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Taxing the Digital Economy in Vietnam: Legal Challenges and Reform

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ABSTRACT

The digital economy has fundamentally transformed global commerce, yet domestic tax systems have struggled to keep pace with value creation that occurs without physical presence. The OECD/G20 Inclusive Framework's Two-Pillar Solution, under which Pillar One reallocates taxing rights over the largest digital enterprises and Pillar Two establishes a 15 per cent global minimum tax, constitutes the most ambitious reform of international tax law in a century. Vietnam, a rapidly digitalising emerging economy that hosts major foreign direct investment from multinational enterprises, faces distinct legal challenges in implementing both pillars within its domestic legal order. This paper examines Vietnam's legal framework for taxing the digital economy, with particular focus on Resolution 107/2023/QH15 and Decree 236/2025/NĐ-CP implementing Pillar Two, and the notable absence of domestic legislation on Pillar One. Through doctrinal legal analysis of Vietnamese legislation, OECD model rules, and comparative reference to implementation in India, Indonesia, and Singapore, the paper identifies three categories of legal challenge: (i) constitutional and jurisdictional obstacles to Amount A allocation without a multilateral convention; (ii) the structural tension between Vietnam's long-standing tax incentive regime and the global minimum tax's anti-base erosion mechanism; and (iii) gaps in enforcement infrastructure that limit effective taxation of foreign digital service providers beyond VAT collection. The paper argues that while Vietnam has moved swiftly and effectively on Pillar Two, the lack of progress on Pillar One leaves a significant portion of digital economy value untaxed, and proposes a sequenced reform agenda spanning amendments to the Law on Enterprise Income Tax, the introduction of significant economic presence rules, and targeted administrative capacity-building.

Keywords: *digital economy taxation, OECD Pillar One, OECD Pillar Two, global minimum tax, Vietnam tax law, BEPS, international tax reform, digital services tax*

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I. Introduction

A. The Digital Economy and the Limits of Traditional Tax Rules

International tax law, as it has developed over the past century, rests on a foundational principle: a jurisdiction may tax business profits only where the enterprise maintains a physical presence.[1] The permanent establishment threshold, codified in Article 5 of the OECD Model Tax Convention, was designed for an economy of factories, branch offices, and sales representatives.[2] The digital economy dismantles this architecture. A technology company can generate billions of dollars in revenue from users in a jurisdiction, through advertising, platform intermediation, data monetisation, and subscription services, without maintaining any physical footprint there.[3] The result is a structural mismatch: value is created where users are located, but taxing rights remain where servers and headquarters sit.[4]

B. The OECD Two-Pillar Response

After years of multilateral negotiation, the OECD/G20 Inclusive Framework on BEPS reached a political consensus in October 2021 on a Two-Pillar Solution to address the tax challenges arising from the digitalisation of the economy.[5] Pillar One reallocates a portion of residual profit to market jurisdictions for the largest and most profitable multinational enterprises, regardless of physical presence.[6] Amount A applies to MNEs with global revenue above EUR 20 billion and profitability above 10 per cent, while Amount B provides a simplified arm's-length approach for baseline marketing and distribution activities.[7] Pillar Two, the Global Anti-Base Erosion (GloBE) rules, establishes a minimum effective tax rate of 15 per cent for MNE groups with consolidated revenue exceeding EUR 750 million.[8] Where an MNE's effective tax rate in a jurisdiction falls below 15 per cent, it must pay a top-up tax through three

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[1] *See* OECD, Model Tax Convention on Income and on Capital art. 7 (2025). The arm's-length principle and the physical presence requirement have been foundations of international tax law since the League of Nations model treaties of the 1920s.
[2] *Id.* art. 5; *see also* Reuven S. Avi-Yonah, Advanced Introduction to International Tax Law 15–26 (3d ed. 2024).
[3] OECD, Addressing the Tax Challenges of the Digital Economy, Action 1: 2015 Final Report 53–67 (2015) [hereinafter OECD Action 1 Report].
[4] *Id.* at 72.
[5] OECD, Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (Oct. 8, 2021) [hereinafter OECD October 2021 Statement].
[6] *Id.* ¶¶ 15–22.
[7] OECD, Pillar One, Amount A: Model Rules for Nexus and Revenue Sourcing 4–10 (2022) [hereinafter OECD Nexus and Revenue Sourcing Rules].
[8] OECD, Tax Challenges Arising from the Digitalisation of the Economy: Global Anti-Base Erosion Model Rules (Pillar Two) arts. 1.1, 5.2 (2021) [hereinafter GloBE Model Rules].

mechanisms: a Qualified Domestic Minimum Top-up Tax (QDMTT), an Income Inclusion Rule (IIR), and an Undertaxed Payments Rule (UTPR).[9]

The Inclusive Framework now comprises more than 140 member jurisdictions.[10] Yet implementation has moved at uneven speeds: Pillar Two has been enacted into domestic law by dozens of countries, while Pillar One remains stalled as the Multilateral Convention (MLC) awaits signature and ratification.[11] For developing economies that are both recipients of significant FDI and markets for global digital platforms, this asymmetry presents an acute policy dilemma.

