



Equity in Tax Law: Vietnam Case Study

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Abstract

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One of the prime principles in the optimal tax system of countries is fairness. Equity in tax law originates from two points of view: fairness on the principle of benefits (from which taxpayers take away from society) and fairness on the principle of the ability to pay taxes (income). According to economist Adam Smith, "taxes are seen as the basis of economic institutions, which can cause economic instability when there is a lack of transparency and clarity". Therefore, fairness in tax law formulation at different stages of development of each country is considered a complete principle associated with countries' economic, social and political conditions in each period. The scope of this article, based on research regarding the history of construction and development of tax law in Vietnam through the analysis of fairness in tax obligations, tax exemption, tax administration, tax fairness and tax accountability. Proposing solutions towards ensuring fairness in completing the legal tax system in Vietnam.



A. Introduction

Tax is not a new notion. In many countries, the Government has always enacted tax laws to manage tax collection and regulate the macroeconomy.¹ Tax is a compulsory contribution to the state budget of enterprises, individuals and other subjects following the regulations.² The self-assessment system is considered to be a modern mechanism of tax administration that is applied in many countries around the world.³ Equity is the most crucial factor in an efficient tax system and is considered by most people to be a fundamental feature of a profitable tax system. Tax equity is founded on the ideal that all members of society who can pay must contribute to maintaining it. Therefore all members must pay their fair share through taxes⁴, which means that subjects with similar conditions must pay taxes equally, and at the same time, reasonably source revenue for the budget without affecting personal life and business activities. The economy of the business entity. An overly unfair tax system may be partly responsible for political upheavals such as the French and American revolutions⁵. Through secondary information and documents, summary reports of tax authorities, articles assessing fairness in the legal tax system, regulations on tax exemption and reduction; Tax Administration; equity in tax spending and tax accountability. From there, propose solutions to improve the legal tax system effectively and fairly and protect the interests of taxpayers in the relationship between obligations and state budget revenues.

Tax development is always related to the country's economic, social and political conditions. In this research, the author explains the history of the taxation system towards an optimal taxation system by studying the country of Vietnam. The optimal system is defined as the equal distribution of a country. This equity can be seen from two perspectives: the distribution of tax obligations from the community and the distribution of the ability to pay taxes (community income).

The novelty of this research will contribute to the country of Vietnam in optimal taxation through tax analysis, tax administration, taxation and tax accountability. In the development stage of the Vietnamese tax system, many policies have been carried out, one of which is tax preferences, intending to develop several branches, fields and regional preferences; however, the result was not as expected. From one of these less successful policies, the suitable formulations for the tax system will run according to the plan the author recommends in this article.

¹ Loan Thi Nguyen, Anh Hong Viet Nguyen, Hac Dinh Le, Anh Hoang Le, Tu Tuan Vu Truong, The Factors Affecting Corporate Income Tax Non-Compliance: A Case Study in Vietnam, *Journal of Asian Finance, Economics and Business* Vol 7 No 8 (2020) 103–115.

² Hieu Huu Nguyen, Impact of Direct Tax and Indirect Tax on Economic Growth in Vietnam, *Journal of Asian Finance, Economics and Business* Vol 6 No 4 (2019) : 129-137.

³ Thi Thuy Duong Nguyen, Thi My Linh Pham, Thanh Tam Le, Thi Hoai Linh Truong, Manh Dung Tran, Determinants Influencing Tax Compliance: The Case of Vietnam, *Journal of Asian Finance, Economics and Business* Vol 7 No 2 (2020) 65-73.

⁴ Halliwell, Margaret, *Justice & Good Conscience in a Contemporary Context*, Old Bailey Press, London, p. 1-3, 1997.

⁵ Ho Chi Minh City University of Economics, *Public Finance theory Curriculum* HoChi Minh National University Publishing House, p145, 2006.

B. Discussion

1. The Concept of Tax Justice

Until now, despite a long history, the issue of tax fairness remains a controversial topic. This has directly affected completing and enforcing tax laws in most countries, especially developing countries like Vietnam. Equity is the basic concept of ethics, the rule of law philosophy, social philosophy, and political, social, religious and legal lives. Equity is an early-existed concept that is considered under many different aspects.

