



## REFLECTION ON CHINESE FISCAL (TAX) COUNTERMEASURES AGAINST EPIDEMIC OF COVID-19

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*Abstract: COVID-19 epidemic has been a challenge for the world. China based on the experience in SARS, responded rapidly, and issued a broad range of fiscal countermeasures to achieve multiple aims. The fiscal countermeasures can be understood better under Chinese political, economic and cultural background, especially a centralized and high mobilization ability system. The measures mainly achieved the primary goals, but there is still room to improve, which includes the improvement of the current fiscal laws. For the challenges in the near future, China will use more tax cut and saving government expenditure to overcome.*

### Introduction:

At the end of 2019, a then unknown new pneumonia/virus was detected in Wuhan, which developed into a pandemic in an astonishing short of time. The whole world suffered and changed. The exact economic and social influence of the pandemic will be a research project which can only be carried out maybe after decades.

Based on the experience of countering SARS, China responded to the COVID-19 rapidly. Even before the lockdown of Wuhan on January 24th, fiscal countermeasures were taken. With the development of the epidemic of COVID-19, more countermeasures were adopted to achieve different aims. At early stage of the epidemic, fiscal measures aimed at providing medical treatment and preventing the spread of the virus. Right followed, was to encourage the supply of anti-epidemic related goods and materials, to encourage donation, and to relieve the most suffered businesses. Before the pandemic was declared by WHO, most policies aimed at restoring economy were released.

In China, COVID-19 is more or less under control. There were small scale out-breaks firstly in June in Beijing, originated from the Xinfadi wholesale market, then from the end of 2020 among a number of cities. The country also passed the challenge of Spring Festival holiday. The economy is recovering, normal life almost back, with high cost and sacrifice of international mobility. Statistics from National Bureau of Statistics of China show that, China's Gross Domestic Product(GDP) in 2020 reached RMB 101,598.6 billion yuan, and on a comparable basis, an

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increase of 2.3% over the prior year. Although there was a 6.8% of GDP drop in the first season, the second season realised a growth of 3.2%, followed by 4.9%, 6.5% increase in the next two seasons.<sup>46</sup>

Why does China contain the virus so effectively and rapidly? To which degree do the fiscal countermeasures contributed the battle against the virus and the recovery of the economy? With the accessibility of vaccines in more and more countries, restoring of the economy and social order is paralleled with tackling the virus. Although it is too early to do an overall assessment of fiscal/tax measures, it is necessary to do some review and reflection, which may help to make is clearer as to what can be done next.

Fiscal measures in COVID-19 or other healthy catastrophes have been studied by Chinese legal community. As to the fiscal law issues brought or inspired firstly by SARS and most recently COVID-19, Chinese academic research covered a comparatively narrow range of topics. The main focus is on the fiscal relationship in dealing with public emergencies (included public health emergencies) between central and local governments, especially on how to legalize the allocation of power and duties along with the expenditure responsibility.<sup>47</sup> Chinese literature on the study of fiscal measures mainly fell into the discipline of economics. The economic effectiveness of fiscal countermeasures should be assessed, while at the same time, the legality of the countermeasures, protection of fundamental rights, and fair allocation of public risk/burden, should always be addressed and reflected. The paper tries to introduce the fiscal countermeasures China have adopted, the back ground to understand their features, with an effort to do a preliminary assessment of the legality, efficiency, etc.<sup>48</sup>

## 1 Overall Fiscal Countermeasures by Chinese Government against COVID-19

Chinese economy has slowed down before COVID-19. The attack from the virus added the difficulty of economy. At the first stage of the epidemic, production and business was suspended, mobility stopped, with certain industries, particularly tourism, hotel, transportation, catering and film topped in the suffer list. However, not all businesses have the same fate.

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<sup>46</sup> See the National Bureau of Statistics, *National Economy Stably Recovered, the Main Goals Achieved Better Than Expected in 2020* (2020国民经济稳定恢复 主要目标完成好于预期), available at [http://www.stats.gov.cn/tjsj/zxfb/202101/t20210118\\_1812423.html](http://www.stats.gov.cn/tjsj/zxfb/202101/t20210118_1812423.html), visited on Feb.15th,2021.

<sup>47</sup> See, e.g., Jie Ji, *Research on the Legalization of Emergency Financial Expenditure in the Post-epidemic Period* (后疫情时代应急财政支出法治化研究), in *Journal of Beijing Institute of Technology(Social Sciences Edition)* (北京理工大学学报(社会科学版)), primary internet published version(which means no volume/page number is assigned yet), available at <https://doi.org/10.15918/j.jbitss1009-3370.2022.3943>.

Scholars also noticed the huge size of government emergency procurement, where current law only offered broad instructions, intended to design a legislation improvement. See, Xiaoping Zhang, *Legalization of Chinese Emergency Procurement: Experience and Suggestion* (我国紧急采购的法治化: 经验与建议), in *Law and Economy* (财经法学), No.3,2020.

Government issued consumption voucher is comparatively new to the people in mainland China. Some Chinese local governments issued consumption vouchers as an economic booming measure. When no specific law gives regulation basis for the government consumption vouchers, professor studied the rules and principles should be followed based on the nature and category of the vouchers. See, Wei Xiong, *Legal Review on Issuing Rules of Consumption Vouchers By China's Local Governments Against the COVID-19 Pandemic* (新冠肺炎疫情背景下政府消费券发放规则的法律检视), in *Wuhan University Journal(Philosophy & Social Science)* (武汉大学学报(哲学社会科学版)), Vol.73 No.5,2020.

<sup>48</sup> For the purpose of this paper, mainly those related to tax and government expenditure related measures are taken into consideration.

According to a questionnaire by Chinese economists in early February 2020, 59.1% of Chinese companies estimated over 20% drop of business income for year 2020, while 31.9% estimated over 50% drop. There is disequilibrium as to the adverse influence of COVID-19: the bigger business income size is, the less degree of adverse influence would suffer.<sup>49</sup> The conclusion seems commonly recognized by international community. Beside the disequilibrium which deserve different treatments, Hubei province need to have special attention——Hubei was in the heart of the COVID-19 attack, during the lockdown of its capital city Wuhan, the GDP almost dropped to 0.

