Avoidance of international double taxation. Taxation of business profits in Romania

Professor **Florin DUMITER**[1]
Assistant professor **Ștefania JIMON**[2]

Abstract

In this article we wanted to achieve a comprehensive analysis of corporate profit tax for non-residents, from the standpoint of the issues that it creates on the double taxation of income and capital. Taxing the corporate profits of non-residents is a particularly important aspect in terms of revenue growth, encouraging foreign investment, and strengthening cross-border trade. The "source" state will decide the legitimate right to tax the profits of businesses that operate within its jurisdiction. Tax treaties do not impose limits on these types of taxing rights, other than those stemming from the obligation to impose profits, since the issue of taxation is "satisfied". Moreover, the source of tax revenue belongs to the source state. Thus, we can see that it is unlikely that the state of residence of a non-resident taxpayer should want to "share" such tax revenue. It can be observed that the state of residence also has the right to tax the profits, but in general it gives credit in respect of taxes of the source state or deducts them for the purpose of preventing the occurrence of double taxation. If the state of residence provides a credit for taxes paid within the source state, taxes which have not been collected and owed to the source state will constitute a tax transfer to the state of residence, from which the taxpayer will not have any benefit. As regards Romania, in terms of the treatment of enterprises, this article represents a real quid pro quo, as it tackles both the international and national taxation of corporate profits, through the provisions found in the new Fiscal Code and the Code of Fiscal Procedure, as well as the new proposals on the taxation of turnover in companies, all of this extrapolated with the new proposals for turnover tax from IT giants. The article ends with the presentation, comment and analysis of a case of international double taxation, more specifically the taxation of corporate profits, a topic of great importance and current interest regarding jurisprudence in Romania, having the aim to observe, mutadis mutandis, the way in which business profits are taxed in practice. The conclusion of this article is intended as a genuine caveat to meet the needs of taxpayers and tax authorities on the need for such measures, both nationally and internationally, in terms of corporate profits, measures that have to take into account the international framework of the contemporary business environment, which is constantly changing and evolving.

Keywords: *international double taxation, double non – taxation, permanent establishment, corporate profits, OECD Model Convention, state of residence, source state, tax treaty.*

JEL Classification: H25, H32, K34, K40.

---

[1] Florin Dumiter – "Vasile Goldiş" Western University of Arad, Romania, fdumiter@yahoo.com.
[2] Ştefania Jimon – "Vasile Goldiş" Western University of Arad, Romania, jimonstefania@yahoo.com.

1. Introduction

Looking at the literature, we see that the threshold of the source state regarding corporate profit tax for non-resident taxpayers is the existence of a permanent establishment through which the non-resident taxpayer's business is carried out. An inefficient tax on corporate profits, achieved through a permanent establishment can lead not only to loss of income tax arising from a permanent establishment, but may lead, *mutatis mutandis,* to the loss of revenue from the taxation of subsidiaries of foreign companies. Where a stable residence and a subsidiary are complementary in terms of management of business activities in the source state, foreign companies will be likely encouraged to use a permanent establishment contrary to a subsidiary, where the profits attributable to a permanent establishment are not taxed as effectively as those of a subsidiary.

The taxation of profits of non-resident enterprises involves many administrative difficulties because the different types of corporate profits are subject to different tax thresholds, rules on the source of revenue and various methods of assessing and collecting taxes. Unlike taxes levied in the source state on investment income and income earned by employees, corporate profits are generally taxed based on tax returns. An effective tax administration requires practicing certain procedures and possession of adequate resources. Unfortunately, most of the emerging countries have difficulties concerning these issues.

The taxation of corporate profits arising from cross-border activities is one of the most urgent problems of international tax law. The "key" principle in the allocation of tax between states, as stated and set by art. 7 of the OECD and the UN Model Conventions, was widely adopted in most tax treaties. This principle states that profits of a company resident of a state shall be taxable only in that state, unless it is operating in another state through a permanent establishment situated in that other state. Where the business is headed by a permanent establishment, the state in which that permanent residence is situated shall have the prerogative to subject to taxation only those profits attributable to the permanent establishment. Of an unambiguous relevance is the question of how to determine volumes corresponding to these profits attributed to a permanent establishment.

The objectives of this article are to present an image as faithful as possible on the current status of taxation of corporate profits worldwide, as well as their impact on legislative provisions in Romania. I also considered it important to analyze corporate profits given the OECD Model Convention and the UN Model Convention and, more specifically, art. 7, as well as the impact of conventions on the avoidance of double taxation on these "sensitive" aspects.

