

Research on the Tax-related Issues of Enterprise Bankruptcy Liquidation

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Abstract

In the process of bankruptcy and liquidation of Chinese enterprises, taxation issues have always been one of the main reasons hindering the process of bankruptcy and liquidation. At this stage, the Chinese tax law focuses on normal business enterprises, and insufficient attention is paid to bankrupt companies. In addition, the tax collection management and bankruptcy trial in the bankruptcy procedure belong to different departmental laws, so it often appears in the actual corporate bankruptcy liquidation process. Courts, tax authorities, and tax authorities have different opinions. This article analyzes the common tax-related issues in the process of corporate bankruptcy and liquidation and gives suggestions in order to lay a tax foundation for the smooth advancement of corporate bankruptcy and liquidation procedures.

Keywords

Liquidation, Tax law, Tax claims, Bankruptcy property.

1. INTRODUCTION

As China's economic growth slows and enters a new normal, some companies that are insolvent due to improper operation and management continue to appear. These companies need to implement liquidation or reorganization procedures in accordance with the relevant provisions of the Corporate Bankruptcy Law, and corporate bankruptcy. The smooth advancement of liquidation procedures can enable enterprises to withdraw from the market as soon as possible, and on the other hand, the allocation of social resources can also be optimized. However, taxation issues in the process of bankruptcy liquidation have become an important obstacle to the smooth development of bankruptcy liquidation. There are not many laws and regulations related to taxation in the case of corporate bankruptcy in the Tax Administration Law, and China's current taxation administrative law and civil and commercial law and the Supreme Court's judicial interpretation on corporate bankruptcy are not smoothly connected. The regulations on taxation issues have many different regulations, which brings great difficulty to the tax authorities in the process of corporate bankruptcy. Based on this, this article explores several difficult issues in the process of corporate bankruptcy and liquidation.

2. ISSUES RELATED TO THE EXERCISE OF TAX AUTHORITY RIGHTS

Taxation is a way for the state to redistribute social wealth by compulsory means. Generally speaking, in taxation legal relations, the state acts as a creditor. However, the state is an abstract form of existence and needs to be exercised by real forms of departments or agencies. Therefore, in the bankruptcy proceedings, the State Taxation Bureau, the local taxation bureau and the customs jointly represent the country to participate in tax claims (hereinafter collectively referred to as the tax authority). In the actual process of handling tax issues related to corporate bankruptcy, there are disputes over issues related to the exercise of rights by tax authorities.

2.1. Whether the Tax Authority Can Apply for Bankruptcy of the Debtor

Article 7 of the Chinese Bankruptcy Law stipulates that if an enterprise cannot pay off its due debts as listed in Article 2, it can autonomously file an application for reorganization, reconciliation or bankruptcy liquidation to the people's court, and creditors can also apply to the debtor who has paid off the debt shall file an application for reorganization or bankruptcy liquidation to the people's court Article 7 of the "Enterprise Bankruptcy Law" states: "The debtor may file an application for reorganization, reconciliation, or bankruptcy liquidation with the people's court under the circumstances specified in Article 2 of this law. The debtor cannot pay off the due debt, the creditor may The People's Court filed an application for reorganization or bankruptcy liquidation of the debtor." However, it did not give a clear explanation as to the specific creditors who filed the above application, let alone whether the tax authority, a special creditor subject, has rights. Proactively apply for the debtor's bankruptcy to give a detailed explanation. For example, in 2018, Zhejiang Wenzhou State Taxation Bureau and Taizhou Local Taxation Bureau first submitted bankruptcy liquidation materials of related companies to the local people's court as creditors. The local court filed the bankruptcy case for handling, which also caused a nationwide cause. It has been discussed extensively, but the social response to this case is that the tax authorities have actively opposed the debtor's bankruptcy application.

The dissenting opinion is that on the one hand, there is no clear legal requirement that the tax authority can make such an application. Therefore, based on the principle of "no legal authorization or prohibition", the tax authority's approach is improper. On the other hand, tax claims Compared with other ordinary creditor's rights, it has priority. However, the tax authority claiming creditor's rights has not assumed the same obligations as other creditors in the process of enterprise bankruptcy and liquidation. Therefore, it is unfair to ordinary creditors.

This article agrees with the tax authorities' application for debtor's bankruptcy. The main reason is that this practice is not only conducive to tax authorities to ensure timely collection of tax debts, but also conducive to the preservation of the legitimate rights and interests of other creditors, which is beneficial to these companies with no development potential. Prompt removal can transfer local superior resources and production capacity to other potential companies as soon as possible. At the same time, relevant national laws have clearly stated that tax authorities have the qualifications to participate in the creditor's rights and debts in civil and commercial legal relations. In response to the problem that the opponents mentioned that there is no clear legal provision that the behavior is allowed, this article believes that the legislation should be improved as soon as possible, and the general creditors and their rights should be clearly defined, and secondly, they should be provided through standardized procedures. As a guarantee, the tax authorities' application for bankruptcy of enterprises is a new attempt in innovative supervision.

