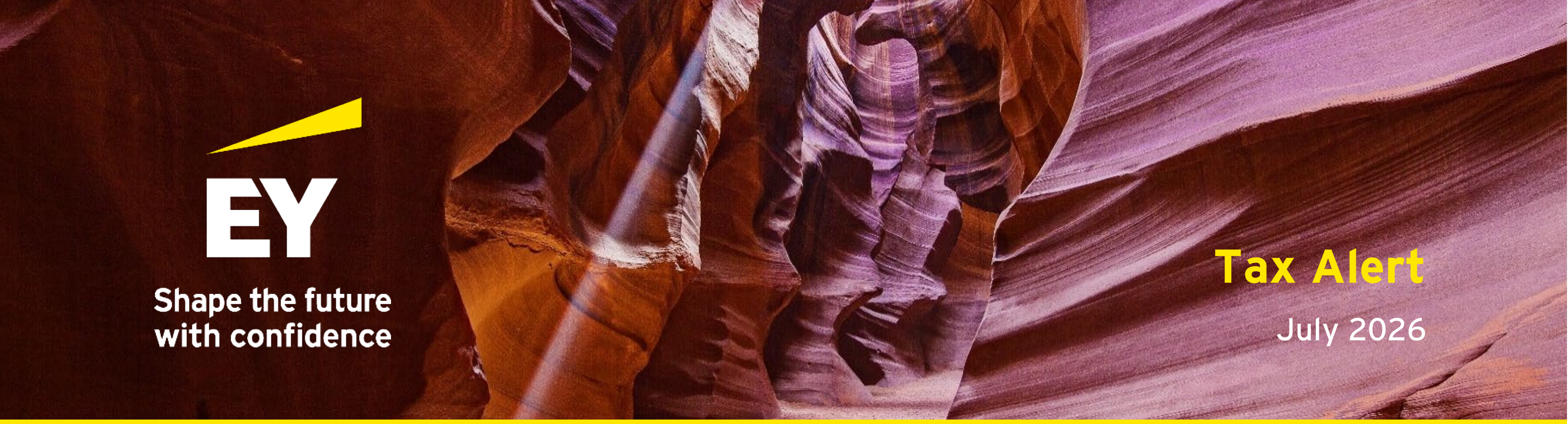


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# New circular providing guidance on the implementation of tax treaties with Vietnam

**This Tax Alert provides some key updates and changes related to the Ministry of Finance's guidance on the implementation of tax treaties with Vietnam.**

To date, Vietnam has signed double taxation avoidance agreements (DTAs) with more than 80 jurisdictions.

On 1 July 2026, the Ministry of Finance issued Circular No. 95/2026/TT-BTC (Circular 95), which, among other matters, provides guidance on the implementation of DTAs to which Vietnam is a signatory. Circular 95 replaces Circular No. 205/2013/TT-BTC (Circular 205) with effect from 1 July 2026.

Circular 95 introduces a number of notable changes and clarifications regarding the application and interpretation of DTAs, as discussed below.

## 1. Changes to the preamble of a DTA

It is stated under Circular 95 that a DTA is intended to (i) eliminate double taxation and prevent tax evasion and tax avoidance, and (ii) prevent the creation of opportunities for non-taxation in both contracting jurisdictions.

Vietnam's existing DTAs contain the preamble of eliminating double taxation and preventing fiscal evasion. However, most of them do not state the purpose of preventing non-taxation in both contracting jurisdictions.

The latter purpose originates from Article 6 of the BEPS Multilateral Instrument (MLI), which entered into force in Vietnam on 1 September 2023. Nevertheless, Vietnam has only notified 75 DTAs as covered tax agreements under the MLI. Accordingly, further clarification may be required as to whether the expanded treaty purpose reflected in Circular 95 should be considered applicable to all DTAs concluded by Vietnam, or only to those DTAs that have been modified by the MLI or otherwise contain similar anti-abuse language.

