

## **INTERNATIONAL COOPERATION IN COMBATING INCOME AND PROPERTY TAX EVASION: LEGAL FOUNDATIONS**

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*The basis of tax relations is the norms reflected in legislative acts. It is a positive fact that the Republic of Azerbaijan has so far signed Agreements on the Elimination of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income with 57 (fifty-seven) countries in order to ensure international cooperation and increase efficiency. It is also commendable that the Rules for the administration of international agreements on the elimination of double taxation concluded between the Republic of Azerbaijan and other states were approved by the Decision of the Board of the Ministry of Taxes of the Republic of Azerbaijan dated June 12, 2017. According to these Rules, a resident of the Republic of Azerbaijan is issued a residency certificate by the tax authority of the Republic of Azerbaijan for the purpose of applying an international agreement. Both resident individuals and non-residents must apply to the tax authorities with the appropriate application forms to take advantage of international agreements. 5 (five) application forms have been approved to use the benefits of international agreements on the elimination of double taxation in the Republic of Azerbaijan.*

*Keywords: financial, tax, state, international, economic.*

International relations in the field of taxation can be considered one of the most significant instruments in regulating global economic relations. Expansion and intensification of international cooperation on taxation issues is one of the priority goals of the Republic of Azerbaijan in the financial and economic sphere. This is primarily due to the fact that

international cooperation is an effective way to defend the independence of one's own tax bases and a guarantee of the correct determination of tax rights between countries that are parties to agreements.

The “Convention on Mutual Administrative Assistance in Tax Matters” [1], adopted in Strasbourg on January 25, 1988, plays an important legal basis in the implementation of international cooperation in the field of taxation. As of January 7, 2025, 149 (one hundred forty-nine) States have acceded to this Convention [4]. The Republic of Azerbaijan ratified the aforementioned Convention by the Law dated December 9, 2003 [7]. The Republic of Azerbaijan also ratified the Protocol “On Amendments to the Convention on Mutual Administrative Assistance in Tax Matters” signed in Paris on May 23, 2014, with the declaration of the Republic of Azerbaijan by the Law dated December 16, 2014 [11].

We would like to note that, one of the important goals of international cooperation in the tax sphere is the prevention of double taxation, since this hinders the effective implementation of economic activity, including international activity. In this regard, the prevention of double taxation gives impetus to economic growth.

The phenomenon of double taxation and tax evasion has arisen in light of various monetary, financial, social and political aspects. For example, over a long period of time, individuals and corporations have received significant income from investments, business operations

or professional activities carried out in foreign countries. The number of people involved in such transactions has increased in recent years due to decreasing travel costs and more convenient and less expensive ways of holding assets abroad.

Y.A. Kalbiyev states: “The potential for double taxation, as noted by P.Dernberg, arises in the event of a conflict of claims (requirements) to tax jurisdiction. For example, country A may claim to tax a person (including a company) based on their citizenship or place of residence, while country B may claim to tax the income on the grounds that it is earned in its country. There is a rule in international taxation: the priority right of taxation is given to countries with territorial ties, that is, the country where the income is earned, and the residual right of taxation is given to the country of citizenship or residence of the person.

Legal double taxation arises when the same taxpayer is subject to comparable taxes in two or more countries in relation to the same taxable object during the same period. It is in relation to double legal taxation that the term “international double taxation” is more often used” [5, pp. 426-427].

M.Lang states that, In double taxation, two different states levy taxes on the same taxpayer for the same period of time and for the same object. At the same time, the following elements are also essential for the occurrence of double taxation: the participation of a foreign element in the tax relations that have arisen; independent legal initiatives that arise as a result of the existence of the residency and territorial principles and conflict with each other; the absence of a bilateral or multilateral agreement between states on the resolution of tax problems [6, pp. 4-5].

