

INTEGRATION PROCESSES AND SOCIO-ECONOMIC DEVELOPMENT

INTERNATIONAL INSTRUMENTS AND PROCEDURAL ASPECTS IN THE PROCESS OF AVOIDING DOUBLE TAXATION IN TERMS OF THE APPLICATION OF INTERNATIONAL TREATIES IN THE REPUBLIC OF MOLDOVA

Vitalie CAZACU, PhD, Associate Professor, Academy of Public Administration

Alexandru MARIT, PhD student, Academy of Public Administration

SUMMARY

The conventions are the norms superior to signatory states' laws. The object of the fiscal conventions is the restriction of the fiscal super tasks that result from operations that imply outcome transfers as well as, the promotion of development of economic relations with a foreign state.

The double international fiscal taxation must be examined according to the fiscal policy peculiarities and the ways of taxation used by different states. That's why, in order to achieve this goal, we use instruments and means that lead to the double taxation avoidance.

Keywords: *double taxation, international tax conventions, custom, jurisprudence, doctrine, dividends, interest, commissions, taxation.*

DOI: [https://doi.org/10.52327/1857-4440.2022.1\(21\).14](https://doi.org/10.52327/1857-4440.2022.1(21).14)

CZU: 336.227.1.025(478)

The actuality of the double taxation research represents a perpetual global problem, which generates the increase of the fiscal pressure and the appearance of the tax evasion, slows down the economic activity, diminishes the investment attractiveness and, as a result, minimizes the financial resources attracted from the economic agents.

In these circumstances, it becomes obvious the need to improve the domestic tax system in order to eliminate double taxation. Namely, taxation often determines the final decision on the investment of money resources in a given economy or influences the investment climate of one or another region. Moreover, it can be said that the stability of the fiscal system is in line with such factors as the political and economic stability of the region.

This paper examines, as the main problem of international economic activity, the issue of double taxation of income and capital obtained by domestic economic agents abroad, as well as by foreigners in the Republic of Moldova.

Taking into account the fact that the number of enterprises with foreign investments is increasing, it becomes obvious the need to apply international conventions. At present, 37 in-

ternational conventions on the avoidance of double taxation are implemented in the Republic of Moldova, which, in one way or another, are aimed at creating a preferential and stable tax regime for domestic economic agents, as well as those foreigners.

The conclusion of a large number of tax agreements between countries around the world has led to the need to develop standards on international tax conventions to avoid double taxation. In order to systematize the practices of concluding conventions (of the Model Treaty of the Organization for Economic Co-operation and Development and of the UN Model Convention), in this thesis the main focus is on the Model Treaty, developed by the OECD (since most conventions concluded by The Republic of Moldova follows this Model).

Materials used and methods applied. In the study process, the general scientific methods and procedures were applied: the dialectical approach, the historical analysis of the development of the taxation systems of foreign taxpayers to the formation of the international income taxation system and the local non-resident taxation system, the logical and system analysis. In working with the fiscal conventions in force, the methods of comparative analysis when examining the practice of applying the methods of elimination of double taxation in the Republic of Moldova and developed countries, the methods of system analysis when examining the normative and legislative acts in force, etc.

The informational support of the paper consists of the legislative and normative acts of the Republic of Moldova; international tax conventions; specialized works published in the Republic of Moldova, Romania, Russia and in other countries; materials of international conferences, as well as publications in the periodical press; factual materials and statistical data provided by the National Bureau of Statistics, the Ministry of Finance of the Republic of Moldova, the materials of a number of research centers abroad, as well as the materials of some international bodies.

Results obtained and discussions. One of the weaknesses of unilateral measures is that „they are usually applied in a uniform manner and do not take into account the fiscal peculiarities of each state [13]”. Therefore, states resort to bi- or multilateral conventions, the conclusion of double taxation conventions was necessary to stimulate economic cooperation, intensify and expand trade, technical-scientific and cultural exchanges between different countries, contributing to the development and diversification of economic relations and between states. Their purpose is to eliminate tax discrimination in any form. Their subsequent signing and ratification will allow the parties to attract foreign investment, to assist their own residents in placing investments abroad, to resolve tax disputes, and will contribute as a whole to the development of cooperation between states.

