CREATIVE APPLICATION OF THE INTERNATIONAL TREATIES ON AVOIDANCE OF DOUBLE TAXATION

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Abstract: This article considers the status of international treaties on avoidance of double taxation within the sources of international law and their application in particular in the Slovak Republic. It analyses in particular the evolution and models of these international treaties and their interpretation according to the rules laid down in Articles 31 to 33 of the Vienna Convention on the Law of Treaties. Contribution also reflects in particular the development and current status of the OECD Model Tax Convention and its Commentary as a resource of interpretation and application of international treaties on avoidance of double taxation.

Key words: international treaties, double taxation, The Vienna Convention on the Law, the OECD Tax Model Law, Commentary to the OECD Model Law, contract, taxation, income tax, property

1 INTRODUCTION

Tax international bilateral treaties play a key role in the context of international cooperation in tax matters. On the one hand, they encourage international investment and, consequently, global economic growth, by reducing or eliminating international double taxation over cross-border income. On the other hand, they enhance cooperation among tax administrations, especially in tackling international tax evasion.

International double taxation occurs when two or more states impose taxes on the same taxpayer for the same subject matter. Most commonly, double taxation arises because states tax not only domestic assets and transactions but also assets and transactions in other states which benefit resident taxpayers, resulting in the overlap of the states' tax claims. Bilateral double tax treaties address and reduce the extent of this double taxation. The efficacy of the treaty approach, however, depends on common and workable interpretations of the treaty terms.[1]

How do tax international treaty provisions apply in practice?

First condition for its application is a status of these treaties in each state which is contracting party to such a treaty. The status of tax treaties in a country's legal system may affect how the country applies the provisions of its bilateral tax treaties. The legal status of tax treaties is a question of the relationship between tax treaties, or international treaties in general and domestic law.

Traditionally, under public international law, a distinction was made between so-called monist and dualist approaches to the status of treaties in international law. Under a monist approach, international law and domestic law are part of one system in which international law always prevails over domestic law. Under a dualist approach, international law and domestic law are separate legal systems and the former does not necessary prevail over the latter in the event of a conflict. Public international law scholars have recognized more recently that this distinction between monist and dualist approaches is too simplistic to accommodate the enormous variation in national practices.[2]

[1] VOGEL, K.: Double Tax Treaties and Their Interpretation. In: Berkeley Journal of International Law, Volume 4, Issue 1, 1986, p. 4.

[2] Professor Vogel suggests that the current scholarly term is "moderate dualism." See TREPELKOV, A. – TONINO, H. – HALKA, D. (eds.): United Nations Handbook on Selected Issues in Administration of Double Tax Treaties for Developing Countries. United Nations, New York, 2013, p. 4-5.

2 MODEL LAW AS A SOURCE OF NEGOTIATION

Over the last few decades, the number of bilateral tax treaties has increased dramatically. The United Nations Model Double Taxation Convention between Developed and Developing Countries (United Nations Model Convention) and the Organisation for Economic Co-operation and Development Model Tax Convention on Income and on Capital (OECD Model Law or OECD Model Tax Convention) provide **models for countries to use in negotiating the terms of their treaties and are regularly updated**.[3]

Bilateral conventions on double taxation were therefore concluded by two so-called model law prepared by the UN and the OECD, and the United States used its own model law[4]. Both models (UN and OECD) have their basis in the legislative work of the League of Nations during the period of its activity between the two world wars (the first model convention was called the Geneva model law from 1928). On this basis, it was drafted so-called Mexican model law (1943) with the participation of countries in North and South America. Finally London model convention from 1946 was crucial for the European countries over the next nearly twenty-year period.[5] On this pattern work of the Organization for European Economic Cooperation (OEEC) has continued and was later completed by the current model already within Organisation for Economic Co-operation and Development (OECD) in 1963.

In the following years the OECD Model and Commentaries were revised by the Fiscal Committee based on practical experience. In 1977 the Committee published a new report with a partially revised model and Commentaries, which were once again sanctioned by a recommendation of the Council of OECD. The changes did not affect the model as much as the Commentaries, which was made more comprehensive and in which the number of reservations was increased. Aside from the reservations, a number of member states included "observations"; these observations "do not express any disagreement with the text of the Convention, but furnish a useful indication of the way in which those countries will apply the provisions of the Article in question."[6]

The model agreement on double taxation was prepared by the UN since 1967 and published in 1980, drawing on the structure of the OECD model. Model tax convention on income and capital was adopted by the OECD as a recommendation also in 1977 and later was revised for the first time in 1992. The OECD Model tax convention and the Commentaries to the OECD Model Tax Convention were updated in 1994, 1995, 1997, 2000, 2003, 2005, 2008 and 2010.

