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CONVENTIONS ON TAXATION OF INCOME: IMPLICATIONS FOR AVIATION OR SEA TRANSPORT EMPLOYEES

Abstract. *To avoid the double taxation of employment income, employees on board an aircraft or ship engaged in international transport refer to the Article 15(3) of Conventions on the taxation of income and the prevention of fiscal evasion with respect to taxes on income and capital gains. However, the wording of Article 15(3) varies in different tax conventions. The question arises: what concepts of avoiding double taxation of income are used in the taxation of income of air or sea transport employees, and which of these concepts are the most convenient to implement from the point of view of these employees? The study compares the Article 15(3) in terms of the complexity of tax procedures and the assessment of the employee's time spent on the tax compliance. Research methods include the historical analysis of the development of tax treaties and comparative analysis of the prevention of double taxation of income of employees of international air or sea transport. In particular, Article 15(3) of the OECD Model Tax Convention and the bilateral conventions adopted between Ukraine and such countries as Ireland, Poland, Greece, Romania and Hungary are compared. The finding of the study is the identification of the following basic concepts of taxation of income of air and sea transport workers: taxation of income only in the country of tax residence of the employee; taxation of income in the country of tax residence of the employer; taxation of income by both countries simultaneously. A matrix of tax actions of air or sea transport workers and a comparison of the time they need to spend on fulfilling their tax obligations was also formed. Our analysis confirms that the wording of Article 15(3) in the OECD Model Convention is optimal from the point of view of transport workers, as it entails the least time spent on fulfilling the tax legislation. However, current conventions often grant the right to tax the income of air and sea transport workers either to the country of tax residence of the employer, or to two countries simultaneously, therefore it is important to simplify tax procedures for workers.*

Keywords: *tax convention, double taxation, crew members, Article 15(3) of the OECD MC, tax resident.*

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КОНВЕНЦІЇ ПРО ОПОДАТКУВАННЯ ДОХОДІВ: ОСОБЛИВОСТІ ЗАСТОСУВАННЯ ПРАЦІВНИКАМИ АВІАЦІЙНОГО ТА МОРСЬКОГО ТРАНСПОРТУ

Анотація. *Проблематика. Оподаткування доходів працівників авіаційного та морського транспорту, задіяних у міжнародних перевезеннях, регулюється статтею 15(3) конвенцій про уникнення подвійного оподаткування доходів і майна та попередження податкових ухилень. Проте формулювання статті 15(3) є різним у різних податкових конвенціях. Постає питання: які концепції уникнення подвійного оподаткування доходів використовуються при оподаткуванні доходів працівників міжнародного транспорту, та які з цих концепцій є найзручнішими до виконання з точки зору цих працівників? Метою дослідження є порівняння положень статті 15(3) податкових конвенцій з точки зору складності податкових процедур та оцінка витрат часу працівника на виконання положень податкового законодавства. У статті використовуються методи історичного аналізу розвитку податкових угод та порівняльного аналізу податкових конвенцій. Зокрема, порівнюються статті 15(3) Модельної податкової конвенції ОЕСР та положення чинних двосторонніх конвенції, ухвалених між Україною та такими країнами, як Ірландія, Польща, Греція, Румунія та Угорщина. Результатом дослідження є виявлення таких основних концепцій оподаткування доходів працівників авіаційного та морського транспорту: оподаткування доходу лише у країні податкового резидентства працівника; оподаткування доходу у країні податкового резидентства роботодавця; оподаткування доходу обома країнами одночасно. Також сформовано матрицю дій працівників авіаційного та морського транспорту на основі норм податкових конвенцій і порівняння часу, який їм необхідно витратити на виконання своїх податкових зобов'язань. Висновки. Наш аналіз підтверджує, що формулювання статті 15(3) у Модельній конвенції ОЕСР є оптимальним з точки зору працівників транспортної галузі, оскільки зумовлює найменші витрати часу на виконання вимог податкового законодавства. Однак чинні конвенції часто надають право оподатковувати дохід працівників авіаційного та морського транспорту або країні податкового резидентства роботодавця, або двом країнам одночасно, тому важливо спрощувати податкові процедури для працівників.*

Ключові слова: *податкова конвенція, подвійне оподаткування, члени екіпажу, стаття 15(3) модельної конвенції ОЕСР, податковий резидент.*

Introduction. Today, aircraft and ships may be registered in one country, owned by a company in another country, operated by a company in another country, and the crew on board the aircraft or ship may be recruited from several other countries. Therefore, it is important to understand the tax obligations of these employees, not only for personal tax compliance, but also to consider the tax planning of their employers, who operate in a highly competitive environment.

