Ways of Restricting the Rights of Taxpayers Under Agreements for the Avoidance of Double Taxation in National Legislation

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Abstract
The article analyzes the situations that might limit the rights of a taxpayer under double taxation avoidance agreements. Because of the analysis of the national legislation in the area of taxation, significant differences that lead to the emergence of controversial situations regarding double taxation are revealed. The general analysis of the basic concepts of legal regulation using Russian and foreign sources regarding restrictions on the exercise of taxpayer rights under double taxation avoidance agreements, principles and mechanisms in national legislation is carried out. Because of studying the terms of individual agreements on avoidance of double taxation to test the admissibility of applying national legislation, significant differences in the approaches of different countries and examples of law enforcement based on judicial practice are analyzed. The novelty of the article is the justification of the necessity of establishing the basic principles upon restricting taxpayer rights under double taxation avoidance agreements in national legislation. The practical significance of the work lies in identifying the role of mutual agreement procedures between the competent authorities of the contracting parties under double taxation avoidance agreements, as well as in stating recommendations on the practical application of the rules regarding the limitation of taxpayer rights under double taxation avoidance agreements. System analysis, expert analysis, event analysis, traditionally legal methods (formal and logical, comparative legal), structural analysis, and modeling research methods are used.

Keywords
taxpayer rights, avoidance of double taxation, elimination of double taxation, tax agreements, tax resident, OECD Model Convention, the right to benefits, restriction of rights

Introduction
The characteristic features of the world economy at the present stage of its development, which Rünger et al. (2019) highlighted when studying the problems of taxation of investors, are the increasing role of international corporations, and as a result, the growth in the volume and speed of cross-border movement of production and human resources and capital. At the same time, the institution of the tax sovereignty of states preserves its existence, and each state continues to conduct independent tax policies. Together, these two factors lead to the fact that there are often disputes related to international legal double taxation (hereinafter referred to as “double taxation”) in the field of taxation between national legal systems.

In this respect, currently double taxation treaties (hereinafter referred to as “DTT”) concluded between states and individual territories are one of the key tools in the process of globalization of international economic relations and regulation of international trade.

Finnerty et al. (2007) note that DTT are international treaties between states (their individual territories) or governments aimed at harmonizing their rights to collect. The DTT

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provisions, like the provisions of any international treaty, must be incorporated into the national legal system. Many scientific and educational publications emphasize that in different states, this issue is solved in different ways (Pepelyaev, 2015). DTT may become a part of the national legal system after it comes into force, or its incorporation will require the approval of some state authority, which is usually done by parliamentary ratification. In particular, in Russia, the consent to be bound by the DTT is expressed by its ratification, as international treaties are subject to ratification, establishing other rules than those stipulated by laws of the Russian Federation.

At the same time, depending on the specifics of the legal system, the DTT provisions have priority over national law (typical for countries of the Romano-German legal family, including Russia on the basis of clause 4 of article 15 of the Constitution of the Russian Federation) or, being incorporated into the national legal system that have equal force with national tax laws (typical of the Anglo-Saxon legal family).

In the second case, the principle of “lex posterior derogat legi priori” will take effect, that is, the provisions of the incorporated DTT law supersede previous laws. Regarding the laws adopted after the incorporation of DTT, according to scientists, for example Lang (2013), in this case the principle of “lex specialis derogat legi generale” is applied and the DTT provisions also have priority as special regulations. Moreover, according to the international legal principle of “pacta sunt servanda” which is recognized by the Vienna Convention on the Law of Treaties of May 23, 1969, contracting parties are obliged to conscientiously fulfill their obligations under the DTT (Vienna Convention on the Law of Treaties, 2019; World Trade Organization [WTO], 2019). The party, as a general rule, cannot refer to the provisions of its domestic legislation to justify non-compliance with the provisions of the DTT (Vienna Convention on the Law of Treaties, 2019).

Thus, in terms of the contradiction of the taxpayer’s rights under the DTT, the consent to be binding of which was expressed by the state according to the established procedure should have an advantage over the taxpayer’s obligations under the national tax legislation.

