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LEGAL NEWSLETTER

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Decree No. 342/2026/ND-CP takes effect on 18 October 2026: Key considerations for foreign retailers

*Effective from 18 October 2026, Decree No. 342/2026/ND-CP **("Decree 342")** replaces Decree No. 09/2018/ND-CP **("Decree 09")** and establishes a new legal framework governing the sale and purchase of goods and its directly related activities of foreign-invested enterprises in Vietnam. These changes require foreign retailers to proactively review their business models and related compliance obligations. This article highlights the key provisions of Decree 342 and the main issues foreign retailers should consider.*

1. Clarification of the types of retail that foreign investors may establish in Vietnam

Clause 12, Article 3 of Decree 342 specifies the types of retailing that foreign investors may establish in Vietnam, including:

> Convenience store: Retail store with a sales area of less than 300 m^2 that sells fast-moving consumer goods, including ready-to-eat food, beverages and everyday consumer products, for immediate consumption on-site or takeaway.
>
> Mini supermarket: Retail store with a sales area of no more than 500 m^2 that sell food, beverages, consumer goods and other products.
>
> Supermarket: Retail store with a sales area of more than 500 m^2 that sell food, beverages, consumer goods and other products.
>
> Shopping mall: Locations comprising multiple retail outlets and service providers arranged in a concentrated and interconnected manner within one or more adjacent buildings and licensed in accordance with the laws on investment and construction.

Compared with Decree 09, Decree 342 provides more specific definitions of retail outlet types. It introduces sales-area criteria to distinguish convenience stores, mini-supermarkets and supermarkets; adds a definition of supermarket; revises the indicators of convenience store; and requires shopping malls to be licensed in accordance with the laws on investment and construction.

These changes help clarify the criteria for classifying retail outlets and provide a basis for businesses to determine the type of outlet that best suits their operations.

2. Significant changes to the economic needs test (ENT)

The economic needs test ("ENT") is part of the licensing procedure for establishing a retail outlet. It enables the competent authorities to assess the need for a new retail outlet by considering the relevant geographic market, its impact on the market and existing retail outlets, the ability to meet consumer demand, socio-economic contributions, and public security, order and safety requirements. Decree 342 introduces significant changes to the application of the ENT, making it easier for certain foreign-invested enterprises to expand their retail networks in Vietnam.

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a) Narrowing the scope of cases subject to the ENT

> Previously, under Clause 1, Article 23 of Decree 09, the ENT applied to all retail outlets established beyond the first retail outlet.
>
> Under Clause 1, Article 22 of Decree 342, the scope of the ENT has been narrowed. The ENT now applies only to investors from countries or territories not covered by international treaties containing commitments to abolish the ENT when establishing retail outlets beyond the first one. An exception applies to retail outlets with a sales area of less than 500 m^2 that are located in shopping malls and are not convenience stores, mini-supermarkets or supermarkets.

This is one of the key changes introduced by Decree 342. After joining WTO, Vietnam opened the distribution market while retaining the ENT requirement for retail outlets established beyond the first outlet. Subsequently, under the CPTPP and EVFTA, Vietnam committed to abolishing the ENT requirement after a five-year transition period from the date each agreement entered into force. The respective dates were 14 January 2024 for CPTPP and 1 August 2025 for EVFTA.

In line with these commitments, Decree 342 revises domestic regulations to narrow the scope of the ENT, facilitating the expansion of retail networks in Vietnam for eligible investors. However, the ENT requirement has not been abolished for all investors. Its applicability must be determined by reference to the relevant international treaties and the specific circumstances of each case.



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b) ENT assessment criteria

The 5,000m² threshold is used to determine the geographic market area affected when assessing the ENT. Specifically, Clause 2, Article 22 of Decree 342 provides that:

> For retail outlets with a sales area of less than 5,000m², the affected geographic market is assessed at the commune or ward level, or an equivalent administrative level;
>
> For retail outlets with a sales area of 5,000m² or more, the affected geographic market is assessed at the provincial level or the level of a centrally governed municipality.