The Tax Code of Ukraine says that individuals – tax residents of Ukraine, shall include their foreign income in the total annual taxable income, except for income that is not subject to taxation in Ukraine in accordance with the provisions of this Code or an international treaty in force in Ukraine [26, Art.13(3)]. For example, personal income received from foreign airlines or shipping companies abroad are required to be declaring as personal worldwide income in Ukraine.

Taxation of the income of a regular employee on board an aircraft or ship in international transportation is the subject of special Article 15(3) of the Conventions on avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains. To date, Ukraine has ratified conventions on income and capital taxation with more than 70 countries.

The purpose of this study is to examine main concepts of the allocation of taxation rights between treaty countries in respect of income received by employees in the aviation or maritime international transportation. Also we compare processes for avoiding double taxation of the employment income based on Article 15(3) of tax conventions.

Literature review. Chen D. et al. (2024) stated that the Organization for Economic Cooperation and Development (OECD), the United Nations (UN) and other international organizations constantly pay attention to the issues of fairness of international taxation [3]. The influence of international taxation is significant today [13; 27]. Kudla J. et al. (2023) discussed the role of tax treaties [19]. West A., Wilkinson B. (2024) noticed that problem of the avoidance of double taxation is important today [30]. Tax administration issues should also be considered [11–12]. Glukh M. et al. (2021) analyzed that the Commentaries provided in the OECD Model Convention on the taxation of income and capital has an important role, even if they are only supplementary means of interpretation [10].

Researchers of the OECD (2017) in the Model Tax Convention on income and capital formulated that *"... remuneration derived by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first-mentioned State"* [23, Art. 15(3)].

The OECD MC (2019) recommends taxing the income of a member of a regular crew of an aircraft or ship in the state of tax residence of the individual [21]. In opinion of the OECD's researchers (2017) the purpose of that amendment was to provide a clearer and administratively simpler rule concerning the taxation of the remuneration of these crews [22]. As an argument, Eyitayo-Oyesode O. A. (2019) mentioned that taxing rights of residence countries were preferred because it was easy to determine where taxpayers were resident than it was to determine the source of income being taxed [8]. The focus on residence does not mean that non-residents are necessarily beyond the reach of a country's tax regime. According to Elkins D. (2021), under current international practice, countries may – and to some extent most countries do – tax the domestic-source income of non-residents [6].

Researchers also proposed another approach to allocation of taxing right in the United Nations Model Double Taxation Convention between Developed and Developing Countries (2001): *"... Notwithstanding the preceding provisions of this article, remuneration derived in respect of an employment exercised aboard a ship or aircraft oper-*

ated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated" [29, Art. 15(3)]. This approach becomes a subject for study and is considering as the alternative version of the Article 15(3) of OECD MC [24].

The analysis of the different concepts of Article 15(3) in tax conventions is relevant today in order to see problems of balancing the interests of employees and businesses on the one hand, and the fiscal interests of the participating countries on the other. Faracik B. et al. (2024) added that it is also important to build not only a favorable business environment, but also a human rights-oriented economy and rationalize the requirements for tax obligations of employees [9].

Methodology. In our article we use methods of historical analysis of the development of tax conventions and the comparative analysis to determine the most favorable concepts of Article 15(3) of tax treaties from the employee's point of view, taking into account the complexity of tax procedures for an individual to comply with tax legislation.

In this article, we analyze the tax conventions in force, scientific literature and describe the current state of knowledge in the field of taxation and prevention of income double taxation of international air and maritime transport employees. We modeled a practical approach to estimate the time required for an employee to comply with tax legislation in Ukraine based on Article 15(3). Based on this analysis, the employee can see the algorithm of actions that must be performed on the basis of tax conventions in force in Ukraine; tax authorities and employers may also identify actions necessary to facilitate employee compliance with tax laws and avoid double taxation of personal income.

This paper consists of the following three sections: 1) tax concepts implemented in Article 15(3) of the OECD MC and commentary on Article 15(3); 2) allocation of taxation rights – that is, to the state of tax residence of the employee or to the tax residence of the employer, or to both of these states in accordance with Article 15(3) of the tax treaties which are in force in Ukraine; 3) we proposed a matrix with a list of procedures for compliance with tax legislation and actions required of a tax resident of Ukraine – an employee of an air or sea vessel, based on Article 15(3) of the tax conventions in force in Ukraine and the OECD Model Tax Convention. Based on this matrix, we compared the approximate time spent by a Ukrainian tax resident to avoid double taxation of personal income received in connection with employment on board an air or sea vessel operated in international transportation.

The main part. Comparative analysis of Article 15(3) in the Ukraine-Ireland, the Ukraine-Poland, the Ukraine-Romania the Ukraine-Hungary and Ukraine-Greece tax conventions Based on the Commentaries to Article 15(3) of the OECD MC, some countries choose to tax the remuneration of an employee who works on board an aircraft or a ship operated in international traffic, both by the State of the enterprise operating such ship or aircraft and by the State of residence of the employee. States wishing to do so may draft Article 15(3) along the following lines: "3. Notwithstanding the preceding provisions of this Article and Article 1, remuneration derived by an individual, whether a resident of a Contracting State or not, in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that Contracting State. Where, however, such remuneration is derived by a resident of the other Contracting State, it may also be taxed in that other State" [22, paragraph 9.6].

The Ukraine-Ireland Tax convention on income and capital contains a similar norms as discussed in the Commentaries to the OECD MC: "3. Notwithstanding the preceding provisions of this Article, remuneration derived in connection with employment exercised on board a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State" [15, Art. 15(3)]. This means that the income received from employment on board an aircraft operated by an Irish company in international traffic is not exempt from paying Irish tax. The Ukrainian employee is chargeable to Irish income tax according to the Irish national legislation.

At the same time the Tax code of Ukraine says that income received by a Ukrainian tax resident from sources of origin outside Ukraine is included in his/her total annual taxable income [26, Art. 13(3)].

The Tax Code of Ukraine says that in order to avoid double taxation in Ukraine and to credit the tax paid abroad before paying the Ukrainian tax, the taxpayer must receive a certificate confirming the amount of tax from the state authority of the country where such income tax was paid, as well as the tax base. The specified tax certificate is subject to legalization in the relevant state, in the foreign diplomatic institution of Ukraine, unless otherwise stipulated by the current international treaties of Ukraine [26, Art. 13(5)]. Thus, a Ukrainian tax resident must obtain a tax certificate from the Irish tax authorities, legalize this document in accordance with the law and submit it together with the Ukrainian tax declaration in order to claim an Irish tax credit against personal income tax in Ukraine.

But not only is the tax residency of a physical person important. For example, the Ukraine-Poland Tax Convention refers to the employer's residency status: "Notwithstanding the preceding provisions of this article, remuneration received in connection with work for hire carried out on board a sea or aircraft operated in international traffic, or on board a river vessel, may be taxed in the Contracting State of which a resident is an enterprise that operates a sea, river or aircraft" [16, Art. 15(3)].

More detailed approach to the taxation of income of employees in transport sector is given in the Article 15(3) of the Ukraine-Romania Tax Convention: "Notwithstanding the preceding provisions of this article, remuneration received in connection with work for hire carried out on board a sea or aircraft, rail or road transport operated in international traffic, or on board a river vessel engaged in inland waterways transport, may be taxed in the Contracting State of which a resident is an enterprise"[18, Art. 15(3)]. In other words, income from employment may be taxed both in Romania and in Ukraine with the possibility of avoiding double taxation in accordance with the provisions of this Convention.

As we can see, the wording of tax conventions is not straightforward for taxpayers, and some definitions are not explained in detail in the text of tax conventions. In such cases, national legislation is used to determine the meaning of "resident employer" as well as the meaning of other terms [5, p. 96].

Another wording of Article 15(3) is in the Ukraine-Hungary Tax Convention: "3. Regardless of the previous provisions of this article, the reward, received in connection with work for hire carried out on board of sea or aircraft, or road vehicle, which is operated in international transportation by a resident of a Contracting State, is subject to taxation only in this Contracting State" [17, Art. 15(3)]. Thus, the Ukrainian-Hungarian tax convention grants exclusive rights to tax income from employment, which is carried out on board an aircraft or ship or road vehicle, to the state where the company – the operator of the aircraft – is resident in this state. For example, if Wizzair is a tax resident in Hungary and Ukrainian tax resident is a member of the aircraft (engaged in international transportation), the income of a Ukrainian citizen will be taxed only in Hungary.

The Ukraine-Greece Tax Convention states that: "3. Regardless of the previous provisions of this article, remuneration received in connection with work for hire, which is carried out of aboard a sea or aircraft operated in international transportation, may be taxed in the Contracting State in which the profits from the operation of sea or air vessels are taxed in accordance with the provisions of Article 8" [14, Art. 15(3)]. As we can see, countries have agreed that the state where the employer pays tax on profit also has the right to tax income derived from employment on aboard an aircraft or ship operated in international traffic.

In this case, the employee's income will be taxed by the state where the company pays tax on the profit derived from aircraft or ship operations. The employee's country of tax residence can then also tax his/her income, providing an opportunity to avoid double taxation.

To summarize provisions of Article 15(3) of the Model Tax Convention and norms of conventions in force in Ukraine, three main approaches to taxation of employee's income are defined:

1) The taxing right only has the state of an employee's tax residency.

2) The taxing right only has the state of employer's registration, or where its place of effective management is situated, or where the tax on profit is paid by the employer.

3) Remuneration received in connection with employment carried out on board of an aircraft or ship operated in international traffic by an enterprise of a tax treaty state, may be taxed in both treaty states.

The first and the second approaches are the most time-saving from the employee's point of view due to taxation only by one state (e.g. the state of employee's tax residency or by the state of employer's registration). As for the third approach, the employee can be taxed by two states with the possibility of the double tax relief according to the Tax Convention or based on the domestic legislation. The first right to tax usually has the country of employment as an economic source of income, and then the personal income can be taxed by the state of his/her tax residency with the application of Article 23 "Elimination of double taxation" of tax convention.

Interpretation and implementation of norms, and the process of avoidance of double taxation are not easy for employees of airlines or other companies, operated in international traffic. Moreover, the Tax code of Ukraine contains very strict requirement for the document confirming the income received and taxed abroad as required for the foreign tax credit in Ukraine. The foreign tax administrations often do not issue the document in the form prescribed by the Ukrainian legislation [31, p. 24]. In this case, the Ukrainian tax resident does not have a document to claim the credit of the tax paid abroad against their personal income tax liability in Ukraine.

Comparative matrix of requirements of Article 15(3) for employees on an aircraft or ship operated in international transportation. Even when the taxing right has only the state of tax residency of employee according to the tax convention, this norm also must be properly documented in the employee's tax report. For example, the Ireland-Netherlands Tax Convention in Article 14(3) "Dependent Personal Services" states that "… remuneration derived by a resident of one of the States in respect of an employment exercised aboard a ship or aircraft in international traffic shall be taxable only in that State" [4, Art. 14(3)]. An individual is a tax resident of the Netherland and exercises duties of the employment with Irish air company aboard an aircraft which operates between the Netherlands and Germany (international traffic). In this case, the individual is taxable in the Netherlands as a tax resident and must submit a personal tax declaration. The Irish employer, in its turn, does not withhold Irish tax from this individual if the individual confirms the tax resident status in the Netherlands and confirms he/she is subject to tax on income in the Netherlands. In addition the employee agrees to notify the employer about any changes in tax resident status or ceasing to be subject to tax on this income in the Netherlands.

Another question is how to determine the personal income tax of crew members if there is no valid tax convention signed by the state of actual management (or registration) of the employer and the state of tax residence of the employee? It depends on the internal legislation of these two states. If the first-mentioned State provides for taxation of the employee's income, then normally any question of relief from double taxation suffered by the employee is a matter for the tax authorities in the state of tax residence of the employee.

Based on project management approaches [1], in order to compare tax compliance procedures that must be performed by employees of international air or maritime transport, in Table 1 we have proposed a matrix of sequential actions required in accordance with the provisions of Article 15(3) of several tax conventions in force in Ukraine. The norms of Article 15(3) of the OECD Model Tax Convention were also added to the matrix (Table 1).

In row 7 of Table 1, we have calculated the approximate time required to avoid double taxation of employees' income, in accordance with Article 15(3) of the tax conventions in force in Ukraine and the provisions of the OECD MC. The minimum time spent by an employee on tax reporting and income tax payment is achieved according to the proposed norms of Article 15(3) in OECD model convention (approximately 3,5 weeks per employee). However, the procedures for avoiding double taxation stipulated by tax conventions in force in Ukraine require more time (approximately 4,5–10 weeks per employee). Moreover, the costs incurred by employees to comply with tax legislation may be increased in the event of delays in implementing actions required by tax conventions.

