

# The International Double Taxation – Avoiding Methods

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**Abstract.** The paper presents the main causes that determine double taxation, its forms, i.e. the economic double taxation and the international legal double taxation, the need for eliminating the double taxation and avoiding methods. In the presentation of the avoidance methods have been used practical examples for comparison of the tax advantages for income beneficiary between: the total exemption method and progressive exemption method, on the one hand, and total crediting method and ordinary crediting method, on the other hand, but the comparing of tax reduction between methods of exemption and crediting.

**Keywords:** exemption method, crediting method, tax advantages, tax reduction.

## 1 Introduction

The development of the world economy, enlarging the economic and political interdependence between various regions of the world, the emergence and remarkable development of the transnational companies and the excessive taxation practised by some states have made necessary the concern of the operators for tax planning and adoption of some legal measures to stimulate the development of the international economic relations by participating countries.

The economy globalization leads to a real half of individuals and legal person's incomes, the public authorities of states seeking to take advantage of this circumstance and by doing to the taxation of the entire incomes of individuals and resident legal persons of the states concerned, as revenues from non-residential persons on the territory taken into account.

So we get that certain income to be taxed both in the state of the origin of incomes, as well as in the state of destination, a fact of nature to prevent amplification even further of the relations between states, where they no take measures to eliminate or at least, to limit the phenomenon.

## 2 The causes of the international double taxation

International double taxation was determined by the diversity of the national systems, the particularities of taxation policies and how to use this tax and duties as levers to stimulate or limitation of economic activities, and not only has adverse effects on society, in general.

This affects the export efficiency and external competitiveness of goods because duties and taxes affect prices of goods and tax burden is greater than if the income or wealth would be subject to taxation legislation from a single state (Mosteanu, 2003).

Come in a more complete and as large definition, the double taxation is imposing a two or more taxes, which are similar, on the same taxable subject, for the same taxable purpose and to the same period of time (Davis, 1985).

The phenomenon is encountered only to direct taxes, i.e. in the income tax and to the tax on wealth. Double Taxation cannot occur in the indirect taxes as citizens of a state found on the territory of other state, as buyers of goods, bears the same taxes contained in prices that citizens of the state concerned. For goods purchased by citizens of a state, from a foreign country, there is no longer pay (in their country) indirect tax similar to those included in the purchase price of goods or services concerned (Vacarel et al., 2006).

The phenomenon of double taxation can be caused by a series of causes, among which:

- governments of some states apply taxes on income made in concerned territory by local and foreign taxable subjects, and on the other hand subject to taxation and income made by its nationals abroad (Leicu, 1995);
- particularities of the fiscal policy and of the taxes systems encountered in a country or another. They may lead to double taxation and to stop activities producing of incomes (Mosteanu, 2003);
- various interpretations of the terms “resident”, “source of income”, “home” etc. Because of the different content of these concepts of the country to country's is possible that the same taxable subject, considered resident in two or more states or as one and the same taxable object to be regarded as having the source in two or more states.

For the last question referred to, an interesting example is the American companies located in the United States but are administered and directed by boards of directors located in Great Britain. This type of company will be subject to American taxes (of state in which has its headquarters), but also British taxes because it is considered to be resident in Great Britain (with the control centre located in this state).

As regards the taxable subjects as persons, interpretation of “resident” can often determine double taxation of income in the British tax system. Because, a British resident who residing in another state is susceptible to taxation for the same income in both countries. For example, the sale of properties located in another state may be the subject to duties both in the state and the Great Britain (where the taxable subject is resident).

Presenting these summary examples show the need for removal situations of double taxation and the requirement of insurance of a clear and safe position for the taxable subjects engaged in commercial, industrial and financial dealings to the international level (Leicu, 1995).

### **3 Double taxation forms**

Taking into account multiple consequences of double taxation, both in the statute of the taxable subjects persons (citizens and/or residents of the state), and the taxable subjects corporate (companies, corporations, etc.), literature awarded to double taxation two forms: international economic and legal (Alexandru, 2003).

