

## CAUSES AND EFFECTS OF THE INTERNATIONAL DOUBLE TAXATION. SOLUTIONS OF THE CONVENTIONS, MODEL FOR AVOIDING THE INTERNATIONAL DOUBLE TAXATION

**Prof. Marius HERBEI, PhD**  
**Sorin DUDAS DACIA, PhD student**  
**Aura COSTEA, PhD student**  
**West University of Timisoara**

Establishing of the competent public authority in order to proceed to the taxation of the income gained and of the assets owned by natural persons and legal entities in countries other than where they belong, in order to avoid the fiscal double taxation represents a necessity in the contemporary economy, where the movement of persons, capitals, goods and services constitute real facts. There are more frequent the situations when the same person has a political, economic or social relationship with two or more states, carrying on activities from which they obtain income or owning assets in many states. Because the establishing of taxes constitutes a right of each state and the way for their setting-up and charging lies within the competence of the legislative power of the respective state, it may end up in the situation that a certain income is subject to the taxation both in the state of origin, and also in the state of destination of the respective income.

The international double taxation arose as the consequence of the superposition of two fiscal sovereignties, which exercise, separately, the right to place a tax on a certain taxable issue spotted on the territory under its jurisdiction, or which, although originates from another territory belongs to a taxpayer which resides on its territory (Vacarel, 1995). Thus, the international double taxation represents the submission to tax of the same taxable

issue and for the same period of time by two fiscal authorities from different countries (Vacarel, 2001). The double taxation supposes the taxation of two or more similar charges, on the same taxable subject, taxable for the same purpose and for the same period of time (Davis, 1985). The international double or multiple taxation occur only when the fiscal authorities from two or more states collect concomitantly taxes having the same incidence, so that a person bears a fiscal obligation heavier than in case it would have been subject to a sole fiscal authority (Spitz). The coexistence of more complementary or competitor fiscal systems may lead to the double even triple fiscal taxation (Alexandru, 2003).

The double taxation may constitute a real barrier in the way of the economic technical-scientific cooperation, of setting-up of subsidiaries or branches abroad, of the foreign investments of capital and of the external loans, of the development of economic and financial affairs. The international double taxation may represent an excessive taxation for the taxpayer and an obstacle in the way of capital movement, of the cooperation between countries and the economic and financial increase (Mosteanu, 2003).

One of the causes for the occurrence of the phenomenon of international double taxation is represented by the fact that the governments of some states apply taxes

on income gained on the territory in question to the taxable individuals, and on the other hand, these are subject also to the taxation in the state where they belong (Leicu, 1995). Another cause is the fact that the fiscal policy and the taxation systems from different states present particularities which may lead to the double taxation or even to the cessation of the activities producing income (Moşteanu, 2003). Also, the terms of “resident”, “source of income” or “home” may have different interpretations from one state to another and it is possible that the same taxable individual, considered resident in two or more states or the same taxable object, be considered having the source in two or more states. Such situations entail the elimination of the double taxation and ensuring a clear and sure position for the taxable individuals involved in the commercial, industrial and financial relationships at an international level (Leicu, 1995).

The phenomenon of the international double taxation appears due to the different concepts/criteria which are the basis for the taxation: the residence, the nationality or the territoriality. According to the *criterion of residence* (or of the fiscal residence), the taxation of the income or assets is made by the fiscal authority of the country the resident belongs to, regardless if the income or the assets forming the object of the taxation are obtained or are on the territory of that country or outside that country. According to the *criterion of nationality*, a country charges with taxes its residents, who realize income or own assets from (in) that country, regardless that those residents live or do not live in their country, and in the case of the *criterion of the income' origin* (territoriality), the taxation is made by the fiscal bodies of the country on whose territory the income have been made or where the assets are, regardless of the residence or nationality of the income' beneficiaries.

The modality in which these criteria are applied may lead to the double taxation. For example, if in the country A the taxation is based upon the criterion of residence, and in the country B on the criterion of the income' origin, then a person from the first country will have to pay taxes on his/her income in the country of residence, as well as in the country of origin of the income.

