

DRAFT GUIDELINES FOR THE IMPLEMENTATION OF AGREEMENTS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION

This PROJECT-Instruction published by the Ministry of Finance on 25/03/2024 with a closing date of 22/04/2024 defines the criteria and procedures for the implementation of the provisions of the Agreements for the avoidance of double taxation and the prevention of fiscal evasion.

1-What does the term "Double Taxation" mean?

"Double taxation" is when the same income, earned by the same person, is taxed twice: once in the country where the income is realized and once in the country where the taxpayer has his residence.

Double taxation arises when both countries claim that, based on the criteria of their domestic laws (which may be different), a natural person or an entity is considered resident in both countries (dual residence) and is subject to the obligation of full tax in both states. So, under these conditions, only the fact that the activity of the natural person or entity is extended in both countries and income is realized in both countries, results in double taxation. As a result of this issue, **"Double Taxation Avoidance Agreements"** were created .

2-WHAT ARE DOUBLE TAXATION AGREEMENTS?

The Double Taxation Avoidance Agreement (DTAA) contains criteria and rules that determine in which contracting state a natural person or entity will be considered a resident, regardless of the provisions of the internal legislation of the contracting states. After the residence is determined, the **DTAA** determines the tax law for each contracting state, i.e. that of the state of residence and that of the source state.

Agreements for the avoidance of double taxation allow the elimination of double taxation by determining which of the countries has the right to tax some income of an entity or natural person, or by dividing this right between the two countries, but without burdening the taxpayer with double taxation. These agreements also aim to avoid fiscal evasion through the exchange of information for all natural persons or entities that exercise activity in both countries between which the Agreement was concluded.

The Agreements for the Avoidance of Double Taxation that are in force in the Republic of Albania are based on the international models for these agreements drawn up and improved by the Organization for Economic Development and Cooperation (OECD) as well as by the United Nations Organization (UN). However, Double Taxation Agreements (DTAs) are always bilateral, so their provisions are effective for the contracting states that have signed and approved them.

The provisions of the **DTAA** are part of the tax legislation and have priority over the provisions of the internal legislation of the contracting states. So in any case, when according to the provisions of the

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DTAA there is a tax rate lower than that of the domestic law or tax exemption, these facilities are applied with priority over the provisions of the domestic legislation.

Double Tax Agreements (DTAs) apply to taxes on income and capital which are listed respectively for both contracting states in each DTA. Double Taxation Agreements in no case impose taxes that do not exist or that are higher than those sanctioned in domestic legislation, on the contrary, they eliminate double taxation by determining which of the contracting states has the right to taxed or divide this right between the two countries, granting a reduced tax rate to one country (usually the country of the source of the income) tax which the other country recognizes by allowing its credit, or by excluding the income from taxation in another country.

3- MAIN CONCEPTS FOR THE IMPLEMENTATION OF DTAA-s.

In order to understand and implement each **DTAA**, several principles and concepts must be taken into account, the most important of which are:

3.1 Principle of Residence

The term "resident", in the tax language, is used to define natural persons or companies (entities) which, according to the criteria defined in the legislation of a country, are considered tax residents of that country, and have the obligation to declare and pay taxes and duties in that country for their worldwide income, derived both inside and outside the country of tax residence. Tax legislation establishes criteria according to which an individual or an entity is considered resident in that country. So the "principle of residence" focuses on the taxpayer, who if considered resident in a country must declare and be taxed in that country for global income.

3.2 The Source Principle

According to this principle, income or profits generated (realized) in one country must be taxed in that country, regardless of whether the taxpayer (natural person or entity) is resident in another country. Example: according to the source principle, income from real estate located in one country (land, buildings, etc.) must be taxed in that country, regardless of whether their owner is resident in another country. There are cases when a taxpayer resident of one country, realizes income or owns capital in another country, can be taxed twice, i.e. once in the country where the source of income is and once in the country of residence of the taxpayer.

3.3 Taxation of non-resident taxpayers in the Republic of Albania

A person who is not resident for tax purposes in Albania (considered non-resident) has activities in/or with Albanian tax residents, according to the Albanian tax legislation, tax liabilities may arise. in Albania (the country of origin).

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For this purpose, the categories of such income for which obligations may arise and which are provided for in the MTD may include, but are not limited to:

- i. passive investments or portfolio income derived from holding property and generating: interest, dividends or royalties paid by a person or entity in the source country (Albania)..
 - ii. income from a service business
 - iii. income from running other businesses
 - iv. income from the provision of services as an employee exercised in the country of origin (Albania).
- c. income from profits realized by the non-resident in the source state.

