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THE EVALUATION OF THE TAXATION OF BUSINESS PROFITS AND DIVIDENDS OBTAINED ABROAD BY TURKISH COMPANIES

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Master's Thesis

Supervisor

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The project titled ‘‘THE EVALUATION OF THE TAXATION OF BUSINESS PROFITS AND DIVIDENDS OBTAINED ABROAD BY TURKISH COMPANIES’’ prepared by SUNAY SEN 173001014 has been accepted for the degree of Master

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Sunay SEN

Signature

DEDICATION

To my daughter and my wife

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ÖZET

KURUMLAR VERGİSİ MÜKELLEFLERİ TARAFINDAN YURTDIŞINDAN ELDE EDİLEN TİCARİ KAZANÇLAR İLE TEMETTÜ GELİRLERİNİN TÜRKİYE'DE VERGİLENDİRİLMESİ HAKKINDA DEĞERLENDİRME

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Artan küreselleşme ve dijitalleşme ile birlikte şirketler daha rekabetçi hale gelmiş ve faaliyetleri kuruldukları ülke sınırlarını aşmayı gerektirmiştir. Bu durumun şirketlere hem kuruldukları ülkede hem de faaliyet gösterdikleri ülkede vergisel bir takım sonuçları da olmaktadır. Her iki ülke de bu şirketleri ve faaliyetlerini vergilendirmek istemektedirler. Ülkelerin bu taleplerinin arkasında uluslararası vergi teorisindeki mülkilik ve şahsilik ilkeleri yatmaktadır. Uluslararası ekonomik faaliyetlerin önünde bir engel olacak şekilde çifte vergilendirme sorunu yaratan bu durumun önüne geçilmesi amacıyla yerel alanda yapılan iç mevzuat düzenlemelerinin yanı sıra ülkeler arasında vergi anlaşmaları da düzenlenmektedir. Bu vergi anlaşmalarıyla ülkeler, aynı gelir kaynağı üzerinde aynı türden vergi yükünün oluşmaması noktasında egemenlik haklarından kısmen veya tamamen feragat etmektedirler.

Diğer yandan şirketlerin karlarını maksimize etme güdüleri ile bazı ülkelerin vergi rekabeti yönlü çalışmaları agresif vergi planlamalarına ve zararlı vergi rekabetine de neden olmaktadır. Çifte vergilendirme yerine hiç vergilendirilmeme sorununu yaratan bu uygulamalarla mücadele kapsamında uluslararası kuruluşlar tarafından yapılan çalışmalar somut ifadesini OECD'nin matrah aşındırma ve kar aktarımı (BEPS) eylem planlarında bulmuştur.

Dolayısıyla küreselleşmeye bağlı artan hacmi de dikkate alındığında rekabetçilik ve sürdürülebilirlik bakımından ülke sınırları dışında yürütülen faaliyetlerdeki vergi yükünün doğru yönetilmesini zorunlu kılmaktadır.

Çalışmamızda Türkiye'de mukim kurumlar vergisi mükelleflerince yurtdışında gerçekleştirilen ticari faaliyetlerin vergilendirilmesi üzerinde durulmaktadır. Şirketler ticari faaliyetlerini doğrudan kendi ülkelerinden gerçekleştirebilecekleri gibi yurtdışında ayrı bir işyeri kurarak ya da yurtdışında ayrı bir şirket kurarak da yürütebilirler. Bu durum vergilendirmeye konu unsurun mahiyetinin farklılaşmasına neden olduğu gibi, vergilendirme hakkının hangi ülkede olacağını da doğrudan etkilemektedir. Şöyle ki, ilk ve ikinci durumdaki yollarla elde edilen gelirler ticari kazançken, son durumdaki yollarla elde edilen gelirler temettüdür. Yine ilk durumda faaliyet gösterilen Kaynak Ülkenin herhangi bir vergileme hakkı bulunmazken, ikinci ve son durumda sınırlı bir vergileme hakkı bulunmaktadır. Sınırlı vergileme hakkı, ikinci durumda işyerinden elde edilen kazanç tutarıyla sınır iken, üçüncü durumda ortaklık ölçüsüne bağlı bir vergi oranıyla sınırlıdır.

Her üç durumda da oluşabilecek muhtemel çifte vergilendirme ve hiç vergilendirmeme sorunları da gerek Türk Vergi Hukukunda gerekse de Türkiye'nin taraf olduğu Uluslararası Vergi Anlaşmalarında yer alan düzenlemelerle çözümlenmektedir.

Anahtar Kelimeler: Daimi İşyeri, Ticari Kazanç, Temettü, Uluslararası Vergi Anlaşması, Çifte Vergilendirme, BEPS, MLI.

ABSTRACT

THE EVALUATION OF THE TAXATION OF BUSINESS PROFITS AND DIVIDENDS OBTAINED ABROAD BY TURKISH COMPANIES

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With increasing globalization and digitalization, companies have become more competitive and their activities have required to cross the borders of the country where they are established. This situation has some tax consequences for companies both in the country where they are established and in the country where they operate. Both countries want to tax these companies and their activities. Behind these demands of countries lies the Principles of Property and Principles of Personality in international tax theory. In order to prevent this situation, which creates a double taxation problem as an obstacle to international economic activities, international tax agreements are also arranged between countries as well as domestic legislation arrangements made in the local

area. With these tax treaties, countries partially or completely renounce their sovereign rights to avoid the same type of tax burden on the same source of income.

On the other hand, the incentives of companies to maximize their profits and the efforts of some countries towards tax competition cause aggressive tax planning and harmful tax competition. The studies carried out by international organizations within the scope of combating these practices, which create the “problem of no-taxation” instead of “the solving of double taxation”, have found concrete expression in the OECD's base erosion and profit shifting (BEPS) action plans.

Therefore, considering the increasing volume due to globalization, it makes it necessary to manage the tax burden in activities carried out outside the borders of the country in terms of competitiveness and sustainability.

Our study focuses on the taxation of commercial activities carried out abroad by corporate companies residing in Turkey. Companies can carry out their business activities directly from their own countries, or by establishing a fixed place abroad or by establishing a subsidiary abroad. This situation not only causes the nature of the subject to be taxed to differ, but also directly affects which country the right to taxation will be in. That is, while the incomes obtained by means of the first and second cases are business profits, the incomes obtained through the means in the last case are dividends. Again, in the first case, the Source Country of operation does not have any taxation rights, while in the second and last case, it has a limited taxation right. Limited taxation right of the Source Country is limited to the amount of business profit from the permanent establishment in the second case, while in the third case it is limited to a tax rate depending on the being or not being a qualified shareholder.

Possible double taxation and non-taxation problems that may occur in all three cases are also solved according to the regulations in both Turkish Tax Legislation and International Tax Treaties to which Turkey is a party.

Keywords: Permanent Establishment, Business Profits, Dividends, International Tax Treaty, Double Taxation, BEPS, MLI

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LIST OF ABBREVIATIONS

ECOSOC	: United Nations Economic and Social Council
OECD	: Organization for Economic Cooperation and Development
FSI	: Financial Service Institute
MLI	: Multilateral Instrument
CbCMCAA	: Competent Authority Agreement on the Exchange of Country-by-Country Reports
BEPS	: OECD Base Erosion and Profit Shifting Studies
CFC	: Controlled Foreign Company
FHTP	: Forum on Harmful Tax Practices
HTVI	: Hard-To-Value Intangibles
MNEs	: Multinational Enterprises
CbC	: Country-By-Country

1. INTRODUCTION

The change and transformation from past to present in the legal rules regarding the use of the taxation authority of the sovereign states still continues. Today, the taxation powers of the States are guaranteed by the Constitutions. In this context, it has been adopted as a rule to take a single tax with the same structure over economic values (YILMAZ, 2016: 1).

On the other hand, today, due to the expansion of economic relations and business across borders, domestic legal norms are insufficient to regulate these relations. When a business operating within the borders of a country aims to expand its business to a different country, it needs the protection of international legal resources as well as the domestic law of the country in question (BAŞOK, 2016: 1).

Otherwise, taxation of the same income both in the country where the income earner is resident and in the source country from which it is obtained will be on the agenda. In other words, a taxable income will be taxed in more than one country. This situation will cause the formation of international double taxation problem.

International double taxation arises from the overlap of taxation powers of more than one state. In other words, the determining factor of international double taxation is that more than one state wants to tax on the same subject (YILMAZ, 2016: 40).

In the theory of finance, it is the basic rule to collect a single tax with the same structure from a certain source. There is no doubt that if several taxes are collected from the same source of the taxpayer, this source will be under great financial burdens or even disappear. In this respect, collecting more than one tax from the same source within a certain time period does not comply with tax justice (KARALDI, 2015: 1).

The problem of international double taxation is one of the most debated and up-to-date issues in international tax law. Previously, the scope of international tax law was only double tax treaties, but later its scope was expanded to ensure tax justice and prevent tax evasion (TUNCER, 1973: 220).

A number of practices aimed at preventing the international double taxation problem, on the other hand, have caused tax avoidance and no taxation problems. Today, international studies on base erosion and profit transfer aim to prevent such international harmful tax competition practices.

In this respect, companies have to consider both the double taxation problem and the effects of international studies when deciding on international transactions. However, since double taxation is a very comprehensive field of study, our study is limited to business activities. Business activities carried out abroad can be carried out by having a permanent establishment or establishing a company in that foreign country, or it can be carried out without having a permanent establishment or establishing a company in that country. According to tax theory, profits from the permanent establishment abroad are taxed as business profits, and profits from the company abroad are taxed as dividends. In this respect, in our study, the taxation of foreign business activities has been examined in the context of business profits and dividend taxation.

In the second part of our study, the concept of international taxation and its general principles are presented. In this context, the meaning of the concept in doctrine is explained in the context of the concept of sovereignty and taxation authority. In the same section, the concept of international double taxation and its elements, the causes and consequences of double taxation and the solutions for the elimination of international double taxation are also examined in detail. In this section, tax treaties are conceptually presented. In the same part of our study, international tax competition and international studies on tax base erosion and profit shifting have been examined. In this section, the conceptual framework of international tax competition and aggressive tax planning has been made. Afterwards, the inadequacies of states in domestic law in the fight against aggressive tax planning and the requirements of international cooperation to improve this situation were emphasized. Finally, current studies carried out under the leadership of the OECD in order to prevent harmful tax competition are included.

In the third and fourth parts of our study, respectively, the taxation of business profits and dividends obtained by Turkish companies from abroad in Turkey is emphasized. The review is carried out in four subsections. In the first subsection, the conditions under which the mentioned incomes can be taxed in Turkey have been examined within the framework of both domestic legislation and tax treaties to which Turkey is a party. In this context, the business profits obtained through permanent establishment abroad and in which cases the income obtained will be considered within the scope of dividend are detailed. In the second subsection, the determination of the part of the business profits and dividends obtained abroad to be taxed in Turkey is detailed. In the third subsection, the methods established in both domestic legislation and international tax treaties for the solution of the double taxation problem that may arise due to these incomes are explained. In the last subsection, the possible impact of the current BEPS Action Plans on the taxation of these incomes in Turkey is examined.

In the last part of our study, our evaluations regarding the taxation of income (business profits and dividends) subject to foreign business activities of Turkish companies are presented.

2. THE CONCEPT OF INTERNATIONAL TAXATION, INTERNATIONAL TAX TREATIES AND AGGRESSIVE TAX PLANNING

2.1. THE CONCEPT OF INTERNATIONAL TAXATION

Today, due to the increase in foreign capital investments, the taxation of the earnings of these investments has become so important. Especially, the needs of developing countries for the import of capital and technology have brought along the question of whether these earnings should be taxed in the country where the income is created (source) or in the country where the foreign capital is dependent (residence). Although the technology and knowledge of the country of residence has a large share in transforming the investment into profit, on the other hand, the labor force and natural resources of the source country are used. Therefore, the tax laws prepared by the states with the thought that the taxation authority should be their own has revealed the double taxation problem (KARALDI, 2015: 11).

International law consists of general rules and principles of practice that deal with states and international organizations in their international relations with each other and with individuals, minority groups and multinational enterprises. International law regulates and limits the powers of the state. When it is accepted that international law draws the sovereignty of the state, it should be accepted that this area is also valid in terms of taxation authority.

The taxation power, which is the most important power of the state in the financial field, is used within the borders of that state's sovereignty, in the area determined by the international law and the state uses its exclusive jurisdiction (PAZARCI, 2009: 173). Although this authority is not an absolute and unlimited power, states aim to use these powers to the extreme limits by accepting various taxation principles. In this respect, double taxation is seen as a legally legitimate fact, but undesirable in terms of its consequences, given the sovereign powers of the states (YALTI, 1996: 225).

States tax transactions that take place within their borders, as a natural consequence of their sovereign powers. However, states can also use their sovereign powers to cover the activities of individuals and enterprises residing within the borders of their own countries outside the borders of the country (ÖZ, 2004: 92). For this reason, it is necessary to determine the limit of taxation authority very well. This authority can be limited at the national level or at the international level. In fact, the problem related to the use of taxation power is not caused by whether states use this power or not. The main problem here focuses on the extent to which power should be exercised (BUDAK and YAKAR, 2007: 135).

2.1.1. General Principles of International Taxation

The principles discussed in determining the area of application of tax laws are the Principle of Property (sovereignty - resource) and the Principle of Personality (nationality-residence). According to the Principle of Property, all tax-generating events and matters occurring in the territory of the country's sovereignty are subject to tax according to the laws of that country (KARAKOÇ, 2019: 130). In other words, the principle of property is the application of tax laws to local or foreign persons without any discrimination, that is, the application of the tax laws enacted in a country to all events and transactions within the national borders of that country. According to this principle, the identity and nationality of the taxpayer does not matter in terms of financial events occurring within the national borders of the country.

With the Principle of Personality, it is expressed that the taxation authority is used outside the territorial jurisdiction by establishing a personal bond with the taxpayer. This principle requires the application of the laws of the country to which the person who is a party to the legal relationship is bound to the legal relationship. In this context, the nationality or residence of the person is taken into account when determining the state to which the person is affiliated or deemed affiliated and states tax these people who have a residence or nationality relationship with them on the income they earn worldwide (CENKERİ, 2012: 194).

In general, the principle of property in the implementation of the laws is based on the principle of "source" in taxation, whereas the principle of personality is based on the principle of "nationality (nationality)" or "residence (residence)" (TÜSİAD, 1989: 16).

According to the principle of resource, the fundamental issue in taxation is the taxation of tax matters and tax-bearing events that are under the sovereignty of a state. What is taxed under this principle is the place where income is born or the event that generates it. States that follow the principle of resource tax the income arising only in their own country, and do not discriminate regardless of who owns the income (TUNCER, 1974: 14).

The principle of resource is more suitable for the economic structures of developing countries. Developing countries are countries that import more capital. In these countries, companies which invest abroad are few in number and not very active in international trade. However, foreign capital investments are quite high in these countries and taxation of foreign capital income is an important source of budget revenue. Since it is very difficult for developing countries to acquire the necessary capital accumulation through voluntary savings, the smartest way to increase capital accumulation in these countries is public savings. Since taxes are the biggest source of public savings, these countries should pay attention to the taxation of income generated at source. For these reasons, it would be appropriate to say that the resource principle is a taxation principle suitable for developing countries (KOCAYUSUFPAŞAOĞLU, 1969: 100).

It provides benefits to states because of the simple and easy implementation of the resource principle. However, this principle causes great difficulties for taxpayers in taxing their income from foreign countries in countries where the tax authority is weak and the enforcement of laws is ineffective and hence the result is not successful (YILMAZ, 2016: 19).

According to the principle of residence, a person's financial domicile (YILMAZ, 2016: 19) will be taxed in the state in which he or she has his financial domicile, regardless of how and where he acquired his or her income and wealth. In this principle, the domicile of the owner of the income or wealth subject to taxation authority in that state legitimizes taxation. The principle of residence, contrary to the principle of resource, is in line with the development of personal income taxes and in particular the unitary income tax system. According to this principle, the person is taxed on the sum of the income he / she earns both in the country where he / she resides and outside this country (TUNCER, 1974: 15).

Developed countries are generally capital exporting countries. They have investors actively involved in international trade. Developed countries want to retain the taxation rights of income from these activities. If developed countries accept the residence principle, they will have the right to tax the foreign income exported and earned from investments by individuals and institutions in their countries (KOCAYUSUFPAŞAOĞLU, 1969: 101).

Where the principle of residence is well applied, it will ensure that both internal and external income are taxed together and hence on the one hand, it will provide an increase in the total tax revenue according to the principle of resource, on the other hand, it will prevent the capital from flowing abroad. Therefore, the application of this principle will provide a balance and equality in terms of taxing domestic incomes and foreign incomes (TUNCER, 1974: 17-18).

On the other hand, for the effective implementation of this principle, it is important to monitor the activities of individuals all over the world and to determine their income. This requires an efficient and developed tax authority and tax audit organization (BUDAK and YAKAR, 2007: 138).

Nationality refers to the political link between a state and an individual. The principle of nationality is not independent, but it is often an auxiliary principle applied in conjunction with the principle of residence. The application of taxation power according to the principle of nationality is the taxation of the income and wealth of its citizens who are under the sovereignty of the state, both within and outside the country. Today, in practice the principle of nationality has been adopted as a complement to the principle of residence. For example, the USA even taxes its citizens residing abroad (TÜSİAD, 1989: 16).

2.1.2. The Concept of International Double Taxation

International double taxation refers to the subjection of the same taxpayer to a tax of the same or a similar nature in two or more states, in the same taxation period, over the same tax subject (GÜNGÖR, 1997: 30).

In case, people have income or wealth in different countries, the problem of double taxation may arise because two different countries want to collect taxes. This is related to legal or economic sense. In legal terms, double taxation refers to the tax collected by more than one state in the same period over the same person and the same tax subject. For example, this will be related to double taxation in legal terms, in case the dividends of a person residing in country A and who is a partner of a company in country B are taxed in both countries. Double taxation with respect to economic refers to the taxation of more than one person separately over the same tax subject. For example, this type of double taxation arises in case, a citizen of an (EU) member country to a person in another member state is not allowed to be deducted as an expense and is also taxed in the country where the compensation is paid. On the other hand, the incident of collecting earning income tax first on the profit of the company located in the same country and then collecting income tax on the dividends distributed to the partners constitutes an example of double taxation in economic terms (BİLİCİ, 2012: 166).

In order to prevent double taxation in the legal sense, states need to limit their taxation powers, and to prevent double taxation in economic terms, in addition, they need to harmonize their tax systems to a certain extent (ÇAĞAN, 1982: 214).

2.1.3. Methods for Elimination of International Double Taxation

2.1.3.1. Foreign Tax Credit Methods

Foreign tax credit system, which is one of the methods adopted in domestic laws in order to prevent double taxation, is to allow the deduction of taxes paid in foreign countries from taxes will be paid in domestic. In this system, taxation is made by taking into account the global income of the taxpayer and also the tax which will be paid in domestic by this taxpayer set off from the taxes that are paid abroad area are allowed.

In this method, if the foreign tax rate is higher than the domestic tax rate, there will be no domestic tax for foreign sources. If the taxes paid abroad are excessive, the excess tax will not be refunded. However, if the domestic tax rate is higher than the foreign tax rate, the part of the domestic tax exceeding the foreign tax is paid as a result of deducting the taxes paid abroad from the tax calculated over the total of domestic and foreign sources. Therefore, it fully fits to prevent double taxation, since the offset method excludes the effect of external taxation from internal taxation. Foreign Tax Credit Methods provides equality in terms of taxation between domestic investors and those who invest in foreign countries, and hence "fairness in capital export" (YALTI SOYDAN, 1995: 27).

The Foreign Tax Credit Methods are generally divided as “Full Credit Method” and “Ordinary Credit Method”. In the Full Credit Method, all of the tax paid abroad is deducted from the calculated tax, while in the Ordinary Credit Method, only the part of the tax paid in the foreign country that corresponds to the foreign tax base can be deducted from the calculated tax (KARAKOÇ, 2019: 141).

Also there is another type of Foreign Tax Credit Method: “Protected Credit Method”. This method is based on offsetting on account assuming that the tax that is intended to be paid in the source state but not paid by exemption or reduction (YALTI SOYDAN, 1995: 26).

2.1.3.2. Exemption Methods

In the exemption method, a state can exempt income derived from abroad from its own tax, either according to the provisions of its laws or in accordance with bilateral agreements (TUNCER, 1974: 26). This method provides equality between investors and foreign investors in the country where the investment is made, that is, "fairness in capital imports" (YALTI SOYDAN, 1995: 27).

Exemption Method can be applied in two methods (OECD, 2017: 387);

- Income or wealth taxed in the Source Country is never included in the base in the Resident Country. In this method, which is called as "Full Exemption" Resident Country has no right to take into account such exempted income when determining the tax to be levied on the remainder of income.
- An income or wealth taxed in the Source Country is not taxed in Resident Country, but it takes into account that income when determining the tax to be applied to the remainder of the income. This method is called as "Progressive Exemption".

2.2. INTERNATIONAL TAX TREATIES

2.2.1. Definition and Legal Nature

One of the ways to be applied in order to prevent double taxation is to make international agreements based on the division of powers between states in a way that their taxation powers do not conflict.

As with other international agreements, tax treaties become law after they are signed by the parties and passed through the parliaments of the states. Thus, the Treaties that gain the force of law prevail over the tax laws and limit the taxation rights of the states by granting exceptions and exemptions in favor of the contracting states in practice

The International Tax Treaties (Tax Treaties - Treaties) can be defined as written will agreements between subjects of international law that restrict the taxation authority and create rights and obligations in accordance with international law (CANYAŞ, 2016: 62-63).

With international tax treaties, two or more states agree to limit their taxation powers in order to avoid double taxation (ERGİNAY, 1971: 17). Therefore with international tax treaties, states are obliged to avoid double taxation and an agreement is reached between the two states on which state will exercise their taxation power (YILDIRIM, 2010: 31).

The most important function of tax treaties is to set the limits that the state parties can apply in a way that prevents the overlap of the tax laws of the two different states in order to avoiding the double taxation (YALTI SOYDAN, 1995: 31). In this respect, the purpose of tax treaties is to allocate these powers of the states instead of giving taxation authority to the parties, and tax treaties do not include regulations that expand the taxation powers of the parties (BAŞOK, 2016: 34).

