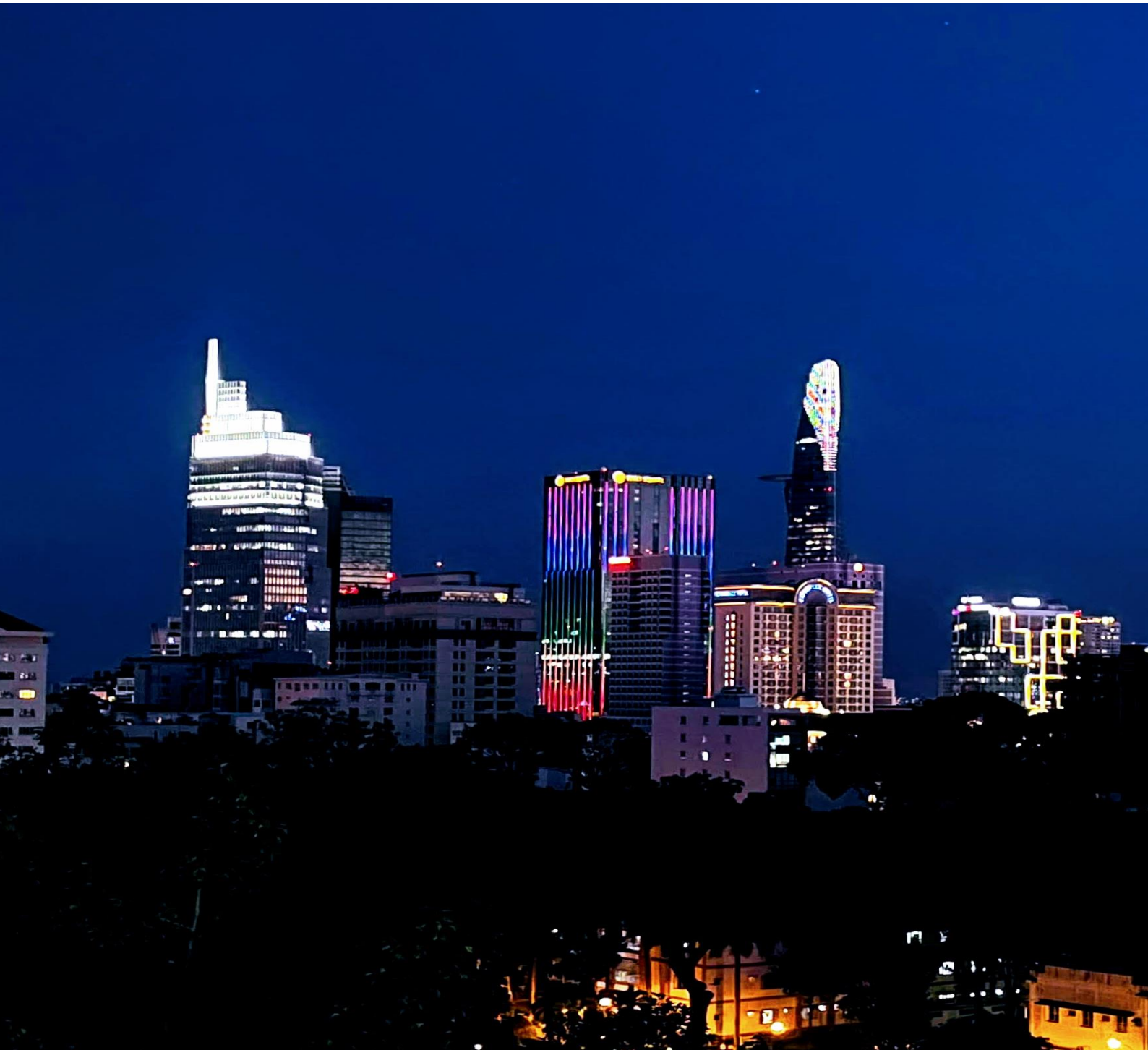


LEGAL UPDATES

December 2021



Decree No. 85/2021/ND-CP dated 25 September 2021 of the Government on Amendments to Decree No. 52/2013/ND-CP dated 16 May 2013 of the Government on E-Commerce (“Decree 85”)

Effective date: 01 January 2022

Decree 85 will take effect from 1 January 2022 with substantial changes to better protect consumer rights and constrict the conditions applicable to foreign investors in this field.

Below are key contents of Decree 85:

1. Governing scope of Decree 85 is focused on e-commerce activities and excludes e-transactions in the sectors of finance, banking, credit, insurance, lottery, money exchange, gambling and online games, digital contents, radio, and television services.
2. Decree 85 introduces a new definition of e-commerce services. In particular, *E-commerce services* are e-commerce activities whereby traders or organisations providing e-commerce services in relation to setting-up of e-commerce websites for other traders, organisations and individuals to conduct commercial promotion activities, sell goods or provide services therein.