## 2. Changes to the interpretation of the permanent establishment (PE) definition

Circular 95 comments on the basic definition of a PE found in most DTAs and concludes that a PE includes an e-commerce platform or digital platform through which a foreign enterprise carries on all or part of its business activities involving the supply of goods or services in Vietnam. The Circular states that such an e-commerce or digital platform satisfies the conditions (including the condition of having a fixed place of business in Vietnam) for constituting a PE. However, it does not elaborate on the basis for this conclusion or explain how those conditions would be met in practice.

In addition, the Circular clarifies that a representative office engaged in the negotiation or conclusion of commercial contracts may constitute a PE in Vietnam. This appears to reinforce the Vietnamese tax authorities' position that the activities of a representative office should be assessed based on their substantive functions.

MNEs with digital business operations or a representative office model in Vietnam should therefore assess the potential impact of these changes on their Vietnam tax position.

## 3. Guidance on the application of capital gains tax exemption under DTAs containing an immovable property ratio clause

Circular 95 provides guidance on determining whether an entity derives the majority of its value from immovable property for the purposes of applying certain DTAs which have such a condition in its provisions relating to gains from the transfer of shares or comparable interests. Similar to Circular 205, Circular 95 prescribes a methodology based on the average ratio of the value of immovable property to the total value of assets at specified points in time, using the relevant financial statements as the basis for the calculation. However, Circular 95 does not require the financial statements prepared at the time of the transfer to be audited.

Another notable development is that Circular 95 expressly refers to direct and indirect transfers in the context of determining the immovable property ratio. However, in the case of an indirect transfer, the Circular does not clearly specify whether the immovable property ratio should be assessed at the level of the Vietnamese entity or at the level of the foreign entity whose shares are directly transferred. This lack of clarity may give rise to interpretative questions in transactions involving multi-tier holding structures.

### 4. Guidance on the determination of Vietnam's taxing rights over capital gains

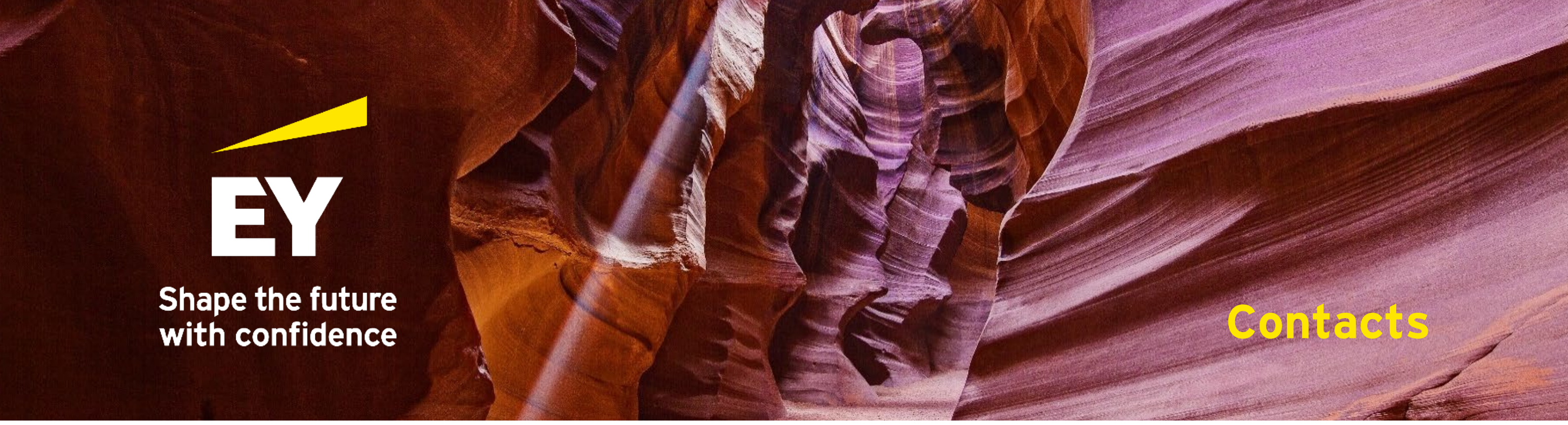
The heading of Article 30(5) of Circular 95 is: "*Tax treatment of gains derived from the direct or indirect transfer of shares in a company resident in Vietnam.*" The article itself simply says that: "*Certain tax treaties provide that gains derived by a resident of another Contracting State from the transfer of shares in a company that is a resident of Vietnam may be taxed in Vietnam*." While the article itself is a statement of fact, the wording in the heading may be construed as implying that Vietnam may tax gains arising from indirect transfers, even where the relevant DTA grants Vietnam taxing rights only over gains derived from the transfer of shares in a company resident in Vietnam (which may be understood to refer only to a direct share transfer). It will be interesting to monitor how this Article is interpreted by the tax authorities in practice.