#### **3.1 Economic double taxation**

Economic double taxation has a definition very similar to general definition, so that it considers this phenomenon consists of the submission of certain taxable raw at two or more taxes in the favour of the same authorities or different public authorities, at the same financial year (Ionita et al., 2003). This means submitting to more taxes, of the same income or of the same fortunes for the same state.

A good example, but the most important and frequency form of economic double taxation, considered by the Americans and Europeans specialists, is imposing the corporation incomes. Still we will present such an example:

- Gross profit of the corporation – 50,000 euros;
- Tax profit (16 percent) – 8,000 euros;
- Net profit – 42,000 euros;
- Tax on dividend (16 percent whereas is taxed as other income obtained from independent activities) – 6,720 euros;
- Total taxes – 14,720 euros.

Economic double taxation from presented example is a combined form of taxation since meet legal person to person in the field of taxation. The corporation bear the income tax and the shareholder bear the tax on dividend through distribution of the profit in the form of dividend.

Another classic example we meet to certain domestic products (tobacco, alcohol, etc.) to which it apply for the first excise and then value added tax. If the same products are from import, from a state that is not a member of the European Union on they apply a third tax in the form of customs duties.

This form of repeated taxation, through which certain revenue or elements of wealth are subject to separate two taxes, represents a deliberate, conscious act, of the fiscal sovereignty which it happening within state (Vacarel, 1995).

And economic double taxation may have international character when one or several taxable subjects are individuals or legal non-residential who transfer their revenue abroad. In this situation, international double taxation will be watching inevitable of the taxation system existing in the state, source of income and not a lack of harmonization of the tax systems in states involved (Alexandru, 2003). Thus, if a company with national capital, owes to the state a tax on profits before the profit distribution, and shareholders – an income tax on dividend what has been divided; if the company's shareholders are residents in the state on which territory is the source of income, double taxation of profit that is distributed as dividend will not exceed the national framework.

In case of a multinational company, however, shareholders residents of other states will transfer dividends as they are entitled to the states for which they have the tax residence, which will be subject to income tax. Economic double taxation what will occur in this situation will exceed, obviously, the national framework. This time, international double taxation will be inevitable consequence of the taxation system existing in the state source of income, and not be to the lack of harmonization of the tax laws in states involved in the matter (Vacarel, 1995).

### 3.2 International legal double taxation

The doctrine of international tax law raised different definition of international double taxation. Thus, for example, B. Spitz considers that this phenomenon *occur when the tax authorities of two or more states collect taxes concurrently with the same basis or the same impact in such a way that a person may bear a heavy tax obligation than if it would be subject to a single fiscal authority* (Spitz, 1972).

Definition and identify the origin of the way of its manifestation constituted a concern and the Romanian experts. Thus, the academician Iulian Vacarel defines the international legal double taxation as *submission of certain taxable raw by two different states, to the same type of tax, to the same financial year* (Ionita et al. 2003).

Also, Professor Gheorghe D. Bistriceanu identified this phenomenon following criteria: *when income and property are imposed by the two countries on the same type of tax and in the same financial year, there is an international legal double taxation*.

A classic example is the case in which a non-resident is forced to pay a tax on dividend: in the country source of dividends (shareholder in the resident company) or in the state where shareholder is resident. In this case the taxation subject suffers a double taxation for the same income, i.e. the state of the source of income and in the state of residence.

The experts responsible for taxation which have developed conventions OECD and their comments found that the international legal double taxation appears in the following situations:

- where each contractor state requires total income and the wealth of the one and same person, which means that there is a full imposing in competition;
- if a resident person in a contractor state obtain revenue or possesses wealth in the other contracting state and where both contracting states taxed the income or wealth;
- where each state taxed the same person, which is no resident of the contracting states, for revenue from a contractor state or for wealth which he owns there. This is when a non-resident has a permanent office or a fixed basic through whom/which revenues or possesses wealth in the other contracting state.

