

Introduction to International Taxation

Automatic Exchange of Information (AEOI)

**Alfred Chan
PhD, LLB(PRC Law), MA, CPA, CTA**

**Institute of Bankers
2017-05-06**

1

Topics

Tax system and Jurisdiction

Exchange of information

2

Part I-1

Tax Systems

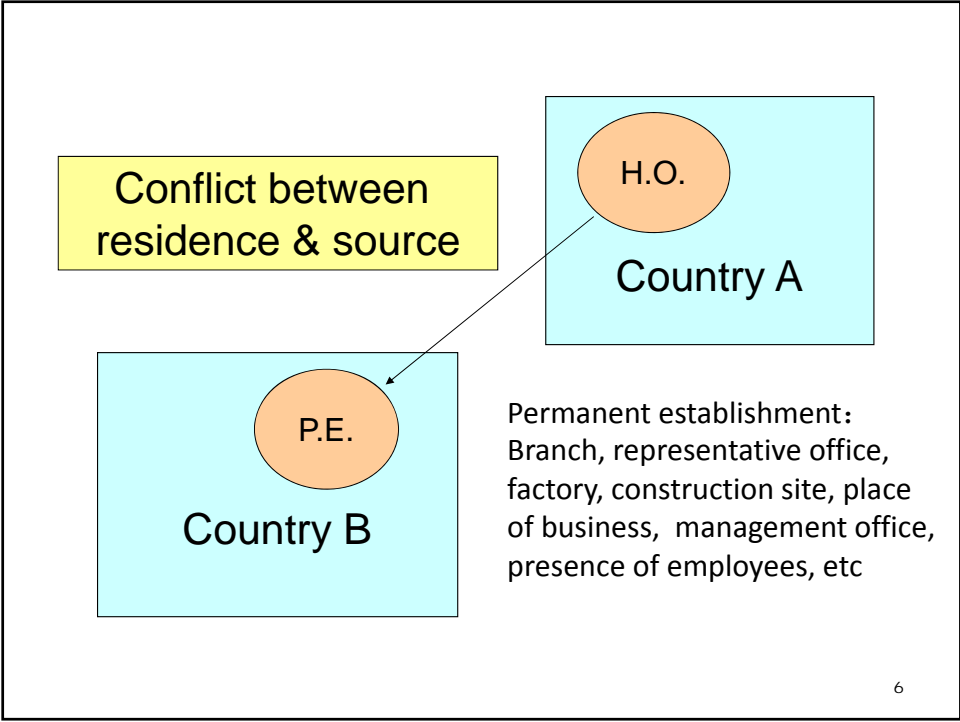
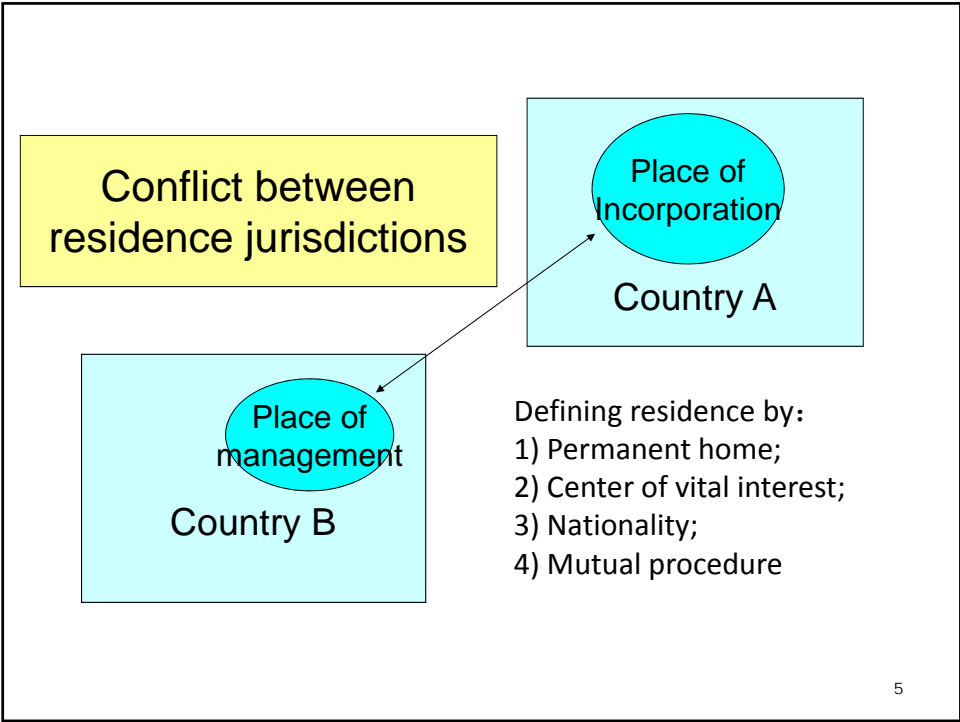
Conflict of Law

