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The Role of International Agreements in Organising Tax Imposed on Intellectual Property Rights in Egypt, Palestine, and Jordan

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Abstract

Recognising the potential abundance of revenue and penetration of intellectual property as protected in various forms (copyrights, trademarks, patents, industrial designs, technical expertise, and trade secrets), into every aspect of society, states have endeavoured to regulate and protect these rights through national legislation and international agreements that emphasise the need to organise and protect these tax rights to support cooperation and integration among countries, as well as resolving international disputes on double taxation and combating tax evasion. This Article examines existing intellectual property legislation in Palestine, Jordan, and Egypt. Legislations in these three countries have agreed to subject to tax intellectual property revenues and activities, recognising them as one of the most important sources of state income. However, Palestinian legislation has not been clear in setting laws to deal with intellectual property revenues, contrary to counterparties in Egypt and Jordan.

Keywords

royalties – tax – intellectual property rights – Palestine – Arab world – Jordan – Egypt

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1 Introduction

Collaborative efforts in the modern era have played an active role in achieving international cooperation and tax regulation under collective and bilateral agreements by avoiding double taxation and preventing evasion among contracting States, as well as the division of sovereignty taxes on income and wealth covered by those agreements, or in some cases limiting them to any of the contracting States. These agreements are considered one of the most important sources of international tax law, as well as the internal law of the State which has legislative sovereignty over its territory.[1]

The United Nations (UN) has played a prominent role in establishing collective agreements, including the model agreements for the avoidance of double taxation on income and capital (Model double taxation on income and on capital) issued by the Organization for Economic Cooperation and Development (OECD) committee on fiscal affairs in 1977. The UN has also contributed to the establishment of a model agreement on the basic principles and rules of tax agreements between developing and developed countries, which was adopted in 1979 in compliance with Economic and Social Council Resolution Number 1541.[2]

International tax agreements continued to evolve in the framework of international tax cooperation to promote investment, free movement of money and persons among contracting countries, exchange of tax information to prevent tax evasion, equality in tax transactions among citizens of contracting countries, avoidance of double taxation, and mutual exemption of certain incomes from taxation.

Among the most prominent agreements in the Arab world is the agreement on the avoidance of double taxation and the prevention of evasion of taxes on income and capital among the Arab Economic Unity Council. The agreement is considered the first Arab-international model to avoid double taxation, and it is similar to the UN model of the basic principles of tax agreements

1 A. Abdel Mawla, *Tax and International Transactions with Special Tax Legislation* (Cairo: Al-Nahda al-ʿArabiya Publishing House, 1991), pp. 3-4.

2 H. Hasan, *The Most Important Aspects of Income Tax Disputes in Jordan*, Ph.D. Thesis, Faculty of Law, Cairo University, Cairo, 1996, pp. 270-271, defines international double taxation as: the imposition of two or more countries on the same money and the same person. Thus, the conditions to be met in international double taxation are: the unit of the tax and the person subject to it and the money to be taxed for the same period of time with the multiple tax authorities of more than one country. *Cf.* A. Saleh, *Regional Income in the Iraqi Law: A Comparative Study*, Ph.D. thesis, Faculty of Law, Cairo University, 1983, pp. 42-43.

between developed and developing countries, and the European Economic Cooperation Organization.[3]

Moreover, many bilateral agreements were concluded between Arab countries or between Arab and foreign countries. The bilateral agreements dealt mainly with the regulation of tax on intellectual property rights among the contracting countries by determining the criteria for taxation and inclusion in tax sovereignty, while simultaneously avoiding double taxation and combating evasion.

1.1 *Research Problem*

Globalisation, diversity of international economic activities, and the ease of transfer of people and money make it easier for countries to greatly increase revenue from tax imposed on various forms of intellectual property such as copyrights, trademarks, patents, industrial designs, technical expertise, and trade secrets. The relationship between intellectual property and the tax system is dependent on international tax legislation and the economic situation of each country. However, international tax legislation imposing tax on intellectual property is very diverse. This diversity may result from regional criteria on revenue inside the boundaries of the country and its sovereignty, and the nationality and residency of the tax payer. As a result, this diversity of international tax legislation may lead to implementation of national tax legislation beyond the boundaries of the country, and may eventually create international tax disputes.

This article reviews criteria used by the legislations of Palestine, Jordan, and Egypt to decide tax on income. Accordingly, we address the various forms of exploitation of intellectual property elements, in particular technology transfer contracts, technical knowledge, license contracts and joint ventures. We then discuss the impact of these actions on determining taxation and preventing evasion. We define the concept of royalties in international agreements and clarify related disputes in line with the economic situation of the country. We also differentiate between royalties from the exchange of services not shared by the country with others, and shares that are divided between the country of origin and the home country. Finally, we determine the right of the country of origin to impose tax, and the exceptions contained therein.

