PROBLEMS OF DOUBLE TAXATION OF INCOME OF NON-RESIDENTS IN CASE OF BILATERAL AGREEMENTS

Foreign Enterprises in case of preforming business activity and about taxation of income should consider two or more legal systems or else the legal system of the country in which the enterprise have permanent business activity and the legal system of the country in which resident is enterprise or permanent establishment. For most of the form of income, income from business activity and income from investment activity, the problem of double taxation relief is soluted through Model convention OECD for the avoidance of double taxation with respect to taxes on income and capital (Model OECD). Solutions in this convention are based on abolish all double taxation in those countries in which we have collision between legal norms at the same level. Tax must be distributed between the resident country and country of tax source, all with respect on Model OECD. Most valuable principle of taxation of business and capital incomes of enterprises is that it is not allowed to tax the income from resident enterprise in non resident country. This principle is not in force only when the resident enterprises is working in non resident country through permanent establishment in non resident country

1 Introduction

Double taxation of company profits can be prevented by adopting unilateral measures, but the most effective way to prevent double taxation is in the composition of bilateral or multilateral agreements. The agreements themselves cover the taxation of various types of income and capital gains and establish procedures for the exchange of information between the tax authorities of the Contracting States, thus preventing tax evasion[1]. In order to harmonize these bilateral agreements with each other as much as possible, countries use model agreements of international organizations (United Nations, OECD) in the preparation of these agreements. In double taxation agreements, terms which are not specifically defined in the agreement shall, in the States Parties to the Agreement, have their content determined in accordance with the national regulations of the State Party[2].

For most forms of income, especially operating income and investment income, the problem of double taxation is reliably solved through the OECD Convention on the Elimination of Double Taxation (hereinafter OECD Model). The solutions in the OECD Model relate to the elimination of double taxation in those countries where there is a conflict between tax norms of the same rank. The tax is distributed between the country of residence and the country of tax source according to the provisions of the

[1] Doernberg L. Richard., (1989) *International Taxation*, St. Paul, Minn., West Publishing Co., p.45-89.

[2] Ključanin E in Zemljič M., (2004) Konvencije o izogibanju dvojnega obdavčenja dohodkov in premoženja z obrazložitvijo, GV Založba Ljubljana, p. 13-16.

OECD Model[3]. The OECD model also has a strong influence on the bilateral solution of double taxation. The vast majority of bilateral agreements contain both the basic principles of avoidance of double taxation contained in the OECD Model and summaries of tax norms from the OECD Model.

2 Taxation of Dividends

In accordance with double taxation agreements (hereinafter: agreements), dividends may be taxed exclusively either in the country of residence or in the country of origin. It is generally accepted that states can tax residents' dividends received from non-resident companies, as dividends represent income from the investment of a taxpayer's assets. This rule does not apply to dividends paid by a company resident in a third country or to dividends paid by a company resident in a Contracting State and attributed to a permanent establishment in the other Contracting State[4].

Taxation of dividends in the country of origin is possible, but it is legally limited to a certain share of taxation. When paying dividends to a non-resident taxpayer, the country of origin can tax this transfer with the highest possible tax rate of 15 percent, which is a logical consequence of the mitigation of economic double taxation, as profits have already been taxed by a legal entity. A lower tax rate is specified in the case of related parties (parent company - subsidiary). In the event that the parent company owns at least 25 per cent of the capital of the subsidiary in one of the Contracting States, the transfer of dividends shall be taxed at a maximum rate of 5%[5]. Depending on the mutual agreement of the two Contracting States, a smaller share of the capital may also be determined. This will come into play when the resident State of the parent company grants to the company, under its domestic law, an exemption from dividends arising from a lower shareholding. The benefits of a lower rate of taxation on the transfer of dividends can be applied mutatis mutandis to the profits of partnerships. States parties may agree on lower tax rates for taxation in the country of origin, taking into account the fact that the tax restriction applies only to dividends and not to corporate income tax. In the event that a third party enters between the beneficiary and the payer, the tax restriction in the country of origin cannot be observed. This rule shall not apply only if the beneficial owner is a resident of the other Contracting State.

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[3] Jann M., (1997) *How Does EC Law Affect Benefits Available to Non-Resident Taxpayers under Tax Treaties*, Tax Treaties and EC Law, Series on International taxation no. 16, Kluwer Law International, London, p. 15-27.

