DE GRUYTER OPEN
JOURNAL OF LEGAL STUDIES
"Vasile Goldiş" Western University of Arad
J. L. S.
DOI: 10.1515/jles-2017-0013

DOUBLE TAXATION CONVENTIONS IN ROMANIA CASE: DSSs RÂȘNOV vs. ANAF BRAȘOV

Professor Florin Dumiter PhD
"Vasile Goldiş" Western University of Arad
E-mail: fdumiter@yahoo.com

Assistant Professor Ștefania Jimon PhD Candidate
"Vasile Goldiş" Western University of Arad
E-mail: jimonstefania@yahoo.com

Associate Professor Marius Boiță PhD
"Vasile Goldiş" Western University of Arad
E-mail: bmarius1963@yahoo.com

(*Received September 2017; Accepted November 2017*)

Abstract: Conventions to avoid double taxation are the *panacea* of tax law, *lato sensu*, and direct taxation, *stricto sensu*. Although the current network of double taxation conventions has over 2500 tax treaties concluded by the world's states, there are still issues that need to be addressed in their application: the anti-abuse provisions to be found in conventions, the practices of the type treaty shopping, LOB clauses, use of arbitration in the application of double taxation avoidance conventions. The case of Romania is analyzed in this article, through the DSSs Râşnov cause vs. ANAF Brasov, in order to highlight the way in which the framework of the double taxation avoidance convention is applied in Romania, if there are differences and divergences between the *de jure* provisions of the double taxation avoidance conventions and the *de facto* application, in practice, a state like Romania, which is in the process of catching up with economies in developed countries. The case presented in this article suggests that there is still *room for maneuver* to improve the framework for double taxation avoidance conventions in Romania and how they are applied in practice, which their provisions are interpreted and respected.

Keywords: double taxation, tax treaty, fiscal space, double legal and economic taxation, income tax and capital, abuse, treaty shopping, capital import neutrality.

1. Introduction

Fiscal policy is the instrument by which governments want to apply the "vision" on the system of taxes and duties within a state, depending on the main objectives of the governance program platform, and especially on the specific objectives of the tax area. Therefore, the characteristics of fiscal policy address the dimensions of fiscal law, through principles and techniques, as well as of public finances, by means of methods and procedures established for the most fair and just fiscal equity, both on vertically and horizontally.

With regard to internationally established tax policy, it has a very new economical, financial, legal and social dimension. If, with regard to the single monetary policy practiced at the level of the European Union, there is a formula for centralizing it; at fiscal policy level the problem is much more complicated. Budgetary and fiscal federalism, issues such as competition versus tax harmonization, especially at EU level, are "open" issues where legal and economic theory have not yet found concrete solutions. Moreover, the creations of fiscal space, *lato sensu*, worldwide, and *stricto sensu*, at the level of the European Union, are the most pressing issues with which the international fiscal policy is currently facing.

Rust (2011, pp. 10) suggests that the double taxation conventions currently in place cannot solve all the legal issues of double international taxation. First of all, one can observe the incomplete stage of the international tax treaty network. Even in the case of the European Union, there are still shortcomings in the double taxation conventions concluded between different states. Secondly, the status of tax treaties on successions is more and more problematic, and it can be noticed in this respect that the European Union has concluded very few tax treaties on successions.

Panayi (2007, pp. 15) highlights the high costs of running different businesses and, implicitly, the reduction of profits associated with cross-border transactions. The efficiency of the costs of multiple taxation can be severe, since the tax rates established at national level are sufficiently high or effectively discourage the vast majority of international businesses if they apply at the same time for the same type of income.

One of the ways of understanding the complex structure of manifestation of a convention for avoidance of double taxation is the semantic analysis and the way of interpreting them. The issue here is the need to clarify the daily issues that arise in the interpretation of a multilingual fiscal treaty, i.e. a tax treaty authenticated in two or more languages, as well as the optimal way of interpreting and solving these issues under the auspices public international law, based on sound arguments and the essential elements on which a tax treaty must be based at the time of its conclusion (Arginelli, 2015, pp. 1).

In view of the above, Maisto (2005) suggests that in some countries, language problems lie beyond translating certain terms into one exclusive and genuine language, the real problems arising from multilingual tax treaties. The latter are different from linguistic problems that are aimed at authentic language. Therefore, those who have more than one genuine language must pay special attention to the mutilinguistic problems that arise from the interpretation of national legislation, including tax legislation, which results in the establishment of rules, regulations and regulations with a special status.

