



**Legal International Double Taxation**

法律性国际双重征税

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## CCS Insights

The International Double Taxation – Causes:  
Legal International Double Taxation

国际双重征税 - 原因  
法律性国际双重征税

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## The International Double Taxation – Causes



- Physical and legal persons belonging to a Country who obtain income from sources in other countries are becoming more common in the international economy due to the amplification and variety of interactions between countries.
- Because each of the relevant Countries might claim tax jurisdiction over all or part of the persons involved, this results in the cohabitation of numerous complementing or competing tax systems, resulting in duplicate or multiple taxation of income.
- International legal double taxation is the term for this situation.

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## The International Double Taxation – Causes



- International double taxation refers to two or more countries imposing the same or similar taxes on the same multinational taxpayer or on the same tax object or source of different taxpayers.
- Usually, international double taxation includes both legal international double taxation and economic international double taxation.
- The so-called legal international double taxation means that two or more countries or regions impose the same or similar taxes on the same taxpayer for the same taxation object within the same period.

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## The International Double Taxation – Causes Legal International Double Taxation



- The concept of legal international double taxation consists of the following four elements:
  - 1) The existence of two or more tax subjects;
  - 2) the same tax subject, i.e. the same taxpayer is liable to two or more countries;
  - 3) the same object of taxation, example: the same income or property value;
  - 4) the taxation of the same or similar nature.
- Only when the above 4 elements are present at the same time, it will constitute legal international double taxation.

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## International Legal Double Taxation - Three Disputes



- Such legal international double taxation, is the core problem that countries are trying to overcome through unilateral domestic legislation and bilateral tax agreements.
- Three disputes may result in legal double taxation:
  - Source-Source Conflict
  - Resident-Resident Conflict
  - Source-Resident Conflict



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## International Legal Double Taxation - Disputes Source-Source Conflict



- Due to differences in how the source of income is defined under their domestic legislation, two countries may use the source principle to tax the same item of income.
- For example, State A's domestic tax laws may stipulate that a non-resident corporation's sales revenue be taxed in that Country if the transaction was made through an office there.
- In contrast, if the transfer of possession of the goods sold occurs within Country B, the tax laws of that country may tax revenue earned from non-resident corporate sales. Because of the disagreement between State A and State B's tax laws, income resulting from a sale made via an office in Country A for delivery in Country B would be taxed in both states.

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## Resident-Resident Conflict



- In this case, both countries claim to be the resident country of the taxpayer from their respective domestic tax laws. In this case, the taxpayer is referred to as a "dual resident".
- For example, China may regard a company incorporated in China to be a resident of China for tax reasons, but Malaysia may consider the same company to be a resident for Malaysian tax purposes since its management is situated in Kuala Lumpur. Each government believes it has the right to tax the taxpayer's worldwide income.
- As a result, the taxpayer is paying two taxes on his worldwide income: one in the first country, which considers him to be a taxpayer resident, and another in the second country, which also considers him to be a taxpayer resident.

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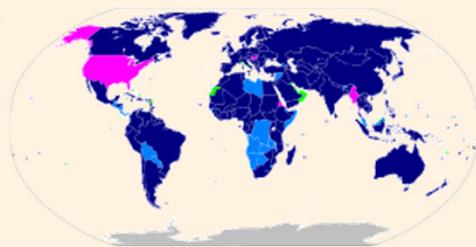
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## Source-Resident Conflict



- One state may apply the residency or nationality principle to tax income earned by a person, whereas another state may apply the source principle to tax on the same income.
- Company A, a resident of State A, may, for example, earn income in State B as a result of its significant activity there.
- Company A would be taxed by State A on its worldwide income, which would include income from State B. State B would impose a tax on income earned within its jurisdiction.



## 国际双重征税 - 原因



- 由于国家间互动的扩大和多样化，属于一个国家的自然人和法人从其他国家的来源获得收入，在国际经济中越来越常见。
- 由于每个相关国家都可能对全部或部分相关人员主张税收管辖权，这就导致许多互补或竞争的税收制度并存，造成对收入的重复或多重征税。
- 国际法律双重征税就是这种情况的术语。

## 国际双重征税 - 原因



- 国际双重征税是指两个或多个国家对同一跨国纳税人或不同纳税人的同一征税对象或来源征收相同或类似的税。
- 通常情况下，国际双重征税包括法律上的国际双重征税和经济上的国际双重征税。
- 所谓合法的国际双重征税是指两个或多个国家或地区在同一时期内对同一纳税人的同一征税对象征收相同或类似的税款。



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## 国际双重征税 - 原因 法律性双重征税



- 法律上的国际双重征税的概念包括以下五个要素。
  - 1) 存在两个或多个纳税主体。
  - 2) 同一纳税主体，即同一纳税人对两个或多个国家负有纳税责任。
  - 3) 相同的征税对象，例如：针对相同的收入或财产价值。
  - 4) 税收的性质相同或相似。
- 只有当上述四个要素同时存在时，才会构成法律性的国际双重征税。

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## 法律性双重征税 - 冲突



- 这种法律上的国际双重征税，是各国试图通过单边国内立法和双边税收协定来克服的核心问题。
- 三种争端可能导致法律上的双重征税。
  - 1) 来源地 - 来源地管辖冲突
  - 2) 居民 - 居民管辖冲突
  - 3) 来源地 - 居民管辖冲突



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## 法律性双重征税 - 冲突

### 来源地 - 来源地管辖冲突



- 由于在确定收入来源的方式上存在冲突，两个国家的税收法都可能同时基于来源地原则，对同一收入征税。
- 例如，A国的国内税法可能规定非居民公司的销售收入在该国应纳税，如果该销售是通过位于该国的办事处进行的。
- 与此相反，B国的税法可能也会对非居民公司的销售收入进行征税，如果售货物的所有权是在该国境内发生的。
- 鉴于A国和B国的税收政策存在冲突，通过位于A国的办事处进行并在B国交货的销售的收入，将在两个国家被征税。

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## 法律性双重征税 - 冲突 居民 - 居民管辖冲突



- 在这种情况下，两个国家都从各自的国内税法中声称自己是纳税人的居住国。在这种情况下，纳税人被称为"双重居民"。
- 例如，中国可能认为一家公司是中国的税务居民，因为它在中国注册，而马来西亚也可能把同一家公司当作是马来西亚的税务居民，因为该公司的管理层设在吉隆坡。
- 每个国家都认为自己有权对纳税人的全球收入征税。因此，该纳税人的全球收入遭受了两次征税：一次是在第一个国家，该国认为他是纳税人的居民，然后是在另一个国家，该国同样主张他是纳税人的居民。

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## 法律性双重征税 - 冲突 来源地 - 居民管辖冲突



- 一个国家通过居住地或国籍的管辖政策对一个人的收入征税，而另一个国家却引用来源地原则也对同一收入征税。
  - 例如，A国居民的A公司，可能因在B国参与了重大的经济活动而在B国获得收入。
  - 基于居民管辖原则，A国将对A公司的全球收入征税，其中包括在B国获得的收入。
  - B国同时基于来源地管辖原则，也对A公司在其领土范围内进行的活动所产生的收入征税。

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