



White Paper on Double Taxation: A Comparative Legal Analysis between Iraq and Western Tax Systems (EU, Germany, USA)

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- While the views expressed herein remain solely those of the authors, this partnership reflects a shared commitment between Salt & Associates and AHK Iraq to advancing transparent, predictable, and investor-friendly legal frameworks in Iraq.
- Preface: This white paper was developed following the Round Table on Double Taxation and Investment Climate in Iraq, hosted by AHK Iraq in collaboration with Salt & Associates. It forms part of the firm's ongoing policy initiative to enhance Iraq's legal and regulatory ecosystem for international investment.

A Comparative Legal Analysis between Iraq and Western Tax Systems (EU, Germany, USA)

INTRODUCTION

“Double taxation in Iraq is a solvable problem. With targeted reforms, Iraq can protect its fiscal sovereignty while making itself an attractive, predictable, and globally aligned destination for foreign investment.”

Abstract: This paper examines Iraq’s income-tax framework (Law No. 113 of 1982) through a comparative lens, measuring it against the legal and policy architectures of the European Union, Germany, and the United States. It identifies how Iraq’s reliance on nationality, residence, and source as concurrent nexus rules—combined with limited treaty coverage—exposes both inbound and outbound investors to unrelieved double taxation. Drawing on the OECD Model (2017, Arts. 23A–23B), the UN Model (2021, Art. 23), and EU directives (Parent–Subsidiary Directive 2011/96/EU (EU Directive 2011/96/EU); Interest & Royalties Directive 2003/49/EC), the study outlines reforms to introduce a statutory foreign-tax-credit regime, expand the DTA network with Western partners, replace the nationality nexus with a “place of effective management” test, and institutionalize mutual-agreement procedures and advance-ruling systems. The objective is to align Iraq with global tax-justice and neutrality standards while preserving fiscal sovereignty and attracting sustainable foreign investment.

Executive Summary

"Double taxation" occurs when two (or more) jurisdictions tax the same income of the same taxpayer with taxes of the exact nature for the same period. Beyond fiscal duplication, it raises fundamental questions of sovereignty, justice/equality, non-discrimination, neutrality, and legal certainty.

Western systems (notably the EU, Germany, and the United States) mitigate the problem through dense treaty networks, domestic relief mechanisms (exemptions/credits), and judicial constraints grounded in constitutional or supranational freedoms.

Iraq's framework ([Income Tax Law No. 113 of 1982](#)) relies on a rare combination of nationality, residence, and source, with limited treaty coverage, exposing inbound and outbound investors to unrelieved double taxation risks. Reforms aligning with OECD/UN models, EU-style coordination, and U.S.-level credits would materially improve certainty and investment attractiveness.

Foundations: Concepts, Conditions, and Legal Principles

Foundations

Defining “Double Taxation” (Juridical vs. Economic)

- Juridical double taxation: the same person is taxed by two states on the same income for the same period (e.g., resident-state worldwide tax and source-state tax).
- Economic double taxation: the same income is taxed in the hands of different taxpayers (e.g., company profits taxed, then dividends taxed at shareholder level).
- Core conditions for “double taxation” in the strict sense: same taxpayer, same subject (income), same tax, same period.
- The OECD Model and UN Model articulate shared aims: eliminate unrelieved double taxation and allocate taxing rights to prevent distortions in cross-border activity.

Legal Principles Engaged

- Sovereignty: Each state has primary competence to tax income within its jurisdiction; treaties are instruments by which states reallocate or restrain those rights. (See OECD Model purpose and commentary.)
- Justice & Equality: Double taxation without relief offends ability-to-pay and equality (e.g., Germany’s Grundgesetz Article 3 equality principle is a constitutional lodestar in tax jurisprudence).
- Non-discrimination & Fundamental Freedoms: In the EU, Articles 49 (establishment) and 63 (capital) TFEU constrain national tax rules that unduly hinder cross-border activity.
- Neutrality: The OECD and mainstream scholarship emphasize that taxation should not distort investment location, legal form, or financing decisions.
- Legal Certainty: Predictable, administrable rules and dispute-resolution mechanisms (MAP/arbitration) are essential to reduce controversy costs—hence the centrality of model conventions and their commentaries.

