On Construction of the State Financial Governance and Perfection of the Fiscal and Tax Law in China

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Abstract. The modern fiscal and tax law can play a supporting participation role in the national governance, but for some unique historical and cultural reasons, the fiscal and tax law in our country doesn’t play this role very well. The Chinese government should transform its governance philosophy and ensure the realization of the function of the fiscal and tax law in supporting the national governance through protecting the taxpayer’s rights, establishing the budget public interest litigation system, improving specific fiscal and tax law systems, etc.

The Function of the Fiscal and Tax Law in Financial Management and National Governance

The fiscal and tax law is an important instrument for the state financial governance in the modern national governance system. Besides regulating the legal relations in the fiscal and tax area, as a derivative function, it also plays a supporting participation role in the national governance. The concept of the supporting participation in the national governance originated from the “political participation” theory by the U.S. scholar, Samuel Huntington. The political participation is “the activity by civilians trying to affect the decision making of the government” which is a form of the authority politics in developing countries. The political stability is dependent on the relationship between the political participation extent and the political institutionalization extent. In case of a political participation with no obvious supporting aim, the people’s support for the national governance can be guided by system design to enable such political participation to play a supporting role in the national governance. The fiscal and tax law is a significant factor of the supporting systems.

People show different passions for the political participation. Some participate in political activities voluntarily and actively which is called the Voluntary Participation Mode, while some don’t have any enthusiasm in taking part in political activities and their political participation is passive and done under others’ interference, influence or motivation which is called the Motivated Participation Mode. With the development of the social economy and the progress of the civilization, the public’s sense of right is increasing and so is their desire for political participation. It is worth noting that the public’s support for the national governance shown through political participation is different from the public’s support for government decisions. When the public oppose, even very strongly, a specific decision made by the government, it only means that the public is against such decision itself, not that they are against the whole national governance. On the contrary, it is the absence of the public support in a specific government decision that causes damage to the authority of the national governance and it is through such objection to inappropriate decisions which are destructive to the political authority that people urge the government to rebuild its authority. Therefore, in this sense, the use of veto and the issue of the administrative responsibility are both forms of political participation. The fiscal and tax law provides a platform for realizing this function.

The rule of the fiscal and tax law is indispensable to the authority of the national governance. For reasons related to the unique historical background and the revolutionary course of our country, the Chinese fiscal and tax law doesn’t function well in this respect. Unlike the revolutions in western countries which were directed toward the fiscal and tax reforms, the mission of the new China revolution was defined as the national independence as well as anti-imperialist and anti-feudal, so
the Chinese scholars have been neglecting the function of the fiscal and tax law in supporting the state financial governance.

**Functions of the Fiscal and Tax Law in the National Governance**

The fiscal and tax law enables the public to take part in the political activities by designing systems on the financial management for both the nation and the public. It plays a role in promoting the stability of the political order and maintaining the political authority, as explained below in detail.

**Expansion of political participants from the financial trust view**

The nation is the representative of the national governance and also the general representative of the civil society. Scholars have various interpretations of the origin of the nation, but regardless of how a nation derived at the very beginning, all nations in modern sense exist as a general representative of the public interest. With such common knowledge, the exercise of the political power and the political construction by the authority should be originated from and destined for the people’s interests. From the view of the financial trust, people set up a public trust institution to manage the public affairs and endow it with an authoritative status. Such trust institution is the government. All government activities should be based on the people’s interests. The people have started the political participation during the establishment of such trust institution. Since the aim of the government operation is the abstract interest of all the people as a whole, the establishment process is naturally a process of supporting participation.

Take our country as an example. As a trust institution representing the people’s interests, our government is set up by the people’s congress at each level. Although not every citizen has chance to attend the people’s congress, through such representative system, the overwhelming majority of the citizens are able to take part directly or indirectly in the establishment of the financial trust institution. Since the establishment and operation of government costs money, the citizens have to transfer part of their private property to the government. To make sure that the private property is to be transferred at the minimum ratio and returned with maximum benefits, the people must elect a government that will work for the benefits of the people. Such government is elected by people with natural political authority and such authority comes from the people’s supporting participation.

