

Methods for Elimination of Double Taxation under Double Tax Treaties

– with Particular Reference to the Application of
Double Tax Treaties in Sweden



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Abstract

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The study deals with the methods for elimination of double taxation that are applied in double tax treaties.

The first aim of the study is to systematise and analyse the methods for elimination of double taxation under double tax treaties in order to gain a better understanding of how they work. A number of issues relating to the application of these methods are analysed. Since double tax treaties are applied by tax authorities, courts, and taxpayers in a domestic law context, i.e. within the framework of the legal system of a particular state, the analysis focuses on the application in Sweden of the methods for elimination of double taxation under double tax treaties.

The second aim of the study is to evaluate in a few selected situations the two main methods for elimination of double taxation recommended by the OECD, namely exemption with progression and ordinary credit, on the basis of whether tax neutrality is achieved. For the purpose of this study, tax neutrality is deemed to be achieved when the taxation of income relating to a cross border transaction corresponds to the tax that would have been levied in either the state of residence (i.e. capital export neutrality, “CEN”) or in the other contracting state (i.e. capital import neutrality, “CIN”), had the cross border element not been present. Furthermore, for the purpose of this study, tax neutrality is deemed to be achieved if the taxation of income relating to a cross border transaction is within the range set by CEN and CIN. The evaluation shows that ordinary credit stands a greater chance than exemption with progression of achieving an outcome which is consistent with the goal of tax neutrality in the situations selected for study.

Keywords: double taxation, double tax treaty, capital export neutrality, CEN, capital import neutrality, CIN, exemption, exemption with progression, modified exemption, limitation of the tax rate, credit, full credit, ordinary credit, tax sparing credit, foreign tax credit limitation, maximum deduction, interpretation of double tax treaties, model tax convention on income and on capital, the OECD Model, the Commentaries of the OECD Model, subject identity, timing mismatch, attribution of income, allocation of expense, RÅ 1996 ref. 84, RÅ 2008 ref. 24, RÅ 2010 ref. 112, dubbelbeskattning, dubbelbeskattningsavtal, skatteavtal, kapitalexportneutralitet, kapitalimportneutralitet, alternativ exempt, OECD:s modellavtal.

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