Decree 342 also removes contributions to the state budget and job creation from the ENT assessment process. Instead, the assessment focuses on the impact of the proposed retail outlet on the market, traditional markets, consumption needs, the modernization of the retail sector and living conditions in the relevant area. This approach aligns the ENT assessment more closely with actual market needs and consumer interests in Vietnam.

3. Provincial People's Committees are authorized to issue business licenses and retail outlet establishment licenses

Previously, under Article 8 of Decree 09, the Departments of Industry and Trade were authorized to issue business licenses and retail outlet establishment licenses. However, the licensing authorities were required to consult the Ministry of Industry and Trade and/or the relevant line ministry for certain conditional business activities. They were also required to consult the Ministry of Industry and Trade before issuing or amending retail outlet establishment licenses. In practice, the licensing process therefore remained significantly dependent on input from central-level authorities.

Under Article 8 of Decree 342, licensing authority is now centralized at the provincial People's Committee, with jurisdiction determined by the location of the head office of the foreign-invested economic organization or the relevant retail outlet. Decree 342 also removes the requirement to consult the Ministry of Industry and Trade and/or the relevant line ministry, shifting the focus to consultation with the Ministry of Public Security and the Ministry of National Defence on national security matters for certain investments of a particular scale or nature.

This change may reduce the number of steps required to transfer and process applications between local and central authorities, potentially shortening processing times and clarifying the responsibilities of the licensing authority. However, Decree 342 does not specify the procedures, timelines or assessment criteria applicable to consultations with the Ministry of Public Security and the Ministry of National Defence. Accordingly, the processing time and predictability of licensing in these cases will need to be monitored in practice.

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4. National security considerations for large-scale retail networks

Under Clause 3, Article 8 of Decree 342, certain licensing applications must be referred to the Ministry of Public Security and the Ministry of National Defence for consultation on national security. These include applications involving foreign-controlled economic organizations operating on certain e-commerce platforms covered by the regulations, as well as investors who own or hold an ownership interest in retail networks meeting specified thresholds.

The relevant retail network thresholds are:

> 100 outlets, each with a sales area of less than 500m²;
>
> 50 outlets, each with a sales area of 500m² or more but less than 3,000m²;
>
> 30 outlets, each with a sales area of 3,000m² or more.

Therefore, although the scope of the ENT has been narrowed, businesses planning rapid expansion or growth through mergers and acquisitions should continue to monitor the overall number, floor area and ownership structure of their retail networks to identify any licensing obligations and potential review requirements.

Overall, Decree 342 may facilitate the expansion of retail networks by foreign investors, but it does not eliminate licensing and regulatory controls. Businesses should determine whether they qualify for an ENT exemption and proactively review their investment conditions, proposed locations and network size to make effective use of these changes.

This article summarizes the key changes introduced by Decree No. 342/2026/ND-CP affecting foreign investors' retail activities in Vietnam. TNTP hopes that it provides useful information to help businesses stay informed of the new regulations and develop appropriate business plans.

Key highlights of Decree No. 302/2026/ND-CP on trading goods through Mercantile Exchanges

Trading goods through Mercantile Exchanges plays an important role in connecting markets, establishing commodity prices, and supporting businesses in managing risks arising from price fluctuations. To further develop the legal framework governing this activity, the Government has issued Decree No. 302/2026/ND-CP detailing certain articles and measures for the implementation of the Law on Commerce regarding trading goods through Mercantile Exchanges ***("Decree 302")****. Decree 302 takes effect from September 15, 2026, replacing Decree No. 158/2006/ND-CP and Decree No. 51/2018/ND-CP. In this article, TNTP will analyze several key highlights of Decree 302 on trading goods through Mercantile Exchanges.*

1. Conditions for establishing a Mercantile Exchange are expanded

Compared with the previous regulations under Decree No. 158/2006/ND-CP, as amended and supplemented by Decree No. 51/2018/ND-CP, Decree 302 expands and specifies the conditions for establishing a Mercantile Exchange. These conditions no longer focus solely on charter capital and information technology systems, but also include requirements on ownership structure, organizational and operational models, and a roadmap for listing goods produced in Vietnam.

