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▪ TAX

NOMIKI BIBLIOTHIKI

DOUBLE TAXATION AVOIDANCE

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What is double taxation?

Double taxation arises when a taxpayer (individual, company or any other body of persons) is subject to more than one jurisdictions.

In this case two or more states impose taxes on income, capital etc. to the same person in respect of the same subject matter and for the same period.

The issue of double taxation may incur both at national and international level. However, international double taxation in particular can cause major problems in international economic relations. Additionally, double taxation is contrary to the basic principle of tax equity, since taxpayers with the same financial ability to pay are subject to different tax treatment without a sufficient legal ground.

In this respect it is obvious that the problem of double taxation should be effectively re- solved.

What is the cause of double taxation?

International double taxation has been mainly developed due to the different approach of the national legislations concerning the connecting element (i.e. permanent residency, nationality etc). If for example, a state provides that all individuals and legal entities residing from a tax perspective in that state are subject to this state's tax legislation for their worldwide income and another state provides that the source income is the determining factor for taxation, then the person or legal entity will be subject to double taxation in both aforementioned states.

How international double taxation can be eliminated?

<u>National provisions</u>: As preliminary response, every state could proceed to the establishement of national provisions towards the avoidance of international double taxation.

<u>Conventions for the avoidance of the double taxation</u>: As the issue of international double taxation exceeds the territory of any given state, national legislation is usually not sufficient to resolve this problem. Thus most states usually conclude bilateral (international) conventions.

<u>European Union rules</u>: European Union (EU) through its legislative bodies has established several tax rules in order for double taxation to be eliminated, i.e. : a) on the taxation of parent companies and their subsidiaries, b) on the taxation applicable to interest and royalty payments between associated companies of different Member –States within the EU, c) the adjustment of profits of associated enterprises, and d) on the "frontier workers" and the workers who are permanent residents of the country of their employment.

Which are the Greek provisions of double taxation avoidance?

Greek law has adopted the "credit method" for the handling of double taxation issues. According to this method, when the income of a Greek tax resident (individual or any legal entity) is derived from abroad, Greek tax authority proceeds to a reduction of the tax payable in Greece. Such reduction shall be equal to the (income) tax paid in the other country.

Greek law also provides that such reduction of the tax payable shall not exceed the amount of tax that should have been paid in Greece for the same income.

Who is considered as a Greek tax resident?

Individuals and legal entities are considered to be Greek tax residents in the following cases:

Individuals: a) if he maintains his primary residence or habitual abode in Greece or Greece is the center of his vital interests or b) if he is a consular or diplomatic employee or public servant working under a similar regime or a public servant bearing the Greek nationality currently working abroad or c) if he is physically present in Greece for a period exceeding 183 days during a given fiscal year.

- Legal entities: a) if any given entity is incorporated or established under Greek law, b) if it has its registered offices in Greece of c) if its effective management is undertaken in Greece at any time during the fiscal year.

Which is the taxable income for a Greek tax resident?

According to the applicable Greek law, individuals and legal entities having their tax residency in Greece are subject to Greek income tax for their worldwide income. Foreign individuals employed in Greece in offices established under Greek law 89/1967 are subject to Greek income tax only for their income from Greek sources. Furthermore, individuals and legal entities having their tax residency outside Greece are subject to Greek income tax only for their source income earned in Greece during the fiscal year.

What are the double taxation conventions?

Having regard that national laws may not ensure that double taxation is eliminated, states usually conclude bilateral conventions for the avoidance of double taxation on income and on capital. These conventions, which are based on the OECD's Model Convention, set out which one of the contracting states and under which conditions has the authority to levy taxes on certain subject matter. Such conventions also provide methods for the double taxation avoidance.

Persons covered by a double taxation convention

The conventions apply to persons (individuals, companies and any other body of persons) who are residents of one or both of the contracting states.

The term "resident" is also defined in the text of the convention.

How is a tax resident defined according to a double taxation convention?

For the purposes of a double taxation convention, any person who, under the laws of that state is liable to tax therein by reasons of his domicile, residence, place of management or any other criterion of a similar nature may be considered as a resident of a contracting party state.

When an individual is a resident of both of the contacting states, then his legal status shall be determined as follows:

- He shall be deemed to be a resident only of the state in which he has his permanent home. If he has a permanent home in both states, he shall be deemed to be a resident only of the state with which his personal and economic relations are closer (centre of vital interests),
- If the state in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home in either state, he shall be deemed to be a resident only of the state in which he has a habitual abode,
- If he has a habitual abode in both states or in neither of them, he shall be deemed to be a resident only of the state of which he is a national,
- If he is a citizen of both states or of neither of them, the competent authorities of the contracting states shall settle the issue by virtue of mutual agreement.

In case a person other than an individual (legal person or any other legal entity) is a resident of both contracting states, such person shall be deemed to be a resident only of the state in which its place of effective management is situated.

Which are the taxes covered by double taxation conventions?

These conventions apply to taxes on income and on capital. In view of the above, all taxes imposed on total income, on total capital or on elements of income and of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation shall be regarded as taxes on income and on capital.

Is it possible for a contracting state to levy taxation on the business profits of an enterprise situated in the other contracting state?

