

NATURAL RESOURCE CONSUMPTION TAX FOR GREEN ECONOMIC DEVELOPMENT IN VIETNAM: LEGAL ISSUES AND SOLUTIONS

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Abstract

How is natural resource consumption tax for green economic development regulated in legal documents in Vietnam? What are the legal issues that arise during the implementation? Studies in Vietnam have not been studied and fully reviewed. So, this study is aimed at two goals: (1) assessment of the legal framework for natural resource consumption tax for green economic development in Vietnam; (2) recommendations on remedial measures when implementing the legislation of natural resource consumption tax for green economic development in Vietnam. To achieve the purposes set out in this study, the study was conducted as a survey of the Law on Natural Resource Consumption Tax for green economic development in Vietnam. The research objects are the Law on Natural Resource Consumption Tax in 2009, decrees and circulars guiding the Law on Natural Resource Consumption Tax in 2009. The methods used in this study are: Desk Research and Theoretical Research. These are typical methods of the legal science industry. Results of this study show that the legal framework of natural resource consumption tax for green economic development is incomplete. Besides, results of this study also show that the legal framework of natural resource consumption tax for green economic development still faces many limitations and problems, which requires the need to complete the law.

Keywords: *Green economic development, law, natural resource consumption tax, tax*

1. Introduction

The legal framework of natural resource consumption tax for green economic development is promulgated by the State of the Socialist Republic of Vietnam to regulate the exploitation of natural resources in Vietnam.

The theoretical basis for the promulgation of the legal framework of natural resource consumption tax for green economic development is: Natural resources are owned by the State, most of them are non-renewable, so they need to be exploited and managed reasonably and effectively. When individuals and organizations exploit natural resources, they must pay the owner (the state) a sum of money. The money must pay the state is tax. The more natural resources are exploited, the more depleted resources become, environmental pollution and climate change. The legal framework of natural resource consumption tax for green

economic development must be in the context of implementation “National strategy on green growth for the period 2011- 2020 with vision to 2050” in Vietnam”. So, the Socialist Republic of Vietnam must issue a legal framework to regulate the behaviours of individuals and organizations towards green economic development.

Research on the legal framework of natural resource consumption tax for green economic development in Vietnam has attracted attention in recent years. But, researches on the legal framework of natural resource consumption tax for green economic development is extremely limited.

Thu, N.T.G (4/2009), *Develop the Law on Natural Resource Consumption Tax in Vietnam*, Hanoi Law review of Vietnam No4. The study comments on the contents of the draft the Law on Natural Resource Consumption Tax in 2009 such as: Scope of regulation; taxable object; tax payers; tax-liable price and tax rate. In which, the author points out that new types of resources such as channel are not subject to tax; responsibility must pay natural resource consumption tax if there is a joint venture with foreign countries.

Truong, L.X and Tung, P.T (7/2016), *Complete the legal provisions on natural resources tax to both ensure the target of budget collection and create a favourable environment*, Journal of Finance and Accounting Research of Vietnam No7. This study has given the inconsistencies between the Law on Natural Resource Consumption Tax in 2009 and the legal system of taxation in Vietnam about severance tax-liable price and finalization of natural resource consumption tax.

Thao, L.T and Tuan, N.Q (2011), *Using economic and legal instruments in environmental management and protection*, Journal of Legislative Studies Electronics of Vietnam No9. This study has given solutions for environmental management and protection through the Law on Environmental Protection Tax, the Law on Natural Resource Consumption Tax, and the Law on Enterprise Income Tax v.v.

The above studies have studied natural resource consumption tax in many different aspects. However, none of the above studies have conducted research on the Law on Natural Resource Consumption Tax in relation to green economic development in Vietnam today. In addition, the above studies do not give a legal framework of natural resource consumption tax for green economic development in Vietnam. Therefore, this research of the author has two goals: (1) assessment of the legal framework of natural resource consumption tax for green economic development in Vietnam; (2) recommendations on remedial measures when implementing the legislation of natural resource consumption tax for green economic development in Vietnam.

2. Method

This study must be in the context of implementation “National strategy on green growth for the period 2011- 2020 with vision to 2050” in Vietnam”. The study was conducted as a survey of the Law on Natural Resource Consumption Tax for green economic

development in Vietnam. The research objects are the Law on Natural Resource Consumption Tax in 2009, decrees and circulars guiding the Law on Natural Resource Consumption Tax in 2009.