To contain the virus, recover economy, Chinese governments responded in multiple directions, among which, fiscal/tax measures are of great importance. Subject to the current legal framework, almost all the epidemic countermeasures are made by respective ministries or institutions as to enforce the relative decisions/plans/resolutions of the CPC and State Council. Some local governments also adopted measures under their respective competences. The current fiscal measures were mainly released in early February, including tax incentives, state aids and subsidies, with the aims to secure supply, to support life and employment, to mitigate the adverse impact and boosting economy. As to the public cost on virus control and money needed, financial arrangements were made to distribute the burden between central and local governments. Of course the countermeasures are not limited to what are introduced in this article, there are some formal or informal policies taken by the administrative departments, judicial departments, to secure business, employments, avoid insolvency, etc. With the change of epidemic situation, the policies will be adjusted, as OECD observed, the new ones will be brought forward. The new adjustments and new policies are not covered either.

**Sustain medical treatment:** Assure no COVID-19 patient barred from medical treatment because of affordability. The medical cost of COVID-19 patients<sup>50</sup> not covered by social insurance or social assistance, is borne by government. Medical staff and persons who work on virus control are given additional allowance, with individual tax exempted.

**Support for necessary supply:** Provide finance support and tax preferences to specified companies which produces virus control related goods, materials, services and life necessities, including state subsidy on loan interest, special loan from the central bank to certain national and local banks for re-loan. Special favorite tax policy will be introduced later.

**Social assistance for the poor:** Broad the coverage of current social assistance system, and to take into the people who suffered difficulty because of COVID-19. Some local governments decided to temporarily extend the utmost months of unemployment insurance benefits and extend its coverage. Students who or whose family suffered from COVID-19 are given financial assistance.

**Resumption of business:** Special concern is given to small and minor businesses, with more accessibility to the Inclusive Financial System, waive and suspend of social insurance contributions, and more tax/government fee cut and tax incentives. The social insurance and tax countermeasures will be introduced later.

In 31th December 2020, China declared the free COVID-19 vaccine for all nationals, the burden will be on medical insurance fund and government. During the battle of the virus, some

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<sup>49</sup> See Wuxiang Zhu and others, *Firm Crisis, Government Support and Policy Efficiency under the Epidemic Shock* :

*Evidence from Two Waves of Questionnaire on SMEs(疫情冲击下中小微企业困境与政策效率提升——基于两次全国问卷调查的分析)*, in *Management World(管理世界)*, N.4,2020,pp.14-15.

<sup>50</sup> Include those suspected cases.

cities carried out mass nucleic acid test for residents, as a method to identify patients to stop the spread of virus, with the cost on government. For the mandatory centering quarantine cost, there is no legal arrangement,<sup>51</sup> people who were quarantined in hotels bear some part of the cost, with the portion differs from place to place.

## 2 Focus on the Tax Countermeasures

Most of the tax countermeasures are released by the Finance Ministry together with SAT, which is a common practice in China. At the first stage of the epidemic, tax countermeasures focused on virus control, and the second stage on recovering. The tax measures take effect retroactively as of 1st Jan.2020, and end on 31th Dec.2020(unless extended)<sup>52</sup>. The retroactive application would have an effect to waiver the taxes already due, relieving liquidity pressure of businesses.

**Support for necessary supply:** Favorite tax policy for the specified companies which produce certain emergent virus control related goods (manufacturers of key emergency supplies) to improve liquidity: (1)the relevant equipment newly purchased by manufacturers of key emergency supplies for the purpose of expanding production capacities is allowed to be deducted on a one-off basis for the purpose of enterprise income tax, (2) the 2020 new incremented excess input VAT credit may be refunded in full amount on a monthly basis.<sup>53</sup>

VAT exemption for certain goods and service: (1)the transport service of key emergency supplies for the prevention and control of the COVID-19 is exempted from VAT, (2) the supply of public transportation services and living services<sup>54</sup>, and daily necessities express delivery services for residents is exempted from VAT. Exempt tariff, VAT, and exercise tax for imported materials by government health departments which are directly used for the prevention and control of COVID-19.

**Encourage donation by granting full deduction and tax exemption:** According to Chinese tax law, donations can be deducted for income tax purpose only when made through government recognized public welfare social organizations or the people's governments at or above the county level and their departments or other state organs,<sup>55</sup> and subject to limitation based on a percentage of taxable income. To encourage donation for countering COVID-19, full deduction is granted, and the materials directly donated to the hospitals undertaking the tasks of prevention and treatment of COVID-19 are allowed to be deducted in full amount too. For the donation of goods which is deemed as taxable supply, VAT exemption is granted (and other taxes due exempted too). The scope of tax-exempt imports is appropriately expanded to donated materials which are used for prevention and control of COVID-19.

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<sup>51</sup> Ar.41 of the Law of Infectious Diseases, states that, "During the period of isolation, the people's governments that take isolation measures shall guarantee the daily necessities of the persons under isolation; and if such persons have their own units, the units, which they belong to, shall not stop the payment of their wages during the period of isolation." But we can't read from the article that, government should bear the cost.

<sup>52</sup> At the time this article was finished, no formal announcement about whether and which tax measures would be extended.

<sup>53</sup> Before 2018, the excess input VAT can only be transferred forward for future credit. In 2018, refund was granted to certain industries as a economy boost measure. From 1st April, 2019, refund policy is applied universally, on a 6 month basis and subject to strict requirements.

<sup>54</sup> Living service as a VAT taxable service item, refers to the various services provided to meet the needs of urban and rural residents in daily life. Including cultural and sports services, education and medical services, tourism and entertainment services, catering and accommodation services, daily services for residents and other living services

<sup>55</sup> Which means, direct donation to donatee is not permitted to deduct before tax.

