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EU's Legal Framework on Personal Income Tax and Suggestions for ASEAN to Protect the Rights of Taxpayers

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Abstract

The European Union (EU) has a complete and standard legal system, which is always the object of research and evaluation to learn for many countries. The EU comprises countries with an appropriate personal income tax system to ensure human rights. To ensure equality and human rights, and development in every member state, the EU seeks to harmonise personal income tax law, an area primarily of national jurisdiction. This article aims to study and evaluate some basic regulations that the EU has issued to create compatibility of the personal income tax law of the member states, better ensure human rights and promote the development of the Union. Based on the experiences of the EU, the article analyses some implications for the harmonisation of personal income tax law within the ASEAN from the perspective of international private Law.

Keywords: Personal income tax; legal harmonisation; EU, ASEAN

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I. INTRODUCTION

Personal income tax (PIT) is a direct tax from taxpayers' incomes, strongly impacting their benefits, so it causes reactions from this group. These are natural and unavoidable reactions. Taxation of personal Income reduces livelihoods, and if the tax rates are high, inappropriate or oppressive, they can be easily harmful to human rights. Therefore, all countries worldwide have paid particular attention to applying PIT, the stipulation of principles, and the PIT rate. The EU and each EU member state are not an exception. To identify the role of PIT in terms of ensuring human rights and promoting development in the EU, it is necessary to analyse PIT.

Many experts have considered the concept of personal income from different angles. Black's dictionary defines PIT: Income is the difference between the payments received and the expenses. This type of income includes income from labour (wages, salary including pensions, allowances including scholarships) and financial Income (savings interest, interest on securities trading, income from real estate rental) and other Income (bonus).[1]

According to Haig.R.M[2] and H.C.Simons[3], Income consists of two parts: "the first part is the net worth and the second is the consumer value over a certain period".[4]However, this perspective is difficult to apply to indicate value-added income. Earnings are often under the potential form, unimplemented until the ownership has been transferred. Meanwhile, the first principle of using PIT is to levy the actual benefit received but not the potential condition. The income of individuals stems from various sources, including production and business activities, labour, existing assets, capital, income from transference, inheritance, and donation. Nevertheless, it should be noted that not all income is taxable income. The only particular type of income that meets specific requirements is taxable income.[5]

Usually, taxable income must be lawful, generated common, and managed by the State. Legitimate income plays a significant role in determining the amount of payable PIT. It is also the foundation for indicating the source of income that is not legal and has an unclear origin. There are many sources of income that are considered illegal. According to FATF, Organization for anti-money laundering and counter-terrorism

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[1] Henry Campbell Black, *Black's Law Dictionary 1968*, Revised 4d edition (West Publishing Company, 1968).

[2] Robert Murray Haig, Thomas Sewall Adams, and Thomas Reed Powell, *1921, The Federal Income Tax* (Cornell University Library, 2009), 27.

[3] Henry C. Simons, *Personal Income Taxation: The Definition Of Income As A Problem Of Fiscal Policy* (Chicago: University of Chicago Press, 1938), 50.

[4] Haig, Adams, and Powell, *1921, The Federal Income Tax*, 21.

[5] H.T. Hai, 'Some Legal Issues on PIT in Viet Nam – Situation and Solutions' (Master's thesis on law, Hanoi Law University, 2014), 9.

financing. Illegitimate incomes are usually prescribed in Law[6] or guided by an international anti-money laundering organization.[7]

PIT aims at a natural person, not a legal entity. However, determining the correct legal status of individuals with taxable income is very important. It relates to national policies and laws regarding income arising in other countries. Individuals concerning a sovereign state can be national citizens, foreigners, or stateless persons. To identify the level of income regulation for foreigners, governments worldwide have introduced the concepts of "resident individual" and "non-resident individual". Many countries define a resident as a person who regularly lives for 183 days or more in a year in a country. For example, in France, a person is considered a resident if France is his primary residence and professional practice or has beneficial centres in France or is regularly present in France for more than six months. France is where most of his income is generated. In Japan, the Law provides explicitly three cases: permanent resident (a permanent resident in Japan is taxed on all income but must have resided in Japan for five years or more); a non-regular resident (a person who does not intend to reside permanently in Japan but has resided in Japan from 1 – 5 years, he will be taxed on income generated in Japan); non-residents (who have no place of residence or live in Japan for less than one year, must have a labour contract or other proof of documents) are not required to pay income tax. In the US, residents are US citizens and people living in the US for 330 days and nights. In Hong Kong, regardless of residency, everyone living in Hong Kong must pay PIT if the income is generated in Hong Kong. A non-resident individual does not meet the residency requirements. The most common and basic principles of PIT law are the principle of fairness, balancing interests between taxpayers and taxing countries, and avoiding double taxation indirect tax. In the context of sustainable development, no one is left behind.

Additionally, in modern society, the application of income tax is associated with ensuring taxpayers' property rights and, therefore, protecting human rights. Human rights protection is emphasised in the policies and laws of countries toward sustainable development goals. According to Ducan Bentley, taxpayers' rights are essential to establishing an effective tax process.[8] The appropriate model for implementing taxpayers' rights is the best way to manage taxes.

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[6] The Socialist Republic of Vietnam, 'Vietnam: Law 07/2012/Qh13: Prevention Of Money Laundering', 07 /2012/QH13 § (2012), 1 Article 4.

[7] FATF, 'The FATF Recommendations' (FATF-GAFI, March 2022), https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html.

[8] Duncan Bentley, *Taxpayers' Rights: Theory, Origin and Implementation* (Kluwer Law International, 2007).

II. LAWS ON TAXATION OF PERSONAL INCOME IN SOME EU MEMBER STATES

All EU member states have a legal system on PIT. This regulation is where member states aspire to maintain and apply national jurisdiction. The PIT legislation of the EU member states is different in many respects. The differences are presented below:

A. Identification of Taxpayers in PIT

All countries in this paper identify their national citizens; foreigners with income generated in their territories are PIT payers.

According to French Law, French citizens or foreign citizens residing in France are subject to PIT. Among the individuals are taxpayers and residents with a precise taxation mechanism on PIT prescribed by laws. In national laws, an individual is considered to reside in France if he meets at least one of the following criteria:

- His or his family's residence is in France, or France is the primary residence.
- Professional practices conducted in France.
- France is the centre of economic interests.

