Enhancing Legislation to Combat "Transfer Pricing" for Foreign-Invested Enterprises in Vietnam

Hoàn thiện pháp luật chống "Chuyển giá" đối với doanh nghiệp có vốn đầu tư nước ngoài tại Việt Nam

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Abstract: Since the enactment of the Law on Foreign Investment in Vietnam in 1987, the state has created favourable conditions for foreign investors to invest in Vietnam, bringing various benefits such as capital, technology, and employment opportunities. However, foreign investors, in their investment activities in Vietnam, have engaged in "transfer pricing," leading to revenue loss for the Vietnamese budget. Transfer pricing is not a new phenomenon in today's economic development; as early as 2012, certain FDI enterprises, like Coca-Cola, Pepsico, Adidas, and Metro, were suspected of engaging in transfer pricing due to continuous reported losses while expanding their business operations. Vietnam has gradually recognized and adjusted transfer pricing activities. Currently, the legal framework for combating transfer pricing is primarily stipulated in Decree 132/2020/ND-CP, which regulates tax management for enterprises with related-party transactions (hereinafter referred to as Decree 132/2020/ND-CP). This article analyzes the nature of transfer pricing and its impact and proposes improvements to the relevant legal provisions on control "transfer pricing".

Keywords: *Foreign-invested enterprises; related-party transactions; transfer pricing*

Tóm tắt: Kể từ thời điểm ban hành Luật Đầu tư nước ngoài tại Việt Nam năm 1987, Nhà nước đã tạo điều kiện cho nhà đầu tư nước ngoài đầu tư vào Việt Nam và những chủ thể này cũng đã mang lại cho chúng ta nhiều lợi ích nhất định như: nguồn vốn, công nghệ và việc làm cho người lao động. Tuy nhiên, khi đầu tư tại Việt Nam, những nhà đầu tư nước ngoài đã thông qua hoạt động "chuyển giá" gây thất thu cho ngân sách Việt Nam. Thật ra, hoạt động "chuyển giá" không còn là một hành vi mới trong quá trình phát tiển kinh tế hiện nay, bởi vì từ năm 2012, một số doanh nghiệp FDI như Coca Cola, Pepsico, Adidas, Metro,... từng bị nghi ngờ chuyển giá do báo lỗ nhiều năm liền liên tiếp trong khi vẫn tiếp tục mở rộng sản xuất kinh doanh. Thế nên, Việt Nam đã từng bước nhận diện và điều chỉnh hoạt động "chuyển giá". Hiện nay, pháp luật về chống "chuyển giá" được quy định chính tại Nghị định 132/2020/NĐ-CP quy định về quản lý thuế đối với doanh nghiệp có giao dịch liên kết (Sau đây gọi là Nghị định 132/2020/NĐ-CP). Ở bài viết này, tác giả phân tích thế nào hành vi chuyển giá, tác động của chuyển giá, và đề xuất hoàn thiện quy định pháp luật liên quan đến kiểm soát hoạt động "chuyển giá".

Từ khóa: *Chuyển giá; doanh nghiệp liên kết; doanh nghiệp có vốn đầu tư nước ngoài*

1. Overview of Transfer Pricing Activities

According to Du Ngoc Bich, the term "transfer pricing" refers to a company arranging transactions with related parties at prices different from those with independent parties (simply put, buying at a high price and selling at a low price) or making unreasonable or unnecessary service payments to transfer profits to a jurisdiction with the most favourable tax rates for that corporation [1, p.45]. According to international practice, transfer pricing is understood as "the implementation of pricing policy" for goods and services between members of the same group (or group) across borders that do not follow market prices. market

