

預算法修改的基礎與國有資本經營預算

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我主要談兩個問題：一個是預算法的基礎，另一個是何為複式預算制度，特別是國有資本經營預算制度。

首先，我國預算法是 1994 年頒佈的，1995 年國務院出台了預算法的實施條例，如果我們把 1994 年的預算法比喻成一座房子的話，那麼這個房子現在是四面透風，問題非常的多，不僅涉及預算法本身的問題，還涉及國家相應的體制、環境，涉及我們現在市場的基礎，以及我們整個經濟發展的階段，因此預算法絕對不會是一些條文的修改就能夠使它成為一個良法。我想進一步說，預算法的基礎是什麼呢？預算法的基礎來源於這麼幾點：

第一個基礎是 1993 年的分稅制。1993 年的分稅制在當時起了很大的作用。當年的國家財政收入只有不到 100 億元，分稅制改革以後，第一年國家財政收入是 420 億元，到去年 83000 億元，這個變化非常大。從結果上來看，實際上分稅制的改革是帶來了強中央政府和弱地方政府，分稅制改革這個成果在預算法中得到了肯定，預算法把這個稅收收入上升為三種，實施條例裏專門對預算法的財政收入做了註解，分為三塊：有中央稅、地方稅和中央地方共享稅。中央稅佔百分之三十左右，地方稅佔百分之三十左右，另外百分之四十是中央地方共享，中央地方共享這塊實際上是全部都進了中央的國庫，而分配的方式主要是採用轉移支付。為什麼最近各地，各省市都採取了「跑部錢進」的方式？就是分稅制的一個後果，中央地方共享稅這一塊的基數非常大，這樣就形成了一個強中央政府和弱地方政府。弱地方政府怎麼解決？在分稅制改革之後，事權大量下放，因為地方的教育改革，醫療改革特別是國有企業改革，大批職工下崗，都需要地方來解決，因此就出現了地方政府去找錢，出現了地方土地財政問題，現在地方土地財政在很多省都佔到地方財政收入的百分之四十以上。如果沒有土地出

讓的收入（預算法中叫做專項收入），地方政府的財政就難以為繼了，當然現在有地方融資平台，這是後一個問題，這些地方政府的融資平台的負債也存在很大的風險。


實際上我們 1993 年的分稅制是我們 1994 年預算法的基礎，這個基礎打的不是很好，造成了一個強中央政府和弱地方政府的局面。為什麼說分稅制是預算法的基礎呢？「稅收是政府的奶娘」，而「預算就是稅收的孿生兄弟」。我們可以看到分稅制帶來的一系列後果，如果不進行改革，下一步預算法的修改將具有非常大的局限性。

第二個基礎是對預算收入的計算，這是一個很重要的問題。我們 1994 年預算法確定了四項收入來源，第一是稅收，這是以分稅制為基礎的；第二是國有資本經營預算，這在前些年是沒有做的；第三是政府的專項收入，包括土地的專項收入；第四是其他收入，我認為這是我們法律現在最大的問題，這個其他收入是沒有邊界的。我們在 2003 年通過了《行政許可法》，這在其他國家都是沒有的，行政許可法主要是約束行政審批，因為大量的行政審批滋生大量的財政收入，這個財政收入在預算法裏我們是歸為其他收入，其他收入嚴格說應該是預算內的收入，但現在在我國有預算內收入，有預算外收入，還有外外收入。所以中國的其他收入是非常可怕的。例如，黑龍江省有個收費站，這個收費站編制是市政府給它的，但未給它工資，其工作人員的收入來源於收費，如果沒有這種收費與罰款的話，它就無法生存。換句話說，這個政府設立的收費站存在的目的就是收費與罰款，現在不讓收過路費了，它還在收與罰，這樣整個政府存在的理由不是為人民服務，政府存在的根基已經發生很大的變化。這樣的收入來源是不是納入我們預算法的其他收入？預算法中的支出也是一樣，它的支出結構分為社會經

濟發展、國防支出以及其他支出，這個「其他」是特別可怕的。現在法律制定過程中有兩個立法技巧：一個是其他，另一個是國務院另行規定，這兩個立法技巧就帶來政府的權力和市場的權利邊界產生問題，也是帶來很多問題制度上的根源。我想如果我們對預算法的收入沒有一個約束，沒有一個定義，沒有一個很確切的界定，我們預算法這一塊的收入與支出是沒有邊際的，既然沒有邊際，那麼很多可能是在預算之外的收入養著所謂的「政府」。這就是我講的預算法的基礎，實際上這是我們下一步修改預算法的很重要的理論前提。