2.2. Issues Concerning the Declaration of Tax Creditor's Rights by Taxation Subjects in Bankruptcy

The Chinese Bankruptcy Law stipulates that civil claims should be declared to the managers of the bankrupt enterprise. (Article 57 of the Chinese Enterprise Bankruptcy Law stipulates: "After the administrator receives the claims declaration materials, it shall register and create a register, review the declared claims, and compile the claims list. The claims list and the claims declaration materials shall be kept by the administrator for the interests People check it out.") However, whether tax claims need to be declared and the path is not clear. Although in practice, Chinese tax authorities generally declare tax claims in the same way as creditors of civil claims. However, the necessity of tax creditor's rights as a kind of creditor's rights based on national law to treat them as civil creditor's rights and declare them at the same time is questionable. Tax creditor's rights are statutory debts, which were originally formed based on relevant legal

norms. Compared with the civil creditor's rights of the intended debt nature, it has the characteristics of public welfare. If the tax creditor's rights and civil creditor's rights are required to be declared together in order to participate in the bankruptcy proceedings of the enterprise, then tax creditor's rights The coercive force and public welfare of the government cannot be reflected, because tax claims arising from statutory matters can only be wiped out due to statutory matters and should not be wiped out because of not participating in the declaration. At the same time, the Supreme People's Court also pointed out in the relevant response documents for tax bankruptcy claims that tax claims do not need to be subject to the requirements for declaration of claims listed in the Bankruptcy Law. Therefore, tax authorities do not need to declare tax claims and should obtain the same. The right to participate in bankruptcy proceedings. However, although there is no mandatory requirement in law, as far as the current tax environment in China is concerned, the company's active taxation awareness needs to be improved. The tax authority actively declares claims together with other civil creditors to protect tax claims. From the perspective of social benefits, tax authorities still need to actively declare the types and amounts of tax claims to the managers of bankrupt companies.

3. ISSUES RELATED TO THE PRIORITY OF TAX CLAIMS

3.1. Priority of Tax Arrears to Secured Claims

The Tax Collection and Administration Law of China stipulates in Article 45 the order of debt settlement of enterprises, and tax claims shall be repaid in priority over unsecured claims, unless otherwise provided by law Article 45 of the Tax Collection and Administration Law provides: "Tax authorities levy taxes, and taxation takes precedence over unsecured claims, unless otherwise provided by law; the tax owed by the taxpayer occurs before the taxpayer sets a mortgage or pledge with his property or the taxpayer's property is lien, Taxation should be implemented before mortgage, pledge and lien." (Article 45 of the Tax Collection and Administration Law of China stipulates: "Tax authorities collect taxes, and the taxation shall take precedence over unsecured claims, unless otherwise provided by law; the tax owed by the taxpayer occurs when the taxpayer sets a mortgage, pledge or pledge with his property Before the taxpayer's property is lien, the tax shall be executed before the mortgage, pledge, and lien.") However, with regard to the priority relationship between secured claims and tax claims, the law states that as long as the tax claims occur before the secured bonds, the tax claims have priority to be repaid. However, the "Bankruptcy Law" stipulates that, regardless of the time of occurrence, the secured creditor's right should be repaid first. Article 109 of the Corporate Bankruptcy Law provides: The owner of the property with a security right has the priority right to compensation for that particular property." (Article 109 of the Chinese Enterprise Bankruptcy Law stipulates: "The holder of a security right in the bankrupt's specific property shall have the priority to receive compensation for that specific property.") This has led to a dilemma for managers in handling tax claims due to different legal regulations in actual corporate bankruptcy procedures.

Under normal operating conditions, the order of repayment of tax claims and secured claims should be judged in accordance with the relevant provisions of the Tax Administration Law. When mismanagement of an enterprise leads to bankruptcy, this article believes that the secured creditor's rights should be repaid with priority in accordance with the provisions of the Enterprise Bankruptcy Law. The main reasons are as follows: First, the two laws are formulated by the Standing Committee of the National People's Congress, so they come from the legal hierarchy. In other words, the status of the two is equal. However, the "Tax Administration Law" is a general law, and its article 2 points out that the scope of application of the law is that all taxes collected by the tax authorities are applicable to the law "Tax Administration Law" Article