International treaties [2]. Most, if not all, countries have tried to avoid double taxation. The tax is made on the incomes accumulated on the territory of the respective country by the foreigners and are taxed at source before repatriation. The amount of these taxes differs, but is generally between 15 and 20% [14]. This amount is considerable. The existence of double taxation treaties offers the possibility of reducing or, in some cases, eliminating withholding tax. For example, an investment in Eastern Europe would benefit from the double taxation treaties signed with the destination country, if it was made through an offshore company. If there is a permissive taxation system in the intermediate country, then the result is to avoid withholding tax, as well as to avoid taxing dividends on their repatriation. A very good example of such an intermediate country is Cyprus, which has a network of double taxation treaties with over 42 countries [15]].

The scope of the international treaties for the avoidance of double taxation covers three different aspects, namely:

- taxes that fall under its incidence;
- the geographical area on which it produces effects;
- the people they target.

We propose to examine each of these areas separately.

Conventions are superior to the laws of the signatory states. In the event of a conflict between the Treaty and national law, the Treaty shall apply.

The objective of tax conventions is therefore threefold:

- to ensure to the nationals of the signatory states conditions of legal stability
- to limit the fiscal overloads resulting from the operations that involve transfers of income (elimination of cases of dual residence, distribution of the right to tax between the states parties to the convention, taxation of income of foreign origin);
- to favor the development of economic relations with a foreign state.

The main function of tax conventions is to determine in which state and at what rates the income obtained from the activity carried out by an investor national of state A (state of residence) on the territory of a state B (state of reception) will be imposed.

Usually, states are linked by flows of goods, capital, people, income, etc. or by the existence of properties belonging to the residents of one state on the territory of the other state agree the way to avoid (or limit) the double taxation by bilateral agreements that provide, on the basis of reciprocity, either waiver of a contracting party to collect taxes or reduce taxes or finally the provision of procedural facilities [6]. Double taxation conventions often do not provide for the exemption from mutual taxation of the income of residents of one State derived from the other State, but establish certain criteria and principles concerning the right of one or other of the Contracting States to tax in full or partially those revenues. In the practice of concluding international conventions in this field, some solutions have been accepted by a considerable number of states.

Conventions can take two forms [14]:

A. Specialized conventions, aimed at avoiding double taxation of income and wealth, in all circumstances in which it may occur;

B. Agreements to regulate, in particular, certain categories of international relations and, in the alternative, to avoid double taxation related to those relations. This category includes, for example, agreements on the organization of air or sea transport between the respective states, economic, technical-scientific and cultural cooperation, mutual guarantee of investments, multilateral conventions (agreements) in which all (or only interested) states participate. being part of a certain international economic organization, etc.

Such conventions aim either to avoid double taxation of income and wealth in relations between the States participating in the Convention, or to regulate relations between those States in a particular field of activity, including the avoidance of double taxation in a particular field.

Examples of the first category are the conventions concluded by eight Member States of the Council for Mutual Economic Assistance in 1977 in Miskolc (Hungary) on the avoidance of double taxation of personal income and property, and in 1978 respectively, in Ulaanbaatar (Mongolia), on the avoidance of double taxation of income and property of legal persons [5].

The second category includes: the General Agreement on Tariffs and Trade, signed in Havana in 1947 [3]; Treaty establishing the European Atomic Energy Community, signed in

Rome 1957; Treaty on the Establishment of the European Economic Community, signed in Rome in 1957, etc., which contains provisions relating to certain mandatory direct and indirect taxes for the signatory states of the respective documents. In addition, the Council of the European Economic Communities has issued directives on how to impose certain categories of taxes on goods and services, designed to help harmonize tax rules in the Community.

Taxes falling under the treaties. The second article of the OECD Model Treaty contains the most important regulations on taxes and duties that will be the subject of bilateral double taxation conventions. The purpose of this article is to clarify the nomenclature used in the classification of taxes and duties covered by bilateral conventions, thus harmonizing their application in the context of international law and eliminating the need to introduce new conventions to amend existing taxes and duties [9].

In principle, the Convention shall apply to taxes on income and on capital goods levied in the Contracting States in accordance with the law. For example, the Agreement between the Government of the Republic of Moldova and the Government of the Russian Federation on the avoidance of double taxation on income and property and the prevention of tax evasion in countries. 2 para. It provides that: „This Agreement shall apply to taxes on income and property levied on behalf of the Contracting State, irrespective of the manner in which they are levied”.

