

LEGAL NEWSLETTER

NHQuang&Associates



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Notable activity in November 2021

On November 18, 2021, under the support by Sweden Government, the Ministry of Justice and UNDP Viet Nam co-organized the second Training and Consultation Workshop to Advance Responsible Business Practice in Viet Nam. The workshop attracted the participation of many domestic and international experts.

As the Team Leader of the National Baseline Assessment Team for Responsible Business, Mr. Nguyen Hung Quang presented about the self-regulation of businesses to carry out responsible business. Mr. Quang gave some good examples, such as the memorandum of understanding between Intel Corporation and the Management Board of Saigon Hightech Park. In addition, Mr. Quang also made some comments on the shortcomings of the Vietnamese legal framework in supporting the self-regulatory mechanism.

The workshop was held within the National Action Plan to advance responsible business practice in Viet Nam, which is founded on the framework and recognized in the 5-year action agenda of the new Government from 2021-2026 (Resolution 99/NQ-CP of the Government dated August 30, 2021).

NEW REGULATIONS ON E-COMMERCE

GIA KHANH

On September 25, 2021, the Government of Viet Nam promulgated Decree 85/2021/ND-CP (**Decree 85**) amending and supplementing certain contents of Decree 52/2013/ND-CP on e-commerce (**Decree 52**). Some of Decree 52's provisions, after having been applied for years, are no longer suitable to the practical e-commerce activities in Viet Nam, which have undergone many changes and development. Decree 85 is issued aiming to fill such gaps as well as to supplement the legal background for emerging e-commerce activities. This article will introduce the noteworthy changes for enterprises to ensure compliance in provision of e-commerce services and business investment activities on e-commerce platforms.

Firstly, social networking sites have been officially recognized as a type of e-commerce exchange from January 1, 2022 (the effective date of Decree 85). To be specific, a social networking site shall be recognized as an e-commerce exchange if it performs one of the followings: (i) allowing users to open online stores for display and introduction of goods and/or services; (ii) allowing users to create accounts for processing contract execution with customers; (iii) providing marketplace section, which facilitates users to list their products and services online. Such social networking sites will be able to provide e-commerce exchange services and directly/indirectly collect fees from participants.

Secondly, requirements for product and service information on e-commerce websites for selling (which is created by an entity to trade its products) have been more rigorously specified. Accordingly, clause 12, Article 1 of Decree 85 has added new requirements that the product information displayed on websites must include the mandatory contents on goods label in accordance with the law on goods labelling, except for information of goods' peculiarities such as: year, month, manufacturing date, expiration date, batch (lot) number, chassis

number (or vehicle identification number-VIN). For goods and services as the products of conditional investment and business fields, providers must publicize the number (code), granting date and granting body information of relevant certificates, licenses, confirmation/approvals or equivalent documents under the regulations on business conditions applied to such fields.

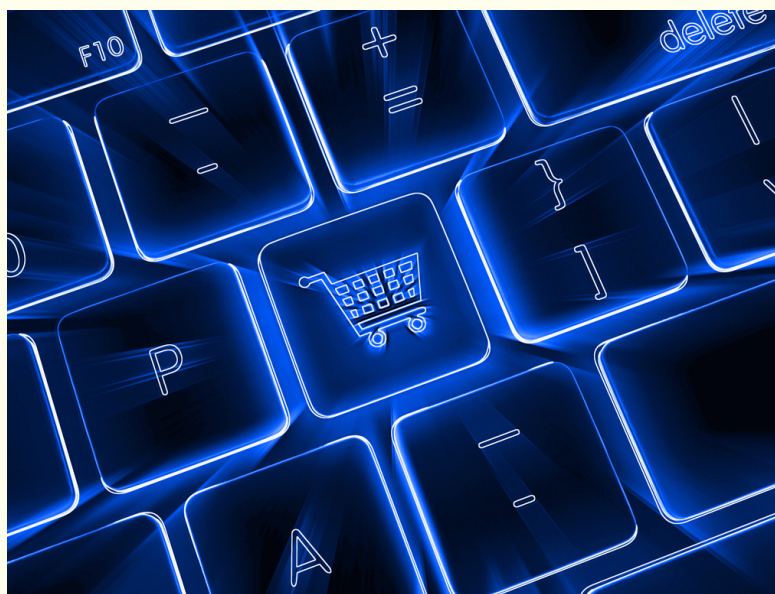
Thirdly, regulations on the responsibility to settle consumer complaints against merchants have been supplemented. Clause 16, Article 1 of Decree 85 indicates that e-commerce exchange service providers shall be responsible for receiving and responding to arising matters for resolution of e-commerce related complaints, reflections or disputes at online.gov.vn - the e-commerce management portal of the Ministry of Industry and Trade.