to minimize the amount of tax payable into state budgets receiving investments globally. To do this, multinational companies must apply differences in policies, tax incentives, and tax rate differences between countries to develop transaction price policies within the group (or corporation)[2,p.45]. Additionally, transfer pricing involves implementing pricing policies for goods, services, and assets transferred between affiliated companies, mostly within multinational corporations, not following market prices to minimize taxes for global multinational companies. The essence of transfer pricing is choosing the most advantageous location for a company to declare taxes without violating current legal regulations. Transfer pricing is a behaviour that influences prices because business entities execute it to alter the value of exchanged goods and services in relationships with affiliated parties. Affiliated companies have implemented policies regarding goods, services, loans, and borrowings that are transferred between related companies, not at market prices, to minimize the overall tax obligation and maximize after-tax profits. Leveraging tax incentives for certain industries and regions, a business can establish additional subsidiary companies or collaborate with other businesses with shared interests to transfer profits to the tax-favoured location, thereby minimizing the tax payable.

Article 7 of the 2020 Enterprise Law stipulates, "Enterprises are free to engage in industries and trades that are not prohibited by law, autonomously conduct business, choose forms of business organization, proactively choose industries, territories, and forms of business, and proactively adjust the scale and business sectors." Therefore, enterprises have the right to determine the prices of transactions. Additionally, due to closely connected business relationships among entities within the same group, differences in transaction prices between entities with shared interests do not alter common interests but can affect the overall tax payable to the competent state authority.

The indicators for identifying "transfer pricing," according to research experts, may be as follows: Companies reporting continuous losses for several years since establishment but still expanding production scale; Companies experiencing alternating profits and losses or abnormal loss situations but continuing business development; Companies with much lower profit margins compared to other companies in the same industry or within the same group; Companies with production costs significantly lower or higher than the market price of similar or equivalent products.

The form of "transfer pricing" can manifest through the following methods:

Firstly, capital investment transfer pricing Involves increasing the value of specific capital contributions of invested enterprises, such as machinery, equipment, and technology. The valuation of capital contributions is inflated significantly beyond their actual value. This form of "transfer pricing" may also occur through the determination of taxes based on values from invoices, which are, however, deemed as "falsified" due to agreed-upon high pricing for imported machinery, equipment, and other fixed assets from affiliated supplying partners. This results in higher depreciation costs for these fixed assets than market prices.

Secondly, technology Transfer Pricing: This includes the transfer of technology, software, patents, trademarks, formulas, etc. Specifically, it artificially raises the value of intangible assets that are difficult to determine accurately the value of, leading to an

increased asset value compared to normal circumstances. The investor's contribution rate (often a foreign investor) and their associated rights are thus enhanced in proportion to the contributed capital.

Thirdly, material and finished product sales transfer pricing Involve raising the cost of raw materials, reducing taxable income, or even turning profits into losses to avoid tax obligations to the state. Establishing a third-party company to buy and sell raw materials through affiliated enterprises makes it difficult for state authorities and partners to determine.

Fourthly, management and Administrative Cost Transfer Pricing: This includes increasing management and administrative costs and operational costs, leading to increased business costs. This may involve hiring high-salary managers, paying management fees to the parent company, sending employees abroad for training with high costs, or increasing advertising costs. The loose current regulations on advertising costs in Vietnam contribute to the occurrence of fictitious cost reductions and losses.

Fifthly, interest Payment on Production and Business Loans Transfer Pricing: Companies with affiliated relationships often generate loans between them. This method is prevalent for transferring profits from high-tax locations to low-tax locations.

Sixthly, change in Selling Prices Transfer Pricing: Companies alter selling prices between affiliated companies by determining selling prices with significant discrepancies compared to market prices for similar or equivalent products. For example, a company sells products at a lower price to foreign companies and buys them back at a higher price from those foreign companies, leading to increased costs, decreased revenue, reduced profits, and, consequently, lower corporate income tax payments than actual profits.

Foreign investors use various methods and forms to manipulate prices to maximize their benefits and minimize tax payments to the state authorities.