C. Vietnam's Position

Vietnam exemplifies this dilemma. The country's digital economy accounted for approximately 18 per cent of national GDP in 2024, a 20 per cent increase on 2023.[12] Foreign digital service providers, including Google, Meta, Amazon, Apple, and Netflix, collectively serve tens of millions of Vietnamese users. In the first six months of 2026 alone, foreign digital service providers paid more than VND 12.5 trillion (approximately USD 479.5 million) in taxes through Vietnam's foreign supplier portal.[13]

At the same time, Vietnam has historically relied on generous tax incentives, including tax holidays, preferential CIT rates as low as 5 per cent, and import duty exemptions, to attract FDI from the world's largest MNEs.[14] Samsung Electronics alone has invested over USD 20 billion in Vietnam, while Intel, LG, and Foxconn operate major manufacturing facilities under preferential tax regimes that produce effective tax rates of 5–7 per cent, far below the 15 per cent GloBE threshold.[15] Vietnam was therefore among the first wave of developing countries to enact Pillar Two legislation, adopting Resolution 107/2023/QH15 in November 2023, effective

[9] *Id.* arts. 2.1 (IIR), 2.4 (UTPR), 5.2 (QDMTT).

[10] OECD, INCLUSIVE FRAMEWORK ON BEPS: PROGRESS REPORT 2025 (2025).

[11] Mona Barake & Elvin Pouhaër, *Tax Revenue from Pillar One Amount A: Country-by-Country Estimates*, 32 INT'L TAX & PUB. FIN. 680 (2025) [hereinafter Barake & Pouhaër, *Pillar One Revenue*].

[12] INTERNATIONAL TRADE ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE, VIETNAM COUNTRY COMMERCIAL GUIDE: DIGITAL ECONOMY (2025), https://www.trade.gov/country-commercial-guides/vietnam-digital-economy-chapter.

[13] *Foreign Digital Service Providers Pay Nearly 480 Million USD in Taxes*, VIETNAMPLUS (July 15, 2026), https://en.vietnamplus.vn/foreign-digital-service-providers-pay-nearly-480-million-usd-in-taxes-post348387.vnp.

[14] *See* Luật Thuế thu nhập doanh nghiệp [Law on Enterprise Income Tax], No. 14/2008/QH12, arts. 13–16 (Viet Nam); *see also* Nghị định 218/2013/NĐ-CP [Decree 218/2013/NĐ-CP] (Viet Nam) (implementing regulations for CIT incentives).

[15] Audit Care Vietnam, *Pillar 1 và Pillar 2 của OECD: Tác động đến ưu đãi thuế TNDN tại Việt Nam* (Sept. 19, 2025), https://www.auditcarevietnam.vn/blog/pillar-1-va-pillar-2-cua-oecd-tac-dong-den-uu-dai-thue-tndn-tai-viet-nam-va-case-study-thuc-te/ [hereinafter Audit Care, *Pillar 1 & 2 Impact*].

from 1 January 2024, and following it with detailed implementing regulations in Decree 236/2025/NĐ-CP.[16]

D. Research Problem and Questions

Despite this legislative activity, significant gaps remain in Vietnam's legal framework. Pillar One has received no domestic legislative attention, leaving Vietnam without any mechanism to claim taxing rights over the digital profits earned by Big Tech within its market. The interaction between Pillar Two's top-up tax and Vietnam's existing tax treaties is legally unsettled. And the administrative infrastructure for collecting income tax from foreign digital enterprises remains underdeveloped.

This paper addresses three research questions:

- What legal challenges does Vietnam face in implementing Pillar One (Amount A), and what options exist pending the MLC?
- How has Vietnam's domestic law implemented Pillar Two, and what legal gaps persist?
- How should Vietnam reform its tax legislation to reconcile its international commitments under the Inclusive Framework with its domestic development objectives?

E. Methodology and Scope

The paper adopts a doctrinal legal methodology, analysing Vietnamese primary legislation (the Law on Enterprise Income Tax, the Law on Tax Administration, Resolution 107/2023/QH15, Decree 236/2025/NĐ-CP, and Law 48/2024/QH15), OECD model rules and commentaries, and comparative legislation from India, Indonesia, and Singapore. The scope is limited to direct taxation (corporate income tax) and the legal dimensions of the Two-Pillar Solution; indirect taxation (VAT) on digital services is discussed only where it interacts with the income tax framework.

F. Structure

The paper proceeds in eight parts. Part II outlines the international legal framework of Pillar One and Pillar Two. Part III examines Vietnam's domestic legal response to Pillar Two. Part IV analyses the absence of Pillar One legislation and Vietnam's options. Part V explores the tension between the tax incentive regime and the global minimum tax. Part VI offers comparative perspectives. Part VII presents legal reform proposals. Part VIII concludes.

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[16] Nghị quyết số 107/2023/QH15 [Resolution No. 107/2023/QH15] (Nov. 29, 2023) (Viet Nam) [hereinafter Resolution 107].

II. THE INTERNATIONAL LEGAL FRAMEWORK: PILLAR ONE AND PILLAR TWO

A. Pillar One: The Search for a Multilateral Solution

Pillar One addresses the fundamental question of taxing rights in the digital age. Under traditional tax treaties, a jurisdiction may tax an enterprise's business profits only if the enterprise has a permanent establishment in that jurisdiction.[17] For digital enterprises that generate substantial value from user participation, data collection, and brand presence without a physical establishment, this rule leaves market jurisdictions with no taxing rights over the profits attributable to their own consumers.[18]

Amount A, the central innovation of Pillar One, would reallocate a share of residual profit (25 per cent of profit above a 10 per cent profitability threshold) to market jurisdictions, irrespective of physical presence.[19] The Amount A rules include a new nexus test based on revenue thresholds: an MNE would be taxable in a jurisdiction under Amount A if its in-scope revenue from that jurisdiction exceeds EUR 1 million (or a lower threshold of EUR 250,000 for small economies with GDP below EUR 40 billion).[20] The mechanism requires a Multilateral Convention to facilitate implementation across the network of existing bilateral tax treaties, and the text of that convention, released in October 2023, had still not been opened for signature by mid-2026.[21]

