

LAWS ON THE MANAGEMENT OF THE UNDERGROUND ECONOMY IN THE FINANCIAL SECTOR IN VIETNAM

LEIS SOBRE A GESTÃO DA ECONOMIA SUBTERRÂNEA NO SETOR FINANCEIRO NO VIETNÃ

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principalmente no setor financeiro. Dado o alto nível de abertura neste setor, torna-se particularmente vulnerável ao impacto das atividades econômicas clandestinas. Além disso, a estrutura legal existente que rege a economia clandestina no setor financeiro do Vietnã ainda está incompleta, resultando em lacunas legais que os operadores clandestinos exploram a seu favor. Esta exploração tem graves repercussões, causando efeitos nefastos na economia, no orçamento do Estado e impedindo os legítimos direitos e interesses de numerosos cidadãos. Diante disso, é imperativo adotar um conjunto abrangente de medidas destinadas a prevenir e combater atividades econômicas clandestinas no setor financeiro público, bem como coibir práticas ilícitas relacionadas à tributação e taxas. Estas são medidas tão importantes que podem contribuir significativamente para o aprimoramento das leis relativas à gestão da economia subterrânea dentro do setor financeiro do Vietnã.

Palavras-chave: Economia clandestina. Direito. Gestão. Finanças. Banca.

Abstract: The underground economy exerts a significant influence on Vietnam's economic landscape, particularly within the financial sector. Given the high level of openness in this sector, it becomes particularly vulnerable to the impact of underground economic activities. Moreover, the existing legal framework that governs the underground economy within Vietnam's financial sector is still incomplete, resulting in legal gaps that underground operators exploit to their advantage. This exploitation has severe repercussions, causing detrimental effects on the economy, and the state budget, and impeding the legitimate rights and interests of numerous citizens. In light of this, it is imperative to adopt a comprehensive array of measures aimed at preventing and addressing underground economic activities in the public financial sector, as well as curbing illicit underground practices related to taxation and fees. These are such important measures that can significantly contribute to the enhancement of laws pertaining to the management of the underground economy within Vietnam's financial sector.

Keywords: Underground economy. Law. Management. Finance. Banking.

Resumo: A economia clandestina exerce uma influência significativa no cenário econômico do Vietnã,

1. Introduction

Finance is associated with the movement of monetary resources from places of excess to places of shortage to meet economic and social needs or “to conduct production and business activities, in which financial resources are indispensable” (Hung, N. V. et al., 2023, p. 14). Because of the association with monetary activities, this is also a very favorable environment for the underground economy to exist. Moreover, with the characteristics of Vietnam as a country with a traditional agricultural background and a market economy that has been developing for just over 30 years, there are still many limitations in the mechanisms of economic operation and the general awareness and understanding of business and commerce among the population are not yet extensive and profound. Therefore, the underground economy easily exists and thrives in Vietnam, especially in the financial sector. Research has shown that “the scale of the underground economy in Vietnam is disproportionately large, and according to a study by Fulbright University, it can reach 23-30% of GDP” (Online Financial Magazine, 2019). Another study indicates that it is “difficult to accurately estimate underground economic activities” (Pham Quang Vinh, 2011, p. 20). Or “in Vietnam, the informal economy sector is witnessing significant growth” (Dao Xuan Hoi et al., 2023, p. 932). This is because the Vietnamese economy consists of diverse components and uneven distribution among industries, sectors, and regions.

The financial sector is crucial for the survival and development of the economy. Therefore, underground economic activities in the financial sector can have significant impacts on economic and social development. Recognizing the importance of managing the underground economy in the financial sector, the Vietnamese government always takes proactive, timely, and flexible measures to regulate it. However, due to the continuous development of the economy and society, as well as the impacts of the Fourth Industrial Revolution, the underground economy in **Vietnam's financial sector** always exhibits highly complex dynamics, posing significant challenges to the state's management of the underground economy.

