

# 国际税法与各国税制概述

## 国际双重征税分析

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# Introduction to International Taxation

## Double Taxation and different tax systems

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## 第一部分

### 双重征税

### 法律冲突

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## Part I

### Double Tax on Income

### Conflict of Law

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## 双重征税与双重不征税情况

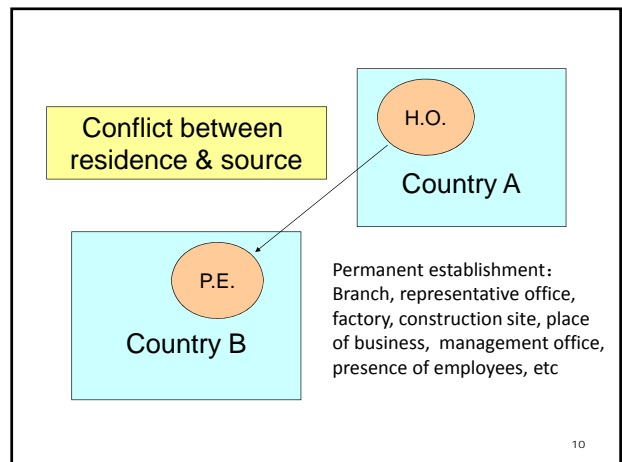
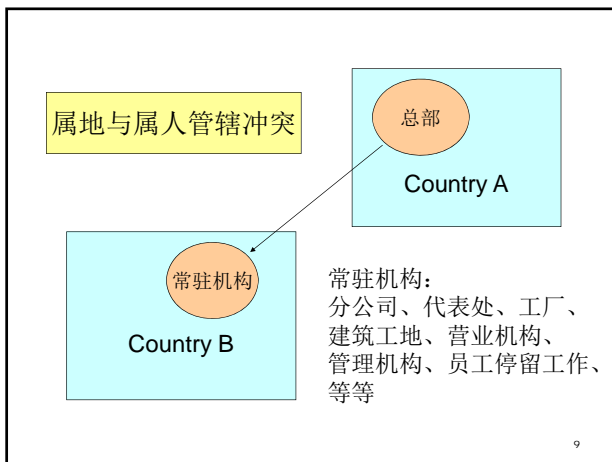
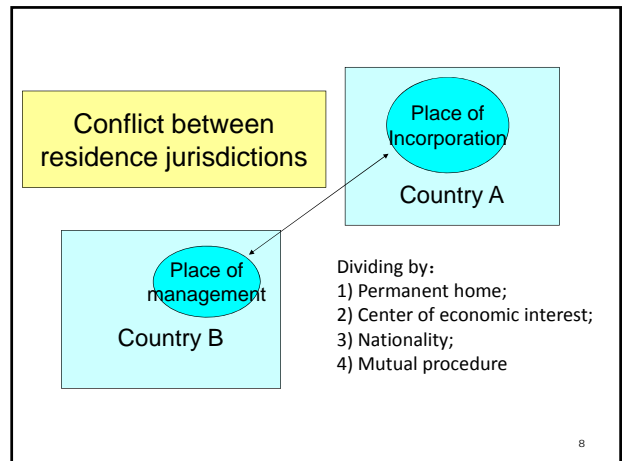
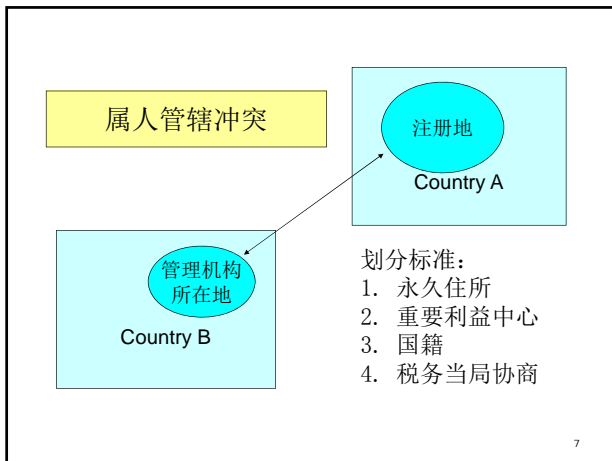
	Country A	Country B
➤ 公司注册地	X	
➤ 管理机构所在地		X