The phenomenon of international legal double taxation occurs not because of the different structures of the tax systems but because of the different concepts (criteria) underlying the imposition.

The practice meets two such conceptions (Vacarel, 1995):

- territorial design which is based on the source criterion, income origin or the place where the fortune is situated;
- world or global design which is supported on the residence criterion or the nationality of taxpayers person, i.e. of the registered taxpayers person.

It should be noted that the international double taxation may take rise not only when a state adopted the territorial design and other state the world design, but when both countries are it the same mindset.

Thus, it occurs and when the states apply the territorial design but have done rules defining different the revenue source that, for example, to determination of the parent company profits and, i.e., its subsidiaries abroad. Also, international double taxation may also occur in the cases where the states are the world design, but define different the notion of residence, or a state used as a criterion of imposing the residence of tax payers, and another its nationality (Alexandru, 2003).

Existing double taxation of incomes and wealth is explained by fiscal policy, which varies from country to country, the peculiarities of existing systems of taxes and of the interests of these countries to use taxes levers to stimulate or braking activities producing by taxable income.

Whatever its origin, the international double taxation has effects that can only be negative. It affects, ultimately, the exports efficiency and external competitiveness of goods; whereas the burden is greater if the income or wealth would have been subject to taxation legislation of a single country (Condor, 1999).

#### **4 The need for eliminating the international double taxation**

The appearance of the international double taxation is determined by the diversity of fiscal systems, the particularities of taxation policies and how to use this tax and duties as levers to stimulate or limitation of economic activities and does not, as we said, than adverse effects on society, in general.

Therefore, fiscal factor, especially through the international legal double taxation, affect good conduct of the foreign trade and the international economic cooperation.

Come in truth, the development of foreign trade of material values and the economic cooperation requires, among other measures, and finding the appropriate means to avoid double taxation of income made in operations with foreigners, to ensure a normal swing of their and an mutual promotion of the partners and amplification in international cooperation (Condor, 1999).

Imposing of the income made from productive, commercial, for mediation and financial activities, those of dividends due to participate in the companies capital, the interest on loans, fees for using or giving away in concession use of the invention patent, production processes and know-how, trade names and other intellectual property rights, the copyright for scientific, literary and art creations, and the other categories of income, which that takes place both in the country of origin thereof, as well as the country of residence of the beneficiaries of income, according to the tax laws of each country, can lead to hindering exchanges economic and other activities producing of income, if not creates legal instruments needed to avoid double taxation of income or wealth (Mosteanu, 2003).

If burden resulting from repeated taxation is exaggerated large, this may cancel the interest of income holder, respectively for the appropriate activities abroad (Alexandru, 2003). As a reaction to this phenomenon the multiplication of tax obligations, not only a few taxpayers seek to circumvent the imposing a higher part of the external revenues, in one or even in both countries, by failure the taxable law, occurring such the tax evasion.

Elimination of the international double taxation represents thus a necessity to develop normal international economic relations. It is necessary to clarify and ensure the fiscal situation of the taxpayers who are the main actors of economic and financial activity (Saguna, 2003), the application of common solutions to identical cases of international double taxation.

## **5 Methods of avoiding the international double taxation**

In the fiscal conventional practice, avoidance of double taxation is ensure, either by the exemption method (exemption from payment), either by crediting method (charging). The distinction between these methods is that the exemption method refers to income, when crediting method refers to tax.

The taxation Committee of the Organization for Economic Cooperation and Development believes the double taxation can be effectively countered by both methods, but the implementation of these should be delimited and defined clearly in each tax convention.

### **5.1 The exemption method**

In the exemption method, the residence state of the beneficiary of income or wealth not taxed income/fortune that, according to provisions of the tax conventions are imposed in other state, i.e. in the state of the source or at the taxable wealth.

In the fiscal conventions, the exemption method is used in one of the following two options: total exemption method and progressive exemption method.