K.Holmes states that, Double taxation arises as a result of the following inconsistencies between the national legislation of two countries:

✓ Source-source conflict - occurs when both countries claim that income or capital was earned in their territory (within their borders) in accordance with their national legislation;

✓ Residence-residence conflict - occurs when both countries consider an individual to be their tax resident in accordance with national legislation (dual residency);

✓ Source-resident conflict - is the most common form of double taxation arising from cross-border transactions. A conflict arises when two countries tax the same income or capital because, under national law, the taxpayer is considered a resident of one country, while the other country claims that the income or capital was derived from a source within its borders [3, pp. 22-23].

Currently, there is no generally accepted precise definition of double taxation. We consider it necessary to state that the taxes to which the Convention on Mutual Administrative Assistance in Tax Matters applies are as follows:

- i) income or profit taxes;
- ii) capital gains taxes, which are separate from income or profit taxes;
- iii) taxes on net assets received on behalf of the party, and b) in respect of the following taxes:

- i) Taxes on profits, income, capital gains or net income derived on behalf of political subdivisions or local authorities of a Party;

- ii) compulsory payments for social security payments made to social insurance organizations established in accordance with the state budget or public law;

- iii) other categories of taxes levied on behalf of a Party, except for customs duties, namely:

- A. estate, inheritance taxes or gift taxes;

- B. real estate taxes;

- C. general consumption taxes, similar to value-added taxes or sales taxes;

- D. specific taxes on goods or services, similar to excise duties;

- E. taxes on the use or ownership of motor vehicles;

- F. taxes on the use or ownership of movable property other than motor vehicles;

- G. any other taxes;

- iv) Taxes in the categories referred to in subparagraph (iii) received on behalf of political subdivisions or local authorities of a Party (article 2).

Cooperation between tax administrations within the framework of this Convention includes the exchange of information, including the simultaneous conduct of tax audits by both States, cooperation in the collection of taxes and the execution of requests for the submission of

documents, as well as the acceptance of provisional documents.

As a result of increased international cooperation in the field of taxation, the number of tax agreements is increasing. To date, the Republic of Azerbaijan has concluded bilateral agreements on the elimination of double taxation with 57 (fifty-seven) states. Those states are as follows: Federal Republic of Germany, Republic of Austria, Ukraine, Republic of Belarus, Kingdom of Belgium, United Arab Emirates, Bosnia and Herzegovina, United Kingdom of Great Britain and Northern Ireland, Republic of Bulgaria, Kingdom of Denmark, Czech Republic, People's Republic of China, Republic of Estonia, Republic of Finland, Republic of France, Georgia, Hashemite Kingdom of Jordan, Islamic Republic of Iran, Kingdom of Sweden, Swiss Confederation, Kingdom of Spain, State of Israel, Italian Republic, Canada, Republic of Korea, State of Kuwait, Republic of Latvia, Republic of Lithuania, Grand Duchy of Luxembourg, Republic of Hungary, Republic of Malta, Kingdom of Morocco, Republic of Montenegro, Republic of Moldova, Kingdom of the Netherlands, Kingdom of Norway, Republic of Uzbekistan, Islamic Republic of Pakistan, Republic of Poland, State of Qatar, Republic of Kazakhstan, Kyrgyz Republic, Republic of Romania, San Marino, Republic of Slovenia, Republic of Serbia, Slovak Republic, Saudi Arabia, Republic of North Macedonia, Republic of Tajikistan, Republic of Turkiye, Turkmenistan, Vietnam, Japan, Republic of Greece, Republic of Croatia, etc.

Let's take a look at some of the above-mentioned bilateral agreements. The Law of the Republic of Azerbaijan dated April 15, 1997 approved the Convention between the Government of the Republic of Azerbaijan and the Government of Georgia for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Income and Property Taxes, consisting of 29 (twenty-nine) articles [8]. Article 1 of the aforementioned legal document, entitled "Persons to whom the Convention applies", states that this Convention applies to persons who are residents of one or both of the Contracting States.