Specifically, under Article 5 of Decree 302, an enterprise applying for the establishment of a Mercantile Exchange must satisfy the following conditions:

> **Legal status and ownership structure:** The enterprise must be established in Vietnam. In the case of an enterprise with foreign investment, the aggregate capital contribution ratio of foreign investors must not exceed 49%.
>
> **Financial capacity:** The enterprise must have charter capital of at least VND 1,500 billion, which is ten times higher than the previous requirement of VND 150 billion.
>
> **Information technology system:** The system must ensure safe, stable, and secure operations; support the real-time processing and storage of transaction data; connect with the Clearing House; monitor transactions; and satisfy requirements on cybersecurity, data security, system backup, and system recovery in the event of an incident.
>
> **Organizational model and market development:** The enterprise must develop an organizational and operational model for the Mercantile Exchange, together with solutions and a roadmap for listing goods produced in Vietnam.
>
> **Operational Charter:** The enterprise must have a draft Operational Charter that complies with Article 13 of Decree 302.

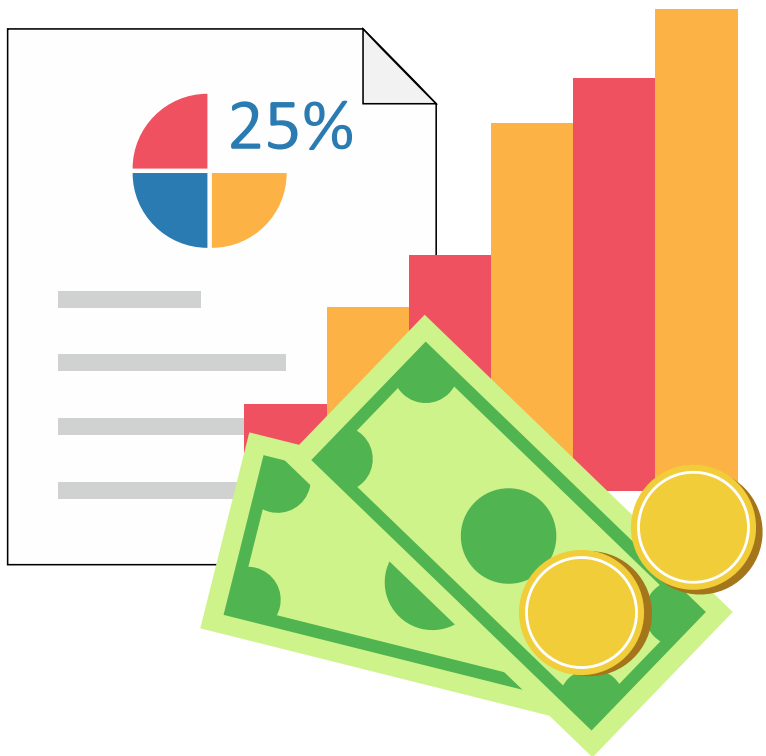
Key highlights of Decree No. 302/2026/ND-CP on trading goods through Mercantile Exchanges

2. Independent Clearing House model

One of the notable new features of Decree 302 is the introduction of an independent Clearing House model, operating separately from the Mercantile Exchange to perform clearing, margin management, and risk management functions. Unlike the previous regulations, under which the Clearing House was organized as an entity under the Mercantile Exchange, Clause 1, Article 16 of Decree 302 provides that the Clearing House is an intermediary organization conducting clearing activities for transactions involving trading goods through Mercantile Exchanges. Notably, a Clearing House may provide clearing services to one or more Mercantile Exchanges. This provision establishes a basis for organizing clearing activities in a more specialized manner while providing a clearer distinction between market organization functions and clearing functions. Accordingly, the new mechanism contributes to strengthening risk control and enhancing transparency and safety in the execution of transactions.

To ensure the effective operation of this model, Decree 302 also sets out specific requirements regarding the conditions for operation, scope of services, and clearing activities, as follows:

> **Conditions for organization and operation:** Clause 2, Article 16 of Decree 302 provides that a Clearing House must be an enterprise established in accordance with the Law on Enterprises, have a minimum charter capital of VND 500 billion, and maintain an information technology system that satisfies the requirements set out in Appendix III to Decree 302. This system must be compatible with and capable of connecting to the information technology system of the Mercantile Exchange. The Ministry of Industry and Trade is responsible for appraising applications and approving eligible organizations to become Clearing Houses.



