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DIGITAL TRANSFORMATION, COOPERATION AND GLOBAL INTEGRATION IN THE NEW NORMAL

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TAX POLICY FOR E-COMMERCE OF COUNTRIES IN THE WORLD AND RECOMMENDATIONS TO VIETNAM

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Abstract

The development of e-commerce is an inevitable trend in the world economy in general and Vietnam in particular. Especially, after the Covid-19 pandemic, e-commerce activities have increased continuously and significantly with more people buying goods and services and many organizations and individuals providing goods and services by the Internet in the form of between companies (B2B), retail sale of goods and services (B2C), and online auctions (C2C). However, the problems related to taxation of transactions made within the framework of e-commerce are also increasing when the tax collected from this activity is not commensurate with reality due to the borderless nature of the commerce. E-commerce poses problems identifying information of sellers, buyers, scope of activities as well as tax collection.

Keywords: *Electronic commerce; Taxation; Tax law; Policy of tax; Tax.*

Introduction

Society is evolving, along with technology. People's lives are becoming more modern, and shopping accordingly is also quick and convenient. Because of that, e-commerce is developing like a storm. However, besides that strong development, there are inadequacies related to many different problems. Typically, the inadequacies relate to tax issues in e-commerce activities. That is the disproportion between the amount of tax collected from the activities of transactions made within the framework of e-commerce and reality. The main cause of these problems is the vastness of the e-commerce environment and its borderless nature. Therefore, information about sellers, buyers, and issues related to tax collection is also limited. For this reason, the authors study "Tax policies for e-commerce in countries around the world and suggestions for Vietnam" to highlight some outstanding shortcomings of the problem. From there, some recommendations are made to help improve the law and solve the above shortcomings.

1. Overview of e-commerce in Vietnam

In the 1970s and 1980s, with the advent of technology and the development of automatic teller machines, credit cards, and banking transactions, electronic commerce began. Canada, the US, and European countries are among the early adopters of e-commerce. Quickly, e-commerce has achieved a great development step for its formation and development with the emergence of Amazon. That step has changed the business world's perspective by introducing a new business type called e-commerce.¹⁰

¹⁰ Hoang The Thoa (2019), "Banking development trend No. 04/01/2019", The bank of Viet Nam, https://www.sbv.gov.vn/webcenter/portal/m/menu/trangchu/ddnhnn/nctd/nctd_chitiet?leftWidth=0%25&showFooter=false&showHeader=false&dDocName=SBV355827&rightWidth=0%25¢erWidth=100%25&afrLoop=26431470500028466#%40%3F_afrLoop%3D26431470500028466%26centerWidth%3D100%2525%26dDocName%3DSBV355827%26leftWidth%3D0%2525%26rightWidth%3D0%2525%26showFooter%3Dfalse%26showHeader%3Dfalse%26_adf.ctrl-state%3Di4061x5kz_9

In order to integrate into the international economy to suit the situation when Vietnam joined the WTO, right in the years 2006–2010, the State implemented the Master Plan for e-commerce development with specific requirements such as: promote propaganda and training on e-commerce; perfect the legal system on e-commerce, provide online public commerce services, develop technologies to support e-commerce; organize and enforce the legal provisions related to e-commerce, strengthen international cooperation on e-commerce, implement the state management of e-commerce in the provinces and cities directly under the Central Government, support e-commerce application business. In 2011, the pivotal year of e-commerce in Vietnam, marked the end of the five-year implementation of the 2006–2010 e-commerce development master plan, the legal framework for e-commerce in Vietnam, and the formatted version. After a process of shaping and developing, our country has entered e-commerce activities with many optimistic signals. During the implementation of Prime Minister's Decision No. 1073/QĐ-TTg approving the Master Plan for E-commerce Development for the period 2011 to 2015 on July 12, 2010 and from 2013 the government is significantly building the legal infrastructure and shaping the development of e-commerce. Thus, e-commerce is one of the brightest and fastest-growing economic sectors.¹¹

According to Decree 52/2013/ND-CP on E-commerce, e-commerce activities are “e-commerce activities that 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.”¹² According to the World Trade Organization (WTO), the term “Electronic commerce, or e-commerce, is defined as the production, distribution, marketing, sale, or delivery of goods and services by electronic means”¹³. This concept is understood as e-commerce, which includes the production, advertising, sale, and distribution of products that are bought, sold, and paid for on the Internet but delivered tangibly, including delivery products, as well as digitized information through the Internet. Thus, it can be understood that “E-commerce is a field of the economy, represented by a set of commercial and financial transactions carried out by electronic means through information systems, including the internet, mobile telecommunications networks, or other open networks”.

