

# TAXATION OF E-COMMERCE IN SOUTHEAST ASIA

MAY 2021

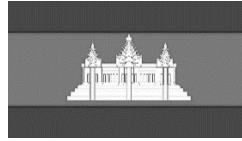
# WHY TAXATION ON E-COMMERCE?

The digital transformation experienced over the last number of years has resulted in unprecedented global economic and societal changes. This has resulted in global debates around international tax and the digital economy and whether the existing international tax rules, developed in a "brick-and-mortar" economic environment more than a century ago, remain appropriate for the modern global economy. The tax implications are wide-ranging affecting both direct and indirect taxation, broader tax policy issues, and tax administration.

Addressing the tax challenges arising from digitization has been a top priority for the OECD/G20 Inclusive Framework, and a focus of the BEPS project since inception. BEPS Action 1 considered several options for addressing these challenges raised by the digital economy, covering direct and indirect tax issues around the digital economy. In relation to indirect tax, options included requiring vendors to register and account for VAT in the jurisdiction of importation or requiring non-resident suppliers of remote digital B2C supplies to register and account for VAT in the customer's jurisdiction.

Countries in Southeast Asia have joined the global digital era in drafting and implementing new rules on e-commerce activities. This publication covers the recent developments in Cambodia, Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam.

# CAMBODIA



## How Does it Work?

Sub-decree 65 provides the criteria and mechanisms to register and collect VAT on the provision of e-commerce activities within Cambodia, which are supplied by non-resident entities that have no taxable presence, otherwise known as a permanent establishment (“PE”) in Cambodia.

## Key Elements of the New Rules

Sub-decree 65 (subject to certain thresholds) requires VAT-registration by non-resident entities with no PE in Cambodia that provide e-commerce services to domestic consumers. The General Department of Taxation (“GDT”) will process VAT-registration for entities with actual or expected revenue of USD 62,500 per annum. These thresholds determine whether entities are classified as self-assessment regime taxpayers.

E-Commerce is defined to include the purchase, sale, rental, exchange of goods or services, including online commercial activities. E-commerce transactions, meanwhile, include the supply of software and other related services, online shopping or auctions, advertising, website hosting, data retrieval, consumption of digital products and/or downloadable content, real time streaming and subscriptions.

**For B2C transactions**, non-resident entities that supply e-commerce services to consumers in Cambodia having registered for VAT must file monthly VAT returns and payable VAT at 10% on its transactions to the GDT no later than the 20th of the month following that in which the payment was made.

**For B2B transactions**, Sub-decree 65 reiterates the OECD’s recommendations that business customers should self-assess VAT on a reverse charge basis.

Non-resident e-commerce providers and registered Cambodian taxpayers who fail to meet their obligations as set out above may be fined or imprisoned according to the Law on Taxation (“LOT”). Article 76(2) of the LOT provides that where an entity fails to register with the GDT on time, it must pay back taxes due since the date on which it should have been registered. As defined in the LOT, obstruction of the tax law includes failing to register with the GDT. Any entity that obstructs the implementation of the tax law may be fined KHR 5 to 10 million (*approximately USD 1,250 – 2,500*) and/or imprisonment from one month to one year.

Sub-decree 65 entered into force on 8 April 2021, with the GDT expected to issue further implementing decrees and guidelines that remain pending at this stage.

## Applicable Regulations

Sub-decree No. 65 S.E on the Implementation of Valued Added Tax on E-Commerce. (“Sub-decree 65”) dated 8 April 2021.



*Implementing regulations to be introduced soon*

# INDONESIA



## How Does it Work?

From 1 July 2020, the Government of Indonesia has started collecting VAT from e-commerce activities in Indonesia. The current regulation is broad in scope and applies on certain intangible goods and services provided online to Indonesian customers from overseas

## Applicable Regulations

MoF Decree No.48/PMK.03/2020 (PMK-48) dated 5 May 2020, and DGT Regulation No. 12/PJ/2020 (PER-12) dated 25 June 2020.