2. Negative Impact of "Transfer Pricing" on Tax Management Activities

Foreign-invested enterprises have employed "transfer pricing" tactics, converting profits into losses to evade taxation, resulting in a serious depletion of corporate income tax revenue from directly foreign-invested enterprises (FDI). These violations are increasingly widespread and, on a larger scale, in tax evasion. Foreign-invested enterprises, with additional financial advantages through transfer pricing, have created unfair competition, causing domestic enterprises to lose market share, experience declining revenues, and potentially suffer reputational damage from FDI companies. The practice of reporting losses by enterprises to avoid taxes leads to distortions in the measurement of the Incremental Capital Output Ratio (ICOR) [3], affecting the perspective of developed countries worldwide towards Vietnam and potentially impacting foreign investor attraction to Vietnam.

According to current statistics, "in early 2023, more than 200 Dutch companies came to Vietnam to explore business opportunities through 30 investment promotion workshops, with a multitude of memoranda of understanding (MOUs) for cooperation between ministries, sectors, and businesses of the two countries, Vietnam and South Korea. These agreements were facilitated with the participation of 205 enterprises, including leading conglomerates such as Samsung, LG, SK, Hyundai Motor, Lotte,

etc. According to the latest figures from the Foreign Investment Agency, Ministry of Planning and Investment, as of the end of July 2023, new FDI project capital increased by 38.6%, newly registered capital increased by 4.5%, and the number of projects increased by 75.5%. These figures demonstrate the flourishing attraction of foreign direct investment, with optimistic expectations" [4]. Statistics from the General Statistics Office show that the rate of increase in new projects (up by 75.5%) is higher than the rate of increase in new investment capital (up by 38.6%), indicating that investors have great confidence in Vietnam's investment environment. Mr. Nguyen Anh Tuan, Deputy Head of the Foreign Investment Agency, Ministry of Planning and Investment, stated: "In a recent conference with foreign investors, the Prime Minister clearly conveyed the message of further improving the investment and business environment, providing more support to address the difficulties and obstacles faced by investors. Continuing to strengthen and enhance the trust of investors in the Government's investment, business, and policy environment is the most fundamental driving force for further promoting foreign direct investment attraction in the coming time" [5]. This reinforcement of trust is manifested through legal policies, also aiming at sustainable development and promoting investments in areas related to the digital economy, green economy, innovation, and renewable energy.

The contemporary progress in Vietnam is ascribed to the favorable influence exerted by foreign direct investment across multiple dimensions. These encompass bolstering GDP expansion, augmenting fiscal inflows, propelling the economy's structural evolution towards industrialization and modernity, fostering export growth and market diversification, transferring scientific and technological knowledge, fortifying capabilities in economic management and corporate governance, refining the competitive prowess of the economy, and addressing employment challenges. Despite these commendable achievements, engagements with foreign investors or economic entities with foreign investments have brought to light various limitations and complexities, notably the use of transfer pricing strategies by certain foreign-invested companies as a means to evade taxation.

The annual report of Vietnamese enterprises in 2015, published by the Vietnam Chamber of Commerce and Industry (VCCI), revealed that the rate of loss-making enterprises within the foreign direct investment (FDI) sector reached 51.2% (in 2008) or 49.8% (in 2009). In the subsequent years, 2010 and 2011, these figures decreased to 44.2% and 45%, respectively. However, in the three years from 2012 to 2014, the rate surged back to approximately 48% [6]. An illogical aspect is that despite continuous and substantial losses, FDI enterprises continued to expand their production and business scale. Notably, while FDI enterprises reported losses, most domestic enterprises in the same industry remained profitable, especially in the textile and leather industries. Therefore, based on the data, the question arises as to whether these losses are genuine or manipulated to evade taxes, prompting the relevant state authorities responsible for tax management.

