



ANALYSIS OF THE APPLICATION OF INTERNATIONAL TAX TREATIES

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Abstract:

In this article, in the context of the active development of the Republic of Uzbekistan and the processes of globalization in the world economy, the constantly growing mobility of international investment resources, actively contributing to the development of the capital market, such tasks are set for all countries. Scientific proposals and recommendations have been developed for the creation of national tax legislation, which not only ensures the investment attractiveness of the national economy for foreign capital, but also allows the tax authorities to ensure tax revenues in full and on time.

Keywords: resident, non-resident, double taxation, offshore, source of income, tax administration, tax reporting, traditional plan, international taxation, global income, property taxes.

Introduction:

The process of globalization taking place in the world economy requires countries to use the standards of international organizations to eliminate double taxation. This has been done by the member states of the Organization for Economic Cooperation and Development, as well as more than 120 countries and jurisdictions that are parties to the Convention on Multilateral Administrative Assistance in Tax Matters, in order to eliminate double taxation agreements.

Particular importance is attached to strengthening interstate cooperation in the field of preventing double taxation in the taxation of residents of different countries of the world. Introduction of international standards into national legislation on the implementation of effective measures against tax evasion and other obligatory payments or evasion of profit taxation by them, simplification of taxation mechanisms for the activities of non-resident legal entities, legal regulation of related issues. is becoming increasingly important.

Analysis of literature on the topic:

Within the framework of the research work, the following works and views of foreign and local scientists regarding the development of the practice of applying the provisions of international tax treaties are analyzed. In particular:

In the legal literature of a number of countries of the world, serious attention is paid to the ideological, political, historical and legal aspects of the development of the practice of applying the provisions of



ternational tax treaties. This is evidenced, first of all, by the works of such scientists as Atiq J.K.¹ Fulcheri Bruni Roccia², Edward N. Lattwak³, Philip Baker⁴, Dernberg RL⁵.

It should be noted that the first works in the scientific literature of the Republic of Uzbekistan on the need to increase the role of the interconnection of the norms of national and international law, as well as the implementation of the provisions of international treaties, appeared only at the end of the last century. As an example, we can cite the dissertation work of G.A. Matkarimova⁶. For the first time, it considered issues related to the relationship between the legal system of the Republic of Uzbekistan and international law. However, this work is devoted to the general system of law and does not touch upon the issues of taxation.

Unfortunately, there are very few scientific works on the development of the practice of application of international tax treaties in Uzbekistan, of the latter we can note the article by D.B. Imomniyozov.⁷ on the importance of the principle of double taxation. However, this article is also based on the scientific works of foreign scientists.

It should be noted that scientists agree on the need to improve the national legal framework for the development of the practice of applying international tax treaties.

In the work of Shakhmametyev A.A.⁸ It is noted that in the legal regulation of taxation, despite the increasing role of international legal norms, the sources of the domestic (national) legal system still retain their primary importance. Conventionally, the latter can be defined as "internal" sources of legal norms, i.e. recognized and reproduced directly by the national system of law itself as a form of expression (and consolidation) of legal norms.

S.V. Khizhnyak noted that "the implementation of the norms of international law in the domestic sphere is sometimes called implementation. In implementation, the main question is about those norms of international law that can be applied on the territory of our country."⁹

When considering the process of interaction between international and national law, it is necessary to take into account some features due to the specifics of the subject of regulation, for example, Shakhmametyev A.A.¹⁰ noted that "the interaction of domestic tax rules and international public law

¹ Atiq J.C. The Problem of Reciprocity in Transnational Enforcement of Tax Judgments // Yale Studies of World Public Order. 1981. Vol. 8. № 1.

² Fulcheri Bruni Roccia. Geo-economic factor in financial relations with foreign countries // Carlo Jean, Paolo Savona. Geoeconomics. Moscow, 1997.

³ Edward N. Lattwak. From Geopolitics to Geoeconomics // The NationalInterest, summer 1990.

⁴ Baker P. An Analysis of Double Taxation Treaties and their Effect on Foreign Direct Investment // International Journal of the Economics of Business. 2014. T. 21. №- 3. C. 341-377;

⁵ Dernberg P.L. Mezhdunarodnoe nalogooblozhenie [International Taxation]. Moscow, 1997.