In the International Tax Treaties, there are basically the taxes to which the agreement will be applied, the determination of the state where the taxpayer is a resident, the definition and scope of the payments made to non-residents, the methods of distribution of income between the states and the rules regarding the prevention of double taxation (AĞAR, 2011: 349).

Tax Treaties are one of the forms of international agreements and their creation and execution is under the management of the Vienna Convention on the Law of Treaties. With the signing of the Treaties, the contracting states undertake to initiate the domestic law process for the conclusion of the agreement (ÖZGENÇ, 2016: 42-43).

According to the last paragraph of Article 90 of the Constitution of Turkey, international treaties duly put into effect have the force of law. They cannot be applied to the Constitutional Court with the allegation of unconstitutionality. In terms of implementation of the law, the law after departing will eliminate the provisions of the previous law in the same field. In addition, provisions of the law of a special nature implicitly repeal the provisions of the general law. Even if the special provisions entered into force before the general provisions, the situation will not change. Therefore, since international tax treaties have the force of law and are enacted by a special law, it is an international norm that should be implemented primarily compared to Turkish tax laws.

2.2.2. Historical Development and Model Tax Conventions

The International Tax Treaties generally purpose to avoid double taxation in taxes on income. Until the beginning of twentieth century, double taxation did not seem to be an extreme problem, as income tax was not widely applied among the world countries and tax rates were also very low compared to those currently applied. When the First World War ended, tax rates were increased in parallel with increased government spending and income tax began to be applied more widely. Expanding international trade has resulted in an increase in transactions subject to more than one authority. In the same period, while some countries gave some exemptions for incomes obtained from shipping, air transport and foreign representation offices, it was observed that some countries started to tax the incomes of their residents from foreign countries, including foreigners, and in turn allow the deduction of the taxes paid in these countries (AKBAY, 1991: 5).

These developments in the world have revealed the need to improve the problems created by taxation that concern more than one country by making Treaties between nations. The first study was initiated in 1921 in the League of Nations, which was later replaced by the United Nations. During these studies, various types of income were examined, and it was emphasized whether the taxation right should be granted to the residence country or the source country, and the application of exemptions in the other country. The interest shown in the approach of recognizing the right of taxation to the residence country at the beginning was not shared by those who participated in this study. The work of the League of Nations in this field resulted in a draft completed at the 1946 London Conference. Later, this draft was developed by the United Nations Economic and Social Council (ECOSOC). A model that provides wider opportunities for taxation at the source has been created. The final text, called the United Nations Model Double Taxation Convention between Developed and Developing Countries, was approved in 1978 and published in 1980. The UN Model Tax Convention was last updated in 2017.

A counter work was initiated in the 1956 Financial Affairs Committee of the Organization for European Economic Cooperation, which was established to operate the Marshall Aid fund. The Committee, which prepared a series of reports on a model that recognizes the right of taxation to the country of residence, has maintained its existence and continued its work after the reorganization of the mentioned organization under the Organisation for Economic Cooperation and Development (OECD). The OECD Model Tax Convention on Income and on Capital (OECD Model Tax Convention) was created as a result of these studies was published in 1963. The articles and interpretations of this OECD Model Tax Convention were reviewed at the end of both the special issues left open in the 1963 model agreement and the needs arising from the changing economic relations and tax systems, and the 1977 revised OECD Model Tax Convention was prepared and published. The Committee continues to work as an international forum where its experiences based on the OECD Model Tax Convention are gathered and various aspects of tax policies are discussed (AKBAY, 1991: 5). The OECD Model Tax Convention was last updated in 2017.

The OECD Model Tax Convention is accompanied by a comprehensive commentary prepared by the OECD Fiscal Affairs Committee. It also publishes several reports on the specific problems encountered by the OECD in the implementation of the OECD Model Tax Convention.

The basic principles of the OECD Model Tax Convention can be summarized as follows (ULUATAM, 2001: 67);

- The taxation of income is mainly tied to the residence principle.
- The taxation of entrepreneur income is based on the workplace measure.

- It is envisaged that the gains arising from the increase in the capital value and the gains from the sale of movable or immovable goods are taxed in the country where the goods are located.
- Wages and independent personnel earnings are taxed in the state where the activity takes place.
- Real estate income is subject to tax in the country where they are located.
- In the taxation of movable property as an element of wealth, the country in which the goods are located is authorized.

The OECD Model Tax Convention is intended only to lay the groundwork for tax Treaties between OECD countries. However, due to the success achieved in practice, this agreement first formed the basis for the tax treaties made by OECD countries with other countries and then for the tax treaties between non-OECD countries. It is known that 70-80% of the tax treaties signed around the world are signed based on the OECD Model Tax Convention (OECD, 2017: 1).

On the other hand, due to the inadequacy of the OECD Model Tax Convention in the Treaties concluded between developed and developing countries, the UN Model Tax Convention, which is arranged as an alternative to protect the interests of developing countries, focuses on the taxation of the source country. The UN Model Tax Convention gives priority to the resource principle, but does not recognize that the source country has exclusive taxation authority. The UN Model Tax Convention tends to soften the OECD Model Tax Convention's rigid residence principle (KARALDI, 2015: 66).

In general, Tax Treaties consist of seven chapters and twenty-nine articles, and the revenues covered in the Tax Treaties are as follows;

1. Business profits,
2. Income from immovable property,
3. International shipping and air transport,

4. Dividends,
5. Interest,
6. Royalties,
7. Capital gains,
8. Independent personal earnings,
9. Income from employment,
10. Entertainers and sportspersons,
11. Pensions,
12. Government service,
13. Students.

2.2.3. International Treaties in Turkey

Until 1983, Turkey abstained from signing bilateral agreements on the avoidance of double taxation. Until this date, Turkey concluded negotiations with two countries, one with Austria (effective date 01.01.1974) and the other with Norway (effective date 01.01.1977). However, in parallel with the policies of international expansion after 1980, negotiations for Treaties also gained momentum. In order to accelerate capital, superior technology and service flows to Turkey, negotiations have been initiated with developed countries and also developing countries where Turkish residents can enter their markets in the near future (KARA, 1995: 55).

According to the provisions of the Law No. 244: "Making and Enforcement of International Treaties and Authorization of the Council of Ministers for the Conclusion of Certain Treaties", initially the public authorities of Turkey initial the tax treaty after the negotiations with the public authorities of the relevant country, and then the tax treaty is signed after the approval of the agreement by the Assembly, is approved by the President and published in the Official Gazette (KARALDI, 2015: 66).

Turkey has signed International Tax Treaties with 86 countries as of 03.04.2021.[1] Treaties are generally concluded on income and wealth taxes in relation to the avoidance of double taxation. In addition, some of the Treaties also contain provisions on the prevention of tax evasion and information exchange. In recent years, we see that Turkey has signed Treaties to exchange information. Although there are few Treaties on information exchange yet, we think that Turkey's agreement network on this issue will expand (YILMAZ, 2019: 227).

Most of the treaties Turkey has concluded according to the OECD Model Tax Convention. However, some provisions include regulations approaching the UN Model Tax Convention (YALTI SOYDAN, 1995: 143). In every treaty, there are parts that differ due to the special economic, social, legal and political conditions in which the other party of treaty and Turkey are involved (YILDIRIM, 2011: 175).

The criterion that Turkey is based on in the treaties is to keep the taxation right at the highest level as the source country for countries that are likely to have capital export to Turkey and to make concessions from the taxation right only to the extent that it accelerates the flow of capital and technology to Turkey. For this reason, it is seen that in the Turkey's tax treaties concluded with developed countries, the provisions of the UN Model Tax Convention are mainly reflected. On the other hand, it is seen that the provisions of the OECD Model Tax Convention are reflected in the treaties concluded with developing countries. Here, the resident principle for the countries to which Turkey can export capital and technology is taken as the basis and it is aimed that Turkey maintains the highest taxation (KARA, 1995: 55).

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[1] GİB, https://www.gib.gov.tr/sites/default/files/uluslararasi_mevzuat/VERGIANLASMALIST.htm (03 April 2021). For detailed information, see Annex Table – 1: The List of International Tax Treaties to which Turkey is a party.

2.3. THE AGGRESSIVE TAX PLANNING

2.3.1. The Concept of International Tax Competition and Aggressive Tax Planning

The International Tax Competition was first developed on a theoretical basis in 1956 by Charles Tiebout and was defined as the reduction of effective tax rates as a result of increased fiscal integration and economic integration (ÖZ ve YAŞARIR, 2009: 5).

Another definition of the International Tax Competition is the competition between units with different taxation powers using tax privileges to provide incentives to individuals and businesses in a region or a country. The International Tax Competition is also accepted as the improvement of a country's national economy by increasing the competitiveness of domestic businesses or by attracting foreign direct investments by keeping the tax burdens on taxpayers lower than those applied by other countries (AKMAZ, 2007: 1).

The concept of tax competition, which rather targets mobile production factors, attaches importance to the tools used within the framework of capital and qualified labor factors. In this sense, the tools used to attract international capital and workforce are generally listed as tax rate reductions, tax incentives and practices, tax holidays and free zones.

When the conceptual framework of international tax competition is examined taking into account its harmful and beneficial effects, it is seen that the scope of harmful tax competition is drawn as preferential and closed tax regime practices, the emergence of tax havens, gaps in international information exchange and measures in determining the tax base. The concept of beneficial tax competition can include effective use of tax revenues, efficiency in resource allocation and provision of public services, and contributions to increase investments (KOŞAR, 2012: 42).

Aggressive tax planning can be defined as acting in a way that the legislature does not intend or is impossible to intend in order to eliminate, reduce or postpone the tax liability of taxpayers. In contrast to avoiding acceptable tax, taxpayers try to gain tax advantage by acting outside the purpose and intention of the legislature in aggressive tax planning. In other words, while taxpayers gain tax advantage by skillfully taking advantage of the legal gaps in the tax system or the incompatibilities between the tax systems of different countries, they cause tax losses against the state (TAYFUR, 2012: 2).

Tax planning carried out by taxpayers within the scope of aggressive tax planning generally has the following characteristics (HARIRI and others, 2013: 9):

- The main goal of aggressive tax planning is to minimize the tax burden.
- There is no commercial purpose in this type of planning, it lacks economic substance, and formality is at the forefront.
- Since more than one relationship or different legal tools are used at the same time in such planning, planning presents a complex appearance.
- Aggressive tax planning is designed in accordance with the letter of the law, but it contradicts the purpose and intention of the law.
- Since aggressive tax planning is not considered legitimate, tax authorities will not approve such plans when they become aware of them.

In practice, tax advantages can be obtained by using many legal instruments. In fact, the methods of resisting tax are similar to a game of chess between the taxpayer and the revenue administration. Taxpayers develop a new strategy against every intervention of the state. It is therefore almost impossible to count the legal instruments used in the context of aggressive tax planning. Therefore, in the context of aggressive tax planning, it would be more instructive to indicate the ways of manipulating taxpayers' legal instruments (GÜLGÜN, 2015: 83):

- Creating hybrid incompatibility by using company structures or financial instruments to benefit from asymmetric arrangements between countries.
- Steering transfer pricing in its favor by artificially separating assets, capital or risk.

- Using new technologies to minimize the need for tangible assets in the tax system or to take certain functions from another geographic region.
- Conducting contrived transactions to benefit countries from tax treaties or lower tax rates.
- Creating special purpose assets.

Tax payers can reduce their tax burden, avoid tax and evade taxes by transferring their revenues cross-border profits or by eroding the tax base on their incomes. While multinational companies transfer their profits across borders, they mostly use tax havens and transfer pricing as tools

Tax haven countries provide exceptions and exemptions for multinational companies and administrative conveniences, especially banking. Such countries that do not have transparent regulations and open information sharing have increased significantly with globalization. For example, Luxembourg hosts 143 banks for a population of 378 thousand, the Channel Islands hosts 120 banks for a population of 140 thousand, the Bahamas hosts 382 international financial institutions for a population of 175 thousand, the former Dutch colony of Aruba, Turks and Caios islands host 6729 companies for 3000 poor population. The state of Naura, which is a very small state in the Pacific Ocean, has 400 banks (TOSUN, 2016: 43).

According to the information announced by the Financial Service Institute (FSI) in 2015, financial assets of around $ 21-32 trillion on a global scale are held in countries that are either lower taxed or not taxed at all (TOSUN, 2016: 44).

2.3.2. Measures against Aggressive Tax Planning and BEPS Action Plans

Nowadays, states create general and special preventive rules in their domestic laws in the fight against aggressive tax planning. However, it is obvious that the individual efforts of states are not enough to combat aggressive tax planning. Considering that aggressive tax planning is an effort to gain tax advantage by taking advantage of fraudulent or artificial operations or structures and of the mismatch between the tax systems of countries, it is a clear fact that aggressive tax planning cannot be prevented only by regulations in national legal systems. It is even possible to say that if countries make their own regulations to combat aggressive tax planning separately from each other, it will further increase the incompatibilities between tax systems. For this reason, international organizations such as OECD and EU are doing important studies in order to ensure efficiency and effectiveness in taxation (GÜLGÜN, 2015: 240).

In this context, studies conducted in the international arena within the scope of combating aggressive tax planning can be summarized as follows;

- Harmonization between tax systems in order to eliminate the current conflicting legislative arrangements between tax systems and to ensure the functioning of tax systems without harming each other,
- Ensuring transparency and information exchange in tax matters,
- Increasing cooperation between tax administrations,
- Analyzing opportunities for the aggressive tax planning and important tax principles related to this, and developing actions to prevent them.

In recent years, multinational companies have eroded the tax base by taking advantage of the gaps in legal regulations and transferred their profits to regions with low tax rates. This situation has caused countries to lose income. Thereupon, G-20 leaders requested assistance from the OECD in 2012 in order to carry out international tax reforms. OECD, which started to work on this subject, presented the Base Erosion and Profit Shifting Project (BEPS) at the G-20 leaders meeting held in Moscow in February 2013. Having accepted the project, the G-20 asked the OECD to prepare a comprehensive action plan. Even the UK and Germany contributed 550,000 Euros to the OECD to show their commitment to the project (ÇAKIR, 2016: 79).

The report published by OCED aims to present the problems related to BEPS in an objective and comprehensive manner. Accordingly, in the first part of the report, public studies and data on the existence and size of BEPS are explained. In addition, the report includes global developments that have an impact on corporate income tax. The essence of the report is the opportunities that cross-border taxation principles offer for BEPS (OECD, 2013: 6).

It is stated in the report that transparency should be increased in order to tax multinational companies effectively. In order to ensure the necessary transparency, the main problematic areas are listed below (OECD, 2013: 6);

- Hybrid regulations and incompatibilities in international taxation resulting from the nature of legal entities or transactions, such as tax arbitrage,
- Application of the terms of the treaties to business profits from the delivery of digital goods and services,
- Taxation of the related person financed by debt, insurance and other intra-group financial transactions made by group companies,
- Transfer pricing especially for the transfer of risk and intangible assets, the transfer of ownership of assets between the group companies, and rarely, the transactions that can be carried out with unrelated persons,
- Especially the effectiveness of generally accepted accounting rules, controlled foreign corporate income regimes, thin capitalization rules and regulations to prevent abuse of tax treaties,
- Existence of preferential tax regimes causing harmful tax competition.

In the report, it was emphasized that a comprehensive action plan should be prepared as soon as possible to solve the above-mentioned problems. In the same year, the "Action Plan on Base Erosion and Profit Shifting" consisting of 15 actions was prepared by the OECD.

In essence, the BEPS action plan is based on three main principles: compliance, priority of substance and transparency.

The actions under the title of "Compliance in International Taxation" are basically aimed at preventing harmful tax planning of multinational companies by taking advantage of differences in legislation between countries. In this context the fallowing are targeted (OECD, 2013: 14);

- Elimination of problems that ensure that commercial active incomes are not taxed in any country due to hybrid instruments/institutions arising from the differences in legislation of the countries (2nd Action Plan),
- Reviewing and improving the CFC regulations, eliminating the problems that ensure that passive income is not taxed in any country, especially due to the differences and gaps in the controlled foreign corporate income regulations (3th Action Plan),
- Elimination of problems that ensure that passive income such as interest, which is considered as an expense in a country, is not taxed as income in the receiving country or is exempted from tax (4th Action Plan),
- Prevention of harmful tax competition by taking into account the principles of transparency and priority of substance (5th Action Plan),

With the actions within the scope of "priority of substance in taxation", it is aimed to tax the business profits in the place where the economic activity is actually carried out, in other words, the enterprises that undertake the risk of the activity and fulfill the necessary functions for the activity. In this framework, measures are taken against the following problems (OECD, 2013: 14);

- Abusing of tax treaties (6th Action Plan),
- Using the permanent establishment as a means of tax avoidance through artificial transactions (7th Action Plan),

- Transfer of profits to low-tax countries through transfer pricing (8, 9 and 10th Action Plans).

Actions under the title of “Transparency” bring the following obligations (OECD, 2013: 14);

- Obligation to multinational companies to notify aggressive tax planning before executing transactions (12th Action Plan),
- A globally harmonized reporting obligation in the field of transfer pricing (13th Action Plan).

In addition, among the BEPS Action Plans, there are Action Plans that aim to identify tax problems caused by the digital economy (1st Action Plan) and to create a multilateral platform that will bring an innovative approach to international tax issues (15th Action Plan).

Based on the 15th Action Plan, in 2016, over 100 jurisdictions concluded negotiations on the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("Multilateral Instrument" or "MLI"). The MLI which entered into force on 1 July 2018 and covers 95 jurisdictions as of 15 May 2020 (OECD, 2016: 1).

The MLI helps the fight against BEPS by implementing the tax treaty-related measures developed through the BEPS Project in existing tax treaties in a synchronized and efficient manner. These measures prevent treaty abuse, improve dispute resolution, prevent the artificial avoidance of permanent establishment status and neutralize the effects of hybrid mismatch arrangements (OECD, 2016: 1).

The MLI is a multilateral agreement that will not change the tax treaties directly, but rather will be applied together with the tax treaty text, based on the MLI provisions in the relevant articles.

The functioning of the MLI system is primarily based on countries reporting which tax treaties are covered by the MLI. In this context, a total of 1575 double DTAs around the world have been directly covered by the MLI regulation. The number of bilateral tax Treaties notified by Turkey under the MLI is 94, including tax Treaties that have not yet been approved (KÜÇÜKŞAHİN, 2020: 1).

Other important legislative studies carried out by Turkey within the scope of the implementation of BEPS Action Plans are as follows;

- The Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA) was approved and published in Turkey's Official Gazette dated 1 October 2020; thereby, Turkey is considered a signatory of the CbC MCAA as of 30 December 2019. Under the CbC MCAA process, tax jurisdictions aim to increase tax transparency in order to assess how multinational businesses structure their activities and to assess high-level transfer pricing risks and other base erosion and profit shifting (BEPS) risks as well as economic and statistical analysis,
- With the President's Decision published in the Official Gazette dated 4 February 2021, in addition to the disguised capital provisions already in effect, in order to combat base erosion through interest payments, the application of financial expense restriction was implemented in 2021,
- On the taxation of the digital economy; a 15 percent withholding tax was imposed on internet advertising payments made abroad, and the Digital Service Tax was implemented.

Turkey also ratified the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information to which 110 countries are parties as of today in 2019. According to this agreement, the signatory countries will automatically share the financial account information they collect from the financial institutions of the residents of the relevant countries with the relevant country every year on a reciprocal basis.

3. THE TAXATION IN TURKEY OF BUSINESS PROFITS WHICH EARNED BY TURKISH COMPANIES ABROAD

According to both the tax legislation in Turkey and the international tax legislation; the activities carried out by the companies are accepted as "business activities" and the earnings from these activities are accepted as "business profits" and are taxed. With respect to this; the income obtained from the activities carried out abroad by a company residing in Turkey (Turkish Company) is also "business profits”.

According to Turkish Tax Legislation, all of the business profits obtained by a Turkish Company, both domestically and abroad, will be taxed in Turkey as Resident Country. On the other hand, if these business profits were obtained by a permanent establishment in the Source Country, the Source Country would also be the right to tax them.

In the taxation of business profits obtained abroad within the scope of business activities carried out abroad by Turkish Companies put forward these questions;

- By which state / country these business profits will be taxed, in other words, which state has the right to taxation?
- How to determine taxable business profits?
- How to eliminate the double taxation that would occur if both states / countries tax the same income?

3.1. THE RIGHT TO TAXATION ON BUSINESS PROFITS EARNED BY TURKISH COMPANIES ABROAD

3.1.1. According to the Turkish Tax Legislation

According to the Corporate Income Tax Law No. 5520[2], capital companies are considered among corporate income taxpayers and they have to pay corporate income tax over their business profits in Turkey. Again, according to Article 2 of the Corporate Income Tax Law No. 5520, the Stock Companies (joint stock companies and limited liability corporations), Partnerships, Cooperative Institutions, State Economic Enterprises and partfunds subject to the regulation and supervision of the Capital Markets Board and foreign companies, partnerships, institutions, enterprises and funds similar as above are considered as capital companies.

Again, according to the Corporate Income Tax Law No. 5520, the taxation in Turkey differs according to the evaluation of these taxpayers as "unlimited liability companies" or "limited liability companies". While unlimited liability companies will be taxed in Turkey in terms of all their business profits both within and outside of Turkey, limited liability companies will only be taxed in Turkey in terms of business profits within Turkey.

The main issue in the distinction between unlimited liability companies and limited liability companies is whether the legal and business center is located in Turkey. Accordingly, capital companies, any of legal entities covered by the law of which registered head office is situated in Turkey, or the center of all business transactions in Turkey are taxed as "unlimited liability capital companies", and capital companies whose legal and business centers are not located in Turkey as "limited liability companies" (CIT Art.3).

[2] It was approved and published in Turkey's Official Gazette dated 21 June 2006.

According to the Turkish Tax Legislation, the issue of "when they are deemed to have been obtained" is also important in taxing business profits. In terms of business profits obtained abroad, it is deemed to have been obtained by transferring them to accounts in Turkey. However, if it is not possible to transfer the business profits to the accounts in Turkey for reasons other than the will of the taxpayer, it will be deemed to have been obtained by the taxpayer when gets able the right of controlling them.

