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ARTICLES

CHALLENGES POSED BY NEW BUSINESS MODELS TO THE CURRENT INCOME TAX LAW AND THE REFORM PATHWAYS

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Cui Xiaojing[*]

In today's China, new business models represented by the sharing economy and platform economy are thriving and have become an important part of economic development. However, the high degree of digitization, virtualization, and diversification of transaction models in these new business models are profoundly transforming the traditional economic operation logic, posing challenges to the substantive and administrative systems of the current income tax law, as well as structural impacts to the tax system caused by industrial automation. This urgently requires corresponding adjustments to the tax system structure. In response to these challenges, tax law systems tailored to new business models should be established, adhering to the guiding principles of balancing tax efficiency and tax equity, managing the relationship between the responsiveness and stability of tax laws, and coordinating domestic tax laws with international tax reforms. In terms of specific implementation pathways, measures should be formulated for improving the tax law system, including refining substantive tax systems and tax administration systems that align with new business models, and rationally addressing the structural challenges posed by new business models to tax revenue, to promote the healthy development of new business models within the framework of the rule of law.

In today's China, the 'three new' economies, represented by new industries, new business models, and new forms, are demonstrating significant growth potential and steadily becoming an indispensable and important component of the economic development landscape.[1] In 2024, the added value of China's 'three new' economies accounted for approximately 18% of GDP.[2] The so-called new business model refers to new links, chains, and activities

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1 NEW INDUSTRIES, NEW FORMS, AND NEW MODELS: THE 'THREE NEW' ECONOMIES BURST WITH POTENTIAL AND SHOW NEW VITALITY, at http://www.xinhuanet.com/2023-08/28/c_1129828104.htm (Last visited on April 23, 2025).

2 DEPUTY DIRECTOR OF THE NATIONAL BUREAU OF STATISTICS ANSWERED QUESTIONS FROM REPORTERS ON THE PERFORMANCE OF THE NATIONAL ECONOMY IN THE FIRST QUARTER OF 2025, at https://www.stats.gov.cn/sj/sjjd/202504/t20250416_1959325.html (Last visited on July 15, 2025).

derived from existing industries and fields in response to diversified, varied, and personalized demands for products or services, relying on technological innovation and application. To date, common new business models include the sharing economy represented by shared travel and shared accommodation, and the platform economy represented by online marketplaces, social media platforms, and service aggregation platforms.[3] As technology continues to advance, it is foreseeable that new forms and models will emerge in the future, further reshaping the pattern of economic development.

From the perspective of taxation, the high degree of digitization and virtualization of new business models and the diversification of transaction modes are profoundly changing the logic of traditional economic operation, which brings many profound challenges to the current income tax law from the dimensions of substantive law and procedural law. At the same time, the accelerating advance of industrial automation also urgently requires corresponding adjustments to the tax structure. In order to effectively utilize fiscal and taxation law to promote the healthy development of new business models, the *Resolution of the Central Committee of the Communist Party of China on Further Deepening Reform Comprehensively to Advance Chinese Modernization*, which was adopted at the Third Plenary Session of the 20th CPC Central Committee in July 2024, explicitly proposes that it is necessary to 'look into approaches for better adapting these systems to new forms of business'.

Despite the presence of individualized and fragmented research on new business models such as the digital economy, the platform economy, and the sharing economy from the perspective of tax law, there is still a relative lack of systematic research on the tax law system that is compatible with the new business models. This paper will address the existing gaps and summarize the challenges brought by the rise of new business models to the current income tax law from a more comprehensive and systematic perspective, precisely identify key guiding principles that the tax law system should follow to support the healthy development of new business models, and put forward the specific implementation paths to improve China's income tax law.

3 Sun Yi, *Artificial Intelligence Empowers New Quality Productivity: Theoretical Logic, Practical Foundation, and Policy Path*, 2 Journal of Southwest Minzu University (Humanities and Social Sciences Edition) 108, 111-112 (2024).

I. CHALLENGES TO THE CURRENT INCOME TAX LAW POSED BY THE RISE OF NEW BUSINESS MODELS

The new business models not only have inconsistencies with the existing substantive and administrative systems of the income tax law, but also pose structural challenges to the tax system in terms of long-term development. Specifically, the substantive tax system faces challenges in the allocation of tax jurisdiction, the characterization of income, and the selection of tax schemes for data elements. The tax administration system faces difficulties in determining the subject of taxation and identifying taxable transactions. The challenges to the tax structure are mainly related to the transformation of industrial automation, centering on the controversy surrounding the 'robot tax'.

A. Challenges to the Substantive Regime of the Current Income Tax Law Posed by New Business Models

The challenges posed by the new business models to the substantive tax system are mainly reflected in three aspects: first, the digitalization of the economy has shaken the traditional basis of the allocation of tax jurisdiction; second, the new economic models have triggered complex disputes over the characterization of income; and third, there are difficulties in the construction of the tax system for data as an emerging factor of production.

First of all, the highly digitalized and virtualized nature of new business models has posed a challenge to the traditional rules on the allocation of tax jurisdiction. At the international level, this has become one of the most pressing issues in the field of international taxation. The current international tax system originated in the 1920s, when the industrial economy model was in place, the production and operation scope of enterprises was relatively fixed in space, and the concept of permanent establishment (PE) based on physical presence became an important threshold for source countries to tax the profits of non-resident enterprises. Only when a non-resident enterprise establishes a physical presence in the source country such as a fixed place PE or an agency PE, is it required to pay taxes to the source country on the profits attributable to the PE. However, in the context of economic digitization, the production and operation activities of some enterprises can easily go beyond the limitations of physical factors, which makes it difficult to effectively implement the tax jurisdiction of the source country based on the PE rule. In order to deal with this problem, the international community has actively explored and put forward numerous proposals. At the unilateral level, jurisdictions such as India and Indonesia have introduced the rule of 'significant economic presence' based on factors such as the number of users and sales revenue as a supplement to the traditional PE rule,[4] while jurisdictions such as France, the United Kingdom, and Spain have taken a different approach by introducing new taxes such as the digital services tax for some digital enterprises.[5] In order to coordinate unilateral digital tax legislation at the multilateral level, the OECD has led the 'Pillar One' international tax reform centered on granting new taxing rights to market jurisdictions. Among other things, the Amount A rules establish a new taxing right, which applies to multinational enterprises—excluding those in extractive industries and regulated financial services—with two key criteria: global revenues of 20 billion euros or more, and profit margins exceeding 10%. For such enterprises, 25% of their excess profits (profits beyond the 10% margin) should be allocated to eligible market jurisdictions.[6] The design of the rules of the *Multilateral Convention to Implement Amount A of Pillar One* has been finalized,[7] but there is considerable uncertainty regarding the prospects for its practical implementation.

It should be noted that the issue of the allocation of tax jurisdiction caused by economic digitization is not limited to the cross-border level, but also occurs between different regions within a country. Although the imbalance in the tax revenue distribution between regions does not affect the overall tax revenue of a country, it can lead to a widening gap in the fiscal capacity of regions. Currently, the enterprise income tax in China is paid at the place of registration,[8] and the tax collected will be shared proportionally between the regions where the head offices and the branches are located.[9]

4 Sun Yi, *Divergent Path for Digital Tax Legislation and China's Response*, 8 Law Science 176, 178 (2024).

5 Qi Meng & Liu Bo, *Digital Service Tax: Theoretical Explanation, International Practice, and China's Approach*, 3 Journal of Shanghai University of Finance and Economics 139 (2022).