The double taxation may be avoided either based upon some unilateral legislative measures, either by concluding bilateral or multilateral agreements between different countries. The avoidance of the double taxation by unilateral legislative measures is more difficult to be realized, as every country is interested to obtain fiscal income as large as possible.

Taking into account the multiple negative effects regarding the international commercial relationships created by the double taxation, at the state level there were proposed and applied varied solutions in order to decrease or eliminate this phenomenon. One of these ways and modalities of preventing and eliminating the double taxation is the introduction, in the national fiscal legislation or in other internal regulations, of some provisions meant to prevent the recurring taxation by two or more fiscal sovereignties.

The Organization for Economic Co-Operation and Development (OECD), by the models of frame-conventions, offers applicable solutions in the bilateral relationships between countries, solutions which are assumed in the desired form in the concrete conventions concluded between countries. The recommended solutions take into account the following:

- The taxation of the income made by the economic agent is to be done by the country on whose territory the income was obtained and in which those subjects have a stable exploitation headquarters;

➤ The benefits resulted from the exploitation of the ships and aircrafts in international traffic are to be taxed by the country in which the management of the exploitation company is located. If the head office is on the ship, it is considered to be in the ships' home port and if such port doesn't exist, in the country of which the person exploiting the ship is a resident;

➤ The income obtained under the form of interests to bonds, promissory notes or debentures, under the form of residuals from using the copyrights, patents, brands or trade marks, the secret procedures or formulae etc, as well as those under the form of equities are to be taxed by both contracting countries, in the proportions agreed by those countries;

➤ The taxation of the income obtained from exercising on its own of a liberal profession (architect, medical doctor, lawyer, accountant, engineer, professional artist, professional athlete etc) to be made in his/her country of origin – when their beneficiary has a head office in order to exercise the liberal profession, or in the country in which the beneficiary of the income is resident – when he/she doesn't have a head office in the foreign country;

➤ The income from wages and fees, as well as those obtained under the form of shares, attendance fees or other similar fees by the members of the boards of trustees or the boards of statutory auditors are to be taxed in their country of origin. In reciprocity conditions, the employees of the embassies and of the diplomatic missions, as well as the correspondents of foreign press agencies are exempted from such a taxation;

➤ The assets owned abroad under the form of real estates are to be taxed by the country in which those are located. If the assets are movable goods, part of the assets of a stable head office of a stable base of operations, which serve to exercising a liberal profession, they are to be taxed in the country in

which the stable head office or the stable base of operations. The ships, the aircrafts, the railroad or road vehicles exploited in the international traffic, as well as the movable goods used for these exploitations to be taxed in the country of residence of the exploitation company's management.

The conventions for avoiding the double taxation are applied to the income and assets taxes, levied in the account of each contracting states. The conventions are applied to those persons who are residents of a contracting state or of states, natural persons or legal entities, trading or share companies, foundations etc. In the case of indirect taxes, this problem is out of question, as the foreign citizens pay, as buyers, the same taxes included in the price of the bought merchandise as the citizens of the country of taxation.

Taking into account the legal aspects, related to the will of the lawgiver, the double taxation performed in a country is voluntary and involuntary. The situation of the *voluntary double taxation* is when this is instituted especially, in order to achieve a certain purpose. In this case are included: the accentuated taxation of the income gained in the country by the natural persons and legal entities or the application of some additional shares of taxes in the favor of the federal (or centralized) budget, to some of the local taxes. The *involuntary double taxation* may be the expression of a repercussion of some taxes, because the lawgiver can not establish in all cases which entity will bear the taxes. Romania concluded so far conventions with 83 states worldwide, within the conventions for the avoidance of the international fiscal double taxation there are concluded a number of specifications which aim the concrete way in which there should be carried out the taxation, with a view to the a precise delimitation of the scope as regards the fiscal subjects, in all possible hypostases of the residence and citizenship; the way

for establishing of the taxable profit of the economic agents and modalities and/or limits for the deduction of the expenses generated of the parent-companies from the management of the daughter-company, which carries on activities in other countries; the level of the taxation shares that may be used by the country of origin of the income under the form of interests, royalties and dividends. In the fiscal international practice there were accepted the following four methods or technical proceedings in order to avoid the double taxation: total exemption, progressive exemption, usual crediting and integral crediting.