Yes. In principal, under the provisions of a double taxation convention, profits of an enterprise situated in a given state shall be taxable only in that state, unless the enterprise carries on business in the other contracting state as well, through its permanent establishment situated therein.

If an enterprise carries on business in the other state as aforementioned, the profits that are attributable to the permanent establishment may be taxed in that other state.

What is a permanent establishment according to a double taxation convention?

The permanent establishment is a fixed place of business through which the business of an enterprise is wholly or partly carried on.

The term “permanent establishment” may include a place of management, a branch, an office, a factory, a workshop and a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

Which are the methods for elimination of double taxation adopted by these conventions?

In the scope of the double taxation conventions, two basic principles are adopted for double taxation avoidance, i.e.: the exemption method and the credit method.

What is the exemption method?

According to the exemption method, the state in which the taxpayer maintains his permanent residence shall exempt income and capital derived in the other contracting state subject to the provisions described in the convention.

What is the credit method?

According to the credit method, in case a resident of a contracting state derives income or owns capital in the other contracting state, then the first contracting state shall accept:

- a deduction from the tax on income of that resident in his territory, an amount equal to the income tax paid in the other contracting state,
- a deduction from the tax on capital of that resident in his territory, an amount equal to the income tax paid in the other contracting state.

What other provisions are included in double taxation conventions?

In the OECD’s Convention Model, a non-discrimination clause is included. According to such clause, citizens of a contracting state may not be subject to any taxation or any requirement connected therein in the other contracting state, in case such other taxation is more burdensome than the taxation and related requirements to which citizens of the first state are or may be subject under the same circumstances.

Furthermore, the option of a mutual agreement is provided by the double taxation convention. According to such option a person who considers that the actions of one or both of the contracting states result in himself being subject to taxation that is not in accordance with the provisions of the convention, such person may present his case to the competent authority of the state of which he is a resident.

What is the exchange of information and the assistance in the collection of taxes, provided for in the double taxation convention?

In accordance with the provisions of the convention, the competent authorities of the contracting states may exchange information relevant for implementing the provisions of the convention or for the administration and enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states.

The convention also provides for assistance between the contracting parties in the collection of taxes. According to the aforementioned provisions, the contracting states shall provide assistance to each other in the collection of revenue claims. The competent authorities of each state may mutually decide on the method of application of the above provision.

Which are the states Greece has entered into double taxation agreement with?

Greece has concluded double taxation conventions with fifty seven (57) states so far. Specifically, Greece has concluded such kind of agreements with: the Republic of San Marino, the Republic of Azerbaijan, the Arab Republic of Egypt, the Republic of Albania, the Republic of Armenia, the Republic of Austria, the Kingdom of Belgium, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of France, the Federal Republic of Germany, Georgia, the Kingdom of Denmark, the Swiss Confederation, the Republic of Estonia, the United Arab Emirates, the United States of America, the United Kingdom of Great Britain and Northern Ireland, the Republic of India, the Republic of Ireland, the Republic of Spain, the State of Israel, the Republic of Italy, Canada, the State of Qatar, the Kingdom of Netherlands, the People's Republic of China, the Republic of Korea, the State of Kuwait, the Republic of Croatia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxemburg, the Kingdom of Morocco, the United States of Mexico, Malta, the Republic of Moldova, the Republic of South Africa, the Kingdom of Norway, the Republic of Hungary, the Republic of Uzbekistan, the Cabinet of Ministers of Ukraine, the Republic of Poland, the Republic of Portugal, Romania, The Russian Federation, the Kingdom of Saudi Arabia, the Republic of Serbia, the Republic of Slovakia, the Republic of Slovenia, the Kingdom of Sweden, the Republic of Turkey, the Czech Republic, the Republic of Tunisia, the Republic of Finland.

Which are the statutory measures against double taxation in European Union?

The European Union (EU) aims to ensure that income, capital etc will be subject to tax only once within its territory, only in a Member State. In this respect, EU has adopted several tax statutory measures towards the elimination of double taxation incidents, mainly through directives issued by the European Council.

In this respect European Union has adopted a common system of taxation applicable to cross – border reorganizations of companies in the EU.

Furthermore, a Convention has also adopted by the Member States on the elimination of double taxation in connection with the adjustment of transfer of profits of associated enterprises. This ensures the avoidance of double taxation arising when an adjustment to the profits of a company carried out by the tax authority of one Member State contradicts with an adjustment of another Member State. Subsequently, a Code of Conduct has been adopted to ensure more effective and uniform implementation of the Arbitration Convention so as the Member States to eliminate double taxation of enterprises carrying out intergroup operations.

Which are the directives of European Council aiming towards double taxation avoidance?

European Council has issued a directive on the common system of taxation aiming at removing fiscal obstacles to mergers, divisions, transfers of assets and exchanges of shares concerning legal entities of different Member States and to the transfer of the registered seat of a European Company.

European Council has also issued a directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States. The aforementioned directive provides the abolishment of the withholding taxes on dividends distributed by a subsidiary to its parent company established on another Member State.

Finally, a directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States has issued by the European Council. According to the provisions of this directive interest or royalty payments arising in a Member State shall be exempt from any taxes imposed on those payments in that State, provided that the beneficial owner of the interests or royalties is a company of another Member State or permanent establishment of a company situated in another Member State.

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