2. Literature review

The underground economy is not only an economic activity but also a subject regulated by the law. Therefore, research works on the underground economy in Vietnam are quite diverse. Among them, notable recent research works on the underground economy in Vietnam include:

Nguyen Dinh Cung (2003) with “*"Iceberg" Underground Economy*”; National Center for Socio-Economic Information and Forecasting (2011) with “*Identifying the underground economy in Vietnam today*”; Pham Quang Vinh (2011) with “*Macroeconomics*”; Vietnam Open Educational Resources (2017) with “*Underground economy*”; Nguyen Vinh Hung (2019) with “*Impacts of the underground economy on the economy, society, and law.*”; Review of Finance (2019) with “*Bringing the underground economy to light: What are the benefits to the economy?*”; Nguyen Vinh Hung (2020) with “*Managing the type of "underground economy" in Vietnam today*”; Vietnam Peace and Development of Foundation (2020) with “*A look at the underground economy in Vietnam*”; Nguyen Vinh Hung (2023) with “*Underground economy in the context of the fourth industrial revolution*”.

Internationally, typical works on the underground economy include: (2004) with “*Shadow economies around the world: What do we know?*”; Economichelp (2019) with “*Underground Economy - definition, problems and causes*”; Nguyen Vinh Hung (2023) with “*Characteristics of the underground economy in Vietnam*”; Dao Xuan Hoi, Nguyen Vinh Hung and Nguyen Duc Anh (2023) with “*Requirements and recommendations to ensure social security for people working in the informal economy sector in Vietnam*”.

While numerous studies exist on the underground economy, their scope has predominantly revolved around its characteristics, nature, and overall impact. However, specific and comprehensive research on the underground economy within the financial sector, particularly in the context of Vietnam, has been lacking. As a result, this article builds upon previous studies while filling the gap by conducting surveys and assessments of the present state of the underground economy in the financial sector. Furthermore, it explores the legal framework governing the underground economy in Vietnam's financial sector.

3. Methodology

To undertake the research on the laws governing the management of the underground economy in Vietnam's financial sector, the authors employ various traditional research methods from the social sciences and legal sciences. These methods include legal analysis, assessing the effectiveness of regulations, and employing the methodology of comparative legal research.

In general, the above research methods used by the authors are closely, harmoniously, and scientifically combined to achieve the research objectives effectively. The combination of these research methods is carefully orchestrated, ensuring a cohesive and scientifically grounded study.

4. Results & Discussion

4.1. *The nature of the underground economy*

The underground economy is a common issue in the economy of every country in the world. **Economists have shown that “there are two economies that exist in countries including a formal economy and an underground economy”** (National Center for Socio-Economic Information and Forecast, 2011). **Or “underground economic activities are a fact of life around the world”** (Friedrich Schneider et al., p. 02). **“All countries in the world have underground economies”** (Vietnam Peace and Development Foundation, 2020). **“No government can completely prohibit the operation of the underground economy. It exists and develops according to the rule of "supply-demand": wherever there is demand, there will be supply, and the higher the demand, the greater the supply”** (Vietnam Peace and Development Foundation, 2020). **Therefore, the existence of the underground economy in Vietnam is an objective necessity.**

When it comes to “analyzing the nature of the underground economy” (Nguyen Vinh Hung, 2020, p. 44 - 45), “this is an economic activity because it creates wealth and income for the performers” (Nguyen Vinh Hung, 2023, p. 18). The underground economy is perceived as a market where all commercial activities are conducted without taxation, laws, or commercial rules (Vietnam Open Educational Resources, 2017). There is also a perception that “the underground economy refers to economic activities conducted to generate profits for the stakeholders involved, but typically not reported or registered with state management agencies” (Nguyen Vinh Hung, 2019, p. 107). Therefore, the underground economy can contribute significantly to economic and social development, but it also entails numerous adverse impacts. The underground economy results in “tax revenues losses; allows the consumption of harmful goods; lowers health and safety standards; strengthens the power of criminal gangs; erodes societal trust and leaks taxes; provides inadequate information to the Government leading to inaccurate policies” (Economichelp, 2019). Thus, “most societies attempt to control these activities” (Friedrich Schneider et al., p. 03) of the underground economy.