According to a report by a group of experts researching the National Competitiveness Index (PCI) in 2013, around 65% of surveyed FDI enterprises reported very high profitability (over 20%), 44% had high profits (between 10 - 20%), 12% had average profits, and 9%

admitted engaging in transfer pricing. Specifically, about 30% of FDI enterprises reported losses (from 0 - 5%) and acknowledged engaging in transfer pricing [7]. The analysis of these figures indicates signs of transfer pricing by these enterprises with the purpose of tax evasion. In reality, the results of tax inspections on foreign-invested enterprises suspected of engaging in transfer pricing show that many profitable enterprises have transformed their profits into losses through transfer pricing. The results of transfer pricing inspections by the tax authorities over the years reveal that each year, the tax authorities have collected hundreds of millions or even trillions of Vietnamese dong from dealing with transfer pricing by enterprises. However, this is only the tip of the iceberg, and the issue of transfer pricing by FDI enterprises remains difficult to determine and control.

It can be observed that in the past, many large multinational companies operating in Vietnam declared losses in their financial reports but continued to expand their investment and business activities. One such example is Coca-Cola Vietnam, which reported continuous losses over the first 20 years of investment in Vietnam, accumulating losses until September 30, 2011, amounting to VND 3,768 billion, surpassing the initial investment of VND 2,950 billion. Due to continuous losses, the company was not required to pay corporate income tax, while its revenue consistently increased by 20-30% annually, expanding its production scale through an additional investment plan of USD 300 million in Vietnam. Additionally, some Metro Vietnam companies in 2014, with more than 19 wholesale centres nationwide, had to adjust and reduce losses and deductions, resulting in a tax recovery of a total of VND 507 billion. Similarly, Pepsico Vietnam, established and operating in Vietnam since 1991, reported continuous losses for nearly 20 years and only recently achieved profitability, with a low-profit margin, and continues to expand its production [8].

The negative impacts of transfer pricing on Vietnam inadvertently create an unhealthy competitive environment among economic entities. With group interests in mind, these enterprises may form alliances to purchase input materials at high prices, making it difficult for other enterprises to procure materials for production and business, pushing other enterprises into bankruptcy [9].

In addition, taking advantage of the provisions of the Investment Law 2020, amended and supplemented in 2022, regulations on foreign investors and economic organizations with foreign investment capital, for foreign investors to invest in Vietnam in industries with investment incentives and investment incentive areas will receive incentives such as tax reduction, tax exemption, or low tax rates as prescribed in Article 13 of the Law on Corporate Income Tax 2013, amended and supplemented 2020. This leads investors to invest in areas without investment incentives, transferring profits to investment incentive areas to apply lower interest rates. Or in the case of foreign investors, transferring profits abroad to "tax havens" such as the Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Gibraltar, Hong Kong, Ireland, Isle of Man, Jersey, Kuwait, Luxembourg, Macao, Malta, Mauritius, Panama and Qatar to avoid taxes.

The analyses above demonstrate that transfer pricing within FDI enterprises has negative impacts on various aspects of Vietnam. Without better measures to address transfer pricing, allowing this phenomenon to become increasingly

widespread and on a larger scale may lead to complex economic, social, and political issues. Vietnam's economy is at risk of domination and dependence due to transfer pricing. "Transfer pricing activities make the benefits brought by FDI capital flows to the economy insufficient to offset the significant economic and financial losses it causes to the FDI-receiving country" [8, pp.15-17]. This is not only an economic issue but also a political and social concern. Therefore, if we do not limit transfer pricing issues or combat "transfer pricing," it will not only result in a loss of state budget revenue but also create an unfair competitive environment for all investors.