## What's New?

- VAT on e-commerce will be applied in cases where foreign intangible goods or services are provided and used in Indonesia through an e-commerce system.
- E-commerce is defined as commercial trade transactions conducted through electronic means and procedures.
- Under PMK-48, the Directorate General of Taxation (“DGT”) is authorized to appoint VAT Collectors. Once the DGT appoints a VAT Collector, they will receive a VAT Collector ID.
- The DGT has set the following thresholds to determining e-commerce VAT collectors in Indonesia:
  - Sales to Indonesian customers of over IDR 600 million (approx. USD 42,000) per annum or IDR 50 million (approx. USD 3,500) per month; or
  - Traffic or access from Indonesia of over 12,000 per annum or 1,000 per month.
- Indonesian customers include those:
  - Individuals and entities residing or domiciled in Indonesia;
  - Settling payments through debit or credit facilities provided by institutions in Indonesia; or
  - That has an Indonesian IP address and telephone number.
- A VAT collector is required to collect VAT of 10% on payments from Indonesian customers and remit it to the Government of Indonesia by the end of the following month.
- VAT collectors must issue VAT collection slips that can be used as VAT invoices for Indonesian taxpayers.
- E-commerce and domestic e-commerce marketplace that meet the VAT Collector criteria, but have not yet been selected by the DGT to be VAT Collectors, can submit a letter to the DGT to request to be appointed as VAT collectors in Indonesia.

# MALAYSIA



## How Does it Work?

From 1 January 2020, a registered foreign individual or entity (“RFP”) is required to charge service tax at 6% on “digital services” provided to consumers in Malaysia. Additional guidelines issued in 2020 provide clarity on exempted digital services, group relief rules, debit and credit notes and the treatment of online platform operators.

## What’s New?

The scope of digital services covers any service delivered or subscribed to over the internet or other electronic network, which cannot be obtained without the use of information technology and where service delivery is typically automated.

**An FSP is any individual or entity that:** (i) resides outside Malaysia; (ii) provides any digital service to a consumer; (iii) operates an online platform for the purchase and sale of goods or providing services (whether digital or not); and (iv) conducts transactions to provide digital services on behalf of any individual or entity.

A consumer is any individual or entity that meets any two of the following conditions:

- Makes payments for digital services to an FSP using a credit or debit card provided by any financial institution or company in Malaysia;
- Acquires digital services from an FSP using an internet address registered in Malaysia or a phone number with a Malaysian country code; and
- Resides in Malaysia.

Registration is required if:

- The individual or entity is an FSP, and the value of digital services provided by it to Malaysian consumers exceeds MYR 500,000 (USD 120,000) over a 12-month period.
- The individual or entity is a platform operator treated as an FSP, and the value of both digital services that it makes to Malaysian consumers and the value of digital services made by other FSPs through its platform to Malaysian consumers exceed MYR 500,000 over a 12-month period.

Registered FSPs are required to file service tax returns on a quarterly basis and settle their liabilities no later than the last day of the month following the end of the corresponding quarterly taxable period.

Registered FSPs must issue invoices, receipts, or similar documents (soft or hard copy) with the required details.

## Applicable Regulations

Service Tax (Amendment) Act 2019  
(the Act)

Royal Malaysian Customs Department  
(Customs) Guide on Digital Services  
(the Guidelines) published on 1 August  
2020



# PHILIPPINES



## How Does it Work?

Revenue Memorandum Circular (“RMC”) No. 60-2020 highlighted the obligations of individuals or entities conducting business transactions through any form of electronic media. RMC No. 55-2013 reiterated taxpayers’ obligations in relation to online business transactions.

## Applicable Regulations

Revenue Memorandum Circular No. 60-2020 and Revenue Memorandum Circular No. 55-2013.



## What’s New?

RMC No. 55-2013 clarified that the existing tax laws and revenue issuances on *“the tax treatment of purchases (local or imported) and sale (local or international) of goods (tangible or intangible) or services”* are to be equally applied with no distinction as to whether the marketing channel is internet-based or digital nature or a typical and customary physical medium.

The most common types of online business transactions are listed: online shopping or retailing, online intermediary services, online advertising/classified ads and online auctions. RMC 55-2013 reiterates that, similar to other business establishments, individuals or entities that engage in such transactions must:

- Register their business with the Bureau of Internal Revenue;
- Secure the required Authority to Print and register books of accounts for use in its business;
- Issue registered invoices or receipts;
- Withhold the required withholding taxes;
- File applicable tax returns; and
- Keep books of account and other business/accounting records within the legally prescribed timeframes.

RMC No. 60-2020 notifies all individuals or entities doing business and earning income in any manner or form, particularly those *“into digital transactions through the use of any electronic platforms and media, and other digital means,”* to ensure that their businesses are registered and that they are tax compliant. The issuance reminds taxpayers to comply with basic registration guidelines and other applicable tax compliance requirements such as issuing invoices, maintaining accurate books of accounts, withholding taxes and filing and paying taxes correctly and by the due deadlines.

