

# Double Taxation On Income In The Context Of International Integration In Viet Nam: Impacts And Treatment Solutions

MBA Nguyễn Tiên Kiên

General Department of Taxation of Viet Nam, [ntkien01@gdt.gov.vn](mailto:ntkien01@gdt.gov.vn)

**ABSTRACT:** The double taxation causes many problems such as trade barriers (does not encourage cross-border investment), is the cause leading to the violation of tax obligations, tax evasion of the persons involved. On the basis of analyzing the concept of double taxation and its impact on economic development in developing countries like Viet Nam, as well as considering the basic views on the treatment of double taxation in Viet Nam by 2030. This article proposes groups of solutions to strengthen treatment of double taxation on income in the context of international integration in Viet Nam as follows: (i) Solutions to complete the legal framework; (ii) Solutions to improve organizational structure; (iii) Solutions in the negotiation and signing of Double Taxation Agreements; (iv) Other solutions.

**Keywords:** Tax, Double taxation, Income Tax

## 1. Introduction

With the globalization of the economy, the increasing investment activities abroad, the movement of labor from one country to another is increasing, the double taxation often occurs when two or more countries are at the same time reserve the right to tax an income of the same taxpayer according to two main principles (residence principle and source principle). This is because a company or individual, is a resident of one country, but operates and earns income in another country (such as offshore investment companies, or providing services and goods abroad; or individuals earning income from an employment, investing in a number of commercial activities, ... abroad). The double taxation causes many problems such as trade barriers (does not encourage cross-border investment), is the cause leading to the violation of tax obligations, tax evasion ... of the persons involved. To deal with the problem of double taxation on the incomes of the above-mentioned persons, countries often sign a bilateral tax agreement, also known as an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (and on Capital) (often referred to as the Double Taxation Agreements or DTA), which principally agrees on the division of the taxing rights of each Contracting State on certain amounts of the income of the

related persons. In the process of opening up the economy, in order to attract investment and develop trade, Viet Nam has negotiated and signed many Double Taxation Agreements with other countries and territories. The first Double Taxation Agreement that Viet Nam signed was with Australia in 1992. As of June 30<sup>th</sup>, 2022, Viet Nam has signed Double Taxation Agreement with 80 countries and territories around the world. Among them, there are 76 Agreements that have come into effect, contributing to creating a legal basis and a stable and transparent investment environment, attracting foreign investors to do business in Viet Nam as well as promoting Vietnamese enterprises to invest abroad. Compared with other countries in the world, Viet Nam's Double Taxation Agreement network is relatively wide.

## 2. Method

### \* Research Methods

The article uses the general research method which is the dialectical materialism and historical materialism of Marxism - Leninism; specific research methods such as: synthesis, situation, analysis, comparison and desk research.

### \* Scientific and practical significance

- In terms of science, the article focuses on analyzing the concept of double taxation and its impact on economic development in developing countries like Viet Nam, the perspective of dealing with double taxation on income in Viet Nam by 2030.

- In terms of practical, the article proposes effective and feasible solutions to strengthen the treatment of double taxation on income in the context of international integration in Viet Nam. Solutions to treatment of double taxation on the basis of compliance with world standards, closely following the orientation, viewpoints and goals of modernization of the tax industry approved by the Ministry of Finance and the Prime Minister, starting from the actual situation of handling double taxation at the Province Tax Offices and the General Department of Taxation. In particular, the application of modern tax management methods is a new approach in the current context and in the future.

### 3. Results

#### 3.1. The concept of double taxation

Double taxation is where income tax is paid twice on the same income during the same tax period. In the context of international trade, double taxation is the taxation by two or more countries/territories on the same income, assets, or financial transactions of a taxpayer who is a resident of one country but whose income, assets or financial transactions arise in another country. The double tax liability can be mitigated in a number of ways, for example, the country/territory may be exempt from tax on foreign source income; signing the Double Taxation Agreements with other countries/territories; ....

Double taxation has very negative effects on global economic development both in developed and developing countries like Viet Nam. Specifically:

(i) For developed countries

With a long development process, developed countries have a huge accumulation of capital and technology. Due to the limitations of land, human resources and resources in comparison with those accumulated sources, these countries are forced to implement policies to encourage investment abroad, especially investment in developing countries, in order to maximize and effectively mobilize such accumulated resources through the exploitation of resources, human resources and markets in

these countries. But it is clear that such policies will not work if the profits derived from offshore investments are taxed at the same time at home and abroad - that is, subject to a higher tax burden than domestic investment.

Furthermore, in order to maintain and gain advantages in advanced engineering and technology, developed countries have had to spend a considerable amount of capital on research and development activities. These costs can only be recovered quickly and made a profit when new techniques and new technologies are not only used in the country but also have to be widely exploited in other countries. In this case, when the receiving country of the new technology and technique imposes an excessively high tax on technology and technology transfer, the remaining revenue will not be enough to cover the initial costs, let alone make a profit. This, from an international tax perspective, discourages research and development of new techniques and new technologies.