3. Current legal Regulations on Transfer Pricing

According to Resolution No. 50-NQ/TW of the Politburo on the orientation of improving the foreign investment cooperation regime policies and enhancing the quality and efficiency of foreign investment cooperation until 2030, issued on August 20, 2019 (hereinafter referred to as Resolution No. 50-NQ/TW), it is emphasized that improving the general regime and policies on foreign investment is necessary and urgent. Specifically, it requires the research and development of regulations to address the situation of "thin capital," transfer pricing, "smuggling" investment, and "shadow" investment. Particularly, the resolution underscores the need to enhance the legal framework for combating transfer pricing by elevating it to law; improving and supplementing strict provisions in laws related to taxes, foreign exchange, customs, investment, science and technology; and establishing a database, disclosing information to control, manage, and prevent transfer pricing from the establishment and throughout the operation of foreign-invested enterprises. Building a robust and capable specialized mechanism to combat transfer pricing, inter-sectoral and specialized inspection mechanisms to prevent and limit the transfer pricing of foreign-invested enterprises. General tax management, restructuring the market healthily, and limiting companies that rely too much on excessive borrowing to expand investment, causing long-term risks to the system, is necessary. Therefore, Decree No. 132/2020/ND-CP on tax management for enterprises with related-party transactions replaces Decree No. 20/2017/ND-CP on tax management for enterprises with related-party transactions. Additionally, to address issues related to "transfer pricing," the legal system includes documents such as the 2019 Tax Management Law, the 2023 Price Law, and the 2008 Law on Corporate Income Tax, amended and supplemented in 2014.

Although Decree No. 132/2020 inherits provisions of Decree No. 20/2017/ND-CP, only amending and supplementing some missing or unclear content to ensure clarity and transparency. Furthermore, in Article 4, Clause 4 of the 2023 Price Law, the definition of the term "market price" is explained as the "price of goods and services formed based on supply, demand, and market-determining factors over a certain period and space." In Decree No. 132/2020/ND-CP, there is no explanation of "market price" in business transactions between related parties as the basis for declaring and determining the tax obligations of business establishments. Therefore, enterprises must rely on the 2023 Price Law to determine the market price.

In Article 5 of Decree No. 132/2020/ND-CP, specific provisions are made regarding related parties (hereinafter referred to as "related parties"), defined as entities having relationships falling into

one of the following cases: One party directly or indirectly participates in the management, control, contribution of capital, or investment in the other party; Parties directly or indirectly participate together in the management, control, contribution of capital, or investment of another party. The stipulations outlined in Clause 2 of Article 5 are explicit and can be summarized as follows: In the context of business relationships, a minimum ownership interest of 25% in the contributed capital of another business must be maintained by a party, whether this ownership is held directly or indirectly. In situations where two enterprises each possess at least 25% of the owner's contributed capital, and a third party maintains a direct or indirect stake, the business that has contributed the most capital and directly or indirectly owns at least 10% of the total shares of the other business is deemed the primary shareholder. Further, a business is considered to have control over another business if it appoints a majority of the leadership members or if a member appointed by the first business has the authority to make decisions concerning the financial policies or business operations of the second business. Control is also recognized when both businesses have a leadership team where over 50% of the members, granted authority by a third party, can make decisions regarding financial policies or business operations. Additionally, the relationship for management or supervision of two businesses in terms of staff, finance, and company operations involves individuals connected through various familial relationships, encompassing relatives such as spouse, parent, adoptive parent, stepfather, stepmother, father-in-law, mother-in-law, son, adopted son, stepson, daughter-in-law, son-in-law, brother, sister, half-sibling, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, nephew, and niece.

Two businesses have a relationship between their main headquarters and branch, or both have a residence at the same location as the foreign organization or individual. An individual controls businesses through their capital contribution to that business or direct involvement in the management of the business; Other cases in which a business exercises actual management, control, and decision-making over the business activities of another business; A business has transactions involving the transfer or receipt of at least 25% of the contributed capital of the owner of the business during the tax calculation period; loaning or borrowing at least 10% of the contributed capital of the owner at the time of the transaction in the tax calculation period with an individual managing or controlling the business or with an individual in one of the relationships specified above.

