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Assistant Professor Bojana Vasiljević Poljašević, LL.D

Faculty of Law, University of Banja Luka

IMPLEMENTATION AND BENEFITS OF THE MULTILATERAL CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS, WITH REFERENCE TO BOSNIA AND HERZEGOVINA

Greed and egoism are phenomena imanent to any society. It could also be said that since the early ages, there has also been a need to claim as much money, power and glory as possible. On the other hand, or side by side, is the need to reduce that amount of money, i. e. wealth, as small or less as possible through different types of taxation.

It could be even said that greed, money and selfish own goals have become a top priority in the life and work of most legal and natural persons, especially large multinational companies, and a very wealthy and/or politically powerful citizens around the world.

In addition, to the last aforementioned activities of legal and natural persons focused primarily on increasing their own power and wealth, and on the other hand focused on paying as little tax as possible or not paying taxes at all, tax competition among different tax jurisdictions happened. States, i. e. jurisdictions have embarked on a strong struggle to attract foreign capital by applying various measures, primarily by introducing various tax reliefs, tax exemptions, introducing simulative tax rates or non-taxation certain incomes at all, etc. Such practices, both by legal and natural persons, as well as by the states themselves, have led to the need to find a unique, global solution that would minimize or prevent the most pronounced tax evasion and tax avoidance, i. e. eliminate the negative effects of harmful tax competition.

As one of the path in the light of solving the problems and developed jointly by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010 was the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. This Convention is the most comprehensive multilateral instrument

Bojana Vasiljević Poljašević, *bojana.vasiljevic@pf.unibl.org.*

available for all forms of tax co-operation to tackle tax evasion and avoidance that is priority in the whole world, i. e. priority in almost every country worldwide.

So, why do we (world) need to have international cooperation and, more above, coordination in the area of taxation? What is the main purpose of this Convention? Why does it matters? What is Convention's main goal and achievement so far? What benefits (and losses) can be expected by Bosnia and Herzegovina and its citizens from this Multilateral Convention on Mutual Administrative Assistance in Tax Matters Convention? What is the legal framework for the exchange of information in Bosnia and Herzegovina, which is very complex in terms of fiscal competencies and organization?

The aim of this paper is to present the legal framework of Bosnia and Herzegovina for the exchange of tax information. Also, in this paper, author will point out the advantages and disadvantages that may occur in Bosnia and Herzegovina within the implementation of this Convention. Finally, the author will point out the need for changes in amendments to tax legislation, so that the Convention in Bosnia and Herzegovina could be applied in the most efficient way.

Key words: Multilateral Convention; Mutual Administrative Assistance; Tax; Tax Matters.

1. INTRODUCTION

For almost 30 years, numerous theorists and practitioners have been debating the effects of globalization, and today's living and business climate conditions. What most agree with is growing economic interdependence demands increased international cooperation. The demand and claims for growing international cooperation is further complicated if viewed from the point of taxation, especially bearing in mind that today the world operates in the conditions of complete globalization, massive (free) mobility of capital, freedom to establish companies and/or to provide services, free movement of persons, and above all, all of mentioned is happening in the context of the digital economy era. Thus, it can be said that need for mutual assistance in tax matters between numeral states (and its tax authorities) is *condicio sine qua non*, both in recent years and in the years to come. In other words, the need for effective global governance based on cooperation and mutual assistance in order to make (common or/and individual) decision is nowhere more evident than in international taxation issues.

Development in (of) whole world in recent years showed that "with taxpayers operating on a global basis, the problem of tax fraud has also increased globally".[1]

Even the fact that in 1928, the League of Nations during drafting the Treaty on Mutual Administrative Assistance in Tax Matters have stated that

[1] R. Seer, "Recent developments in exchange of information within the EU for tax matters", *EC Tax Review* 2013, 66–77.

the international tax regime "… has been designed to protect the sovereign right of nation states to make tax law. A consequence of this regime, with its network of bilateral double tax agreements (hereafter: DTAs), is that there is a need for high-level administrative cooperation in order to ensure that firms and individuals with international sources of income are not subject to either conventional double taxation or double non-taxation", and even the fact that International Chamber of Commerce dismissed the League of Nations Draft Treaty on Mutual Administrative "an extension beyond national frontiers of an organized system of fiscal inquiry" and "an organised plan of attack on the taxpayer",[2] problems arise from and related to international tax matters was not high priority to many states.

Approach to this matters has changed dramatically in era of transnational production and global capital markets, especially following and after the global financial crisis in 2008. It became obvious that changing tax policies and practices in one state will and would have strong impacts on the tax systems of their neighbors, or even broader.

Besides, and beyond before mentioned, it became obvious obvious that states could and will start the race to the bottom, with an aim to meet the growing expectations of governments in terms of stronger and more comprehensive collection outstanding taxes, especially from the growing residents bank accounts held offshore. On the other hand, the taxation of offshore capital income depends on the effective exchange of information between tax authorities which in turn relies on high level international administrative cooperation because, otherwise tax authorities have to rely on the reports of taxpayers themselves, who have an economic incentive to under-report their true income.[3]

Regarding European Union law, the principle of fiscal cooperation is not explicitly codified in the Treaty on the Functioning of the European Union, but, in the creation of the customs union with the consequential removal of tax barriers, there has been a process of harmonization of tax legislation. Actions have been planned, for the exchange of information and administrative cooperation, to make the Law of the European Union effective. Close and regular cooperation will also help to combat fraud and illegal activities (art. 113, 115, 197 and 325 of the Treaty on the Functioning of the European Union (hereafter: EU).[4]

[2] R. Eccleston, "Evolution or Evolution: Sovereignty, the Financial Crisis and the Governance of International Taxation", *Journal of Applied Law and Policy* 2011, 13–16.

[3] S. Picciotto, *Regulating Global Corporate Capitalism*, Cambridge University Press 2011, 224.

[4] See Buccisiano, 671; G. Melis, Spunti sul metodo di coordinamento fiscale aperto quale possibile strumento per l'integrazione fiscale tra Stati dell'Unione Europea e Stati terzi.