Under most bilateral treaties on tax that France has with other countries, tax residence is first determined by the country's Law that has the right to collect taxes. If the individual is a lawful resident under the laws of both countries, the treaties stipulate the method by which the taxpayer's residency is determined. This breakthrough approach often includes criteria of importance, such as permanent housing, personal relationships, economic relationships, permanent residence, and nationality. If these criteria are not present, the competent authority will decide.

The Law of this Nordic country regulates that everyone who lives here must pay taxes. The Law focuses on "everyone who works pays PIT" in Sweden. Living in Sweden is understood as living with registration and paying taxes on wages and other income.[9] Everyone who wants to stay in Sweden for more than a year must do civil registration. In determining taxpayers, Swedish Law applies the five-year principle. According to this principle, Swedish citizens and foreigners who have resided in Sweden for at least ten years are considered a habitual abode for tax purposes until all significant connections to the Swedish citizens are proven terminated. Five years after the taxpayers leave Sweden, the tax authorities must prove their ties to Sweden still exist.[10]

PIT laws in Sweden stipulate cases where permanent residents here are sent to work abroad or are employed abroad for at least six months and are not required to pay income taxes if this income is generated from the abroad work under one condition: PIT has been paid in a foreign country. These people do not stay in Sweden for more than

[9] Skatteverket, 'Living in Sweden', text, skatteverket.se, accessed 25 December 2021, https://skatteverket.se/servicelankar/otherlanguages/inenglish/individualsandemployees/livinginsweden.4.7be5268414bea064694c3f8.html.

[10] PWC Worldwide Tax Summaries, 'Sweden - Individual - Residence', Taxsummaries, accessed 25 December 2021, https://taxsummaries.pwc.com/sweden/individual/residence.

seven or 72 days per year. If they are exempt from PIT in the foreign country of employment, PIT will be waived in Sweden if they are abroad for no less than 12 months. Any income not taxed under the foreign country of employment laws must be paid in Sweden.

In the Federal Republic of Germany. Unlike the laws of France and Sweden that both listed and identified the signs of the taxpayers of PIT, the Federal Republic of Germany law takes housing as the criterion for determining the place of residence. The approach of German Law is that anyone must have a home, maintain and use it, and therefore reside there. Section 8 of the German Taxation Code[11] states that anyone is "regarded as a resident in a certain place if he maintains the house in a condition deemed to be maintaining and using it". Similarly, Section 9 of the German Taxation Code prescribes criteria to indicate the concept of habitual abode. Habitual abode is regulated to determine the taxpayers. This concept is used in taxation agreements to resolve conflicts in case people have different places of residence in two countries. German Law regulates this concept in Taxation Code. A person shall be deemed to have a habitual abode in a place where there are indications that his stay in that place or in that region is not merely temporary. A continuous stay of not less than six months is a condition for applying for the Taxation Code. This period of not less than six months is not applied to the case of staying purely for visiting purposes, resting, medical treatment or other similar personal purposes but not more than one year.

An overview of some legal provisions in Sweden, France and Germany on taxpayers shows that although there are differences in specific criteria, habitual abode and income from activities are the most basic and standard bases to determine PIT taxpayers.

B. Identification of Personal Income

Personal income is generated from all different sources, either within the taxing country or not within the taxing country, and is reviewed and considered for personal income taxation.

In the French Republic, the Law stipulates that PIT is the tax levied on an individual's total income in a year. PIT is levied annually on the taxable income of the taxable household in a given calendar year, declared in the following year. Unless otherwise stated, all income is aggregated to identify taxable net income regardless of source. However, the calculation method of PIT allows for adjusting the tax scale according to specific circumstances. For example, the 2013 Budget Law revised the tax regime for investment income (dividends and similar Income, Income from securities) under a progressive income tax scale.[12]

The Law also prescribes that non-resident individuals must pay income tax on income generated in the territory of the French Republic. According to the treaties for

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[11] Federal Law Gazette, 'The Fiscal Code of Germany' (2002), Section 8, Second Chapter.

[12] Public Finances Directorate General, 'Overview of the French Tax System', *Impots.Gouv.Fr* (blog), 31 December 2016, https://www.impots.gouv.fr/portail/files/media/1_metier/5_international/french_tax_system.pdf?l=en.

the avoidance of double taxation, regardless of their nationality, non-residents in France are only subject to a tax on their income generated from the sources in France. According to Article 164B CGI, only the following are considered income from sources of French.[13]

- Income from property located in France or from the rights relevant to that property;
- Income from transferable securities of France and all other securities invested in France.
- Income from business interests in France.
- Income from professional activities, salaries, or for-profit activities in France.
- Capital obtained from the transfer for considering the value of property and profit derived from transactions explicitly made by real estate dealers where they are involved in the businesses operating in France and the properties located in France, property rights relating to them or shares in unlisted companies whose assets consist primarily of properties and those rights.
- Capital gains from the transfer of shares in companies having registered offices in France.
- Funds, including wages relating to artistic or sports performance, donated or used in France.

The Personal Income Taxation Law specifically regulates taxable and non-taxable Income[14] in Bulgaria. According to Article 6 of the Law, taxable incomes include:

- Income from other sources, income from employment,
- Income from business activities, self-employment.
- Income from other business activities
- Income of resident individual from taxation or other payments received from providing property for use;
- Income of resident individuals from the transfer of the rights of land use.

Certain incomes origins from Bulgaria paid to a non-resident individual will be levied one-off taxation[15]:

- Compensation for losses and damages caused by nature.
- Scholarship to study in the country and abroad.
- Investment gains.
- Technical aid fee
- Incomes from management and supervision during the participation in the business management and monitoring agencies.
- Income from buying, selling, exchanging and transferring fixed assets.
- Income from transfer, purchase, sale and exchange of shares.
- Income from compensation stocks and other investment assets.

[13] French Republic, 'Code Général Des Impôts(GCI)' (2020).
[14] Republic of Bulgaria, 'Income Taxes on Natural Persons Act of Bulgaria 2007' (2007), Chapter One, Article 6.
[15] Republic of Bulgaria, 'Income Taxes on Natural Persons Act of Bulgaria 2007' (2007), Chapter One, Article 7.

C. Regarding Non-Taxable Incomes and Deductions

Income deductions for house tax: 10% withholding is allowed from rental income. In Bulgaria, the PIT law stipulates quite clearly this issue. Deductions include social security contributions, health insurance, voluntary insurance, and a deduction for people with disabilities. While Bulgaria identifies the deductions, Sweden stipulates that the total deductions do not exceed 50.000SEK/year.[16] These regulations have also recognised different provisions in the Vietnam Law on PIT.