However, the question is whether restrictions on the exercise of the rights of the taxpayer under the DTT can be established in the regulations of national law, as well as what principles and mechanisms are applicable.

Relevance of the Research

In the context of a slowdown in economic growth and forced measures of economy, the research of the possibility of restricting the rights of a taxpayer under DTT becomes especially relevant.

Today, more than 3,000 DTT (Hong, 2018; International Bureau of Fiscal Documentation [IBFD], 2019) have already been concluded in the world and more than 80 DTTs in Russia (“Current bilateral international treaties of the Russian Federation on the avoidance of double taxation”, 2019). On June 7, 2017, Russia, along with 73 countries, within the framework of the Organization for Economic Cooperation and Development (hereinafter referred to as the Organisation for Economic Co-operation and Development [OECD]), signed the Multilateral Convention, signed on November 24, 2016 in Paris, to implement measures related to tax agreements to prevent the erosion of the tax base and the withdrawal of profits from taxation (hereinafter referred to as the “OECD Multilateral Convention; OECD, 2019b). In 2018 to 2019, the OECD Multilateral Convention has already been ratified by 25 countries, including Russia.

Moreover, they announced a focus toward deoffshorization of the economy (Wilson, 2015), in a number of countries, including Russia (“Message from the President to the Federal Assembly,” 2013; Graaf & Visser, 2018), as indicated in scientific publications and official documents, in connection with which a whole range of changes are being made to the national tax legislation, which also have impact on taxpayer rights under DTT and their restriction (Buettner et al., 2017; Kalamov, 2020).

The mentioned tendencies and changes in the national legislation and in the area of the DTT treaty-making require a more detailed consideration of the possibility of restricting the taxpayers’ rights under DTT through the regulations of national tax legislation.

Based on the above mentioned, the purpose of our study is to assess the possibilities of limiting the rights of taxpayers under the DTT through the regulations of national tax legislation, as well as the principles and mechanisms applicable to this.

Accordingly, the article includes the following points:

- Identification of the situations that might limit the rights of the taxpayer under the DTT through the regulations of national tax legislation.
- Interpretation of the provisions of individual DTTs regarding the accuracy of applying national legislation and measures to counteract tax evasion to limit the taxpayer’s rights under DTT.
- Analysis of the approaches to limiting the rights of the taxpayer under the DTT through the regulations of the national tax legislation that have developed in Russian and foreign doctrine and law enforcement practice.
- Establishment of the basic principles, accounting and compliance of which are necessary when restricting the rights of the taxpayer under DTT through national legislation.
- Determination of the role and place of the mutual agreement procedures between the competent authorities of the contracting parties regarding DTT, while restricting the rights of taxpayers on DTT.
Methodology
The methodological basis of the article was made by modern achievements of the theory of knowledge. In the research process, general philosophical, theoretical methods (dialectics, comparative method, system analysis, synthesis, analogy, deduction, observation, modeling), traditionally legal methods (formal logical), as well as expert assessment methods were used. In particular, system analysis was used for the texts of relevant DTTs concluded by different jurisdictions and expert assessment method was used with respect to analysis of possible approaches for limitation of taxpayers’ rights under the DTTs.

Theoretical Basis
In the course of writing the article, normative documents and scientific works of Russian and foreign scientists involved in the DTT application were used.

The regulatory framework was based on the provisions of the DTTs concluded by Russia and other states (territories), the provisions of the OECD Multilateral Agreement (OECD, 2019b), the provisions of the OECD Model Tax Convention (hereinafter referred to as the OECD Model Convention; OECD, 2019a), Comments on the OECD Model Convention (OECD, 2010) and other OECD documents, the regulations of the national tax legislation of Russia and other countries, judicial decisions, and acts of the competent executive authorities that supplement and specify tax legislation.

Literature Review
Today, there are a number of scientific studies that focus on the topic of DTT and partially address the aspect of the possibility of restricting the rights of taxpayers on DTT.