**Managing national affairs through managing the national wealth**

The modern fiscal and tax law targets to regulate the government behaviors by regulating its financial activities. The state budgeting regulates the government power by allocating the limited fiscal revenue among the potential expenditures. The citizens’ supporting participation is shown throughout the practice of the fiscal and tax law: the power to approve and adjust the budget and to supervise the implementation of the budget is vested in the people’s congress. This in itself is a kind of political participation and also an influence on the government activities. Such influence is based on the democratic decision making process and will naturally support the later decisions made by the government. The power to administrate state affairs originating from the legitimate fiscal and tax order is based on the support of the people and represents the people’s will. This forming process will strengthen the authority of the national governance activities of the government.

**Correcting the government’s irrational revenues and expenditures to enhance its authority**

The authority of a government doesn’t remain unchanged. Any abuse of the power by the government will damage the state order. The most common example of such abuse is to replace a democratic decision with a political arbitrary decision, where the authority takes advantage of its status and resorts to violent means to approve and implement some arbitrary decisions that benefit itself, fixes the order by carrying out such arbitrary decisions and then declares that such decision has legal effect that is binding on everyone. But such logic should be subject to the premise that the order is formed on the basis of the public support, otherwise the authoritative governance will lose its authority.
The authority of a government doesn’t remain unchanged. Any abuse of the public power will damage the national governance order. The maintenance of the government authority should be dependent on the construction of good systems, instead of the government leaders’ conscience or some powerful political figures’ wisdom. With proper system designs, the fiscal and tax law can correct the irrational activities of the authority by following means. First, curb the government’s irrational expenditures through disclosing all financial information. With the financial information disclosed and transparent, any expenditure hidden in the shadow will be exposed to the sunlight so as to systematically prevent corruption of the authority. Second, prevent the over taxation by the government through the rule of the fiscal and tax law. The rule of the fiscal and tax law means that the state fiscal and tax system should be built up by legislation with the supporting participation of the citizens, not by the authority government at its own will. Third, prevent the government’s inappropriate behaviors by budget supervision. The decisions made by the government should result from consultations. One of the public’s direct or indirect political participation is to ensure the compliance of the budget through the supervision of the people’s congress. To correct the government’s inappropriate behaviors is to play a supporting role in the national governance. Finally, keep the authority in control through accountability. Accountability is a system of holding responsible the authority which has conducted inappropriate behaviors. Without this system, all other fiscal and tax rules will become dead letters.

Mitigating the unbalance in order by narrowing the gap between the rich and the poor

The economic development of a country not only promotes the sense of right and the political appeals of the public, but also gives rise to new groups representing different interests and further leads to a re-allocation of the social wealth during which the gap between the rich and the poor occurs. Every authority has to face such issue as how to effectively motivate the political participation by the public to keep the gap between the rich and the poor under control. The fiscal and tax law can play a more obvious adjusting role in solving such problem. On the one hand, the fiscal and tax law directly regulate the gap between the rich and the poor by collecting the income tax at progressive rates. The legislative purpose of the income tax law is not only to increase the state’s tax revenue, but also to regulate the gap between the rich and the poor by levying different amount of the taxation on entities with different taxation abilities, which is a manifestation of the principle of taxation according to ability to pay in the fiscal and tax law. On the other hand, the fiscal and tax law regulates the regional inequality through fiscal transfers. The fiscal transfer is the re-allocation of the fiscal funds across regions and aims to mitigate and adjust the development unbalance among different regions. The fiscal transfer system itself is a key part of the fiscal and tax law system and should be established and run in compliance with the applicable laws and regulations such as the Budget Law and subject to the people’s ultimate decision making power.

