



Special Alert

December 2022

www.indochinecounsel.com

Tax Authority Issued Guidance on the Obligations of the Owners of E-commerce Trading Floors for Disclosure of Merchants' Information

On 30 October 2022, the Government promulgated Decree No. 91/2022/ND-CP on amendments of and additions to a number of articles of Decree No. 126/2020/ND-CP dated 19 October 2020 elaborating the 2019 Law on Tax Administration ("**Decree 91**"), which further specifies the responsibilities of tax payers relating to tax declaration and payment on cyberspace, including the responsibility of providing certain prescribed information of merchants on e-commerce trading floors by such floors' owners. For implementation of Decree 91, on 14 November 2022, the General Department of Taxation (the "**GDT**") issued Official Letter No. 4205/TCT-DNNCN on the guidance for the owners of e-commerce trading floors to provide the prescribed information on merchants operating thereon ("**OL 4205**"). Below is our summary of the notable contents of this OL 4205, that would have impacts on e-commerce businesses.

New rule on tax administration for trading activities on e-commerce trading floors

Under the draft publicly released back in February 2022, the e-commerce trading floor owners are required to withhold and pay prescribed taxes on behalf of (domestic and foreign) individual merchants in the capacity of the merchants' representative (for those goods and services sold through online ordering function) or under the merchants' authorization, as well as to provide certain prescribed information of the merchants. However, in the final shape of Decree 91, only the regulatory obligation to provide the prescribed information of merchants is approved, and the tax withholding and payment duty has been omitted. In particular, such regulatory obligation as per Article 1.7 of Decree 91, and as further specified under OL 4205, is provided as follows:

Information to be provided

Prescribed merchants' information to be provided by an e-commerce trading floor owner comprises the merchant's name, tax code or number of personal identification or identity card or citizen identification or passport, contact details (i.e. address and phone number), and revenue received from the online ordering function, if any. Such information must be provided fully, accurately and timely. If e-commerce trading floors do not fully keep the required general information, they remain obligated to fully, correctly and timely provide the information that is actually stored on their e-commerce platforms at the reporting time. E-commerce trading floor owners are also responsible for updating the required information by requesting merchants to provide the missing information on the e-commerce trading floor and notify the same to tax authorities in the next information provision period.

Time for providing information

The provision of relevant information must be conducted on a quarterly basis and by the last day of the first month of the following quarter. As Decree 91 came into force from 30 October 2022, the first information provision period is therefore the fourth quarter of 2022, then the deadline for this period is 31 January 2023. In addition, the last day of the information provision period would be the following working day in case the actual last day coincides with a day-off or public holiday.

Form of information provision

E-commerce trading floor owners are required to provide online merchants' information by electronic method via the GDT's web portal in the prescribed format. Accordingly, the required information would be reported via the website <https://www.thuedientu.gdt.gov.vn/> by accessing the "E-Commerce Data Portal" ("Cổng Thông Tin Thương Mại Điện Tử" in Vietnamese) at the right hand below corner of the website (the "**Portal**") under the data format specified in the appendix on the composition of data receiving information from the e-commerce trading floor owners attached to OL 4205. The Portal has been activated on 15 December 2022.

Who is impacted by the new rule?

Per Article 1.7 of Decree 91, those who are responsible to provide merchants' information are organizations who are established and operating under Vietnamese laws, being the owners of e-commerce trading floors, and the merchants in question would include those merchants being organizations or individuals that conduct entirely or partially their trading activities on such e-commerce trading floors. It should be noted that those developing websites for e-commerce activities in specialized sectors, such as finance, banking, credit, insurance, lottery, money exchange, gold exchange, foreign currencies exchange and other payment means, betting, lucky games, digital content distribution and publication services, broadcasting and television services, and those providing website design services but not directly involved in business activities, operations or coordination on such websites, are not covered under the ambit of this new tax administration rule.

For foreign e-commerce platform owners, not only the providers having e-commerce websites under Vietnamese domain name and/or displayed in Vietnamese language but also those having e-commerce websites with more than 100,000 transactions per year from Vietnam, are absolutely targeted by this regulation. That means this new tax administration rule applies to both domestic and foreign e-commerce platform owners.

What is legal consequence for e-commerce trading floor owners for the failure to provide the prescribed information?

An act of failing to provide the merchants' prescribed information by an e-commerce trading floor owner shall be subject to an administrative sanction (main penalty), which is in the range of VND2,000,000 (about US\$87) and VND16,000,000 (about US\$696). In addition, the e-commerce trading floor owner remains obligated to provide the required information fully and correctly for remedying the consequence of the violation.