On one hand, Park and Lee (2018) and Bird (2018) point out that the state is interested in increasing budget revenues, which in some cases can lead to actions restricting the rights of taxpayers, including their rights under the DTT.

On the other hand, we should agree with Kuźniacki (2018) and Gomes (2019) that the taxpayers themselves seek to maximize the benefits provided to them under the DTT, which can sometimes abuse of rights under such agreements and makes it necessary for the application of national rules to restrict such abuse.

Lang (2013) argues that national legislation aimed at combating DTT abuse cannot limit the taxpayer’s rights under DTT.

Reimer et al. (2015) noted that setting restrictions on the exercise of taxpayer rights under the DTT at the national level can unilaterally lead to different application of the DTT by the two contracting parties, as the internal standards aimed at combating abuse may vary in different countries.

At the same time, Finnerty et al. (2007) note that it is not common for DTT to set taxes or create objects of taxation; therefore, DTT do not address the restrictions established in this regard by national legislation and therefore do not affect them.

Region (2017) and Schenkelberg (2019) argue that contracting states, when applying national law, must abide by their obligations under the DTT, and therefore, their corresponding taxpayer rights to eliminate double taxation, until it is clearly established that there is abuse form the part of DTT.

Sharma (2018) emphasizes that the restrictions imposed on the implementation of the rights of the taxpayer under the DTT within the regulations of national law and judicial practice today has become widespread as a means of preventing abuse of the DTT.

Analysis of existing studies and positions reveals that it is the aspect of the circumstances that make possible to restrict the rights of taxpayers under DTT through the regulations of national tax legislation, as well as the principles and mechanisms applicable to this can be explored in detail.

Scientific Question
What should be the basic principles for restriction of taxpayers’ rights under DTT by way application of national tax legislation?

Discussion and Results
In individual DTTs (in particular, concluded in Russia), the possibility of restricting the rights of taxpayers under DTTs through the application of national tax legislation is directly established. Thus, Article 27 of DTT Russia and Hong Kong established the following: “nothing in this Agreement restricts the right of each Contracting Party to apply its national legislation and measures against tax evasion, regardless of whether they are mentioned or not in the Agreement” (Draft Agreement between the Governments of Russia and Hong Kong on the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, 2015). Similar provision is also used in DTT concluded by Hong Kong with other countries, for example, with Latvia, Vietnam, and the Netherlands. However, in the texts of many DTTs, there are no direct explanations on this matter.

The question of whether the national regulations that establish restrictions on the implementation of the rights of the taxpayer under DTT come into conflict with the DTT itself was considered in the OECD Comments. In particular, it was concluded that such regulations “are part of the basic national rules” and “determine the facts that are the basis for the emergence of tax obligations.” If the application of the regulations of national legislation leads to the re-qualification of one type of income into another or the determination of another person as a taxpayer, the application of DTT and the enforcement of the rights of a taxpayer under DTT should consider such national standards (OECD, 2010).
However, not all countries agreed with this approach. In this context, it is relevant to cite the position of Luxembourg and the Netherlands, which commented on the relevant provisions of the OECD Comments, not agreeing that national standards aimed at combating the abuse of DTT and limiting the taxpayer’s rights under DTT do not conflict with DTT.

Luxembourg expressed its opinion that in the absence of a clearly defined provision in the DTT (similar to the provision in Article 27 of the DTT of Russia, Latvia, Vietnam, and the Netherlands with Hong Kong mentioned earlier), the contracting parties are entitled to apply their national anti-abuse provisions in specific cases only after they have resorted to a mutual agreement procedure for DTT (OECD, 2010).

The Netherlands noted that the compatibility of national anti-abuse law with the provisions of the DTT depends on the nature and wording of the relevant national rules and the wording and objectives of the relevant provisions of the DTT. The application of national standards restricting the exercise of taxpayer rights under the DTT is justified “in specific cases of abuse of the agreement.” In this case, “you should consider the pro rata principle” and “apply only those measures that are necessary to prevent abuse of the agreement” (the pro rata principle; OECD, 2010).