The Shortcomings of the Supporting Participation Function of the Chinese Fiscal and Tax Law

Failure to consider participation in the national governance while defining the legislative purpose

The legislative philosophy for the current fiscal and tax law is obviously far behind the progress of the fiscal and tax legal theory. The legislative purpose of the current fiscal and tax law in our country is still of state-oriented and underlines the state’s intention to administrate fiscal revenues and expenditures. Logically speaking, such legislative purpose implies that the state and the government carry out activities related to the state financial governance within the framework of the national governance order. However, the national governance and the political order is a result of the political participation and system design, instead of the system re-design under assumption of the national governance. The authority in and the order of carrying out activities related to the state financial governance in our country should depend on system factors including the fiscal and tax law system, so the fiscal and tax system has to be designed to show the support for the national
governance. Some specific fiscal and tax systems display this function, but it is merely an unexpected result occurring during the fiscal funds collection process and only a minor legislative objective. Whenever there is a need to determine the priority between the major legislative purpose and the minor one, the state revenue and expenditure will always be guaranteed first of all, without regard to whether the public supporting participation is restricted as a result.

**Weak protection for the taxpayer’s rights**

Taxpayers are political participants and the protection of the taxpayer’s basic rights will definitely influence the legitimacy of the political system designs. The existing fiscal and tax law system in our country provides a very weak protection for the taxpayer’s rights, making it very difficult for the government to motivate the political participation by the public. Most individuals respond to the state’s political mobilization in a passive way and with an indifferent attitude and consequently, most political participation is blind in direction. Lacking basic rights and effective political participation channels, many taxpayers who are really enthusiastic in political participation usually express their dissatisfaction through informal channels like the internet, which may easily become an irrational political participation in the form of populism. Such political participation is unable to support the authority government, instead it will adversely affect the national governance because the participants are in pure pursuit of the results of confronting the government without rationally distinguishing right from wrong.

**Insufficient binding force of the fiscal and tax law**

The fiscal and tax law can be considered as a system designed for maintaining the political order and also as a means of the political participation by the citizens. By proper systematic designs, the fiscal and tax law restricts the recklessness of the authority and invites the public participation in the formation of the political order to make such formation more democratic and justified. To this end, the fiscal and tax law can be defined as a law restricting the rights of the authority. However, the effects of practicing the fiscal and tax law in our country show that it doesn’t have sufficient binding force as elaborated below. First, the rule of the fiscal and tax law has not been implemented thoroughly. Only 3 taxes among the current 18 taxes in our country have justified basis at law level. The root cause for such situation is that the government has been promulgating authoritative documents to substitute the law. Second, government revenues and expenditures often break the bonds of the law. According to the law, the revenue and expenditure activities of the government have to be carried out in compliance with the annual budget approved by the local people’s congress at the corresponding level, but in reality local governments often exceed the limits of the budget. To govern a nation mainly by means of policies is harmful to the governance through the rule of law. Third, the people’s congress fails to impose sufficient constraints over the government budgets. Since the essence of the budget is to regulate the government’s power by regulating its financial activities, while reviewing the government’s draft budget, the people’s congress should adopt an approval standard which focuses on the substance rather than the form, but in the current practice such reviews are reduced to mere formality. Under such system design, it is difficult for the public to support the national governance through political participation.

**Design defects in the fiscal and tax law itself**

There are many defects in the existing fiscal and tax law in our country. First, the supervision by the people’s congress over the budgeting is weak. For one thing, during the review and approval phase, the people’s congress can only choose to veto or approve the government budget and has no right to modify it. As a result, the people’s congress has to approve those draft budgets that contain some flaws to avoid the great institutional costs that may arise from disapproving such budgets in full. For another, the people’s congress doesn’t have sufficient manpower or professionals to conduct such supervision as strong enough to meet the requirements of the political participation. Second, the budget law is not actionable and doesn’t provide a channel for the public to bring public interest litigation against the authority’s violations of the law. Political participation is the right of every citizen, but not every citizen has chance to be a representative of the people’s congress, so it
is extremely important to ensure that the common people have access to political participation in
terms of the fiscal and tax law. One of the effective ways is to make the budget law actionable and
thus allow the common people to bring public interest litigation against the authority’s violations of
the budget law. Third, the unfairness subsisting in some specific tax laws and regulations is
detrimental to the function of the fiscal and tax law in adjusting the income gap. From the view of
the legislative techniques, the tax legislation in our country is relatively rough and many specific
taxation systems failed to meet the original legislation purpose. Those defects weaken the function
of the fiscal and tax system in adjusting the gap between the rich and the poor.

