FORMS OF DOUBLE TAXATION*

FORMELE DE MANIFESTARE ALE DUBLEI IMPUNERI*

D. DUDAŞ[1]

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

Abstract: *Double taxation represents taxing the same taxable matter, for the same period of time, by two different fiscal authorities, belonging either to the same state or to different ones. Fiscal theory and practice shows the existence of various types of double taxation, the most significant criteria for classifying them being: the criterion of consequences regarding the status of the taxees, the criterion of conditions under which double taxation occurs, the criterion of the aim had in view regarding fiscal equit, the criterion of the taxable object, and the criterion of the type of tax on which this phenomenon is based.*

Key words: *fiscal double taxation, taxable matter, fiscal equity, fiscal authority*

INTRODUCTION

Historically speaking, the issue of double taxation is not something new. Nowadays, one can notice that the levels the present governments deduct, under the form of taxes, from the income made by an economic subject in a foreign state are still acceptable, as compared to the merciless seizure that used to be current practice in the past.

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MATERIAL, METHOD, RESULTS AND DISCUSSIONS

The development of domestic and foreign trade relations has made natural and legal persons obtain incomes or posses property subject to different fiscal authorities of the same state or of other states. This fact allowed creating a delimitation of competences of the authorities of the same state or of the authorities in other states as regards the way of taxing e income or property, due to the fact that these taxable objects might make the object of a simultaneous fiscal dispute between several such entities.

More over, fiscal restrictions applied to the same taxable matter bring about comparable taxation of a taxable object by more than one fiscal authority or paying a tax from a single source of income in two different countries. This phenomenon is considered an instance of double taxation.

Matei et al. (2007) consider double taxation as being subjecting the same taxable matter, for the same period of time, to one or more taxes, by the same fiscal authority (economic double taxation) or by different fiscal authorities (legal international double taxation). Cătinianu (2007) says that double taxation refers to the activity of subjecting to taxation the same taxable matter, belonging to the same subject, for the same period of time, by two (or more) fiscal authorities. In simpler words, the phenomenon of double taxation appears, in Ispas's (2009) conception, when the same taxable matter is being taxed twice or several times during the economic circuit of the same financial exercise. The phenomenon of double taxation is manifest only in direct fiscal payments that is in the case of income and property taxes, since indirect taxes, due to goods and services purchased by the citizens of one country in another state, are no longer paid in the country of the buyer.

Marliave (2005) considers that, in the case of a company, one should limit the definition of the phenomenon to three operations only. Hence, in this author's opinion, this concept should be called „triple taxation". The demonstration starts with the fact that, if there are no liquidations or re-purchasing of securities, the value of the capital of a company is given by the present net worth netă of all the future dividends.

This present net worth is subject to three taxes: the profit tax, the dividend tax, as well as the capital gains tax.

From the definitions above, we can conclude that double taxation implies several elements of content: identity of the taxable object, identity of the taxee, identity of the tax, simultaneity of taxation, as well as conflicts between two or several fiscal authorities.

New currents of thought also consider that there is double taxation only if the nature of the taxes is identical. This point of view is consistent with the principles stipulated by financial experts in Geneva.

Taking into account the diversity of positions as regards applying the principles of international taxation by fiscal jurisdictions to subjects and objects of taxation, all the cases of double taxation can be grouped into two categories: double taxation generated by the development of the conflict between fiscal jurisdictions as regards the status of natural and legal persons and double taxation generated by the development of the conflict between fiscal jurisdictions as regards the object of taxation – income and capital gains. The existence of different types of taxation based on national fiscal systems brings about the phenomenon of double taxation.

In my opinion, the other elements influencing the appearance of double taxation can be summed up as: the irreversible process of internationalization, globalisation, world-scale extension of the savings of the states throughout the world, the technical-scientific revolution, disappearance of geographic distances, complex activities of economic and industrial cooperation that go beyond national borders, an intense process of internationalization of the goods market.

