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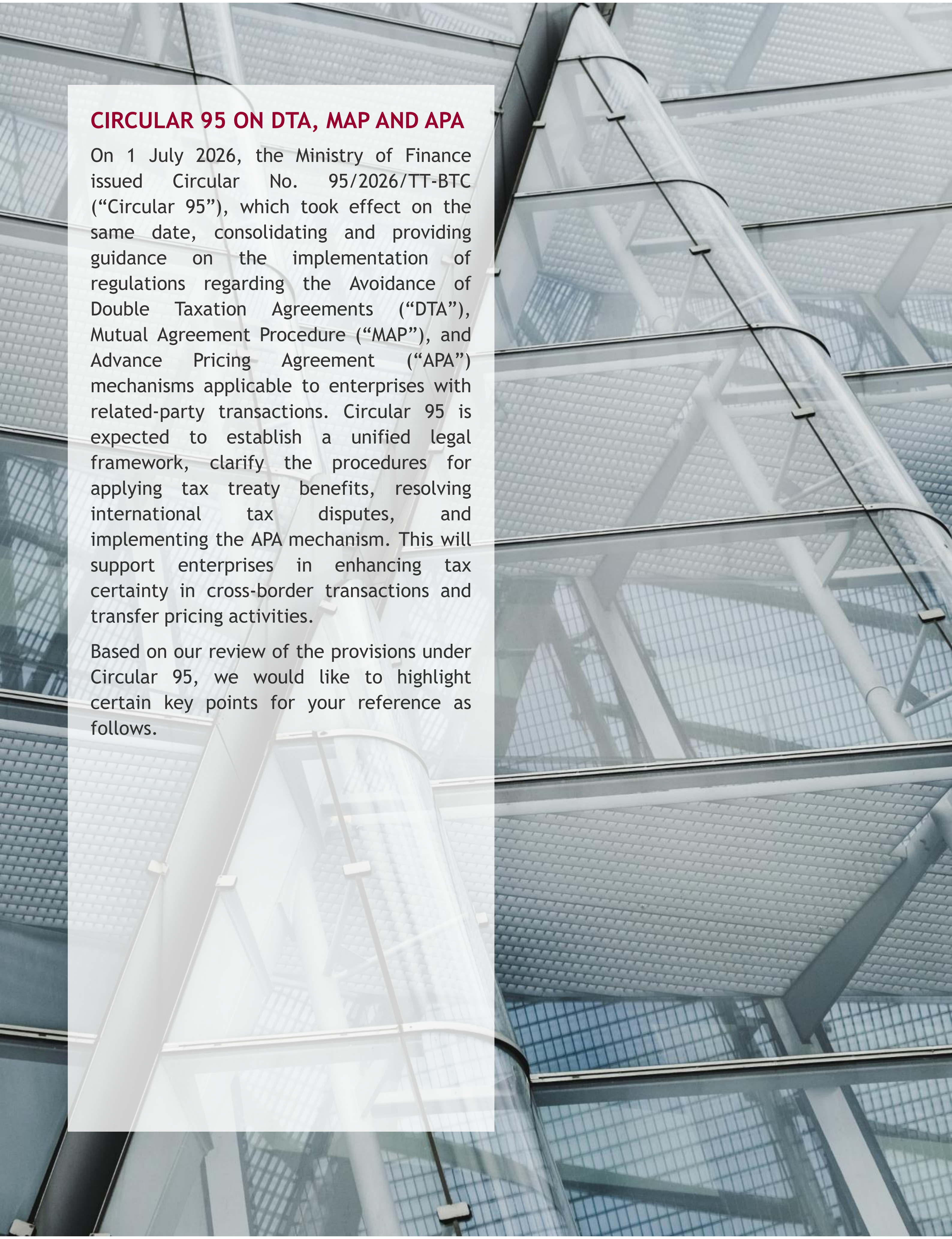
TAX ALERT
CIRCULAR NO.95/2026/TT-BTC
KEY UPDATES ON TAX AGREEMENT, APA & MAP



CIRCULAR 95 ON DTA, MAP AND APA

On 1 July 2026, the Ministry of Finance issued Circular No. 95/2026/TT-BTC ("Circular 95"), which took effect on the same date, consolidating and providing guidance on the implementation of regulations regarding the Avoidance of Double Taxation Agreements ("DTA"), Mutual Agreement Procedure ("MAP"), and Advance Pricing Agreement ("APA") mechanisms applicable to enterprises with related-party transactions. Circular 95 is expected to establish a unified legal framework, clarify the procedures for applying tax treaty benefits, resolving international tax disputes, and implementing the APA mechanism. This will support enterprises in enhancing tax certainty in cross-border transactions and transfer pricing activities.

Based on our review of the provisions under Circular 95, we would like to highlight certain key points for your reference as follows.

1. Supplementary regulations on methods for submitting MAP and APA applications

Circular 95 introduces additional regulations regarding the methods for submitting MAP and APA applications. Accordingly, applications, explanations, supplementary documents, and notifications of processing results shall be submitted through electronic methods.

In cases where the application documents exceed the capacity limit or do not meet the technical requirements of the electronic system, taxpayers are permitted to submit physical documents.