On 19 May 2020, House Bill No. 6765 or the proposed Digital Economy Taxation Act (“**Proposed DETA**”) was filed to usher in five key changes in taxation of the digital economy. This includes making network orchestrators and e-commerce platforms withholding agents for income taxes and VAT. The Proposed DETA clarifies that services rendered electronically in the course of trade or business, such as digital advertising by internet giants and subscription-based services - are now subject to VAT. The Proposed DETA requires providers of digital services to do so through a resident agent or representative office in the Philippines. The bill has been referred to the House Committee on Ways and Means and remains pending.

# SINGAPORE



## How Does it Work?

The Goods and Services Tax Act (Chapter 117A of Singapore) (“**GST Act**”) provides for GST to be levied on the provision of web-based digital services by an overseas supplier to local customers. This tax will be collected through the Overseas Vendor Registration (“**OVR**”) regime or on a reverse charge basis, depending on the local customer’s GST registration status. The Seventh Schedule to the GST Act sets out the definition of “**digital services**”, classification criteria for digital services suppliers and details of the OVR regime. Due to take effect from 1 January 2023, GST will be extended to cover non-digital services imports.

## What’s New?

The applicability of GST to e-commerce activities in Singapore depends on whether the supplier is a local or overseas individual or entity. A local supplier of web-based goods or services (including digital services) must charge GST of 7% on such services supplied to a local customer in Singaporean resident. Where the supply is made to a customer outside Singapore, zero-rated GST may apply: (a) in the case of physical goods, if they are exported; or (b) in the case of (digital) services, the supply qualifies as an international service under section 21(3) of the GST Act.

However, where the supplier is outside of Singapore, there are variations in the ways that GST should be calculated depending on the type of supply and the registration status of the Singapore-based recipient:

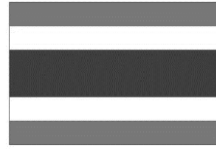
- Where an overseas individual or entity supplies goods to one based in Singapore via the internet, such supply is generally subject to import GST, regardless of whether the importer is GST-registered or not. With effect from 1 January 2023, a GST-registered business subject to reverse charges must perform reverse charges on all low-value goods (i.e. with a total value not exceeding SGD 400).
- Where an overseas individual or entity supplies digital services (or non-digital services with effect from 1 January 2023) to a customer in Singapore via the internet:
  - **For bank to bank ("B2B") transactions** (i.e. where the customer is either a GST-registered partially exempt business not entitled to full input tax credit or a GST-registered charity or voluntary welfare organisation that receives non-business receipts): GST for the supply of services will be collected by the customer on a reverse charge basis.
  - **For B2C transactions:** An overseas supplier must be GST-registered under the OVR regime if: (a) its global turnover exceeds SGD 1 million for the calendar year or is reasonably expected to exceed this in the next 12 months; and (b) the value of digital services made to non-GST registered customers in Singapore exceeds SGD 100,000 for the calendar year or is reasonably expected to exceed this in the next 12 months (“**OVR Threshold**”). Under certain circumstances, the operator of a local or overseas electronic marketplace supplying digital services on behalf of overseas suppliers to customers based in Singapore will also be required to register and account for GST on such supplies under the OVR regime. From 1 January 2023 onwards, the OVR Threshold and the obligation to account for GST on supplies by overseas entities will extend to all non-digital services.

## Applicable Regulations

Section 8(1A) read with the Seventh Schedule to the GST Act



# THAILAND



## How Does it Work?

The Act Amending the Revenue Code No. 53 promulgated on 10 February 2021 (the “Act”) introduces VAT on ‘Electronic Services’ (services including the supply of intangible assets, delivered over the internet or other electronic networks) consumed by non-VAT registered service recipients that are either:

- a) *supplied by overseas service providers; or*
- b) *supplied through ‘Electronic platforms’ (online markets or channels through which service providers supply the ‘Electronic services’) from overseas.*

## What’s New?

Overseas providers of ‘**Electronic Services**’ and operators of ‘Electronic Platforms’ supplying services to recipients in Thailand (**non-VAT registrants**) are now required to register for VAT in Thailand.

- VAT registration is required if annual revenue reaches THB 1.8 million for the respective tax year.
- This VAT will apply to such transactions from 1 September 2021 onward.

## Individuals or Entities Liable to Tax

- Overseas service providers providing ‘**Electronic services**’ to non-VAT registrants in Thailand must remit VAT to the Thai Revenue Department.
- If the ‘Electronic services’ are provided through an ‘**Electronic platform**,’ the platform operator must remit VAT on behalf of all ‘**Electronic Services**’ providers conducting their activities through its platform.
- The platform operator is not required to disclose the transactions of each ‘**Electronic Services**’ provider.
- Neither service providers nor platform operators may offset any input VAT against output VAT on the services.

