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CROSS-BORDER E-COMMERCE ACTIVITIES AND TAX MANAGEMENT ISSUES

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Abstract:

Following the new trend of the global economy, in the era of industry 4.0, e-commerce activities are becoming more and more popular. The scope of e-commerce activities has erased the concept of national borders and territories. This opens up a variety of transaction methods in the field of e-commerce following the trend of globalization. Along with positive contributions to growth and restructuring of the world economy, the emergence and rapid development of cross-border e-commerce activities also poses challenges to state management in each country, including tax administration issues. In Vietnam, cross-border e-commerce activities also follow the general trend of strong development. Accordingly, the tax state management agency must both ensure conditions for entities conducting cross-border e-commerce activities to participate in the economy in a healthy way, bring sustainable economic benefits, and strictly comply with the tax law framework in the host country. In the article, the authors make assessments on tax administration for cross-border e-commerce activities; some current situations and challenges in this field. The authors also propose a number of solutions to improve efficiency in cross-border e-commerce tax management.

Keywords: *e-commerce activities, cross-border, tax management.*

1. General comments on the development of cross-border e-commerce activities and tax management issues according to modern trends

The industrial revolution 4.0 has created conditions for many new types of services to form and develop. In detail, the form of commerce combined with payment methods based on digital technology makes the exchange and purchase take place much faster and more convenient than the previous traditional commercial method. Accordingly, the parties can buy, sell, exchange and provide products and services without having to meet in person, not restricted by geographical distance or time. Transactions can be made on the basis of technology platforms and electronic means of communication. This reinforces the growth of the trend of globalization, opening up new types of cross-border trade transactions based on the application of technology in the 4.0 period.

According to the Organization for Economic Co-operation and Development (OECD), an e-commerce transaction is a transaction that provides goods and services between businesses, households, individuals, governments, state agencies, or private organizations performed on a computer network [1].

The World Trade Organization (WTO) states that: “E-commerce includes the production, advertising, sale and distribution of products that are bought, sold and paid for on the internet, but with the tangible delivery of both delivered products and digitized information over the internet”[1].

In Vietnam, according to Decree No. 52/2013/ND-CP dated May 16, 2013 on e-commerce: “*e-commerce activities are the conduct of part or the whole process of commercial activities by electronic means connected to the internet, mobile telecommunications networks or other open networks*”.

Thus, it can be understood that e-commerce activities are commercial activities carried out on an information technology platform with internet connection, by applying electronic means to carry out information exchange and commercial transactions between parties in the purchase and sale relationship. E-commerce activities, in addition to the provision of ordinary goods and services, also include the provision of digital technology products such as digital services, digital products, and digital resources [2].

E-commerce activities can be classified according to the form of implementation with common forms of implementation including: Electronic mail (Email); Retail website; Electronic trading platform. In addition, according to the subjects participating in e-commerce, including Business, Government, and Consumer, this economic form is divided into a number of popular types such as B2B, B2C, C2C, and B2G [3].

E-commerce activities with a variety of methods are carried out across borders, making an increasingly important contribution to the overall global economic growth. Statistics show that global e-commerce market sales in 2019 reached \$26.7 trillion, accounting for about 30% of global GDP, including business-to-business (B2B) and business-to-consumer (B2C) sales. In 2021, the global e-commerce market will reach \$4.89 trillion. As the COVID-19 pandemic spreads globally, cross-border e-commerce becomes more and more popular (eMarketer, 2021); forecast to increase to \$2.883 billion by 2023, with an average annual growth rate of 11.7% in the period of 2019-2023.

In that trend, Southeast Asia is considered to be the fastest growing e-commerce region in the world, with a growth rate of \$62 billion in 2020, is expected to be \$172 billion by 2025. Vietnam is currently one of the countries with the highest e-commerce growth rate in the ASEAN region. According to the report on Southeast Asia's Digital Economy published in November 2020, by Google, Temasek and Bain & Company, Vietnam's digital economy in 2020 will reach a value of 14 billion USD (accounting for 5.2% of GDP), an increase of 16% compared to 2019 (the highest increase in the region). Currently, Vietnam's digital economy ranks third in value in the region, behind Indonesia (\$44 billion), Thailand (\$18 billion). In particular, e-commerce has a high growth rate of 46%, causing the value of this field to increase from 5 billion USD in 2019 to more than 7 billion USD in 2020 [4].