The purpose of this article is to confer an image as faithful as possible on the way Romania has failed to harmonize national legislation with international law regarding the taxation of corporate profits. Since this aspect is a particularly sensitive and multifaceted, one must highlight, such controversial issues as agreements to avoid double taxation *versus* treaty shopping practices, permanent establishment *versus* resident companies, and taxation of corporate profits *versus* taxation on turnover in companies.

The article describes the international double taxation from a corporate profit tax perspective, both internationally, based on art. 7 of the OECD and the UN Model Conventions, and in terms of national legislation enacted in Romania. In this regard, we proposed an analysis as detailed as possible on the main aspects of corporate profits and the main controversies about some issues such as permanent establishment, taxation of corporate profits for non-residents, etc. Furthermore, we presented and analyzed the main aspects of corporate profits on corporate tax imposed in Romania, and legislative proposals on the controversial tax on company turnover or turnover tax on IT giants. The case presented at the end of this article is a successful foray in the jurisprudence of Romania in corporate profits, presenting relevant issues on the expression of this in Romanian legal practice.

2. Corporate profits

2.1. Brief history

Between 1920-1936, the League of United Nations set forth the universal international principles governing taxation on company profits which a company established in a state, which comes from permanent establishments and subsidiaries established in the other State. These actions have resulted in the development of the market price principle, a principle which underlies Articles 7 and 9 of the United Nations Model Convention and the OECD Model Convention.

The initial focus of these efforts was on the situation of an enterprise established within a State which has a permanent establishment within the other State[3]. The first solution to address these issues was included in the resolution presented in the 1925 Report of the Finance Committee of the League of Nations by seven officials from European Member States who, in 1922, were appointed by the League of Nations to study the issues of double taxation and tax evasion.

The first part of these resolutions concerns "impersonal or planned taxes". This part included the following resolutions on the taxation of profits of an enterprise of one state obtained in another state:

- where businesses of an enterprise are coordinated in one and the same State, income should be regarded as originating in that country, regardless of the nationality of the owner of a business;
- where the enterprise has its head office in one state, and the branch, agency, industrial or commercial organization, or a permanent representative in the other state, each contracting state shall subject to taxation that part of the net income that is generated in its own territory. Therefore, the financial authorities of the member states

[3] This reflects the business reality of the 1920s, where owning subsidiaries was not fully possible either legally or economically, in most states.

concerned shall hold the prerogative to require the taxpayer to send accounts, balances and other relevant documents.

Another part of resolutions is aimed at “personal or general income tax” which was defined as “a tax (which may be progressive) applied to the taxpayer’s worldwide income, regardless of its source of origin”. The other part of the resolutions states that both the home and the home state can levy a personal tax on certain income categories, including: “the bilateral conventions to be concluded between states in view of avoiding the double taxation of these types of income taxation”.

The resolutions confer two approaches that can be used to avoid double taxation: (i) a deduction of the tax levied in the home country calculated in one of two ways, which corresponds to deduction and crediting methods; (ii) a division of revenue between the state of residence and the state of origin, so that each state would tax only a portion of that income. The report and resolutions suggest that the state of residence and the state of origin must be entitled to tax on profits generated by a permanent establishment situated in the territory of the state of origin, although the dual right of taxation has been restricted to “personal” taxes, needing a mechanism to eliminate double taxation. The report proposed “patenting” deduction and crediting methods as an integral part of the first approach that was built to eliminate double taxation.

The report and these resolutions highlighted the basic elements of the architecture of the current rules of tax treaties, as regards corporate tax rights which an enterprise established within a state, namely the state of residence, derives from within the other state, namely the state of origin, or more specifically, the source state.

The report and resolutions certified the principle that the state of origin must have the right to tax the profits of a foreign enterprise, but only if the enterprise has permanent facilities within that State. Because the resolution did not use the term “permanent establishment”, it referred to what later became the “ingredients” of a permanent establishment, namely “a branch, an agency, an institution, stable industrial and commercial organization, or a permanent representative”.

2.2. Right of taxation of the state of residence

Article 7 para. (1) both of the OECD Model Convention and the UN Model Convention confers exclusive rights by the state of residence regarding tax on corporate profits, in absence of a permanent establishment in the other state. There has been no change to this aspect of Article 7 when the OECD recalibrated the provisions of the Model Convention in 2010. If a permanent establishment can be identified, the other state may tax the profits attributable to it. If we look at this from a literal point of view, Article 7 para. (1) of the OECD Convention Model does not stipulate that the state of residence may be subject to tax profits where a permanent establishment is established in the other State; this is considered implicit and certainly the language does not prevent the state of residence from imposing taxation.