Deductible tax credits are granted, for example, for childcare, including hiring caregivers, for sustainability-related and support equipment at home. The French Republic prescribed rather specifically the deductions when calculating taxable income. The deductions are currently listed in the CGI's interest, such as donations to charities and public utilities, dependent children's schooling costs, and corporate capital subscriptions of small and medium enterprises.

The total benefit derived from some tax deductions is listed fully (total deduction, tax breaks and credits) has been limited. Therefore, the total tax deduction based on expenditure or investment conducted in 2016 cannot present a tax reduction of more than €10,000.[17]

However, the total amount of tax reduction is subject to the limits set by the Law, usually capped at €10,000, plus the tax relief resulting from offshore investment and/or capital registration of sponsoring companies "Sofica" to the cinema and audio-visual industry, which is limited to an income tax relief of €18,000.[18] One of the points to be concerned about is whether the income from the deposit is subject to PIT or not. This is stipulated differently in different countries. The most typical example is France which levies an income tax on dividual deposits.[19]

D. Tax Rate

Hungary imposes a tax rate of 16%. This rate is relatively low because it applies to all types of income. This does not necessarily mean that Hungarians have a lower tax burden. Passive income from dividends, interest, and rental properties is also taxed at 16%. Hungary provides a deduction from schooling and professional travel expenses, and families receive a deduction for each child. Hungary considers spouses to be separate taxpayers. Social insurance contribution is 18.5% of an employee's income.[20]

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[16] Republic of Bulgaria, Article 7.
[17] French Republic, Code général des impôts(GCI).
[18] French Republic.
[19] Public Finances Directorate General, 'Overview of the French Tax System', *Impots.Gouv.Fr* (blog), 31 December 2016, https://www.impots.gouv.fr/portail/files/media/1_metier/5_international/french_tax_system.pdf?l=en.
[20] Financial Library, 'The Nations Have the Highest PIT to Singles and Families', accessed 25 December 2021, https://financial-lib.com/vi/the-countries-with-the-highest-income-tax-rates-for-singles-and-families/.

In Sweden, individuals must pay national and local income taxes. In 2010/2011, the PIT rate in Sweden varied between 54% and 61% across localities; 57,77% is the average tax rate.[21]

- National income tax rate: 25%
- Average local tax rate in 2010: 31,56%
- Average tax rate: 57,77%

In Europe, specifically the countries in the European Union, the PIT rate is at the highest level on a global scale. Many reasons explain this: countries' governments pay special attention to direct taxes, and PIT is typical.

E. Methods to Manage Personal Income Tax

The French Republic: Article 60 of the 2017 Budget Law no. 2016-1917, dated December 29 2016 established a system of withholding at source for PIT, effective from January 1 2018. This system aims to modernise income tax collection. The system of deductions at source is implemented as follows: for salaries, wages, pensions and alternative income, the tax will be withheld at source by the payers (employers, pension fund, funds, or social welfare agencies); for taxpayers with income from self-employment, property rental and some other types of income, tax administration agency will collect taxes of the current year by direct debit to the taxpayers' bank accounts. Taxes due for the current year will be made when the taxpayer receives their income.

Regarding the tax year, Bulgaria and Sweden define the tax year as the calendar year[22], similarly to France and Germany. The fascinating point is that the taxation of PIT in some countries is carried out both in the central government (to form the central budget/federal budget) and the local government. Sweden is an example of this case.

An overview of the PIT legislation in EU member states leads to the following conclusions:

Firstly, PIT law is an area of national jurisdiction. The EU does not have the authority to issue PIT legislation that applies to all member states. Although the EU is a supranational institution, tax is an aspect that member states reserve for national jurisdiction when signing the TEU agreement. Sijbren Crossen commented that "PIT varies widely across EU member states in determining tax rates, limits and income level as the differences focus on the different perceptions of what constitutes the taxation background, different tax rates, tax arrears and tax deductions".[23] Hence, it is not easy for the EU to overcome the discrepancies arising from policies and laws on income tax, particularly taxes. Tomasz Wołowiec and Aleksander Suseł argue that PIT in EU member states differs in 7 aspects, including (1) Tax-free income levels for unemployed spouses of taxpayers and their children that they are raising; (2) Co-taxation or not for married couples who are both taxable; (3) Single-family taxation; (4) Deducting

[21] PWC Worldwide Tax Summaries, 'Sweden - Individual - Residence'.
[22] Republic of Bulgaria, Income Taxes on Natural Persons Act of Bulgaria 2007, Chapter Three, Article 15.
[23] Sijbren Cnossen, 'Tax Policy in the European Union: A Review of Issues and Options', *FinanzArchiv / Public Finance Analysis* 58, no. 4 (2001): 582.

construction expenses from the cost of raising children in the situation that need to be nurtured; (5) Size and scope of tax bracket; (6) Mechanism for determining allowable and deductible expenses; (7) The system of preferences depends on the family's circumstances.[24]

Secondly, although EU member states share many similarities in tax legislation, there are many foundational differences in identifying taxpayers, tax rates, and tax administration. For example, the level of taxable income and the source of income have many differences in the current legislation of the EU member states.

Thirdly, the EU is a typical institution for regional integration in many aspects, including institutionalisation. Integration leads to free migration within the EU and unlimited labour resources and markets. It is common for EU citizens to live in one member state but work in another. This fact results in difficulty determining the "residence" and "permanent residence" criteria for PIT collection. There are quite a few legal conflicts in the field of PIT law. Sijbren Crossen emphasised that the tax policy of one member state may reach out to or impact another negatively or positively. Similarly, different capacities to secure the benefit of the residents could harm the distribution of factors of production across the Union. Furthermore, separate tax regimes increase administrative complexity and compliance and the costs for governments and taxpayers, it also prevents member states from having redistributive tax policies.[25]

Fourthly, stemming from the need for integration, preventing negative impacts of tax policies among member states, based on the TEU and TFEU, the EU has the needs and foundation to harmonise the Law on PIT particularly and on tax generally.