6 Jiang Yuesheng, *Path and Countermeasures for Chinese 'Going Global' Enterprises to Strengthen Global Tax Strategy Management Against the Background of International Tax Reform*, 5 International Taxation in China 10, 11 (2024).

7 *See* OECD, INTERNATIONAL TAX REFORM: MULTILATERAL CONVENTION TO IMPLEMENT AMOUNT A OF PILLAR ONE, at https://www.oecd.org/tax/beps/multilateral-convention-to-implement-amount-a-of-pillar-one.htm#:~:text=The%20Multilateral%20Convention%20to%20Implement%20Amount%20A%20of,improves%20tax%20certainty%20and%20removes%20digital%20service%20taxes (Last visited on July 15, 2025).

8 Article 50 of the *Enterprise Income Tax Law*.

9 The *Measures for the Distribution and Budget Management of Enterprise Income Tax for Inter-Provincial and Municipal Head Offices and Branches* (Financial Budget [2012] No. 40) stipulate that the enterprise income tax paid by enterprises of inter-provincial and municipal head offices and branches, which falls within the scope of sharing between the central and local governments, shall be implemented in accordance with the principle of uniformity and standardization, taking into account the interests of the head office and the branches' locations, and shall follow the principle of unified calculation, hierarchical management, local prepayment, summary liquidation, and fiscal transfer. Among the local share of the tax payable for the current period calculated by the head office and branches, 25% is shared by the location of the head office, 50% is shared by the location of each branch office, and 25% is distributed among localities according to a certain proportion.

However, as the economy continues to become more digitized, an increasing number of cross-regional service provisions do not require the establishment of a physical presence, which poses difficulties for the traditional tax allocation model based on 'the locations of head offices and branches'.[10]

Secondly, the rise of new business models has impacted the traditional income classification system and triggered controversy over the characterization of income. Under new economic models such as the platform economy and the sharing economy, it has become difficult to accurately determine the nature of the income from transactions due to the large number of participating subjects, complex transaction structures, and a wide range of income titles.[11] For example, in the live-streaming e-commerce model, there are many disputes over whether the commissions, pit fees, bounties, income from fan payments, advertising endorsements, and many other new forms of income obtained by webcasters should be classified as income from wages and salaries, remuneration for services, business income, or incidental income.[12] Similarly, the relationship between 'gig workers' and the online platform in the sharing economy is complex. It may constitute an employment relationship, a service relationship, or a cooperative relationship, which further increases the uncertainty in the characterization of the transaction income.[13] The ambiguity in the characterization of income in the new business model not only leads to disputes in the interpretation and application of the tax law, but also may allow taxpayers to avoid taxes by switching the income of their transactions, due to the differences in tax liabilities for different types of income.

Thirdly, clearer provisions on the taxation of data elements shall be included in the current tax law. Data, as a new production factor, is an important raw material for creating new business value.[14] Similar to traditional factors of production such as land, labor, capital, and technology, data factors can also create economic gains, and their taxability has been widely

10 Mao Yan, *Regional Tax Challenges in the Digital Economy: Causes and Response*, 5 Fiscal Science 56, 59 (2021).

11 Yao Dongmin, Peng Zhuoran & Xu Aohan, *Tax Reform in the Context of New Business Models: Principles, Challenges, and Solutions: A Digital Economy Perspective*, 4 Taxation Research 31, 37 (2025); Ouyang Tianjian, *Research on the Tax Law Regulation of Platform Economy Under the Background of the Digital Rule of Law*, 8 Nanjing Journal of Social Sciences 75, 76-77 (2022).

12 Xiong Wei, Mao Yan & Xu Liantian, *On the Application of Individual Income Tax Law for Online Streamers*, 5 International Taxation in China 52, 55 (2022).

13 Xi Xiaonan, *On the Improvement of Tax Governance of Sharing Economy*, 12 Taxation Research 129, 130 (2021).

14 Li Jianjun & Zhao Wei, *Research on Tax Reform Adapted to Emerging Business Models*, 4 Taxation Research 25, 30 (2025).

recognized by academics.[15] However, data has not yet been included in the taxation scope of the current tax law, resulting in a tax burden gap between different production factors. The *Opinions on Building a Data-Base System to Better Utilize the Role of Data Factors* (hereinafter referred to as the Twenty Articles on Data) issued by the CPC Central Committee and the State Council in December 2022 propose to 'establish a system for distributing the benefits of data factors that embodies efficiency and promotes fairness'. This requires improving the tax system related to data. At present, extensive discussions exist in the academic community on the construction of a data taxation system. However, there are still several key issues that need to be resolved: first, there are still obstacles to the data taxation at the technical level, as issues regarding data rights and data pricing have not yet been properly resolved; and second, there is no consensus among academics as to the path by which the data taxation should be realized.[16]

B. Challenges to the Administration Regime of the Current Income Tax Law Posed by New Business Models

The traditional tax collection and management model is based on the context of industrialized mass production and mainly focuses on the supervision of legal entities and fixed business premises. However, new business models exhibit prominent characteristics such as diversified and virtual business entities and cross-regional operations, which have posed many challenges to the traditional tax administration system.

First of all, in new business models, business entities are characterized by diversification and dispersion, which has impacted the traditional system for determining taxpayers. Currently, China's tax collection and management model is mainly centered on the supervision of enterprises, and the tax registration system is an important management tool. However, with the rise of new business models, a large number of freelancers and self-employed individuals have emerged in the market. According to the National Bureau of Statistics, as of 2023, the number of flexible employment in China had reached 200 million, accounting for more than a quarter of

15 Fu Jing, *Research on the Taxability of Data*, 8 Taxation Research 54, 57 (2020); Deng Wei, *Theory and System Selection of Data Taxation*, 1 Taxation Research 47, 48 (2021).

16 Some scholars believe that special taxes such as 'data use tax' and 'data resource tax' should be set up; some scholars also advocate that data should be included in the scope of the existing income tax and value-added tax. *See* Chu Ruigang, *The Debate Between Specialized Taxes and Traditional Taxes: A Systematic Review of the Legislative Model of Data Taxes*, 2 Taxation Research 51, 51 (2025).

the total employed population.[17] A proportion of these individuals have not applied for tax registration, which makes it difficult for tax authorities to determine the identity of taxpayers.[18] In the case of Didi Taxi, express car drivers only need to complete information verification on the platform without requiring tax registration, and the income of the drivers is relatively sporadic, which increases the difficulty of tax collection and management work.[19]

Secondly, the decentralization and fragmentation of transactions of new business models have made it more difficult to identify taxable transactions. On the one hand, under the platform economy, the sharing economy, and other business models, the business model with individuals as the main body of transactions has led to the replacement of batch assembly lines and large-value transactions by a large number of decentralized, high-frequency, and small-value transactions,[20] which has increased the difficulty and cost of tax collection and management. On the other hand, China currently relies on the invoice system to identify taxable transactions and exercises control over tax sources through 'invoice-based tax control'. However, in the business-to-consumer transaction scenarios, consumers are less motivated to request invoices. At the same time, some self-employed operators lack the ability and awareness to issue invoices, making it difficult for the 'invoice-based tax control' system to fully play its role.[21]

In order to adapt to the development of new business models, Chinese tax authorities have actively enhanced the efficiency of tax administration through digital technology. However, the current digital transformation of tax administration still has room for improvement. The first is to improve the efficiency of tax information sharing. On the one hand, within tax authorities, there are still obstacles to the sharing of tax information among tax

17 LI ZUOJUN, ZHANG LIANG & WANG BINGWEN, ACCELERATING THE ESTABLISHMENT AND IMPROVEMENT OF THE SOCIAL SECURITY SYSTEM FOR FLEXIBLY EMPLOYED PEOPLE, at https://www.drc.gov.cn/DocView.aspx?chnid=379&leafid=1338&docid=2908439 (Last visited on July 15, 2025).