In the period between 2009–2011, the EU was and the main instigator and, above all, the leading force for expanding international cooperation between tax administrations from different jurisdictions in the world. EU was the first organization that approved (and intoduced) a list of rules, considered hard law (in the framework of direct and indirect taxation), which enabled (and later led to) close cooperation between Member States in applying the tax system.[5] This actions have encouraged many Non – EU States

Diritto e practica tributaria internazionale, 2008, Vol. 8, n. 1, 207; and F. Saponaro, Lo scambio di informazioni tra amministrazioni finanziarie. Rassegna tributaria, 2005, Vol. 48, n. 2, 453. In E. A. Aucejo, *Towards an International Code for administrative cooperation in tax matter and international tax governance¸* Revista Derecho del Estado, no. 40, Universidad Externado de Colombia, 2018, 51.

5 - Council Directive 2003/48/EC of 3rd of June 2003 on taxation of savings income in the form of interest payments No longer in force, Date of end of validity: 31st od December 2015;

- Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, *Official Journal of EU,* L 84*,* 31st of March 2010, 1–12;

- Council Regulation (EU) No 904/2010 of October the 7th 2010 on administrative cooperation and combating fraud in the field of value added tax, *Official Journal of EU,* L 268/1 12nd of October 2010;

- Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation *Official Journal of EU L 64,* 11th of March 2011. (Note: Directive 77/799/EEC is repealed with effect from 1st of January 2013 with Directive 2011/16/EU). This Directive was amended by:

-Amended by the Council Directive 2014/107/EU, 9th of December 2014 with regards mandatory automatic exchange of information in the field of taxation, *Official Journal of EU, L 359,* 16th of December.2014.

- Council Directive (EU) 2015/2376 of 8 December 2015 with regards mandatory automatic exchange of information in the field of taxation, *Official Journal of EU*, L 332/1, 18th of December, 2015,

- Council Directive (EU) 2016/881, 25th of May 2016 as regards mandatory automatic exchange of information in the field of taxation, *Official Journal of EU*, L 146/8, 3rd of June 2016.

- Council Directive (eu) 2016/2258, *Official Journal of EU*, L 342/1 of 6th of December 2016 as regards access to anti-money-laundering information by tax authorities,

- Council Directive (EU) 2018/822 as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements" ("DAC 6") and the associated concerns with respect to the adoption by Member States, *Official Journal of EU,* L 139/1, o 25th of May 2018.

- Council Directive (EU) 2020/876 amending Directive 2011/16/EU to address the urgent need to defer certain time limits for the filing and exchange of information in the field of taxation because of the COVID-19 pandemic, *Official Journal of EU*, L 204, of 24 June 2020.

- Council Directive (EU) 2021/514 on administrative cooperation in the field of taxation, *Official Journal of EU*, L 104, 25th od March of 2021.

- Council Regulation (EU) No 389/2012 of 2nd of May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004, *Official Journal of EU*, L 121, 8th of May 2012, 1–15;

to introduce these rules into their tax systems even though they are not members, and have therefore not been obliged to implement them.[6]

But, there were (and still are) various initiatives and intentions to address the problem(s) of international taxation, but also the problem(s) of multifunctional and more comprehensive international cooperation and mutual assistance among tax authorities around the world approaches globally, and not just to solve the problem(s) within the European Union or the United States. As some of them, it could be mentioned Global Forum on Transparency and Exchange of Information for Tax Purposes, Convention on Mutual Administrative Assistance in Tax Matters, the Agreement on Exchange of Information on tax matters, Tax Information Exchange Agreements, The Common Reporting Standard, Multilateral Model Competent Authority Agreement, The Base Erosion and Profit Shifting, Fiscalis, Fiscalis 2020, etc.

This paper empirically analyses Multilateral Convention for Mutual Administrative Assistance in Tax Matters (hereafter: Convention) as well as its adoption and implementation in Bosnia and Herzegovina (hereafter: BiH), and benefits and losses BiH may have from this Convention, when its entry into force in BiH as well. In this paper, author will also propose changes that should be made in BiH legal system so every competent body inside BiH could implement the provisions of the Convention, as in the manner provided by this Convention.

Initial hypothesis at the beginning of this paper was that, even though fiscal federalism in BiH is divided between BiH and its entities, and Brčko District, all levels of authority within BiH will have more gain than loss from the implementation of Multilateral Convention for Mutual Administrative Assistance in Tax.

- Council Directive 2008/55/EC of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (Codified version), *Official Journal of EU,* L 150, 10.6.2008, 28–38. Note: No longer in force, Date of end of validity: 31.12.2011; Repealed by Council Directive 2010/24/EU of March the 16th 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, *Official Journal of EU,* L 84, 31st of March 2010, 1–12.

- Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, *Official Journal of EU,* L 193, 19th of July 2016, 1–14.

- Regulation (EU) 2021/847 of the European Parliament and of the Council of 20 May 2021 establishing the 'Fiscalis' programme for cooperation in the field of taxation and repealing Regulation (EU) No 1286/2013, PE/35/2021/INIT, Official journal of EU, L 188, 28th of May 2021, 1–17.Proposal for a COUNCIL DIRECTIVE implementing enhanced cooperation in the area of financial transaction tax * COM/2013/071 final - 2013/0045 (CNS), 2nd of February 2013.

- The Legislation is completed among other communications from the Commission and Parliament, standards, resolutions, etc.

[6] Later on, they were in danger of being declared as non-cooperative tax jurisdictions and on the EU's or OECS's unofficial blacklist, or at least greylist.

2. MULTILATERAL CONVENTION FOR MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS

It could be said that the Convention is crucial for the implementation of comprehensive, multilateral exchange of different types of information between, and among all states (jurisdictions) that have signed and ratified Convention. Also, the Convention is the most comprehensive multilateral instrument available for all possible forms of administrative cooperation between states in the assessment and collection of taxes, in the combat against cross border tax fraud, and above all, in the combat against tax evasion and avoidance as whole.

