

DISSERTATION INFORMATION

Doctoral Dissertation Title: **LAW ON INDIVIDUAL BUSINESS**

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1. SUMMARY OF THE THESIS

1.1. Research objective of the thesis

The research objective of the thesis is to demonstrate the necessity of unifying and establishing separate legal regulations for individual business owners. In order to achieve this, the thesis aims to accomplish the following specific research tasks:

Firstly, to clarify the legal nature of individual business owners with other forms of business, such as sole proprietorships and private enterprises, throughout different historical periods, and compare them with regulations in countries like France, the United States, and China.

Secondly, analyze and evaluate the provisions of Vietnamese law regarding the registration of activities and the representation mechanisms of each entity, aiming to affirm that sole proprietorships and private enterprises are essentially forms of individual business ownership according to the regulations of many countries. Therefore, it is necessary to establish a unified legal framework to govern the existence and development of individual business models.

Thirdly, assess the current tax obligation regulations applied to sole proprietorships and private enterprises to provide recommendations for considering the construction of a unified legal framework for tax obligations applicable to all entities that are individual business owners.

1.2. Research subject of the thesis

The research subject of the thesis is the legal provisions regarding the legal nature, registration of activities, representation issues, and tax obligations of individual business owners in two forms: sole proprietorships registered by individuals and private enterprises in Vietnam, as well as individual business owners in countries such as France, the United States, and China.

1.3. Scope of the research

Within the thesis framework, the author analyzes the regulations related to two types of business entities registered as sole proprietorships and private enterprises in Vietnam from 1986 to the present. In addition to analyzing the Vietnamese legal provisions, the author also compares them with the legal regulations of some countries regarding individual business owners, such as the United States (representing the Common Law system), France (representing the Civil Law system), and China.

1.4. Research methodology of the thesis

The thesis is presented based on theoretical foundations and utilizes specific research methods such as analysis, synthesis of documents, comparative legal analysis, and historical analysis.

1.5. The theoretical and practical significance of the thesis

In terms of *theoretical significance*, the thesis introduces the concept and characteristics of individual business owners to support the viewpoint that sole proprietorships and private enterprises are both forms of individual business ownership. Additionally, the thesis analyzes the shortcomings in the registration of activities, representation issues, and tax obligations of these two entities. Therefore, it is necessary to systematize and develop a unified legal framework for individual business owners.

In terms of *practical significance*, based on the current legal situation of sole proprietorships and private enterprises in Vietnam, the author provides recommendations to align Vietnamese laws with the laws of other countries in regulating the activities of individual business owners, including business registration and determining tax obligations. Furthermore, the thesis can serve as a reference for research, teaching, and learning in Law and Public Administration institutions, as well

as a resource for policymakers when drafting legal documents to regulate the operation of individual business owners in the future.

2. RESEARCH FINDINGS OF THE THESIS

The thesis has researched issues related to individual businesses by analyzing and evaluating the legal provisions regarding sole proprietorships and private enterprises in order to determine the goal of unifying and replacing the currently existing models with the concept of individual business ownership. Specifically, the thesis has achieved the following results:

Firstly, the thesis has defined the concept of individual business ownership as a form of business conducted by an individual who possesses assets establishes a residence, bears unlimited liability for debts in business activities, and does not have a legal personality. According to this viewpoint, individual business ownership in Vietnam currently includes private enterprises and sole proprietorships registered by an individual. The existence of multiple business entities has led to shortcomings in the management mechanism and created inequality among these entities. Therefore, unifying and replacing these forms with the concept of individual business ownership is necessary. The following fundamental reasons further demonstrate this necessity:

- The general trend in many countries is to classify business entities based on the criteria of natural persons and legal entities, relying on legal frameworks established by commercial law, business law, investment law, and bankruptcy law. The commercial activities of traders in Vietnam are regulated not only by the aforementioned legal texts but also by civil law, insurance business law, credit organization law, commercial arbitration law, civil litigation law, tax laws, international trade practices, etc.
- The individual's freedom of business should be guaranteed, and the state should aim to innovate and relax business registration regulations, most favourably for business entities.
- The nature of sole proprietorships registered by an individual needs to be reconsidered from the perspective of individual business ownership, and a

harmonized tax management mechanism should be established between these business entities and private enterprises.