18 Chen Yu & Li Rui, *Research on Taxation Issues of Sharing Economy in China*, 8 Journal of Central University of Finance & Economics 3, 6-7 (2017); Ma Hongfan, Xu Ling & Liu Guoping, *Digital Economy, Tax Impacts, and Transformation of Tax Governance*, 4 Taxation Research 84, 89 (2021).

19 Yuan Jiao & Wang Min, *On the Adaptability of Tax System with Digital Economy: Logic, Dimension, and Reform Prospects*, 10 Taxation Research 17, 18 (2024).

20 Zhou Keqing & Li Xia, *Innovation of the Tax Governance System Under a Platform Economy*, 12 Taxation Research 73, 74 (2018).

21 Wang Yuanwei, *Exploration of Tax-Related Issues on Sharing Economy*, 6 Taxation Research 112, 115 (2018); Ouyang Tianjian, *Challenges and Governance Optimization of Tax Collection on Platform Economics Under the Idea of Shared Benefits and Joint Governance*, 5 Journal of Huazhong University of Science and Technology (Social Science Edition) 10, 11 (2023).

authorities in different regions.[22] On the other hand, in different government departments, data input and output are relatively independent, and the caliber of statistical input and the speed of updating are not consistent, which affects the efficiency of collecting, processing, and analyzing tax-related data.[23] The second is to improve the efficiency of tax information utilization. At present, the application of big data, artificial intelligence (AI), and other technologies by tax authorities is still in the initial stage, and the ability to mine and analyze massive tax-related data is insufficient. The third is to improve protection for taxpayers' information security. In the process of large-scale collection and exchange of tax information, there is a risk of leakage of taxpayers' commercial secrets and personal privacy. Moreover, the current legal framework for the protection of tax information shall be further completed with sufficient remedies for taxpayers' information leakage to effectively safeguard their information security.

C. Structural Challenges to the Tax System Due to the Automated Transformation of Industry

In recent years, the rapid development of the AI industry has dramatically changed the structure of the global labor market, leading to traditional jobs being replaced by intelligent technology and exacerbating technological unemployment. This change has not only reduced the labor demand in the traditional manufacturing industry but also put service industry jobs such as customer service and cab drivers at risk of being replaced by AI. In the future, with the rapid development of automation technology, there may be a wave of technological unemployment, bringing structural challenges to the entire tax system. On the one hand, the widespread application of automation technology may lead to a decrease in tax revenues. Currently, individual income tax, especially on labor income, is one of the important revenue sources for various tax jurisdictions.[24] Increased levels of automation may result in the loss of wage income for workers, leading to a reduction in taxes on labor income. Although the automation process also leads to lower labor costs and higher profits for businesses, which in turn generates more tax

22 Yan Qing, *Dilemma, Origin, and Solution of Tax Collection and Management Mechanism of Flexible Employment Platform in the Era of Digital Economy*, 3 Journal of Shanghai Jiaotong University (Philosophy and Social Sciences) 104, 107 (2023).

23 Chinese Academy of Fiscal Sciences Research Group & Liu Shangxi, *Reflections on Tax Reform for Online New Economic Development*, 4 Scientific Development 16, 19 (2023).

24 OECD, TAX ON PERSONAL INCOME, at https://www.oecd.org/en/data/indicators/tax-on-personal-income.html (Last visited on April 23, 2025).

revenue from capital income,[25] the negative impact of the development of AI on tax revenue remains more significant when viewed in the aggregate, as the current tax burden on labor income is generally heavier than that on capital income.[26] On the other hand, the development of automation technology will also increase the return of capital and technology providers.[27] Taxation, as an important means of income distribution regulation, should play a more active role in narrowing the automation-induced income gap.

Against this backdrop, some scholars have proposed the concept of a 'robot tax' in the hope of slowing down the pace of automation and thereby mitigating unemployment growth and revenue decline. The widely discussed 'robot tax' does not refer to a new tax on robots as taxpayers, but rather a 'tax on the use of robots', where the main taxpayers are companies that use robots. Specific measures include the reduction or elimination of tax incentives for the use of robots and the imposition of an unemployment compensation tax on businesses.[28]

However, although a 'robot tax' can, to a certain extent, address the structural challenges posed to the tax system by the transformation of industrial automation, its negative impact should not be underestimated. The booming AI industry helps promote the development of new quality productivity and improve both the modern industrial system and public welfare in the areas of health care, transportation, and the environment.[29] Nevertheless, a 'robot tax' will increase the cost of using robots, which could potentially inhibit the development of the AI industry, affect the popularization of automation technology, and in the long run hinder economic growth.[30] In particular, considering that the new scientific and technological revolution and industrial change are in full swing, AI, as the core of the new economy, is directly related to the country's industrial competitiveness. Therefore, 'slowing down the process of intellectualization due to the imposition of the tax will not be worth the loss.'[31]

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25 Zhang Zhaoting, *Questioning Tax on AI Robots*, 6 Journal of Harbin Institute of Technology (Social Sciences Edition) 68, 70-71 (2022).

26 Orly Mazur, *Taxing the Robots*, 46 Pepperdine Law Review 277, 290-295 (2019); Ryan Abbott & Bret Bogenschneider, *Should Robots Pay Taxes? Tax Policy in the Age of Automation*, 12 Harvard Law & Policy Review 145, 150-151 (2018).

27 XAVIER OBERSON, TAXING ROBOTS: HELPING THE ECONOMY TO ADAPT TO THE USE OF ARTIFICIAL INTELLIGENCE, at 12-13 (Wang Huayu & Sun Bolong trans., Shanghai People's Publishing House, 2022).

28 Wang Tingting & Liu Qichao, *Legal Issues of Robot Tax: Theoretical Debates and Development Trends*, 3 International Taxation in China 29, 34-35 (2018).

29 DUAN YUCHEN, EMPOWERING HIGH-QUALITY DEVELOPMENT WITH ARTIFICIAL INTELLIGENCE, at http://www.qstheory.cn/dukan/hqwg/2024-04/13/c_1130108914.htm (Last visited on April 23, 2025).

30 Orly Mazur, *supra* note 26, 299-300.

31 Wang Tingting & Liu Qichao, *supra* note 28, 31.

In short, the transformation of industrial automation will bring deep structural challenges to the tax system. Therefore, a key focus of future tax policy formulation will be balancing technological advancement with social equity, fostering the development of new business models while ensuring that the benefits of technological progress are broadly shared across society.