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## Double Taxation & Double Non-taxation

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

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国内法律规定		税收协议规定
	常驻机构	例外情况 (不构成常驻机构)
1.	在另一方设立固定经营场所	在另一方设立专为储存、交付目的而保存本企业货物或者商品的库存
2.	一方派出员工到另一方工作	以在任何十二个月中连续或累计不超过六个月的为限
3.	在另一方境内聘用非独立代理以该企业的名义签订合同	代理人通过固定营业场所进行的活动限于以上第一项的规定

其他例外：参考内地与香港税收安排

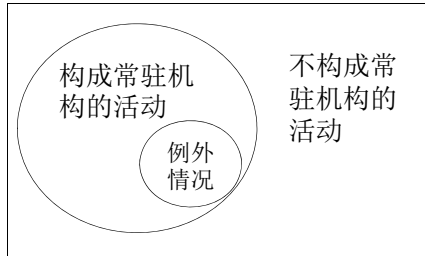
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Domestic rules		DTA rules
	P.E.	Exceptions to scope of P.E.
1.	Set up fixed place of business on the other side	(a) Maintenance of stock of goods belonging to enterprise for storage, display & delivery purposes
2.	Employees sent by one side to work on the other side	Performing such activities for periods not aggregating 183 days within any 12 month period
3.	Hire dependent agents to sign agreements in the other side	(c) If the agreement is in connection with the above tax-exempted activities

For other exceptions, see HK-China DTA

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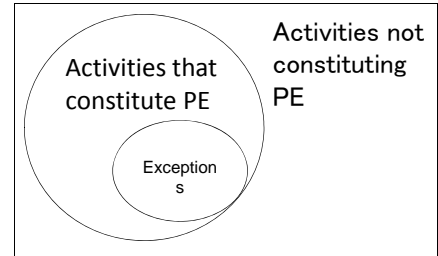
### 属人管辖原则限制：常驻机构



参考文章: <http://www.china-tax.net/pub/Article4.pdf>

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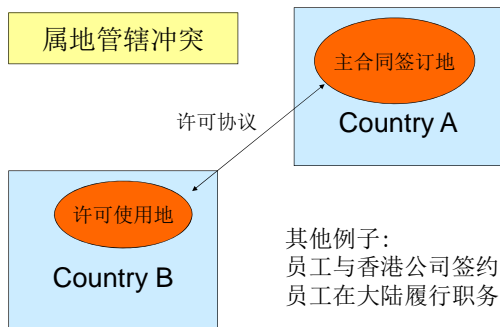
### Limitation to residence jurisdiction: PE



Reference: <http://www.china-tax.net/pub/Article4.pdf>

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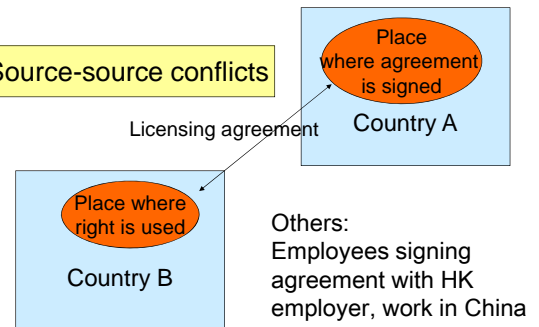
### 属地管辖冲突



其他例子:  
员工与香港公司签约;  
员工在大陆履行职务

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### Source-source conflicts



Others:  
Employees signing  
agreement with HK  
employer, work in China

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### 案例

- 某香港公司派遣一位员工到大陆连续工作2年，该员工是美国公民，配偶、子女和住所都在加拿大。
- 问：香港、大陆、美国、加拿大各自行使什么管辖权？该员工应该在什么地方纳税？

提示：（1）根据美国与加拿大的双边税收协定，双方决定居民管辖权的时候，家庭联系关系（重大经济利益中心）排序优于国籍；（2）税务居民境外收入可以在国内获得抵免（Tax credit）。

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### Case

- A HK company assigns an employee to work in China for two years, who is a US national with the 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.