Analysis and comparison of related-party transactions based on the essence of activities, transactions determining tax obligations to identify the nature of related-party transactions: The nature of transactions is compared between the legal contracts or agreements of related parties with the practical implementation of the parties; The nature of transactions is determined through methods of collecting information, evidence, data on transactions, and risks of related parties in the practical business operations. Particularly the selection of independent comparable entities, the expansion of the scope of analysis and comparison, the sequence of analysis and comparison, the selection of methods to determine the price of related-party transactions, the method of comparing the price of related-party transactions with the prices of independent transactions, the method of

comparing the profit margin of the taxpayer with the profit margins of independent comparable entities, the method of profit allocation among related parties, determining costs for taxing entities with related-party transactions, and the use of databases in declaration, identification, and management of related-party transaction prices are outlined in Decree No. 132/2020/ND-CP to restrict transfer pricing between affiliated enterprises.

4. Directions to improve legal regulations on "transfer pricing"

In the process of developing and implementing measures to address transfer pricing, Vietnam needs to focus on several fundamental solutions: Transfer pricing activities between affiliated enterprises have led to unfair Base Erosion and Profit Shifting (BEPS) for developing countries, causing annual revenue losses ranging from USD 100-240 billion, as discussed at Conference 15 when Vietnam participated in the International Forum on BEPS organized by the Organization for Economic Cooperation and Development (OECD). To address tax evasion, improve the consistency of international tax rules, and ensure a more transparent tax environment, 135 countries at the conference are expected to adopt the results of the "two pillars" consisting of the first pillar draft Multilateral Agreement on Part A (income of multinational enterprises with revenue exceeding USD 20 billion and profit margins exceeding 10% of revenue), Part B (marketing and distribution income at market prices); the second pillar is the source country tax rights (SCTRs) and the implementation support program. These two-pillar solutions are based on the consensus of participating countries, playing a crucial role in ensuring fairness and equality in the tax system and strengthening the international tax framework in the face of new and changing business models. In this spirit, ensuring consistency in the legal framework regulating transactions between related parties is extremely necessary, specifically with the approach of Vietnam's Parliament to the principles and international practices of tax management for related-party transactions through the Law on Tax Administration No. 38/2019/QH14 dated June 13, 2019, and the Law on Corporate Income Tax No. 14/2008/QH12 amended and supplemented in 2014. The National Assembly of Vietnam needs to enact legal regulations on global minimum tax, including the General Provisions on Minimum Taxable Income (IIR) and the Domestic Minimum Supplementary Tax (QDMTT) standards. Therefore, from an individual perspective, it is necessary to refine the legal framework on transfer pricing and move towards the issuance of the Transfer Pricing Law; domesticate legal regulations to ensure compliance with the Model Rules and guidance under the Base Erosion and Profit Shifting (BEPS) Program; narrow tax incentives, specifically limiting the maximum legal policies in tax incentives; transferring investigative powers from the General Department of Taxation to provincial and city tax authorities and improving the information system and tax data about taxpayers and businesses to monitor changes in revenue and profit. Additionally, legal regulations related to the presentation of supporting documents, the establishment of databases on tax information and customs for comparison within the national territory, as well as strengthening international information exchange, need to be stipulated. Accelerating the development of the electronic Government ensuring connectivity and automatic information

exchange between tax authorities and other state management agencies is crucial.

However, tax incentive policies are also a tool to attract investment. Resolution No. 50-NQ/TW outlines the solution of "Improving transfer pricing laws towards enactment." This is the most fundamental, domestically-oriented solution, emphasizing the necessity of proactive international cooperation in the field of transfer pricing. In the action plan to control "transfer pricing" activities by the Ministry of Finance, tax management responsibilities for transfer pricing activities are assigned to specific Tax Departments overseeing numerous affiliated enterprises in cities such as Hanoi and Ho Chi Minh City. Moreover, the General Department of Taxation has received substantial support from international organizations (JICA, ADB, EU, IFC, WB) for capacity building of tax officials in the area of transfer pricing. Simultaneously, the Government and local authorities must enhance management capabilities while improving transparency and creating favourable mechanisms for business operations, truly embodying a government that fosters development and integrity. Additionally, it is crucial to enhance the professional ethics of officials, combat corruption, and streamline processes for citizens and businesses.