3.1.2. According to International Tax Treaties

General principle in international tax theory says that the right of taxation of business profits arising from business activities carried abroad belongs to country where the earner is resident (the Resident Country). However, in some cases, the right to taxation may pass to country where the business profits obtained (the Source Country). In order for these situations to occur, first of all, the contribution of the Source Country on this gain should be clearly visible. In this respect, the establishment of a workplace in the Source Country or conducting an activity by stopping for a long time is among the important distinctions in the international tax theory, showing that the Source Country contributes to the business profits from that activity.

There is an international consensus that it cannot be presumed to participate in the economic life of that the Source Country in such a way as to ensure that the Source Country until a taxpayer of the Resident Country has a permanent establishment in the Source Country (OECD, 2014: 120). This principle also applies to the International Tax Treaties to which Turkey is a party

Therefore, in the determination of the taxation right regarding the taxation of business profits obtained from abroad in terms of International Tax Legislation, it is taken as a basis whether the business activities are carried out by a permanent establishment abroad. In other words, the concept of permanent establishment is used as a rule of thumb, which means that business profits of non-residents can be taxed only to the extent that they are attributable to a permanent establishment.

3.1.3. Permanent Establishment Rule in International Tax Treaties

The ability of a state to tax business profits arising within its borders requires the existence of a business in that country and the acquisition of business profits through this workplace. With respect to this, the definition of permanent establishment is that ıt has in terms of determining whether a state has an economic connection with business profits arising within the borders of its own country an important function in tax treaties and therefore in the domestic laws. In other words, the Permanent Establishment Rule as a binding point plays an extremely important role in determining which state will tax the business profits (YILMAZ, 2019: 126-127).

The term "permanent establishment" was used for the first time in the tax treaty dated 1899 and signed between the Austro-Hungarian Empire and Prussia. At that time, the concept pointed to presence and continuity in a specific area rather than a physical location in a specific place. The permanent establishment rule in the contemporary sense emerged after the First World War, when it was worried that international double taxation prevented international trade and investment. Thus, the concept of permanent establishments has a history as old as double taxation treaties (YILMAZ, 2019: 128-129).

In our study, the concept of permanent establishment will be examined under several headings. First of all, the general framework of the Permanent establishment will be introduced. In this context, a number of activities that will not leads to a Permanent establishment will also be explained. Finally, the status of Agencies, Permanent Representatives and Independent Enterprises and Construction - Construction Works, Professional Services and Electronic Commerce activities will be specifically examined in terms of Permanent establishment.

3.1.3.1. General Framework of the Permanent Establishment

The Permanent Establishment, which is a very important concept in determining the state where business profits will be taxed, is defined in the 5th articles of the UN Model Tax

Convention with the OECD Model Tax Convention. With respect to this explanation, the Permanent Establishment means a fixed place of business from which the business of an enterprise is wholly or partially carried on. After the permanent establishments are defined in both articles, examples of permanent establishments are included and places which are not considered as the Permanent Establishment are counted. While the concept of the Permanent Establishment has been handled narrowly in OECD Model Tax Convention, the concept is discussed more broadly in the UN Model Tax Convention where the source country is at the forefront. In both Model Tax Conventions, there is a unity on the definition and examples of the concept of workplace (YILMAZ, 2019: 127-128).

Three basic conditions are sought for "permanent establishment" according to the general definition in the OECD and UN Model Tax Conventions and Tax Treaties which Turkey is a party are “existence of the business place”, “that business place is fixed” and “partially or completely carrying out business activities through this fixed place”.

1- “Existence of the business place” requirement generally requires the existence of a building, facility and installation. However, in cases where these are not available, this condition may also be met by the fact that a certain area is at the disposal of the enterprise or building, facility and installation are rented. for example, if a counter in a market place or a certain area uses continuously in a customs warehouse, or the employee of a company uses an office at the headquarters of a newly purchased subsidiary to fulfill its obligations under the contracts concluded with the subsidiary, a permanent establishment is created (OECD, 2014: 85-86).

It is sufficient for an enterprise to have a certain area at its disposal, which it uses for its business activities, to establish a permanent establishment. In the other words a formal legal right to use this space is not required. Therefore, a permanent establishment may also be present where an enterprise illegally occupies a particular place where it maintains its business (UN, 2017: 146).

In the 2017 update of the OECD Model Tax Convention, an example of home-office was added to the examples given regarding the fact that a certain place constitutes a permanent establishment. According to this, even if part of an enterprise's business can be carried out in a place such as an individual's home-office, it should not be automatically concluded that this place used by the employee is at the disposal of the enterprise. Whether a home office creates a place at the disposal of the enterprise will depend on the situation and circumstances of each event. In many cases, this home is not considered to be a place at the disposal of the enterprise because of the intermittent or small and insignificant business activities that take place in a person's home (e.g. home of employee). Moreover, if this home-office is used continuously to carry out the business activities of an enterprise, and if it is clear from the actual situation and circumstances that it is also clear from the actual circumstances and conditions that the person's use of this place to carry out the business of the enterprise is also required by the enterprise, this home-office may be deemed to be at the disposal of the enterprise (OECD, 2017: 120).

2- The location of business being "fixed" means there is a link between the business location and a specific geographic point. Accordingly, in case a country considers a place as a permanent establishment, it depends on the fact that this workplace is located in the territory of that State. Again, the fact that the place related to the work is "fixed" indicates the continuity of the activity to a certain extent. In addition, a place of business may constitute a workplace, although in practice it only exists for a short time, as the nature of the work requires it to be carried out only for a short period of time (OECD, 2014: 87-88).

As stated in the OECD Model Tax Convention Comments, while the leasing of tangible (such as buildings, facilities and equipment) and intangible assets of an enterprise to others through a fixed workplace abroad will generally turn that the business place into a permanent establishment. If this lease is realized without maintaining a business place in that country, the leased facility, equipment, building or intangible asset will not be accepted as a permanent establishment of the lessor. This last case would also apply where the lessor provided staff to operate the assets. In that case, the leased assets must be operated under the management, responsibility and control of the lessee or the liability of the lessor's staff must be limited to the maintenance of these assets (OECD, 2014: 88-89).

3- In order for the permanent establishment to be stated, the enterprise must also carry out its business activities completely or partially through this place. This activity does not have to be efficient. Therefore, within the framework of a well-managed business organization, the assumption that each part contributes to the productivity of the whole will be accepted as correct (OECD, 2014: 85).

In addition, a permanent establishment begins to exist from the moment an enterprise starts running its business through a fixed place of business. With the disposal of the fixed place of work or the completion of any activity carried out through this place, that is, from the moment when all actions and measures related to the previous activities of the permanent establishment are terminated (liquidation of current commercial transactions, maintenance and repair of facilities), the workplace will also cease to exist (OECD, 2014: 90).

3.1.3.2. Specific Situations Regarding Permanent Establishment

3.1.3.2.1. Preparatory and Auxiliary Activities

In order to be taxed in the Source Country, it is necessary that the business profits must be obtained through a permanent establishment located in the Source Country. However, it is not always easy and possible to determine how much of the business profits are obtained through a business place. In this context, some activities have not been seen to form a permanent establishment in the country where they are carried out in the OECD and UN Model Tax Conventions also Tax Treaties to which Turkey is a party, and the earnings from these activities in the Source Country have not been deemed sufficient to be taxed.

These activities, which are generally defined as "preparatory or auxiliary activities", are included in the OECD and UN Model Tax Conventions and the 4th paragraphs of the 5th Articles of the Tax Treaties to which Turkey is a party.

Often it is difficult to distinguish between preparatory or auxiliary activities and those that are not. Each event should be evaluated in itself. It is necessary to look at the extent to which the activities carried out in the business place in general correspond to the activities carried out by the enterprise in general. General purpose which is the same as the general purpose of the whole enterprise, it does not perform a business place, a preparatory or auxiliary activity related to work. Again, a fixed place of business, whose function is to manage an enterprise or even only a part of an enterprise or group belonging to the related group of companies, cannot be seen as a place that performs a preparatory or auxiliary activity, because such a management activity exceeds this level (OECD, 2014: 31).

According to 5/4 of the Tax Treaties to which Turkey is a party the Preparatory or Auxiliary activities are detailed as fallows;

1. In Art.5/4-a, even if an enterprise has a facility abroad, it is stipulated that if only the activities of the storage and display of its own goods are carried out in this facility, these activities will not constitute a permanent establishment in that country (Source Country).

   For example, if a Turkish white goods manufacturer has a business place in Germany for the sole purpose of storing and displaying its own goods, this business place will not be considered as the Turkish Company's permanent establishment in Germany. However, if goods belonging to another enterprise are kept in this business place or activities other than storage and display are carried out, a permanent establishment will be deemed to have been established in Germany.

2. In Art.5/4-b, it is stipulated that the fact that an enterprise keeps its goods in a facility belonging to another person abroad for storage and display purposes will not constitute a permanent establishment in that country (Source Country).

For example, if a logistics company located in Germany stores or displays the goods of a not-related Turkish white goods manufacturer, this logistics company in Germany is not considered as a permanent establishment of the Turkish company. In this context, the entire income earned by the Turkish company from the sale of goods in Germany will be taxed in Turkey. On the other hand, the fact that the logistics company carries out delivery and sales transactions other than storage and display on behalf of the Turkish company will cause it to be considered as a "permanent establishment" and tax the business profits from its activities on behalf of the Turkish company.

3. In Art.5/4-c, it is stipulated that the fact that a Turkish enterprise keeps its goods in another facility abroad for the sole purpose of processing, will not create a permanent establishment in that country (Source Country).

   For example, if the goods belonging to a Turkish Company are located in a business in Germany to be subject as contract manufacturing, "permanent establishment" is not considered to be established in Germany, but, if the Turkish Company is given the right of unlimited access to the goods for the purpose of control and protection in Germany, "permanent establishment" will be deemed to have been established in Germany.

   A striking point in this Art is that, unlike the UN Model Tax Convention, in the OECD Model Tax Convention, "delivery" is also counted under "preparatory or auxiliary activities". However, in all tax Treaties which Turkey is a party, the "delivery" activity has been excluded from the "preparatory or auxiliary activities". Therefore, delivery activities by Turkish Companies at business places abroad will result in taxation in that country (Source Country) within the scope of "permanent establishment".

4. In Art.5/4-d, it is stipulated that a Turkish enterprise having a business place abroad only for the purpose of buying goods or collecting information for that enterprise will not create a permanent establishment in that country (Source Country).

For example, when a Turkish company establishes a business in Turkmenistan to purchase cotton only for this Turkish company, this workplace is not considered as the permanent establishment of the Turkish company in Turkmenistan and all business profits related to the Turkish company's purchase of cotton in Turkmenistan are taxed in Turkey.

However, if the activity of purchasing goods from the business place abroad constitutes the main activity of that Turkish enterprise, the business place abroad should be considered as a "permanent establishment" of that Turkish enterprise.

In this respect, if the main activity of the Turkish Company in our example is to "purchase cotton from Turkmenistan", the business place in Turkmenistan established for this purpose will be considered as "permanent establishment" and the part of the business profits corresponding to this business place will be taxed in Turkmenistan.

5. Art.5/4-e relates to other activities of "preparatory and auxiliary" nature that are not counted in the first four clauses of the paragraph (a, b, c and d clauses). According to the Art.5/4-e, in case an enterprise holds a business place abroad to carry out a business with a preparatory or auxiliary character, it will not constitute a permanent establishment in that country (Source Country).
Although the definition of "preparatory and auxiliary" character has not been made, it can be defined as not constituting the main activity of the enterprise and not being binding on behalf of the enterprise.

For example, if a Turkish Company establishes an office in a state in Germany and the employees in that office take an active role in negotiating substantial parts of contracts for the sale of goods with buyers in that state without having the usual authority to conclude contracts or playing the main role leading to the conclusion of contracts (for example participating in decisions regarding the type, quality or quantity of products covered by these contracts) will not be considered to have a "preparatory or auxiliary" character as such activities will generally form an important part of the enterprise's business activities (OECD, 2014: 137).

6. According to Art.5/4-f, it is stipulated that carrying out several of the activities mentioned in the previous clauses (a, b, c, d and e clauses) in a business place abroad will not constitute a permanent establishment alone.
   According to the Art, if the activity of the business place of work resulting from the combination of several activities is of a preparatory or auxiliary character, it must be accepted that a permanent establishment does not exist (OECD, 2014: 95).

Finally, in the interpretation of the above-summarized activities, the changes made in the OECD and UN Model Tax Conventions in 2017 should also be taken into account. That means some changes have been made in the Art.5 of OECD and UN Model Tax Conventions within the scope of BEPS Action Plans, narrowed the exceptions for the business places where preparatory and auxiliary activities are carried out cannot constitute permanent establishments. It has been emphasized that in its new version, the activities listed in the 5/4 of Model Tax Conventions must have "preparatory or auxiliary" character.

3.1.3.2.2 Dependent Agent, Independent Agent and Independent Enterprises

In international taxation, according to the basic principle in the taxation of income derived from business activities; these business profits are not taxable in the Source Country unless there is a permanent establishment. Again, according to the same principle, for the permanent establishment, first of all, there must be a fixed place of business in that country. “The criterion of "having a fixed location in the Source Country" is quite restrictive in terms of Source Country taxation. In order to prevent the abuse of this restrictive condition, In the OECD and UN Model Tax Conventions, even in cases where the criterion of "having a business place in the Source Country" is not met, provisions regarding the establishment of permanent establishments in the Source

Country were introduced (Art.5/5). With respect to this, even if the criterion for finding a fixed place for work is not met, in case there is a person (Dependent Agent) acting on behalf of the enterprise in the Source Country, it will be assumed to have a permanent establishment in the Source Country.

Likewise, in the all Tax Treaties to which Turkey is a party, the provisions of the Dependent Agent in the Model Tax Conventions are included.

The advantages related to certainty and applicability provided by the criterion of "having a fixed location in the Source Country" will not be valid in cases where the Dependent Agent rule is applied. In such cases, some problems that are very difficult to solve may be encountered. On the other hand, the provisions in the OECD and UN Model Tax Conventions regarding the Dependent Agent rule and the interpretation of these provisions may also change from time to time. For example, with the amendment made in the OECD and UN Model Tax Conventions in 2017, habitually playing the principle role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise constitutes Dependent Agent status. Therefore, each concrete incident related to the Dependent Agent rule needs to be carefully examined within the framework of the provisions of the relevant Tax Treaty.

According to the Tax Treaties to which Turkey is a party the Dependent Agent should generally have the following elements;

- The person to be considered as a Dependent Agent does not have a <u>separate job of his / her own in the Source Country</u> as usual,
- This Person <u>to act entirely on behalf of the Turkish enterprise</u> in the Source Country,
- This Person has <u>the authority to conclude a contract</u> on behalf of the Turkish enterprise,
- This Person's <u>habitual exercise of his / her contractual authority</u>,

- The works done by this Person should not be from "preparatory and auxiliary activities" to those that are not qualified as permanent establishments,
- This Person does not qualify as an Independent Agent,

The most prominent of the general elements above and what makes the Dependent Agent abstract according to the "fixed workplace" rule is the "having the authority to conclude a contract on behalf of the enterprise". With respect to this; the key separator adopted in the OECD and UN Model Tax Conventions' commentaries is how much a contract signed by the Dependent Agent legally binds the enterprise. That means in order for a contract to be deemed to have been concluded on behalf of an enterprise, this contract must create an obligation for the enterprise. In other words, will the person who signs the contract with Agent in question be able to directly sue the enterprise (not the Agent) and request the enterprise to fulfill the relevant actions? If the answer of this question is "yes", the Agent has the authority to make a contract on behalf of the enterprise and has exercised this authority (BATUN, 2015: 46-47).

Again, the Agent should exercise a "habitual" authorization to sign contracts or play a major role in the conclusion of a "habitual" contract. This principle states that if the enterprise concerned is presence in the Source Country goes beyond a mere temporary presence (OECD, 2014: 97).

On the other hand, according to given principle above, it should not be forgotten that there are some important differences between the Tax Treaties to which Turkey is a party. For example, in 32 Tax Treaties to which Turkey is a party [3], even if the Agent does not have the authority to conclude a contract on behalf of the enterprise, the goods

[3] USA, Austria, Australia, Bahrain, Belgium, Algeria, Denmark, Indonesia, Finland, France, S. Korea, India, Netherlands, England, Ireland, Spain, Israel, Sweden, Italy, Japan, Canada, Luxembourg, Norway, Uzbekistan, Pakistan, Portugal, Romania, S. Arabia, Singapore, Thailand, Turkmenistan, Ukraine, New Zealand, Greece

is also regularly stocked in the Source Country by the Agent on behalf of the enterprise, the Agent is considered as Dependent Agent of this enterprise.

Similarly, in the Tax Treaties with India and Thailand, “making orders for the enterprise (including other enterprises affiliated with this enterprise) in the Source Country” was deemed sufficient for the Dependent Agent to apply.

Again, due to the possibility of the said protectionist approach interrupting trade between the two countries, the application of the above provision in some Treaties is tied to the "proof of the purpose of avoiding tax". According to this in the Tax Treaties which signed by Turkey with USA, Netherlands, Spain, Japan, Luxembourg, Portugal, S. Arabia States, for the implementation of the above provision, it must be demonstrated that this Agent not only carries out the continuous delivery of goods or merchandise, but also carries out all kinds of related activities related to the sale of goods or merchandise, except the actual execution of the contract of sale.

According to some Tax Treaties[4] to which Turkey is a party, activities carried out by the Agent will not be considered as a "preparatory and auxiliary activity" unless they are "limited to the purchase of goods or merchandise for the enterprise".

Also according to the Tax Treaties[5] to which Turkey is a party is, even if the Agent’s activities are completely or partially devoted to the name of the enterprise, if the conditions between this Agent and this enterprise differ from those between independent persons, the Dependent Agent rule will apply.

One of the necessary elements for the functioning of the Dependent Agent rule is that this person will not be qualified as an Independent Agent. With respect to this, The Dependent Agent rule will not apply if a person carries out ordinary activities on her/his behalf in the Source Country but also acts for the enterprise in the ordinary course of

[4] Australia, Bahrain, India, Italy and Thailand
[5] Estonia, Ethiopia, Morocco, Qatar, Latvia and Lithuania

business activities. Therefore, in cases where an enterprise conducts its business in the Source Country through an independent agency with which it has a business relationship, if that agency continues its business in the usual manner, the enterprise may not be taxed in the Source Country under such businesses (OECD, 2014: 97).

In determining whether the Independent Agent is independent from the enterprise, the extent of the Agency's obligations to the enterprise should be considered. According to this, if a person carries out business activities on behalf of the enterprise subject to detailed instructions or comprehensive control of the enterprise, that person is not deemed independent (OECD, 2014: 97).

In addition, with the 2017 amendment to the OECD and UN Model Tax Conventions, it is also stipulated that when a person acts exclusively or almost exclusively on behalf of one or more closely related enterprise, that person will not be considered an independent agent.

On the other hand, according to OECD and UN Model Tax Conventions and also Tax Treaties to which Turkey is a party, if an enterprise owns or controls a different company operating in the Source Country, it will not be sufficient to be accepted as the "permanent establishment" in the Source Country of that company enterprise. According to this, independent businesses of the enterprise in the Source Country will not be considered as permanent establishments similar to the independent agent.

3.1.3.2.3 Situation in Construction Projects

In Model Tax Conventions and Tax Treaties to which Turkey is a party, the existence of a fixed place and the realization of the works through this fixed place are generally considered sufficient for the establishment of a permanent establishment. In addition, exceptionally, business profits from certain businesses such as building site, construction and installation project (Construction Projects), even though they are performed from a fixed location, must exceed the period specified in the Treaty in order for them to be taxed by the Source Country.

The definition of Construction Projects is generally made as follows in OECD and UN Model Tax Conventions and also Tax Treaties to which Turkey is a party (Art.5/3)[6];

"3. A building site, construction, assembly and installation project and supervising and control activities related to these projects constitutes a permanent establishment only if it last more than …. months [7]."

Therefore, provided that it is completed in a shorter time within the periods specified in the Treaties;

- Building site, construction, assembly[8] or installation project activities abroad,
- Surveillance, control and audit activities related to these activities abroad [9]

Even if it is built from a fixed place, it is considered that a "permanent establishment" has not been established and the right to tax the business profits derived from these business activities remains in the Resident Country of the enterprise.

Although there is no clear provision regarding the scope of Construction Projects, even in the OECD Model Tax Convention, which is relatively narrower than the UN Model Tax Convention, it has been adopted that these activities should be interpreted broadly rather than only narrowly as construction. Therefore, in addition to the construction of buildings, the construction and renewal of roads, bridges or canals, laying of pipelines and excavation and dredging work should be considered within this scope. Again, according to the OECD Model Tax Convention Comments, an installation associated

[6] For detailed information, see the Annex Table – 2: Scope of Construction Projects.
[7] For detailed information, see the Annex Table – 3: Minimum Time Required for the Construction Projects.
[8] In the 23 Tax Treaties to which Turkey is a party, the "assembly project" activities are not counted among the Foreign Construction Projects. However, it is an interpretation adopted in OECD and UN Model Tax Conventions Comments that Foreign Construction Projects should be interpreted broadly.
[9] In the current 34 Tax Treaties to which Turkey is a party, "supervision, control and audit" activities are not counted within the scope of "Foreign Construction Projects". Therefore, if there is no special provision, these activities should be considered as Independent Personnel Services with respect to these 34 Tax Treaties.

with a construction project, as well as the installation of a new equipment in an existing building or outdoor, or the on-site planning and construction supervision of a building will also be considered within the scope of Construction Projects (OECD, 2014: 91).

Another important point that causes hesitation and creates the possibility of collusion is how to determine the duration of the Construction Projects. According to the understanding adopted in the OECD Model Tax Convention Interpretations, the "duration of the Construction Projects" generally covers the time between the date when the contractor starts the work, including any preparatory work in the country where the Construction Projects will take place, and the period between the completion of the works and the permanent abandonment of the site (OECD, 2014: 92). The general approach of Turkey on the subject is to take as basis the period between the delivery date of the construction site to the contractor and the provisional acceptance. This approach is explicitly included in Russia and Macedonia Treaties.