3 The Council of Arab Economic Unity Council Resolution No. 1069/ D66, dated 3 December 1997, approved this agreement. *Cf.* Arab Agreements and Investment Promotion issued by the Council of Arab Economic Unity, Cairo, 2003. *Cf.* Abdel Mawla, *supra* note 1 at 3 *et seq*.

1.2 *Road Map*

Section 1 addresses bilateral agreements and in particular Arab tax legislation on income in Palestine, Jordan and Egypt. Section 2 examines criteria utilised by governments to impose tax on income (nationality, residence, and economic dependence). Section 3 defines the concept of royalties in international agreements. Section 4 addresses various forms of intellectual property, such as technology transfer contracts, technical knowledge, license contracts, and joint ventures. And finally, Section 5 discuses royalty-related tax disputes.

2 Criteria Used to Impose Tax on Income

In their constitutional legislations all local Arab tax systems deal with the legality of taxes, stating that no tax or fee shall be imposed except by law, and no one shall be exempt from tax except by law. They also agree on the need to achieve justice and equity in taxation, taking into account the ability of taxpayers to pay.[4] However, these local tax systems – while determining the tax sovereignty of income tax, avoidance of double taxation, and the prevention of evasion – are influenced by standards of international tax law through the adoption one or more of the following criteria:

1. political dependence (nationality);
2. social dependency (residency); and
3. economic dependence (regionality, *i.e.*, the area where the activity occurred or the income was earned).

2.1 *Political Dependence* (*Nationality*)

Political dependence is defined as the sovereignty of a country over its nationals and its financial resources, located both inside and outside its territory. The adoption of this criterion by tax systems as a single criterion should eliminate double taxation. However, adoption of this criterion outside its territories by applying it to its nationals residing abroad would violate the sovereignty of other countries. Countries also differ when it comes to the imposition of

4 Art. 88 of the Palestinian Basic Law, which states that: 'the imposition and amendment of public taxes and fees shall be by law only and no one shall be exempted from performing all or part of them except in the cases set out in the law'. *Cf.* Art. 111 of the Jordanian Constitution came into force in 1952, published in the *Official Gazette* of Jordan, No. 1093 dated 8 January 1952, and Art. 119 of the Egyptian Constitution in 1971. See also: J. Khasawneh, *Public Finance and Tax Legislation and Applications. A Process in Accordance with the Jordanian Legislation* (Amman: Dār Wael Publishing, 1999/2000), pp. 283 *et seq*.

taxes.[5] Thus, the application of this criterion would be only possible under international agreement to avoid double taxation and tax collection from those charged with its provisions.

2.2 *Social Dependency* (*Residence*)

Social dependency is classified into two types: natural persons and legal persons.

2.2.1 Natural Person

A natural person is a person who chooses a country as his place of residence intending to remain there permanently, also known as a physical resident. This criterion has been adopted for imposing income tax in many countries, including Egypt, France, the United Kingdom and the United States.[6] For example, Egyptian income tax law states that foreigners normally resident in Egypt are subject to income tax on the transferred values resulting from Egyptian or foreign companies operating outside Egypt.[7] The comparative tax legislation did not limit this criterion to the imposition of income tax, but added the criteria of nationality and territoriality to it.

However, this standard was not adopted in Jordan and Palestine as a general term for imposing income tax. Instead, an exception was applied to the income of the resident person from any external source as long as it is raised from funds and deposits within the country, in accordance with the criterion of nationality of capital.[8] A natural person is considered to be resident in Palestine if one of the following conditions exists:[9]

1. a Palestinian who is resident in Palestine for at least 120 days during the year in which the activity is carried out;
2. a Palestinian employee or an employee of the Palestinian Authority or any local authority inside or outside Palestine during any period of the year; and

5 Khasawneh, *ibid*.,; see also Saleh, *supra* note 2.
6 Saleh, *ibid.*, at 42-43; see also: Abdel Mawla, *supra* note 1 at 3 *et seq*.
7 Art. 1, paragraphs 2, 4 and 5 of the Egyptian Income Tax Law No. 157/1981, published at http://www.incometax.gov.eg/low-157.asp; see also Saleh, *ibid*.
8 Art. 3/C of the Jordanian Income Tax Law No. 34/2014 published in the *Official Gazette* No. 5320 on 30 December 2014, and Art. 7, paragraph 15, of Decree Law No. 8/2011 regarding the Palestinian income tax, published in a special issue in the *Palestinian Chronicle*, 24 October 2011.
9 *Ibid.*, Art. 1 of the Decree Law No. 8/2011 regarding the Palestinian income tax; and Art. 1 of the Palestinian Income Tax Law No. 17/2004, published in the *Palestinian Chronicle* No. 53 in February 2005.