The concept of equity in economics is horizontal and vertical equity. Horizontal equity means equal treatment of contributors and vertical equity means different treatment of people with differences in birth, qualifications, abilities or living conditions. Equity can also be understood in two different senses: objective equity and subjective equity. In the objective sense, fairness is understood as appropriate values, common rules and standards or appropriate actions accepted by the community. Regarding subjective meaning, fairness depends on each person's perception, evaluation and judgment. Each person has their assessment of what is fair or unfair.

In short, equity is understood in the most general way as the ideal condition of human society, in which the problems of property, benefits and opportunities among members of society are reasonably shared without bias position⁶. From the point of view of tax law, fairness is an objective requirement of taxpayers because this is the compulsory price they must pay for public goods and services.⁷ There has not been any specific and clear concept of tax fairness, although tax justice has been mentioned extensively in the history of research. New researches only stop at points of view and theories such as those of Aristotle, Adam Smith or economic science. For Aristotel, the study of tax justice comes from questions such as: "Who has the right to collect taxes? What is tax justice? In modern society, the concept of fairness of direct tax and indirect tax is given. As for Adam Smith, he studied tax justice based on the ideal of a just and democratic society, that is, based on the actual capacity of the economy, not everyone is the same", and should tax highest for those who can afford it." In fact, this doctrine has had an important impact on the tax policies of European countries, including the United States, for many years. It has stimulated the development of social democracy in the process. Developing and implementing tax policies⁸. On the side, economic scientists offer solutions to ensuring fairness and considering redistribution through taxes.

Legislators enact tax regulations to eliminate or reduce undesirable socioeconomic conditions and provide balance or at least a sense of balance in the complex economic landscape of each country. They also enact tax rules promoting or encouraging various profitable economic activities. However, over the years, tax equity has been formulated according to two common standards: the benefit rule and the affordability rule. Because the tax fairness attribute is an objective requirement of the tax development process in a democratic society when completing the tax system, it is necessary to ensure the following principles:

⁶ Oswald Schwemmer, *Gerechtigkeit*, In: Jürgen Mittelstraß (Hrsg.), *Enzyklopädie Philosophie und Wissenschaftstheorie*. Band 1. Metzler, Stuttgart. S. 746, 1995.

⁷ Tuan, NM, *Justice is always controversial*, 2013, <https://vietnamnet.vn/vn/tuanvietnam/su-cong-bang-luon-gay-tranh-cai-139994.html>

⁸ Tuyen. VV, *The Nature of Taxes - An approach from classical to modern theories*, 2020, <https://luattaichinh.wordpress.com/2009/06/05/b%E1%BA%A3n-ch%E1%BA%A5t-c%E1%BB%A7a-thu%E1%BA%BF-s%E1%BB%B1-ti%E1%BA%BFp-c%E1%BA%ADn-t%E1%BB%AB-cac-h>

First, equity is reflected in the tax liability of individuals and organizations. Based on exercising the State's right to collect taxes to maintain economic functions, the State does not directly participate in economic activities. Still, it leaves opportunities for other actors in society, and the State collects a small amount of money. Share of their income. That is fair. The obligation to pay tax to the State is mandatory, and the transfer of income in the form of tax is not tied to the specific interests of the taxpayer. After all, it's for the people. In addition to meeting the spiritual and material needs of the people, the State must also ensure that the people improve their tax payment obligations in terms of self-discipline and compliance with the law. The problem is how to ensure tax fairness for subjects. Those with the same tax conditions must be treated equally in taxation.

Second, ensuring fairness in taxing based on the taxpayer's ability to pay, not all, but taking into account the living conditions and circumstances of each person is an essential principle of tax law. Here, justice must be social justice in general, in line with the development orientation of our country and the world, so when formulating tax laws, it is necessary to have appropriate regulations.

Thirdly, fairness in tax exemption and reduction. Reasonable exemption and reduction regulations are fair for the general development of society. The combination of these two policies aims to promote economic growth and ensure the realization of social goals, including social equity and equality. In today's society, socio-economic policies must take social justice as a prerequisite.

