligation in time due to lack of understanding of the tax

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obligation and its performance under the tax law. [4] In short. Tax compliance not only means that taxpayers do not evade taxes and faithfully perform their tax obligations, but also includes a high degree of recognition of tax obligations and the initiative to perform them. [5]

The tax law needs to be a deterrent, that is, to set up a disciplinary system for those who deliberately fail to comply, such as administrative and criminal penalties for taxpayers' tax evasion once verified. However, the detection probability and punishment intensity of violations of tax law are restricted by the quantity and cost of law enforcement resources, and tax compliance cannot be fundamentally realized. Only by establishing an effective incentive mechanism for tax compliance and making taxpayers consciously abide by tax laws and consciously fulfill their tax obligations, can we reduce the cost of tax collection and improve tax efficiency. [6] Voluntary tax disclosure is an important part of tax compliance incentives. It can improve the tax compliance of taxpayers by giving taxpayers who fail to fulfill their tax obligations a chance to reform.

3. International Comparison of Tax Voluntary Disclosure Laws

3.1. Tax Voluntary Disclosure System in American

Voluntary tax disclosure is a long-standing practice of the Criminal Investigation Department of the Internal Revenue Service of the United States. When it decides to recommend criminal prosecution, whether the taxpayer has timely, accurate and complete voluntary disclosure is an important consideration. A voluntary disclosure will occur when taxpayers provide true, complete and timely disclosure to the tax authorities through designated procedures, cooperate with the tax authorities to determine the correct tax obligations, and pay the taxes, interests and fines owed in full. Among them, timely disclosure refers to the following situations: (1) civil inspection and criminal investigation are started, or taxpayers are notified to start; (2) Third parties such as informers, media or other institutions remind the tax authorities to pay attention to the illegal acts of specific taxpayers; (3) Obtain information directly related to the specific illegal acts of taxpayers according to the investigation order, grand jury summons and other criminal law enforcement actions. [7]

Section 11, Chapter 5, Part 9 of the Internal Revenue Service workbook explains the requirements for voluntary tax disclosure in the form of positive and negative examples: (1) within the prescribed time limit, if the declaration letter includes the taxpayer's complete and accurate amended information, and the promised supplementary payment conforms to the actual situation, it constitutes voluntary disclosure, but the declaration letter only expresses the taxpayer's willingness to disclose without identity information, Does not constitute voluntary disclosure; (2) In view of the fact that the compliance action is not directly related to the specific

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responsibilities of taxpayers, taxpayers disclose their tax evasion information before the compliance action is announced but no investigation is conducted on taxpayers, which meets the requirements of voluntary tax disclosure; (3) After receiving the notification of whether to declare without investigation intention, taxpayers' disclosure of their undeclared behavior meets the requirements of voluntary tax disclosure. (4) If a taxpayer has been investigated by a grand jury, whether he knows it or not, the disclosure of relevant tax evasion information is not voluntary tax disclosure. (5) That is, if the IRS has not launched an investigation on the taxpayer but has learned about the taxpayer's tax evasion from a third party, the disclosure of the taxpayer's tax evasion information cannot constitute voluntary tax disclosure. [8] In 2009, 2011, 2012 and 2014, the United States also successively launched a series of temporary voluntary tax disclosure projects for taxpayers' overseas income and assets, and by June 2014, it had collected up to \$6.5 billion in unpaid taxes, late fees and fines. Among them, the United States also launched the simple disclosure compliance procedure in 2014, that is, taxpayers who participate in the simple disclosure compliance procedure, if they are not U.S. citizens, are only required to pay their arrears of taxes and interest; If you are a U.S. citizen, you must pay a slight offshore fine of 5% of the total amount of overseas assets. [6]

