

Tax Transplants and Local Culture: A Comparative Study of the Chinese and Canadian GAAR

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This Article discusses, compares, and analyzes the transplanted General Anti-Avoidance Rule (GAAR) in China and the GAAR in Canada. It demonstrates the similarity between the GAARs on paper and the divergence between the GAARs in action. It argues that the divergence is largely attributable to the differences between Canada and China in the general legal system, legal institutions, judicial and taxpayer attitudes towards tax avoidance, and the ideology of tax avoidance.

INTRODUCTION

The transplantation of tax laws from one country to another commonly occurs around the world. It may range from the wholesale adoption of entire systems of tax law to the importation of a single rule. The best-known example of a systematic transplantation is perhaps the adoption of the European value-added tax (VAT) by over 100 countries. With the exception of the systematic transplantation of income tax law due to colonization (such as the Inland Revenue Code in Hong Kong, Singapore, and Israel),

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income tax transplantation has largely been rule-specific. Examples are the transfer pricing rules, the controlled foreign corporation (CFC) rules and thin capitalization rules. Tax transplantation occurs across legal cultures. Even among the OECD countries, there is a mix of civil law traditions, Anglo-Saxon common law traditions, and Asian legal traditions. Such cross-cultural transplantation raises interesting questions about the actual function of apparently similar rules in countries with different institutional and cultural backgrounds.

There is an emerging body of literature on comparative taxation,¹ tax transplants,² and tax culture.³ This Article contributes to that literature by

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- 1 E.g., HUGH J. AULT & BRIAN J. ARNOLD, *COMPARATIVE INCOME TAXATION: A STRUCTURAL ANALYSIS* (2004); VICTOR THURONYI, *COMPARATIVE TAX LAW* (2003); RICHARD M. BIRD & PIERRE-PASCAL GENDRON, *THE VAT IN DEVELOPING AND TRANSITIONAL COUNTRIES* (2007); RICHARD DOERNBERG, LUC HINNEKENS, WALTER HELLERSTEIN & JINYAN LI, *ELECTRONIC COMMERCE AND MULTIJURISDICTIONAL TAXATION* (2001); JINYAN LI, *INTERNATIONAL TAXATION IN THE AGE OF ELECTRONIC COMMERCE: A COMPARATIVE STUDY* (2003); NABIL OROW, *GENERAL ANTI-AVOIDANCE RULES: A COMPARATIVE INTERNATIONAL ANALYSIS* (2000).
 - 2 For further discussion on tax transplants, see Carlo Garbarino, *Comparative Taxation and Legal Theory: The Tax Design Case of the Transplant of General Anti-Avoidance Rules*, 11 *THEORETICAL INQUIRIES L.* 765 (2010); Carlo Garbarino, *Tax Transplants and Circulation of Tax Model* (Mar. 9, 2009) (unpublished manuscript), available at <http://ssrn.com/abstract=1356122>; Assaf Likhovski, *Is Tax Law Culturally Specific? Lessons from the History of Income Tax Law in Mandatory Palestine*, 11 *THEORETICAL INQUIRIES L.* 725 (2010); Michael Walpole & Chris Evans, *Whitehall to Wagga Wagga: The Legacy of UK Tax Law in Australia*, 2008 *BRIT. TAX REV.* 205; Benjamin Alarie & David G. Duff, *The Legacy of UK Tax Concepts in Canadian Income Tax Law*, 2008 *BRIT. TAX REV.* 228; Michael Littlewood, *The Legacy of UK Tax Law in Hong Kong*, 2008 *BRIT. TAX REV.* 253; Ivor Richardson, *The Legacy of UK Tax Law Concepts on the Tax Laws of New Zealand*, 2008 *BRIT. TAX REV.* 285; E.B. Broomberg, *The Legacy of UK Tax Law in South Africa*, 2008 *BRIT. TAX REV.* 291. For the general literature on legal transplants, see ALAN WATSON, *LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW* (1993); P.W. Schroth, *Legal Transplantation*, 34 *AM. J. COMP. L.* 47 (1986); Katharina Pistor & Daniel Berkowitz, *Of Legal Transplants, Legal Irritants, and Economic Development*, in *CORPORATE GOVERNANCE AND CAPITAL FLOWS IN A GLOBAL ECONOMY* 347 (Peter K. Cornelius & Bruce Kogut eds., 2003). There is an emerging body of literature on legal transplants to China. See, e.g., Donald C. Clarke, *The Independent Director in Chinese Corporate Governance*, 31 *DEL. J. CORP. L.* 125 (2006); Ni Zhu, *A Case Study of Legal Transplant: The Possibility of Efficient Breach in China*, 36 *GEO. J. INT'L L.* 1145 (2005).
 - 3 The pioneer in this field is Michael Livingston. See Michael A. Livingston, *Law, Culture, and Anthropology: On the Hopes and Limits of Comparative Tax*, 18 *CAN. J.L. & JURISPRUDENCE* 119 (2005).

examining one of the most recent tax transplants to China — the General Anti-Avoidance Rule (GAAR) enacted in 2008. The GAAR transplant to China occurs across legal cultures.⁴ The Canadian legal system, which I use as an example of the Western sources of the GAAR adopted in China, is part of an Anglo-Saxon system, featuring a strong tradition of judge-made law. The Chinese system has its own traditional values and features, imported Western ideas, and is generally closer to the civil law system.⁵ The GAAR transplant is thus an ideal case for a comparative study. In this Article I demonstrate that while the GAAR in Canada and China may be similar on paper, the GAAR in action is very different. I present a number of institutional and cultural differences as possible influencing factors for such divergence.

Following this Introduction, Part I provides a brief overview of the GAAR provision in Canada and China and shows the similarity between the two provisions. Part II highlights the areas of divergence of the GAAR in action. These range from the problem of avoidance addressed by the GAAR to the motivations and application of the GAAR. Part III examines the differences between Canada and China in terms of the general legal system, legal institutions, judicial and taxpayer attitudes towards tax avoidance, and the ideology of tax avoidance. Part IV concludes the Article with some observations about the implications of this research for the comparative study of taxation and tax culture.

4 For an overview of legal cultures, see Mark Van Hoecke & Mark Warrington, *Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law*, 47 INT'L & COMP. L.Q. 495 (1998).

5 PITMAN B. POTTER, *THE CHINESE LEGAL SYSTEM: GLOBALIZATION AND LOCAL CULTURE* (2001); ZOU KEYUAN, *CHINA'S LEGAL REFORM: TOWARD THE RULE OF LAW* (2006); JOHN W. HEAD, *CHINA'S LEGAL SOUL: THE MODERN CHINESE LEGAL IDENTITY IN HISTORICAL CONTEXT* (2009); Wulan Lei, *ZhongGuo fa lv wen hua bian qian ji te dian* [*Changes of Legal Culture in China and Its Characteristics*], 23 J. POL. SCI. & L. 72 (2006); Roger Des Forges & Qiang Fang, *Were Chinese Rulers Above the Law? Toward a Theory of the Rule of Law in China from Early Times to 1949 CE* (Buffalo Legal Studies, Research Paper No. 2006-06, 2006), available at <http://ssrn.com/abstract=896910>; Teemu Ruskola, *Law Without Law, or Is "Chinese Law" an Oxymoron?*, 11 WM. & MARY BILL RTS. J. 654 (2003); Randall Peerenboom, *What Have We Learned About Law and Development? Describing, Predicting, and Assessing Legal Reforms in China*, 27 MICH. J. INT'L L. 823 (2005-06).

I. THE GAAR ON PAPER

A. "Transplant"

A general anti-avoidance rule has been introduced in a number of countries, including Australia, Canada, Hong Kong SAR, Italy, Germany, New Zealand and South Africa, to combat a growing problem of tax avoidance.⁶ It generally applies when an avoidance transaction technically complies with the text of a tax statute, but offends the legislative intent or purpose. As illustrated in the Canadian context, the GAAR is generally introduced when specific anti-avoidance rules or judicial anti-avoidance rules are considered inadequate. Although the specific wording of the GAAR differs from country to country, the general framework and goal are more or less the same. The Chinese GAAR is a tax transplant because China imported this rule,⁷ although not necessarily from Canada alone. Chinese drafters considered precedents from various countries before settling on a rule that suited Chinese needs. The Canadian GAAR is used as an example of Western GAARs.

On paper, both GAARs apply only to "abusive" avoidance transactions and authorize the tax authorities to deny the tax benefit sought by the taxpayer.⁸ The meaning of "abusive avoidance" given by the Canadian courts and the Chinese State Administration of Taxation (SAT) strives to capture transactions that violate the object and purpose of the legislation.

B. The Canadian GAAR

The Canadian GAAR provision is found in section 245 of the Income Tax Act.⁹ The key elements read as follows:

6 For an overview of the GAAR in various countries, see *TAX AVOIDANCE AND THE RULE OF LAW* (Graeme S. Cooper ed., 1997); Chris Charles Evans, *Barriers to Avoidance: Recent Legislative and Judicial Developments in Common Law Jurisdictions*, 73 H.K. L.J. 103 (2007), available at <http://ssrn.com/abstract=969554>.

7 Houlu Yang, *New Developments in the General Anti-Abuse Rules and the Impact on International Tax Planning*, 3 ASIAN-PAC. TAX BULL. 176, 176-82 (2009).