Fifthly, although the PIT legislation in EU member states has many discrepancies, due to the integration process, with the establishment of the EU, there have been many development steps towards the common to limit the competition of the tax system. The enhancement of national competitiveness through the tax system will negatively affect the overall development of the EU. Due to this matter, EU member states have carried out tax reforms within their scope, aiming for the similarities and effectiveness of PIT in particular and other taxes in general.

III. HARMONIZATION OF PERSONAL INCOME TAX LEGISLATION IN THE EU

A. The Role of Harmonization of Personal Income Tax Legislation in the EU

[24] Tomasz Wołowiec and Aleksander Suseł, 'Harmonization of Personal Income Taxation and Process of EU Integration' (6th International Scientific Conference, Vilnius, 2010), 760.
[25] Cnossen, 'Tax Policy in the European Union: A Review of Issues and Options', 467.

Harmonisation of tax legislation in the EU is closely linked to the concept of a single market, whereby the requirement of equal rights for each market participant must be met. Practice shows that the subjects compete mainly on price; therefore, the factors affecting prices should be similar in all member countries (indirect tax harmonisation). Tax harmonisation is the process that leads to standardising tax systems in different countries. This process aims to achieve a state where tax issues do not affect the flow of goods, services and capital goods between countries. Harmonisation is needed when differences in tax systems between specific countries lead to decisions by one or more countries that have a particular impact on other countries. Therefore, it is necessary to harmonise the tax systems of different countries and ensure that their function is consistent with the economic objectives of the EU. Tax harmonisation is an essential element of economic integration. Its degree is closely related to the degree of the integration process.[26]

The requirement for harmonisation of direct taxes, including personal income tax, was not explicitly stated in the European Economic Community Treaty. The legal basis for initiatives in the harmonisation process is Article 100 of the Treaty, which provides for harmonising regulations that directly affect the formation and operation of the single internal market. Direct tax harmonisation includes various income tax provisions that restrict the freedom of income stream in the form of dividends, interest, fees and capital among Community members.

The income taxation principles in EU countries are not as important an area of harmonisation as that of indirect taxation. The main difference is that direct taxes have less of an effect on the functioning of the common market. Furthermore, it is much more challenging to harmonise direct taxes than indirect taxes, both from a political, technical and legislative point of view. Only some aspects of corporate income tax are being harmonised, as they relate to international aspects of a company's operations that could cause potential discrimination between domestic and foreign companies and related to the avoidance of double taxation. Areas of personal income tax harmonisation may include taxation of savings income paid as interest and mutual administrative assistance in tax matters. The main factor distinguishing direct taxes is the urgency in harmonising legislation. Direct taxes have less of a negative effect on the functioning of the single market, so their harmonisation starts later, lasts longer and does not go as far as indirect taxes. Regulations on direct taxation in the European Union are left to the member states decisions. These countries enjoy considerable freedom in presenting their solutions in this area. However, they must treat domestic and foreign operators equally regarding tax rates.[27]

Analysis of the impact due to tax differences, thereby serving as a basis for the harmonisation of the personal income tax law, can state some of the following factors:

[26] Tomasz Wołowiec and Janusz Soboń, 'EU Integration and Harmonisation of Personal Income Taxation', *Contemporary Economics* 5, no. 1 (31 March 2011): 36–46.
[27] Wołowiec and Suseł, 'Harmonization of Personal Income Taxation and Process of EU Integration'.

1) Impact of personal income tax on labour costs. High taxes increase labour costs because of low after-tax income and hence cause workers to need to raise wages, which complicates the company's competitive position and affects its profitability.
2) Personal income tax is an obligation. This case leaves taxpayers with a defensive response in the form of opportunities to shift the tax burden to other entities. The observational practice of taxpayers' reactions to tax obligations shows that it is much easier to convert the tax burden in the case of indirect taxes than indirect taxes (in this case, the standard technique of economic activity is limited).
3) The ability to transfer the tax burden differs for employees and employers. Increased labour costs will affect production costs, affecting the price of products/services. Opportunities for employers will depend on the type of goods/services being taxed and the realities of the market (competition), as determined by the degree of change in market demand. The flatness of demand for goods will make it easier for employers to pass the tax burden on to customers. A second possibility is to shift the tax burden to employees by reducing their wages. Opportunities here will be determined by the current state of the labour market, market openness, unemployment levels, and changes in the labour supply.
4) Measure the ability to transfer the tax burden. This measurement is difficult even during an economic shutdown because the impact of a tax increase can be hidden in prices, production costs other than wages, and producer profits. These difficulties are exacerbated in an open economy where the tax burden transfer mechanism affects the societies and economies of many different countries.

In the era of international economic integration, the tax burden transfer mechanism is also global in terms of taxes on income, labour, business activities, loan interest, and capital gains. The individual's decision to choose a salaried workplace (assuming no restrictions on the movement of labour) will be influenced by the proposed wage rate and the required taxes. Thus, income migration becomes natural as people head to locations where income and taxes are most beneficial. It is much easier for workers to change locations than for employers and entrepreneurs, as these individuals must adapt to the requirements of the country in which they operate (for the whole world). The corporate department or its division, subsidiary, thus, both labour and capital will benefit from tax harmonisation as it will simplify operations and create a more balanced environment that reduces the need to move to seek tax benefits. [28]

B. Some Challenges to the Harmonization of PIT In The EU

Harmonising member states' legislation has been of great interest to the EU. The EU has implemented many legislative efforts toward a unified or harmonised tax legal system. However, the harmonisation of tax legislation in general and especially PIT, a direct tax, have faced many challenges. This illustration is a process of adjusting tax relations arising

[28] Tomasz Wołowiec and Daniel Szybowski, 'Economic Dimension Of Harmonizing Personal Income Taxation In The European Union Countries', *International Journal of New Economics and Social Sciences (IJONESS)* 6, no. 2 (22 December 2017): 9–24.

in countries according to the principles and regulations that have been agreed upon and harmonised to pursue one main policy goal of relevant countries—as in other areas, harmonising tax laws focuses on eliminating conflicts and overcoming differences. The basic philosophy of harmonisation of tax laws is the creation of solid and unified legislation that underpins the efficient allocation of resources in countries with common development goals. In the case of the EU, it is the EU's development goal.

