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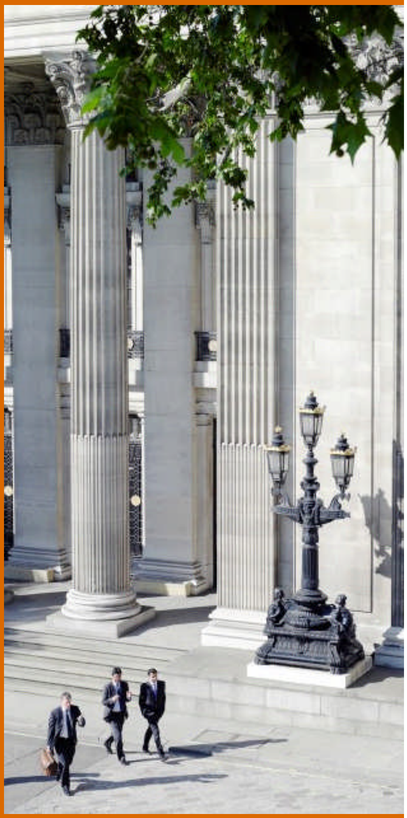
# DRAFT CIRCULAR ON IMPLEMENTATION OF DOUBLE TAX AGREEMENTS ("DTA") INTRODUCES ANTI- TREATY SHOPPING RULES



The Ministry of Finance has released a draft circular amending the existing Circular 133/2004 on the implementation of DTAs signed between Vietnam and other countries.

The draft circular introduces for the first time anti- treaty shopping rules based on which the Vietnamese tax authorities could in certain cases deny DTA benefits. We summarise below some key proposals in this draft.

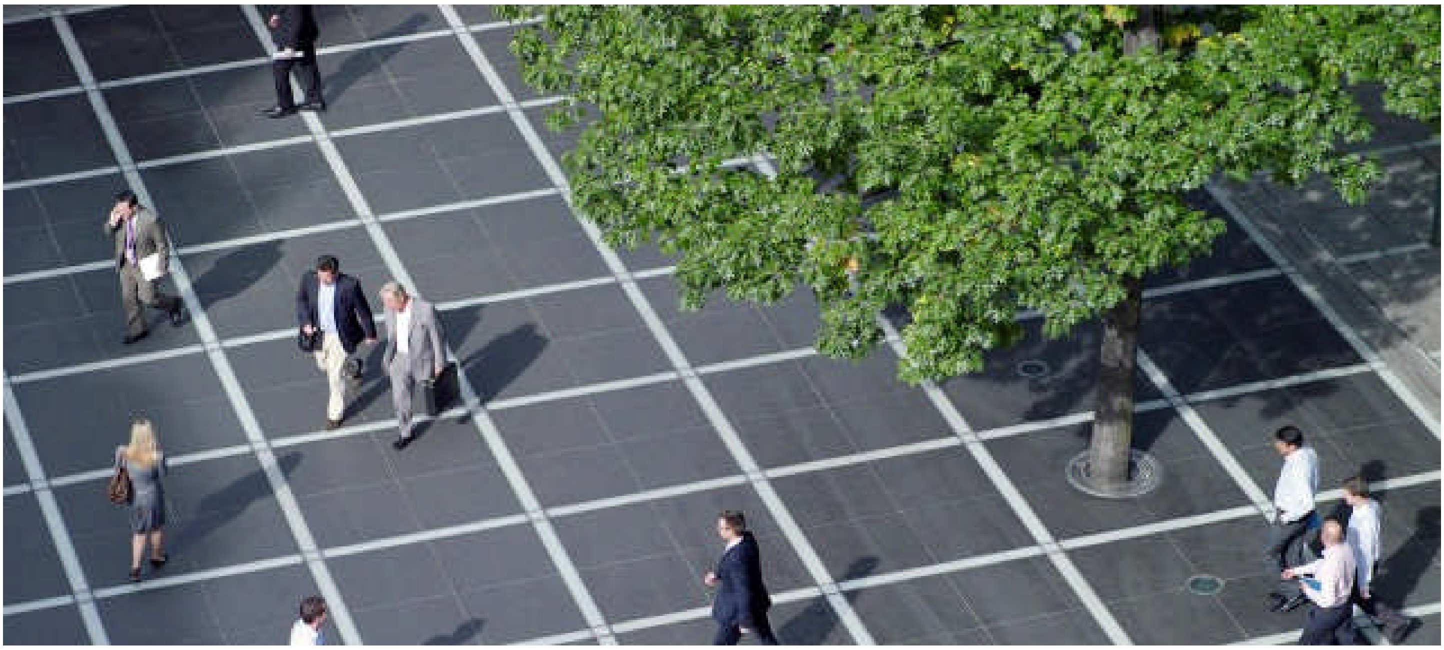
### 1. Anti-treaty shopping rules

Under the draft, DTA benefits can be rejected in the following cases:

(i) The main purpose of an agreement / structure is to obtain treaty benefits; or

(ii) The applicant who claims the treaty benefits is not the beneficial owner of the income. The basic principle of "substance over form" is applied and beneficial ownership could be challenged in the following cases:

- ✓ The applicant has the obligation to distribute more than 50% of the income to an entity of a third country within 12 months from the receipt of such income.
- ✓ The applicant does not carry out business activities except for the ownership of the assets or the right to generate income.
- ✓ The amount of assets, business scale or number of employees of the applicant is not commensurate with the income received.
- ✓ The applicant does not have control or power over the assets or has only low risks in relation to the assets or income.



- ✓ The applicant has a back to back arrangement for lending, royalties or technical services with a third party.
- ✓ The applicant is a resident of a country which has no income tax or only a low income tax.
- ✓ The applicant is an intermediary solely for the purpose of accessing treaty benefits.

## 2. Reinforcement of the 3-year deadline for making DTA claims

Circular 133 did not set a time limit for submitting a DTA claim, which implied that a DTA notification dossier could be submitted any time without the DTA entitlements being forfeited. There was however a 3 year statute of limitation for complaints. In practice, some local tax authorities however rejected DTA notification dossiers which were submitted more than 3 years after the tax liability arose. Under the draft circular, if a taxpayer fails to submit the DTA notification dossier within 3 years from the tax payment deadline, the DTA entitlements will be forfeited.

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It is unclear at this point of time when this Circular will be finalised and implemented, and whether there will be substantial changes to the current version.

Please let us know if you wish to discuss the implications of these proposed changes for your investments in Vietnam.


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