Regarding e-commerce exchanges with online ordering function, the providers of e-commerce exchange service shall be responsible for:

- (i) Designating contact points to receive requests and provide online information to state management bodies about subjects with signs of law violations; and such contact points shall furnish the relevant information within 24 hours from the time of receiving requests to promptly and duly serve the inspection, examination, violation sanctioning and settlement of complaints and denunciations;
- (ii) Representing foreign merchants on e-commerce exchanges to settle consumer complaints related to products and services provided by such merchants and taking the charge of notifying foreign merchants' tax obligations arising from e-commerce exchange engagement as stipulated in Vietnamese laws; also, being the focal point for receiving and settling consumer complaints resulting from a more-than-2-party transaction executed on e-commerce exchange.

Last but not the least, the legal basis for e-commerce activities by foreign traders and organizations has been supplemented. Specifically, it is the first time that e-commerce law has provided the criteria to determine foreign traders and organizations that have websites providing e-commerce services in Viet Nam, including: (i) e-commerce websites with Vietnamese domain name; (ii) e-commerce websites displaying Vietnamese

language; and (iii) e-commerce websites with over 100,000 transactions from Viet Nam per year. Accordingly, the number of transactions from Viet Nam shall be determined based on (i) voluntary reports of traders and organizations; (ii) official data of Viet Nam's competent state management agencies (customs; internet management bodies; banking and tax management bodies); (iii) available and public reports, information of which the authenticity can be proved by relevant authorities. The above-mentioned foreign entities are obliged to register e-commerce activities and set up representative offices in Viet Nam, as well as to comply with the required liabilities under Decree 52 and this Decree.



COMMENTS AND RECOMMENDATIONS

With such new regulations, from January 1, 2022, Decree 85 is expected to partially narrow the gaps that Decree 52 cannot meet in the e-commerce development practice in Viet Nam. Entities operating social network services that are planning to add or having e-commerce business function need to comply with the conditions and responsibilities of traders and organizations providing e-commerce exchange service. In term of entities currently using social network as a channel for product, service distribution, the same responsibilities compared to sellers on e-commerce exchanges shall be strictly adhered to. Besides, enterprises need to uphold their responsibility to ensure feedback and complaint settlement, as well as to coordinate with state agencies in resolving disputes and complaints arising from business activities in digital environment. For foreigners conducting e-commerce service business in Viet Nam, they should carefully determine whether they are subject to the governance of Decree 85 to limit unnecessary legal risks.

In addition to the regulations of Decree 52, businesses are suggested to regularly update new guidelines for e-commerce activities in Viet Nam in order to meet the stipulated requirements, conditions and responsibilities and also to protect their rights and interests when operating investment and business on digital platforms.

SOME OUTSTANDING CONTENTS OF DECREE 92/2021/ND-CP

HUYEN THU

On October 27, 2021, the Government issued Decree 92/2021/ND-CP (**Decree 92**) detailing the implementation of Resolution 406/NQ-UBTVQH15 of the National Assembly Standing Committee on the solutions to support businesses and people affected by the COVID-19 pandemic (**Resolution 406**). Regarding tax exemption and reduction solutions to support enterprises, Decree 92 has delivered 03 groups of solutions, including: (i) reduction of corporate income tax (CIT); (ii) reduction of value added tax (VAT); (iii) exemption of late payment interest. The followings are some main contents of the solution groups mentioned in Decree 92:

Firstly, reducing 30% of CIT for the tax period of 2021

- Application subjects: The organizations engaged in production and business activities of goods and services, established under Vietnamese law, of which the revenue of the tax period in 2021 is not more than VND 200 billion and reduces as compared to that of 2019 tax period (excluding revenue deductions, revenues from financial activities and other incomes). However, the revenue reduction criterion is not applied to enterprises which are newly established or perform consolidation, merger, division, separation in the tax period of 2020 and 2021.
- Determination of reduced tax amount: The reduced CIT amount is calculated based on the payable CIT of the tax period of 2021, after deducting the CIT incentive amount entitled by enterprises under the Law on CIT and its guiding documents.
- Procedures for implementation: Based on the revenue in the tax period of 2019 and the expected revenue in the tax period of 2021, enterprises shall self-determine the reduced tax amount when temporarily paying the quarterly CIT. When finalizing CIT for 2021 period, the underpaid or overpaid amount of taxes temporarily paid in quarters compared with the annually finalized payable tax amount shall be handled in accordance with the law on tax administration. To perform the procedures, enterprises shall declare taxes according to the declaration form enclosed with Circular 80/2021/TT-BTC and the Annex on CIT reduction of



Appendix II, Decree 92.

Secondly, reducing 30% of VAT from November 1, 2021 to December 31, 2021

- The application subjects are the goods and services in the field of transportation services; accommodation and food services; travel services; publishing products and services; information and communication services; art and entertainment services, etc. The details of goods and services eligible for tax reduction are specified in Appendix I on the list of goods and services eligible for VAT reduction enclosed with this Decree.
- Tax reduction rates: Enterprises calculating VAT by the credit-invoice method are eligible for 30% reduction in VAT rate for the goods and services applied with tax reduction. Enterprises calculating VAT by the direct method (% on revenue) are entitled to a 30% reduction in the rate for direct VAT calculation for goods and services applied with tax reduction.
- Procedures for implementation: Enterprises shall declare the goods and services eligible for VAT reduction under Appendix II on VAT reduction, Resolution No. 406/NQ-UBTVQH15 in accordance with Appendix II of this Decree and the VAT declaration form. Besides, in particular case, they need to pay attention to the invoice contents as guided at point a, clause 3, Article 3 of Decree 92.

Thirdly, exempting the late payment interest arising in 2020 and 2021 of all tax debts, land use levies, land rents

- Application subjects: Enterprises and organizations (including their dependent units and business locations) that incur losses in the tax period of 2020.
- Determination of exempted late payment interest: Based on tax administration data, the Heads of tax departments managing directly and tax departments managing taxes, land use levies and land rents ("**tax authority**") shall determine the late payment interest incurred in 2020 and 2021 of taxpayers to issue the decisions on exemption of late payment interest.
- Procedures for implementation: Enterprises shall complete an application form for exemption of late payment interest, which specifies the losses incurred in the tax period of 2020 according to Form No. 01/MTCN, Appendix II, Decree 92. Within 15 business days after receiving the application form, the tax authority shall issue a Notice on disapproval of late payment interest exemption or a Decision on exemption of late payment interest.

COMMENTS AND RECOMMENDATIONS

Decree 92 has ensured the principle of simplicity, transparency, ease for understanding and implementation, as well as relevance with socio-economic life, created maximum convenience for enterprises and people, thereby encouraging them to resume production and business according to guidelines of the Party and the State. Many enterprises also highly appreciate the realism and timeliness of Decree 92, especially those heavily affected by the COVID-19 pandemic such as small and medium enterprises, enterprises operating in the fields of tourism, transportation, accommodation and food, movies, sports, and entertainment.



After promulgation of Decree 92, the General Department of Taxation has issued an official dispatch asking provincial tax departments to create favorable conditions for enterprises, organizations and people when implementing Resolution 406 and Decree 92. In addition, the General Department of Taxation emphasizes the responsibility of inspecting and monitoring the selling prices of goods and services by enterprises and organizations within the areas to ensure the objective that the consumers can enjoy the benefit from VAT reduction.

During their declaration and preparation of the documents, any enterprise that incurs obstacles or problems in approaching and obtaining the support policies can send their questions, feedbacks and recommendations to the Portal of General Department of Taxation and provincial tax departments, directly contact or send email to the tax departments for timely instructions and answers. Thereby, enterprises should take advantages of these official information sources to study the support regulations and complete the declaration and submit support documents, especially the guidelines, some specific cases in Decree 92, Resolution 406 as well as relevant tax legal documents. Especially, in the period affected by the COVID-19 pandemic as currently, the policies and incentives for enterprises are still being issued, revised regularly, and diversified for various subjects and fields; therefore, enterprises also need to regularly update information and study newly issued documents so that they can approach and optimally use the state's support.