⁶ See: Matkarimova G.A. International Law and the Legal System of the Republic of Uzbekistan: Relationship and Mutual Influence. Avtoref. diss. Cand. Legal. Sci.-T.: TSUI, 1999, 26 p. (<https://unilibary.uz/dissertation/264592>)

⁷ Imomniyazov D.B.// "The importance of the principle of double taxation"// Journal "Oriental Renaissance: Innovative, Educational, Natural and Social sciences" 2021;

⁸ Shakhmametyev A.A. International Tax Law: Educational and Methodological Complex. — M.: Trovant, 2009 [Elektronnyi resurs] – SPS «Konsul'tantPlyus»;

⁹ Khizhnyak S.V. Interaction of the National Law of Russia and International Law // Modern Law. 2002. № 7. [Electronic resource] – ATP "ConsultantPlus"

¹⁰ Shakhmametyev A.A. International Tax Law: Educational and Methodological Complex. — M.: Trovant, 2009 [Elektronnyi resurs] – SPS «Konsul'tantPlyus»;



norms governing interstate relations in the field of taxes is one of the characteristic features of the tax and legal system of a modern state."

Russian scientist Shpyrko P.S.¹¹ In his scientific article, he noted that International Tax Treaties play a key role in countering tax evasion and improving international tax exchange. Their effective application contributes to the creation of a fairer and more stable tax system that contributes to the economic development of states and provides a sustainable financial basis for solving social and economic challenges.

In her scientific article, I. Y. Timofeeva noted¹² that modern international tax relations are regulated by interstate tax conventions and treaties on the avoidance of double taxation or on the provision of possible measures for tax control and collection of tax payments, which determine the procedure for differentiating the rights of one state in relation to residents and non-residents when determining the tax base and the procedure for paying taxes in another state. However, Methods of tax administration are established by domestic national tax legislation.

Analysis and discussion of the results

Before proceeding to the analysis of the application of the provisions of international tax treaties, it is necessary to carry out an inventory of these treaties for the availability of tax administration tools. The most common international treaty in the tax sphere is the treaty regulating the avoidance of double taxation and the prevention of tax evasion. In most cases, when it comes to international tax treaties, this treaty is meant. It should be noted that modern international treaties regulating the avoidance of double taxation and the prevention of tax evasion are based on the model tax conventions of the United Nations (UN) and the Organization for Economic Cooperation and Development (OECD). It is also worth noting that many countries have also prepared their own model tax treaties, which they use to start bilateral negotiations. For the most part, these conventions are not published and are used exclusively for official use.

It is important to understand that the OECD Model Convention is based on the priority of the rights of capital-exporting countries over capital-importing countries, and therefore the tax distribution is not in favor of the source countries. The parties to such a treaty are approximately at the same level. However, in the case of a first-world treaty with developing countries, the fundamental provisions of such a Model Convention are not appropriate for use. In this regard, developing countries, under the auspices of the United Nations, have developed another Model Treaty that provides for the interests of capital-importing countries. The Republic of Uzbekistan has also concluded many international treaties with foreign countries in the field of taxation. Uzbekistan, as a full-fledged subject of international law, pursues a consistent policy of strengthening the legal framework of interaction with other countries of the world in the field of taxation. Since 1993, the Tax Committee has been working on the formation of a system of

¹¹ Shpyrko Pavel Sergeevich // International Tax Agreements: Analysis of Principles and Mechanisms of Counteraction to Tax Evasion // Agrarian and Land Law. 2023. №8 (224). Available at: <https://cyberleninka.ru/article/n/mezhdunarodnye-nalogovye-soglasheniya-analiz-printspov-i-mehanizmov-protivodeystviya-ukloneniyu-ot-uplaty-nalogov> (accessed: 23.12.2023).

