Research on Tax Law of Private Equity Fund

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Abstract: In the development of private equity funds, the tax legal system, especially the income tax law system, plays an important role. At present, China's tax system involving private equity funds urgently needs further reform and improvement in order to stimulate the positive role of private equity funds in the healthy and healthy development of China's economy.


1 Introduction

To divide the structure of private equity investment fund structure is the more commonly used classification method. This classification has the appearance of a clear and easy to change, the legal provisions of a clear, the internal structure of the legal system more complete and so on. As China's tax law is based on the organizational structure as the main tax revenue body based on the classification method, so the classification of the organizational structure as a standard classification method can better deal with private equity funds and tax law-related issues in this paper is Based on this division method. According to China's tax law, there are different laws governing enterprises with legal personality and partnerships not qualified as legal persons, as well as the organizational forms established under the trust relationship. From the current development of private equity funds, corporate type and limited partnership type is the protagonist, trust-type private equity fund has been developed because of its avoidance of double taxation. However, after the new Partnership Enterprise Law recognizes the limited partnership, the trust-type private equity funds have exposed the problems of high management fees and cumbersome procedures and are in urgent need of reform. This article mainly analyzes the corporate type and limited partnership type private equity funds.

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2 Tax Law Should Have Attitude to Private Equity Funds

Private equity funds to improve our capital market, building a good corporate governance structure, providing investors with a good investment object is of great significance.

The reason why private equity funds have such value is inseparable from their own characteristics. Private equity funds have the following characteristics:

(A) The private equity fund investment object is the non-listed companies’ equity investment, but mainly in industrial investment. In particular, high-tech enterprises and efficient basic industries such as toll road and bridge construction, power construction and urban public infrastructure construction will promote industrial upgrading and structural upgrading in order to achieve high-risk and high-yield.

(B) The investment period is longer. Private equity funds generally invest in the enterprise growth period, to exit the investment after the relative maturity of the enterprise, the investment period is longer, usually 3-7 years.

(C) the implementation of "capital + service" mode of operation, that is, private equity funds and then provide financial support to enterprises, but also actively participate in the operation and management of the invested enterprises to provide specialized capital management, value-added management services, An expert-managed capital investment, different from a simple investment behavior.

(D) The motivation of investment is to promote the development of enterprises through investment based on the potential value of the enterprise, and sell the shares through listing, mergers and acquisitions or management buy-out at the appropriate time to realize the capital appreciation gains.

Tax incentives are the tax incentives and take measures adopted by the state in accordance with the tax laws to target certain taxpayers or taxpayers or regions. Its essence is the economic subsidies given by a country to a particular subject, which are the renunciation and concession of the tax revenue of the state. Tax incentives are an integral part of the tax law and belong to the category of law. The realization of the goal of the state's macroeconomic policy must comprehensively use various means of economy, administration and law. In these measures, the characteristics of law's normativity, stability and compulsion determine that it has the following advantages in the macro-economic control: Other means cannot match the effect.

3 Research on the Tax Law of Limited Partnership Private Equity Fund

Limited partnership private equity fund is a popular international private equity fund. It is characterized by the partners divided into limited partners and unlimited partners, general limited partners are investors, unlimited partners are fund managers. The reason why the use of limited partnership to
set up private equity funds is mainly due to consider the issue of corporate-type private equity funds subject to double taxation. The use of limited partnership type private equity funds can effectively avoid the tax on private equity funds, only to tax investors.

In fact, it is to solve the problem of using the long-term non-distribution of partnership and avoiding income tax. Under the "ticking rules," a partnership is required to pay income tax on its partners if they are not assigned. On this issue is the same. However, the following provisions, it is worth considering. As a virtual external form of a partnership, all his legal effects point to a partner. Corporate and other organizations as partners to fulfill their funding obligations (especially in partnership PE funds) is actually an equity investment conducted, the profits and losses of such investments are related to the legal persons and other organizations income. If only allowable profit tax, the loss is not allowed to deduct, for investors in partnership with private equity funds is very unfair. Therefore, the profits of investors should be allowed to be deducted from the losses of the partnership enterprises in order to achieve tax fairness.

The Tax Law gives tax concessions to small and medium-sized high-tech enterprises for corporate-type investment enterprises, but there is no corresponding preferential treatment for partnership-type private equity funds. For this problem, some scholars think that the same should apply to partnership-type investment enterprises and trust-type investment enterprises. The author believes that the reason why the tax law so stipulates the main purpose is to balance the tax differences between different types of investment funds. As the corporate investment fund to pay corporate income tax and investor income tax, the comprehensive tax burden is high, while the trust type and partnership type only need to pay the partners' income tax, lower comprehensive tax burden. Under this provision, suppose a private equity firm has a firm investment of X, a return of Y, and a corporate income tax of 25% Y. A deduction of 70% if the tax incentives are met. At 70% X = 25% Y, the marginal return on investment that yields tax benefits is X: Y = 25%: 70%, which is approximately 1: 3. In other words, when the investment income ratio is below 1: 3, the enterprise income tax cannot be paid. If it exceeds, the excess amount of income is paid. 300% return on investment for private equity funds should belong to a higher return value. Therefore, this preferential tax treatment basically solved the issue of double taxation of corporate-type private equity funds. It is not necessary to make any major changes. However, it should also be noted that this provision is indeed a move of rights and interests. The crux of the matter is to solve this issue based on the solution to the double taxation of corporate-type private equity funds.
4 Conclusion
Reform and Improvement of Tax Law of Private Equity Fund

(1) Recognizing the great significance of private equity funds to the economic development of our country and actively create a favorable external environment so as to promote the healthy and rapid development of private equity funds. The tax law is not only a means of raising funds by the state, but it can also effectively play an important role in adjusting the economic structure and promoting the development of the sunrise industry. As an aggregator of private capital, private equity funds should actively promote the use of the tax law.

(B) Making full use of tax law to do a good job in the flow of private equity funds to guide the work. For high-tech industries, central and western regions, infrastructure, agriculture, forestry, animal husbandry and fishery industries that give priority to development, we should make use of preferential tax policies to actively guide private equity funds to these industries. Utilize Tax Leverage to Promote the Healthy Development of Private Equity Funds.

(C) Identifying correctly the characteristics of private equity funds is different from the previous industry. Private equity funds with a long time investment, investment risk, large changes in investment income and so on. For such industries, we must adhere to the principle of seeking truth from facts and differences. In the tax law is not appropriate across the board, according to the characteristics of the industry set the tax rules.

(D) Speeding up the development of "Investment Fund Law." At present, the equity investment fund in our country, especially the private equity investment fund, is under-regulated. Some of the legal issues are not defined, limiting the development of domestic private equity funds. With the advent of a group of foreign private investment funds such as Carlyle and Blackstone, the private equity investment market in China is facing the risk of foreign investors being overwhelmed by the influx of foreign capital. At the same time, the investment behavior of foreign investors is sometimes related to China's economic security and national security. Therefore, the early formulation of "Investment Funds Law" to regulate and improve the local private equity fund market, strengthen the supervision of foreign private equity funds and safeguard our economic security. Similarly, the perfect "Investment Funds Law" also requires the active cooperation of the tax law, only the two can work together to eventually promote the development of private equity funds in China.

References