Convention was developed jointly by The Organization for Economic Co-operation and Development (hereafter: OECD) and the Council of Europe in 1988 and amended by Protocol in 2010.[7] Although it could be said that until 2010 the Convention did not meet the originally set goals because, among other, it was not signed or ratified by all Member States of the Council of Europe and the OECD, the situation has changed significantly since the great economy crisis in 2008. After adoption and entering into force Amendment from 2010, each State that is not Member of Council of Europe or OECD may request to be invite to sign and ratify Convention. Since that period, i. e. since the 2008 financial cirisis, the G20 has consistently encouraged countries to sign the Convention. Finaly, communique from the G20 summit that was held in Buenos Aires in 2018 stated "...We call on all jurisdictions to sign and ratify the multilateral Convention on Mutual Administrative Assistance in Tax Matters. Jurisdictions scheduled to commence automatic exchange of financial account information for tax purposes in 2018 should ensure that all necessary steps are taken to meet this timeline. We support the OECD strengthened criteria to identify jurisdictions that have not satisfactorily implemented the internationally agreed tax transparency standards. Defensive measures will be considered against listed jurisdictions. We support enhanced tax certainty and tax capacity building, including through the Global Knowledge – Sharing Platform for Tax Administration under the umbrella of the Platform for Collaboration on Tax".[8]

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[7] The Multilateral Convention on Mutual Administrative Assistance in Tax Matters *Amended by the 2010 Protocol*

https://www.oecd.org/tax/the-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters-9789264115606-en.htm.

Denmark (and Greenland and the Faroe Islands) Finland, Norway, Slovenia and Georgia were the first jurisdictions that fully implement the amended Convention on 1st of June 2011.

[8] G20 Summits, *Communiqué*, G20 Finance Ministers and Central Bank Governors, the 23rd of July, 2018, Buenos Aires, Argentina, available on: *http://www.g20.utoronto.ca/2018/2018-07-22-finance.html.*

At the 20th of September of 2021, 144 jurisdictions participate in the Convention, including 17 jurisdictions covered by territorial extension.[9]

So, which areas are „covered" by the Convention? What is the scope of Convention?

Convention reflects modern international standards of exchange of information for tax matters and aloud joint audits. In addition, implementation of Convention is (or at least could be) powerful and effective tool against corruption and money laundering, too.

At the same time, while the aim of this Convention is to promote international cooperation between state parties, Convention courages states to have better national tax laws, and better operation of those laws, while respecting the fundamental taxpayers rights.[10] Information gathered through exchanged information need to be confidential, and to remain confidential. Also, those information can be used and disclosed only for, and in accordance with specific and/or certain purpose for which it was provided and/or provided for the Convention. Nevertheless, confidentiality need to be *vice versa*, i. e. confidentiality covers both information in a request, and information in response to request.[11]

Convention covers a wide (r) scope of taxes, but also spontaneous, simultaneous automatic exchange of information for taxes that were not an object of any DTA. For example, it covers: taxes on income and profits, capital gains, net wealth, both local and global, compulsory social security contributions, estate, inheritance or gift taxes, taxes on immovable property, general consumptions taxes, i. e. VAT/GST, specific taxes on goods and services such an excise duties, taxes on the use and ownership of motor vehicles, taxes on the use or ownership of movable property other than vehicle. So, it can be said that Scope of Convention are all type ox taxes other than customs duties.[12]

On the other hand, Convention is flexible enough, so each state can, in accordance to the article 30. of Convention, make reservation about information or areas that concrete state, by its own discretion, is not will or ready to share with other states parties.

Finaly, it can be said, that implementation of the Convention allows access and exchange of information to the tax authorities in a way that they can gather, and/or share, information to assist each other ascertaining whether their residents are engaged in unacceptable tax practice.

[9] List of partitipating states available at: *https://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf.*

[10] See article 21–22. of Convention.

[11] More about Confidentality of Informaton exchanged Tax purpose see in: OECD, *Keeping it safe*, OECD guide on the protection of Confidentality of Informaton exchanged Tax purpose, 2012.

[12] See article 3. of Convention.

It can be noted, even Convention is not over long,[13] it brings different benefits to states parties, as follow:

1. It can serve as umbrella for multilateral cooperatation and, in the same time, its improvement;
2. It can serve as umbrella for multilateral simultaneous tax examinations concerning transfer pricing cases;
3. It provides exchange of information, including upon request, automatically and spontaneously exchange of (different type) information;
4. Timely access of information without having to enter into bilateral agreements. This provides a basis, especially for developing and undeveloped countries, but also for some developed countries, which have a limited number of DTAs (with mandatory information exchange within the DTA) to exchange tax information with a significant number of countries with which they did not exchange tax information before acceding to the Convention.;
5. It covers all taxes but custom duties;
6. It allowes joint audits and provides for assistance in the recovery of tax;
7. It can be used to encourage regional cooperation:[14]
8. As DTA(s) does (do) not cover indirect taxes, it can serve as strong instrument against VAT/GTS froud and avoidance scheeme, specially "carousel"scheme, as Convention aloud automatic/spontaneous exchange of information, and exchange of information on request, as well;
9. It provides exchange of information that can be used as powerfull tool to combat tax evasion and avoidance, to combat money laundering, aggressive tax planning schemes, corruption, terrorist financing, and other different types of financial crimes. It also encourages the implementation of the mentioned combat actions;
10. It is very flexible instrument and alows any state party to enter reservation related to adiministritive assistance regarding taxes in relation to the subjects of taxation, in relation to the object of taxation, in relation the type of tax, as well. It also allows a member state to "introduce" a reservation and to "cancel it" at some point.

On the other hand, this Convention suffer from some limitations, at least, if not losses for states parties, especially for offshore countries and stats that are prone to corruption.[15] As some of them, it could be mentioned:

[13] Convention has 32 articles.