Income taxation is the most important part of the Convention, in this sense we will take as an example the OECD Model Convention, which includes 15 articles allocating the right to tax different elements of income, either for the state whose resident is the person who earned such income, or for the state in which the taxation rights were: the real estate income (art. 6); business profit (art. 7 and 9); income from international transport (art. 8); dividends (art. 10); interest (art. 11); royalties (art. 12); capital increases (art. 13); income from personal and independent services (art. 14, which in the 2000 version is suppressed); independent professions (art. 15); the directors’ fee (art. 16); incomes of artists and athletes (art. 17); pensions (art. 18); revenues from public activities (art. 19); income of students and trainees (Article 20); other income (art. 21).

Capital taxation includes only art. 22, which allocates the right to tax a varied number of elements of capital between the state in which the holder of the capital elements is resident and the state in which the capital elements are located.

In a state there may be two or more tax authorities empowered to levy taxes of the nature shown above. For this reason, we consider it necessary to clearly indicate in the text of the Convention which taxes fall within the scope.

Conventions often stipulate the totality of these taxes, stating that they apply to taxes on income and wealth levied on behalf of each of the Contracting States, of the administrative-territorial subdivisions and of their local authorities, irrespective of the system of collection. Convention Art .2”

In some cases, although the convention does not contain the above text, it does not exclude taxes levied at lower levels, as is clear from the list of taxes to which they relate. Thus, for example, the case of the Romanian-German convention, which at art. 2, para. 3, enumerates the Romanian taxes on income and wealth that are levied both on the state budgets and on the budgets of the administrative-territorial units, respectively the German taxes that supply both the federal budget and the state and local budgets [12]. ”

The conventions concluded by the Republic of Moldova in the field do not contain the text

of art. 2, para. 1, of the OECD Model Convention, but do not include in the list of targeted taxes a series of local taxes.

Sometimes the central (federal) public authority, when concluding conventions to avoid double taxation, confines itself to resolving issues related to taxes within its competence, leaving out of the convention those that fall within the remit of political subdivisions (states, provinces or regions federation) and local authorities (districts, counties, cities, communes, etc.). This happens when, according to the Constitution, the federal bodies are entitled to establish and collect taxes only at the federal level; at the hierarchically lower echelons, the authorities of those subdivisions (Parliaments or local councils, as the case may be) are vested with such rights. The insertion in the convention of such a text, as the one suggested by the OECD convention in art.2, par. It would constitute a violation of legal provisions, an interference in the internal affairs of other public authorities. The authorities of state subdivisions and local authorities, although having fiscal powers in the territories under their jurisdiction, do not enjoy political sovereignty and, as such, cannot conclude international agreements. The consequence of this conflict of competences is obvious: double taxation at levels other than the federal level cannot be avoided by convention.

The legal definitions given to income and property taxes in the conventions concluded by the Republic of Moldova are the following: „All taxes levied on total income or property value, or from certain elements thereof in the Agreement between the Government of the Republic Moldova and the Government of the Russian Federation on the avoidance of double taxation on income and property and the prevention of tax evasion, of 12.04.96, published in the official edition «International Treaties», 1999, volume 21, p. 232; the same definition is provided in other Conventions concluded by the Republic of Moldova with other states.

OECD Model Convention of 1977, art. 2, para. 2. stipulates the following definition: “Taxes on income and wealth, taxes on total income, on total wealth or on parts of income or wealth, including taxes on income from the alienation of movable or immovable property, as well as taxes on increase in value”.

As we note, social security contributions or other social burdens are not considered taxes on the total amount of wages, and are therefore not subject to the convention for the avoidance of double taxation. The state does not receive contributions in its capacity of public authority, but of insurer, ie of organizer, at national level, of some social benefits. Therefore, the right to receive contributions has only the state that provides protection within the social security to the persons who carry out their activity on the territory under its jurisdiction.

The OECD model convention does not specify any extraordinary taxes. The lack of an express reference in this respect should not be interpreted as proof of the intention to exclude them, but as an expression of the freedom enjoyed by the Contracting States to decide, by mutual agreement, whether or not to include them [12].

The third paragraph of art. Article 2 of the OECD Model Convention refers to the list of taxes and duties subject to the Convention for the Elimination of Double Taxation in the two signatory states. These are the taxes and duties in force at the time of signing the convention. «However, this list is not intended to be exhaustive, but only illustrative for the definitions in the previous paragraph. However, the current trend (reflected in the recently concluded conventions) is to provide as complete a list as possible of the taxes and duties existing in the two states, at the time of signing the convention”.