Foundations

Domestic vs. International Double Taxation

- **Domestic:** Overlaps between central and sub-central taxing powers (federal/state; central/regional). Legal systems typically prevent duplicate imposition on the same base (e.g., via specific relief or constitutional norms).
- **International:** Conflicts between residence (worldwide) and source (territorial) claims—precisely what OECD and UN models aim to coordinate (with the UN Model allowing greater source-country taxing rights for developing countries).

Iraq's Framework: Statutory Design, Reliefs, Gaps

Iraq's Framework

Iraqi Legislative Architecture (Income Tax Law No. 113 of 1982)

Iraqi Legislative Architecture (Income Tax Law No. 113 of 1982)

Article 5-core scope rule:

- **Iraqi resident:** taxed on income wherever arising.
- **Non-resident:** taxed on Iraqi-source income.
- **Foreign resident in Iraq:** foreign-source income excluded.

Iraq is unusual in retaining nationality as part of its tax logic for legal persons (companies), alongside residence and source. This is conceptually closer to the U.S. allegiance doctrine than to European practice.

Companies and Branches

Iraqi companies: corporate income [tax rate 15%](#) on profits; worldwide reach for Iraqi residents; some sectors subject to specific withholding assessments (e.g., logistics).

- **Branches of foreign companies:** taxed on Iraqi-source profits.
- **Oil sector:** a specific fiscal regime (e.g., Law No. 19 of 2010; withholding parameters per implementing instructions) that ring-fences sector economics; double-taxation relief generally depends on the counterparty state's law/treaty and the project contract's fiscal-stability language.
- **Practitioner note (Iraq):** Internal duplication risk has historically arisen from central—regional overlaps. The Ministry of Finance's order unifying withholding between the federal administration and the Kurdistan Region is a domestic "anti-duplication" step.

Domestic Relief Mechanisms

- **Article 7(2):** excludes real-estate income already subject to a property tax from being taxed again as income an intra-system anti-double-taxation rule.
- **Article 15:** credit-style relief for distributed profits to avoid taxing the same corporate earnings twice (company then shareholder).
- **Article 26:** partnership income computed once, then allocated to partners and aggregated with their other income; also empowers the tax authority to look through abusive or sham participations (targeting artificial arrangements that multiply relief).

Treaty Position and Exposure

- Iraq's ratified treaties remain limited relative to investment patterns (e.g., Egypt, Sudan, Tunisia, Yemen, UAE, Hungary, Arab Economic Unity framework). Absence of agreements with key Western partners (Germany, many EU states, USA) creates unrelieved double-taxation exposure for both directions of investment.
- **Consequence:** Multinationals often structure via treaty-connected platforms (e.g., UAE, Hungary) pending expansion of Iraq's DTA network. (Compare Germany's broad DTA coverage.)

Western Approaches: EU, Germany, and the United States

Western Approaches

The European Union: Supranational Constraints @ Secondary Law

Primary Law Freedoms.

- **Article 49** TFEU (freedom of establishment) and
- **Article 83** TFEU (free movement of capital) limits national measures that, in effect, double-burden cross-border income or discriminate against non-resident situations, unless justified and proportionate.
- **The CJEU's** case law polices the proportionality of anti-avoidance and relief restrictions (e.g., Cadbury Schweppes on CFC rules; FII Group Litigation on dividend tax asymmetries; De Groot on relief and personal allowances).

Secondary Law Harmonization.

- **Parent-Subsidiary Directive (2011/96/EU)**: aims to exempt cross-border dividends from withholding and to eliminate double taxation at the parent level (subject to anti-abuse).
- **Interest & Royalties Directive (2003/49/EC)**: removes source-state taxation on qualifying intra-group interest and royalty flows.
- **Council Directive 2011/96/EU, 2011.**
- **Council Directive 2003/49/EC of 3 June 2003**

Practical Effect

- **EU law curtails domestic** measures that deny loss relief or duplicate taxation without proportionate policy justification (post-Marks & Spencer trajectory; subsequent narrowing by later cases).
- **EU Takeaway:** In the Single Market, the combination of Treaty freedoms, CJEU jurisprudence, and harmonizing directives functions as a systemic ex ante shield against double taxation within the EU—something Iraq lacks and must replicate via DTAs + domestic relief.