First, it is necessary to emphasise that the harmonisation of direct tax legislation was not concentrated during the European Economic Community (EEC) period. Therefore, when established, the EU had not yet inherited the harmonised legal provisions from the EEC. In the TEU and TFEU, there are many fundamental regulations promoting the harmonisation of laws, but there is also a lack of precise requirements for harmonising direct taxes, especially corporate income tax and personal income tax. When ratifying the TFEU agreement, the member states understood that direct taxes have no effect on the internal market and ignored the harmonisation of income tax. The TEU and TFEU have principles considered as a foundation of the harmonisation of indirect tax legislation to promote the formation of a common market. Article 100 of the TEU stipulates the EU's authority to enact rail and waterway traffic[29] laws.

Article 111 -113 TEU stipulates some principles on harmonising indirect taxes but does not mention direct taxes.[30] These sectors directly impact the formation and development of the EU internal market. "... It should be remembered that the principles of income taxes in EU member states do not constitute an important area for harmonisation as they do for direct taxes".[31]

Secondly, income tax relates to property individual's ownership. EU member states want to maintain jurisdiction over many issues related to ownership and property. PIT is the direct tax most closely associated with property rights. PIT has particular importance for many EU member states. According to Price Waterhouse Coopers (PCW) research, PIT accounts for a huge proportion of the tax system's contributions to the national budgets of many member countries. Specifically, PIT in Denmark accounted for 51.8% of the budget contribution from taxes, in Finland, it is 30.3%, in Sweden, it is 30.2%, Germany is 23.4%, and Italy is 26.3.[32] The legislation of most EU member states restricts the free flow of income beyond the borders under the forms of dividends, interest, and licensing fees to maintain budget revenues. The harmonisation of direct tax legislation includes PIT.

For this reason, harmonising the PIT and income tax law is much more complex than harmonising the Law on indirect taxes. This difficulty comes from the policy of the EU member states on maintaining the national jurisdiction regarding taxation in general and PIT in particular. On the other hand, it is noted that PIT taxpayers account for a

[29] EU member states, 'The Treaty on European Union- Maastricht Treaty' (1992), Article 100.
[30] EU member states, 'Treaty on the Functioning of the European Union' (1957), Article 111-113.
[31] Cnossen, 'Tax Policy in the European Union: A Review of Issues and Options', 578.
[32] PWC, 'Personal Tax in the European Union: How Much Do You Get to Take Home from Your Pay Packet and How Do Your European Colleagues Fare?' (Price Water House Cooper, edition 2009), https://www.pwc.pl/en/biuro-prasowe/pit_en.pdf.

substantial proportion of society and the politicians in the EU member states are very cautious about changes in the PIT system, especially tax rates.

Thirdly, the current legislation of the EU still entitles the decision-making rights on the issuance of policies and laws on tax generally and PIT, particularly for the Member States. Therefore, member states of the EU are very liberal concerning the regulation of their PIT laws. The huge differences in legislation in this field among member states make harmonisation much more complicated regarding technical issues, especially national interests. Specifically, harmonising PIT legislation by the EU requires the unification of member states, which is not easy to achieve. At the same time, the TEU and TFEU do not have foundational provisions for harmonising policies and laws on direct taxes, especially PIT. On the other hand, regarding economic goals, the harmonisation of the legislation on PIT is not as straightforward as the harmonisation of legal fields that directly affect the development of the EU, such as trade, investment, environment, school, and traffic.

Fourthly, the harmonisation of PIT legislations would face challenges due to the potential of conflicts between national laws and the Union's laws. These potential conflicts are likely to arise in respect of which of the countries where EU citizens emigrate have their nationality or their permanent residence or where they will collect the PIT, conduct PIT exemption or reduction for people in vulnerable groups, etc. As noted above, the role of PIT varies widely in each member country. While the Nordic countries have a high proportion of PIT in budget contributions from taxes, there are member states where PIT accounts for only 8.7% in Slovakia, 9.4% in Bulgaria, and 11.7% in Czech. The differences in the economic, social, and political effects of PIT among the EU member states will influence their willingness to harmonise legislation in this area. "*The harmonisation of direct taxes is mainly based on the following goals: avoiding tax evasion and eliminating double taxation. Maintaining harmonisation level of direct tax is necessary to prevent distortions of competition, especially in investment decision making*".[33] The harmonisation of legislation on taxes in general and PIT in particular in the EU is, on-trend, required by the integration process and the need for sustainable development. Tomasz Wołowiec and Aleksander Suseł highlighted the need and opportunity to harmonise PIT legislation in the EU as follows:

"The harmonisation of direct taxes (income) has not been appropriately considered because it is perceived that they do not affect the unified internal market. The problems related to direct taxation became apparent when integration took place, as the EU is more and more growing, leading to the migration of EU citizens and the development of multinational enterprises in terms of their size and scope and their financial flows (movement of capital and profits between the holding company and its subsidiaries located in different countries are affected).[34]

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[33] Sasho Kozuharov, Natasha Ristovska, and Jana Ilieva, 'Harmonization Of Tax Policies:Reviewing Macedonia And Croatia', *UTMS Journal of Economics* 6, no. 2 (2016): 264.

[34] Wołowiec and Suseł, 'Harmonization of Personal Income Taxation and Process of EU Integration', 760.

The EU has also made efforts to harmonise tax legislation. However, the results have not met expectations, especially regarding direct taxes. As mentioned above, member states enact tax legislation though obligated to consider the impact on other member states. This point, combined with the fact that countries want to maintain their policies and laws on direct taxes, has not promoted the harmonisation of PIT legislation in the EU.

C. Legal Instruments of the EU in the Regulation of Direct Taxes

The EU has issued several legal instruments to regulate indirect taxes such as VAT, import and export taxes, corporate tax, etc. However, not many legal instruments of the EU regulate direct taxes. Notably, the EU has not yet issued a tool to adjust PIT. Nevertheless, PIT as a direct and corporate income tax (CIT) always go hand in hand. Therefore, studying the legal instruments of the EU on direct taxes will also reveal many aspects of the harmonisation of PIT. Tomasz Wołowiec and Aleksander Suseł are right when focusing on income taxation but recognise this tax in a broader view because the tax in terms of macroeconomic concepts, PIT, and CIT are related.[35] It is easy to see this relationship between corporate Income and PIT. CIT is levied beforehand, and its tax rate tax calculation affects the income of employees in the enterprise, including leaders, workers and shareholders. Therefore, the harmonisation of PIT legislation should pay special attention to the tax rate and the competitiveness of the tax rate. Tomasz Wołowiec emphasised that the legal harmonisation of both factors still needs to consider three more elements, including (1) the impact of harmonising PIT on the national budget and the imbalance of public financial resources; (2) the impact of flexible labour mobility on the national economy; (3) The influence of changes of the tax system on the ratio between the indirect and direct taxes, CIT and PIT when these taxes are applied to attract foreign investment.[36]

Despite encountering challenges in tax harmonisation, especially PIT, the EU has also formed several harmonisation instruments for direct taxes. There are 4 Directives of the Council of Europe related to PIT among those instruments.