¹² Timofeeva I.Y. Development of International Tax Legal Relations in the Era of Globalization and National Interests of the State // National Interests: Priorities and Security. 2010. №11. Available at: <https://cyberleninka.ru/article/n/razvitie-mezhdunarodnyh-nalogovyh-pravootnosheniy-v-epohu-globalizatsii-i-natsionalnye-interesy-gosudarstva> (accessed: 23.12.2023).



international treaties in the field of taxation with the countries of near and far abroad. The treaties concluded and being concluded by Uzbekistan are based on the treaty model developed by the OECD.¹³ To date, there are 55 treaties in force in the Republic of Uzbekistan on the avoidance of double taxation and the prevention of tax evasion on income and capital indirect taxes, cooperation in compliance with tax legislation, mutual assistance in the field of combating violations of tax legislation, exchange of information, as well as multilateral agreements on the exchange of information, including automatic ones.

In addition, Uzbekistan joins the Global Forum on Transparency and Exchange of Information for Tax Purposes. At the same time, despite the presence of such a large number of various international tax treaties in the tax legislation of the Republic of Uzbekistan (Tax Code¹⁴, Law on the State Tax Service¹⁵, Regulation on the State Tax Committee of the Republic of Uzbekistan¹⁶) there are no provisions regulating the procedure for the exchange of information, including automatic information, conducting mutual agreement procedures and providing mutual assistance in the collection of taxes. implementation of joint tax control with the fiscal authorities of other countries. Taking into account the structure of the system of international treaties, the object of the research is the provisions of national tax legislation for the application of the norms of international treaties in the field of application of tax exemptions or reduced tax rates, as well as the elimination of double taxation, the implementation of mutual agreement procedures and the exchange of tax information, and the provision of assistance in the collection of taxes.

Article 354 of the Tax Code of the Republic of Uzbekistan contains provisions on exemptions from taxation or the application of reduced tax rates on income of non-residents when paying income taxed at the source of payment in accordance with the established procedure, in accordance with the provisions of an international treaty. The procedure for applying exemption from taxation or reduced tax rates under international treaties of the Republic of Uzbekistan is determined by Article 357 of the Tax Code. In accordance with this procedure, a tax agent has the right to independently apply tax exemption or a reduced tax rate if the recipient of income is a tax resident of a state with which an international treaty of the Republic of Uzbekistan is concluded. The provisions of an international treaty of the Republic of Uzbekistan shall apply under the following conditions:

- submission of a document confirming tax residency no later than the date of payment of income.
- when paying income to a non-resident in the form of dividends, interest and (or) royalties, the tax agent, provided that the non-resident has the actual right to this income. It should be noted that the Republic of Uzbekistan is one of the first CIS countries to abolish the declarative procedure for applying the provisions of international tax treaties

¹³ Information from the official website of the Tax Committee // <https://soliq.uz/page/xalqaro-hamkorlik> Accessed on 03.05.2024

¹⁴ New edition of the Tax Code of the Republic of Uzbekistan, approved by the Law of the Republic of Uzbekistan dated 30.12.2019 No ZRU-599;

¹⁵ Law of the Republic of Uzbekistan "On the State Tax Service", dated 29.08.1997 No 474-I;

¹⁶ Appendix No 1 to the Resolution of the Cabinet of Ministers of April 17, 2019 No 320;



Rice. 1 Information on the amounts of exempt income and taxes of non-residents as a result of the application of the provisions of international treaties for the period from 2020 to 2022¹⁷

Year	Number of international treaties applied	Income exempt non-residents (billion soums)		
		Number of subjects	Size Income	Tax amount
2020	47	1704	1 530,6	198,1
2021	49	651	5 129,8	557,4
2022	50	801	5 573,6	637,1
Total:		11 064	12 234	1 392,5

According to the data received, as a result of the application of provisions on exemption from taxation and (or) reduced tax rates under international treaties, the amount of unpaid tax on income of non-residents in Uzbekistan for the period from 2020 to 2022 amounted to 1.4 trillion soums, of which 198.1 billion soums in 2020, 557.4 billion soums in 2021, and 637.1 billion soums in 2022.

It should also be noted that the geography of investments corresponds to the geography of existing international treaties on the avoidance of double taxation signed by the Republic of Uzbekistan. The presence of tax treaties contributed to an increase in the inflow of foreign investment into the republic due to the elimination of double taxation of entrepreneurs of the two countries.