Analyzing the issues highlighted above, we can see that conventions to avoid double taxation still involve serious problems in terms of formulating different

terms in different languages, how to construct, how to engrave economic construction within the framework but also in terms of the correct and concrete way of applying them in practice.

The structure of this article is as follows: in the first part of the article, the introduction is intended to constitute a genuine *caveat* as regards the national and international framework for the conventions for the avoidance of double taxation; the second part of the article is a genuine *quid pro quo*, in which the economic dimension and the legal dimension of the international double taxation, and in particular the tax treaties concluded by Romania, are presented in a comprehensible manner; the last part of the chapter constitutes, *mutatis mutandis*, the "core" of the article and analyzes a suggestive case in the jurisprudence regarding the concrete application of the provisions of the conventions for the avoidance of double taxation in Romania. The conclusion drawn from this article would like to highlight the significant evolution that Romania has made in improving the qualitative and quantitative framework of double taxation avoidance conventions and the steps that need to be followed in order to have as practical a practical outcome as possible comprehesive.

2. The legal and economic framework of international double taxation conventions in Romania

Without intending to carry out in this section an exhaustive analysis of the framework for double taxation avoidance conventions in Romania, we consider that there are some aspects to which we need to make a few points.

The national legislation regulating the framework of the conventions for avoidance of international tax double taxation is constituted by the following normative acts:

■ Law no. 571/2003 on the Fiscal Code, as subsequently amended and supplemented, including its Implementing Rules.

■ O.G. no. 92/2003 on the Fiscal Procedure Code, republished, as subsequently amended and supplemented, including its Implementing Rules.

■ Law no. 227/2015 on the Fiscal Code, as subsequently amended and supplemented, including its Implementing Rules.

■ Law no. 207/2015 on the Fiscal Procedure Code, as amended and supplemented; Law no. 241/2005 on the prevention and combating of tax evasion, with subsequent amendments and completions.

■ Order no. 222/2008 of 8 February 2008 on the content of the transfer pricing file.

The most recent legislative amendment is the Order no. 2309/2017 of 1 August 2017 amending the Order of the President of the National Agency for Fiscal Administration no. 3.626 / 2016 on the establishment of the list of reporting jurisdictions.

With regard to the exchange of information between Contracting States, each State undertakes to notify the partner State of the amendment of national tax laws and other information necessary for the application of the provisions of the agreement and to avoid evasion and tax fraud. As regards the case of Romania, the information exchange has expanded from the perspective of the international law instruments in which Romania is an integral part. In this respect, according to the new legal regulations in force in Romania since 2017, the list of reporting jurisdictions includes the following states: South Africa, Anguilla, Argentina, Bermuda, Colombia, Gibraltar, Greenland, Guernsey, Iceland, India, Cayman Islands, Faroe Islands, The Isle of Man, the Turks and Caios Islands, the British Virgin Islands, Jersey, Liechtenstein, Mexico, Montserrat, Norway, South Korea, San Marino and the Seychelles. Starting with 2018, the list of reporting jurisdictions will expand and include the following states: Andorra, Antigua and Barbuda, Saudi Arabia, Aruba, Australia, Bahamas, Bahrain, Barbados, Belize, Brazil, Brunei Darussalam, Costa Rica, Curacao, Dominica, Switzerland, United Arab Emirates, Russia, Ghana, Grenada, Hong Kong, Indonesia, Cook Islands, Marshall Islands, Israel, Japan, Kuwait, Lebanon, Macao, Malaysia, Mauritius, Monaco, Nauru, Niue, New Zealand, Pakistan, Panama, Quatar, Samoa, Saint Kitts and Nevis, Saint Lucia, Saint Martin, Saint Vincent and the Grenadines, Singapore, Trinidad and Tobago, Turkey, Uruguay and Vanuatu.

The international double taxation agreements concluded by Romania use the OECD model and set out the taxes and the competence of each State to impose taxation, the way in which the elimination of double taxation, the way of settling possible divergences, the way in which it is carried out the exchange of information, the date of entry into force and the way in which denunciation can be given. Also, the signatory states of such agreements commit themselves to respecting the right to non-discrimination, i.e. to grant the same rights and to impose the same obligations on non-resident and resident persons (Dumiter & Jimon, 2016a, pp. 186 – 187).