**Recover aid for suffered industries and small business:** Mainly through VAT and enterprise income tax, estate related taxes, and some administrative fees. Because (1) VAT. From January 1, 2020, to December 31, 2020, taxpayers are exempted from VAT on film projection services. From 1st March 2020, to 31st May 31 2020 (later was extended to the end of 2020), as for small-scale VAT taxpayers in Hubei province, the supplies which VAT imposition rate of 3%<sup>56</sup> apply shall be exempt from VAT. As for a small-scale VAT taxpayer in a province, autonomous region or municipality directly under the Central Government other than Hubei province, the supplies which the VAT rate of 3% apply shall be reduced to 1%. (2) Enterprise income tax. Companies in transportation, catering, accommodation, tourism and film, the lost occurred in 2020, the utmost transferrable (afterwards) term is extended from 5 years to 8 years. (3) House property tax and urban land use tax. Unlike VAT and income tax, no business activity, no tax due, the tax obligation of house property tax and urban land tax continues even during the closure of business, which can be an extra threat on finance liquidity. For temporary exemption of these two taxes, authority belongs to provincial governments, the range, degree and term of exemption thus differ from province to province. Mainly speaking, the exemption aimed at those suffered great loss and small businesses. (4) Social insurance contribution cut. The Ministry of Human Resources and Social Security, which in charge of social insurances, according to the decision of the State Council, issued notice in February then again in June, setting that local government may decide to offer full waiver of no more than 5 month social insurance contribution<sup>57</sup> (employers' share) for middle and small size companies, half waiver of no more than 3 month for big companies, and temporary suspend for difficult employers, starting from February. The term of waiver was doubled in June. For Hubei province, the full waiver policy also applies to big companies.

Although China has a uniform Social Insurances Law and fund manage system, social insurance systems are not unified in national level, with policies and fund units being independent in province level and even in city level. Local governments have some room as to the degree this social insurance waiver policy may apply. The fact is, almost all the local governments enforced the policy, and offered further social insurance cut by lowering down the rate or basis for 2020. Social insurance burden is high for companies, especially those labor-intensive companies. According to a study, for middle and small size businesses, because of COVID-19, salary and social insurance contribution account to 58.4% of expenditure pressure, while rent accounts for 17.5%.<sup>58</sup> Voice to lower down this public burden has long been heard, but little was done before the Tax and Fee Cut Policy from 2018. Because of some historic reasons, and the recent aging

<sup>56</sup> A simplified imposition rate on sale which input is not permitted to credit. This kind of VAT imposition rates, 1%, 3%, or other, apply to small-scale VAT taxpayers mainly, and to certain items of general VAT payers.

<sup>57</sup> There are five social insurances and one housing fund in China. The Social Insurance Law of PRC set 5 social insurance, basic pension insurance, unemployment insurance, work-related injury insurance, basic medical insurance and maternity insurance. The first three are on the list of the cut policy. Arrangements also made as for basic medical insurance and the housing fund.

The basis of contributions are salary of employee, with the burden mainly split between employer and employee. Social insurance contributions are mandatory, while housing fund is de facto not mandatory. The over-all of this 5-insurance and 1-fund burden on business amount at least 20% of the salary expenditure.

<sup>58</sup> See Wuxiang Zhu and others, *Firm Crisis, Government Support and Policy Efficiency under the Epidemic Shock* :

*Evidence from Two Waves of Questionnaire on SMEs(疫情冲击下中小微企业困境与政策效率提升——基于两次全国问卷调查的分析)*, in *Management World(管理世界)*, N.4, 2020, P15.

trend, basic pension insurance and medical insurance has been under pressure, narrowing the room for contribution fee cut.

**Policies aimed at expand export and encourage domestic market are also issued.**

The VAT refund rate upon export is raised for certain products. The VAT imposition rate on sale of second hand vehicles reduced from 2% to 0.5%, effective from 1st May 2020 to 31st December 2023. The policy of exempt Vehicle Purchase Tax on new energy vehicles is extended to 2022. Domestic market gained special attention and high expectation from the top leader level as economic growth engine for the years to come.

**Tax administrative arrangements:** Tax return filling is extended for difficult tax payers. For small profit companies, the prepayment of enterprise income tax from May to December is permitted to suspend to the first file term in 2021. The same rule applies for the individual income tax of sole traders. To avoid person contact, more e-tax arrangements are launched, from e-registration, e-filing to the application for Mutual Consultation Procedures by Chinese resident taxpayers. SAT published an inclusive list of items which may be done online. SAT also published a policy instruction, for the convenience of taxpayers, as to all the applicable tax incentives for countering COVID-19.

### 3 the Features of Chinese Practice

Countries around the world shared some common fiscal/tax tools as summarized by OECD,<sup>59</sup> but of course the measures would reflect the economics, social, political and even cultural aspects of the country. In China, maybe it is the unique political system, above all, make them more impressive.

#### 3.1 tax cut, more tax cut

Tax incentives, and tax cut policies are frequently used for dealing with emergencies events, to boost market faith. Generally speaking, compared the fiscal countermeasures that taken for SARS, the Chinese government responded faster, and devoted much more government expenditure. Similar tax incentives were taken in COVID-19, though the degree, range differ, and differences also lie in the fact that in 2016, business tax was abolished and transformed into VAT.

Chinese scholar observed that, unlike in the United States, government aid in emergency events is provided in multiple forms, mainly through insurance and loan, while Chinese depends more on government budget and resources. On the contrary, tax incentives policies are comparatively more complicated in China.<sup>60</sup> The government budget and resources were mainly put into the control and prevention of the virus, vaccines, that is the health part, and less on business support, with the later mainly targeted by tax incentives.