In Vietnam as well as around the world, e-commerce has had a continuous and significant increase since the outbreak of the COVID-19 pandemic, leading to individuals and organizations changing business models to new ones. Online shopping has become an important business channel for everything from necessities to luxury goods and services. Besides, this new business model has challenged agencies all over the world, and Vietnam is no exception when the scope of this business model extends beyond the national territory. According to data from the Vietnam E-commerce White Paper in 2022 of the Department of E-commerce and Digital Economy, 75% of Vietnam's population uses the Internet, of which 74.8% participate in online shopping. The types of goods and services that people choose to shop online for the most include Clothing, shoes, cosmetics, home appliances, technology, and electronics; books; flowers; gifts; food; etc. Mobile phones are often used by people to order online (accounting for 91%). Vietnam's e-commerce growth is forecast to continue to boom in the coming years and will reach \$39 billion by 2025, ranking second after Indonesia (\$104 billion), equal to Singapore.¹⁴ However, domestic and foreign organizations and individuals doing business through e-commerce in Vietnam have not or have not declared, calculated, and fulfilled tax obligations with the state budget, leading to the declaration of taxpayers. The annual tax collected from these subjects is very modest, causing significant revenue loss for the tax industry in our

¹¹ Official Dispatch 2464/BCT-TMDT Master Plan for E-Commerce Development for the Period 2006-2010

¹² Clause 1, Article 3 of Decree 52/2013/ND-CP

¹³ World Trade Organization (WTO), Electronic commerce, https://www.wto.org/english/thewto_e/minist_e/mc11_e/briefing_notes_e/bfecom_e.htm accessed on 5/7/2023.

¹⁴ Department of E-commerce and Digital Economy (2022), E-commerce White Paper in 2022, pp. 25–32

country. Therefore, the traditional tax calculation principles must also change based on the transactions in this business model.

2. Tax policy for e-commerce in Vietnam

Currently, tax is understood as a compulsory, non-reimbursable source of revenue directly from the State to individuals and organizations. Based on taxable objects and taxpayers, taxes can be divided into two types to be collected: direct tax and indirect tax managed by tax authorities and customs offices. Up to the present time, the law has no provisions on the concepts of direct tax and indirect tax. However, it can be generalized as follows:

Direct tax: a tax where the taxpayer is also the taxpayer; direct income from incomes and benefits obtained by economic organizations or individuals. Thus, it can be understood that this tax is paid directly to the Government and not through any intermediary. For example, there are several direct taxes, such as Personal income tax, corporate income tax, etc.

An indirect tax is a tax in which the taxpayer is not the same as the taxpayer. Specifically, this tax is paid by manufacturers, traders, or service providers to the State by adding this tax amount to the selling price to be borne by consumers. For market prices, indirect taxes directly affect this issue because indirect taxes are added directly to the prices of goods and services and are taxed by consumers. Typical examples of indirect taxes include value-added tax, Import and Export Tax, etc.

Tax authorities are responsible for policies related to direct taxes, including income tax, property tax, and tax on permanent residents; Customs authorities are responsible for policies related to indirect taxes on imported and exported goods. According to e-commerce business activities, and business on digital platforms, there is no need to determine residency or non-resident status as long as the business is conducted in Vietnam and the business income from e-commerce is considered to be income from Vietnam. Such income is taxable in Vietnam. This is stipulated in Article 42 on the principles of tax declaration and calculation of the Tax Administration Law 2019. It can be seen that Vietnam's tax principle is based on destination; that is, income, goods, and services are considered to originate in Vietnam, and income, goods, and services are taxable.

3. Tax policies for e-commerce in countries around the world

3.1. In Canada

Because it is not through customs, it makes it difficult to collect taxes and loses Canada's state budget revenue from taxes in the field of e-commerce (cross-border nature; intangible goods and services are distributed online through software, data, consulting services, etc., not physical goods, so it is difficult to collect tax). As of now, in Canada, there is no rule to collect taxes on intangible goods and services imported into the country. Along with that is the difficulty for tax authorities in determining where to provide intangible goods and services when applying tax policies. Therefore, the collection of taxes on goods and services through e-commerce is mainly through the self-declaration of buyers and sellers. However, in reality, individual consumers will often not comply with the regulations on self-declaration to save costs. Only businesses providing goods and services declare tax because it involves the deduction between input and output taxes when selling goods. Faced with this situation, the Government has required foreign suppliers selling goods via e-commerce to register for tax if the transaction value exceeds a certain threshold. In addition, applying new technologies to control transaction information through e-commerce.¹⁵

¹⁵ Ho Ngoc Tu (2022), "Tax policy in the field of e-commerce",
https://mof.gov.vn/webcenter/portal/vclvcstc/pages_r/chi-tiet-tin?dDocName=MOFUCM223809

3.2. In the European Union (EU)

German tax authorities face the risk of shifting the profits of businesses in the field of e-commerce to countries with lower tax rates and tax havens, especially intangible goods, digital goods and services (S. Bach, M. Hubbert, and W. Muller, 2000).