Process of providing the prescribed information

Per OL 4205, e-commerce trading floor owners provide the prescribed information to the tax authorities under the following process:

Step 1: E-commerce platform owners use their e-Tax account granted on the Portal to provide information. Accordingly, e-commerce trading floor owners could provide information to the Portal in one of the three following ways:

- To declare directly on the declaration support software (HTKK), then export the XML file to send through the Portal.
- To download the excel template file from the declaration support application and input the data in excel, then input it into the declaration support application to check the data and export the XML file to send through the Portal.
- To export from the company's software to an XML file in accordance with the prescribed data format, then input it into the declaration support application to check and export the XML file to send via the Portal.

Step 2: The Portal shall check the provided information under the specified data format, then receive the data and notify the receipt of the data. After receiving the data, if an error is detected in any detailed information line, the Portal shall make a specific notice of the error information line and the reason for that error in order for the e-commerce trading floor owners to re-provide the correct information.

Step 3: E-commerce trading floor owners provide additional information or change information if necessary.

Conclusion

Tax is one of the main sources for the national budget, and merchants' business activities in cyberspace have been more and more popular in the Vietnamese market. The new rule requiring the e-commerce trading floor owners to provide the merchants' prescribed information demonstrates the strong determination of the Vietnamese Government for better tax administration.

The fact that Decree 91 came into effect on its signing date shows the immediate approach of the Vietnamese tax authorities. Also, earlier the business community did recommend to apply the regulation that requires e-commerce trading floor owners to provide prescribed information on an annual basis with the aim to help them reduce the admin and expenditure burden. The GDT finally decided to require e-commerce trading floor owners to quarterly provide the relevant information as in the final shape of Decree 91. This shows that the tax authorities would likely shift from education and recommendation approach to enforcement within a very short term. As such, businesses operating in cyberspace should be prepared for more scrutiny and stricter compliance.

About Indochine Counsel

Established in October 2006, Indochine Counsel is one of the leading business law firms in Vietnam. The firm provides professional legal services for corporate clients making investments and doing business in Vietnam. The legal practitioners at Indochine Counsel are well qualified and possess substantial experience from both international law firms and domestic law firms. The firm boasts more than 45 legal professionals working at the main office in Ho Chi Minh City and a branch office in Hanoi.

Indochine Counsel's objective is to provide quality legal services and add value to clients through effective customized legal solutions that work specifically for the client. The firm represents local, regional and international clients in a broad range of matters including transactional work and cross-border transactions. The firm's clients are diverse, ranging from multinational corporations, foreign investors, banks and financial institutions, securities firms, funds and asset management companies, international organizations, law firms to private companies, SMEs and start-up firms in Vietnam.

Indochine Counsel advises clients in the following areas:

- Inward Investment
- Corporate & Commercial
- Mergers & Acquisitions
- Securities & Capital Markets
- Banking & Finance
- Property & Construction
- Taxation
- Intellectual Property
- Technology & Media
- Mining & Energy
- International Trade
- Dispute Resolution

A full list of partners, associates and other professionals is available on our website. |

Contact Us

For further information or assistance, please contact the following Indochine professionals:



Dang The Duc
Managing Partner
duc.dang@indochinecounsel.com



Nguyen Thi Hong Anh
Partner, Head of IP&T Practice Group
anh.nguyen@indochinecounsel.com



Le Nguyen Huy Thuy
Partner
thuy.le@indochinecounsel.com



Le Van Duong
Partner, Head of Hanoi Office
duong.le@indochinecounsel.com



Phan Anh Vu
Partner
vu.phan@indochinecounsel.com



Pham Thi Thanh Lan
Partner
lan.pham@indochinecounsel.com



Greater China Desk
Ly Nghia Dzung / 李義勇
Of Counsel
dung.ly@indochinecounsel.com



Dang Hoan My
Associate
my.dang@indochinecounsel.com

Ho Chi Minh City

Unit 305, 3rd Floor, Centec Tower
72-74 Nguyen Thi Minh Khai, District 3
Ho Chi Minh City, Vietnam
T +84 28 3823 9640
F +84 28 3823 9641
E info@indochinecounsel.com

Hanoi

Unit 705, 7th Floor, CMC Tower
Duy Tan Street, Cau Giay District
Hanoi, Vietnam
T +84 24 3795 5261
F +84 24 3795 5262
E hanoi@indochinecounsel.com

www.indochinecounsel.com

This Special Alert is designed to provide our clients and contacts with general information of the relevant topic for reference only, without the assumption of a duty of care by Indochine Counsel. The information provided is not intended to be nor should it be relied upon as a substitute for legal or other professional advice.

© 2022 Indochine Counsel. All Rights Reserved.