The OECD decided, as part of the BEPS Project, to include an "escape clause" in the OECD Convention Model regarding the effects of tax treaties, with the express exception of several provisions that clearly address the state of residence, such as Article 23 on the avoidance of double taxation, which does not prevent the state of residence from taxing its residents in accordance with the provisions of national law[4]. This provision appeared often in the tax treaties concluded by the US[5], which extend to US citizens, according to the US National legislation subjecting to taxation global citizens and residents, but has become much used in tax treaties concluded with other countries.

The OECD Model Convention and the United Nations Model Convention have no exceptions to the general rights of taxation on the state of residence, regarding the profits of the enterprise, although in practice there are two ways in which the state of residence does not have the taxation prerogative under the auspices of tax treaties that are based on the OECD Model Convention and the United Nations Model Convention. First, if a tax treaty adopts a method of relief as referred in Article 23A, the state of residence exempts from taxation the profits achieved through a permanent establishment, as a method of reducing residence – source double taxation.

The structure of the article on corporate profits found in the OECD Model Convention and the United Nations Model Convention can be seen as a fact that creates a threshold in terms of taxation rights, under the guise of the existence of a permanent establishment in the first sentence of Article 7 para. (1), and then a distinct supply rule through attribution, or a similar rule within the second sentence. Commentary on Article 7 of the OECD Model Convention[6] apparently accomplishes this separation in the debate of underlying principles. Alternatively, Article 7 para. (1) of the OECD Model Convention and the United Nations Convention Model can be viewed as a whole as providing a source rule regarding corporate profits, under whose auspices which they are formed in the state of residence, unless they are attributable to a permanent establishment in another state, in which case they are regarded as being formed in the other state.

Modern tax treaties invariably use the threshold on the permanent establishment as a general test for when source tax rights arise on corporate profits, under the auspices of Article 7 of the OECD Model Convention. However, we can identify special cases within the current tax treaties in which other thresholds for corporate profits are used beyond other articles found in tax treaties including those profits. This is especially true of the profits from an insurance business. The OECD Model Convention does not have any special rules in the field of insurance, although special issues arising from the taxation of such profits have long been

[4] OCDE, *Preventing the Granting of Treaty Benefits in Inappropriate Circumstances: Action 6 2014,* para. 51-53, OECD 2014, International Organizations' Documentation IBFD.
[5] *U.S. Model Income Tax Convention* art. 1(4) and (5), 15 November 2016, IBFD Models.
[6] Para. 10 -12 of the OECD Model Convention, Commentary on Article 7, 2014.

recognized. One approach, which is found in Article 5 para. (6) of the United Nations Model Convention, is to confer a regular permanent establishment on certain types of activities coming from the insurance area. While the above approach addresses the issue of the threshold, it does not solve the difficulties of calculating the profits from insurance, as well as their allocation to different parts of the enterprise.

3. The peculiarities of corporate income taxation in Romania

From a historical point of view, tax systems are national in nature and are adapted to the economic conditions existing within each state. The fiscal sovereignty of a state presupposes the existence of the right to "establish the tax system it establishes, to define the taxes which make up that system, to specify the subjects of taxation, to determine the basis of taxation, to size up tax rates, set deadlines for payment, grant tax incentives, set tax penalties, set up appeals, and settle tax disputes, etc." [7]

The enhancement of international relations has boosted competitiveness in terms of taxation, so as to make the national climate as favourable to foreign investment as possible and contribute to the development of domestic markets. As a result, some measures have been adopted to regulate the tax system in order to implement favourable tax treatments to avoid the migration of capital to other countries.

In Romania the main national tax regulations are represented by Law no. 227/2015 on the Fiscal Code[8] and the Law no. 207/2015 regarding the Code of Fiscal Procedure[9]. Romania also applies the legal regulations of the European Community, as well as the provisions of the international agreements concluded for the avoidance of double international legal taxation. The purpose of these international treaties is "to protect taxpayers against legislative abuse of revenue and profits taxed abroad, and to establish the limits of national tax law, following the model proposed by the OECD." [10]

Conventions for the avoidance of double taxation are thus an integral part of national tax legislation, the provisions of which are guaranteed by the Constitution, which stipulates that "the Romanian State pledges to fulfil as such and in good-faith obligations deriving from the treaties to which it is a party"[11]. Although the

---

[7] Ioan Condor, *Evitarea dublei impuneri internaţionale*, Autonomous Publishing House "Official Monitor", Bucharest, 1999, pp. 31.