2 Provisions: "The collection and management of various taxes levied by tax authorities in accordance with the law shall be governed by the Tax Collection and Management Law and these rules; where there is no provision in the Tax Collection and Management Law and these rules, it shall be implemented in accordance with other relevant tax laws and administrative regulations." The "Bankruptcy Law" is a special law, which is suitable for enterprises in bankruptcy proceedings. According to the provisions of the Legislative Law, when there are conflicts between laws and regulations formulated by the same agency, the provisions in the special law shall take precedence over ordinary laws and regulations. Article 83 of the Legislative Law states: "The same agency Where the laws, administrative regulations, local regulations, autonomous regulations, separate regulations, and rules made are inconsistent with the general regulations, special regulations shall apply; if the new regulations are inconsistent with the old regulations, the new regulations shall apply." Article 85 also stipulates: "When the new general regulations on the same matter between laws are inconsistent with the old special regulations, and it is uncertain how to apply, the Standing Committee of the National People's Congress shall make a ruling." (Article 83 of the Legislative Law stipulates: "If the laws, administrative regulations, local regulations, autonomous regulations, separate regulations, and rules formulated by the same agency, special regulations are inconsistent with general regulations, special regulations shall apply; new regulations and old regulations In case of inconsistency, the new regulations shall apply." Article 85 of the law also states: "When the new general regulations on the same matter between laws are inconsistent with the old special regulations, and it is uncertain how to apply, the Standing Committee of the National People's Congress shall make a ruling.") Therefore, it should be from this perspective In accordance with the provisions of the Bankruptcy Law. In addition, when the property is pledged or lien, according to Article 37 of the Bankruptcy Law, the administrator of the bankrupt enterprise is allowed to repay the debt or provide guarantee for the creditor after the court accepts the bankruptcy application, then the pledge can be made Or take it back. Then, according to this regulation, the tax authority can become passive, because as long as the manager aims to retrieve the pledge and lien, the secured bond can be repaid first, and the tax authority cannot prevent this behavior from happening. Therefore, the provisions on tax claims and secured claims in the Tax Administration Law are equivalent to being "overheaded."

3.2. Priority of Late Payment Fees

Companies that are in arrears with taxes need to pay late fees, and the corporate tax claims for bankruptcy liquidation have priority, so do the late fees of bankrupt companies have the same priority? This problem has always been a topic of debate in the theoretical circle because of the lack of clear provisions in the Tax Administration Law and the Bankruptcy Law, and it has also caused certain difficulties in practice.

The argument in favor of the priority of late payment fees is that tax late fees are caused by companies in arrears with taxes, so they should be regarded as the fruits of tax arrears. At the same time, the difference between tax late fees and other penalties is that It represents the protection of the country's credibility, so it should have priority along with the tax owed. On the other hand, the party with the opposite view believes that the priority in the bankruptcy law is the tax in arrears itself, and it does not point out that late fees or fines due to tax arrears also have priority, and late fees are treated as arrears. The true nature of the fruits of taxes should be treated as interest on debts, and should not be treated the same as tax arrears themselves, and therefore should not be repaid with priority.

The relevant documents issued by the tax authorities all treat tax and late fees on the same status. For example, in the IRS's reply to tax priority including late fees, it is pointed out that tax late fees are treated as taxes when they are collected. Management, however, the context of the provisions of these clauses is in the case of normal operation of the enterprise, and does not

indicate whether the bankrupt enterprise is adaptable or not. The Supreme People's Court did not support this determination by the tax authority in the specific operation process. Instead, it recognized the late payment fee of the enterprise before the bankruptcy case as an ordinary bankruptcy claim, and the late payment fee after the bankruptcy case was no longer recognized as bankrupt. Creditor's rights, therefore, do not agree that late fees enjoy priority. If in the course of normal business operations, the tax creditor's rights and late fees are treated equally and levied in accordance with the tax authority's point of view, it can supervise and urge enterprises in arrears and facilitate the timely recovery of national taxes. However, for bankruptcy liquidation companies, this article believes that if tax late fees are still listed as priority for payment, then in fact this is to transfer the state's penalties for the debtor's tax arrears to ordinary creditors, which will be detrimental to other creditors. It is unfair to say, and the order of late payment fees is placed after ordinary claims, and the protection of civil claims reflects the fairness of the law.

