PwC Vietnam Newsbrief

New framework on the application of Vietnam's Double Tax Treaties

July 2026

At a glance

On 30 June and 1 July 2026, the Ministry of Finance issued Circular 89/2026/TT-BTC (“Circular 89”), providing guidance on the implementation of a number of articles of the Law and Decree on tax administration and Circular 95/2026/TT-BTC (“Circular 95”), providing guidance on the application of Vietnam’s Double Tax Treaties (“DTT”), Mutual Agreement Procedures (“MAP”) and Advance Pricing Agreements (“APAs”).

Both Circulars took effect on 1 July 2026.

For DTT-related matters, Circulars 89 and 95 replace Circular 205/2013/TT-BTC (on tax treaty implementation) and Circular 80/2021/TT-BTC and its subsequent amendments (on DTT procedures).

DTT applications submitted and received by Vietnam tax authorities before the effective date but not yet processed will continue to be processed under the previous regulations.

Context

1. By way of background, Vietnam has signed 81 tax treaties and has an established Mutual Agreement Procedure – (MAP).

2. In 2022 and 2023, Vietnam signed and ratified Multilateral Convention to implement tax treaty related measures to prevent base erosion and profit shifting (“MLI”) and Convention on Mutual Administrative Assistance in Tax Matters (“MCAA”).

3. According to the OECD, the signing and ratification of the MLI brings 60 tax treaties of Vietnam in line with the Action 14 minimum standard.

Key Changes

01

Treaty objective includes no double non-taxation

Circular 95 states that the objective of Vietnam's DTT is to eliminate double taxation, prevent tax evasion, and avoid creating opportunities for non-taxation in either contracting state.

The Circular requires the tax authorities to assess beneficial ownership based on all relevant facts and circumstances, applying a substance-over-form principle.

However, the wording of the provision gives rise to some uncertainty. It is not explicit whether the restriction applies to all situations of non-taxation in both contracting states, or only to cases where such outcomes arise from tax evasion or avoidance, as reflected in the preamble to the Multilateral Instrument (MLI).

02

New interpretation of permanent establishment

Circular 95 introduces a broader interpretation of permanent establishment (PE).

Per Circular 95, an e-commerce or digital platform through which a foreign enterprise carries out all or part of its supply of goods or services in Vietnam is regarded as a (virtual) PE in Vietnam, on the basis that the general PE conditions are considered to be met.

This interpretation appears to depart from the OECD's current position on the taxation of the digital economy, including its recommendation under BEPS Action 1.

This development may create additional challenges for taxpayers in the e-commerce and digital sectors seeking to apply tax relief under DTT.

Key Changes

03

The burden of proof on taxpayers

Circular 95 places a clear burden of proof on taxpayers to demonstrate that they meet the conditions for treaty benefits.

In doing so, taxpayers are required to provide complete, timely, accurate, and truthful information and supporting data to the tax authorities.

04

Issuance of MAP guidance

While Circular 95 formalises the guidance governing access to the Mutual Agreement Procedure (MAP), it does not establish a defined timeline for the resolution of MAP cases, nor does it indicate alignment with the commonly referenced 24-month target timeframe.

05

DTT procedure

Under Circular 95, a claim for tax relief under DTT is formally recognised on the date the taxpayer submits a complete application dossier in accordance with the prescribed requirements. Where a DTT claim is submitted more than three years after the tax liability arises, the Vietnamese tax authorities would reject the application.

In terms of documentation, Circular 89 provides helpful clarification for the e-commerce and digital services sectors, confirming that template agreements (such as Terms of Use or Terms and Conditions) may be accepted in place of formal contracts, provided they contain sufficient key information. This includes details of the service provider, timing, scope of services, contract value, payment terms, as well as the respective rights and obligations of each party.

However, the use of such template agreements is subject to an additional requirement to maintain a corresponding list of service users. This data requirement may offset some of the practical benefits offered by the simplified approach.

Contact us

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