Analysis of existing administrative and judicial practice shows that the following rules can be used by states to limit the rights of taxpayers under DTT.

**General Rules to Combat the Abuse of DTT**

Thomsen and Watrin (2018) note that the courts of some countries have developed in practice and use the general principle of “substance over form,” in which the courts primarily consider the real economic content of the transactions, and not its legal form (for example, in the United States). However, as Diane de Charette (2019) and Lang (2018) points out, in many countries of the Romano-German legal family, the general principle of “fraus legislation” is the prohibition of abuse of right (for example, in Austria, France, Germany, the Netherlands, Spain, Sweden, Switzerland). Finally, some countries adopted general standards, analyzed by a number of scientists, for example Reimer et al. (2015), which allow you to re-qualify a transaction aimed solely at abuse of rights and the use of tax benefits for tax purposes (for example, Australia, Canada, South Africa. We should agree with Hu and Kim (2019) that all of the above approaches can be used to counteract the abuse of DTT and limit the taxpayer’s rights under DTT.

In this context, the Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation of October 12, 2006 No. 53 “On the assessment of the justification for obtaining tax benefits by the taxpayer by arbitration courts” gained significant importance in Russia and which formalized the doctrine of “business purpose” aimed at establishing reasonable economic or other reasons in the taxpayer’s actions (Supreme Arbitration Court of the Russian Federation, 2006).

Since August 19, 2017, Article 54.1 “Limits on the implementation of rights to calculate the tax base and (or) the amount of tax, duty, insurance contributions” (Tax Code of the Russian Federation Law, 2020), which defines the conditions under which the taxpayer does not have the right to reduce the tax base and (or) the amount of tax payable and partially enshrines in the law the concept of “unjustified tax benefit” was also incorporated into the Tax Code of the Russian Federation formulated by the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation of October 12, 2006 No. 53. In particular, according to Art. 54.1 (Supreme Arbitration Court of the Russian Federation, 2006), a taxpayer shall not be entitled to reduce the tax base or the amount of tax if reduction of the tax burden is the main purpose of the transaction.

Besides general rules, a number of special rules are also used in national legislation aimed at countering the abuse of DTTs and restricting taxpayer rights.

**Rules on Controlled Foreign Companies**

The scientific publications report that a significant number of countries (Finnerty et al., 2007; Kuzniacki, 2018), including Russia, have established the rules on controlled foreign companies (CFC) in their legislation. Of course, one should agree with the point of view of Mcintyre et al. (2018) that these rules are aimed at preventing the situation when passive income (in particular, interest, dividends, royalties) is accumulated from a foreign company and is not distributed in favor of the taxpayer, which allows him to defer tax payments in the state of residence.

In fact, according to Finnerty et al. (2007), CFC rules oblige the taxpayer to pay tax in the state of residence in respect of income received by foreign companies under his control. At the same time, the authors note that application of the CFC rules limits the taxpayer’s right under the DTT to exempt from taxation or the application of a preferential tax rate and in this part contradicts the relevant provisions of the DTT (Finnerty et al., 2007; Mcintyre et al., 2018; OECD, 2019a). In this regard, some countries decided to make it clear directly in the DTT text that application of the legislation on CFCs would not contradict the DTT (Blum, 2018; OECD, 2019a).

This issue has also been addressed separately in the OECD Comments. It was concluded that the above clarification in the DTT text “is unnecessary,” and even in its absence, it is now generally accepted that the legislation on CFC does not contradict the DTT (OECD, 2019a).

However, not all countries supported this position. For example, Belgium and Switzerland commented on paragraph 23 of the OECD Comments on Art. 1 of the Model Convention disagreed that the CFC rules in all cases do not contradict the provisions of the DTT. Ireland and the Netherlands also stated that “the resolution of this issue will depend on the nature of the relevant provisions of national
law.” Luxembourg noted that CFC rules restricting the rights of the taxpayer under the DTT can only be applied after a mutual agreement procedure has been carried out between the competent authorities of the contracting parties.

**The Rules of Thin Capitalization**

From the point of view of taxation, the interest rate of loans compared to the dividend payment, as a rule, gives the taxpayer a greater share of taxing rights under the DTT and the national tax laws. In this regard, some countries, including Russia (Tax Code of the Russian Federation Law, 1998), enshrine in their legislation the rules of “thin capitalization,” scientifically described by such scientists as McIntyre et al. (2018), Finnerty et al. (2007). These rules apply when the ratio between a person’s debt to a foreign company and equity exceeds a certain threshold. The result of applying the thin capitalization rules is the conversion of interest into dividends and, thus, a possible restriction of the taxpayer’s rights under the DTT to exempt from taxation in the state-source of income or to apply for a more favorable tax rate (Schwibinger, 2019). However, Burkhalter-Martinez N. in his article “BEPS Action 4 and Its Compatibility with the Principle of Non-Discrimination” expresses the opinion that if these rules apply only to debts to a foreign company, they can also be considered as limiting the taxpayer’s right to nondiscriminatory treatment (Martinez, 2019).

The OECD Comments and the 1986 OECD Report on “Thin Capitalization” (OECD, 1995) reflect the position that the rules for thin capitalization comply with the provisions of the DTT, subject to certain conditions. In particular, these rules should be applied to affiliated enterprises (understanding Article 9 of the OECD Model Convention) and should be aimed at adjusting the taxpayer’s profit that would correspond to the amount of profit received between independent entities (“arm’s length principle”). That being said, it is additionally recommended to establish that the prima facie operation is not an interest payment on the loan, but a dividend distribution, and the taxpayer actually assumes the risks associated with managing the company (OECD, 2010).

However, the OECD Comments emphasize that if the thin capitalization rules apply only to debt to a foreign company, then it contradicts to paragraph 4 of Art. 24 of the OECD Model Convention, which provides the taxpayer the right to deduct for the purposes of determining the taxable profit of interest made by a resident of another state, under the same conditions as if such payments were made in favor of a resident of that state (OECD, 2019a).

Moreover, some countries, in particular, the United States, commented on the OECD Comments regarding the application of thin capitalization rules, noting that instead of re-qualifying interest as dividends, other rules may be more appropriate. In some cases, the nature of the transaction for the purposes of DTT may remain unchanged; however, the source state of the income may refuse to provide deductions for interest payment for the purpose of determining taxable profit (OECD, 2010).

In Russia, most courts base their position on the landmark Decree of the Presidency of the Supreme Arbitration Court of the Russian Federation of November 15, 2011 No. 8654/11 when considering cases on the application of thin capitalization rules. In the above-mentioned Decree, it was concluded that the application of thin capitalization rules under Art. 269 of the Tax Code of the Russian Federation does not constitute a violation of the taxpayer’s right to non-discriminatory treatment under DTT, as Art. 269 of the Tax Code of the Russian Federation doesn’t impose any discrimination, but “only introduces an additional condition that must be met to be able to deduct interest without appropriate restrictions.”

The validity of treaty of Art. 269 p. 2-4 of the Tax Code of the Russian Federation and their compliance with the provisions of the DTT was contested in the Constitutional Court of the Russian Federation (Decision of the Constitutional Court of the Russian Federation of March 24, 2015 No. 695-o “On the refusal to accept for consideration the complaint of the open joint-stock company” Gurovo-Beton” on violation of constitutional rights and freedoms by paragraphs 2, 3 and 4 of Article 269 of the Tax Code of the Russian Federation”). The applicant argued that, unlike the provisions of Article 269 of the Tax Code of the Russian Federation, the provisions of DTT provide the possibility of unlimited deduction of interest on loans granted to the taxpayer by a foreign participant when paying corporate income tax. The Constitutional Court of the Russian Federation in this case indicated that paragraphs 2–4 of Art. 269 of the Tax Code of the Russian Federation determine the procedure for taxing corporate profit tax in cases containing signs of possible abuse of their position by the taxpayer, and therefore, there is no reason to believe that they can be considered as enshrining other rules than those provided by DTT, and, therefore, as violating constitutional rights and freedoms of the applicant on these aspects.