Tax cut policies have been used for encourage market faith too. From 2018, to counter the economic slowdown and to build confidence to economy, China launched a new round of tax cut(and administrative fee cut) policy, that is Tax and Fee Cut Policy. Intensive tax incentives have been made, with middle/small size businesses as main benefiter. VAT basic rate lowered from 17% to 16% in May 2018, then further to 13% from April 2019, and VAT simplified

<sup>59</sup> OECD (2020), *Tax and fiscal policy in response to the Coronavirus crisis: Strengthening confidence and resilience*, OECD Policy Responses to Coronavirus (COVID-19), OECD Publishing, Paris, <https://doi.org/10.1787/60f640a8-en>.p5.

<sup>60</sup> Xuedan Zhang, Zhanxia Wu, *Building a Fiscal Governance System to Meet the Needs of Emergency Management with Chinese Characteristics*(构建适应中国特色应急管理需求的财政治理体系), in *Public Finance Research* (财政研究), N.4, 2020. p.28.

imposition rates are lowered substantially too. The mandatory threshold for General VAT Taxpayer registration was raised to RMB 5 million yuan<sup>61</sup> of annual VAT taxable sale amount. <sup>62</sup> For enterprise income tax, the threshold for small enterprises raised too, to cover more small businesses for whom favorite tax rates and policies are offered.

In 2020, the State Council declared to increase tax and fee cut again, because of COVID-19. The tax and fee cut amounts to RMB 2.6 trillion yuan in 2020.<sup>63</sup> Some of the tax countermeasures for COVID-19 can be considered as a continue of the 2018 Tax and Fee Cut Policy. At the same time, Tax and Fee Cut Policy to some degree limited the possibility and also the necessity of the former.

China also face the budget pressure, especially for local governments, just like most of other countries, from the adverse impact of COVID-19 on economy and expanded expenditure. When some countries try to find new tax revenue or raise tax rate, Chinese government are more determined to depend on government debt,<sup>64</sup> and cutting government expenditure to work through the difficulties. What is more, during the session of NPC in March this year held in Beijing, the State Council announced more tax cuts policies for small business. As reported, China will continue to implement proactive fiscal policies and prudent monetary policies in 2021 amid efforts to maintain the necessary support for economic recovery.<sup>65</sup> According to the minister of MoF, Mr. Liu, the institutional tax and fee cut policy adopted recent years will continue, while the temporary ones which were introduced in 2020 will exit slowly.

### 3.2 Centralized (commanding) system and high mobilization ability

Why Chinese government can be so effective and rapid to contain COVID-19? The centralized and unified leadership of CPC, the unique political system, the exist economic achievement, and Chinese culture, as part of the so-called Chinese Institution Superiority are the

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<sup>61</sup> Comparing before, 500,000 RMB for industrial business, and 800,000 RMB for commercial business.

<sup>62</sup> For the common consideration of lowering administrative cost, a threshold for VAT is adopted by China, as other countries. Beside this, China use another mechanism: the taxpayers in VAT in China are divided into two categories: the first is the General VAT taxpayer, for whom, the input credit mechanism applies, based on the Special VAT Invoice administrative system, and the VAT rate is higher(not necessary higher burden of tax because of the right to credit input VAT). The second category is Small-Scale VAT Taxpayer, for who, a simplified imposition rule applied. That is, the Small-Scale Taxpayers apply a much lower VAT Imposition rate, and the input VAT is not permitted to credit, the VAT as to Small-Scale Taxpayers is more like a business tax, with the difference is, the purchaser from Small-Scale Taxpayers may credit the VAT input.

The division based on two criteria: the annual VAT taxable sale amount, and the ability account ability. Taxpayer may choice to apply to register as General VAT Taxpayer if have account ability even if the sale amount is below the threshold. The taxpayer have to register as General VAT Taxpayer if the sale amount is over the threshold.

During the tax cut actions, the two type of thresholds (for VAT liability and for General VAT Taxpayer) have been used as a tax incentive method.

<sup>63</sup> See Report on the Implementation of China's Fiscal Policies in 2020 by MoF, available at [http://www.mof.gov.cn/zhengwuxinxi/caizhengxinwen/202103/t20210305\\_3666406.htm](http://www.mof.gov.cn/zhengwuxinxi/caizhengxinwen/202103/t20210305_3666406.htm), visited on 7th, March, 2021.

<sup>64</sup> The deficit-to-GDP ratio in 2020 was projected at more than 3.6 percent (a raise from 2.8 percent), with a deficit increase of one trillion yuan over last year. One trillion yuan of special government bonds for covid-19 control were issued in June 2020. These were extraordinary measures for an unusual time. The deficit-to-GDP ratio in 2021 is set at 3.2, no new special government bond will be issued. See Report on the Implementation of China's Fiscal Policies in 2020 by MoF, available at [http://www.mof.gov.cn/zhengwuxinxi/caizhengxinwen/202103/t20210305\\_3666406.htm](http://www.mof.gov.cn/zhengwuxinxi/caizhengxinwen/202103/t20210305_3666406.htm), visited on 7th, March, 2021.

<sup>65</sup> See Xinhua news, *China's proactive fiscal policy to be more targeted*. <http://www.chinadaily.com.cn/a/202101/01/WS5fef24dba31024ad0ba9ffcc.html>, visited on 6th, March, 2021.

main reasons, some commented in an official media.<sup>66</sup> Others attributed the success to the centralized power model, highly activated social resources, a co-work mechanism, along with other reasons.<sup>67</sup>

Public health might fall into the jurisdiction of local governments in a federal system. One can't deny that, the response to such a pandemic like COVID-19, a centralized system or otherwise well designed coordination mechanism (especially executive one) are necessary. The worldwide experiences show that, among countries that successfully dealt with the first wave of the COVID-19 pandemic, there are examples of both centralized and decentralized approaches.<sup>68</sup> Chinese experience mainly belongs to the first approach. And unlike in most countries, where it is the executive branch of the government who works on centralized coordination mechanism, China depends more on a political coordination mechanism.

