INTERNATIONAL TAX LAW AND TAXES
IRANIAN LEGISLATION

Abstract. The purpose of this article is to analyze the modern state taxation system, which is built on stimulating international trade and attracting foreign capital to the national economy. It is noted that the distribution of tax jurisdiction between states requires a special form of international legal regulation. It is emphasized that the global processes of the modern era have led to the creation of an international legal order on the mutual cooperation of states in tax matters.

Methods and methodologies. In the work, such methods as the analysis of articles of certain articles of legislative acts, a comparative analysis with foreign analogues in the field of taxation were widely used. It is noted that in this area of great importance is the mutual international legal cooperation of states and the expansion of activities to accept the problem of international tax law at the international level within the framework of international organizations.

Novelty in the article. In this article, a comparative analysis of some aspects of international law, laws and tax legislation of the Islamic Republic of Iran and related and mutual issues was carried out for the first time. Compatibility of various aspects of Iranian tax legislation with international tax law and the provision of international law and international treaties, including international tax treaties in the domestic legislation and the constitution of Iran, the possibility of conflict between domestic legislation and international treaties, and liability.

Conclusions. In the context of the analysis of legislative acts, the importance of international tax treaties and the comparison of the principles governing Iranian tax law with international tax law, as well as its application in the international procedures of Iranian tax law, were studied, and the necessary results were obtained. It is noted that various principles of taxation, including the legality of taxation, tax determination methods, tax incentives, the principle of internationality of tax legislation, the principle of mutual trade of international tax law, the principle of confidentiality of tax information. The principle of non-discrimination of taxpayers, etc. is analyzed.
МІЖНАРОДНЕ ПОДАТКОВЕ ПРАВО І ПОДАТКИ ЗАКОНОДАВСТВО ІРАНУ

Анотація. Мета цієї статті проаналізувати сучасну систему оподаткування держави, яка побудована на стимулюванні міжнародної торгівлі та залучає іноземний капітал у національну економіку. Зазначається, що розподіл податкової юрисдикції між державами потребує особливої форми міжнародно-правового регулювання. Наголошується, що глобальні процеси сучасної доби призвели до створення міжнародно-правового порядку про взаємне співробітництво держав у податкових питаннях.

Методи та методології. У роботі широко було використано такий методи, як аналіз статтею певних статтею законотворчих актів, порівняльний аналіз із зарубіжними аналогами в галузі оподаткування. Зазначається, що у цій сфері велике значення має взаємне міжнародно-правове співробітництво держав та розширення діяльності щодо ухвалення проблеми міжнародного податкового права на міжнародному рівні в рамках міжнародних організацій.

Новизна у статті. У цій статті було вперше проведено порівняльний аналіз деяких аспектів міжнародного права, закони та податкове законодавство Ісламської Республіки Іран та пов’язані з ним та взаємні питання. Сумісність різних аспектів податкового законодавства Ірану з міжнародним податковим правом та положенням міжнародного права та міжнародних договорів, включаючи міжнародні податкові договори у внутрішньому законодавстві та конституції Ірану, можливість конфлікту між внутрішнім законодавством та міжнародними договорами, а також відповідальність.

Висновки. У контексті аналізу законодавчих актів було вивчено важливість міжнародних податкових договорів та порівняння принципів, що регулюють податкове законодавство Ірану з міжнародним податковим правом, а також його застосування у міжнародних процедурах податкового законодавства Ірану, та отримано необхідні результати. Зазначається, різні принципи оподаткування, зокрема законність оподаткування, способи визначення податку, податкові пільги, принцип міжнародності податкового законодавства, принцип взаємної торгівлі міжнародного податкового права, принцип конфіденційності податкової інформації. Проаналізовано принцип недискримінації платників податків та ін.

