ROMANIA AND THE CONVENTIONS FOR ELIMINATINGDOUBLE TAXATION*

ROMÂNIA ŞI CONVENŢIILE DE EVITARE ALE DUBLEI IMPUNERI*

D. DUDAŞ[1]

[1]West University of Timisoara, Faculty of Economics and Business Management, Timisoara, Romania; dudasdacian@yahoo.com

Abstract: *The conventions meant at eliminating double taxation concluded by Romania play an important part in preventing discrimination of tax payers at international level, as well as in ensuring a general framework of legal and fiscal stability for accomplishing international activities. Conventions for eliminating double taxation are applied to income and property taxes, established by each of the contracting states, by their political subdivisions and by units of territorial administration.*

Key words: *conventions for eliminating double taxation, taxable matter, fiscal equity.*

INTRODUCTION

Representing an agreement specialised exclusively in fiscal issues, the conventions for eliminating double taxation treat in an exhaustive manner, cases in which two fiscal sovereignties claim their right of taxing, specifying for each individual case which of them can impose a tax or another, whether the states that have signed the convention are entitled to tax that taxable matter, the limits within which each of them will do it, methods of eliminating double taxation, procedures for solving conflicts, the duties of each party.

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MATERIAL, METHOD, RESULTS AND DISCUSSIONS

The conventions for elimination double taxation offer concrete solutions to issues of taxation of incomes resulting from international activities and they reflect, at the same time, the general policy of each contracting state, of stimulating foreign investments encouraging their own investors that participate in international trade and in investments abroad.

The aim of the conventions for eliminating international double taxation are reflected in meeting the needs of balanced allotment of taxation rights between states, in stimulating the development of commercial and financial relations between these states, and, last but not least, in preventing and eliminating the phenomenon of fiscal evasion and fraud. Most conventions for eliminating double taxation, even if they do not clearly mention it in their title, include at least two declared objectives, respectively avoiding double taxation and preventing fiscal evasion.

At the same time, fiscal conventions play an important part in preventing discrimination of tax payers at international level, as well as in ensuring a general framework of legal and fiscal stability for accomplishing international activities

Conventions for eliminating double taxation are applied to income and property taxes, established by each of the contracting states, by their political subdivisions and by units of territorial administration (member states of the federation, departments, cantons, provinces, areas, counties, cities, towns, communes). Persons resident in one or both the contracting states, natural or legal persons (associations of persons and capital) are subject to the conventions.

As far as income taxation is concerned, the conventions concluded between different states, have introduced several solutions.

Incomes made from real estate (farming and forestry exploitations) are taxed in the contracting state where the respective estate is located. Real estate includes all the accessories belonging to the respective exploitations, their implements and the livestock, the rights coming from land property, life interests of real estate and rights to variable or fixed annuities coming from exploiting or leasing it for mineral deposits, springs, or other mineral riches.

The benefits obtained by the enterprises of a contracting state are usually taxed by the fiscal bodies of that state. In case the respective organization has industrial or commercial activity in the other contracting state as well, having a stable registered office there, the benefits coming from the activity of the latter office are taxed in the state where the office is. In other words, the benefits of an organisation, obtained in several registered offices located in both states, signatories of the convention, are taxed in each of those states, using the proportion which those benefits would bring to the respective registered offices if they were operated as distinct organisations.

For establishing the benefit of a stable registered office one takes into consideration the expenditures made for its activity, irrespective of their being made only in the state where the established registered office I or somewhere else too.

The benefits coming from exploiting vessels or aircraft in international traffic are taxed in the contracting state where the effective management of the organization is located. If the registered office of this management is on board of a vessel, the registered office is considered to be the contracting state where the port of origin of the vessel is, or, if this is non-existent, the state whose resident the person exploiting the vessel is.

The incomes made by shareholders from societies with capital under dividends form, are taxed partly in the state of origin, partly in the state of destination, in proportions stipulated in the agreement between the contracting parties. The state of destination of the dividends allotted is the first entitled to taxing them, the state of origin of the dividends having only a limited taxation right (often, 15% of the amount of the dividends).