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### US-Canada Tax Treaty

#### Article 1

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

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### US-Canada Tax Treaty

#### Article 4

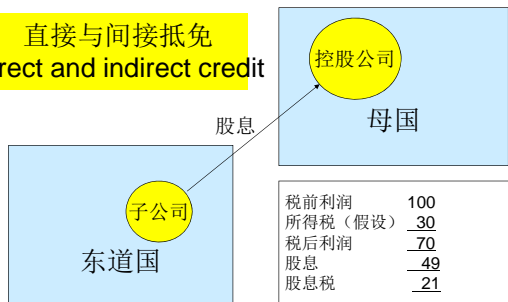
1. ...

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); ...

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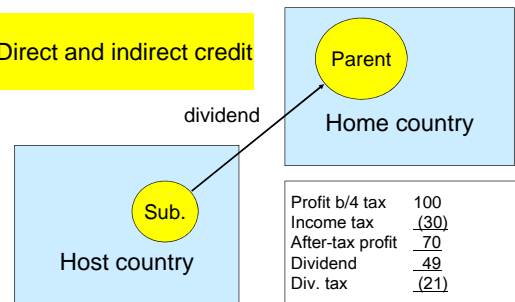
### 直接与间接抵免 Direct and indirect credit



马来西亚—中国双边税收协定第23条。

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### Direct and indirect credit

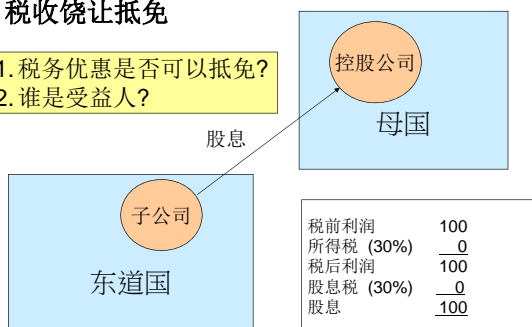


Article 23: Malaysia-China DTA

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### 税收饶让抵免

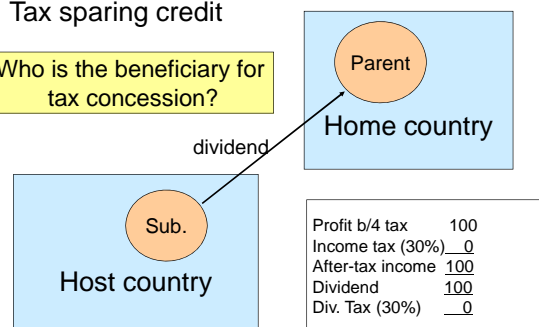
1. 税务优惠是否可以抵免?
2. 谁是受益人?



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### Tax sparing credit

- Who is the beneficiary for tax concession?



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## 属人管辖与属地管辖

- 一国对所得征税因为该国与取得所得的人之间的联系，而不考虑所得的来源地。
- 一国对所得征税因为该国与所得产生的活动之间有联系，不考虑纳税人是否居民。

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## 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 tax 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.

Source: International Tax Primer, Kluwer Law International, p19.

## 第二部分

### 对华投资收益征税比较

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## Part 2

### Comparing the tax on investment income derived from China

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## FDI 外商对华直接投资

### 投资收益纳税比较

1. BVI Co. 维尔京群岛
2. HK Co. 香港
3. Mauritius Co. 毛里求斯
4. Singapore Co. 新加坡
5. Canadian Co. 加拿大

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## FDI 外商对华直接投资

### Comparing tax on investment income

1. BVI Co. 维尔京群岛
2. HK Co. 香港
3. Mauritius Co. 毛里求斯
4. Singapore Co. 新加坡
5. Canadian Co. 加拿大

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**Domestic tax rules in host country**  
东道国的法律

- 外商投资企业
- 2008.1.1前，外国投资者从外商投资企业取得股息免税，2008年1月1日开始外资企业股息纳税。

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**Domestic tax rules in host country**

- Before 2008.1.1, dividend distributed from the profits earned by the FIE in China is exempt from income tax.
- Dividend from profits earned thereafter is subject to tax.