Germany: Constitutional Equality, Robust DTAs, and Methodical Relief

- **Constitutional anchor:** Article 3 of the Grundgesetz (equality before the law) underpins a jurisprudence of tax justice; disproportionate, duplicative burdens raise equality concerns.
- **Treaty policy:** Germany maintains an extensive DTA network, with methodical publication and guidance by the Federal Ministry of Finance; relief is typically provided via the exemption method, with progression or credit, depending on the DTA and income type.
- **Method choices:** German practice uses an exemption for active business profits (PE) and credit for passive income, reducing juridical double taxation while preserving progressivity. Comparative commentary (IBFD) explains national per-country credit limitations and carryforward rules.

Western Approaches

Exemption vs Credit (Practitioner Lens)

- **Exemption method:** Resident state exempts foreign-source income (often with progression).
- **Credit method:** Resident state taxes worldwide income but grants credit for foreign tax, capped at domestic tax on that income.
- **Choice affects planning,** cash tax, and controversy profile; the exemption method eliminates juridical double taxation at its root, while credit preserves residence-state oversight.

United States: Allegiance Doctrine + Credits + Dense DTAs

- **Citizenship-based taxation:** The U.S. uniquely taxes citizens worldwide regardless of residence; the allegiance rationale was upheld in *Cook v. Tait* (1924) (265 U.S. 47).
- **Domestic relief:** The Foreign Tax Credit (IRC §901) mitigates double taxation by allowing foreign income taxes to offset U.S. tax liability (subject to limitations).
- **Corporate residence:** Defined by place of incorporation (not "effective management") for domestic-status purposes; aligns with formalism over functional tests.
- **DTA network:** Deep treaty coverage complements credits to reduce juridical duplication for multinational groups and investors.
- **Comparative Insight:** Iraq's retention of nationality as a corporate nexus resembles U.S. exceptionalism, but without the U.S. safety net (broad credits, rulings practice, treaty density). Consequently, the burden remains while the relief is thin.

Policy Implications & Recommendations Mitigating Double Taxation Risk for Foreign Entities in Iraq

Policy Implications & Recommendations

Foreign investors entering Iraq face heightened exposure to unrelieved double taxation due to Iraq's limited treaty network, nationality-based nexus rules, and rigid withholding practices. While comprehensive reform requires legislative and treaty action, investors can proactively mitigate risks through a combination of structural planning, compliance, and legal safeguards.

Treaty Planning and Jurisdictional Structuring

- **Use of Treaty-Friendly Jurisdictions:** Until Iraq expands its treaty coverage with Western states (EU, Germany, USA), investors often route capital and services through jurisdictions with ratified Iraqi DTAs (e.g., the UAE and Hungary). This allows relief at the holding-company level via exemption or credit mechanisms in the treaty partner.
- **Substance Requirements:** Withstand anti-abuse scrutiny under both Iraqi practice and foreign home jurisdictions (e.g., the EU's GAAR and the Principal Purpose Test), and intermediate entities must demonstrate real economic activity (board meetings, employees, local expenses).

Contractual Safeguards

- **Tax Gross-Up Clauses:** Foreign service providers and contractors should negotiate gross-up provisions in Iraqi contracts, ensuring net-of-tax payment obligations are preserved if Iraqi withholding exceeds anticipated levels.
- **Stabilization Clauses in Concessions:** In the oil and infrastructure sectors, investors should seek tax stabilization clauses (common in PSCs) that cap exposure or guarantee reimbursement/crediting of excess taxes.

Domestic Relief Mechanisms

- **Profit Distribution Credits (Article 15):** Ensure corporate distributions are documented so that taxes paid at the company level can be credited against shareholder-level liabilities.
- **Partnership Transparency (Article 26):** Structure joint ventures as partnerships where possible, so income is taxed once and then allocated transparently to partners.
- **Property/Real Estate Relief (Article 7(2)):** Confirm exclusion of property taxes already paid from income tax assessments to avoid duplication.