When establishing the proportions regarding taxation of dividends one takes into consideration the fact that the state of origin of the dividends has the possibility of imposing an additional tax on the benefit of the capital society. The benefits of societies of persons belong by right to the shareholders and they are taxed as industrial or commercial benefits, not as dividends.

The incomes obtained under the form of interest (from bonds, promissory notes or other debt titles) are being taxed in both contracting states, respecting the proportions agreed upon. The state of destination of

interests has priority in taxation, and the state of origin has also the right to impose a tax, but not higher than 10% of the gross sum of the interests.

The incomes obtained as dues, are usually taxed in both contracting states, using the proportions agreed upon. The origin state of the due can only impose a limited quota of taxation at its disposal.

The incomes made by exerting a liberal profession (independent activity practiced by physicians, architects, lawyers, engineers, accountants, etc.) are taxed either in the state of origin of the incomes, when their beneficiary has a fixed basis/office for exerting the liberal profession, or, in case he/she has not, by the state whose resident the beneficiary of the incomes is.

Incomes from salaries and other similar remunerations are generally taxed I the state where the remunerated activity takes place.

The incomes made under the form of royalties, director's fees, and other similar retributions that a resident of a contracting state gets in his capacity of an administrative or supervision board of a society that resides in another contracting state, are taxed in the latter state.

The incomes made by show artists (in cinema, theatre, television), from personal activities of that kind, as well as sports people, in the other contracting state, are taxed in the state in which such income-producing activities are performed.

Property under the form of real estate is taxed in the state where the respective goods are located. Property represented by movable goods, a component of the assets of an established registered office of an organization or of a fixed basis that is used for exerting a liberal profession, is taxed in the state where the established registered office or the fixed basis is. Vessels, aircrafts, rail or road vehicles, exploited in international traffic, as well as the movable goods used during this exploitation are taxed only in the state housing the seat, the registered office of the effective management of the organisation.

As far as the area of application of the fiscal conventions is concerned, according to Romania regulations, negotiating and signing agreements, conventions, and other international agreements at government or department level, take place on the basis of authorisations given to delegations approved for this specific purpose.

Negotiations are usually carried on by experts of the Ministry of Public Finance and they are concluded by sealing the project ad referendum,

and the documents of fiscal conventions are signed by persons detaining written authorisation for engaging the Government of Romania, as a rule the finance minister or his/her deputy. After being signed like this, conventions for eliminating double taxation are submitted for ratification to the Parliament, by decree of the President of Romania, counter-signed by the Prime Minister of the Government. After ratification, based on article 77, paragraph 1 in the Constitution of Romania, the law for the ratification of the convention is promulgated and dispositions are given for its being published in the Official Bulletin of Romania.

At present, Romania has in force conventions for elimination double taxation with 79 states of the world. Inspired from the structure and the solutions offered by model conventions, O.C.D.E. and U.N.O., the area of application of the conventions for elimination double taxation concluded by Romania includes three different aspects, that is: persons they have in view; taxes that are subject to them; territory (geographic area) where they operate.

CONCLUSIONS

By concluding conventions for eliminating double taxation, industrialised states with liberal economy turn to account, as a rule, fiscal policies attached to the imperative of neutrality of taxation, while less developed states frequently use policies of clear interventionist inspiration, by granting fiscal advantages meant at attracting flows of capital, technical knowledge, specialists, etc, from abroad. In the 79 conventions for eliminating double taxation that Romania has concluded with different states of the world, the method of exoneration, as a method of avoiding double taxation, has, in general, limited applicability

REFERENCES

1. DAVIS D.R. (1985) - Principles of International Double Taxation Relief, Londra: Sweet & Maxwell, pp.45-46.

2. IDA T. (2006) - International Tax Competition and Double Taxation, The Applied Regional Science Conference (ARSC) / Blackwell Publishing Asia Pty Ltd., Rurds, Vol. 18, No. 3, pp.35-39.

3. ISPAS ROXANA (2009) - Methods for Avoiding The Double Imposition in The International Conventional Practice, Ovidius University Annals Economic Sciences Serie Volume XIII, pp.120

4. MARLIAVE R. (2005) - The Triple Taxation of Corporate Equity Profits, Atlantic Economic Journal, Nr.33, pp.68-89.