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**投资国(地区)税法规定 (I)**

- 如果外商投资企业派发股利，在母国可能出现的纳税情况：
  - (a) 不征税
  - (b) 免税（单方规定或双边协定）
  - (c) 母国收到利润时征税
  - (d) 在东道国取得收入时征税

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**Domestic tax rules in home country - (I)**

- Where the FIE pays a dividend, it may be taxed at home in one of the following ways:
  - (a) No liability for tax
  - (b) Tax exemption (unilateral or bilateral)
  - (c) Tax on receipt basis
  - (d) Tax on as-earned basis

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**投资国(地区)税法规定(II)**

不予征税	维尔京群岛 / 香港	
征税	新加坡、台湾、加拿大	在母国投资方收款时征收
征税	加拿大	向东道国公司未分配利润征税
免税	新加坡、加拿大	税收协定有饶让条款，或由母国税法免税

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**Tax rules in the investing countries (II)**

No liable to tax	BVI / HK	
Liable to tax	Singapore, TW, Canada	Tax on receipt basis
Liable to tax	Canada	Tax on an "as-earned" basis
Exempt from tax	Singapore, Canada	Tax spared, or tax exempted under domestic rules

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税收管辖区分类：

I.	避税港公司	不能签税收（租税）协定	BVI 维尔京群岛
II.	半避税港公司	能签有限度税收（租税）协定，例如签订海空运输收入税收协定。	HK 香港（在2010年后可签订全面税收协定，但名同实异）
III.	非避税港公司	能签税收（租税）协定	新加坡/ 加拿大/ 中国

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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

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1. Singapore 新加坡 (国内法)

➤ Foreign source income is taxed if received in Singapore; 境外所得汇入新加坡时征税。[Section 10(1), SITA]

➤ Offshore dividend Income received in Singapore is taxable but it is specifically exempted under domestic Income Tax Act. 境外投资收益汇入新加坡时要纳税，但是国内所得税法有特别豁免纳税的规定。[Section 13(8), SITA] 《先征后免》

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1. Singapore

➤ Foreign source income is taxed if received in Singapore; [Section 10(1), SITA]

➤ Offshore dividend Income received in Singapore is taxable but it is specifically exempted under domestic Income Tax Act. [Section 13(8), SITA] They adopt a tax-and-exempt approach.

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Singapore 新加坡 (双边协定)

➤ 境外所得有抵免（直接抵免），如果外商投资企业（FIE）控股权=>10%，抵免额包括FIE已缴纳的企业所得税（间接抵免）

税务居民可以享受抵免。

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Singapore (bilateral rules)

➤ tax credit, including credit for tax paid on profit earned at company level if Singapore equity in FIE =>10%

Tax residents are eligible for tax credits.

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## 新加坡境外股息收入税收政策

### ➤ 境外投资收益所得抵免与免税的差异

➤ 免税可以减少母公司的应纳税所得额（母公司可以保留以前年度亏损），抵免不能减少应纳税所得额。

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## Tax policy of foreign dividends in Singapore

### ➤ Difference between tax credit and tax exemption

➤ Tax exemption can reduce the taxable income (keeping carried forward loss intact); Tax credit cannot reduce the taxable income

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## 2. Mauritius 毛里求斯

➤ GBL1 类型公司：股息收入按15%征税，但是国内税法有80%抵免，有效税率是3%。

➤ GBL2 类型公司：不予征税（但是，GBL2公司不可以享受税收协定优惠）

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## 2. Mauritius

➤ Company (GBL1): foreign dividend income is taxed at 15%, but tax credit is available at 80%. The effective tax rate is 3%.

➤ Company (GBL2): foreign dividend income is not liable to tax. But GBL2 is not eligible for DTA concessions.

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## 3. Canada 加拿大 (双边协定)

- 协定国公司派发股利
- 如果在协定国公司（FIE）控股超过10%，股息在加拿大免税，
- 也有间接抵免。

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## 3. Canada (bilateral rules)

- Dividend distributed by treaty country Co (FIE) is exempted from income tax, if Canadian tax residents own more than 10% equity in the FIE.
- Indirect credit also available.

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## Canada (domestic rules)

- 非协定国公司派发股息
- 1. 生产经营所得在汇回加拿大时纳税（收到股息时征税）
- 2. 投资收益在东道国取得时纳税（CFC，不派息也要征税）

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## Canada (domestic rules)

- Dividend distributed by Non-treaty country Co.
- 1. Taxed on receipt basis if foreign subsidiary earns active income
- 2. Taxed on as-earned basis if foreign subsidiary earns passive income (i.e. CFC)

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## 4. Hong Kong

- 不予征税：境内境外投资收益不予征税
- 香港税制实施属地管辖，但是海运空运业务所得除外

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## 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

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## 5. BVI 维尔京群岛

- 维尔京群岛法律对境外收入不征税
- 维尔京群岛公司不允许在本地（地）经营业务、从事经济活动、或拥有不动产。
- 维尔京群岛公司允许在本地租用办公地点作为注册地址。

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## 5. BVI 维尔京群岛

- 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.