Fourthly, fairness does not contradict the direct non-refundable property of taxes. Citizens who pay taxes to the State will benefit from the country's prosperity.

The principle of fairness must be reflected in the entire tax legal system because this is not only a general principle of tax but also a fundamental principle for building a legal tax system. Objects with the same income and conditions shall have the same tax obligations; entities have equal positions in tax rights and obligations; their weak positions are also considered. Based on the principle of fairness, it is only necessary to determine the taxable conditions without specifying the subjects when completing the legal tax system.

2. Equity in The Current Tax Legal System in Vietnam

Right from the feudalism in Vietnam, kinds of tax were delivered to supplement the State budget. Under the regime of the Democratic Republic of Vietnam, decrees on the State budget revenue were delivered, such as decree 11/1945, decree 12/1946, and decree 32/1946. In the stage of centralized planning, such taxes were delivered as wine tax, import-export tax, slaughter tax, agriculture tax, and industry ad trade tax which were mainly applied to non-state economic sectors. State economic sectors were entitled to apply their revenue to the State budget: Circular 93-TTg in 1962, 1962 the State enterprises had to pay monthly tax to the State budget. After 1962 they were twice a month. Circular 73-CP in 1971 noted that the State enterprise had to distribute profit. The profit in the plan must be paid at least 10%. Enterprises that exceeded the plan and did not register before had to pay 60% to the State budget. From 1990 to now, the State had significant tax reform appropriate to the general rule of the world community and tax adjustments suitable with fundamental changes in each practical stage of the economy. Typical cases are the stages 1990-1995 (tax reform of stage I), 1996-2004 (tax reform of stage II), 2005-2010 (tax reform of stage III) and 2011-2020. After over 20 years of reform, spending many times of adjustment and complement to be appropriate with economic development situation, up till now, tax laws are generally promoted their high effect. In the policy of perfecting the law system of Vietnam, the tax industry keeps on its reform process

to build the Vietnamese tax system towards modernity and compliance with international practice.

The tax system of Vietnam is generally similar to the tax system of countries with long-standing developed economies in the world. However, this is often difficult and not always possible when assessing tax equity. There have been two opposing views on the Vietnamese tax system in recent years. One shows that the Vietnamese tax system is improving positively in relation to tax burden and collection. Typically, reducing the tax burden for businesses and people.

Another problem is that the tax system increases the tax burden on low-income citizens daily. The evidence is that the proportion of consumption tax in total tax revenue is increasing. In contrast, personal income tax accounts for a small proportion and the proportion of CIT tends to decrease⁹. Therefore, when formulating a tax policy, it is necessary to consider whether it is fair. Equity at what level? Can they comprehensively cover all revenues? How is management precise? And which of the following tax trends in the economy? Through the analysis of tax exemption and reduction regulations, tax administration, tax accountability and fairness in tax spending, and comprehensive assessment of tax fairness in the development of Vietnam's tax law.

a. Fairness in Tax Obligations

Tax equity receives attention in the formulation of any tax policy. In the scope of this article, the authors mainly deal with tax fairness for direct taxes (personal income tax, corporate income tax, including electronic tax).

Paying tax is an obligation of each individual and organization: Article 47, Constitution of Vietnam 2013 clearly states: “everyone should pay tax according to regulations”. This regulation has defined the basis of tax liability as any individual or organization having business activities or earning income in the territory of Vietnam, having beneficial activities to taxable objects. Fulfill the tax obligation to the state directly (direct tax: corporate income tax¹⁰, personal income tax¹¹) or indirectly (indirect tax: VAT, excise tax) meaning is the tax obligation determined based on mainly taxable income and taxable objects, so it forces all entities to fulfill tax obligations to the state without discriminating between individuals or organizations. Organization and ethnicity as in corporate income tax policy or personal income tax policy (the deduction for taxpayers is 11 million VND, regardless of being Vietnamese or foreign).