[4] Jirousek H., (2015) *The Implementation of the OECD Update 2014 in Bilateral Tax Treaty Practice – an OECD Member States' Perspective* v Lang M. in ostali, The OECD Model Convention and its Update 2014, Linde Verlag, Wien, p. 201-207.

[5] Jerman S, Odar M., (2008) Zakon o davku od dohodkov pravnih oseb s komentarjem, GV založba d.o.o., Ljubljana, p. 509 – 521.

With regard to the determination of the capital share, a rule was adopted that it should be determined according to the situation at the time of the tax liability, ie at the moment when the shareholders can legally dispose of dividends. Particular attention should be paid to the abuse of the rule on reducing the taxation of dividends, in the event that a company with a smaller capital share, before the payment of dividends, increases its share in order to use the relief, or the share was established solely for tax exemption.

The country of origin may apply its own law with regard to taxation and collect the tax as a withholding tax or by individual tax assessment decisions. As regards the procedure, States may apply their national law. In the event that the owner of dividends from a Contracting State is a company which is a resident of the other Contracting State and whose property is wholly or partly owned by partners outside that other State, only the latter shall enjoy more favorable tax treatment. In doing so, it may be questionable whether such a company should comply with the tax limit. On such matters, States Parties must agree on specific derogations from the rules on taxation[6].

Due to the existing differences between OECD member countries in the field of company law and tax law, it is not possible to define the concept of dividends independently of the domestic law of countries. The specificities of national law may be taken into account and an amicable solution may be established as regards the definition of the concept of dividends and its scope to other payments by companies. Interest on loans may also be considered if the lender actually shares the company's risk or the repayment of the loan is related to the company's operations and depends on the performance of the company. In this case, interest can be treated as dividends in accordance with the regulations on too thin capitalization. The finding that the loan is linked to the company's business risk must be determined on a case-by-case basis. This case includes a loan that significantly exceeds other capital inflows of the company and is largely uncovered by current assets. Even when the lender will participate in the company's profits, and when the repayment of the loan is subject to the requirements of other creditors or the payment of dividends, the loan is subject to the same treatment as the payment of dividends. An important element in treating a loan as a share of the company is in the case when the amount of interest or their

[6] Shareholders of U.S. brokerage firms are not granted a rate for direct investment dividends, even if they were eligible, because of a percentage of their share. The State has the option of a reservation to prescribe its branch tax on the company's earnings attributable to a permanent establishment in the State. It also reserves the right to prescribe "accumulated earnings tax" and "personal holding company tax" to prevent tax evasion. Andrejasič I., (2007) *Zakon o davku od dohodkov pravnih oseb s komentarjem in stvarnim kazalom*, Uradni list RS d.o.o., Ljubljana p. 248 -263.

payment depends on the company's profit and the loan agreement does not include firm provisions on repayment of the loan within a certain period[7].

In addition to dividends, companies may also pay certain special benefits, which are linked to the decision-making of shareholders at the company's annual general meeting (free shares, premiums, liquidation gains and disguised payments). Tax relief relating to special benefits is taken into account as long as the resident paying country taxes the benefits as dividends, regardless of whether the company has paid these benefits from current year profits, previous years or from reserves. The benefits themselves are linked to the notion of a partner, only in statutory cases can these benefits be granted to persons who are not legally considered partners, but the legal relationship between these persons and the company is equal to participation in the company and the benefits are closely linked to partners. In the event that the partner and the beneficiary are residents of two different countries with which the country of origin has concluded an agreement, different views may arise as to compliance with the provisions of the agreement.

Dividends paid to a person resident in a Contracting State from sources within the other State, on the basis of some legal fiction linking them to a permanent establishment, do not fall under the tax limit. The rule only provides that dividends in the country of origin may be taxed as part of the profits of a permanent establishment of a beneficiary resident in another country if they are paid in connection with shares which form part of the permanent establishment's assets or actually belong to that permanent establishment. These rules also apply if the beneficiary of dividends in the other Contracting State has a permanent base for the provision of independent personal services and a share of the payment of dividends belongs, in fact, to this permanent establishment[8].

To avoid economic double taxation, many countries use different methods through domestic tax law. Two tax rates can be set; thus, the corporate income tax rate for distributed profits is lower than for retained earnings. Tax relief is also possible, which is recognized in the calculation of the partner's personal tax. Dividends can only be taxed once, in such a way that the company's profits are not taxed. The relief of economic double taxation can be examined from an economic point of view, in terms of the effects of the various systemic reliefs of double taxation and the international movement of capital. These elements are also affected by the different distortions and

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[7] Schuch J, Pinetz E., (2015) *The Definition of Dividends, Interests, Royalties and Capital Gains*, v Lang M., et.al., The OECD Model Convention and its Update 2014, 1. Aflage, Linde Verlag Vienna p. 6-8.