8 There are also some differences between the Canadian and the Chinese GAAR. The most notable difference is the legislative sources. While the Canadian GAAR has a single legislative source, i.e., the Income Tax Act, the Chinese GAAR has three legislative sources, i.e., the Enterprise Income Tax Law, the Enterprise Income Tax Regulations, and the SAT's Special Measures. Another difference is that the Chinese GAAR provides examples of targeted avoidance transactions, whereas the Canadian law does not.

9 Income Tax Act, R.S.C. 1985 (5th Supp.), c. 1.

Section 245(2):

Where a transaction is an avoidance transaction, the tax consequences to a person shall be determined as is reasonable in the circumstances in order to deny a tax benefit that, but for this section, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction.

Section 245(3) defines the term "avoidance transaction" to mean any transaction:

- (a) that, but for this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than to obtain the tax benefit; or
- (b) that is part of a series of transactions, which series, but for this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than to obtain the tax benefit.

Section 245(4):

[The GAAR] applies to a transaction only if it may reasonably be considered that the transaction

- (a) would, if this Act were read without reference to this section, result directly or indirectly in a misuse of the provisions of any one or more of this [Income Tax] Act [or other tax statutes], or
- (b) would result directly or indirectly in an abuse having regard to those provisions, other than this section, read as a whole.

The meaning of the GAAR has been interpreted by the Supreme Court of Canada in three cases: *Canada TrustCo Mortgage Co. v. Canada*,¹⁰ *Mathew v. Canada*,¹¹ and *Lipson v. Canada*.¹² The Court states that the GAAR applies where: (1) there is a *tax benefit resulting from a transaction* or part of a series of transactions; (2) the transaction is an *avoidance transaction* in the sense that it cannot be said to have been reasonably undertaken or arranged primarily for a *bona fide* purpose other than to obtain a tax benefit; and (3) there was *abusive tax avoidance* in the sense that it cannot be reasonably

10 *Canada TrustCo Mortgage Co. v. Canada (Canada Trustco (SCC))*, [2005] 2 S.C.R. 601.

11 *Mathew v. Canada*, [2005] 2 S.C.R. 643.

12 *Lipson v. Canada*, [2009] 1 S.C.R. 3.

concluded that a tax benefit would be consistent with the object, spirit or purpose of the provisions relied upon by the taxpayer. If it is unclear whether there has been *abusive tax avoidance*, the benefit of the doubt goes to the taxpayer. The fact that an avoidance transaction lacks economic substance does not, on its own, render it abusive for the purpose of the GAAR.¹³

The Supreme Court of Canada has not provided any clear line between abusive avoidance and non-abusive avoidance transactions. In the *Canada Trustco* case, a factually complex but conceptually straightforward type of cross-border leveraged leasing transaction was found to be non-abusive.¹⁴ In *Mathew*, a "retail tax shelter" that was designed to transfer business losses from a bankrupt corporation to individual investors through the use of partnerships was found to be abusive. The Court was split (4/3) in applying the GAAR in *Lipson* to a series of transactions designed to enable a married couple to effectively deduct interest expenses on a home mortgage (which

13 The Supreme Court of Canada did not reject the relevance of economic substance, but did not give it much weight either. In *Canada Trustco (SCC)*, the Court stated:

Whether the transactions were motivated by any economic, commercial, family or other non-tax purpose may form part of the factual context that the courts may consider in the analysis of abusive tax avoidance allegations under s. 245(4). However, any finding in this respect would form only one part of the underlying facts of a case, and would be insufficient by itself to establish abusive tax avoidance. The central issue is the proper interpretation of the relevant provisions in light of their context and purpose.

Canada Trustco (SCC), [2005] 2 S.C.R., para.66. For further discussion on economic substance in Canada, see Jinyan Li, *Economic Substance: Drawing the Line Between Legitimate Tax Minimization and Abusive Tax Avoidance*, 54 CAN. TAX J. 23 (2006); Brian J. Arnold & Jinyan Li, *Chief Justice Bowman: Substance over Form*, 57 CAN. TAX J. (forthcoming 2009).

14 The facts of the *Canada Trustco (SCC)* case are summarized as follows:

Briefly stated, on December 17, 1996, the respondent, with the use of its own money and a loan of approximately \$100 million from the Royal Bank of Canada ("RBC"), purchased trailers from Transamerica Leasing Inc. ("TLI") at fair market value of \$120 million. CTMC [Canada Trustco] leased the trailers to Maple Assets Investments Limited ("MAIL") who in turn subleased them to TLI, the original owner. TLI then prepaid all amounts due to MAIL under the sublease. MAIL placed on deposit an amount equal to the loan for purposes of making the lease payments and a bond was pledged as security to guarantee a purchase option payment to CTMC at the end of the lease. These transactions allowed CTMC to substantially minimize its financial risk. They were also accompanied by financial arrangements with various other parties, not relevant to this appeal.

Canada Trustco (SCC), [2005] 2 S.C.R., para.3.

were not deductible if the money was borrowed to directly finance the purchase of the home).

C. The Chinese GAAR

A GAAR is found in Article 47 of the Enterprise Income Tax Law:¹⁵ "If an enterprise enters into any business arrangement without bona fide commercial purposes that result in a reduction of taxable revenue or income, the tax authority is entitled to make adjustments based on reasonable methods."¹⁶ The term "business arrangements without bona fide commercial purposes" is defined under Article 120 of the Enterprise Income Tax Regulations to refer to "arrangements whose primary purpose is to reduce, avoid or defer tax payments."

There is no case law interpreting the meaning of the GAAR. The SAT issued a circular on the implementation of anti-avoidance rules (the "Anti-Avoidance Circular").¹⁷ The term "tax avoidance arrangements" is defined to include those that result in an "abuse of tax incentives, abuse of tax treaties, abuse of a company's legal form, or avoidance of tax through using a tax haven, and other arrangements without bona fide commercial purposes."¹⁸ The SAT circular also lists a number of factors to be considered in determining the application of the GAAR, which include: "form and substance of the arrangement, conclusion time and execution period of the arrangement, implementation method of the arrangement, relationship between each step

15 Qi ye suo de shui fa [Enterprise Income Tax Law] (promulgated at the 5th Session of the 10th National People's Congress of the People's Republic of China, Mar. 16, 2007, effective Jan. 1, 2008) LAWINFOCHINA (last visited July 26, 2009) (P.R.C.).

16 Qi ye suo de shui fa shi shi tiao li [The Implementation Regulations of the Enterprise Income Tax Law of People's Republic China] art. 121 (promulgated by the State Council at the 197th executive meeting, Nov. 28, 2007, effective Jan. 1, 2008) LAWINFOCHINA (last visited July 26, 2009) (P.R.C.) provides:

When the tax authorities make special tax adjustments for enterprises in accordance with provisions of tax laws and regulations, they shall impose interest charges for the underpaid tax computed on a daily basis from June 1 following the tax year to which the tax is attributed, through the date of tax payment. The aforementioned interest charges shall not be deducted when computing taxable income.

17 Te bie na shui tiao zheng shi shi ban fa [Measures for the Implementation of the Special Tax Adjustment (trial)] (promulgated by the State Administration of Taxation, Jan. 10, 2009, effective Jan. 1, 2009). As explained further below, the SAT circular has the force of law in China. Chinese courts do not challenge the SAT's interpretation of the tax law or tax regulations.

18 *Id.* art. 92.

or part of the arrangement, changes in financial performance of each party involved in the arrangement, and tax consequences of the arrangement."¹⁹

The GAAR authorizes the tax administration to re-characterize the nature of a tax avoidance arrangement based on business substance and deny the taxpayer any tax benefit obtained from the tax avoidance arrangement. For example, the tax authorities will deny the existence of a corporation without economic substance, particularly those established in tax havens and which result in tax avoidance of their associated or unassociated parties.²⁰

II. THE GAAR IN ACTION — DIVERGENCE

While the GAAR in Canada and China appears similar on paper they diverge greatly in terms of the problems addressed, motivations behind their enactment, application and effect. In this Part of the Article I examine these areas of divergence.

A. "Tax Avoidance"

In Canada the concept of "tax avoidance" is well accepted. In virtually everything a taxpayer does he or she takes into account tax consequences. Tax planning leads to tax avoidance. Tax avoidance "is not a dirty word."²¹ Tax "avoidance" must be distinguished from tax "evasion". Evasion involves a deliberate breach of the Income Tax Act, by, for example, failing to file a return, failing to report all taxable income, deducting non-existent expenses, or concealing or falsifying other relevant information. Evasion is illegal, and is subject to both civil and criminal penalties. Avoidance differs from evasion in that it is legal. It does not involve fraud, concealment or any other illegal measure. What it does involve is the ordering of one's affairs in such a way as to reduce the tax that would otherwise be payable.

Avoidance presupposes that the taxpayer has a choice as to the ordering of his or her affairs, and the taxpayer chooses the course that would minimize tax liability. There are different forms of tax avoidance, ranging from taking advantage of a tax relief, such as deductions for retirement savings or a capital gains exemption for home ownership, to the use of

¹⁹ *Id.* art. 93.

²⁰ *Id.* art. 94.