Rice. 2. Information on the geography of application of the provisions of international treaties in 2022¹⁸

№	Name of States	Income of non-residents exempted (billion soums)		
		Number of subjects	Amount of income	sum Tax
1	Russia	136	1 257,0	205,6
2	Korea	18	1 350,2	143,8
3	UAE	11	1 046,1	64,7
4	Turkey	70	181,2	30,7
5	China	52	251,2	27,6
Altogether:		801	5 573,6	637,1

Regarding the mechanism of "elimination of double taxation".

¹⁷ The information was formed by the author on the basis of internal data of the Tax Committee.

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Articles 342 and 399 of the Tax Code of the Republic of Uzbekistan determine the procedure for offsetting the corporate income tax and personal income tax actually paid (withheld) in accordance with the legislation of a foreign state and (or) an international treaty of the Republic of Uzbekistan.

It should be noted that the offset of the amounts of income tax or personal income tax is carried out if the following conditions are met at the same time:

- 1) on income subject to taxation in the Republic of Uzbekistan;
- 2) if there is an international treaty with the Republic of Uzbekistan;
- 3) if there is a document confirming the payment (withholding) of such tax.

At the same time, the amount of the offset amount of income tax paid (withheld) outside the Republic of Uzbekistan may not exceed the amount of tax payable by the taxpayer in the Republic of Uzbekistan for the tax period in which the specified income is to be received (received).

A document confirming the payment (withholding) of tax outside the Republic of Uzbekistan is a certificate of the competent authority of a foreign state or another document confirming the fact of payment of tax outside the Republic of Uzbekistan.

In addition, the established forms of tax reporting provide¹⁹ for appropriate lines that reduce the amount of income tax or personal income tax payable in Uzbekistan. Consequently, the national tax legislation contains exhaustive provisions on the application of the *mechanism of "elimination of double taxation"* provided for in international tax treaties.

Regarding the implementation of mutual agreement procedures.

The mutual agreement procedure is provided for by all international tax treaties in the field of avoidance and prevention of tax evasion concluded by the Republic of Uzbekistan.

The essence of this procedure is that the competent authorities of the states parties to the international treaty can reach an agreement on the application of the provisions of the international treaty on controversial issues that cannot be resolved at the domestic level. In other words, it is a negotiation process on a specific case.

In international practice, this tool is quite widespread and is one of the indicators of international cooperation among tax authorities.

According to the OECD, 9788 mutual agreement procedures were carried out among member countries in 2022. The top three in terms of mutual agreement procedures among OECD member countries are Germany, France and Italy: as of the end of 2022 – 1424, 986 and 924 cases, respectively²⁰.

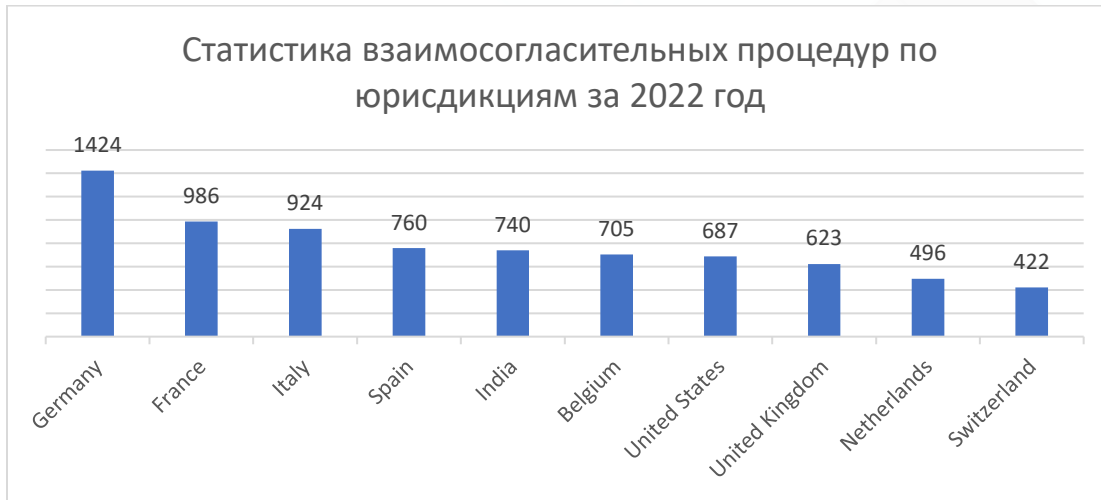
The number of cases considered in the OECD member countries within the framework of mutual agreement procedures increased by 94% from 2006 to 2022²¹.

