PERSONAL INCOME TAX LEVIED ON REAL ESTATE BUSINESS IN VIETNAM: REALITY AND SOME RECOMMENDATION

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ABSTRACT

Objective: The provisions of Personal income tax (PIT) on real estate are still inadequate and incompatible with the practice of economic and social development in Vietnam. Due to that fact, this scientific article researches the status quo of provisions of PIT levied on real estate to come up with some recommendations to perfect the law.

Theoretical framework: Recent literature points out that PIT on real estate plays very important role in the development of Vietnam's economy, and society. However, in the current stage of development, from the influence and impact of international integration, in reality, the provisions of PIT on real estate are still inadequate. In there, limits and problems in regulations about PIT on real estate have caused many difficulties when applied. On the other hand, in the context of judicial reform in Vietnam, the issue of complete law system has always been paid special attention by the Party and Vietnam State.

Method: The authors have used a combination of traditional research methods of the social sciences and legal sciences such as legal analysis method, the legal efficiency evaluation method, and comparative legal method to achieve the objectives of the research.

Results: Research results have determined that the provisions of PIT on real estate are still inadequate, and affect the state budget, and the economy, society in Vietnam.

Conclusion: PIT on real estate is an important source of revenue for the state budget. At the same time, this is a tax that has great impact and influence on economic and social development and taxpayers. However, current regulations on PIT on real estate still have some shortcomings, limitations, and are not consistent with the practical situation of real estate transfer transactions in Vietnam.

Research implications: The results of the research contribute to proposing a number of solutions to improve the law on PIT on real estate in Vietnam.

Originality/value: The research of the PIT on real estate become more and more urgent and very important in Vietnam.

Keywords: tax, personal income tax (PIT), real estate, PIT on real estate trading, Vietnam.

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RESUMO

Objetivo: As disposições relativas ao imposto sobre o rendimento das pessoas singulares (IRS) aplicáveis aos imóveis continuam a ser inadequadas e incompatíveis com a prática do desenvolvimento econômico e social no Vietnã. Devido a esse fato, este artigo científico pesquisa o status quo de provisões do PIT cobradas sobre imóveis para vir com algumas recomendações para aperfeiçoar a lei.

Estrutura teórica: A literatura recente aponta que o PIT sobre imóveis desempenha um papel muito importante no desenvolvimento da economia e da sociedade vietnamitas. No entanto, no atual estágio de desenvolvimento, a partir da influência e impacto da integração internacional, na realidade, as provisões do PIT sobre imóveis ainda são inadequadas. Lá, limites e problemas em regulamentos sobre PIT no imobiliário causaram muitas dificuldades quando aplicados. Por outro lado, no contexto da reforma judicial no Vietnã, a questão do sistema jurídico completo foi sempre alvo de especial atenção por parte do Partido e do Estado do Vietnã.

Método: Os autores têm utilizado uma combinação de métodos tradicionais de pesquisa das ciências sociais e ciências jurídicas, como o método de análise jurídica, o método de avaliação da eficiência jurídica e o método jurídico comparativo para alcançar os objetivos da pesquisa.

Resultados: Os resultados da pesquisa determinaram que as provisões do PIT em imóveis ainda são inadequadas, e afetam o orçamento do Estado, e a economia, sociedade no Vietnã.

Conclusão: o PIT sobre imóveis é uma importante fonte de receita para o orçamento do Estado. Ao mesmo tempo, trata-se de um imposto que tem grande impacto e influência no desenvolvimento econômico e social e nos contribuintes. No entanto, a atual regulamentação relativa ao IRS no setor imobiliário ainda apresenta algumas lacunas e limitações e não é coerente com a situação prática das transações de transferência de bens imobiliários no Vietnã.

Implicações da investigação: Os resultados da investigação contribuem para propor uma série de soluções para melhorar a lei sobre o IRS no setor imobiliário no Vietnã.

Originalidade/valor: A pesquisa do PIT sobre imóveis torna-se cada vez mais urgente e muito importante no Vietnã.

Palavras-chave: imposto, imposto de renda pessoal (PIT), imobiliário, PIT sobre comércio imobiliário, Vietnã.
1 INTRODUCTION

Before looking into the status of PIT law applied to real estate in Vietnam, we need to research the nature of taxes generally and PIT specifically. “In Vietnam, taxes and tax laws are passed to create State’s revenue” (Nguyen Thi Lan Huong, 2016, p. 05). “Economic efficiency speaking, taxes are the most contributed source” (Nhung, D. H, 2023, p. 593) to “State budget” (Hanoi Law University, 2018, p. 07). PIT is a part of Vietnam’s tax law system and is “an important revenue of state budget” (Nguyen Minh Hang, 2011, p. 119 - 121). “PIT is a form of tax that levies on sources of income of a person, no matter if they run a business or not” (Hanoi Law University, 2020, p. 256). However, PIT aims at persons who have a taxable income. This is shown when a person may only have a fixed income from labor activities, from conventional production, not related to trading activities. Therefore, this is a direct tax and is a very important duty to every person.

PIT levied on real estate consists of PIT on the internal market and PIT on the international market. Vietnam’s PIT Law, which was legislated in 2007 (revision in 2012, 2014), states that PIT of the internal market consists of PIT on financial investment income, PIT levied on real estate, PIT on direct income from trading activities, and PIT levied on other income generating activities.4

PIT levied on real estate is a tax based on assets, which applies to persons to levy on the real estate trading income. According to the recent PIT Law of Vietnam, persons who resident with a taxable income arising inside or outside Vietnam’s territory and non-resident persons with a taxable income arising in Vietnam’s territory both have to be levied on their income, which consists of personal income from real estate, foreign investors included. PITs are levied on real estate (lands, houses,...), invested assets, and other estate.5

Different from Vietnam, “to ensure the stable growth and development of the economy” (Garnov, A., Ordov et al., 2022), some countries state that PIT levied on real estate is a tax levied on incomes related to real estate, consisting of personal incomes from leasing, transferring, trading ownership, and exploiting real estate in that country (Norregaard, J., 2013). PITs levied on real estate are legislated by the tax law and real estate law.

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Therefore, we can determine that **PIT levied on real estate is the tax that is levied on trading, leasing, trading ownership, and exploiting real estate personal income, legislated by tax laws and real estate laws.**

PIT levied on real estate has some certain function. One of its most basic functions is to distribute: PIT on real estate to assure the fair distribution of income among social members, contribute to lowering income inequality, and facilitate the chance to access public services for people who have low income (Arnold, J., 2012). PIT levied on real estate helps redistribute the income of people with much real estate and people with less real estate. The second function of PIT levied on real estate is to stabilize the economy: Through PIT levied on real estate policy, the State can regulate the operation of the real estate market, stabilize the price and investment structure, and support the development of a sustainable economy (Cabral, M., 2012). PIT levied on real estate can help the State distribute real estate to different economic and social aims. The third function is contributing to the state budget: PIT levied on real estate is a considerable revenue, and helps preserving financial resources for the State’s functioning and public services (Martinez-Vazquez, J., 2011). All taxes are the State budget’s revenues. When the real estate market develops, the state budget revenue from PIT related to real estate is worth minding.

On the other hand, laws adjusting PIT levied on real estate, since it is a matter of regulating, directing, and managing the real estate market, have a huge impact on the development of the economy and society. Therefore, when legislating laws adjusting these PITs, we need to do deep research and consider the affection that these PITs have on the real estate market and the state budget. Some factors that we need to pay attention to are:

Tax rates and policies of PIT levied on real estate can affect the people’s act of investment and the act of trade, and as a result, affect the demands and the supplies of the real estate market (Feld, L. P., 2011). High tax rates and complicated tax policies can reduce investment and trading incentives and encourage speculation.

Besides, PIT levied on real estate also greatly affects the revenue of the state budget: PIT levied on real estate significantly contributes to the state budget, increases the revenue of the state budget, and reduces the pressure of government debt (Bahl, R., 2009). However, taxation also demands tax authorities to effectively construct the database, manage and control taxes to ensure justice and prevent tax evasions.
In conclusion, PIT levied on real estate is an important tool to redistribute income, regulate the functioning of the real estate market and increase the revenue of the state budget in Vietnam. Legislating suitable tax policies can contribute to encouraging economic development and ensuring social equality, but we need to mind the problem of taxation, tax management and tax control to achieve favored results.

2 LITERATURE REVIEW


3 METHODOLOGY

To research the personal income tax levied on real estate business in Vietnam, the authors have used a combination of traditional research methods of the social sciences and legal sciences such as legal analysis method, the legal efficiency evaluation method, and comparative legal method to achieve the objectives of the research.

4 RESULTS AND DISCUSSION

4.1 PERSONAL INCOME TAX LEVIED ON REAL ESTATE REGULATIONS IN VIETNAM

PIT levied on real estate is a PIT regulated by the PIT law (legislated in 2007, amended and supplemented in 2012 and 2014). Article 3 of the PIT law states that PIT levied on real estate is a tax levied on the transferring real estate income, consisting of land use rights and assets attached to land transferring income; house ownerships or house use rights transferring income; the right of leasing lands and water surface transferring income; Other real estate transferring, by any means, income. § Besides, income from real...
Personal income from real estate is the income a person gets from transferring their real estate; including: Land use rights transferring income, Land use rights and assets attached to lands (explained as houses, even houses formed in the future); Structure and construction works attached to lands, formed in the future included; other assets attached to lands included agricultural, silvicultural, fishery products (as crops and animals, cattle, etc.) transferring income. House use rights, formed in the future included, transferring income; lands and water surface leasing rights transferring income; Legal capital contribution with real estate to establish businesses or to increase the capital for business and production; Income from the authorization to manage real estate in which the authorized person has the right to transfer real estate or has the same rights as the owner of real estate; Other real estate transferring, by any means, income. The regulations of houses and construction work formed in the future follow the law on real estate business.

Regarding how to calculate PIT levied on real estate, there are two cases:

In the case of calculating PIT levied on transferring real estate with a residential person is regulated in clause 4, Article 12 of Circular 111 states that:

In the case that the taxable income can be determined:
The PIT needs to be paid = the taxable income x 25% tax rate

In the case that the taxable income cannot be determined or there are no files to determine the capital’s price, the purchase price or the lease price and no legal documents

The PIT needs to be paid = The price of transferring x 2% tax rate

In the case that the transferred real estate is co-owned:
The tax liability is determined separately for each taxpayer based on the real estate ownership rate. The ownership rate is determined by legal documents like initial capital contribution agreements, the wish of the testator or the Court’s decision on assets division, etc...

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7 Circular No. 111/2013/TT-BTC of the Ministry of Finance, dated August 15, 2013: guiding the implementation of the Law on Personal Income Tax, the Law amending and supplementing a number of articles of Personal Income Tax Law and Decree No. 65/2013/ND-CP of the Government detailing a number of articles of the Personal Income Tax Law and the Law amending and supplementing a number of articles of the Personal Income Tax Law core.

8 Clause 5, Article 2 of Circular No. 111/2013/TT-BTC of the Ministry of Finance, dated August 15, 2013: guiding the implementation of the Law on Personal Income Tax, the Law amending and supplementing a number of articles of Personal Income Tax Law and Decree No. 65/2013/ND-CP of the Government detailing a number of articles of the Personal Income Tax Law and the Law amending and supplementing a number of articles of the Personal Income Tax Law core.
In the case that there are no legal documents, each person's tax liability is determined based on the average rate.

It could be said that the way of calculating PIT levied on transferring real estate with residential persons is based on taxable income, the transferring price and the ownership rate (in the case that the transferred real estate is co-owned). These regulations were stated to ensure equality and transparency in calculating PIT levied on transferring real estate.  

*The personal income tax calculation method from real estate transfer for non-resident individuals is as follows:*

Personal income tax amount = real estate transfer price x tax rate 2%

Particularly, the real estate transfer price of the non-resident is the whole amount of money that individuals receive from the real estate transfer, without deducting any expenses, including the cost price; The real estate transfer price of non-resident individuals is determined following the specific stipulation in Article 12 of Circular 111/2013/TTC  

*Personal income tax exemption for individuals having one house or residential land.*

Because real estate is a very valuable asset for individuals and households. In addition to regulations on taxes and tax rates, the law on personal income tax from real estate also regulates cases of personal income tax exemption from real estate. Specifically: Income from real estate transfer between husband and wife; father, mother and their children; adoptive father, adoptive mother and adopted child; father-in-law, mother-in-law and daughter-in-law; father-in-law, mother-in-law and son-in-law; grandfather, grandmother and grandchildren; brothers, sisters, and siblings together. Income from transfer of housing, residential land use rights and assets attached to residential land of individuals in cases where the individual only has a single house or residential land.