b. Fairness in Taxation

Tax fairness is determined based on the taxpayer's ability to pay. The tax law is perfected based on the taxpayer's ability to pay different incomes, so the tax payable is not the same. Unlike the regulations on tax obligations during the feudal period in Vietnam, the provisions of the current tax law ensure that after performing their responsibilities to the state, taxpayers do not fall into that impoverished state. Is the policy of family deduction in personal income tax (deduction for the taxpayer himself is 11 million VND / person and dependents 4.4 million VND / person), the policy of exemption and reduction in corporate income tax, tax agricultural land use tax, non-agricultural land use tax, value added tax, excise tax. In addition, the ability to pay taxes is a basis for planners and legislators to apply to subjects who can pay enough

⁹ Thanh, DN, Cuong, VS & Thon, HTC, *Tax Equivalence - Vietnam Review 2017*, Hong Duc Publishing House, Ha No, p.65, 2018.

¹⁰ National Assembly, *Corporate Income Tax Law*, National Political Truth Publisher, 2013.

¹¹ National Assembly, *Personal Income Tax Law*, National Political Truth Publisher, 2014.

taxes but do not cause too much pressure and ensure a remaining financial balance. To continue production and business to create new motivations for income generation and capital accumulation.

The tax rate is considered the soul of tax, with the regulation of a progressive tax rate in an individual's regular income (in personal income tax law) towards the goal of taxing according to the ability to pay. In tax policy, tax rates for particular goods services - excise tax¹² different from ordinary goods tax (value added tax¹³); complex or especially difficult economic sectors or areas have policies to reduce taxes such as tax reduction for land use proper transfer.

c. Fairness in Regulations on Tax Exemption and Reduction Policies

The goal of an optimal and efficient tax system is one of the requirements in perfecting tax policy is to create and maintain revenue for the budget while encouraging and promoting the development of society through encouraging the nurturing of revenue sources - taxpayers - tax exemption and reduction policies.

Tax exemption and reduction are considered as a social policy measure to support some cases falling into difficult circumstances due to natural disasters, fires, unexpected accidents, or other force majeure circumstances: land use tax, agriculture, value-added tax (during the time of the covid epidemic, the Government had a change in the value-added tax policy, stimulating the purchasing power of consumers should be reduced from the standard tax rate of 10% down to 8%¹⁴).

In addition to providing preferential policies, tax fairness is also created when managing taxes related to related transactions. Decree 132/2020/ND-CP dated November 5, 2020 stipulates the tax management for enterprises with associated transactions, ensuring a sufficient legal foundation in line with the common practice of the country's economy. There is no discrimination between domestic enterprises and foreign enterprises. Vietnam has signed more than 80 agreements to avoid double taxation with countries worldwide. Article 24 of the agreement to avoid double taxation stipulates that “there is no discrimination between domestic enterprises and foreign enterprises”.

Moreover, WTO commitments also mention and are consistent with the rule: “Prohibit discrimination between economic sectors in relation to taxes”. This is the principle of fair treatment mentioned in Article 17 of the General Agreement on Tariffs and Trade (GATT) and Article 3 of GATT on trade-related aspects of intellectual property rights. Domestic enterprises already have linkage and investment activities abroad, so they are also subject to tax management for association activities and anti-transfer pricing¹⁵.

In this respect, the fairness of the tax law is placed in social policy and equity in the development context of each country (because the development of countries is different in goals and approaches). The approach will have changes following the goals and policies of that school.

¹² National Assembly, *The Law on Special Consumption Tax Amended and Supplemented*, National Political Truth Publisher, 2008, 2014.

¹³ National Assembly, *Value Added Tax Law*, National Political Truth Publisher, 2013.

¹⁴ Government, *Decree 15/2022/ND-CP, Regulations on tax exemption and reduction policies according to Resolution No. 43/2022/QH15 of the National Assembly on fiscal and monetary policies to support the recovery program economic recovery and development*, 2022.