How does this happen? The leadership role of CPC, and emergency response pattern is the key answer as to how this centralized system works. The whole COVID-19 control is directed by an ad hoc CPC Workgroup, under the leadership of Politburo Standing Committee, which is the top power of CPC. At the same time, the State Council established an ad hoc Joint Mechanism to assure good departments coordination. Unlike the battle against SARS, H1N1, when the role of CPC in the national emergency command system was indirect leader, in COVID-19, the role changed into direct leader,<sup>69</sup> which is a reflection of the enhancement of CPC's leadership started from the 18th CPC national congress in 2012. The emergency response pattern then works this way: Workgroup (composed of important ministers) study and decide on important issues (give response instruction), Joint Mechanism in charge of coordination of all the related government departments and local governments (both horizontally and vertically). The fiscal and tax policies issued by the MoF, SAT, can be considered as an enforcement of the instructions from the Workgroup.<sup>70</sup> The mechanism assured a rapid and effective respond, which is vital especially in the early stages of the epidemic.

During what OECD might call it phase 3&4, that is the stage when attention should be given to economic recovering and restoring of public finances,<sup>71</sup> a similar path was followed. Political Bureau of CPC Central Committee in a meeting on 17th, April, 2020 stressed the so called 6-priorities (六保) of the task of the country, to be specific, ensure security in job, basic

<sup>66</sup> Jiahua Wu, *The Scale and Speed of Anti-epidemic Shows China's Institutional Superiority* (抗疫规模和速度彰显中国制度优势), in 红旗文稿, N.5, 2020, p7.

<sup>67</sup> See Feng Guo, *Discussion on the Construction of Law System of Epidemic Prevention and Control in China* (构建我国疫情防控法律体系的探讨), in Law and Economy (财经法学), N.3, 2020, pp10-11.

<sup>68</sup> de Biase, P. and S. Dougherty (2021), *Federalism and public health decentralisation in the time of COVID-19*, OECD Working Papers on Fiscal Federalism, No. 33, OECD Publishing, Paris, <https://doi.org/10.1787/b78ec8bb-en>, p6. It summarized that, Countries employed different solutions to align multiple levels of government in implementing responses to tackle the pandemic. Three that are worth highlighting are executive federalism, use of centres of government, and state-of-emergency laws.

<sup>69</sup> Kaibin Zhang, *Development of the National Emergency Command System: Comparative Case Studies of the SARS, H1N1 and COVID-19* (国家应急指挥体制的“变”与“不变”——基于“非典”、甲流感、新冠肺炎疫情的案例比较研究), in *Administrative Law Review* (行政法学研究), No.3, 2020.

<sup>70</sup> See the supra note, Kaibin Zhang, pp.21-22.

<sup>71</sup> See OECD (2020), *Tax and fiscal policy in response to the Coronavirus crisis: Strengthening confidence and resilience*, OECD Policy Responses to Coronavirus (COVID-19), OECD Publishing, Paris, <https://doi.org/10.1787/60f640a8-en>, pp9-11.



living needs, operations of market entities, food and energy security, stable industrial and supply chains, and the normal functioning of primary-level governments. Fiscal policies were arranged by respective departments to ensure 6-priorities be executed.

The Chinese system has great mobilization ability. Chinese scholar rightly pointed out, as China likened the COVID-19 epidemic prevention and control as People's War<sup>72</sup>, it is not an infectious diseases prevention and control in legal sense, but a full-perspective mobilization from political, economic, social and cultural dimensions.<sup>73</sup> If without unified will, culture embodied collectivism, and cultural respect from Chinese people toward being-alive (willing to restrict freedom for the prevention of threat to life), no matter how compulsive the government was, it would never maintain so inclusive social order. Beside patriotism and national attitude to life, the elaborate organization system of the CPC, and feeling of mission and duty of ordinary CPC members also make the mobilization possible.

When the country is lack of a formal coordination system, centralization of course can bring fiscal pressure on local governments, especially when fiscal-federalism is part of the central-local government relationship.<sup>74</sup> Fiscal measures were produced from central government, though local governments do have some room to issue their own policies. Many local governments, like Wuhan, tried to issue consumption coupons to boost economy. However, the fiscal measure (including tax and fee cut policies) from central government means more expenditure(also tax expenditure) obligation on local governments. Considering the fiscal pressure of local governments, the two trillion yuan raised through extra debt ratio and specific treasury bond will be transferred in full to local governments. To work with it, a special transfer payment mechanism will be set up to ensure that funds go straight to prefecture and county level governments(instead of go through provincial governments). When releasing fiscal pressure of local governments, other possible problems need to be dealt with, inter alia, how to make sure the efficiency of transfer payment, how to make sure the fairness between local governments. In a legal perspective, a law based framework for fiscal central-local government relationship is in urgent need.

#### 4 Primary Assessment of the Fiscal Countermeasures

##### 4.1 the effect of the countermeasures

In a study carried out in the middle of February,2020, among the companies under survey, 73.8% did not enjoy tax benefits, 9.0% deferred payment of enterprise income tax, 4.6% extended tax-loss carryforward term, 4.1% and 3.5% enjoyed VAT and enterprise income tax

<sup>72</sup> Xi Jinping name the fight against the COVID-19 as a people's war, proclaiming "firmly rely on the people to resolutely win the war against epidemic prevention and control," and "extensively mobilize and depend on the masses." Win the People's War of Epidemic Prevention and Control with one heart and one mind.

<sup>73</sup> Bin Xu, *the Cost of Rights:Analyze on Citizn Rights in the Prevention and Control of Epidemic: Take China's Countermeasures in COVID-19 as Example*(权利的成本：疫情防控中的公民权利辨析：以中国新冠肺炎抗疫措施为例), in *Human Rights*(人权), No.3,2020.P79.