[8] In Italy, the reservation on the estimated percentage of ownership (25%) is respected and a dividend tax rate of 5% can only be agreed if the direct share is more than 50%. A reservation on the taxation of dividends under domestic law is possible if the recipient of the dividends has a permanent establishment in Italy, even if the shareholding on the basis of which the dividends are paid is not in fact linked to that permanent establishment. Andrejasič (2007), p.125 – 130.

discrimination caused by the different systems of individual countries. The effects on the state budget and tax control in the context of the principle of reciprocity must also be taken into account[9].

In the event that economic double taxation is eliminated or mitigated at the level of domestic tax law, it does not need to be specifically addressed at the international level. In countries with a traditional system of eliminating economic double taxation, the amount of corporate income tax in each Contracting State may not affect the rate of tax after deduction of dividends in the country of origin. In countries that have received a double corporate income tax system, it is collected at a higher rate for retained earnings and a lower rate for paid profits. In the country of origin of the income, it must be based on the average corporate tax burden, which means that the burden must be equated with the burden arising from the uniform rate to be borne by resident companies[10].

Countries that recognize relief at the partner level tax the company for the entire profit and dividends with the partner, and the latter has the option of relief through a personal income tax credit, as dividends have already been taxed with the legal entity. The tax credit is offset by the tax that has to be paid, which can lead to a refund. As a general rule, this system is considered at the level of residents of the home country, and some countries have extended this rule to residents of other Contracting States through agreement and reciprocity. However, the above rule must take into account the actual nature of personal income tax, which leads us to the conclusion that if the tax credit is more than personal income tax, the tax refund cannot be taken into account. The rule also results in a reduction in the partner's personal income tax due to the taxation of dividends by corporate tax. Therefore, the tax credit is recognized as a lump sum and does not correspond to the share of corporate income tax that falls on profits paid due to dividends. Relief is not a refund of corporate income tax, but a reduction in an individual's personal income tax. Countries that recognize a relief at the level of shareholders should grant a relief for personal income tax collected from resident shareholders for foreign dividends, which would be contrary to the principle of reciprocity[11]. It is also possible to follow the rule that the country of origin assumes the cost of a tax credit recognized as a relief at the partner level by another country by transferring funds to that country in the amount of the relief. However, such a procedure is very difficult to achieve, so countries prefer to resort to a settlement procedure, which does not take into account a lower rate when taxing dividends, but a tax credit corresponding to the amount that that country recognizes as dividends from internal sources[12].

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[9] Ključanin, Zemljič (2004), p. 155 – 159.
[10] Jerman, Odar (2008), p. 236 -250.
[11] Lang M. et.al., (2007) *Tax Treaty Law and EC Law*, 1. Auflage, Linde Verlag Vienna.
[12] Ključanin, Zemljič (2004), p. 158-159.

3 Taxation of Interest

There is no economic double taxation in interest taxation. In general, the rule is that the recipient of interest pays tax unless otherwise agreed in the contracts. The debtor may undertake to bear the burden of the tax levied at source, which means that he is prepared to pay the creditor additional interest according to the amount of that tax. Interest on bonds or debentures is usually subject to withholding tax when they are paid. If the recipient is a resident of the country collecting the taxes at source, double taxation is eliminated by internal measures. In the event that the recipient is a resident of another country, double taxation arises, first in the country of origin and then in the country of which the recipient of the interest is a resident. This method of taxation hinders the flow of capital and international investment. Due to the complexity of determining the content of interest taxation, a compromise solution was adopted. Interest is taxed in the country of residence, but the country of origin may be entitled to collect taxes if its law allows it, which means that the country of origin may waive the taxation of interest paid to non-residents. In the event that she exercises the above right, she is limited by the highest possible tax rate, which her tax may not exceed[13].

Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable in the latter. It is possible to transfer the right to tax to the country where the interest originates, but this right is limited by setting a maximum tax rate, which may not exceed 10 percent. This tax rate is understandable mainly because the country of origin can already tax profits or income from investments in its territory financed by borrowed capital. As with dividends, interest taxation is not subject to tax restrictions in the event of a third party entering into a tax relationship (see above for dividends), type of taxation in the country of origin, dependence of relief on taxation in the country of residence, recognition of tax relief in the country of origin interest and the case where the beneficial owner of interest from a Contracting State is a company which is a resident of the other Contracting State and whose capital is wholly or partly owned by shareholders outside that other State (the company does not pay profits and enjoys more favorable tax treatment)[14].

The chosen solution regarding the allocation of the right to tax the country of origin and the tax deductions in the resident country may lead to partial double taxation if the beneficiary of interest to finance interest operations has to borrow money, the profit generated being lower than the nominal amount received. In order to take into account the methods of eliminating double taxation, the tax in the country of origin of

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[13] Lang M. et.al., (2013) *Introduction to the Law of Double Taxation Conventions*, 2nd edition, Linde Verlag, Vienna p. 32-41.

[14] In the United Kingdom, interest and other payments related to certain loans are treated as dividend payments when there are certain circumstances prescribed by domestic law, including those where the loan amount, interest rate or other loan terms have not been agreed, if there were no special relationships. Ključanin, Zemljič (2004), p. 164-166.

interest is charged on the gross amount, while the same interest is disclosed in the operating profit of the beneficiary in net amount. As a result, part or all of the tax amount cannot be recognized as a deduction in the resident's country. The solution to this problem lies in raising the interest rate charged by the deductible to the debtor. The problem arises in the case where the interest payer is the state itself, because in the final stage it bears the tax burden of the fiscus, which does not give any benefits to the state. Such problems arise mainly in credit and banking transactions. The supplier transfers to the buyer without any additional mark-up only the amount that he will have to pay to the bank or some other financial institution in order to obtain funds to finance the loan[15].

In order to eliminate any risk of double taxation, the Contracting States may agree on a provision in the Agreement which takes into account the taxation of interest in the State in which the recipient is resident and is the beneficial owner and is paid in connection with the sale of any industrial, scientific or commercial equipment on credit, sale of goods between companies on credit and loans granted through banks.

Penalties for late payment shall not be taken into account as interest, but the State may, at its discretion, treat such surcharges as interest. With regard to annuities, which otherwise represent a certain level of investments or income from working capital, a provision was adopted that these should be classified in the category of salaries, wages and pensions and are also taxed at this level[16].

Where interest-bearing loans are linked to a permanent establishment which the interest payer has in the other Contracting State, the principle that the interest shall have its origin in the State in which the interest payer is resident shall not apply. In this case, the source of interest is in the country of the permanent establishment if the borrowing was directed to the needs of that permanent establishment. The economic link between the loan and the permanent establishment must be sufficiently strong. The management of a permanent establishment takes out a loan for the needs of that business unit and is shown under its liabilities and interest is paid directly to the lender. The company's management can also take out a loan for the purpose of a permanent establishment in another country. In this case, the interest will be paid by the company's management, and the final transfer will be at a permanent establishment. A less probable combination, however, is in the event that the loan will be taken by the management of the company and the funds thus obtained will be used for several permanent establishments in different countries.

[15] Shuch, Pinetz (2015), p. 12-13.

[16] In Greece, interest is excluded from receivables that do not arise from bona fide business causes, but were created or attributed primarily to take advantage of the OECD Model.Ključanin, Zemljič (2004), str. 170 – 173.

A special case of taxation is considered when the beneficiary and the payer are residents of the Contracting States and the loan is taken out for the needs of the payer's permanent establishment in a third country. In doing so, the presumption that interest originates in the Contracting State of which the payer is a resident shall apply. Due to the occurrence of double taxation, a bilateral agreement must be concluded between the resident country of the interest payer and the third country - the country of the permanent establishment.

4 Taxation of Intellectual Property Rights

Taxation of income from intellectual property rights is considered in international law under the taxation of income from property rights. The problems of international legal taxation of income from intellectual property rights are considered in the context of the collision of foreign source income. In this case, we use the OECD Model to avoid double taxation. The basic norms regarding the solution of double taxation of income from property rights and thus income from intellectual property rights are contained in Article 12 of the OECD Model[17].

It is a generally accepted principle that payments for intellectual property rights are taxed exclusively in the country where the beneficial owner is resident. In the event that a third party (agent or proxy) enters between the beneficiary and the payer, no tax exemption is possible in the country of origin, unless the beneficial owner is a resident of the other Contracting State. The above principle does not apply to payments for intellectual property rights arising from a third country or to payments of a permanent establishment held by an enterprise in another Contracting State. Bilateral agreements may provide for exemptions in the country of origin, which depend on payments for intellectual property rights taxable in the country of residence.