According to Dumiter et al. (2017, pp. 249), the earliest conventions for the avoidance of double taxation concluded by Romania date from the period of state organization as a socialist republic. In 1973, the first convention to avoid double taxation of income and capital was signed with the Federal Republic of Germany until 2003 when it was updated and amended. In 1974, agreements were concluded with the French Republic and the US, and in 1976 with Japan and the United Kingdom. Until 1980, Romania concluded international treaties to avoid double taxation with countries such as Austria, Belgium, Canada, Denmark, Finland, Italy, Pakistan, Spain and Sweden. Bilateral conventions were signed between Bangladesh, Cyprus, Egypt, India, Jordan, Malaysia, Morocco, Norway, the Netherlands, the Federal Republic of Yugoslavia (current Bosnia Herzegovina),

Syria, Sri Lanka, Turkey, Tunisia and Zambia. After 1992 and until 2010, the number of conventions concluded by Romania for the avoidance of international double taxation has increased considerably and targeted countries around the world: 28 from Europe, 24 from Asia, 7 from Africa, and from Australia, Canada, Ecuador and Mexico. After 2010, the number of international treaties signed decreased, with the partner countries being Saudi Arabia, India and Uruguay. Of course, some of these conventions have been updated and amended, and some protocols on the avoidance of double taxation with Switzerland, San Marino, Luxembourg and Austria have also been signed.

The analysis of double tax avoidance conventions should also be made in comparison with the central and eastern European states. Therefore, central and eastern European countries hold a considerable number of conventions and protocols concluded to avoid double international taxation, the most common being to avoid double taxation of income and capital. As a result of the data published in the United Nations Conference on Trade and Development Conference of the European Union and the Ministries of Finance of these countries, we have noticed that the Czech Republic sums up 84 such treaties, Poland 111, Slovakia 69, Hungary 84, and Romania 90 (Dumiter & Jimon, 2016b, pp. 4).

3. Cause of DSSs vs. ANAF Brasov

Within this section we will also present the decision 901 of March 24, 2016, issued by the High Court of Cassation and Justice of Romania - the Administrative and Fiscal Litigation Section regarding the appeal in annulment formulated by S.C. DSS S.R.L. Râşnov against Decision no. 2718 of July 9, 2015 of the High Court of Cassation and Justice - Administrative and Tax Appeal Section (High Court of Cassation and Justice of Romania, Administrative and Fiscal Court, Decision no. 901, delivered in a public hearing on March 24, 2016, File no. 2912/1/2015].

This article covers the costs of the provision of personnel supply services and the income derived by non-residents on the territory of Romania and their tax deductibility in the light of the tax legislation and the provisions of the Convention concluded between the Government of the Socialist Republic of Romania and the Government of the United Kingdom of Great Britain and Northern Ireland for the avoidance of double taxation with respect to income taxes and capital gains, ratified by Decree no. 26/1976.

Circumstances of the case

By the action registered under no. 430/64/2012 on the role of the Brasov Court of Appeal - Administrative and fiscal contentious division, S.C. DSS S.R.L. Râşnov sued the defendants the National Agency for Fiscal Administration, the National Agency for Fiscal Administration - the General Directorate for Solving Complaints

and the General Directorate of Public Finances Braşov requesting the annulment of the Taxation Decision no. F-BV no. 1021 / 30.11.2011, of the Tax Inspection Report no. F-BV 843 / 30.11.2011, of the provision of measures no. 440 / 30.11.2011 and the Decision no.175 / 18.05.2012, as well as order the defendants to pay the costs.
The applicant filed a new action at the Court of Appeal of Brasov - Administrative and Tax Appeals Division under no. 177/64/2012 by which he sued the defendants the National Agency for Fiscal Administration, the National Agency for Fiscal Administration - the General Directorate for Solving Complaints and the General Directorate of Public Finances Braşov requesting the annulment of the Taxation Decision no. F-BV no. 1021 / 30.11.2011, of the Tax Inspection Report no. F-BV 843 / 30.11.2011, of the provision of measures no. 440 / 30.11.2011 and the assimilated administrative act, represented by the lack of reply of the General Directorate for Solving Complaints to the administrative complaint filed by the applicant.