[8] The Official Gazette of Romania, Part I, no. 688 of 10 September 2015.

[9] The Official Gazette of Romania, Part I, no. 547 of 23 July 2015.

[10] Florin Dumiter et. al., *Fundamentarea Convențiilor de evitare a dublei impuneri fiscale internaționale în România. O abordare holistică*. Adaptabilitate, divergențe și perspective în contabilitatea și fiscalitatea contemporană, Simpozion „Pavel Ciuce", 15th edition, Moneasa, 2017, pp. 248.

[11] Constitution of Romanian, Title I General Principles, Article 11 – International law and domestic law, available online on: http://www.cdep.ro/pls/dic/site.page?id=339 (consulted on 10.11.2017).

applicability of international conventions is a priority over national regulations, "it is well worth noting the preservation of member states' fiscal sovereignty"[12].

3.1. The provisions of the new Fiscal Code and Code of Fiscal Procedure of Romania

In the context of increased globalization and mobility of persons and capital, "the tax regime of the incomes obtained on the territory of Romania is provided in corroborating the provisions of the Fiscal Code with the articles of international tax conventions." [13]

The Fiscal Code provides for the taxation of all taxable income obtained on the territory of Romania, as well as the taxation of income earned by its residents abroad, the calculation, declaration and payment of taxes and duties to the state budget.

Signing conventions to avoid double taxation of income or income and capital is intended to protect own taxpayers who carry out economic activities and obtain income from abroad. "Agreements to avoid international double taxation concluded by Romania use the OECD model, and they establish taxes and the power to tax due to each state, how they will achieve the elimination of double taxation, how to handle possible conflicts, how to exchange information, the date of entry into force, and how to terminate the agreement. Also, the signatory states of such agreements are bound to respect the right to non-discrimination, i.e. to grant the same rights and to impose the same obligations on non-resident and resident persons." [14]

The notion of "residence" for economic entities is defined by the legislature in the existence of the registered office or place of actual management of the business on the territory Romania. Thus, the Fiscal Code provides for all income and profits earned by non-residents in Romania, imposition, calculation, withholding, declaration and payment to the state budget, applying the more favourable tax rate between the one in the domestic law and the provisions of existing agreements[15]. In the case of an agreement to avoid double taxation, the

---

[12] Cornelia Lefter, Simona Chirică, *Evitarea dublei impuneri internaţionale (Reglementări legale interne şi convenţii fiscale încheiate de România)*, „Economie teoretică şi aplicată", Vol. XVII, No. 9(550), 2010, pp. 38-51.

[13] Georgiana Covrig, *Conventions for the avoidance of double – taxation. Romania case*, „Contemporary Readings in Law and Social Justice", Volume 4(1), 2012, pp. 427.

[14] Florin Dumiter, Ștefania Jimon, *Double Taxation Conventions in Central and Eastern European Countries*, „Journal of Legal Studies", Vol. 18, Issue 32/2016, pp. 5.

[15] Law 277/2015 on the Fiscal Code, Title VI – Tax on income obtained in Romania by non-residents and the taxation of subsidiaries of foreign companies established in Romania, Chapter I – Taxation on revenue obtained in Romania by non-residents, Section 7 – Corroborating the provisions of the Fiscal Code with those of conventions on the avoidance of double taxation and European Union legislation, art. 18. "In application of art. 230 para. (1) of the Fiscal Code: (1) The provisions of para. 2 of Art. Dividends, Interests, Commissions, Royalties from conventions on the avoidance of double taxation concluded by Romania with other states, which regulate taxation of such income in the source state, are applied with priority. When domestic legislation expressly provides a more favourable taxation rate, the provisions of domestic law shall apply."

amount of tax paid will be regularized by granting a tax credit or exemption in the taxpayer's country of residence.

Similarly, for income and profits made by Romanian residents abroad, tax regulations provide for their taxation in Romania. Under the conditions of a tax treaty for avoiding double international taxation and a document proving the fulfilment of tax obligations and the effective payment of the tax abroad, a deduction is granted in Romania either in the form of a tax credit, or in the form of a tax exemption in the other Contracting State.

The Code of Fiscal Procedure and double taxation conventions provide for international administrative cooperation. In this regard, all the legislative changes on the taxation of income and capital, which manifest their influence on the application of signed treaties, are notifiable to partner states.