3. a foreigner who lived in Palestine during the year in which the income is earned for a period of not less than 183 days, whether the residence is connected or intermittent.

In Jordan, natural persons – whether Jordanian or foreign – shall be deemed to be resident if they actually resided in Jordan for a period not less than 183 days during the taxation period, whether residence is continuous or intermittent. However, a Jordanian employee shall be deemed to be resident if they actually work for any amount of time during the taxation period for the Government, or any of the official institutions or public institutions inside or outside Jordan.[10]

The importance of residency for the natural person residing in Palestine or Jordan is reflected in the granting of personal, family, university donations, and other exemptions. A natural person who is not a resident is not granted any of these exemptions, unless the persons who are dependent on that person are residing in Jordan or Palestine and will benefit from these exemptions.[11]

However, when it comes to Egypt, a natural person is considered to be a citizen when one of these cases applies:

– if they have a permanent home in Egypt;
– if they reside within Egypt for more than 183 consecutive or interrupted days within 12 months; and
– Egyptians who perform duties abroad and receive income from the Egyptian treasury.[12]

2.2.2 Legal Persons

A legal person shall be deemed to be resident of Palestine if the centre of administration is in Palestine; this criterion was applied until 2010.[13] Art. 1(4) of the Palestinian Decree Law No. 8 of 2011 concerning income tax considers the legal entity to be a resident if it is registered in Palestine and has a centre or branch that exercised management and control over the work from 2011.

On the other hand, in Jordan, Art. 2 of Income Tax Law No. 34 of 2014 considers a legal entity to be a resident of Jordan if one of the following conditions is met:

10 Art. 2, Jordanian Income Tax Law No. 34/2014, *supra* note 8.

11 Art. 9/A,B, Jordanian Income Tax Law No. 34/2014, *supra* note 8; also Art. 12, Palestinian Income Tax Law No. 17/2004, *supra* note 9; Art. 12, Decree Law No. 8/2011 regarding the Palestinian income tax, *supra* note 8.

12 Art. 2, Egyptian Income Tax Law, No. 91/2005, published in the *Official Gazette* No. 23, on 9 June 2005.

13 Art. 2, Income Tax Law No. 25/1964, which was in effect in the West Bank for tax years 66/67 until 31 December 2004; and Art. 1, Palestinian Income Tax Law No. 17/2004, *supra* note 9, in effect since 2005.

1. it was established or registered in accordance with the provisions of the Jordanian legislation and had in the Kingdom a centre or branch that exercises management and control over its work therein; and
2. the centre of its principal or actual management is in the Kingdom, or in the ownership of the government, any of the public institutions, or public institutions for more than 50% of its capital.

However, in Egypt, a legal entity shall be deemed to be a resident:[14]

1. if it was established in accordance with Egyptian law;
2. if the centre of principal or actual administration is in Egypt; and
3. if in a company in which the State or a public legal person owns more than 50% of its capital.

It is clear that income tax legislation in both Jordan and Palestine did not adopt the criterion of residence for tax purposes. However, residence was taken into consideration to differentiate tax treatment in terms of exemptions and tax segments. All these legislations grant residents the right to enjoy exemptions provided by law, to apply progressive taxation, and to calculate tax on net income after production expenses and legal exemptions. Non-residents are not granted these benefits, which increases their tax burden.

2.3 *Economic Dependence* (*Regional*)

Countries using this criterion impose income tax on all activities, revenues and services arising inside their territory, regardless of the nationality of the owner or their place of residence. Accordingly, country's tax sovereignty is reflected through the application of its national legislations to all revenues generated in its territory as a source of income. This standard was adopted by successive Jordanian income tax laws[15] that state that: 'Any income in the Kingdom shall be taxable to any person who earns it regardless of the place of payment, including the following incomes: Income from business activity, interests, commissions, and royalties'.[16] In Art. 3(c) of the same law, the Jordanian legislator excluded the following taxes from the principle of territoriality:

14 Egyptian Income Tax Law, *supra* note 12.

15 Art. 3/A, Jordanian Income Tax Law No. 34/2014, *supra* note 8.

16 Art. 5, Jordanian Income Tax Law No. 25/1964, *supra* note 13, which governed the tax years 66/67 to 1981, states: 'Subject to the provisions of this law, the income tax shall be paid on the basis of the category or categories specified in the following for the assessment year that begins on the first day of April 1965 and each year of appreciation followed by the income that comes to any person in the Kingdom or earns them'. See also: Art. 3 in both the Jordanian Income Tax Law No. 34/1982 and the Jordanian Income Tax Law No. 57/1985 published in the *Official Gazette*, Issue No. 3343, on 1 October 1985, which stated that: 'taxable income that comes to any person in the Kingdom …'. See also: Art. 3/A of the Jordanian Income Tax Law No. 34/2014, *supra* note 8, which states: 'Any income which is