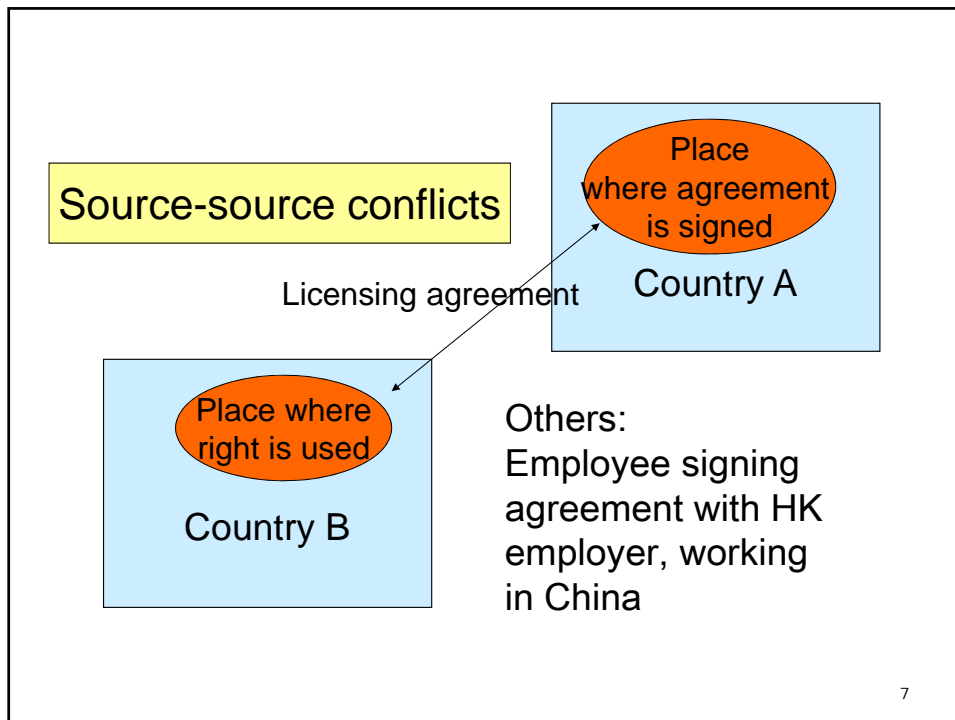
3

Residence jurisdiction: double taxation & double non-taxation

	Country A	Country B
➤ Place of incorporation	X	
➤ Place of management		X

4





Case I

- A HK company assigns an employee to work in China for 3 years, who is a US national with his spouse and kids working and living in Canada.
- Question: “What tax claim the following jurisdiction shall exercise: HK, China, US and Canada? Where the employee should pay the tax bill?”

Hint (1) Per US-Canada DTA, family ties (center of vital interests) shall take precedence over nationality; (2) Tax resident has right to claim tax credit for tax on foreign income.

8

US-Canada Tax Treaty

Article 1

This Convention is generally applicable to persons who are residents of one or both of the Contracting States.

9

US-Canada Tax Treaty

Article 4

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both States or in neither State, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests); ...

10

Residence vs. source jurisdiction

- Income may be taxed under the laws of a country because of a nexus between the country and the person earning the income, irrespective of where it is earned.
- Income may also be taxed under the laws of a country because of a nexus between the country and the activities that generate the income, with no reference to the residence of the taxpayer.

11

Part I-2

International double non-taxation

12

1. Double non-taxation case

(1) Depending services

A BVI company assigned a HK employee to work in China for 150 days. Later the employee was relocated back to HK.

As the employee stayed in China for a period less than 183 days in a 12-month period, the HK-China DTA exempts the employee from IIT liabilities.

As per HK tax rules, the same income is not subject to salaries tax as the employee, who had a non-HK employment, worked outside Hong Kong for that period.

13

2. Trading profits

(a) X is the resident of a country that imposes tax on worldwide income. He sets up a trading company in HK, buys goods from South Africa and resells the same to a state owned enterprise in China. No HK tax liabilities will arise as the activities for the negotiation and conclusion of trading contract takes place outside HK (a jurisdiction that imposes tax on HK-source income only).

(b) A Singapore resident does the same, and he will not be subject to HK tax for the same reason given above.

