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The Arbitration Convention as One of the Measures to Eliminate Double Taxation in the European Union and in the Slovak Republic

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Abstract

In the world of taxes, double taxation or double non-taxation represents one of the main problems within international taxation. Fair taxation, which manifests itself as a taxation of incomes in countries where the value is created in the light of legal tax optimization, is an important issue for a lot of international organisations and a relevant topic of innumerable initiatives and statements. In that regard, tax disputes between two or more states arise whose subject is the profit allocation. Such disputes are the main object of the so-called Arbitration Convention, which stipulates international challenge of the present and future of the profit allocation. Secondary subject of this article is to point out other relevant international and national arbitration measures within the European Union and Slovak Republic.

Keywords

Arbitration Convention; Double Tax Treaty; Double Taxation; Mutual Agreement Procedure; Contracting State.

1 Introduction

Fair taxation is an important isser for a lot of international organisations and a relevant topic of innumerable initiatives and statements. One of these are interstate agreements, usually in the form of legally binging documents, the subject of which is the solution of double taxation or double non-taxation problems and the coordination of states in these cases – tax arbitrations. Nowadays, tax disputes can be solved by more than one legal procedure. In this article, we will analyze legal opportunities for tax disputes

arbitration between more than one state within the world connected with the fair redistribution of tax profits of individual states.

The risk of double taxation[1] may arise in respect of many types of incomes – real estates, dividends, interests, licence fees – that are paid from one country to another. The reason behind this is not so difficult to grasp – every single state needs to fund its expenses and tax profits are the best way to do so.[2] Such a tax profit distribution is also connected with the so-called transfer pricing rules. The basis of transfer pricing rules is the requirement to adhere to the arm's length principle in transactions between related parties. According to that, tax disputes arise between two or more states for the tax income of international enterprises which cooperate in more than one county (usually in the form of mother – subsidiary – sister company, etc.). The substance of their existence is expressed at national level in Section 17 para. 5 of the Slovak Act on Income Tax, according to which also the difference by which prices or conditions in controlled transactions (i.e., transactions between the taxpayer and its related parties) differ from prices or conditions that would be applied between unrelated parties in comparable transactions must be included in the taxpayer's tax base. This principle reflects a standard wording of most Double Tax Treaties ("DTT") based on OECD[3] and UN Model Tax Treaties, namely articles corresponding to Art. 9 of both Model Tax Treaties. The importance of the above rules and their thorough application by the respective tax administrations is underlined by the existing conclusions in academic literature which states that the profit shifting in the OECD countries is significant and that the extent of such profit shifting is such that *"on average, a unilateral increase in the corporate tax*

1 According to the double taxation, *Hejl* states, that *"one of the exceptions is the tax paid abroad, which can be set off against the total tax liability according to the rules in law on income taxes or in the relevant double taxation agreement. At the very least, however, this means a non-refundable tax paid abroad, again, regardless of the individual situation of the taxpayer. The above procedure for taxation of profit shares and interest is also common in other countries. Double taxation treaties may set a maximum the amount of the withholding tax rate in the source country which he is required to pay resident of the other state."* See more at: HEJL, F. Zdanění individuálního investora. In: JANOVEC, M. et al. (eds.). *COFOLA 2020.* Brno: Masaryk University, 2020, p. 1017.

2 KŘÍŽOVÁ, T. Způsob propagace zavádění nových daní na příkladu digitální daně. In: JANOVEC, M. et al. (eds.). *COFOLA 2020.* Brno: Masaryk University, 2020, p. 267.

3 The Organisation for Economic Co-operation and Development ("OECD").

rate does not lead to an increase in corporate tax revenues owing to a more than offsetting decline in reported profits." [4]

In the international taxation, firstly, when deciding the tax profits distribution between states, we have to consult a DTT. In our case, we have chosen the Agreement between the Slovak Republic and the Czech Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital ("DTT between Slovak Republic and Czech Republic"). DTTs are concluded with the aim of avoiding double taxation of income and capital without creating opportunities for non-taxation[5] or reduction of taxation through tax evasion or avoidance. In addition, EU has developed its own set of rules that apply to such a dispute resolution, which resulted in creating of another set of laws. In that regard, if we talk about tax dispute resolution, we distinguish i) international level – represented by DTTs, ii) EU level – represented by its own regulation, and iii) national level.

