

## 摘要

### 壹、研究動機：

所得稅，是國家最主要的稅收，但台灣現行所得稅制，存在效率及公平的問題——稅基侵蝕日益嚴重，稅制的漏洞讓富人得「合法」避稅，例如，兆豐洗錢案；永豐金弊案；王雪紅「假公益、真避稅」，而且 2012 年兩稅合一稅改，導致假外資橫行，因此，貧富差距日益嚴重、稅負重擔落在中產與受薪階級頭上。綜上所述，稅制改革成為社會關切的議題！

### 貳、研究目的：

盼藉由本論文的討論，能夠提供政府所得稅制改革的參考，有助於建置更公平正義、財政平衡與均富生活的租稅環境，兼顧財政永續及國家長遠發展。

### 參、研究方法：

彙整國內外相關的議題、期刊、研討會內容；並且，參酌教科書、註釋資料及財政部、司法院網站資訊。以「文獻分析法、案例分析法、比較分析法、歸納法」，探討國內判決：「所得稅法中租稅規避」爭議；同時，提出國內學者建議及國外作法，使抽象法律得以具體化。

### 肆、實質課稅原則：

#### 一、實質課稅原則的涵義：

指稅法的適用，形式與實質不同時，應探究實質經濟意義：廣義的實質課稅原則，包括脫法避稅行為，依量能課稅原則調整。實質課稅原則與納稅人權利保護相輔相成，而且與稅務人員權利保護息息相關；畢竟實質課稅原則追求的是稅法的公平正義、經濟實質與保護納稅人權益。稽徵機關運用實質課稅原則查核且負舉證責任，稅務人員不因保護納稅人權利而招致圖利他人之懷疑，或因執法過當而招來圖利國庫的非議，權利可獲合法保障，達到徵納和諧目的！

#### 二、建立更周延的反避稅機制：

2016 年三讀通過受控外國公司 (CFC)、實際管理處所 (PEM) 制度，與 2004 年訂定的「移轉訂價查核準則」、2011 年增訂的「反資本弱化原則」，構成我國四大反避稅機制。而且為防堵跨國性逃漏稅，2017 年財政部發布「金融機構執行共同申報及盡職審查作業辦法」，預計 2019 年實施共同申報準則 (CRS)，2020 年進行各國金融資訊交換，建立透明金流軌跡，加強我國金融活動信譽評。法案正式實施後，企業成立受控外國公司 (CFC) 或實際管理處所 (PEM) 在台灣，視為境內公司來課稅。同時，2017 年三讀通過「所得基本稅額條例」修正案 (建立個人 CFC 制度)，避免營利事業 CFC 制度實施後，衍生以個人名義設立 CFC 方式規避適用。另外，為加強查緝逃漏稅，2016 年修正所得稅法第 66 條之 9；訂定「維護租稅公平重點工作計畫」

#### 伍、結論與建議：

司法院研議制定適用於刑事、民事、行政訴訟的證據法專法；仿效日本、德國和美國成立專業稅務法庭；法官可借重具財經背景的司法事務官，對課稅事實進行認定，直接對課稅事實做出判決；稅制採總額主義(相牽連的稅案一起解決爭訟)；建立裁判憲法審查(訴願)制度；並恢復儲蓄投資特別扣除額、擴大稅基、培養稅源，以創造整個社會的財富。

#### 關鍵字：

營利事業所得稅、實質課稅原則、租稅規避、過少資本稅制、隱藏性盈餘分配

## **Abstract**

**Income tax is the primary source of tax revenues in Taiwan. However, both efficiency and fairness are the major issues in nation's income tax system which resulting in the increasing deterioration of tax base erosion. The rich "legally" use the loopholes of tax rules for tax avoidance planning. For example, the cases of Mega Bank's money laundering, SinoPac Financial Holdings Company scandals, and Cher Wang using charity to make tax avoidance. The Integrated Income Tax System has resulted in the fake foreign capital all over the market since 2012. Consequently, wealth gap is increasingly serious, and the source of tax revenue for central government most comes from the middle class and wage earner. Therefore, the reformation of the income tax system has been deeply concerned by the society nowadays. The above-mentioned considerations create the motivation of this thesis.**

**The purpose of this study is to provide some suggestions about the reformation of the income tax system for government. It also hopes to build the taxing environment, which has fairness and justice, financial balance and equal distribution of wealth, and fiscal sustainability.**

**The study compiles the issues about income tax investigated in Taiwan and other countries, and refers to textbooks and the data in the websites of Ministry of Finance and Judicial Yuan. On the basis of the comparative and inductive approaches, the investigation of pros and cons of the domestic judgments, which relating to the controversy of the tax avoidance in income tax system, has been conducted. Furthermore, the suggestions of domestic scholars and the measures applied to other counties were presented to concretize the abstract laws.**

**The Principle of Substantive Taxation should investigate the substantive economic significance when the substance and form in tax laws are different. Generally speaking, it including the actions of tax evasion and tax avoidance has to be adjusted according to the ability-to-pay principle. The principle of substantive taxation and the taxpayer rights protection complement each other, and also are related to the taxation personnel protection very closely. After all, it pursues the aim of the fairness and justice in tax, economic substance, and taxpayer rights protection. The tax authorities apply it in tax audit and bear the burden of proof. The taxation personnel can not incur the doubt about the**

intention of profiting others because of protecting the rights of taxpayers, or cannot have the dispute over profiting national treasury due to law enforcement. Both rights of the taxpayer and the taxation personnel will be protected and the aim of tax levy and payment will be achieved.

There are four anti-tax avoidance mechanisms in Taiwan: 1 and 2. The anti-tax avoidance rules were amended in July 2016 for controlled foreign company (CFC) and place of effective management (PEM). 3. The principle of anti-thin-capitalization was revised in 2011. 4. The law of “Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing” was drawn up in 2004.

In order to prevent cross-border tax avoidance and evasion, the Ministry of Finance announced the “Regulations Governing the Implementation of the Common Standard on Reporting and Due Diligence for Financial Institutions” on November 16, 2017. The “Common Reporting Standard” (CRS) will be conducted in 2019. Furthermore, the financial information exchange and transparency of financial flows will be built, and the credit rating of national financial activities will be enhanced in 2020. After these laws take effect, the CFCs and PEMs in Taiwan will be regarded as companies within country for taxation. The Income Basic Tax Act was revised in 2017 to prevent the way of instituting the CFC in the name of an individual, which will avoids the application to the Income Tax Act for CFC. The Ministry of Finance also announced the key work plan of maintaining the fair of tax in 2016 and revised Article 66-9 of the Income Tax Act in 2017 for enhancing the audit of tax evasion.

The suggestions that the study makes are as follows: Judicial Yuan should formulate the specific evidence law applied to criminal, civil and administrative litigation, and establish a dedicated tax court, which emulates the ways coming from Japan, Germany and USA. The judge has the authority to ascertain the taxpayers’ obligation and directly gives the sentence with the help of the judicial associate officer with financial background. The summation theory should be adopted and the constitutional review (complaint) system should be instituted. The restoration of special deduction for savings and investment, tax base broadening and development of revenue source will be made to create wealth for society.

**Keyword : Profit-seeking Enterprise Income Tax 、 The Principle of Substantive Taxation 、 Tax Avoidance 、 Hidden Profit Distribution 、 Thin Capitalization Rules**