According to S. Bach, M. Hubbert, and W. Muller (2000)¹⁶, the transfer of profits of enterprises in the field of e-commerce in Germany to other countries with lower tax rates and tax havens is alarming, causing problems for the German tax authorities. Therefore, the annual state budget of this country suffers a significant loss of revenue. Because the server system is located abroad, it is difficult for Germany's domestic tax system to manage and monitor e-commerce transactions. To solve this problem, Germany requires countries to sign bilateral agreements to exchange information voluntarily. Thereby reducing tax fraud. However, there are also some problems. Because “tax havens” would not normally sign such agreements with Germany.

Compared to its actual potential, the scale of tax collection for e-commerce in the EU is lower. Part of the reason is that e-commerce businesses can apply the payment method of electronic money, making it difficult for the authorities to manage, check, and supervise electronic money transactions outside the bank. Therefore, the EU has required non-EU suppliers who sell goods via e-commerce into the EU to register for tax and collect value-added tax from consumers of goods in this area.

3.3. In China

Hong Kong has a lower tax rate than other regions, so China has difficulty collecting taxes on e-commerce when faced with the risk that businesses may locate or shift profits to this area. Besides, the Chinese market is a very large consumer market, but the tax compliance rate of people here is very low, and the development of e-commerce increases people's ability to evade taxes. The state regulatory agency for industry and commerce has been asking online retailers to provide their real names and IDs since 2010. From 2012, several government agencies issued guidelines to encourage e-commerce and e-invoicing. Establishing an electronic invoicing system, an online information platform, and an online payment standard are guidelines that have been issued by Chinese government agencies. In addition, they also believe that e-invoices will bring benefits in tax collection via e-commerce to the management agencies and help them monitor tax sources more optimally.¹⁷

4. Inadequate tax regulations for e-commerce in Vietnam

Firstly, the growth of e-commerce activities leads to special tax concerns and impacts domestic tax collection when allowing goods and services to be traded remotely to customers without needing to pay taxes. physical presence, which may lead to non-collection of goods and services tax and create potential pressure on domestic sellers since sellers do not reside in Vietnam, leading to tax authorities having difficulty identifying sellers and tracing their sales to domestic customers. According to current statistics, the activities of foreign individuals and organizations in cross-border service provision are very strong in Vietnam through platforms such as Amazon, Tiktok, Facebook, etc. However, legal regulations do not keep up with this development, leading to businesses taking advantage of legal loopholes for “tax avoidance”. It is because of those loopholes that Facebook currently does not have a branch or representative office in

¹⁶ S.Bach, M. Hubbert và W. Muller (2000), Taxation of E- Commerce: Persistent Problems and Recent Developments, Journal of Vierteljahrshefte zur Wirtschaftsforschung Vol. 69, pp. 657 - 678.

¹⁷ R.Azam (2013), E-commerce Taxation in China, Journal of Chinese Tax and Policy, pp.66 - 76.

Vietnam. The proceeds from commercial activities are transferred directly by international payment methods to the account of the parent company or at the Singapore headquarters¹⁸.

Therefore, from the above analysis, the direct tax calculation based on “Permanent Residence” does not reflect modern reality if the seller in a foreign country must have one or another physical presence in Vietnam, such as rooms, warehouses, shops, etc. If the seller sells goods outside the territory of Vietnam, the application of the traditional tax calculation principle may upset the existing balance of tax revenue between the countries in which the country is located for sale and country of origin, and sellers who are not residents or citizens of Vietnam may not register and do not pay tax on goods and services. This may lead to a loss of tax revenue and potential unfair competitive pressure on domestic sellers.

In addition, there may be a potential for tax arrears when the seller intends to relocate production and business activities to avoid tax obligations or does not disclose their exact location or identity. Therefore, the absence of the physical presence of sellers, buyers, and goods and services makes tax enforcement difficult.

Second, there is no clear distinction between “e-commerce” and normal business types. The peculiarity of e-commerce is that such activity is usually not the main activity but a supplementary activity because often organizations and individuals carrying out normal business activities also begin to participate in other business activities using the Internet. Thus, e-commerce entities conducting business via the Internet are usually registered, have a certificate of tax registration, and pay tax according to regulations, and selling on the Internet is just one of the sales methods. Therefore, taxes related to e-commerce are included in the tax volume, but e-commerce has its own peculiarities compared to other types of activities, making it difficult to check the completeness of tax payments.