The solution of the court of first instance
The Court of Appeal of Brasov admitted the exception of connection and ordered the merger of file no. 430/64/2012 to file no. 177/64/2012, considering that the conditions are imposed by art. 164 Civil Procedure Code.
The court acknowledged the lack of passive procedural quality of the defendant National Agency for Fiscal Administration and rejected the exception of premature action.
Through Sentence no. 48 of 31 March 2014, the Court of Appeal of Brasov upheld the applicant's action, annulled the decision no. 175 / 18.05.2012, the taxation decision no. F-BV no. 1021 / 30.11.2011, the tax inspection report no. F-BV 843 / 30.11.2011 and the provision of measures no. 440 / 30.11.2011 and ordered the defendant Regional Directorate General of Public Finance Brasov (subrogated to rights and obligations of the General Directorate of Public Finance Brasov) to pay to the applicant partial expenses.

Appeal
Against the decision of the court of first instance, the defendant, the Regional Directorate General of Public Finances, Brasov, appealed, requesting its amendment and dismissing the applicant's action, based on art. 304 (7) and (9) of the Code of Civil Procedure, stating that the contested judgment is based on the misinterpretation of tax legislation and the provisions of the Double Taxation Convention concluded with the United Kingdom of Great Britain and Northern Ireland.

Findings of the Board of Appeal

The High Court of Cassation and Justice found that the first instance considered as tax deductible the expenses representing the service provision and the fact that the income obtained by non-residents was paid by the defendant who also paid the related contributions for this type of income, established on the basis of Romanian legislation.

Both in administrative and judicial proceedings, the recurring authority argued that, in reality, the contract no. 407311 / 26.03.2007, concluded with HLSS LTD, resident in the UK, is a management services contract, that there are affiliation relations between the contracting parties, as HLSS LTD holds 100% of the share capital of the affiliated person . Also, the defendant did not justify the fact that these expenses were incurred for the purpose of taxable income, which is why they are not tax deductible, in relation to the provisions of point 41 of the H.G. no. 44/2004 on the Methodological Norms for the Application of the Fiscal Code, point given in the application of art. 11 par. (2) of the Fiscal Code.

By re-evaluating the evidence in question, the High Court found that the appellant's criticism was based on the fact that during the 2007-2009 period, the defendant party recorded in the accounts the expenses on the basis of the service contract concluded with HLSS LTD, at point 1 it is stated that the latter "will transfer one or more of its employees" to the "defendant" to work or assist "this company. As the first instance has shown, the defendant has recorded in the accounting records the related bills representing management fees.

The High Court of Cassation and Justice assessed according to the provisions of art. 7 and art. 11 paragraph (2) of the Law no. 571/2003 on the Fiscal Code and point 41 of H.G. no. 44/2004 on the Methodological Norms for the application of the Fiscal Code, that among the affiliated persons, the costs of administration, management, control, consultancy or similar functions are deducted at central level through the parent company on behalf of the group as a whole. Expenditures of this nature can be deducted only if they provide services to affiliates in addition or if the services or administrative costs are also taken into account in the price of the goods and the value of the services provided.

In the present case, the two previously listed companies are affiliated legal entities, given that HLSS LTD holds a 100% stake in the shareholder's share capital.

Thus, the court found that the tax authority's conclusion is correct in the sense that it is management services, starting from the fact that they were invoiced with this title. The defendant plaintiff did not prove the effectiveness of the services rendered by each of the persons listed in the appendices to the invoices, which were recorded in the accounts, in particular, the individuals B.H., C.N. and G.C.

The Court of Justice also noted that the complainant did not include in the price of the delivered goods the costs of the management services invoiced by the affiliated

person and moreover had concluded individual labor contracts with Romanian persons who, job descriptions, have as work tasks, tasks that are among the activities mentioned in the contract under discussion.
Thus, it was appreciated that for the expenses invoiced by HLSS LTD, the defendant did not prove that they are related to the realization of taxable income, as required by the provisions of art. 21 par. (1) Tax Code, and no proof of their realization, according to art. 21 par. (4) lit. m) of the same normative act.
Regarding the expenses for accommodation and mass services rendered to F.C., as a delegate from HLSS LTD, in relation to the provisions of art. 21 par. (2) lit. e) of the Fiscal Code and the fact that the nominee does not have the status of an employee or manager in the company, the court of appeal considered that the deductibility of such expenses could not be deducted.
With regard to the late payment, the provisions of art. 119 and art. 120 Fiscal Code, the court of appeal considered that the intimate owes late payment for the period 25.04.2008-29.10.2009, in relation to the amount of the main debit established additional payment.

