

Agent Activities

Foreign traders can request for local agent for sale and purchase of goods of various kinds, except for goods on the lists of goods the import and export of which is prohibited or temporarily suspended. With respect to goods on the list for which the import or export is subject to issuance of a permit, the business entity shall only be permitted to sign an agency contract after the competent agencies have issued a permit. The agency contract must be in writing or in another form with equivalent legal validity. Under the Commercial Law, agent activities vary by the following forms: commission agent, package agent, exclusive agent and general agent. Goods under an agency agreement for the foreign trader performed in Vietnam, if cannot be sold in Vietnam, shall be re-exported. The tax refund is regulated by the MOF.

Vice versa, a Vietnamese trader may engage a foreign trader to act as sales agent to sell goods abroad, except for the goods under the list of prohibited exports and imports or suspended imports. The exported goods under the agency agreement shall be re-imported to Vietnam if they cannot be sold abroad and shall be eligible for import duty exemption and export duty refund (if any) in accordance with instructions of the MOF.

Legislation

The same legal basis applicable for processing by foreigners is effective to the agent activities for foreigners and foreign-invested enterprises in Vietnam.

Contents of the Contract

A sale and purchase agent contract may contain quite simple contents in comparison to other types of commercial or economic contracts. Only the following are compulsory therein: the description about both principals and agents; the contractual goods: name, specifications, quality, quantity,

volume; time-limit for, method and place of goods delivery; price; commission rate and costs; method and time of payment; bonuses, penalties and indemnity; and duration of validity of contract.

Permitted Activities

Traders acting as purchasing agents must request foreign traders to transfer fund in freely convertible foreign currencies through banks in order to purchase goods under agency contracts.

Amongst others, foreign principals can decide at their own discretion the selling or purchasing price and service charge to customers, and the price which the principal fixes for the agent; request the agent to implement security measures; receive deposits or documents on mortgaged assets from the agents and request the agents to make payment or deliver goods in accordance with the signed contracts. To inspect and supervise the contract performance, foreign principals can second their people to agents' facilities in Vietnam.

As a matter of fact, the following actions are often carried out by local agents instead of foreign principals, which include the dealing with the import/export procedures, the declaration and payment of relevant taxes on behalf of foreign principals.

Taxation

Contractual goods are likely subject to the import/export duties of Vietnam.

In case goods under a sales agency contract in Vietnam for foreign traders must be re-exported if they cannot be sold in Vietnam, the tax refund shall comply with the regulations.

On the contrary, goods exported under sales agency contracts in foreign countries must be imported back into Vietnam

because they cannot be sold in foreign countries will be not subject to import tax and will be refunded export tax (if any) under the guidance from the MOF.