#### **5.1.1 Total exemption method**

Under this version of exemption method, the residence state of the income beneficiary, to determination of the taxable income of his resident, will not take into account its taxable income in the state of origin of the income and no the income related to a permanent office or a fixed base of other contracting state. Thus, he will take into account only the rest of taxable income. In this way, by not taking account of a certain income, would be granted an exemption. Furthermore, the state of residence overlook the existence of the incomes exempt from tax, when determining the taxable income for taxpayers residing in that state.

For example, suppose a French businessman performed in France (country of residence) an income of 90,000 euros, while in Spain (country source or of origin of the income) an income of 30,000 euros. The two states there is an agreement on avoiding double taxation which provides to use the total exemption method. The tax quota in France, relevant for income obtained in France is 25 percent, the tax quota in Spain on income obtained in Spain is 21 percent and the tax quota in France corresponding to the total revenue obtained in the two countries is 30 percent.

In these conditions, the tax paid by France is  $90.000 \times 25\% = 22.500$  euros, the tax paid by Spain is  $30.000 \times 21\% = 6.300$  euros, and the total tax paid by taxpayer, for the revenues made in the two countries, in the conditions under which there is a convention which provides avoiding for double taxation to be made by the total exemption method is the  $22.500 + 6.300 = 28.800$  euros.

We will continue to determine the fiscal reduction granted by France for the revenues made in Spain, which is determined by the deduction of the tax due in both contracting states, in the lack of fixing the convention, of the tax due in the convention existence. In the lack of fixing the convention, the total

tax paid determined by adding the tax paid by France in the lack of convention ( $120.000 \times 30\% = 36.000$  euros) with the tax paid by Spain ( $30.000 \times 21\% = 6.300$  euros) will be of  $36.000 + 6.300 = 42.300$  euros. The fiscal reduction, i.e. the advantage which benefits the French citizens is of  $42.300 - 28.800 = 13.500$  euros.

Therefore, it appears that the volume of taxes owed by French citizen, by both countries, is lower in the case of the existence of convention to avoid double taxation, by the total exemption method, paying only 28,800 euros, than in the case in which he had not been a convention, when he would pay 42,300 euros, more than with 13,500 euros.

### **5.1.2 Progressive exemption method**

Under this version of the exemption method, the taxable income in the other contracting state (which is the state of origin of the income, at the permanent office or fixed base) does not require taxation in the state of residence of the income beneficiary. Instead, the latter state retains the right to take into account that income when determining the tax related to the rest of income. And similar proceed to the wealth tax.

For example, suppose the French citizen of the subchapter 5.1.1. The two states there is an agreement on avoiding double taxation which provides to use the progressive exemption method.

In these conditions, the tax paid by France is of  $90.000 \times 30\% = 27.000$  euros, the tax paid by Spain is of  $30.000 \times 21\% = 6.300$  euros, and the total tax paid by taxpayers, for the revenues made in the two countries, in the conditions under which a convention which provides avoiding for double taxation to be made by the progressive exemption method is of  $27.000 + 6.300 = 33.300$  euros.

We will continue to determine the fiscal reduction granted by France for the revenues made in Spain. In the lack of fixing the convention, the total tax paid determined by adding the tax paid by France in the convention lack ( $120.000 \times 30\% = 36.000$  euros) with the tax paid by Spain ( $30.000 \times 21\% = 6.300$  euros) will be of  $36.000 + 6.300 = 42.300$  euros. The fiscal reduction, i.e. the advantage which benefits the French citizens is of  $42.300 - 33.300 = 9.000$  euros.

Therefore, can reach the conclusion that the volume of taxes owed by French citizen, by both countries, is lower in the case of the existence of convention to avoid double taxation, by the progressive exemption method, paying 33,300 euros, than in the case in which he had not been a convention, when he paid 42,300 euros, more than with 9,000 euros.