4.2. The current situation of the underground economy in the financial sector and legal system governing the underground economy in Vietnam

Finance is a key issue for the development of an economy. In other words, this is a place where capital is transferred from surplus individuals to those in need of capital, with the common goal of reaping profits. The financial market is comprised of three main components: the money market (operations of banks, financial companies...), the foreign exchange market (currency trading), and the stock market (capital market). Therefore, managing the financial market requires a multitude of legal regulations.

Currently, finance is one of the most intricate and complex legal fields in the Vietnamese legal system. Finance encompasses various interconnected legal areas. However, finance in Vietnam is divided into multiple sectors primarily based on the managing authorities and participating actors. The composition of the financial system in the Vietnamese economy includes public finance (state budget funds), corporate finance, personal finance, insurance, credit, and more. Nevertheless, the fields of insurance, credit, and personal finance are seldom mentioned as they do not hold significant economic value. Typically, they fall under the purview of insurance, banking, or family law. Therefore, when referring to the financial sector, it mainly pertains to “public finance” and “corporate finance”. These are also the two areas of finance greatly influenced by the underground economy.

*** Public finance sector:**

Public finance is a highly complex field that encompasses different revenues and expenditures of the state. When referring to public finance in Vietnam, it is synonymous with the state budget. This includes revenue sources such as taxes, fees, levies, auctions of land use rights, interest payments to host countries, and foreign aid to the Vietnamese government. Additionally, public finance includes the system of the budget cycle (budget process) that takes place annually in Vietnam. In this context, the underground economy can manifest itself in various stages of the budget cycle. For example, the corrupt activities of individuals holding positions and power in various levels of government in the allocation and use of budget funds (“corruption fuels the underground economy” (Vietnam Peace and Development Foundation (2020)); or the intricate administrative procedures that prompt citizens and businesses to seek aid and support, thereby creating opportunities for bribery; or the cumbersome processes that impose pressure and hardships on finance officials (such as officials involved in land use rights certificate processing); individual tax evasion is also indicative of the underground economy... Furthermore, the swift

advancement of social media and the emergence of the sharing economy has led to numerous content creators on social platforms producing entertainment, educational, and recreational programs that yield substantial economic gains but “intentionally evading taxes on substantial incomes obtained through social media” (Vietnamnet Electronic Newspaper, 2020) has also become quite common in Vietnam recently.

Concerning the legal system governing the underground economy in the public finance sector, Vietnam follows a legislative approach that often subdivides branches of law and even groups of legal regimes can be formed into a law. As a result, Vietnam has numerous laws, and typically, each area is primarily regulated by its respective specialized law. For example, activities related to the establishment, distribution, and use of the state budget are regulated by the Law on State Budget. However, the Criminal Code is the only law governing criminal offenses and their corresponding penalties. Therefore, all criminal acts in different fields are subject to the governing scope of the Criminal Code. The underground economy encompasses economic activities in many different sectors, therefore, there is no specific law governing the underground economy. In other words, Vietnam does not make a law specifically titled "Management of the underground economy." When actors engaged in the underground economy violate the law in each specific field, their offenses are determined based on the legal provisions of those respective fields and cross-referenced with the types of offenses specified in the Criminal Code. The court then imposes corresponding penalties on the offending actors. Therefore, for laws on public finance as well as corporate finance, the legal framework governing the underground economy consists of the provisions within the existing laws (such as statutes and legal documents providing guidelines for enforcement) in Vietnam. Specifically, for public finance, these important laws include:

- Law on State Budget 2015.
- Law on Personal Income Tax 2007 (amended and supplemented in 2012, 2014)
- Law on Enterprise Income Tax 2008 (amended and supplemented in 2013, 2014).
- Law on Value Added Tax 2008 (amended and supplemented in 2013, 2014, 2016).
- Law on Special Consumption Tax 2008 (amended and supplemented in 2014, 2016, 2022).
- Law on Import and Export Tax 2016.
- Law on Tax Administration 2019.
- Law on Auditing 2015 (amended in 2019).
- Law on Fees and Charges 2015.