Ключові слова: міжнародне право, міжнародне податкове право, міжнародний договір, податкове законодавство.
Problem statement. In the modern world, bilateral tax treaties represent international tax law based on two models (OECD and UN models). Indeed, the similarities between all bilateral tax treaties, all the rules embodied in them, have become part of international law and therefore can be bound by bilateral tax treaties in the absence of them. Today, most of international law is made up of international treaties, and since international treaties are one of the main sources of international law, this is also important for international tax law, so it is important for the author to examine international tax treaties and their implementation and international tax law. Bilateral agreements prevail, followed by regional treaty norms. Empirical economic studies show that the existence of a bilateral tax treaty between two developed countries does not significantly affect foreign direct investment; bilateral tax treaties concluded between developed countries mainly affect the sharing of income between the governments of the two countries. Similar studies conducted on tax treaties between developed and developing countries show that the existence of a bilateral tax treaty has a significant positive effect on the flow of foreign direct investment to a developing country. These studies support the argument that tax treaties increase investor confidence in the stability of investment in developing countries, and therefore, a developing country can foreclose some tax revenue from tax treaties; it probably benefits in the end from increased foreign direct investment. International tax treaties have developed at many points since the 1920s. The more precisely these issues are regulated, the more important is the arrival of foreign investments and investment in the states. Taxes should not become a yoke for those who pay them, but should act as an incentive for the development of the national economy. The tax policy of the state should lead to the formation of a favorable tax environment in the country and the promotion of investments. The regulation of the tax issue was not only an economic issue of the states, but also the establishment and development of social security, employment, business, investment environment and, ultimately, a political-legal problem. Such an issue gains new importance in international relations. Modern states have established the system of taxation in such a way that it is possible to stimulate international trade and attract foreign capital. The sharing of taxing jurisdiction between states requires a special form of international legal regulation. Global processes of the modern era, economic and commercial integration have led to the international legal order on mutual cooperation of states in tax matters. In this field, the mutual international legal cooperation of the states, the expansion of activities within the framework of international organizations on the acceptance of the problem at the international level, the international tax law, the international obligations determined by it, of individual states, and accordingly, international agreements and tax legislation of the Islamic Republic of Iran are examined. The constant expansion of cooperation between states on tax issues, the adoption of international norms in this field, as well as the adoption of model tax treaty projects for states by international organizations have created the conclusion of the formation of a new field in international law,
namely international tax law. Although there are different and controversial positions among lawyers, the reality of the modern era is that international tax treaties have been adopted in many areas and this area continues to expand. All the issues we mentioned show how relevant this article is.

Analysis of recent research and publications. About conducting similar studies on the topic, the author applied to the information and scientific research center of the Ministry of Science, Research and Technology of the Islamic Republic of Iran and observed the list of conducted studies, and only one study was published by Mohsun Babakhani, a master of the faculty of law and political sciences of Tehran University in 1997, in 134 pages "In Iran conducted his master's thesis on the topic of "double taxation" and he investigated the promotion of foreign investment from the tax point of view in the article, and almost no researches were conducted on international tax law and Iran's tax legislation.

The purpose of this article is to analyze the modern state taxation system, which is built on stimulating international trade and attracting foreign capital to the national economy.

Statement of basic materials. INTERNATIONAL TAX LAW. Iran's constitution does not directly say anything about the validity of international law and its relationship with domestic laws. Since the validity of international law depends on the basis and content of the agreement, the validity of the agreement is discussed in Iran and in fact the agreement itself is evaluated (Shabani, Qasim. 2016: 219). It is true that Iran's constitution does not state a clear position on the evaluation and validity of international agreements, but in Article 9 of the Civil Law there is a statement that "agreements concluded between other countries and Iran have the status of law" (Mansor, Jahangir. 2015: 38). From the analysis of that statement, it can be concluded that: Iran's constitution takes precedence over international agreements. Because Article 9 of the Civil Law states that an international treaty has the status of common law and the constitution is superior to common law, the constitution takes precedence over international treaties within Iran, and the constitution prevails if there is a conflict between the content of the international treaty and the constitution. Thus, we observe that in Iran, unlike many countries, the international agreement is not considered a supreme law, but a common law (Ranjbari, Abulfazl and Ali Badamchi. 2014: 56). However, according to Article 2 of the United States Constitution, an international treaty is considered the supreme law. However, this is not the case for all international agreements. Agreements on matters of general interest of the international community or erga omnes obligations are treaties with constitutional status (Rashid, Ahmad. 2014: 85). For example, the superiority of the United Nations Charter over Iranian customary laws is unconditional. The situation of the United Nations Charter in international agreements in which Iran is a party is completely different. According to Article 103 of the Charter, "when there are conflicts between the agreements of the United Nations member countries based on previous treaties and the agreements based on
the principles of the Charter, the principles of the Charter shall prevail." How can there be a relationship between the charter and Iranian laws in the Iranian constitution, where the superiority of treaties is not discussed? According to Article 9 of the Civil Law, international agreements are at the level of common law. However, the special advantage of this international agreement is mentioned in the charter. Summarizing this advantage in relation to Iranian laws, it can be said that when there is a conflict between the principles of the charter and the laws of Iran, the requirements of the charter should be preferred. The main reason for this is that the charter is a universal international agreement on ensuring international security and has its own status, that is, the charter has the status of supreme law. However, the charter is not superior to the constitution.