## **5.2 The crediting method**

The characteristic feature of the crediting method is that the residence country of the beneficiary treats the foreign taxes within certain statutory limits. When the foreign tax share is less than its domestic share, only the surplus of internal tax share is payable over the residence country of the beneficiary. When the foreign tax is higher than the domestic tax, the residence country will not levy any tax.

In the fiscal conventions, the crediting method known two options: the total crediting method and the ordinary crediting method (or limited), each of them having the opportunity to choose the appropriate method for its internal tax system.

### **5.2.1 Total crediting method**

Under this alternative of the crediting method, the state of residence deducted from tax related to total taxable incomes (fortune) of taxpayers the total amount of the tax paid to other state.

For example, suppose the French citizen of the subchapter 5.1.1. For Spain assume two versions of taxation rate: 21 percent and 33 percent. The two states there is an agreement on avoiding double taxation which provides to use the total crediting method.

In these conditions, the tax due to France before granting of the tax credit is of  $120.000 \times 30\% = 36.000$  euros. The tax credit granted by France, which is equal to the tax paid by Spain, will be: for 1<sup>st</sup> version:  $30.000 \times 21\% = 6.300$  euros; and for 2<sup>nd</sup> version:  $30.000 \times 33\% = 9.900$  euros.

The tax paid to France after granting the tax credit will be: for 1<sup>st</sup> version:  $36.000 - 6.300 = 29.700$  euros; and for 2<sup>nd</sup> version:  $36.000 - 9.900 = 26.100$  euros.

The total tax paid by taxpayers, for revenues arising in the two countries, as the convention which provides that avoid double taxation to be made by total crediting method is of: for 1<sup>st</sup> version:  $29.700 + 6.300 = 36.000$  euros; and for 2<sup>nd</sup> version:  $26.100 + 9.900 = 36.000$  euros.

We will continue to determine the fiscal reduction granted by France for the revenues made in Spain. In the lack of fixing the convention, the total tax paid determined by adding the tax paid by France in the lack of convention ( $120.000 \times 30\% = 36.000$  euros) with the tax paid by Spain ( $30.000 \times 21\% = 6.300$  euros in the 1<sup>st</sup> version and  $30.000 \times 33\% = 9.900$  euros in the 2<sup>nd</sup> version) will be of  $36.000 + 6.300 = 42.300$  euros in the case of 1<sup>st</sup> version and  $36.000 + 9.900 = 45.900$  euros in the case of 2<sup>nd</sup> version. The fiscal reduction, i.e. the advantage that enjoys the French citizens is of  $42.300 - 36.000 = 6.300$  euros in the 1<sup>st</sup> version and the  $45.900 - 36.000 = 9.900$  euros in the 2<sup>nd</sup> version.

So the advantage of benefiting French citizen is of 6,300 euros, for the situation in which Spain applies a minimum rate of 21 percent and 9,900 euros, for the situation in which Spain apply a maximum quota of 33 percent.

Therefore, it can reach the conclusion that the volume of taxes owed by French citizen, by both countries, is lower in the case of the existence of convention to avoid double taxation, by the total crediting method, paying 36,000 euros in both versions, than in the case in which there were no convention, when he paid a tax of 42,300 euros, with more than 6,300 euros in the 1<sup>st</sup> version and 45,900 euros, with more than 9,900 euros in the 2<sup>nd</sup> version.

### 5.2.2 Ordinary crediting method

According to this version of the crediting method, the residence state deducted, with title of tax paid in other contracting state, an amount that can be equal or lower than that effectively paid in the state of income origin. Therefore, in cases where the rates of tax charged on two contracting states are identical, and when quotas applied in the residence state are higher than in the state source, the fiscal credit granted by the latter state is equal to the amount of the tax paid in the state of revenues origin.

If the situation in which the quotas applied in the residence state are smaller than those prevailing in the state of revenues origin, appear differences in the sense that the residence state reduced the tax due to the taxpayer in the title of fiscal credit, an amount less than the tax actually paid in the state source.