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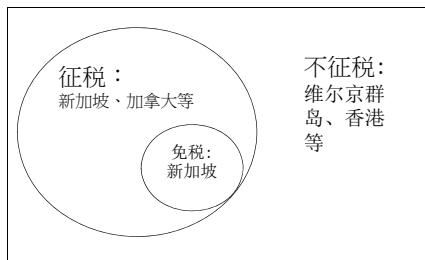
## 不予征税与免税

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## Not liable to tax vs exempt from tax

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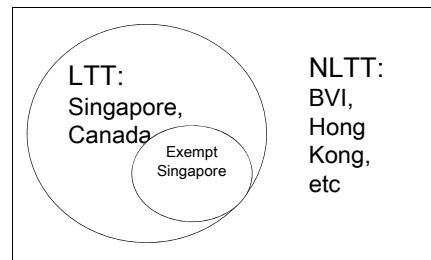
## 对股息征税与不征税



不予征税、征税、免税（由国内法或税收协定加以规定）

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## Dividends liable to tax (LTT) vs not liable to tax (NLTT)



NLTT, LTT, Tax exempt: determined by domestic rules

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## 投资收益在新加坡《免税》的情况之一

- 由东道国国内税法给予投资者免税，再通过税收协定“税收饶让”条款（tax sparing credit）予以保证执行；
- 东道国投资收益（dividends）在汇入母国时候产生纳税义务，再通过国内税法的特定条文（S13(8)SITA）予以免税。【先征后免】

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## Tax-exempt investment income in Singapore (1)

- (a) Tax rule in host country grants the exemption. The exempt (untaxed) income is spared under the DTA articles.
  - (b) Where dividends received in home country are taxed but the same income is specifically exempted by domestic rules [S13(8)SITA] [tax-and-exempt]
- (a) and (b) work together.

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### 投资收益在新加坡《免税》的情况之二

➤与香港不同，新加坡是对境外投资收益征税的税收管辖区（新加坡企业不属于税务总局[2009]698号及[2015]7号文非居民企业股权转让所得、财产转让所得）管辖；

➤由于对境外投资收益征税，新加坡公司在国际投资税收筹划中可以作为导管公司 (conduit Company)。

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### Exemption of foreign investment income in Singapore(2):

➤Unlike HK, Singapore imposes tax on foreign investment income. It is not caught under SAT [2009]698 & [2015]7, which deals with the gain derived by non-resident company on the indirect transfer of equity in the FIE;

➤As Singapore taxes on foreign dividend income, it may be used as conduit company in tax planning.

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### 投资收益在新加坡《免税》的情况之三

➤香港公司无须居民担任董事，但新加坡公司必须有居民董事。

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### Investment income in Singapore (3)

➤The HK companies ordinance does not require that the directors must be HK residents.

➤Singapore companies act has such requirement.

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### “税收饶让抵免”与“间接抵免”

	饶让抵免	间接抵免 (投资所有权门槛)
加拿大	有； (协定21条第2款)	有
新加坡	有； (协定第22条第2款)	有
毛里求斯	有； (协定第23条第2款)	有

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### “Tax sparing credit” and “indirect credit”

	Tax sparing credit	Indirect tax credit (ownership threshold applies)
Canada	Yes; Article 21(2)	Yes
Singapore	Yes; Article 22(2)	Yes
Mauritius	Yes; Article 23(2)	Yes

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### “间接抵免”与“优惠税率”

	间接抵免； 适用投资者所有 权门槛	股息 5% 预提税率
中国-加拿大	有	不适用
中国-新加坡	有	有；适用投资者 所有权门槛
中国-香港	有	有；适用投资者 所有权门槛

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### “indirect credit” and “reduced tax rate

	Indirect credit; ownership threshold applies	Dividend at 5% withholding income tax
China- Canada DTA	Yes	N/A
China- Singapore DTA	Yes	Yes, ownership threshold applies
China-HK DTA	Yes	Same as above

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### 香港税务条例与新加坡所得税法比较

	香港税务条例 第14条	新加坡所得税 法第10条
来源于境内收 入	征税	征税
来源于境外收 入	不征税	征税（汇入境 内时征税）

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### 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 (upon receipt)

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### 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. (Replaced 2 of 1971 s. 9. Amended 7 of 1986 s. 12; 56 of 1993 s.