The following paragraph provides for the continued application of the Convention, regard-

less of subsequent changes in the tax system of the signatory States. „The Agreement shall also apply to any identical or substantially similar taxes which are levied by either Contracting State after the date of signature of this Agreement in addition to or in place of the existing taxes referred to in point 3 of this Agreement. The competent authorities of the Contracting States shall inform each other of any significant changes in their tax legislation” provided for in the Agreement between the Government of the Republic of Moldova and the Government of the Russian Federation on the avoidance of double taxation on income and property and the prevention of tax evasion, art. published in the official edition „International Treaties”, 1999, volume 21, pag. 232.

So in this case only one condition is provided, namely that the taxes and duties introduced subsequently have a nature identical or similar to those in force at the date of signing the convention. This provision is important because it prevents possible changes in the tax system in the two states.

Geographical space. The geographical area or territory subject to the provisions of a tax convention is usually that over which each Contracting State exercises its sovereignty. According to art. 3 of the Constitution of the Republic of Moldova // Official Gazette no. 1 of July 29, 1994: „The territory of the Republic of Moldova is inalienable. The country’s borders are established by organic law, respecting the unanimously recognized principles and norms of international law”.

According to art. 2 of the Law on the state border of the Republic of Moldova Law No. 1.08-XIII of 17.05.94 on the state border of the Republic of Moldova, published in the Official Gazette of the Republic of Moldova no.12 of 03.11 „The state border of the Republic of Moldova is established by the Parliament, respecting the principles and norms of international law and can only be amended by law”. And Article 3 paragraph 1 stipulates: „The state border is established in the treaties concluded by the Republic of Moldova with neighboring states based on ,the treaty on the tracing and marking of the state border on the ground is to be ratified by Parliament”.

In international practice there are many situations in which tax conventions concluded by certain states will not apply to territories dependent on these states, as these territories have a fiscal autonomy, for example, in this situation are: New Caledonia, Guadeloupe, Martinique , Reunion, French Polynesia and other overseas territories of France.

Target people. The tax conventions state that they „apply to persons who are residents of one or both of the Contracting States, namely; The agreement between the Government of the Republic of Moldova and the Government of the Russian Federation on the avoidance of double taxation on income and property and the prevention of tax evasion, published in the official edition „International Treaties”, 1999, volume 21, page 232”. Article a. „This Model OECD Convention applies to persons who are residents of one or both of the Contracting States”.

It is clear that in order to specify more specifically the scope of the conventions on persons, the content of the following notions must be established:

A. resident;

B. person (taxable subject).

A. Resident. Unlike previous projects that were applicable to citizens of signatory states, the Model Treaty (1992 and 2000) uses a longer term - resident. „This new approach does not distinguish between taxable persons of different nationalities, it has been considered appro-

pritate to meet the requirements of the current stage of development of international financial relations [9]”. The OECD Model Convention stipulates Article 4:

„1. For the purposes of this Convention, the term „resident of a Contracting State” shall mean any person who, under the law of that State, is considered to be a taxable person in that State, depending on his domicile, residence, place of business or residence. any other criterion of an analogous nature and also applies to this State, as well as to all its political subdivisions or local communities. However, this expression does not include persons who are not considered to be liable to tax in that State except for income whose source is situated in that State or for wealth in that State.

2. If, in accordance with the provisions of paragraph 1, a natural person is a resident of both Contracting States, his situation shall be governed as follows:

a) such person shall be deemed to be a resident only of the State where he has a permanent residence; if he has a permanent residence in both States, he shall be deemed to be a resident only of the State with which he has closer personal and economic relations (center of vital interests);

b) if the State in which that person has the center of his vital interests cannot be determined, or if he has no permanent residence in any of the States, he shall be deemed to be a resident only in the State in which he resides regularly;

c) if he is a resident of both States or of a State who is not a resident of either State, he shall be deemed to be a resident only of the State of which he is a national;

d) if such person possesses the nationality of both States or if he is not a national of either State, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. If, in accordance with the provisions of paragraph 1, a person other than a natural person is a resident of both Contracting States, then he shall be deemed to be a resident only of the State in which his place of effective management is situated”.

Understanding and deciphering the meaning of the notion of „residence” is important by establishing the scope of the conventions in resolving cases where double taxation occurs as a result of double residency and, finally, in resolving cases where double taxation is generated by the regulations applied in the state. of residence vis-à-vis those applied in the source state.

So the authors of the treaties have to address two issues, namely:

a) who is considered a resident of one of the signatory States;

b) how the cases of double residence should be solved.

