HANKUK
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Newsletter

Double Taxation Avoidance Agreements: MAP and APA

Pursuant to Circular No. 95/2026/TT-BTC

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Why Do We Need Double Taxation Avoidance Agreements?

When you earn income across borders, the biggest risk is being taxed twice on the same income. Circular No. 95/2026/TT-BTC establishes the "rules of the game" to address this issue, with three main objectives:

- Protection: Preventing double taxation (Ensuring a fair environment for investors).
- Resolution: Providing dispute resolution mechanisms (MAP and APA).
- Prevention: Preventing tax evasion and tax avoidance (Protecting honest taxpayers).

Who Is Covered by the Double Taxation Avoidance Agreement?

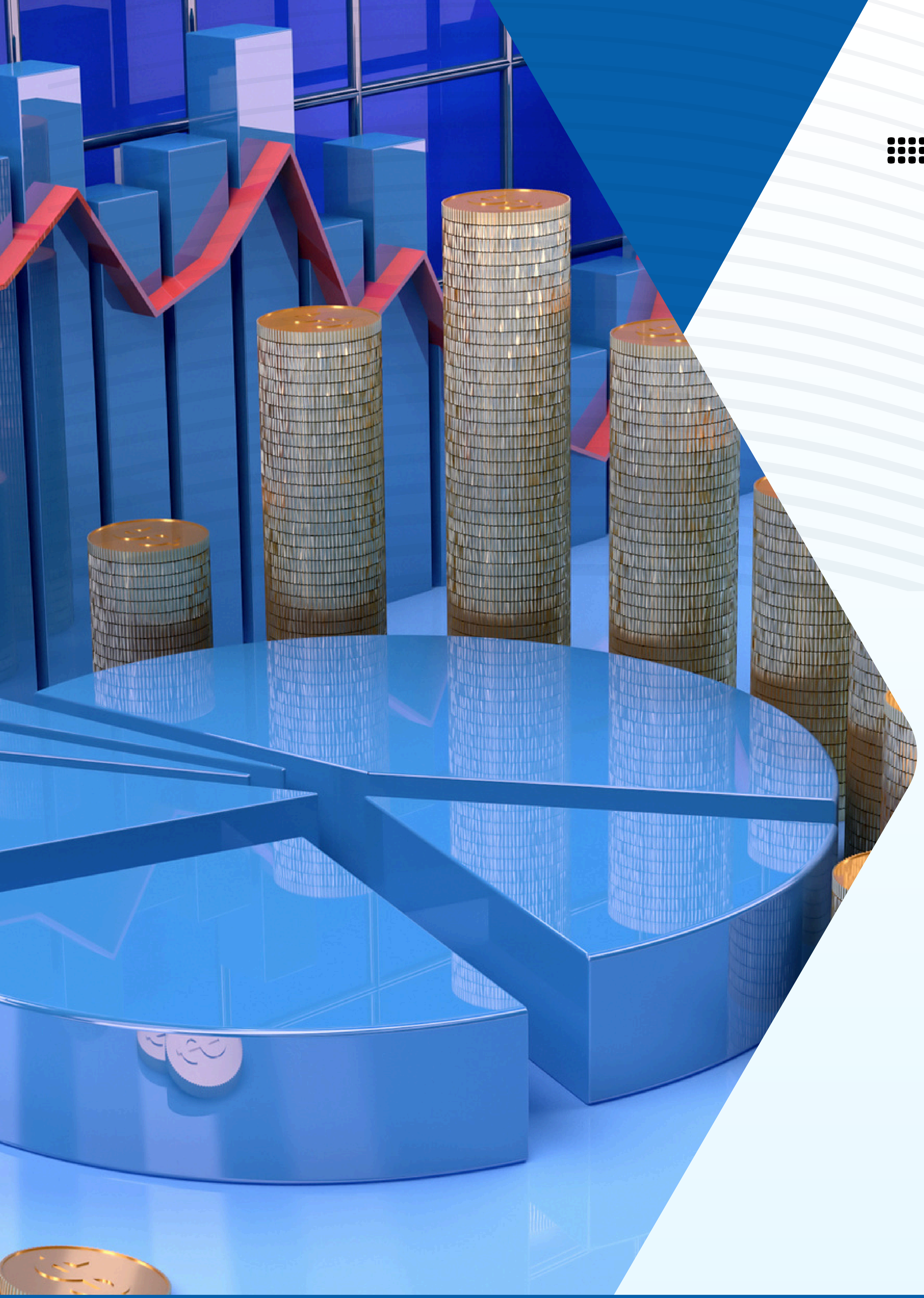
A tax treaty applies only to individuals or entities that are residents of one or both Contracting States. Which category do you fall into?