The legal basis for arbitration or dispute resolution is performed through the so-called "mutual agreement procedure" ("MAP"). It is set by DTTs and, on the EU level, by the EU Arbitration Convention[6]. Within the legal framework of the Slovak Republic, Guideline MF020525/2017-724 stipulates the steps to be taken within the mutual agreement procedure ("Slovak Republic guidelines"). Slovak Republic guidelines take part in negotiations on the avoidance of double taxation with several other countries. The particular steps to be taken during MAP also depend on national regulations, which are rather brief and require more detailed guidance. This

4 BARTELSMAN, E. J. and R. BEETSMA. Why pay more? Corporate tax avoidance through transfer pricing in OECD countries. *Journal of Public Economics,* 2003, Vol. 87, no. 9–10, pp. 2225–2252; CHOMA, A., M. KAČALJAK and P. RAKOVSKÝ. Transfer pricing safe harbours in the Slovak Republic. *Financial Law Review*, 2020, no. 17 (1), p. 71.

5 Double non-taxation causes two negative consequences: (1) it deprives Member States of considerable revenue and (2) causes unfair competition between undertakings in the single internal market but also between Member States. See more at BABČÁK, V. Zamyslenie sa nad problémom dvojitého nezdanenia. In: TOMÁŠKOVÁ, E., D. CZUDEK and J. VALDHANS (eds.). *DNY PRÁVA 2018. Část V. – Interakce práva a ekonomie*. Brno: Masaryk University, 2019, p. 9.

6 Convention No. 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises. Joint Declarations ("Arbitration Convention").

is the purpose of the above-mentioned measures of dispute resolutions which focus on several fields, e.g.:

- legal basis for MAP;
- subject matter and purpose of MAP;
- preconditions for initiation of MAP;
- application of the taxpayer for MAP initiation and its essentials;
- the competent authority and communication with other bodies;
- specific steps, deadlines, creation of an advisory commission.

The condition for initiating MAP is not necessarily just the double taxation situation, but situations where there is a risk of double taxation may also be considered. Moreover, it also covers situations when there is an incorrect application of the DTT or the Arbitration Convention in cases of the application of state aid rules or other incentives to business support. However, the aim of MAP is not to facilitate the situations that lead to double taxation and to tax avoidance practices.

In the following text, we will discuss the above-mentioned procedures as the measures to initiate tax arbitration between two or more countries.

2 Double Tax Treaty With the Czech Republic

All DTTs concluded by the Slovak Republic contain provisions on the dispute resolution by agreement, i.e., they implement MAP. These provisions are usually based on Art. 25 of the OECD Model Tax Convention on Income and on Capital (known as OECD Model Convention).[7] At the same time, according to Section 1 para. 2 Act No. 595/2003 Coll., on Income Tax, as amended, *"international treaties take precedence over the law"*.[8]

DTTs are concluded with the aim of avoiding double taxation of income and capital without creating opportunities for non-taxation or reduction

7 Model Tax Convention on Income and on Capital 2017 (Full Version). *OECD* [online]. 25. 4. 2019 [cit. 16. 5. 2021]. Available at: https://www.oecd.org/ctp/model-tax-convention-on-income-and-on-capital-full-version-9a5b369e-en.htm