The content of Article 4 of the Treaty, 1 OECD Model (1992) is also taken over by the conventions concluded by the Republic of Moldova. The fiscal code of the Republic of Moldova in art. 5 points 5 and 6 defines both the notion of resident and non-resident. Not all normative acts in the Republic of Moldova stipulate the same definition of resident institution. The Regulation on foreign exchange regulation on the territory of the Republic of Moldova defines in art. 19 as residents:

- The natural person who is uninterruptedly on the territory of the Republic of Moldova for a year or more.

- Legal entities, including sole proprietorships and limited partnerships, located and registered in the Republic of Moldova, as well as permanent representations of such legal entities, sole proprietorships and limited partnerships, located abroad.

Subsidiaries registered in the Republic of Moldova of legal entities, sole proprietorships and

limited partnerships, established outside the Republic of Moldova. The following are considered residents:

a) any natural person who meets one of the following requirements:

- has a permanent domicile in the Republic of Moldova, including:

- is undergoing treatment or rest, or learning, or traveling abroad;

- is a person with positions of responsibility of the Republic of Moldova, in the exercise of office abroad;

- is in the Republic of Moldova for at least 183 days during the fiscal year;

b) any legal person or individual enterprise, or peasant household (farmer), whose entrepreneurial activity is organized or managed in the Republic of Moldova or whose basic place of activity is the Republic of Moldova.

And according to art.5 point 6 non-resident persons are: Any natural person who is not resident in accordance with point 5 letter a) or, although it corresponds to the requirements of p. 5 letter. a), is located in the Republic of Moldova:

- as a person with diplomatic or consular status or as a member of the family of such a person;

- as a collaborator of an international organization, created based on the interstate agreement to which the Republic of Moldova is a party, or as a family member of such a collaborator;

- to treatment or rest, or to study, or to travel, if this natural person was in the Republic of Moldova exclusively for these purposes;

- exclusively for the purpose of passing from one foreign state to another foreign state through the territory of the Republic of Moldova (transit transit);

c) any legal person or individual enterprise, or peasant household (farmer), which is, corresponds to the requirements of point 5 letter. b of the Fiscal Code.

As it could be observed, the provisions of the convention also link the notion of resident with that of permanent representation or permanent headquarters. It can be observed that in most of the conventions concluded by the Republic of Moldova the term of permanent representation is used, and in those concluded by Romania the term of permanent headquarters is used, for the final designation of the same concept. Thus, within the meaning of the Agreement between the Republic of Moldova and the Republic of Hungary on the avoidance of double taxation and the prevention of tax evasion concerning income and property taxes, from January 1997, the term „permanent representation” designates the permanent place of activity through which the enterprise the Contracting Party carries out its entrepreneurial activity in the other Contracting State. Moreover, art.5 point 5 letter b Fiscal code provides a similar definition.

The term „permanent establishment” means a fixed place of business through which the business is wholly or partly carried on. In art. 5 of the Convention between the Government of Romania and the Government of Ukraine for the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income and capital, signed at Izmail on 29 March 1996. The expression permanent establishment includes: a place of management; a branch; a desk; a factory; a workshop; prospecting facilities for the purpose of obtaining income; a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; a warehouse or the like, used for the delivery of goods for the purpose of obtaining income; a construction site, a construction project, installation installation or related supervision activities, but only when such site, project or activities last for a period longer than 12 months; the

provision of services, including consultancy services, by an enterprise of a Contracting State, provided that such activity lasts, for the same or a related project, for a period or periods exceeding 12 months.

The mere fact that an enterprise carries on business in another state through a broker, general commission agent or any other agent with independent status; the fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other State (through a permanent establishment or otherwise) is not sufficient to make those companies a permanent establishment of the other art. 5 points 6, 7 of the Convention between the Government of Romania and the Government of Ukraine for the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income and capital, signed in Izmail on March 29, 1996.