Secondly, the thesis proposes the establishment of a general concept of individual business ownership, including both sole proprietorships and private enterprises, based on implementing short-term and long-term solutions such as:

- Amending the provisions regarding the subjects of the Commercial Law to define traders as including two types: legal entity traders (companies) and natural person traders (individual business owners).
- Modifying the Enterprise Law to exclude regulations on private enterprises from the scope of regulation under the Enterprise Law.
- Amending the provisions in tax-related legal documents regarding taxes for private enterprises, sole proprietorships, and independent individual business owners who are not required to register to create a unified understanding of the term "individual business owner."
- Amending the 2014 Bankruptcy Law by supplementing regulations on bankruptcy for individual business owners.
- Enacting the Individual Business Law to regulate the activities of all forms of business, including private enterprises, sole proprietorships, and independent individual business owners who are not required to register their businesses.

Thirdly, to achieve uniformity in the legal provisions for registering the individual business ownership model between sole proprietorships and private enterprises, the author suggests implementing the following synchronized solutions:

- Simplifying the registration procedures for establishing the individual business ownership model.
- Standardizing management data for different types of individual business ownership.
- Considering business registration as both a right and an obligation of individual business owners.

- Removing the requirement for a seal for private enterprises and the individual business ownership model in general.
- Constructing the Individual Business Law.

Fourthly, the issue of representation for business households is mainly regulated by civil law in the form of authorized representation. In contrast, the Enterprise Law governs representation in private enterprises, applying both authorized representation and representation according to the legal representative form, which is unnecessary. Additionally, this regulation creates contradictions between the provisions on representation for private enterprises in the specialized laws (Enterprise Law and Civil Law). The author's viewpoint is that representation for individual business owners should be unified under a single form, represented by authorization. This provision can be directly incorporated into the amendment of the Commercial Law shortly regarding the content of representation for legal entity traders. Alternatively, the existing representation provisions in Civil Law can be maintained, considering private enterprises and sole proprietorships as legal entities under civil law. Furthermore, the ultimate goal is to build the Individual Business Law, which can precisely regulate the representation framework for the individual business ownership model, parallel to the Corporate Law that defines the representation for commercial legal entities.

Lastly, according to tax management regulations, there are three central taxes that both sole proprietorships and private enterprises must pay, including License tax (levy), Value Added Tax, and Personal Income Tax. In addition, private enterprises are also required to pay corporate income tax. This creates inequality between these two taxpayers because sole proprietorships and private enterprises are essentially individual businesses and should be treated fairly, particularly in enforcing tax obligations. Therefore, the thesis presents general recommendations to improve the regulations for each type of tax applicable to individual businesses as follows:

- For the license tax: A unified tax rate should apply to individual businesses, including sole proprietorships and private enterprises. The relevant legal

provisions regarding tax exemptions and reductions should be reviewed to avoid creating inequality among taxpayers.

- For the Value Added Tax (VAT): The state should issue legal documents to regulate the unified calculation method, tax determination method, and tax rates paid by private enterprises and sole proprietorships. Furthermore, the provision that exempts sole proprietorships with annual revenue below 100,000,000 VND from VAT should be removed, and the state should introduce a new control mechanism through the systematization of invoices, documents, and tax declarations for individual businesses.
- For individual business owners' Personal Income Tax (PIT): A unified type of personal income tax should be applied to individual business owners, including both sole proprietorships and private enterprises. Additionally, the tax regime based on fixed amounts according to sectors or business areas should be abolished, and the policy of exempting sole proprietorships with annual revenue below 100,000,000 VND from personal income tax should be revised. Finally, regulations should mandate non-cash payments and tax control through banking systems.

3. ISSUES THAT NEED FURTHER RESEARCH

The author intends to continue researching the group of individuals engaged in business activities without the requirement of legal registration, as well as delving deeper into the government's regulatory mechanisms concerning individual businesses, specifically in the context of online sales. These investigations aim to develop a comprehensive understanding of the Personal Business Law in the future.

Ho Chi Minh city, Day 28 Month 6 Year 2023

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