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9 Clause 4, Article 12 of Circular No. 111/2013/TTC of the Ministry of Finance, dated August 15, 2013: guiding the implementation of the Law on Personal Income Tax, the Law amending and supplementing a number of articles of Personal Income Tax Law and Decree No. 65/2013/ND-CP of the Government detailing a number of articles of the Personal Income Tax Law and the Law amending and supplementing a number of articles of the Personal Income Tax Law core.

10 Article 12 of Clause 4, Article 12 of Circular No. 111/2013/TTC of the Ministry of Finance, dated August 15, 2013: guiding the implementation of the Law on Personal Income Tax, the Law amending and supplementing a number of articles of Personal Income Tax Law and Decree No. 65/2013/ND-CP of the Government detailing a number of articles of the Personal Income Tax Law and the Law amending and supplementing a number of articles of the Personal Income Tax Law core.
In addition, according to Point b, Clause 1, Article 3 of Circular 111/2013/TT-BTC (amended by Clause 1, Article 12 of Circular 92/2015/TT-BTC) stipulates exempt income tax which requires the following conditions: There is only the right to own a house or the right to use a plot of residential land (including cases where there is a house or construction attached to that plot of land) at the time transfer; Have the right to own a house and the right to use residential land for at least 183 days at the time of transfer. The time to determine housing ownership and residential land use rights is the date of issuance of the Certificate of land use rights, ownership of houses and other land-attached assets. Particularly in cases of reissue or exchange according to the provisions of land law, the time to determine housing ownership and residential land use rights is calculated according to the time of issuance of the Certificate of land use rights, ownership of houses and other land-attached assets before being re-granted or exchanged; Transfer all houses and residential land. In cases where an individual has sole or joint ownership of a house or residential land use rights but transfers part of it, the transfer will not be exempt from tax.11

The issue of personal income tax collection for authorization contracts.

In fact, there have been cases where real estate purchases and sales did not comply with the normal land use rights transfer process, but instead used authorization contracts to avoid taxes. Such authorization contracts often allow the authorization recipient to exercise complete control and decision-making power over real estate assets. In 2011, to limit this situation, the General Department of Taxation issued Official Dispatch No. 1133/TCT-TNCN and Official Dispatch No. 3373/TCT-TNCN, guiding the calculation of personal income tax on the transfer of real estate through an authorization contract, which specifically stipulates as follows: “1. For cases of transfer of land use rights, purchase and sale of housing ownership that are carried out through an authorization contract (notarized), the authorization content must be determined in accordance with the provisions of the Civil Law. , Land Law, Housing Law, Personal Income Tax Law, the individual is the person who authorizes payment of personal income tax on income from the transfer of land use rights and home ownership rights, except for specified subjects in Clause 1 and Clause 4, Article 4 of the Personal Income Tax Law. In case the authorizer authorizes the authorized recipient to pay personal income tax on his or her behalf, the

11 Point b, Clause 1, Article 3 of Circular 111/2013/TT-BTC (amended by Clause 1, Article 12 of Circular 92/2015/TT-BTC).
authorized recipient must pay personal income tax on behalf of the authorizer. An individual who is an authorized recipient and receives remuneration for performing an authorization contract, including income received from being authorized to use property, must pay personal income tax. 2. For cases of transfer of land use rights, purchase and sale of housing ownership rights in the form of authorization contracts, the content of the authorization contract stipulates that the authorized recipient has the rights to occupy ownership, use rights, and disposition of land use rights and home ownership rights according to the provisions of Articles 164, 171, 182, 192, 195 of the Civil Code, tax authorities are responsible for coordinating with local authorities to conduct inspection, investigation, verification and clarification of the content of the authorization contract to determine the personal income tax obligations of the authorizing subjects and authorized subjects before Carry out procedures for transferring land use rights and house ownership.”

In short, “the rapid economic growth in Vietnam today has greatly impacted and influenced the Personal Income Tax Law” (Nguyen Vinh Hung, 2020). On the other hand, currently, “human society is continuously developing” (Tolkachew, I. el al., 2023), therefore, personal income tax needs to constantly innovate to meet the needs of social. In particular, personal income tax on real estate is a very important source of contribution to the state budget and also represents the reasonable distribution of income sources in society. However, current regulations are not consistent with reality, causing problems and inadequacies that require timely solutions to quickly overcome them.