Solution of the appeal court
By Decision no. 2718 dated July 9, 2015, the High Court of Cassation and Justice - the Administrative and Fiscal Appeal Division admitted the appeal declared by the defendant to the General Directorate of Public Finances of Brasov against the Sentence no. 48 of 31 March 2014 of the Brasov Court of Appeal - Administrative and Tax Appeals Division and amended the contested judgment, in the sense that they dismissed the main action and the related claim as unfounded.

The legal basis of the solution adopted in the appeal
The High Court admits the appeal filed by the defendant to the General Directorate of Public Finances of Brasov against Sentence no. 48 of 31 March 2014 of the Court of Appeal of Brasov - Administrative and Tax Appeal Section, based on the provisions of Art. 7 and art. 11 paragraphs (2), respectively art. 21 par. (1), par. (2) lit. e), par. (4) lit. m) of Law no. 571/2003 on the Fiscal Code and point 41 of H.G. no. 44/2004 on Methodological Norms for the Application of the Fiscal Code.

Annulment contest in question
Against the decision of the intimate-complaining court of S.C. DSS S.R.L. Râșnov filed an appeal for annulment, based on the provisions of Art. 318 paragraph (1) of the Civil Procedure Code, requesting the change of Decision no. 2718 of 9 July 2015 of the High Court of Cassation and Justice - Administrative and Fiscal Complaints Division and dismissal of the appeal filed by the General Directorate of Public Finances of Brasov, at trial expenses.

In a first criticism, the challenger submits that the contested decision is the result of an obvious material error, generated by the non-observance of the content and object of the Taxation Decision no. F-BV 1021/2011 and the Decision on resolution of the administrative appeal no. 175/2012.

A second complaint concerns the fact that the Board of Appeal failed to analyze its defense regarding the tax deductibility of staff costs posted under the provisions of the convention between the Government of the Socialist Republic of Romania and the Government of the United Kingdom of Great Britain and Northern Ireland for the avoidance of double taxation with respect to taxes on income and capital gains, ratified by Decree no. 26/1976.

On February 10, 2016, the contestant filed an addendum to the grounds for the appeal.

It completes the first plea in law, alleging that the contested decision is the result of a material error on the one hand, the non-observance of the deductible nature of the costs of the provision of personal supply services and of the costs of accommodation for the benefit of the representative of HLSS LTD.

Thus, the contested decision is the result of an error in the erroneous classification of the contract concluded with HLSS LTD as a management service contract because, in order to benefit from the experience gained by the group of companies it is part of, service contracts for the supply of personnel to companies within the group.

Interpretation of the contract as management is unlawful because the contract for the provision of personnel is a service contract which is the basis for the provision of work by the staff made available and the fact that part of the employees so transferred also performs the work management does not change the qualification of this contract.

It was thus legally obliged to pay the value of the work performed, the wage costs and other associated costs or the costs directly incurred, and, on the basis of the invoices issued by the employer, recorded these expenses as tax deductibles.

The point of view of the court starts from the provisions of art. 11 paragraphs (2) of the Fiscal Code and point 41 of the Methodological Norms for its application, articles which allow the tax authorities to adjust the expenses paid to an affiliated person, but only if their legal basis is the legal relationship that governs the form business organization.

In the case in question, the invoices were not issued on the basis of the legal relationship governing the form of organization, but based on the provisions of the contract, the services being actually provided by B.H., C.N. and G.C.

He states that before the court of appeal he submitted, attached to the testimony, proof of the actual involvement in the activity of the society of the three persons as well as the proof of payment of the income tax for them in Romania.

It shows, as regards B.H., that he was seconded to the beneficiary's headquarters as general manager, under Law no. 344/2006 and H.G. no. 104/2007. With regard to C.N. and G.C., they were delegated to the beneficiary's premises, and no contract for that purpose could be concluded.