Amount B addresses baseline marketing and distribution activities, establishing a fixed arm's-length return on sales of between 1.5 per cent and 5.5 per cent for distributors and sales agents performing standard functions, the applicable figure depending on the industry grouping and on the distributor's operating expense and asset intensity.[22] Amount B is less controversial and has already been incorporated into the OECD Transfer Pricing Guidelines, but its interaction with Amount A remains legally complex.[23]

B. Pillar Two: The GloBE Rules

Pillar Two operates through a fundamentally different logic. Rather than reallocating existing taxing rights, it establishes a floor on tax competition: no MNE shall pay an effective tax rate

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[17] OECD, MODEL TAX CONVENTION ON INCOME AND ON CAPITAL, *supra* note 1, arts. 5, 7.
[18] OECD ACTION 1 REPORT, *supra* note 3, at 72.
[19] OECD OCTOBER 2021 STATEMENT, *supra* note 5, ¶¶ 15–22.
[20] OECD NEXUS AND REVENUE SOURCING RULES, *supra* note 7, R. 4.
[21] Barake & Pouhaër, *Pillar One Revenue*, *supra* note 11; *see also* OECD, *Multilateral Convention to Implement Amount A of Pillar One*, https://www.oecd.org/en/topics/sub-issues/reallocation-of-taxing-rights-to-market-jurisdictions/multilateral-convention-to-implement-amount-a-of-pillar-one.html (text released Oct. 11, 2023; not yet opened for signature).
[22] OECD, PILLAR ONE, AMOUNT B: GUIDANCE ON THE APPLICATION OF THE ARM'S LENGTH PRINCIPLE TO BASELINE MARKETING AND DISTRIBUTION ACTIVITIES (2024).
[23] *Id.* at 4–10.

below 15 per cent on profits in any jurisdiction where it operates.[24] The mechanism is the GloBE rules, which contain three interlocking components.

The QDMTT allows a jurisdiction to collect the top-up tax itself, ensuring that the revenue stays in the jurisdiction where the profits arise.[25] The IIR operates at the parent company level: if a parent jurisdiction has adopted the IIR, it may tax the low-taxed profits of its foreign subsidiaries.[26] The UTPR acts as a backstop, denying deductions or requiring equivalent adjustments in jurisdictions where the MNE operates, to the extent that the top-up has not been collected through the QDMTT or IIR.[27]

The scope covers MNE groups with consolidated revenue of at least EUR 750 million in at least two of the preceding four fiscal years.[28] The effective tax rate (ETR) is calculated on a jurisdictional basis, dividing adjusted covered taxes by GloBE income.[29] Where the ETR falls below 15 per cent, the top-up tax percentage is applied to excess profits, defined as GloBE income minus a substance-based income exclusion (based on tangible assets and payroll).[30]

By January 2026, over 50 jurisdictions had enacted or substantively introduced Pillar Two legislation, including all EU member states, the United Kingdom, Japan, South Korea, Australia, and an increasing number of developing countries.[31] Vietnam was among the earliest adopters in Southeast Asia.

C. The Legal Character of the OECD Pillars

A threshold legal point must be clarified: the OECD Two-Pillar Solution is not a binding international treaty in itself.[32] It is a political consensus within the Inclusive Framework, a non-binding arrangement with no formal enforcement mechanism. Implementation depends entirely on domestic legislation by member jurisdictions and, in the case of Pillar One, on the ratification of the MLC as a formal treaty. This legal character has important implications for Vietnam: while Resolution 107 and Decree 236 domestically enact Pillar Two rules, they operate within Vietnam's sovereign legislative authority, subject to constitutional constraints and treaty

[24] GLOBE MODEL RULES, *supra* note 8, arts. 5.1–5.2.
[25] *Id.* art. 5.2.
[26] *Id.* art. 2.1.
[27] *Id.* art. 2.4.
[28] *Id.* art. 1.1.
[29] *Id.* art. 5.1.
[30] *Id.* arts. 5.2–5.3.
[31] Acclime Vietnam, *OECD Pillar Two in Vietnam: A Comprehensive Guide* (June 23, 2026), https://vietnam.acclime.com/guides/oecd-pillar-two/ [hereinafter Acclime, *Pillar Two Guide*].
[32] C. Brown, *BEPS, Pillar Two and Developing Countries*, in RESEARCH HANDBOOK ON INTERNATIONAL TAX LAW (2025).

obligations.[33] The GloBE rules do not override Vietnam's tax treaties; the domestic legislation must be designed to operate within the existing treaty framework.[34]

III. Vietnam's Domestic Legal Response to Pillar Two

A. Resolution 107/2023/QH15

Vietnam's legislative response to Pillar Two was remarkably swift. The National Assembly passed Resolution 107/2023/QH15 on 29 November 2023, with effect from 1 January 2024.[35] The Resolution adopts the core GloBE framework within Vietnamese law, establishing a 15 per cent minimum effective tax rate for MNE groups with consolidated global revenue of at least EUR 750 million.[36]

The Resolution adopts two of the three GloBE mechanisms: the QDMTT and the IIR.[37] The UTPR was deliberately deferred, reflecting a legislative judgment that Vietnam's position as a recipient of FDI, rather than a headquarters jurisdiction for outbound MNEs, makes the UTPR a lower priority. Under the QDMTT, Vietnam claims the right to collect any top-up tax where the ETR of an MNE's Vietnamese operations falls below 15 per cent.[38] Under the IIR, Vietnamese parent companies of MNE groups are required to include the low-taxed income of their foreign subsidiaries.[39]

The Resolution is a framework instrument: it sets out the fundamental policy choices and authorises the Government to issue detailed implementing regulations.[40] This legislative technique is consistent with Vietnam's practice of passing framework laws and leaving technical details to government decrees.