1. the net income earned by the resident from any source outside the Kingdom provided that it has been generated from funds and deposits from the Kingdom;
2. the total net income achieved by the branch of the Jordanian network operating abroad which is announced in its final financial statements and approved by an external legal accountant; and
3. the net income referred to in paragraphs 1 and 2 of this paragraph shall be regarded as taxable income and shall be taxed at the rate of 10%, the deduction of any amount or any part thereof shall not be allowed for any reason.

Prior to 2004, Jordanian Income Tax Law No. 25 of 1964 had been adopted and implemented in Palestine. The law adopted a regional income principle to subject the activity or income to tax.[17] After 2004, Palestinian Income Tax Law No. 17 of 2004 and its amendments, in accordance with Decree Law No. 8 of 2011 on income tax, was adopted and replaced the Jordanian Income Tax Law. The new law did not specify explicit criterion for subjecting income to tax, but provided a general rule that states: 'Unless the text of the exemption is in this decree law all incomes granted for any person from any source will be subject to the tax'. The intent of the legislator in Palestine was to expand the base of tax compliance to include regional standards, nationality and residency. However, tax authorities in Palestine still apply the principle of regional income or activity only in accordance with the old Income Tax Law No. 25 of 1964, in clear violation of the text of the actual law in force. Moreover, tax sovereignty over the Palestinian territories is ineficient, since the law is not applied to any foreigner performing an economic activity in Jerusalem or in the illegal settlements.

Nevertheless, the Egyptian Income Tax Law promulgated by Law No. 91 of 2005 adopted the principle of territoriality for taxing the income of natural persons. As for the tax on the profits of legal entities, the law adopted the residency standard for resident legal entities, and the regional standard for non-resident legal entities.[18] The tax legislations of both Palestine and Jordan

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derived in the Kingdom by any person or from which it is derived shall be taxed regardless of the place of payment'.

17 Art. 5, Jordanian Income Tax Law No. 25/1964, *supra* note 13.

18 Art. 6, Egyptian Income Tax Law, No. 91/2005, *supra* note 12, which states: 'An annual tax shall be imposed on the total net income of natural persons residing in Egypt and non-residents for their income earned in Egypt as well as non-commercial professions. Of the non-commercial occupations practiced by the financier independently, the main element of which is employment if they are paid. An annual tax shall be imposed on the net profits of legal persons regardless of their purpose. The tax applies to: 1. legal persons residing in Egypt in respect of all the profits that they earn either from Egypt or abroad,

have adopted a regional criterion of activity or income for tax purposes, and did not employ other criteria such as nationality and residence, thus leaving their tax sovereignty incomplete. In contrast, in addition to the territorial principle, Egyptian tax legislation adopted the residency principle, especially for legal entities.

3 Concept of Royalties on Tax Agreements

International agreements dealing with intellectual property rights call the outcome resulting from their use 'royalties'. Royalties are defined as

> the amounts paid for the use or the right to use the copyright of any literary, artistic or scientific work or any patent, trademark, design, model, plan, installation, secret methods, the use or right to use any industrial, commercial or scientific equipment or in exchange for information related to industrial, commercial or scientific experience.[19]

Many tax laws in Arab countries relate to royalties. According to these laws, royalties are defined as payments of any kind for the use or right to use the copyrights of any literary, artistic or scientific work including cinematography, as well as any patent, trademark, design, model, plan, composition, secret operation or for use or right to use equipment, industrial, commercial, scientific or information related to industrial, commercial or scientific experiments.[20]

Palestinian income tax legislation does not mention royalty specifically, and reads: 'Unless the provision for exemption is provided in this law, all incomes

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except for the National Service of the Ministry of Defense, and 2. non-resident juridical persons in respect of profits earned through a permanent establishment'.

19 The Arab Economic Unity Council Resolution No. 1090/ D18 dated 1 December 1998 has been ratified to date by Jordan, Sudan, Syria, Iraq, Libya, Egypt and Yemen. See Art. 12, item 2, of both the Avoidance of Double Taxation and Prevention, and the Avoidance of Taxes on Income and Capital between the States of the Arab Economic Unity Council. See also: the Convention on the avoidance of double taxation and the prevention of tax evasion of income and capital between the Arab Republic of Egypt and the Palestine Liberation Organization (PLO) in favour of the Palestinian Authority, and signed in Gaza City on 28 April 2004, available at: http://www.incometax.gov.eg/pdf/treaties-ex/en/palstin.pdf.