International agreements are at the level of customary laws of Iran (Momtaz, Jamshid and Amir Hossein Ranjbarian. 2014: 183). As it can be seen, in paragraph 9 of the Civil Law, the international agreement is considered equal to the common law, and the attitude that applies to the common law is also applied to the international treaties. Taking these into account, it can be said that if there is a conflict between the law and the international agreement, the principles of solving the conflict between the ordinary laws will be solved in the main.

In addition to the above, it should be noted that according to the 72nd principle of the Iranian constitution, "the national assembly cannot approve laws that are against the official religion of the country or the constitution." For example, the international credit agreement based on the interest system will not be recognized because it is not accepted by the principles of Islamic law, which prohibits usury. According to the 96th principle of the constitution, "the members of the constitutional control council must determine whether the laws approved by the national assembly are in accordance with the principles of Islam and the constitution" (Mansor, Jahangir. 2016: 81). Therefore, religious principles and unconstitutional laws are repealed, and this matter falls within the jurisdiction of the supervisory board as stated. Of course, it can be concluded that taking the international agreement equal to the ordinary law is only an internal matter of Iran, and it is important in internal relations and domestic courts. From the point of view of international law, it cannot be justified to equate international treaty with customary law. Therefore, the Iranian state will face a serious problem at the international level if the legislative body passes a law that invalidates the previous agreement.

The most important issue is that Article 168 of the Law on Direct Taxes states that "the state may enter into tax treaties for the prevention of double taxation and the exchange of information and on the income and property of the payers and shall implement them after approval by the parliament. The article instructs that "the state should examine the previous treaties and agreements within one year from the date of entry into force of this law (20.03.2016) and report its opinion on their continuation or cancellation to the Islamic Shura Majlis." This report is due by
19.03.2017. should be given. But it was not given until 19.04.2017 (the date of investigation). However, suppose that when the explained report is given on the basis of that article, the cancellation of one or more tax agreements is requested and approved in the assembly, then the responsibility of the Iranian state may arise at the international level.

Taking into account the principle of pacta sunt servanda mentioned by Professor Aliyev, that is, treaties must be observed (Aliyev, A.I. 2009: 35) and due to the fact that in most countries, especially in developed countries, treaties are superseded by laws approved by the parliament, and on the law of treaties 1969-

According to Article 27 of the Vienna Convention, "a party to a contract may not invoke its domestic law to prevent the contract from being performed"; as well as, according to Article 42 of the Convention, "The annulment or repudiation of a contract or the exclusion of a party from it shall be based only on the provisions of that contract". Taking these into account, it can be concluded that according to Articles 27 and 42 of the 1969 Vienna Convention on the Law of Treaties and the principle of pacta sunt servanda in advanced countries, treaties should be preferred to laws, especially Article 27 should not be forgotten. According to this article, a state that is a party to an international agreement cannot refer to a conflicting aspect of domestic legal norms in order not to fulfill its international obligation. Therefore, this part of the law under consideration (direct taxes law) should be canceled even though it is a new law.