B. Decree 236/2025/NĐ-CP

The Government issued Decree 236/2025/NĐ-CP on 29 August 2025, providing detailed implementation rules for Resolution 107.[41] The Decree entered into force on 15 October 2025 and applies retrospectively from fiscal year 2024.[42]

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[33] *See* Resolution 107, *supra* note 16, art. 1 (scope of application).
[34] OECD, Pillar Two: Frequently Asked Questions on Treaty Compatibility (2023).
[35] Resolution 107, *supra* note 16.
[36] *Id.* arts. 2, 4.
[37] *Id.* arts. 4–5.
[38] *Id.* art. 4.
[39] *Id.* art. 5.
[40] *Id.* arts. 7–8.
[41] Nghị định số 236/2025/NĐ-CP [Decree No. 236/2025/NĐ-CP] (Aug. 29, 2025) (Viet Nam) [hereinafter Decree 236].
[42] *Id.* art. 19.

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The Decree defines the scope of taxpayers as constituent entities of MNE groups meeting the EUR 750 million revenue threshold in at least two of the prior four fiscal years.[43] The calculation methodology follows the GloBE rules: the ETR is computed as adjusted covered taxes divided by GloBE income; where the ETR falls below 15 per cent, the top-up tax is (15 per cent minus the ETR) multiplied by excess profits, with excess profits defined as GloBE income minus the substance-based carve-out.[44]

Key administrative provisions include:

- the designation of a filing constituent entity (Filing CE) responsible for group compliance;
- the registration requirement for a tax code;
- the submission of a GloBE Information Return (GIR) and a top-up tax return;
- a filing deadline of 18 months for the first fiscal year and 15 months for subsequent years; and
- a first top-up tax filing deadline of 30 June 2026.[45]

The Decree also introduces transitional relief provisions. For fiscal years commencing before 31 December 2026 and ending before 30 June 2028, no penalties apply for late filing, non-compliance, or erroneous reporting.[46] The simplified ETR safe harbour, generally available for fiscal years commencing on or after 31 December 2026, provides a transitional simplification for MNE groups during the initial implementation period.[47]

Excluded entities under the Decree include government entities, international organisations, non-profit organisations, pension funds, and investment funds, consistent with the OECD GloBE model.[48]

C. Complementary Regulatory Framework

Beyond Resolution 107 and Decree 236, Vietnam has adopted complementary legislation relevant to the taxation of the digital economy.

Law 48/2024/QH15, passed on 26 November 2024, restructured the VAT treatment of foreign digital service providers.[49] Effective from 1 July 2025, foreign suppliers carrying on business in

[43] *Id.* art. 3.
[44] *Id.* arts. 5–8.
[45] *Id.* arts. 10–12.
[46] *Id.* art. 17.
[47] *Id.* art. 16.
[48] *Id.* art. 4.
[49] Luật số 48/2024/QH15, Luật Thuế giá trị gia tăng [Law No. 48/2024/QH15 on Value Added Tax] (Nov. 26, 2024) (Viet Nam).

Vietnam through e-commerce or digital platforms are subject to VAT at 10 per cent (increased from the previous 5 per cent rate), collected through the Foreign Supplier Electronic Portal.[50] This portal has proven effective: in the first six months of 2026, foreign suppliers paid more than VND 12.5 trillion (approximately USD 479.5 million) in taxes through this mechanism.[51]

The related-party transaction regulatory framework has also been updated. Decree 20/2025/NĐ-CP (10 February 2025, effective 27 March 2025) amended Decree 132/2020/NĐ-CP on the tax administration of enterprises with related-party transactions, principally by revising the definitions of related parties and the related-party disclosure appendix.[52] Decree 20 was subsequently replaced by Decree 255/2026/NĐ-CP (30 June 2026, effective 1 July 2026), which repealed both Decree 132/2020 and Decree 20/2025, consolidated the transfer pricing regime, raised the threshold for exemption from transfer pricing documentation, and revised the country-by-country reporting requirements that operate alongside the GloBE rules.[53]

D. Assessment of the Pillar Two Framework

Vietnam's Pillar Two implementation must be assessed against the legal framework it establishes.

The strengths are significant. The speed of adoption, from November 2023 to August 2025, places Vietnam ahead of most developing economies in the region.[54] The adoption of the QDMTT ensures that top-up tax revenue stays in Vietnam rather than being collected by the MNE's parent jurisdiction through the IIR.[55] The substance-based carve-out preserves the tax benefit of genuine economic activity (tangible assets and payroll) while neutralising the advantage of artificial profit shifting.[56] The transitional relief provisions give both taxpayers and tax authorities time to develop compliance capacity.[57]

Several legal weaknesses deserve attention. First, the UTPR has not been enacted, leaving a gap in Vietnam's defensive architecture. While this may be rational for a capital-importing country, it means that if another jurisdiction's QDMTT or IIR fails to collect the full top-up, Vietnam has no mechanism to capture the residual. Second, the legal relationship between the GloBE rules

[50] *Id.* art. 1.
[51] *Foreign Digital Service Providers Pay Nearly 480 Million USD in Taxes*, *supra* note 13.
[52] Nghị định số 20/2025/NĐ-CP [Decree No. 20/2025/NĐ-CP] (Feb. 10, 2025) (Viet Nam).
[53] Nghị định số 255/2026/NĐ-CP [Decree No. 255/2026/NĐ-CP] (June 30, 2026) (Viet Nam).
[54] PwC Vietnam, *Vietnam Issues Decree on Implementation of Global Minimum Tax Under OECD Pillar Two Framework* (Sept. 4, 2025), https://www.pwc.com/vn/en/publications/news-brief/250904-vietnam-gmt-rules-oecd-pillar-two-framework.html.
[55] Acclime, *Pillar Two Guide*, *supra* note 31.
[56] GLOBE MODEL RULES, *supra* note 8, art. 5.3; Decree 236, *supra* note 41, art. 6.
[57] Decree 236, *supra* note 41, arts. 16–17.

and Vietnam's network of double taxation agreements is not expressly addressed in the Decree.[58] Where treaty rates or allocation rules produce a lower effective tax rate than the GloBE minimum, the potential for inconsistency arises, although the OECD's position is that the GloBE rules are compatible with treaties because they impose a separate tax rather than overriding treaty allocation rules.[59] Third, the administrative capacity of the tax authority to process GloBE returns, verify ETR calculations, and audit MNE groups is unproven at scale.[60] The first filing deadline of 30 June 2026 will serve as a critical stress test.