However, the providers of e-commerce services mentioned above are exclusive of the ones who are just providing services of websites designing and not involved in business, operation, and coordination of those websites.

3. Range of entities being subject to the governance of Decree 85 is expanded. Particularly:
 - all traders, organisations having e-commerce activities fall within governing scope of Decree 85 regardless of their commercial presence or non-presence in Vietnam; and
 - logistic services providers and other supportive services providers are subject to governing scope of Decree 85.
4. A social network will be considered as an e-commerce platform if having one of following functions for which users have to pay to use:
 - allowing users to open booths to display and introduce goods or services;
 - allowing users to open accounts to perform the contract signing process with customers;
 - having a sale and purchase section which allows users to post information on their purchase and sale of goods and services.
5. Regulations to enhance protection of consumer rights are for the first time provided in Decree 85. Particularly, those regulations include the following:
 - detailing in information on goods published on the website of mandatory contents displayed on the goods labels in accordance with the law on labelling goods;
 - publication of information numbers, issuance date and issuance authorities of the licenses or other similar documents of sellers of goods and services which have to satisfy investment and business conditions included in the list of conditional business lines and investment sectors;
 - supplementation of goods inspection policy to general transactional conditions that apply to goods traded or introduced on the website;
 - demarcation and publication of logistic service providers’ responsibility for provision of

documents of goods during the delivery process;

6. Obligations of foreign traders that have e-commerce activities in Vietnam set out in Decree 85 are as follows:

- a) For foreign traders, organisations having website providing e-commerce services in Vietnam:
- (i) A foreign trader or organisation which has website providing e-commerce services in Vietnam is the one operating an e-commerce website, which (1) has Vietnamese domain name; or (2) has Vietnamese as display language; or (3) has over 100,000 transactions from Vietnam per year (the “**Foreign E-commerce Services Provider**”);
 - (ii) The Foreign E-commerce Services Provider must:
 - register its business in e-commerce services sector; and
 - establish a representative office in Vietnam or assign a party to be its authorised representative in Vietnam;
 - (iii) Imported and exported goods traded via e-commerce must go through customs procedures in accordance with the laws on customs.
- b) For foreign traders, organisations trading goods via Vietnamese e-commerce platforms (the “**Foreign Trader**”):
- (i) In order to participate in trading goods on Vietnamese e-commerce platform, a Foreign Trader must select one of following options:
 - Option 1: Performing import, export rights of foreign traders not having presence in Vietnam in accordance with the Vietnamese law; or
 - Option 2: The owner of e-commerce platform will, on behalf of buyers, import goods that are purchased via the e-commerce platform from the Foreign Trader; or
 - Option 3: Appointing a commercial agent in Vietnam.
 - (ii) The platform owner must verify the identity of Foreign Trader and represent the Foreign Trader to settle complaints of consumers.
 - (iii) Similar to the case of Foreign E-commerce Services Provider, traded goods also must go through the customs procedures.
- c) For foreign investors that set up companies in Vietnam operating in e-commerce sector (the “**Foreign Investor**”):

As e-commerce services provision falls within the sector to which conditions for market access shall apply to foreign investors, a Foreign Investor must:

- (i) satisfy market access conditions as stipulated by the Law on Investment; and
- (ii) obtain an appraisal opinion on national security from the Ministry of Public Security if the Foreign Investor holds controlling right over at least one in top five leading companies in the Vietnam market of e-commerce services, as per the list published by the Ministry of Industry and Trade.

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TAX

Circular No. 80/2021/TT-BTC (“Circular 80”) dated 29 September 2021 of the Ministry of Finance Guiding Implementation of the Law on Tax Administration and Decree No. 126/2020/ND-CP dated 19 October 2021 of the Government Detailing Law on Tax Administration (“Decree 126”)

Effective date: 1 January 2022

Circular 80 provides for detailed guidance on a number of articles of the Law on Tax Administration and Decree 126 and will replace a few existing regulations governing various matters. Among other matters described in the new Circular 80, there are two remarkable ones highlighted in the present Legal Updates, including (1) tax allocation and (2) tax filing mechanism for cross-borders e-commerce and digital business.

1. Tax Allocation

As per Article 11.2 of Decree 126, a taxpayer conducting business activities at multiple localities in different provinces other than the place where its head office is located and doing centralised accounting at the head office must submit tax declaration files to the tax authority in charge of that tax payer’s head office. Simultaneously, the taxpayer is required to submit to the tax authority a table detailing its allocation of payable tax amount to each provincial locality where there is [a collection point for] State Budget revenue.

