



## LEGAL UPDATE

### NEW GENERAL AND IMPORT/EXPORT RULES FOR E-COMMERCE ACTIVITIES

The Vietnamese e-commerce market has recorded remarkable growth in recent years, partially due to the immediate consequences of the COVID-19 outbreak. As a result, the domestic legal framework requires several amendments and further regulations to ensure consistency between the applicable laws.

Decree 52/2013/ND-CP on e-commerce dated 16 May 2013 (**Decree 52**) has served as the main legal basis for e-commerce activities for almost a decade. It has now been amended by Decree 85/2021/ND-CP dated 25 September 2021 (**Decree 85**).

Moreover, the Ministry of Finance has circulated a draft decree regulating the management of exported and imported goods transacted via e-commerce (**Draft Decree**). It addresses the surge in the volume of imported and exported goods sold via e-commerce.

Decree 85 came into effect on 1 January 2022, while the Draft Decree is now pending further comments and revisions.

In this update, we will first set out the relevant points on Decree 85 and on the Draft Decree.

#### 1. E-commerce Activities Specifically Regulated

##### 1.1. Governing Scope

Decree 85 shows a focus on regulating the development, application, and management of e-commerce activities, by excluding activities in the following sectors or specific activities from its application:

- Finance, banking, credit, insurance, lottery, money exchange, gold exchange, foreign currencies exchange, and other payment means; and
- Betting, gaming with prizes services, digital content distribution and publication services, broadcasting and television services.

##### 1.2. Definition of E-commerce Services

A noteworthy provision of Decree 85 is its definition of *e-commerce services*, which are *activities in which*

*traders, individuals, or organisations providing e-commerce services and set up an e-commerce website that offers a place for other traders, organisations, and individuals to carry out trade, sales of goods or offering services.*

This definition excludes businesses that are merely involved in website and application design and therefore do not directly participate in the business operations of these websites.

These changes were necessary, as Decree 52's provisions were vague on the governing scope and lacked an explicit definition of e-commerce services.

#### 2. New Forms of E-commerce Trading Platforms

Under Decree 85, a website is deemed to be an e-commerce trading platform if it:

- a. Allows the participants to open booths to showcase goods and/or services;
- b. Allows participants to open an account to perform the process of entering into a contract with a customer;
- c. Has a sales section, where participants are allowed to post information on the sale and purchase of goods and services; and
- d. Is a social network website having one of the activities listed above, and whose participants directly or indirectly pay a fee for the performance of such activities.

For the avoidance of doubt, as long as participants pay no fee for the use of a social network to perform the earlier mentioned activities it shall not be considered as an e-commerce trading platform.

Furthermore, Decree 85 clearly states that all subjects performing e-commerce activities must adhere to standards governing information security, cybersecurity, and other relevant areas of law.



### 3. Foreign Entities Active in E-commerce

#### 3.1 General

Decree 85 now covers all foreign traders, organisations conducting e-commerce activities. They are classified into three groups:

- a. Foreign traders, or organisations having e-commerce service websites in Vietnam;
- b. Foreign traders or organisations being sellers on Vietnamese e-commerce trading platforms; and
- c. Foreign investors in the e-commerce sector.

#### 3.2 Specific requirements for foreign entities

##### Group A

Under Decree 85, foreign entities that have either:

- Vietnamese domain names (e.g. **.vn**); or
- Vietnamese as an available language; or
- More than 100,000 transactions per year are sourced from Vietnam.

shall be considered as *foreign traders, or organisations providing e-commerce service websites in Vietnam*.

Accordingly, they must register for e-commerce business lines in accordance with relevant laws and either:

- a. Set up a *representative office* in Vietnam; or
- b. *Appoint an authorised representative* in Vietnam in accordance with Vietnamese laws.

##### Group B

Foreign traders and organisations that sell products on Vietnamese e-commerce trading platforms are now subject to know-your-client procedures. These are to be implemented by the local e-commerce trading platform service providers.

##### Group C

Decree 85 also imposes additional conditions on foreign investment into the Vietnamese e-commerce sector. In addition to complying with market access requirements under the Law on Investment 2020, foreign investors must adhere to particular market access conditions set out in Decree 85. For example, those applicable to foreign investors controlling one or more enterprises in a group of five leading enterprises in Vietnam's e-commerce service market as determined by the Ministry of Industry and Trade shall be appraised by the Ministry of Public Security for national security matters.

### 4. Import and Export via E-commerce

Vietnam does not have a specific management mechanism for goods that are imported or exported via e-commerce. Procedural difficulties relating to customs clearance can therefore compromise transactions. As the e-commerce sector in Vietnam develops, the volume of small shipments increases rapidly. This leads to late delivery or congestions in the supply chain (e.g. at border gates). The introduction of the Draft Decree is expected to create a more practical legal framework for import and export activities that are sourced from e-commerce.

### 5. New Subjects of Customs Declarant

In addition to entities listed in the 2014 Law on Customs, the Draft Decree supplements the owners of e-commerce trading platforms and e-commerce marketplace websites (**E-commerce Service Providers**) as a *customs declarant*. They shall carry out customs procedures according to the laws. This includes local e-commerce trading platforms such as Shopee, Lazada, and foreign counterparts such as Amazon, Alibaba. In case the E-commerce Services Providers are foreign entities with no presence in Vietnam, they shall carry out customs procedures via the customs brokers.

These new draft regulations are practical in governing customs procedures related to e-commerce activities because even though the E-commerce Service Providers are neither the seller, the buyer nor the shipper, they hold all information relating to such transactions, including but not limited to information on the buyers and sellers, transactions' value, shipping units, and payment methods.

### 6. Customs Electronic Data Processing System

The Draft Decree also introduces a customs electronic data processing system for imported, exported goods via e-commerce (**System**). The System is a new and integrated component of the customs authorities' database system that is designed as an online portal specialised for customs procedures and information exchange relating to imported, exported goods transacted via e-commerce.

The most important function of the System is the submission of information on the order, payment and shipment relating to imported or exported goods via e-commerce.



The submission needs to take place:

- Immediately after the orders are created and prior to carrying out the customs declaration for exported goods and goods stored in bonded warehouses, or
- Before the imported goods are loaded onto transportation vehicles for exit.

The E-commerce Service Providers, transportation service providers, and payment service providers are subject to the above information submission requirement. The specific responsibilities of each party in performing the same are in accordance with the Draft Decree, and they are responsible for the accuracy and truthfulness for any information submitted to the System.

## 7. Exemptions for Imported goods via E-commerce

### 7.1 Specialised Management and Inspection Exemption

Under the Draft Decree, goods imported via e-commerce can enjoy an exemption from specialised management and inspection if their customs value is:

- No more than VND 1 million for each item of the order; or
- Less than VND 5 million for goods imported as a single unit item (except for quarantined goods, goods under the management of the Ministry of Culture, Sports and Tourism).

The above exemption only applies to one order per day and for no more than four orders per month, and are not applicable if specialised management agencies issue:

- A warning about food safety, a threat of disease, danger to human health and life, environmental pollution, infringement of social morality, Vietnamese customs, danger to the economy, or to the national defence; or
- A written notice regarding the cessation of the specialised inspection before customs clearance.

### 7.2 Import Tax Exemption

Imported goods transacted via e-commerce are entitled to an exemption of import tax if they have a customs value for *each order* of:

- No more than VND 1 million; or
- More than VND 1 million but the total import tax to be paid is less than VND 100,000.

The above exemption only applies to one order per day and no more than four orders per month for each organisation or individual.

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