1. Directive of European Council no 90/434/EEC dated July 23 1990, on the standard taxation system applicable to mergers, split-ups, and transfers of assets and shares concerning companies of the member states is the first legal instrument for harmonising tax legislation in the EU.

   This directive governs the mergers, transfers of assets, and shares between companies with headquarters and operates in at least two EU member states. The directive has agreed on the basic concepts of the transactions under the scope of regulation, such as a merger, split-ups, partial split-ups, transfer of shares, transfer of registered office, etc.[37] The directive stipulates general principles applied to mergers, split-ups, partial split-ups, and transfer of shares. One of the basic principles is that

[35] Wołowiec and Suseł, 760.
[36] Wołowiec and Suseł, 762.
[37] European Union, 'EU: Directive of European Council No. 90/434/EEC' (1990), Article 2, Article 3.

mergers, split-ups or partial split-ups will not be levied on the capital gains calculated on the difference between the net value of the owned assets and transferred debts and their value for tax purposes.[38] The directive prescribes other general principles on mergers, split-ups, partial split-ups, and shares transfers in Articles 4 to 8. The directive also provides general provisions for the transfers of properties in Articles 9 and 10.

2. Directive of European Council no 2003/48/EC dated June 3 2003, on income taxation from savings under interest payments. This directive directly relates to PIT to a significant extent.

   The ultimate purpose is to enable income from saving under interest payments to be implemented in a member state for beneficial owners who are taxable individuals residing in other member states in accordance with the member state's laws in which such a person lives.

   The purposes of this directive may be best achieved by directing the interest payments made or guaranteed by economic entities established in a member state to the benefit or for the benefits of beneficiaries residing in another member state.

   The Direct unifies many concepts related to its regulated objects to harmonization. Formal definitions of beneficial owners, paying agency, competent agencies, interest payer, identity, and place of residence of the beneficial owner.

   The directive defines the obligations of member states to comply with a standard taxation regime for income from saving under the form of interest payment between economic entities and beneficial owners in different companies. However, the standard mechanism only depends on the national legislation. Member states cannot fully achieve the objective of this directive because of the lack of coordination between countries in the taxation of income from savings countries, meaning taxation of income from savings. It is not easy to achieve better at the Community level so that the community can apply appropriate measures with the secondary principles such as the regulation in Article 5 of TEU. The directive also determines the principle of the corresponding limitation. The directive's content is limited to the minimum requirements to achieve the stated purpose and not exceed what is necessary.

3. Directive of European Council 2003/49/EC dated June 3 2003, on a standard taxation system applicable to payments of interest and royalty fees made between member companies in other countries in the EU have a significant influence on the harmonization of PIT legislation.

   This directive stipulates the conditions and procedures for tax exemption payments of interest and royalty fees between holding and subsidiary companies in different EU member states. The directive has some essential provisions for harmonisation as follows:

   - The main content of the directive is to create a standard mechanism for taxation of payments of interest or royalty fees stemming from a member state which

[38] EU: Directive of European Council No. 90/434/EEC, Article 4

shall be exempt from any tax in that country, whether by deduction at source or by determination, provided that the beneficial owner is a company of another member state of the headquarters of the company is located in another member state.

- The payment made by a company of a member state or a resident office located in another member state is considered to be stemmed from that member state, from now on referred to as the "Source status".
- A resident office shall be deemed to be paying the interest or royalty fee if such payments are deductions of taxes of the resident office located in the member state.

A member state company shall be considered the beneficial owner of interest or royalty fee only if it receives such payments and does not receive it as an intermediary, trustee, etc.

4. The Directive of European Council No. 2009/133/EC dated October 19 2009, on the standard tax system applicable to mergers, spit-up, partial split-up, transfer of property and shares related to European enterprises (SE)[39] and European cooperative enterprises (SCE)[40] of different member states and with the transfer of registered headquarters of the public enterprises and located in other member states.

This Directive of the EU mainly concerns the harmonisation of the corporative income tax regime for enterprises operating within the EU member states.

Studies on direct taxation in EU member states and the harmonisation process of this field can draw the following general conclusions:

Firstly, the harmonisation of tax legislation in the EU is very slowly and not profoundly. Even the harmonisation of the Law on direct taxes shows this situation. Compared with legal instruments of the EU in another field, the harmonisation of PIT legislation is minor.

Secondly, the EU has not yet harmonised PIT legislation separately. Most of the EU's general principles and regulations on PIT are issued via a Directive relevant to direct tax. Some EU experts believe that harmonising PIT legislation is even impossible.[41] The proposal to harmonise the PIT law has been mentioned for a long time but has not been implemented yet.

Thirdly, harmonising the PIT legislation faces the most obstacles compared to other fields. The most significant difficulty is that neither the TEU nor the TFEU have constraints on direct taxes in general and PIT in particular for member states. The member states of the EU did not want to waive their national jurisdiction and authority over taxation.

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[39] SE - Socitas European

[40] SCE – Socitas Cooperative European

[41] Sylwester Bogacki and Agnieszka Sulimierska, 'Personal Income Harmonization Process', *European Research Studies Journal* XXIV, no. Special 2 (2021): 583.

Fourthly, the EU bodies, including the European Parliament, the European Council and the European Commission, currently do not have the authority to issue binding principles and regulations on direct taxes. Therefore, harmonising PIT legislation requires a change in the EU's legislative process to overcome the unanimity of member states on PIT, one of the sensitive areas relating to national jurisdiction.[42] This is not easy soon because of its nature and the important role of PIT for member states.

IV. ASPECTS OF INTERNATIONAL JUSTICE AFFECTING PERSONAL INCOME TAX LEGISLATION

A. Sovereignty of Nations

The sovereign equality of states is associated with the principle of equality to issue laws on taxes in general and PIT in particular. The equal right to taxation among nations is one of the paramount principles in international relations, respected by countries worldwide and multinational institutions.

