TAX REGULATIONS TO ENSURE THE RIGHTS OF PEOPLE WITH DISABILITIES IN SUSTAINABLE DEVELOPMENT IN VIETNAM

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Abstract: *Tax is one of the financial tools of the state used to regulate the income of the population, including people with disabilities. This article analyzes how the provisions of value-added tax law, corporate income tax, and personal income tax have affected people with disabilities. Through these analyses, the paper will identify limitations and shortcomings in the regulations in order to make recommendations for tax regulations that ensure the rights of people with disabilities in sustainable development in Vietnam.*

Keywords: *People with disabilities, ensuring rights, tax, rights of people with disabilities.*

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1. INTRODUCTION

Currently, out of more than seven billion people in the world, there are more than one billion people with disabilities (PwDs) (accounting for about 15% of the world's population) [1]. Therefore, caring for and ensuring the rights of PwDs is a natural thing that the world needs to consider and take into account. Along with the development of society, the rights of PwDs are becoming more and more concerned and focused. If, in the beginning, when the rights of PwDs were concerned by society, these rights also stopped at the level of ensuring that PwDs have a minimum standard of living and medical care [2]. After economic and social conditions have developed, the rights of PwDs are increasingly elevated, creating favorable conditions for them to enjoy political, economic, cultural, and social rights equally with non-disabled individuals and enabling them to develop their potential to achieve stable lives, integrate into the community, and participate in cultural and social activities like any other non-disabled individuals. It can be said that the adoption of the Convention on the Rights of Persons with Disabilities (CRPD) by the United Nations General Assembly in 2006 has provided a clear legal basis for defining the rights of PwDs in the contemporary world and serves as a foundation for countries to ratify and implement specific conventions and projects related to strengthening and reinforcing the rights of PwDs within their national scope, leading to a substantial impact on the regional and international levels on this issue. Accordingly, the rights of PwDs have been expanded to cover many aspects, such as the right to life, equal recognition before the law, access to the justice system, personal freedom and safety, freedom from torture, cruel or degrading treatment, inhumane or degrading treatment, freedom from exploitation, violence or abuse. The Convention also emphasizes "the importance of integrating disability issues as an integral part of relevant sustainable development strategies" [3]. Vietnam became the 118th member to sign the CRPD on October 22, 2007. To concretize the contents of the Convention, on June 17, 2010, the

National Assembly passed Law on PwDs No. 51/2010/QH12. Among many issues related to the exercise of the rights of PwDs, the author is concerned and wants to study and specifically address the current legal provisions on taxes to ensure the rights of PwDs in sustainable development in Vietnam. Accordingly, this article will analyze the current tax regulations of Vietnam regarding this issue to determine the appropriate points of tax laws as well as the limitations and shortcomings of the rules in order to have better and more effective recommendations to ensure the rights of PwDs in sustainable development in Vietnam.

2. TAX REGULATIONS TO ENSURE THE RIGHTS OF PEOPLE WITH DISABILITIES IN VIETNAM: LIMITATIONS AND SUGGESTIONS FOR IMPROVEMENT

Basically, to ensure the rights of PwDs in sustainable development in Vietnam related to taxes, there are often taxes associated with this content, such as value-added tax (VAT), export and import tax, corporate income tax (CIT), personal income tax (PIT)... In addition, in the Law on PwDs, there are also provisions on taxes to ensure the rights of PwDs. Therefore, this article will analyze based on these regulations to clarify the strengths and weaknesses of the current tax laws and the contents that have not been reasonable enough, not fully expressing the meaning of the regulations in supporting PwDs.