- Other relevant Decrees, Circulars, and Decisions.

In principle, when the subjects of the underground economy violate those regulations, they will be processed based on the offenses stipulated in the 2015 Criminal Code (amended and supplemented in 2017)

***Cooperate finance sector:**

Laws on corporate finance regulate activities related to the establishment, distribution, and utilization of financial resources of different types of businesses. It encompasses the legal provisions pertaining to financial matters of various types of enterprises in Vietnam. These include joint-stock companies, single-member limited liability companies, multi-member limited liability companies, partnerships, private enterprises, cooperatives, and individual business households, all of which are subject to the laws on corporate finance.

The underground economy in the corporate finance sector in Vietnam is currently manifested through activities such as creating fake businesses to engage in “trading value-added tax (VAT) invoices” (Nguyen Vinh Hung, 2023, p. 141) to embezzle money or obtain tax refunds; selling goods without issuing invoices or documentation; declaring lower revenue than the actual revenue, and so on. A typical example of the underground economy in the corporate finance sector is when individuals establish businesses to take advantage of the VAT invoicing privilege, but intentionally trade these invoices, causing serious harm to the State and violating the law. For example, a new motorbike was smuggled. To Register this motorbike, a VAT invoice is required, therefore, so many people try to find ways to purchase VAT invoices. Where there is demand, there is supply. Not a few businesses have issued illegal invoices to gain illicit benefits. Furthermore, studies have shown that “the largest underground economic activities occur within the business sector because every business maintains two sets of accounting books, one for internal record-keeping and another for tax and revenue calculation, and the figures in these two books often differ significantly” (Vietnam Peace and Development Foundation, 2020). The practice of “transfer pricing” to reduce the amount of taxes owed to the state seriously affects the revenue of the state budget. Disputes between customers and companies arise when there are fraudulent acts related to bond issuances (Vietnam Electronic Finance Newspaper, 2022). Additionally, disputes among company members regarding capital contribution, management, and utilization of company funds are common underground economic activities in the field of corporate finance.

Regarding the legal system of corporate finance related to the underground economy, there are still important laws such as:

- Law on Enterprises in 2020 (amended according to law No. 03/2022).
- Law on State Budget 2015.
- Law on Accounting 2015 (amended in 2019).
- Law on Securities 2019.
- Laws on taxes, fees, etc.
- Other relevant Decrees, Circulars, and Decisions.

4.3. Some solutions to improve the legal framework and enhance the effectiveness of underground economic management in the financial sector

The underground economy can lead to numerous adverse impacts on the economy and society, such as “creating an unequal and unreliable business environment, disadvantageous to genuine businesses” (Nguyen Dinh Cung, 2003). Specifically, as analyzed above, in the financial sector, the underground economy causes severe consequences. Regarding the goals of the Vietnamese government, “having a healthy and unified financial system is a requirement for the state in the management of the national economy” (Nguyen Ngoc Chi, 2022, p. 111). Besides that “in the context of judicial reform in Vietnam, the issue of complete law system and expanding the freedom to business has always been paid special attention by the Party and Vietnam State” (Hung , N. V, et al., 2022, p. 01). Therefore, the legal system regarding finance needs to be improved to effectively prevent the adverse effects of the underground economy on the economy. Consequently, the authors suggest that to mitigate the negative impacts of the underground economy on Vietnam's financial sector, the following solutions should be taken into account:

Firstly, prevent and address underground economic activities in the public finance sector:

As mentioned, public finance directly relates to the establishment, management, and utilization of state budget funds, which are implemented in all government agencies. This includes budgeting and budget execution at all administrative levels (commune/ward level, district level, province/city under central authority level, and central level). If individuals entrusted with the task and authority of budgeting and budget execution, intentionally exploit and embezzle funds, it constitutes illegal underground economic activity. For example, in a mountainous locality in Vietnam where a road was recently eroded by an estimated 1,000 cubic meters of soil and rock. However, local transport officials intentionally manipulated the statistics, falsely reporting over 6,000 cubic meters to obtain additional compensation from the state.