Article 2 of the Convention is entitled "Types of Taxes to which the Convention ap-

plies", Article 3 "General Definitions", Article 4 "Resident", Article 5 "Permanent representation", Article 6 "Real estate income", Article 7 "Income from entrepreneurial activity", Article 8 "International transportation", Article 9 "Enterprises included in the Association", Article 10 "Dividends", Article 11 "Interest", Article 12 "Royalties", Article 13 "Proceeds from the alienation of property", Article 14 "Income from independent personal services", Article 15 "Income from paid work", Article 16 "Directors' fees", Article 17 "Actors and athletes", Article 18 "Pensions", Article 19 "Employees in the civil service", Article 20 "Students", Article 21 "Other income", Article 22 "Property", Article 23 "Elimination of double taxation", Article 24 "Non-discrimination", Article 25 "Mutual agreement procedure", Article 26 "Exchange of information", Article 27 "Employees of diplomatic missions and consular post", Article 28 "Entry into force of the Convention", and Article 29 is entitled "Termination of the Convention".

According to Article 23 of the said Convention, where a resident of one of the Contracting States derives income or owns capital which, in accordance with the provisions of this Convention, is taxable in the other Contracting State, the amount of tax paid in that other State on that income or capital shall be deducted from the amount of tax levied on that resident in the first-mentioned State in respect of that income. However, the amount so deducted shall not exceed the amount of tax charged on such income or capital under the tax laws of the first-mentioned State.

Where in accordance with any provision of this Convention income or capital derived by a resident of a Contracting State is exempt from tax in that State, then in calculating the tax on the remaining income or capital of that resident, the exempted income or capital may be taken into account.

The Law of the Republic of Azerbaijan dated March 24, 2000 approved the Convention between the Government of the Republic of Azerbaijan and the Cabinet of Ministers of Ukraine "On the Avoidance of Double Taxation and the Prevention of Evasion of Taxes on Income and Property" consisting of 29 (twenty-nine) articles. Article 6 of this Convention,

entitled "Income from Immovable Property", states:

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" has the meaning assigned to it by the law of the Contracting State in which the said property is situated. In all cases, the term includes property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the general provisions of law respecting landed property apply, rights granted in respect of immovable property, and variable or fixed payments as consideration for the working of, or the right to work, mineral resources, sources and other mineral deposits. Ships and aircraft are not regarded as immovable property.

3. The provisions of paragraph 1 of this Article shall apply to income derived from the direct use, letting or any other form of use of immovable property.

4. The provisions of paragraphs 1 and 3 of this Article shall also apply to income derived by enterprises from immovable property and to income derived from immovable property used for the performance of independent personal services [9].

The Law of the Republic of Azerbaijan dated April 10, 2007 approved the "Convention between the Government of the Republic of Azerbaijan and the Government of the United Arab Emirates for the Elimination of Double Taxation with respect to Taxes on Income and on Capital", consisting of 30 (thirty) articles. Article 8 of the said Convention, entitled "Profits from Business Activities", states:

1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2) Subject to the provisions of paragraph 3, where an enterprise of a Contracting State car-

ries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3) In determining the profits of a permanent establishment - there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State, in which the permanent establishment is situated or elsewhere.

4) Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7) Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article [10].

By the Resolution of the Milli Majlis of the Republic of Azerbaijan dated September 29, 1995, the Convention between the Government of the Republic of Azerbaijan and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention

of Fiscal Evasion with respect to Taxes on Income and on Capital Gains was approved [14].

In accordance with Article 23 of the said Convention entitled "Limitation of relief", where under any provision of this Convention any income is relieved from tax in a Contracting State and, under the law in force in the other Contracting State a person, in respect of that income, is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the amount thereof, then the relief to be allowed under this Convention in the first-mentioned Contracting State shall apply only to so much of the income as is taxed in the other Contracting State.