Individual

Has a place of residence: Owns or rents a permanent residence in Vietnam.
Or: Qualifies as a tax resident under the Law on Personal Income Tax.

Organization

Incorporated/Registered: Legally incorporated or registered in Vietnam.
Or has its Place of Effective Management (POEM): The place where key management decisions are made.



What Happens If Both Countries Consider You a Tax Resident?

1

Permanent Home (owned, rented, or otherwise available for use)
→ If a permanent home is available in both countries, proceed to Step 2.

2

Centre of Vital Interests (the country with which the individual's personal and economic relations are closer)
→ If the centre of vital interests cannot be determined, proceed to Step 3.

3

Habitual Abode: Where do you spend more time living?
→ If the time spent is equal in both countries, proceed to Step 4.

4

Nationality: Which nationality do you hold?
→ If you have dual nationality or no nationality, proceed to Step 5.

5

Mutual Agreement Procedure (MAP): The competent authorities of both countries will negotiate and reach a mutual agreement.

Right to Deny Treaty Benefits

The tax authority may deny treaty benefits if it determines that the principal purpose of an arrangement or transaction is to obtain tax benefits.

Beneficial Owner:

Treaty benefits are not available to agents, intermediaries, or nominees. You must have actual control over and bear the economic risks of the income or assets. Transferring more than 50% of the income to a third-country resident within 12 months may disqualify you from treaty benefits.

Thời Hạn 3 NămThree-Year Time Limit:

Treaty benefits cannot be claimed for taxes incurred more than three years ago.

Substance Over Form:

The tax authority looks at the actual economic substance of business activities, not just the legal documents.

The Tax "Anchor" for Foreign Enterprises: What Is a Permanent Establishment (PE)?

The business profits of a foreign enterprise are taxable in Vietnam only if it has a Permanent Establishment (PE) in Vietnam.

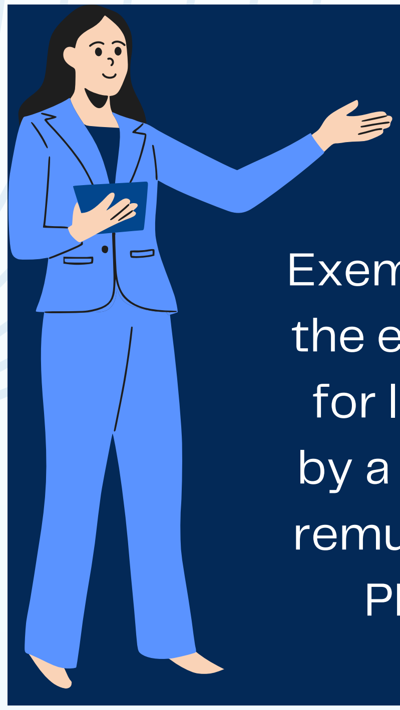
- A Fixed Place of Business: A branch, office, factory, workshop, or mine.
- Construction Projects / Service Activities: Lasting longer than the prescribed period (typically more than 183 days within a 12-month period).
- Digital Platforms & E-Commerce: A digital platform that carries out all or part of its service activities in Vietnam may also constitute a Permanent Establishment (PE).

Note: A warehouse used exclusively for storage or display purposes is not considered a Permanent Establishment (PE).