2.1 Tax regulations on value-added tax to ensure the rights of people with disabilities in Vietnam: Limitations and suggestions for improvement

VAT is an indirect tax on the price of goods and services to regulate the added value of goods and services produced and consumed in Vietnam. Because VAT is included in the price of goods and services related to PwDs, the Vietnamese government has considered and calculated to ensure their accessibility. Specifically, Article 5, Clause 24 of the Law on VAT No. 13/2008/QH12 of June 3, 2008, by the National Assembly states that “Artificial products used to replace body parts of patients; wheelchairs, hand trucks and other specialized equipment for the disabled” are exempt from VAT. The purpose of this provision is to make the prices of wheelchairs, hand trucks, and other specialized equipment for the disabled exempt from VAT, which makes the price of these goods cheaper and helps PwDs access and purchases these products more efficiently. This enables them to live and perform their daily activities comfortably.

It can be said that the above approach is principle-correct and reasonable in terms of the price of goods. However, it needs to be reconsidered from an economic perspective and actual effectiveness. The principle of exempting VAT for products such as wheelchairs, hand trucks, and other specialized equipment for PwDs is to reduce the price of these products and make them accessible for PwDs to overcome difficulties in their daily activities. However, this provision will create a disadvantageous situation for the manufacturers of these products.

Firstly, suppose these manufacturers only produce assistive devices such as wheelchairs and other specialized equipment for PwDs. In that case, they will not be subject to VAT and will only need to pay CIT or PIT on the income earned from this activity. Suppose they pay PIT as individual business owners. In that case, it will not be affected because PIT on business income is calculated based on revenue multiplied by a tax rate, which is adjusted based on each industry and sector of production and business [4]. For those who pay CIT, the amount of CIT to be paid is calculated as follows: “The CIT payable in the tax period is calculated based on taxable income multiplied by the tax rate” [5].

Example 1: Company A purchases stainless steel materials for producing wheelchairs for 10,000,000 VND excluding VAT (including 11,000,000 VND) with complete invoices per the law. Then, Company A makes and sells them for 15,000,000 VND.

Therefore, with a CIT tax rate of 20%, Company A will pay CIT for the period: (15,000,000 - 11,000,000) x 20% = 800,000 VND.

In the above example, the VAT paid for the input materials will be considered a reasonable cost deduction when calculating CIT and cannot participate in the goods circulation process, causing a "break" in VAT collection [6].

Secondly, suppose these manufacturers produce assistive devices such as wheelchairs and other specialized equipment for PwDs and other taxable goods and services subject to VAT. In that case, they must separate their accounts to calculate VAT and accurately deduct input VAT. Specifically: "Input VAT on goods and services used simultaneously for the production and business of taxable and non-taxable goods and services can only be deducted for the input VAT on taxable goods and services. Businesses must separately account for the input VAT to be deducted and not to be deducted. If they cannot account for it separately, the input tax to be deducted will be calculated based on the percentage of the revenue from taxable goods and services to the total revenue of goods and services sold." Clearly, this causes a lot of inconvenience for them. If they do not do it correctly, they will face the consequences of violating tax laws and be subject to penalties from competent state authorities.

With this issue, the author believes that the law should consider and may regulate including "wheelchairs, mobility aids and other specialized equipment for PwDs" in the VAT taxpayer group, but with a VAT rate of 0%. The following advantages will result from this amendment:

First, including these products in the VAT taxpayer group will lead to the producers of these goods becoming VAT taxpayers. As a result, these entities must perform the obligations of taxpayers, such as declaring, settling, and paying VAT (if any), which will help improve the effectiveness of state management.

Second, when these products are subject to VAT at a rate of 0%, the producers will have total input and output VAT to register and offset VAT according to the deduction method. In this case, they have 0% output VAT for wheelchairs, mobility aids, and other specialized equipment for PwDs. Therefore, paying taxes will be more accessible and more beneficial for VAT taxpayers as follows:

One is, VAT taxpayers who produce wheelchairs, mobility aids, and other specialized equipment for PwDs will have certain tax benefits when using the deduction method.

For example 2: With the same circumstances and figures as in example 1, but now the tax obligations of Company A have changed as follows: Company A is responsible for both VAT and CIT taxes:

In terms of VAT, if enterprise A pays using the deduction method, the VAT amount that enterprise A must pay is equal to the output VAT - input VAT.