[14] For example, at African regional level, the African Tax Administration forum member countries have developed the Multirateral Agreement on Mutual Assistance in Tax Matters.

[15] Transparency International's 2020 Corruption Perception Index (CPI) ranked Bosnia and Herzegovina among countries where corruption is rapidly worsening as the country has slipped

1. Dilema to what extand is implementation of this Convention, i.e. to what extand this exchange of information is (or is not) balanced with fiscal souverenity of each state, and its tax laws? Or to what extent is the country willing to lose one part of its fiscal sovereignty?
2. Exchange of information requires some principles, and steps that need to be taken before and during mutual exchange of information, as for example principle of subsidiarity and principle of reciprocity;
3. Limmitation imposed by issue of trade or bussines secrecy;[16]
4. Additional expenditures in line with article 26 of Convention;[17]
5. State of Democracy in society specific state;[18]
6. State of Corruption in society of specific state;
7. State of Transparency in society of specific state;
8. Convention is not supstitut for DTAs, and it should be noticed that DTAs based on OECD model, provide mechanism for avoiding double taxation of varios income types. Convention can not deal to eliminate double taxation as provided through DTAs, and so on.

3. ISSUES OF FISCAL SOVEREIGNTY IN BIHAND ITS (THEIR) IMPLICATIONS IN TERMS OF IMPLEMENTATION MULTILATERAL CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS IN BIH (AND OTHER EU DIRECTIVES IN THE FIELD OF TAXATION)

In order to point out certain specifics of fiscal relations in BiH and clarify the constitutonal and legal framework for the implementation of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters in BiH, it is necessary to emphasize that BiH is regulated by the Constitution of BiH as a state union with two entities, Republic of Srpska and The Federation of Bosnia and Herzegovina, and that its constitutive part from 08.03.2000. year Brčko District of BiH, established as an independent administrative unit of BiH.

11 places on the list, ranking 111 out of 180 countries with a score of 35. This is the worst score the country has had since 2012. BiH is now at the bottom of the list in the Western Balkans region, where it shares a spot with North Macedonia, and it share spot worldwide with Panama and Mongolia. See more on: *https://www.transparency.org/en/cpi/2020/index/bih#.*

[16] Some trade/bussines information that are requred to be exchanged, might be protected under Trade Agreement, or some other kind of Agreement.

[17] Unless ottherwise agreed bilaterally by Parties concerned, ordinary costs incurred in providing assistance are to be borne ny the requested Party and any extraordinary costs insurred in providing assistance are to be borne by the requesting Party.

[18] State of democracy, state of corruption and state of transparenty on society could be viewed as a challenges, not just as a problems.

The Constitution of Bosnia and Herzegovina does not contain provisions on fiscal sovereignty and basic principles related to the regulation of the tax system and the determination of tax relations between the highest level of governance in BiH (BiH level) and its citizens. Also, by the same Constitution, the competencies of the entities are determined by the general clause in such a way that all competencies and functions, which are not explicitly given to BiH, are within the competence of the entities. In this way, the Constitution of BiH confers very limited competencies to the highest level of governance in BiH, i. e. to BiH, especially in terms of fiscal competencies. But truth be told, foreign policy and customs policy, among others competencies, have been determined as constitutional functions within the competence of Bosnia and Herzegovina.

Starting from 2003–2005, with the adoption of the Law on Indirect Taxation System, the establishment of the Indirect Taxation Authority of Bosnia and Herzegovina, and the adoption of the Law on Value Added Tax, the fiscal sovereignty of the entities is limited, i.e. a significant part of their original fiscal sovereignty (and District) was delegated to BiH. In this way, fiscal sovereignty within BiH was divided, so that fiscal sovereignty from the sphere of direct taxes is held by the entities and Brčko District, as well, while fiscal sovereignty from the sphere of indirect taxes is under the jurisdiction of BiH.

In accordance with the above mentioned competencies, today, there are four independent (and self-contained) tax authorities in BiH, namely: the Indirect Taxation Authority of BiH, which is responsible for VAT, excises, customs and tolls as special excises[19], the Tax Administration of Republic of Srpska[20], The Federation of Bosnia and Herzegovina Tax Administration and the Tax Administration of the Brcko District of BiH, which are competent for application of tax legislation among BiH. However, regardless of the fact that the competencies are definitely determined between the tax administrations, all four tax administrations within BiH are, in accordance with the provisions of the relevant tax laws, responsible for the implementation of international cooperation and adequate assistance.[21]

[19] The Board of Directors of the ITA is responsible for the introduction of indirect taxes, which submits legal acts to the Parliamentary Assembly of BiH for adoption through the Council of Ministers of BiH. The ITA is responsible for the implementation of legislation and indirect taxation policy, as well as for the collection, payment, and distribution of indirect tax revenues.

[20] TARS implements tax policy and collects taxes and other public revenues for which it is responsible, in accordance with the law and international agreements in the field of taxation, assists taxpayers in fulfilling their tax obligations, monitors and analyzes the functioning of the tax system and makes proposals for improving the fiscal system in the RS, cooperates with other state bodies, institutions and organizations, provides reports to external users, and provides international legal assistance to foreign bodies in resolving certain tax cases.

[21] See Art. 10, para. 19. and art. 14. Law on Tax Procedure of Republic of Srpska, Official Gazette of Republic of Srpska, No. 78/20, See Art. 7. Point m, Art. 8. Point. 4. i and Art. 9.

Given the complexity of the tax system (s) within BiH, the paper will further on focus on the legal framework for the implementation of the Convention in terms of the indirect taxation system and the direct taxation system under the jurisdiction of Republic of Srpska.

In this respect, Art. 7. Para. 1, point m, art. 8. para. 4. i and Art. 9. the Law on the Indirect Taxation Authority of BiH stipulates that the Indirect Taxation Authority of BiH (hereafter: ITA) applies international agreements in the field of indirect taxes, that the ITA is authorized to cooperate with tax and customs administrations of other countries, in accordance with agreements concluded between BiH and foreign states, or international organizations, that ITA is obliged to provide international legal assistance based on international treaties or agreements concluded by BiH.