另一個問題是複式預算的問題，把預算分為公共財政預算、國有資本經營預算和社會保障預算。複式預算實際上最早實踐於丹麥，美國在羅斯福新政的時候實踐了複式預算，它通過兩個表格的形式反映了整個政府財政收支的情況，它的流向流量以及資金性質，但是我們的複式預算並非真正的複式預算。從1994年規定複式預算以後，實際上我們並沒有實現過複式預算，我們只是一個公共財政預算，每年的「兩會」上財政部作的預算報告實際上是公共財政預算，從來沒有國有資本經營預算和社會保障預算，今年的「兩會」發生變化，我們又把複式預算偷偷地改為公共財政預算、政府性基金預算、社會保險預算，這個複式預算現在也有很多問題，我們原來的社會保障預算、社會保障基金理事會，是90年代初中央為了應對2020年可能出現的養老人口高峰、人口老齡化的高峰而作的養老的社會儲備金，而不是真正意義上的社會保障金，所以社會保障預算是一個空預算。國有資本經營預算是2008年才開始收繳的，因此我們原來真正只有公共財政預算，但公共財政預算和國有資本經營預算、政府性基金支出以及社會保障預算並不是複式預算，它不是像羅斯福新政時的一般性預算，正式的預算和非正式的預算一般是要把兩者區分開來，我們實際上是公共財政預算在做國有企業的補貼、國有企業改革的投資，在填補社會保障的缺口。這其實動搖了我們預算法的基礎，我們預算法是以複式預算作為它的一個基礎，但是這個複式預算的前提是不存在的。我認為這是非常機械僵化地學習西方複式預算的結果。公共財政預算，政府性基金預算和社會保險預算實際上都是公共預算的一個特別預算，從嚴格意

義來講，都可以在公共預算裏專列項目做開支，所以我建議恢復單式預算制度，不要搞複式預算制度。

這裏特別談一下國有資本經營預算的問題。2008年之前，所有的國有企業的利潤是不要上繳國家的，我們在起草國有資產法過程中發現這是一個非常大的問題，所以在起草過程中就已經不斷地推動中央政府改變這一決策，全體納稅人投資做的國有企業竟然一分錢不要回報股東，這是一個非常可笑的邏輯，所以2008年中央決定開始實施國有資本經營預算制度，也就是恢復到我們1994年預算法、1995年實施條例裏的國有資本經營預算制度，但是這僅限於中央企業。我們現在央企分兩類：一類是國資委管的央企，另一類是八十多個部委管的6000多家央企。現在這個只是向國資委的央企收國有資本經營預算，又把國資委的央企分為三類，對資源性的交百分之十，一般性的交百分之五，軍工性的都不交，所以在2008年第一年，國有企業總的利潤是9000億元，只收了547億元。我們納稅人投資的國有企業最後的股息、分紅是非常小的，2009年收了588億元，2010年收了630億元。去年為什麼網上會出現數字上的錯誤呢？這主要是合併報表的問題。我們可以看到，國有資本經營預算雖是納入到我們預算法範圍，但是現在有三個缺陷：第一，範圍只限於央企，我們建議要擴大到所有的國有企業，包括其他央企和地方國有企業；第二，收支的比例應該提高，不應該是百分之十五，應該更多，百分之五十以上，因為確實有一些利潤沉澱到央企之後迅速就瓜分掉了，作為福利返還給全體納稅人中的部分納稅人也就是本企業的職工；第三是支出的結構，在支出結構上，更多的是用於增減國有資本金，2010年的財政預算報告指出2010年國有企業的破產支出是三千多億元，而去年全國的破產案件是1793件，大多數都是民營企業，國有企業為什麼這麼高？我們現在沒有公開的透明的信息披露，這些賬怎麼得出來的？是把歷年的賬沉澱在這裏算，還是也走了一些關閉性的、不是採用破產程序的一些支出？這些都不為我們所知。所以國有資本經營預算現在面臨著覆蓋範圍、支出結構以及提高比例這三個方面的改革，如果真的把國有資本經營預算做好的話它實際上可以作為公共財政預算的一個專項預算，來彌補我們的社會保障以及整個國民福利的提高。

Basis of Budget Law Revision and State Capital Management Budget

By Li Shuguang (Deputy Dean of Graduate School, PhD supervisor, China University of Political Science and Law)

I am intending to focus on two issues: the first is the basis of Budget Law; the second is a concept of double-entry budgetary system, especially the state capital management budget.