Taxing Rights by Type of Business Income

TYPE OF INCOME	TAXING STATE	IMPORTANT NOTES
Lãi cổ phần	Vietnam & the State of Residence	Vietnam may impose tax only up to the maximum rate specified under the applicable tax treaty.
Dividends	Vietnam & the State of Residence	Reduced tax rates apply only to the true lender.
Royalties / Technical Service Fees	Vietnam & the State of Residence	Vietnam's withholding tax is capped under the applicable tax treaty and applies to patents, software, industrial designs, and management fees
International Transport	State of Effective Management	Tax exemption or reduced tax in Vietnam for foreign shipping and airline operators.
Immovable Property	State Where the Property Is Located	Immovable property is taxed where it is located.

Taxing Rights by Type of Individual Income



Employment Income:

Exempt from Vietnamese tax if the employee stays in Vietnam for less than 183 days, is paid by a foreign employer, and the remuneration is not borne by a PE or branch in Vietnam.

Independent Professionals (Doctor, Lawyer):

Taxable in Vietnam if they maintain a fixed base in Vietnam or stay in Vietnam for 183 days or more.

Directors' Fees:

Taxable in Vietnam if the individual acts as a director of a Vietnamese company.

Artistes and Athletes:

Performances in Vietnam are taxable in Vietnam, except under government-sponsored cultural exchange programs.

Students and Trainees:

Funds received from abroad for maintenance, education, or training are tax-exempt in Vietnam.

Pensions:

Taxable only in the State of residence or the paying State, depending on the source of the pension.

Three Methods to Eliminate Double Taxation in Vietnam

Direct Tax Credit:

Foreign taxes paid may be credited against Vietnamese tax, but not exceeding the amount of Vietnamese tax payable.

Indirect Tax Credit:

A Vietnamese corporate shareholder receiving foreign dividends may also claim a credit for the foreign corporate income tax paid by the subsidiary.

Tax Sparing Credit:

Foreign taxes that are exempted or reduced under special tax incentives are deemed to have been paid for tax credit purposes in Vietnam.

Tax Dispute Resolution under Tax Treaties

If you believe the tax treaty has been applied incorrectly, you may refer to the following dispute resolution mechanisms:

Nature of the Mutual Agreement Procedure (MAP):

A direct negotiation between the Government of Vietnam and the foreign government to resolve your tax treaty dispute.

Time Limit:

You have up to 3 years (or 2 years, depending on the applicable tax treaty) from the date you receive the tax assessment or notice of incorrect taxation to submit a MAP request to the Tax Department.

Notes:

Full tax payment is still required while the MAP request is pending. The request may be rejected if there is evidence of tax evasion or if it is submitted after the applicable deadline.

Proactive Tax Protection: Advance Pricing Agreement (APA)

Unlike MAP, which resolves existing disputes, an APA provides advance tax certainty for future related-party transactions.

WHAT IS APA?

An Advance Pricing Agreement (APA) establishes the transfer pricing method for related-party transactions in advance. Once approved, the taxable prices or profit margins are predetermined.

TYPES OF APA:

Unilateral (Vietnam – Taxpayer), Bilateral, or Multilateral (involving multiple jurisdictions).

VALIDITY PERIOD:

Up to 3 tax years, with a possible extension of up to 3 additional years

REQUIREMENTS:

The covered transactions must be genuine, transparent, and conducted in substance, with no tax avoidance purpose. An annual compliance report must also be submitted.

Your Legal Compliance Checklist

1. Determine Your Tax Residence:

Which country are you considered a tax resident of?

2. Identify Your Income Type:

Salary, dividends, or business income?

3. Demonstrate Beneficial Ownership:

Ensure you are the true beneficial owner, not a conduit or shell company, to enjoy tax treaty benefits.

4. Claim Tax Treaty Benefits:

Apply the appropriate foreign tax credit mechanism (Direct, Indirect, or Tax Sparing Credit) to avoid double taxation.

5. Activate Your Tax Protection:

Use MAP for tax treaty disputes, or enter into an APA for transfer pricing certainty over the next three years.

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Thank You!

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