One content of equal rights among countries in tax is that all sovereign countries have developed independent PIT laws like Vietnam (PIT law 2007 and the Law on amendments and supplements), the United Kingdom (Income Tax Act 2007 (C3) and amend), Bulgaria (Income taxes on Natural Persons Act of Bulgaria) or issue a Tax Code including the Law on PIT like the French Republic (Code général des impôts (CGI) 2020 rélaboration du Code Général des Impôts en 2007) or the Federal Republic of Germany (The Fiscal Code of Germany, As on May 25 2018). The ways to issue PIT laws in different countries have shown the right of self – determination of each country in operating activities in its own country. Additionally, PIT can only be effective when enacted according to each country's socio-economic conditions and development policies. Hence, the promulgation of the PIT law indicates the foundational aspects such as tax rates, taxpayers and eligible groups for tax exemption are decided by each country without any direct imposition. This aspect of international private Law creates the biggest challenge for legal harmonisation in multinational institutions such as the EU ASEAN.

B. Principle of Non-Discrimination

PIT laws in countries are promulgated in a way that does not discriminate against the legal status of taxpayers, often identified as residents or non-residents. The principle of non-discrimination in relations with national citizens and foreigners among foreigners is reflected in the PIT law's issuance and enforcement. In the case of protecting the rights of national citizens, Governments of the countries ratified treaties to avoid double taxation, generally applied to eligible citizens, regardless of gender or social status...

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[42] Irene Isabel das Neves, 'The Poor Relation of Tax Harmonisation in the European Union – Direct Taxation', *Official Blog of UNIO* (blog), 21 July 2020, https://officialblogofunio.com/2020/07/21/the-poor-relation-of-tax-harmonisation-in-the-european-union-direct-taxation/.

The implementation of the principle of non-discrimination is also clearly reflected in the provisions on taxation to foreign investors in the taxing country, regardless of the origin of investment from any country. This principle does not apply to the case of the investment capital from individuals or countries on the list of terrorist financing risks (blacklist)

Harmonisation of legislation in the EU has faced this challenge due to the considerable differences in the EU member states in identifying taxpayers and tax deductions on the income generated in other member states.

C. Protecting Personal Rights in International Private Law and Requirements to Fully Implement Personal Income Tax Obligations

In modern society, especially in the current digital era, the issue of privacy is highly emphasised, in which the requirement of personal information privacy plays a core role. Countries are often interested in regulations to prevent tax base erosion for entities with foreign elements to avoid budget revenue loss. To do this, the laws of all countries are concerned with the taxpayers' obligation to provide information of taxpayers, in which personal information is just a group of subjects. The Federal Law of Germany is an example.[43]

In addition to the above arguments, the question is: Does implementing regulations (even mandatory) on providing information violate the right to privacy? The right to privacy is essential and excised within the legal framework; personal rights must not affect the interest of the community or the State. The provision of information in tax administration relations is only a case of determining the relation between personal rights and public and State interests.

D. Respect the Agreement of Parties and Implementation of the Principle of Reciprocity, Reflected in the Results of Personal Income Tax

Referring to international Law means mentioning issues related to "private law", in which agreement and the principle of "reciprocity" are highly emphasised. If the primary content of the principle of respecting the agreement in choosing applicable Law (but the choice of applicable Law is not always accepted), then in tax relations, the countries will not entitle taxpayers to this right to opt out. Nevertheless, if the choice is seen as a factor to consider, PIT legislation of countries still creates some of the following choices for taxpayers:

- The issue of choosing a tax registration place. Foreign individuals can ultimately select a location of tax registration according to the principle of determining "residence" or "non-residence" because the signs to determine are quantitative, possibly "over the threshold" or "below the threshold", has led to the determination of an individual's tax registration position. This condition is reflected in the provisions of Vietnamese Law and

[43] Federal Law Gazette, The Fiscal Code of Germany.

the countries analysed in section 2.2 of this paper. However, its downside is the risk of leading to "tax base erosion".

Choosing a method of PIT declaration for investment and business activities (tax declaration for securities investment, tax declaration for business activities on cross-border e-commerce platforms, tax declaration for business activities on social networks)

Regarding the principle of reciprocity in international private Law, the primary content is that the rights and obligations of foreigners in the country that share this principle shall act accordingly as citizens of their own country. This content has been analysed in the section on non-discrimination in taxation.

E. The Relationship between the Requirements of the PIT Law and the Principles of International Private Law

Considering and evaluating the legal system on PIT with the principles of international private Law, the following points can be mentioned:

Firstly, the tendency to promote taxpayers' rights in the tax relationship between the state and citizens is associated with the responsibility of countries to treat individuals paying taxes.

Secondly, the tendency to form groups of global citizens and the need to attract personal financial investment and high-quality human resources are associated with non-discrimination in tax relations between national citizens and foreigners.

Thirdly, the tendency of a "flat world" in information sharing and benefit-sharing with the principle that "if you want to go far, go together" in managing citizens and exercising the right to collect taxes.

Fourthly, the tendency to respect the right of taxing countries with the requirement of non-discrimination in tax relations between countries in a union.

V. SOME IMPLICATIONS FOR VIET NAM WHEN PROPOSING SOLUTIONS FOR THE LEGAL HARMONISATION PROCESS IN ASEAN TOWARDS THE ASEAN COMMUNITY LAW

From the theoretical analysis of PIT and PIT legislation, the comments and assessments of a legal framework on PIT of the EU (exist or non-exist) as well as the laws of some selected European countries (with specific reasons), the relationship in principles in international private Law with PIT law, all together suggest the following proposals:

A. Uniform Application in Diversity When Harmonisation the Law On Personal Income Tax in Asean

PIT is related to each country's cultural factors and specific economic conditions; additionally, it is a direct tax. Individual taxpayers want to show their responsibility to the country of their nationality. To examine the legal system of the European Union to find out the basis for the issuance of a standard legal system, there is no legal framework regulating this matter in the EU. Therefore, forming a legal framework on PIT for ASEAN countries is not feasible regarding both theoretical and practical aspects of legal experience.

Within the framework of ASEAN, the Charter's provisions and the derivatives' regulations do not mention the harmonisation of direct tax rates. Therefore, the harmonisation of direct tax rates among ASEAN countries is to maintain the tax sovereignty of each member state, the personal income tax rate will not change, and ASEAN should also maintain difference and diversity. This is in line with established practice in the EU.