Policy Implications & Recommendations

Administrative Engagement

- **Tax Residency Certificates:** Obtain residency certificates from the General Commission for Taxes (GCT) to prove Iraqi-source taxation and facilitate credit claims in the home jurisdiction.
- **Mutual Agreement Procedure (MAP):** In treaty-covered cases, invoke MAP to resolve disputes of residence, permanent establishment (PE), or excessive withholding.
- **Advance Rulings:** Seek binding rulings on withholding rates, PE exposure, and deductibility where available; this reduces audit risk and provides certainty for cross-border flows.

Alignment with Home—Country Relief

- **Foreign Tax Credits:** Investors from the U.S. and Germany can utilize domestic FTC regimes (IRC §901; German per-country credit rules) to mitigate Iraqi tax exposure, but only where Iraq's tax qualifies as a creditable "income tax." Careful documentation of tax payments is essential.
- **Exemption Method:** For EU/German companies, where treaties apply, rely on the exemption-with-progression method to eliminate juridical double taxation on active business income.

For Iraq: Toward Neutrality, Certainty, and Alignment

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Introduce a General Foreign Tax Credit (FTC) Regime

- **Global Standard:** Both the U.S. and Germany allow residents to credit foreign taxes against domestic liability, capped at the domestic tax on that income.
- **For Iraq:** Amend the Income Tax Law to create a statutory FTC that applies where no treaty exists. This ensures that Iraqi multinationals (e.g., Iraqi banks and logistics firms expanding abroad) are not double-taxed when repatriating profits. It also signals to foreign investors that Iraq recognizes modern international relief standards.

Expand the Treaty Network with Priority Partners

- **Global Standard:** Germany has >90 DTAs; the U.S. has >60.
- **For Iraq:** Prioritize DTAs with Germany, Italy, France, the Netherlands, and the United States, because these countries are:

Significant sources of FDI in Iraq (energy, healthcare, infrastructure).

Home jurisdictions of Iraq's current and potential partners (GKSD in Italy, Samsung in Korea, Siemens in Germany, U.S. oil service companies).

Practical Effect: A DTA with Germany, for example, would eliminate double tax on dividends from Iraqi subsidiaries, encouraging German companies to localize operations instead of serving Iraq remotely.

Adopt "Effective Management" as Corporate Residence Test

- **Global Standard:** OECD/UN models and EU states apply the place of effective management (POEM) as the tiebreaker in dual-residence disputes.
- **For Iraq:** Replace the nationality test for companies in Article 5 with POEM. This prevents Iraqi-incorporated multinationals (e.g., Iraqi holding companies investing in Dubai or London) from being taxed on worldwide income simply due to Iraqi incorporation. It also aligns Iraq with treaty language, simplifying dispute resolution.

For Iraq: Toward Neutrality, Certainty, and Alignment

Institutionalize Mutual Agreement Procedures (MAP) and Arbitration

- **Global Standard:** DTAs (OECD/UN models) require MAP; OECD's Multilateral Instrument even promotes binding arbitration.
- **For Iraq:** Currently, investors in Iraq have no predictable mechanism for resolving disputes if they are subject to double taxation. By embedding MAP into DTAs and allowing arbitration, Iraq can reduce litigation risk and demonstrate its commitment to investor protection to international partners. This is especially relevant in oil/gas projects, where disputes often arise over permanent establishment (PE) status and withholding tax.

Strengthen Domestic Transparency and Rulings Practice

- **Global Standard:** EU states and the U.S. issue advance rulings (e.g., U.S. IRS private letter rulings, EU APA regimes).
- **For Iraq:** Create a binding advance ruling system within the General Commission for Taxes (GCT) on:
 - Withholding rates.
 - PE recognition.
 - Deductibility of intra-group payments (royalties, services).

This would reduce uncertainty for investors and lower the number of disputes, which currently deter companies from on-the-ground operations in Iraq.