Key highlights of Decree No. 302/2026/ND-CP on trading goods through Mercantile Exchanges

> **Scope of services:** Decree 302 allows a Clearing House to provide services to one or more Mercantile Exchanges. This provision establishes a legal basis for organizing centralized clearing activities, while supporting infrastructure connectivity and the standardization of transaction processing procedures among Mercantile Exchanges.
>
> **Clearing functions:** Pursuant to Clause 14, Article 3 of Decree 302, clearing includes activities such as margining, reconciliation and confirmation of transactions, position management, netting, determination of payment obligations, and the transfer of money or money together with the underlying goods on the settlement date. Accordingly, a Clearing House not only determines payment obligations but also plays an important role in managing margins and controlling risks arising during the execution of transactions.

Accordingly, the provisions of Article 16 of Decree 302 contribute to completing the legal framework governing clearing activities in commodity trading transactions. These provisions provide a basis for market participants to clearly identify the organizational conditions, functions, and responsibilities of a Clearing House, with a view to enhancing the safety and efficiency of trading goods through Mercantile Exchanges.

In addition to regulating the organizational model and functions of the Clearing House, Clause 1, Article 32 of Decree 302 allows the parties to choose how to settle a forward contract, either through clearing via the Clearing House on the contract performance date or through the delivery or receipt of goods via a Member responsible for custody and delivery of goods, or direct delivery or receipt by the customer in the case of transactions involving large volumes or specialized products. For options contracts, Clause 2, Article 32 provides that the parties may choose to exercise the option using one of the methods specified in Clause 1, Article 32 or not to exercise the option. This provision introduces flexibility in contract performance. However, enterprises should determine their specific obligations when participating in the market based on the type of contract, the selected performance method, and the relevant trading rules.

Key highlights of Decree No. 302/2026/ND-CP on trading goods through Mercantile Exchanges

3. Expansion of Mercantile Exchange membership structure and addition of personal data protection obligations

One notable feature of Decree 302 is the addition of members responsible for the custody and delivery of goods to the membership structure of Mercantile Exchanges. Compared with the provisions of Decree No. 158/2006/ND-CP, Decree 302 changes the approach to identifying the entities performing these functions. Specifically, Decree No. 158/2006/ND-CP provides that the Goods Delivery and Receipt Center performs tasks related to the storage, delivery, and receipt of goods. Pursuant to Clause 3, Article 19 of Decree 302, a member responsible for the custody and delivery of goods is an organization designated by a Mercantile Exchange to undertake the custody, storage, delivery, and receipt of goods for transactions conducted through physical delivery. In addition, Clause 1, Article 32 of Decree 302 provides that parties to forward contracts may choose to deliver or receive goods through a member responsible for the custody and delivery of goods or to arrange direct delivery or receipt in certain cases. The transition from the Goods Delivery and Receipt Center model under the previous regulations to the model of members responsible for the custody and delivery of goods under Decree 302 helps clarify the position of entities performing custody, storage, delivery, and receipt functions within the membership structure of Mercantile Exchanges. This change establishes a basis for delineating the responsibilities of organizations undertaking the delivery and receipt of goods, while enhancing the autonomy of Mercantile Exchanges in designating organizations suitable for their operational needs. Accordingly, goods delivery and receipt activities may be organized more flexibly, helping to monitor contract performance and mitigate risks arising from the physical delivery process.

In addition, Decree 302 introduces personal data protection obligations for trading members and brokerage members. Specifically, Point i, Clause 3, Article 21 of Decree 302 requires trading members to fully discharge their responsibilities for protecting customers' personal data and ensure the safety and confidentiality of information during the collection, storage, use, and processing of such data. Pursuant to Point b, Clause 2, Article 22 of Decree 302, brokerage members must also comply with personal data protection laws and are responsible for keeping customers' personal information confidential, retaining such information securely, and refraining from disclosing it, except where disclosure is required by a competent state authority in accordance with the law.