8 List of DTT that has The Slovak Republic, closed and valid, is located on the website of the Ministry of Finance of the Slovak Republic. Double Tax Treaties. *Ministry of Finance of the Slovak Republic* [online]. [cit. 16. 4. 2021]. Available at: https://www.mfsr.sk/en/taxes-customs-accounting/direct-taxes/income-tax/international-taxation/double-tax-treaties/

of taxation through tax evasion or avoidance. When resolving situations arising from practice, disputes may arise between Contracting States as to the correctness of individual provisions of the respective DTT. Such situations can lead to double taxation despite the existence of a valid DTT. This risk of double taxation exists, for example, in cases where the concerned Contracting States (or rather the financial administrations of those States) interpret the terms of the DTT differently or set out the facts of the case at issue differently. In practice, these discrepancies include for example, determining the tax residence, the establishment and existence of a permanent establishment, as well as the allocation profits of this permanent establishment, different classification of income and different characterization of entities, transfer pricing, etc. To resolve such tax disputes, DTTs also contain provisions that allow the competent authorities of the Contracting States to contact each other directly in order to resolve disputes under MAP.[9]

For the purposes of this article, we have been looking into the DTT between the Slovak Republic and Czech Republic. The competent authorities of the Contracting States shall endeavour to resolve them by agreement the situation of taxable persons subject to taxation which is not in accordance with the relevant DTT. Competent authorities are entitled to communicate directly, without using diplomatic channels. MAP is usually an effective and efficient way of resolving disputes arising from DTTs. In the Slovak Republic, the competent authority for resolving disputes, arising under a DTT, by agreement is the Ministry of Finance of the Slovak Republic ("Ministry of Finance"). The competent authority shall ensure the application of DTT in good faith and within the framework of MAP shall endeavour to reach an agreement with the competent authorities of the Contracting States, in accordance with the principle of equality and transparency.

According to the above-mentioned, the Slovak Republic and the Czech Republic, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, have agreed to DTT between Slovak Republic and Czech Republic.

9 The provisions on MAP are mainly found in Art. 25 of DTTs.

DTT between Slovak Republic and Czech Republic, in its Art. 24, providing for the so-called "Mutual Agreement Procedure", states: *"Where a person considers that measures of one or both Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of these States, present his case to the competent authority of the Contracting State of which he is a resident, or, if his case comes under Article 23, para. 1, to the competent authority of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement."*[10]

Provided the competent authority considers the objection justified and that it is not itself able to arrive at a satisfactory solution, it shall endeavour to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in compliance with this Agreement.

In the following paragraphs, DTT between Slovak Republic and Czech Republic states: *"Competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts which may arise as to the interpretation or application of this Agreement. They may also consult together in order to eliminate double taxation in cases which are not provided for in the Agreement. The competent authorities of the Contracting States may communicate with each other directly as well as through a common Commission consisting of their representatives for the purpose of reaching an agreement in the sense of the preceding paragraphs."*[11]

According to that, Art. 24 of DTT between Slovak Republic and Czech Republic applies to situations where the taxpayer considers that the measures of one or both Contracting States lead or will lead in his case to taxation which is not in accordance with the provisions of the DTT, while he may, irrespective of the remedies provided by the domestic law of the Contracting States, submit his case to the competent authority of the Contracting State in which he is a resident. According to Art. 24 para. 1, *"the taxpayer is also required to bring the case within three years of the first notification of a measure aimed*

10 Agreement between the Slovak Republic and the Czech Republic on the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital is in the collection of Laws of Slovak Republic No. 238/2003.

11 Ibid.

at taxation which does not comply with the provisions of the DTT".[12] If the competent authority considers the taxpayer's objection to be justified and if it is not itself capable find a satisfactory solution, it will endeavour to resolve the case by mutual agreement with the authorities of the other Contracting State so as to exclude any taxation which is incompatible with the DTT.