It can be seen that the increasing role of e-commerce in Vietnam, when the rate of people using the internet reaches 66%, of which 44.8 million people participate in online shopping (accounting for about 46% of the country's population). People's spending on shopping increased from \$160 in 2015 to \$225 in 2019 (up to 40.6%). The ratio of e-commerce revenue to total retail sales of consumer goods and services nationwide also increased, from 2.8% in 2015 to nearly 2 times (at 4.9% in 2019) [1]. In fact, e-commerce activities in Vietnam are developing rapidly, mainly in popular forms such as B2C, B2B... The Vietnam E-commerce white paper in 2022 gives information that the scale of Vietnam's retail e-commerce (B2C) market in 2022 will reach 16.4 billion USD. Compared to 2015, the retail e-commerce value in 2022 will increase 4 times, from 4 billion USD to more than 16 billion USD. It is forecasted that by 2025, Vietnam will reach \$39 billion, ranking second in terms of e-commerce growth in Southeast Asia [5]. Based on the data, it can be seen that B2B and B2C models are popular and account for the highest proportion in the form of e-commerce. Therefore, the scientific management of tax sources for this commercial activity is an indispensable requirement.

Tax administration for e-commerce activities is one of the tax management contents implemented by state agencies, so it has all the basic features of tax management. Tax administration for e-commerce

activities is understood as the organization and administration of the work of tax authorities for tax payers engaged in e-commerce activities. Accordingly, tax management aims to ensure tax payment rights and obligations based on tax management contents for e-commerce activities, including management of taxpayer information; Management of tax bases; Tax collection management. At the same time, with specific activities in the virtual environment involving many different management agencies, tax management for e-commerce activities must: (i) ensure the management of tax payers participating in e-commerce activities; (ii) ensure appropriate tax collection and tax revenues from e-commerce activities are properly mobilized into the state budget; (iii) ensure the modernization of tax administration for e-commerce activities in the direction of strengthening the role of supervision and coordination of state management agencies.

In Vietnam, tax administration for cross-border e-commerce is becoming one of the challenges in the industrial 4.0 era. The rapidly evolving practice of cross-border e-commerce activities requires tax administration to adapt, in order to effectively manage and facilitate the development of e-commerce activities. Tax administration also has to create a level playing field between traditional business and e-commerce business, between domestic business activities and cross-border business activities.

2. Current status of tax administration for cross-border e-commerce activities in Vietnam

2.1 Positive results in improving tax administration for e-commerce activities

In general, over the years, the competent authority has made great efforts in perfecting the legal framework for the collection of taxes on cross-border services, ensuring a fair and equal business environment.

The Tax Administration Law of 2019 has expanded the scope of regulation to e-commerce activities, especially foreign suppliers that do not have a presence in Vietnam. Accordingly, for foreign suppliers, tax management applies two mechanisms in parallel:

Firstly, the foreign contractor tax mechanism. This is a tax applied to individuals and organizations (foreign contractors, foreign subcontractors) when doing business or earning income in Vietnam according to regulations [6]. For instance, a foreign enterprise X signs a contract to buy fabric from Vietnamese enterprise A, and at the same time appoints enterprise A to deliver goods to Vietnamese enterprise B in the form of on-spot import and export as prescribed by law. Enterprise X has income generated in Vietnam on the basis of a contract signed between enterprise X and enterprise B (enterprise X sells cloth to enterprise B). In this case, enterprise X is the puzzle Subjects apply according to the provisions of Circular 103/2014/TT-BTC and enterprise B is responsible for declaring, withholding and paying tax on behalf of enterprise X according to the provisions of Article 1 of Circular 103/2014/TT-BTC dated August 6, 2014 of the Ministry of Finance guiding the implementation of tax obligations applicable to foreign organizations and individuals doing business in Vietnam or earning income in Vietnam.