To conduct this research, the author has collected legal documents, including: The Law on Natural Resource Consumption Tax in 2009, decrees and circulars guiding the Law on Natural Resource Consumption Tax in 2009. The methods used in this study are: Desk Research and Theoretical Research. First, the author read documents and study legal theories. After, the author compares with the theoretical basis when building a legal framework of natural resource consumption tax for green economic development in Vietnam, relevant legal theories and practice to find the conflict points. Finally, the author recommends how to resolve those conflicts.

3. Results

“National strategy on green growth for the period 2011- 2020 with vision to 2050” in Vietnam” with three main contents as follows: first, reducing the intensity of greenhouse gas emissions and boosting the use of clean energy, renewable energy; second, production greening; third, greening lifestyle and boosting sustainable consumption. Inside, “Green Economy: It creates and distributes environmentally friendly products and services, renewable energy, transport and clean fuels and green works, reduces energy consumption, raw materials and water through effective strategy of energy and natural resources and switching from carbon components to non-carbon”. After using research methods are: Desk Research and Theoretical Research, results show:

3.1. Advantages

First, the legal framework of natural resource consumption tax for green economic development has synced with the legal system in Vietnam.

The State of the Socialist Republic of Vietnam uses legal instrument to regulate economic relations, helping economic relations develop according to its will. After economic relations are regulated by law, these economic relations become legal relations. Objects participating in these legal relations will have objective rights and must perform object obligations. The legal framework of natural resource consumption tax for green economic development promulgated by Socialist Republic of Vietnam to encourage the efficient, economical exploitation and use of natural resources towards a green economy, no-environmental pollution and sustainable development.

The legal framework of natural resource consumption tax for green economic development is fully promulgated, with a transparent and clear legal framework. This legal framework is established by Law No. 45/2009/QH12 of November 25, 2009, on Natural Resource Consumption Tax; Law No. 71/2014/QH13 dated November 26, 2014, amendments to tax Laws; Decree No. 50/2010/ND-CP of May 14, 2010, detailing and guiding a number of articles of the Natural Resource Consumption Tax; Decree No.

12/2015/ND-CP dated February 12, 2015, on elaboration of the Law on amendments to tax Laws and amendments to some articles of decrees on taxations; Circular No. 152 /2015/TT-BTC dated October 02, 2015, guidance on Natural Resource Consumption Tax. This legal framework is consistent with the provisions of the Law on Tax Administration in 2019 regarding on the order and procedures to collect natural resources consumption tax; taxable object; tax exemption; tax reduction is consistent with the Law on Petroleum, the Law on Investment, the Law on Mineral; Taxable price of natural resource is consistent with the Law on Customs. Furthermore, the Article in the Law on Natural Resources Consumption Tax in 2009 is consistent with the legal system of environmental protection, non-renewable resources are object to a higher tax rate than renewable resources. This regulation helps to efficiently, economically exploit natural resources and reduce environmental pollution towards green economic development and sustainable development.

Second, the legal framework of natural resource consumption tax for green economic development has undertaken Vietnam's commitments to the international community about environmental protection direction, green economic development and sustainable development.

The Law on Natural Resource Consumption Tax has prescribed the natural resources in taxable object, including: (1) Metallic minerals; (2) Non-metallic minerals; (3) Crude oil; (4) Natural gas, coal gas; (5) Natural forest products, other than animals; (6) Natural aquatic products, including marine animals and plants; (7) Natural water, including surface water and groundwater; (8) Natural swallow's nests. This action demonstrates Vietnam's commitment to the many international commitments to which it is a member. Normally, for a State party to an international commitment to fulfil the international commitments to which it is a party, that country will "Internalize international treaties". Internalize international treaties will be done by incorporating such international commitments into the relevant legal frameworks. As such, Vietnam has fulfilled such international commitments by means of regulations or by reference to such international commitments in the Law on Natural Resource Consumption Tax. Up to now, Vietnam has " internalize international treaties" into the Law on Natural Resources Consumption Tax and Decrees and Circulars with the following commitments: Convention on the Law of the Non-navigational Uses of International Watercourses May 21, 1997; Convention on Biological Diversity, May 22, 1992; Convention RAMSAR 1971; v.v.

Third, the legal framework of natural resource consumption tax helps the State of the Socialist Republic of Vietnam to manage and exploit natural resources to develop a green economy.