Firstly, the country's Budget Law was introduced in 1994, one year before the State Council introduced a set of its enforcement regulations. If we compare the 1994 Budget Law to a house, now the house is in a fragile condition with a lot of problems concerning not only the budgetary law itself but also the country's institution and environment, market foundation, as well as the current phase of economic growth. Thus, the law-revising efforts will not be completed with only improvement to concrete provisions. I will start by analyzing the basis of Budget Law:

The first would be a system of revenue distribution introduced in 1993, which had helped a lot in boosting the country's fiscal revenues, rising from ten billion yuan in the year of 1993 to forty-two billion yuan next year, and eight point three trillion yuan last year. Seen from the consequence of the revenue reform, the revenue distribution scheme has resulted in a strong central government and weaker local governments, which has been pinned on to the Budget Law as a positive achievement. In the enforcement regulations of the Budget Law, the revenue distribution scheme was elaborated as including three categories: central revenues, local revenues and revenues shared between the local and the central, with the first category accounting for some thirty percent of the total, the second also thirty percent, and the third forty percent. However, the third category has actually been swallowed by the central treasury and the major way of distribution was named as transferring payment. Why we hear recently more stories about local officials visiting frequently their acquaintances in various central ministries and departments for the granting of national programs or projects, or more directly, appropriations? This is a natural result of our revenue distribution system featured by a strong central government and weaker local governments. After the introduction of such a revenue distribution mechanism, more powers had been entrusted to the local governments, coming with it was more local responsibilities like educational reform, health care reform, and especially the state-owned enterprises reform, laid-off workers, all of which may produce financial burdens on local governments that can only rely on transferring land use right in exchange for gains in local fiscal revenues, now accounting for more than forty percent in many provinces. Without such a channel of revenue (or referred to as special revenue in Budget Law), local governments would find no ways of funding social reforms or establishments. Of course, local governments may find other channels of funding, which we may discuss in the final section. However, local government debt may produce

huge risks in the lone term.


Actually, our 1993 revenue distribution system was a basis of 1994 Budget Law, which was not considered a satisfactory solution and led to a situation featured by a strong central government and weaker local governments. Why we say that the revenue distribution system was a basis of the Budget Law? It is said that the government would live off its financial revenue and the budget would be a twin brother of revenue. We can see that the revenue distribution system have brought about a series of consequences, without its reform a further revision to the Budget Law will be largely restricted.

The second basis is the calculation of budgetary receipts, which is an issue with great importance. The 1994 Budget Law confirmed four revenue sources, the first category comes from taxes on the basis of revenue distribution system; the second category is national capital management budget, which has not been done in previous years; the third category is special revenue of the government, including land revenue; the fourth will be miscellaneous revenues, which, in my opinion, is the foremost concern of our budget law because this category has not been appropriately defined. China introduced a Law of Administrative Permission, a creative legislative more across the world. The law was targeted at administrative examination and approval process since during such a process a great sum of financial revenue would be produced, which would be categorized into miscellaneous revenues in accordance with provisions of our Budget Law. Strictly speaking, miscellaneous revenue also belongs to budgetary revenue. However, in the real practice, the country recognizes budgetary revenue, extra-budget revenue, and extra extra-budget revenue, which is a horrible thing for budgetary control. We take the story of a toll station in the northeastern province of Hei Longjiang for example, the municipal government has fixed a staffing quota for the station but refuse to cover the pay for its staffs who would have no other way than collecting fees and imposing fines to survive the harsh situation. In other words, the exact purpose of the government to establish such a toll station was to collect fees and impose fines, a popular practice that has been forbidden across the country, but the toll station still exist, so do its fee-collecting and fine-imposing actions. On the basis of such a theory, the reason for the existence of the government has been fundamental changed and could be anything rather than serving its people as government officials have claimed. Should government revenue like this be categorized into miscellaneous revenue in terms of our Budget Law? The Budget Law also defines fiscal expenditure, the structure of which includes socioeconomic development, national defense expenditure and other expenditures. The last category brings also uncertainties. Two

major legislative techniques would be employed in contemporary law-making process: one would be named as “other or miscellaneous provisions”; the other would be separate regulations issued by the State Council. The two ambiguous legislative terms bring about problems resulting from uncertain demarcation between the government and the market in terms of their powers, which is also considered a source for much institutional confusion. It is my personal view that more and more so called “governments” nurtured by extra-budget revenues would possibly be seen if we do not impose restraints on or give no clear definition to fiscal revenues in Budget Law, which means that fiscal revenues and expenditures could be unrestrained in our Budget Law. This is what I mean by discussing bases for our Budget Law, and actually it offers important theoretical premise for further revision of the law.

Another question will be complex budgetary system including public finance budget, national capital management budget and social security budget. Compound budget was first adopted by Denmark, and later by the Roosevelt administration of the United States. However, what we adopt here in China in our Budget Law should not be called complex budget in real sense since the so-called complex budget requires two report forms indicating overall situation of the revenue and expenditure of the government, the flowing direction and volume of the capital, as well as its nature. Complex budget has not been practically implemented since its introduction in the year of 1994. What we have up to now is a public fiscal budget as released in a budget report made by the Ministry of Finance during annual sessions of the National People's Congress (NPC) and the Chinese People's Political Consultative Conference (CPPCC), without including a national capital management budget and social security budget. Situation changes during this year's two sessions of national level conference when the structure of fiscal budget was modified covertly to include public fiscal budget, government fund budget, and social security budget, a new structure that is plagued by many problems. The original social security budget and Council of Social Security Fund are basically social reserves established by the central authority at the beginning of 1990s in order to cope with a possible speedy aging of population in the year of 2020. In this term, the social security budget is an empty budget. The state capital management budget began its function only from 2008, before that year we had only public fiscal budget. However, the public fiscal budget, state capital management budget, government fund expenditure, as well as the social security budget constitute no complex budget, and they are quite different with general budget practiced in New Deal during Roosevelt's Administration. General budget practice will differentiate between formal and informal budget. What we are doing now is to finance the state-owned enterprises subsidies, state-owned enterprises reforms, and social security program by using the public fiscal budget, a practice that might have jeopardized the basis of our Budget Law, namely the complex budget. However, the premise for the complex budget does not exist. I think this is a result of copying strictly the western complex budgetary system. Public fiscal budget, government fund budget and social security budget are all separate budgets belonging to the public budget, which could be listed as special items in public budget. Thus, I suggest that we may recover a

singular budgetary system, getting rid of the complex one.

Now I am going to talk about the state capital management budget. Before 2008, profits of state-owned enterprises would not be handed over to the state, a serious problem that we have discovered when drafting a state asset law, pushing the central authority to redress the situation. It would be a funny logic that state-owned enterprises jointly invested by the whole body of tax-payers have not been required to pay their shareholders back. Therefore, the central authority began to implement the budget system of state capital management in the year of 2008, going back to the original practice in the 1994 budget law and the enforcement regulations of 1995, but restricted only to the state-owned enterprises centrally administered. The centrally administered SOEs would be put into two categories: the first category is SOEs under the control of the State Asset Supervision and Administration Commission, or the SASAC; the second category is over 6,000 SOEs under the supervision and administration of central ministries and departments. At current state, only the first category of SOEs are obliged to contribute to the state capital management budget, within which category three types of SOEs would be identified with the resource-type of SOEs contributing ten percent, the general type contributing five percent, and the budget duty of the defense industry enterprises has been totally exempted. Therefore, the country reported only 54.7 billion yuan in state capital management budget, in contrast to 900 billion yuan's overall profits of the SOEs. The budget figure was 58.8 billion yuan in 2009, and 63 billion yuan in 2010. Stock dividends and share bonus from the SOEs are minimal compared with the huge investment by our tax payers. But why we have seen figures telling a different story online? The difference in figures may result from the combined reports. We can see that three factors are plaguing our current state capital management budget that has been defined in Budget Law: firstly, at current stage, only the centrally administered SOEs are subject to the budget management, and our suggestion is that we should enlarge the range covered by the scheme to include all SOEs; secondly, the contribution ratio should be increased from some fifteen percent to over fifty percent because a large majority of the profits have been divided among staffs of the SOEs instead of all tax-payers; thirdly, the structure of expenditure focusing on increasing or reducing the state capital amount should be readjusted. Figures revealed in 2010 fiscal budget report showed that bankruptcy expenditure on SOEs stood at 300 billion yuan, and the number of bankruptcy cases across the country stood at 1,793, most of which are but privately owned enterprises. The country lacks a public and transparent information disclosure mechanism, which may lead to confusion about some figures in the budget report. We have no sources to know exactly how much of the transaction has been performed under the table. Reforms of the state capital management budget could be done in three aspects including range of coverage, expenditure structure, and contribution ratio, the improvement of which, namely making it a special budget item in the overall public fiscal budget, will help to cover our social security expenses and better our national welfare. 

(Translated by Fu Yao)