In general, DTTs contain provisions of a conflicting nature, so the rule which of the Contracting States is entitled to claim payment of the tax and tax the taxpayer's income or assets has to be laid down. However, it is also necessary to take into account the possibility that a DTT itself may lead to double non-taxation / allow double non-taxation. This will apply to a situation where a DTT contains provision that a certain source of income in the territory of the other State (State of source of income) is not taxed in that territory and its taxation is transferred to the other Contracting State (State of tax residence), DTT does not address the question of whether such income is taxed in the State of tax residence. This may be a situation where the state tax residence on the basis of under its national tax rules cannot tax that income because it is exempt or does not constitute tax. A similar situation occurs when states, through their unilateral measures, exclude certain income from taxation / provide an exemption from tax with the result that this income is not taxed in any of the States concerned. This situation can also be implemented in a DTT, in which case it would be necessary to consider whether states are aware of the legal consequences, i.e., double non-taxation or double deduction.[13]

12 Must be noted that, the specific text of the article in question within the individual DTT may be in some aspects or details different, but as a result of the adoption of the Multilateral Convention to introduce measures to prevent distortions of tax bases and transfers of profits related to tax treaties ("Multilateral Convention" in this footnote), the provisions are unified and add that, in the contracts to be covered, these provisions are possible as a result contractual instrument. Bilateral modifications of valid and effective DTTs resulting from the application of the Multilateral Convention will be notified by means of a notification Ministry of Foreign Affairs and European Affairs of the Slovak Republic in the Collection laws of the Slovak Republic. According to the scope and limitations of this article, we will no longer spread this issue. See Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. *Ministry of Foreign Affairs and European Affairs of the Slovak Republic* [online]. [cit. 15. 5. 2021]. Available at: https://www.slov-lex.sk/static/prilohy/SK/ZZ/2018/339/20181129_4921747-2.pdf

13 BABČÁK, V. Zamyslenie sa nad problémom dvojitého nezdanenia. In: TOMÁŠKOVÁ, E., D. CZUDEK and J. VALDHANS (eds.). *DNY PRÁVA 2018. Část V. – Interakce práva a ekonomie*. Brno: Masaryk University, 2019, p. 36.

3 Arbitration Convention – Procedure to Eliminate Double Taxation in Specific Situations Within the European Union Member States

Another instrument that provides similar possibilities for resolving disputes as a DTT, but only between Member States of the EU, is the Arbitration Convention. The Arbitration Convention was signed on 23 July 1990 and was in force from 1 January 1995 until 31 December 1999 (a period of 5 years). On 25 May 1999, the Council adopted a protocol amending the convention, extending it for further periods of 5 years at a time.[14]

The Arbitration Convention contains, in addition to the possibility of resolving cases by agreement, also the possibility of using an advisory commission (so-called arbitration). It follows from the scope of this Convention that it only resolves disputes between EU Member States and only covers the solution of double taxation situations with respect to:

- transfer pricing,
- the allocation of profits to a permanent establishment.

Arbitration Convention, also known as the intergovernmental convention, introduces a procedure to eliminate double taxation in specific situations. For example, where branches of multinational companies (associated companies) are based in different EU countries and are taxed by more than one EU country as a result of an upward adjustment in its profits in another EU country.[15]

For the effective implementation of the Convention, a so-called "Code of conduct"[16] was drawn up by the EU's Joint Transfer Pricing Forum[17] ("JTPF").

14 Elimination of double taxation (arbitration). *EUR-Lex* [online]. 14. 12. 2017 [cit. 11. 4. 2021]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:l26038&from=SK

15 Methodical guidelines of the Ministry of Finance of the Slovak Republic no. MF/020525/2017-724 on procedures under the mutual agreement procedure. *Slovenská komora daňových poradcov* [online]. [cit. 16. 5. 2021]. Available at: https://www.skdp.sk/webnew/main.nsf/0/4be4fb9e06068287c125824100374648/$FILE/Metodické%20usmernenie%20Ministerstva%20financi%C3%AD%20Slovenskej%20republiky.pdf

16 Code of conduct for the effective implementation of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises No. 2006/C 176/02. *EUR-Lex* [online]. 28. 7. 2006 [cit. 16. 5. 2021]. Available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:176:0008:0012:EN:PDF

17 Joint Transfer Pricing Forum. *European Commission* [online]. [cit. 16. 5. 2021]. Available at: https://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en