3.2. Automatic Tax Evasion Exemption System in Germany

In Germany, the automatic declaration and exemption of tax evasion and evasion is equivalent to voluntary tax disclosure. In 1919, article 374 of the general principles of imperial taxation in Germany first stipulated the general provisions of exemption from tax penalties. In 1977, article 370 of the general principles of Taxation in Germany stipulated the crime of tax evasion and evasion, and Article 371 stipulated the surrender of the crime of tax evasion and evasion. According to Article 371 of the general principles of Taxation, there are two positive conditions for the automatic declaration and exemption of tax evasion and evasion in Germany: (1) to declare the illegal act of tax evasion and evasion, that is, to disclose the facts of tax evasion and evasion involving tax payable within the time limit; (2) The remedy for the illegal consequences of tax evasion and evasion is to pay off the taxes and interest owed within the time limit specified by the tax authority, and have no right to ask for a return. Therefore, the purpose of exemption from punishment is to restore the damage caused by taxpayers to tax claims, and at the same time, illegal taxpayers have the opportunity to return to the honest tax system. Once the tax authorities have evidence of tax evasion and evasion of taxpayers, the taxpayers' automatic declaration and payment will lose the role of saving the cost of collection, and its declaration and payment are not voluntary. Therefore, the application of exemption from punishment for automatic declaration and payment of tax evasion and evasion should be excluded, that is, the negative element is that before the taxpayers'

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automatic declaration and payment, they know or should know that their tax evasion and evasion has been discovered by the tax authorities, Including the following circumstances: (1) the taxpayer or its agent has been notified to investigate it; (2) The staff of the tax authorities have been present to investigate or have started to implement the punishment. In addition, article 378 of the general principles of Taxation imposes penalties on tax evasion and evasion for gross negligence, and stipulates those taxpayers or their agents, who correct or supplement incorrect and incomplete explanations and supplement the undeclared parts before receiving the notice of penalty or punishment procedures, will not be subject to verification and punishment. [9]

In 2011, the German law on the prevention and control of money laundering amended Article 371 of the general principles of Taxation, stipulating that if the amount of tax evasion and evasion exceeds 50000 euros, the automatic payment cannot be exempted from punishment. Taxpayers must pay the taxes owed within the time limit specified by the tax authorities, and pay a fine of 5% of the taxes owed to the state treasury, and the tax authorities will not investigate their tax evasion and evasion. In 2014, the amount of tax evasion decreased to 25000 euros, but the proportion of fines increased from 10% to 20%. The revised general rules of Taxation in 2015 clearly stipulate that taxpayers who pay the amount of tax evasion and evasion within the specified period do not exceed 100000 euros will be fined 10% of the amount of tax evasion and evasion; If the amount of tax evasion exceeds 100000 euros but does not exceed 1million euros, a fine of 15% of the amount of tax evasion will be imposed; If the amount of tax evasion exceeds 1million euros, a fine of 20% of the amount of tax evasion will be imposed. In other words, after paying the corresponding tax evasion and evasion, the taxpayer must make up the payment and collect a fine before being exempted from other legal liabilities. [10]

3.3. Voluntary Tax Disclosure in Australia

Australia's Tax Administration Act imposes severe penalties on tax evasion and evasion, which can impose a fine of 90% of unpaid taxes and 10 years imprisonment. In order to ease the harsh tax penalties, Australia provides for a permanent voluntary disclosure system, that is, if taxpayers voluntarily disclose their tax evasion and evasion behavior, they can be exempted from the punishment, but the reduction degree will be determined according to the time node of taxpayers' Voluntary Disclosure: (1) if taxpayers disclose after the tax authorities issue a notice of voluntary disclosure, the fines of the tax authorities will be reduced by 20%; (2) If the taxpayer makes disclosure before the tax authority issues a voluntary disclosure notice, the fine imposed by the tax authority will be reduced by 80%, and the unpaid tax less than \$1000 will be exempted from punishment. In addition, Australia has

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implemented two temporary "offshore voluntary disclosure projects" and "offshore income disclosure projects today" for offshore assets.

The offshore Voluntary Disclosure Project is aimed at taxpayers' overseas assets and income. Taxpayers are encouraged to disclose their offshore accounts or offshore tax avoidance before June 20, 2010, but they are not allowed to participate in the disclosure if there are the following circumstances: (1) they have been audited and investigated by the Australian Revenue Agency; (2) Has received a notice from the Australian revenue service that it has omitted information about its offshore income; (3) Overseas income obtained through other criminal activities; (4) Overseas income derived from illegal income; (5) Have engaged in or encouraged others to engage in tax evasion; (6) Has been investigated or wanted by the Australian revenue service, the federal police or the criminal Committee for tax violations. The incentive policies provided by the offshore Voluntary Disclosure Project to taxpayers mainly include: (1) taxpayers who did not pay taxes in 2002 and before are not required to pay late fees; From 2003 to 2004, the overdue fine was calculated according to the lowest proportion; Normal collection in 2005 and after. (2) If the income declared by the taxpayer is less than \$20000, the late fee shall be exempted; If it exceeds \$20000, 10% of the undeclared income of the year will be charged as a late fee. (3) Taxpayers participating in the offshore voluntary disclosure action can anonymously seek help from the Australian revenue authority to understand whether the taxpayer's situation constitutes a crime, so as to help them avoid criminal prosecution. [11]