In determining whether or not it is subject to the payment of non-resident tax on income derived from the country of source, it is important to identify the non-residents. For persons who realize income from business activities, the information is obtained from the Albanian resident tax payer.

In the case of interest, dividends and royalties, the non-resident must also prove through documentation the beneficial ownership of the amounts in question. In this case, the beneficial ownership may also be the subject of an information request from the Albanian Tax Administration, near the tax authorities of the state where the taxpayer is resident.

3.4 Permanent headquarters

The concept of Permanent Establishment arose out of the need to define the presence in a contracting state of an entity that is resident in the other contracting state and the tax right and tax base in the state where the permanent establishment is located. According to this concept, an entity (company) resident in a Contracting State may be taxed in the other Contracting State:

- (i) if it has a permanent establishment in that other country and,
- (ii) for the income attributable to this permanent establishment.

4- IMPLEMENTATION OF DTAA AND REQUIRED DOCUMENTATION.

Double taxation agreements are part of the tax legislation, are implemented by taxpayers and controlled on a risk basis by the tax administration.

Albanian resident tax payers must complete the documentation according to the deadlines specified in the law.

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The documentation that proves the implementation of DTAA is:

- a. The form** according to the established model which contains complete data for the Albanian resident taxpayer, for the tax resident taxpayer in the other contracting state, the type of payment from the Albanian taxpayer (income for the resident taxpayer in the other state).
- b. Service contracts** with the non-resident company, in the language(s) signed by the parties.
- c. Certificate of residence** for the supplier (person not resident in Albania) who is resident in the other Contracting State.
- d.** A summary list of foreign **invoices** issued by the tax resident in the other country, for which MTD has been applied;
- e.** A summary **list of payments** made by the Albanian taxpayer to the taxpayer resident in the other country, for which DTA has been applied.

Deadlines for submitting/uploading documentation in the tax system and penalties.

Pursuant to the law "On tax procedures in Albania ", the following deadlines are set for the uploading/submission of supporting documentation by the taxpayer for the implementation of the DTA:

- a) The documentation listed above must be uploaded to the electronic tax system/submitted within the calendar year following the year in which the provisions of the DTA-s are implemented. If the electronic tax system does not allow the electronic upload of the documentation, or there are technical problems, the taxpayer submits the requested documentation to the relevant regional tax directorate by official letter on paper or with an electronic carrier (CD).
- b) If the taxpayer does not upload the documentation to the system/does not submit it within the deadline set at that time, a fine of 10,000 ALL will be applied to the taxpayer for each month of late submission. This fine is applied up to the following 24 months, after the end of the specified period.
- c) If the taxpayer does not submit the documentation even after the 24-month deadline has passed, then the taxpayer loses the right to apply the provisions of the DTA and must pay/return the unpaid taxes or the reduced part of the tax according to the DTA , as well as fines and interests for late payment in accordance with the Law "On Tax Procedures in the Republic of Albania".

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5- ISSUING THE CERTIFICATE OF RESIDENCE FOR ALBANIAN TAXPAYERS.

5.1. The Residency Certificate serves to prove that the taxpayer fulfills the conditions defined in the tax legislation to be considered a tax resident in Albania, i.e. the obligation to declare in Albania the worldwide income, realized in Albania and abroad. This certificate serves the taxpayer to present it to the authorities of the other contracting state, in accordance with the relevant MTD or even the internal legislation in that other state.

5.2. For taxpayers registered and provided by the National Business Center with an Identification Number (NUIS), the Residence Certificate is issued through the e-albania application.

5.3. For individuals, the Residence Certificate is issued within 30 days from the submission of their request to the Tax Payers Service at the Regional Tax Directorate. In order to be provided with a Tax Residence Certificate, individuals must submit the following documentation to the Regional Tax Directorate:

- a) A short request to be provided with a Tax Residence Certificate, also specifying the tax period (usually the calendar year), and
- b) Copy of the Individual Annual Declaration of Global Income (DIVA –), if he meets the conditions for making this declaration and/or the employment contract when he is employed, as well as a copy of the ownership certificate or the lease contract where he lives, or ;
- c) The certificate issued by the State Police, in which the entry/exit from Albania is indicated and it is proved that he has stayed in Albania for more than 183 days, as defined in the Law "On Income Tax", or an individual declaration that defines days of stay in Albania, accompanied by copies of passport pages showing entry and exit into the territory of the Republic of Albania, or
- d) Documentation proving that he is an employee of the Albanian State in an embassy or consulate or other institution as a representative of Albania in another State.

6- SUBMISSION OF DOCUMENTATION FOR THE IMPLEMENTATION OF DTA.

The Tax Administration takes measures to offer taxpayers the possibility of submitting documentation online through the e-filing tax system by 2024.

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