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### 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 by Act 29 of 65]
- (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.

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### 第三部分 税收协定主要目的

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### Part 3 Major Objectives of DTA

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#### 税收协定的主要目的 (I)

- 免除双重征税
- 划分税收管辖
- 无差别待遇
- 税收情报交换
- 提升国际投资与贸易税收环境确定性

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#### Major Objectives of DTA (I)

- Avoidance of double taxation
- Allocation of tax jurisdiction
- Avoiding discriminatory taxation
- Exchange of information (EOI)
- Enhancing certainty in taxation for doing international business and cross-border investment

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#### 一些基本概念

- 不同法域双重征税和经济活动双重征税
- 直接抵免
- 间接抵免
- 单边给予的抵免
- 双边抵免
- 税收饶让抵免
- 税务居民
- 常驻机构

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#### Basic concepts

- Juridical double taxation vs. economic double taxation
- Direct credit
- Indirect credit
- Unilateral credit
- Bilateral credit
- Tax sparing credit
- Tax resident
- Permanent establishment

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### Scope of DTA 适用范围

➤ 租税协定适用于缔约国一方或同时为双方居民的人。

DTA适用范围: Person 包括自然人与法人

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### 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

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### 第四部分 常驻机构

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### Part 4 Permanent Establishment

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### 非居民税务问题

	非居民企业分类	中新税收协定条文
1、	在中国设有常驻机构的非居民（外国）公司	营业利润（第7条） 常驻机构的例外范畴（第5条）
2、	没有在中国设立常驻机构的非居民（外国）公司，但获得来自中国的收入	预提所得税征收及管理：股息、利息、特许权使用费（第10、11、12条）

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### Taxation of Non-residents

	Class of Non-residents	Applicable DTA articles
1.	Foreign enterprise having a permanent establishment (PE) in China	Article 7: Business profits Article 5: the scope of exceptions to PE
2.	Foreign enterprise having no permanent establishment (PE) in China, but deriving China source income	Article 10, 11, 12 (dividend, interest, royalty): Liability for withholding income tax, and administration of WIT

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## 什么是常驻机构？

它源于属人管辖与属地管辖之间的冲突，它也是对属人管辖的限制。

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## What is a PE?

- PE arises from the conflict between residence jurisdiction and source jurisdiction.
- It is also an exception to the residence jurisdiction.

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## 什么构成常驻机构？

- 管理机构，经营场所，办公室；
- 不具有法人地位的中外合作经营企业的外方；
- 在所在国作业达致一定期限的员工；
- 获授权接单或订立合同的代理人。

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## What constitutes a PE?

- Establishment, place of business, or an office;
- Foreign party to CJV that is not formed to have a legal capacity;
- Presence of employees for a certain time period;
- Agent appointed to sign contract or accept orders.

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## 机构与场所

第五条 企业所得税法第二条第三款所称机构、场所，是指在中国境内从事生产经营活动的机构、场所，包括：

- (一) 管理机构、营业机构、办事机构；
- (二) 工厂、农场、开采自然资源的场所；
- (三) 提供劳务的场所；
- (四) 从事建筑、安装、装配、修理、勘探等工程作业的场所；
- (五) 其他从事生产经营活动的机构、场所。

企业所得税法实施条例第5条。

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## Establishment or place of biz

1. Management establishment, business establishment or administrative office;
2. Factory, farm, or place of extraction of natural resources;
3. Place where services are provided;
4. Place where a project of construction, installation, assembly, repair, exploration, etc is carried out;
5. Other establishments or places of business where production and business operations are carried out.

As per Art. 5 of Implementation Reg.