One of the main goals in building the ASEAN single market is to bring about the free movement of skilled labour in the region. Therefore, the question is how to tax migrant workers because when an individual residing in a member state exercises his right of free movement, and moves to work in another member state, the person will also be taxed in the country in which the individual is employed. Perhaps it would make sense for ASEAN to pass a derivative or soft Law to regulate the matter. From the experience of EU countries, these regulations are based on the principle of non-discrimination, according to which foreign workers are obliged to pay the same tax as local workers under the same conditions. For example, this principle applies to tax rates, deductions, and exemptions. To ensure uniform application of the principle, legislation should clearly define equal working conditions.

Besides, similar to the EU issuing directives to regulate double taxation avoidance among member states, ASEAN should also issue derivative or soft laws to solve the above problem, facilitating benefits for ASEAN community building.[44]

B. Develop a Mechanism to Share Information among ASEAN Member States on PIT involving Cross-Border Transfers

First, regarding the information-sharing mechanism. Currently, Vietnam and other countries have developed a single-window mechanism. Still, it does not mean that information related to taxpayers, population, and displacement is shared among member ASEAN states.[45] In this period, when the digital economy and technology products have entered all activities of member states' governments, it is possible to share information to ensure effective tax administration.

Secondly, develop common standards in the PIT declaration, similar to the custom declaration. Currently, customs declarations attached to taxes at the border gate: import tax, export tax, excise tax, environmental protection tax, value-added tax and certificate of origin have been shared by a single-window mechanism with many countries within the region. In 2018, ministries and agencies implemented 106 procedures through NSW and as of January 30, 2019, there were 173 administrative procedures of 13 ministries and agencies connected with nearly 1.9 million files of 27.000 enterprises. Regarding the

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[44] Tanapong Damkerngkhajornwong, 'Harmonization of Tax Legislation of the ASEAN Community', *University Of Bengkulu Law Journal (UBELAJ)* 1, no. 1 (2016): 1–10.

[45] Viet Nam National Single Window, 'NA, "Viet Nam Connects ASEAN Single Window (ASW)" (,) <> [Accessed Dec 25 2021].', 18 February 2019, https://vnsw.gov.vn/profile/detailNews.aspx?id=43.

implementation of ASW, Vietnam is one of the first five countries in ASEAN to exchange electronic C/O form D (currently exchanging electronic C/O form D with four countries in the region, including Singapore, Malaysia, Indonesia, and Thailand).[46] With these successes, Vietnam has actively proposed to issue common standards for PIT declaration among ASEAN countries. This sets a foundation for legal harmonisation at a higher level of unification.

Third, Vietnam needs to propose solutions that unify income payments through bank accounts and implement income control. This proposal has been shown in previous studies.[47] Vietnam is a member state of the Asia Pacific Group on Money Laundering (APG), so following the recommendations of APG by the member states does not only well implement anti-money laundering activities but also provides a foundation (with high consistency and standard) to determine the level of mobilisation into the state budget of individuals via PIT).[48]

C. Develop, Issue and Implement a Joint Agreement to Respond to Tax Base Erosion

European Union does not issue the Convention on Prevention of Tax Base Erosion, but it is an essential basis for general application in ASEAN. Vietnam and ASEAN member states can ultimately develop standards for the internal association to aim at the interests of each member country and ASEAN as a whole.

Compulsory revenues are tied to individuals in the design of financial obligations of citizens (such as social insurance + health insurance + financial obligations). From the regulations of European countries, should it be included in the mandatory payments into the system, such as personal taxes into the system of compulsory fees of individuals? In Bulgaria, required insurance and social insurance are applied to employers and employees. Sweden is in a similar position. The concern here is that the domestic tax authority is the agency that collects the mandatory revenues for the taxpayers' welfare. With sufficient grounds, the tax-collecting agencies' authority will help collect/remit health insurance and social insurance payments on time. However, as mentioned above, this proposal also needs a suitable roadmap and solutions (related to the amendment of social insurance, health insurance, and tax administration law).

An essential requirement of international private Law, as well as civil society, is to enhance taxpayers' rights. Vietnam must propose specific principles on taxpayers' rights under the PIT laws. They are improving tax compliance of taxpayers when considering tax payment as a transaction contract, in which incentives and deterrence mechanisms need to be fully met. Taxpayers will engage in non-compliant behaviours when the legal provisions are too complicated and unclear, the motivations and deterrents are not strong enough, or the frequency of control is too little. The taxpayers

[46] Viet Nam National Single Window

[47] Pham Thi Giang Thu, 'Improvement of Law on Anti-Money Laundering through Commercial Banks in Vietnam – Some Lessons from Some Other ASEAN Countries', *IAFOR Journal Of Politics, Economics & Law*, 2016, 137–50.

[48] The Financial Action Task Force.

will be willing to declare and pay taxes if they see precise results from paying taxes; moreover, the friendliness of taxpayers and tax authorities also increases tax compliance. That is the determination of the rights of taxpayers.

Vietnam needs to propose a solution for ASEAN member states to internalise the primary advantages of the Convention on Prevention of Tax Base Erosion. This solution is possible because ASEAN countries are the parties to this Convention. For Vietnam, the expansion of the tax base, the prevention of revenue erosion and transfer pricing continue to be the critical contents of the tax system reform strategy in the coming time. Vietnam has ratified 80 tax agreements with countries and territories worldwide. On the one hand, these agreements avoid double taxation of income among countries, and on the other hand, they also prevent tax evasion. Vietnam should choose effective solutions and propose them to the AMM and the ASEAN Summit.[49]

VI. CONCLUSION

PIT and PIT legislation of some European Union countries have many differences in terms of taxpayers, tax bases, and levels of mobilisation into the state budget. Therefore, harmonising legislation on PIT in the EU has faced many complex challenges. Up to now, the EU has not created any legal instruments to harmonise PIT legislation. The research, analysis, and evaluation results of the bout the harmonisation of tax legislation in the EU said this process is challenging at this moment; ASEAN may not have had the opportunity to harmonise this sensitive area with valid legal frameworks binding on member states. However, the consensus on some basic concepts of PIT and recommendation action by member states will create valuable agreements for developing the ASEAN Community and forming legislation for the community in the future. Being trusted and highly appreciated by ASEAN member states for its contributions to the construction of the AC, Vietnam needs to refer to the research results of this paper to propose suitable solutions to ASEAN to promote the progress in promoting harmonisation of legislation on PIT in the initial steps.

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