Again, while determining the "duration of the Construction Projects", the project should be regarded as a single unit, even if it is carried out on the basis of several contracts, provided that the project forms a commercially and geographically harmonious whole (OECD, 2014: 91). In this context, temporary stops (due to bad weather or temporarily inability to provide material) occur during the contract period, or the division of contracts into sub-companies affiliated to the same group of companies, or if the activity carried out by the contractor requires permanent or at least occasional relocation. (For example, the construction of roads or canals or the laying of pipelines or dredging of waterways) or for example the duration of the Construction Projects in cases where parts of an important structure such as an offshore platform are assembled in different locations in a country and then moved to another location in the country for final assembly work ", is calculated as a “one Construction Projects” (OECD, 2014: 91).

Similarly, in the Construction Projects performed by several companies in the form of a joint venture, such as a consortium, if the duration of the whole work is taken into consideration instead of the duration of the work performed by only one company, it will be accepted that each partner has a business place, in case the time is exceeded (OECD, 2014: 92). In the event that some works are outsourced to subcontractors, the duration of the works done by these subcontractors (in the calculation of whether a permanent establishment is formed) is added to the duration of the activities carried out by the contractor. In the calculation of whether a business place has been created for the subcontractor, it is subject that only the time spent due to her/his own activity will be taken into account (YILMAZ, 2019: 120).

On the other hand, provided for this work after the activities subject to the Construction Projects are completed and the site is permanently abandoned, some additional services (warranty, training, etc.) will not be considered as the activities done for the completion of this Construction Projects (OECD, 2014: 131).

3.1.3.2.4 Situation in e-Commerce

The development of new communication tools has facilitated communication and caused an increase in the volume of trade made with these tools. Electronic commerce (digital economy or e-commerce), which can be defined as "products that can be downloaded from computer to computer via internet without using traditional delivery methods such as physical goods and without entering customs borders".

While the digitalization of the economy improves international trade and human well-being in a positive way; it often makes it difficult to answer the questions of "when" and "where" the income is obtained and "in which country" it will be taxed (USLU, 2017: 149). Because digitalized activities enable companies to perform commercial transactions without being physically present in any country.

The debates held before the OECD have also resulted in favor of developed countries where e-commerce companies are heavily resident. In this context, OECD has linked the determination of the business place in electronic commerce to the condition of fixedness and physical existence as in traditional trade. In other words, the elements to be sought for the "existence of a permanent establishment" to be taken as basis in taxation of electronic commerce abroad in that country (Source Country); the existence of a physical location, the "fixed" location of this place, the possession of the fixed place at the disposal of the enterprise, the continuity of presence in this place and the conduct of business activity in this place (BATUN, 2014: 70).

At this point, the being a necessary component in electronic commerce transactions and having a physical and fixed asset leads to servers are considered as business place in e-commerce. In the discussions held before the OECD, it was emphasized that the servers will constitute the permanent establishment criteria, provided that the activities carried out on the servers are not within the scope of "preparatory and auxiliary activities". When determining whether an activity is or is not in fact of a preparatory or auxiliary character, the OECD argues that the activity “within itself” should be an important and necessary part of the activity of the enterprise as a whole. In this regard, it will not be possible to consider servers that can be qualified as "a machine that only operates with a series of instructions" as an indispensable and important part of the activities of enterprise.

It also makes it difficult to reveal the existence of a permanent establishment by looking at the servers because of that it can be placed in the desired country or moved at certain intervals by placing it on portable computers. On the other hand, even if it is accepted that the permanent establishment is formed, this time, determining the business profits to be attributed to the permanent establishment will arise as a problem. Because, in this case, it will be difficult to talk about a classical form of organization in the form of the main center-branch in the internet environment and thus to reveal the functions and functions.

3.1.3.2.5 Situation in Independent Personnel Services

It has been clarified what Independent Personnel Services means in all of the Tax Treaties to which Turkey is a party, except with the USA and apart from the independent activities of doctors, lawyers, engineers, architects, dentists and accountants, especially independent scientific, literary, artistic, educational or teaching activities were considered as Independent Personnel Services.[10]

According to the Turkish Tax Legislation, Independent Personnel Services are the performance of non-commercial works that are based on personal work, scientific or professional knowledge or expertise rather than capital, and on their own behalf and account, without being subject to the employer.[11]

According to the Turkish Tax Legislation, Independent Personnel Services carried out by Turkish Companies are taxed within the scope of business profits. Therefore, Income derived from professional activity carried out abroad by an undertaking will also be taxed within the business profits of that enterprise.

Similarly, the OECD removed the provision on Independent Personnel Services (Art. 14) from the Model Tax Convention since its 2000 version. According to the understanding adopted by the OECD, there is no significant difference between business profits and professional earnings, and Independent Personnel Services will be taxed in accordance with the principles of business activities. However, there is a separate provision regarding "Independent Personnel Services" in all of the Tax Treaties to which Turkey is a party.[12] In this regard, the Tax Treaties to which Turkey is a party should

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[10] Art.14/3 of Tax Treaties

[11] The Personnel Income Taxes Law No:193, Art.65/1

[12] In the total of 17 Tax Treaties to which Turkey is a party stated that the provision of the Independent Personnel Services will be applied only to the natural persons. For detailed information, see Annex Table – 4: List of Tax Treaties in which the Provision of Independent Personnel Services is applied for only Natural Persons and Tax Treaties in which Provision of Independent Personnel Services is applied for Enterprises also.

primarily be complied with in the taxation of Independent Personnel earnings obtained from abroad by the enterprises residing in Turkey.

In all of the Tax Treaties to which Turkey is a party, in the taxation of Independent Personnel Services, similar to the understanding adopted in business profits, the determination of the taxation right of the Source Country is based on "having a fixed place in the Source Country and obtaining the earnings from here".

However, the fact that Independent Personnel Services can be carried out without requiring a fixed place, since they are based on personal time, has revealed the necessity to consider criteria other than "fixed place" in their taxation. In this regards, in some Tax Treaties[13] to which Turkey is a party, In addition to this element, the element of "residence time" can also be used. Again, in a small number of Tax Treaties[14] to which Turkey is a party, the element of “payment being made by or on behalf of the residents in the Source Country or the payment made from the place of business / fixed place in the Source Country” is also included.

On the other side, in Art.5 of some Tax Treaties[15] to which Turkey is a party in addition, "service workplace" provisions are also included. Namely, in some Treaties, professional services such as consultancy provided in the Source Country by the employees of an enterprise or other personnel assigned by the enterprise for this purpose over a certain period[16] in a certain period are also included in the concept of "permanent establishment" as "service workplace". With this regulation, the concept of "service workplace" and also, the definition and scope of the "permanent establishment" expands

[13] In a total of 56 Tax Treaties to which Turkey is a party, besides the "fixed place" element, the "the duration of stay" criteria is also included. For detailed information, see Annex Table – 5: The Minimum Time Requirements for Taxation the Earnings from Independent Personnel Services according to the Tax Treaties to which Turkey is a party.
[14] South Korea, Israel and Sweden.
[15] For detailed information, see Annex Table – 6: The List of Tax Treaties According to the Concept of Service Workplace.
[16] The regulation regarding the minimum time requirement is included as an "alternative provision" in the OECD Model Tax Convention, unlike the UN Model Tax Convention.

with in terms of Independent Personnel Services. Since the taxation to be made in this case will be carried out in accordance with the business profits provisions of the Treaties, the Resident Country does not have the right to tax on earnings attributable to the service workplace.

3.1.3.2.5.1 The Duration of Stay Criteria in Tax Treaties

In the taxation of Independent Personnel Services, it is generally considered sufficient to carry out the activities without having a fixed place in the Source Country for a certain period of time to be taxed in the Source Country obtained from these activities.

Accordingly, staying in the Source Country for a period of more than 6 months[17] in total for one or several trips within a continuous period[18] specified in the Treaty for the execution of the professional activity will require taxation of the earnings from those activities in the Source Country.

In the calculation of the duration, the days that the person is physically present in the Source Country in order to perform the Independent Personnel Services are taken into account. Independent Personnel Services to be carried out by the enterprises in the Source Country refers to the Independent Personnel Services that these enterprises will perform in the Source Country through their personnel.

Again, if the duration of stay is specified as "months" and if an intermittent stay in the Source Country is calculated, "30 days" will be taken as basis for each "month" in the

[17] In some Tax Treaties, it is regulated as "183 days" instead of "6 months". For detailed information, see Annex Table – 5: The Minimum Time Requirements for Taxation the Earnings from Independent Personnel Services according to the Tax Treaties to which Turkey is a party.

[18] This continuous period is regulated as “calendar year” or “fiscal year” in some Tax Treaties and as “12 months” in some Tax Treaties. For detailed information, see Annex Table – 5: The Minimum Time Requirements for Taxation the Earnings from Independent Personnel Services according to the Tax Treaties to which Turkey is a party.

calculation of the Duration of Stay. On the other hand, if more than one professional activity is performed during the same period in the Source Country, these should be taken into account once as a full day in the calculation.

3.1.3.2.5.2. "Service Workplace" in Tax Treaties

As stated in the previous section, in accordance with Article 5 of some Tax Treaties, providing Independent Personnel Services such as consultancy over a certain period of time in the Source Country through employees assigned by an enterprise will cause to be deemed by the enterprise to have formed a "permanent establishment" as a "service workplace" in the Source Country.

In this case, it will cause the right to tax on earnings from Independent Personnel Services performed through a service workplace located in the Source Country[19] to be limited to the portion attributed to the service workplace, as in business profits.

However, it should be noted that the "preparatory and auxiliary" activities that prevent the formation of a permanent establishment also restrict the "establishment of a service workplace" in the same way. In other words, the Independent Personnel Services carried out in the Source Country should not be among the "preparatory and auxiliary" activities.

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[19] Although this period differs in the Agreements, it is generally regulated as "Exceeding 6 Months in a Continuous 12 Month Period". For detailed information, see Annex Table – 6: The List of Tax Treaties According to the Concept of Service Workplace.

3.2 DETERMINATION OF BUSINESS PROFITS OBTIANED ABROAD

3.2.1 According to the Turkish Tax Legislation

According to the Corporate Income Tax Law No. 5520, corporate income tax is calculated over the net corporate income earned by corporate income taxpayers within an accounting period (Art.6). The basic measure in determining the net income is the comparison of equity at the end of the period and at the beginning of the period. While making this comparison, the values withdrawn from the business during the period are added, and the values added to the business during the period are reduced.

In addition, in the determination of the net corporate income, deductible expenses which are counted in the Corporate Income Tax Law No. 5520 (Art.8) and Personal Income Tax Law (Art.40) and expenses that are not discounted are counted in the e Income Tax Law (Art.11) and Personal Income Tax Law (Art.41) are also taken into consideration. The basic principle applied in the reduction of expenses is to establish a causal link between the expenses made and the acquisition or continuation of business profits.

It is also possible to deduct the losses abroad from the corporate income in case of loss from the activities abroad (CIT Art.9/b). However, there is no possibility of offsetting foreign losses related to activities whose business profits are exempted from corporate income tax in Turkey. According to this, since business profits from construction projects abroad are exempted from corporate income tax in Turkey, in case of loss from these activities, these losses cannot be deducted from business profits from other activities. On the other hand, if the foreign losses subject to deduction in Turkey are offset or written off in the relevant country, the foreign business profits to be included in the declaration in Turkey will be the amount before the deduction or expense is written off. According to the Corporate Income Tax Law No. 5520, the deduction of losses arising from foreign activities is limited to five years, and for the deduction, it is stipulated that the declarations related to the foreign activities are reported by the institutions authorized to audit according to the legislation of that country and this report is submitted to the relevant tax office in Turkey.

3.2.2 According to the International Tax Treaties

Within the scope of international taxation, it is important to calculate the amount of gain from business activities carried out abroad in determining the amount that may be subject to taxation in the Source Country. The income that may be subject to taxation in the Source Country is limited to the business profits obtained through the permanent establishment in that country.

It was emphasized that the business profits obtained through the permanent establishment in both OECD and UN Model Tax Conventions and all Tax Treaties to which Turkey is a party should be determined within the scope of the arm's length principle (Art.7/2).

According to this provision, it is necessary to tax the permanent establishment abroad, keeping it completely separate from the enterprise. Business profits from this permanent establishment should be determined in the same way. In other words, the business profits obtained through the permanent establishment should be the same as the business profits that would have been expected if there was no real relationship and dependency between this permanent establishment and the enterprise.

A detailed guide (Transfer Pricing Guide) has been prepared by the OECD in order to solve the difficulties of making such a determination. Therefore, OECD Transfer Pricing Guide should also be followed in determining the business profits obtained through a permanent establishment abroad.

On the other hand, in some cases, disputes may arise between countries (Resident Country and Source Country) within the scope of the application of the provisions of Art.7/2 of the Treaties. In other words, while a country (Resident Country or Source Country) may criticize its tax addressee (enterprise or permanent establishment) by putting forward the above agreement provision, the other country does not accept it. This situation causes double taxation problem. For this reason, some countries also include special provisions in their tax treaties in order to avoid this problem. According to this provision, the fact that the criticism made by one country is really in accordance with Art.7/2 of the Treaties (based on the arm's length principle) and in the case of double taxation, it obliges the other country to make an adjustment to the amount of tax to be paid in that country on the same business profits. If the double taxation problem cannot be solved in this way, Mutual Agreement Procedure (Art.25/1) will be used (OECD, 2014: 130).

Again, in cases where the transactions between an enterprise and its related person (for example, another dependent enterprise) directly affect the determination of the business profits of this enterprise's permanent establishment abroad, as Art.7/2 of the Treaties, these transactions may need to be corrected within the scope of arm's length principle (OECD, 2014: 130).

On the other hand, in determining the business profits attributed to the permanent establishment abroad, "arm's length principle" is the basis, however, in some Treaties, the use of "distribution key-allocation method" has also been adopted. Similarly, a provision regarding this method is included in some Tax Treaties[20] to which Turkey is a party. However, the provision regarding this method was enacted in the 2014 version of the OECD Model Tax Convention. While the OECD Committee is announcing this change, it is already heard that Art.7/2 of the Treaties (based on the arm's length principle) is applicable in all cases even in the most difficult cases and concerns, which will be ensured that the results of the "distribution key - allocation method" comply with the arm's length principle were justified.

[20] Bangladesh, Belgium, Bosnia and Herzegovina, Denmark, India, Ireland, Norway, Serbia – Montenegro, Slovakia, Slovenia, Ukraine, Vietnam, Greece

Another basis taken into account in the determination of the part of the business profits obtained through the permanent establishment abroad is that all relevant expenses are also taken into account. In this context, the following provision (Art.7/3) has been included in all of the Tax Treaties to which Turkey is a party;

"In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere."

According to the provision of the article, when determining the business profits corresponding to the permanent establishment abroad, the reduction of all related expenses suitable for the purposes of that permanent establishment should be allowed. It does not matter where and in which country these related expenses are incurred. Again, "management and general administrative expenses" may also be included in "related expenses".

In fact, the "arm's length principle" makes it obligatory to take into account "all related expenses" regardless of where and how they were made. It is considered that there is a "reinforcement and clarification concern" in the above-mentioned provision in the Treaties.

However, some restrictions may be imposed on the "reduction of all related expenses" by making some arrangements in the above provision in Treaties between some countries. In this context, in some Tax Treaties[21] to which Turkey is a party, some of the following payments are not allowed to be reduced as "related expenses";

[21] Australia, Belgium, Algeria, Denmark, Indonesia, Finland, France, S. Korea, England, Sweden, Japan, Canada, TRNC, Kuwait, Luxembourg, Mexico, Norway, Pakistan, Romania, S. Arabia, Thailand, Ukraine, Oman, Vietnam, New Zealand, Greece

- Intangible rights, fees or other similar payments made in return for the use of royalties, privileges, patents or other rights,
- Commission payments made in return for the service or management provided,
- Interest payments made against money lent to the workplace, excluding banking enterprises

Again in the same context, in some Tax Treaties[22] to which Turkey is a party it is clearly stated that the payments reflected to the permanent establishment as participation in the losses and expenses of the head office or other workplaces abroad will not be allowed to be discounted as "related expenses".

In addition, allowing the reduction of these related expenses can be applied in terms of determining the part of the business profit attributable to the permanent establishment. In other words, after determining the part of the business profits attributed to the permanent establishment, each state could having the right in their domestic legislation to consider these expenses (OECD, 2014: 132).

On the other hand, there is no explanation on how to determine "management and general administrative expenses", which will be considered as "related expenses" in both Model Tax Conventions and Tax Treaties to which Turkey is a party (except TRNC Treaty). At this point, provided that it is at a reasonable level it would be correct to reflect a "management and general administration expense" determined on the basis of objective distribution keys.

[22] Indonesia, Thailand and New Zealand

3.2.3 Determination of Earnings Obtained from the Independent Personnel Services

In the 14th Articles of the Tax Treaties to which Turkey is a party, it is also described how to determine earnings of the Independent Personnel Services to be taxed in the Source Country. [23]. In this respect, earnings of the Independent Personnel Services are either income attributable to a fixed place abroad or income derived only from services or activities performed during the period abroad.

On the other hand, in some Tax Treaties[24] to which Turkey is a party, the enterprise are also given the right to choose to have its income earned from its Independent Personnel Services abroad taxed in accordance with the "business profits" provisions of the Tax Treaties. In this regard, enterprise may prefer to have their professional activities carried out in that country taxed as business profits, even if they do not have a fixed place in the Source Country.

Also, earnings of the Independent Personnel Services arising from the establishment of a "service workplace" in the Source Country will be determined within the scope of the "business profits" provisions.

[23] This provision is not included in the South Korea, Israel and Sweden Tax Treaties.
[24] USA, Austria, Belgium, Denmark, Finland, France, Netherlands, UK, Ireland, Spain, Italy, Luxembourg, Mexico, Norway, Pakistan, Poland, Portugal, New Zealand, Greece.

3.3 AVOIDING DOUBLE TAXATION ON BUSINESS PROFITS

3.3.1 According to the Turkish Tax Legislation

According to the Turkish Tax Legislation, the business profits obtained abroad by Turkish companies will be subject to corporate income tax in Turkey, since these companies are considered as full taxpayers in Turkey. On the other hand, the fact that these business profits are also taxed by the Source Country from which they are obtained will cause a double taxation problem on these business profits.

Some exception and foreign tax credit methods have been introduced in the Turkish Tax Legislation in order to avoid the double taxation problem arising from business profits. In accordance with the Exception Method, the business profits obtained by Turkish enterprises abroad will not be subject to declaration in Turkey. In accordance with the Foreign Tax Credit Method, the business profits obtained by Turkish enterprises abroad are subject to declaration in Turkey, and the tax paid in the Source Country will be deducted from the corporate income tax calculated in Turkey.

In the Corporate Income Tax Law No. 5520, the corporate incomes obtained by the companies through their permanent establishments abroad are exempted from corporate income tax under the following certain conditions;[25]

- The total tax burden in the Source Country must be at least 15%[26],
- The incomes have been transferred to Turkey until the required date,

On the other hand, the business profits transferred to the general result accounts in Turkey by providing from the Construction Projects abroad with the Art.5/1-h of the

[25] CIT.Art.5/1-g

[26] In the event that the main field of activity of the participating company is financing including financial leasing, provision of insurance services or investment in securities, the total tax burden in the Source Country must be at least 20%.

Corporate Income Tax Law No: 5520 are exempted from corporate income tax without any conditions.

However, in foreign tax credit method, For the business profits obtained abroad that will be taxed in Turkey, the taxes paid in the local area will be deducted from the corporate income tax to be calculated due to these business profits in Turkey. Since there is no taxable corporate income in Turkey in the relevant year, this offsetting right can be used until the end of the following third accounting period.

It is also obligatory to attest to the payment of taxes in foreign countries with the documents approved by the Turkish embassies or consulates, or by the representatives of the same quality in the country that protect the Turkish interests in their locality.

Exchange rate to be taken as basis in the calculation of the foreign tax credits is exchange rate during the transfer of the related business profits to the general accounts.

The taxes paid abroad that can be deducted from the taxes in Turkey cannot be more than the amount found by applying the corporate income tax rate in Turkey to the business profits obtained abroad. Again, business profits obtained abroad should be included in the tax base in Turkey.

On the other side, in case the business profits obtained abroad are exempted from tax in Turkey, it is not possible to deduct the taxes paid abroad from the domestic corporate income tax calculated on these business profits.

3.3.2 According to the International Tax Treaties

In the tax theory, the legal double taxation problem, which is the taxation of the business profits of the same person by both countries, it is tried to be solved by distributing the taxation right between countries in the first place in Tax Treaties.

In this context, one of the Contracting States has been granted exclusive right of taxation for certain income items in Tax Treaties, states that the income in question will be "taxed" "only" in the Contracting State. The statement "only" will be taxed in a Contracting State makes it impossible to tax the other State, thus avoiding double taxation. States to which exclusive taxation is granted are normally the state in which the taxpayer is a resident.

However, there are also income items in the Treaties where the allocation of the taxation right is not exclusive. The Treaties state that these items of income may be "taxed" in the State where the taxpayer is not a resident (Source Country). In such cases, the State of residence (Resident Country) must grant a reduction to avoid double taxation. Here, exemption and foreign tax credit method have been established in the Treaties for the said discount.

In this context, the Progressive Exemption Method and the Ordinary Foreign Tax Credit Method are recommended in OECD and UN Model Tax Conventions. In the Model Tax Conventions' commentaries, it is stated that both states may choose one of the two methods, as well as different methods separately or a method which is the combination of these two methods. A combination of the two methods one method will respond to States that generally adopt the exemption method to wish to exclude certain items of income from exception and apply foreign tax credit method those items.

Considering the Tax Treaties to which Turkey is a party, within the scope of preventing the double taxation problem in business profits obtained abroad, it is understood that the foreign tax credit method is generally preferred. According to this, in order to avoid double taxation on business profits, In 22 of the Tax Treaties to which Turkey is a party, the Progressive Exemption Method has been adopted and the Ordinary Foreign Tax Credit Method has been adopted in 62.[27]

According to this, business profits obtained by Turkish Companies through permanent establishments in countries where the Exemption Method has been adopted will not be

[27] For detailed information, see Annex Table – 7: Methods of Avoiding Double Taxation on Business Profits.

included in the declaration in Turkey. Ultimate taxation in respect of these gains will be made in the country in which the profit is derived.