II. GUIDING PRINCIPLES FOR BUILDING A TAX LAW SYSTEM COMPATIBLE WITH NEW BUSINESS MODELS

The vigorous emergence of new business models has challenged the existing tax law in many aspects, necessitating legislative adjustments and optimization of the tax law in a timely manner. In order to ensure the tax law remains compatible with the development of new business models and to enhance the scientific and coordinated nature of the relevant legislation, it is necessary to carefully weigh the relationship between tax efficiency and tax equity, the responsiveness and stability of the tax law, as well as the rule of law at the domestic and international levels.

A. Balancing Tax Efficiency and Tax Equity

Efficiency and fairness are the basic values of law, with the former relating to how to make the ‘cake’ bigger, and the latter relating to how to share the ‘cake’ better. Regarding how to deal with the relationship between efficiency and fairness, General Secretary *Xi Jinping* emphasized that ‘Chinese modernization seeks not only to achieve greater efficiency than capitalism, but also to more effectively uphold social fairness. A proper balance should be struck between efficiency and fairness to ensure that the two aspects reinforce and align with each other.’[32] In the field of tax law, the principles of tax efficiency and tax equity, as the two cornerstones, are of vital significance in constructing a tax system that is compatible with new business models.

On the one hand, from the perspective of tax efficiency, the tax law should become a strong guarantee and solid support for the development of new business models. Cultivating new business models is an important way to develop new quality productivity,[33] which helps to break through the boundaries of traditional economic thinking and open up new economic

32 Xi Jinping, *Handling Major Issues Properly to Advance Chinese Modernization*, 19 Qiushi Journal (2023).

33 Huang Qifan & Li Jinbo, *The Connotation Logic and Strategic Path of Developing New Quality Productivity*, 14 People’s Tribune 6, 11 (2024).

growth points. At the same time, the application of new technologies accelerates the reshaping of the traditional production organization model as well as the industrial supply chain and value chain, promotes industrial transformation and upgrading, facilitates the conversion of old and new kinetic energy, and contributes to high-quality development.[34] In view of the positive effect of the development of new business models on improving economic efficiency, which is fully in line with China's future economic development strategy, it is particularly necessary to strengthen the support for new business models through well-designed tax laws and policies. Tax incentives, as an important means of macro-control, can enhance the competitiveness of enterprises, stimulate market investment in new business models, and promote the growth of new business models. In particular, it should be noted that scientific and technological innovative enterprises generally face the problems of high research and development (R&D) investment, high investment risk, and long growth cycle, which makes it even more crucial to give appropriate tax incentives.

At present, China has implemented a series of tax incentives, including tax deductions and exemptions, accelerated depreciation, and super deductions for high-tech enterprises, small and microenterprises, and other taxpayers related to new business models. These incentives are of great significance in stimulating innovation and promoting the development of new business models. However, the current system of tax incentives still has room for improvement in terms of effectiveness and precision. From the viewpoint of applicable subjects, the threshold for innovation incentive policies is relatively high, which makes it difficult for some small and medium-sized enterprises (SMEs) to benefit from them.[35] From the viewpoint of applicable stages, the incentives for innovation are mainly concentrated in the front-end R&D stage, and those for the back-end transformation and application stage are relatively insufficient.[36]

On the other hand, taxation shoulders the critical responsibility of promoting fairness in social distribution, and the principle of tax equity requires

34 Sheng Yulei, *New Industry, Opening up New Blue Ocean of Economy*, People's Daily, July 7, 2020, at 5.

35 Li Xiangju & Wang Yang, *Research on Improving the Tax Policies for the Technological Innovation of the Enterprises in China*, 7 Taxation Research 39, 41 (2021); Zhang Jiayi, *Effective Innovation Incentive or Harmful Tax Competition?—'Patent Box' Plight Under BEPS*, 5 Journal of Central University of Finance & Economics 3, 10 (2015); Wang Yannan, Yang Xiaowen & Sun Lin, *Analysis of the Incentive Effect of Income Tax Preferential on Enterprise Innovation*, 1 Taxation and Economy 101, 104 (2019).

36 Zhang Fuqiang & An Jiachun, *The Reference of 'Patent Box' Innovation Tax System of European Countries to China*, 11 Guizhou Social Sciences 101, 103-104 (2016).

that tax collection be universal and equal.[37] As a fundamental expression of tax equity, the ability-to-pay principle encompasses both horizontal and vertical fairness: horizontal fairness means that people with the same tax-paying ability should be subject to the same tax rate, while vertical fairness requires that people with different tax-paying abilities should be subject to different tax rates. However, there are phenomena in the current tax policy for new business models that affect tax equity and thus need to be adjusted.

The first is the impact of tax incentives on tax equity. In practice, the complexity and diversity of tax incentives and inadequate coordination mechanisms have provided opportunities for tax arbitrage. In particular, the local tax incentives for attracting investment are difficult to comprehensively supervise due to the lower level of the policy documents and their hidden nature, forming ‘tax havens’. In order to standardize tax incentives and avoid harmful tax competition, restrictions should be imposed at both the formal and substantive levels. Formally, according to the statutory taxation principle, local tax incentives should be carried out within the statutory authorization frameworks.[38] Substantively, tax incentives should comply with the principle of proportionality to prevent excessive deviation from tax equity.[39]

The second involves tax non-compliance in the tax collection and management of new business models. The rise of new business models, such as online taxi, shared accommodation, and webcasting, has lowered the threshold for business entry, leading to massive participation by individual taxpayers. However, the current tax system has limited channels to obtain information about individual taxpayers, resulting in issues of tax compliance and tax evasion. While tax incentives are tax benefits based on specific policy considerations and have a certain degree of reasonableness, loopholes in the collection and management process are contrary to the original intent of the legislation and the principle of tax equity. Therefore, tax collection and management require comprehensive strengthening through enhanced tax information transparency and robust loophole-closing measures.

Thirdly, the tax burden between capital income and labor income is inequitable. According to *China’s Individual Income Tax Law*, labor income such as salary, wages, compensation for labor, and remuneration for manuscripts are included in the comprehensive income and subject to a

37 ZHANG SHOUWEN, FINANCE AND TAXATION LAW, at 160 (China Renmin University Press, 2010).

38 Xiong Wei & Gao Yuanli, *Promoting Development Function of Tax Law and the Construction of Chinese Modernization*, 2 International Taxation in China 11, 16-17 (2023).

39 Ye Jinyu & Gu Derui, *Normative Review and Implementation Evaluation of Tax Incentives: Taking the Principle of Proportionality as a Tool of Analysis*, 6 Modern Law Science 171, 173 (2013).

progressive tax rate of 3%-45%; capital income such as interest, dividend, bonus, property rental, and transfer of property is subject to a proportional tax rate of 20%, which is lower than the highest marginal tax rate for labor income. In addition, the existence of a series of capital income tax incentives[40] further widens the gap in tax burdens between the two types of income.[41] In this context, strategic tax restructuring could both mitigate automation-induced revenue loss and advance social equity.

