



LEGAL UPDATE

DECREE 14 ON CROSS-BORDER TRADE

Vietnam ranks 68 out of 190 economies for doing business in general. However, for cross-border trade Vietnam ranks 94 out of 190 economies. This is a place lower than last year even though it takes less time and money to export and import than in 2016.¹ In Southeast Asia, Vietnam ranks 4 behind Singapore, Thailand, and Malaysia.

According to the General Department of Vietnam Customs trade turnover with Laos was above USD890 million, with Cambodia USD3.7 billion, and with China USD71.9 billion in 2017. Cross-border trade has grown at a good and stable pace in the past few years and is expected to increase significantly in the future.

On 23 January 2018 Decree No. 14/2018/ND-CP (**Decree 14**) entered into force and replaced Decision No. 52/2015/QĐ-TTg. Decree 14 provides details on cross-border trade activities with neighbouring countries China, Laos, and Cambodia. It contains specific provisions on trade activities in border areas and the purchase, sale and exchange of goods among border inhabitants. The Vietnamese Government has improved the legal framework for cross-border trade and for Vietnamese citizens living in border areas.² Temporary import/export, re-export/import, border-gate transfer and transit are not covered by Decree 14.

Hereafter you will find a high-level overview of some of the key points.

1. Who can benefit from Decree 14?

Decree 14 provides that cross-border trading activities can be conducted by:

- Vietnamese traders, including enterprises, co-operatives, business households and individuals with a Vietnamese business registration;

- foreign owned enterprises and branches following commitments of relevant international treaties; and
- border residents³.

2. Where can cross-border trade take place?

Cross-border trade can take place via the following border gates⁴:

- international border gates (persons and vehicles, Vietnamese and foreign, and goods and products);
- main border gates (persons and vehicles, Vietnamese and from bordering countries, and goods and products);
- auxiliary border gates (persons and vehicles, Vietnamese and from provinces of bordering countries in border provinces only, and goods and products);
- locations opened for cross-border travel (for locals, their vehicles and goods of both sides of the border, opened in case of force majeure or at the special request of both sides of the border); and
- other locations subject to approval of the Vietnamese Government.

3. What goods can be traded across the border?

3.1 Goods exchange and goods trading

Goods that can be traded and exchanged via the auxiliary gates and locations opened for cross border travel must be on the list of goods permitted to trade via such gates which is provided by the Ministry of Industry and Trade and relevant provincial people's committees.

3.2 Border market

According to Decree 14, individuals and traders of bordering countries can only trade and exchange goods that are permitted-to be traded at the border markets. These goods must be compliant with Vietnamese laws in terms of goods circulation, quarantine, food inspection and control, and payment of taxes and fees.

¹ Report Doing Business 2018 of the World Bank, available at www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB2018-Full-Report.pdf

² Note that the Law on Foreign Trade Management as entered into force on 1 January 2018 is also relevant.

³ Border residents are: Vietnamese citizens with residence registration in communes, wards, townships or areas of equivalent administrative boundaries that share part of the administrative boundaries with the national land borders.

⁴ Decree 112/2014/ND-CP of 21 November 2014. The border provincial people's committees will decide and announce a list of auxiliary border gates and locations opened for cross border travel.



4. Exceptions for border residents

4.1 Quarantine, food safety and quality

Decree 14 facilitates the production and business activities of border residents. Animal, plant and aquatic products that are traded and exchanged by border residents and are meant for direct consumption or production, not for gathering purpose, are not subject to quarantine, checks of food quality and safety. This exception does not apply in case of an epidemic or contagious disease as announced by relevant authorities. The goods are also not subject to food quality and safety control checks.

Note that these exceptions do not apply to (professional) traders as they must comply with all relevant requirements.

4.2 Taxes and fees

Border residents are also exempt from paying taxes⁵ when the goods are meant for direct consumption and the value is not more than 2 million VND (USD89) per person per day with a maximum of four days per month. Goods traded by the border residents *not* for direct consumption or *in excess of* the permitted quantity are subject to taxes and other fees and charges.

Again, this exception does not apply to (professional) traders unless they qualify for an incentive in accordance with relevant international laws and treaties

5. How to pay?

Border trade activities can be settled in freely-convertible foreign currencies, Vietnam dong or currencies of bordering countries. Payments can be done via banks and in cash. Clearing between export goods and services with imported goods or services via bank payment.

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⁵ Appendix V of Decree 134/2016/ND-CP of 1 September 2016 detailing several articles of and the implementation method for the Law on Import and Export Taxes.