IV. The Absence of Pillar One Legislation

A. The Revenue at Stake

Vietnam has enacted no domestic legislation implementing Pillar One. This is not a failure of implementation, since Pillar One cannot be effectively implemented without the MLC, which has not yet entered into force.[61] But the legal consequence is stark: Vietnam collects no income tax on the profits that Google, Meta, Amazon, and other large digital enterprises earn from their Vietnamese users, beyond the VAT collected under Law 48/2024/QH15.

The revenue figure is worth examining. Vietnam's digital economy generated approximately 18 per cent of national GDP in 2024.[62] The Big Tech platforms earning revenue from Vietnamese users include Meta (Facebook and Instagram advertising), Google (advertising, YouTube, Google Cloud), Amazon (e-commerce, AWS), Apple (app store commissions, services), TikTok (advertising, in-app purchases), Netflix (subscription revenue), and Spotify (subscription revenue). While precise figures for Vietnam-specific revenue are not publicly disclosed, the IMF has estimated that developing countries lose USD 30–50 billion annually in tax revenue from digital economy profit shifting.[63] Under Amount A, Vietnam would be entitled to a portion of residual profit for any in-scope MNE generating more than EUR 1 million in revenue from its market, a threshold easily exceeded by every major digital platform operating in the country.

B. Legal Obstacles

Three legal obstacles prevent Vietnam from unilaterally taxing digital profits under the current framework.

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[58] *See generally* RSM Vietnam, *Tác động của OECD Pillar Two (Thuế tối thiểu toàn cầu) đến chuyển giá tại Việt Nam* (Apr. 26, 2024), https://www.rsm.global/vietnam/vi/news/tac-dong-cua-oecd-pillar-two-thue-toi-thieu-toan-cau-den-chuyen-gia-tai-viet-nam.
[59] OECD, Pillar Two: Tax Treaty Compatibility (2023).
[60] *See* Grant Thornton, *Điểm tin Thuế: Nghị định 236/2025/NĐ-CP* (2025), https://www.grantthornton.com.vn/vi/insights/thue/bn-tin-thu-2025/diem-tin-thue-nghi-dinh-236/.
[61] Barake & Pouhaër, *Pillar One Revenue*, *supra* note 11.
[62] International Trade Administration, *supra* note 12.
[63] IMF, International Tax Cooperation: A New Chapter (Feb. 2023).

The permanent establishment threshold. Under Vietnam's Law on Enterprise Income Tax and its tax treaties based on the OECD and UN Model Conventions, a foreign enterprise is subject to CIT only if it has a permanent establishment in Vietnam.[64] The vast majority of digital enterprises serving Vietnamese users have no physical presence in the country. Their servers are typically located in Singapore, Japan, or the United States; their sales teams, where they exist, serve the Southeast Asian region from regional hubs rather than from Vietnam.[65]

The absence of a legislative basis for SEP rules. Some jurisdictions have enacted "significant economic presence" (SEP) rules that create a tax nexus based on digital engagement, such as the number of users, the volume of transactions, or other indicators, without requiring physical presence. India's equalisation levy is the best-known example.[66] Vietnam's Law on Enterprise Income Tax does not currently contain any SEP provision, and the tax authority has indicated no legislative initiative to introduce one.[67]

The treaty override problem. Even if Vietnam were to introduce SEP rules or a unilateral digital services tax, these provisions would interact with Vietnam's bilateral tax treaties. Under the Vienna Convention on the Law of Treaties, Vietnam cannot unilaterally expand its taxing rights in a manner inconsistent with its treaty obligations.[68] A DST or SEP rule that taxes profits in the absence of a permanent establishment may be challenged as a violation of Article 7 (business profits) of Vietnam's tax treaties.[69] This is not merely a theoretical concern: India's equalisation levy attracted sustained objection from major technology companies and from the United States, and was ultimately withdrawn.

C. Vietnam's Options Pending the Multilateral Convention

Pending the MLC's entry into force, Vietnam has several legal options.

Option 1: a significant economic presence rule. Vietnam could amend the Law on Enterprise Income Tax to define digital engagement as constituting a taxable presence. India's equalisation levy and Indonesia's PMSE regime provide models. An SEP threshold could be set at, for example, 500,000 users or VND 100 billion in digital revenue from Vietnam. This would provide a legal basis for CIT collection from foreign digital enterprises in the short term. The

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64 Law on Enterprise Income Tax, *supra* note 14, art. 2.1.

65 *See generally* Vietnam Briefing, *Global Minimum Tax in Vietnam* (2025), https://www.vietnam-briefing.com/doing-business-guide/vietnam/taxation-and-accounting/gmt-global-minimum-tax-vietnam.

66 India Finance Act, 2016, § 165 (equalisation levy on online advertising); *id.* § 165A (inserted by the Finance Act, 2020) (equalisation levy on e-commerce supply of goods and services).