<sup>74</sup> The current system is more like a combination of political centralism and fiscal federalism. From 1993, a fiscal reform was carried out, and the tax revenue was shared between central government and local governments. But for the past three decades, more fiscal power was transferred to central government, while expenditure obligation stays in or goes to local governments. It was called asymmetric decentralization—expenditure remains decentralized with revenue being recentralized. The asymmetric decentralization is believed have contributed to the economic prosperity, but negative consequences such as increased socioeconomic inequalities. See, Alfred M.Wu, *Economic Miracle and Upward Accountability: A Preliminary Evaluation of the Chinese Style of Fiscal Decentralization*, in *Asian Review of Public Administration*, Vol.23m Nos.1&2,2012.pp.104-121.

deduction, while only 3.1% enjoyed the deduction of property tax and urban land tax. The bigger size the company is, the higher percentage of enjoying the deferral of tax. Among the companies which have less than 50 employees, or less than 5 million annual business income, the percentage of those enjoy no tax benefit is as high as 78.3%. What is more, government beneficial policies are better landed in state-owned companies than private-owned companies.<sup>75</sup> The possible reasons for the outcome, according to the study, include that: the survey was carried less than 2 weeks after the policies produced, some policies need further details for enforcement, some tax benefit require approval/check which need some time. And also, in early February, normal work did not completely resumed yet.<sup>76</sup> Although there is limitation on the study considering the timing, the fact that fiscal countermeasures have a kind of tardy nature should be taken into consideration. Another empirical study carried out in March in Hunan province, got a similar conclusion. It found that, generally speaking, the fiscal support measures cushioned the attack of COVID-19 on business expectation, and state-owned companies are more sensitive to social insurance cut policies and finance support, while private-owned companies are more benefited from tax incentives.<sup>77</sup> The question why so many small businesses, which are the main target of the fiscal countermeasures, did not enjoyed fiscal support measures at the early stage, the second study on March seems offer some sense for that. Some small businesses benefited less from social insurance fee cut, mainly because they had not paid the due part of social insurance contributions before.<sup>78</sup> The story would be the same as for some tax incentives—they would have no/little effect on most small businesses since under the current tax system, those small business are already exempted from tax. For those small businesses, current fiscal measures won't do much help.

The study also found that, the fiscal measures have more positive effect on companies in no-key-epidemic areas, than those in key epidemic areas, where resumption of businesses were constrained by virus containment measures.<sup>79</sup> The finding is more inspiring considering that, local leaders tend to take stricter containments in the try to control the virus in a shorter time. If it is agreed that, fiscal countermeasure by central government have a re-distribution effect, what about the redistribution effect of containment measures? For different businesses, industries, and professions, might be impacted differently by containment (especially extra containments). As far as observed, Chinese fiscal countermeasures did not take much into consideration the businesses/individuals that are suffered from government containment measures. If, how, and to what degree the business/individuals who suffered from government containment measures should be compensated, is worthy of further discussion. As to the author, it is about how to

<sup>75</sup> See Wuxiang Zhu and others, *Firm Crisis, Government Support and Policy Efficiency under the Epidemic Shock : Evidence from Two Waves of Questionnaire on SMEs*(疫情冲击下中小微企业困境与政策效率提升——基于两次全国问卷调查的分析), in *Management World*(管理世界), N.4,2020,P19.

<sup>76</sup> See the supra note, Wuxiang Zhu and others, p.20-21.

<sup>77</sup> Youth Project Group of Hunan Branch of the State Treasury, *Impact of COVID-19 Epidemic, Fiscal and Financial Support Policy and Enterprise Development Expectation: Based on the Empirical Study of the Investigation on 1907 enterprises in Hunan province*(新冠肺炎疫情冲击、财税金融支持政策与企业发展预期——基于湖南1907家企业调查数据的实证分析), in *Finance Economy*(金融经济),N.12, 2020, p79.

<sup>78</sup> See the supra note, Youth Project Group of Hunan Branch of the State Treasury, p.79.

<sup>79</sup> See the supra note, Youth Project Group of Hunan Branch of the State Treasury, p.79.

allocate public risk among the society, or even around the world. If ability to pay should be followed? Or some other principles should be followed?<sup>80</sup>

#### 4.2 The legality of countermeasures

The legality of fiscal measures are questioned even by economics,<sup>81</sup> and some suggest vest in local government more power to decide tax countermeasure policies during emergency event.<sup>82</sup> As to legality, the tax countermeasures during COVID-19 were not more lack of legality compared with the practices in normal times, for all the countermeasures were issued by MoF and SAT as in normal times. Chinese tax law has been criticized for lack of legality, formally and substantially. Consider, as an example, the highest legal source of VAT is an administrative regulation issued by the State Council, under a vague authorization from the National People's Congress(NPC) in 1985. Most tax incentive policies are made by Finance Ministry together with the State Administration of Taxation(SAT), subject to a internal approval from the State Council. The top leaders are determined to solve this problem, and efforts are on the way by enacting taxes including VAT. However, response to emergencies has been considered deserve some special treatments in a legal system. So before questioning the legality of fiscal measures, maybe firstly, a glance to the legal framework of containing public health emergencies is needed.

The limit of law and legal method seems allow, no matter how unreluctantly, *necessi tas legem non habet*, while countries have been making efforts to put crisis governance under rule of law. As to fiscal countermeasures, rapidness and flexibility is always fatal to the effectiveness, when the same effectiveness may only be assured by its legality and due process. So we need to put fiscal countermeasures under a legal framework, and from that legal framework to reflect how they works.

The main legal framework is composed of Law of the People's Republic of China on Prevention and Treatment of Infectious Diseases (Law of Infectious Diseases)<sup>83</sup>, the Emergency Response Law of the People's Republic of China(Emergency Response Law),<sup>84</sup> and Regulation on Responses to Public Health Emergencies(Public Health Emergencies Regulation).<sup>85</sup>

Law of Infectious Diseases sets the main legal basis of state aid for medical treatment to people with financial difficulties, with authorization to health and finance ministries to set down details.<sup>86</sup> Public Health Emergencies Regulation requires government to do the budget arrangement for public emergencies, give allowances and subsidies for medical and health

<sup>80</sup> Chinese scholar introduced the idea of right to social compensation, inspired by German's practice. The free medical treatment for COVID-19 patients would be legalized by the idea. See Yu Lou, *On the Right to social compensation*(论社会补偿权), in Law Science(法学), No.2,2021, pp.89-107. But here the possible compensation for the lost suffered from containment measures seems fall out of coverage of this right. In Chinese legal system, no direct applicable law can be found yet.

