



Strengthening tax administration across the e-commerce landscape

By Phan Hoai Nam
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Vietnam is a country where internet users account for more than half of the country's population and this is expected to increase sharply in the coming years.

According to the "e-Conomy SEA 2020" report by Google, Temasek, and Bain & Company, Vietnam's internet economy reached a total value of around \$14 billion in 2020 and will likely reach \$52 billion in 2025, with a 29 per cent compound annual growth rate.

With the development of the internet economy in recent years, e-commerce business activities have become much more diversified. Such activities have adopted multiple mobile and lifestyle consumer-centric platforms including social networks, online booking services, online advertising services on social networks, and many other types of e-commerce. As a result, related businesses do not need a presence in a host country to conduct sale transactions, and this has drawn the tax authorities' attention with a view to building a tax regime that is effective to manage this new business model.

In principle, all foreign organisations and individuals earning income in Vietnam, whether present in Vietnam or not, are obliged to pay taxes into the state budget. For foreign organisations and individuals present in Vietnam, the tax declaration and payment are simple. For those not present, it is implemented on the basis of foreign contractor tax in accor-

dance with Circular No.103/2014/TT-BTC guiding tax obligations applicable to foreign organisations and individuals doing business in Vietnam or earning income here.

However, Vietnam's tax authorities view that the tax amount collected from e-commerce activities is still very limited. The main reason is attributable to the specific nature of e-commerce which is different from traditional commerce in terms of scale of activities within the non-border internet environment.

As a new policy development, the Law on Tax Administration No.38/2019/QH14 effective from last July has stipulated the regulations of tax administration for e-commerce and digital business transactions. This new measure aims at providing stricter management as well as limiting the loss of state budget revenue in the context of continuous business expansion of foreign individuals and organisations in this field.

The law clearly stipulates that for e-commerce business, digital-based business, and other services provided by an overseas supplier without a permanent establishment in Vietnam, the overseas supplier is obliged, either directly or to authorise a third party, to conduct tax registration, declaration, and payment in Vietnam.

The detail for tax administration for e-commerce activities was set out in Decree No.126/2020/ND-CP, taking effect from December 2020, on detailing a number of articles of the Law on Tax Administration. The decree specifies that commercial banks and payment intermediary ser-

vice providers will now have to pay tax obligations on behalf of foreign individuals and organisations with income-generating e-commerce business in Vietnam.

Accordingly, commercial banks and intermediary payment service providers are responsible for withholding and paying the tax liabilities of overseas suppliers who do not have a permanent establishment in Vietnam and are doing e-commerce business or digital-based businesses with organisations and/or individuals in Vietnam.

It works as follows – firstly, overseas suppliers are required to register, declare, and pay taxes directly with the Vietnamese tax authorities, or authorise a third party to register, declare, and pay taxes. However, where the overseas supplier has not registered to pay taxes directly, the commercial bank or the intermediary payment service provider shall on a monthly basis withhold and pay tax liabilities for each product, good, and service where the individual buyer makes payment to the overseas supplier. The General Department of Taxation (GDT) will identify the names and websites of those overseas suppliers so that the commercial bank or intermediary payment service provider shall perform the withholding obligations.

Where an individual buys goods or services from an overseas supplier with a form of payment which the commercial bank or intermediary payment service provider cannot withhold tax, the commercial bank or the intermediary payment service provider shall notify the GDT.



Although the tax administration policy for e-commerce has been enacted, there are currently no specific regulations on tax administration and policies for various issues.

The aforementioned regulations will place significant administrative burdens on banks and payment intermediaries. In order to comply with the above provisions on tax withholding obligations, banks and payment intermediaries must have resources to monitor and handle this work.

In terms of policy, the withholding agents also need clear guidance to fulfill the related withholding obligation, for example the withholding tax rates applied to payment of specific transaction; if the withholding agents have to identify the transaction from

specific overseas suppliers and to withhold tax by themselves or upon a clear instruction from the tax authority on the detailed overseas supplier; the mechanism of reporting and coordination between the overseas supplier, the tax authorities, and the withholding agents; and so on.

The upcoming circular providing guidance to Decree 126 is expected to provide details, and we assume a transition period for the related parties to have time to implement this new tax withholding mechanism.■

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Accountability sought in e-commerce

By Huong Nguyen

Unless they enhance their responsibilities in controlling trading activities in order to improve competitiveness, e-commerce platforms may face troubles caused by new legal provisions and sanctions.

A draft decree amending 2013's Decree No.52/2013/ND-CP on e-commerce, which will see comments collected from businesses and consultant firms, has recently caused concern for e-commerce operators if the draft is adopted.

Nguyen Chi Linh, representative of an e-commerce platform which is a subsidiary of the Chinese tech giant Alibaba Group, noted her criticisms to *VIR* about an adjusted article which orders a searching tool for state authorities to manage all information of their traders to check and inspect any violations or complaints.

"This regulation is unnecessary and can seriously impact the convenience of traders. Even if traders

do not violate or make any complaints, they don't want private information to be monitored by state management agencies. They could jump to other social platforms, and hamper e-commerce development," said Linh.

She added that the platforms are assisting state management agencies in investigating illegal business acts, saying that providing registration information, transaction histories, and other documents on the issue on the e-commerce trading platform should be enough.

In addition, new regulations related to joint responsibility on goods and services on the platforms has caused headaches for e-commerce operators. The draft decree has added responsibilities in Article 36.11.d, and the representative of the Chinese e-commerce platform said this is impossible for them, which plays a commercial intermediary role only.

Without a legal framework, the role and responsibilities of e-commerce platforms continue to be high-

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– Nguyen Minh Long
Director, Dragon Law Company

lighted. At the end of 2019, sneaker and sports apparel giant Nike ditched its deal with Amazon after two years, after noting its concerns about third-party sellers offering counterfeit products on the marketplace. Many brands are unhappy with how Amazon operates, with fake goods running rampant.

According to *Bloomberg*, the e-commerce giant is also notorious for identifying popular products sold by third parties on its website and then selling its own similar products at lower prices.

In Vietnam, e-commerce platforms like Shopee and Sendo are used to inspections for massive violations and complaints related to bad service or fake and prohibited goods.

Nguyen Minh Long, director of Dragon Law Company, said that e-commerce platforms should not shirk their duty to provide a management tool for state authorities, and take the joint responsibilities to improve themselves.

"In order to enhance the efficiency of these regulations, we need some sanctions strong enough to ensure owners of e-commerce platforms improve accountability and compliance, ensure good performance of online trading, and protect local consumers," said Long.

He agreed with new provisions, saying, "In the context that online trading is increasingly developing, especially during the pandemic, strengthening the state management for the sustainable development of the retail market is necessary to maintain both benefit of businesses

and consumer protection, and avoid e-commerce platforms developing as a place for trading illegal goods," explained Long.

The draft decree amending 2013's Decree No.52/2013/ND-CP on e-commerce is being compiled by the Ministry of Industry and Trade. The draft adds provisions on managing e-commerce activities involving foreign factors, and those on social networks. It also revises several regulations on the responsibility of both e-commerce platforms and their operators.

Some popular e-commerce platforms in Vietnam are backed by Chinese technology giants, or funded by regional venture funds. However, results often fail to match investment, and competitiveness increasing. In 2020, *Lazada.vn* fell behind Shopee and Tiki, according to Malaysian shopping aggregator iPrice Group, with a sharp month-by-month drop of its traffic, while that of the leading player Shopee has tripled Lazada and Tiki.■