Even G-20 countries must collaborate to prevent transfer pricing by multinational corporations. Therefore, Vietnam needs to strengthen ties with the governments of regional countries and the governments of member countries of new-generation trade agreements to establish agreements and collective actions to address transfer pricing in FDI enterprises in Vietnam.

To ensure tax incentive policies and limit transfer pricing between enterprises more effectively, more stringent and detailed regulations are required. To achieve this, tax authorities need to urgently establish a database system that meets the requirements for exploration and risk analysis and serves as a basis for determining market prices for related-party transactions. According to provincial Tax Departments, identifying transfer pricing is not challenging, but the processing encounters difficulties due to a lack of data. Tax officials still have to collect and compare each item manually. Learning from other countries in data analysis is essential. Clear guidelines should be provided to determine behaviors with signs of "transfer pricing," causing tax losses to the state. Building a comprehensive database system and connecting data and information about FDI enterprises across relevant Vietnamese agencies for coordinated and seamless control of transfer pricing by functional authorities is imperative.

In the near future, the Tax Department, investment licensing agencies, customs, police, banks, and other relevant agencies need to strengthen the construction of databases and information connectivity to ensure an information system for general tax management and specific activities such as risk analysis, inspection, and handling violations related to transfer pricing among affiliated members.

Furthermore, it is necessary to apply the Advance Pricing Agreement (APA) method – a mechanism for prior agreement on price determination. This measure is widely implemented in Europe and many countries in the region, such as China, Indonesia, Thailand, Malaysia, etc. Under this mechanism, multinational enterprises must proactively propose pricing methods or levels for the purchase and sale of goods and services among members of the group before declaring and paying taxes. Tax authorities will

coordinate with foreign tax authorities that have signed double taxation avoidance agreements with Vietnam to organize supervision and control to prevent tax evasion. Tax authorities need to strengthen transfer pricing inspections, considering this to be one of the key tasks of the tax sector. Emphasis should be placed on inspecting and examining transfer pricing for companies with multiple members, industries with significant tax risk due to transfer pricing by affiliated enterprises, and companies undergoing restructuring likely to exploit transfer pricing to avoid taxes. For transfer pricing cases, there must be penalties in the direction of increasing penalties and forms of penalties compared to current regulations to ensure the seriousness of the law.

Maintaining the perspective of attracting FDI and investment incentive policies at all costs has left certain negative consequences that need adjustment of this mindset. Although foreign capital holds a crucial position, it is necessary to "use foreign resources to enhance domestic capacity" [10, pp.18-20]. By implementing selective attraction policies and improving the effectiveness of FDI utilization, the focus should be on additional objectives such as supplementing investment capital for development, absorbing science and technology, expanding markets, and learning management experience. Tax incentive policies to attract foreign investment need to be adjusted to narrow the gap in corporate income tax rates between privileged and non-privileged areas [9, pp. 15-17]. The Government and relevant authorities also need to review and adjust tax incentives to narrow the gap in tax privileges among sectors, industries, regions, and localities. As mentioned earlier, one of the causes of transfer pricing is the difference in corporate income tax between countries and the difference in corporate income tax rates within a country due to preferential tax rates and other incentives such as exemptions and reductions. Vietnam has moved beyond the phase of attracting foreign investment at all costs; therefore, considerations should allow tax incentives for certain industries, sectors, regions, and in cases that are most beneficial compared to other incentive forms. However, applying measures against "transfer pricing" must ensure a balance between the interests of the state, domestic-invested enterprises, and FDI enterprises, not diminishing the attractiveness of Vietnam's investment environment. Achieving this requires legislators to discuss, consult, and carefully analyze these measures.