B. Balancing Responsiveness and Stability in Tax Law

There is an inherent tension between the responsiveness of the law and its stability. As the economic and social environment changes, the law needs to be constantly adjusted to meet the requirements of the evolving era. Otherwise, once the law becomes divorced from economic and social realities, its function of regulating social relations will be significantly undermined, and it can hardly be regarded as a good law. At the same time, the stability and predictability of the law are inherent requirements of the rule of law. In order to maintain the authority and dignity of the law, the law should avoid frequent changes and remain stable for a specific period of time. Therefore, how to balance the responsiveness and stability of the law has become an important issue in the context of economic and social change.

At present, new business models are undergoing rapid development, with new economic forms and business models constantly emerging, making it challenging to balance the responsiveness and stability of the tax law. On the one hand, 'developing a tax system compatible with new business models' requires enhancing the responsiveness and adaptability of the tax law to new economic forms. The rise of new business forms has challenged the substantive and procedural elements of the traditional tax law, triggered disputes over the application of the tax law, and led to problems such as tax revenue loss and inequitable tax burdens. Failure to carry out

40 For example, *Notice of the State Taxation Administration on the Exemption of Individual Income Tax on Share Capital Increase and Distribution of Bonus Shares by Shareholding Enterprises*, State Taxation Administration [1997] Decree No. 198; *Notice on the Policy of Individual Income Tax Related to Individuals Transferring Shares of Companies Listed on the National Equities Exchange and Quotations System*, Ministry of Finance and State Administration of Taxation [2018] No. 137; *Notice on Continuing to Implement the Tax Policies Related to the Pilot Phase of Domestic Issuance of Depository Receipts by Innovative Enterprises in China*, Announcement No. 22 of 2023 by the Ministry of Finance, the State Taxation Administration, and the China Securities Regulatory Commission.

41 Huang Fengyu, Han Guoying & Xin Yu, *China's Individual Income Tax Reform Should Focus on the Coordination of Three Major Relationships*, 11 Taxation Research 29, 33-34 (2018).

necessary reforms to the current tax system will compromise the fairness of the tax law and the healthy development of new business models in the long run. Therefore, it is of great practical significance to adjust the current tax law to accommodate the development of new business models. On the other hand, according to the statutory taxation principle, the tax law should maintain a certain stability. The formulation of tax law needs to be grounded in the economic basis while ensuring stability over a specific period of time. Frequent amendments would not only undermine the authority and seriousness of the tax law but also adversely affect the national economic life.[42] In order to give full play to 'the role of the rule of law in consolidating foundations, ensuring stable expectations, and delivering long-term benefits',[43] the tax law should remain stable over appropriate durations.

However, against the background of rapid iteration of new technologies and the emergence of new models, the lag of legislation is unavoidable no matter how actively legislators respond to it. To enhance the vitality of legislation, a balance between clarity and ambiguity should be sought as far as possible, thereby accommodating the evolving nature of new business models. Yet, the rapid development of the new business models makes it challenging to accurately grasp their evolutionary patterns and conduct systematic distillations of their various taxable elements. Drawing from China's experience in dealing with the relationship between reform and the rule of law, the following two points should be noted in order to balance the stability and responsiveness of the tax law in the process of constructing a tax system that is compatible with new business models.

Firstly, legislation should exercise prudent restraint and avoid premature intervention. Considering the lagging nature of the law itself, ideally, the law should be forward-looking, rather than merely responding to problems as they emerge.[44] However, at the early stage of the development of a new business model, legislators have a limited understanding of its legal nature and development trend, making it difficult to carry out forward-looking legislation. Consequently, a prudent legislative philosophy should be upheld to avoid premature legislative intervention that hinders the development of science and technology.[45] Generally speaking, in the startup and development

42 LIU JIANWEN, BASIC ISSUES OF CHINA'S TAX LEGISLATION, at 144 (China Tax Publishing House, 2006).

43 Xi Jinping, *Steadfastly Following the Path of Socialist Rule of Law with Chinese Characteristics to Provide Strong Rule of Law Guarantees for the Comprehensive Construction of a Modern Socialist Country*, 5 Qiushi Journal (2021).

44 Zhang Xinping, *Reflection and Improvement of Network Platform Governance Legislation*, 3 China Legal Science 122, 136-137 (2023).

45 Zuo Weimin, *How Does Law Respond to Technology: Reflection and Prospect*, 6 China Law Review 1, 10-13 (2024).

stages of the business model, it is appropriate to adopt a loose regulatory strategy, and legislation should not be involved too early; in the maturity and decline stages, the regulatory strategy should be adjusted to strengthen the regulatory efforts and prevent negative impacts.[46] Given that different models of new business are at different stages of development, tax reform and legislation should be based on accurate judgment. For business modes that have entered the mature stage and can generate stable tax sources (such as the platform economy), they should be the focus of tax policy; for those that are still in the early stage (such as AI and other emerging fields), legislators should adopt a cautious and wait-and-see approach. They should gradually explore the appropriate tax scheme to avoid the obstruction of industrial development caused by premature intervention.

Secondly, it is helpful to accumulate experience and improve the quality of legislation through pilot legislation. This approach is conducive to adjusting and amending the tax law under the premise of preserving stability of the tax law system, and exploring through the methods of 'pilot-promotion', 'pilot-cancellation', and 'pilot-exploration'.[47] For example, in order to address the issue of double taxation under the business tax system, Shanghai took the lead in piloting the reform of replacing the business tax with a value-added tax in 2012. Following the successful trial, the reform was extended to other provinces and municipalities including Jiangsu and Beijing. After the pilots matured, the reform was fully implemented nationwide in 2016. However, excessive reliance on pilot legislation may deviate from the statutory taxation principle. For this reason, it is necessary to assess whether pilot legislation has clear objectives, a reasonable timeframe, and well-defined rules before implementation, while strictly controlling legislative quality. Furthermore, regular assessment and supervision should be carried out during the subsequent implementation of the law to continuously optimize the pilot scheme and enhance the scientific nature of the legislation.[48]

C. Integration of Domestic Tax Laws and International Tax Reforms

Advancing the rule of law in domestic and foreign-related affairs in a coordinated manner, and pursuing coordinated progress in domestic and

46 Wang Shoujie, *Timing Logic of Regulating Innovation*, 25 ECUPL Journal 50, 55 (2022).

47 Zhang Wansu, *Practice Progression from Statutory Taxation to the Rule of Law in Taxation—Centered on Further Implementing the Principle of Statutory Taxation*, 45 Chinese Journal of Law 162, 168 (2023).

48 Li Juan, *Theoretical Construction and Empirical Analysis of 'Experimental Legislation'—Centered on Article 13 of China's Legislation Law*, 7 Political Science and Law 84, 93-94 (2017).

international governance, is one of the epochal logics and core tenets of Xi Jinping Thought on the Rule of Law.[49] Economic globalization is one of the key catalysts for fostering new business models.[50] With the deepening of economic globalization, currency and tariff barriers to cross-border operations are progressively broken down, enabling an increasing number of SMEs to globalize their operations through digital technology and virtual network platforms.[51] Therefore, in the process of building a tax system compatible with new business models, it is necessary to attach great importance to the integration and coordination of the domestic and international situations, which is reflected in the following two key dimensions.