2. Scope of tax treaty application

Notably, the Circular supplements and clarifies the following matters:

- Expansion of the scope of entities eligible for tax treaty application, including residents of Vietnam, residents of the Contracting State, or entities that are simultaneously residents of Vietnam and the Contracting State.
- Additional guidance on determining tax residency status under tax treaties, including criteria for determining residency status and tax obligations applicable to individuals who are simultaneously residents of Vietnam and the Contracting State.

3. Supplementary guidance on the principle of entitlement to tax treaty benefits

Circular 95 provides several important additional guidelines to clarify the principles for applying Double Taxation Agreements, specifically as follows:

- Clarification of the timing for requesting tax treaty application: The date of requesting tax treaty application is determined as the date on which the taxpayer submits a complete application dossier in accordance with Circular No. 89/2026/TT-BTC guiding the Law on Tax Administration and Decree No. 252/2026/ND-CP.
- Addition of anti-abuse principles for tax treaty application: Circular 95 emphasizes that the objective of tax treaties is to eliminate double taxation without creating opportunities for income to be subject to non-taxation in both countries.

4. Expansion of the definition of immovable property under tax treaties

Circular 95 updates the definition of immovable property to ensure consistency with the current provisions of the Law on Land, the Law on Real Estate Business, and other relevant regulations.

Accordingly, the concept of immovable property is expanded to include:

- Value of land use rights;
- Land lease rights in certain cases as prescribed by law;
- Future-formed immovable property.

5. Updates on the determination of tax obligations for business income under tax treaties

To ensure consistency with the Law on Corporate Income Tax 2025, Circular 95 providing guidance on the application of Double Taxation Agreements supplements guidance on determining the permanent establishment ("PE") of foreign enterprises in cases where they conduct e-commerce activities and business operations through digital platforms.

Accordingly, a foreign enterprise carrying out wholly or partly of its activities of supplying goods or services in Vietnam through e-commerce or digital platforms may be considered to have a permanent establishment in Vietnam if it simultaneously satisfies the three conditions for determining a permanent establishment as prescribed.

6. Supplementary guidance on determining tax obligations for income from asset transfers

Circular 95 supplements guidance on determining tax obligations arising from income derived from asset transfers, aiming to clarify the application of relevant provisions to direct and indirect capital transfer transactions involving immovable property in Vietnam.

Accordingly, notable contents include:

- Clarification of the principles for determining tax obligations applicable to income from direct or indirect capital transfers;
- Provision of methods for determining the ratio of immovable property value to the total value of assets of an enterprise. Specifically, this ratio shall be determined based on the simple average of the ratio between the remaining value of immovable property and the total remaining asset value of the enterprise at the beginning and end of the tax period immediately preceding the year in which the transfer transaction takes place;
- Clarification of the basis for determining the value of immovable property. Accordingly, the value of immovable property shall be determined based on the Audited Financial Statements of the enterprise at the beginning and end of the tax period preceding the year of transfer, and the Statement of Financial Position prepared by the enterprise at the time of transfer.

7. Mutual Agreement Procedure (MAP)

Regarding this matter, enterprises should note the following key points:

Rejection of MAP requests

Circular 95 stipulates cases where the competent authority of Vietnam shall reject a request for MAP, including:

- The request does not fall within the authority of the competent authority for resolution;
- The request is submitted beyond the prescribed deadline;
- The applicant has not fully fulfilled its obligations as prescribed;
- The applicant is undergoing a tax audit but has not yet received an official tax audit record; or
- There are indications that MAP is being misused for the purpose of avoiding tax or avoiding tax obligations that have been appropriately determined under the relevant tax treaty.

Acceptance of MAP applications

Regarding the acceptance of applications, Circular 95 inherits all provisions under Circular No. 80/2021/TT-BTC applicable to applications submitted by taxpayers who are residents of Vietnam. At the same time, Circular 95 supplements regulations regarding the receipt and confirmation of MAP requests submitted by the tax authority of the Contracting State.

Unilateral resolution of MAP requests

Circular 95 provides that the Tax Department may independently determine whether a MAP request is consistent with the relevant tax treaty and resolve such request without requiring consultation or negotiation with the tax authority of the Contracting State.

After resolution, the Tax Department shall notify the outcome to the taxpayer and the tax authority of the Contracting State.

8. Advance Pricing Agreement (APA)

In general, Circular 95 inherits the existing regulations on APA, while supplementing and clarifying certain provisions to further improve the APA implementation mechanism. Key points include:

Longer proposed APA period

The new regulations allow taxpayers to request APA application for a continuous period of up to five tax years, although the maximum validity period of an APA remains three years.

Given that APA negotiations often require a significant amount of time, proposing a longer period from the initial application stage helps ensure that, once signed, the APA can be effectively applied for the intended period, thereby reducing the need for early renewal or submission of a new APA request.

Enterprises should consider taking advantage of this provision when preparing future APA applications.

Enhanced reporting obligations during APA implementation

Reporting obligations during the implementation of an APA are also more strictly regulated. Enterprises are required to submit annual APA compliance reports and proactively notify the tax authorities of any changes affecting critical assumptions.