3 MODEL LAW AS A SOURCE OF INTERPRETATION UNDER VIENNA CONVENTION ON THE LAW OF TREATIES

Double tax treaties are international agreements. Their creation and their consequences are therefore determined according to the rules contained in the **Vienna Convention on the Law of Treaties of May 23, 1969**. As provided in Article 84, the Convention came into effect on January 27, 1980 with the ratification or accession of the thirty-fifth state. With regard to states which have not ratified the Convention, it is important to note that the Convention to a great extent merely codifies existing norms of customary international law.[7]

Convention on avoidance of double taxation with the Netherlands, came by virtue of Article 31 into force on 5 November **1974**. The Vienna Convention on the Law of Treaties from 1969

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[3] TREPELKOV, A. – TONINO, H. – HALKA, D. (eds.): United Nations Handbook on Selected Issues in Administration of Double Tax Treaties for Developing Countries. United Nations, New York, 2013, p. 1.

[4] The United States Treasury Department published its own model treaty in 1976 to serve as the basis for U.S. treaty negotiations. A revised model was published in 1977, and in June, 1981 a suggested draft for a further revision was published, followed by an alternative draft of the model's anti-treaty shopping provision (Article 16) in December of the same year ("June" and "December" versions).

[5] Model Bilateral Conventions for the Prevention of International Double Taxation and Fiscal Evasion, League of Nations Doc. C.88.M.88. 1946 II A. (1946).

[6] VOGEL, K.: Double Tax Treaties and Their Interpretation. In: Berkeley Journal of International Law, Volume 4, Issue 1, 1986, p. 12.

[7] VOGEL, K.: Double Tax Treaties and Their Interpretation. In: Berkeley Journal of International Law, Volume 4, Issue 1, 1986, p. 15.

is valid and binding in the Slovak Republic, respectively Czechoslovak Socialist Republic from **1987**, therefore applies to bilateral or multilateral treaties concluded by the Czechoslovak Socialist Republic and the Slovak Republic, which came into effect from 1987.

Furthermore, I found out that the International Court of Justice[8] has repeatedly held that the **rules of interpretation contained in Article 31** of the Vienna Convention on the Law of Treaties are codified international customs that are so fully applicable to treaties, which is not under temporal scope of the Vienna Convention under its Art. 4, respectively the treaties concluded by non-Parties to the Vienna Convention on the Law of Treaties. Likewise, in terms of commentary of the International Law Commission to the Vienna Convention on the Law of Treaties, its Article 31 is codified customary rules of international law according *res magis quam pereat* and therefore in accordance with Art. 4 of the Vienna Convention on the Law of treaties not affected the validity of the respective parties.

Also under the decision of the International Court of Justice, interpretation rules set out not only in Article 31, but in **Art. 32 of the Vienna Convention on the Law of Treaties as well, are codified customary rules** and therefore Article 32 is applicable to the interpretation of contracts concluded before the entry into force of the Vienna Convention on the Law of Treaties.[9]

According to Art. 31 (general rules of interpretation) of the Vienna Convention on the Law of Treaties:

"1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) Any agreement relating to the treaty which was made between all the parties in connexion the conclusion of the treaty;

(b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) Any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended."

According to Art. 32 (supplementary means of interpretation) of the Vienna Convention on the Law of Treaties:

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting the application of article 31, or to determine the meaning when the interpretation according to article 31 (a) Leaves the meaning ambiguous or obscure; or (b) Leads to a result which is manifestly absurd or unreasonable.