This is calculated as follows:

Output VAT = 15,000,000 VND x 0% = 0 VND Input VAT = 10,000,000 VND x 10% = 1,000,000 VND

Therefore, the VAT that enterprise A has to pay is 0 - 1,000,000 VND = -1,000,000 VND. This means that enterprise A does not have to pay VAT and may be refunded by the state (if eligible) or deducted this VAT amount from other taxes or the next VAT payment.

Regarding CIT, enterprise A must pay:

(15,000,000 - 10,000,000) x 20% = 1,000,000 VND.

This calculation method shows that enterprise A does not have to pay additional taxes to the state because they have deducted CIT from the VAT amount. This demonstrates that this regulation benefits the enterprise and encourages them to produce these products to serve PwDs, thereby better ensuring the rights of PwDs. However, on the other hand, this regulation reduces revenue to the state budget. Nevertheless, according to the author, although this regulation reduces state revenue, it brings many benefits to PwDs, so the state should consider and apply it.

Two is, this amendment will help taxpayers reduce errors in the declaration process because even though this product is subject to VAT, it is subject to a different VAT rate than other goods and services. This reduces errors in the declaration and payment of VAT by taxpayers and strengthens tax management efficiency by tax authorities.

2.2 Tax laws and regulations for corporate income aimed at ensuring the rights of people with disabilities in Vietnam: shortcomings and recommendations for improvement

The state's tax policy for corporate income aimed at ensuring the rights of PwDs in sustainable development in Vietnam is reasonable and necessary because these regulations will have an impact on the labor utilization strategies of enterprises to help PwDs find employment, increase income, ensure their livelihoods, and promote equality with others in society.

Currently, according to the author, there are two issues to be analyzed in this content:

Firstly, the regulation on corporate income tax exemption for businesses using a large number of PwDs as laborers in the enterprise is not appropriate. Previously, Article 34 of the Law on PwDs stipulated: "Enterprises that employ from 30% or more of PwDs in their total workforce are exempt from CIT”. This regulation, although progressive, still has certain limitations [7]. Then, this regulation was abolished under the provisions of point k, paragraph 4, Article 2 of the Law No. 32/2013/QH13, amending and supplementing some articles of the Law on CIT because, at this time, Law No. 32/2013/QH13 amending and supplementing some articles of the Law on CIT had supplemented clause 3, Article 1 of Law No. 32/2013/QH13 amending and supplementing some articles of the Law on CIT to clarify this issue. Accordingly, clause 3, Article 1 of Law No. 32/2013/QH13 amending and supplementing some articles of the Law on CIT stipulates: "Exempted income: Income from the production and trading of goods and services of the enterprise having from 30% or more of PwDs in their total workforce in the year and having an average workforce of twenty or more people, excluding enterprises operating in finance and real estate." In essence, this new regulation is better than the old one because it has clearly defined that only corporate income tax is exempted when the enterprise uses a large number of PwDs (twenty or more) to encourage these enterprises to want to enjoy preferential treatment must use a large number of PwDs to increase the likelihood of employment for laborers.

However, with the additional provision of Law No. 32/2013/QH13 amending and supplementing some articles of the Law on CIT, should Article 34 of the Law on PwDs be abolished entirely or not? According to the author, this should not be done. Because if it is completely removed as Vietnam applies in the specialized tax law, many people will not recognize this incentive. Meanwhile, for current taxes, tax authorities are using the principle of “self-declaration, self-payment, self-responsibility”.

Therefore, if taxpayers do not keep up with these regulations, they will be unable to take advantage of them to be exempt from corporate income tax. This reduces the significance of this regulation in encouraging companies to recruit more PwDs and reduces the ability to find jobs and income for PwDs. Therefore, in the author's opinion, should Article 34 of the Law on PwDs be restored with a more straightforward provision: "Exemption from corporate income tax for companies using many PwDs will be carried out according to the regulations of the Law on CIT”. This regulation has the following significance:

Firstly, the Law on PwDs still indicates that if a company uses many PwDs, it will be exempt from income tax, so interested parties can be aware of this issue and learn more about the regulations in the Law on CIT. Accordingly, they will not miss these regulations during the declaration and tax payment process and benefit from this regulation.