Suggestions on How to Improve the Function of the Fiscal and Tax Law in the National
Governance

Introduction of the political participation that can promote the national governance into the
system design

The design and implementation of the fiscal and tax system should be based on the authority,
democracy and stability of the whole social and political order, coordinate the relations among
various classes, and motivate the public enthusiasm for political participation in order that the
system design, the formation of the political order and the maintenance of the political authority are
all legitimate because of the wide supporting political participation. Logically speaking, the public’s
supporting participation is a means to uphold the political authority and both the starting point and
the destination of the national governance are to better serve the people, so the public’s supporting
participation and the national governance are mutually reinforcing. However in terms of the
legislation wording, although the law is part of the political superstructure, the language used in
legislation should be as neutral as possible and avoid sounding political. Therefore, the fiscal and
tax law should be designed for the purpose of promoting the political participation in the national
governance, but such purpose is only generally applied to guide the system design and is not
necessary to be expressed in legal provisions.

To strengthen the protection of the taxpayer’s rights

Most supporting political participants are taxpayers as defined in the fiscal and tax law relations,
so to promote the supporting function in the national governance, the rights of political participants
have to be protected, that is to protect the taxpayer’s legal rights. Considering that the common
political participants are in a disadvantageous place in front of the authority and taxation agencies,
their rights should be given more protection than normal, which is also a manifestation of the
people-orientated conception in the fiscal and tax law.

China doesn’t have a separate Taxpayer’s Rights Law for now. The taxpayer’s few rights are
scattered in various laws and regulations which set forth those rights by simple enumeration. This
means that those rights not enumerated are excluded and cannot be enjoyed by taxpayers and
actually draws up a substantial boundary on the taxpayer’s rights. The current amendment draft to
the Tax Levy and Administration Law introduced a few more taxpayer’s rights, but some rights
advocated by scholars are still missing, such as taxpayer’s privacy right, presumption of honesty
right. China should further expand the scope of the taxpayer’s rights and enhance taxpayers’
initiation and consciousness in political participation.

Exploration of the possibility of budget public interest litigation

Any law must be actionable. For taxpayers, the disputes in the tax area may be solved through tax
administrative litigation, so the focus of the actionability of the fiscal and tax law referred to in this
article is the actionability of the budget law. Although the government budget has to be subject to
the approval and supervision by the people’s congress, as explained in the previous part of this
article, not every citizen has chance to do political participation as a representative of the congress
on the one hand, and the current budget law does not stipulate how the common people can conduct
political participation in case the government violates the budget law and the people’s congress is
sluggish in performing its supervision duty on the other hand. Consequently, the political participation in the fiscal and tax area has been reduced to activities of a small number of representatives and fails to involve the vast majority of the public. To solve this problem, a budget litigation system has to be built up which allow taxpayers to bring public interest litigation to correct the government behaviors. Such system has three benefits. First, taxpayers are the biggest source of the budget revenue of the government, so it is natural to allow them to correct the government’s abuse of the budget fund. Second, enabling taxpayers to bring public interest litigation will make the common people more eager for political participation and keep the creditability of the government. Third, the amount recovered from the public interest litigation will be returned to the state treasury instead of the plaintiff, so no individual can gain private profits from the budget public interest litigation and the misused budget fund will be designated to its intended use after returning to the state treasury.

To establish the modern fiscal and tax system

With the economic and social development in China, the fiscal and tax system is being improved gradually, but still far from perfection. A deficient fiscal and tax system not only harms the state’s competence in the state financial governance, but also has adverse effect on the public’s political participation. Therefore, it is necessary to establish a modern fiscal and tax system that meets the requirements of the state governance order. Specifically, the fiscal and tax system in our country should be further improved in the following ways. First, implement the principle of statutory taxes and to ensure the public’s participat

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