It should be accepted, that the main object and purpose of a Treaty on avoidance of double taxation with the Netherlands in 1974 is almost without doubt, and in particular the title, preamble and subject matter - to prevent double taxation of natural and legal persons who are residents in one or both countries and income in the second or both of the Contracting States (see also Art. 1 and 2 of the Treaty). Another purpose is according to its title and the preamble or the Art. 28 para. 1 "to prevent fiscal evasion with respect to taxes on income and on capital", respectively. prevent tax evasion and / or tax cuts. The subject of the avoidance of double taxation with the Netherlands in 1974 is to establish the rights and obligations of both parties and individuals (natural or legal persons) under the jurisdiction of the Parties, concerning the taxation of income and assets of

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[8] See in particular the judgment of the International Court of Justice in the Kasikili / Case Sedud Island (Botswana v. Namibia), Judgment, ICJ Reports 1999, p. 1059, para. 18 and other decisions cited therein.

[9] See the case-law of the ICJ: LaGrand Case (Germany v. United States of America), Judgment, ICJ Reports 2001, p. 501, para. 99; Territorial Dispute (Libyan Arab Jamahiriya / Chad), Judgment, ICJ Reports 1994, p. 21, para. 41.

specific entities (taxpayers who have tax domicile in one or both Contracting States) and establishing the State in which the taxation of income and property takes place (or may take place).

In order for tax treaties to be applied efficiently and fairly, courts of different countries must strive to interpret treaty provisions consistently. This principle of common interpretation is already well-established in many jurisdictions. Common interpretation is also a rule of interpretation in domestic law, a judge is expected to examine the decisions of other courts and evaluate their reasoning. Rather than adhering stubbornly to a unique personal view, he must choose the interpretation most likely to find general acceptance by courts.[10]

The OECD Model Law and its Commentaries are very important for the interpretation of tax treaties in that they provide a source from which courts of different states can seek a common interpretation.

For further interpretation disputes over dividends paid by SPP to Dutch company is more important to focus on the creative linguistic interpretation. Is it possible one single clear and definite term (resident of State) altered into a "beneficial owner of income" based on subsequent changes of the OECD Model Tax Convention and moreover of its Commentaries, for national individual – taxpayer, who is responsible for taxation of dividends?

4 CZECHOSLOVAK – DUTCH DOUBLE TAXATION TREATY IN PRACTICE

4.1 Slovak Gas Industry Case (tax on dividends)

In Slovakia, until recently, there wasn't significant disagreement on interpretation and application of a bilateral international treaty on avoidance of double taxation.

But during 2003 the original shareholders of Slovak company SPP (Slovenský plynárenský priemysel, i.e. Slovak Gas Industry), Ruhrgas Mittel und Osteuropa GmbH, based in the Federal Republic of Germany (hereinafter the "Ruhrgas") and G.D.F. Investissements 2SA based in France (hereinafter referred to as "GDF"), which each owned a 24.5% stake in SPP (the rest 51% owned by the Slovak Republic through the National Property Fund), established under Netherlands law "Slovak Gas Holding" as a company with liability company ("besloten vennootschap", abbreviated as "BV"), based in the Netherlands (the company "SGH").

Later in 2003 an extraordinary general assembly of shareholders of the SPP have unanimously approved the transfer of Ruhrgas and GDF shares, i.e. 49% of the shares of SPP, for company SGH.

Than the ordinary general assembly of the SPP decided to pay out dividends for Slovak Republic (NPF) and for shareholder SGH to the Netherland. Dividends were paid to the company SGH account on July in 2003.

Finally according to the international exchange of tax information, SGH did not tax receiving from these dividends in Netherlands. One month later during 2003 SGH concluded a loan agreement with Ruhrgas and GDF for the same amount as dividends. Dividends paid by SPP accounted for the only significant income of SGH.

For tax year 2003 SPP did not seduce income tax with regard of income paid to the Dutch shareholder SGH due to the application of Article 10 para. 3 of the Convention between the Czechoslovak Socialist Republic and the Kingdom of the Netherlands for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and on capital from 1974.[11]

After tax inspection of the SPP by the Slovak Financial Administration (Special Tax Office for Selected Taxpayers) has issued for tax year 2003 an additional assessment of income tax in the amount of € 15,4 mil. Tax administration has considered the issue of SGH residence otherwise than SPP.

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[10] VOGEL, K.: Double Tax Treaties and Their Interpretation. In: Berkeley Journal of International Law, Volume 4, Issue 1, 1986, p. 39.

[11] According to Art. 10 paragraph 3 of this Convention: "Notwithstanding the provisions of paragraph 2 the State of which the company is a resident shall not levy a tax on dividends paid by that company to a company the capital of which is wholly or partly divided into shares and which is a resident of the other State and holds directly at least 25 percent of the capital of the company paying the dividends."