The JTPF, set up in 2002, assists and advises the European Commission on transfer pricing issues. The code of conduct clarifies aspects such as:

- the scope of the convention,
- the admissibility of a case,
- MAP, and
- the dispute resolution procedures.[18]

The Arbitration Convention is also an international treaty that has taken precedence over national law. Art. 6 of the Arbitration Convention to a large extent replicates the wording of Art. 25 para. 1 and 2 of the OECD Model Tax Treaty. That is the case, *"if an entrepreneur considers that the procedures laid down in the Arbitration Convention have not been complied with, notwithstanding the remedies available under the domestic law of the Contracting States concerned may submit the case (object) to the competent authority of the Contracting State where it is resident or in which it has a permanent establishment. The relevant case must be submitted within three years from the first notification concerning the act which results in it, or will cause double taxation. The first act is considered to be the tax collection."* If the competent authority concludes that the objection is justified and if the competent authority is not able to reach a satisfactory solution himself, he will try to solve the case by bilateral agreement with the competent authority of the Contracting State concerned, with a view to avoid double taxation on the basis of the procedures defined in the Arbitration Convention.[19]

When double taxation arises, the company affected can present its case to the tax authorities concerned. If those authorities cannot solve the problem satisfactorily, they shall seek mutual agreement with the authorities of the EU country where the associated firm is taxed.

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18 Code of conduct for the effective implementation of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises No. 2006/C 176/02. *EUR-Lex* [online]. 28. 7. 2006 [cit. 16. 5. 2021]. Available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:176:0008:0012:EN:PDF

19 Art. 6 Arbitration Convention; Methodical guidelines of the Ministry of Finance of the Slovak Republic no. MF/020525/2017-724 on procedures under the mutual agreement procedure. *Slovenská komora daňových poradcov* [online]. [cit. 16. 5. 2021]. Available at: https://www.skdp.sk/webnew/main.nsf/0/4be4fb9e06068287c125824100374648/$FILE/Metodické%20usmernenie%20Ministerstva%20financi%C3%AD%20Slovenskej%20republiky.pdf

If the authorities of these two EU countries are not able to reach an agreement, they present the case to an advisory commission, which suggests a way of resolving the dispute.

Although the tax authorities may subsequently adopt, by mutual agreement, a solution which is different from the one suggested by the advisory commission, they are bound to adopt the commission's advice if they cannot reach an agreement. The commission consists of a chairman, 2 representatives from each of the tax authorities concerned, and an even number of independent members.[20]

3.1 Resolution of Tax Disputes According to DTT or the Arbitration Convention

After the case has been resolved and the agreement approved, the Ministry of Finance will send a final closing letter to the competent authority of the Contracting State.

In the event of an agreement between the competent authorities of the Contracting States, the Ministry of Finance shall immediately inform the taxpayer and the Finance Directorate of the outcome of the agreement. The result of the agreement is binding for the Ministry of Finance, the taxpayer, the Financial Directorate, and the relevant tax administrator that shall take immediate steps to implement the outcome of the agreement. If the agreement results in a solution that changes (reduces) the taxpayer's tax liability in the Slovak Republic, the taxpayer is entitled to file an additional tax return that reflects the result of the agreement between the competent authorities without a time limit, unless the relevant DTT provides otherwise.

If, despite the efforts made, the competent authorities cannot reach an agreement, MAP fails. The taxpayer has no legal right to an agreement between the competent authorities of both Contracting States, except in cases where there is a right to settle cases in an arbitration proceeding (see section above). In this case, the taxpayer and the Finance Directorate will be informed of the failure of the MAP. In cases where the competent

20 Proposal for a Council Directive on Double Taxation Dispute Resolution Mechanisms in the European Union. *EUR-Lex* [online]. 25. 10. 2016 [cit. 1. 5. 2021]. Available at: https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52016PC0686

authorities cannot reach an agreement, but the DTT contains a provision on arbitration, the taxpayer may apply to settle the case in arbitration.[21]