A special case arises when the rightful owner of income from intellectual property rights originating in a Contracting State and a company resident in the other Contracting State and its capital is wholly or wholly owned by partners of residents outside that other State. In doing so, these companies enjoy more favorable tax treatment. In this case, the question must be answered as to whether tax exemptions can be granted for the intellectual property rights of the country of origin[18].

The provisions for the avoidance of double taxation do not stipulate that payments for property rights received by a resident of a Contracting State from sources within a non-resident State on the basis of some statutory presumption must be linked to a

[17] Ključanin, Zemljič (2004), p. 179 -181

[18] Vann R., (2015) *Austraila; Royalties – Task Technology and Seven Netvork Cases* v Lang M et.al., Tax Treaty Case Law Around the Globe 2015, 1. Auflage, Linde Verlag Vienna p.183 -200.

permanent establishment in the non-resident State. Payments for property rights may be taxed as part of the profits of a permanent establishment of a beneficiary resident in another country. However, such payments must be in conjunction with rights which form part of the assets of the permanent establishment or otherwise fall within the scope of the permanent establishment. This rule also applies if the beneficiary of payment for property rights in a non-resident country has a permanent base for the provision of personal services and the right or property actually belongs to a permanent place of business[19].

Due to the special relationship between the payer and the beneficial owner or between them and a third party, the amount of payment for the property right exceeds the amount that the payer and the beneficial owner would choose as an unrelated person. In such a case, the provisions shall apply that the excess amount of the property right payment shall be taxed in accordance with the law of each Contracting State, subject to bilateral agreement. In the tax treatment of the excess amount of payment for property rights, it is necessary to evaluate the case on an individual basis and to determine precisely the nature of the amount so that the type of income can be determined.

5 Taxation of Capital Gains

Taxation of capital gains varies from country to country. In some countries, capital gains are not considered taxable income, while in other countries only those profits made by a company are taxed, not those made by a natural person outside the pursuit of his activity. Some profits generated by a natural person outside the pursuit of an activity are taxed only in specific cases[20].

There are also differences in the system of taxation of capital gains according to OECD countries. In some countries, capital gains are taxed as regular income and are added to income from other sources. This applies to capital gains associated with the disposal of company assets. In some OECD countries, capital gains are subject to special taxes, which are levied on each capital gain or on the sum of capital gains made during the year, at special rates. In this case, the other income of the taxpayer is not taken into account. It is left to the domestic law of each individual OECD country whether capital gains should be taxed and in what way[21].

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[19] Schuch, Pinetz (2015), p. 15-17.

[20] Rust A., (2016) *Austria: Constitutional Review of Tax Treaties* v Lang M et.al., Tax Treaty Case Law Around the Globe 2015, 1. Auflage, Linde Verlag Vienna p. 95-100.

[21] Lang M, Ecker T., Gernot R., (2011) *Understanding Tax Treaties: The History and relevance of the OECD Documents fort he Interpretation of Tax Treaties*, Series of International Tax Law, Volume 69, Linde Verlag Vienna.

The right to tax capital gains from a certain type of property belongs to those countries which, in accordance with the OECD Model, are entitled to tax property or income arising from it. Such a state should also be given the right to tax profits from the disposal of business assets, whether capital gains or operating gains. In this case, it is not necessary to distinguish between operating and capital gains. It is left to the domestic law of the State to determine whether capital gains tax or income tax is levied. Most countries that tax capital gains tax them on the disposal of capital, while some countries tax only realized capital gains. In certain circumstances, regardless of the disposal, there is no realization of capital gains for tax purposes, because depending on the question of whether the realization took place or not, it is decided according to the relevant domestic tax law. As a rule, an increase in value not related to the disposal of capital is not taxed, as long as the owner owns the property, there is a capital gain only on paper. However, some tax laws of OECD countries tax an increase in the value or revaluation of business assets even when there is no disposal. Special circumstances may also dictate the taxation of the increase in the value of non-disposed assets. The value of the property can be increased by the owner revaluing the property in the books due to the increase. The book increase in value can also occur when the domestic currency is devalued. Some OECD countries collect special taxes on book profits, amounts of provisions, increases in paid-in capital and other increases related to the adjustment of the book value of capital[22].