Slovak Financial Administration noted that in view of treaties for the avoidance of double taxation and prevention of tax evasion is the question of "residence" addressed in Article 4 of the OECD Model Tax Convention. According to the Commentary on that article in determining the country, in which the person is a resident for the purposes of double tax treaties, it is not possible to attach importance to just and purely formal criteria (e.g. company registration), but residence nature should be taken into consideration as well. SPP did not apply the Convention for the avoidance of double taxation with the Netherlands from 1974 correctly, just because incorrect assessment of the actual owner of income of dividends paid to SGH. Convention with the Netherlands the term "beneficial owner of income" explicitly did not stated, but the Commentary on Article 10 of OECD Model Tax Treaty (as in force since 2003) use the term "beneficial owner of income" and was incorporated to OECD Model Tax Convention in order to clarify the meaning of the phrase "... paid to a resident."

Therefore for Slovak Financial Administration beneficial owners of income paid from dividend to SGH accounts were not in Netherlands, but in Germany (Ruhrgas) and in France (GDF). As any tax conventions with Germany, France and Slovak Republic (or former Czechoslovakia) exists until present days, SPP was obliged to pay tax from dividend.

Main argument of the Slovak Financial Administration is based on the premise that since the Convention with the Netherlands from 1974 is clearly based on the draft OECD Model Convention of 1963 with respect to the above interpretation it is possible to use text of the Commentaries in force of the payment of dividends, i.e. from 2003. Moreover the Article 10.2 OECD Model Tax Convention, namely the concept of "beneficial owner of income" is not a reservation any of the respective States (Slovakia, the Netherlands, Germany, France). Similarly, none of them did note to the relevant part of the commentary. In this way the States have clearly declared that on that concept espoused and that it will be applied in practice.

SPP has brought an action before Slovak courts and argues that Convention with the Netherlands the term "beneficial owner of income" explicitly did not stated, but contains very common and precise term "residence" which was also clear and untestable for taxpayer (SPP). This taxpayer cannot by bound by later changes of the OECD Model Tax Law and moreover of its Commentaries, which contains definition of "beneficial owner" just sometimes from 2003, where dividends has been just transferred and also when these "sources" were never translated into Slovak and/or published in Slovak Collection of Law.

4.2 Which Model Law is applicable and what is its relevant wording

Convention on avoidance of double taxation with the Netherlands from 1974 was among the very first international bilateral agreements of this kind concluded by the Czechoslovak Socialist Republic and the other states (more similar agreements were concluded with Italy and France in 1973, Finland and Belgium in 1975, Japan in 1977, Austria in 1978, etc.).

The first Draft convention on avoidance of double taxation on income and capital (Draft Double Taxation Convention on Income and Capital) was adopted as a Recommendation of the OECD Council in 1963, which also called on the OECD Member States in the conclusion of new or changes to existing tax treaties follow this proposal. This could not be relevant for Czechoslovakia, as either in 1963, nor in 1974 was outside the OECD.

I would like to note, that the text of the **Draft convention for the avoidance of double taxation on income and capital in 1963**, compared with the text of the **Model Tax Convention as amended in 2003** does not differ radically. Identical structure and provisions of articles is maintained principally, just used expressions and terminology are subject to change, respectively, adding some provisions of obligations and rights of taxpayers (e.g. the term used in Art. 17 "athletes" vs "sportsmen" amendment to the second paragraph of the cited article).

The same is true when comparing the wording of Art. 10 (dividends) between the Draft convention for the avoidance of double taxation on income and capital from 1963 and the text of the Model Tax Convention as amended in 2003 (e.g. adding expression "beneficial owner of the dividends is a resident of a Contracting State" in the second paragraph Art. 10: "However, Such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and According to the law of that State, but the tax charged to the shall not Exceed ...." vs. "However, Such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and According to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the Charged with Tax shall not Exceed ... ").

Comparing the text of the Draft Convention on the elimination of double taxation on income and capital in 1963 and the Convention on the avoidance of double taxation with the Netherlands in 1974, I found that they are identical in structure (slight difference resulting from the addition of Article 13 and 21 of the Treaty on avoidance of double taxation with the Netherlands in 1974) and almost all the provisions of the two documents are identical.