The competent authorities of the participating countries should endeavour to resolve the case by mutual agreement within a period of 24 months. If MAP does not reach a solution within two years, the competent authorities of the participating Contracting States shall, at the request of the taxpayer, designate advisory commission.[22]

The advisory commission shall consist of an independent chairman and two representatives of the competent authority of the Contracting States and an even number of independent persons (usually two) in accordance with Art. 9 para. 1 of the Arbitration Convention. The advisory commission shall deliver its opinion no later than six months from the date on which the matter was referred to it. Pursuant to Art. 12 of the Arbitration Convention, Contracting States shall avoid double taxation within 6 months of the issuance of the opinion of the Advisory Commission. The competent authorities of the Contracting States may agree on another outcome within this period. If no agreement is reached within this period, the competent authorities shall be bound by the opinion of the arbitration panel. For the purposes of these procedures, general principles of the Arbitration Procedure shall be applied in accordance with the Convention and the principles set out in the Code of Conduct for the effective implementation of the Arbitration Convention.[23]

3.2 EU Level – Progressive Council Directive (EU) 2017/1852[24]

In October 2017, the Council adopted Directive on tax dispute resolution mechanisms in the EU which builds on the Arbitration Convention.

21 Methodical guidelines of the Ministry of Finance of the Slovak Republic no. MF/020525/2017-724 on procedures under the mutual agreement procedure. *Slovenská komora daňových poradcov* [online]. [cit. 16. 5. 2021]. Available at: https://www.skdp.sk/webnew/main.nsf/0/4be4fb9e06068287c125824100374648/$FILE/Metodické%20usmernenie%20Ministerstva%20financi%C3%AD%20Slovenskej%20republiky.pdf

22 VALENTE, A. and F. VINCENTI. The importance of mutual agreement procedures in international tax disputes. *International Tax Review* [online]. 24. 3. 2021 [cit. 25. 3. 2021]. Available at: https://www.internationaltaxreview.com/article/b1r2tr3f5sbp5m/the-importance-of-mutual-agreement-procedures-in-international-tax-disputes

23 See Art. 6 and following Art. of Arbitration Convention.

24 Council Directive No. 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union ("Directive on tax dispute resolution"). *EUR-Lex* [online]. [cit. 16. 5. 2021]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L1852&from=EN

The directive's scope is broader than the Convention's and will apply to all taxpayers subject to taxes on income and capital covered by bilateral DTTs and the Arbitration Convention. Over time, the use of the Arbitration Convention may reduce, given the advantages of the directive requiring double taxation to be removed. Directive on tax dispute resolution introduces a similar mechanism, the so-called arbitration, also for other situations of double taxation where it was not possible to resolve the case of double taxation within the specified time by agreement. This instrument is again limited to situations of double taxation between EU Member States and was implemented in the Slovak Republic through legislation. The Council Directive was implemented by 1 July 2019. This Directive has been adopted to the Slovak Republic regulation by the Act No. 11/2019 Coll., on the rules for resolving disputes concerning taxation. We believe that the Czech Republic has adopted this Directive into the similar local act.

As the Directive on tax dispute resolution states, *"the mechanisms currently provided for in bilateral tax treaties and in the Union Arbitration Convention might not achieve the effective resolution of such disputes in all cases in a timely manner. The monitoring exercise carried out as part of the implementation of the Union Arbitration Convention has revealed some important shortcomings, in particular as regards access to the procedure and as regards the length and the effective conclusion of the procedure."*[25] Directive on tax dispute resolution applies to all taxpayers that are subject to taxes on income and capital covered by DTTs and the Arbitration Convention. As it states *"individuals, micro, small and medium-sized enterprises should have less of an administrative burden when using the dispute resolution procedure"*.[26] In addition, the dispute resolution phase should be strengthened. In particular, it is necessary to provide for a time limit for the duration of the procedures to resolve double taxation disputes and to establish the terms and conditions of the dispute resolution procedure for the taxpayers. We must note that despite the existence of this Directive, these problems are still present in practice. There may be several reasons for that. International disputes will always be covered by the necessary knowledge and willingness of states to "return" tax income to taxpayers back, after the final decision was issued,

