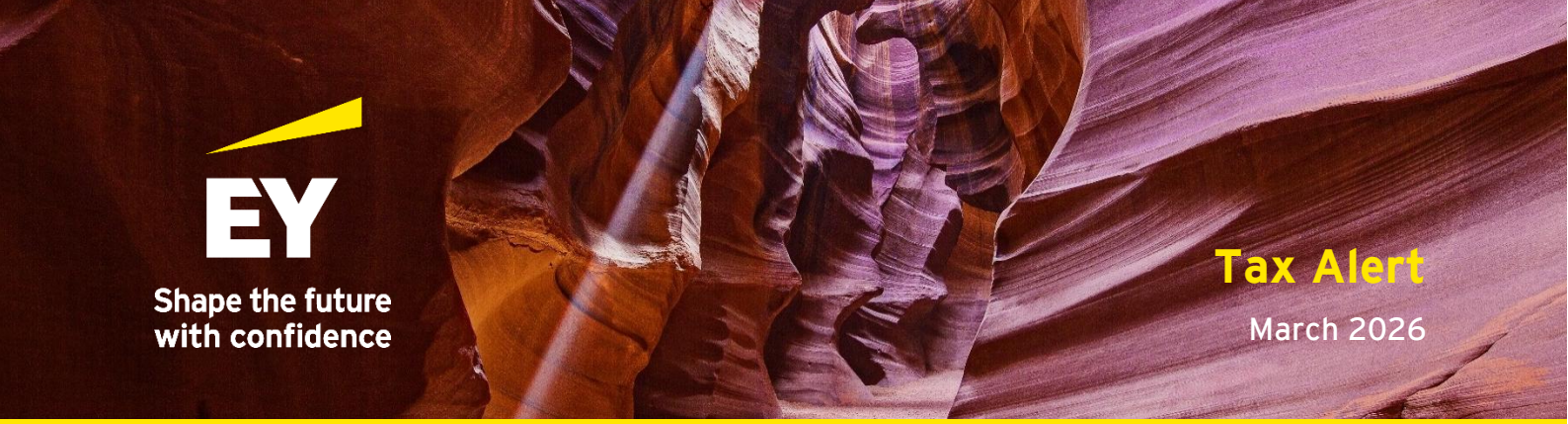

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Tax Alert

March 2026

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Circular 20 providing guidance for the Law on corporate income tax 2025 and Decree 320/2025/ND-CP – Vietnamese capital gains tax for foreign investors

Further to our Tax Alert issued in December 2025, this Tax Alert provides new updates on the taxation of capital gains in Vietnam for foreign investors under Circular 20/2026/TT-BTC dated 12 March 2026.

On 12 March 2026, the Ministry of Finance issued Circular 20/2026/TT-BTC (Circular 20) providing detailed guidance on the implementation of certain articles of the Corporate Income Tax Law No. 67/2025/QH15 dated 14 June 2025 (the CIT Law 2025) and Decree 320/2025/ND-CP dated 15 December 2025 (Decree 320).

Capital gain tax (CGT) declaration method

Circular 20 reaffirms that, from the effective date of Decree 320 (i.e., 15 December 2025), foreign enterprises conducting direct and indirect capital transfers are subject to a deemed 2% tax rate on the sales proceeds.

On 17 March 2026, the Ministry of Finance issued Circular 21/2026/TT-BTC, which provides the form required to declare non-resident CGT events (i.e., Form 05/TNDN) under Decree 320.

Timing of revenue recognition for capital transfer by foreign enterprises

Circular 20 stipulates that, for capital transfer transactions, the taxable revenue for CGT purposes is recognized at the time **when the initial capital transfer contract becomes effective in accordance with regulations**. The Circular does not elaborate on how the effective date of such a contract should be determined. According to Article 401 of the Civil Code, a lawfully concluded contract takes effect from the time it is concluded, unless otherwise agreed by the parties or otherwise provided by relevant laws.

CGT exemption for group internal restructuring transactions

Article 7, Clause 2, Point m. of Circular 20 codifies the CGT exemption applicable to **intra-group ownership restructuring** where there is **no change in the ultimate parent entity (UPE)** of the entities holding direct or indirect ownership in the Vietnamese enterprise, and **no taxable income arises** from the transaction. The Circular expressly includes various forms of internal restructuring — such as division, separation, consolidation, merger, share swap, capital contribution in the form of shares, distribution of dividends in shares within the group, and transfers of direct or indirect ownership of a Vietnamese enterprise.

To qualify for the exemption, the transaction must meet **all four conditions** set out under Circular 20, including:

(i) No change in the ultimate beneficial owner (UBO).