<sup>81</sup> Yanfeng Bai and Yining Tang, *Comparative Research on Chinese Fiscal and Tax Policies in Response to Public Health Emergencies*(中国应对突发公共卫生事件财税政策的对比研究), in Economic Theory and Business Management (经济理论与经济管理),No.7,2020, p.28.

<sup>82</sup> See the supra note.Xuedan Zhang, p.31.

<sup>83</sup> First promulgated in 1989, revised in August 2004, with a newest amendment in 2013.

<sup>84</sup> The laws on war, emergency, emergency response which made before SARS were considered incomplete. China started legislation on emergency response from SARS.

<sup>85</sup> It is an administrative regulation issued by the State Council in May 2003.

<sup>86</sup> Art 62.

personnel.<sup>87</sup> During COVID-19, free medical treatment was not limited to those in difficulties, as prescribed by Law of Infectious Diseases. The medical cost uncovered by social medical insurance fund was mainly paid by central government, and finally on the burden of taxpayers. The expenditure side of fiscal countermeasures, beside the aforementioned laws, is governed by Budget Law. Since budget law works mainly through procedural control mechanism, no illegality can be found in it. However, legitimacy of universal free medical treatment seems not be questioned by Chinese scholars. As written before, containing COVID-19 is a people's war, the society needs confidence, the government needs support.

COVID-19 epidemic, as a public health incident, together with natural disaster, accidental disaster, safety incident, are four type of emergency incidents governed by the Emergency Response Law. The law aimed to vest the government with necessary power to prevent, control public emergencies incidents efficiently, and to limit and regulate those powers.<sup>88</sup> The law is considered inenforcible because of broad wording.<sup>89</sup> It does offer some guidances for the allocation of responsibilities among different levels and departments of government, and give general legality for government controlling methods. For, the division of jurisdiction(or in another way, responsibility) and expenditure, which reflects the central-local government relationship, has been an practical issue and aslo academic topic—as intorduced before, Chinese state power follows centralism, but the legal relationship between central and local government is ignored by Constitution of PRC or other constitutional laws. Scholar summarized Chinese practice as *de facto federalism*.<sup>90</sup> The State Council made some efforts to make reforms, and to set down clearer rules. According to a circular, the central government has the responsibility for expenditure related to national or inter-regional epidemic controls.<sup>91</sup> It was not fully abided in COVID-19, for some of the expenditure was on local government. Maybe further clarification is needed as to what kind of expenditure should be considered as related to national or inter-regional epidemic controls.

Emergency Response Law was supposed to answer the legality question, but it went short of the expectation. When in the draft stage, the law was initially name State of Emergency Law(紧急状态法), then State of Emergency and Emergency Management Law(突发事件和紧急状态处置法), finally the current name. The reason for enacting a State of Emergency Law, was because the China realized the necessity for the grant of power for government to take some measures which are not part of the legal system for normal situations, and the need to prevent

<sup>87</sup> Art.6&9.

<sup>88</sup> See, Kangtai Cao, then director of Legislative Affairs Office of the State Council of the People's Republic of China, the note on the draft bill of Emergency Response Law of the People's Republic of China(关于《中华人民共和国突发事件应对法(草案)》的说明), in Bulletins of the Standing Committee of the National People's Congress,(全国人民代表大会常务委员会公报) No.6,2007,pp544-545.

<sup>89</sup> See An Yu, *the Enforcement Problem of Emergency Response Law(《突发事件应对法》的实施问题)*, in *Theoretical Horizon(理论视野)*, No.4,2009.pp44-46.

<sup>90</sup> See Yongnian Zheng, *De Facto Federalism in China: Reforms and Dynamics of Central-Local Relations*, by World Scientific Publishing,2007.

<sup>91</sup> Circular of the General Office of the State Council on Issuing the Reform Plan for the Division of Fiscal Powers and Expenditure Responsibilities between the Central and Local Governments in the Field of Medical and Health Care(国务院办公厅关于印发医疗卫生领域中央与地方财政事权和支出责任划分改革方案的通知,国办发〔2018〕67号)

such power from being abused. During the battling with SARS, a lot of quarantine and expropriation measures were adopted, which then were lack of a legal basis. The drafters soon realized that, the declare of emergency, and the “extraordinary” power of the government granted after the declaration of emergency situations (other than normal power that from in normal legal system<sup>92</sup>) is not enough to tackle emergency events. How to respond to emergency events, will more focus on firstly how to prevents emergency events, how to take different countermeasures with the development of such events, which cannot be put in the name of “State of Emergency Law”. So, the name of the draft bill was changed to State of Emergency and Emergency Management Law, then into the current name. With the changing of name, the purpose and content of the law changed accordingly, leading to the loss of its original goal, which left the power/legality for outside ordinary law is still missing to a great degree.<sup>93</sup>

It should be better for the Emergency Response Law after future revision, to design a mechanism, under which, extraordinary fiscal/tax measures can be triggered automatically from the time of declaration of emergent state. The legality problem will be solved, together with the tardy nature of fiscal measures be overcome. What is more, predictability can be assured, which will bring stability and efficiency.

#### 4.3 efficiency, equality and proportionality

In SARS, the fiscal efficiency was criticized.<sup>94</sup> The efficiency of the economic recovering policies during COVID-19 is to be assessed in the future. Until now, the fiscal measures on encouraging medical treatment, donation, increasing material supply, restarting business meet the goals. Though discussions on how to improve the fiscal response policies are on the way too. Efficiency, should not limited to economic efficiency, if the countermeasures have other effect, for example, boost the faith of the society, mobilize social resources, it is applaudable. The problem of course is that, sometimes it is hard to weight between the cost and the gain, and maybe more should be put under reasonable discretion and due process.