4.2 RECOMMENDATIONS

Basically, personal income tax on real estate transactions in Vietnam is relatively complete and the tax rate also ensures reasonableness, close to the economic and social development situation. However, in order to further improve the personal income tax policy from real estate in accordance with the current and future situation of economic and social development in Vietnam and especially to ensure fairness in the way Tax calculation method, while promoting the development of Vietnam's real estate market, the following solutions need to be considered:

*First, personal income tax should not be collected on authorization contracts:

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12 Official Dispatch No. 3373/TCT-TNCN of the General Department of Taxation dated September 20, 2011 guiding the calculation of personal income tax for real estate transfers through authorization contracts.
According to the provisions of the Personal Income Tax Law and current guiding documents, for real estate transfer activities, the transferor being an individual must pay personal income tax at a tax rate of 2% on the transfer price or 25% of the transfer value and profits earned. Meanwhile, a real estate authorization contract does not result in the transfer of ownership or use rights of real estate from the transferor to the authorized person. It only entails a change in the entity exercising the rights of the property owner. On the other hand, in Vietnam, there have recently been cases of using authorization to evade personal income tax. Instead of signing a transfer contract, the transferor and transferee agree to use an authorization contract to represent the transferor in exercising all management and disposition rights over real estate such as purchasing, donate or transfer to a third party without being subject to personal income tax laws. To properly implement personal income tax regulations in cases where individuals authorize real estate transactions for other individuals, the General Department of Taxation has issued Official Dispatch No. 1133/TCT-TNCN providing guidance on personal income tax for real estate transfer activities. Accordingly, authorization for real estate transactions is a civil transaction permitted by law. However, with the explanation that individuals who have the legal capacity to entrust others are not exempt from tax so that they have full rights to possess, manage, use and dispose of their real estate, including includes leasing, lending, transferring, exchanging, donating, mortgaging and not having to return the real estate to the donor. They can also benefit from activities carried out under authority, even without receiving remuneration. In fact, this is essentially a real estate transaction. Therefore, the donor has the obligation to declare and pay personal income tax according to the provisions of the Personal Income Tax Law. The authors believe that this explanation may be reasonable but not legal. This is just a subjective speculation of the tax authority. It can be seen that the above Official Dispatch has legal effect over laws such as the Civil Code, Personal Income Tax Law or Land Law... Because, not all authorization contracts related to the ownership, use and disposition of real estate are all fraudulent attempts to avoid taxes. In many cases, due to difficult residence and travel conditions or age, health, time, or lack of transaction experience, the property owner authorizes an authorized person, including proxy representatives representing owners in transferring real estate to third parties. Besides, if the authorization contract is a fake contract to cover up the transfer contract, the parties to that contract are responsible for the risks and have no obligation to prove it before the tax authorities.
Second, there should be no regulation on the number of days for individuals who transfer their only house or residential land:

As analyzed above, individuals who transfer their only house or residential land are exempt from personal income tax if they have the right to own a house or the right to use residential land, the minimum period of time of transfer is 183 days. This may stem from the perspective that the Personal Income Tax Law only stipulates that when transferring a single house, it is exempt from tax, and the taxpayer declares and bears all responsibility. During the application process, some people who owned many houses and land “circumvented the law” by transferring each property to relatives who did not own a house. Then, these people sell and are exempt from personal income tax due to the transfer of the only house, resulting in a loss of tax revenue. Since then, the Ministry of Finance issued Circular No. 111, adding the condition that one must “have housing ownership rights and residential land use rights up to the time of transfer for at least 183 days” to be exempt from tax. This regulation was issued to prevent tax evasion in the above manner (Tuoi Tre Electronic Newspaper, 2016).

However, according to the authors, the regulation of a minimum number of 183 days affects the rights of individuals who transfer houses or residential land only. Therefore, to ensure fairness for people and comply with land laws as well as tax laws, it is necessary to abolish the regulation on the 183 days condition when transferring an individual’s only residential house or land.

5 CONCLUSION

Personal income tax on real estate is an important source of revenue for the state budget. At the same time, this is a tax that has great impact and influence on economic and social development and taxpayers. However, current regulations on personal income tax on real estate still have some shortcomings, limitations, and are not consistent with the practical situation of real estate transfer transactions in Vietnam. Therefore, the results of the research contribute to proposing a number of solutions to improve the law on personal income tax on real estate in Vietnam.
REFERENCES


