Legal Commentary

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Inheritance Tax Forecast

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The main functions of inheritance tax are to regulate the social discrepancies between the rich and poor, as well as to encourage the younger generation to rely on their own abilities rather than on the wealth of their ancestors. However, the inheritance tax has also been highly criticized since it is an after-tax tax, meaning that the people must pay a tax on their wealth which has already been taxed.

As early as July 1, 1940, China officially levied an inheritance tax. After the founding of the People's Republic of China, the *National Tax Implementation* was passed in 1950, with inheritance tax being one of these taxes, but due to the conditions was not collected at that time. The new tax system, as reformed in 1994, made it possible for the state to begin imposing an inheritance tax. In 1996, the National People's Congress authorized the *9th Five-Year Plan for National Economic and Social Development* and the *2010 Vision Outline*, which was an outline on "how to gradually impose an inheritance and gift tax."On February 5, 2013, the Central People's Government and State Council agreed to implement the *Several Opinions Concerning the Deepening the Reform of the Income Redistribution System*, of which the fourth part of the fifteenth provision expressly concerns "the issue of researching the appropriate time to begin levying inheritance tax." Based on this recent legislation, it can be assumed that inheritance taxes will start to be levied in the not so distant future. Therefore, it is necessary to have a basic understanding of this tax in order to properly conduct medium and long-term asset planning.

Basic Details of Inheritance Tax

The most important details of basic inheritance tax are as follows:

a) Taxpayer. The payer of inheritance tax is typically a successor (including the legatee), and other benefactors of the inheritance.

b) Tax threshold. The threshold for inheritance taxpayers is relatively high, because the theory for levying the tax is based on regulating the wealth imbalance between the wealthy class and the poor class, so the tax targets the inheritance of a certain class of wealthy people.

c) Tax-rate adjustment. According to state practice, the inheritance tax rate is one that is the most adjustable. There are two reasons for this:

   i. The tax has nothing to do with economic circulation, so adjusting the rate would have a very small impact on economic life.

   ii. Whenever the fiscal deficits decrease, the inheritance tax rate lowers

d) Differentiating the tax rate. The tax rate varies according to the successor'sdegree of kinship with the decedent, which determines the applicable tax rate.

e) Tax Exemption (Type 1). Each country has some sort of inheritance tax exemption. Estate property exemption represents the first type of tax exemption. An example of this would be Hong Kong's exemption on property outside of Hong Kong. Italy and France exempt property in the form of equity from inheritance tax. France also exempts woodlands and agricultural lands from inheritance tax.

f) Tax Exemption (Type2). In addition to the exemption of property, some countries also have a "special consideration" portion of taxpayers. For example, in many countries, a person with a derivative acquisition is exempt from paying an inheritance tax on their first set of housing.

It is worth mentioning that inheritance tax and gift tax are imposed at the same time, so as to cover both the legacy and cause of death given with the inheritance,so that the property transfer mode has the same legal consequences.

Inheritance Tax (Tax Saving) Planning

Compared to planning for other types of taxes, inheritance tax planning has very different characteristics: firstly, due to the unpredictability of death, you must plan ahead, and secondly, inheritance tax typically involves a combination of the management of family wealth and intergenerational inheritance.

Although every country's (or region's) rules on tax exemption are different, the focus of inheritance tax planning is not to prepare for inheritance tax exemption, but to prepare for overall family estate planning. Therefore, there are some universally adopted methods for inheritance planning in every country.

First, setting up the children or other beneficiaries with a beneficiary trust is a common method to evade paying inheritance taxes. By setting up the trust, the ownership of the property is

divested, and through the beneficial rights of the trust the wealth is passed intact to the next generation. Before the inheritance tax was abolished in Hong Kong, many people chose to set up a trust fund for one or more of their family members in their estate. In such an arrangement, the ownership of the property is entrusted to the trustee, who has the responsibility to preserve and manage the trust, as well as to withdraw the property and income according to certain arrangements after the death of the principal, as agreed upon by the beneficiary. Such arrangements are carried out because, according to the relevant Hong Kong laws and regulations, a gift from a trust made more than three years after the death shall be exempt from taxation.

Second, the misinterpretation of the function of life insurance. Many lifelong life-insurance products contain a death benefit function; that is, once the insured person dies, the insurance benefit is directly attributable to the beneficiary, and thus is not part of the object levied by the estate tax. Thus, in theory, life insurance is a way to avoid inheritance tax, butit is rarely used in practice, as the use of a high number of life insurance policies introduces a high factor of instability into the family's assets. It also introduces another element of instability into the life of the insured person: situations where the beneficiaries of the insurance policykill the insurant to take advantage of the insurance benefit have previously occurred.

Finally, in planning for the will for an estate, family wealth and the generation transition are planned together. If the inheritance operates by law without a will, there is the possibility of missing out on certain tax benefits. By using the inter-generational inheritance of family wealth, the family will be able to move the property between the generations of the family step-by-step and thus scatter or defer the tax burden, instead of losing much of the money through inheritance.

Important Announcement

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