The proposed tax matrix can be used in models of tax management systems in aviation or maritime transport companies, as well as to inform employees about their tax obligations and avoid double taxation of income from employment based on Article 15(3) of tax conventions [7, p. 338]. Furthermore, the proposed matrix can also be

Table 1

Time parameters of tax compliance procedures in accordance with Article 15(3) of tax conventions

#	Name of action	Event		Approximate execution time for Ukrainian employee, weeks*	OECD MC	Ireland-Ukraine	Romania-Ukraine	Hungary-Ukraine	Greece-Ukraine
		Start	End						
1.	Confirm the employee's tax residency status	0	1	2	✓	✓	✓	✓	✓
2.	Payment of tax in the country of employment	1	2	0.5	–	✓	✓	✓	✓
3.	Obtaining certificate confirming tax payment in the country of employment	2	3	2**	–	✓	✓	✓	✓
4.	Legalization of certificate confirming tax payment in the country of employment	3	4	4***	–	✓	–	–	✓
5.	Filing of declaration in the country of employee’s residence	4	5	1	✓	✓	✓	–	✓
6.	Payment of tax in the employee's country of tax residence, if any	5	6	0.5	✓	✓	✓	–	✓
7.	Total approximate time spent on tax compliance (weeks)	–	–	–	3.5	10	6	4.5	10

*Note: * – The time is calculated in accordance with the tax procedures in Ukraine*
*** – In some cases, the time for obtaining a foreign tax certificate may be longer*
**** – Legalization of the tax certificate is not required for some countries that are party to the convention*

Source: compiled by the authors

used by employers or tax authorities to improve tax administration processes regarding the practical use of Article 15(3) of tax conventions.

Due to the significant impact of double income taxation on the one hand, as well as the requirements to prevent tax evasion on the tax compliance of aircraft (or ship) employees, on the other hand, building a clear and simple taxation system requires not only unilateral improvement of the tax administration capacity of the country, but also makes comprehensive international tax cooperation increasingly important [32]. The cooperation, exchange of information between the tax authorities of different countries [28] and the simplification of tax procedures reduce the time spent on the practical implementation of norms of tax conventions.

It is also important to modernize country’s tax administration in order to optimize the time that an employee spends on tax compliance.

Conclusions. Tax conventions aim to promote international economic relations by mitigating or eliminating double taxation of income and capital. Article 15(3) of the OECD Model Tax Convention provides that the remuneration of employees engaged in international air or maritime transport is taxable only in the state of tax residence of these employees. The principle of exclusive taxation in the state where the employee is a tax resident was included in Article 15(3) of the OECD MC as amended in 2017. The purpose of this amendment was to provide a clearer and administratively simplified rule on the taxation of income received from employment.

Alternative rules of Article 15(3) in tax conventions allow the taxation of remuneration of crew members employed in international transportation, exclusively by the state of tax residence of the employer who operates such aircraft or sea vessel. This approach, for example, is used in the Ukrainian-Hungarian tax convention. Another approach to the wording of Article 15(3) assigns the exclusive right to tax the personal income from the employment of crew members to the state in which the place of effective management of the enterprise is located, and not to the country of tax residence of the employee. Article 15(3) may also confer taxing rights on both the state of residence of the enterprise operating such vessel or aircraft and the state of residence of the employee.

The proposed matrix with a sequence of actions that the employee must perform in accordance with the norms of the national legislation and tax conventions helps to estimate the time required for each action in Ukraine. Our analysis suggests that the approach proposed by the OECD to the formulation of Art. 15(3) of 2017, which gives the exclusive right to tax remuneration to the state of residence of the employee, is the most convenient for employees. In particular, the employee will face a minimum of actions and spend less time on the procedures for compliance with tax legislation and avoidance of double taxation of personal income (in this case, compliance with tax legislation in Ukraine takes approximately 3.5 weeks).

If taxation of the crew member’s remuneration is applied both by the state of the enterprise that operates such ship or aircraft, and by the state of residence of the employee, comprehensive tax procedures must be completed by the employee to avoid double taxation of his/her personal income (may take approximately 6–10 weeks). Granting tax rights only to the state of residence of the employer operating such a vessel or aircraft still requires employees to properly document the employer's tax status (resident or non-resident) and the tax obligations associated with the employment.

At the same time there are many arguments in favor of allocating taxing right to the source countries which is more complicate for employee’s tax compliance. In this case, simplifying tax procedures is an important task for tax authorities around the world. Simplification of tax procedures for taxpayers can be achieved by strengthening international cooperation between tax authorities of different countries, automating tax administration processes, using modern software, etc.

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