Circular 80 provides for detailed guidance on that tax allocation matter as follows:

| No. | Applicable Cases | Value-Added Tax (VAT) | Cooperate Income Tax (CIT) | Personal Income Tax (PIT) |
|-----|--|---|---|---------------------------|
| 1. | Electronic lottery business | According to the ratio (%) of the actual ticket sales revenue in each province over the total actual ticket sales revenue of the taxpayer | According to the ratio (%) of the actual ticket sales revenue in each province over the total actual ticket sales revenue of the taxpayer | X |
| 2. | Activity of real estate transfer in a province other than province of head office’s location | 1% of revenue before VAT in each province (instead of 2% as per former regulations) | 1% of revenue being subject to corporate income tax in each province (instead of basing on net gain calculation) | X |
| 3. | Construction activity in a province other than province of head office’s location | 1% of revenue before VAT in each province (instead of 2% as per former regulations) | X | X |
| 4. | Dependent unit and/or business locations being (a) production facility(ies) in a province other than | 1% (for goods being subject to 5% VAT) or 2% (for goods being subject to 10% VAT) of revenue before VAT of the respective | According to the ratio (%) of the expenses of each production facility over the total expenses. | X |

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|----|---|--|---|--|
| | province of head office's location | unit/business location (the "Allocated Tax Amount"). In case the Allocated Tax Amount is greater than the total payable tax amount of the head office, the Allocated Tax Amount shall be re-calculated based on the ratio (%) of the Allocated Tax Amount over the total payable amount of the head office. | In case of tax incentivised activities, the payable CIT shall be determined based on the actual business results and tax incentive scheme rather than by the ratio method as above. | |
| 5. | Activity of hydropower plant located in many provinces | According to the ratio (%) of the investment value of the part of hydropower plant located within each province over the total investment value of the hydropower plant | According to the ratio (%) of the expenses of each hydropower plant over the total expenses of the head office (instead of calculating based on investment value). In case of tax incentivised activities, the payable CIT shall be determined based on the actual business results and tax incentive scheme rather than by the ratio method as above. | X |
| 6. | Incomes from salaries and wages paid at the head office for employees working at dependent units and business locations in a province other than province of head office's location | X | X | According to the actual PIT amount withheld at each province |
| 7. | Electronic lottery awards | X | X | According to the actual PIT amount withheld at each province |

2. Tax Filing Mechanism for Cross-Borders E-Commerce and Digital Business

Circular 80 formalises taxing rules for foreign companies doing e-commerce, digital business and other business in Vietnam without permanent establishments (the “**Foreign Company**”).

- a) A Foreign Company, either by itself or via its authorised party(ies), is able to register tax code, declare, and pay taxes (using freely convertible foreign currency) in Vietnam at the portal of General Department of Taxation.
- b) Applicable taxes for a Foreign Company comprise VAT and CIT. Payable tax amount shall be determined based on revenue derived in Vietnam according to the prevailing regulations of VAT and CIT. Principles to determine ‘revenue derived in Vietnam’ given under Circular 80 include the following:
 - (i) Types of information used to identify transactions of organisations and individuals purchasing goods and services arising in Vietnam (the “**Vietnamese Buyer**”) are as follows:
 - information on payment of the Vietnamese Buyer, such as credit card information based on bank identification number (BIN), bank account information or other similar information that are used by the Vietnamese Buyer to make payments with the Foreign Company;
 - information on the Vietnamese Buyer’s residential status in Vietnam (information on billing address, shipping address, home address or other similar information declared by the Vietnamese Buyer to the Foreign Company);
 - information on access points of the Vietnamese Buyer in Vietnam, such as country phone area code of the SIM card, IP address, landline location or other similar information.
 - (ii) When determining a transaction arising in Vietnam for tax declaration and calculation, the Foreign Company shall do the following:
 - using two non-conflicting information including: (a) one relating to the payment of the Vietnamese Buyer; and (b) one relating the residential status or information about the access points of the Vietnamese Buyer;
 - in the case Vietnamese Buyer’s payment information cannot be obtained or contradicts with the remaining information, the Foreign Company is allowed to use information relating to residential status and access points of the Vietnamese Buyer.
- c) In case a Foreign Company does not directly register, declare and pay tax in Vietnam, relevant Vietnamese parties will take the following responsibilities:
 - (i) in case of institutional Vietnamese Buyers established in accordance with Vietnamese laws, the Vietnamese Buyers are obliged to withhold, declare, and pay tax on behalf of the Foreign Company for the payable tax amount; or
 - (ii) in case of individual Vietnamese Buyers, relevant commercial banks or intermediary payment service providers are responsible for withholding, declaring and paying tax, except where unable to withhold payable tax amount, the commercial banks or intermediary payment service providers are required to track and report those transactions on monthly basis.

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