Secondly, foreign entities register and declare tax directly through the electronic portal. Specifically, on March 21, 2022, the General Department of Taxation held a conference to announce the electronic portal for foreign suppliers (Etaxvn.gdt.gov.vn) and deploy the eTax Mobile application. The portal will help foreign businesses that do not have a presence in Vietnam to register, declare and pay taxes. Since then, the situation that foreign enterprises do not know where to declare and pay taxes has been overcome [7]. At the same time, the portal is an address

for foreign suppliers to look up information and learn about Vietnam's tax legal system. This not only creates favorable conditions for FPOs, but also saves costs, time, and reduces administrative procedures for domestic organizations and individuals. According to statistics, from 2018 to the end of April 2022, e-commerce trading backgrounds have declared and paid taxes with a total amount of more than 5,111 billion VND. In which, some large units such as Facebook paid 1,965 billion VND; Google paid 1,902 billion VND; Microsoft paid 651 billion dong. Regarding tax collection management for Vietnamese organizations and individuals that have income from providing cross-border digital services and e-commerce business activities, by the end of April 2022, tax authorities have collected about VND 735 billion from handling violations and preventing loss of revenue [8].

In addition, in order to improve the proactiveness in management and control of cross-border e-commerce tax-related issues, on September 29, 2021, the Ministry of Finance issued Circular No. 80/2021/TT-BTC guiding the implementation of a number of articles of the Law on Tax Administration and Decree No.91/2022/ND-CP dated October 30, 2022 on amending and supplementing a number of articles Decree No.126/2020/ND-CP of the Government stipulating a number of articles of the Tax Administration Law, dated October 19, 2020 of the Government detailing a number of articles of the Law on Tax Administration. Specifically, article 81 in Circular No. 80/2021/TT-BTC guiding the implementation of a number of articles of the tax administration law and Decree No. 126/2020/ND-CP dated October 19, 2018. 2020 of the Government detailing a number of articles of the Law on Tax Administration stipulates that no matter where a business is present, when the service is consumed in Vietnam, it will still be subject to value added tax. At the same time, commercial banks and payment intermediaries are obliged to withhold and pay on behalf of foreign suppliers the payable tax obligations of foreign suppliers that conduct e-commerce business activities with organizations and individuals in Vietnam without a permanent establishment and do not actively conduct tax registration, tax declaration and payment in Vietnam.

In addition, in order to strengthen the implementation of its tax management function, the Ministry of Finance has signed a cooperation agreement with the Ministry of Industry and Trade in developing and perfecting the law in the field of e-commerce. The connection between the two agencies is implemented through database sharing and connection to exploit information to serve the state management of e-commerce business activities in the country and across borders. The General Department of Taxation has also advised the Ministry of Finance to sign an agreement with the Ministry of Information and Communications on the exchange and provision of information for tax administration for subjects providing telecommunications services and online advertising; software products and services; digital information content products and services and products, services through domestic and cross-border digital platforms. In addition, the General Department of Taxation also proposed the Ministry of Finance to develop cooperation programs and coordinate with the Ministry of Public Security and the State Bank of Vietnam on a mechanism to connect and share databases for effective tax management for foreign suppliers providing cross-border services into Vietnam [7].

In order to strengthen tax administration, the Tax authority has continued to upgrade and build a database system that connects and integrates between the banking system and digital platform providers to capture tax management objects, arising transactions, sales, and payable tax amounts, especially for cross-border transactions, commercial transactions on digital platforms, and online business.

In addition, the Minister of Finance signed Decision 2146/QĐ-BTC dated November 12, 2021 approving the project “Tax management for e-commerce activities in Vietnam”, the General Department of Taxation developed a project to add the investigation function for the Tax agency to implement from 2025 in order to strengthen and expand the functions for the Tax sector.