In order to ensure good international cooperation, Romania has signed 86 conventions to avoid double international taxation[16], and 73 agreements for automatic exchange of information on financial accounts, the list of non-reporting financial institutions, and the list of excluded accounts. [17]

All these tax treaties are based on the model proposed by the OECD Convention, but without the requirement for a uniform interpretation of its provisions, so that national authorities do not have to strictly comply with the decisions of the partner country. As a result, there is controversy regarding the improper use of conventions, on the one hand, this discussion focuses on the meaning of the term 'abuse', and hence its undesirability, and on the other hand, the rules encumber tax authorities to give benefits from double taxation convention.

In the event of divergences or conflicts regarding the application of national regulations and the provisions of the agreements for avoiding double international taxation, the settlement shall consider the amicable procedure[18].

---

[16] National Agency for Tax Administration – General Directorate for the Administration of Large Contributors, available online at: https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/Conventii/Conventii.htm (consulted on 10.11.2017).

[17] Order no. 2309/2017 of 1 August 2017 amending the Order of the President of the National Agency for Tax Administration no. 3.626 / 2016 establishing the list of reporting jurisdictions with which Romania will cooperate on the basis of the Multilateral Agreement of Competent Authorities for Automatic Exchange of Information on Financial Accounts, the List of Non-Reporting Financial Institutions and the List of Excluded Accounts, provided in the legal instruments of international law to which Romania has engaged in the automatic exchange of financial information, published in: Official Gazette no. 635 of 3 August 2017, available online at: https://static.anaf.ro/static/10/Anaf/legislatie/OPANAF_2309_2017.pdf (consulted on 10.11.2017).

[18] Law 207/2015 on the Tax Procedure Code, Title IX The amicable procedure for avoiding / eliminating double taxation, art. 282 Amicable settlement, para. (1) "under the provisions of the Double Taxation Convention or Agreement, a taxpayer / resident in Romania who considers that taxation in the other Contracting State is not in compliance with the provisions of that convention or agreement may request A.N.A.F. to initiate the amicable procedure" and paragraph (2) "A.N.A.F. also carries out the amicable procedure if the competent authority of the state with which Romania has concluded a convention or a double taxation avoidance agreement so requests."

3.2 Taxation on turnover in companies

At a national level, there are a number of changes to tax legislation that the legislator believes would ensure fiscal equity. The main potential change, which is still only in the draft stage, concerns the taxation of economic entities based on revenues and not as profit. Taxation will be conducted on three steps with a rate of 1%, 2% or 3% from the turnover. This proposal came as a result of the reduced percentage of the GDP for revenues collected from taxes (25.4%), due to the practice of multinational companies not to declare all profits. Among the possible consequences of this change are the simplicity of tax calculation, the impossibility of diminishing the taxable base, the increase in fiscal revenues, the increase in fiscal burden, the reduction of fiscal conformism, the discouragement of investments, the distortion of competitive conditions. Application of such measures must take into account EU regulations which, in the Directive 112 of 2006 on VAT, does not allow a tax on turnover.

Other legislative proposals in the tax area require the elimination of tax on dividends; the elimination of tax on cultivated agricultural land, but doubling the tax on the non-cultivated agricultural lands for two consecutive years; the obligation of economic entities with negative capital to rebuild their capital; reducing salary contributions; VAT reduction.

At European Community level, there is a discussion of the practice of “profit making”, used mainly by large IT companies operating virtually without the existence of permanent headquarters, and thus transferring income obtained in the territory of the European Union to lenient tax jurisdictions in terms of corporate tax. A first aspect in regulating these activities is to define the permanent establishment. Bruno Le Maire, French Minister of Finance, said that the basis for determining the level of taxation should be the actual turnover. The European Commission is analyzing this issue, and the solution is to be adopted in agreement with the OECD and G20 member states.

4. The application of the Convention for the avoidance of double taxation concluded between Romania and the USA. Case: Tax on revenues obtained in Romania by non-residents under the auspices of art. 7 “Business Profits” [19]

In this section, we consider the presentation and analysis of a decision of the Supreme Court of Romania *(HCCJ)* i.e. 2484 dated 28 May 2014. This case concerns a foreign company in the US that is ordered to refund taxes on income obtained in Romania by non-residents, based on the stipulations of Art. 7 “Business Profits”, having as grounds the Convention between the Government of the Socialist Republic of Romania and the United States of America for the avoidance of double taxation and prevention of income tax evasion.

