

Draft E-commerce regulations

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At a glance...

The Ministry of Industry and Trade has released draft amendments to Decree 52/2013 on E-commerce for public comment.

Taken together with the new rules being drafted to tighten up on the taxation of e-commerce, these proposed amendments underline the Vietnam government's determination to regulate and tax the start growing e-commerce sector.

In detail...

Key points in the draft decree include:

- **Narrowing down the scope** of Decree 52 by excluding activities dealt with under other specialised laws, for example e-transactions relating to banking, insurance, money exchange, online games, radio, and television services.
- **Expanding the range of entities** governed by Decree 52 to include all “*foreign traders and organisations that have e-commerce activities in Vietnam*” notwithstanding whether they have a physical presence in Vietnam.
- **“Foreign traders and organisations that have e-commerce activities in Vietnam”** may comprise:
 - Type 1: Foreign traders, without a presence in Vietnam, indirectly participating in commercial activities via Vietnam-based e-commerce platforms
 - Type 2: Foreign traders, without a presence in Vietnam, with direct commercial transactions with Vietnamese consumers by way of:
 - (i) setting up an e-commerce website under a Vietnamese domain name;
 - (ii) setting up an e-commerce website in Vietnamese language; or
 - (iii) owning an overseas platform with transactions in Vietnam reaching a prescribed annual threshold (e.g. 100,000 transactions)
 - Type 3: Foreign investors that set up foreign-invested enterprises engaging in e-commerce transactions in Vietnam.
- **For Type 1**, the draft decree requires owners of Vietnam-based e-commerce platforms to:
 - (i) verify the identities of the foreign traders selling goods on their platforms;
 - (ii) request foreign traders to export or import in accordance with the law;
 - (iii) request foreign traders to appoint their own commercial agents in Vietnam;
 - (iv) act as the importer-of-record on behalf of the buyers for the goods transacted via their platforms; and
 - (v) declare, withhold, and pay tax on behalf of foreign traders.
- **For Type 2**, the draft decree requires foreign traders who set up an e-commerce website under a Vietnamese domain name or in Vietnamese language to register with the MoIT.
 - For non-resident overseas e-commerce platform operators, the draft Decree provides 2 options. Option 1 states that if a platform has 100,000 transactions in Vietnam in a year, they must notify/register with the MoIT.
 - Option 2 introduces an “open” threshold and the MoIT, the Ministry of Information and Communications, and the Ministry of Finance will coordinate to set such threshold.

In detail...

- Option 1 requires all foreign traders under Type 2 to set up a representative office to meet their obligations to protect the interests of Vietnamese consumers, while Option 2 requires the foreign traders to appoint a legal representative in Vietnam to do the same.
- The draft Decree also requires all imported goods to go through Customs procedures.
- According to Article 27.7 of the draft decree, all domestic website owners must store information on transactions made through the website in accordance with the Law on Accounting and fulfill applicable tax obligations. However, it is unclear whether offshore websites must comply with this.
- **For Type 3**, as e-commerce is a “conditional sector” industry for both local and foreign investors in Vietnam, market access conditions for foreign investment in e-commerce are introduced in the draft decree, including:
 - Form of investment can be 100% foreign owned or a joint venture.
 - The foreign investor must be in the “*list of global reputable technology companies involved in e-commerce industry*”. This list will be published periodically by the MoIT. However, this requirement will not apply for foreign investment in innovative start-up SMEs.
 - Appraisals must be obtained from the Ministry of Defence and Ministry of Public Security for any substantial investment in the top 5 e-commerce companies in Vietnam. Again, the MoIT will announce the list of such top 5 e-commerce companies periodically.
- **Further guidance will be issued by several ministries.** The draft decree sets out the responsibilities of seven ministries, including:
 - The MoF will provide guidance regarding tax declaration and payment. The MoF must also coordinate with the MoIT to provide information and share data on the number of exports and imports transacted via e-commerce market.
 - The State Bank of Vietnam is to coordinate with the MoIT to request the payment service providers and payment intermediaries to provide information about transactions on e-commerce websites.
- **Other notable proposed changes**, e.g.:
 - No need to notify/register if a website does not have online ordering function;
 - Various new regulations aiming to ensure the transparency of information on goods/services and to combat counterfeiting and infringing intellectual property rights;
 - Social networks may be considered an e-commerce platform in certain cases; and
 - Introduction of “*guarantee payment method*”.

Contact us

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