2.2 Some shortcomings need to continue to improve tax administration for cross-border e-commerce activities

Evaluation of the measures of state management agencies associated with the tax field shows a positive move from a management perspective. However, effectiveness needs to be considered because most solutions do not escape the traditional method, while e-commerce activities are transnational and diversified, flexible in ways, beyond the previous tangible commercial framework. However, expanding connectivity and enhancing information sharing will complete the database, contributing to overcoming difficulties related to fully managing revenue sources and payers, determining tax bases, distinguishing income types as a tax base, controlling business transactions to manage tax collectors, and controlling cash flows.

The fact shows that, due to the characteristics of this type of commerce, commercial transactions are carried out by electronic means, an object can have many stores on an e-commerce exchange and vice versa this object also existing in many e-commerce platforms on the Internet. On the basis of digital economic infrastructure, suppliers and customers trade goods and services with each other through the internet. From a tax perspective, the internet allows tax preparers to access new income streams through online transactions. Even though these transactions take place on the network and make payments via crypto currency or crypto currencies, they still create tax obligations on the participants of the transaction. Taxing transactions on digital platforms can be complicated due to difficulties in fully managing tax revenue and taxpayers for cross-border e-commerce business. The identification problem involves the following factors:

(i) The server location where the transaction is processed, where the goods are shipped, and the destination of the goods in different locations. Therefore, transactions need to be checked before being taxed. People participating in the online purchase and sale of digital goods and services will need some tax knowledge, to determine the supplier of the goods and the tax obligations to be fulfilled.

(ii) Applying information technology to professional activities of tax administration agencies. This includes not only the technology used, but also the dramatic increase in data sources and analytics capabilities as well as the evolution of vendors and third parties [9].

In addition, the current situation of the problem of preventing loss of state budget revenue for e-commerce activities also needs to be comprehensively assessed. With the diversity of methods, the problem of controlling e-commerce payment activities to determine the corresponding tax becomes even more difficult in the context of cross-border transactions. In fact, in case the cash flow from one entity to another is associated with payment activities for e-commerce transactions, the entities transferring money to each other may deny that it is a commercial transaction in order to evade taxes. In addition, if an e-commerce business entity uses cash-on-delivery (COD), it becomes impossible to control cash flow to identify e-commerce transactions.

In addition, tax bases for cross-border e-commerce activities cannot be determined based on traditional tax management principles in all cases where transactions arise. In terms of the digital economy, organizations and individuals can conduct cross-border business activities without being taxed by any country. Typical for this activity are online advertising and other activities g interact through social networking platforms. Besides, it is difficult to determine the amount of money paid for royalties, service fees or business profits without clearly distinguishing the type of income as a tax basis, such as revenue related to software, digital information content products, and applications posted on the Internet. The determination of business lines and fields as a basis for calculating value-added tax and tax declaration obligations. The fact that Grab's model - whether it's a transport service business or just a connection service provider - has been debated a lot lately [10].

At the same time, the legal corridor related to cross-border e-commerce tax management needs to continue to be improved. Legal gaps for specific taxes (value-added tax-VAT) and corporate income tax (CIT), regulations on permanent establishments for CIT, regulations on taxable objects for VAT are still open. At the same time, regulations on the type of information to be provided, how and time limit for providing personal information in the event that individuals do not declare and pay additional taxes on e-commerce are required to continue to comply with the law on e-commerce declaration and payment. The responsibility of social networks in providing information about advertising activities for personal business purposes on social networks is also one of the content that must continue to be perfected. In addition, the process and methods to check and handle violations in the form of e-commerce, civil liability for tax declaration, tax payment on behalf of an individual, in the case of an individual household doing both on the spot and doing business must be determined.

Besides, the international cooperation on e-commerce tax management has not been really focused. Strengthening international cooperation will promote strict management and control, avoiding the omission of tax sources and tax collectors, and avoiding double taxation for cross-border e-commerce activities. Therefore, strengthening international cooperation should be considered as an important task in tax administration, for cross-border e-commerce activities.