The advantage of the contract is applied in the constitution and the political, economic, social, legal, etc. of the state. issues of interest are based on Iran's partnership with other countries in a more effective form. In modern times, in the process of preparing, accepting or joining an international agreement, states reveal their national interests in advance. In this case, the international agreement becomes part of the legal system of the participating state. An agreement concluded with any threat or deception is invalid according to both the UN Charter (art. 2) and the Vienna Convention on the Law of Treaties (art. 53) (Shabrang, Muhammad. 2012: 214). In this sense, secret agreements are not considered law. It is logical to understand that secret agreements cannot be approved by the national assembly based on Article 77 of the constitution. Therefore, those laws cannot be considered law as long as they keep their secrecy and do not become ordinary law. Of course, after the 14-point Wilson declaration, the principle of "open policy" gained international status and value. In this regard, opinions were expressed in the United Nations about the openness of laws and registration in a normal form, and after approval, the number of secret agreements decreased significantly (Kemalan, Sayyid Mehdi. 2013: 424-425).

Treaties concluded without the intervention of the National Assembly are legally invalid. Some international agreements and treaties and cooperation agreements, declarations, etc. is in the form Agreements of this type are generally agreed and decided by the executive without the intervention of the legislature.
According to paragraph 9 of the Civil Law, these agreements do not have the status of law, and the 77th principle of the Constitution states that "international agreements, treaties and agreements must be approved by the national assembly" (Mostaghimi, Bahram and Masud Taromsari. 2016: 32-33).

The interaction of domestic law with international agreements to which Iran is a party requires improvement in several directions. In this regard, the superiority of the interstate agreements to which the Iranian state is a party should be recognized in the Constitution, except for the general principles of the constitution and Islamic law. Practically, this issue is expressed in the Constitution of the Republic of Azerbaijan (Article 151). Then, the place of Iran's international treaties, the basis of their recognition as part of Iran's legal system, should be mentioned in the Basic Law. After that, in separate laws, as well as tax, finance, foreign investments, etc. and their status should be strengthened. Since this rule creates certainty for foreign partners, it will attract their investments, increase Iran's economic potential, increase employment, etc. would have created conditions for solving the issues.

Creation of favorable conditions for exchange of ideas. The signing and existence of financial and tax agreements creates conditions for interaction and exchange of ideas between the financial and tax managers and institutions of the two governments. In this way, mutual trust is created between the two governments, and in case of problems related to financial and tax activities or any other discussions, those disputes will be resolved by consensus. Prevents double taxation and tax evasion. Another positive aspect of the implementation of tax treaties is the prevention of double taxation and prevention of tax evasion by using the administrative and judicial capabilities of the government. If there is an agreement between two governments, if the citizens of the two countries refuse to pay taxes in the country in which they operate or transfer their capital to their own country or to another country by resorting to illegal means, according to the agreement, the person in question will be forced to pay taxes and the illegally withdrawn capital will be returned to the agreed country (Ibrahiminijad, Mehdi. 2005: 110).

TAX LEGISLATION OF IRAN. With the discovery and emergence of methods and rules that dominate any field of science, the human mind faced a regular system. Because, in order to have a scientific and technical understanding of the regular system and science, we must fully recognize the methods and rules that dominate it (Moqtadir, Hushang. 2015: 116). In other words, as much as we know these methods and rules, as well as their precise and regular connection with each other, we will have coverage of the mentioned field of science. Tax theory emphasizes two groups of tax reform principles. The first group includes the classical principles of taxation. The second group includes principles that, when tax reforms are carried out in a particular country, take into account the specific characteristics of that country. This case should be accepted for the domestic tax laws of Iran, where international tax laws are applied. In order to know the level of compliance of Iranian laws with international tax laws and the level of
implementation of international tax treaties supported by Iran, it is necessary to compare Iran's tax laws with tax principles, especially the principles of international tax law. The principles of international tax law organize intergovernmental cooperation with the aim of creating the necessary conditions for the collection of favorable taxes for the participants of these relations. The principle of tax sovereignty is the unconditional recognition by the subjects of international tax relations of the right of governments to levy and collect taxes from individuals and organizations within their territorial borders. Article 5 of the 1979 Madrid Convention for the Avoidance of Double Taxation of Royalties states that measures against double taxation of royalties are subject to the tax authority of both the State of origin and the State of residence.