First of all, when formulating tax policies related to new business models, it is necessary to comprehensively consider the impacts at both the domestic and international levels. On the one hand, the cross-border characteristics of new business models are obvious. The formulation and adjustment of domestic tax rules may have spillover effects, and rash actions may trigger international disputes. A case in point is the U.S. '301 investigation' targeting the digital service tax imposed by France, Austria, Brazil, the United Kingdom, and other tax jurisdictions, which were deemed discriminatory.[52] Similarly, the unilaterally introduced rule of 'significant economic presence' conflicts with the PE rule in tax treaties, and a tax based on this rule that is not recognized by other parties may give rise to the risk of double taxation and tax disputes. Therefore, when designing the domestic tax system, it is necessary to carefully consider its international impact. On the other hand, the tax policies related to new business models are increasingly influenced by international tax reform. For example, the OECD's global minimum tax reform will affect the design of tax incentives for new business models in various countries. Under this reform, for multinational enterprises whose consolidated group revenue exceeds 750 million euros, if their effective tax rate in a particular jurisdiction is lower than 15%, other jurisdictions have the right to levy a top-up tax. This means that the relevant tax incentives will not only fail to achieve their intended effects, but the tax revenue ceded will also be collected by other

49 HUANG HUIKANG, ADVANCING THE RULE OF LAW IN DOMESTIC AND FOREIGN-RELATED AFFAIRS IN A COORDINATED MANNER, at http://theory.people.com.cn/n1/2021/0127/c40531-32013474.html (Last visited on April 23, 2025).

50 Huang Qifan & Li Jinbo, *The Connotative Logic and Strategic Path of Developing New Quality Productivity*, 14 People's Tribune 6, 11 (2024).

51 Yuan Jiao & Wang Min, *supra* note 19, 19 (2024).

52 *See* USTR, INITIATION OF A SECTION 301 INVESTIGATION OF FRANCE'S DIGITAL SERVICES TAX, at https://ustr.gov/sites/default/files/enforcement/301Investigations/Initiation_of_Section_301_Investigation.pdf (Last visited on April 23, 2025); USTR, INITIATION OF SECTION 301 INVESTIGATIONS OF DIGITAL SERVICES TAXES, at https://ustr.gov/sites/default/files/enforcement/301Investigations/DST_Initiation_Notice_June_2020.pdf (Last visited on April 23, 2025).

jurisdictions.[53] Therefore, tax incentive design for new business models must align with the global minimum tax regime.

Secondly, the tax challenges arising from new business models have certain similarities at both international and domestic levels, thus necessitating careful coordination of relevant tax law rules. The issues of tax jurisdiction allocation and tax competition, which are hotly discussed in the current international tax reform, not only exist in the international arena, but also exist among different regions in China. Taking the allocation of tax jurisdiction as an example, while reform programs at the international level are mostly centered on expanding the taxing rights of market jurisdictions, China demonstrates limited demand in this regard. Due to the rapid development of local digital enterprises in China and the regulated foreign entry into the digital market, the digital market in China remains primarily led by local enterprises, and the problems of profit shifting and tax revenue loss by multinational enterprises are not prominent.[54] In contrast, the inter-regional tax transfer and tax distribution imbalance seem to be more obvious. The digital economy shows stronger development in the east compared to the west, with most digital enterprises concentrated in the eastern regions, which have secured a significant portion of the tax revenue. Statistics show that the proportion of domestic and foreign Internet-listed enterprises in China with their industrial and commercial registrations located in the cities of Beijing (36.1%), Shanghai (18.7%), Shenzhen (11.6%), and Hangzhou (11.0%) is as high as 77.4%.[55] Due to varying levels of digital economy development across regions, the western region shows relatively slower growth in online transactions, with some tax sources shifting to the eastern region. This not only results in the direct transfer of tax revenues, but also inhibits the development of the local tax source by the consumption outflow, which leads to the indirect transfer of tax revenues. In addressing the considerations of domestic regional tax distribution, relevant approaches of international tax reform could be referenced.

In summary, in view of the globalized nature of the business activities of new business models, it is crucial to integrate the domestic tax system with the international tax system when constructing a tax law system suitable for new business models. It is necessary to comprehensively examine and

53 Chen Jingxian, *Global Minimum Tax Reform's Influences on China's Tax Incentives Regime and Response Measures*, 5 Chinese Review of International Law 101, 102-103 (2023). *See* also Chen Jingxian, *Development of Tax Carve-Out Provisions in International Investment Agreements and China's Responsive Approach*, 2 China Legal Science 96, 102 (2025).

54 Sun Yi, *supra* note 4, 187-188.

55 THE 54TH STATISTICAL REPORT ON CHINA'S INTERNET DEVELOPMENT, at https://www3.cnnic.cn/NMediaFile/2024/0911/MAIN1726017626560DHICKVFSM6.pdf (Last visited on April 23, 2025).

consider the domestic and international legal systems and practical needs, so as to realize the positive interaction between the domestic tax system and the international tax reform.

III. PATHS FOR BUILDING A TAX LAW SYSTEM COMPATIBLE WITH NEW BUSINESS MODELS

In order to further advance the tax reform and enable the income tax law to play a positive role in the development of new business models, it is necessary to make adjustments at three key levels, namely, the substantive tax system, the tax administration system, and the tax structure. Efforts should be made to address the incompatibility between the current tax system and the development of new business models.

A. Improvement of the Substantive Tax System in Line with New Business Models

New business models, characterized by digitization, virtualization, and complex transaction structures, have posed extensive and serious challenges to the substantive tax system. In order to better align the substantive tax system with the development of new business models, it is necessary to optimize and adjust the rules for tax jurisdiction allocation, the rules for income characterization, and the data taxation system.

Firstly, the rules for the allocation of tax jurisdiction should be revised. At the international level, two principles should be followed when selecting from various options for the allocation of taxing jurisdiction. First, it is vital to prioritize the moderate and progressive reform options. Given the fact that cross-border profit shifting poses a relatively minor issue in China's digital market, and considering the practical need to support the development of its own digital enterprises, a gradual reform option is more in line with China's overall interests. Among the many reform paths explored by the international community, compared with the digital service tax option of creating a new tax, the Pillar One or the 'significant economic presence' option is still based on the current tax framework with relatively limited changes, which is more in line with China's tax interests. Second, multilateral options should be preferred, and unilateral digital tax measures should be discouraged. Unilateral digital tax measures implemented by various jurisdictions overlap and conflict with each other, which not only exposes digital enterprises to the risk of double taxation but also significantly increases their compliance costs and worsens the global tax business environment. Although digital enterprises in China are still at an early stage of going global and the impact of other jurisdictions' digital tax measures is relatively limited, the impact of such unilateral measures will become increasingly obvious as enterprises accelerate overseas expansion. However, judging from the negotiation process of the Pillar One program and the prospect of its implementation, it will take a long and torturous process to reach a multilateral consensus. In the future, China should actively participate in multilateral tax reform negotiations on the digital economy and continue to explore options that balance equity and efficiency.[56]

At the domestic level, in order to promote the equitable distribution of tax revenue among regions, it is necessary to adjust the local tax allocation rules for enterprise income tax. In determining the place of tax payment for enterprise income tax, it should not be limited to the place of registration of the enterprise. Drawing on ideas of international tax reform, the criterion of 'significant economic presence' can be introduced as a complement. Factors to consider in determining 'significant economic presence' include the location of the enterprise's server, the place where contracts are signed with consumers in the name of the enterprise in a non-physical way, the location of consumers who access services through electronic business interfaces such as web pages, and the place where consumers receive goods.[57] In addition, since changes to tax laws are time-consuming, in the short term, consideration could be given to providing modest financial compensation to the location of the user through central-to-local transfers.[58]