In addition, double taxation also directly affects the division of labor in developed countries. Managers, technical experts with high qualifications will never be able to work abroad if their after-tax income is not at least equal to the income when working in the country.

(ii) For developing countries like Viet Nam

For developing countries like Viet Nam, double taxation has even more direct consequences. Because developing countries are trying to find ways to attract foreign investors to get capital and technology by unilaterally offering tax exemption and reduction incentives in general and income tax in particular to reduce their tax burden. For income tax, the following measures are generally applied:

- exempt or collect at a low tax rate on certain types of income.
- expand and increase the amount of business expenses to be reduced in order to promote exports.
- reduce certain types of income in export activities.
- tax exemption on income from export activities.
- reduction of withholding tax at source on dividends and interest.
- reduction of personal income tax.
- accelerate the depreciation of fixed assets.

However, the above measures are only really beneficial to foreign investors when the investor's own country (usually called the investment country or the residence country) allows tax exemption for foreign-sourced income or accept a deduction from the tax payable in the country of the tax already paid in the host country. If such provisions do not exist in the domestic law of the investment country, the benefits from the tax exemption or reduction of the host country will simply be transferred to the State treasury of the investment country to increase the budget revenue of this country. Thus, in the end, investors still have to pay the full amount of tax arising from the profits earned, the difference is that a larger part of that tax will go to the budget of the investment country - usually a developed country. As a result, unilateral elimination or reduction of double taxation is always at the expense of the host country - usually a developing country.

### **3.2. The treatment of double taxation on income must be consistent with the external views of the Party and the State**

Since the treatment of double taxation on income is an integral part of Viet Nam's international tax cooperation activities with other countries, the treatment of double taxation on income must be consistent with the viewpoint of foreign policy of the Party and State, thereby, jointly aiming to realize the goal of Viet Nam's international tax cooperation activities, ensuring uniformity in the performance of tasks of the whole political system. Accordingly, the motto, content, and method of organizing the treatment of double taxation on income must thoroughly grasp the point of view of "Diversification and multilateralization in foreign relations; proactively and actively integrate into the world; is a friend, a reliable partner and a responsible member of the international community". This point of view is concretized in the treatment of double taxation on income as follows:

Firstly, the treatment of double taxation must ensure compliance with international treaties on taxation to which Viet Nam is a member and in line with the Party and State's external views.

Second, the treatment of double taxation on income must contribute to promoting the elevation of relations between Viet Nam and countries that have signed

bilateral and multilateral trade and investment agreements, double taxation agreements.

Third, promote the initiative and creativity in the treatment of double taxation on income, develop and review, adjust, harmonize and perfect the tax policy system in line with international practices. Viet Nam's economic situation and improve the efficiency of information exchange with tax authorities of other countries in order to best solve the problems posed in tax administration in the new integration conditions such as cross-border e-commerce transactions, erosion of tax base and transfer of profits, ... Proactively propose principles and solutions to handle double taxation on income.

- Modernize the treatment of double taxation on income in the direction of maximizing the achievements of the fourth industrial revolution

The fourth industrial revolution has, is and will continue to have great impacts on all areas of socio-economic life, including the field of international tax cooperation. The fourth industrial revolution affects the way of doing business as well as the way of business management of the tax administration object, impact on tax administration methods of tax authorities, affect the way tax authorities interact with taxpayers, the way of interaction and the content of treatment of double taxation on income. These impacts are multidimensional, creating both opportunities and challenges. Therefore, it is necessary to actively electronicize the treatment of double taxation on income to make the most of the opportunities created by the fourth industrial revolution, as well as limit its negative effects.

- Better promote the role of double taxation on income in tax administration

The treatment of double taxation on income is one of the duties of the tax authorities. This task is assigned to help tax authorities fully qualified to perform tax administration functions. The content of the treatment of double taxation on income shows that if the organization performs well, the treatment of double taxation on income can contribute more to improving the efficiency of tax administration.

- Ensure publicity and transparency

Publicity and transparency are both a requirement and a condition for effective law implement. This is also a very important factor in tax administration.

Ensuring publicity in dealing with double taxation on income is firstly reflected in the disclosure of regulations on the content and implementation process as a basis to enhance the taxpayer's understanding on the organization of law implement. Transparency requires that the provisions on the treatment of double taxation on income be clear, simple, easy to understand and worded so that it can only be understood in a consistent way, not in many different ways. The legal understanding of the persons involved in the process of treatment of double taxation on income is the most basic condition for effective tax administration. In fact, there have been many cases where the lack of information and understanding about the contents of the tax legislation and be handled for collect taxes arrears in the course of tax law implementation.