²¹ *Canada Trustco Mortgage Co. v. The Queen (Canada Trustco (TCC))*, [2003] 4 C.T.C. 2009, para. 57.

tax-efficient structures, to sophisticated tax arbitrage arrangements and tax shelters.²² Tax avoidance transactions are designed to take advantage of the inconsistencies and gaps that exist within the Income Tax Act (and across national tax systems in the case of international transactions) as well as tax incentive provisions. Until the enactment of the GAAR in Canada in 1988, tax avoidance was not further distinguished between acceptable and unacceptable or abusive avoidance. Now the "GAAR draws a line."²³ As discussed below, the scope of "abusive avoidance" has been defined very restrictively by the Canadian courts.

In China, the concept of tax avoidance is relatively new. By contrast, the terms "tax evasion," "tax resistance" and "tax revolt" are as old as the Chinese tax system. Tax avoidance was not regarded as a serious issue by the SAT until 1998, which was designated as the "year of anti-avoidance." The distinction between tax evasion and tax avoidance is not clear. Chinese literature and official publications often conflate the two into a single category of "tax evasion/avoidance."²⁴ The extent of the problem is often based on circumstantial evidence. For example, a large percentage of companies receiving foreign direct investment (FDI) that sustain perennial losses in China not only continue to invest in China, but also expand their operations. One explanation for this "unnatural" phenomenon is tax avoidance — the losses exist on "paper" as a result of tax planning strategies.²⁵ Typical tax planning strategies involve taking advantage of tax incentives offered

22 For a general discussion of tax avoidance in Canada, see Brian J. Arnold, *The Long, Slow, Steady Demise of the General Anti-Avoidance Rule*, 52 CAN. TAX J. 488 (2004); PETER HOGG, JOANNE MAGEE & JINYAN LI, PRINCIPLES OF CANADIAN INCOME TAX LAW ch. 20 (6th ed. 2006); TAX AVOIDANCE IN CANADA AFTER CANADA TRUSTCO AND MATHEW (David Duff & Henry Erlichman eds., 2007); WILLIAM I. INNES, PATRICK J. BOYLE & JOEL A. NITIKMAN, THE ESSENTIAL GAAR MANUAL: POLICIES, PRINCIPLES AND PROCEDURES (Carrie Shimkofsky ed., 2006); ALAN M. SCHWARTZ ET AL., GAAR INTERPRETED: THE GENERAL ANTI-AVOIDANCE RULE (2006).

23 *Canada Trustco (TCC)*, [2003] 4 C.T.C., para.16.

24 For example, in 2008 there were twenty three corporations reassessed for additional tax payment in excess of millions of yuan. No evidence was given as to whether the taxpayers were committing tax avoidance or evasion. All that was important was that more taxes were assessed. Editorial Note, *Wo guo fan bi shui jin ru xin jie duan* [A New Era of Chinese Anti Tax Avoidance], ZHONGGUO SHUIWU BAO [CHINA TAX NEWSPAPER], Feb. 10, 2009, available at <http://www.chinatax.gov.cn/n8136506/n8136593/n8137681/n8817331/n8817378/8818759.html> (Chinese).

25 *Id.*

to foreign investors.²⁶ The concept of abusive tax avoidance was virtually nonexistent until the introduction of the GAAR.

As such, while "tax avoidance" is a well-entrenched part of the Canadian tax landscape, it is new in China. In Canada, the general assumption is that tax avoidance is acceptable unless it is made specifically unacceptable through specific anti-avoidance rules or the GAAR. Tax avoidance is clearly distinguished from tax evasion. In China, the opposite assumption is generally made. Tax avoidance is often closely associated with tax evasion.

B. Motivations for Enacting the GAAR

The tax administrations in both Canada and China consider some types of tax avoidance transactions to be unacceptable as they threaten the integrity of the tax system, erode substantive equality and erode the tax base. Enacting the GAAR was motivated to combat abusive tax avoidance. However, the specific "triggers" for enacting the GAAR were different. The Canadian GAAR was reactive in order to overrule adverse court decisions, while the Chinese GAAR was proactive, signaling the types of transactions that would be attacked. The Canadian GAAR reflects a "bottom up" approach, whereas the Chinese is "top down."

The Canadian Parliament enacted the GAAR in 1988, principally in response to *Stuart Investments Ltd. v. The Queen*.²⁷ In that case, the taxpayer transferred the business losses of one subsidiary to another subsidiary for tax purposes through a series of transactions on paper. The Income Tax Act treats each corporation as a separate entity and does not generally allow a consolidation of losses between related companies. The taxpayer achieved consolidation by selling the profit-making business to the loss company and then appointing the profit-making company to manage the business as an agent. There are specific anti-avoidance rules, but the Supreme Court of Canada found these rules inapplicable. Furthermore, the Court relied on the number and variety of these specific anti-avoidance measures that were in existence at the time to buttress its conclusion that the Court of its own motion should not create a business purpose test that had not been enacted by Parliament. Since none of the specific anti-avoidance measures caught

²⁶ Until 2008, most of the tax incentives were available only to "foreign" investment, which led to the phenomenon of "round tripping" — Chinese investors channelled their investment in China through an entity in a tax haven jurisdiction. For a discussion of these tax incentives, see Jinyan Li, *The Rise and Fall of Chinese Tax Incentives*, 8 FLA. TAX REV. 670 (2007).

²⁷ [1984] 1 S.C.R. 536.

the situation in that case, the Court reasoned that it should not assume the power to disregard genuine legal arrangements simply because of their tax avoidance motivation. The lesson that the Department of Finance drew from the reasoning in *Stuart* was that the Income Tax Act ought to include a general anti-avoidance rule, which would cover such a broad range of tax avoidance activity that an unforeseen device such as that employed in *Stuart* would not fall through the cracks again.

China's motivations for enacting the GAAR were different from Canada's. One possible motivation was to empower the SAT to combat cross-border tax planning. As mentioned earlier, tax avoidance has been closely associated in China with foreign investors, especially multinational corporations. Although the Enterprise Income Tax Law and Regulations include some well-known specific anti-avoidance rules, such as transfer pricing, thin capitalization, controlled foreign corporations and anti-tax-haven rules, the drafters were concerned with the types of avoidance transactions that can circumvent the application of these rules.²⁸ China's tax base, hence its national interest, would be harmed by such transactions. According to the SAT's published materials, the main purpose of the GAAR is to combat "hidden" or "unforeseeable" tax avoidance transactions by supplementing the application of specific anti-avoidance rules. "No matter how airtight the tax law system is, loopholes always exist."²⁹ The main target of the GAAR seems to be cross-border transactions. The perception is that multinational companies are engaged in aggressive tax planning to avoid Chinese taxes.

Another possible motivation for the Chinese GAAR is "scientific" drafting so that the law on paper looks comprehensive. The GAAR provision is located in Chapter Six of the Enterprise Income Tax Law. There is a sense that the inclusion of the GAAR in Chapter Six helps complete China's anti-avoidance legislation on paper, enhancing the scientific value of the legislation.

28 Explanations of the Enterprise Income Tax Regulations are available at State Administration of Taxation, <http://www.chinatax.gov.cn/n480462/n480513/n480934/index.html> (last visited July 26, 2009).

29 Xin qi ye suo de shui fa jing shen xuan chuan ti gang [Guidelines for Public Education of the Spirit of the New Enterprise Income Tax Law] (promulgated by the SAT, No. 159, Feb. 5, 2008), available at <http://www.chinatax.gov.cn/n480462/n480513/n480934/index.html>.

C. Application of the GAAR

The application of the GAAR in Canada and China differs in terms of who has the power of giving meaning and effect to the GAAR. As a result, the scope of the Canadian GAAR may be much narrower in action than on paper. The opposite is likely true in China.

In Canada, application of the GAAR involves the Canada Revenue Agency (CRA) and the courts. The effectiveness of the GAAR depends on its judicial interpretation. The Supreme Court of Canada has been reluctant to hear GAAR cases. Because the court's jurisdiction is discretionary (it grants leave to appeal), it refused to hear GAAR cases until 2005, seventeen years after the GAAR was enacted. The GAAR decisions by the Tax Court of Canada and the Federal Court of Appeal have largely been in favor of taxpayers.³⁰ In the three GAAR decisions by the Supreme Court of Canada, there was a clear win for the government in *Mathew*, a clear win for the taxpayer in *Canada TrustCo*, and a split decision with a 4/3 majority in favor of the government in *Lipson*.

The *Lipson* case is the most telling in regard to the effectiveness of the GAAR. Two dissenting justices were strongly in favor of the continuing validity of the *Duke of Westminster* principle³¹ and vigorously defended legitimate tax planning from unpredictable application of the GAAR. Another dissenting justice would have applied a specific anti-avoidance rule instead of the GAAR. The slight majority advocated a purposive reading of the law and was concerned that the minority's approach would "essentially gut" the GAAR. The majority reiterated that:

The GAAR is neither a penal provision nor a hammer to pound taxpayers into submission. It is designed, in the complex context of the *ITA*, to restrain abusive tax avoidance and to make sure that the fairness of the tax system is preserved. A desire to avoid uncertainty cannot justify ignoring a provision of the *ITA* that is clearly intended to apply to transactions that would otherwise be valid on their face.³²

The Supreme Court of Canada's reluctance to hear GAAR cases and its "restrained" approach to interpreting the GAAR may be attributable to the facts that: (a) the GAAR was enacted to overrule the Court's decision in the

30 For an overview of the GAAR jurisprudence, see INNES ET AL., *supra* note 22, at 80-89.

31 See *infra* note 65 and accompanying text.

32 *Lipson v. Canada*, [2009] 1 S.C.R. 3, para. 52.