Similarly, agricultural and rural development officials in certain localities deliberately falsified damage caused by a storm to irrigation systems or floral crops on farmland. Therefore, it is necessary to resolutely prevent and thoroughly handle illegal underground economic activities in the public finance sector in order to help stabilize and sustain Vietnam's financial system and contribute to enhancing the trust of the people in the leadership of the state apparatus. Based on this, the authors believe that amendments and supplements are needed to improve the Law on State Budget 2015 in the direction of strengthening the authority of those in charge at all levels of the budget, accompanied by increasing responsibility and stricter penalties when damages occur. Moreover, it should be considered to establish and regulate a mechanism of “unlimited liability” regarding assets for those in charge of all levels of budgets if their actions result in economic damages to the state during their tenure, and they must be held accountable. In other words, if the person in charge of a budget level is negligent in managing the state budget in their locality or intentionally exploits their position and authority for personal gain or the benefit of close associates, they should be required to use all of their personal assets to fulfill the obligations of compensating the damages to the state and, in addition, face criminal liability. Determining the assets of individuals in positions of budgetary authority who are subject to unlimited liability can pose significant challenges due to the complexity of the task. Often, these individuals are not officially listed as owners of the assets in legal documents, making the process even more difficult. In light of this, the authors assert that strengthening the supervision of asset declaration by officials responsible for the budget at the local level is crucial. Additionally, it is important to pay attention to the feedback of the people and regard whistleblowing information regarding embezzlement, corruption, and personal assets of officials. Furthermore, high-level leadership agencies of the Party and the State in the anti-corruption and anti-waste front, such as the Central Inspection Commission, the Central Internal Affairs Committee, and the Government Inspectorate, should expand channels to receive whistleblowing information and constructive opinions from the people regarding the actual assets of the leaders at various levels of budget in the localities. Furthermore, it is imperative to decisively tackle the problem of power and authority abuse by certain officials in tax agencies and people's committees at all levels. This abuse often leads to inconveniences for the general public when dealing with administrative and tax procedures. By addressing this issue head-on, Vietnam can effectively combat corruption and effectively tackle the challenges posed by the underground economy in the public finance sector.

Second, limit the illegal underground economy in the field of taxation and fees:

The phenomenon of transfer pricing by businesses or tax evasion by individuals and organizations can be attributed to both subjective and objective factors. These activities constitute illegal underground economic practices that seriously damage the state budget. In addition to propagating and disseminating that people have a sense of responsibility for their tax obligations, the authors suggest a reevaluation of the existing tax and fee calculation methods in Vietnam should be conducted. The reason is that there are numerous cases where taxes and fees still overlap. For example, when passing through toll booths owned entirely by the state located on national highways (not the sections operated under the BOT form), vehicle owners are required to purchase tickets at the booth. What is worth mentioning here is that toll tickets are a form of fee, but the price of the ticket includes an additional value-added tax (VAT). As a result, taxes are imposed on fees even though they are revenues for the state budget. Another example is the situation where super luxury cars imported into Vietnam or the price of fuel face multiple layers of taxation. This leads to the phenomenon of importers finding ways to evade taxes, while a considerable number of individuals declare lower taxes to avail themselves of tax reductions. Or the “practice of dual pricing in real estate transactions” (Nguyen Vinh Hung, 2023, p. 77) is also driven by buyers and sellers aiming to minimize tax obligations.