The applicant also stated that the provisions of Art. 269 p. 2–4 of the Tax Code of the Russian Federation do not meet the proportionality principle, as they are applied only on the basis of a formal criterion and do not allow taking into account other circumstances of the taxpayer’s activities, which may indicate a lack of intent to an unreasonable minimization of taxation. It seems that in this case the applicant’s argument about non-observance of the proportionality principle was ignored, as the Constitutional Court only reiterated that the impugned provisions “aimed at countering abuses in tax legal relations” and “could not be considered as violating the applicant’s constitutional rights and freedoms in the aspect mentioned by him, as well as contrary to proportionality principle.”

**Beneficial Ownership Rules**

The regulations on the beneficial ownership (the actual recipient of income) are, first of all, enshrined in the DTT as
a condition for the implementation of the rights of the taxpayer under the DTT (see, in particular, Art. 10-12 Agreement between the Government of the Russian Federation and the Government of the Kingdom of the Netherlands on the avoidance of double taxation and the prevention of tax evasion in respect of taxes on income and property of December 16, 1996 or Convention between the German Federal Republic and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income and on capital). As there is no definition for this term in DTT, one of the approaches commented by Lang (2013) is to interpret the term solely from the context of DTT. However, Gooijer (2014) states that currently there is no single definition of the beneficial owner for DTT, and it can be interpreted by the national courts in different ways. At the same time, national law may also be applied according to paragraph 2 of Art. 3 of the OECD Model Convention.

In this regard, a number of countries establish rules in their national legislation regarding the beneficial ownership. In particular, Russia uses the similar term “a person who has an actual right to receive income,” when establishing which it is necessary to consider the functions performed by the person in relation to such income and the risks assumed. At the same time, it is emphasized that if a person has limited powers in relation to such income or performs intermediary functions in the interests of another person, without performing any other functions and assuming no risks, he is not recognized as a person having an actual right for the purpose of exercising his rights by DTT (Tax Code of the Russian Federation Law, 2020).

In fact, such an approach limits the taxpayer rights under DTT in internal law. The possibility of introducing such a restriction in national rules is considered differently by the courts of many countries (Finnerty et al., 2007). In any case, it seems that such rules should correspond to generally accepted approaches to the concept of beneficial ownership, as enshrined, in particular, in the OECD Comments, and their application should be uniform in the contracting parties and, if necessary, should be the result of a mutual agreement procedure.

Russia proceeds to actively developing the practice of applying the concept of the actual recipient of income for a number of Russian DTT:

- Cyprus (Decision of the Ninth Arbitration Court of Appeal dated April 12, 2019 No. 09AP-70311/2018 in the case N A40-193386),
- the Netherlands (Decision of the Supreme Court of the Russian Federation of April 25, 2019 No. 301-ES19-2319 in the case No. A11-9880),
- Austria (Decision of the Moscow Arbitration Court of April 10, 2019 in case No. A40-8065),
- Luxembourg (Decision of the Arbitration Court of the Moscow District of October 4, 2016 No. F05-14331),

- Sweden (Decision of the Arbitration Court of the Moscow District of January 15, 2016 No. F05-19254).

In these court cases, Russian tax authorities dispute the status of foreign companies as actual recipients of income for the purposes of applying DTT. An analysis of this jurisprudence suggests that the courts are guided by such criteria when applying the concept of the actual recipient of income and limiting the benefits of DTT: the absence of significant economic activity in the jurisdiction of incorporation; reduced presence in the jurisdiction of incorporation; the presence of “transit” in the framework of the chain of income sourced in Russia (especially if there are offshore low-tax jurisdictions in the chain of companies); the absence of large powers to manage income at the level of a foreign company.