The contract of 26 March 2007 was concluded between a Romanian legal person and a resident legal entity in the UK, which leads to the analysis of transactions in light of the principles / rules introduced by the OECE Fiscal Model Tax and Income Tax Code, which regulates double taxation the convention concluded between the Government of the Socialist Republic of Romania and the Government of the United Kingdom of Great Britain and Northern Ireland for the avoidance of double taxation with respect to income taxes and capital gains ratified by Decree no. 26/1976. The provision of art. Article 16 paragraph (2) of this decree was incorporated into the national legislation under Title III, art. 88 of the Fiscal Code.

The contestant also states that at art. Article 21 (2) let. e) of the Fiscal Code and point 27 let. b) the norms issued for its application are recognized as expenses incurred for the purpose of obtaining income (tax deductibles), transport and accommodation expenses, performed by the non-resident natural persons, according to the law, in case the taxpayer bears the legal rights due to them.

According to art. 4 of the contract concluded, the service provider will invoice an amount covering the salary and other benefits of the transferred employee as well as other incidental costs or expenses borne directly or indirectly by NON-ROM.CORP. In the transfer of employees' and 'a 1% margin for the administrative costs involved in the amounts invoiced in accordance with point 4.1'. According to point 4.4 of the contract, the beneficiary of the services will directly bear the direct costs and expenses incurred on the territory of Romania deriving from the transfer of the employees transferred to Romania.

In the continuation of his claims, the contestant states that, at art. Article 21 (2) let. e) of the Fiscal Code and in point 27 let. a) and b) of the norms issued for its application are recognized as expenses incurred for the purpose of obtaining income (tax deductible) transport and accommodation expenses incurred for persons assimilated to their own employees, namely directors appointed on the basis of a mandate and individuals non-resident detainees, according to the law, in case the taxpayer bears the legal rights due to them. Thus, he claims that the conditions set forth in point 48 of the Methodological Norms for the application of art. 21 of the Fiscal Code.

It shows that the tax authority is not competent to determine which services the applicant has or has the right to employ, since the companies, indifferent to the form of organization, operate on the basis of the principle of the freedom of

management or management non-interference, a principle that forbids the tax administration to criticize the enterprise's management decisions as an opportunity.
It claims that, by mistake, the court did not properly apply the provisions of art. 21 paragraph (4) and art. 11 paragraph (2) of the Fiscal Code.
The tax regime generated by the management expenses is regulated by art. 21 paragraph (4) let. m) Fiscal Code, but only for those expenses with management services for which no contracts are concluded. The special tax regime for the management expenses mentioned in art. Article 11 (2) refers to the situation in which those services are provided by companies belonging to the same group, the tax authorities being able to adjust the amount of expenditure thus incurred by using a method of determining the market price of that service.
The methods are listed in this paragraph and detailed in section 22 and following of the methodological norms, being established on the basis of the transfer pricing guidelines issued by the Organization for Economic Cooperation and Development.
It shows that the arguments of the court concerning the partial performance of the same activities and other persons employed on the basis of an individual employment contract can not be retained, while legally there is no prohibition to employ more persons to provide the same kind of activity if the interests of society demand it.
Even if the control bodies would depart from the management service contract qualification, the analysis of the effectiveness and price reality of the paid prices should be done in accordance with the provisions of the guidelines.
In determining the reality of service provision, it must be ascertained whether an independent, non-affiliated company would have been willing to pay for the performance of those activities, either an employee or a subcontractor. Even if he hired other people to perform similar activities, besides Mr. H. and N., the added value of the transferred staff experience contributed decisively to the implementation and development of society in Romania.
Although it considers the contract concluded with HLSS LTD as an intra-group management service contract, the DP does not include any assessment of the reality or effectiveness of the provision of these services, and the tax inspectorate did not analyze these aspects without indicating any method of adjusting the expenses that would have led them to completely eliminate these expenses as if they had not existed.
It applauds the contestant that this superficial approach has led to unlawful conclusions because the reality of performing these activities can not be denied and the effectiveness of the costs determined by it can not be removed.
It shows that the tax expert appointed by the court of first instance held the lawfulness of the recording of expenditure in the accounts and, consequently, the