---

[19] The High Court of Cassation and Justice of Romania, the Administrative and Fiscal Court, Decision no. 2 484, delivered in public session on May 28, 2014, File no. 843/42/2012.

Circumstances of the case. Through the action registered on 17 October 2012, against the defendant National Agency for Fiscal Administration – General Directorate of Public Finance Prahova County, the applicant SC IGS SRL Ploiesti sought the annulment of Decision no. 375/13 April 2012, of the partial tax inspection report no. F - PH 27/25 January 2012, of the taxation decision no. F – PH 28/25 January 2012 on additional tax payment liabilities established by the tax inspection, and the decision not to modify the tax base no. F - PH 29/25 January 2012 on the total amount of 1,263,935 lei, representing tax on revenues obtained in Romania by non-resident legal entities – amounting to 891,561 lei, surcharges and penalties for late payment.

The solution of the court of first instance. In judgment no. 77/6 March 2013 the Court of Appeal Ploiesti – Section II Civil, Administrative and Fiscal Matters, dismissed the action as unfounded, stating that additional tax liabilities owed by the applicant were established in accordance with art. 115 para. 1 let. and Law no. 571/2003 for the technical consulting activity.

The Court noted that, under to the Convention called "consulting agreement" no. 1-0630200 9/30 June 2009, signed by the applicant, as an intermediary with Tehnical Industrial Services company, corporate beneficiary, headquartered in Italy, advisory services were performed by RPSLA US company – outside of our country, within the objectives held by TIS in Brazil, Oman, Kazakhstan, Sweden, Qatar, Russia and Iran.

It was noted that the corporate beneficiary, of Italian nationality, prepared reports and daily activity records for services received, comprising: providing logistics and on-site administration, verifying suppliers of materials and technical documentation before starting work, ensuring vehicle management and coordination, checking the equipment and personnel employed by subcontractors, covering many other areas of activity, and documents describing the tasks of staff employed by the non-resident provider, namely: welding inspectors, electrical supervisors, mechanical construction supervisors, pipeline supervisors, assistants/secretaries of administration and logistics and control of documents, supervisors commissioning devices etc.

The court of first instance, according to the terms of the contract and with art. 982 of the Civil Code, found that the applicant had conducted consulting business for which it was properly required to pay tax on income derived from Romania by corporate non-residents, tax due in accordance with art. 115 para. 1 let. of Law no. 571/2003 for revenue obtained in Romania from the provision of management services and consulting services in any field, if such income is received from a resident or if such incomes are expenses of a permanent establishment in Romania.

Appeal. Against this judgment, the plaintiff SC IGS SRL Ploiesti appealed requesting, pursuant to art. 304 pt. 7 and 9 of the Code of Civil Procedure, for the judgment under appeal to be amended, in the sense of admission of the action, arguing that the judgment under appeal does not contain sufficient objective grounds on which the conviction of the court was based regarding the groundlessness of the action, is lapidary and does not include references or analysis of all administered evidence and the documents which detailed the specificity of activities performed by the corporate non-resident.

The applicant argued that the trial court had misinterpreted the terms of the agreement called “Consulting agreement” no. 1-06302009 and the provisions of art. 115 para. 1 letter i of the Fiscal Code, holding a contradictory reasoning that the services provided for the Italian beneficiary were related to technical consultancy.

Regarding the interpretation of contract clauses in accordance with art. 982 of the Civil Code, it was shown that the trial court ignored the content of activity reports and statements from the wording of invoices issued under the contract before the Court, depriving of effectiveness the intention of the legislature by not corroborating all contractual terms of the documents that are part of the contract.

With regard to the interpretation of art. 115 para. 1 letter i of the Fiscal Code, the plaintiff argued that the trial court had wrongfully qualified the activity by the name and content of the agreement concluded with Roma Paper Services company, although the applicable tax rules do not refer to agreements concluded or to other legal relations, but only to services rendered or goods delivered effectively.

In relation to the administered evidence, it was stated that technical services were provided under contract from 7 July 2009, consisting of: compiling consumer bills, central telephone management, installation of all equipment on the site, arranging cables in underpassages and running tests, carrying out connections between cables and equipment, installing supports, installing pipes, making drawings, performing hydraulic tests, installing various equipment, installing cables, preparing parts etc. , which, according to specialized expert opinion, are common or routine technical activities, and the duties of one of the employees – providers (welding inspector) are technical in nature, so the provisions of art. 115 para. 1 letter i of the Fiscal Code are not incidental, and are misapplied by the administrative and fiscal documents drawn up by the defendant.