Fiscal practice and theory demonstrate the existence of various types of double taxation, the most significant criteria for classifying them being: the criterion of consequences regarding the status of the taxees, the criterion of conditions under which double taxation occurs, the criterion of the aim had in view regarding fiscal equity and the criterion of the taxable object.

1. According to its multiple consequences regarding the status of the taxable subjects, both natural persons, (citizens and/or residents of a state), and legal persons (trade companies, corporations, etc.), the specialized literature speaks about two forms of double taxation: international legal double taxation and economic double taxation.

a. Legal double taxation is the classical form of double taxation and it can be synthesised in a definition generally accepted at international level: double taxation is imposing two (or more) similar taxes, on the same subject

of taxation, for the same taxable object and for the same period of time. On the same line, Talpoş and Enache (2001) appreciate that international double taxation is subjecting to direct taxation the same taxable matter for the same period of time, by public authorities in different countries.

The fiscal literature in Romania defines international legal double taxation as subjecting a certain type of taxable matter to the same type of taxation, for the same type of financial exercise, by two different states. In conclusion, international double taxation occurs when the income and the property are taxed by two states, with the same type of tax, and for the same financial exercise.

According to the legal approach, international double taxation occurs only when three consecutive elements cumulate: repeated perception in different states of the tax or of the tax referring to the same income; the existence of an identity of period of taxation; subjection of the tax payer to a surplus of fiscal obligation, a difference he would not be supposed to pay if taxation were imposed by only one of the states.

International double taxation originates in the fiscal sovereignty of the states that have a right to taxation, one, because it is the country where the beneficiary of an income resides, and the other, because the source of income is on its territory.

In this situation, the income obtained by a natural or legal person abroad, are susceptible to taxation in both countries. One should note that international double taxation can occur not only when one state has adopted the territorial conception, and the other the world-wide conception, but also when both states favour the same conception.

It also occurs when the states under discussion apply a territorial conception but they have adopted regulations that define differently the sources of income as, for example for establishing the profits of the parent-society and, respectively, of its subsidiaries abroad.

International double taxation can also occur when the respective countries favour the world-wide conception, but they define differently the concept of residence, or when a country uses as a criterion for taxation the residence of the tax payers, and another their nationality. The conflicts of interests can appear in cases of double nationality or double citizenship, in the case of natural taxable parsons.

The appearance of the phenomenon of international double taxation is thus a consequence of overlapping of two fiscal sovereignties that exercise

separately their right of taxing a taxable matter. One of the states takes into account the fact that the respective income was made on its territory, and thus it is entitled to a right of taxation, while the other state will not take into account the source of the income but the fact that the beneficiary of the income is its resident. This is only one of the situations that might appear in international fiscal practice. Other reasons for the appearance are the criteria used by the states in the world for establishing their fiscal jurisdiction, criteria like: the term of „resident", „citizenship", „the source of income" .

b. Economic double taxation occurs when different taxable subjects are taxed for the same taxable object. This form of repeated taxation, in which certain incomes or elements of property are subject to two distinct taxes, represents a conscious, deliberate act of the fiscal authority that takes place within the respective country.

In numerous countries the share of the profit of the societies that is distributed to the shareholders under the form of dividends is taxed once, in the tax for the profit of the companies, which has in view the total profit before sharing, and a second time, in the income tax for natural persons.

Economic double taxation can have an international character when one or more taxable subjects are non-resident natural or legal persons who transfer their incomes abroad. In this situation, international double taxation will be an inevitable consequence of the taxation system existing in the country where the source of income is, not of lack or harmonisation of the fiscal systems in the states under discussion.