3.3. The Issue of the Order of Settlement Among Various Taxes

The taxes that companies need to repay in bankruptcy procedures usually involve multiple taxes, such as taxes that need to be paid to the central government and local taxes, or different taxes of the same tax subject. If the bankrupt company cannot fully pay off all the taxes owed What kind of tax should be repaid first? This problem is indeed a difficult problem in taxation practice. China's relevant laws and regulations have not given relevant explanations so far. However, if the tax payment has to be sorted, this article believes that it should not be the same as the current situation. Nowadays, most people acquiesce that the repayment of national tax claims should take precedence over the repayment of land tax claims, because there is no essential difference between the two except in the tax authorities. A feasible order of repayment is recommended to be determined in accordance with the order of actions taken by the tax authorities, because the bankruptcy of a company is not an instant event, and the bankruptcy of the company must have shown signs of insolvency, and due to tax arrears Relevant tax enforcement agencies will take administrative enforcement measures to supervise and urge enterprises to pay taxes in arrears. For example, they have previously issued a notice to order payment within a time limit, or they have taken other compulsory tax measures against enterprises, and these actions show taxation. The agency's enthusiasm, therefore, when different tax categories face the issue of the order of repayment in the corporate bankruptcy process, the tax authorities' previous measures based on the tax category's previous measures to pay off is a plan that can simultaneously serve to strengthen the performance of tax authorities.

4. TAXATION OF BANKRUPTCY PROPERTY

4.1. Invoicing Issues in Bankruptcy Proceedings

Difficulty in issuing invoices has always been one of the obstacles to the normal progress of corporate bankruptcy procedures. In the corporate bankruptcy process, the corporate asset manager needs to recover the company's external claims in a timely manner. At this time, the debtor will ask for an invoice for entry processing. When the manager handles the auction of the property of the enterprise, the purchaser of the property will also ask for an invoice for the normal transfer of ownership. However, because the enterprise has entered the bankruptcy process, its authority to issue invoices will be blocked by the tax authority, making it impossible to issue invoices normally. In addition, the tax authority usually requires the bankrupt enterprise to first pay off the tax debts, late fees and fines before issuing invoices. , Bankrupt companies that are already insolvent cannot obtain funds through the sale of assets, so there is no conversion income to pay off the arrears of taxes and late fees. Therefore, the bankruptcy process cannot continue.

The tax authority's restrictions on invoicing for bankrupt companies are in fact unreasonable. The bankruptcy law's tax payment order is ranked second, and first employee remuneration is the first. If the variable income of all the assets of the enterprise cannot even be compensated. The amount of employee compensation, then the second-ranked tax does not need to be paid off. In addition, in the normal process of disposing of property, invoices should be issued before the converted income can be used for the settlement of various claims. Tax authorities should not and cannot regard whether the tax has been paid off as whether to allow enterprises to issue invoices conditions of. Therefore, in the process of issuing invoices such as the auction of corporate property, the tax authority should take the initiative to provide convenience for them. While promoting the smooth progress of the corporate bankruptcy process, it will also help ensure the recovery of tax debts.

4.2. Taxes on the Conversion of Bankruptcy Assets

Different tax payments will be involved in the auction process. For example, the sale of land requires payment of land value-added tax and additional education fees, and the sale of houses requires payment of water charges such as value-added tax and consumption tax. However, in the actual corporate bankruptcy law, there is no specific provision on whether taxes need to be paid during the property auction process. The proceeds from the auction of bankruptcy assets by enterprises are used to compensate the creditors' related claims. If the auction price of the bankrupt assets needs to be taxed during the auction process, the subsequent enterprises can only use the auction price after deducting the auction tax and the remaining price. Compensation for the creditor's claims will inevitably affect the creditors' normal claims. In the course of normal business operations, if the property is sold or auctioned, it is understandable to charge the auction price. However, the auction of bankruptcy assets in the corporate bankruptcy procedure is a special case. It is not for the purpose of making profits, but for the purpose of making up for the creditors' rights and interests through the conversion of income. If taxes and fees are levied in the link of price change, it will be an infringement of the creditor's right to obtain creditor compensation. Furthermore, this kind of tax collected in the link of price change is a super priority right for secured claims, because for an enterprise that has entered bankruptcy proceedings, in fact, the enterprise is already dead, so the tax authority will not. The tax should be collected in accordance with the method of corporate taxation under normal circumstances. Therefore, this article believes that taxes should not be levied during the auction of the bankrupt property and the auction at variable prices. In response to this problem, tax authorities in many places in China have also taken measures to avoid the deprivation of creditors' tax rights during the price change process. For example, many cities in Shandong and Qinghai provinces exempt bankrupt companies from selling land use rights. Value-added tax, this shows that the laws, regulations and systems related to bankruptcy in China are becoming more and more perfect.

5. CONCLUSION

The process of bankruptcy and liquidation of an enterprise is far more complicated than setting up a new enterprise, and the tax-related issues in the process are one of the main difficulties. This article discusses and analyzes the disputes in the corporate bankruptcy proceedings from three aspects: the exercise of management rights by the tax authority, the priority of tax claims, and the tax issues arising from the processing of bankruptcy assets, and provides relevant opinions and suggestions. All in all, China must further improve the tax laws and regulations involved in corporate bankruptcy liquidation at the legal level, provide a clear standard basis for the actual operation process, and promote the sustainable development of China's taxation field.

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