The constitution of the Islamic Republic of Iran insists at the end of Article 107 in order to state the position of non-discrimination between individuals and the belief in their equality before the law: "The leader is equal to other individuals of the country before the law" (Khosravi, H.Ş. 2010: 43-52).

The principle of confidentiality of tax information is a particularly important norm of tax legislation. The tax payment limit of the payer is not possible without a proper investigation of his income and expenses. According to Article 229 of the Law on Direct Taxes, those who passed the Law are obliged to provide the tax authorities with notebooks, documents, etc. allows searching. However, this information may be important to its economic competitors and, on the contrary, its disclosure may cause irreparable injury to the payer. Trade secrets must be protected without a court order. Due to the above-mentioned issue, tax officials should keep confidential the information obtained as a result of searching notebooks and documents. Article 26.1 of the agreement concluded with the Republic of Azerbaijan states that the competent authorities of the contracting states shall exchange information necessary for the implementation of the provisions of this agreement or their domestic legislation on taxes to which this Agreement is applied, provided that the taxation provided for in those legislations is contrary to this Agreement. The exchange of information is not limited to Articles 1 and 2. Any information obtained by a Contracting State shall be treated as confidential under the same rules applicable to information obtained under the domestic law of that State, and shall be deemed confidential only for the purpose of calculating or collecting, collecting, enforcing or prosecuting taxes to which the Agreement applies, or handling complaints related to such taxes, disclosed to persons or bodies dealing with, including courts and administrative bodies. Such persons or bodies shall use such information only for such purposes. They may disclose this information in public hearings or court orders.

Iran has laws preventing the disclosure of commercial information of businessmen and taxpayers: the Law on Investigating and Resolving Administrative Misconduct of Civil Servants, approved by the Iranian parliament in 2013, recognizes and punishes disclosure of secrets by employees in question (Tavakkoli,
Ahmed. 2013: 195). Also, in Article 8 of the law approved in 1959, we see a confidentiality clause regarding the list of property and assets of public officials and ministers, which states that anyone who discloses such information without special permission will be punished according to the law. Article 232 of the Law "On Direct Taxes" states: Tax officers and auditors must keep confidential the information obtained from taxpayers and must not disclose such information. If they act against the confidentiality of information and disclose that information, they will be punished according to the Islamic Criminal Code (Khosravi, H. Sh. 2017: 112-123).

The non-disclosure of the said wealth list is related to the cabinet and is highly controversial. Their wealth should not be kept secret when they are considered to be de facto government employees. By the way, the list of their wealth and wealth compared to other people should be made public. Keeping the list of their wealth secret during their time in power does not exclude their corruption. Business secrets of non-political individuals can be kept confidential to prevent abuse by rivals, but disclosure of information about the wealth of governments must be timely and accurate. The rights, gifts and privileges of public officials should be explained to the members of society. Advanced countries are leading the way in preventing discrimination and financial corruption in disclosing the income and wealth of powerful public officials. The European Court of Human Rights has repeatedly rejected the privacy of the lives of public figures. Therefore, we believe that the restriction of Article 8 of the mentioned law should be changed and removed.