Legal instrument helps Vietnam to orient economic relations according to its will. Natural resources are owned by the state, so when individuals and organizations exploit natural resources, they must pay to the State. The money must pay the state is tax. In order to collect money from natural resource consumption tax, the state must issue a full, clear and transparent legal framework. The Socialist Republic of Vietnam must issue a legal framework to have

three main purposes: first, show state ownership over natural resources; second: the state is the manager of the exploitation of natural resources; Third: through the collection of taxes on the exploitation of natural resources, the State has a direct impact on the behaviour of exploiting natural resources by individuals and organizations. This impact is that individuals and organizations that exploit non-renewable resources will have to pay higher taxes than exploiting renewable resources. Since then, natural resources are exploited efficiently, economically, towards green economic development and sustainable development.

3.2. Problems

First, regulations on taxable object in the Law on Natural Resource Consumption Tax.

In Article 2 of Law on Natural Resource Consumption Tax, Article 2 of Circular No. 152 /2015/TT-BTC, Decree No. 50/2010/ND-CP, taxable objects are: “The items object to natural resource consumption tax prescribed in this Circular are natural resources within the land, islands, internal waters, territorial sea, contiguous zones, exclusive economic zone, and continental shelves under the sovereignty and jurisdiction of Socialist Republic of Vietnam”. As such, Vietnam's taxable objects is very wide, including natural resources under Vietnam's sovereignty on land, islands, and sea. In addition, these articles also list the taxable objects such as: Metallic minerals; Non-metallic minerals; Crude oil; Natural gas, coal gas; Natural forest products, other than animals; Natural aquatic products, including marine animals and plants; Natural water, including surface water and groundwater; Natural swallow's nests. However, in the Law on Natural Resource Consumption Tax, Decrees and Circulars guiding the Law on Natural Resource Consumption Tax is not regulated natural resources in the airspace under Vietnam's sovereignty are taxable object; and is not regulated wind energy to be a taxable object. Meanwhile, wind energy is an abundant resource that has been exploited in Vietnam.

Second, regulations on natural resource output used for natural resource consumption tax calculation

Natural resource output used for natural resource consumption tax calculation regulated in Article 5 of the Law on Natural Resource Consumption Tax; Article 5 of Circular No. 152 /2015/TT-BTC; Article 3 of Decree No. 50/2010/ND-CP. Accordingly, natural resource output used for natural resource consumption tax calculation is divided into the following cases: “(1) For an exploited natural resource the quantity, weight or volume of which can be determined, the natural resource output used for royally calculation is the quantity, weight or volume of natural resource actually exploited in a natural resource consumption tax period; (2) For an exploited natural resource the quantity, weight or volume of which cannot be determined because this natural resource contains different substances and impurities, the natural resource output used for natural resource consumption tax calculation shall be determined based on the quantity, weight or volume of each substance obtained from sorting and classification; (3) For natural resources which are not sold but used for turning out other products, if their actually exploited quantity, weight or volume

cannot be directly determined, the natural resource output used for natural resource consumption tax calculation shall be determined based on the output of products turned out in a natural resource consumption tax period and the use norm of natural resource per unit of product; (4) For natural water used for hydropower generation, the natural resource output used for natural resource consumption tax calculation is the output of electricity sold by a hydropower generation establishment to an electricity buyer under an electricity purchase and sale contract or the output of delivered electricity, in case such contract is unavailable, which is determined according to the metering system up to Vietnam's measurement and quality standards, certified by the purchaser and seller or the deliverer and recipient; (5) For natural mineral water, natural thermal water and natural water used for industrial purposes, the natural resource output used for natural resource consumption tax calculation shall be determined in cubic meter (m³) or litre (l) according to the metering system up to Vietnam's measurement and quality standards; (6) For natural resources exploited on a manual, scattered or mobile, irregular basis, if the planned output of exploited natural resources in a year is valued at under VNI) 200 million, a fixed output of exploited natural resources may be determined on a regular or seasonal basis for natural resource consumption tax calculation. Tax offices shall coordinate with local concerned agencies in determining the fixed output of exploited natural resources for natural resource consumption tax calculation”.

Whereby, natural resource output used for natural resource consumption tax calculation is based on the declared behaviour of the resource exploiter. Practice has proven that the consequences of self-declaration have led to loss of revenue for the state budget and inefficient exploitation of natural resources. All of this is due to the fact that the output of natural resources exploited is not the output used as a basis for calculating natural resource tax.

Third, regulations on jurisdiction stipulates the types of natural resources that are taxable objects.