The same principles should apply to the taxation of an increase in the value of business assets as to the disposal of assets. The right to tax has the state of which the alienator is a resident, unless it is immovable property or movable property that is part of the business assets of a permanent establishment or belongs to a fixed base. In these cases, the country in which the property is located is entitled to tax[23]. In some countries, the transfer of assets from one permanent establishment located in the territory of one country to a permanent establishment in another country is treated in the same way as the disposal of assets[24]. These countries tax the profit or return that is estimated to have been generated by the transfer, provided that such taxation is in accordance with the provisions of the OECD Model. Regarding the origin of capital gains, the OECD Model states that there are no differences, as the provisions of the OECD Model apply to all capital gains, both for those achieved over a long period of time in parallel with the continuous improvement of economic conditions and for those achieved in the

[22] Hansen S.F, Denmark, (2016) *Capital Gains; Permanent Establishment; Article 7 Of the Denmark – Germany Tax Treaty* v Lang M et.al., Tax Treaty Case Law Around the Globe 2015, 1. Auflage, Linde Verlag Vienna, p.159 - 162.

[23] Lang M. et.al., (2020) *Tax Treaty Case Law Around the Globe 2019*, 1. Auflage, Linde Verlag Vienna.

[24] Pechota F., (2011) *The Interrelation between teh Attribution of Profits unde Tax Treaty Law and the Realization of Profits under Domestic Law*, v Lang M. et.al., Permanent Establishments in International and EU Tax Law, 1. Auflage, Linde Verlag Vienna p. 171 -183.

short term. speculative period. This group also includes capital gains arising from the devaluation of the domestic currency[25].

The calculation of capital gains is left to domestic tax laws. Capital gains are determined by excluding costs from the sale price. Costs are determined by adding to the purchase price all expenses related to the purchase and expenses related to product improvements. In some cases, costs that already include depreciation are taken into account. Problems may arise when the tax base for the taxation of capital gains is not equally defined in both States Parties to the double taxation agreement. Capital gains from the disposal of assets calculated in one Contracting State shall not necessarily be equal to capital gains calculated in another State in accordance with their accounting rules. This may be the case where one country is entitled to tax capital gains because it contains assets, while another country has the option to tax capital gains on the basis of the company's residence[26].

6 Methods for Elimination of Double Taxation

To eliminate or reduce double taxation, the principles provide for two methods, namely the method of exemption (exemption) and the method of deduction (credit, credit)[27]. The fundamental difference between the two methods is that the exemption method works at the income level and the deduction method at the tax level. Both methods have different derivatives (submethods). The most commonly used are the progression exemption method and the ordinary credit method. The basis for the use of each method can be found in both national tax regulations and bilateral agreements. When a bilateral agreement is concluded, its provisions prevail over the regulations of an individual country. The avoidance of double taxation and the methods used are generally set out in a separate article of a bilateral agreement (OECD Model Article 23), which eliminates double taxation according to the recipient's country of residence by obliging it to exempt from income tax. , which have already been taxed in the source country, to the recognition of the credit for taxes already paid in the source country[28].

Under the exemption method, income or property which, under the provisions of bilateral agreements, may be taxed in the country of source shall not be taxed in the country of residence. There are two methods of exemption: the full exemption method and the progression exemption method. Under the full exemption method, income or

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[25] Vogel K., (1991) *On Double Taxation Conventions: A Commentary to the OECD, UN and US Model Conventions for the Avoidance of Double Taxation of Income and Capital*, Deventer, Boston: Kluwer.
[26] Lang M.. et.al., (2015) *The OECD Model Convention and its Update 2014*, 1. Auflage, Linde Verlag Vienna.
[27] Wandl K.S., (2015) *Prevention of Economic Double Taxation under Article 24(3) of the OECD Model* in Dziurdz K. in Marchgraber C., Non-Discrimination in European and Tax Treaty Law, Linde Verlag, Vienna, p. 427-461.
[28] Terra B. in Wattel P., (2010*) European Tax Law*, Eight Edition, Kluwer Law International, London.

property of a taxable person that may be taxed in the source country under a bilateral agreement is not taken into account in determining the tax on other income or property of the taxable person in the country of residence, regardless of whether the source country actually taxes this income or not.

Example 1
Person A has an income of € 200,000, in addition to an income of € 50,000 abroad, from which tax was paid at source at the rate of 20%, ie € 10,000. In the country of residence, it determines the tax base of € 200,000, of which tax is levied at a rate of 30%, ie 60,000 units. Income that has already been taxed at source is not included in the tax base.