¹⁵ Duong Thuy, *Fair observance of the law in tax administration*, 2020, <https://nhandan.com.vn/baothoinay-tinh-te/cong-bang-thuc-thi-phap-luat-quan-ly-thue-624224/>

d. Fairness in The Enjoyment of Benefits by Taxpayers does not Conflict with Interests that Taxpayers Ensure do not Conflict The Direct Non-Refundable Attribute of Taxes and Ensures Publicity, Transparent

In the trend of international integration and cooperation, the tax sector has actively cooperated with other countries and international organizations on taxation, serving practically the renovation and modernization of the tax system, and improving the tax system's efficiency. Professional competence of the tax administration staff, contributing to affirming the Vietnamese tax industry in the international community. Along with the implementation of the reform contents in tax administration, the Tax sector regularly evaluates the performance of the industry following the general rules of the world, demonstrating the commitment of the Tax sector to the implementation of the tax law values under the motto "transparency, professionalism, integrity, innovation". In recent years, the tax administration in Vietnam has been evaluated well.

From 2011 to now, implementing the Strategy on Tax System Reform for the period 2011-2020 issued by Decision 732/QĐ-TTg dated May 17, 2011 of the Prime Minister, the Tax sector has always completed only entrusted revenue. Regarding the State budget, the ratio of State budget revenue to GDP on average is about 24%, of which the rate of mobilization from taxes and appropriate fees is 21% (compared to the period 2006-2010, it was 23.6%). State budget revenue changed positively, and domestic revenue accounted for an increasing proportion of total state budget revenue, expected to reach about 84% by 2020, achieving the target set out in the Tax System Reform Strategy. in the period 2011-2020 (84 -85%), a sharp increase compared to the previous periods (the period 2006-2010 was 58.9%, the period 2011-2015 was 68%), ensuring the strategic direction of increasing the proportion of domestic revenue gradually in the direction of compensating for the reduced import and export tax due to the implementation of commitments when Vietnam joins international and regional trade organizations.

By 2020, the Tax sector will provide electronic tax services (electronic tax declaration, electronic tax payment) nationwide, basically meeting the needs of developing e-government and creating favorable conditions for the development of e-government. For taxpayers in fulfilling their tax obligations. Specifically, for tax declaration, for taxpayers who are businesses, the General Department of Taxation has implemented electronic tax declaration at 63 provincial Tax Departments and 100% of Tax Departments; cooperated with 54 commercial banks to deploy electronic tax payment service, accounting for 99.53% of the total number of enterprises that are implementing; implemented electronic tax refund in 63/63 provinces and towns, the rate of enterprises participating in electronic tax refund reached 93.61%, the rate of dossiers received by electronic method reached 95.80%¹⁶. In propagandizing and supporting taxpayers, the tax sector has changed from a tax support agency and providing tax services to guiding taxpayers to implement the most secure tax management procedures. Creating favorable conditions for taxpayers in fulfilling their tax registration obligations, tax declaration, tax payment, tax refund, etc. On the other hand, organizational structure and human resources are intensely interested and renewed by the tax industry. Following the ability to execute and deploy tasks, streamline the focal point following the management tasks and the actual conditions of the locality.

¹⁶ Tien, NQ, *Tax administration reform and modernization: Accompanying the Finance sector*, 2020, <https://tapchitaichinh.vn/Chuyen-dong-tai-chinh/cai-cach-hien-dai-hoa-quan-ly-thue-dong-hung-prov-de>

The results of the 2019 OBS global survey have just been released. In particular, the score on publicity and transparency of the Vietnamese budget increased sharply compared to previous assessments. The publicity and transparency score of Vietnam's budget reached 38/100 points for the Public Budget column, an increase of 23 points compared to 2017; achieved 11/100 points for the Community Participation column, an increase of 4 points compared to 2017; achieved 74/100 points for the Monitoring column, an increase of 2 points compared to 2017. Regarding national ranking, Vietnam ranked 77th out of 117 countries, up 14 places compared to 2017¹⁷. According to OBS's 2019 ranking, Vietnam is assessed to have made remarkable efforts and progress in terms of publicity, budget transparency in general, and tax transparency in particular. Thanks to the National Assembly for passing the Law on State Budget 2015 (effective from the 2017 budget year) with extensive provisions on the fields, subjects, content and form of disclosure, such as public data and report on budget estimates when submitted by the Government to the National Assembly remarkable progress has been made. The 2015 Budget Law regulates budget data and legal documents related to revenue and expenditure. Assess the transparency and accountability of the tax system based on criteria of access to information, audit, and citizen participation.