### 5. Limitation period for tax treaty relief claims

Circular 95 continues to provide a three-year limitation period for claiming tax treaty relief in Vietnam. However, Article 10(1) now clarifies that the Treaty application date is the date on which a complete application dossier is submitted in accordance with Circular 89/2026/TT-BTC and Decree 252/2026/ND-CP[1].

This clarification may have implications in practice. Where the tax authorities consider an initial submission to be incomplete, and the taxpayer only provides further information after certain period of time, the Treaty relief claim could be denied partly or wholy on the grounds that a complete application was not submitted within the statutory time limit.

[1] Circular 89/2026/TT-BTC of the Ministry of Finance and Decree 252/2026/ND-CP dated 30 June 2026 of the Governement which details the implementation of the Law on Tax administration No. 108/2025/QH15 effective from 1 July 2026.




# Contacts

## Hanoi Office

**Huong Vu | General Director**
EY Consulting Vietnam Joint Stock Company
huong.vu@vn.ey.com

**Trang Pham | Senior Partner | Tax**
Ernst & Young Vietnam Limited
trang.pham@vn.ey.com

## Ho Chi Minh City Office

**Robert King | EY Vietnam, Laos, Cambodia Tax Leader**
EY Consulting Vietnam Joint Stock Company
robert.m.king@vn.ey.com

**Thinh Xuan Than | Senior Partner | Tax**
EY Consulting Vietnam Joint Stock Company
thinh.xuan.than@vn.ey.com

**Thy Thi Anh Huynh | Partner | Tax**
EY Consulting Vietnam Joint Stock Company
thy.anh.huynh@vn.ey.com

**Duyen Nguyen | Director | Tax**
EY Consulting Vietnam Joint Stock Company
duyen.t.nguyen@vn.ey.com

## Japanese Business Services (JBS)

**Takahisa Onose | EY Vietnam, Laos, Cambodia JBS Leader**
Ernst & Young Vietnam Limited
takahisa.onose@vn.ey.com

**Takaaki Nishikawa | Associate Partner**
EY Consulting Vietnam Joint Stock Company
takaaki.nishikawa@parthenon.ey.com

## Korean Business Services (KBS)

**Binh Thanh Phan | EY Vietnam, Laos, Cambodia KBS Leader**
EY Consulting Vietnam Joint Stock Company
binh.thanh.phan@parthenon.ey.com

**Kyung Hoon Han | Associate Partner**
Ernst & Young Vietnam Limited
kyung.hoon.han@vn.ey.com

## Chinese Business Services (CBS)

**Truong Duc Le | EY Vietnam, Laos, Cambodia CBS Leader**
Ernst & Young Vietnam Limited
truong.duc.le@vn.ey.com

**Owen Tsao | Director**
Ernst & Young Vietnam Limited
owen.tsao@vn.ey.com

**Trinh Kiet Luong | Assistant Director**
Ernst & Young Vietnam Limited
trinh.kiet.luong@vn.ey.com

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