20 Art. 1, Egyptian Income Tax Law No. 91/2005, *supra* note 9; *cf.* Art. 2, Jordanian Temporary Income Tax Law No. 28/2009, available at: http://www.istd.gov.jo/AttachedArabic/IncomeTaxLaw2.pdf.

accruing to any person from any source shall be taxable'.[21] This is considered a gross deficiency in Palestinian tax legislation which needs be addressed as soon as possible. In the absence of international tax conventions, the definition of royalty included in national tax legislation comes into force. Where national legislation does not include the definition of royalty, it will fall to other non-tax legislation, such as civil and commercial law, to determine that concept. Clarity of tax legislation is key to avoiding uncertainty and tax evasion, and leads to the commitment and stability of taxpayers, and the preservation of the rights of the state treasury.

The definitions of royalty contained in the Arab conventions or national legislations mentioned above were taken from the definition of the OECD and the UN Conventions. These definitions include all revenue paid for the use or right to use:

1. literary, scientific and artistic copyright;
2. trademarks and patents;
3. scientific, industrial and commercial equipment; and
4. all information related to commercial, industrial and scientific expertise.

Although most Arab and foreign tax conventions adopt the said definition of royalty, some add to it the sale of property rights, whether literary, industrial, technical or commercial. In this case, the waiver of the sale of the said rights is considered as capital gains that are taxed in this description in the countries that differentiate tax treatment between capital gains and other revenues and activities.[22]

The question remains with regard to contracts that include the elements of rent and sale. Are the tax provisions related to royalties or sale therefore considered to be capital gains, despite the fact that international agreements consider rent exchange a royalty? To answer this question, it is necessary to determine the most prevalent element in these contracts. If it is found that the provisions of the lease agreement prevail like the lease sale, for example: 'which allows the contractor to own what is rented during the term of the lease or upon its expiry', the royalty will be opposed on the exchange. However, when it comes to sale by instalment, the exchange is not considered as royalty. In cases where some international agreements have excluded the leases

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21 The Palestinian Income Tax Law No. 17/2004, *supra* note 9; Decree Law No. 8/2011 regarding the Palestinian income tax, *supra* note 8.

22 Abdel Mawla, *supra* note 1 at 139-140. Art. 13/A of the Egyptian–American Treaty defined the second item in addition to the definition of royalties as 'profits derived from the sale or exchange or any other action in any money or rights of such as long as the amounts earned against this sale or exchange or other behaviour depends on the productivity or use or disposition of these funds or rights'.

of rights mentioned in the definition of royalties, the provisions relating to revenue arising from the services are applied.[23]

4 Various Forms for using Intellectual Property (Royalties)

The means of transferring intellectual property vary, especially the transfer of technology to knowledge. For example, private contracts for technical knowledge transfer take various forms, such as administration contract, license contract, contract for the provision of technical knowledge, or contract for the establishment of joint ventures.[24] This can be explained as follows below.

4.1 *Administration Contract*

The administration contract is based on training workers and providing the necessary technical assistance. This contract is considered a contract of service provision, and payment in exchange of training would not be considered a royalty.

4.2 *License Contract*

A license contract is based on transferring and developing international technology at national level. It is also considered a legal act whereby the owner of the patent authorises another person to use the right to exploit the invention in exchange for a certain payment.[25] It is agreed in this contract that the owner of the industrial property completely waives the license to the licensee, or waives his right to use that license. In these two cases different rules apply. In the first case, all the rights of the owner of the industrial property are transferred to the licensee. The licensee shall enjoy all the rights derived from this license as the right of use or sale and protection from any violation. The waiver is considered a sale, and the money received for the license shall be deemed capital income. On the other hand, in the second case where the license contract contains clauses in which the right to use a trademark, design or patent for a certain period is waived, the payment in this case is considered a royalty.[26]

23 *Ibid.*, Abdel Mawla, p. 141.

24 *Ibid.*, p. 141 *et seq*; see also: N. al-Mawla, *The Legal Effects of Technology Transfer Contracts* (Amman: Dār Wael, 2003), p. 15 *et seq*; A. Jabbour, *Licensing Contract: Comparative Study, International Scientific House for Publishing and Distribution* (Amman: Dār al-Thaqafa for Publishing and Distribution, 2003), pp. 20 *et seq*.

25 Jabbour, *ibid.*, p. 17.

26 *Ibid.*, p. 20 *et seq.*; see also: Abdel Mawla, *supra* note 1 at 141 *et seq.*; Al-Mawla, *supra* note 24 at 15 *et seq*.