Documents related to Vietnamese tax are widely published. People can access it through the website of the Ministry and State agencies related to their fields. In addition, people also have access to information through publications and declarations. People and businesses base themselves on published legal documents to declare and pay taxes themselves; The audit must comply with the 2015 Law on State Audit provisions. The State Audit is independent of the General Department of Taxation and the General Department of Customs. Since 2015, people can access audit information through direct monitoring of National Assembly sessions or information in the press; The government has created many information channels so that they can contribute opinions on draft legal documents. Before a draft law is passed, changed, or supplemented, it is published on the government website. Citizens with opinions on legal documents can exchange opinions at grassroots National Assembly meetings. However, the participation of the people only stops at the development of legal documents in terms of budget distribution. The people have not had the opportunity. Should residents be involved in this process because they are the beneficiaries of spending and understand the needs of their community? Thus, improving the quality of spending and avoiding negative phenomena.

C. Proposing Solutions Towards Ensuring Fairness in Perfecting The Legal Tax System in Vietnam

To achieve tax equity, it is necessary to have an assessment of tax policies in the overall policy. To ensure the mutual complementarity of tax policies, it is necessary to implement the following solutions:

Firstly, determining the scope and objects of taxation following the direct tax policy according to the level of development of the economy and income, besides studying the changing trends of the regional and international tax systems. To ensure internal stability and fairness in tax policy.

Second, examine and evaluate the tax incentives for appropriate adjustments and modifications. Completing the framework for evaluating the effectiveness of tax incentives, developing tax spending reports; conduct a careful and long-term cost-benefit analysis of tax incentives before introduction and implementation, including social impacts. Enterprises

¹⁷ Hong Van , *Budget transparency to improve accountability and community oversight*, 2020, <https://haiquanonline.com.vn/minh-bach-ngan-sach-de-nang-cao-trach-nhiem-giai-trinh -va-su-giam-sat -crab-cong-dong-128163-128163.html>.

enjoying incentives must make a full declaration, even in cases where no tax is payable (due to incentives). To fulfill this requirement, it is necessary to establish a reporting mechanism so that the tax sector has a basis for collecting information and data related to the implementation of tax incentives, including information related to the amount of tax, projects are eligible for tax incentives, reducing state budget revenue due to tax incentives, contributions from economic incentive projects on job creation, export promotion and technology transformation results.

Thirdly, along with the improvement of tax incentive policies, there should be other synchronous solutions at the macro and micro levels to ensure an open and transparent business and investment environment, ensuring public access, equal, easy with reasonable cost that investors, business opportunities as well as the enjoyment of benefits from tax incentives among domestic and foreign investors.

Fourth, promote the use of electronic invoices and cashless transactions. Re-evaluate the online tax declaration process, and promote the responsibility of people to use e-invoices, digital signatures, and online tax refunds. This helps better to control tax collection agencies and tax revenue sources, and at the same time, State agencies have a cooperation mechanism in tax administration, reducing tax loss.

Fifth, the proportion of direct daily tax is low, which proves that Vietnam mainly relies on consumption tax collection and affects the fairness in tax spending. Therefore, Vietnam needs to make more efforts to restructure budget expenditures to reduce public debt and budget deficit. There is a need to increase healthcare and education spending, which should be disclosed in budget reports. In particular, the revenues of the non-budget fund must be made public and transparent so that the people know. At the same time, the Government needs to continue to improve transparency and accountability in budget revenues and expenditures of governments at all levels. Taking publicity as a criterion to evaluate the performance of individuals and organizations in charge.

Sixth, it is necessary to establish a mechanism to promote public participation in the entire process of using the State budget. For example, it is necessary to establish a mechanism for the people to participate in the state budget monitoring process of the legislature and a mechanism of public accountability between the legislative body and the people in the state budget. The construction process and budget. Approval and implementation. In particular, it is necessary to build this mechanism so that people can participate continuously as well as cover a large number of people in society, especially those with disadvantaged positions.

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