Stuart case and limits a long-standing common law principle based on the *Duke of Westminster* case, that is, taxpayers are entitled to tax minimization; (b) the GAAR requires the Court to adopt a purposive interpretation of tax statutes that the Court was not accustomed to; and (c) the level of uncertainty associated with applying this type of rules.

The Chinese GAAR begins and ends with the SAT under the current system.³³ It does not depend on the court for interpretation and implementation. On the other hand, the implementation of the GAAR depends on the effectiveness of local offices in identifying tax avoidance transactions and submitting the case to the head-office. It is beyond the scope of this Article to detail the challenges facing the SAT in managing corruption, inefficiencies, and resources. Suffice it to say that these challenges are internal to the SAT and it is within the powers of the SAT to give effect to the GAAR.

The concept of "abusive avoidance" is much narrower in Canada. On the basis of *Lipson* and *Mathew*, the only type of abusive transactions are those "anti-avoidance karate" schemes in which taxpayers attempt to use a statutory anti-avoidance provision to their advantage.³⁴ In the *Mathew* case, the taxpayers attempted to take advantage of the "stop-loss" rule (that is, a rule designed to prevent taxpayers from generating paper losses to reduce taxable income) to acquire the loss of another taxpayer. As the Supreme Court of Canada stated:

Section 18(13) [of the Income Tax Act] preserves and transfers a loss under the assumption that it will be realized by a taxpayer who does

33 The SAT's head-office is in Beijing and there are local bureaus across the country. The head-office of the SAT does not process tax returns or directly deal with taxpayers. Its role is mainly limited to setting policies, providing guidance to local offices, and functioning as a competent tax authority for China under bilateral tax treaties. The head-office is involved in selected cases related to transfer pricing, such as negotiating advance pricing agreements, large tax evasion or avoidance cases, or administrative review. Local offices of the SAT are established at the provincial, municipal and township levels. They deal with taxpayers, process tax returns, and enforce tax collections. There are also local tax bureaus responsible for collecting "local" taxes and taxes shared between the national and local government. Local tax bureaus are part of local government in terms of appointment and compensation, but under the SAT in terms of tax policy. Uniform implementation of national law across China is a challenge because of close personal, economic and social links of local tax officials with taxpayers and local government. The SAT issues circulars, rulings and other types of guidelines to improve the quality of tax administration at the local level.

34 Robert Walker, *Ramsay 25 Years On: Some Reflections on Tax Avoidance*, 120 LAW Q. REV. 412, 422 (2004).

not deal at arm's length with the transferor. . . . To use these provisions to preserve and sell an unrealized loss to an arm's length party results in abusive tax avoidance under s. 245(4).³⁵

Similarly, in *Lipson*, the taxpayers turned an anti-income splitting rule under subsection 74.1(1) on its head and used it as part of a scheme to obtain interest deductions between the spouses. Bowman C.J.T.C. remarked: "The purpose of section 74.1 is to prevent income splitting. . . . Here the attribution rules are being used in essence to allow the attributed dividend income to carry back with it to [the transferor] the interest deduction [to cloak a non-deductible interest expense with an income-earning purpose]."³⁶

If the courts were not involved in interpreting the GAAR in Canada, the actual scope of application of the Canadian GAAR would be closer to that of the Chinese GAAR. This could be seen from treaty-shopping transactions. In the Canadian *MIL Investments* case,³⁷ the government considered treaty shopping abusive under the GAAR, but the court ruled against it. In China, the SAT considers treaty shopping to be subject to the GAAR. In a circular published by the local bureau of the SAT, a holding company used by a company resident in Singapore for investment in a Chinese company was looked through or ignored by the tax administration in determining the source of the gains from the disposition of the shares in the holding company. The gain was deemed to be realized from the sale of equity interest in the Chinese company, and to arise from a source in China for the purpose of Chinese domestic law and the China-Singapore tax treaty.³⁸ Similarly, the formal residence of a holding company in Barbados was ignored by the Chinese authorities where the shareholders and directors of this company were individuals resident in the United States.³⁹

35 *Mathew v. Canada*, [2005] 2 S.C.R. 643, para. 58.

36 *Lipson v. The Queen*, [2006] 3 C.T.C. 2494, para. 22. (Can. Tax. Ct.).

37 *MIL (Investments) S.A. v. The Queen*, [2006] 5 C.T.C. 2552 (Can. Tax Ct.), *aff'd*, [2007] F.C. 236 (Fed. Ct. App.).

38 This is a ruling published on November 27, 2008 on the website of the Yuzhong District State Taxation Bureau of Chongqing City. See www.cqsw.gov.cn/jcsx/20081127111.htm (last visited July 26, 2009). For a brief discussion of this case, see Houlu Yang, *supra* note 7.

39 This is referred to as the "Xinjiang Anti-Treaty Shopping" circular. See Houlu Yang, *supra* note 7. It was published by the SAT as Guo Shui Han (Notice) [2008] No. 1076 which was issued on December 30, 2008.

D. Nature and Effect of the GAAR

Is the GAAR intended to be a guide for distinguishing between acceptable and unacceptable tax avoidance or to be a "hammer"? If it is the former, the GAAR can function as a statutory interpretation principle that requires tax provisions be given a meaning that is consistent with the legislative context, purpose and intent. That is more or less the case in Canada. The Canadian GAAR has the potential of shifting the judicial approach to tax avoidance because Canadian courts have generally favoured a more literal, formalistic approach to statutory interpretation as opposed to purposive, substantive approach.

When the GAAR was enacted in Canada, the accompanying *Explanatory Notes* issued by the government stated that the GAAR "is intended to prevent abusive tax avoidance transactions or arrangements but at the same time is not intended to interfere with legitimate commercial and family transactions," and that the GAAR "seeks to distinguish between legitimate tax planning and abusive tax avoidance and to establish a reasonable balance between the protection of the tax base and the need for certainty for taxpayers in planning their affairs."⁴⁰ The Supreme Court of Canada recognized in the *Canada Trustco* case that "the GAAR draws a line between legitimate tax minimization and abusive tax avoidance."⁴¹ In its most recent GAAR decision in *Lipson*, the majority of the Supreme Court of Canada reiterated that "[t]he GAAR is neither a penal provision nor a hammer to pound taxpayers into submission. It is designed, in the complex context of the *ITA*, to restrain abusive tax avoidance and to make sure that the fairness of the tax system is preserved."⁴² Some Tax Court judges had previously described the GAAR as an "extreme sanction,"⁴³ an "ultimate weapon,"⁴⁴ a "heavy hammer,"⁴⁵ or a "blunt instrument"⁴⁶ that can be used only as a measure of last resort.

40 MICHAEL H. WILSON, MINISTER OF FINANCE, EXPLANATORY NOTES TO LEGISLATION RELATING TO INCOME TAX 461 (1988).

41 *Canada TrustCo Mortgage Co. v. Canada*, [2005] 2 S.C.R. 601, para. 16.

42 *Lipson v. Canada*, [2009] 1 S.C.R. 3, para. 52.

43 *Jabs Construction Ltd. v. The Queen*, [1999] 3 C.T.C. 2556, para. 48 (Can. Tax. Ct.).

44 *Hill v. The Queen*, [2003] 4 C.T.C. 2548, para. 63 (Can. Tax. Ct.).

45 *Canada Trustco Mortgage Co. v. The Queen*, [2003] 4 C.T.C. 2009, para. 58 (Can. Tax. Ct.).

46 *CIT Financial Ltd. v. The Queen*, [2004] 1 C.T.C. 2232, para. 30 (Can. Tax. Ct.).

In China, the GAAR has not been rationalized as a means of balancing the protection of the tax base and taxpayers' right to tax planning. It is clearly an instrument to be used at the discretion of the SAT. On the other hand, enacting the GAAR may have the effect of signaling that "general tax avoidance" is tolerable as long as it does not offend the GAAR. In effect, the line-drawing function in China seems to work in the opposite direction as that in Canada, namely, the Chinese GAAR "officially" recognizes "tax avoidance" as acceptable, whereas the Canadian GAAR attempts to signal out "abusive avoidance" as unacceptable.

III. INSTITUTIONAL AND CULTURAL CONTEXTS

In the previous Parts of this Article, I have demonstrated that the GAAR in Canada and China may be similar on paper, but different in action. In this Part I shall attempt to explain this phenomenon by looking at some institutional and cultural contexts.

A. General Legal System

The application of a tax rule, including the GAAR, is dependent on the general legal environment in which tax laws are made and interpreted. There are some fundamental differences between the general legal systems in Canada and China that affect how the GAAR operates in reality.

The Canadian system is based on the principle of the rule of law. The principle signifies that "all elements of Canadian society — public and private, individual and institutional — are subject to and governed by known legal rules."⁴⁷ In a tax context, the rule of law means that taxes must be imposed through a proper parliamentary process rather than through administrative or judicial discretion. The government as well as the taxpayers must comply with tax laws. The rule of law also implies that tax laws must be reasonably capable of discovery and that taxpayers should be able to reasonably predict, in advance and with a sufficient degree of certainty, the tax consequences of their actions. It also implies the separation of powers and the independence of the judiciary. The legislature and the judiciary both participate in the development of the GAAR.