4.3 *Contract for the Provision of Technical Knowledge*

Technical knowledge includes various manufacturing methods, including the expertise and knowledge acquired in an industrial field, and the application of different arts in the various fields of production, which have not been disclosed. Technical knowledge does not have the same legal protection given to patents because it is not registered and has not been declared. Nevertheless, court precedents have protected them in many rulings when considered acts of infringement, as theft of productive art, unfair competition, or through the laws of trade secrets.[27]

4.4 *Contract for the Establishment of Joint Ventures*

In the contract regarding establishment of joint ventures, one of the parties is foreign and the other local, and covers the transfer of technical knowledge in a joint venture. However, if the project itself is considered a legal independent person of its constituents, the tax provisions on commercial profits would apply. On the other hand, if the project does not have independent legal personhood, it shall be taken as a company of persons, thus the foreign party shall be in the business via a stable facility that is subject to local tax.

5 Tax Disputes Related to Royalties

Section 5 covers the most important aspects of international tax disputes related to royalties, which are the following:

1. tax disputes arising from the determination of the value of royalties and distinguishing them from the amount for services, and indicating the importance of tax differentiation; and
2. tax disputes relating to the determination of tax sovereignty under the international conventions of any country of origin or of the home country in the imposition of a tax on royalties, or the sharing of that sovereignty between the two countries.

5.1 *Tax Disputes Arising from the Determination of the Value of the Royalty*

In order to comprehend tax disputes arising from royalties, the following issues should be considered.

27 Abdel Mawla, *ibid.*, p. 141 *et seq*, p. 15 *et seq.*; Jabbour, *ibid.*, p. 20 *et seq*.

5.1.1 Tax Disputes Arising from the Determination of the Value of the Royalty

These disputes usually arise when there are special relations between the transferor and the recipient of the technology. It may be agreed between both parties to declare only a portion of the amount to tax authorities, which adversely affects the tax due. In certain cases both parties agree to announce a greater amount to the authorities. These cases result when tax treatment differs between or among parties, or when the proportion of seizure from the source that is established by the tax legislation of contracting countries differs, or there are provisions for tax exemptions for royalties under those legislations or international agreements. Therefore, the person responsible for payment of the amount may deduct it from the burden of income related to their activity, which reduces their portion of tax.

Eventually this situation should be addressed by adopting an integrated information system for tax authorities to interact and cooperate with local and international entities, and to know the size of the market, competition, duration, and what is achieved by the beneficiary to determine and impose the corresponding taxes due on royalties in accordance with the truth and reality.

5.1.2 Distinction for Royalty in Exchange for Services

A distinction must be made between a royalty and an exchange for services, because tax treatment differs for both. The tax sovereignty of the taxation of royalties under international conventions tends in most cases to share this right between the country of origin and the home country, while the performance of services is entirely subject to the home country.[28]

The question that needs to be answered here though is this. If one country's project carries out technical services or geological research in another country that requires technical studies, is it considered an intellectual act? Or has it provided industrial expertis,e and therefore the return should be considered a royalty or service?

The answer to this question is that in the case of a valid international agreement explicitly stating that it is considered a royalty, the content of this provision must be adhered to.[29] However, if there is no express provision in that tax agreement, the solution lies in the examination and analysis of the contract

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28 The source officer shall be bound by a territorial principle of the source of income in which the activity is exercised, namely the domicile; the taxpayer of natural and legal persons residing in that State. *cf.* Abdel Mawla, *supra* note 1 at 12 *et seq*.

29 Art. 12.2 of Conventions on the Avoidance of Double Taxation and Prevention of Tax Evasion of Taxes and Capital Rules among the States of the Arab Economic Unity Council, *supra* note 19.

governing the parties. If this contract includes an obligation to transfer technical knowledge to another party, the corresponding amount is considered as royalty since it is a contract for technical knowledge. Otherwise the contract shall be the performance of the services.

5.2 *Tax Disputes Related to the Determination of the Tax Sovereignty of any State of Origin or Country of Origin*

The discussion of this issue includes knowledge of the rules laid down by the international treaties for the stay of the normal person, and the concept of permanent establishment. The preamble to these agreements contains the tax treaty between the States of the Arab Economic Unity Council, which states that:[30]

> Article 1
> For the purposes of this Convention, the term 'resident' of a Contracting State means any person who is subject to the laws and taxes of that State by virtue of his domicile, residence or place of administration or any other criterion of a similar nature might also mean. A person who is liable to tax in that State solely for the purpose of obtaining income acquired from sources in that State or possession of money in which it is situated is not considered a resident.
>
> Article 2
> In the case of a natural person considered in accordance with the provisions of the preceding Art. 1 who is a resident of more than one Contracting State, this case shall be dealt with in accordance with the following rules:
> (A) is considered a resident of a Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in more than one Contracting State, he shall be deemed to be a resident of the Contracting State in which the centre of his principal interests is situated (closer personal or economic relations);
> (B) in the absence of a permanent home available to him or in the event that it is not possible to identify a Contracting State in which the centre of his principal interest is situated in any Contracting

30 *Ibid.*, Art. 4; see also: Art. 4, Convention on the Avoidance of Double Taxation and Prevention of Tax Evasion on Income and Capital between Egypt and the PLO in 2004; Arab Economic Unity Council, *supra* note 19.