Secondly, this regulation does not repeat legal provisions to avoid conflicts in regulations, ensuring consistency in regulations on tax obligations that specialized tax laws must regulate.

The current tax policy does not fully reflect the preferential tax regulations for corporate income tax in the Law on PwDs in the current rules of specialized tax laws. Clause 2, Article 26 stipulates: "The production base of shaping equipment, devices, functional recovery equipment, assistance for daily living, learning, and work for PwDs... shall be exempted or reduced according to the provisions of the law." and Clause 3, Article 43 of the Law on PwDs provides regulations: "The State has policies of exemption or reduction of taxes... for research, manufacturing, and providing services, supporting technology and communication for PwDs; supporting the collection, compilation, and publication of Braille materials for visually impaired people, reading materials for people with hearing and speech impairments, and people with intellectual disabilities”.

Although it is not explicitly stated as exempt or reduced tax, with regard to the activities mentioned above, the law implies that it is subject to the CIT. However, upon comparing the current provisions of Articles 13 and 14 of the Law on CIT, there are no provisions for an exemption or reduction of CIT for these cases. Therefore, there is an evident lack of consistency in the regulations between the Law on PwDs and the specialized tax laws, in this case, the Law on CIT. Therefore, the author recommends that the relevant state agency should consider including income from "research, development, production and provision of services, assistive technology, and communication devices for PwDs; support for the collection, compilation, and publication of Braille materials for visually impaired people, materials for reading and writing for people with hearing and speech disabilities and intellectual disabilities" and income from "production of orthopedic equipment, functional recovery devices, aids for daily living, learning, and labor for PwDs" into the list of income exempted or reduced from CIT to ensure consistency in the legal system and the effective implementation of the noble ideas of the CRPD.

2.3 Regulations on personal income tax laws to ensure the rights of people with disabilities in Vietnam: Issues and suggestions for improvement

Regarding PIT regulations, there are currently two provisions related to PwDs: i) identifying disabled children as dependents [8]; and ii) allowing the deduction of charitable contributions to organizations and facilities caring for PwDs from the taxable income of individuals for income from wages or salaries [9]. The provision on identifying disabled children as dependents directly support the child with disabilities by reducing the taxable income of their parents, thus providing them with more financial resources to help the child. On the other hand, the provision allowing the deduction of charitable contributions to organizations and facilities caring for PwDs from the taxable income of individuals for income from wages or salaries is a provision that encourages the Vietnamese people's spirit of "the good leaves protect the worn-out leaves" to contribute financially to these facilities so that they can have the means to help PwDs.

However, the regulations on personal income tax to ensure the rights of PwDs are not yet clear and meaningful. This is evidenced by the following:

Firstly, the current law on personal income tax calculates the dependent deduction for PwDs at the same rate as an average person, which is unreasonable because the cost of raising a person with a disability is much higher than that of a normal dependent—for example, introducing a normal child under 18 charges much less than caring for a child with a disability.

Secondly, the threshold for determining whether a person with a disability over 18 years old is a dependent or not for personal income taxpayers is too low. Under current regulations, PwDs over 18 years old are determined to be dependents of the individual income taxpayer if they are "persons outside the working age, persons within the working age as prescribed by law but have disabilities and have no income or have income but do not exceed the prescribed income level" [10]. Meanwhile, "the income level for determining the applicable dependent deduction is the average monthly income from all sources of income not exceeding 1,000,000 VND" [11]. An income level of over 1,000,000 VND per month is insufficient to meet the basic living needs of a normal person, let alone a person with a disability. The current minimum wage as an actual threshold to ensure the minimum living needs [12, p.50] of Vietnamese workers in Region IV is 3,250,000 VND per month [13]. Therefore, the regulation of the income level as the basis for determining the applicable dependent deduction as the average monthly income from all sources of income not exceeding 1,000,000 VND is unreasonable in deciding whether a person with a disability is a dependent of the personal income tax payer.