However, under the progression exemption method, the income or assets of a taxable person who may be taxed in the country of source under a bilateral agreement are not taxed in his country of residence, but that country has the right to take such income or property into account when determining tax on other income taxable person. The method of exemption with a reservation of progression is relevant only for those taxes for which the rate is determined progressively, since in the case of taxes with a uniform rate, regardless of the size of the tax base, the reservation of progression is irrelevant. In bilateral agreements, this method is more common[29].

Example 2
Person A has an income abroad of € 30,000, of which tax is paid at source at the rate of 15%. In the country of residence, he still has € 200,000 of income, from which he paid tax at the rate of 20 percent, which amounts to € 40,000. The scale for taxation is progressive and amounts to 20% for the tax base of € 200,000 and 30% for the tax base of € 230,000. However, he established a tax base of € 200,000 in the country of residence, from which he would calculate personal income tax at the rate of 20%. However, since the method of exemption is provided by progression, he will calculate personal income tax as it would apply to all his world income, ie 30%. The tax liability is therefore not € 40,000, but € 60,000.

Under the deduction method, the country of residence calculates the tax on the taxpayer's total income or property, including income or property from a source in another country, which may be taxed in that other country by bilateral agreement, but excluding income or property which may be taxed by bilateral agreement only in this source country. The tax thus calculated is reduced by the tax paid in another country. There are also two deduction methods: the so-called full deduction method and the ordinary deduction method. In the case of a full deduction, the State of the recipient's registered office shall deduct the full amount of tax paid in the other State[30].

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[29] Balestieri S., (2015) *Juridical Double Taxation Relief under Article 24(3) of the OECD Model: The PE Country's Obligations* in Dziurdz K. in Marchgraber C., Non-Discrimination in European and Tax Treaty Law, Linde Verlag, Vienna, p. 403-427.
[30] Schaumburg H. prof.dr., (1998) *Internationales Steuerrecht, Aussensteuerrecht, Doppelbesteuerungsrecht*, Verlag, Dr. Otto Schmidt, Koln, 2. Auflage.

Example 3

Person A has an income of € 200,000, in addition to an income of 50,000 units abroad, from which the withholding tax was paid at the rate of 20%, ie € 10,000. In the country of residence, it determines the tax base of € 250,000, of which tax is assessed at the rate of 30%, which amounts to € 75,000. His tax liability is reduced by any advance payment of personal income tax paid abroad and amounts to € 65,000.

By contrast, in the case of a normal deduction, the recipient State deducts only the amount of tax paid in the source country equal to the tax which it would have levied on income earned in another country. This sub-method is used more frequently than the full deduction.

Example 4

Person A has an income of € 200,000, in addition to an income of € 50,000 abroad, from which tax was paid at source at a rate of 30%, ie € 15,000. In the country of residence, it determines the tax base of € 250,000, of which tax is assessed at the rate of 25%, which amounts to € 62,500. His tax liability is reduced by the amount of tax paid abroad, but not more than the amount that would be paid in Slovenia (50,000 x 25% = € 12,500), and not by the entire amount of tax paid abroad (€ 15,000).

7 Conclusion

With regard to the taxation of non-residents, it is extremely important to consider the criteria for the elimination of double taxation, as the system of taxation of world income, due to the specific characteristics of world income, almost always leads to the phenomenon of double taxation. Theory and practice have formulated two basic criteria for the elimination of double taxation. The first criterion is linked to the origin of the income and is confirmed by the fact that the tax is directly linked to the income, which is organically linked to the area where it was acquired. Thus, the countries of origin limit their tax legislation only to the taxation of income which has its origin in that territory. The second criterion relates to the notion of residency. Confirmation of taxation on the basis of residence can be determined by tying the income tax according to the use of income. Even if the income is earned in an area outside a state territory, it is very likely that it will return to the territory where the entity that earned such income resides or has the continuity of its business functions in that territory. Income earned abroad, where it has its primary source, and transferred to the country of residence includes, in addition to its net economic value, the amount of tax paid by the entity to the tax authorities of the foreign country, according to their sovereign tax law. In this case, the country of residence prevents or completely eliminates double taxation of income through special methods that take into account, on the one hand, income for taxation in the resident country and, on the other hand, tax for taxation in the resident country. The exemption method does not take into account income earned abroad when taxing in a resident country, as tax has already been paid on this income; in the case of the tax deduction method, the deduction of tax paid abroad in relation to the total tax liability on the entities' global income is taken into account.