State, he shall be deemed to be a resident of the Contracting State in which he has a habitual residence.

(C) if he has a habitual residence in more than one State or has no habitual residence in any of them, he shall be deemed to be a resident of the State of which he is a national; and

(D) if he holds the nationality of more than one Contracting State, he shall be deemed to be a resident of the State in which he was born of a father of the same nationality.

Article 3
In the case of a person other than a normal person, who is a resident of more than one Contracting State, he shall be deemed to be a resident of the Contracting State of which he is a national and if he does not hold the nationality of any Contracting State or shall have the nationality of more than one State and shall be deemed to be a resident of the State in which he has his or her actual place of administration.

As for the permanent establishment, Art. 5 of the agreement of the Arab Economic Unity Council and the Egyptian-Palestinian Agreement dealt with the following:

Article 1: For the purposes of this Agreement, the term 'permanent establishment' means the fixed place in which the enterprise carries on all or part of its business; and

Article 2: The term 'permanent establishment' includes, in particular, the following:
– the place of administration;
– the branch;
– places used as outlets for sale;
– the office;
– the plant;
– workshop;
– the mine, the quarry, the oil field or any other place to extract natural resources;
– the farm or field;
– the site of construction, establishment, assembly project, equipment project or supervisory activities associated with any of them if such site, project or activity continues for a period exceeding a total of six months within a period of 12 months; and

– the provision of services including consultancy services provided by a project through employees or other individuals if such activities continue for a period exceeding a total of 6 months within a period of 12 months.

It is clear through the foregoing that the determination of the tax sovereignty in the taxation of the goods of any contracting state or the determination of such sovereignty between the state of origin and the home country, is closely related to the criterion of residence of the person, and the concept of permanent establishment. In the case of residence in more than one country, the person's nationality also adopts the regional standard in many activities.

As a result of the discrepancy in tax standards, whether between national tax legislation or between international tax conventions and the definition of tax sovereignty, this leads to double taxation, evasion and frequent tax disputes. Based on the above, we will address the meaning of the country of origin and its right to impose a tax on royalties and the exceptions thereto, and the right of the home country to impose a tax on royalties in four instances.

5.2.1 What Is Meant by the State of Origin?

The majority of bilateral tax agreements follow in the definition of the state of origin as contained in the United Nations Convention, which allows the state of origin alone to impose a tax on goods through seizure of the source. International conventions state:

> Royalties are deemed to have arisen in a Contracting State if the payer of the royalties is the State itself, one of its political divisions or a local authority or resident of that State. However, if the person who is the payer of the royalties, whether he is a resident or not, has a permanent establishment or a fixed base in which there is an actual connection with the right or property in respect of which the royalties arise, and such permanent establishment or fixed base bears the royalties, such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.[31]

31 *Ibid.*, Art. 4, Convention on the Avoidance of Double Taxation and Prevention of Tax Evasion from the Countries of the Arab Economic Unity Council; Article 4, Convention on the Avoidance of Double Taxation and Prevention of Tax Evasion on Income and Capital between Egypt and the PLO in 2004, See Arab Economic Unity Council, *supra* note 19; *Cf.* Abdel Mawla, *supra* note 1 at 150.

Accordingly, the state is a source of royalties:

1. if the state itself or one of its public institutions is a payer of such royalties;
2. such royalties have been paid by a resident of the state; and
3. it has been paid by a permanent establishment situated in the territory of the state and shall be borne by that enterprise without regard to the place of the person who owes the debt.

5.2.2 The Right of the State of Origin to Impose a Tax on Royalties

The Model Tax Conventions, including international treaties, differ on the right of the exporter country to subject the royalties to their taxes. The ECO Convention provides for the right of the home country only to impose the obligation on the royalties, while the UN Convention establishes this right for the state of origin to impose the tax on it.[32] However, if there are no tax agreements, the royalty is subject to national tax legislation if it is paid to any resident, and the method of booking from the source is applied if it is paid or owed to any non-resident, as provided for, where it states:[33]

1. Every person who is entitled to or paid an income that is not exempt from tax for a person who is not a resident directly or by mediation shall be entitled to deduct from this income on the date of maturity or payment, whichever is earlier, at the rate of 10% and should provide a copy of this statement.
2. By executive orders any deduction in accordance to the provisions of article (1) is considered a peremptory tax.