I have to conclude, that the **Convention for the avoidance of double taxation with the Netherlands in 1974** was negotiated and concluded by the model, which was the draft Convention on the elimination of double taxation on income and capital in 1963, i.e. both Contracting States have the available text of the draft convention and agree to this model.

4.3 Which Commentaries on the Articles of OECD Model Tax Conventions is applicable and what is its relevant wording

On the other hand, I found that **radical change** is subject to particular **text of Commentaries attached to the OECD Model Tax Convention**.

The first text of Commentaries attached to the draft Convention on the elimination of double taxation on income and capital from 1963 contained about 43 pages, text of Commentaries attached to the Model Tax Convention as amended in 2003 includes nearly 400 pages.

Commentaries attached to the Model Tax Convention as amended in 2003 states:[12] "The requirement of beneficial ownership was introduced in paragraph 2 of Article 10 to clarify the meaning of the words "paid ... to a resident" as they are used in paragraph 1 of this Article. It makes plain that the State of source is not obliged to give up taxing rights over dividend income merely because that income was immediately received by a resident of a State with which the State of source had concluded a convention. The term "beneficial owner" is not used in a narrow technical sense, rather, it should be understood in its context and in light of the object and purposes of the Convention, including avoiding double taxation and the prevention of fiscal evasion and avoidance. It would be equally inconsistent with the object and purpose of the Convention for the State of source to grant relief or exemption where a resident of a Contracting State, otherwise than through an agency or nominee relationship, simply acts as a conduit for another person who in fact receives the benefit of the income concerned. For these reasons, the report from the Committee on Fiscal Affairs entitled "Double Taxation Conventions and the Use of Conduit Companies" concludes that a conduit company cannot normally be regarded as the beneficial owner if, though the formal owner, it has, as a practical matter, very narrow powers which render it, in relation to the income concerned, a mere fiduciary or administrator acting on account of the interested parties."

4.4 OECD Model Tax Convention and its Commentaries as contextual or just supplementary interpretation

Worldwide legal doctrine discusses the legal nature of the OECD Model Tax Law and Commentaries on the OECD Model Tax Convention, i.e. their legal status and moreover **if they are applicable according to Art. 31 or 32 of the Vienna Convention on the Law of Treaties**.

According to Art. 5 Convention on the Organisation for Economic Cooperation and Development of 14 December 1960 may OECD to achieve their goals:

a) take decisions which are binding on all members, unless otherwise provided,

b) to make recommendations to the Members and

c) enter into agreements with its members, non-member States and international organizations.

I note that the draft Convention on the elimination of double taxation on income and Capital in 1963 and later model tax treaty on income and wealth from 1977 and its revisions are adopted as recommendations under Art. 5 letter b) of the Convention on the Organisation for Economic Cooperation and Development of 14 December 1960's.

Pursuant to these recommendations, the governments of the OECD Member States should conclude every new tax treaty and revise existing tax treaties in accordance with the current OECD

[12] Commentaries on the articles of the model tax convention. Model tax convention (condensed version), OECD 2010, Para 12, pp. 187-188.

model tax law and execute subsequent interpretation given in the current version of Commentaries. Equally tax authorities are encouraged to follow the application and interpretation of tax treaties under current (updated) version of the Commentaries to the OECD Model Tax Convention.

Whereas the Czechoslovak Socialist Republic did not participate in the preparation and approval work on the Draft Convention on the elimination of double taxation on income and capital in 1963, it cannot be used in the contextual interpretation (in the overall context) used as an agreement relating to the treaty which was made between all the parties in connection with the conclusion of the contract in accordance with Art. 31 paragraph 2 letter a) of the Vienna Convention on the Law of Treaties, but can be used according to the letter b) as an **instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty**.

The Draft Convention for the avoidance of double taxation on income and capital from 1963 is also connected to Commentaries that constitutes de facto one document with Draft Convention itself. We can conclude that the Czechoslovak Socialist Republic and the Kingdom of the Netherlands had provided the text of a Draft convention on the avoidance of double taxation on income and capital in 1963, along with Commentaries that served as a model, a model subsequently concluded agreement on avoidance of double taxation in 1974. I found that Commentaries to the Draft Convention on the elimination of double taxation on income and capital in 1963, which is connected to it, contains individual provisions (Articles) of the Draft Convention and the explanation of their "purpose".

5 CONCLUSION – BENEFICIAL OWNER VS RESIDENT IN 2003 ACCORDING TO THE TAX TREATY FROM 1974 ?

The purpose of the term "beneficial owner" is to provide the benefits of the Convention for the avoidance of double taxation only to the person whose income nature of dividends, interest and royalties is granted and which has also the right to managed such income as the ultimate or true owner.

In this context it is necessary to consider the wording of paragraph 33 - 36.1 of the Introduction to Model Tax Convention, indicating that the Draft OECD Model Tax Convention of 1963 will be interpreted in the spirit of the current version of the Commentaries in the Model Tax Convention, and even in cases where the wording of the relevant article of the Treaty **does not contain new wording clarified OECD Model Tax Convention**.

This procedure does not apply only in cases where there has been a principled change in the wording of the relevant article of the OECD Model Convention and resulting changes of the Commentaries. These amendments or additions of the Commentaries that do not result from changes principled wording of some articles of the OECD Model Tax Convention can also be used in the interpretation of treaties for the avoidance of double taxation concluded before changing the Commentaries.

When responding to a question, we must note that the term "beneficial owner" or equivalent "real beneficiary" (Beneficial owner) was added into the OECD Model Tax Convention and Commentaries on the Model Tax Convention **in 1977** (see Art. 10 para. 2 and 4, Art. 11 para. 2, Art. 12 para. 3 and 4), as an initiative of the United Kingdom. Germany, for example, during the preparatory discussions of the Working Group 27 claimed that there is no need to change the model OECD Tax Convention, as the terms used in the Convention are sufficiently clear.

OECD Tax Convention of 1977 and Commentaries attached to did not contain a definition of the term "beneficial owner", nor reasons of their reference.

Only text of the Commentaries on the OECD Model Tax Treaty of 2003 in point. 12 and 12.1 of the Article 10 states that the term "beneficial owner" was introduced for the purpose of clarification of the term "paid to.... person who is a resident" in Article. 10 paragraph 1 of the OECD Model Convention. State of the source of dividends is not obliged to give up the right to tax dividends only because this is paid directly to the beneficiary residing or established in the other Contracting State.

The term "beneficial owner" cannot therefore by applied only in a narrow technical sense, but it is necessary to take into account the subject of the purpose of the OECD Model Tax Convention, including the avoidance of double taxation and prevention of tax evasion.

It can be stated that if the concept of a term and its meaning and purpose are only in the Commentaries to the OECD Model Tax Convention, so just following explicit change of these terms and concept (e.g. in the text of the Model Tax Convention itself) and further definition is not a new approach and especially not if it pursues the original object and purpose of this concept. This is way of contextual interpretation and use of Commentaries to the OECD Model Tax Convention **under Article 31 of the Vienna Convention**.

Moreover "preparatory work" within the meaning of Article 32 of the Vienna Convention refers to the materials of an individual treaty, not to the OECD Model or Commentaries. In contrast to the preparatory work applicable to an actual agreement, the OECD Model and the Commentaries are generally known and easily obtainable. No reason exists, therefore, to refer to these sources only as secondary means of interpretation, as is the case for "preparatory work" within the meaning of Article 32.[13]

On the other hand it is possible to use Commentaries to the OECD Model Tax Conventions in the interpretation of the treaty, only if the differences between the wording of the Model tax Convention and of an specific international tax treaty is not essential and the provisions that have been amended or supplemented to comment after signing international tax treaties were published in, respectively during the period of the transaction. Commentaries can generally be used as a supplementary means of interpretation of international tax treaties **in accordance with Article 32** of the Vienna Convention on the Law of Treaties. It can be used either to confirm the importance of specific provisions of contracts resulting from the use of the general rules of interpretation laid down in Article 31 of the Vienna Convention on the Law or it can be used as an additional resource where meaning under Article 31 of the Vienna Convention on the Law it is ambiguous, fuzzy, contradictory or obviously unreasonable.

Whereas actually during 2016 is abovementioned case still not judicially decided we'll see what decision and direction of Slovak courts can be expected. Plus, the court's decision in this case will be precedent and shall have retroactively effect for more than this financial transaction.

This work was supported by the Slovak Research and Development Agency under the contract No. APVV-14-0852.

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