

# Decree 85 amending e-commerce regulations

16 November 2021

## At a glance...

Following on from the new rules to tighten up the taxation of e-commerce (*please refer to our previous NewsBriefs for further details on related [tax](#) and [customs](#) regulations*), on 25 September the Government issued Decree 85/2021 setting out new rules on e-commerce.

# In detail...

Key points of Decree 85 include:

- **Focusing on e-commerce** and excluding other activities such as e-transactions relating to banking, insurance, money exchange, online games, radio, and television services.
- **Expanding the range of entities** governed by Decree 52/2013 to include all *“foreign traders and organisations that have e-commerce activities in Vietnam”* notwithstanding whether they have a physical presence in Vietnam.
- **A social network will be considered an e-commerce platform** if the participants directly or indirectly pay a fee to conduct any of the following activities:
  - to open booths to display and introduce goods/services on the network;
  - to open accounts to perform the process of entering into contracts with customers on the network;
  - to post information about buying/selling goods/services on a network that has a buying and selling section.
- **Detailing obligations of foreign traders that have e-commerce activities in Vietnam and related parties**

1) Foreign traders selling goods/services via Vietnam-based e-commerce platforms must select one of the following three options:

Option 1: The foreign traders shall exercise the import rights applicable to foreign traders without a presence in Vietnam. Decree 85 does not provide further details on this. However, according to Decree 90/2007 regulating export/import rights of foreign traders without a presence in Vietnam, the foreign trader must register and obtain an import licence from the Ministry of Industry and Trade (MoIT). While this provision has existed for many years, it seems that there has been little if any precedent to date for foreign traders registering thereunder.

Option 2: The platform owner shall arrange the import on behalf of the buyers/consumers for the goods from overseas that are purchased via the platform.

Option 3: The foreign traders shall appoint commercial agents in Vietnam. According to the Commercial Law, commercial agents will then sell goods/services to buyers/consumers.

The platform owners must authenticate the identity of foreign traders, who sell goods/services via their platforms, and represent the foreign traders to settle consumers' complaints as well as make the required tax notifications.

## In detail...

- 2) Foreign traders having websites providing e-commerce services, which (i) are under Vietnamese domain names, or (ii) in Vietnamese language, or (iii) have over 100,000 transactions from Vietnam per year must:
  - register with the MoIT. It is unclear whether the registration should take place upon reaching the threshold of 100,000 transactions per year, or prior to that, based on the expected (or historical) number of transactions; and
  - either set up representative offices or appoint legal representatives in Vietnam; and
  - report to the MoIT on an annual basis; and
  - cooperate with the Vietnam authorities to prevent transactions in goods/services that violate Vietnamese laws; and
  - ensure the quality of goods/services and protect the interests of buyers/consumers.
  
- 3) Foreign investors that set up companies in Vietnam engaging in e-commerce activities must:
  - satisfy the applicable market access conditions for foreign investors in e-commerce services under the Law on Investment; and
  - obtain appraisal opinions from the Ministry of Public Security in case of 'control' investments in the top five e-commerce companies in Vietnam, as announced by the MoIT.

However, these requirements will not apply for foreign investment in innovative start-up small and medium size enterprises.

All imported goods sold via the platform or from foreign traders' websites must go through customs procedures.

- **Transitional period:** Foreign traders/investors mentioned in (2) and (3) above must complete required procedures/obligations within 12 months from the effectiveness of Decree 85, i.e. 1 January 2022. Other local e-commerce traders must re-register/re-notify within 180 days from then.

## Contact us

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