right of deduction in full of those costs, the court of appeal completely ignoring the findings of the tax expert report.
It completes the challenger and the second criticism regarding the court's failure to analyze his defense and considers that the court of appeal has failed to rule on the existing legal provisions between Romania and the UK regarding the avoidance of double taxation.
Thus, by the contested decision, the court did not analyze the incidence of these provisions and of those laying down the general rule concerning the taxation of earned earnings, according to which the taxation of such income is done in the state where the paid employment is actually carried out.
If the income from the salaries paid by the personnel seconded to Romania was imposed in Romania, as it results from the legal obligations, the expense related to this income, incurred and registered by the resident company in Romania, is fully deductible.
It considers that this essential element was completely omitted from the analysis of the court of appeal, but according to Art. 261 point 5 of the Civil Procedure Code, the court is legally obliged to refer to the reasons given for the judgments delivered on all the heads of claim made and to the reasons for which certain requests were rejected.

High Court's Grounds on Cancellation Claims

Examining the challenge to the annulment of the contested decision, the evidentiary material and the relevant legal provisions in question, the High Court finds that the remedy raised is unfounded, since the challenge in annulment is an extraordinary appeal, withdrawal, if the sentence the date is the result of a material error or when the court, by rejecting the appeal or admitting it only in part, has omitted in error to investigate any of the reasons for modification or removal (Article 318 paragraph (1) of the Code of Civil Procedure).
The contestant criticized both the existence of material mistakes and the failure to analyze all the arguments put forward in the grounds of appeal.
The High Court notes that material misconduct is any apparent material error committed by the court by confusing important elements or material data of the file and which is decisive for the pronounced solution. So, in order for an appeal to be set aside against a decision given by a court of appeal, it is necessary for the material error alleged by one party to look at mistakes committed by confusing essential data of the case, formal aspects of the judgment in appeal, for which a review of the fund or a reassessment of evidence is not required.
The challenger contends that the court did not observe the deductibility of the costs of the supply of personnel supply services as a manifest material error resulting

from the erroneous classification of the contract concluded with HLSS LTD as a management service contract. He appreciates that art. Article 21 (2) let. e) of the Fiscal Code and point 27 let. a) and b) of the Norms issued in its application.
In the grounds of the appeal, the contestant also invoked the superficial approach of the provisions of the concluded contracts, the aspects regarding the reality of the performance of the activities, as well as the misinterpretation of the substantive fiscal law provisions applicable in the matter deducted from the judicial analysis, respectively the provisions of art. 21 paragraphs (4) and art. 11 paragraphs (2) of the Fiscal Code and points 22 et seq. and point 41 of the methodological norms for its application.
The High Court considers that these errors can not be the subject of the remedy by way of the appeal for annulment because it exceeds the will of the legislator expressed in the provisions of Article 318 of the Code of Civil Procedure, which conceived the annulment appeal as an extraordinary attack and withdrawal of reform.
Consequently, it is found that, through his claims, the challenger puts into question aspects that go beyond the notion of material error, which can not be interpreted extensively, and the errors regarding the actual realization of the judgment, regarding the lawfulness of the judgment pronounced.
Concerning the second criticism raised by the contestants, art. 318 The Civil Procedure Code concerns only the omission of the court to examine one of the grounds for amendment provided by art. 304 and not the pleas of fact and law relied on by the parties.
The contestant considers that the court has failed to rule on the issue of the deductibility of the salary income expense.
Article 318 of the Civil Procedure Code regulates only the omission to examine all the grounds of appeal invoked by the appellant in time, and not the factual or legal arguments indicated by the party, which, however developed they are, are always subsumed to the ground of appeal that rests.
As a result, the Board of Appeal is entitled to group the arguments used by the appellant to develop the grounds for the cassation to respond by a common reason, it being sufficient for the Board of Appeal to show the reasons for which it found the ground to be unfounded, responded to all the arguments of the appellant.
In the present case, as set out in paragraph 2 of this decision, the Board of Appeal responded extensively to each ground of appeal by grouping its arguments. The fact that it did not respond to the appellant's submissions does not constitute a ground for challenging the annulment because the text of art. 318 The Civil Procedure Code penalizes the non-examination of the grounds of appeal and not the errors of assessment.

The procedural law does not regulate, as a ground for challenging the annulment, the failure to properly and properly analyze the claims of the parties, the evidence of the case and the applicable law, so that the objections raised by the contestants are not likely to form the subject of the analysis in the extraordinary appeal in annulment.