## Applicable Regulations

The Act Amending the Revenue Code No. 53

(promulgated in the Royal Thai Government Gazette on 10 February 2021)





# VIETNAM



## How Does it Work?

The Digital Economy Law 38/2019 and Decree 126/2020 set out the mechanisms for taxation of e-commerce and digital business activities in Vietnam. Under the new rules, several Government Ministries and Agencies are tasked with creating efficient and effective tax collection tools. Further guidance is expected later in 2021.

## Applicable Regulations

Law on Tax Administration No. 38/2019/QH14 dated 13 June 2019 (“Law 38/2019”) and Decree 126/2020/ND-CP dated 19 October 2020 (“Decree 126/2020”)



*Implementing regulations to be introduced soon*

## What's New?

- Commercial banks and payment service providers must withhold taxes on the income of foreign companies derived from their e-commerce and digital business activities in Vietnam.
- The tax is collected on a monthly basis if the foreign providers are not registered for tax in Vietnam.
- Commercial banks and payment service providers must withhold tax where individuals in Vietnam purchase goods and services from foreign e-commerce and digital service providers.
- Under Law 38/2019, foreign e-commerce or digital service providers without a taxable presence or Permanent Establishment (“PE”) in Vietnam must register to file tax in Vietnam or authorize another party to do so on their behalf.
- In accordance with Decree 126/2020, the tax authorities will provide foreign e-commerce and digital businesses with a ten-digit tax code to file taxes in Vietnam.
- Commercial banks and payment service providers must keep records of payments remitted overseas to foreign e-commerce and digital businesses and provide this information to the General Department of Tax every month.
- If the commercial banks and payment service providers cannot meet the withholding tax requirements, the tax authorities can request bank account details and other information relating to the relevant transactions of foreign e-commerce and digital businesses.
- Further guidance is expected soon under a new implementing circular outlining the applicable tax rates and other relevant details.

# TAX

## Dedicated to helping you succeed

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DFDL's tax team offers a unique combination of highly specialized lawyers and accountants dedicated to tax services across the region, from strategic planning to day-to-day operations, including tax advisory, international tax, M&A, tax compliance, transfer pricing, and customs advisory. We are also regularly involved in developing the tax environment of the markets in which we operate.

DFDL received the Regional Tax Firm in Asia of the Year, Vietnam Tax Disputes Firm, and Cambodia Tax Firm of the Year awards at the ITR Asia Tax Awards 2020.

The DFDL tax practice is recognized as a preeminent multiregional tax law firm in Asia.

DFDL provides tax services across all industries and sectors. To better serve our clients' business needs, we have organized our expertise into service lines with experts in each jurisdiction. These service lines address major tax concerns of investors in emerging markets:

### **Tax Advisory**

- International tax planning and structuring
- M&A and tax due diligence
- Tax planning for inbound and outbound investments
- Tax treaty planning
- Tax review of contracts and transactions
- Assistance in obtaining tax rulings

### **Tax Compliance**

- Corporate tax compliance reviews
- Preparation and reviewing of tax returns
- Personal income tax compliance, review and related expatriate tax services
- Book keeping and accounting support

### **Tax Controversy**

- Assistance with tax audits and tax disputes
- Litigation on tax and customs

### **Public Sector Advocacy**

- Government consultancy
- Tax policy advocacy

### **Transfer Pricing**

- Preparation of transfer pricing documentation
- Transfer pricing advisory
- Advanced Pricing Agreement (“**APA**”) and MAP applications
- Transfer Pricing audit support and defense strategies
- Transfer Pricing policy implementation, review and remediation



# ABOUT US

DFDL was established in 1994 and founded on a unique vision: to create an integrated legal and tax advisory firm, with in-depth knowledge of the developing jurisdictions in which we are based.

Our dedicated professionals exhibit the understanding and insight necessary to assist you in navigating the legal complexities and challenges. We strive to provide concise, commercially focused, and innovative advice, drawing on over 27 years of wide ranging experience and finely tuned local knowledge of the countries in which we operate.

We provide a full range of legal and tax services to investors interested in developing their operations in our markets.

## World Tax 2021

- Tier 1 – Private Client – Thailand
- Tier 2 – General Corporate Tax – Thailand & Vietnam
- Tier 2 – Customs – Vietnam
- Active – Myanmar



## International Tax Review 2020

- Regional Tax Firm of the Year in Asia
- Cambodia Tax Firm of the Year
- Vietnam Tax Disputes and Litigation Firm of the Year



## Asialaw Profiles 2021

- Highly Recommended – Thailand & Vietnam



## Legal 500 2021

- Tier 1 – Vietnam
- Tier 3 – Thailand



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