The Chinese legal system is not based on the Canadian notion of rule of

⁴⁷ Beverley McLachlin, Chief Justice of Canada, *Foreword* to GERALD L. GALL, *THE CANADIAN LEGAL SYSTEM*, at ii (5th ed. 2004).

law. China is a "socialist country ruled by law" (*shehui zhuyi fazhi guojia*)⁴⁸ and had a long history of "rule by man" in imperial China.⁴⁹ The preamble to the Constitution states that China will be guided by "Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory" and that "the Chinese people of all ethnic groups will continue to adhere to the people's democratic dictatorship and the socialist road." There is no separation of powers. The Constitution provides that the State Council and the People's Courts both be subordinate to the National People's Congress (the formal lawmaking body). Globalization and China's access to the World Trade Organization have brought about significant law reforms in China, especially in respect of making the laws more accessible to the public. However, the fundamental structure of the legal system remains the same.

B. Institutions and Process of Tax Lawmaking

In Canada, several government institutions are involved in tax law, namely Parliament enacts tax legislation, the judiciary interprets tax law and fills the gaps in tax legislation, the Canada Revenue Agency administers tax law, and the Department of Justice represents the government in tax cases before the courts. The Department of Finance is generally responsible for tax policy and introducing draft tax legislation. There is a dynamic process which begins with the introduction of a tax law or rule that taxpayers subsequently apply in a manner that minimizes their tax liability, which often involves exploiting "loopholes"; the Canada Revenue Agency challenges the taxpayer's interpretation and reassesses the taxpayer's tax liability; the taxpayer disputes the assessment and brings a lawsuit to the court; the judge interprets the law, often in favor of the taxpayer; Parliament does not agree with the court's decision and enacts new rules to plug the loopholes; and another round begins. Such a dynamic legislative process involving multiple institutions produces highly technical, complex tax legislation, although it does strive to balance the interest of taxpayers and that of the government. The Canadian Income Tax Act⁵⁰ grew from 20 pages (large

48 In 1999 the Constitution was amended to state in article 5: "The People's Republic of China shall practice ruling the country according to law, and shall construct a socialist rule-of-law state."

49 DANIEL C.K. CHOW, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA* 39-66 (2003); RANDALL PEERENBOOM, *CHINA MODERNIZES: A THREAT TO THE WEST OR MODEL FOR THE REST?* (2007); PITMAN B. POTTER, *THE CHINESE LEGAL SYSTEM: GLOBALIZATION AND LOCAL LEGAL CULTURE* (2001).

50 Income Tax Act, 1970-71-72 S.C., ch. 63 (1971) (Can.) enacted the substance of the Act, although it did not wholly repeal the previous Act. The first federal income

print) in 1917 to 1500 pages (in small print and on 2-column pages) in 2007.⁵¹ It currently weighs more than a kilogram!⁵² The monumental statute is very detailed, complex, and drafted in precise, technical and sometimes formulaic language.⁵³

The judiciary plays a pivotal role in the development of Canadian tax law. Through adjudicating cases, the courts interpret the meaning of tax provisions and their interpretation becomes "law" unless it is overruled by legislative amendments. The judicial approach to statutory interpretation is in part responsible for the increasing complexity of the Income Tax Act, including the enactment of the GAAR.⁵⁴ Under strict, literal interpretation, taxpayers are entitled to benefit from any ambiguity in the legislation or unintentional glitches in the law that they (or their tax advisors) find by applying a literal reading of the law until the ambiguity or glitches are addressed through legislation. New provisions of the Income Tax Act are drafted to make them as detailed and airtight as possible. Inexorably the

tax was introduced in 1917. It was supposed to be a temporary wartime measure to raise revenue to finance Canada's war effort. But as the income tax was proven to be a reliable source of government revenue, the temporary tax became permanent after the war: in 1948, the word "War" was dropped. The current Income Tax Act (ITA) was enacted in 1971 and came into force at the beginning of 1972.

51 E.g., *THE PRACTITIONER'S INCOME TAX ACT* (David M. Sherman ed., 31st ed. 2007). When supporting regulations are added, the legislation comprises some 2500 pages.

52 *Ipsco Inc. v. The Queen*, [2002] 2 C.T.C. 2907, para. 26 (Can. Tax. Ct.).

53 There are many specific anti-avoidance rules, designed to stop various types of avoidance transaction. There are also many cross-references and related provisions that add further complexity. The Income Tax Act is intended to apply to more than three quarters of the general population, many of whom are willing to exploit any linguistic imprecision to their benefit. The drafters of the Act attempt to use precise language in order to minimize loopholes. Many of the provisions in the Act are limitations or restrictions involving two or more variables. Some provisions are very lengthy. For example, section 95(2) (which deems income from the specified activities as either falling within the foreign accrual property income regime or falling outside it) has over 6000 words, and comprises more than seven pages.

54 The textual, contextual and purposive approach to interpreting the ITA was established by the Supreme Court of Canada in the *Canada Trustco (SCC)* decision.

However, the particularity and detail of many tax provisions have often led to an emphasis on textual interpretation. Where Parliament has specified precisely what conditions must be satisfied to achieve a particular result, it is reasonable to assume that Parliament intended that taxpayers would rely on such provisions to achieve the result they prescribe.

Canada TrustCo Mortgage Co. v. Canada, [2005] 2 S.C.R. 601, para. 11. The Court remains uncertain about the relative weight of context and purpose in statutory interpretation.

Income Tax Act can only become longer and more complicated, as Parliament must overturn decision after decision by statutory amendment. As the Income Tax Act becomes more detailed and complex, it breeds more aggressive tax planning and leaves less room for "liberal" interpretation, causing yet more amendments. The cycle perpetuates itself. Even after the enactment of the GAAR and the recent shift towards contextual and purposive interpretation, the Supreme Court of Canada maintained that the text of the Income Tax Act must be given "greater emphasis" in the interpretation because of the degree of precision and detail characteristic of many tax provisions. The Court further stated that clear, precise, and unequivocal wording plays a dominant role because taxpayers are entitled to certainty in planning their affairs.⁵⁵

In China, there are two government institutions involved in tax lawmaking: the National People's Congress and the State Council/SAT. The process of generating tax law reforms does not involve the judiciary. The notion of "tax law" in China is much broader than in Canada because rules and measures introduced by the SAT or Ministry of Finance have the force of law.⁵⁶ On the other hand, court decisions do not form part of Chinese tax law, although they can be an important source of reference for taxpayers. There are three different layers of "tax law" in China:⁵⁷ (a) legislation entitled "law" promulgated by the legislature — the National People's Congress — containing general principles and basic rules;⁵⁸ (b) implementation regulations introduced by the State

55 *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, [2006] 1 S.C.R. 715, para. 21.

56 For example, the Enterprise Income Tax Law was enacted by the National People's Congress, the Enterprise Income Tax Regulations were enacted by the State Council, and the Special Measures were issued by the SAT. The level of detail increases when the lawmaking body's ranking decreases under the Chinese Constitution. The higher-order legislation is generally broadly worded, leaving ample space for the executive legislation to expand. This is consistent with China's history and bureaucratic tradition — laws begin and end with the bureaucracy. The enactment of the GAAR is just one example of this. It is up to the SAT to assess whether a taxpayer's transaction violates the GAAR, and its assessment is final.

57 There is a long tradition of this style of lawmaking in China. See William Alford, *The Limits of "Grand Theory" in Comparative Law*, 61 WASH. L. REV. 945 (1985); THOMAS B. STEPHENS, ORDER AND DISCIPLINE IN CHINA: THE SHANGHAI MIXED COURT, 1911-27 (1992); William C. Jones, *Trying to Understand the Current Chinese Legal System*, in UNDERSTANDING CHINA'S LEGAL SYSTEMS: ESSAYS IN HONOR OF JEROME A. COHEN 7 (C. Stephen Hsu ed., 2003); Graham Mayeda, *A Normative Perspective on Legal Harmonization: China's Accession to the WTO*, 38 U.B.C. L. REV. 83 (2005); XIN REN, TRADITION OF THE LAW AND LAW OF THE TRADITION (1997).

58 The National People's Congress (NPC) is the supreme body under the Chinese Constitution. It meets once a year in Beijing. Most of the laws are passed by the

Council, which spell out more details for the implementation of the provisions in the law;⁵⁹ and (c) rules and regulations issued by the SAT. For example, the basic GAAR provision is found in Article 47 of the Enterprise Income Tax Law.⁶⁰ The Enterprise Income Tax Regulations define the meaning of a key concept — "business arrangements without bona fide commercial purpose" — in Article 121 and impose tax penalties in Article 122. The Anti-Avoidance Rules provide technical details.⁶¹

Chinese tax laws are drafted in general language, containing general principles as well as "open-ended provisions," leaving much room for administrative discretion. Coupled with the lack of independent judicial interpretation, the system is generally more "opaque" than its Canadian counterpart.

The fundamental differences between the general legal system and institutions in Canada and China can be seen in the role of the tax administration. The Canada Revenue Agency's role is to administer tax law. At court, the Canada Revenue Agency and the taxpayer have equal status, each represented by counsel. The Chinese SAT, by contrast, has lawmaking powers.⁶² The SAT enjoys another power that is not available to

Standing Committee of the NPC. The NPC often delegates legislative powers to the government (i.e., the State Council or ministries of the State Council). In practice, the Communist Party controls the lawmaking process, as most members of the NPC are Communist Party members who are required to follow the Party direction. See CHOW, *supra* note 49.