Equality and proportionality of fiscal measures are essential too. It is normal to ask, why a certain sector, industries, type of taxpayers is supported or given tax benefits, while the rest are not? And if the measure can meet the goal or not. How the technical details of the policies were discussed and determined, are unknown to the public. Some would be curious, like why film projection services got the VAT exemption treatment, while other sectors not.

In state of public emergency, rapid response from the government is essential, which will require unusual power granted to government. As to fiscal countermeasure, the most important one is to arrange fund and necessary resources toward the most needed areas, to save and maintain lives. When attention is focused on emergency, the rest might be easily ignored. In the early stage of the virus, medical materials were in terrible shortage, leading to no COVID-19 patients who also need urgent care in Wuhan were “squeezed out” from hospitals. Cautious

<sup>92</sup> Here means the laws/rules for states or situation other than state of emergency.

<sup>93</sup> See, Hongchao Lin, Liangheng Kong, *On Reformulating China's Legal System of Emergency State——Revisiting Emergency Response Law*(论我国紧急状态法制的重构——从反思《突发事件应对法》切入), Journal of Shanghai University(Social Sciences)(上海大学学报(社会科学版)), No.5, 2020.at pp133-136.

<sup>94</sup> The research group of “SARS and Government Public Policy” in the Public Policy Research Center of Dongbei University of Finance & Economics, *The contructure of government input system in emergent public events: start from SARS crisis*(突发性公共事件中的政府投入体系建设), in Review of Economic Research(经济研究参考), N.49, 2003, p.19.

reflection should be given as to if there is over-input from government part. For, the fiscal over-input on the epidemic would unavoidably infected other roles of the government. Or it can be put in another way: with less money, the government will not be able to offer other necessary public goods and services. From what Cass R. Sunstein will say, less rights will be protected, for every right, negative or positive, actually all have a cost in the form of tax. To overcome the revenue pressure, the Chinese government decided to do a saving finance in 2021, avoiding unnecessary meetings, business travels of the central government and so on. If so much portion of government expenditure would be saved or refrained from spending in the future, one can't stop to ask, why it was not avoided in the past? Was there a waste for the past years on those areas?

As to tax incentives, different taxes have their own function area based on their nature. The current tax incentives taken by China covered a wide range of taxes, from VAT, exercise tax, enterprise income tax, etc., the obligation of which is based on taxpayer's turnover or profit. As was argued by some Chinese scholar, for the lockdown businesses, exemption of VAT or enterprise income tax is meaningless. On the contrary, taxes like property tax is more like a fixed cost, to relieve the suffered business, better to expand property tax and urban land tax exemption.<sup>95</sup>

Disaster has always provided opportunity to improve in human history. COVID-19 provides good opportunity for fiscal legal system too. As was pointed out, the problems of Chinese fiscal system exposed and made worse by COVID-19, requires further improvement and reform of the system itself.<sup>96</sup> Reform and Open has never stopped in contemporary China. The current fiscal and taxation system was originally set in the end of 1993. 2008 witnessed an important reform of the enterprise income tax system, followed the transformation of VAT in 2009. From 2014, a so-called new round of fiscal and taxation system reform started formally, with three main goals: improve budget administrative system, improve taxation system, build a proper central-local fiscal relationship. As to the tax reform, a fairer and more robust tax system will be good foundation for the sustainable development of economy and society.<sup>97</sup> The leader of Communist Party of China (CPC), in its suggestion for the 14th 5-year-plan of national economic and social development, proposed a *dual circulation development pattern*, to specify, development depends mainly on domestic circle of economy, and domestic and international circulations mutually reinforcing.<sup>98</sup> Fiscal system need to be adjusted accordingly too.

## 5 As an ending: How should Risk be Allocated Among the Society

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<sup>95</sup> Cheng Gu and Zeyu Liu, *the Choice of Fiscal and Tax Policy to Fight COVID-19*(*应对新冠肺炎疫情的财税政策选择*), in *Fiscal Science*(*财政科学*), No.3,2020, p.19.

<sup>96</sup> See Ming Li, and others, *The Active Fiscal Policy Trend and the Finance-taxation System Reform in China after the Epidemic*(*疫情后我国积极财政政策的走向和财税体制改革任务*), in *Management World*(*管理世界*), No.4,2020.

<sup>97</sup> The to-be-reformed list of the current tax reform is long. VAT, exercise tax, individual income tax, real property tax are on it. The extension of VAT to provision of services, intangibles, real estate has ended in 2016, and still need systematic reform. Individual Income Tax Law was revised in the end of 2018, with three more income items included into the progressive rate brackets, ability to pay need to be addressed further.

<sup>98</sup> In plain words, depend on and explore domestic market more. As to China, this strategy is rationalized by an external environment characterized by rising protectionism, trade war, global economic downturn, and a shrinking international market.

Chinese traditional governance model was summarized as “centralized mini-governance model”<sup>99</sup>, under which, government could be high effectively maintained with low cost. The cost actually was not lowed, but eternized, shared by the society. The same is for containment of COVID-19, or the future public emergency events. The cost was not limited to those government input, but the whole society. The cost of containment was not limited to the money actually payed, but the opportunity cost of the business and people affected.

We are in a world full of risk<sup>100</sup>, there are public risk which would threat the whole country or even the world. A well-received fiscal theory in China is, the aim of the fiscal policy reposed to public risks. A bigger question should be asked, how should risk and the cost for containing the risk be allocate among the society, and how can fiscal/tax law do?

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<sup>99</sup> See Philip G. C. Huang, *Centralized Minimalism: Semiformal Governance by Quasi Officials and Dispute Resolution in China*, (集权的简约治理: 中国以准官员和纠纷解决为主的半正式基层行政), Chinese translation published in *Rural China: An International Journal of History and Social Science* (中国乡村研究), 2007(00), pp.1-23.

<sup>100</sup> See Ulrich Beck, *Risikogesellschaft: Auf dem Weg in eine andere Moderne*, the Chinese version 《风险社会：新的现代性之路》was published in 2018 by Yilin Press.