Furthermore, the Art.9 previous mentioned Law on the Indirect Taxation Authority of BiH also defines that the ITA will provide international legal assistance, if it is not regulated by international treaties or agreements, provided that there is reciprocity or legitimate interest, then that the state receiving legal assistance undertakes to use the received notifications and documentation only for the purpose of tax, misdemeanor and criminal proceedings, and that, accordingly, these notifications and documentation will be available only to persons in administrative bodies or judicial bodies conducting the said proceedings. In addition, the provision of international assistance is permitted to the ITA as long as the submission of data does not jeopardize the sovereignty, security or any other essential interests of BiH.

Also, Art. 12. Para. 19 and Art. 14 of the Law on Tax Procedure of Republic of Srpska in a very similar way regulates the provision of international assistance by the Tax Authority of Republic of Srpska (hereafter: TARS). But, the competences of TARS do not explicitly state the activity of international cooperation, as stated in the Law on ITA, but the following provisions of The Law on Tax Procedure of Republic of Srpska, and indirectly Art. 4. Para. 3. Point 3. in the part of tax secrecy where it is stated that TARS is obliged to submit data and information kept as a tax secret to foreign tax authorities, in accordance with international agreements, and directly to Art. 14. in such a way that the Tax Administration has the right to request and provide international legal assistance.[22] Furthermore, the provisions of the same article define that international legal assistance is the right

Law on Indirect Taxation Authority, Official Gazette of BiH, No. 89/2005. See article 6. Law on Tax Administration of FBiH, Official Gazette of FBiH, No. 33/02, 28/04, 57/09, 40/10, 27/12, 7/13, 71/14 and 91/15. See Art. 16. of the Law on Tax Administration of BDBiH, Official Gazette of BDBiH, No. 11/2020.

[22] Bearing in mind that the Law does not specify an imperative norm, a justified question could be asked whether the TARS should / can provide / receive international assistance in tax matters.

of the Tax Administration to turn to a foreign tax authority for assistance in resolving a certain tax case, as well as to submit data and documentation at its disposal to that authority on a particular taxpayer. Also, it has been determined that this provision of assistance is based on international agreements. However, even when an international agreement has not been concluded, it is determined that TARS will provide legal assistance, in a very similar way as ITA does when there is no international agreement, provided that the principle of reciprocity is respected and that the submission of data is not jeopardized public order and other interests of Republic of Srpska, that there is no danger of revealing official, commercial, industrial, technological or professional secrets, and finally, that providing information to the taxpayer will not produce damage incompatible with the purpose of legal aid.[23]

In both cases, it is predicted that the taxpayer to whom the said notices and documentation relate shall be notified before the notices and documentation are submitted to the foreign tax authority.

A very important Law for the conclusion, implementation and enforcement of any international agreement in BiH, including this Convention, is the Law on the Procedure for Concluding and Executing International Treaties, bearing in mind that foreign policy is within the competence of BiH. In this regard, all international agreements in the field of international taxation and international (bilateral or multilateral) agreements, agreements and/or conventions related to tax matters are concluded through the Ministry of Finance and Treasury of BiH (hereafter: MFTBiH) as MFTBiH is line ministry.[24]

But, although their conclusion, implementation and enforcement are regulated by the norms of the last mentioned Law, this does not mean that the entities are left out of the application and implementation of this Law. On the contrary, Art. 4. of this Law defines that "the initiative for initiating the procedure for concluding international agreements may be given by the institutions of Bosnia and Herzegovina, entities, cantons and other regional and local communities from the field of its activity". The same Article further defines the timetable for launching the initiative, as well as the negotiation procedure regarding the conclusion of these agreements / conventions / conventions.[25] On the other hand, the Decision on initiating the procedure for negotiations for concluding an international agreement, need to be adopeted by the Presidency of BiH.

[23] This provision is fully in line with the two EU directives and the provisions of the Convention.

[24] Law on the Procedure for Concluding and Executing International Treaties, Official Gazette of BiH, no. 29/00 and 32/13.

BiH has 39 ratified treaties on the avoidance of double taxation that provide a legal basis for, inter alia, the exchange of information between signatory countries. All DTAs are available on: *https://mft.gov.ba/Content/Read/sporedumi-u-primjeni.*

[25] Considering that these are international tax matters, the line ministry is MoFTBiH.

Also, Art. 4. Para 5. point e. the same Law stipulates that when determining the proposal for initiating the procedure for negotiations for concluding an international agreement, the opinion of the competent bodies of the entities must be obtained and attached when the international agreement regulates issues within the exclusive competence of the Entities. Finally, but not least, it is necessary to point out that entity representatives must be, together with the representatives of BiH, part of the negotiating delegation appointed on behalf of BiH.[26]

Regardless of the fact that all 39 bilateral DTAs that BiH has signed with other countries have provisions on mutual exchange of information between tax authorities, the Convention has a much wider application and enables automatic, spontaneous and exchange of information on request, assistance in recovery, including measures of conservancy, the submission of documents, as well as simultanious tax examinations and participation in tax examinations (abroad), and etc.

In addition, by ratification of the Convention, BiH has enabled the exchange of tax information with some of Bosnia and Herzegovina's significant foreign trade partners with which BiH has not concluded a DTA, such as Switzerland, Russia and the United States, and with whom there was no possibility of requesting and/or exchanging tax information until the entry into force this Convention. Besides, this Convention will alow BiH the exchange of tax information with some counties that are known as tax havens, as Malta for example.[27]

However, it is important to mention that on occasion of the 10th Plenary Meeting of the Global forum that was held in Paris on 27th of November 2019, BiH was the 135 state that signed the Mutual Convention on a Mutual Administrative Assistance in Tax Matters. Besides, Convention is ratified on 22nd of July 2020, and enter into force on 1st of January 2021, but it shal have effect for administrative assistance related to taxable periods beginning on or after 1st of January 2022 (as one year following the year in which the Convention entered into force in BiH).[28]

In that respect, it is decided that, the MFTBiH in the procedures of international cooperation with tax purposes has the role of co-ordinator between the competent bodies of the entities, i.e. the Ministry of Finance of Republic

[26] Although the Law states the "opinion" of the entities, in practice this means the consent of the Entities.