Notwithstanding the provisions of any other Article of this Convention, a resident of a Contracting State who, as a consequence of domestic law concerning incentives to promote foreign investment, is not subject to tax or is subject to tax at a reduced rate in that Contracting State on income or capital gains shall not receive the benefit of any reduction in or exemption from tax provided for in this Convention by the other Contracting State if the main purpose or one of the main purposes of such resident or a person connected with such resident was to obtain the benefits of this Convention.

The Law of the Republic of Azerbaijan dated September 30, 2016 approved the "Convention between the Government of the Republic of Azerbaijan and the Government of the Kingdom of Sweden for the Elimination of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income" and its Protocol [13]. Article 10 of this Convention, entitled "Dividends", states:

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 20 per cent of the capital of the company paying the dividends and the participation in that company exceeds 200 000 Euros or its equivalent in the national currencies of the Contracting States;

(b) 15 per cent of the gross amount of the dividends in all other cases.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 7 of the Convention regulates issues related to profits from entrepreneurial activities, and Article 14 regulates issues related to independent personal services.

The Law of the Republic of Azerbaijan dated October 02, 2023, approved the “Agreement between the Republic of Azerbaijan and the Slovak Republic for the Elimination of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income”, consisting of 30 (thirty) articles (This Agreement shall enter into force on April 01, 2024) [12]. The said Agreement shall apply to persons who are residents of one or both of the Contracting States. For the purposes of this Agreement, income derived by (through) any entity or arrangement which is considered to be wholly or partly fiscally transparent under the tax laws of one of the Contracting States shall be deemed to be income of a resident of a Contracting State, provided that the income is treated by that Contracting State as income of a resident of that Contracting State for the purposes of taxation.

Article 2 of the said Agreement (this Article is entitled “Taxes covered”) states:

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its administrative-territorial subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises

3. The existing taxes to which the Agreement shall apply are in particular:

- a) in the Slovak Republic:
  - (i) the tax on income of individuals;
  - (ii) the tax on income of legal persons;
- b) in the Republic of Azerbaijan:
  - (i) the tax on profit of legal persons;
  - (ii) the income tax of physical persons.

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

It is necessary to note that, on August 4, 2016, the President of the Republic of Azerbaijan signed an Order “On approval of the direc-

tions of reforms to be carried out in the field of taxation in 2016 and on improving tax administration” [2]. In that Order, simplification of the rules for the administration of international agreements on the elimination of double taxation between the Republic of Azerbaijan and other states was identified as one of the directions of reforms to be carried out in the field of taxation.

In November 2024, an employee of the State Tax Service under the Ministry of Economy held a videoconference meeting with the Deputy Chief Executive Officer of the UK Revenue and Customs Administration. The meeting discussed the exchange of information in the field of taxation between Azerbaijan and the United Kingdom, the organization of internship programs, and the format of bilateral and multilateral cooperation. The benefits of joint activities for increasing transparency in the global tax environment, organizing effective cooperation, and reducing tax evasion were highlighted.

In November 2024, the Head of the State Tax Service under the Ministry of Economy of the Republic of Azerbaijan also held a videoconference meeting with the Director General of the Swedish Tax Agency. During the meeting, it was noted that bilateral economic relations between Azerbaijan and Sweden are developing successfully in various fields, including the tax field, and discussions were held on priority areas of joint activity, work done in the field of promoting international relations between tax authorities, and perspective projects.

Although the Republic of Azerbaijan has signed Agreements on the Elimination of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income with a number of countries, it has not yet signed such Agreements with some countries (for example, the Arab Republic of Egypt, the Sultanate of Oman, the Kingdom of Bahrain, the Republic of Ireland, Iceland, the Republic of Albania, the Portuguese Republic, the Federative Republic of Brazil, the Argentine Republic, etc.). We believe that it would be appropriate for the Republic of Azerbaijan to conclude an Agreement on the Elimination of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income with the above-mentioned states.

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