NEW PROVISIONS ON ADMINISTRATIVE SANCTIONS FOR TAX AND INVOICE-RELATED VIOLATIONS

TUE DANG

On November 16, 2021, the Government issued Decree 102/2021/ND-CP amending and supplementing a number of provisions of several decrees on sanctioning administrative violations in the field of taxes and invoices; customs; insurance business, lottery business; management and use of public property; thrift practice and waste combat; national reserve; State Treasury; accounting and independent audit (**Decree 102**). This Decree will take effect from January 01, 2022, amending and supplementing a number of provisions in Decree No. 125/2020/ND-CP on administrative sanctions for taxes and invoices-related violations (**Decree 125**) with the following notable points:

Firstly, increasing the statute of limitations for sanctioning invoice-related administrative violations from 1 year to 2 years.

Secondly, supplementing sanctions on the following tax and invoices-related violation acts:

- (i) Acts of giving and selling invoices (excluding giving and selling externally ordered invoices which have not yet been released or giving and selling invoices ordered by clients to other organizations and individuals) will be fined from VND 20,000,000 to VND 50,000,000;
- (ii) Issuance of invoices that do not contain all compulsory contents as prescribed will be fined from VND 4,000,000 to VND 8,000,000;
- (iii) Acts of losing, burning or damaging issued invoices for which taxes have not been declared will be fined from VND 4,000,000 to VND 8,000,000. The loss, burning or damage of invoices must be recorded in writing by the concerned parties.



Thirdly, supplementing the remedy of "reducing fines for tax and invoice-related administrative violations" and specifying circumstances, conditions and procedures for "fine reduction or exemption" under the Law on Handling Administrative Violations 2012 and the Law amending and supplementing a number of provisions of the Law on Handling Administrative Violations, which shall come into effect from January 1, 2022 (collectively referred to as the **Law on Handling Administrative Violations**) and the Law on Tax Administration. Enterprises should note the conditions to enjoy the exemption or reduction of fines in the Law on Handling Administrative Violations as follows:

- (i) An organization for which the execution of the pecuniary sanctioning decision has been postponed will be entitled to a partial reduction of the fine stated in the sanctioning decision if it continues to face with special or unexpected economic difficulties due to natural disasters, fire, epidemic and obtains certification for such difficulties by the People's Committee of the local commune, the Management Board of the industrial park, export processing zone, high-tech zone, economic zone, the direct managing tax agency or the superior agency.
- (ii) An organization is exempted from the remaining fine as stated in the sanctioning decision when it fully meets the following conditions: (a) it has received a partial reduction of the fine as prescribed in Clause 1, Article 77 of the Law on Handling Administrative Violations or already paid the fine for the first or second time in the case where it is permitted to pay the fine in several times as prescribed in Article 79 of the Law on Handling Administrative Violations; (b) it has completed the additional sanctioning forms, the remedial measures stated in the sanctioning decision; (c) it continues to face with special or unexpected economic difficulties due to natural disasters, calamity, fire, epidemic and obtains certification for such difficulties by the People's Committee of the local commune, the Management

Board of the industrial park, export processing zone, high-tech zone, economic zone, the direct managing tax agency or the superior agency.

(iii) An organization is exempted from the total fine amount as stated in the sanctioning decision when it fully meets the following conditions: (a) The execution of the sanctioning decision is postponed according to Article 76 of the Law on Handling Administrative Violations; (b) it has completed the execution of additional sanctioning forms, the remedial measures stated in the sanctioning decision; (c) it continues to face with special or unexpected economic difficulties due to natural disasters, calamity, fire, epidemic and obtains certification for such difficulties by the People's Committee of the local commune, the Management Board of the industrial park, export processing zone, high-tech zone, economic zone, the direct managing tax agency or the superior agency.



COMMENTS AND RECOMMENDATIONS

In comparison with Decree 125, the regulations on administrative sanctions relative to tax and invoices as amended and supplemented in Decree 102 are stricter for individuals/organizations. i.e. the supplementation of administratively sanctioned acts which individuals and organizations easily encounter, such as the issuance of invoices that do not contain all compulsory contents, losing/burning/damaging invoices. At the same time, the regulations regarding (i) statute of limitations for sanctioning and (ii) fine exemption/reduction are amended and supplemented to be consistent with the provisions of the Law on Handling Administrative Violations.

Decree 102 will take effect in the coming time; therefore, corporates should closely update and study the provisions of this Decree to ensure comprehensive compliance with the obligations under law and avoid unnecessary legal risks.

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