There may often be cases when the natural person is a resident of several states (the case of conflicts of residence), for example art. 4 point 2. of the Agreement between the Government of the Republic of Moldova and the Government of the Russian Federation on the avoidance of double taxation on income and property and the prevention of tax evasion, signed in Moscow on April 12, 1996, published in the official edition „International Treaties”, 1999, volume 21, p. 232. , in this case the solutions proposed by the conventions concluded in the field are the following:

a) he shall be deemed to be a resident of the Contracting State in which he is permanently resident; if he has permanent residence in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (center of vital interests);

b) if the Contracting State, in which such person has a center of vital interests, cannot be determined or if he has no permanent residence in any of the Contracting States, then he shall be deemed to be a resident of the Contracting State in which he is domiciled;

c) if that person actually resides in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

d) if each Contracting State considers that the person is a national of that State or of neither of the States, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

A special situation may arise if the signatory states of the convention provide in their domestic legislation the possibility of dual citizenship, in this case the tax conventions will include provisions on how to determine the status of the person for a correct distribution of the right to tax art. 4 pt. 2, lit. d, of the Convention between the Government of Romania and the Government of Ukraine ..., signed in Izmail on March 29, 1996 stipulates that „if the person is a national (citizen) of both Contracting States or of neither of them jointly”.

In the case of legal persons, when it is a resident of both Contracting States, it shall be deemed to be a resident of the Contracting State in which the Governing Body is actually situated.

Finally, it should be emphasized that the international benefits of the elimination of double taxation are offered only to persons resident in one or both signatory states. A taxable person who is not resident in one of these states will not be able to benefit from the provisions of the conventions. However, the principle according to which the provisions of the conventions are applied only to the residents of the signatory states is not applicable in two situations: the one regulated in art. 24 (principle of non-discrimination); as well as the one from art. 26 (exchange of information) between the two signatory states.

From this brief analysis of art. 4 shows fully the importance of the notion of «residence» and the detailed nature of the solutions offered for each of the problems raised by the elimination of double taxation in relations between the signatory states.

B. Person (taxable subject). Art .3 para. 1 lit. a of the Model Convention stipulates: the term „person” includes natural persons, companies and any other associations of persons, for example similar provisions are stipulated in the conventions concluded by the Republic of Moldova with other states ”.

It should be noted that unlike the definitions given by the OECD Model Convention (1977), the conventions concluded by the Republic of Moldova defining the notion of «person» do not include the element of society, replacing it with the notion of legal person. However, the conventions concluded by the Republic of Moldova in the article that will refer to the general definitions (art. 3) will not even refer to the content of legal person, as is the case with the Model Convention, when it refers to the notion of „society”. These differences are not serious, because the notion of „company” is defined by the Model Convention as follows: „the term“ company „designates any legal person or any entity that is considered for tax purposes as a legal person”. So, from the broad sense of the notion of „legal person”, used in the conventions concluded by the Republic of Moldova, only those legal persons can be delimited that are considered „for tax purposes”, ie legal persons that are subject to taxation. which the convention covers.

The OECD Model Convention on the Avoidance of Double Succession Taxation is specified in art. 1 that the term «resident» refers to a natural person who at the time of death was domiciled in one or both of the Contracting States. The Conventions concluded by the Republic of Moldova, referring to the subjects they cover, also use the term „national person” which designates, for example, as in the Convention concluded between the Republic of Moldova and Russia, art. 3 para. 1 lit. f.:

- any natural person who is a national of the Contracting State;
- any legal person, association or association which has received this status in on the basis of the legislation in force of the Contracting State.

The tax conventions must specify which is the „competent authority” to carry out its provisions, to resolve disputes that arise along the way, to transmit the information to which the contracting parties have committed themselves. In some states the Ministry of Finance is the competent authority in the Republic of Moldova, Ukraine, Russia, Romania, Japan, Belgium, Finland, Sweden, Spain, Egypt, etc., while in others this responsibility is entrusted to another body.

Before the courts, the application of conventions for the avoidance of double taxation appears as a derogation from the general rules of tax law. Consequently, he who avails himself of the provisions of the Convention must prove that it is applicable to him.

The same is done when there are no precise rules regarding the application or interpretation of tax conventions.

International custom is the oldest source of international law, based on the practice of states. It confirms the fact that a rule of international law can exist in the absence of an agreement formed between states, as a result of the repetition under certain conditions, of a certain behavior of the states, in the international relations. We note that in the formation of the OECD Model Conventions custom was one of the main sources.

Custom is a rule of conduct established in practice and observed for a long period of time

by virtue of learning as a mandatory rule. Some customs are sanctioned by law, provided by international conventions, thus acquiring the character of a source of law [7].

In another sense, it is about „a whole range of acts and deeds, which are expressed” in a certain concrete field [11].

In the opinion of the French jurist Louis Cartou, “the rule according to which an international convention can facilitate the obligations of the taxpayer, and not aggravate them, is of customary origin. The custom can go as far as neutralizing the application of national provisions [12]”.

The customary rule is an unwritten rule, but mandatory for the subjects of international law, who have recognized this character of it [10].