Considerations and the court’s appeal. The trial court pronounced the sentence in compliance with art. 261 para. 1 pt. 5 of the Civil Code, covering both the *de facto* and *de jure* reasons that led to the conviction of the court, and those for which requests by the parties were rejected.

It appears that for the first complaint raised on appeal by the plaintiff under the provisions of art. 304 pt. 7 of the Code of Civil Procedure, the trial court presented a coherent reasoning and without contradictions or ambiguities, showing legal arguments that led to the judgment by a correct interpretation of legal rules incidental to this case.

In accordance with Art. 261 para. 1 pt. 5 of the Code of Civil Procedure, art. 6 para. 1 of the European Convention on Human Rights and Fundamental Freedoms and the ECHR jurisprudence (judgement of 15 March 2007 in the case Gheorghe v. Romania), the sentence of the court of first instance contains a specific answer, explicit to the issue pursued, noting the legality of administrative and fiscal acts drawn up by the defendant.

The argument on the merits based on art. 304 pt. 9 of the Code of Civil Procedure is also unfounded, in accordance with art. 115 para. 1 letter i, art. 116

para. 1 and 2, and art. 118 of Law no. 571/2003 which provide that taxable incomes obtained in Romania refer to revenue from management and consulting services in any field, not performed in Romania, if such income is received from a resident and the income beneficiary has no document proving residence for tax purposes, so that the plaintiff owes tax on revenues obtained from Romania by corporate non-residents.

This tax was not established, declared and paid by the company in the July 2009 - September 2011 period for revenue obtained in Romania by the corporate non-resident RPSLA – US, based on consulting contact no. 1/7 July 2009.

According to documents filed, in the period under review the plaintiff recorded in its accounts purchases for the provision of consulting services and technical assistance made by RPSLA - US company outside Romania (Brazil, Oman, Kazakhstan, Sweden, Qatar, Russia and Iran), pursuing the objectives (industrial facilities) held by the recipient Industrial Global Services SRL Italy based on requests for services, received by e-mail by the recipient.

By a correct interpretation of clauses of consulting contract no. 1/7 July 2009 and supporting documents submitted by the Italian beneficiary, the court of first instance upheld the conclusion of tax inspectors concluded that the staff (consultants) of provider RPSLA - US supplied both management and technical consulting services. The nature of supplied services is also shown by bills drawn up throughout the reviewable period by supplier RPSLA - US for technical services and consulting.

Irrelevant to the present case are the documents relating to activities undertaken by staff according to the job description, which are generic and do not correspond to the provision of services included in the consulting contract signed with the US supplier and in work reports send by the recipient ITS SRL Italy as being carried out by the supplier's consultants.

The same conclusion applies with regard to request no. 782/18 February 2013 the by National Institute for Research – Development in Welding and Material Testing, and request no. 7/21 February 2013 of SC HP SRL, noting that they refer only to powers and duties of the welding inspector and other technical activities carried out on site, without analyzing the specificity of services performed under the consultancy contract, which evidently results from the terms of the Convention, the documents presented by the beneficiary, and the content of invoice issued by the supplier, accompanied by detailed work reports.

Accordingly, the trial court correctly established the legality of administrative acts by which the tax inspectors proceeded to tax the consulting firm RPSLA – US based on art. 115 para. 1 letter i, art. 116 para. 1 and 2, and art. 118 para. 2 of the Fiscal Code, in conjunction with the provisions of pt. 3 and pt. 13 of the Methodological Rules for the application of the Fiscal Code, approved by Government Decision no. 44/2004, as the beneficiary of income from Romania (RPS company) did not present the tax residence certificate issued by the tax authority of the state of residence, and therefore did not justify the right to benefit in Romania from the provisions of art. 7 "Business Profits" of the Convention between the Government of the Socialist Republic of Romania and the United

States of America for the avoidance of double taxation and prevention of tax evasion on income, ratified by Decree no. 238/1974.

The legal basis of the settlement adopted by appeal. The High Court rejects as unfounded the appeal filed by SC IGS SRL Ploiesti based on the provisions of art. 312 para. 1 of the Code of Civil Procedure and art. 20 of Law no. 554/2004.

5. Conclusions

The manner in which taxes from corporate profits are collected and enforced, as well as the efficiency and equity in relations with non-residents, can influence business. From the perspective of non-resident taxpayers, taxes are part of the costs of running a business. Issues such as certainty and predictability of taxation are as important as the amount of taxes. Therefore, the competent tax authorities can not only collect taxes owed by taxpayers, but also contribute to a positive and proactive business environment in terms of foreign investment. On the other hand, in cases where tax administrations are inefficient or incompetent, they will cause uncertainty, confusion and dismay among taxpayers, which may lead to discouraging foreign companies from doing business or investing in the source state.