Accordingly, Decree 302 both introduces an additional type of member responsible for physical delivery and receipt of goods and strengthens members' responsibilities for managing customer information. These are requirements that enterprises should take into account when joining or continuing to operate as members of a Mercantile Exchange.

Decree 302 marks a step forward in the development of the legal framework governing the trading goods through Mercantile Exchanges, introducing various provisions concerning the conditions for establishing and operating Mercantile Exchanges, membership structure, clearing mechanisms, and overseas commodity trading. The above are some of the key highlights of Decree 302, which also introduces other new provisions governing the trading goods through Mercantile Exchanges. A thorough understanding of these new provisions will help enterprises proactively review their business operations, identify the applicable legal requirements, and ensure compliance with the law.

Key changes in tax and invoice penalties under Decree No. 310/2025/ND-CP

Decree No. 310/2025/ND-CP amending and supplementing certain provisions of Decree No. 125/2020/ND-CP has officially been promulgated and took effect on January 16, 2026. This document marks an important step in improving the legal framework on administrative penalties in the field of taxation and invoicing, with several adjustments aimed at resolving practical difficulties, particularly regarding scope of regulation, principles of sanctioning, determination of violations, and legal responsibilities of relevant parties. In the following article, TNTP's lawyer will analyze and highlight notable amendments and supplements introduced by Decree No. 310/2025/ND-CP compared to Decree No. 125/2020/ND-CP, thereby clarifying the interpretation and application of the new provisions in practice.

1. Supplementing and clarifying the scope of regulation in tax and invoice penalties

Pursuant to Clause 1, Article 2 of Decree No. 125/2020/ND-CP, administrative violations in the field of taxation are defined as acts that violate laws on tax administration, tax laws, and other revenues. However, this provision does not clearly specify the scope of other revenues in connection with the tax authorities' revenue administration and sanctioning competence, leading to inconsistent interpretation and application in practice.

To address the above issues, at Point a, Clause 1, Article 1 of Decree No. 310/2025/ND-CP (amending Clause 1, Article 2 of Decree No. 125/2020/ND-CP), the Government has supplemented a criterion for clearly identifying **"other revenues belonging to the state budget that are managed by the tax authorities"**, thereby specifically delineating the scope of administrative penalties for tax-related violations.

Although this adjustment is consistent with the revenue management orientation established under the Law on Tax Administration 2025 (effective from July 1, 2026), it should be noted that not all other state budget revenues organized for collection or jointly collected by the tax authorities under the Law on Tax Administration 2025 fall within the scope of administrative penalties for violations relating to tax and invoices as prescribed in Decree No. 125/2020/ND-CP and Decree No. 310/2025/ND-CP. Accordingly, revenues such as fees and charges; marine area usage fees; proceeds from the conversion of ownership of state-owned enterprises and public service units; and proceeds from the transfer of state capital in enterprises, although organized for collection or coordinated by tax authorities in accordance with specialized laws, in principle do not fall within the scope of administrative penalties for violations relating to tax and invoices, but are instead subject to corresponding sector-specific sanctioning regimes.

Decree No. 310/2025/ND-CP clearly distinguishes between tax administration and the administration of fees, charges, and other state budget revenues, while avoiding overlap with sanctioning mechanisms in the field of fees and charges under Decree No. 02/2026/ND-CP, thereby ensuring consistency and transparency in the application of the law on administrative sanctions.

Key changes in tax and invoice penalties under Decree No. 310/2025/ND-CP

2. Amending and supplementing principles of tax and invoice penalties

Decree No. 310/2025/ND-CP does not alter the fundamental sanctioning principles of Decree No. 125/2020/ND-CP but focuses on clarifying violations within the same case to ensure consistency in application.

Accordingly, Clause 3, Article 1 of Decree No. 310/2025/ND-CP revises Points a, b, c, Clause 3, Article 5 of Decree No. 125/2020/ND-CP to uniformly apply the criterion of **"within the same day"** to determine consolidation of violations, replacing the previously unclear concept of **"at the same time"**. Thus, if within the same day a taxpayer makes multiple errors in tax declarations, submits multiple late tax filings of the same tax type, or submits multiple late notifications/reports of the same invoice type, only one violation is penalized, applying the highest fine bracket.