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## 税收协定 常驻机构豁免

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## PE exemptions under DTA

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	常驻机构	不构成常驻机构情况
1)	在另一方设立固定经营场所	(a) 在另一方使用专为储存、交付目的而保存本企业货物或者商品的设施 (b) 在另一方设立专为储存、交付目的而保存本企业货物或者商品的库存 (c) 在另一方设立专为第三方加工而保存本企业货物或者商品库存

参考：中新税收协定

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DTA exceptions		
	Constituting P. E.	Not constituting PE
1)	Have a fixed business place on other side	(a) Use of facilities for storage, display, delivery of goods belonging to the enterprise (b) Maintenance of stock of goods belonging to enterprise for storage, display & delivery purposes (c) Maintenance of stock of goods belonging to enterprise for purpose of processing by others

Ref: China-Singapore DTA

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## 税收协定例外

	构成常驻机构	不构成常驻机构
1)	在另一方设立固定经营场所	(d) 为本企业采购货物或者商品或者搜集情报的目的所设的固定营业场所 (e) 为本企业进行其他准备性或辅助性活动的目的所设的固定营业场所

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## DTA exceptions

	Constituting P. E.	Not constituting PE
1)	Have a fixed business place on other side (continued)	(d) Sourcing of goods, collecting information, from China (e) Performing activities of preparatory or auxiliary character

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税收协定例外	
构成常驻机构	不构成常驻机构
2. 透过代理人在另一方签订合同	(a) 代理人订立的合同限于上述第1项活动范围  (b) 按常规经营本身业务的经纪人、一般佣金代理人或者任何其他独立代理人订立合同

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DTA exceptions	
Constituting P. E.	Not constituting PE
2. Having an agent conclude contracts on other side	(a) Having agent conclude contracts for activities relating to (1) above  (b) Broker and general commission agent on the other side

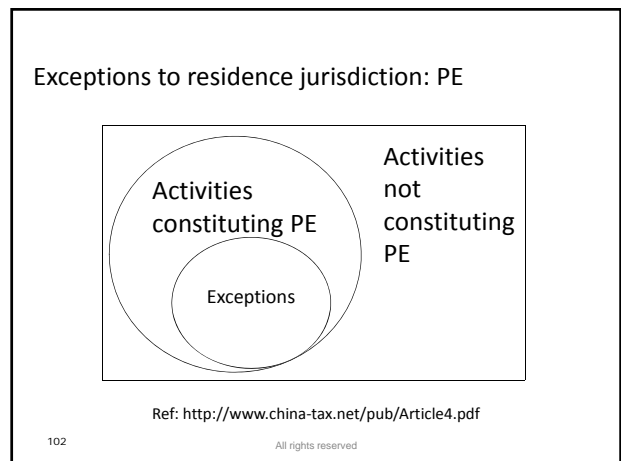
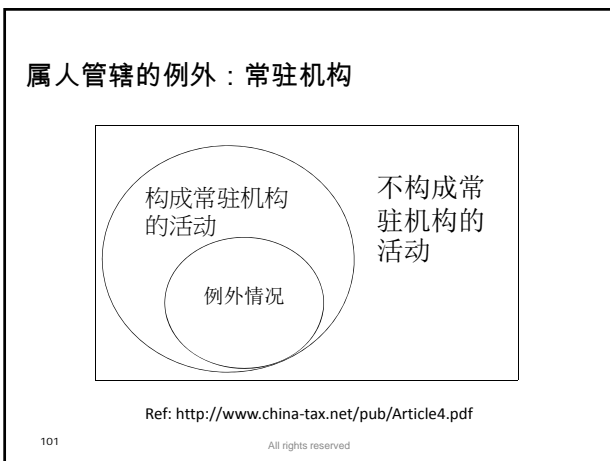
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DTA exceptions	
构成常驻机构	不构成常驻机构
3. 雇员或雇佣的其他人员在缔约国一方提供的劳务活动，包括咨询劳务活动	有关人员活动在任何12个月期限不超过6个月。
4. 一方居民公司，控制或被控制于缔约国另一方居民公司或者在该缔约国另一方进行营业的公司	不认为存在常驻机构

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DTA exceptions	
Constituting P. E.	Not constituting PE
3. Presence of employees providing services on other side	Performing such activities for periods not aggregating 183 days within any 12 month period
4. a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State	Not to be considered a PE

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介绍完毕  
(待续)

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**To be continued**

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