Regarding the taxation of non-residents, the rule of the method of deduction of tax paid abroad was adopted, which is in line with the adopted method of unlimited tax liability. The exemption method can only be used where we have taxation by source, which means that this method comes into consideration only when calculating income tax on individual sources of income that are subject to personal income tax.

8. Aknowledgments

1. Andrejasič I., (2007) *Zakon o davku od dohodkov pravnih oseb s komentarjem in stvarnim kazalom*, Uradni list RS d.o.o., Ljubljana.
2. Balestieri S., (2015) *Juridical Double Taxation Relief under Article 24(3) of the OECD Model: The PE Country's Obligations* in Dziurdz K. in Marchgraber C., Non-Discrimination in European and Tax Treaty Law, Linde Verlag, Vienna.
3. Doernberg L. Richard., (1989) *International Taxation*, St. Paul, Minn., West Publishing Co. Ključanin E in Zemljič M., (2004) Konvencije o izogibanju dvojnega obdavčenja dohodkov in premoženja z obrazložitvijo, GV Založba Ljubljana.
4. Hansen S.F, Denmark, (2016) *Capital Gains; Permanent Establishment; Article 7 Of the Denmark – Germany Tax Treaty* v Lang M et.al., Tax Treaty Case Law Around the Globe 2015, 1. Auflage, Linde Verlag Vienna.
5. Jann M., (1997) *How Does EC Law Affect Benefits Available to Non-Resident Taxpayers under Tax Treaties*, Tax Treaties and EC Law, Series on International taxation no. 16, Kluwer Law International, London.
6. Jerman S, Odar M., (2008) *Zakon o davku od dohodkov pravnih oseb s komentarjem*, GV založba d.o.o., Ljubljana.
7. Jirousek H., (2015) *The Implementation of the OECD Update 2014 in Bilateral Tax Treaty Practice – an OECD Member States' Perspective* v Lang M. in ostali, The OECD Model Convention and its Update 2014, Linde Verlag, Vienna.
8. Lang M, Ecker T., Gernot R., (2011) *Understanding Tax Treaties: The History and relevance of the OECD Documents fort he Interpretation of Tax Treaties*, Series of International Tax Law, Volume 69, Linde Verlag Vienna.
9. Lang M. et.al., (2007) *Tax Treaty Law and EC Law*, 1. Auflage, Linde Verlag Vienna.
10. Lang M. et.al., (2013) *Introduction to the Law of Double Taxation Conventions*, 2nd edition, Linde Verlag, Vienna.
11. Lang M. et.al., (2020) *Tax Treaty Case Law Around the Globe 2019*, 1. Auflage, Linde Verlag Vienna.

12. Lang M.. et.al., (2015) *The OECD Model Convention and its Update 2014*, 1. Auflage, Linde Verlag Vienna.
13. Rust A., (2016) *Austria: Constitutional Review of Tax Treaties* v Lang M et.al., Tax Treaty Case Law Around the Globe 2015, 1. Auflage, Linde Verlag Vienna.
14. Schaumburg H. prof.dr., (1998) *Internationales Steuerrecht, Aussensteuerrecht, Doppelbesteuerungsrecht*, Verlag, Dr. Otto Schmidt, Koln, 2. Auflage.
15. Schuch J, Pinetz E., (2015) *The Definition of Dividends, Interests, Royalties and Capital Gains*, v Lang M., et.al., The OECD Model Convention and its Update 2014, 1. Aflage, Linde Verlag Vienna.
16. Terra B. in Wattel P., (2010*) European Tax Law*, Eight Edition, Kluwer Law International, London.
17. Vann R., (2015) *Austraila; Royalties – Task Technology and Seven Netvork Cases* v Lang M et.al., Tax Treaty Case Law Around the Globe 2015, 1. Auflage, Linde Verlag Vienna.
18. Vogel K., (1991) *On Double Taxation Conventions: A Commentary to the OECD, UN and US Model Conventions for the Avoidance of Double Taxation of Income and Capital*, Deventer, Boston: Kluwer.
19. Wandl K.S., (2015) *Prevention of Economic Double Taxation under Article 24(3) of the OECD Model* in Dziurdz K. in Marchgraber C., Non-Discrimination in European and Tax Treaty Law, Linde Verlag, Vienna.