The implementation time of the offshore income project disclosed today is from March 27 to December 19, 2014. In addition to the six restrictions stipulated in the offshore voluntary disclosure action, taxpayers who have participated in the offshore voluntary disclosure project but failed to comply with their relevant obligations cannot participate in the disclosure of offshore income projects today. In today's disclosure of offshore income projects, taxpayers' late fees cannot be reduced. The exemption of fines, criminal proceedings and the provision of additional information are basically consistent with the offshore voluntary disclosure action project.

4. Legal System and Practice of Tax Voluntary Disclosure in China

The tax administration law of 1992 and its amendments in 1995, 2001, 2013 and 2015 don't provide for voluntary tax disclosure. However, according to Article 11 of the rules on the exercise of discretion in tax administrative penalties issued by the State Administration of Taxation in 2016, "administrative penalties may be imposed according to laws, regulations and rules. If the party violates the rules for the first time and the circumstances are minor, and takes the initiative to correct before the tax authorities discover it or within the time limit ordered by the tax authorities to correct it, no administrative penalty shall be imposed.", And item 1 of Article 14, "where the illegal act is minor and corrected in time without causing harmful

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consequences", is not subject to administrative punishment, and item 1 of Article 15, "where the harmful consequences of the illegal act are actively eliminated or mitigated", is a lighter or mitigated administrative punishment, with the characteristics of voluntary disclosure of some taxes, but its superior law basis is not the tax collection and management law, but the administrative punishment law, Even the simple repetition of Article 27, paragraph 1, item 1, and Article 38, paragraph 1, item 2 of the administrative punishment law does not reflect the particularity of tax collection management, nor is it operational.

Self-inspection and self-correction in the practice of tax collection management are similar to voluntary tax disclosure. The tax self-examination and self-correction can be traced back to the Tax finance and price inspection that began in 1985. The 13-year "fiscal and tax inspection" often requires the combination of the taxpayer's self-examination and the key inspection of the tax authorities, and establishes the punishment principle of "Leniency for self-examination, strictness for being investigated, seeking truth from facts, and moderation for leniency and strictness". Although the "financial and tax inspection" was later canceled, the principle of self-inspection and self-correction of tax and its punishment were adopted in the practice of tax collection and management in China. [12] For example, in 2004, the notice of the State Administration of Taxation on strengthening the collection and administration of individual income tax for foreigners (Guo Shui Fa (2004) No. 27) proposed that "if a foreigner or withholding agent voluntarily declares the unpaid tax for the previous year before the end of June 2004, in addition to making up the tax according to law, a late fee of 0.5 ‰ of the overdue tax will be charged on a daily basis, but no penalty will be imposed"; Another example is the notice of the State Administration of Taxation on further regulating the tax order of the film and television industry (SZF (2018) No. 153) in 2018, "From October 10, 2018, local tax authorities notified local film and television production companies, brokerage companies, performing arts companies, Star Studios and other enterprises and high-income practitioners in the film and television industry to conduct self-examination and self-correction on the tax declaration since 2016. Film and television enterprises and practitioners who seriously self-examination and self-correction and voluntarily pay taxes before the end of December 2018 are exempt from administrative punishment and fines.", Tax self-inspection and self-correction have the characteristics of a temporary voluntary tax disclosure system, but the legal basis of self-inspection and self-correction is insufficient, and its consequences are set at will. Customs is one of the tax collection and administration organs in China. Customs has gradually formed a voluntary disclosure system with permanent voluntary disclosure characteristics. In order to improve the efficiency of supervision, promote the law-abiding and self-discipline management of enterprises, and explore the establishment of an incentive mechanism of "law-abiding and fault-tolerant". Before

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2014, the pilot of "enterprise self-discipline management" was started. In 2014, the general plan for comprehensively deepening the reform of the customs clearly stated that "the system of 'active disclosure' should be established. If an enterprise actively reports violations or errors, it can be reduced, mitigated or exempted from punishment". Since then, it has been officially named as "active disclosure". In 2015, the General Administration of Customs issued a number of measures to support and promote the construction of pilot free trade zones in Fujian, Guangdong and Tianjin, which clearly stipulated that, "Try out the system of 'active disclosure' by enterprises. For enterprises' active reporting of violations not found by the customs, they can be given a lighter, mitigated, or no administrative punishment according to the circumstances according to the law, guide enterprises to abide by the law, operate in good faith, and standardize the operation, and create a good environment for law-abiding convenience and punishment for violations of the law." the 2016 customs inspection regulations were amended to add paragraph 2 to Article 26, "Enterprises and units directly related to import and export goods that take the initiative to report their violations of customs regulations to the customs and accept the handling of the customs shall be given a lighter or mitigated administrative penalty.". The measures for the implementation of the regulations of the customs of the People's Republic of China on inspection formulated at the same time set up a special chapter on active disclosure, which stipulates the application and exceptions of active disclosure by the customs, the submission of supporting materials for active disclosure and the legal consequences of active disclosure.

In a word, in the practice of tax collection and management in China, the tax self-inspection and self-correction system with temporary voluntary tax disclosure and the customs active disclosure system with permanent voluntary tax disclosure have been formed. It is urgent to establish and specify the legal system of voluntary tax disclosure in the tax collection and management law. The revised draft of the tax administration law (Exposure Draft) in 2015 also stipulates the legal system of voluntary tax disclosure. Paragraph 2 of Article 99 on Amending the declaration provisions, "If a taxpayer or withholding agent makes an amended declaration and pays taxes from the date of expiration of the time limit for tax declaration and payment as prescribed by laws and administrative regulations or determined by the tax authorities in accordance with laws and administrative regulations to the date of tax inspection, a fine of less than 20% of the supplementary tax shall be imposed", which is reduced compared with paragraph 1; Article 124, paragraph 2, "those who take the initiative to correct tax violations or cooperate with the tax authorities to investigate and deal with tax violations may, depending on the circumstances, be given a lighter, mitigated, exempted from administrative penalties or reduced or exempted from tax interest." it can be seen that the draft establishes the legal system

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of voluntary disclosure of taxes, but there are many deficiencies in the design of the specification, which should be further improved.

5. Legal System Construction of Tax Voluntary Disclosure in China

5.1. Applicable situation

Voluntary tax disclosure can be divided into permanent voluntary tax disclosure and temporary voluntary tax disclosure. The tax administration law should clearly stipulate permanent voluntary tax disclosure. Based on the principle of tax fairness, it should be widely applied to all taxes such as goods and services tax, income tax, property and behavior tax. However, the application of permanent tax voluntary disclosure should set negative elements, that is, if the taxpayer's illegal behavior of tax evasion and evasion has been found by the tax authorities, the permanent tax voluntary disclosure is not applicable.

The temporary voluntary disclosure of tax revenue is the commitment of the tax authorities to give certain lighter or mitigated punishment for specific tax violations in a special period. The temporary voluntary tax disclosure has a certain flexibility, and the tax administration law should not specify it in more detail, but the legal basis for the implementation of the temporary voluntary tax disclosure, the authority of the Department and the temporary voluntary tax disclosure scheme required to be issued by the tax authorities should clearly specify the applicable taxes, duration, etc. Generally speaking, in order to increase the sense of urgency of taxpayers, the period of voluntary disclosure of temporary taxes should not be too long, and it is appropriate to take two to three months.

5.2. Pre-Communication

The core of tax voluntary disclosure is the voluntary choice of taxpayers. In order to improve the enthusiasm of taxpayers to participate in tax voluntary disclosure, we should strengthen the provisions of early communication between tax authorities and taxpayers. The tax authorities should not only publicize and guide the voluntary tax disclosure for general subjects to raise public attention but also conduct targeted pre-communication with potential taxpayers of voluntary tax disclosure. In other words, taxpayers who are willing to make voluntary tax disclosure can conduct preliminary consultations with the tax authorities anonymously to understand the process of voluntary tax disclosure, the risks involved in non-compliance and the legal consequences of voluntary disclosure. In order to better protect the rights and interests of taxpayers, the early communication should be informal and non-binding. The tax authorities can set up a column of voluntary tax disclosure on the official website, and provide telephone, e-mail and other conveniences for taxpayers to inquire. They can provide legally binding answers to the more complex legal issues raised by anonymous taxpayers.

