

# DOUBLE TAXATION TREATIES

*The presentation hereby has in view the legal provisions in force on the 31<sup>st</sup> of March 2004*

## ***Applicable legislation in this field***

- Law no. 571/2003 on Fiscal Code, published in the Official Gazette no. 927/23<sup>rd</sup> of December 2003
- Government Decision no. 44/2004 for the approval of the Methodological Norms for the enforcement of the Law no. 571/2003 on Fiscal Code, published in the Official Gazette no. 112/6<sup>th</sup> of February 2004

## ***I. International double taxation***

International double taxation represents the submission to taxation of the same taxable matters and for the same period of time by two fiscal authorities from different countries. The occurrence of double taxation is due to the way in which criteria at the basis of the income taxation or assets taxation are enforced. In the international tax practice the **criteria** at the basis of the incomes or assets taxation are:

- **residence criterion** (or of the fiscal domicile), according to which the incomes or assets taxation is made by the fiscal authority from the country to which the resident belongs, regardless of the fact that the incomes or assets, which are the object of taxation, are obtained or are on the territory of that country or outside that country;
- **nationality criterion**, according to which a country taxes its residents making profits or owning assets from (in) the respective country, regardless of the fact if they live or not in their country;
- **incomes origin criterion** (territoriality), according to which the taxation is made by the tax bodies from the country on the territory of which the incomes have been made or the assets are, regardless of the residence or the nationality of the beneficiaries of incomes.

The negative effects of double taxation upon the development of economic and financial relations between different countries have caused the finding of solutions for its removing. Double taxation may be avoided, on

the basis of certain unilateral legislative measures or by the conclusion of certain bilateral or multilateral contracts between different countries.

## **1. Methods / means for the double taxation avoidance**

In the international tax practice more **methods** or **technical means** apply for the proper avoidance of double taxation, namely:

- total exemption (exoneration) method;
- progressive exemption (exoneration) method;
- usual “crediting” (charging) method;
- integral “crediting” method.

## **2. Means of double taxation avoidance**

As double taxation avoidance means the following impose:

- tax regulations contained in internal law;
- international tax conventions.
  1. bilateral conventions, involving two countries only;
  2. multilateral conventions, involving more than two participating countries.

## ***II. Bilateral conventions of the double taxation avoidance concluded by Romania***

Bilateral conventions concluded for this purpose by Romania apply to all persons resident of one or both contracting states. Person means a natural person, a company and any other association of persons. Company means any legal person or any entity considered legal person for the purpose of taxation.

Most conventions concluded for this purpose follow the same pattern and many of their provisions are similar or even identical, which is due to the fact that many of them are negotiated on general recognized basis and on the basis of similar international patterns.

***Income and capital taxes*** are aimed at through the concluded conventions, established on behalf of a contracting state or of its political subdivisions, of the territorial-administrative units or of the local authorities, regardless the way in which they are levied.

All the incomes established on total income, on total capital or on the elements of income or capital, including taxes on gains coming from the

alienation of real estate or personal property, as well as the incomes on capital increase are considered income and capital taxes.

## **1. Taxation on incomes obtained from Romania by non-resident natural or legal persons**

Incomes obtained in Romania by non-resident natural or legal persons are taxable according to the provisions of the double taxation avoidance conventions, namely of the articles from these conventions regulating the taxation of the respective income categories. For incomes to which in the double taxation avoidance conventions the right of taxation in the source-state, without expressly stating a taxation quota is stipulated, the respective incomes are taxable according to the double taxation avoidance conventions corroborated with the Romanian legislation in this field.

For persons residing in the states to which Romania has concluded conventions and who make incomes from Romania, the withholding tax for dividends, interest, commissions, royalties is at the **level of the quota** established at the paragraph 2 from the articles: “Dividends”, “Interests”, “Commissions”, “Royalties” from conventions. If the domestic legislation expressly stipulates tax exemption, or a more favorable taxation quota, the provisions of the domestic legislation apply – Methodological Norms for the enforcement of the Fiscal Code on the enforcement of the double taxation avoidance conventions or agreements – Part 139<sup>1</sup>.

Paragraph 2 of the articles: “Dividends”, “Interests”, “Commissions”, “Royalties” from the double taxation avoidance conventions is not cancelled by the paragraph 1 of the same articles that stipulates that respective incomes paid to a resident are taxed in his state of residence. Enforcement of paragraph 2 of the articles: “Dividends”, “Interests”, “Commissions”, “Royalties” from the double taxation avoidance conventions that stipulate the taxation in the source state does not lead to a double taxation on the same income, as the state of residence grants fiscal credit for the income paid in Romania, according to the provisions of the double taxation avoidance convention.