Harmonize Federal—Regional Taxation (Baghdad & Kurdistan)

- **Global Standard:** Federal systems (Germany, U.S.) prevent duplicate federal/state or federal/Länder taxation on the same base.
- **For Iraq:** Codify into law the recent Ministry of Finance's practice of recognizing Kurdistan Region tax paid as creditable against federal liability. This prevents Iraqi and foreign companies from being taxed twice domestically and reduces arguments that Iraq is an unpredictable jurisdiction.

For Iraq: Toward Neutrality, Certainty, and Alignment

Leverage Investment Law Incentives as Treaty — Complementary

- **Global Standard:** Tax holidays are often paired with treaties so that investors don't lose benefits in their home country.
- **For Iraq:** Investment Law No. 13 of 2006 provides 10-year exemptions, but if no treaty exists, the home state (e.g., Germany, U.S.) may still tax those profits. Iraq should negotiate a treaty "tax sparing credits", ensuring the investor's home country recognizes Iraqi exemptions. This would make Iraq's tax holidays far more attractive to foreign investors.

Training & International Engagement

- **Global Standard:** OECD, UN, and IMF provide tax-administration capacity-building to emerging economies.
- **For Iraq:** The GCT should: «Train staff on OECD and UN Model Conventions. «Join the OECD Inclusive Framework on BEPS (already open to non-members).
- Engage with regional tax forums (Arab Tax Administrators Forum)

For Western Investors (EU/Germany/ USA inbound to Iraq)

For Western Investors

Exposure Without a Treaty

In the absence of a double taxation agreement (DTA), investors should anticipate unrelieved double taxation: Iraqi source-based taxation combined with residence-state taxation. Relief will depend solely on whether the home jurisdiction allows credits for non-treaty foreign taxes, often with strict limitations (e.g., Germany's per-country credit ceiling; the U.S. system's foreign tax credit "basket" rules).

Structuring Options

Until Iraq concludes DTAs with major Western partners, investors commonly structure through treaty-linked jurisdictions such as the UAE or Hungary; these routes can provide access to exemption or credit relief at the holding company level. However, such arrangements must be carefully substantiated to avoid challenges under EU anti-abuse rules (GAAR, Principal Purpose Test under the OECD BEPS framework) or domestic CFC/anti-avoidance regimes. Substance is essential—demonstrable local operations, governance, and economic activity are required.

EU-Specific Considerations

For EU-based groups, it is critical to note that EU directives, such as the Parent-Subsidiary Directive and the Interest and Royalties Directive, do not apply to third countries such as Iraq. Therefore, dividends, interest, and royalties paid between Iraq and EU entities remain fully exposed to Iraqi withholding tax unless protected by a bilateral treaty, with any relief available only under the investor's domestic credit/exemption mechanisms.

Strategic Framing

Strategic Framing

Sovereignty vs. Neutrality

Iraq can preserve fiscal sovereignty and attract FDI by reallocating taxing rights via treaties and by providing predictable unilateral relief.

Equality/Justice

Aligning with Grundgesetz-style equality and EU non-discrimination concepts (adapted domestically) enhances investor confidence and reduces arbitrariness.

Legal Certainty

Modern MAP/arbitration commitments and published administrative practice lower the “tax risk premium” on Iraqi projects.

Recommendations to Mitigate Double Taxation and Enhance Iraq's Investment Climate

Recommendations to Mitigate Double Taxation and Enhance Iraq's Investment Climate

Domestic Legislative Reforms

- Introduce a Statutory Foreign Tax Credit (FTC) Regime, and amend Iraq's Income Tax Law to allow Iraqi residents and Companies to credit foreign taxes paid against domestic tax liabilities, even in the absence of a tax treaty. This aligns Iraq with global standards and protects Iraqi multinationals operating abroad.
- Replace the Nationality Test with the "Place of Effective Management" (POEM). Adopt POEM as the corporate residence criterion, in line with OECD and UN models (OECD Model 2017, Art. 23A–23B; UN Model 2021, Art. 23). This prevents Iraqi-incorporated companies from being taxed on worldwide income solely due to their legal registration.
- Establish a Binding Advance Ruling System. Create a formal mechanism within the General Commission for Taxes (GCT) to issue advance rulings on:
 1. Withholding tax rates.
 2. Permanent Establishment (PE) status.
 3. Deductibility of intra-group payments (e.g., royalties, services).

This enhances legal certainty and reduces audit risks.

Codify Federal—Regional Tax Harmonization

- Legally recognize taxes paid in the Kurdistan Region as creditable against federal tax liabilities to eliminate domestic double taxation and improve predictability for investors.

Expansion of Iraq's Tax Treaty Network

- Prioritize Bilateral Tax Treaties with Strategic Partners.
- Focus on concluding treaties with Germany, France, Italy, the Netherlands, and the United States—countries with significant foreign direct investment (FDI) in Iraq's energy, infrastructure, and healthcare sectors.
- Include Mutual Agreement Procedure (MAP) and Arbitration Clauses in Treaties

Institutional Capacity Building

- Join International Tax Cooperation Frameworks, engage with the OECD Inclusive Framework on BEPS, and regional platforms such as the Arab Tax Administrators Forum to enhance Iraq's credibility and negotiation capacity.
- Train GCT Staff on International Tax Standards. Build expertise in OECD/UN Model Conventions, MAP procedures, and global principles of tax neutrality and justice.

Practical Guidance for Foreign Investors

- Structure Investments via Treaty-Linked Jurisdictions Until Iraq expands its treaty network, investors should consider routing capital through jurisdictions like the UAE or Hungary to access treaty-based relief. Include Tax Gross-Up Clauses in Contracts.
- Ensure that service contracts in Iraq include provisions to preserve net-of-tax payments in case of unexpected withholding.
- Obtain Iraqi Tax Residency Certificates. Secure official residency documentation from the GCT to support foreign tax credit claims in the investor's home jurisdiction.

Observations

Observations

1. Iraq's current tax framework—particularly its emphasis on nationality as a nexus alongside residence and source—creates avoidable friction when measured against international practice. Compared with Western systems, the gaps are clear:

- The European Union limits duplication through supranational law and targeted directives.
- Germany ensures fairness via constitutional equality and a comprehensive treaty network.
- The United States, though unusually broad in its citizenship-based reach, offsets the burden through foreign tax credits and dense treaty coverage.

2. For foreign investors, the risks in Iraq are real: exposure to unrelieved double taxation, rigid withholding, and limited treaty relief. That is why immediate, practical mitigation steps—such as routing through treaty-friendly jurisdictions, negotiating contractual gross-ups, and obtaining GCT residency certificates—are essential in the short term. Focus on concluding treaties with Germany, France, Italy, the Netherlands, and the United States—countries with significant foreign direct investment (FDI) in Iraq's energy, infrastructure, and healthcare sectors.

3. Yet investor self-help can only go so far. Sustainable solutions require systemic reform within Iraq itself. The additional recommendations outlined—establishing a foreign tax credit regime, expanding the treaty network with Germany, the EU, and the U.S., replacing nationality with a practical management test, embedding MAP/arbitration, and harmonizing Baghdad-Kurdistan taxation—are not abstract technicalities. They are the legal and policy levers that would move Iraq from an insular sovereignty-driven system to a globally aligned, investor-friendly tax regime.

If enacted, these reforms would:

- Protect Iraqi companies expanding abroad from double taxation.
- Encourage Western investors to commit capital directly rather than through intermediaries.
- Reduce disputes and uncertainty, lowering the “tax risk premium” that burdens projects.
- Signal that Iraq is serious about fairness, legal certainty, and economic diversification.

In short: while foreign entities must currently mitigate risks through structuring and compliance, the long-term imperative lies with Iraq. By modernizing its tax law, strengthening its treaty network, and embracing global standards of tax justice and neutrality, Iraq can ensure that income is taxed once, fairly, and transparently—supporting both fiscal sovereignty and the inflow of sustainable foreign direct investment.

Strategic Outlook

- By implementing these reforms, Iraq can:
- Protect its own companies from double taxation abroad. Attract direct investment from Western partners.
- Reduce legal disputes and uncertainty.
- Signal its commitment to fairness, transparency, and economic diversification.

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