1. Corresponding to the **total exemption method**, the income gained by the resident of a country in a foreign country (Vits) and subject to the taxation in the respective country is deducted from the global taxable income (Vigl) which in the country of residence takes into account the totality of the income obtained by the tax payers. To this effect, it is used the relation:

$$\text{Vitr} = \text{Vigl} - \text{Vits}$$

For example, lets suppose that a French citizen gains in the country of residence (France) an annual income of Euro 100,000, and in Spain (from its country of origin or of origin of the income) obtains an income of Euro 30,000. Between these two states, there is an agreement regarding the avoidance of the double taxation which stipulates the use of the method of total exemption. The tax share in France for the income obtained here is of 25%, and the tax share in Spain for income obtained in Spain is of 21%. The tax share in France corresponding to the total income obtained in these two countries is of 30%.

In these conditions, the tax paid by the French tax payer in France is of  $100,000 \times 25\% = \text{Euro } 25,00$ , and the tax paid for the income obtained in Spain is of  $30,000 \times 21\% = \text{Euro } 6,300$ . The total tax paid by the tax payer for the income gained in these two countries, in

case that there is a convention which stipulates for the avoidance of the double taxation the method of total exemption is of  $25,000 + 6,300 = \text{Euro } 31,300$ .

In the absence of the convention for avoidance of the double taxation, the total amount of the tax paid is determined by adding to the tax paid in France in the absence of a convention ( $130,000 \times 30\% = \text{Euro } 39,000$ ) of the tax paid in Spain ( $30,000 \times 21\% = \text{Euro } 6,300$ ). Thus, the total amount of the tax would have been  $39,000 + 6,300 = \text{Euro } 45,300$ . The fiscal reduction, meaning the advantage of which benefit the French citizen is of  $45,300 - 31,300 = \text{Euro } 14,000$ . As a result, the volume of the tax owed by the French citizen by both countries is less than in case of the existence of the Convention for the avoidance of the double taxation, through the method of total exemption. It shall pay only Euro 31.300, with Euro 14.000 less than the in case of lack of the Convention.

2. The method of progressive exemption assumes a separate taxation of the income, in every of the Convention's signatory countries. But, in the context of the progression of the taxation, the income obtained abroad by the resident of a country (Vits) are added to the taxable income achieved in the residence country (Vitr), obtaining the global taxable income (Vigl), depending on which, the progressive related rate is determined (Cip) or / and adequate progressive fix amount (Sfp). They are used afterwards only for the calculation of the tax related to the income obtained in the residence country. In this context, there are used the ratios:

$$\text{Vigl} = \text{Vitr} + \text{Vits}$$

$$\text{Vigl} = > \text{Cip or / and Sfp}$$

$$\text{Itr} = \text{Vits} \times \text{Cip} / 100$$

Or:

$\text{Itr} = \text{Sfp} + (\text{Vitr} - \text{Nmin}) \times \text{Cip}/100$ , where Nmin refers to the minimum level of the installment of taxable income – in case of taxation composed on installments, by

using fix tax amounts and progressive percentage rates.

In the above mentioned analyzed example, if between the two states, France and Spain, an agreement is signed on the avoidance of double taxation, providing the use of the method of progressive exemption, the tax paid in France by the tax payer is  $100.000 \times 30\% = \text{Euro } 30.000$ , and the tax paid in Spain is  $30.000 \times 21\% = \text{Euro } 6.300$ . The total value of the tax in case of existence of the Convention on the avoidance of double taxation providing the use of the method of progressive avoidance shall be of  $30.000 + 6.300 = \text{Euro } 36.300$ .

In the absence of the Convention, the total value of the tax paid by the French tax payer shall be determined by the addition of the tax paid by France, in the absence of the Convention ( $130.000 \times 30\% = \text{Euro } 39.000$ ), at the tax paid in Spain ( $30.000 \times 21\% = \text{Euro } 6.300$ ), that is  $39.000 + 6.300 = \text{Euro } 45.300$ . The fiscal reduction that is the advantage of which the French citizens enjoys is  $45.300 - 36.300 = \text{Euro } 9.000$ .