On the other hand, if the same income was obtained through a permanent establishment in the country which the Foreign Tax Credit Method was selected, it would be included in the declaration in Turkey. In this case, double taxation will be eliminated by deducting the taxes paid in the country where the business profits were obtained from the tax calculated in Turkey. In this respect, the ultimate taxation in the Foreign Tax Credit Method will be made in Turkey where the Turkish Company is a resident.

A characteristic of Foreign Tax Credit Method compared to Exemption Methods is that the Resident Country never has to allow a deduction for more than the tax payable in the Source Country. In this case, where the tax payable in the Source Country is lower than the tax in the Resident Country, the taxpayer will always have to pay the same amount of tax as he would have paid if it were to be taxed in the Resident Country only, as if he had received all the income in the Resident Country alone. Where the tax payable in the Source Country is higher and the deduction is limited, the taxpayer will not receive a deduction for the full amount of tax paid in the Source Country. In such a case, the total tax burden would be higher than if all of his income was born in the Resident Country.

3.3.3 A Comprehensive Example about Avoiding Double Taxation on Business Profits Obtained by Turkish Companies Abroad

A AŞ, resident in Turkey, is engaged in television production and sales. In addition, A AŞ sells televisions in the Netherlands and the UK through its permanent establishment.

A AŞ's business profits in Turkey, the Netherlands and the UK for the year 2020 and the taxes paid in the Netherlands and the UK on these business profits are as follows *(Assuming that the Corporate income tax rates in Turkey, the Netherlands and the UK respectively are 22%, 10% and 30%)*;

		Amount (TL)	Explenation
Business Profits in Turkey	A	80.000.000	
Business Profits in the Netherlands	B	10.000.000	1.250.000 Euro * 8 TL
Business Profits in the UK	C	10.000.000	1.000.000 Pound * 10 TL
TOTAL BUSİNESS PROFITS	**D**	**100.000.000**	**A+B+C**
Tax paid in the Netherlands	*E*	*1.000.000*	*125.000 Euro * 8 TL*
Tax paid in the UK	*F*	*3.000.000*	*300.000 Pound * 10 TL*

1. In the absence of any double taxation avoidance, taxation will be as follows;

TOTAL BUSİNESS PROFITS	**D**	**100.000.000**	**A+B+C**
DECLERATED TOTAL BUSİNESS PROFITS	**G**	**100.000.000**	Since there is no EXEMPTION provision in both the Internal Legislation and the Tax Agreements, all of the business profits are included in the tax base
Calculated the Corporate Tax in Turkey	H	22.000.000	G*%22
The Corporate Tax Payable in Turkey	**I**	**22.000.000**	Since there is no CREDİT provision in both the Internal Legislation and the Tax Agreements, all of the business profits are included in the tax base
The Corporate Tax Payable abroad	**İ**	**4.000.000**	**E+F**
The Corporate Tax Payable (Total)	**J**	**26.000.000**	**I+İ**

According to this, A AŞ will totally pay 22.000.000 TL in Turkey as unlimited liability company and 4.000.000 TL in the Netherlands and the UK as a limited liability company. Therefore, by adding those to be incurred in Turkey to the taxes incurred abroad, the total tax burden on the business profits form the permanent establishments in the Netherlands and the UK respectively will be 32% and 52%. In that case, since a tax burden arises on the same income both in Turkey and abroad, the problem of double taxation will arise.

2. Only when there is double taxation prevention in the internal legislation, taxation will be as follows;

		Amount (TL)	Explenation
TOTAL BUSİNESS PROFITS	**D**	**100.000.000**	**A+B+C**
Exemption on the Business Profits from the PE in the UK	K	-10.000.000	KVK md.5.1/g
DECLERATED TOTAL BUSİNESS PROFITS	**G**	**90.000.000**	D-K
Calculated the Corporate Tax in Turkey	H	19.800.000	G*%22
Deduction of taxes paid abroad	M	-1.000.000	
The Corporate Tax Payable in Turkey	**I**	**18.800.000**	H-M
The Corporate Tax Payable abroad	**İ**	**4.000.000**	**E+F**
The Corporate Tax Payable (Total)	**J**	**22.800.000**	**I+İ**

According to this, A AŞ will totally pay 18.800.000 TL in Turkey as unlimited liability company and 4.000.000 TL in the Netherlands and the UK as a limited liability company. In this way, by exempting the business profits from the permanent establishment in the UK, the total tax burden on that business profits will be 30%. On the other hand, by deducting the taxes paid in the Netherlands, the total tax burden on the business profits form the permanent establishment in the Netherlands will be 22%. Therefore, since the business profits obtained in the UK are not included in the declaration in Turkey, the final taxation on these business profits will be made in the UK. On the other hand, due to the fact that the taxes paid in the Netherlands (10%) are lower than the taxes payable in Turkey (22%), the final taxation will be in Turkey for the business profits obtained in the Netherlands.

3. Only when there is double taxation prevention in the relevant Tax Treaties, taxation will be as follows;

		Amount (TL)	Explenation
TOTAL BUSİNESS PROFITS	**D**	**100.000.000**	**A+B+C**
Exemption on the Business Profits from the PE in the Netherlands	K	-10.000.000	Tax Agreement md.23/3
DECLERATED TOTAL BUSİNESS PROFITS	**G**	**90.000.000**	D-K
Calculated the Corporate Tax in Turkey	H	19.800.000	G*%22
Deduction of taxes paid in the UK	M	-2.200.000	Tax Agreement md.23/1-a
The Corporate Tax Payable in Turkey	**I**	**17.600.000**	H-M
The Corporate Tax Payable abroad	**İ**	**4.000.000**	**E+F**
The Corporate Tax Payable (Total)	**J**	**21.600.000**	**I+İ**

According to this, A AŞ will totally pay 17.600.000 TL in Turkey as unlimited liability company and 4.000.000 TL in the Netherlands and the UK as a limited liability company. In this way, by exempting the business profits form the permanent establishment in the Netherlands, the total tax burden on that business profits will be 10%. On the other hand, by deducting the taxes paid in the UK, the total tax burden on the business profits form the permanent establishment in the UK will be 30%. Therefore, since the business profits obtained in the Netherlands are not included in the declaration in Turkey, the final taxation on these business profits will be made in the Netherlands. On the other hand, the fact that the taxes allowed to be deducted are limited to the tax payable in Turkey will cause all taxes paid in the UK to not be deducted in Turkey. This will result in the final taxation of business profits in the UK, where the tax burden is higher.

4. When there are double taxation preventions in the internal legislation and the relevant Tax Treaties, taxation will be as follows;

		Amount (TL)	Explenation
TOTAL BUSİNESS PROFITS	**D**	**100.000.000**	**A+B+C**
Exemption on the Business Profits from the PE in the Netherlands	K	-10.000.000	Tax Agreement md.23/3
Exemption on the Business Profits from the PE in the UK	L	-10.000.000	KVK md.5.1/g
DECLERATED TOTAL BUSİNESS PROFITS	**G**	**80.000.000**	D-K-L
Calculated the Corporate Tax in Turkey	H	17.600.000	G*%22
The Corporate Tax Payable in Turkey	**I**	**17.600.000**	H
The Corporate Tax Payable abroad	**İ**	**4.000.000**	**E+F**
The Corporate Tax Payable (Total)	**J**	**21.600.000**	**I+İ**

According to this, A AŞ will totally pay 17.600.000 TL in Turkey as unlimited liability company and 4.000.000 TL in the Netherlands and the UK as a limited liability company. In this way, by exempting the business profits form the permanent establishments in the Netherlands and the UK, the total tax burden on that business profits respectively will be 10% and 30%. Therefore, since the business profits obtained in the Netherlands and the UK are not included in the declaration in Turkey, the final taxation on these business profits will be made in the Netherlands and the UK.

3.4 EFFECTS OF BEPS STUDIES ON TAXATION OF BUSINESS PROFITS

In recent years, multinational companies have eroded the tax base by taking advantage of the gaps in legal regulations and transferred their profits to regions with low tax rates. This situation has caused countries to lose income. International organizations such as OECD and EU are doing important studies in order to ensure efficiency and effectiveness in taxation. Thereupon, OECD presented the Base Erosion and Profit Shifting Project (BEPS) and prepared fifteen comprehensive action plans.

The BEPS 1th Action Plan specified a number of tax difficulties caused by digitalization, and answered the question of how taxing rights on business profits obtained from cross-border digital transactions should be separated among countries. Up to the present, any consensus emerged in this area. On the other hand, recent works have centered on the some options that aim to change simultaneously the existing application, with a view to give more taxing rights to the Source Country which the customers or users are located.

In the BEPS 1th Action Plan also aim a new system to ensure that minimum tax will be imposed to the multinational digital companies such as Google, Netflix. This goal would protect the tax base to shift from normal jurisdictions to low/no-tax jurisdictions. The Action Plan allows jurisdictions to tax business profits which has already being taxed in other to ensure that these business profits obtained by the multinational digital activities are taxed at least in a minimum level.

According to this measurement, over 130 countries and jurisdictions, representing more than 90% of global GDP, joined a new agreement in July 2021 to reform the international taxation rules and ensure that multinational enterprises pay a fair share of tax wherever they operate. This global tax deal – the outcome of negotiations coordinated by the OECD for much of the last decade – updates key elements of the century-old international tax system which is no longer fit for purpose in a globalized and digitalized 21st century economy and puts a floor on tax competition by setting a global minimum corporate tax.

The new tax system is expected to take effect in 2023. It sets an effective global minimum tax of 15% on multinationals with more than $890 million in revenue. The system will redirect some of the taxes that large multinationals pay to the countries where their products or services are sold, instead of the taxes going only to the country they're headquartered in. On the other hand multinationals with more than $23.8 billion in revenue—with the large exceptions of financial companies and "extractives" such as oil companies—will pay between 20% to 30% of their profits above a 10% margin to countries where their products or services are sold.

The BEPS 5th Action Plan aims to prevent harmful tax competition and sets principles of transparency and the priority of substance. The BEPS 5th Action Plan is one of the four BEPS minimum standards and targets that mobile business profits cannot be consciously parked in a low/no tax jurisdiction. To do this, the BEPS 5th Action Plan will ensure that the low/no tax jurisdictions have the taxing right on business profits when only if the substantial business activities are performed in that jurisdictions.

The 6th Action Plan is also one of the minimum standards and aims to include a specific provision in the Tax Treaties to ensure the protection against treaty shopping. With treaty shopping a taxpayer could access the advantages of a tax treaty without being a resident of one of those countries which are parties of that treaty.

BEPS 7th Action Plan aims to block the using of a permanent establishment as a means of tax avoidance through unnatural transactions. For this purpose, the permanent establishment definitions in the OECD Model Tax Convention are reviewed and some changes are made in existing tax treaties through MLI measures.

The BEPS 8, 9 and 10th Action Plans are related to transfer pricing and are intended to ensure that transfer pricing rules give results in line with the values created. The 8th Action is addressed in terms of intangible rights, the 9th Action in terms of risk and capital investments, and the 10th Action in terms of other high-risk transactions.

The BEPS 11th Action Plan aims to improve some datasets and analytical tools. In this way, the impacts of tax avoidance and the effects of the BEPS measures will be measure and monitor. In the feature, these statistics are also provide useful information on the location of multinationals' taxes, income, and business activities.

On the other side, the aim of 12th Action Plan is to supply modular framework on disclosure regime. According to this mandatory disclosure rules, countries are able to coincide their requirement to achieve earlier information on possibly aggressive or illegal tax planning schemes, also the users and projector of schemes like this.

With respect to BEPS 13th Action Plan, all of the large multinational enterprises (MNEs) are needed for the preparation of a country-by-country (CbC) report related to aggregate data which are on the global allocation of taxes, profit, income paid, also financial activity amid tax jurisdictions where is operated. Tax administrations share this report in tax jurisdictions in order to use in higher up transpose the risk assessments of BEPS and pricing.

Also for all this purposes, some following changes are made in existing tax treaties through MLI measures;

- The tax treaties include an initial provision to prevent the creation of low taxation or non-taxation opportunities through tax evasion or tax avoidance.
- Principal Purpose Test is introduced to prevent treaty abuse.
- Benefiting from the tax treaty is restricted in case of hybrid mismatches due to structures that are considered as fully or partially transparent in terms of tax by one or both of the contracting countries.
- If the tax rate to be applied to a permanent establishment income is lower than 60% of the tax rate in the contracting country where the head office of this business is located, the benefits envisaged in the tax treaty will not be applied.
- If a person acting on behalf of the enterprise of a contracting country in the other country acts as an independent agency, it is stated in the regulation that a

permanent establishment will not be established as before. However, if a person acts exclusively on the accounts of one or more closely related undertakings, this person will not be considered as an independent agent, that is, a permanent establishment will be able to establish.

- The issue of which activities will not constitute a permanent establishment, clarified by evaluating whether the activities are generally of a preparatory or auxiliary character or by counting what they do not specifically cover.
- New regulations have been introduced regarding the time criterion regarding whether certain projects and activities, such as construction sites, will constitute a permanent establishment.
- Appropriate transfer pricing adjustments between contracting countries are established.

The MLI is a multilateral agreement that will not change the tax treaties directly, but rather will be applied together with the tax treaty text, based on the MLI provisions in the relevant articles.

According to the MLI, in terms of current tax treaties to which Turkey is a party, the MLI will enter into force after Turkey completes the domestic legal procedures and then submits the certificate of ratification, acceptance, or approval. Turkey started the approval process by submitting it to the Parliament's Plan and Budget Commission on 2 June 2020 as a law proposal that the implementation of the MLI is deemed appropriate.

4. THE TAXATION OF DIVIDENDS OBTAINED BY TURKISH COMPANIES ABROAD

4.1 RIGHT TO TAXATION OF DIVIDENDS OBTAINED ABROAD

41.1 According to the Turkish Tax Legislation

According to the Corporate Income Tax Law No. 5520, companies are taxed by calculating corporate income tax on their business profits. “Dividend” is also included in the taxable business profits of companies. According to Turkish Tax Legislation, dividends of all kinds of stocks and earnings arising from participation shares are taxed as "dividend".

On the other hand, while the corporate income of fully responsible taxpayer companies (Turkish Companies) include all their earnings both in Turkey and abroad, the corporate income of limited responsible (non-resident) taxpayer companies only include all earnings they earned in Turkey. Unlimited-Limited liability companies’ distinction is made according to whether the companies' legal or business centers are located in Turkey.

In this respect, dividend obtained by unlimited liability companies abroad will also be subject to corporate income tax in Turkey. Without prejudice to the provisions of the International Tax Treaties, the taxation of these revenues obtained by Turkish Companies in the Source Country does not prevent them from declaration in Turkey. The possible double taxation issues that may arise due to the fact that it is also taxed in the Source Country is solved with “exemption” and “credit” methods.

According to the Turkish Tax Legislation, the issue of "when they are deemed to have been obtained" is also important in taxing business profits. In terms of business profits obtained abroad, it is deemed to have been obtained by transferring them to accounts in Turkey. However, if it is not possible to transfer the business profits to the accounts in

Turkey for reasons other than the will of the taxpayer, it will be deemed to have been obtained by the taxpayer when gets able the right of controlling them.

In addition, there are the Controlled Foreign Company rules (CFC) in the Corporate Income Tax Law No. 5520 (art.7). According to the CFC, even if dividends are not actually distributed to shareholders in Turkey from foreign subsidiaries, it is accepted that dividends are distributed in terms of tax practices and thus, the dividends of these subsidiaries are subject to corporate income tax in Turkey in that year. In the event that this income is distributed later, only the untaxed portion of the dividends will be subject to corporate income tax.

The necessary conditions for the CFC are as follows;

- Having at least 50% control power[28] over the foreign subsidiary.
- The income of the foreign subsidiary must be at least 25% passive income[29].
- The total tax burden similar to corporate income tax of the foreign subsidiary must be less than 10%.
- The total revenue of the foreign subsidiary in the relevant year must exceed 100,000 TL.

4.1.2 According to the International Tax Treaties

4.1.2.1 The Definition of Dividends

In all Tax Treaties to which Turkey is a party, the definition of "dividend" has been made. Although there are minor differences in some of these Tax Treaties, it is possible

[28] Control power identified either by share, dividend and vote.
[29] Passive Income refers to earnings which are obtained from other than commercial, agricultural or self-employment activities such as interest, dividends, rent, and license fee.

to define dividend as "income from all kinds of rights to participate in earnings and other revenues with the same treatment as income from stocks”.

What are the rights that enable participation in the earnings in the Tax Treaties were also counted through sampling as fallow;

- Stocks,
- “Joissance” share or “joissance” rights,
- Founders’ shares or other rights participating in profits,
- Mining shares,
- Mutual Funds Certificates and Investment Trust Certificates[30],

Therefore, it could be said that, dividends are income derived from the capital that the shareholders give to the company. In this regard, dividend is primarily related to the distribution of the earnings deserved from the shares. In addition to stocks, it also covers securities issued by the company that provide the right to participate in the company's earnings without being dept-claims, such as “joissance” share or “joissance” rights, founder's shares or other rights that allow to participate in the profits. On the other hand, dept-claims participating in profits is not a dividend. Such as interest on “convertible debentures”, they are taxed as interest income (OECD, 2017: 238-239).

Alike Interest income received in return for lending is also not considered dividend. However, interest income received in return for lending is also considered dividend in

[30] These rights are not included in the Tax Treaties which Turkey is a party with Belarus, Brazil, Czech Republic, China, Estonia, Latvia, Lithuania, Luxembourg, Malaysia, Pakistan, Russia, Saudi Arabia and New Zealand.
On the other hand, in the Tax Treaties which Turkey is a party with USA, Albania, Australia, Ethiopia, Morocco, Philippines, Finland, Switzerland, Italy, Japan, Canada, Egypt, Moldova, Norway, Singapore, Ukraine, Tunisia, Thailand, Vietnam and Portugal the revenues obtained by the Turkish beneficiaries from these rights are taxed as dividends.

cases where the lending transaction can be qualified as 'capital deposit' rather than 'lending'[31].

These situations are described in the OECD Model Tax Convention's commentaries as "the lender shares the risks run by the company" and exemplified as follows (OECD, 2017: 240);

- The situation where the loan is not accept as "redeemable assets"
- The situation where the lender takes a share of all kinds of gains and losses of the company,
- The situation where the repayment of debt comes after other lenders' claims or dividends are paid,
- The situation where the level of interest or its payment depends on the company's earnings.

Similarly, if the person making the payment is a concealed partner of the company that makes the payment or if these persons are closely connected with a shareholder, their income will be considered as a "dividend" even if they are not a "shareholder" under company law (OECD, 2017: 241).

In addition to the profit distributions decided at the annual general meetings, other benefits in money or money worth such as bonus shares, premiums, liquidation gains or redemption of shares and disguised distribution of earnings are also defined as dividend. In general, however, distributions made by a company that have the effect of reducing

[31] For example, in the Tax Treaty to which Turkey is a party with the Norwegian; Dividend payments made by the debtor to the lender within the scope of the securities lending agreement are considered as dividend. In the same Tax Treaties, payments similar to dividends are defined as the amount corresponding to the dividends distributed over the borrowed shares during the borrowing period.
Similarly, in the Tax Treaty with New Zealand, the income related to debt securities defined in Chapter FA 2 of the New Zealand 2007 Income Tax Law are also defined as dividend income.

stock rights, for example payments that a repayment of capital, are not considered as dividends (OECD, 2017: 240-241).

According to the almost all of the Tax Treaties[32] to which Turkey is a party, if the remaining part of the business profits obtained in the Source Country after being taxed is sent to the enterprise in the Resident Country, these payments will be taxed as dividends.

4.1.2.2 Determining Which Party has Right to Taxation on Dividends, According to International Tax Treaties

The basic principle adopted in the OECD and UN Model Tax Conventions regarding the taxation of dividends can be summarized as "dividends are ultimately taxed in the country where the beneficiary is the resident (Resident Country), while these income also can be taxed in limited in the Source Country.

Also, in order for dividends to be deemed to have been obtained, it must be "paid". The term "paid" has a very broad meaning. That is, making the funds subject to dividends ready for the disposal of the shareholder in accordance with the contract or custom is sufficient for the concept of "paid" (OECD, 2017: 232).

In this context, the same principle has been adopted in the Tax Treaties to which Turkey is a party, and the right to tax in the taxation of dividends obtained from abroad by Turkish Companies is left to Turkey without rate limitation. However, such income may also be subject to tax in the State in which it is generated (Source Country) at rates not exceeding the rates specified in the Treaties. For limited taxation to be made by the Source Country, the tax rates included in the Treaties represent the maximum rate for taxation, and these rates will in no way be exceeded. However, if a lower tax rate is applied for such incomes in the domestic legislation of the Source Country, then these

[32] For detailed information, see Annex Table - 6 List of Tax Treaties that Include Dividend Taxation if Business Profits are distributed to the Resident Country.

lower rates will be applied in favor of the taxpayer instead of the rates specified in the Treaties.

The Treaties generally use different tax rates as the limited taxation rate of the Source Country, depending on the nature of the party receiving the dividend and the shareholding rate. Similarly, in Tax Treaties to which Turkey is a party, tax rates to be applied to dividends differ depending on the nature of the party and on the proportion of participation in the capital. For example, according to the Turkish - German Tax Treaty, Germany's right to tax as the Source Country for the dividend earned by Turkish Company from a company residing in Germany, is limited to 5% when this Turkish Company has participated in the capital of this company in Germany at a rate of at least 25% (qualified shareholding), otherwise it is limited to 15%.

Here, it is aimed to avoid duplicate taxation of the earnings payments made by the company subject to qualified shareholding to the foreign parent company and to facilitate international investment.

Considering all the Tax Treaties to which Turkey is a party, in cases where the shareholding rates of Turkish Companies are at least a certain rate (qualified shareholding), the taxation right of the Source Country is generally limited to 10%[33], and in all other cases, the Source Country is generally limited to 15%[34].

In the event that the remaining part of the income obtained from the business activities carried out in the Source Country is sent to the Turkish Company after the taxation, the

[33] In 42 of the Tax Treaties to which Turkey is a party, the taxation right of the Source Country is limited to 10%; in 24 of the Tax Treaties, it is limited to 5%; in 13 of the Tax Treaties, it is limited to 15%; in 3 of the Tax Treaties, it is limited to 12%; in Morocco tax Treaty, it is limited to 7%; and in Kosovo Tax Treaty it is limited to 0% **for qualified shareholder**. For rates on country basis, see the Annex Table – 9: The Maximum Taxation Levels on Dividend in the Source Country according to the Qualified Shareholding Share.