25 Recital 3 Directive on tax dispute resolution.
26 Recital 7 Directive on tax dispute resolution.

that part of the income should be taxed in another state. In addition, when the problem about taxation between two or more countries arises, effective exchange of information is necessary.[27]

4 Tax Arbitration in Accordance With National Laws

The Ministry of Finance of the Slovak Republic issued the Slovak Republic guidelines in order to ensure uniform application of the processes for MAP. Its main topic applies particularly to i) MAPs which are initiated by the taxpayer based on DTTs, ii) MAP which are initiated by the taxpayer based on the Arbitration Convention and iii) contains formal and factual details of the procedure in the Slovak Republic.[28]

These methodical guidelines apply in particular to:

- MAPs initiated by the taxpayer on the basis of DTT (for example, the DTT with the Czech Republic)
- MAPs initiated by the taxpayer on the basis of the Arbitration Convention, containing the formal and substantive requirements of the procedure in the Slovak Republic.

A contrario, as we have stated above, there is also another local regulation solving the international tax resolution – the Act No. 11/2019 Coll., on the rules for resolving disputes concerning taxation, adopting Directive on tax dispute resolution. Under this Act, tax arbitrations are solved between Slovak Republic and another EU Member State in so far as such disputes arise out of the interpretation and application of DTTs, a State with which the Slovak Republic has concluded a DTT, if these disputes arise from the interpretation and application of the DTT, and with a State with which the Slovak Republic has concluded a DTT in so far as such disputes arise

27 For example, country-by-country reporting and automatic exchange of information, which is part of measure 13 of the BEPS project (base erosion and profit shifting), is a tool whose main objective is to detect possible tax evasion, for which transfer prices are used between related parties. TULÁČEK, M. Výměna zpráv podle zemí jako nástroj k omezení eroze základu daně z příjmů. In: MRKÝVKA, P., D. CZUDEK and J. VALDHANS (eds.). *DNY PRÁVA 2016. Část II. Rekodifikace daní z příjmů (90 let od Engliš ovy daňové reformy)*. Brno: Masaryk University, 2017, p. 355.

28 Slovak Republic transfer pricing profile. *European Commission* [online]. November 2018 [cit. 16. 3. 2021]. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/tpprofile-sk.pdf

out of the interpretation and application of the DTT in connection with the adjustment of profits of associated enterprises based on the Arbitration Convention.

5 Conclusions

International MAPs are bilateral procedures to avoid taxation which is not in accordance with the relevant DTT or the Arbitration Convention. This bilateral procedure shall be conducted directly between the competent authorities of both Contracting States, whereas the taxpayer is not a direct participant to this procedure. As we have stated above, some of these procedures must be implemented into domestic regulations, at least when it comes to individual procedural steps and conditions for starting and running the processes.

The subject of the mutual agreement is therefore the settlement of a dispute between tax claims of two Contracting States against the taxpayer so that the resulting tax liability is determined in accordance with the provisions of the relevant DTT or the Arbitration Convention. The result of such an agreement may be reflected in the adjustment of taxpayers' tax liability. The competent authorities are obliged to seek such an agreement. Unfortunately, in practice, there are situations when one or the other Contracting State is not willing to waive its claims and double taxation persists. Such a situation can only be resolved through arbitration which is regulated in the Arbitration Convention and in those DTTs which contain provisions on arbitration. With that said, there is still a potential risk of double taxation in cases where the state will not be willing to helpf within the procedure, or the state will not be willing to adjust its taxpayer's tax liability and let another state to keep this tax profits. Such a persistent risk must be resolved on a case-by-case principle and in good faith. In addition, states must cooperate, and as we can see, international taxation is dependent on the knowledge of international taxation's rules of procedure and must be responsible in matter of double taxation, which is still unsatisfactory condition.

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