59 The State Council is the most powerful organ of state in China. It has the power to administer and enforce the legislation enacted by the NPC or the NPC's Standing Committee. It is also a legitimate lawmaking body on its own. Chinese *Law-Making Law* recognizes the force of law of "administrative regulations" by the State Council, as well as administrative rules introduced by a ministry of State Council, such as the Ministry of Finance or SAT. More importantly, because Chinese legislation is drafted in broad language and provides broad discretionary powers to the administration, the government can often extend or modify the law in practice.

60 Prior to 2008, enterprises with foreign investment and domestic enterprises were subject to different systems of taxation. It is beyond the scope of this Article to review the history of the Chinese enterprise income tax system. For more discussion, see DONALD. J.S. BREAN, *TAXATION IN MODERN CHINA* (1998); JINYAN LI, *TAXATION IN THE PEOPLE'S REPUBLIC OF CHINA* (1999); Jinyan Li & He Huang, *The Transformation of Chinese Enterprise Income Tax: Internationalization and Chinese Innovations*, 62 *BULL. INT'L TAX'N* 275 (2008); and Jinyan Li, *Fundamental Enterprise Income Tax Reform in China: Motivations and Major Changes*, 61 *BULL. INT'L TAX'N* 519 (2007).

61 See *Te bie na shui tiao zheng shi shi ban fa* [Measures for the Implementation of the Special Tax Adjustment (trial)] (promulgated by the State Administration of Taxation, Jan. 10, 2009, effective Jan. 1, 2009).

62 Article 89 of the Chinese Constitution provides that the State Council has the

the Canada Revenue Agency — statutory interpretation. Under Chinese law, the body that has the power to make law also has the power to interpret the law. As such, the SAT has the sole authority to interpret its own regulations and the regulations enacted by the State Council. While the National People's Congress, or its Standing Committee, has the power to interpret tax laws, such as the Enterprise Income Tax Law, it has not published any interpretations of tax laws. In practice, the SAT's interpretation is binding. By contrast, the guidelines or interpretation circulars issued by the Canada Revenue Agency constitute an extensive and valuable commentary on the law,⁶³ but do not have the force of law. The courts regard them merely as "interpretive aids."⁶⁴ Therefore, faced with unacceptable tax avoidance transactions, the Canada Revenue Agency's only recourse is to either litigate in court or persuade Parliament to amend the tax legislation.

C. Judicial Attitude Towards Tax Avoidance

It is perhaps unfair to compare the different judicial attitudes towards tax avoidance because the Chinese judiciary does not play much of a role in developing tax law. Nonetheless, the lack of judicial influence in China is an important context for understanding the divergence of the GAAR in action.

The origin of the Canadian judicial approach towards tax avoidance dates back to the British House of Lords' decision in the *Duke of Westminster* (1935) case.⁶⁵ This case established a principle that a taxpayer is entitled

power "to adopt administrative measures, enact administrative rules and regulations and issue decisions and orders in accordance with the Constitution and the law." Article 90 of the Constitution provides that the ministries and commissions of the State Council have the power to "issue orders, directives and regulations within the jurisdiction of their respective departments and in accordance with the law and the administrative rules and regulations, decisions and orders issued by the State Council." The directives, regulations and measures issued by the SAT have the force of law, as long as they do not violate the legislation enacted by the State Council and the National People's Congress. See Li fa fa [Chinese Law-Making Law] art. 71 (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 15, 2000, effective July 1, 2000) 2000 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 112 (P.R.C.).

⁶³ These publications are available on the Canada Revenue Agency's website. Canada Revenue Agency, Forms and Publications, <http://www.cra-arc.gc.ca/formspubs/menu-e.html> (last visited July 26, 2009).

⁶⁴ See, e.g., *Nowegijick v. The Queen*, [1983] C.T.C. 20, 24 (Can. Tax Ct.).

⁶⁵ *Commissioners of Inland Revenue v. The Duke of Westminster*, [1936] A.C. 1 (H.L.). For a comparison of this case with the American case, *Helvering v. Gregory*, see Assaf Likovski, *The Duke and the Lay: Helvering v. Gregory and the History of Tax Avoidance Adjudication*, 25 CARDOZO L. REV. 953 (2003-04).

to arrange his affairs to minimize tax. This principle is derived from the strict or literal approach to statutory interpretation and the characterization of transactions based on legal form.⁶⁶ Literal interpretation and taxation on the basis of legal form created a potent combination that allowed tax avoidance transactions to flourish. The facts in *Duke of Westminster* were straightforward. The Duke of Westminster had a number of household servants. The then British Income Tax Act did not allow a deduction of wages of household servants, but allowed a deduction of annual payments made in pursuance of a legal obligation other than remuneration of servants. The Duke accordingly entered into deeds of covenant with each of his servants under which he undertook to pay each of them annual sums for a period of seven years. The payments were to be made irrespective of whether any services were performed by the promisee, and were without prejudice to the promisee's entitlement to remuneration if he or she did perform any services to the promisor. However, it was established by evidence that the understanding between the Duke and his servants was that they would rest content with the provision made for them by deed, and would not assert any right to remuneration. In this way, the Duke converted his non-deductible wages obligation into a deductible annuity obligation. The deeds were legally effective in that all legal formalities had been carried out. Nor were the deeds shams: the Duke had covenanted to pay the annuities for seven years, and had thereby assumed the risk of having to continue to pay an annuitant who had stopped working for him or who had insisted upon additional remuneration for working for him. Of course, the understanding that the faithful retainers would continue to work for him, and would do so without extra charge, virtually eliminated this risk. But the risk was genuinely assumed, and none of their lordships regarded the deeds as shams. The legal form of the transactions was found controlling and the Duke was entitled to deduct the payments.

The *Duke of Westminster* principle is deeply entrenched in Canadian tax law — so deeply that the principle is applied by the courts without any analysis of the origin of the principle or its continuing validity or viability.⁶⁷ The courts have not developed any meaningful general anti-avoidance

⁶⁶ According to strict interpretation, tax could only be imposed if a taxpayer's situation was literally covered by the words of a charging provision; and a taxpayer's situation was determined by reference to the legal rights and obligations created by the taxpayer, not the economic substance. If, therefore, a taxpayer arranged the legal rights and obligations so that the statute did not literally apply, tax was avoided despite the fact that the arrangement, especially if construed in accordance with its economic substance, might have been within the spirit of the statute.

⁶⁷ The Supreme Court of Canada has reaffirmed the *Duke of Westminster* principle

principle to deal with abusive avoidance transactions. As mentioned already, the Supreme Court of Canada's decision in *Stuart v. The Queen*⁶⁸ was the immediate reason for the introduction of the GAAR. The enactment of the GAAR was intended to instruct the judiciary to consider the object and spirit of the legislation. As discussed above, however, the courts have been reluctant in abandoning the traditional mindset.

Chinese courts do not have the final power of statutory interpretation. They generally hear administrative cases involving taxpayers suing tax officials for "misconducts."⁶⁹ These cases are generally concerned with actions in assessing penalties, enforcing collections, or other aspects of tax administration.⁷⁰ Disputes between taxpayers and the tax administration arising from the interpretation of tax legislation are mostly resolved through administrative reviews.⁷¹ The GAAR is thus not an instruction to the courts about interpreting tax law in a manner that prevents abusive tax avoidance. The GAAR is written for taxpayers and tax administrators. That is why similar treaty shopping cases are considered offensive by tax administration in both China and Canada, but the GAAR eventually applied only in China because the Canadian courts disagreed with the Canada Revenue Agency.

many times, especially in a series of cases in the late 1990s involving aggressive avoidance schemes. *E.g.*, *Shell Canada Ltd. v. The Queen*, [1999] 3 S.C.R. 622.

68 [1984] 1 S.C.R. 536.

69 *Xing zheng su song fa* [The Administrative Procedure Law of the People's Republic of China] (promulgated at the 2nd Session of the 7th National People's Congress, Apr. 4, 1989, effective Oct. 1, 1990.) LAWINFOCHINA (last visited July 26, 2009) (P.R.C.) The SAT has issued guidelines to help local tax offices prepare for the defense, make arguments in court, file appeals, and enforce court decisions. *See Shui wu xing zheng ying su gong zuo gui chen* [Operational Guidelines on Responding to Tax Administrative Appeals] (effective Jan. 1, 1995), available at <http://www.chinatax.gov.cn/n480462/n480513/n480934/index.html>; *see also Decision of the SAT on Several Questions Concerning Establishing Disciplinary and Inspection Offices*, ZHONGGUO SHUIWU BAO [CHINA TAX NEWSPAPER], Nov. 15, 1995.

70 In such administrative cases, taxpayers have won more than two-thirds of the cases. *See* SONG SHUWEN, MA XIA & KONG BING, CASE COMMENTS ON LITIGATION BETWEEN CITIZENS AND ADMINISTRATIVE AGENCIES 146-52 (1992).

71 YAO MEIYAN & HAO RUYU, STUDY ON CHINESE TAXATION LEGAL SYSTEMS 663-69 (2005). Judicial appeals on matters of interpretation are virtually nonexistent in China. *Id.* at 257. Tax expertise is concentrated in the tax administration. Tax officials are presumed to know tax laws better than anyone else (taxpayers, judges, and members of the legislature). The small number of tax cases makes it difficult for judges to develop tax expertise. There is a lack of institutional competence on the part of the judiciary to deal with tax law interpretation.