Furthermore, the collection of registration fees for cars and motorcycles is not truly fair, reasonable, and aligned with the actual market prices. Tax authorities apply pre-existing tax rates without adjusting them to match the actual market prices. Moreover, “the provisions of the personal income tax law regarding tax rates and dependent deductions are excessively slow and do not keep pace with the inflationary trends, the development situation, and the income of the people” (Nguyen Vinh Hung, 2020, p. 28). This leads to a situation where taxes seem to only target individuals who receive salaries and fixed incomes within organizations, institutions, and businesses. In other words, it overlooks a significant number of individuals with higher incomes who are engaged in underground economic activities such as construction workers, domestic helpers, and food and entertainment businesses, and entertainment. Therefore, the authors propose the need to review and revise the current mechanisms for calculating taxes and fees so as to limit underground economic activities that cause damage to the state budget and create inequity among taxpayers. In this regard, the law on personal income tax needs to reconsider the taxable income threshold and the level of dependent deductions. Currently, the threshold for taxable income starting at 11 million VND per month or 132 million VND per year is not reasonable in relation to the average income of Vietnamese citizens.

Additionally, it is essential to reevaluate and refrain from imposing personal income tax on the transfer transaction of land use rights, as this practice not only puts the people at a disadvantage but also promotes dual pricing in real estate transactions. This measure will also help reduce instances of tax evasion and minimize disruptions caused by tax authorities. In fact, there is an emerging perspective advocating for a “reduction in personal income tax for real estate transactions” (Vnexpress Electronic Newspaper, 2022). Furthermore, the calculation of taxes and fees for all goods and services needs to be reassessed, and any overlapping taxes and fees should be eliminated. By undertaking these measures, it is possible to curb illegal underground economic activities associated with tax and fee evasion and, at the same time, ensure fairness and rationality for all citizens in society.

Third, addressing the illegal underground economic activities in the field of corporate financials:

As known, “tax evasion activities undermine the economic management order of the State in the tax sector and affect the state budget revenue” (Nguyen Ngoc Chi, 2022, p. 95). Among them, the practices of enterprises trading VAT invoice trading and transfer pricing have a serious impact on the state budget revenue. Therefore, the authors believe that it is necessary to tighten the "pre-check" process when establishing businesses. Accordingly, strict examination of the industry and business sectors registered by the enterprise must be conducted, followed by continuous "post-check" activities to verify if the businesses are operating in accordance with the registered industry and sector or not. If an enterprise registers an enterprise line or sector but does not engage in that sector for a certain period of time, the operating license for that sector may be revoked. Regarding the situation where enterprises issue bonds to raise capital but contain significant risks, as seen in the cases of “Van Thinh Phat, Tan Hoang Minh” (Vietnam Economic News, 2022) it is necessary to reconsider the conditions for bond issuance under Clause 2, Article 15 of the Law on Securities 2019 and the regulations on private bond issuance in the Law on Enterprise 2020 (amended in 2022). It is possible that, in the desire to facilitate capital mobilization for businesses, the laws stipulate relatively favorable conditions for securities issuance. However, this leads to many businesses having taken advantage of legal loopholes in capital mobilization, which can pose significant risks to investors. As a result, underground economic activities have had a significant impact on investors and seriously affected the long-term stability and sustainability of the Vietnamese stock market. Therefore, according to the authors, it is necessary to strictly regulate the conditions for bond issuance under Clause 2, Article 15 of the Securities Law 2019 in a way that requires businesses to have been operating for

at least 5 years and have no accumulated losses. At the same time, businesses must have a charter capital of at least 50 billion VND in order to be allowed to issue bonds, with the amount of capital mobilized from bonds not exceeding 50% of the total assets of the company. Such regulations contribute to limiting the establishment of businesses and the misuse of businesses that can jeopardize the safety and stability of the financial market.

5. Conclusion

The underground economy in Vietnam's financial sector is currently quite complicated and intricate. Despite having a multitude of regulatory laws on the underground economy in the financial sector, Vietnam still faces numerous limitations and deficiencies. This provides a basis for the exploitation and misuse of the underground economy in the financial sector, resulting in significant losses to the state budget and affecting the legitimate rights and interests of the people. Therefore, it is necessary to promptly address legal loopholes so that the underground economy in the financial sector contributes positively to the economic development of Vietnam without causing negative impacts or adverse effects.

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