Additionally, Point b, Clause 3, Article 1 of Decree No. 310/2025/ND-CP supplements cases eligible for consolidation, such as multiple instances of issuing invoices at incorrect times, multiple failures to issue invoices, or multiple errors in the same tax declaration. These amendments help limit cumulative penalties and provide a clearer legal basis for both tax authorities and taxpayers.



Key changes in tax and invoice penalties under Decree No. 310/2025/ND-CP

3. Quantifying the aggravating element of "large-scale administrative violation"

Clause 4, Article 1 of Decree No. 310/2025/ND-CP (amending Clause 2, Article 6 of Decree No. 125/2020/ND-CP) refines the criteria for determining **"large-scale administrative violations"** by linking them strictly to a specific violation, rather than aggregating multiple violations. This aligns with the sanctioning principles of the Law on Handling Administrative Violations and practical guidance from tax authorities.

> **Tax violations:** An act is considered large-scale only when it involves tax evasion under Article 17 of Decree No. 125/2020/ND-CP, with an evaded tax amount is VND 100,000,000 or more, and subject to transfer for administrative sanctioning under Article 63 of the Law on Handling Administrative Violations. Compared to previous regulations, Decree No. 310/2025/ND-CP removes the criterion based on goods/services value of VND 500,000,000 or more, thereby narrowing the scope of aggravating circumstances and ensuring sanctions reflect the essence of tax evasion.
>
> **Invoice violations:** Only when a single administrative violation involves 10 or more invoices is it considered large-scale.

Previously, Official Letter No. 216/TCT-PC from the General Department of Taxation clarified that if a taxpayer committed multiple invoice violations and was penalized separately for each, the "large-scale" aggravating circumstance did not apply, even if the total exceeded 10 invoices. Instead, penalties were applied per violation, and from the second violation onward, the aggravating circumstance of "repeated violations" could be considered.

Thus, Decree No. 310/2025/ND-CP does not change the basic quantitative thresholds but clarifies that "large-scale" applies only to a single violation, ending the practice of aggregating multiple violations to apply aggravating circumstances.



Key changes in tax and invoice penalties under Decree No. 310/2025/ND-CP

4. Clarifying responsibilities of relevant organizations and individuals

Decree No. 310/2025/ND-CP further refines provisions on subjects liable for tax and invoice administrative penalties, thereby delineating legal responsibilities between taxpayers and related organizations/individuals, particularly in authorization relationships and in the context of Global Minimum Tax. According to Clause 2, Article 1 of Decree No. 310/2025/ND-CP (amending Point a, Clause 1, Article 3 of Decree No. 125/2020/ND-CP):

> **Authorization relationships:** If a taxpayer authorizes another organization/individual to perform tax obligations, and the law assigns responsibility to the authorized party, when the authorized party commits a violation, that organization/individual is penalized, not the taxpayer. This ensures sanctions target the correct party and enhances professionalism and accountability of tax service providers.
>
> **Global Minimum Tax:** Decree No. 310/2025/ND-CP specifies that the liable subject is the constituent unit responsible for declaring and paying the supplementary corporate income tax or submitting notifications under global anti-base erosion rules. Clarifying the responsible subject ensures the feasibility of implementing the Global Minimum Tax regime in practice.

Overall, these amendments clarify boundaries of legal responsibility among related parties, reduce overlapping sanctions, and provide a transparent legal basis for applying penalties in taxation and invoicing.

Decree No. 310/2025/ND-CP does not fundamentally change tax and invoice penalty policies but clarifies and refines their application to address practical difficulties arising from implementation of Decree No. 125/2020/ND-CP. The amendments focus on delineating scope of regulation, clarifying consolidation principles, quantifying “large-scale” aggravating circumstances, and defining responsibilities of relevant parties. Through these changes, Decree No. 310/2025/ND-CP provides a more transparent and consistent legal basis for tax authorities in applying sanctions, while helping enterprises proactively identify and manage legal risks in tax and invoice administration.

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