Q. What is the tax implication in Singapore?

14

3. Service income

A HK Company entered into an installation agreement with a foreign investment enterprise, under which the HK company is to send employees to work in China, and the work will last for 4 months.

Under the HK-China DTA, the presence of HK employees in Mainland China will last for a period not exceeding 183 days. As that does not constitute a permanent establishment, the service income is exempt from income tax in China.

As per HK tax rules, the service income derived from activities performed outside HK. Therefore, the income is not subject to tax in Hong Kong.

15

Part II

Jurisdiction on Tax

At country levels

16

The tax Jurisdiction of China

17

The PRC Corporate Income Tax Law

Article 2. Enterprises are divided into resident enterprises and non-resident enterprises.

The resident enterprise under this law refers to one that is established inside China in accordance with the law, or established under the laws of foreign countries (regions) but having its place of actual management inside China.

The non-resident enterprise under this law refers to one established under the laws of foreign countries (regions) and having no place of actual management inside China, but having establishments and offices inside China, or having no establishments and offices inside China but deriving China-source income.

18

PRC Individual Income Tax Law

Article 2 Individual income tax shall be levied on the following categories of income:

1. Income from wages, salaries;
2. Income from production, operation derived by industrial and commercial households;
3. Income from contract or leasing operations to enterprises or institutions;
4. Income from the provision of service;
5. Income from authors remuneration;
6. Income from royalties;
7. Income from interest, dividends and extra dividends;
8. Income from lease of property;
9. Income from transfer of property;
10. non-recurring or causal income;
11. Other income specified as taxable by the finance department of the State Council.

Comparing Hong Kong tax

19

Hong Kong Tax Rules

20

Jurisdictions under the IRO

	Having source from outside HK	Having source within HK
Salaries	S8(1)	S8(1A)
Air service income	S23C	S23D
Shipping service income	S23B(1)	S23B(2)
Income from trade, business & profession	<u>Not provided</u>	S14
Licensing income	<u>Not provided</u>	S15

21

4. Hong Kong

- Profits not liable to tax: investment income (foreign and domestic)
- HK tax system adopts source principle; Exception: taxation on shipping and air service income

22

5. BVI 維爾京群島

- BVI does not impose tax on foreign income.
- BVI Co. has no power to carry on business with BVI residents, and own any property situated in BVI
- BVI Co. can hold a leased property for use as the registered office in the BVI.

23

Comparing HK IRO and Singapore ITA

	IRO, S14	SITA, S10
Income derived within HK (Singapore)	Taxable	Taxable
Income derived from outside HK (Singapore)	Not taxable	Taxable (when received in Singapore)

24

Charge of profits tax – IRO

CAP 112 Inland Revenue Ordinance
S14 Charge of profits tax
(Past Version on 19970630).

(1) Subject to the provisions of this Ordinance, profits tax shall be charged for each year of assessment at the standard rate on every person carrying on a trade, profession or business in Hong Kong in respect of his assessable profits arising in or derived from Hong Kong for that year from such trade, profession or business (excluding profits arising from the sale of capital assets) as ascertained in accordance with this Part.

25

Charge of income tax – Singapore Income Tax Act

10.—(1) Income tax shall, subject to the provisions of this Act, be payable at the rate or rates specified hereinafter for each year of assessment upon the income of any person accruing in or derived from Singapore or received in Singapore from outside Singapore in respect of —

- (a) gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;
- (b) gains or profits from any employment;
- (c) [Deleted]
- (d) dividends, interest or discounts;
- (e) any pension, charge or annuity;
- (f) rents, royalties, premiums and any other profits arising from property;

and

- (g) any gains or profits of an income nature not falling within any of the preceding paragraphs.

26

Classification of tax jurisdictions:

I.	Tax haven Co.	Cannot sign DTA	BVI
II.	Semi-tax haven Co.	Can sign DTA to a certain extent (i.e. air and shipping service income)	HK - It signs DTA after 2010, but HK is still a tax haven.
III.	Non-tax haven Co.	Can sign DTA	Singapore / Canada / China

27

Part 3

Major Objectives of DTA

28

Major Objectives of DTA (I)

- Avoidance of double taxation
- Allocation of tax jurisdiction
- Avoiding discriminatory taxation
- Exchange of information (EOI)

29

Scope of DTA

- This DTA shall apply to persons who are residents of one or both of the contracting states.
- The personal scope of the DTA covers:
natural person and legal person

30

Case II

- A HK company assigns an employee to work in China for 5 years, who is a Japanese and previously worked in HK, The employee sold the flat and bought annuity contract that pays annuity regularly into his bank account in HK.
- Question: any reporting requirement under automatic exchange of information (AEOI)?

31

To be continued

32