- Ensure compliance and suitable with international standards and practices

International economic integration creates conditions to promote economic development and expand economic cooperation relations for each country. At the same time, the integration process also requires each country to have changes in management regulations, as well as management standards in line with international commitments and practices. The implementation of international tax commitments and practices facilitates the management activities of State agencies to integrate with the management system in the world. Compliance with international practices also facilitates the process of treatment of double taxation on incomes of foreign contractors.

#### 4. Discussion and Conclusion

(i) Solutions to complete the legal framework Double Taxation Agreements are negotiated on the basis of Models (UN, OECD, and model of Viet Nam), therefore, the Agreements all have the same general provisions. In addition to those similar provisions, each Agreement has its own provisions, leading to some differences between the Agreements. For example, the tax rate in the source country for a type of income, the scope of the permanent establishment (PE), ... Among those differences, there are a few that stand out, namely:

The first is the issue of the concept of PE. In some signed DTAs of Viet Nam, the concept of PE does not include construction PE, installation PE, furnishing of services PE

(usually clause 3(a) or 3(b) of Article 5) or providing that the existence of a fixed base in a Contracting State solely for the purpose of delivering the goods of a resident of the other Contracting State shall not constitute PE.

The second is tax exemption on interest paid to the Government. In the "Interest" Article in many current DTAs (usually Article 11), there are provisions on tax exemption in the source country on interest paid to the Government or organizations or agencies of the Government.

The third is the issue related to the alienation of property (or capital gains) Article (usually Article 13).

On the basis of the above synthesis and analysis, a number of DTAs are proposed to be prioritized for renegotiation, namely: the Netherlands, France, Italy, the UK, Canada, China, India, Australia, Korea, Indonesia, Saudi Arabia, Turkey, Austria, Czech Republic, Belgium, Denmark, Norway, Finland, Ireland and Spain.

\* Developing a set of negotiation principles and a DTA model for Viet Nam in the new context

Before conducting negotiations, all countries must develop a set of negotiation principles and a DTA model expressing their expectations and benefits to be achieved through negotiations with their tax treaty partners. Therefore, each country is required to do their own research and analysis to know what they want when negotiating.

Essentially, a set of DTA negotiating principles is designed and formulated to achieve the material outcomes which a country wants to achieve when negotiating DTAs. At the same time, on the basis of the principles that have been introduced after completing the development of a set of negotiation principles, it can develop a corresponding DTA model to reflect the choices made when developing a set of negotiation principles for each country. In which, the DTA model shows all the different provisions of the DTA that the country wishes to achieve in the DTAs that will be signed in the future.

(ii) Solutions to improve organizational structure

The tax sector needs to review and evaluate the effectiveness of the new management model, thereby continuing to perfect the organizational model of the tax administration apparatus according to functions combined with

management by groups of taxpayers, especially foreign contractors subject to tax exemption, reduction and refund under DTAs. In addition to researching and developing policies to negotiate and sign DTAs, the General Department of Taxation (the Large Taxpayers Department in coordination with the International Taxation Department) directly manages and guides large enterprises having transactions with foreign partners subject to DTAs. The Province Tax Offices focus on performing the function of directing, guiding, auditing and examining the handling of double taxation on incomes of foreign contractors that incur tax obligations in their respective management areas. Taxpayer grouping for management helps tax authorities to apply systems of providing services to taxpayers and handle double taxation on income in a favorable way.

The General Department of Taxation should soon issue a process for handling double taxation agreement application dossiers to apply in the whole industry. At the same time, to build a National Support Center for taxpayers on issues related to double taxation on income, creating favorable conditions for taxpayers and local tax authorities. Additional personnel with experience in handling double taxation on income for the Taxpayer Assistance Center by phone.

#### (iii) Solutions in negotiation and signing of DTAs

New negotiations for a number of articles of the DTA include: Regulations against taking advantage of the DTA, Preventing the formation of PE, and supplementing regulations on determining PE for digital economic transactions, expanding the scope and objects of information exchange for tax administration and dealing with double taxation on income (for example, exchanging information with both non-residents and indirect taxes, such as VAT), Support in tax collection between partner countries that have signed DTAs.

#### (IV) Other solutions

On February 9<sup>th</sup>, 2022, Viet Nam officially signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) and became the 99<sup>th</sup> member to join this Convention. In order for MLI to really play its role, it is necessary to perform the following tasks:

Firstly, complete the procedures to submit to the Government and the President for approval of the effect of MLI in accordance with the provisions of the Law on International Treaties no. 108/2016/QH13.

Second, the Ministry of Finance/General Department of Taxation studies and issues Circulars or documents guiding the implementation of bilateral tax agreements that Viet Nam has signed within the scope of the MLI. Give specific situations, examples and how to apply the modifications. The content of the guide focuses on: (1) Combating tax avoidance through financial instruments; (2) Regulations on agreement abuse; (3) Preventing the artificial avoidance of PE status; (4) Strengthening dispute settlement; (5) Arbitration mechanism.