In Article 2 of the Law on Natural Resource Consumption Tax, the law prescribed the types of natural resources as object to tax, including: (1) Metallic minerals; (2) Non-metallic minerals; (3) Crude oil; (4) Natural gas, coal gas; (5) Natural forest products, other than animals; (6) Natural aquatic products, including marine animals and plants; (7) Natural water, including surface water and groundwater; (8) Natural swallow's nests. Besides, other resources prescribed by the National Assembly Standing Committee of Vietnam in Clause 9 Article 2 of the Law on Natural Resource Consumption Tax.

According to the regulations on the Constitution in 2013 of the Socialist Republic of Vietnam, the National Assembly of Vietnam is the highest state power body of the Socialist Republic of Vietnam. It shall exercise constitutional and legislative powers. So, it decides on the tax Laws or change or abolish them. Therefore, in Vietnam, only the National Assembly has the authority to decide which natural resources are taxable objects. However, according to the current provisions of the Law on Natural Resource Consumption Tax, the

National Assembly Standing Committee of Vietnam has this authority. This provision is inconsistent with the Constitution in 2013.

4. Discussion and Conclusion

4.1. Discussion

The results of this study show problems that need to be discussed:

First, regulations on taxable objects in the Law on Natural Resource Consumption Tax.

Natural resources are owned by the state. So, the state has right to imposed on the act of natural resource consumption within its territory. In Vietnam, Natural resource consumption tax is a type of tax to imposed on the act of natural resource consumption under the sovereignty of Vietnam. However, up to now, in the Law on Natural Resource Consumption Tax has only regulated natural resources in water and land areas under the sovereignty of Vietnam are taxable objects, but there are no regulations the natural resources in airspace under Vietnam's sovereignty are taxable objects.

According to research by D. Truong - D. Tuan (2009), “Wind energy is an important resource with wind energy with a total capacity of 13,360 MW, 200 times the capacity of Son La Hydropower Plant and 10 times the total forecasted capacity of the whole electricity industry by 2020”. So, wind energy should be regulated a taxable object in the Law on Natural Resource Consumption Tax, because of the following two reasons: first, wind energy exploitation will bring the state revenue to support economic development. This activity is consistent with “National strategy on green growth for the period 2011- 2020 with vision to 2050” in Vietnam; second, wind energy is a kind of clean energy, so using them will reduce environmental pollution. Meanwhile, reducing environmental pollution is one of the key tasks in green economic development in Vietnam.

Second, regulations on natural resource output used for natural resource consumption tax calculation.

In the Law on Natural Resource Consumption Tax, tax bases include: natural resource output used for tax calculation, tax-liable price and tax rate. Therefore, the correct determination of natural resource output used for tax calculation will determine the amount of natural resource tax to be paid to the state. However, at present, the method of determining the output for calculation of natural resources tax in the Law on Natural Resources Tax in 2009 is appropriate, because of the following reasons: first, resource operators decide on their own that natural resource output used for tax calculation is not suitable. Because they only choose high-value resources to mine, while other times, to find this resource, they must also exploit low-value resources. This is extremely profitable for them. But as a result, low-value natural resources are left in the mines. This is a waste; The wasteful exploitation of resources is the reason why the state does not collect natural resource exploitation tax from the portion of resources that have been exploited but left in the mines. And as a result, the state budget is reduced because it cannot collect natural resources consumption tax. The

above consequences show that it is difficult for Vietnam to achieve the important goals of the “National strategy on green growth for the period 2011- 2020 with vision to 2050” if it does not provide solutions to overcome this problem.

Third, regulations on jurisdiction stipulates the types of natural resources that are taxable objects.

According to the regulations on the Constitution in 2013 of the Socialist Republic of Vietnam, the National Assembly of Vietnam is the highest state power body of the Socialist Republic of Vietnam. It shall exercise constitutional and legislative powers. Therefore, in Vietnam, only the National Assembly has the authority to decide which natural resources are taxable objects. Article 44 of the Law on organization of the National Assembly of Vietnam, “the Standing Committee of the National Assembly shall draft law- and ordinance-making programs and submit them to the National Assembly for decision; direct the implementation of the law- and ordinance-making programs; adjust these programs and report the adjustments to the National Assembly at its next session; set up drafting committees and designate agencies to verify bills and draft ordinances in accordance with law; give comments on bills before they are submitted to the National Assembly; direct the study, assimilation and justification of opinions of National Assembly deputies in order to revise and finalize bills and submit them to the National Assembly for consideration and passage”. Therefore, Standing Committee of the National Assembly has no authority to decide on the tax Laws or change or abolish them. Therefore, the provision in Clause 9 Article 2 of the Law on Natural Resources Consumption Tax is a "constitutional violation". And these provisions will have no legal effect. Therefore, it is necessary to improve this provision.