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In addition, some taxpayers may face economic difficulties. The tax authorities can negotiate with them in the early communication of voluntary tax disclosure and reach an agreement on the installment payment of taxes owed, interest and overdue fines according to the economic status of taxpayers.

5.3. Disclosure Content

Voluntary tax disclosure requires taxpayers to truthfully declare their own tax-related facts, supplement and amend the information that was declared or not truthfully declared in previous years and disclose tax-related information such as overseas financial accounts, assets, offshore structures, etc. as required.

The contents of tax voluntary disclosure of taxpayers shall meet the requirements of completeness, accuracy, and detail. If taxpayers' tax information disclosure does not meet the requirements, they cannot enjoy the incentive treatment of voluntary tax disclosure.

5.4. Legal Consequences

If the punishment for tax violations and crimes is based on retribution and utilitarianism, tax voluntary disclosure, as an incentive means of tax compliance, has obvious utilitarianism. [13] that is guiding taxpayers to pay taxes in good faith through the reduction and exemption of the legal consequences of tax violations: (1) tax debt and its compensation liability. The tax voluntary disclosure system has the function of accumulating fiscal revenue. At the same time, if the tax and interest owed by taxpayers are reduced or exempted, it is equivalent to interest-free loans or even free subsidies to illegal taxpayers, which is unfair to other honest taxpayers. Therefore, in principle, taxpayers should disclose voluntarily according to the tax, pay the overdue tax, and pay the tax interest incurred due to the delay in tax payment. However, the initiation of some temporary voluntary tax disclosure may have special reasons such as the unfair tax system, and special legislative forms should be allowed to reduce or exempt the liability for the repayment of taxes and interest owed by relevant taxpayers. (2) Concession of administrative responsibility. According to the relevant provisions of the tax administration law, the administrative punishment law and the administrative enforcement law, the administrative responsibilities involved in tax violations include administrative execution penalties such as late fees and administrative order penalties such as fines. Since the administrative penalty has the function of supervising and urging the payment of taxes owed, it is not suitable to be reduced or exempted, but the administrative penalty can be reduced and exempted according to voluntary tax disclosure. (3) Concession of criminal responsibility. According to the requirements of the principle of legality of crime and punishment and the principle of suiting crime to responsibility, taxpayers who have committed tax crimes should be exempted from criminal liability according to the provisions on

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voluntary surrender in Article 67 of the criminal law. At the same time, according to the provisions of Article 67, Item 18, and Article 80 of the constitution, the taxpayer who participates in the voluntary disclosure of specific temporary taxes shall be granted an amnesty for criminal responsibility. [14]

In view of the construction of the tax credit system, the taxpayers who participate in the voluntary disclosure of tax should be timely restored to avoid the impact of dishonesty and integration punishment. However, the number of times that taxpayers participate in tax voluntary disclosure should be limited. For example, taxpayers applying for tax voluntary disclosure lose the qualification to participate again within the specified time limit.

5.5. Supporting System

In order to effectively encourage taxpayers to participate in voluntary tax disclosure, the tax administration law should further strengthen the acquisition, application, management and confidentiality of taxpayers' tax-related information, establish an accountability mechanism for tax authorities' disclosure of tax-related information, and provide the reasons for information disclosure and improvement measures to taxpayers whose information has been leaked. For important information that has been leaked, economic compensation should be given. [15]

Strengthening tax law enforcement is also a reverse incentive measure for voluntary tax disclosure. The increased probability of taxpayers' tax evasion and evasion being found and the increased punishment will help taxpayers to abandon the fluke mentality and enhance their incentives to participate in voluntary tax disclosure, so as to improve tax compliance.

6. Conclusions

China should learn from the advanced experience of the tax voluntary disclosure legal system in various countries, establish and improve the tax voluntary disclosure legal system in the revision of the tax administration law, improve the tax compliance of taxpayers, and promote the modernization of tax governance.

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