International custom as a source of the norms of international law presents two difficulties, in particular:

a) proof of the existence of the customary rule;

b) the exact delimitation of the content of the customary rule. International custom as a source of international law is defined by the following elements:

a) it is an expression of a practice of states that results from behavior in international relations. This practice of the states towards an act or situation from international relations must be constant (ie repeated, not accidental). She it can be general or local.

b) The customary rule must be recognized as binding (*opinio juris*), in consequence, accepted by states as a rule of law. Recognition of the activity of the rule customary can be express or tacit.

The rule can arise not only from a constant action of states in international relations, but also from their repeated abstention. The recognition of the obligation of the customary rule is a determining element of its existence.

Jurisprudence [4]. It is also a limited source of international tax law. It is appealed to when the bodies in charge of applying the conventions for the avoidance of double taxation are presented with cases, which have been the subject of a trial. The solutions adopted at that time, gaining the authority of the *res judicata* are now taken as such.

The courts whose judgments in tax law include national tax courts, the International Court of Justice in The Hague, arbitration bodies established by the signatory states of a convention, and some supranational courts (for example: Supreme Court of Justice of the European Communities, based in Luxembourg).

Doctrine [3]. This method consists in the studies carried out by various well-known specialists, under the aegis of some international bodies, where there are opinions worth remembering for solving the fiscal problems that appeared in the relations between states.

Among the international non-governmental bodies with concerns in fiscal matters we mention: the International Law Association, the International Fiscal Association, the International Institute of Public Finance, etc. There are also a number of international government agencies that have contributed to solving tax problems worldwide. Thus, under the aegis of the League of Nations in the period 1920-1946, a financial committee and, subsequently, another fiscal one elaborated three model conventions, of bilateral type. These are model conventions for the avoidance of double taxation on income and wealth (adopted in Mexico in 1943 and revised in London in 1946), conventions on administrative and legal assistance.

The successor to the League of Nations, the United Nations, has continued its work to avoid double taxation through a financial and tax commission. It set out in 1947:

- review the model conventions adopted in Mexico and revised in London;
- to publish fiscal conventions;
- to centralize various documents on national tax legislation.

In 1979, the UN Model Convention for the Avoidance of Double Taxation of Income and Wealth was adopted, and in 1981 the UN Secretariat published a manual for the negotiation of bilateral tax conventions between developing countries.

The European Organization for Economic Co-operation and its successor, the Organization for Economic Co-operation and Development, have also expressed particular concern about international tax issues. These concerns materialized in the elaboration of the Model Conventions for the avoidance of double taxation on income and wealth (from 1963 and 1978) and, respectively, on inheritances (1966), as well as numerous studies devoted to taxes.

We should also mention the Model Convention for the avoidance of double taxation between the Member States of the Andean subregion and third countries (Andean model), as well as the Convention on Administrative Assistance in Tax Matters concluded between the northern states of our continent: Denmark, Finland, Iceland, Norway and Sweden [12].

Conclusions. The research conducted leads to the formulation of the following conclusions and recommendations:

The state may impose the incomes of its citizens or economic agents according to the existing legal relationship with this state, or it may impose the incomes coming from the sources located on the territory of the respective state, according to the territoriality criterion. Under these conditions, the problem of double taxation becomes inevitable as a result of the competition of fiscal sovereignties.

The comparative analysis of the principles of taxation based on the criteria of residence and territoriality allows us to conclude that the criterion of residence, applicable to income obtained abroad, is more acceptable and safer for the taxpayer, and the criterion of territoriality - more acceptable for the state. Only one criterion generates reduced possibilities for withdrawing resources from the state budget, and the application of both principles by all states, without any restrictions, inevitably generates exaggerated fiscal pressures on taxpayers.

Therefore, in order to increase budget revenues and taking into account the interests of taxpayers operating in the Republic of Moldova, we recommend the complex application of these two criteria, according to international practices.

Characteristic of the relations within the international taxation of incomes and capitals is the fact that the national fiscal norms act either in relation to the international object of taxation, or in relation to the foreign subject of taxation, which, in our opinion, generates the problems of double taxation and tax evasion.

The commercial activity of the economic agent, in order to obtain incomes in a foreign state, can be varied. In order to achieve a fair taxation, it was agreed to delimit this activity of non-residents into „active” and „passive”.