In addition, small organizations and individuals now tend to choose the business model on the Internet due to low costs, few employees, small office space, and no need for a separate warehouse, which will lead to difficulties in taxes. Although electronic trading is not very different from trading in the market. Although, according to Circular No. 40/2021/TT-BTC dated June 1, 2021, business households and individuals, regardless of traditional business or e-commerce business, are subject to tax liability, Value-added tax, and personal income tax, if there is a turnover of 100 million VND per year or more, are applicable to business households according to the business lines specified in the attached tax schedule. includes four major business groups distribution and supply of goods: VAT rate 1%, personal income tax rate 0.5%; services, construction excluding raw materials: value added tax rate 5%, personal income tax rate 2%; production, transportation, services with goods, construction with raw materials: value-added tax rate of 3%, personal income tax rate of 1.5%; Other business activities: value-added tax rate of 2%, personal income tax rate of 1%¹⁹, and business households and individuals doing business in the form of groups of individuals or households, the turnover rate is from 100 million dong/year or less to identify individuals who do not have to pay value-added tax or pay personal income tax, determined for a single representative of a group of individuals or households in the tax year²⁰. In this regulation, the principle of tax calculation based on revenue to calculate tax is not appropriate because revenue has not yet fully reflected business activities (profit or loss), leading to business households and individuals making losses. They still have to pay personal income tax if the turnover from production and business in the calendar year is over VND 100 million, which may lead to double tax calculation.

¹⁸ Industry and Trade Newspaper (2022), ““Vulnerability” cannot be taken lightly”, <https://congthuong.vn/bai-3-lo-hong-khong-the-xem-nhe-220964.html>

¹⁹ Appendix 1 Circular 40/2021/TT-BTC.

²⁰ Clause 3, Article 4 of Circular 40/2021/TT-BTC.

Third, customs duties on Internet business may also be charged. However, this mainly applies to the sale of physical goods ordered on the Internet that will be received with the payment of customs duties. So, how do you calculate tax on digital goods and services? When they have no physical form. Besides the identification of overseas seller information, tax authorities can obtain information from third parties such as customers or banks, but it depends on privacy laws and regulations. The law on the operation of credit institutions, when there is a problem getting financial information from overseas sellers or non-residents outside the territory of Vietnam will depend on the country managing the information there. Even the many problems related to e-commerce that arise when collecting indirect taxes in the case that a product is purchased in one country and imported into another country will be quite complicated regarding the calculation of indirect taxes. Duty and VAT refunds on export and tax calculation in the country where the product is being sent by international mail cannot be assessed on a per shipment basis.

5. Some recommendations on tax regulations for e-commerce in Vietnam

International economic integration is inevitable for Vietnam, and the economic process in Vietnam is moving in the same direction as other countries. Vietnam sees the importance and always expects an acceleration in the development of e-commerce in the economy, but with it come inadequacies related to its tax calculations. Therefore, there should be some recommendations to overcome the above-mentioned inadequacies:

Firstly, the tax on e-commerce is quite large and, in the future, will become one of the most important items to supplement the state budget. Therefore, Vietnam needs to have specific and clear sanctions in order to force e-commerce entities that, for subjects in the territory of Vietnam, do not need to define “permanent residence” to register with tax authorities and must provide identity accounts (payment accounts) through electronic payment systems in order for the tax authorities to control comprehensive information on the money movement of e-commerce subjects who are currently facing difficulties due to The entity provides multiple payment channels and multiple payment accounts, as well as a form of payment for collection (COD).

Secondly, it is necessary to define the concept of “e-commerce” for statistical purposes and to ensure data collection for tax calculation for e-commerce activities in order to adjust taxes appropriately when determining the value-added tax.

In addition, as analyzed above, e-commerce activities are not very different from traditional commercial activities, so there is no need to take new taxes for e-commerce. However, due to the characteristics of e-commerce, which is bought, sold, and paid on the Internet, mobile telecommunications networks or other open networks need to apply new or change existing procedures and methods for tax calculation and payment taxes related to e-commerce.

Thirdly, at present, cross-border e-commerce activities are a big challenge for Vietnam when related to many fields, industries, and international treaties. Therefore, if the subject sells goods outside the territory of Vietnam, goods and services tax is calculated when importing them into Vietnam.\

Results

E-commerce is an opportunity for Vietnam to increase tax revenue, as well as increase profits for organizations and individuals. It also presents challenges that tax authorities must solve, especially related to taxpayers’ tax evasion. Besides, the borderless nature of e-commerce also creates management problems in identifying subjects, determining the scope of activities, and collecting and verifying tax collectors. Therefore, Vietnam needs to define the concept of e-commerce and identify taxable entities within and outside the Vietnamese territory, as well as the tax calculation principle that there is no difference between

e-commerce and Traditional trade, to ensure fairness and efficiency, balance the benefits between the state and tax payers, and avoid the situation of being subject to the same tax many times.

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