It may be concluded that the volume of the taxed due by the French citizen to both countries is smaller also in case of the existence of the Convention on the avoidance of double taxation through the method of progressive exemption.

3. **Common crediting** consists in the fact that the tax paid to the foreign country for the income obtained on its territory by the resident of other country shall be deducted directly from the total tax calculated in the residence country (litr-c). This tax shall be calculated taking into account the global taxable income obtained through the appropriation of the taxable income obtained in both countries (according to the previous method).

The tax paid abroad shall be deducted only up to the threshold of the internal tax that would be due for a global income equal to that obtained abroad.

This tax, respectively the tax deductible for the taxable income from the contracting foreign country (lits-de) compared to the one effectively paid (lits-pl) must satisfy the ratio:  $\text{lits-de} \leq \text{lits-pl}$

In case that the tax calculated in the residence country is smaller than that paid abroad, the tax payer shall bear a total corresponding tax bigger than that which he/she would have paid if all taxable income had been obtained in their residence country.

By using the previously analyzed example, the case of the French citizen and the income which he obtained in France and Spain, let's assume that between the two states an agreement is signed regarding the avoidance of double taxation, providing the use of the common crediting method. Also, for Spain, there shall be taken into account two rates of the tax, a minimum one of 21% and another maximum rate of 33%. Under such circumstances, the tax due in France before granting the fiscal credit is  $130.000 \times 30\% = \text{euro } 39.000$ . The credit granted by France, which is equal with the tax paid by Spain shall be: for the first version (rate of 21%)  $30.000 \times 21\% = \text{Euro } 6.300$ ; and for the second version (rate of 33%):  $30.000 \times 30\% = \text{Euro } 9.000$ , as the maximum rate permitted in the residence country, France, is 30%. The tax payable in France, after granting a fiscal credit shall be: for the first version:  $39.000 - 6.300 = \text{Euro } 22.700$ , and for the second version:  $39.000 - 9.000 = \text{Euro } 30.000$ . The total value of the tax paid by the tax payer for the income originating from the two countries according to the Convention on the avoidance of double taxation through the method of common crediting is: for the first version :  $39.000 - 6.300 = \text{Euro } 22.700$ , and for the second version :  $39.000 - 9.000 = \text{Euro } 30.000$ . In the absence of this convention, the total value of the tax payable would be determined by the addition at the value of the tax paid in France ( $130.000 \times 30\% = \text{Euro } 39.000$ ), of the tax paid in Spain

( $30.000 \times 21\% = \text{Euro } 6.300$  in the 1<sup>st</sup> version and  $30.000 \times 30\% = \text{Euro } 9.000$  in the second version), that is  $39.000 + 6.300 = \text{Euro } 45.300$  in the first version and  $30.000 \times 30\% = \text{Euro } 9.000$  in the second version, that is  $39.000 + 6.300 = \text{Euro } 45.300$  in the first version and  $39.000 + 9.000 = \text{Euro } 48.000$  in the second version. The fiscal reduction is  $45.300 - 36.000 = \text{Euro } 9.300$  in the first version and  $48.000 - 36.000 = \text{Euro } 12.000$  in the second version. So, the advantage of which the French citizen benefits is euro 9.300, for the situation in which Spain applies a minimum rate of taxation of 21% and Euro 12.000, for the situation in which Spain applies a maximum rate of taxation of 33%.

4. **Full crediting** eliminates the deficiency of the common crediting method, in the sense that the tax paid abroad is deducted fully from the total tax calculated in the residence country, irrespective of its size. Also in the analyzed example, of the French citizen and of the income paid by him in France and Spain, let's assume that there is between the two states an agreement regarding the avoidance of the double taxation by full crediting. In these circumstances, the tax due in France before granting the fiscal credit is  $130.000 \times 30\% = \text{Euro } 39.000$ . The credit granted by France, which is equal to the tax paid in Spain, shall be: for the first version (the taxation rate 21%):  $30.000 \times 21\% = \text{Euro } 6.300$  and for the second version:  $30.000 \times 33\% = \text{Euro } 9.900$ . The tax paid in France after granting the fiscal credit shall be: for the first version:  $39.000 - 6.300 = \text{Euro } 32.700$  and for the second version:  $39.000 - 9.900 = \text{Euro } 29.100$ . The total value of the taxes paid by the tax payer, for the income obtained from the two countries, according to the Convention on the avoidance of the double taxation through the method of full crediting is: for the first version:  $32.700 + 6.300 = \text{Euro } 36.000$ , and for the second version:  $29.100 + 9.900 = \text{Euro } 3.900$ . In the absence of the Convention,