## **2. Certificate of tax residence**

For the enforcement of the provisions of the double taxation avoidance conventions the beneficiaries of incomes from Romania, persons resident of the other contracting state, shall file annually with the income payer **the original or the copy of the certificate of tax residence**,

translated and certified with the authorized body from Romania, in the moment of the income payment, but no later than one month calculated from the date of its payment. The certified copy of the certificate of tax residence shall be countersigned also by the authorized person who has signed the document of payments of the income at the extern.

If the income beneficiary, person resident of the other contracting state, does not present **the original or the copy of the certificate of tax residence**, translated and certified, the tax quotas provided by the Title V of the Fiscal Code apply and not those established by convention.

Information regarding the issuance of the certificate of tax residence for Romanian natural and legal persons, as well as those regarding the issuance of the certificate of attesting the paid tax, according to the double taxation avoidance convention, shall be delivered by:

- services of methodology and aid for taxpayers and the offices (departments) of state monopoly within the county general departments of the public finances and state financial control; methodology department, relations to taxpayers and monopolies department (cigarettes, beverages, games, etc.) within the General Department of public finances and state financial control of the Bucharest municipality; services (offices, departments) for the enforcement of double taxation avoidance conventions within the county general departments of public finances and state financial control, respectively of the Bucharest municipality, except Ilfov county;
- aid offices for taxpayers within the municipal financial administrations; legal services and relations to taxpayers and license, marking of cigarettes and alcoholic beverages departments, within the financial administrations of the districts of the Bucharest municipality;
- and respectively, of the International fiscal agreements department within the Ministry of Finance.

Certificate of tax residence is issued on the basis of an application lodged by the interested person, whose model is provided in the Order no. 1798/1998 for the approval of the forms regarding the enforcement of the double taxation avoidance conventions and establishment of the capacities regarding the signing of such forms.

## 2. Tax restitution

If restraints have been made in Romania, exceeding the provisions from the double taxation avoidance conventions, the **amount of income additionally withheld can be restituted**, upon income beneficiary's request, namely the non-resident person.

The income restitution application has to be filed by the non-resident person within the legal prescription term, established by the Romanian state legislation. Income restitution to the non-resident person shall be made through the Romanian resident income payer.

## 3. Non-discrimination

Conventions concluded for the double taxation avoidance comprise also provisions regarding discrimination.

Thus, the fact that the nationals of a contracting state shall not be subjected in the other contracting state to any taxation or obligation thereon, different or more burdening than the taxation or obligation to which the nationals of the other state under the same situation are or may be subjected to, especially regarding the residence is stipulated.

The same provisions shall also apply to the persons who are not resident of one or both contracting states.

The taxation of a permanent headquarter that a company of a contracting state has in the other contracting state shall not be established in conditions less favorable in that the other state than the imposing established to the companies of that the other state, developing the same activities. This provision shall not be construed as obliging a contracting state to give to the residents of the other contracting state any personal deduction, incentive or reduction regarding the taxation on grounds regarding the civil status or the family responsibilities granted to its residents.

Subject to exceptions provided in conventions, the interests, royalties and other payments made by a company of a contracting state to a resident of the other contracting state shall be deduced, for the purpose of determination of the taxable profits of such company, under the same conditions as they would have been paid to a resident of the first state mentioned. In a similar way, any debts of a company of a contracting state towards a resident of the other contracting state shall be deductible, for the determination of the taxable capital of this company, under the same conditions as they would have been contracted towards a resident of the first state mentioned.

The companies of a contracting state, whose capital is integrally or partially owned or controlled, directly or indirectly by one or more residents of the other contracting state, shall not be subjected in the first state

mentioned to any taxation or any other obligation in relation thereto, which to be different or more burdening than the taxation and the obligations thereto, to which similar companies of the first state mentioned are or may be subjected to.

#### **4. Amicable procedure**

When a person considers that because of the measures taken by one or both contracting states a taxation which is not according to the provisions of the convention results or may result for it, he or she can, regardless the ways of attack provided by internal legislation of those states, to subject his or her case to the competent authorities of the contracting state whose resident is, or, if the situation frames within the provisions of paragraph 1 of Art. 26, to that contracting state whose national is. The case has to be presented within 3 years from the first notification of action from which a taxation contrary to the provisions of the convention results.