At the same time, in these cases, the conditions for taxpayers to exercise their rights under the DTT as enshrined in the DTT itself (in particular, the existence of an actual right to income) receive a unilateral interpretation in decisions of Russian administrative and judicial authorities, which may not coincide with the understanding of such conditions on the other side of the DTT.

**Transfer Pricing Standards**

The transfer pricing that manages the procedure for determining prices between related parties are enshrined in the laws of most countries (Haller & Chand, 2019). At the same time, Kato and Okoshi (2017) state that the question is whether these standards are aimed at countering the abuse of DTT and limiting the rights of the taxpayer, or they simply form part of the tax state systems. It seems that if these rules are aimed solely at observing the above-mentioned “arm’s length principle” when performing transactions between related parties and adjusting their results in case of non-compliance with this principle, such standards are fully consistent with Art. 9 of the OECD Model Convention and do not impose additional restrictions for the implementation of taxpayer rights under DTT.

**Conclusion**

Summing up the results, the following can be noted:

1. As a general rule, the rights of the taxpayer under the DTT, the consent of the obligation of which was expressed by the state in the prescribed manner, should take precedence over the obligations of the taxpayer under the national tax law, as they cannot refer to the provisions of their domestic law to justify non-compliance with the provisions of the DTT (the international legal principle of “pacta sunt servanda”). However, when applying national legislation,
contracting parties must comply with their obligations under the DTT and, therefore, their corresponding taxpayer rights to eliminate double taxation, until it’s clearly established that there is abuse of DTT.

(2) The provisions of individual DTTs (for example, DTTs between Russia and Hong Kong, Latvia and Hong Kong, the Netherlands and Hong Kong) directly allow for the possibility of applying national legislation and measures to counter tax evasion. In fact, even the absence of such provisions in the DTT does not prevent the application of national legislation restricting the rights of the taxpayer under the DTT for the purpose of counteracting tax evasion.

(3) An analysis of approaches to limiting the taxpayer’s rights under DTT in the national legislation standards allows us to conclude that currently they are widely used in the legislation of various countries, in particular, in the legislation of the Russian Federation (general rules aimed at countering the abuse of DTT; rules on CFCs; thin capitalization rules; beneficial ownership rules; transfer pricing standards). At the same time, the doctrine and judicial practice express the position that certain regulations (“thin capitalization” rules; transfer pricing standards; the CFC rules) are only an integral part of the state tax system and do not impose additional restrictions on the implementation of the taxpayer’s rights under the DTT. At the same time, despite the fact that such standards can be considered as an integral part of the tax legislation of states and are an important mechanism for counteracting tax evasion, they can also affect the rights of taxpayers under DTT.

**Recommendations**

Based on the research and the results obtained, it appears possible to identify the following recommendations.

It seems that the application of national regulations restricting the rights of taxpayers under DTT should occur solely for the purpose of counteracting tax evasion and abuse of DTT standards. In this case, the international legal principle of symmetry in the interpretation of DTT regulations by the contracting parties and the principle of “pacta sunt servanda” should be taken into account. The indicated approach should be reflected both in the DTT regulations itself and at the level of national legislation.

The application of restrictive national standards should be exceptional and aimed at preventing abuse of the provisions of DTT. In this case, it is preferable that the application of such restrictive regulations is carried out in compliance with the principles of proportionality and commensurability. The consolidation of these principles in the DTT texts and in the general regulations of the national tax legislation will also contribute to their implementation.

If so required, the application of national rules restricting the rights of the taxpayer for DTT should be the result of a mutual agreement procedure between the competent authorities of the states that are contracting parties for DTT. Such an approach is more likely to lead to a symmetric interpretation and application of DTT regulations, compliance by the contracting parties with the international principle of “pacta sunt servanda,” and will increase the predictability of the taxpayer in the exercise of their rights under the DTT. The mechanism for applying the mutual agreement procedure should be agreed in the DTTs themselves and worked out in detail in the national tax laws of the DTT partner states to make such a mechanism accessible and effective for practical application.

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