(ii) The transfer value must not exceed the book value or the original contributed capital.

(iii) No value discrepancy is created, the value stated in the approved restructuring dossier by the relevant authorities must not exceed the value recorded at the time of transfer.

(iv) The transferee must inherit the entire capital value, obligations, and rights associated with the transferor's investment.

While Circular 20 sets out four conditions for satisfying an intra-group restructuring transaction for CGT exemption, the regulatory language remains high-level and leaves several important concepts undefined, such as:

1. Condition (i) — No change in the ultimate beneficial owner

Circular 20 does not provide a definition of UBO, nor does it clarify the method or criteria for determining who the UBO is.

It is worth noting that, prior to the issuance of Circular 20, the term "beneficial owner" is defined differently for different purposes. For instance, it is defined under the Article 17 of Decree 168/2025/ND-CP on enterprise registrations for regulatory purpose, and also under Article 6 of Circular 205/2013/TT-BTC, which provides guidance on the application of tax treaties with Vietnam. Currently, it is uncertain whether either of these existing definitions could be treated as an appropriate reference point for interpreting the UBO concept under Circular 20 in the context of intra-group restructurings within multinational enterprise groups, or whether a separate definition will be required.

2. Condition (ii) — The transfer value must not exceed book value or original contributed capital

Circular 20 does not specify whose accounting records should be used to determine the relevant book value — whether the accounting books of the seller or the target should be used. If the target's records are to be used, in the case of an indirect transfer of a Vietnamese entity, whether the book value should be taken from the records of the entity directly being transferred or the Vietnamese company.

3. Condition (iii) — No value discrepancy is created, the value stated in the approved restructuring dossier by the relevant authorities must not exceed the value recorded at the time of transfer

Further monitoring is needed to see whether this condition is relevant to any internal restructuring transactions or only to those that require approval from Vietnamese authorities, which are typically required for direct capital transfer transactions falling into the legally specified cases.

The lack of clear definitions and implementation guidance makes the four conditions difficult to interpret and apply consistently. Accordingly, taxpayers may encounter challenges in establishing a defensible basis for demonstrating compliance with these conditions.

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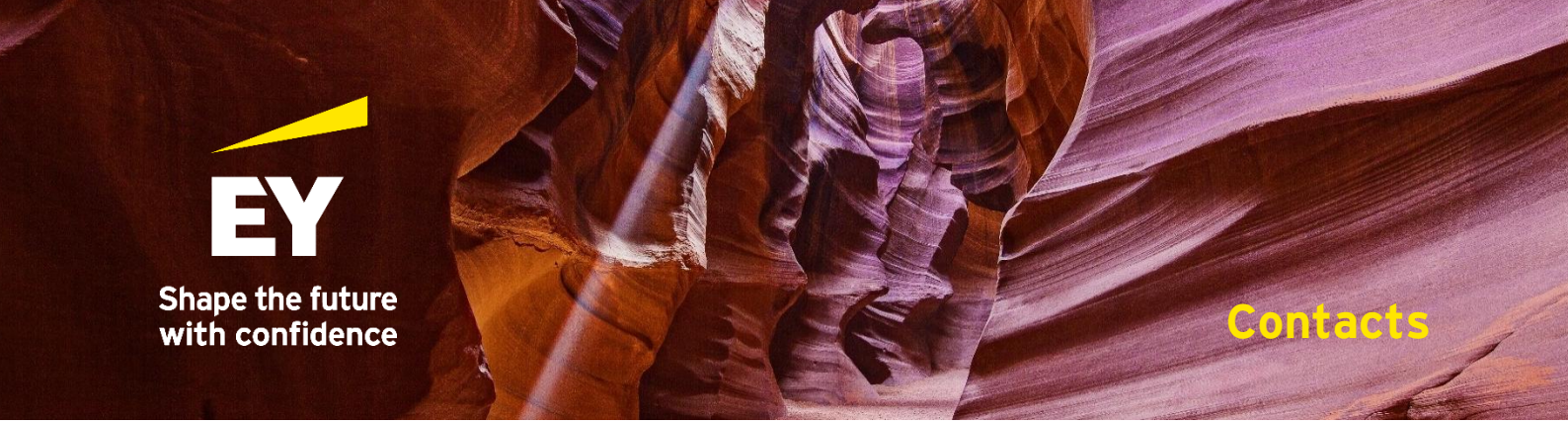
Please note that the above content is for reference purposes only. Taxpayers should be aware of these ambiguities and continue to monitor further developments on this matter. It is also recommended that taxpayers seek professional advice before applying it to specific cases.



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