[27] The largest number of BiH residents whose financial and legal records "leaked" were those who had bank accounts in Malta. List available on: *https://offshoreleaks.icij.org/search?c=BIH.*

[28] *The Mutual Convention on a Mutual Administrative Assistance in Tax Matters*, Official gazette of BiH, International treaties, No. 14/20.

of Srpska and the Federal Ministry of Finance,[29] as well as the Finance Directorate of the Brčko District.[30] At the same time, the MFTBiH is a contact point for cooperation with the Global Forum, but in connection with the Convention, the competent bodies in BiH are: ITA for taxes stated in Art. 2. Para.1. point b. iii. C., for direct taxes stated in Art. 2. Para.1. Point a. i. Ministry of Finance of Republic of Srpska, Federal Ministry of Finance and Finance Directorate of Brčko Distict of BiH.[31]

3.1. Application of provisions the Multilateral Convention on Mutual Administrative Assistance in Tax Matters in BiH

Given the fiscal features and specificities of the constitutional and legal system of BiH, the question arises, how will the provisions of the Convention be applied in BiH and whether it is necessary to adjust or amend the current tax laws in BiH?

A detailed analysis of tax legislation in BiH shows that it (they) is (are) not fully adapted to the implementation of the Convention within BiH.

But, true to be said, the Constitution of BiH explicitly qualifies the incorporation of international legal sources within the national legal system in Art. III/3(b) with regard to general principles: "general legal principles are an integral part of the legal system of Bosnia and Herzegovina and its entities". These legal sources overrule other national laws, so does this Convention.

Also, as already mentioned in the paper, the tax laws in BiH support and enable international tax cooperation and exchange of information related to it. On the other hand, the Law on Tax Procedure of Republic of Srpska lacked the imperative norm regarding international tax cooperation, so Art. 14 of the same Law states that "TARS has the right to request and provide international legal assistance in its work", which leaves a dose of voluntarism in the implementation of this international assistance by TARS.

In addition, although Art. 31–35. of the Corporate Income Tax law of Republic of Srpska[32] defined the terms "transfer pricing", "associated enterprises", as well as methods for determining the compliance of transactions between associated enterprises with the principle of "out at arm's length",

[29] This is the name of FBIHs (entitiy) Ministry of Finance.

[30] In most counties, relations with other countries fall within the competence of the Minister for Foreign Affairs, but given the specific constitutional relations in BiH, this is not the case in BiH. Therefore, the co-ordinating body that monitor implementation of this Convention into BiH is composed from representatives from Ministry of Finance of Republic of Srpska, Federal ministry of Finance, Finance Directorate of Brcko District of BiH and from ITA.

[31] The Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

[32] *Corporate Income Tax law of Republic of Srpska*, Official Gazette of Republic of Srpska, No. 94/15, 1/17 and 58/19.

but also established obligations to taxpayers with, and in connection with cross-border transactions between (their) associated enterprises, these articles are not in line with numerous EU directives, and this Convention, as well.

Also, Article 52 of the Law on Indirect Taxation Procedure (confidentiality of data on indirect taxes) does not provide for information that is considered a tax secret to be exchanged with tax authorities of other countries, and it should be supplemented in such a way that information that is not considered a tax secret The ITA keeps it an official secret in the event that this information is requested by foreign tax authorities in accordance with international agreements, noting that this "removal" of tax secrecy is recognized in the Law on Tax Procedure of Republic of Srpska.[33]

Given that the mentioned tax laws in Bosnia and Herzegovina only know and recognize the category of international legal assistance in tax matters (upon request), they need to be supplemented/amended in order to create legal preconditions for full implementation of the Convention, first of all, in the field of administrative cooperation to prevent tax evasion, tax avoidance, prevention of cross-border tax avoidance, aggressive tax planning, harmful tax practices, collection of information on revenues based on sharing economy[34] and gig economy, but also to enable simultaneous tax examinations and participation of representatives of other tax authority in tax examination in BiH (and vice versa).

Also, in connection with the above mentioned, it would be desirable, but also necessary in order to harmonize BiHs with EU Directives, as follows: EU Directives (Council Directive 2011/16/EU on administrative cooperation in the field of taxation, that is harmonization with Council Directive (EU) 2015/2376 (amending Directive 2011/16/EU) as regards mandatory automatic exchange of information in the field of taxation[35] and Council

[33] Back in 2005, the European Court of Human Rights approved the publication of the property status of public officials (statements of property) of the family. In the 2005 case, the European Court of Human Rights approved the publication of asset declarations. See: European Court of Human Rights (2428/05) - Court (Fourth Section) - Decision - WYPYCH v. POLAND available on: *https://www.stradalex.com/en/sl_src_publ_jur_int/document/echr_2428-05. Furthermore*, in 2015, the European Court of Human Rights rejected the request for non-exchange of bank accounts for tax purposes, ie it also approved the international administrative exchange of bank data for tax verification purposes. See: European Court of Human Rights (Third section) - CASE OF G.S.B. v. SWITZERLAND (Application no. 28601/11), 22nd of December 2015, final 22nd of March 2016. available on: *file:///F: /MAC/CASE_OF_G.S.B._v._SWITZERLAND.pdf*.

[34] See more in B. Vasiljević Poljašević, "Open issues related to the taxation of the sharing economy", *Juridical life, Association of Jurists of Serbia* 2019, 9–101.

[35] With this Directive an advance cross-border ruling and advance pricing arrangement are defined (sufficiently broad to cover a wide range of situations, including but not limited to the following types of advance cross-border rulings and advance pricing arrangements).