67 Based on review of legislative initiatives published by the National Assembly and the Ministry of Finance as of July 2026.

68 Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331 (*pacta sunt servanda*).

69 *See* OECD, MODEL TAX CONVENTION ON INCOME AND ON CAPITAL, *supra* note 1, art. 7, ¶¶ 1–2.

treaty override risk could be mitigated through a carefully designed scope that taxes only residual profits attributable to user participation, rather than the full business profits protected under Article 7.

Option 2: an expanded withholding tax regime. Vietnam could expand its withholding tax on payments to foreign entities, currently applicable to royalties and technical service fees under Article 12 of Vietnam's tax treaties, to cover digital advertising revenue, platform commissions, and data monetisation payments. Thailand and Vietnam have previously discussed this approach in ASEAN tax forums.[70]

Option 3: a unilateral digital services tax. A DST at, say, 3 per cent on gross revenue from digital services targeted at Vietnamese users would mirror the UK, French, and Indian models. A DST could generate immediate revenue while Pillar One remains incomplete. The trade-off is that a DST is a gross-basis tax with no deduction for costs, which means it may fall disproportionately on unprofitable or low-margin digital enterprises. It also carries political risk: the United States has consistently opposed DSTs as discriminatory against US technology companies and has threatened tariff retaliation.[71]

Option 4: wait for the MLC. Vietnam could continue its current approach of relying on VAT collection and awaiting the MLC. This is the safest option legally but forgoes significant revenue in the interim. Given the uncertainty over the MLC's timeline, its text having been public since October 2023 with no clear path to signature and entry into force, this option carries its own risk of indefinite delay.

V. THE TENSION BETWEEN TAX INCENTIVES AND THE GLOBAL MINIMUM TAX

A. Vietnam's Tax Incentive Architecture

Vietnam has relied on tax incentives as a core instrument of its FDI attraction strategy for over two decades. The Law on Enterprise Income Tax and its implementing decrees provide a graduated system of preferences: investment projects in high-tech zones, economic zones, and prioritised sectors may qualify for CIT rates as low as 5 per cent, 7 per cent, or 9 per cent (compared with the standard rate of 20 per cent), along with tax holidays of four to six years and 50 per cent reductions for up to nine additional years.[72]

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[70] ASEAN Forum on Taxation, TAX COOPERATION IN THE DIGITAL ECONOMY (2024).
[71] Office of the U.S. Trade Representative, REPORT ON DIGITAL SERVICES TAXES (2024); *see also* Office of the U.S. Trade Representative, *Section 301 Investigation: Digital Services Taxes* (2020).
[72] Law on Enterprise Income Tax, *supra* note 14, arts. 13–16; Nghị định 218/2013/NĐ-CP [Decree 218/2013/NĐ-CP] (Viet Nam), arts. 15–18.

The major beneficiaries are precisely the MNEs that fall within the scope of Pillar Two. Samsung operates six manufacturing facilities in Vietnam under multiple tax incentive certificates. Intel has invested USD 1.5 billion in its chip assembly and test facility in Ho Chi Minh City, which received a "high-tech enterprise" certification entitling it to a preferential regime. LG Display, LG Innotek, and Foxconn similarly operate under incentive regimes producing effective tax rates in the range of 5–7 per cent.[73]

B. The Neutralisation Mechanism

Pillar Two fundamentally alters the economics of these tax incentives. Where an MNE's effective tax rate in Vietnam falls below 15 per cent, the top-up tax under the QDMTT or IIR brings the total tax burden to 15 per cent regardless of the statutory incentives. The incentive is effectively neutralised: the benefit of the reduced rate does not accrue to the MNE but is instead collected by a tax authority, either Vietnam through the QDMTT or the parent jurisdiction through the IIR.

The operation of this mechanism can be seen in a hypothetical calculation. Samsung Vietnam's effective tax rate has been estimated at approximately 5–7 per cent. Under the GloBE rules, the top-up tax would be 15 per cent minus 7 per cent, that is 8 per cent, applied to the excess profits (GloBE income minus the substance-based carve-out). For a facility with significant tangible assets and payroll in Vietnam, the carve-out reduces the excess profits base but does not eliminate it entirely. The result is a total tax burden close to 15 per cent, regardless of the incentive certificate provisions.

C. Policy Implications

The neutralisation of tax incentives has two significant implications.

First, Vietnam loses its primary fiscal tool for attracting FDI. The competitive advantage that low-tax regimes provided, such as Samsung's 5 per cent ETR against Singapore's 17 per cent headline rate, is eliminated. MNEs evaluating investment locations will shift their focus to non-tax determinants: infrastructure quality, labour force skills, political stability, logistics connectivity, and market access.[74] Vietnam performs well on many of these metrics, but the adjustment period will create uncertainty.

Second, Vietnam must restructure its investment incentive framework. The policy direction indicated by both the Ministry of Finance and international advisers points towards replacing

[73] Audit Care, *Pillar 1 & 2 Impact*, *supra* note 15.

[74] KPMG Vietnam, Decree 236 Guiding on Global Minimum Tax (Sept. 2025), https://assets.kpmg.com/content/dam/kpmgsites/vn/pdf/2025/09/decree-236-guiding-gmt-en.pdf.

tax-rate incentives with non-tax alternatives: R&D tax credits (which reduce tax liability but do not reduce the ETR for GloBE purposes in the same way), accelerated depreciation, training subsidies, infrastructure support, and innovation grants.[75] Several of these alternatives fall outside the GloBE definition of "covered taxes" and therefore do not trigger top-up liability.[76]

The legal reform needed is substantial. The Law on Enterprise Income Tax, the Law on Investment, and the decree on high-tech zones will all require amendment to shift the incentive architecture from rate-based to expenditure-based instruments.[77] The legislative timeline for such amendments is uncertain, but early signals suggest the Government is studying the transition.