According to Palestinian law, '… a person who is in the event of paying any taxable amount under the provisions of this law to a non-resident must deduct 10% of the amount as a final tax for the department'.[34]

Whereas in Egypt the law states:

> The amounts paid by the owners of individual establishments and legal persons residing in Egypt and non-resident entities having a permanent establishment in Egypt shall be subject to tax at the rate of 20% without any deduction from them. These amounts include:

32 Abdel Mawla, *ibid.*

33 Art. 12/B (1+2), Jordanian Income Tax Law No. 34/2014, *supra* note 8.

34 Art. 31.2, Decree Law No. 8/2011 regarding tPalestinian income tax, *supra* note 8.

1. returns; and
2. royalties other than amounts abroad in return for the design or rights of knowledge of industrial service, and the Minister shall determine in agreement with the Minister concerned the industry cases where the rights of knowledge to serve the industry.[35]

In the event that the tax treaties provide for the right of the country of origin to impose a royalty tax by way of seizure from source, developed countries provide in those treaties the right of the state of origin to subject the royalties to their taxes. This is done through seizure from the source of a certain percentage, according to the treaty of the European Economic Cooperation and Development Council. This percentage varies from one treaty to another – under the Egyptian-British tax treaty, Art. 12/1, the deduction rate is 15%, while in the Egyptian–Moroccan tax treaty, Art. 12/1, the deduction rate is only 10%, thus resulting in tax evasion.[36]

It is rare for international tax conventions to exempt the royalty from taxation by the state of origin, unless it is contracted with Western countries affected by the agreement model of the European Economic Cooperation Organization. In such case it would be subject to the home country without being shared by the state of origin.

5.2.3 Exceptions to the Right of the State of Origin to Impose a Tax on Royalties

If the tax agreements between the Contracting States adopt the right of the state of origin to subject the royalties to tax, the following is often excluded from it:

1. The royalty payable to a beneficiary engaged in commercial, industrial or professional activity through a permanent establishment, provided that the right or property giving the royalties is absolutely linked to such establishment or fixed centre where the tax rules for commercial or industrial profits or rules relating to professional profits apply to them.[37]
2. The case of increased amount of royalty due to the existence of special relations. Where the agreements indicate that “if the amount of the royalty due to special relations between the payee and the beneficial owner or between each other and the other person in consideration of the use or the right to use or the information for which the royalty is paid exceeds

35 Art. 56/1+2, Egyptian Income Tax Law, No. 91/2005, *supra* note 12.
36 Abdel Mawla, *supra* note 1 at 153.
37 *Ibid.*, p. 155.

the amount agreed upon by the payer and the beneficial owner if this relationship is not found, the provisions of this article shall apply only to the last value. In such case, the excess part of the amount paid shall remain taxable according to the laws of each of the contracting states.[38]

5.2.4 The Right of the Home Country to Impose the Tax on Royalties

The home country has the permanent right to impose a tax on royalties without a ceiling, despite the existence of tax agreements which state in their provisions that the right to impose a tax on the state of origin shall be limited, provided that the home country undertakes to avoid any double taxation that may be subject to such royalty.

6 Conclusion

We found that national tax legislation differs in standards determining taxable income in terms of regionalisation, residence, and nationality. Some countries adopt one standard, others adopt two standards, and others adopt three standards. This can lead to double taxation, exhaustion of taxpayers, and tax evasion. These standards also vary within the international conventions themselves leading to the emergence of international tax disputes.

The adoption of unified standards in tax sovereignty, and international cooperation between countries, are essential to avoiding double taxation and tax evasion. Countries need to exchange information and tax expertise and develop appropriate, fair, and balanced solutions, especially among contracting countries when one party is economically and politically strong and the other is weak.

Finally, there is a need to harmonise national tax legislation in each country to avoid double taxation, supported by internal justice to prosecute evasion. In those international tax treaties contracting states treaties should provide for the obligation of each state to develop appropriate solutions to avoid tax duplication and prevent evasion. This article is an invitation to other researchers in the field to provide deeper insights into current legislation to aid policymakers throughout the revision process. Only this kind of shared understanding can ensure that we move toward more informed policy decisions.

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38 Art. 12/4, Convention on the Avoidance of Double Taxation and Prevention of Tax Evasion from the Countries of the Arab Economic Unity Council; Article 12/5, Convention on the Avoidance of Double Taxation and Prevention of Tax Evasion on Income and Capital between Egypt and the PLO; Arab Economic Unity Council, *supra* note 19.