[34] In 42 of the Tax Treaties to which Turkey is a party, the taxation right of the Source Country is limited to 15% in 26 of the Tax Treaties, it is limited to 10%; in 11 of the Tax Treaties, it is limited to 20%; in 3 of the Tax Treaties, it is limited to 12%; in Belgium tax Treaty, it is limited to 5%; and in Kosovo Tax Treaty it is limited to 0% **for non-qualified shareholder**. For rates on country basis, see the Annex Table – 10: The Maximum Taxation Levels on Dividend in the Source Country according in the other cases.

taxation that can be made in the Source Country is generally based on the above criteria applied for dividends. However, different rates have been established in some Tax Treaties[35] to which Turkey is a party.

According to the Treaties, in determining the "qualified shareholding ", it is considered that the company that pays the dividend directly[36] holds at least a certain share[37] of its capital[38][39] [40]. The term "capital" here should be understood as understood in company law. In this respect, what is meant by capital is the nominal value of all shares in the balance sheet. On the other hand, in determining the "qualified shareholding", the decision is made based on the situation at the time of the dividend. There have also been different arrangements in some Treaties[41].

On the other hand, for the low taxation to be applied in the Source Country due to the qualified shareholding included in the Tax Treaties, the beneficiary of the dividend income must be the "beneficial owner". This condition makes it clear that the Source Country is not obliged to waive its taxation rights on dividend just because the income is paid directly to a resident of a Contracting Country. The term beneficial owner should not be interpreted in a narrow technical sense and should be considered in the light of the objectives and objectives of the Treaties, including the prevention of double taxation and avoidance of tax evasion and avoidance. In this way, it is aimed to prevent tax

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[35] For detailed information on the Agreements and the rates to be applied, see Annex Table – 11: Differences in Rates to be applied in the Distribution of Business Profits to the Resident Country.
[36] In the UK Treaty also indirectly controlled are covered.
[37] The minimum shareholding ratio required in most of the Agreements is 25%.
In addition, the minimum shareholding rate is 20% in the Tax Agreements with Switzerland, Qatar, Norway and Saudi Arabia, 15% in the Tax Agreement with Lebanon, and 10% in the Tax Agreements with the USA, Australia, Belgium, Gambia and Canada.
[38] In Australia, England, Ireland and Canada Agreements, "voting power / voting right" is used instead of "capital".
[39] As an additional requirement under the Pakistan Agreement, the company that pays the dividend must also be engaged in an industrial activity. Industrial activities are listed in Article 10/3-b of the same Agreement.
[40] As an additional requirement under the Treaty of New Zealand, such dividends must be exempted from tax in the Resident Country.
[41] According to the Japan Agreement, the shareholding ratio must be kept within the 6-month period just before the end of the accounting period which dividends are distributed.
According to the Portugal Agreement, the shareholding ratio must be kept within the 2-year period just before the end of the accounting period which dividends are distributed.

avoidance situations that may occur with the intervention of a buyer who is obliged to pass the dividend to another person (OECD, 2017: 234).

The beneficial owner of the dividend income may also be conducting business activity through a business or professional activity through a fixed base in the Source Country. In this case, the connection between dividend and business or independent personnel activity will be looked into. If there is an effective link between the dividend income and the business or independent personnel activity in that country, the dividend income will be taxed within the scope of the business or independent personnel earnings from that country. In other words, in this case, instead of Article 10 of the Treaties subject to dividend, Article 7 subject to business profits or Article 14 subject to earnings from the independent personnel services will be applied.

On the other hand, Articles 10 of the Treaties concern dividends paid by a company residing in the Source Country to a resident of the other country. In this regard, it does not allow States to tax dividends distributed by a non-resident company. In this context, a special provision has been added to many Tax Treaties to which Turkey is a party, as in OECD and UN Model Tax Conventions. However, there are also Tax Treaties[42] to which Turkey is a party that do not contain this provision.

[42] Azerbaijan, UAE, Bangladesh, Belarus, Indonesia, Ethiopia, Gambia, India, Croatia, Qatar, Kazakhstan, Kyrgyzstan, Kuwait, Macedonia, Malaysia, Moldova, Slovakia, Uzbekistan, Russia, Syria, Sudan, Tajikistan, Jordan, Yemen, Greece.

4.2 AVOIDING DOUBLE TAXATION ON DIVIDENDS

4.2.1 According to the Turkish Tax Legislation

According to the Turkish Tax Legislation, the dividends obtained by Turkish Companies abroad will be subject to corporate income tax in Turkey, since these companies are considered as full taxpayer institutions in Turkey. On the other hand, the fact that these incomes are taxed by the Source Country from which they are obtained will cause the problem of double taxation.

The Exception and the Foreign Tax Credit methods have been introduced in the Turkish Tax Legislation in order to avoid the double taxation problem arising from dividend income. In accordance with the Exception method, dividends obtained by Turkish Companies abroad will not be subject to declaration in Turkey. In accordance with the Foreign Credit method, the dividends obtained by Turkish Companies abroad will be subject to declaration in Turkey, but the taxes paid in the Source Country will also be deducted from the corporate income tax calculated in Turkey.

The conditions sought regarding the Exception application are regulated in Article 5/1-b of the Corporate Income Tax Law No. 5520. Accordingly, in order to apply the exception method, the following conditions must be met;

- The company from which the income is obtained does not have a legal and business center in Turkey,
- This company is established as a joint stock or limited company,
- The participation rate in this company is at least 10%,
- Keeping the participation share in this company for at least 1 year without interruption,
- The earnings subject to dividend are taxed at least 15% in the Source Country,
- Transferring the dividend to Turkey until the date on which the corporate income tax return should be submitted for the accounting period in which it was obtained.

In order to benefit from the Exception, the above conditions must be fulfilled collectively. Accordingly, for example, even if the participation rate is over 10%, it is not possible to benefit from the Exception if the condition of holding at least one year is not fulfilled or in cases where the tax burden is not fulfilled with all conditions.

On the other hand, in cases where it is necessary to establish a separate company in accordance with the legislation of the Source Country in order to perform construction, repair, assembly works and technical services abroad, this exception will be applied to the earnings obtained from participating in these companies without any conditions.

In the Foreign Tax Credit Method, the taxes that were previously paid locally for the earnings obtained abroad will be deducted from the corporate income tax to be calculated in Turkey due to these earnings. This deducting right can be used until the end of the following third accounting period, since there is no taxable corporate income in Turkey in the relevant year. It is also obligatory to attest to the payment of taxes in foreign countries with the documents approved by the Turkish embassies or consulates, or by the representatives of the same quality in the country that protect the Turkish interests in their locality.

The taxes paid abroad that can be deducted from the taxes in Turkey cannot be more than the amount found by applying the corporate income tax rate in Turkey to the same dividends.

On the other hand, if the earnings obtained abroad are exempted from tax in Turkey, it is not possible to deduct the taxes paid abroad from the domestic corporate income tax calculated on these earnings.

4.2.2 According to the International Tax Treaties

As stated earlier, according to the international tax principles, right to tax dividends ultimately belongs to the Resident Country where the beneficiary is the resident. At the same time, these income also can be taxed in limited in the Source Country where the

Foreign Subsidiary is resident. In the OECD and UN Model Tax Conventions, the Progressive Exemption Method and the Ordinary Foreign Tax Credit Method are recommended to avoid double taxation.

In almost all Tax Treaties to which Turkey is a party, the Ordinary Foreign Tax Credit Method is preferred to avoid double taxation on dividends. Only in four Tax Treaties[43] to which Turkey is a party the Progressive Exemption Method is used. This clearly shows that Turkey does not want to leave the taxation right on the dividends obtained by Turkish Companies to the Source Country.

On the other hand, in order to apply the Exemption Method on dividends, some additional conditions have been established in the Treaties. In this context;

- According to the Belgium – Turkey Tax Treaty, to apply the Exemption Method, the Foreign Subsidiary in Belgium must be a stock company and the dividends similarly must be exempted from the corporate income tax when this Foreign Subsidiary was a resident in Turkey.
- According to the Netherlands – Turkey Tax Treaty, to apply the Exemption Method, Turkish Company must directly has at least 10% of the capital of the Foreign Subsidiary in the Netherlands and a similar Exemption should be established for dividends distributed by Turkish companies in Dutch law.
- According to the Sweden – Turkey Tax Treaty, to apply the Exemption Method, Turkish Company must directly has at least 10% of the capital of the Foreign Subsidiary in Sweden.
- According to the TRNC – Turkey Tax Treaty, to apply the Exemption Method, the dividends similarly must be exempted from the corporate income tax when the Foreign Subsidiary was a resident in Turkey.

[43] Belgium, Netherlands, Sweden, TRNC.

4.2.3 A Comprehensive Example about Avoiding Double Taxation on Dividends Obtained by a Turkish Company Abroad

A AŞ, resident in Turkey, is engaged in television production and sales. A AS has also directly %100 participated in two equity companies located in the Netherlands and the UK (Foreign Subsidiaries).

In 2020, A AŞ's business profits in Turkey and dividends paid by Foreign Subsidiaries and the Withholding Taxes paid in the Netherlands and the UK on these earnings are as follows *(Assuming that the corporate income tax rate in Turkey is 22%, and the Withholding Tax rates in the Netherlands and the UK respectively are 0% and 15%)*;

		Amount (TL)	**Explenation**
Business Profits in Turkey	A	80.000.000	
Dividend from the Netherlands Company	B	10.000.000	1.250.000 Euro * 8 TL
Dividend from the UK Company	C	10.000.000	1.000.000 Pound * 10 TL
TOTAL EARNİNGS	**D**	**100.000.000**	**A+B+C**
Withholding Tax paid in the Netherlands	*E*	*0*	*1.250.000 Euro * %0 * 8 TL*
Withholding Tax paid in the UK	*F*	*1.500.000*	*1.000.000 Pound * %15 * 10 TL*

1. In the absence of any double taxation avoidance, taxation will be as follows;

		Amount (TL)	**Explenation**
TOTAL EARNİNGS	**D**	**100.000.000**	**A+B+C**
DECLERATED TOTAL BUSİNESS PROFITS	**G**	**100.000.000**	Since there is no EXEMPTION provision in both the Internal Legislation and the Tax Agreements, all of the business profits are included in the tax base
Calculated the Corporate Tax in Turkey	H	22.000.000	G*%22
The Corporate Tax Payable in Turkey	**I**	**22.000.000**	Since there is no CREDİT provision in both the Internal Legislation and the Tax Agreements, all of the business profits are included in the tax base
The Withholding Taxes paid abroad	**İ**	**1.500.000**	**E+F**
The Total Taxes	**J**	**23.500.000**	**I+İ**

According to this, A AŞ will totally pay 22.000.000 TL in Turkey as unlimited liability company and 1.500.000 TL in the Netherlands and the UK as a limited liability company. Therefore, by adding those to be incurred in Turkey to the taxes incurred abroad, the total tax burden on the dividends form the Foreign Subsidiaries in the Netherlands and the UK respectively will be 22% and 37%. In that case, since a tax burden arises on the same income both in Turkey and the UK, the problem of double taxation will arise.

2. Only when there is double taxation prevention in the internal legislation, taxation will be as follows;

		Amount (TL)	Explenation
TOTAL EARNİNGS	**D**	**100.000.000**	**A+B+C**
Exemption on the Dividends from the UK Company	K	-10.000.000	KVK md.5.1/b
DECLERATED TOTAL BUSİNESS PROFITS	**G**	**90.000.000**	D-K
Calculated the Corporate Tax in Turkey	H	19.800.000	G*%22
Deduction of taxes paid in the Netherlands	M	0	
The Corporate Tax Payable in Turkey	**I**	**19.800.000**	H-M
The Withholding Taxes paid abroad	**İ**	**1.500.000**	**E+F**
The Total Taxes	**J**	**21.300.000**	**I+İ**

According to this, A AŞ will totally pay 19.800.000 TL in Turkey as unlimited liability company and 1.500.000 TL in the Netherlands and the UK as a limited liability company. In this way, by exempting the Dividends form the Foreign Subsidiary in the UK, the total tax burden on that earnings will be 15%. On the other hand, by deducting the taxes paid in the Netherlands, the total tax burden on the Dividends form the Foreign Subsidiary in the Netherlands will be 22%. Therefore, since the earnings obtained in the UK are not included in the declaration in Turkey, the final taxation on these earnings will be made in the UK. On the other hand, due to the fact that the taxes paid in the Netherlands (0%) are lower than the taxes payable in Turkey (22%), the final taxation will be in Turkey for the earnings obtained in the Netherlands.

3. Only when there is double taxation prevention in the relevant Tax Treaties, taxation will be as follows;

		Amount (TL)	Explenation
TOTAL EARNİNGS	**D**	**100.000.000**	**A+B+C**
Exemption on the Dividends from the Netherlands Company	K	-10.000.000	Tax Agreement md.23/1.a
DECLERATED TOTAL BUSİNESS PROFITS	**G**	**90.000.000**	D-K
Calculated the Corporate Tax in Turkey	H	19.800.000	G*%22
Deduction of taxes paid in the UK	M	-1.500.000	Tax Agreement md.23/3
The Corporate Tax Payable in Turkey	**I**	**18.300.000**	H-M
The Withholding Taxes paid abroad	**İ**	**1.500.000**	**E+F**
The Total Taxes	**J**	**19.800.000**	**I+İ**

According to this, A AŞ will totally pay 18.300.000 TL in Turkey as unlimited liability company and 1.500.000 TL in the Netherlands and the UK as a limited liability company. In this way, by exempting the Dividends form the Foreign Subsidiary in the Netherlands, the total tax burden on that earnings will be 0%. On the other hand, by deducting the taxes paid in the UK, the total tax burden on the Dividends form the Foreign Subsidiary in the UK will be 22%. Therefore, since the earnings obtained in the Netherlands are not included in the declaration in Turkey, the final taxation on these earnings will be made in the Netherlands. On the other hand, the fact that the taxes allowed to be deducted are limited to the tax payable in Turkey will cause all taxes paid in the UK to not be deducted in Turkey. This will result that the final taxation of Dividends the Stock Company in the UK, where the tax burden is lower than Turkey will be in Turkey.

4. When there are double taxation preventions in the internal legislation and the relevant Tax Treaties, taxation will be as follows;

		Amount (TL)	Explenation
TOTAL EARNİNGS	**D**	**100.000.000**	**A+B+C**
Exemption on the Dividends from the Netherlands Company	K	-10.000.000	Tax Agreement md.23/1.a
Exemption on the Dividends from the UK Company	L	-10.000.000	KVK md.5.1/b
DECLERATED TOTAL BUSİNESS PROFITS	**G**	**80.000.000**	D-K-L
Calculated the Corporate Tax in Turkey	H	17.600.000	G*%22
The Corporate Tax Payable in Turkey	**I**	**17.600.000**	H
The Withholding Taxes paid abroad	**İ**	**1.500.000**	**E+F**
The Total Taxes	**J**	**19.100.000**	**I+İ**

According to this, A AŞ will totally pay 17.600.000 TL in Turkey as unlimited liability company and 1.500.000 TL in the Netherlands and the UK as a limited liability company. In this way, by exempting the Dividends form the Foreign Subsidiary in the Netherlands and the UK, the total tax burden on that earnings respectively will be 0% and 15%. Therefore, since the earnings obtained in the Netherlands and the UK are not included in the declaration in Turkey, the final taxation on these earnings will be made in the Netherlands and the UK.

4.3 EFFECTS OF BEPS STUDIES ON TAXATION OF DIVIDENDS

In recent years, multinational companies have eroded the tax base by taking advantage of the gaps in legal regulations and transferred their profits to regions with low tax rates. This situation has caused countries to lose income. International organizations such as OECD and EU are doing important studies in order to ensure efficiency and effectiveness in taxation. Thereupon, OECD presented the Base Erosion and Profit Shifting Project (BEPS) and prepared fifteen comprehensive action plans. The BEPS Actions is related with the Dividends are summarized below.

The BEPS 3th Action Plan construct advices for the design of effective CFC rules. These recommendations include the description of the content of the CFC, exemptions and thresholds, touch for identifying the type of income subject to the CFC, calculation of CFC income, the feature of CFC income to shareholders and measures to avoid the double taxation. According to the latest data about corporate income tax statistics, which published in 2020, shows that comprehensive and effective CFC rules leads to reducing the incentive to shift profits from a market jurisdiction into a low/no tax jurisdiction.

The 6th Action Plan is also one of the minimum standards and aims to include a specific provision in the Tax Treaties to ensure the protection against treaty shopping. With treaty shopping a taxpayer could access the advantages of a tax treaty without being a resident of one of those countries which are parties of that treaty.

The BEPS 11th Action Plan aims to improve some datasets and analytical tools. In this way, the impacts of tax avoidance and the effects of the BEPS measures will be measure and monitor. In the feature, these statistics are also provide useful information on the location of multinationals’ taxes, income, and business activities.

With respect to BEPS 13th Action Plan, all of the large multinational enterprises (MNEs) are needed for the preparation of a country-by-country (CbC) report related to aggregate data which are on the global allocation of taxes, profit, income paid, also financial activity amid tax jurisdictions where is operated. Tax administrations share this report in tax jurisdictions in order to use in higher up transpose the risk assessments of BEPS and pricing.

Also for all this purposes, some following changes are made in existing tax treaties through MLI measures;

- The tax treaties include an initial provision to prevent the creation of low taxation or non-taxation opportunities through tax evasion or tax avoidance.
- Principal Purpose Test is introduced to prevent treaty abuse.
- Benefiting from the tax treaty is restricted in case of hybrid mismatches due to structures that are considered as fully or partially transparent in terms of tax by one or both of the contracting countries.

The MLI is a multilateral agreement that will not change the tax treaties directly, but rather will be applied together with the tax treaty text, based on the MLI provisions in the relevant articles.

According to the MLI, in terms of current tax treaties to which Turkey is a party, the MLI will enter into force after Turkey completes the domestic legal procedures and then submits the certificate of ratification, acceptance, or approval. Turkey started the approval process by submitting it to the Parliament's Plan and Budget Commission on 2 June 2020 as a law proposal that the implementation of the MLI is deemed appropriate.

5. CONCLUSION

Today, due to the increase in foreign capital investments, the taxation of the earnings of these investments has become so important. Especially, the needs of developing countries for the import of capital and technology have brought along the question of whether these earnings should be taxed in the country where the income is created (source) or in the country where the foreign capital is dependent (residence). Although the technology and knowledge of the country of residence has a large share in transforming the investment into profit, on the other hand, the labor force and natural resources of the source country are used. Therefore, the tax laws prepared by the states with the thought that the taxation authority should be their own has revealed the double taxation problem.

States tax transactions that take place within their borders, as a natural consequence of their sovereign powers. However, states can also use their sovereign powers to cover the activities of individuals and enterprises residing within the borders of their own countries outside the borders of the country. For this reason, it is necessary to determine the limit of taxation authority very well. This authority can be limited at the national level or at the international level. In fact, the problem related to the use of taxation power is not caused by whether states use this power or not. The main problem here focuses on the extent to which power should be exercised.

The principles discussed in determining the area of application of tax laws are the Principle of Property (sovereignty - resource) and the Principle of Personality (nationality-residence). According to the Principle of Property, all tax-generating events and matters occurring in the territory of the country's sovereignty are subject to tax according to the laws of that country. In other words, the principle of property is the application of tax laws to local or foreign persons without any discrimination, that is, the application of the tax laws enacted in a country to all events and transactions within the national borders of that country. According to this principle, the identity and nationality of the taxpayer does not matter in terms of financial events occurring within the national borders of the country.

With the Principle of Personality of taxes, it is expressed that the taxation authority is used outside the territorial jurisdiction by establishing a personal bond with the taxpayer. This principle requires the application of the laws of the country to which the person who is a party to the legal relationship is bound to the legal relationship. In this context, the nationality or residence of the person is taken into account when determining the state to which the person is affiliated or deemed affiliated and states tax these people who have a residence or nationality relationship with them on the income they earn worldwide.

International double taxation refers to the subjection of the same taxpayer to a tax of the same or a similar nature in two or more states, in the same taxation period, over the same tax subject. In order to prevent double taxation in the legal sense, states need to limit their taxation powers, and to prevent double taxation in economic terms, in addition, they need to harmonize their tax systems to a certain extent.

There are two main methods to prevent double taxation: the Foreign Tax Credit Method and the Exemption Method. Foreign tax credit method, which is one of the methods adopted in domestic laws in order to prevent double taxation, is to allow the deduction of taxes paid in foreign countries from taxes will be paid in domestic. In this system, taxation is made by taking into account the global income of the taxpayer and also the tax which will be paid in domestic by this taxpayer set off from the taxes that are paid abroad area are allowed. In the Exemption Method, a state can exempt income derived from abroad from its own tax, either according to the provisions of its laws or in accordance with bilateral Treaties.

In addition to the regulations in the domestic legislation for the prevention of double taxation, countries also sign international tax treaties for this purpose. The International Tax Treaties can be defined as written will agreements between subjects of international law that restrict the taxation authority and create rights and obligations in accordance with international law. In the International Tax Treaties, there are basically the taxes to which the agreement will be applied, the determination of the state where the taxpayer is a resident, the definition and scope of the payments made to non-residents, the methods of distribution of income between the states and the rules regarding the prevention of double taxation.

Nowadays, over 3,000 bilateral income tax treaties are currently in effect, and the number is growing. There are two main Model Conventions, hat are taken as a source while preparing the tax treaties: OECD Model Tax Convention and UN Model Tax Convention. Turkey has signed International Tax Treaties with 86 countries as of 14.06.2021. Most of the treaties Turkey has concluded according to the OECD Model Tax Convention. However, some provisions include regulations approaching the UN Model Tax Convention.

The definition of the International Tax Competition is the competition between units with different taxation powers using tax privileges to provide incentives to individuals and businesses in a region or a country. Aggressive tax planning can be defined as acting in a way that the legislature does not intend or is impossible to intend in order to eliminate, reduce or postpone the tax liability of taxpayers.