Secondly, it is important to clarify the rules for the income characterization in new business models. Under the platform economy, the sharing economy, and other new business models, the transaction relationship is intricate and complex, and the sources of income are rich and varied, making it difficult to accurately define the nature of income, with boundaries between remuneration for labor services and business income being particularly blurred. In this regard, judgment should be made based on the business substance of the transaction, taking into account factors such as the predictability of the income and the degree of input of costs. Generally speaking, those who invest labor to provide services to specific objects and obtain expected income qualify as labor service providers; those who invest

56 Sun Yi, *supra* note 4, 176-192.

57 Li Rui & Li Peixuan, *Correction of Imbalanced Regional Taxation in the Era of the Digital Economy: Based on the Perspective of Vertical Allocation of Taxation Powers*, 1 Journal of Shanghai University of Finance and Economics 108, 116-117 (2023).

58 Mao Yan, *supra* note 10, 63-64.

labor and production materials, engage in certain management activities, obtain income only after the recognition of business results, and bear the costs and risks by themselves qualify as production operators.[59] However, considering the diversified sources of income of taxpayers, and in order to enhance tax certainty, some income that is difficult to accurately characterize can be dealt with by presumptions. The income of individuals who are primarily or exclusively engaged in the provision of platform economic services can be presumed to be income from wages and salaries. The income of individuals who are engaged in the provision of platform economic services on a part-time basis should be presumed as remuneration for labor services. The income derived from the provision of relevant services with the help of immovable property or fixed assets can be presumed as business income or rental income.[60] Although not precise enough, these presumptions help to strike a balance between tax administration efficiency and the protection of taxpayers' rights.[61]

Finally, a data taxation system in line with China's national conditions should be constructed. First, it is necessary to clarify the preliminaries of data taxation. Clarifying the classification of data and the ownership of different categories of data is the prerequisite for the realization of data taxation. The Twenty Articles on Data proposes to categorize data into public data, enterprise data, and personal data. On this basis, the ownership of different types of data should be clarified under the guidance of the concept of 'separation of three rights'.[62] At the same time, the data pricing system also plays an important role in data taxation. It is necessary to establish a national data trading market to realize the openness and marketization of data trading.[63] Second, the design of the data taxation system should distinguish between data as a commodity and as a means of production. When data are used as commodities, the resulting economic benefits can be measured independently and thus included in the current income tax collection framework. In order to ensure strict tax law implementation, 'income from the transfer of data' should be explicitly included in the taxable income of

59 Li Nannan & Fu Daxue, *The Distinction Between Labor Income and Business Income in Tax Collection and Administration of Platform Economy: A Perspective Based on the Principle of Substantive Taxation*, 6 Taxation Research 77, 81-82 (2024).

60 Zhou Keqing & Liu Wenhui, *Exploration of Tax Collection Mechanism of Personal Income Under Platform Economy*, 8 Taxation Research 83, 87 (2019).

61 Mao Xiaojun, *The Tax System of Part-Time Income Under the Sharing Economy: Another Review of the French Sharing Economy Tax Bill*, 7 Sub National Fiscal Research 36, 40 (2018).

62 Chen Rongxin, *On the Transformation of Data Taxation Model Under the Structural Separation of Property Rights*, 6 Taxation Research 55, 55-57 (2024).

63 Fu Jing, *supra* note 15, 60.

enterprise income tax and individual income tax.[64] However, when data are used as a means of production, the economic benefits derived therefrom are integrated into other goods or services, and the part of the economic benefits derived from data cannot be measured independently. For this part, a specific data tax should be established.[65]

B. Improvement of the Tax Administration System in Line with New Business Models

To address tax collection and management challenges posed by new business models, the current tax administration system should be adjusted. Modernizing the tax governance system requires both improving digital platforms' tax information reporting obligations and advancing the digitization of tax collection and management processes.

Firstly, it is necessary to improve the tax information reporting obligations of digital platforms. Due to the digital platform's information advantage and technological capability, strengthening its tax information reporting obligation plays an important role in enhancing the tax transparency of the platform economy. Currently, article 28(2) of the *E-Commerce Law* has introduced the obligation of e-commerce platform operators to report tax information. The *Tax Collection and Administration Law (Revised Draft for Comment)*, released in March 2015, proposes to extend this obligation to other online platform operators[66] and introduces a provision on the legal responsibility of platforms that fail to fulfill the obligation,[67] which will help to fill the legal gaps. However, some of the provisions therein are rather vague, leading to a discretionary space for tax authorities. For example, article 62(6) stipulates that the tax authorities have the right to notify e-commerce platforms, other online platform operators, and electronic payment service providers in writing to provide tax-related information, but there is no restriction on the form or duration of the provision of information. In addition, the provisions therein on the legal responsibility of platforms for failing to fulfill the obligation to report tax information are overly stringent, and it attempts to introduce, for the first time in the *Tax Collection and Administration Law*, the aggravating circumstance of 'particularly serious circumstances' and simultaneously raise the maximum fine from 500,000

64 Deng Wei, *supra* note 15, 51.

65 Zhao Shenhao, *On the Theoretical Basis and Dual Realization Path of Data Taxation*, 8 Taxation Research 52, 58-59 (2023).

66 The first two paragraphs of article 29 of the *Tax Collection and Administration Law (Revised Draft for Comment)*.

67 Article 72 of the *Tax Collection and Administration Law (Revised Draft for Comment)*.

yuan under the *E-Commerce Law* to 2 million yuan. This is not only heavier than the legal liability of financial institutions, which are also third parties,[68] but may also conflict with the *E-Commerce Law*.

Secondly, promoting the digital transformation of tax administration is a key strategy for improving the tax administration system. This transformation is of great significance in enhancing the transparency of tax-related information on new business models and improving the efficiency of tax administration. In view of the current issues in the digital transformation of tax administration, improvements can be made in the following aspects. First, it is essential to strengthen the top-level design and build a cross-regional and cross-departmental information sharing mechanism. Influenced by departmental interests, data transmission security risks, and other factors, the phenomenon of 'data silos' is quite common, restricting the efficiency of tax information sharing. To solve this problem, it is necessary to promote the construction of a national unified data and information sharing management platform, standardize the caliber of data collection, and promote cross-regional and cross-departmental information sharing.[69] Second, it is crucial to strengthen technological empowerment and promote the deep integration of emerging technologies such as big data, AI, and blockchain with tax administration.[70] Among them, big data technology is conducive to improving the efficiency and accuracy of tax information processing; AI technology is conducive to intelligent analysis and the prevention of various risks in different aspects of tax administration through autonomous collection and processing of tax information; and blockchain technology is conducive to enhancing the security of tax information.[71] Third, it is necessary to strengthen coordination with laws such as the *Personal Information Protection Law*, the *Data Security Law*, and the *Cybersecurity Law*, with an emphasis on the protection of taxpayers' commercial secrets and personal privacy. To this end, data desensitization and classification of tax information should be promoted in the exchange process to balance the relationship between collection and management efficiency and information protection.