VI. Comparative Perspectives

A. India

India provides the most instructive comparison for Vietnam, as a large developing economy with a significant digital market and a history of assertive digital tax policy. India introduced an equalisation levy of 6 per cent on online advertising services in 2016 and expanded it to 2 per cent on the e-commerce supply of goods and services in 2020; both levies have since been withdrawn, the e-commerce levy with effect from 1 August 2024 and the advertising levy from 1 April 2025.[78] The levy operated as a unilateral DST, collected by withholding at source on payments to non-resident service providers.

India has not, however, enacted Pillar Two legislation. It remains an Inclusive Framework member and has signalled an intention to align with the GloBE rules, but as at 2026 no qualified domestic minimum top-up tax or income inclusion rule has been brought into force in Indian law.[79]

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[75] Tạp chí Kinh tế & Tài chính, *Thuế tối thiểu toàn cầu và những tác động dự kiến đến môi trường đầu tư tại Việt Nam* (Apr. 29, 2026), https://nghiencuu.tapchikinhtetaichinh.vn/thue-toi-thieu-toan-cau-va-nhung-tac-dong-du-kien-den-moi-truong-dau-tu-tai-viet-nam-kinh-nghiem-quoc-te-va-ham-y-chinh-sach-154899.html.

[76] For GloBE purposes, "covered taxes" comprise taxes on income or profits and do not include refundable tax credits or non-tax subsidies. *See* GLOBE MODEL RULES, *supra* note 8, art. 4.2.

[77] EY Vietnam, *Nghị định hướng dẫn áp dụng chính sách thuế tối thiểu toàn cầu tại Việt Nam* (Sept. 2025), https://www.ey.com/content/dam/ey-unified-site/ey-com/vi-vn/technical/tax/documents/tax-alert-september-2025-decree-guiding-the-application-of-global-minimum-tax-policy-in-vietnam-vn.pdf.

[78] India Finance Act, 2016, § 165; *id.* § 165A (inserted by the Finance Act, 2020). The 2 per cent levy on the e-commerce supply of goods and services was withdrawn with effect from 1 August 2024, and the 6 per cent levy on online advertising with effect from 1 April 2025.

[79] PwC, *Pillar Two Country Tracker*, https://www.pwc.com/gx/en/services/tax/pillar-two-readiness/country-tracker.html (recording that India has not enacted GloBE legislation); *see also* BDO, *Pillar Two Updates: Status of Implementation Around the World*, https://www.bdo.global/en-gb/insights/tax/international-tax/pillar-two-updates-status-of-implementation-around-the-world.

The Indian experience offers three lessons for Vietnam. First, the equalisation levy faced legal challenges and opposition from the United States, creating trade friction that Vietnam must consider. Second, India's administrative infrastructure for digital tax collection, including a dedicated portal for equalisation levy compliance, provides a potential model. Third, India's experience demonstrates that a DST can generate meaningful revenue during the period before Pillar One enters into force.[80]

B. Indonesia

Indonesia implemented a VAT on digital services (the PMSE regime) in 2020, requiring foreign digital platforms to register, collect, and remit VAT on services provided to Indonesian consumers. It has since implemented Pillar Two through Minister of Finance Regulation No. 136 of 2024, which applies the GloBE rules, including a domestic minimum top-up tax, to fiscal years beginning on or after 1 January 2025.[81]

Indonesia's approach nonetheless remains close to Vietnam's current position: relying on VAT collection for the digital economy while awaiting a multilateral solution on Pillar One. Indonesia has not adopted a unilateral DST, reflecting concern about trade retaliation and investment climate effects.

C. Singapore

Singapore, as a regional financial hub and headquarters jurisdiction for many MNEs operating in Southeast Asia, has implemented Pillar Two from a different starting point. Singapore introduced a Domestic Top-up Tax (DTT), alongside an income inclusion rule, for financial years beginning on or after 1 January 2025, applying a 15 per cent minimum effective tax rate.[82]

Singapore's DTT model is relevant because it demonstrates how a jurisdiction with a historically low headline CIT rate (17 per cent) and extensive incentive regimes can restructure its tax system to comply with GloBE while maintaining competitiveness. Singapore's approach has been to offer direct grants and subsidies rather than tax holidays, precisely the shift that Vietnam needs to undertake.[83]

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[80] Barake & Pouhaër, *Pillar One Revenue*, *supra* note 11.

[81] Indonesia Minister of Finance Regulation No. 48/PMK.03/2020 (VAT on foreign digital services); Indonesia Minister of Finance Regulation No. 136 of 2024 (Dec. 31, 2024) (implementing the GloBE rules for fiscal years beginning on or after 1 January 2025).

[82] Multinational Enterprise (Minimum Tax) Act 2024 (No. 36 of 2024) (Sing.).

[83] Acclime, *Pillar Two Guide*, *supra* note 31.

D. Comparative Takeaways

Three comparative insights emerge. First, no developing country in Southeast Asia has unilaterally implemented Pillar One or an equivalent profit allocation mechanism; all are waiting for the MLC. Second, the Pillar Two implementation strategies of Indonesia, Singapore, and Vietnam are broadly aligned with the OECD model, suggesting that the GloBE rules will create a relatively uniform floor across the region. Third, the divergence lies in the treatment of tax incentives: countries that shift fastest to non-tax incentive instruments will retain their competitive advantage in the post-Pillar Two landscape.