Nowadays, states create general and special preventive rules in their domestic laws in the fight against aggressive tax planning. However, it is a clear fact that aggressive tax planning cannot be prevented only by regulations in national legal systems. It is even possible to say that if countries make their own regulations to combat aggressive tax planning separately from each other, it will further increase the incompatibilities between tax systems. For this reason, international organizations such as OECD and EU are doing important studies in order to ensure efficiency and effectiveness in taxation.

Thereupon, G-20 leaders requested assistance from the OECD in 2012 in order to carry out international tax reforms. OECD, which started to work on this subject, presented the Base Erosion and Profit Shifting Project (BEPS) at the G-20 leaders meeting held in Moscow in February 2013. Having accepted the project, the G-20 asked the OECD to prepare a comprehensive action plan. In essence, the BEPS Action Plans are based on three main principles: compliance, priority of substance and transparency.

Based on the 15th Action Plan, in 2016, over 100 jurisdictions which Turkey is also involved, concluded negotiations on the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("Multilateral Instrument" or "MLI").The MLI helps the fight against BEPS by implementing the tax treaty-related measures developed through the BEPS Project in existing tax treaties in a synchronized and efficient manner. These measures prevent treaty abuse, improve dispute resolution, prevent the artificial avoidance of permanent establishment status and neutralize the effects of hybrid mismatch arrangements.

According to the MLI, in terms of current tax treaties to which Turkey is a party, the MLI will enter into force after Turkey completes the domestic legal procedures and then submits the certificate of ratification, acceptance, or approval. Turkey started the approval process by submitting it to the Parliament's Plan and Budget Commission on 2 June 2020 as a law proposal that the implementation of the MLI is deemed appropriate.

Other important legislative studies carried out by Turkey within the scope of the implementation of BEPS Action Plans are as follows;

- The Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA) was approved and published in Turkey's Official Gazette dated 1 October 2020; thereby, Turkey is considered a signatory of the CbC MCAA as of 30 December 2019. Under the CbC MCAA process, tax jurisdictions aim to increase tax transparency in order to assess how multinational businesses structure their activities and to assess high-level transfer pricing risks and other base erosion and profit shifting (BEPS) risks as well as economic and statistical analysis,

- With the President's Decision published in the Official Gazette dated 4 February 2021, in addition to the disguised capital provisions already in effect, in order to combat base erosion through interest payments, the application of financial expense restriction was implemented in 2021,
- On the taxation of the digital economy; a 15 percent withholding tax was imposed on internet advertising payments made abroad, and the Digital Service Tax was implemented.

Turkey also ratified the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information to which 110 countries are parties as of today in 2019. According to this agreement, the signatory countries will automatically share the financial account information they collect from the financial institutions of the residents of the relevant countries with the relevant country every year on a reciprocal basis.

According to both the tax legislation in Turkey and the international tax legislation; the activities carried out by the companies are accepted as "business activities" and the earnings from these activities are accepted as "business profits" and are taxed. With respect to this; the income obtained from the activities carried out abroad by a company residing in Turkey (Turkish Company) is also "business profits".

Again, according to the Corporate Income Tax Law No. 5520, unlimited liability company capital companies which legal or business centers are located in Turkey, will be taxed in Turkey in terms of all their earnings both within and outside of Turkey.

On the other hand, according to the last paragraph of Article 90 of the Constitution of Turkey, international treaties duly put into effect have the force of law. They cannot be applied to the Constitutional Court with the allegation of unconstitutionality. In terms of implementation of the law, the law after departing will eliminate the provisions of the previous law in the same field. In addition, provisions of the law of a special nature implicitly repeal the provisions of the general law. Even if the special provisions entered into force before the general provisions, the situation will not change. Therefore, since international tax treaties have the force of law and are enacted by a special law, it is an international norm that should be implemented primarily compared to Turkish tax laws.

According to the OECD and UN Model Tax Conventions and Tax Treaties which to Turkey is a party, in some cases, the Source Country also has the right of taxation on the business profits. Therefore, in the determination of the taxation right on the business profits obtained from abroad, it is taken as a basis whether the business activities are carried out by a permanent establishment abroad.

The Permanent Establishment means a fixed place of business from which the business of an enterprise is wholly or partially carried on. On the other hand, preparatory or auxiliary activities, Independent Agents and Enterprises which if a person carries out ordinary activities on her/his behalf in the Source Country but also acts for the enterprise in the ordinary course of business activities, Construction Projects which only if it last less than a specific duration do not constitute a permanent establishment abroad. Therefore the business profits from these activities could not taxed in the Source Country.

The business profits obtained through the permanent establishment in both OECD and UN Model Tax Conventions and all Tax Treaties to which Turkey is a party should be determined within the scope of the arm's length principle (Art.7/2). According to this provision, it is necessary to tax the permanent establishment abroad, keeping it completely separate from the enterprise. Business profits from this permanent establishment should be determined in the same way. In other words, the business profits obtained through the permanent establishment should be the same as the business profits that would have been expected if there was no real relationship and dependency between this permanent establishment and the enterprise.

According to the Turkish Tax Legislation, the business profits obtained abroad by Turkish companies will be subject to corporate income tax in Turkey, since these companies are considered as full taxpayers in Turkey. On the other hand, the fact that these business profits are also taxed by the Source Country from which they are obtained will cause a double taxation problem on these business profits.

Some exception and foreign tax credit methods have been introduced in the Turkish Tax Legislation in order to avoid the double taxation problem arising from business profits. In the Corporate Income Tax Law No. 5520, the corporate incomes obtained by the companies through their permanent establishments abroad are exempted from corporate income tax under the certain conditions which stated in the Art.5/1-g-h. On the other hand, according to the Art.33 of the Corporate Income Tax Law No. 5520, For the business profits obtained abroad that will be taxed in Turkey, the taxes paid in the Source Country will be deducted from the corporate income tax to be calculated in Turkey and since there is no taxable corporate income in Turkey in the relevant year, this offsetting right can be used until the end of the following third accounting period.

Considering the Tax Treaties to which Turkey is a party, within the scope of preventing the double taxation problem in business profits obtained abroad, it is understood that the foreign tax credit method is generally preferred. According to this, in order to avoid double taxation on business profits, In 22 of the Tax Treaties to which Turkey is a party, the Progressive Exemption Method has been adopted and the Ordinary Foreign Tax Credit Method has been adopted in 62. According to this, business profits obtained by Turkish Companies through permanent establishments in countries where the Exemption Method has been adopted will not be included in the declaration in Turkey. Ultimate taxation in respect of these gains will be made in the country in which the profit is derived. On the other hand, if the same income was obtained through a permanent establishment in the country which the Foreign Tax Credit Method was selected, it would be included in the declaration in Turkey. In this case, double taxation will be eliminated by deducting the taxes paid in the country where the business profits were obtained from the tax calculated in Turkey. In this respect, the ultimate taxation in the Foreign Tax Credit Method will be made in Turkey where the Turkish Company is a resident.

“Dividend” is also included in the taxable corporate income of companies. The basic principle adopted in the OECD and UN Model Tax Conventions regarding the taxation of dividends can be summarized as "dividends are ultimately taxed in the country where the beneficiary is the resident (Resident Country), while these income also can be taxed in limited in the Source Country.

In all Tax Treaties to which Turkey is a party “dividend” is defined as "income from all kinds of rights to participate in earnings and other revenues with the same treatment as income from stocks”. Therefore it could be said that, dividends are income derived from the capital that the shareholders give to the company. In addition to stocks, it also covers securities issued by the company that provide the right to participate in the company's earnings without being dept-claims, such as “joissance” share or “joissance” rights, founder's shares or other rights that allow to participate in the profits. On the other hand, dept-claims participating in profits is not a dividend. Such as interest on “convertible debentures”, they are taxed as interest income.

The Treaties generally use different tax rates as the limited taxation rate of the Source Country, depending on the nature of the party receiving the dividend and the shareholding rate. Considering all the Tax Treaties to which Turkey is a party, in cases where the shareholding rates of Turkish Companies are at least a certain rate (qualified shareholding), the taxation right of the Source Country is generally limited to 10%, and in all other cases, the Source Country is generally limited to 15%.

On the other hand, for the low taxation to be applied in the Source Country due to the qualified shareholding included in the Tax Treaties, the beneficiary of the dividend income must be the "beneficial owner". This condition makes it clear that the Source Country is not obliged to waive its taxation rights on dividend just because the income is paid directly to a resident of a Contracting Country.

In order to avoid double taxation, there are some local and international measures. In Art. 5/1-b of the Corporate Income Tax Law No. 5520, some dividends obtained abroad is exempted from the corporate income tax in Turkey. Also according to the Art.33 of the Corporate Income Tax Law No. 5520, the taxes paid in the Source Country will be deducted from the corporate income tax to be calculated in Turkey and since there is no taxable corporate income in Turkey in the relevant year, this offsetting right can be used until the end of the following third accounting period.

In almost all Tax Treaties to which Turkey is a party, the Ordinary Foreign Tax Credit Method is preferred to avoid double taxation on dividends. Only in four Tax Treaties to which Turkey is a party the Progressive Exemption Method is used. Also in order to apply the Exemption Method on dividends, some additional conditions have been established in the Treaties This clearly shows that Turkey does not want to leave the taxation right on the dividends obtained by Turkish Companies to the Source Country.

On the other hand, due to the characteristic of Foreign Tax Credit Method compared to Exemption Methods, in the case, where the tax payable in the Source Country is higher and the deduction is limited, the taxpayer will not receive a deduction for the full amount of tax paid in the Source Country. In such a case, the total tax burden would be higher than if all of his income was born in the Resident Country.

Also the current following developments in the international tax area, such as OECD, UN, EU, should also be taken into consideration on the taxation of business profits and dividends abroad;

- Recent works have centered on the some options that aim to change simultaneously the existing application, with a view to give more taxing rights to the Source Country which the customers or users are located.
- The BEPS 1th Action Plan also aim a new system to ensure that minimum tax will be imposed to the multinational digital companies such as Google, Netflix. This goal would protect the tax base to shift from normal jurisdictions to low/no-tax jurisdictions. Over 130 countries and jurisdictions, representing more than 90% of global GDP, joined a new agreement in July 2021 to reform the

international taxation rules and ensure that multinational enterprises pay a fair share of tax wherever they operate. The new tax system is expected to take effect in 2023.

- The BEPS 3th Action Plan construct advices for the design of effective CFC rules. According to the latest data about corporate income tax statistics, which published in 2020, shows that comprehensive and effective CFC rules leads to reducing the incentive to shift profits from a market jurisdiction into a low/no tax jurisdiction.
- The BEPS 5th Action Plan aims to prevent harmful tax competition and sets principles of transparency and the priority of substance. The BEPS 5th Action Plan is one of the four BEPS minimum standards and targets that mobile business profits cannot be consciously parked in a low/no tax jurisdiction. In October 2019, the OECD released guidance on the framework for the spontaneous exchange of information collected by "no or only nominal tax jurisdictions" pursuant to the standard
- The 6th Action Plan is also one of the minimum standards and aims to include a specific provision in the Tax Treaties to ensure the protection against treaty shopping. With treaty shopping a taxpayer could access the advantages of a tax treaty without being a resident of one of those countries which are parties of that treaty.
- BEPS 7th Action Plan aims to block the using of a permanent establishment as a means of tax avoidance through unnatural transactions. For this purpose, the permanent establishment definitions in the OECD Model Tax Convention are reviewed and some changes are made in existing tax treaties through MLI measures.
- The BEPS 8, 9 and 10th Action Plans are related to transfer pricing and are intended to ensure that transfer pricing rules give results in line with the values created.
- With respect to BEPS 13th Action Plan, all of the large multinational enterprises (MNEs) are needed for the preparation of a country-by-country (CbC) report

related to aggregate data which are on the global allocation of taxes, profit, income paid, also financial activity amid tax jurisdictions where is operated. Tax administrations share this report in tax jurisdictions in order to use in higher up transpose the risk assessments of BEPS and pricing.

- Also for all this purposes, some important changes are made in existing tax treaties through MLI measures.

6. APPENDIX

Annex Table – 1:

The List of International Tax Treaties to which Turkey is a Party (As of 01.01.2021)

No	The Relevant Party	The Date of Signing	The Relevant Oficial Gazette of Turkey	The Effective Date	The Date of Application
1)	Austria	03.11.1970	01.08.1973 - 14612	24.09.1973	01.01.1974
	Austria (revised)	28.03.2008	26.06.2009 - 27270	01.10.2009	01.01.2010
2)	Norway	16.12.1971	21.12.1975 - 15445	30.01.1976	01.01.1977
	Norway (revised)	15.01.2010	28.05.2011 - 27947 **(m.)**	15.06.2011	01.01.2012
3)	South Korea	24.12.1983	02.10.1985 - 18886	25.03.1986	01.01.1987
4)	Jordan	06.06.1985	15.07.1986 - 19165	03.12.1986	01.01.1987
5)	Tunisia	02.10.1986	30.09.1987 - 19590	28.12.1987	01.01.1988
6)	Romania	01.07.1986	21.08.1988 - 19906	15.09.1988	01.01.1989
7)	Netherlands	27.03.1986	22.08.1988 - 19907	30.09.1988	01.01.1989
8)	Pakistan	14.11.1985	26.08.1988 - 19911	08.08.1988	01.01.1989
9)	England	19.02.1986	19.10.1988 - 19964	26.10.1988	01.01.1989
10)	Finland	09.05.1986	30.11.1988 - 20005	30.12.1988	01.01.1989
	Finland (revised)	06.10.2009	24.03.2012 – 28243	04.05.2012	01.01.2013
11)	K.K.T.C.	22.12.1987	26.12.1988 - 20031	30.12.1988	01.01.1989
12)	France	18.02.1987	10.04.1989 - 20135	01.07.1989	01.01.1990
13)	Germany (Defunct)	16.04.1985	09.07.1986 - 19159	30.12.1989	01.01.1990
	Germany (New)	19.09.2011	24.01.2012 - 28183	01.08.2012	01.01.2011
14)	Sweden	21.01.1988	30.09.1990 - 20651	18.11.1990	01.01.1991
15)	Belgium	02.06.1987	15.09.1991 - 20992	08.10.1991	01.01.1992
16)	Denmark	30.05.1991	23.05.1993 - 21589	20.06.1993	01.01.1991
17)	Italy	27.07.1990	09.09.1993 - 21693	01.12.1993	01.01.1994
18)	Japan	08.03.1993	13.11.1994 - 22110	28.12.1994	01.01.1995
19)	B.A.E.	29.01.1993	27.12.1994 - 22154	26.12.1994	01.01.1995
20)	Hungary	10.03.1993	25.12.1994 - 22152	09.11.1995	01.01.1993
21)	Kazakhistan	15.08.1995	08.11.1996 - 22811	18.11.1996	01.01.1997
22)	Macedonia	16.06.1995	07.10.1996 - 22780	28.11.1996	01.01.1997
23)	Albania	04.04.1994	05.10.1996 - 22778	26.12.1996	01.01.1997
24)	Algeria	02.08.1994	30.12.1996 - 22863	30.12.1996	01.01.1997
25)	Mongolia	12.09.1995	30.12.1996 - 22863	30.12.1996	01.01.1997
26)	India	31.01.1995	30.12.1996 - 22863	30.12.1996	01.01.1994
27)	Malaysia	27.09.1994	30.12.1996 - 22863	31.12.1996	01.01.1997
28)	Egypt	25.12.1993	30.12.1996 - 22863	31.12.1996	01.01.1997
29)	Chinese People's Rep.	23.05.1995	30.12.1996 - 22863	20.01.1997	01.01.1998
30)	Poland	03.11.1993	30.12.1996 - 22863	01.04.1997	01.01.1998
31)	Turkmenistan	17.08.1995	13.06.1997 - 23018	24.06.1997	01.01.1998
32)	Azerbaijan	09.02.1994	27.06.1997 - 23032	01.09.1997	01.01.1998
33)	Bulgaria	07.07.1994	15.09.1997 - 23111	17.09.1997	01.01.1998
34)	Uzbekistan	08.05.1996	07.09.1997 - 23103	30.09.1997	01.01.1997
35)	USA	28.03.1996	31.12.1997 - 23217	19.12.1997	01.01.1998
36)	Belarus	24.07.1996	22.04.1998 - 23321	29.04.1998	01.01.1999
37)	Ukraine	27.11.1996	22.04.1998 - 23321	29.04.1998	01.01.1999
38)	Israel	14.03.1996	24.05.1998 - 23351	27.05.1998	01.01.1999
39)	Slovakia	02.04.1997	03.10.1999 - 23835	02.12.1999	01.01.2000

No	The Relevant Party	The Date of Signing	The Relevant Oficial Gazette of Turkey	The Effective Date	The Date of Application
40)	Kuwait	06.10.1997	28.11.1999 - 23890	13.12.1999	01.01.1997
41)	Russia	15.12.1997	17.12.1999 - 23909	31.12.1999	01.01.2000
42)	Indonesia	25.02.1997	15.02.2000 - 23965	06.03.2000	01.01.2001
43)	Lithuania	24.11.1998	10.05.2000 - 24045	17.05.2000	01.01.2001
44)	Croatia	22.09.1997	10.05.2000 - 24045	18.05.2000	01.01.2001
45)	Moldova	25.06.1998	25.07.2000 - 24120	28.07.2000	01.01.2001
46)	Singapore	09.07.1999	18.07.2001 - 24466	27.08.2001	01.01.2002
47)	Kyrgyzstan	01.07.1999	12.12.2001 - 24611	20.12.2001	01.01.2002
48)	Tajikistan	06.05.1996	24.12.2001 - 24620	26.12.2001	01.01.2002
49)	Czech Republic	12.11.1999	15.12.2003 - 25317	16.12.2003	01.01.2004
50)	Spain	05.07.2002	18.12.2003 - 25320	18.12.2003	01.01.2004
51)	Bangladesh	31.10.1999	15.12.2003 - 25317	23.12.2003	01.01.2004
52)	Latvia	03.06.1999	22.12.2003 - 25324	23.12.2003	01.01.2004
53)	Slovenia	19.04.2001	23.12.2003 - 25325	23.12.2003	01.01.2004
54)	Greece	02.12.2003	02.03.2004 - 25390	05.03.2004	01.01.2005
55)	Syria	06.01.2004	28.06.2004 - 25506	21.08.2004	01.01.2005
56)	Thailand	11.04.2002	08.01.2005 - 25694	13.01.2005	01.01.2006
57)	Sudan	26.08.2001	17.09.2003 - 25232	31.01.2005	01.01.2006
58)	Luxembourg	09.06.2003	08.01.2005 - 25694	18.01.2005	01.01.2006
59)	Estonia	25.08.2003	04.07.2004 - 25512	21.02.2005	01.01.2006
60)	Iranian	17.06.2002	09.10.2003 - 25254	27.02.2005	01.01.2006
61)	Morocco	07.04.2004	22.06.2005 - 25853	18.07.2006	01.01.2007
62)	Lebanon	12.05.2004	17.08.2006 - 26262	21.08.2006	01.01.2007
63)	South Africa Rep.	03.03.2005	20.11.2006 - 26352	06.12.2006	01.01.2007
64)	Portugal	11.05.2005	15.12.2006 - 26377	18.12.2006	01.01.2007
65)	Serbia-Montenegro	12.10.2005	08.08.2007 - 26607	10.08.2007	01.01.2008
66)	Ethiopia	02.03.2005	09.08.2007 - 26608	14.08.2007	01.01.2008
67)	Bahrain	14.11.2005	21.08.2007 - 26620	02.09.2007	01.01.2008
68)	Train	25.12.2001	05.02.2008 - 26778	11.02.2008	01.01.2009
	Qatar (revised)	18.12.2016	30.12.2018 - 30641	31.12.2018	01.01.2019
69)	Bosnia and Herzegovina	16.02.2005	08.04.2007 - 26487	18.09.2008	01.01.2009
70)	Saudi Arabia	09.11.2007	03.02.2009 - 27130 **(m.)**	01.04.2009	01.01.2010
71)	Georgia	21.11.2007	10.02.2010 - 27489	15.02.2010	01.01.2011
72)	Oman	31.05.2006	13.03.2010 - 27520	15.03.2010	01.01.2011
73)	Yemen	26.10.2005	13.03.2010 - 27520	16.03.2010	01.01.2011
74)	Ireland	24.10.2008	10.08.2010 - 27668	18.08.2010	01.01.2011
75)	New Zeland	22.04.2010	04.07.2011 - 27984 **(m.)**	28.07.2011	01.01.2012
76)	Canada	14.07.2009	29.04.2011 - 27919 **(m.)**	04.05.2011	01.01.2012
77)	Switzerland	18.06.2010	12.01.2012 - 28171	08.02.2012	01.01.2013
78)	Brazil	14.03.2005	12.01.2012 -28171	09.10.2012	01.01.2013
79)	Australia	28.04.2010	21.05.2013 - 28653 **(m.)**	05.06.2013	01.01.2014
80)	Malta	14.07.2011	27.04.2013 - 28630	13.06.2013	01.01.2014
81)	Mexican	17.12.2013	06.06.2015 - 29378	23.07.2015	01.01.2016
82)	Kosovo	10.09.2012	28.08.2015 - 29459 **(2.m.)**	15.10.2015	01.01.2016
83)	Philippines	18.03.2009	10.04.2011 – 27901	11.01.2016	01.01.2017
84)	Vietnamese	08.07.2014	05.06.2017 – 30087 **(m.)**	09.06.2017	01.01.2018
85)	Gambia	11.02.2014	07.06.2017 – 30089 **(m.)**	26.01.2018	01.01.2019
86)	Ruanda	01.12.2018	25.09.2020 – 31255	21.10.2020	01.01.2021

Annex Table – 2:

Scope of Construction Projects

Building, Site Construction, Installation or Assemble Projects and Relatad Supervision Activities	Building, Site Construction or Assemble Projects and Relatad Supervision Activities
GERMANY	ALGERIA
AUSTRALIA	CHINA
AUSTRIA	CROATIA
AZERBAIJAN	ITALY
BELGIUM	
BOSNIA AND HERZEGOVINA	
CZECH REPUBLIC	
INDONESIA	**Building, Site Construction or Assemble Projects**
ESTONIA	ALBANIA
PHILIPPINES	UAE
FINLAND	BAHRAIN
SOUTH AFRICA	BELARUS
SOUTH KOREA	BULGARIA
INDIA	ETHIOPIA
IRELAND	MOROCCO
SPAIN	GEORGIA
ISRAEL	IRANIAN
SWEDEN	KOSOVO
SWITZERLAND	KUWAIT
JAPAN	MOLDOVA
CANADA	POLAND
TRAIN	SERBIA AND MONTENEGRO
KAZAKHISTAN	SLOVENIA
KYRGYZSTAN	SUDAN
LATVIA	TUNISIA
LITHUANIA	JORDAN
LEBANON	YEMEN
MACEDONIA	
MALAYSIA	
MALTA	
MEXICAN	**Building, Site Construction, Installation or Assemble Projects**
EGYPT	USA
MONGOLIA	BANGLADESH
NORWAY	BRAZIL
UZBEKISTAN	DENMARK
PAKISTAN	FRANCE
PORTUGAL	GAMBIA
RUSSIA	NETHERLANDS
SINGAPORE	ENGLAND
SAUDIARABIA	T.R.N.C.
TAJIKISTAN	LUXEMBOURG
THAILAND	HUNGARY
TURKMENISTAN	ROMANIA
UKRAINE	SLOVAKIA
VIETNAMESE	SYRIA
NEW ZELAND	OMAN
GREECE	

Annex Table – 3:

Minimum Time Required for the Construction Projects

6 MONTHS		9 MONTHS	12 MONTHS		15 MONTHS
USA	SPAIN	BAHRAIN	ALBANIA	QATAR	KYRGYZSTAN
GERMANY	SWEDEN	ESTONIA	AZERBAIJAN	KAZAKHISTAN	
AUSTRALIA	SWITZERLAND	KUWAIT	UAE	KOSOVO	18 MONTHS
AUSTRIA	ITALY	LATVIA	BANGLADESH	LEBANON	RUSSIA
BELGIUM	JAPAN	LITHUANIA	BELARUS	HUNGARY	SERBIA AND MONTENEGRO
ALGERIA	TRNC	MALAYSIA	BOSNIA AND HERZ	MALTA	SUDAN
DENMARK	CANADA	EGYPT	BRAZIL	MOLDOVA	
INDONESIA	LUXEMBOURG	PORTUGAL	BULGARIA	POLAND	24 MONTHS
PHILIPPINES	MEXICAN	SYRIA	CZECH REPUBLIC	SLOVAKIA	MACEDONIA
FINLAND	NORWAY		CHINA	SLOVENIA	MONGOLIA
FRANCE	PAKISTAN	10 MONTHS	ETHIOPIA	SAUDIARABIA	TAJIKISTAN
SOUTH KOREA	ROMANIA	MOROCCO	GAMBIA	THAILAND	
INDIA[2]	SINGAPORE	GREECE	SOUTH AFRICA	UKRAINE	36 MONTHS
NETHERLANDS	TUNISIA		GEORGIA	OMAN	UZBEKISTAN
ENGLAND	JORDAN		CROATIA	YEMEN	
IRANIAN	VIETNAMESE		ISRAEL		45 MONTHS
IRELAND	NEW ZELAND				TURKMENISTAN

Annex Table – 4:

List of Tax Treaties in which the Provision of Independent Personnel Services is applied for only Natural Persons and Tax Treaties in which Provision of Independent Personnel Services is applied for Enterprises also

ONLY FOR THE NATURAL PERSONS	ALSO FOR THE ENTERPRISES			
GERMANY	USA	TRNC	MOROCCO	SAUDIARABIA
AUSTRALIA	ALBANIA	KUWAIT	PHILIPPINES	SINGAPORE
BELARUS	AUSTRIA	LITHUANIA	FINLAND	SLOVAKIA
ESTONIA	AZERBAIJAN	LEBANON	FRANCE	SUDAN
SOUTH AFRICA	UAE	LUXEMBOURG	GUNAY KOREA	SYRIA
GAMBIA	BAHRAIN	HUNGARY	CROATIA	TAJIKISTAN
GEORGIA	BANGLADESH	MALAYSIA	NETHERLANDS	THAILAND
INDIA	BELGIUM	MALTA	ENGLAND	TUNISIA
SWITZERLAND	BOSNIA AND HERZEGOVINA	MEXICAN	IRANIAN	TURKMENISTAN
CANADA	BRAZIL	EGYPT	IRELAND	UKRAINE
TRAIN	BULGARIA	MONGOLIA	SPAIN	OMAN
KOSOVO	CZECH REPUBLIC	MOLDOVA	ISRAEL	JORDAN
LATVIA	ALGERIA	NORWAY	SWEDEN	VIETNAMESE
MACEDONIA	PEOPLE'S REPUBLIC OF CHINA	PAKISTAN	ITALY	YEMEN
UZBEKISTAN	DENMARK	POLAND	JAPAN	NEWZEALAND
MOLDOVA	INDONESIA	PORTUGAL	KAZAKHISTAN	GREECE
SERBIA	ETHIOPIA	ROMANIA	KYRGYZSTAN	

Annex Table – 5:

The Minimum Time Requirements for Taxation the Earnings from Independent Personnel Services according to the Tax Treaties to which Turkey is a party

Country	Intention of a Certain Period	Total Minimum Activity Time	Country	Intention of a Certain Period	Total Minimum Activity Time
ALGERIA	Fiscal Year	183 Days	LUXEMBOURG	Continuously 12 Months	184 Days
AUSTRALIA	Continuously 12 Months	183 Days	MALAYSIA	Calendar Year	184 Days
AUSTRIA	Continuously 12 Months	183 Days	MALTA	Continuously 12 Months	183 Days
BAHRAIN	Continuously 12 Months	183 Days	MEXICAN	Continuously 12 Months	184 Days
BANGLADESH	Fiscal Year	183 Days	NETHERLANDS	Continuously 12 Months	184 Days
BELGIUM	Continuously 12 Months	183 Days	NEW ZEALAND	Continuously 12 Months	184 Days
BOSNIA AND HERZEGOVINA	Fiscal Year	183 Days	NORWAY	Continuously 12 Months	184 Days
BRAZIL	Fiscal Year	183 Days	PAKISTAN	Continuously 12 Months	184 Days
CANADA	Continuously 12 Months	183 Days	PEOPLE'S REPUBLIC OF CHINA	Calendar Year	184 Days
CZECH REPUBLIC	Fiscal Year	183 Days	PHILIPPINES	Continuously 12 Months	184 Days
DENMARK	Continuously 12 Months	183 Days	POLAND	Continuously 12 Months	184 Days
EGYPT	Continuously 12 Months	184 Days	PORTUGAL	Continuously 12 Months	184 Days
ENGLAND	Continuously 12 Months	184 Days	ROMANIA	Continuously 12 Months	183 Days
ESTONIA	Continuously 12 Months	183 Days	SAUDIARABIA	Continuously 12 Months	183 Days
FINLAND	Continuously 12 Months	183 Days	SERBIA	Continuously 12 Months	183 Days
FRANCE	Continuously 12 Months	184 Days	SINGAPORE	Continuously 12 Months	184 Days
GERMANY	Continuously 12 Months	183 Days	SOUTH AFRICA	Fiscal Year	184 Days
GREECE	Continuously 12 Months	184 Days	SPAIN	Continuously 12 Months	184 Days
GUNAY KOREA	Calendar Year	184 Days	SWEDEN	Calendar Year	184 Days
INDIA	Last 2 Year	184 Days	SWITZERLAND	Continuously 12 Months	183 Days
INDONESIA	Continuously 12 Months	183 Days	SYRIA	Continuously 12 Months	183 Days
IRELAND	Continuously 12 Months	183 Days	THAILAND	Continuously 12 Months	183 Days
ISRAEL	Calendar Year	184 Days	TRNC	Continuously 12 Months	183 Days
ITALY	Continuously 12 Months	184 Days	TURKMENISTAN	Continuously 12 Months	183 Days
JAPAN	Continuously 12 Months	184 Days	USA	Continuously 12 Months	183 Days
KOSOVO	Continuously 12 Months	184 Days	UZBEKISTAN	Continuously 12 Months	184 Days
LATVIA	Continuously 12 Months	183 Days	VIETNAMESE	Fiscal Year	183 Days
LITHUANIA	Continuously 12 Months	183 Days	YEMEN	Continuously 12 Months	184 Days

Annex Table – 6:

The List of Tax Treaties According to the Concept of Service Workplace

Country	The Term Condition in Service Workplace	Country	The Term Condition in Service Workplace
AUSTRALIA	Kesintisiz 12 aylık bir dönem içinde 183 günü aşmak	LEBANON	Exceeding 6 Months in a 12-month period
CANADA	Exceeding 183 Days in a 12-month period	MALTA	Exceeding 6 Months in a 12-month period
CROATIA	12 Month	NEW ZEALAND	Exceeding 6 Months in a 12-month period
EGYPT	Exceeding 6 Months in a 12-month period	PEOPLE'S REPUBLIC OF CHINA	12 Month
GERMANY	Exceeding 6 Months in a 12-month period	PHILIPPINES	Exceeding 6 Months in a 12-month period
GREECE	Exceeding 6 Months in a 12-month period	ROMANIA	Exceeding 6 Months in a 12-month period
INDONESIA	Exceeding 183 Days in a 12-month period	SAUDIARABIA	Exceeding 6 Months in a 12-month period
ISRAEL	12 Month	SINGAPORE	Exceeding 6 Months in a 12-month period
ITALY	Exceeding 6 Months in a 12-month period	SWITZERLAND	Exceeding 6 Months in a 12-month period
JAPAN	Exceeding 6 Months in a 12-month period	THAILAND	Exceeding 6 Months in a 12-month period
KAZAKHISTAN	12 Month	TRAIN	Exceeding 6 Months in a 12-month period
KYRGYZSTAN	12 Month	VIETNAMESE	Exceeding 6 Months in a 12-month period

Annex Table – 7:

Methods of Avoiding Double Taxation on Business Profits and Dividends

Country	Preventng Double Taxation on the Business Profits	Preventng Double Taxation on the Dividends
Albania	The Progresive Exemption	The Ordnary Credit
Algeria	The Ordnary Credit	The Ordnary Credit
Australia	The Ordnary Credit	The Ordnary Credit
Austria	The Ordnary Credit	The Ordnary Credit
Azerbaijan	The Progresive Exemption	The Ordnary Credit
Bahrain	The Ordnary Credit	The Ordnary Credit
Bangladesh	The Progresive Exemption	The Ordnary Credit
Belarus	The Progresive Exemption	The Ordnary Credit
Belgium	The Progresive Exemption	The Progresive Exemption
Bosnia and Herzegovina	The Ordnary Credit	The Ordnary Credit
Brazil	The Ordnary Credit	The Ordnary Credit
Bulgaria	The Ordnary Credit	The Ordnary Credit
Canada	The Ordnary Credit	The Ordnary Credit
China	The Ordnary Credit	The Ordnary Credit
Croatia	The Progresive Exemption	The Ordnary Credit
Czech Republic	The Ordnary Credit	The Ordnary Credit
Denmark	The Ordnary Credit	The Ordnary Credit
Egypt	The Ordnary Credit	The Ordnary Credit
England	The Ordnary Credit	The Ordnary Credit
Estonia	The Progresive Exemption	The Ordnary Credit
Ethiopia	The Ordnary Credit	The Ordnary Credit
Finland	The Ordnary Credit	The Ordnary Credit
France	The Ordnary Credit	The Ordnary Credit
Gambia	The Ordnary Credit	The Ordnary Credit
Georgia	The Ordnary Credit	The Ordnary Credit
Germany	The Ordnary Credit	The Ordnary Credit
Greece	The Ordnary Credit	The Ordnary Credit
Hungary	The Ordnary Credit	The Ordnary Credit
India	The Progresive Exemption	The Ordnary Credit
Indonesia	The Progresive Exemption	The Ordnary Credit
Iranian	The Ordnary Credit	The Ordnary Credit
Ireland	The Ordnary Credit	The Ordnary Credit
Israel	The Ordnary Credit	The Ordnary Credit
Italy	The Ordnary Credit	The Ordnary Credit
Japan	The Ordnary Credit	The Ordnary Credit
Jordan	The Ordnary Credit	The Ordnary Credit

Country	Preventng Double Taxation on the Business Profits	Preventng Double Taxation on the Dividends
Kazakhistan	The Ordnary Credit	The Ordnary Credit
Kosovo	The Ordnary Credit	The Ordnary Credit
Kuwait	The Ordnary Credit	The Ordnary Credit
Kyrgyzstan	The Progresive Exemption	The Ordnary Credit
Latvia	The Progresive Exemption	The Ordnary Credit
Lebanon	The Ordnary Credit	The Ordnary Credit
Lithuania	The Progresive Exemption	The Ordnary Credit
Luxembourg	The Ordnary Credit	The Ordnary Credit
Macedonia	The Progresive Exemption	The Ordnary Credit
Malaysia	The Ordnary Credit	The Ordnary Credit
Malta	The Ordnary Credit	The Ordnary Credit
Mexican	The Ordnary Credit	The Ordnary Credit
Moldova	The Progresive Exemption	The Ordnary Credit
Mongolia	The Ordnary Credit	The Ordnary Credit
Morocco	The Progresive Exemption	The Ordnary Credit
Netherlands	The Progresive Exemption	The Progresive Exemption
New Zeland	The Ordnary Credit	The Ordnary Credit
Norway	The Ordnary Credit	The Ordnary Credit
Oman	The Ordnary Credit	The Ordnary Credit
Pakistan	The Ordnary Credit	The Ordnary Credit
Philippines	The Ordnary Credit	The Ordnary Credit
Poland	The Ordnary Credit	The Ordnary Credit
Portugal	The Ordnary Credit	The Ordnary Credit
Romania	The Ordnary Credit	The Ordnary Credit
Russia	The Ordnary Credit	The Ordnary Credit
Saudi Arabia	The Ordnary Credit	The Ordnary Credit
Serbia and Montenegro	The Ordnary Credit	The Ordnary Credit
Singapore	The Ordnary Credit	The Ordnary Credit
Slovakia	The Progresive Exemption	The Ordnary Credit
South Africa	The Ordnary Credit	The Ordnary Credit
South Korea	The Ordnary Credit	The Ordnary Credit
Spain	The Ordnary Credit	The Ordnary Credit
Sudan	The Progresive Exemption	The Ordnary Credit
Sweden	The Progresive Exemption	The Progresive Exemption
Switzerland	The Ordnary Credit	The Ordnary Credit
Syria	The Ordnary Credit	The Ordnary Credit
Tajikistan	The Ordnary Credit	The Ordnary Credit
Thailand	The Progresive Exemption	The Ordnary Credit
Train	The Ordnary Credit	The Ordnary Credit
TRNC	The Progresive Exemption	The Progresive Exemption
Tunisia	The Ordnary Credit	The Ordnary Credit
Turkmenistan	The Progresive Exemption	The Ordnary Credit
UAE	The Ordnary Credit	The Ordnary Credit
Ukraine	The Ordnary Credit	The Ordnary Credit
USA	The Ordnary Credit	The Ordnary Credit
Uzbekistan	The Ordnary Credit	The Ordnary Credit
Vietnamese	The Ordnary Credit	The Ordnary Credit
Yemen	The Ordnary Credit	The Ordnary Credit

Annex Table – 8:

List of Tax Treaties that Include Dividend Taxation if Business Profits are distributed to the Resident Country

Country	Country	Country	Country
ALBANIA	FINLAND	LUXEMBOURG	SERBIA-MONTENEGRO
ALGERIA	FRANCE	MACADONIA	SLOVAKIA
AUSTRALIA	GAMBIA	MALAYSIA	SOUTH AFRICA
AUSTRIA	GEORGIA	MALTA	SPAIN
AZERBAIJAN	GREECE	MEXICAN	SUDAN
BAHRAIN	HUNGARY	MOLDOVA	SWEDEN
BANLADESH	INDIA	MONGOLIA	SWITZERLAND
BELGIUM	INDONESIA	MOROCCO	TAJIKISTAN
BOSNIA AND HERZEGOVINA	IRANIAN	NETHERLANDS	THAILAND
BRAZIL	IRELAND	NEW ZELAND	TRAIN
BULGARIA	ISRAEL	NORWAY	TRNC
CANADA	ITALY	OMAN	TURKMENISTAN
CROATIA	JAPAN	PAKISTAN	UAE
CZECH REPUBLIC	KAZAKHISTAN	PHILIPPINES	UKRAINE
DENMARK	KOSOVO	POLAND	USA
EGYPT	KUWAIT	PORTUGAL	UZBEKISTAN
ENGLAND	LATVIA	RUSSIA	VIETNAMESE
ESTONIA	LEBANON	SAUDIARABIA	YEMEN
ETHIOPIA	LITHUANIA		

Annex Table – 9:

The Maximum Taxation Levels on Dividend in the Source Country according to the Qualified Shareholding Share

Country	The Maximum Taxation Level in the Source Country	Country	The Maximum Taxation Level in the Source Country
ALBANIA	5%	LUXEMBOURG	5%
ALGERIA	12%	MACEDONIA	5%
AUSTRALIA	5%	MALTA	10%
AUSTRIA	5%	MEXICAN	5%
AZERBAIJAN	12%	MOLDOVA	10%
BAHRAIN	10%	MONGOLIA	10%
BANGLADESH	10%	MOROCCO	7%
BELARUS	10%	NETHERLANDS	5%
BELGIUM	5%	NEW ZELAND	5%
BOSNIA AND HERZEGOVINA	5%	NORWAY	5%
BRAZIL	10%	OMAN	10%
BULGARIA	10%	PAKISTAN	10%
CANADA	15%	PEOPLE'S REPUBLIC OF CHINA	10%
CROATIA	10%	PHILIPPINES	5%
CZECH REPUBLIC	10%	POLAND	10%
DENMARK	15%	PORTUGAL	5%
EGYPT	5%	ROMANIA	15%
ENGLAND	15%	RUSSIA	10%
ESTONIA	10%	SAUDI ARABIA	5%
ETHIOPIA	10%	SERBIA - MONTENEGRO	5%
FINLAND	5%	SINGAPORE	10%
FRANCE	15%	SLOVAKIA	5%
GAMBIA	5%	SLOVENIA	10%
GEORGIA	10%	SOUTH AFRICA	10%
GERMANY	5%	SOUTH KOREA	15%
GREECE	15%	SPAIN	5%
HUNGARY	10%	SUDAN	10%
INDIA	15%	SWEDEN	15%
INDONESIA	10%	SWITZERLAND	5%
IRANIAN	15%	SYRIA	10%
IRELAND	5%	TAJIKISTAN	10%
ISRAEL	10%	THAILAND	10%
ITALY	15%	TRAIN	5%
JAPAN	10%	TRNC	15%
JORDAN	10%	TUNISIA	12%
KAZAKHISTAN	10%	TURKMENISTAN	10%
KOSOVO	0%	UAE	10%
KUWAIT	10%	UKRAINE	10%
KYRGYZSTAN	10%	USA	15%
LATVIA	10%	UZBEKISTAN	10%
LEBANON	10%	VIETNAMESE	%5 - %10
LITHUANIA	10%	YEMEN	10%

Annex Table – 10:

The Maximum Taxation Levels on Dividend in the Source Country according in the other cases

Country	The Maximum Taxation Level in the Source Country	Country	The Maximum Taxation Level in the Source Country
ALBANIA	15%	LUXEMBOURG	20%
ALGERIA	12%	MACEDONIA	10%
AUSTRALIA	15%	MALTA	15%
AUSTRIA	15%	MEXICAN	15%
AZERBAIJAN	12%	MOLDOVA	15%
BAHRAIN	15%	MONGOLIA	10%
BANGLADESH	10%	MOROCCO	10%
BELARUS	15%	NETHERLANDS	20%
BELGIUM	5%	NEW ZELAND	15%
BOSNIA AND HERZEGOVINA	15%	NORWAY	15%
BRAZIL	15%	OMAN	15%
BULGARIA	15%	PAKISTAN	15%
CANADA	20%	PEOPLE'S REPUBLIC OF CHINA	10%
CROATIA	10%	PHILIPPINES	15%
CZECH REPUBLIC	10%	POLAND	15%
DENMARK	20%	PORTUGAL	15%
EGYPT	15%	ROMANIA	15%
ENGLAND	20%	RUSSIA	10%
ESTONIA	10%	SAUDI ARABIA	15%
ETHIOPIA	10%	SERBIA - MONTENEGRO	15%
FINLAND	15%	SINGAPORE	15%
FRANCE	20%	SLOVAKIA	10%
GAMBIA	15%	SLOVENIA	10%
GEORGIA	10%	SOUTH AFRICA	15%
GERMANY	15%	SOUTH KOREA	20%
GREECE	15%	SPAIN	15%
HUNGARY	15%	SUDAN	10%
INDIA	15%	SWEDEN	20%
INDONESIA	15%	SWITZERLAND	15%
IRANIAN	20%	SYRIA	10%
IRELAND	15%	TAJIKISTAN	10%
ISRAEL	10%	THAILAND	15%
ITALY	15%	TRAIN	10%
JAPAN	15%	TRNC	20%
JORDAN	15%	TUNISIA	15%
KAZAKHISTAN	10%	TURKMENISTAN	10%
KOSOVO	0%	UAE	12%
KUWAIT	10%	UKRAINE	15%
KYRGYZSTAN	10%	USA	20%
LATVIA	10%	UZBEKISTAN	10%
LEBANON	15%	VIETNAMESE	15%
LITHUANIA	10%	YEMEN	10%

Annex Table – 11:

Differences in Rates to be applied in the Distribution of Business Profits to the Resident Country

Country	The Maximum Taxation Level in the Source Country	Country	The Maximum Taxation Level in the Source Country
AUSTRALIA	15%	NORWAY	5%
CANADA	15%	POLAND	15%
DENMARK	7,50%	PORTUGAL	5%
ENGLAND	15%	SAUDI ARABIA	5%
FINLAND	15%	SERBIA-MONTENEGRO	5%
FRANCE	7,50%	SLOVAKIA	10%
HUNGARY	10%	SPAIN	5%
IRANIAN	15%	SWEDEN	15%
IRELAND	5%	SWITZERLAND	5%
JAPAN	10%	UKRAINE	10%
LEBANON	10%	USA	15%
MEXICAN	5%	VIETNAMESE	5%
NETHERLANDS	7,50%		

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