the total value of the tax would have been calculated by the addition of the tax paid in France, in the absence of the Convention ( $130.000 \times 30\% = \text{Euro } 39.000$ ) of the tax paid in Spain ( $30.000 \times 21\% = \text{Euro } 6.300$  in the first version and  $30.000 \times 33\% = \text{Euro } 9.900$  in the second version). The total value of the tax due would have been  $39.000 + 6.300 = \text{Euro } 45.300$ , in case of the first version and  $39.000 + 9.900 = \text{Euro } 48.900$  in case of the second version. The fiscal reduction is  $45.300 - 36.000 = \text{Euro } 9.300$  in the first version and  $48.900 - 36.000 = \text{euro } 12.900$  in the second version. So, the advantage of which the French citizen benefits is Euro 9.300, for the case when Spain applies a minimum tax rate of 21% and Euro 12.900 for the case in which Spain applies a maximum tax rate of 33%. The conclusion is that the volume of the taxes due by the French citizen to both countries is smaller in case of existence of the Convention for the avoidance of the double taxation through the method of full crediting than in case no convention had been at all.

From the two exposed exemption methods, the most advantageous is total exemption, and from the two "crediting" methods, the most advantageous for the tax payer is the full crediting method. The advantages and disadvantages fall on the tax payers, but it depends on the mention written in the convention concluded by the reference countries – as concerns the method of procedure that shall be used for the avoidance of the fiscal double taxation at international level.

For the avoidance of the double taxation, principles were created in the international practice, on the basis of which through the signed conventions, methods of settlement and charging of taxes are established: the principle of taxation, principle of tax exemption, and principle of fiscal non-discrimination. According to the taxation principle, the residence state calculates the tax

originating from the total amount of the income of the taxable individual, inclusive on those coming from the origin state and that, according to the Convention, are taxable in this latter state; from the tax that is thus established, the amount that was paid in the other state shall be deducted afterwards. Based on the principle of tax exemption, the residence state imposed only that income that, according to the Convention, are taxable in that state exempting the

income from taxation (or part of them) taxable in the origin state of the tax payer. According to the principle of fiscal non-discrimination, the states signatory of the Convention for the avoidance of the double taxation, undertakes not to apply towards the residents of the other contracting state, as concerns taxation, normative dispositions more burdening than those applied to their own tax payers found in the same situation.

## REFERENCES

Alexandru , M.	Dubla impunere internationala, (International Double Taxation), Economic Printing House, Bucharest 2003;
Davis, D.R.	Principle of International Double Taxation Relief, sweet & Maxwell, London, 2005;
Leicu, C.	Eliminarea dublei impuneri in relatiile financiar- contabile (Eliminating the double taxation in the financial and accounting relationships), Lumna lex Printing House, Bucharest, 2005;
Mosteanu, N.R.	Dubla Impunere Internationala, (International double taxation), Didactic and Pedagogic Printing House, Bucharest 2003;
Saguna, D.D.	Drept financiar si fiscal. (Financial and Fiscal Law) Bucharest. All Beck, 2003;
Vacarel, I.	Finante publice (Public finances), Didactic and Pedagogic Printing House, Bucharest 2006;
Vacarel, I. et all.	Relatii financiare internationale (International Financial Relations) Romanian Academy printing House, Bucharest 1995.

**Acknowledgement.** This article is a result of the project “**Creșterea calității și a competitivității cercetării doctorale prin acordarea de burse**”. This project is co-funded by the European Social Fund through The Sectorial Operational Programme for Human Resources Development 2007-2013, coordinated by the West University of Timisoara in partnership with the University of Craiova and Fraunhofer Institute for Integrated Systems and Device Technology - Fraunhofer IISB.