VII. Legal Reform Proposals

A. Short-Term Reforms (2026–2027)

Enact the UTPR. Vietnam should complete its Pillar Two implementation by adding the UTPR to the legislative framework. While the UTPR is less immediately relevant for a capital-importing country, its absence creates a gap in defensive coverage that could be exploited as MNE structures evolve. The UTPR can be enacted through an amendment to Decree 236 or a supplementary decree.

Issue administrative guidance. The tax authority should issue circulars (*thông tư*) clarifying areas of interpretive ambiguity in Decree 236: the methodology for computing the substance-based carve-out, the treatment of deferred tax liabilities, and the interaction with Vietnam's tax treaties.[84]

Introduce a significant economic presence rule. As an interim Pillar One measure, Vietnam should amend the Law on Enterprise Income Tax to define digital engagement as constituting a taxable presence. A revenue-based threshold of VND 50 billion in digital revenue from Vietnam and a user-based threshold of 500,000 Vietnamese users would capture the major digital platforms while excluding smaller enterprises. The SEP rule should be designed as a tax allocation mechanism rather than a full profit attribution, to minimise treaty override risk.

Expand the Foreign Supplier Portal. The existing Foreign Supplier Electronic Portal, which has proven effective for VAT collection, should be expanded to serve as the filing and payment platform for CIT obligations under the SEP rule.

[84] Forvis Mazars Vietnam, *Bản tin Thuế & Pháp lý: Cập nhật Nghị định 236*, https://www.forvismazars.com/vn/vi/n-ph-m-s-ki-n/c-p-nh-t-v-vi-t-nam/b-n-tin-thong-bao-chuyen-mon/b-n-tin-v-thu-va-phap-ly/c-p-nh-t-ngh-d-nh-236-v-thu-t-i-thi-u-toan-c-u.

B. Medium-Term Reforms (2027–2028)

Amend the Law on Enterprise Income Tax. The Law should be comprehensively revised to incorporate the GloBE rules as a permanent part of Vietnam's tax architecture, rather than relying on the temporary framework of Resolution 107. This amendment should also integrate the SEP rule for digital enterprises and modernise the permanent establishment definition.

Restructure investment incentives. Vietnam should phase out tax holidays and reduced CIT rates that are neutralised by the GloBE rules and replace them with expenditure-based incentives: R&D tax credits (structured as refundable credits that do not reduce the ETR), training subsidies, accelerated depreciation allowances, infrastructure grants, and innovation fund contributions. These reforms require coordinated amendments to the Law on Investment, the Law on High Technology, and relevant decrees.

Renegotiate tax treaties. Vietnam should review its bilateral tax treaties to ensure consistency with the GloBE framework and, where necessary, initiate renegotiations to clarify that the QDMTT and IIR are not limited by treaty provisions on business profits or non-discrimination. The MLC, when it enters into force, will handle Pillar One treaty issues; separate action is needed for Pillar Two treaty alignment.

C. Long-Term Strategy (2029 Onwards)

Ratify the Multilateral Convention. When the MLC enters into force with sufficient ratifications, Vietnam should ratify promptly and amend domestic legislation to implement Amount A. The pre-existence of an SEP rule will ease the transition, as the administrative infrastructure for taxing digital enterprises will already be operational.

Develop administrative capacity. The tax authority should invest in specialised audit capacity for GloBE compliance, digital enterprise taxation, and transfer pricing in the digital economy. This includes training programmes, technology systems for cross-border data exchange, and coordination with tax authorities in MNE parent jurisdictions.

Advance regional cooperation. Vietnam should work within ASEAN and the ASEAN Forum on Taxation to develop coordinated approaches to digital economy taxation, including information sharing, joint audit protocols, and common positions on Pillar One implementation.[85]

[85] For the broader context of regional cooperation, *see* OECD, OECD ECONOMIC SURVEYS: VIET NAM 2025 (2025).

VIII. CONCLUSION

Vietnam's legal response to the OECD Two-Pillar Solution presents a study in asymmetry. On Pillar Two, the country has acted with notable speed and sophistication, enacting Resolution 107/2023/QH15 and Decree 236/2025/NĐ-CP within two years of the OECD consensus, adopting the core GloBE mechanisms with limited deviation from the international model, and preserving its taxing rights through the QDMTT. This legislative architecture provides a sound legal foundation for the post-Pillar Two tax environment.

On Pillar One, however, Vietnam has taken no domestic legislative action, leaving itself without legal tools to tax the digital profits that global technology enterprises generate from Vietnamese users. The exclusive reliance on VAT collection through the Foreign Supplier Portal, while effective as a consumption tax measure, does not substitute for the income tax revenue that Pillar One would unlock. Nor does it address the fundamental legal question of how a developing economy can assert its sovereign taxing rights over value created within its borders by enterprises with no physical presence there.

The central legal challenge identified by this paper, the tension between Vietnam's FDI-dependent development model and the fiscal sovereignty requirements of the digital age, is not unique to Vietnam. Every developing country in the Inclusive Framework faces the same dilemma. Vietnam's experience, however, offers a case study in the legal complexity of navigating between international tax consensus and domestic development priorities.

The reform agenda proposed in this paper, from the short-term introduction of SEP rules and UTPR enactment, through the medium-term restructuring of investment incentives and treaty alignment, to the long-term development of administrative capacity and regional cooperation, provides a sequenced pathway for completing Vietnam's legal framework for taxing the digital economy. The path requires legislative discipline, administrative investment, and a clear-eyed assessment of the trade-offs between retaining FDI competitiveness and collecting the tax revenue that the digital transformation has made possible.

The ultimate contribution of this paper is to frame these choices not merely as policy decisions but as questions of legal architecture, of how domestic tax law must evolve to meet the challenges of a digitalised global economy, within the constraints of constitutional order, treaty obligations, and the evolving norms of international tax cooperation.

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