The average terms of the external (interstate) stage of mutual agreement procedures: in 2022 it was 24.43 months, in 2020 – 18.5 m. (a detailed table of data is presented in Appendix No 2).

¹⁹ Resolution of the State Tax Committee of the Republic of Uzbekistan "On Approval of Tax Reporting Forms", registered on 24.02.2020, reg. Number 3221.

²⁰ Официальный сайт ОЭСР // <https://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics-2022-per-jurisdiction.htm#tpcases> // дата обращения 03.05.2024 г.

²¹ Официальный сайт ОЭСР // <https://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics-2022-inventory-trends.htm> / дата обращения 03.05.2024 г.



Rice. 1 Information on ongoing mutual agreement procedures by jurisdiction for 2022²²

The institute of mutual conciliation procedures in Uzbekistan practically does not operate, according to A. Egamberdiev, an employee of the Department of International Tax Relations of the Tax Committee.²³ There are no examples of applications for these procedures for the period from 2020 to 2023. However, it is necessary to understand that due to the lack of cases on the implementation of mutual conciliation procedures, there are real cases when taxpayers taxed twice in different countries due to unclear provisions of an international tax treaty are not able to solve this problem.

Regarding the exchange of tax information. Since bilateral international treaties in the field of avoidance of double taxation and prevention of tax payment are aimed not only at eliminating double taxation, but also at preventing tax evasion, they almost always contain provisions on the exchange of information. Provisions on the exchange of information are provided for in all 55 international treaties signed by the Republic of Uzbekistan.

At the same time, the requested state is not entitled to refuse to provide information only because such information is at the disposal of a bank, other financial institution, nominee holder, agent or trustee, or contains information about property interests in relation to a person. As such, the sharing of information on request is not subject to internal restrictions such as bank secrecy or other similar provisions.

At the same time, Article 29 of the Tax Code stipulates that the disclosure of tax secrets does not include the provision of the requested information about the taxpayer to the tax or other relevant authorities of other states in accordance with international treaties of the Republic of Uzbekistan. The national tax legislation also enshrines the right of the tax authorities to receive and use information obtained through the international exchange of information. 12 of the Regulations on the Interregional State Tax Inspectorate for Large Taxpayers²⁴ The Interregional Tax Inspectorate has the right to receive from the competent authority

²² The information was formed by the author, based on information from the official website of the OECD.

²³ A. Egamberdiev – Chief State Tax Inspector of the Department of International Tax Relations.

²⁴ Appendix No 2 to the Resolution of the Cabinet of Ministers of April 17, 2019 No 320



of a foreign state in the field of tax administration, in coordination with the Committee, information on the fulfillment of obligations of tax legislation, as well as international treaties on the part of large taxpayers and their related legal entities. Regional Tax Departments, the Republic of Karakalpakstan and the city of Tashkent.

According to the Tax Committee, in 2023, about 62 requests were received from foreign competent authorities, while about 40 international requests for the exchange of information were sent from the tax authorities of Uzbekistan. Thus, there is a rather limited use of this tax administration tool by the tax authorities of Uzbekistan (detailed information is given in tabular form in Appendix No 3). To summarize, it can be noted that today the tax authorities of Uzbekistan have experience, as well as methodological foundations for the exchange of information, but the exchange of information is carried out only in isolated cases and for the most part does not bring high results.

Suggestions and Recommendations

1. The current situation in the application of the provisions of international tax treaties is analyzed and the problems in their application are identified. In particular, there is no practice of mutual agreement procedures, which leads to an increase in the tax burden of domestic exporters, insufficient application of the mechanism for providing information from foreign tax authorities and assistance in collecting taxes, as well as the absence of an obligation to provide a document confirming tax residency and a certificate of the amounts of income received and tax paid by non-residents of the Republic of Uzbekistan.

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