D. Right to Tax Minimization

Tax minimization generally takes the form of tax avoidance in Canada and, until recently, tax evasion in China. While tax avoidance is a form of "open confrontation" between taxpayers and the tax administration and the rules of engagement are interpreted by the judges, tax evasion is deceitful and often associated with other illegal activities. The line between tax avoidance and tax evasion is generally clear in Canada and often not so clear in China.

In Canada, the principle that taxpayers are entitled to arrange their affairs in such a manner as to minimize tax liability is deeply entrenched in tax law. This is generally attributed to the *Duke of Westminster* case. Lord Tomlin's remarks in the *Duke of Westminster* case remain current:

Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Act is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then however unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax.⁷²

The same attitude continues under the GAAR because the GAAR is intended to limit, not eliminate, taxpayers' right to tax minimization.⁷³ The Supreme Court of Canada stated clearly in the *Lipson* case that "the Duke of Westminster principle has never been absolute, and Parliament enacted . . . the GAAR, to limit the scope of allowable avoidance transactions while maintaining certainty for taxpayers".⁷⁴ Therefore, in Canada, taxpayers do not hide the fact that they are engaged in tax minimization and there is certainly nothing to be ashamed of.

Until recently, "tax avoidance" or lawful minimization of taxation did not exist in the Chinese vocabulary.⁷⁵ There is a gap between the "official" attitude

72 *Commissioners of Inland Revenue v. The Duke of Westminster*, [1936] A.C. 1, 7 (H.L.) (Lord Tomlin).

73 *Canada TrustCo Mortgage Co. v. Canada*, [2005] 2 S.C.R. 601, para.13.

74 *Lipson v. Canada*, [2009] 1 S.C.R. 3, para. 54.

75 Zhang Jingqun, *Tou shui wen ti tan yuan* [*The Origin of Tax Evasion*], 7 TAX'N RES. 70 (2000); Zheng Junsheng, *Qian tan shui shou liu shi de cheng yin ji zhi li* [*On the Cause and Abatement of Revenue Loss*], 2 TAX'N RES. 17 (1999); Zhang Yunping, *Tou tao shui cheng yin de fen xi ji qi zhi li* [*On the Cause and Abatement of Tax Evasion*], 1 TAX'N RES. 58 (1997); Dong Lei, *Wo guo dang qian tou tao shui chan sheng de you yin ji dui ce* [*The Cause and Strategies of Tax Evasion*], 4 TAX'N RES. 67 (2001); Zhang Yi, *Tou tao shui yuan yin pou xi* [*On the Cause of Tax Evasion*], 9 TAX'N RES. 48 (2000); Li Jiansuo, *Qian tan shui shou liu shi de qu dao ji fang*

and the "popular" attitude. The official propaganda is that tax payment is an honorable duty and noncompliance is shameful.⁷⁶ The purpose of taxation is to raise revenue from the people in order to better serve the people (*que zhi yu min, yong zhi yu min*). The SAT publishes an annual list of "model taxpayers." This line of propaganda is consistent with the "socialist" ideal and traditional Chinese values emphasizing the collective interest. It does not distinguish between non-payment of tax by way of "evasion" or "avoidance." Therefore, the notion of a taxpayer's right to minimize taxation is not officially recognized in China. In reality, Chinese taxpayers are not much different from their Canadian counterparts in desiring to pay the minimal amount of tax possible. Tax minimization was achieved primarily through tax evasion or gaining favorable tax treatment through favorable administrative interpretation of the law. Tax minimization through tax planning is a recent phenomenon, transplanted to China by foreign investors. The concept of "tax avoidance" itself can be considered a "transplant" that came to China with foreign direct investment. The SAT seems to have shown a great deal of deference towards international tax norms, including taxpayers' right to tax planning.⁷⁷ The introduction of the GAAR may be perceived as the beginning of an official recognition of tax avoidance.

The "right" to tax minimization in Canada is thus clearly contrasted to the "duty to pay tax" in China. This contrast reflects the different nature of the relationship between the government and taxpayers. In Canada and other Western countries, the right to tax avoidance is arguably rooted in a core individual right, including the right to choose the form of the transaction, and the right to assume that tax statutes must be certainly defined in scope and subject to strict or literal interpretation. The ideological basis of the right to tax avoidance is the right of liberty, which can be understood as the liberty of the subject to be free from an overreaching government, the freedom of property, and the freedom to contract.⁷⁸ There is no equivalent ideology in China. The duty to pay taxes is based on the traditional values

fan cuo shi [*On the Channel of Revenue Loss and Precautions*], 6 TAX'N RES. 40 (1999).

76 See SAT Home Page, <http://www.chinatax.gov.cn/n8136506/index.html> (last visited July 26, 2009).

77 Other than transfer pricing cases, the SAT does not seem to have been very aggressive in assessing avoidance transactions. Possible explanations for this approach may include the lack of specific legislative authorization, as the appearance of "taxation in accordance with law" is considered important when it comes to dealing with foreign investors.

78 William B. Barker, *The Ideology of Tax Avoidance*, 40 LOY. U. CHI. L.J. 229 (2009). For further discussion, see LOUIS EISENSTEIN, *THE IDEOLOGIES OF TAXATION* (1961).

emphasizing collective right and social harmony.⁷⁹ The relationship between the government and taxpayers is framed in terms of a "duty" to support the state, as opposed to a kind of "deprivation" of private property.⁸⁰ Taxpayers are not regarded as equals in such a relationship. In traditional China, the payment of taxes to the emperor was analogized to supporting one's parent because the emperor was the "head" of the nation-family.⁸¹ The taxpayer/children's duty to support the emperor/parent was "unconditional" and a moral obligation.⁸² Resorting to aggressive tax planning to minimize taxation may be perceived as playing games or defying the authority of tax law and tax authorities, which is generally frowned upon.

Interestingly, some Chinese scholars attribute the low level of tax compliance (not by way of tax planning) to the lack of recognition of taxpayers' rights.⁸³ Recognizing the taxpayers right to tax minimization has been recently touted as an important step towards the development of the rule

79 In China, rights are more commonly associated with collectivities and claims made in the name of community membership rather than negative freedoms vis-à-vis the state. See WANG GUNGWU, *THE CHINESENESS OF CHINA* (1991); RANDLE R. EDWARDS, LOUIS HENKIN & ANDREW J. NATHAN, *HUMAN RIGHTS IN CONTEMPORARY CHINA* (1986); XIN REN, *supra* note 57, at 19-35; Jones, *supra* note 57, at 7-45.

80 Fang Jing, *Zhongxi fang shuishou falu wenhua bijiao yanjiu* [A Comparative Study on Chinese and Western Tax Cultures], 16 J. YANTAI U. [PHIL. & SOC. SCI.] 43 (2003); Li Linping, *Zhong xi fang shui shou wen hua zhi bijiao* [Comparison of Chinese and Western Tax Cultures], 8 LI LUN DAOKAN [J. ON THEORY] 77 (2005); Liu Rong & Du Jian, *Na shui ren quan li bao hu yu wo guo shui shou si fa gai ge* [The Protection of Taxpayers' Rights and Chinese Taxation Judicial Reform], 1 TAX'N RES. 51 (2007); You Xiaofeng & Wang Zhifang, *Shui shou qi yue yu na shui ren quan li zhi bao hu* [Taxation Agreement and the Protection of Taxpayers' Rights], 2 TAX'N RES. 69 (2008).

81 Fang Jing, *supra* note 80; Li Linping, *supra* note 80, at 77-78; Yang Bin, *Zhong xi fang wen hua chaiyi yu shui zhi gai ge* [Differences Between Chinese and Western Cultures and Tax Reform — A Case Study of VAT and Personal Income Tax], 5 SHUI WU YAN JIU [TAX RES.] 14 (2005); Yu Daqing & Peng Jiming, *Zhong ying chuantong shuishou wenhua bijiao* [Comparison Between Chinese and English Traditional Tax Cultures] 16 J. XIA'N INST. FIN. & ECON. 13 (2003).

82 Li Qian & Han Yu, <Qi ye suo de shui fa>yi ban fan bi shui tiao kuan ping xi [Some Comments on General Anti-Avoidance Provisions in the Enterprise Income Tax Law of the People's Republic of China], 8 INT'L TAX'N CHINA 68 (2008); Zhou Chengjuan, *Lun shui fa de he xin jia zhi yu na shui ren de quan li bao hu* [On the Core Values of Tax Law and the Protection of Taxpayers' Rights], 4 TAX'N RES. 60 (2009); Wang Jianping, *Na shui ren quan li li nian yu zheng fu — na shui ren guan xi de zhuan xing* [The Concept of Taxpayers' Right and the Relationship Between the Government and Taxpayers], 4 INT'L TAX'N CHINA 57 (2008).

83 See, e.g., Cai Jun & Cui Hao, *Gou jian he xie zheng na guan xi de li yi ji chu yu shui zhi lu jing* [Basis and Ways of Developing a Harmonious Relationship Between

of law in the Chinese tax system, as it would demand that tax laws be certain and predictable and that the courts independently adjudicate tax cases.⁸⁴

E. Tax Culture

The divergence between the GAAR in action in Canada and China can be attributed to the significant differences in the tax culture of the two countries. First, the Canadian GAAR is home-grown, enacted to deal with a problem that is rooted in the Canadian tax culture. Tax avoidance came into existence with the introduction of income tax in 1917. In China, the first income tax was introduced 1980 and applicable only, in effect, to foreign investors and foreign individuals in China. A uniform individual income tax applicable to Chinese and foreign individuals was introduced in 1993 and a uniform enterprise income tax law was introduced only in 2008. The income tax system in China is the product of globalization and transplantation. It is relatively easy to transplant tax laws, but much harder to transplant the values and principles underlying the modern tax laws, such as the rule of law, respect of private property, the ideology of liberty, and the nature of relationship between taxpayers and the state. While it takes time for the transplanted system to take effect, there is likely a gap between the law on paper (which has been transplanted from the West) and the law in action (which is defined by local conditions).