General topics of international tax law are naturally related to topics of tax law. In general, it should be noted that the international world does not observe a situation that accepts or rejects the tax law. Therefore, the creation of international tax law is carried out on the basis of international agreements. These agreements between governments on tax matters are many and varied, and because of the problems with tax matters, the creation of an international tax treaty is difficult. Therefore, these international agreements, whether bilateral or multilateral, reflect the content and issues of the tax laws of the contracting countries. Those treaties are expressed in two special and general titles. Various international agreements are concluded under the name of solving specific tax issues. Those agreements do not discuss the general issues of the tax system, but make necessary decisions regarding the implementation details of specific taxes (Gharabaghyan, Murtaza. 2011: 61). Implementation and application of relevant tax treaties may be effective in international relations or international situations. These rulings are a type of special rulings in the form of tax treaties that affect the status of international tax law. Various international tax treaties are concluded under the general title. Personal tax issues, particularly income tax, create issues that cannot be resolved under domestic law. These issues, including double taxation and tax evasion, cannot be resolved by general international law (Safdari, Muhammad. 2015: 41). It should be remembered that the League of Nations made efforts after 1925 and it can be said that it is the origin of today's globalized various tax treaties in the field of prevention of double
taxation, prevention of financial and tax evasion between countries. It is hoped that a general agreement will be signed. Because projects (bilateral agreements) were formed at the October 1928 conference with the participation of 27 countries. Since it is not possible for governments to adopt only one tax law, they jointly conclude special agreements to prevent double taxation and prevent tax evasion (Sadiqi, Mohsen. 2016: 23). Tax evasion occurs when a taxpayer refuses to pay taxes by submitting illegal documents for tax assessment in another country with a low or zero tax rate. In such a case, the tax authority of the respective country compels the taxpayer to pay the taxes by tracking the taxable goods and services and determining the place of realization of the income. Such a fight against tax violations can prevent tax evasion. But when international rules cooperate to succeed in this matter, domestic laws will have the necessary efficiency. Tax evasion occurs when the taxpayer ignores the tax imposed by the tax authority and refuses to pay the tax (Shiravi, Abdulhuseyn. 2016: 116). In this case, a special system of cooperation between governments at the international level can solve or minimize the problem. This important tax goal can be achieved by coordination between governments and specialized tax organizations and political, managerial and administrative authorities (Khosravi, H. Sh. 2020: 43-45).

Conclusion. According to the domestic laws of Iran, international agreements are considered ordinary laws, like other laws approved by the Iranian parliament. International agreements are at the level of ordinary laws of Iran. As it can be seen, in paragraph 9 of the Civil Law, the international agreement is considered equal to the common law, and the relationship that applies to the common law is also applied to the international treaties. Taking these into account, it can be said that if there is a conflict between the law and the international agreement, the principles of resolving the conflict between the ordinary domestic laws will be basically resolved. Of course, taking the international agreement equal to the ordinary law is only an internal matter of Iran, it is important in internal relations and domestic courts. From the point of view of international law, it cannot be justified to equate international treaty with customary law. Therefore, the Iranian state will feel the main problem at the international level if the legislative body passes the law that invalidates the previous agreement. In order to collect the required taxes, it is possible to determine the amount of people's income by obtaining the necessary information from their financial transactions, that is, it is necessary to provide information to the tax authorities. In connection with the above-mentioned cases, the tax officials of the competent authority should not disclose the information they have obtained. In Iran, some rules have been adopted regarding the non-disclosure of information: In the Law on Administrative Offenses (approved in 2013), the disclosure of administrative secrets is considered an administrative offense and an administrative penalty is provided. According to Article 8 of the law of 10 March 1959 on the assets of public officials and ministers, the list of assets is confidential and those who publish it before a decision is made are punished according to the criminal law.
Article 232 of the Law on Direct Taxes states that "auditing tax officials shall consider the information they obtain while inspecting the tax affairs of the payer confidential and should refrain from disclosing it. If they disclose, they will be punished by the Islamic criminal law." It can be considered controversial to consider the list of wealth, which is said to be only about the wealth of government officials and ministers, to be a secret. When these employees are in the public service, it is unacceptable to keep their wealth secret. It is possible to keep the list of assets secret until he comes to that position. Keeping the list of their wealth secret when they are in power does not exclude cases of corruption on their part. Since trade secrets are related to non-powerful individuals, state bureaucrats must be exposed to full transparency in their power activities. Their salaries, gifts and privileges should be open to everyone. The anti-corruption experience of developed countries also proves this. The European Court of Human Rights repeatedly in this matter, the head of state and d. did not accept that the lives of officials should be a secret. We believe that the issue related to state officials in Article 8 of the mentioned Law should be abolished.

Conclusions. Iran's tax legislation system needs to be improved in a more serious way. For example, the expression of tax legislative acts expressed in different acts in one legislative document or Code can provide legal certainty in a simpler way for both residents. Different legislative acts cannot but negatively affect foreign investors and their investment due to their lack of knowledge of Iran's domestic legislation. As international tax treaties to which Iran is a party are important for foreign residents, these treaties should be considered as the source of Iranian tax legislation.

References:


