TARIFF AND TURNOVER TAX IMPORTANT REVENUES OF THE STATE FROM FOREIGN INVESTED ENTERPRISES

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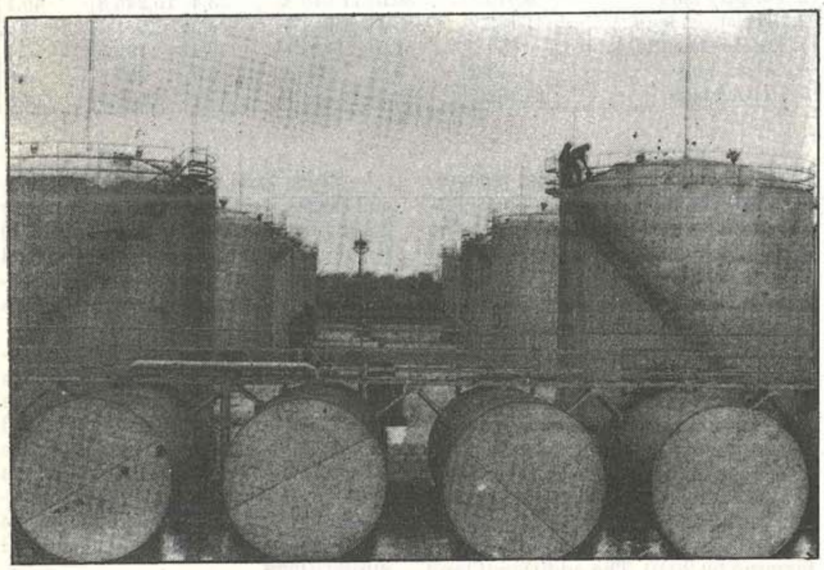

With the aim of economic growth and development and foreign investment attraction, the Vietnam's Law on Foreign Investment issued on Dec 29, 1987 was given amendments and supplements two times on June 30, 1990 and Dec 23, 1992 and it was concretized by Decree 18-CP dated April 16, 1993. Statistics in recent years revealed foreign investment capital flowed increasingly into Vietnam and thereby various kinds of taxes paid by foreign invested enterprises caused significant revenues of the State. In HCMC alone, taxes paid to the State budget from foreign invested sector rose by 200% from 1994.

Some of these kinds are import, export duties, turnover tax, profits tax...

I. EXPORT, IMPORT DUTIES

Export, import duties arise when commodities are transferred across border and export processing zones' (EPZ) gates. Those subject to taxes are goods imported and exported legally across the border gates and goods in commercial transaction with the EPZ. Goods in transit, concerning change of border gates and humanity aid do not bear taxes.

As for tax-free goods, within 30 days since the date of tax notification or 10 days since the date of inspection, the business must make application for tax reduction and exemption to the General Department of Taxation or the representative board.

Tax-free goods sold in Vietnam's market must be permitted by the Ministry of Trade and pay the amount of tax already exempted. Base for tax calculation include tax rate, foreign exchange rate, taxable price at the time of sales according to the minimum prices list. In case of transferred assets are fixed ones which have been completely depreciated in the utilization process and got permission for liquidation, taxable price is the real one according to legal receipts.

The prices for export, import duties are the selling, buying prices respectively at the border gates including freight and insurance cost.

The list of import, export duties is issued by the State Council in line with each category, the former Ministerial Council and present Government defines it minutely according to each circumstance.

The preferential tax rate is lowered but not surpassing 50% towards nations having signed preferential agreements with Vietnam.

1. Privileges in import, export duties

Taxable goods comprise: machinery, equipment, personal belongings, patents, technical know-how, technological process. Machinery, equipment and materials for production are given priority in tax reduction and exemption. Materials used in assembly are subject to tax rates according to SKD or IKD forms. General tax reduction is ruled by the Law on Tariff, Article 35 of the Foreign Investment Law, Article 76 of Decree 18-CP dated April 16, 1993 and Circular 90/TC-TCT dated Nov 4, 1994 concerning guidelines for the consideration of tax exemption, tariff return for foreign-invested enterprises.

a. Products made by foreign invested enterprisess:

- Exports: Tax-free goods must bear temporary import duty, afterwards the Customs will give back the sum in proportion to the real materials for export.

- Transferred goods must be licensed by the Ministry of Trade, subject to taxes according to Article 76 of Decree 18/CP and regulations on the Customs' inspection, monitoring. Import duty-free goods must be declared and the seller must return the amount of tax already exempted.

- Commodities made in the EPZ, kept in foreign trade warehouses and for BOT projects are in compliance with Regulations on EPZ accompanied by Decree 322-HĐBT dated Oct 18, 1991, Regulations on foreign trade warehouses accompanied by Decision 104-TTg dated March 16, 1994, Regulations on investment under BOT (Build-Operate- Transfer) form according to Decree 87-CP dated Nov 23, 1993, Regulations on Industrial Park accompanied by Decree 192-CP dated Nov 25, 1994.

b. Personal belongings:

+ Reduction and exemption: Tax-free commodities defined by law include the following cases: grant aid, temporary import and re-export in fair and exhibition, move of assets, exemption stipulated by the Government in accordance with international agreements, imports for re-export in line with contracts, goods used for security and defense, scientific research, education and training, exports and imports of foreign invested enterprises in case of investment encouragement, gifts within regulations.

These can be imported, exported or transferred only with the General Department of Customs' permission according to Article 92 of Decree 18-CP and Decision 02-TCHQ-GQ.

2. Shortcomings of the list of import tax rates: too many levels for reduction and exemption

The volume of import duty accounts for the biggest percentage in the whole revenues of undeveloped countries because the people prefer foreign goods to domestic ones due to poor industrial production. When the economy sees development, the import rate is always higher than the growth rate, the import duty, therefore, becomes important.

Export duty is also decisive, so many agroproducts in developing countries are subsidized and the subsidization rate is very high, sometimes over 50%, whereas underdeveloped countries, on the contrary, imposed tax on these goods to secure revenues of the national budget.

Since tariff rates are fixed rather highly to secure revenues for the Treasury, enterprises' tax evasion sees an upward trend. Many means to avoid tax are used including giving bribes to customs officers and other negative acts. The list of import tax rates which has many distinguishments and preferential treatments based on economic development or limits over consumption is a shelter for negative acts. The reduction of trade across border gates partly restricts negative acts at border gates which can be hardly controlled. When the general tax rate (turnover + profits +...) is too high in the country, it will enable tax evasion such as cigarette smuggling (cigarettes made by foreign invested businesses cannot compete with illegally imported cigarettes of the same trade mark).

The important trick to evade tax is to lower the import value with the aim to reduce the taxable value or change categories to enjoy lower tax rates. This became popular for commodities having great price and high tax rates such as car, liquor...As for medium-sized enterprises making foreign relations, this is carried out almost via intermediaries such as the mother company or the seller operating in Hong Kong where trade regulations are very flexible. They also made out vouchers in Hong Kong for commodities exported from Japan, for example, the case of tax evasion concerning car importation in HCMC recently presented on HCMC newspapers.

II. TURNOVER TAX 14b

Regarding developed countries, direct taxes, of which the most important is profits tax play a special role. At the same time, in developing countries like Vietnam, indirect taxes are favorable for tax collection and keep away from psychological effects arising in direct tax collection. The collection of turnover tax has also one more advantage, that is, tax rates can be easily adjusted for preferential or restrictive treatment suited to the target of economic development of each period.

According to the Law on Turnover Tax, decrees, circulars on guidelines for the implementation, declaration form is submitted to the taxation agency of the locality where the establishment is located. The affiliated establishment must do the same thing. In case the enterprise must pay special consumption tax, it is exempted from turnover tax. Turnover tax is collected right at the producer or trader, its rates depend on businesses' scope of activities.

Turnover arising through trade activities in Vietnam must be subject to turnover tax or special consumption tax. Taxable turnover is the whole sales of commodities and assets, processing fees, transportation charges, commissions not minus any cost put in the bookkeeping and regardless of having already collected or not.

Trader having sufficient and lawful books, receipts and vouchers can pay turnover tax with tax rate of 15% of margins. Contracted turnover is implemented only by small businesses. Different tax rates are applied to consumer or capital goods.

As for businesses engaging in different occupations, turnover tax is applied to each kind of occupations, if it cannot sort out, it must apply the highest rate.

Those not subject to turnover tax include:

- Agricultural production (subject to agricultural tax)
- Commodities subject to special consumption tax
- Exports production

Taxable turnover is defined by Article 8 of the Law on Turnover Tax as follows:

- Proceeds from sales in production, trade, food and beverage services
- Processing charge including charge, costs of fuel, machinery, subsidiaries and other expenses.
- Commission of agent and consignee.
- Service fee.
- Insurance premiums

1. Tax rates

Turnover tax is generally divided into six big industries, each industry is also divided into many various occupations with different tax rates. Services are subject to highest tax rates, followed by trade, food and beverage services.

a. Services:

- Leasing house: 10%
- Hotel and tourism: 10%
- Dancing, ship agent: 30%
- Karaoke, sauna, massage: 20%
- Golf course: 20%

- Techno-scientific services: 2%

- Law consulting service: 4%

- Services of street sanitation and drainage: 0%

b. Commerce:

The following forms of business need distinguishments:

- One-payment contract, the form of installment payment is commonly used in real estate trading .

- Agent: the agent contract between two partners states clearly about categories, commission. Party A determines the selling price for Party B. Importation is implemented before selling based on the contract according forms of the Ministry of Finance, the commission bears a tax rate of 15%. Since 1996, Party A has to give selling receipts to Party B, at the final settlement, the two parties will depend on the real sales.

If the agent contract is lawful, Party B must pay turnover tax according to commission and Party A pay turnover tax according to the selling price.

- Consignment: if the consignee is not a trader, the consignment contract is similar to the agent contract. Party B must pay turnover tax and profits tax for Party A if Party A is not a trader, Party B will pay 15% turnover tax imposed on commission. Party B pays turnover tax for Party A, Party A pays profits tax minus turnover tax paid by Party B.

- Mandate sales contracts for foreign companies apply articles in agreements on avoiding double taxation signed by Vietnam with each nation. If there is no agreement of this kind, Party B must pay turnover tax.

Tax rate applied for sales agent and broker is 15%. If a trader does not have enough and legal books and vouchers, taxable turnover will be sales and different tax rates will be applied to separate lines.

If a trader has enough and legal books and vouchers, taxable turnover is the margin:

General tax rate: 15%

In particular:

- Book, newspaper and film distribution: 4%

- Agro-marine products, vegetables and fruits, fresh foodstuff: 10%

- Trading in gold and silver, gemstones, foreign curency, real estates: 20%

c. Food and beverage services:

Taxable turnover is the whole proceeds from catering for food, beverage, cigarettes and other revenues from these services. There are two tax rates:

- Popular food and beverage services: 6%

- High grade restaurant with specialities: 10%

d. Production and processing:

These sectors have low tax rates, some occupations pay 0% or 0.5% tax rate. Production of cosmetics, cement above P300 bears 10% tax rate. Taxable turnover is based on the contract of production or the value of processing products.

If an establishment buys materials for foreign enterprise, their contract is not a processing contract.

e. Construction:

The pure wages or project value are not distinguished as before. Turnover tax is 15% of the project value.

If a builder contracts to supply materials, the cost of materials will be deducted from the project value, but he/she must pay one more turnover tax imposed on trade in materials.

f. Transportation:

Transportation of passengers within city, town by bus enjoys a preferential tax rate of 1%.

Taxable turnover is fee for transportation of commodities, passengers, luggage, and other revenues from transportation activities such as loading and unloading commodities, surcharges, costs,...calculated totally in transportation fee or turnover.

Regarding international transportation establishment permitted to operate in Vietnam, taxable turnover is fee of transportation carried out in Vietnam and from Vietnam to final destination. Regarding international air transportation, taxable turnover is the turnover enjoyed under the regulations on international air transportation. For overseas transportation establishments, the same calculation is applied without distinguishing place of purchase or payment mode of transportation fee.

2. Tax reduction:

Article 18, Point 3 of the amended Law on Turnover Tax,on July 5, 1995 regulated: Business establishment operating in mountainous and island areas, exploiting sea products offshore, establishments of scientific research, new application of new technology, newly-founded establishments, testing new production lines, establishments producing import substitutes, if they meet difficulties or losses, will enjoy tax reduction in the initial years. The tax reduction must not exceed 50% of the tax to be paid and the duration of tax reduction must not surpass two years, three years for mountainous area and remote islands. Business establishments facing great difficulties caused by natural disasters or sudden accidents will enjoy tax reduction.

3. Punishment for delayed tax payment and fine

According to Article 19, Point c, item 1 of the amended Law on Turnover Tax issued on July 5, 1995, for a delayed payment of the tax or fine in the amount written in the tax notification, the taxable object must pay for each day of delay a fine equal to 0.2% of the amount of delayed payment.

The duration for determination of delayed tax payment:

- Over 15 days of the next month of the tax month.

- The duration defined by the tax bureau on the tax notification or penalty decision.

4. Handling of violations:

Organizations or individuals making false declaration or a tax evasion, apart from paying in full the tax defined by law, must pay a fine equivalent to from one to three times (according to the times of violation) the evaded tax:

In case organizations, individuals evade tax of big amount or have received administrative discipline for violations but still commits the same or other serious violations, they will be investigated for criminal responsibility according to law.

5. Shortcomings of turnover tax

Many enterprises are subject to taxes according to sales, not to margins since they bought farming products without vouchers, this is a problem hard to solve. Foreign invested enterprises of large scale face no obstacles because they may have tax agreements with superior authorities but this, on the whole, raises products' prices and restricts competitiveness of domestic goods against foreign ones, affecting consumers badly and limiting exportation.

Turnover tax has many deficiencies such as tax losses, multiple tax and illogical tax rates.

To overcome these shortcomings, the National Assembly, Session 2, Term IX, on Dec 23, 1992 assigned the Government to implement pilotly value added tax in some occupations with the aim to replace payment of turnover tax. Due to loose application of bookkeeping, the test of VAT application replacing turnover tax has not been carried out yet.

Foreign invested enterprises, on the whole, have great taxable turnover along with good bookkeeping, as a result, they will become taxable object for VAT application in 1996. When VAT is applied, turnover tax will be deleted and special consumption tax will be deducted■