The widespread existence of tax avoidance in Canada is generally attributable to various factors, including: (a) the charging provisions of tax statutes are drafted in clear language that provides a reasonable level of

Tax Authorities and Taxpayers], 2 TAX'N RES. 74 (2008); Liu Rong, *Cong shui shou fa lv zhi du de shi jiao kan zheng fu yu na shui ren de guan xi [On the Mutual Relationship Between the Government and the Taxpayers from a Perspective of Tax Law System]*, 4 TAX'N RES. 56 (2009); Ruan Jiafu, *Lun wo guo shui shou wen hua de xian zhuang yu jian she si lu [On the Status Quo of Chinese Tax Culture and the Idea of Construction]*, 11 TAX'N RES. 92 (2008); Wang Wei, *Na shui ren quan li yu wo guo shui shou zun cong du de ti sheng [On Safe Guarding the Right of Taxpayers to Promote Tax Compliance in China]*, 4 TAX'N RES. 70 (2008).

⁸⁴ See Luan Guohua, *Na shui ren quan li bao hu shi jiao de shui shou si fa gai ge [Analysis of Tax Judicial Reform from the Perspective of the Protection of Taxpayers' Rights]*, 8 INT'L TAX'N CHINA 26 (2006); Wang Hongmao, *Na shui ren wen ti chu lun [An Analysis of Taxpayer]*, 8 INT'L TAX'N CHINA 18 (2006); Lin Wensheng, *Xin <Qi ye suo de shui fa> zhong fan bi shui yi ban tiao kuan fa lv shi yong de kun jing yu dui ce [Problems and Solutions of the Application of the General Anti-Tax Avoidance Articles in the New Enterprise Income Tax Law of the People's Republic of China]*, 8 TAX'N RES. 57 (2008).

certainty and predictability for taxpayers, or in other words, the "loopholes" can be identified and taken advantage of; (b) the taxpayer and the tax administration are equal before the court and the court has the power of interpretation; (c) taxpayers have no duty to pay tax in the absence of clear obligations set forth in legislation and the right to tax minimization is recognized in law; (d) under private (non-tax) law, taxpayers can use different forms of legal arrangements to achieve the same economic results; and (e) there is a reasonable level of transparency in tax compliance and administration. These factors are currently lacking in China. The Chinese style of tax law drafting makes it difficult for taxpayers to engage in the kind of tax planning common in Canada. To begin with, the text of the law does not often clearly define the boundaries between what is taxed and what is not. While the Canadian income tax legislation occupies 2,500 pages, the Chinese income tax legislation is no more than ten percent of that. Moreover, while any legislative ambiguity is generally interpreted in favor of taxpayers in Canada, the opposite might often be true in China. The "opaque" nature of tax legislation makes it difficult for taxpayers to interpret the law and avoid its literal application through tax planning. In China, tax minimization has been achieved largely through tax evasion because the costs of "tax evasion" are relatively lower, as they involve simply concealing information as opposed to hiring tax advisers to construct tax-efficient legal structures. The chance of being detected and punished is relatively small because of personal connections between the taxpayer and tax officials,⁸⁵ the common

85 Personal connections (*guan xi*) are prevalent in Chinese legal culture. For more discussion, see STANLEY B. LUBMAN, *BIRD IN A CAGE: LEGAL REFORM IN CHINA AFTER MAO* (2002); Pitman B. Potter, *Guanxi and the PRC Legal System: From Contradiction to Complementarity*, in *SOCIAL CONNECTION IN CHINA: INSTITUTIONS, CULTURE, AND THE CHANGING NATURE OF GUANXI* 179 (Thomas Gold, Doug Guthrie & David Wank eds., 2002). For a discussion of *guan xi* in the tax system, see Yang Bin, *supra* note 80; Li Linping, *supra* note 80.

interest of taxpayers and local government in minimizing taxes belonging to central government,⁸⁶ and the widespread incidence of tax evasion.⁸⁷

Absent the Canadian conditions, a logical conclusion would be that the Chinese GAAR is redundant: there would be no reason to combat tax avoidance in China through a statutory GAAR as the Chinese system lacks the certainty and predictability necessary for such tax planning in the first place. It is thus worthwhile to reiterate that the Chinese GAAR is top-down, aimed to prevent abusive tax avoidance, as opposed to the Canadian GAAR that is bottom-up, in reaction to adverse court decisions.

CONCLUSION

In this Article I have attempted to explore the reasons why the GAAR, though similar on paper, operates differently in Canada and China. The inquiry has led to several observations about tax transplants and comparative tax research. At one level, comparative tax research is similar to research on domestic tax in that both require a high-level appreciation and understanding of the broader legal, social and economic contexts. On the other hand, because comparative tax research involves two or more countries, it is more challenging in terms of language and access to information.

The level of sensitivity of tax rules to the local tax culture differs based on the nature of the tax rule. One can imagine that the "universal" or "scientific" rules, such as those based on accounting or market exchanges, are less sensitive than those "indigenous" rules that reflect political or social

⁸⁶ In principle, "national" taxes are collected by the local offices of the SAT, and local taxes are collected by local tax bureaus. For example, income tax owed by state-owned enterprises under the control of the central government is collected by the SAT, while other types of domestic enterprises pay tax to the local tax bureaus. Under the previous central planning model, enterprises were managed by different levels of government. This legacy has been passed on to the current tax system. Since there is only a weak supervisory role of the SAT and no effective system for distributing and enforcing common policy, the SAT sometimes has to rely on more clear and authoritative legislative rules to carry out its policies. There are many cases of local government interference with the administration of taxation at local levels. See XU SHANDA, RESEARCH ON CHINA'S TAXING POWER 135-36 (2003).

⁸⁷ Many entrepreneurs prefer to evade laws rather than to fight for their enforcement. See Huang Lei, *Wo guo dangqian taobishui de zhuyan yuanyin yu duice* [Major Reasons of China's Tax Evasion and Tax Avoidance and Possible Counter Measures], 4 TAX'N RES. 67, 68 (2001) (in the late 1990s, fifty percent of large and medium enterprises and over eighty percent of small private enterprises evaded taxes).

values, such as progressivity, or tax expenditures for social programs.⁸⁸ Tax avoidance rules may fall in-between. There is some universal truth in defining tax avoidance and singling out unacceptable avoidance transactions for sanctions. This is particularly true in the case of anti-avoidance rules for cross-border transactions. Yet, the effectiveness of transplanted tax rules largely depends on their fit with the local tax culture. It is difficult to evaluate the success of a transplant without a full understanding of the underlying tax culture.

Tax culture is not static. In Canada, the GAAR arguably has brought some changes to both how taxpayers approach tax avoidance and how the courts interpret tax laws. It has caused some concern for the health of the *Duke of Westminster*.⁸⁹ Taxpayers need to consider whether their planned transactions might run afoul of the GAAR. The courts have gradually moved away from the strict, textual interpretation of tax laws. The Chinese GAAR seems to signal some cultural changes as well. On the one hand, it sends a signal to taxpayers, especially taxpayers conducting cross-border transactions, that China takes tax avoidance seriously.⁹⁰ On the other hand, the enactment of the GAAR arguably signals to taxpayers that tax avoidance is permissible as long as it does not offend the GAAR. In other words, transactions that have bona fide commercial reasons, even if they result in tax savings, are valid. That may encourage taxpayers to seek professional tax assistance in compliance and planning and to expect more certainty and transparency in tax assessment.

Similar rules may produce significantly different effects in different cultural contexts. The Canadian GAAR reduces the scope of tax planning in Canada, whereas the Chinese GAAR arguably clarifies and "broadens" the scope of tax planning. On the other hand, there is increasing convergence in tax culture, which can be credited to some extent to the GAAR. Canadian courts are interpreting tax law in a more purposive manner, an approach more consistent with the way laws are interpreted in China. Limitations on taxpayers' right to minimize taxation in Canada are moving the Canadian system closer to the Chinese system, which has always valued collective interest more than individual interest. In the meantime, the Chinese GAAR

88 For further discussion of the difficulties of implementing even accounting rules in China, see Jin Li & Richard Krever, *Globalization and Modernization as Drivers for Tax Reform in the Socialist Market Economy*, 11 THEORETICAL INQUIRIES L. 687 (2010).

89 In the *Lipson (SCC)* case, Justice Binnie asked: "How healthy is the Duke of Westminster? There is cause for concern." *Lipson v. Canada*, [2009] 1 S.C.R. 3, para. 54.

90 State Administration of Taxation, *supra* note 28.

implicitly permits taxpayers to assert their right to tax minimization and to demand more certainty and predictability in the Chinese tax system.

Overall, this Article barely scratches the surface of comparative tax research and tax transplants. It will be fascinating to see whether similar tax rules behave the same way in different countries and then explore the reasons for such behavior.