4.2. Recommendations

First, amendment to the Law on Natural Resource Consumption Tax. Accordingly, to regulation that wind energy is an object to natural resource consumption tax.

This regulation is consistent with current practice in Vietnam and some countries around the world when it is considered that wind energy is an inexhaustible natural resource. And the exploitation of wind energy can bring high economic benefits to Vietnam. In addition, wind energy is clean energy, so consuming this energy will reduce environmental pollution. This is essential for a green economy. It uses clean energy, reduce environmental pollution and develop sustainably.

Besides, the regulation of wind energy as a object of natural resource consumption tax also brings the state an abundant and stable revenue for the state budget. Legally, this regulation also demonstrates the state's right to collect taxes on natural resources in its territory. Moreover, this regulation is the legal basis for wind energy exploiters and users to be economical, efficient and according to the will of the state. However, at the initial stage of applying this new legal regulation, the state needs to stipulate a lower tax rate or apply a tax rate bracket according to the roadmap from low to high. And stipulate a number of other

cases when exploiting wind energy is exempted from tax or reduced tax to encourage the exploitation and use of wind energy efficiently and economically.

Second, amendment to the Law on Natural Resource Consumption Tax on natural resource output used for natural resource consumption tax calculation.

In Vietnam, natural resource output used for natural resource consumption tax calculation is based on the declared behaviour of the resource exploiter. Consequences of self-declaration have led to loss of revenue for the state budget and inefficient exploitation of natural resources. So, amendment to the Law on Natural Resource Consumption Tax on natural resource output used for natural resource consumption tax calculation.

Recommendations for this issue are given as follows: Natural resource operators must have a natural resource extraction plan. This plan must clearly show how much potential future production is, how long it will take and what resources will be extracted. Tax authorities will base on this potential catch to temporarily collect tax money. This tax amount will correspond to the potential catch in the natural resource extraction plan. At the end of the year, when finalizing tax, the resource exploiter will provide records and papers to prove that the exploited output is in fact. This mining output is used to compare with the potential yield in the previous resource mining plan. Based on this, the tax authority will decide to collect more tax or refund the tax. This solution will solve two problems: first, avoid loss of tax revenue for the state budget; secondly, it is imperative that natural resource exploiters have a plan to exploit resources efficiently and economically. Only then, “National strategy on green growth for the period 2011- 2020 with vision to 2050” can be implemented in reality.

Third, amendment to the Law on Natural Resource Consumption Tax on jurisdiction stipulates the types of natural resources that are taxable objects

In Article 74 on the Constitution in 2013 of the Socialist Republic of Vietnam, the National Assembly Standing Committee of Vietnam has only the authority to issue ordinances. Ordinance is a legal document with lower validity than law. And, the National Assembly Standing Committee has the power to interpret the Constitution and laws. So, the National Assembly Standing Committee of Vietnam has no authority to change or abolish the law that has been promulgated by the National Assembly of Vietnam. This authority belongs to the National Assembly of Vietnam.

Therefore, it is necessary to change in Clause 9, Article 2 of the Law on Natural Resource Consumption Tax in 2009. Accordingly, the National Assembly of Vietnam must cancel the authority of the National Assembly Standing Committee of Vietnam in Clause 9 Article 2 of the Natural Resource Consumption Tax and give this authority to itself. This solution will solve a very important problem: in accordance with the Constitution in 2013 of the Socialist Republic of Vietnam (The Constitution is the legal document with the highest legal validity in Vietnam. All documents must be complied with. its effect).

4.3. Conclusion

The practice of implementing the 2009 Law on Natural Resources in Vietnam has shown that: First, regulations on taxable object in the Law on Natural Resource Consumption Tax are incomplete; Second, regulations on natural resource output used for natural resource consumption tax calculation are not consistent with the practice of natural resource exploitation in Vietnam. The wasteful exploitation of resources is the reason why the state does not collect natural resource exploitation tax from the portion of resources that have been exploited but left in the mines; Third, regulations on jurisdiction stipulates the types of natural resources that are taxable objects are not consistent with the Constitution. Therefore, in order to achieve the goals set out in “National strategy on green growth for the period 2011- 2020 with vision to 2050”, Vietnam needs to: first, regulation that wind energy is an object to natural resource consumption tax; second, amendment to the Law on Natural Resource Consumption Tax on natural resource output used for natural resource consumption tax calculation; third, amendment to the Law on Natural Resource Consumption Tax on jurisdiction stipulates the types of natural resources that are taxable objects.

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