It is essential to consider the improvement of the overall institutional environment, particularly the investment environment, as the foundation of the effort to combat enterprises' transfer pricing practices. A favourable and "clean" environment serves to both enhance the legitimate interests of investors and relatively minimize the motives for transfer pricing—a channel seen by enterprises as crucial for maximizing profits. Simultaneously, it establishes an institutional and legal framework for activities addressing transfer pricing. In this context, addressing transfer pricing is not simply aimed at preventing revenue loss to the budget. It should be viewed as a measure to foster a healthy business and competitive environment. This is not solely the responsibility of the tax authorities but a shared task among various relevant agencies, including taxpayers who both contribute to and benefit from national taxation.

In addition to "legal" solutions, it is necessary to employ measures affecting

"business ethics," emphasizing equality in tax obligations and the voice of consumers (who are also taxpayers). This can be achieved through awareness campaigns, utilizing the power of public opinion to prevent or minimize transfer pricing behaviours of FDI enterprises, particularly those enterprises that value maintaining their image and reputation in the public eye.

Finally, ensuring transparency in tax management aims to reduce tax evasion resulting from collusion among affiliated enterprises. Tax management authorities need to enhance training and develop human resources for the tax sector, specializing in monitoring and controlling transfer pricing. This involves focusing on training skills in determining market prices, providing knowledge about industry economics, computer skills, and foreign languages. Strengthening the capacity of the inspection team and implementing risk analysis methods are crucial in preventing revenue loss to the budget and combating transfer pricing. Moreover, it is necessary to establish a system of sanctions for "transfer pricing" activities strictly and seriously, as well as to organize the systematic handling of violations for non-compliance with transfer pricing declarations in transactions with related parties according to the procedures and regulations of the law.

Transfer pricing is a prevalent international phenomenon that is at risk of increasing due to the exploitation of the deepening globalization process in today's economic development. Currently, no country in the world can completely prevent "transfer pricing" activities; they can only limit this issue. Therefore, authorized state agencies need to recognize the complexity and difficulties in combating "transfer pricing" activities and unify their views on dealing with such behaviour. Vietnam needs to improve the effectiveness of its efforts to combat "transfer pricing." In the near future, it is necessary to refine the legal framework by issuing specific legislation on combatting transfer pricing to establish a legal basis with sufficient deterrent and effectiveness to support the tax management authorities in their struggle against "transfer pricing." This legal framework should be clear, transparent, and consistent to provide businesses and organizations with a legal basis for compliance. Legislation on combatting "transfer pricing" needs to be consistent between tax management solutions and general state management to ensure a harmonious balance of national interests, business interests, and investment environment protection.

Furthermore, legal regulations on combatting "transfer pricing" must be in line with international conventions and practices, incorporating the experiences of developed countries while also being suitable for the practical conditions and capabilities of Vietnam. Although Government Decree No. 132/2020/NĐ-CP on tax management for enterprises with related-party transactions, issued by the Government, has been in effect for less than three years and has contributed to restraining "transfer pricing" activities, it has created difficulties for enterprises. According to Mr. Dang Ngoc Minh, Deputy General Director, "In addition to tightening tax management and combating transfer pricing, the Government has also directed units, including the Ministry of Finance, to issue other policies supporting enterprises, especially small and medium-sized enterprises." Therefore, it is necessary to ensure a balance between the benefits of effective tax management in transfer pricing and the establishment of a rational, attractive, and transparent tax

policy to attract investment. Such a policy and solution system must be stringent and capable of reducing the motive for tax evasion through "transfer pricing."

5. Conclusion

The article has introduced basic concepts related to "transfer pricing", thereby analyzing the impact of "transfer pricing" activities on the economy, causing tax losses for the state, affecting development. of the economy. Although Vietnamese law has regulations on tax management for businesses with associated transactions. But it seems that foreign investors can still take advantage of loopholes in the law to maximize profits by taking advantage of the legal policies of "tax haven" countries to avoid taxes. This is not tax evasion but tax avoidance. Therefore, currently, we are completing the legal regulations when applying the Global Minimum Tax to Vietnam.

References

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