These obligations are ongoing throughout the APA validity period. Failure to fully comply may serve as a basis for the tax authorities to cancel the APA. Therefore, enterprises should establish appropriate internal monitoring procedures.

More favorable rules regarding APA cancellation/revocation risks

Regarding the risks of APA cancellation or revocation, the new regulations provide a more favorable approach for enterprises. Errors or inaccurate information will only result in such consequences if they actually affect the determination, conclusion, or implementation of the APA, rather than being automatically applied to all errors.

APA renewal

For renewal purposes, enterprises should prepare supporting data demonstrating that the arm’s length range or profit margins remain consistent with the critical assumptions. Enterprises should also note that the renewal period is uniformly limited based on the validity period specified in the signed APA.

Procedural improvements

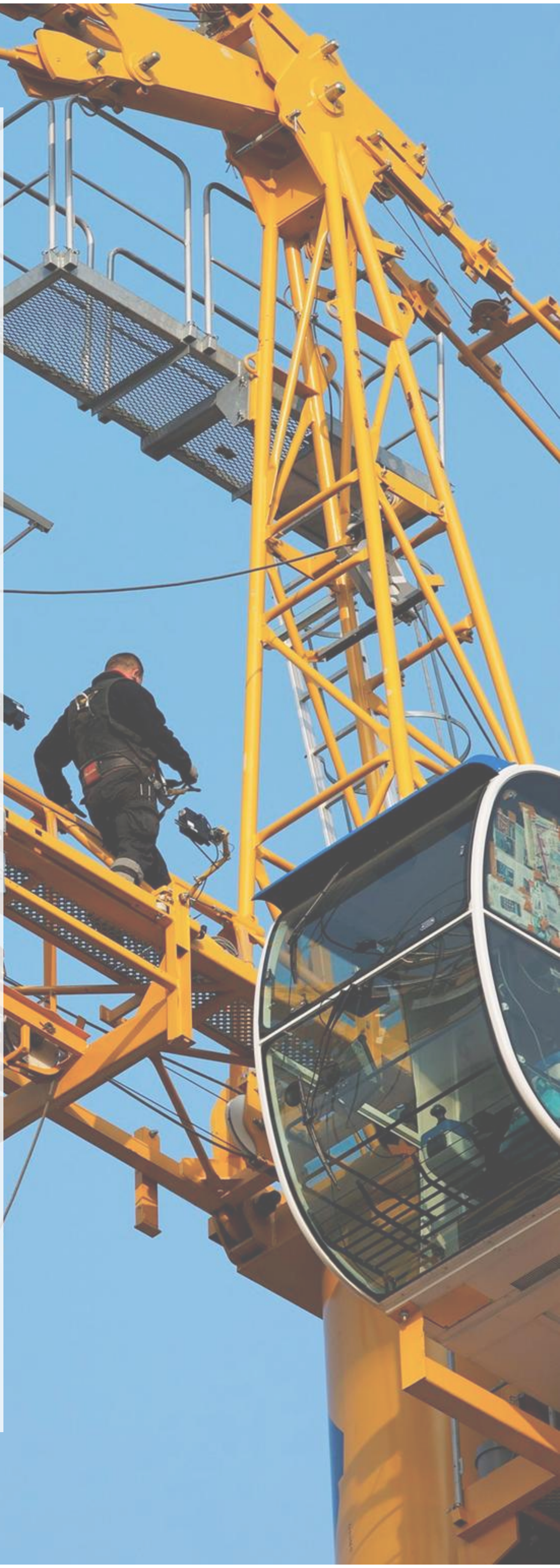
Notable procedural improvements include:

- The consultation meeting mechanism is no longer mandatory before submitting an official application;
- Applications may be submitted electronically; and
- The tax authority may refer to data from previously processed APA applications, which may help shorten the processing timeline.

Bilingual APA documentation requirements

In addition, for bilateral or multilateral APAs prepared in English, enterprises are required to provide Vietnamese translations when signing and circulating the agreements to avoid delays during the finalization process.

Where supporting documents are too extensive to be fully translated into Vietnamese within the APA application submission deadline, enterprises may provide summaries of the relevant contents, explain the reasons, and clearly specify where the documents are maintained and how the tax authorities may access and review such documents upon request.



OUR RECOMMENDATIONS

The issuance of Circular 95 further strengthens the legal framework governing APA and MAP, while also reflecting a broader trend toward aligning Vietnam's tax administration of related-party transactions with international practices. Against the backdrop of increasingly rigorous tax inspections, audits, and information exchange by the tax authorities, enterprises are encouraged to proactively review their transfer pricing policies and assess the feasibility of applying APA or MAP to relevant transactions, with a view to mitigating tax risk and enhancing certainty in compliance.

We hope the information above will assist your Company in gaining a clearer understanding of the notable changes introduced under Circular 95, as well as in making appropriate preparations to meet compliance requirements going forward. Your Company may wish to refer to the full text of Circular 95 and its related regulations to assess the potential impact on your business and to consider the application of APA or MAP where appropriate.

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