In the theory of income and capital taxation, we do not find a definition given to the incomes obtained from „active activity” and „passive activity”, which should comprehensively include all aspects of this activity. Many of these definitions include only the enumeration of the most common cases, characteristic of a concrete situation. Thus, the „active” is attributed the commercial activity, production, as well as the provision of services or execution of works.

The income obtained from the „passive” activity of the economic agents, usually, is attributed the interests, dividends and any other payments in the form of distribution of the company’s income; licensing payments; rental income, royalties, etc.

In our opinion, taking into account the international practice of taxing income and capital, it is advisable to divide the company’s income into income from active activities and passive activities, according to the criterion of direct participation of company members in obtaining such income. In order to obtain income from active activities, it is necessary to have an «active» participation of people, the permanent presence of human activity. Obtaining income from passive activities involves the unitary participation (once) of persons (usually at the stage of concluding the contract or in deciding on the distribution of income) and, in some cases, the subsequent control of the fulfillment of contractual obligations.

In the context of fiscal reforms in the Republic of Moldova, we note that important legislative changes have been adopted, including in the direction of regulating the aspects of avoiding international double taxation. The process of modernizing the tax legislation was oriented both in terms of improving the general system of taxes and fees by including aspects related to international taxation, and in terms of redefining and updating specific terms used in international tax law, such as: resident, representation, permanent representation, etc. At the same time, the system of income taxation of non-resident individuals and legal entities operating in the Republic of Moldova in the absence of a tax convention to avoid international double taxation has been improved by updating the legislation in the field. Despite the progress made in improving the tax legislation in the Republic of Moldova, it is still characterized by a high complexity of the tax system, low transparency and a certain degree of instability. These aspects encourage tax evasion, thus contributing to the formation of the tendency to reduce the degree of tax collection.

Therefore, we consider it reasonable that, instead of fiscal facilities or the reduction of tax rates, a relaxation of capital taxation be applied, justified by the need to stimulate the propensity to save and invest, which would be a premise of sustainable economic growth based on the expansion of the sector. private.

To date, the Republic of Moldova has concluded over 37 conventions. The objective of these conventions is to provide optimal ways and solutions for the elimination of double taxation in international economic and financial relations, through a process of harmonization of the interests of the partner tax authorities and, respectively, of the taxable subjects of the signatory states. Of the first nine states participating (between 01.01.1992 - 31.12.2007) in the investment process in the Republic of Moldova, whose capital invested in domestic registered enterprises represents 73%, only three states (Netherlands, Romania, Russia) have concluded tax agreements with our state, and the capital invested by them represents about a third of the total capital. These figures eloquently demonstrate the importance of tax conventions. We believe that the process of concluding the new tax conventions needs to be accelerated. The further conclusion of the fiscal conventions is beneficial for the Republic of Moldova and can boost the attraction of new investments, and, as a result, the creation of new values and increasing levies in the national public budget.

The tax agreements currently concluded by the Republic of Moldova are mainly based on the provisions of the OECD Model Treaty, and some recommendations of the Model Convention developed by the UN. This situation is due to a significant number of factors, among which we mention: the need to harmonize the fiscal system of the Republic of Moldova with

that of the European Union states in the perspective of future accession to this body; the orientation of economic policies towards attracting foreign capitals and investors by granting fiscal concessions to their states of residence; emphasizing the stimulating role of the tax system applied to support economic growth; the existence of interdependencies between the economy of the Republic of Moldova and the world economy, etc.

At the same time, there are currently tax conventions ratified on the principle of succession (agreements concluded with Germany, Belgium, Japan), which, in our opinion, require a general overhaul by eliminating (or replacing) segments that no longer correspond to reality and that make it difficult to apply the provisions of the given conventions. We consider that the operation of revising the content of these conventions must not meet with resistance from the partner states, because, on the one hand, it is proposed to update the form and not their content, and, on the other hand, the measure is beneficial to both states. -signatory, as the equivocal interpretations will be eliminated and the cases of recourse to amicable procedures generated by inaccuracies of the provisions of the conventions will be reduced.

The research results can be used by:

- fiscal and legislative bodies in the process of elaboration of new legislation and improvement of the existing one regarding the activity of domestic companies abroad and the activity of non-residents in the Republic of Moldova;
- taxpayers - domestic economic agents and foreign investors, in order to adequately structure the fiscal obligation, according to the stages of performing the works stipulated in the contract;
- foreign companies in the process of evaluating the fiscal efficiency of investment projects.

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Presented: 22 June 2022

E-mail: alexmarit123@gmail.com