Since the tax credit granted by the state of residence to its taxpayer is less than the taxation paid by the other contracting state shows that the ordinary crediting method leads to a limited avoid to the double taxation.

For example, suppose the French citizen of the subchapter 5.2.1. The two states there is an agreement on avoiding double taxation which provides to use the ordinary crediting method.

In these conditions, the tax due to France before granting the tax credit is of  $120.000 \times 30\% = 36.000$  euros. The tax credit granted by France, which is equal to the tax paid by Spain, will be: for 1<sup>st</sup> version:  $30.000 \times 21\% = 6.300$  euros; and for 2<sup>nd</sup> version:  $30.000 \times 30\% = 9.000$  euros, since the permissible maximum quota in the country of residence France for a total income is 30 percent.

The tax paid by France after granting of the tax credit will be: for 1<sup>st</sup> version:  $36.000 - 6.300 = 29.700$  euros; and for 2<sup>nd</sup> version:  $36.000 - 9.000 = 27.000$  euros.

The total tax paid by taxpayers, for revenue arising in the two countries, as the convention which provides that avoid double taxation to be done by the ordinary crediting method is: for 1<sup>st</sup> version:  $36.000 - 6.300 = 29.700$  euros; and for 2<sup>nd</sup> version:  $36.000 - 9.000 = 27.000$  euros.

We will continue to determine the fiscal reduction granted by France for the revenues made in Spain. In the lack of fixing the convention, the total tax paid determined by adding the tax paid by France in the convention lack ( $120.000 \times 30\% = 36.000$  euros) with the tax paid by Spain ( $30.000 \times 21\% = 6.300$  euros in the 1<sup>st</sup> version and  $30.000 \times 30\% = 9.000$  euros in the 2<sup>nd</sup> version) will be of  $36.000 + 6.300 = 42.300$  euros in the 1<sup>st</sup> version and of  $36.000 + 9.000 = 45.000$  euros in the 2<sup>nd</sup> version. The fiscal reduction, i.e. the advantage that enjoys the French citizen is of  $42.300 - 36.000 = 6.300$  euros in the 1<sup>st</sup> version and of  $45.000 - 36.000 = 9.000$  euros in the 2<sup>nd</sup> version.

So, the advantage of benefiting the French citizen is 6,300 euros, for the situation in which Spain applies a minimum rate of 21 percent and 9,000 euros, for the situation in which Spain apply a maximum quota of 33 percent.

Therefore, it can reach conclusion that the volume of taxes owed by French citizen, by both countries, is lower in the case of existence of the convention to avoid double taxation, by the ordinary crediting method, paying 36,000 euros in both versions, than in the case in which there were no convention, when he paid a tax of 42,300 euros, with more than 6,300 euros in the 1<sup>st</sup> version and of 45,000 euros, with more than 9,000 euros in the 2<sup>nd</sup> version.

## 6 Conclusions

If we will compare the results in the case of progressive exemption method with those from the total exemption method, considering that they have used the same data as in our case, it may be established that using the progressive exemption method in the convention, in the place of the total exemption is not for the taxpayers benefit, since in the total exemption method, the taxpayer benefits from a fiscal reduction of 13,500 euros, while in the progressive exemption benefits from a fiscal reduction of 9,000 euros.

Also, comparing the two versions of the crediting method, considering that they have used the same data, it can be found that the fiscal reduction the taxpayer benefits from using of the same two versions, if using the minimum rate of 21 percent, respectively a tax reduction of 6,300 euros. If using the second version of the quota, the maximum, it is observed that in the total crediting method, the tax reduction is higher, to 9,900 euros, than the ordinary crediting method, to 9,000 euros, as the state of origin of the income cannot apply than its share maximum allowable in the country of residence, i.e. of 30 percent.

Therefore, after the presentation of the two methods of avoiding the international double taxation, each of the two suitable versions and using the same data for exemplification, it can see that, the French citizen obtain the highest fiscal reduction, if the convention to avoid international double taxation concluded between the two states is considering applying the total exemption method.

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