3. Some solutions to improve tax management for cross-border e-commerce business activities

In order to strengthen the management of cross-border e-commerce business activities, Vietnam ensures proper compliance with the law on tax administration, in parallel with the synchronous implementation of the following solutions:

First of all, an accurate, synchronized database for risk management focused on foreign suppliers who do not have business establishments in Vietnam and some owners of e-commerce trading floors must be considered as one of the mandatory requirements for completion. This must be done on the basis of the connection mechanism, strengthen the international cooperation and learn from the experience of the pioneering countries in cross-border e-commerce tax management, but must be suitable to the actual conditions of Vietnam.

In addition, the tax administration law needs to supplement regulations on information transparency on e-commerce websites, strengthen the responsibility of owners of e-commerce trading floors in managing e-commerce activities on the floor; along with that is the effective control of e-commerce activities on social networks and the corresponding responsibilities of the social network management unit. In addition, the Tax Administration Law 2019 clearly states that commercial banks are responsible for withholding and paying on behalf of the tax obligations payable by foreign organizations and individuals, in order to create

a “proactive” position in tax collection and collection, which has not been effectively implemented in the past time. However, specific guidelines to ensure that the implementation of withholding and payment of tax obligations of commercial banks are consistent with the provisions of the law, especially in accordance with international practices, should be promulgated [11]. This solution is also associated with strengthening close and methodical coordination between tax authorities and commercial banks.

Agencies and departments need to have a roadmap and plan to enhance the application of scientific and technical achievements to e-commerce tax administration activities for cross-border activities; classifying objects based on the level of tax payment, applying big data technology (Big Data), artificial intelligence (AI), ... to be able to search to collect necessary information about e-commerce businesses. This solution needs to be synchronized with the completion of the tax authority's data warehouse on the basis of connecting and sharing with the database of relevant ministries and branches.

In addition, taking advantage of tools such as social networking sites, sales websites, online trading platforms to ensure that all necessary information is available for management, and at the same time consider to use these means to transmit and guide individuals and organizations conducting e-commerce activities to better understand relevant legal regulations, guide ways to declare and pay taxes, especially by means of online tax declaration and payment. This will increase collection efficiency, information processing, especially basic information about trends in e-commerce transactions.

Specifically, local Tax Departments review, classify, monitor and regularly update information about companies that are organizing business activities and generating income from business forms in the field of e-commerce within their management areas basing on specific target groups [7].

Local tax authorities also synthesize, review and compare data on enterprises that have e-commerce business activities, participate in content creation on online platforms, and generate income from foreign organizations with tax management information in order to promptly identify cases in which tax declaration and payment obligations arise but have not yet performed tax registration and payment according to regulations [7]. This solution contributes to timely identification of cases where there is an obligation to declare and pay tax but have not yet performed tax registration, tax declaration and payment according to regulations [10].

Tax administration agencies step up the inspection, examination and review of foreign contractor tax declaration and payment and collect information on foreign companies and corporations that are providing current forms of cross-border advertising. Proposing and perfecting legal provisions related to cases of deliberate fraud, tax evasion, failure to declare and pay tax as prescribed, transfer to the police agency for investigation, verification and handling in accordance with the law.

4. Conclusion

In short, cross-border electricity trade has been and is still developing strongly, contributing to the significant transformation of the world economy. Along with that development, the Vietnamese tax administration for this commercial activity needs to be controlled and managed more scientifically. This will help this economic activity have the opportunity to develop sustainably and healthily together with other economic forms, and also help state agencies to navigate the economy in accordance with the original orientation. Tax administration needs to make efforts to well implement cross-border e-commerce tax management, ensure fairness between types and business entities, and avoid tax loss. Within the scope of the article, the authors have assessed the current situation of cross-border e-commerce tax administration. Thereby, the authors also propose some solutions to improve the efficiency of cross-border e-commerce tax management in Vietnam.

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