The International Taxation in the Egyptian Tax Legislation - Issue 3

Introduction

When Egyptian Tax Law 91 was issued in 2005, it transformed the tax interactions between Egypt and the rest of the world. For the first time, international transactions between natural/juridical persons abroad and their counterparts in Egypt were regulated by Egyptian law, which also specified the conditions for imposing tax on the wealth of persons residing in and out of Egypt.

In order to do this, it was first necessary to clarify the difference between tax avoidance and tax evasion. Tax avoidance is a legitimate method by which domestic law and international conventions and agreements are used as a framework in tax planning, in order to realize the maximum legal tax benefits for oneself or one's client. In contrast, tax evasion uses illegal means, including hiding and/or failing to disclose one's own or the client's real income in order to avoid complying with the law.

In this article, we will explore current tax law as it is applied in Egypt, as well as international law on the avoidance of double taxation.

The articles of Egyptian Tax Law 91/2005 and their corresponding articles in the International Avoidance of Double Taxation Treaty are as follows:

Subject	Egyptian Tax Law	Avoidance of Double Taxation Treaty Form
1. Resident	Article 2	Article 4
2. Permanent Establishment	Article 4	Article 5
3. Related Person	Article 30	Article 9
4. Royalties	Article 56	Article 12
5. Neutral Price	Article 1	Article 9
6. Interest	Article 56	Article 11
7. Service Fees	Article 56	Articles 14, 16 and 17

Residence

The basic purpose of international tax law is to define the legal parameters within which different countries may exercise their sovereignty to impose taxes, while sparing the taxpayer from having to shoulder a double tax burden. The right of each sovereign state to impose tax within its national borders and upon its own citizens is recognized internationally. However, this has resulted in a wide diversity of tax laws and very different standards and definitions from country to country. As a consequence, a framework of international "geographical" and "citizenship" principles was devised for defining individual states' rights to impose taxes. The first treats the person as an economic subject, while the second treats the citizen as a political subject. Recently, a third principle was added, "residence", which defines the taxpayer in social terms.

Clear criteria are necessary to determine which state has the legal right to impose tax on which person(s). Thus, it was important to distinguish between a taxpayer's "residence" and "nationality". A person's residence is the place in which he or she normally or actually lives, while his or her nationality is the place in which he or she is free to exercise his or her full civil and economic rights. Egyptian law uses residence as a basis for determining a natural person's tax liability.

Article 2 of Law 91/2005 defines a resident in Egypt as follows:
1) A person who has a permanent home in Egypt;
2) A person who is present in Egypt for not less than 183 consecutive or non-consecutive days within twelve months;
3) A person who works outside Egypt, but whose income is derived from the Egyptian treasury.
As for juridical (non-natural) persons, Egyptian law equates "nationality" with permanent location to determine tax liability. A juridical (non-natural) person is determined to be permanently located in Egypt if the following conditions apply:
1) It was established according Egyptian law;
2) Its principal management headquarters are in Egypt;
3) It is a corporation in which more than 50% of its capital is owned by the Egyptian state or by one of its corporate entities.
Article 3 of the law also uses objective criteria for determining that an income or a capital good is subject to taxation in Egypt. These are:
1) Income from services provided in Egypt, including salaries;
2) Income paid by an employer resident in Egypt;
3) Income received by an athlete or artist for activities performed in Egypt;
4) Income received by a non-resident for work executed through a permanent establishment in Egypt;
5) Income from trade in movable goods by or on behalf of a permanent establishment in Egypt;
6) Income from the exploitation or trade of real estate located in Egypt;
7) Income from shares of companies located in Egypt;
8) Profit shares or dividends paid by companies located in Egypt;
9) Interest paid by the Egyptian government or Egyptian public corporate entity, or by any person resident in Egypt or by any permanent establishment in Egypt;
10) Rent or license fees or royalties paid by any resident of Egypt or by any permanent establishment in Egypt;
11) Income from any other activity performed in Egypt.

Definition of Residence in International Treaties

The first paragraph of Article 4 in the Organization of European Economic Development (OECD) form, as well as Article 4 in the form issued by the United Nations, states:
"The word 'resident' in a contracting state refers to any person subject to the tax laws of that state, imposed by virtue of the person's citizenship or place of residence or management headquarters or any similar criteria."
National states are free to define who is a resident within their own borders, and thus to define which persons located in their countries are subject to their sovereign tax laws. International law does not concern itself with the tax laws of individual states, except if they permit a person to be taxed multi-nationally twice or multiple times. Such cases can arise in cases where a person is residing in two or more countries and thus liable for tax purposes in more than one of them. Also, it is possible for double taxation to result from a situation in which the country where the revenue was realized is different from the country in which the beneficiary of that revenue resides.