68 Article 73 of the *Tax Collection and Administration Law* stipulates that a bank or any other financial institution that fails to fulfill its obligation of concerted effort shall be fined by the tax authority not less than 100,000 yuan but not more than 500,000 yuan.

69 Jiang Yibiao, Zhang Xili & Liu Xiao et al., *Reflections on Optimizing the Tax Governance of Platform Economy: Research Based on Digital Economy Industry in Haidong City, Qinghai Province*, 11 Taxation Research 75, 79-80 (2024).

70 Wang Min, Fang Zhu & Liu Yaxian, *Path Selection for Comprehensively Deepening Tax Administration Reform Under the Goal of Tax Governance Modernization*, 40 Chinese Public Administration 155, 158 (2024).

71 Li Xinzhao, *Suggestions for Strengthening Tax Administration in the Context of Digital Economy*, 1 Taxation Research 129, 130 (2023).

C. Addressing the Structural Challenges of New Business Models to Tax Revenues

In the face of the risk of technical unemployment and tax revenue loss that may be triggered by industrial automation, it is necessary to prudently assess the potential impact of policy changes on the development of the AI industry while rationally adjusting the current tax system, and to seek to balance technological advancement with social equity.

On the one hand, in order to support the development of the AI industry and improve China's international competitiveness, it is not appropriate to implement a 'robot tax' system at this stage. AI is an important driving force of the new round of scientific and technological revolution and industrial transformation. Accelerating the development of a new generation of AI is a strategic matter related to China's ability to seize the opportunities of the new round of scientific and technological revolution and industrial change.[72] At present, China's AI industry is developing rapidly. From 2014 to 2023, China's patent applications in the field of AI exceeded 38,000, ranking first in the world.[73] However, more major original achievements need to be made, especially in basic theories, core algorithms, key equipment, high-end chips, and other aspects of AI.[74] In 2017, the State Council issued the *Next Generation AI Development Plan*, which proposes that by 2023, AI theories, technologies, and applications should generally reach the world's leading level. At the same time, it puts forward the need to 'implement preferential fiscal and tax policies for AI SMEs and startups, and support the development of AI enterprises through policies such as tax incentives for high-tech enterprises and super deductions for R&D expenses'. The 'robot tax' will adversely affect the development of the AI industry and is inconsistent with China's industrial policy and development strategy. In addition, from the perspective of tax revenue, as individual income tax only accounts for about 8% of China's tax revenue, which is not a high proportion,[75] the impact of automation on China's tax revenue is relatively

72 XI JINPING PRESIDED OVER THE NINTH GROUP STUDY SESSION OF THE POLITICAL BUREAU OF THE CPC CENTRAL COMMITTEE AND DELIVERED A SPEECH, at https://www.gov.cn/xinwen/2018-10/31/content_5336251.htm (Last visited on April 23, 2025).

73 WIPO, PATENT LANDSCAPE REPORT: GENERATIVE ARTIFICIAL INTELLIGENCE (GENAI), at https://www.wipo.int/web-publications/patent-landscape-report-generative-artificial-intelligence-genai/assets/62504/Generative%20AI%20-%20PLR%20EN_WEB2.pdf (Last visited on April 23, 2025).

74 MINISTRY OF SCIENCE AND TECHNOLOGY OF THE PEOPLE'S REPUBLIC OF CHINA, BUILDING CORE COMPETITIVENESS, at https://www.most.gov.cn/mtjj/ztjj/201805/t20180502_139275.html (Last visited on April 23, 2025).

75 FISCAL REVENUE AND EXPENDITURE IN 2023, at https://www.gov.cn/lianbo/bumen/202402/content_6929621.htm (Last visited on April 23, 2025).

controllable, and there is no urgent and realistic need to introduce a robot tax.[76] Therefore, at this stage, China's AI tax system should still aim to promote innovation.

On the other hand, the risk of unemployment and the shortfall in tax revenues that may be caused by industrial automation should be pre-judged in advance to make sound policy reserves. In response to the short-term technical unemployment caused by industrial automation, the incentive role of tax policy in employee education and skills upgrading should be brought into full play. In the long run, the development of AI will give rise to new industries and create more jobs, with the job creation effect outweighing the substitution effect.[77] However, due to the structural differences in the quality requirements for workers between the replaced jobs and the new ones, the problem of short-term unemployment cannot be ignored. Therefore, it is necessary to use tax policy to guide enterprises to participate in vocational education and encourage them to carry out vocational training. At present, enterprises are allowed to deduct up to 8% of the total wages and salaries for employee education expenses when calculating the taxable income for enterprise income tax, and the excess can be carried forward for deduction in the following tax years.[78] In the future, consideration may be given to appropriately increasing the percentage of deduction, so as to enhance the incentive for enterprises to participate in vocational training, thereby more effectively alleviating the structural unemployment problem.

Meanwhile, the structure of the tax system should be continuously adjusted and optimized. The employment substitution effect brought about by the development of AI will reduce the tax revenue based on labor income and increase the tax revenue based on capital income. The current marginal tax rate on labor income in China is higher than that on capital income, which may lead to a decrease in overall tax revenue and exacerbate the inequitable distribution of income as the AI industry further develops. The *Outline of the 14th Five-Year Plan for National Economic and Social Development and Vision 2035 of the People's Republic of China* clearly states that it is necessary to 'improve the individual income tax system, promote the expansion of the scope of comprehensive taxation, and optimize the structure of tax rates'. In the future, consideration can be given to gradually

76 Zhang Zhaoting, *supra* note 25, 71.

77 Hu Congjun & Guan Leining, *Research on Employment Creation Effect and Employment Substitution Effect of Digital Economy*, 4 Reform 42, 43-46 (2022).

78 *Notice on Pre-Tax Deduction Policy for Enterprise Employee Education Expenses*, Ministry of Finance and State Administration of Taxation [2018] No. 51.

incorporating capital income, such as income from property transfers, property leasing, and dividends and bonuses, into comprehensive income in due course.[79] This approach is conducive to balancing the tax burden of labor income and capital income, and better adapting to the changes in the tax structure brought about by the development of AI.

(Edited by Gong Li)

新业态对现行所得税法的挑战及改革路径

内容提要 当今中国，以共享经济、平台经济为代表的新业态蓬勃发展，成为经济发展的重要部分。然而，新业态的高度数字化、虚拟化以及交易模式的多样化正深刻变革着传统经济运行逻辑，给现行所得税法的实体制度和征管制度带来了诸多挑战。同时，产业自动化对税收体系具有结构性冲击，迫切要求对税制结构进行相应调整。针对这些挑战，中国应当构建适配新业态的税收法律制度，兼顾税收效率与税收公平，妥善处理税法回应性与稳定性的关系，统筹协调国内税法与国际税改。在此基础上，中国完善税收法律制度的具体实施路径，应包括完善同新业态相适应的税收实体制度和税收征管制度，及理性应对新业态对税收收入的结构性挑战，以促进新业态在法治轨道上健康发展。

79 Ma Caichen & Huang Shaohan, *An Optimization Discussion of the Personal Income Tax System on Capital Income*, 9 Taxation Research 51, 54-55 (2024).