Third, organize seminars (possibly under online) to disseminate the contents of MLI as well as the amendments related to the bilateral tax Agreements. Participants are officials of the General Department of Taxation and local Tax Offices involved in the process of treatment of double taxation.

- Improve the efficiency of organization and implementation of DTAs

DTAs are signed with two top important goals: (i) Avoiding double taxation on incomes and assets related to investment and business activities of organizations and individuals in different countries; (ii) Preventing tax avoidance and tax evasion for cross-border investment and business activities. Whether these goals are achieved in reality or not depends on the effectiveness of the treatment of double taxation under DTAs with the basic focuses on: (i) Determining the right taxpayers to implement tax liability as PE of a foreign resident or as a subject to tax on the basis of the source of income; (ii) Determining the right subjects eligible for tax exemption or reduction under DTAs; (iii) Apply measures to avoid double taxation and deal with obstacles in the application of DTAs; (iv) Exchange of information on taxpayers to properly determine tax obligations, prevent tax avoidance, tax evasion, tax fraud; (v) Support for mutual tax collection between tax authorities of different countries.

- Accelerate the Mutual Agreement Procedure (MAP)/Advance Pricing Agreement (APA) negotiations and ensure the rationality and enforceability of the MAP/APA agreements.

MAP/APA is an effective tool to help the tax authorities of the Contracting States to completely handle the situation of double taxation or may lead to double taxation when the unilateral double taxation treatment by a tax authority is not actually benefits to taxpayers. However, in fact, the progress of negotiation and signing of MAP/APA is still slow.

- Actively organize and participate in international tax forums

International tax forums are one of the dynamic forms of international cooperation and bring many benefits to both tax authorities and taxpayers. Therefore, strengthening the organization and participation in international tax forums will have many positive effects in dealing with double taxation on income.

- Strengthening international exchange of expertise and scientific research on handling double taxation

Professional exchange and international scientific research on handling double taxation have achieved many important results, but there are still limitations that need to be overcome, especially in the context of international integration in the fourth industrial revolution.

- Recommendations to strengthen the treatment of double taxation on income in Viet Nam in the context of international integration. The General Department of Taxation assigns the International Taxation Department to assume the prime responsibility for, and coordinate with the Tax College in, regularly organizing training courses, professional training and sharing experiences on handling double taxation for local tax Authorities and Large Taxpayers Department. Training classes are held annually, including basic training and advanced training (thematically, focusing on issues that often arise at each Province Tax Office). In order to improve professionalism, it is necessary to encourage Province Tax Offices to set up a Team/Group to handle double taxation on income. Depending on the organizational structure of each Province Tax Office, the Team/Group dealing with double taxation on income can be independent or flexible (established according to each specific and complicated dossier).

Viet Nam's integration process is going deeper and deeper, as shown by the fact that Viet Nam has signed more and more bilateral and multilateral agreements, as well as participated more and more in international and regional organizations to promote international

cooperation and attract foreign investment. In that context, in order for businesses and individuals with investment and business activities abroad and vice versa to really benefit from the bilateral and multilateral agreements that Viet Nam has joined/signed, the treatment of double taxation on income plays a very important role.

On the basis of analyzing the concept of double taxation and its impact on economic development in Viet Nam, the basic views on the treatment of double taxation in Viet Nam by 2030, this article has analyzed the characteristics of international integration, the trend of tax reform in the world and the impact on the treatment of double taxation in Viet Nam by 2030. To serve as a basis for proposing solutions to strengthen the treatment of double taxation in Viet Nam, this article has raised and analyzed 5 basic points of view on dealing with double taxation in Viet Nam in the near future, that is: the treatment of double taxation on income must be in accordance with the Party's and State's external relations, making the most of the achievements of the fourth industrial revolution, and further promoting the role of the treatment of double taxation on income in tax administration, ensuring openness and transparency and ensuring compliance and suitable with international standards and practices.

Based on the theoretical basis, international experience, analysis of the effects of double taxation on the economic development of Viet Nam and the basic views on the treatment of double taxation in Viet Nam by 2030, this article proposes four groups of solutions to strengthen the handling of double taxation of income in the context of international integration in Viet Nam.

The first group of solutions is to complete the legal framework. The second group of solutions is to perfect the organizational structure, followed by solutions in negotiation and signing of DTAs and other solutions. The solutions to handle double taxation are proposed on the basis of compliance with world standards, closely following the orientation, viewpoint and goal of modernization of the tax sector approved by the Ministry of Finance and the Prime Minister, stemming from the actual situation of double taxation at the Province Tax Offices and the General Department of Taxation. In which, the application of modern tax management

methods is a new approach in the current context and in the future.

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