Directive (EU) 2016/881 (amending Directive 2011/16/EU) as regards mandatory automatic exchange of information in the field of taxation with aim to fight against cross-border tax avoidance, aggressive tax planning, and harmful tax competition, at global and Union levels,[36] Council Directive (EU) 2018/822 (amending Directive 2011/16/EU) as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements,[37] and with Council Directive (EU) 2021/514[38] which plans standardization reporting, i.e. automatic exchange of tax information related to sharing and gig economy to make the necessary "corrections" of domestic legislation.

[36] With this Directive, an obligation has been established to Member States to adopt coordinated rules on transparency obligations of MNE Groups. Note: MNE Group means, with respect to any Fiscal Year of the Group, a Group having total consolidated group revenue of more than EUR 750 000 000 or an amount in local currency approximately equivalent to this amount.

Also, by this Directive is stipulated, inter alia, that the country-by-country report shall contain the following information with respect to the MNE Group: (a) aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates and (b) an identification of each Constituent Entity of the MNE Group setting out the jurisdiction of tax residence of that Constituent Entity and, where different from that jurisdiction of tax residence, the jurisdiction under the laws of which that Constituent Entity is organized, and the nature of the main business activity or activities of that Constituent Entity.

[37] With this Directive, an obligation of issuing reports has been adapted with potentially aggressive tax-planning arrangements span across more than one jurisdiction, via the (automatic) disclosure of information about those arrangements that would bring additional positive results where this information were exchanged amongst Member States, so they can take actions where they observe aggressive tax practices. Furthermore, with this Directive an obligation for intermediaries has been introduced to inform tax authorities of certain cross-border arrangements that could potentially be used for aggressive tax planning, and obligation for Member States tax to the share the information with their peers.

[38] One of the aims of this Diretcive is to ensure the effectiveness of the exchanges of information and to prevent unjustified refusals of requests, as well as to provide legal certainty for both tax administrations and taxpayers by the internationally agreed standard of foreseeable relevance that should be clearly delineated and codified.

In addition, with this Directive, given the nature and flexibility of digital platforms, the reporting obligation should also extend to platform operators that perform commercial activity in the Union but are neither resident for tax purposes, nor incorporated or managed, or have a permanent establishment in a Member State. This would ensure a level playing field among all digital platforms and prevent unfair competition. In order to facilitate achieving this objective, before mentioned (foreign) platform operators should be required to register and report in one single Member State for operating in the internal market. After revoking a registration of a (foreign) platform operator, Member States should ensure that such (foreign) platform operator is required to provide to the Member State concerned appropriate assurances, such as affidavits or security deposits, while re-registering in the Union. But, each Member State should lay down appropriate measures that would reduce administrative burden on foreign platform operators and tax authorities of Member States, in cases where adequate arrangements exist, ensuring that equivalent information is exchanged between a non-Union jurisdiction and a Member State.

In this regard, for example, it is necessary to introduce into tax law(s) certain institutes and definitions that are not standardized in BiH tax law (s) at all, or are not defined precisely enough, such as: exchange of information on request, automatic exchange of information, spontaneous exchange information, transfer pricing (broader definition), associate enterprises, transfer pricing risk assessment[39] (especially for MNE), cross-border transaction, aggressive tax planning, harmful tax competition, intermediary (s) especially bearing in mind that in the global economy a significant amount of taxable transactions is performed through various intermediaries in the sale/provision of services and various online platforms, which often remain outside the tax coverage), the standard of predictable relevance, sharing economy, gig economy, OECD model rules, etc.

Of course, it is necessary not only to unambiguously define all terms, but also to determine the way of informing, information channels, deadlines in which (un) reacts and informs, (un) possibility of joint supervision and control, exemptions from application, etc, with strong and full protection of taxpayers' rights, business, trade or industrial secrets or trade proceedings.

In addition, provision should be made for the possibility of collecting information from all persons who submit their applications to the tax authorities (or competent bodies) within time limits that are in line with the time limits defined by the Convention.

Finally, but not least, it is necessary to ensure that the exchange of information does not in any way reveal information that would be contrary to the public policy of BiH, i.e. its entities and BD, and that they are used only for the purposes provided by the Convention.

4. INSTEAD OF A CONCLUSION

Discouraging fact is that even though the Convention entered into force on 01st of January 2021 it did not become a reality on the ground. Experience shows that the time it took jurisdictions to sign, ratify and entry into force this Convention illustrates and represent the country's willingness to cooperate.

Nevertheless, Multilateral Convention on Mutual Administrative Assistance in Tax Matters Convention definitely represents a most comprehensive multilateral instrument which enables all forms of international tax cooperation, such as: exchange of information on request, spontaneous exchange of information,[40] simultaneous tax examinations and participation

[39] As it has already been said, the legislation of Republic of Srpska knows these categories, but in a much narrower sense.

[40] It will also, provide spontaneous exchange of information on tax rulings, under the BEPS package.

in tax examinations (abroad and vice versa), assistance in recovery, including measures of conservancy, the submission of documents, automatic exchange of information, etc, all in order to counter tax evasion and double taxation avoidance.

By joining this Convention, Bosnia and Herzegovina joined a group of over 135 countries signatories. In relation to bilateral agreements, i. e. signed DTAs, this will provide a platform to BiH to conduct, on a mutual basis, automatic (and spontaneous, if needed) exchange of information. In addition, it will provide an exchange of financial account information in tax matters, country to country report, and peer review, as well.[41]

Implementation of the Convention should and would become indispensable tools in providing access to the information all Bosnian and Herzegovinian tax authorities needs to support the global fight against tax evasion and avoidance, both at home and abroad.

Further, through implementation of the Convention, BiH's tax authorities will have access to data on asset, transactions and accounts of its resident performing business activities, either directly or through associated enterprises from countries with which BiH does not have a signed DTAs.