The right to a fair trial enshrined in art. 6 of the European Convention on Human Rights and consolidated in the case law of the European Court of Human Rights implies a fair and proper examination of the defense of the parties, but the observance of this conventional principle by a court can not be verified by way of an appeal in annulment, that is to say an extraordinary remedy under domestic law, since the national legislature did not regulate such a ground for the withdrawal of an irrevocable decision.

Regarding the complainant's allegation that this remedy must also be open to the complainant for failing to investigate his defense against the reason for the cassation or amendment that the appeal court has taken to ensure equality of arms within the meaning of the case law derived from art. 6 of the European Convention on Human Rights, the High Court notes that, as also stated in the case-law of the Constitutional Court, only the legislature has the power to determine the jurisdiction and the procedure, including the conditions for the exercise of ordinary or extraordinary remedies.

In this respect, in Decision no. 506/2012 regarding the rejection of the unconstitutionality exception of the provisions of art. 318 of the Code of Civil Procedure, the Constitutional Court has stated that the legislator is sovereign in regulating differently, in different situations, the access to an ordinary way of attack, without thereby affecting free access to justice, the more the principle is applicable if the access to an extraordinary way of attack is in question, and according to art.126 paragraph (2) and art. 129 of the Basic Law, the prerogative of establishing the jurisdiction and the procedure for the trial, including the conditions for the appeal, is the exclusive attribute of the lawmaker.

Also, in Decision no. 387/2004 regarding the rejection of the unconstitutionality exception of art. 318 paragraphs (1) of the Civil Procedure Code, the Constitutional Court has stated that, far from restricting constitutional rights, the regulation provided by art. 318 paragraphs (1) of the Code of Civil Procedure is a guarantee of the application of the principle provided by art. Article 6 paragraphs (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the fair and reasonable hearing of a case, with a view to eliminating any abuses by the parties, which tends to cause unjustified delay in solving a process.

In conclusion, the High Court considers that the entire argumentation of the contestant leads to the conclusion that it is intended to reform the solution through

a rediscovery of the case, but the law did not seek to open the party to the appeal, which would be solved by the same court.

Sentence of the High Court of Cassation and Justice on the Cancellation Appeal
The High Court dismisses the appeal brought by S.C. DSS S.R.L. against Decision no. 2718 of 9 July 2015 of the High Court of Cassation and Justice - Administrative and Fiscal Litigation Division as unfounded. The sentence is irrevocable.

The legal basis of the solution adopted on the Cancellation Appeal
In this case, the conditions imposed by the provisions of art. 318 of the Code of Civil Procedure, so that the High Court of Cassation and Justice will reject the appeal in annulment as unfounded.

4. Conclusions

In this article we have proposed to provide a diagnosis regarding the concrete, practical, legal and economic way of manifesting the conventions for avoidance of double taxation in Romania, taking into account the historical course, as well as the special peculiarities of Romania. Obviously, the features of a tax system involve two levels; an international level in which some common features of a tax system and of a fiscal policy can be found; a national level, which implies the customization of the tax system and fiscal policy at national level, taking into account a set of specific elements such as: the size and the opening of the national economy, the rule of law, the current state of the legal system, the framework of the tax system from the point of view stability and consistency, traditions, cultures, customs, customs, history, etc.
As far as Romania is concerned, we can see from the analysis made in this article that our country has taken important steps in improving the fiscal, economic and legal framework, but also in terms of tax partnerships with different countries, in 2017. Moreover, the improvement of international cooperation, the increase of the economic sphere of the national economy and the establishment of various measures of fiscal nature are suggestive arguments for the evolution of the fiscal policy framework in Romania.
The article presented in this article wishes to highlight the way in which conventions to avoid international double taxation in Romania are expressed, with a precise focus on how they are applied in practice, but also on the way of understanding in a manner as long as possible comprehensible of their provisions by tax authorities, individuals, various economic entities and multinational companies. Analyzing the aspects of this case, we can see that there is still, *room for maneuver* as to how these conventions to avoid double taxation are

implemented in practice, but also the need to distinguish a unitary way of interpreting their provisions, which is necessary for the sustainability of the tax system in general and fiscal policy in particular.

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