2. According to the situations in which the double taxation occurs, the characteristic forms are intentional double taxation and unintentional double taxation. This distinction can be associated to a great extent with another classification, the classification according to which double taxation can be domestic and international, thus assimilating *domestic double taxation* with *intentional double taxation,* and *international double taxation* with *unintentional double taxation,* although the domestic double taxation might also be unintentional.

a. Intentional double taxation sometimes comes from social objectives, like decreasing the number of absentees who, from the point of view of the mutual social interest, are highly criticised. For attaining this objective, the state uses the "fiscal weapon", which, in very many cases,

proves excellently efficient. But in the case of absentees, the results are not exactly satisfactory, as there are many possibilities of tax evasion.

The income produced by farming land, woodlands, buildings, etc. that belong to absentees are over-taxed. One applies an additional quota or one establishes a special tax, obtaining thus an intentional double taxation, created deliberately by the legislator. This double taxation is based on the fact that the state does not appreciate its citizen who goes abroad to spend the –sometimes quite important – income obtained from farming and forest properties in the country.

Another shortcoming is added to spending of the income abroad: that owner, instead of exploiting his property on his own, has to leave it to the care of other people, who will not work it properly, thus the economy of the country as a whole being endangered.

One of the social aims some states want to attain is diminishing the strongly marked inequality between the wealths of their citizens. They try to obtain a levelling of those wealths by extending double taxation to an ever increasing segment of the population.

The same form of intentional double taxation imposed by the legislator also allows applying the fiscal principle of income discrimination. When a state wants to affect certain incomes more than others, it cannot resort to applying a too high tax rate, because this would bring about much dissatisfaction, but it adds a special income tax for those incomes it wants to over-tax.

b. Unintentional double taxation is the result of the phenomenon of repercussion/impact, but also of conflicts between fiscal laws, this double taxation having more an international character. This unintentional type of double taxation can also occur within one country, as conflicting laws can appear even inside a country. Of course, the most significant legal conflicts are those arising between the laws of two different countries.

In case of double taxation due to repercussion one cannot blame it on the legislator. In this situation, a taxed established for an income is paid by the beneficiary of the respective income or by a third party, who remains doubly-taxed for the same income.

The situation that most probably brings about unintentional double taxation is when a person or some property is connected at the same time with two or more states, this situation almost surely creating conflicts between their laws or their fiscal authorities, as each country taxes, in good-

faith, the property or the person, without having in view what happens in another country. This is the most common situation that leads to unintentional double taxation.

3. According to the aim had in view about fiscal equity: the German fiscal literature uses instead of intentional and unintentional double taxation the terms: formal double taxation and real double taxation.

By *formal double taxation* the German authors mean the double taxation deliberately adopted by the legislator as a means of fiscal technique, especially for discriminating incomes.

Only the double taxation coming from conflicting national or international laws is considered *real double taxation*, as it is caused not by the will of the legislator, but by a conjectural situation. They consider that fiscal inequities can occur only in this case, those who are subject to double-taxation having the right to ask for a reduction of the tax, which is something equitable from the point of view of equal treatment as compared to other citizens.

4. According top the criterion of the taxable object, double taxation can refer to the income or to the property. *Double income taxation* means double taxation of the incomes of natural and/or legal persons, and the double property *taxation* has in view only the property of natural and/or legal persons.

CONCLUSIONS

The development of domestic and foreign trade relations has made natural and legal persons obtain incomes or posses property subject to different fiscal authorities in one same state or in other states. This fact allowed creating a delimitation of competences of the authorities of the same state or of the authorities in other states as regards the way of taxing income or property, due to the fact that these taxable objects might make the object of a simultaneous fiscal dispute between several such entities.

Fiscal restrictions applied to the same taxable matter bring about comparable taxation of a taxable object by more than one fiscal authority or paying a tax from a single source of income in two different countries. This phenomenon is considered an instance of double taxation and it can appear under different forms. The international practice of taxing incomes and

property uses two ways of eliminating this phenomenon: at national level, within domestic legislation about taxing incomes and property, and at international level, within the limits and by the conventions regarding avoidance of double taxation.

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