The current regulation and implementation of family deductions for those who currently generate income in personal income tax are applied equally without discrimination regarding the living conditions of taxpayers with disabilities. The current legal regulation for taxpayers' family deductions is 11,000,000 VND/month [14]. Generally, this regulation is reasonable for the majority of taxpayers, although there are still some limitations in determining this amount [15]. However, this regulation does not ensure fairness for taxpayers with disabilities. Because individuals with disabilities have to put in a lot more effort and expense to provide a service than ordinary people, or they have to bear additional costs to help them reduce the disadvantages of their bodies in order to find a job to support themselves and their families [16]. For example, PwDs need to equip themselves with a special motorcycle with special devices attached to assist them in performing their work when traveling long distances to work, which increases their expenses but does not increase their income. Therefore, the legal regulation of the family deduction for PwDs and ordinary people will create certain inequalities.

According to the author, these limitations can be fundamentally resolved with the following solutions:

Firstly, the law should introduce a certain coefficient when deducting the family deduction for PwDs, such as 1.3 or 1.5 times that of ordinary people. This coefficient will help PwDs receive a higher deduction than ordinary people to be fairer when they have higher expenses than ordinary people, ensuring that the state's tax regulation is reasonable. Secondly, the law needs to adjust the income level used to determine dependents eligible for deductions. The author believes that if the principle is based on the average monthly income from all sources of income in a year not exceeding the minimum wage level prescribed by law, then any dependents and disabled dependents with incomes exceeding this minimum wage level will not be considered as dependents. This regulation ensures that dependents, especially disabled dependents, will be eligible for a higher deduction, contributing to reducing the burden for personal income taxpayers so that they can have better conditions to take care of PwDs and thereby protect and create conditions for PwDs to have a better life.

2.4 Other contents to ensure the rights of people with disabilities in tax law in Vietnam: Inadequacies and suggestions for improvement

In addition to the Law on VAT, Law on CIT, and Law on PIT, which have provisions directly or indirectly affecting PwDs, the Law on PwDs also has many provisions aimed at clarifying other tax regulations to support PwDs better directly or indirectly. Specifically:

Article 26, Clause 3 of the Law on PwDs stipulates: "Orthopedic appliances, functional rehabilitation equipment, living, learning and working aids for PwDs from non-refundable aid programs, foreign organizations or individuals' donations and support are exempted or reduced according to the provisions of tax laws."

Or Clause 42, Article 4 of the Law on PwDs stipulates: "Public transport vehicles that meet national technical standards for accessible transportation are exempted or reduced according to the provisions of tax laws when produced or imported."

In theory, the Law on VAT, Export Tax Law, and Import Tax Law need specific provisions on these tax exemptions or reductions to implement the spirit of the Law on PwDs and directly or indirectly support PwDs to make these products cheaper so they can access and use them more. However, because only the Law on PwDs provides policies, but there are no specific provisions in the specialized laws, these provisions cannot be applied in reality. This makes the significance of these provisions only on paper without bringing practical benefits to PwDs. Therefore, the author suggests that the government should promptly study and propose specific provisions to the National Assembly in the process of amending and supplementing the Law on VAT, Export Tax Law, and Import Tax Law so that these provisions are explicit and bring benefit to PwDs, thereby effectively ensuring the rights of PwDs in Vietnam's sustainable development.

The tax regulations have been and are currently significantly impacting PwDs. Therefore, researching and evaluating these legal provisions is a practical and essential need to ensure the rights of PwDs in sustainable development. Through this article, the author has pointed out some inconsistencies and irrationalities in the tax laws and regulations that have not positively impacted the development of PwDs. Based on their perspective, the author has provided some recommendations to improve the content of these tax regulations and ensure the rights of PwDs more effectively.

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