The BEPS project of OECD on the erosion of the tax base and the diversion of profits that began in 2012 and aims to establish effective, comprehensive, and balanced strategies, and which is aimed, in particular, at states facing erosion of the tax base and diversion of profit, can also be influenced by the implementation of *the new approach to the OECD – "Authorized OECD approach" or "AAO"*. In this regard, the OECD argued that its instructions can contribute to the erosion of the tax base and the diversion of profits, since they put an excessive emphasis on legal structures, namely, the contractual terms of risk allocation. This hypothesis seems to be consistent with the AAO approach, an approach that disregards the legal contracts, because they do not exist in a permanent establishment – general enterprise relationship. Furthermore, the project on erosion of the tax base and profit diversion also concerns how the current rules provide "leeway" in the allocation of taxable profits other than those in which the business operates. This project could revive the AAO approach, as well as its support regarding the currently held arm's length principle, or alter its "course" to its classification under the new order of international tax.

Romania has made great strides in terms of improving international double taxation, both in terms of significant "adjustment" and strengthening of national legislation, and through the extension of the scale and complexity of the network of double taxation conventions, in regard to both the types of agreements, and the number of states which concluded tax treaties. Moreover, in 2017 partnership agreements on information exchange and tax cooperation, which must take place between tax administrations in different countries, were updated, adjusted and recalibrated. This is particularly important for Romania because direct taxation issues are particularly complex, and cooperation between the competent tax authorities will help the taxation of corporate profits be established in a more accurate, fairer and more effective way.

The conclusion of this article shows that the efficiency of taxing non-resident corporate profits by the source state entails "cautious" provisions in national tax legislation and tax treaties that define and measure the tax liability of non-residents, and the need for a tax reporting, verification and collection system. Through building the capacity of non-resident corporate profit tax management, tax authorities in developing states will hold the prerogative of adopting best practices from other countries or international rules, using them as a genuine "catalyst" to improve tax administration, seen as a whole. However, procedures and measures in place to collect as effectively as possible the tax owed by non-residents, can be used to collect taxes from domestic enterprises. This particularity is especially noticeable in states that are in the early stages of developing the capacity to manage income tax.

Bibliography

I. Doctrine

1. Cornelia Lefter, Simona Chirică, *Evitarea dublei impuneri internaţionale (Reglementări legale interne şi convenţii fiscale încheiate de România)*, „Economie teoretică şi aplicată", Vol. XVII, No. 9(550), 2010, pp. 38-51.
2. Florin Dumiter, Ştefania Jimon, *Double Taxation Conventions in Central and Eastern European Countries*, „Journal of Legal Studies", Vol. 18, Issue 32/2016, pp. 1-12.
3. Florin Dumiter, Adriana Pușcaș, Lavinia Dudaș, Loredana Pribac, Ștefania Jimon, *Fundamentarea Convențiilor de evitare a dublei impuneri fiscale internaționale în România. O abordare holistică*, Adaptabilitate, divergențe și perspective în contabilitatea și fiscalitatea contemporană, Simpozion „Pavel Ciuce", 15th edition, Moneasa, 2017, pp. 237-258.
4. Georgiana Covrig, *Conventions for the avoidance of double – taxation. Romania case*, „Contemporary Readings in Law and Social Justice", Volume 4(1), 2012.
5. Ioan Condor, *Evitarea dublei impuneri internaţionale*, Autonomous Publishing House „Official Monitor", Bucharest, 1999.

II. Legislation

1. Law no. 571/2003 regarding the Fiscal Code, as amended and supplemented, including its implementing rules.
2. Government Ordinance no. 92/2003 regarding the fiscal procedure, republished, with subsequent amendments and completions, including its implementing rules.
3. Law no. 227/2015 regarding the Fiscal Code, as amended and supplemented, including its implementing rules.
4. Law no. 207/2015 on the Code of Fiscal Procedure, with subsequent amendments and completions.
5. Order no. 23.09 / 2017 of August 1, 2017 amending the Order of the National Agency for Fiscal Administration no. 3626/2016 establishing a list of reporting jurisdictions.
6. OECD *Preventing the Granting of Treaty Benefits in Inappropriate Circumstances: Action 6 2014*, para. 51-53, 2014 OECD, International Organizations IBFD Documentation.