Having in mind that tax avoidance and tax evasion are global concerns (read problems) that reduce taxpayers trust in fair tax system, but above all, they reduce collected governments revenue, it could be said that this problem is especially visible and acute in developing and undeveloped states. For example, in 2019, 20,1% was the share of tax revenues[42] into GDP in BIH, while the tax –to –GDP ratio in the OECD states in the same year was 33,8%. It is clear that tax to GDP ratio in BiH significantly differs than the same ratio in OECD. Nevertheless, that does not have to be a problem, but a chance that could be exploited by a full implementation of this Convention, especially having in consideration that taxes have the dominant share in BiH's public revenue,[43] i. e. revenue collected form taxes are main source of financing of all budgets within BiH.

But truth to be told, if BiH planes to come close to the average tax to GDP ratio as in OECD countries, all tax authorities within BiH must have

[41] The first peer to peer report (of BiH) is expected to be released in the spring of 2022.

[42] Contributions are excluded.

[43] Budget Rebalance of the Republic of Srpska for 2021 available on:
https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mf/Documents/%D0%A0%D0%B5%D0%B1%D0%B0%D0%BB%D0%B0%D0%BD%D1%81%20%D0%B1%D1%83%D1%9F%D0%B5%D1%82%D0%B0%20%D0%A0%D0%B5%D0%BF%D1%83%D0%B1%D0%BB%D0%B8%D0%BA%D0%B5%20%D0%A1%D1%80%D0%BF%D1%81%D0%BA%D0%B5%20%D0%B7%D0%B0%202021.%20%D0%B3%D0%BE%D0%B4%D0%B8%D0%BD%D1%83_463792254.pdf .

access to information on all business activities and asset of their taxpayers. Without application of this Convention, there would be no or limited (in terms of limited number of signed DTAs and its application would be only to certain taxes) information on their asset, and business activities. The implementation of the Mutual Administrative Assistance in Tax Matters Convention allows access to information which BiH's tax authorities would not be able to collect due to territorial limitation of fiscal sovereignty, or insufficient number of DTAs.

Further, signing of the Convention improved BiH's reputation as a country with active participation in international efforts to prevent tax evasion and remove the tag from BiH as a "non-cooperative jurisdictions for tax purposes".[44]

Considering everything previously stated, it could be said that initial hypothesis underlined in this paper, which was that all levels of authority within BiH would have more gain than loss from the implementation of Multilateral Convention for Mutual Administrative Assistance in Tax Matters, was confirmed.

On the very end it can be concluded that implementation of this Convention is a key driver for international tax cooperation not just for BiH, but for the world as a whole, and that serious and intensive efforts in terms of alignment of local legislation with the EU and OECD legislation are ahead of BiH's legislation makers. But, considering the overall social and political situation within BiH and almost constant "turmoil", question is whether and when the Convention will ever become a reality on the ground.

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Доц. др Бојана Васиљевић Пољашевић

Правни факултет Универзитета у Бањој Луци

ПРИМЈЕНА И КОРИСТИ ОД МУЛТИЛАТЕРЛАНЕ КОНВЕНЦИЈЕ О УЗАЈАМНОЈ АДМИНИСТРАТИВНОЈ ПОМОЋИ У ПОРЕСКИМ СТВАРИМА, СА ОСВРТОМ НА БОСНУ И ХЕРЦЕГОВИНУ

Сажетак

Похлепа и егоизам су појаве својствене сваком друштву. Може се, такође, рећи да је од давнина постојала потреба за прибављањем што више новца, моћи и славе. С друге стране, или упоредо с тим, стоји потреба за умањењем те своте новца, тј. богатства, на што мању мјеру кроз различите облике опорезивања.

Може се чак рећи да су похлепа, новац и себични сопствени циљеви постали најважнији у животу и раду већине правних и физичких лица, посебно великих мултинационалних компанија, и врло богатих и/или политички моћних грађана широм свијета.

Поред ових, поменутих активности правних и физичких лица усмјерених првенствено на повећање њихових сопствених богатства и моћи, и, с друге стране, оних које су усмјерене на плаћање што мањег пореза или на неплаћање пореза, догодила се пореска конкуренција између различитих пореских јурисдикција. Државе, тј. јурисдикције укључиле су се у снажну борбу за привлачење страног капитала

примјеном различитих мјера, првенствено кроз увођење различитих пореских ослобођења, пореских изузимања, увођење стимулативних пореских стопа или неопорезивања појединих прихода, итд. Такве праксе, како правних тако и физичких лица, као и самих држава, довеле су до потребе да се пронађе јединствено, глобално рјешење које би минимизовало или спријечило већину наведених облика пореске евазије и избјегавања плаћања пореза, тј. елиминисало негативне ефекте штетне пореске конкуренције.

Један од начина рјешавања проблема, развијен заједнички у оквиру OECD и Савјета Европе 1988. године, измијењен Протоколом из 2010. године, јесте Мултилатерална конвенција о узајамној административној помоћи у пореским стварима. Ова конвенција је најобухватнији мултилатерални инструмент доступан за све облике сарадње у борби против пореске евазије и избјегавања који је приоритет у цијелом свијету, тј. приоритет у скоро свакој земљи широм свијета.

Зато, зашто ми (свијет) треба да имамо међународну сарадњу и, више од тога, координацију у области опорезивања? Шта је главна сврха Конвенције? Зашто је важна? Шта је главни циљ и постигнуће Конвенције до сада? Које користи (и недостатке) могу очекивати Босна и Херцеговина и њени грађани од Мултилатералне конвенције о узајамној административној помоћи у пореским стварима? Који је правни оквир размјене информација у Босни и Херцеговини, који је врло сложен у смислу фискалних надлежности и организације?

Циљ овог рада је да се представи правни оквир Босне и Херцеговине за размјену информација. Такође, у раду ће ауторка ће указати на предности и недостатке које може очекивати Босна и Херцеговина у примјени ове конвенције. Коначно, ауторка ће истаћи потребу промјена у допунама пореског законодавства, како би Конвенција у Босни и Херцеговини могла да буде примијењена на најефикаснији начин.

Кључне ријечи: *Мултилатерална конвенција; Узајамна административна помоћ; Порез; Пореске ствари*.