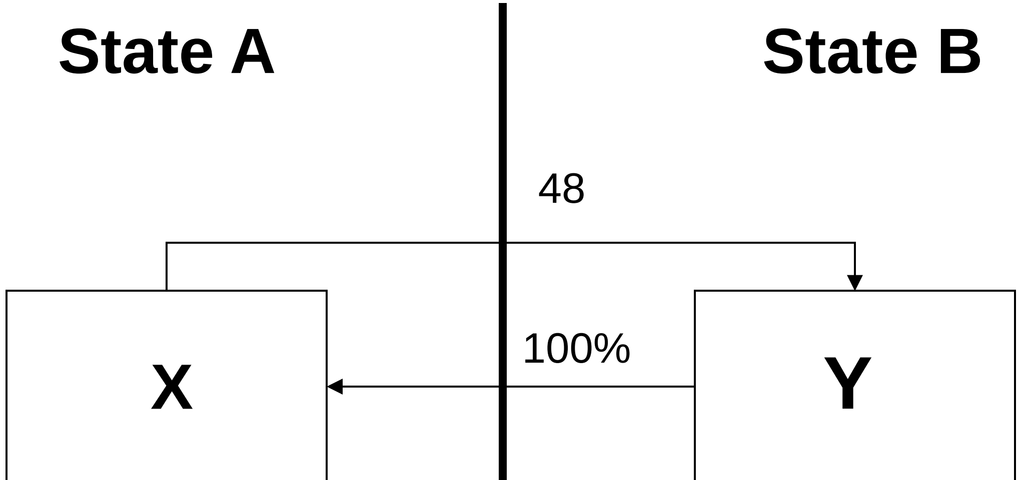
Definition of international double taxation

- <u>Juridical double taxation</u>: imposition of comparable taxes in two (or more) States on the same taxpayer in respect of the same subject matter and for identical periods (OECD Model Tax Convention, Introduction, paragraph 1).
- <u>Economic double taxation</u>: imposition of comparable taxes in two (or more) States on different taxpayers in respect of the same wealth.

Example of international double taxation



Profits	100
Tax (40%)	40
Dividends	60
WHT 20 %	12
Dividend to Y	48

Dividend received	48
Tax (40%)	19,2
Net profit	28,8

Conflicts between personal and objective criteria of taxation

- World-wide taxation principle: residents are subject to tax on their income produced everywhere in the world (art. 3, paragraph 1, TUIR).
- Principle of territorial taxation: non-residents are subject to tax only on the income produced within the Italian territory (artt. 23, 151 e 152, ITC)

Other conflicts able to determine double taxation

- Dual residence (Art. 4 OECD Model)
- Conflicts between residence and nationality (for example, USA)
- Inheritance and gift tax (residence of the deceased – residence of the heirs – place of location of the estate)
- Value Added Tax (conflicts between principle of origin and principle of destination)

Double taxation and international law

- Absence of a ban on double taxation

- Right of non cooperation (*par in parem non habet imperium*)

Internal double taxation

- Art. 163 ITC - Art. 67 Presidential Decree No. 600/1973 The same tax cannot be levied more than once in relation to the same taxable event. This applies also if the tax is levied on two different taxpayers.

OECD Model Convention

- The OECD Model Convention is used by Member States as a basis for negotiations of tax treaties
- Developing Countries tend to use the UN Model Convention
- The tax authorities of some jurisdictions (particularly, USA and the Netherlands) designed models that are different than the OECD Model in order to take into account the peculiarities of their tax systems

OECD Member States

Austria, Belgium, Canada, Denmark, France, Germany, Greek, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States (members since the set up of the OECD), Japan, Finland, Australia, New Zealand, Mexico, Czech Republic, Hungary, Poland, Korea, Slovak Republic, Israel, Estonia, Chile (States that were admitted later on)

Structure of the Model Convention

- In addition to the text of the Model Convention (30 articles), a Commentary, article to article, is attached to the model, as well as the position of some States that are not members of the OECD (Albania, Argentina, Armenia, Belarus, Brasil, Bulgaria, China, Congo, Ivory Coast, Croatia, United Arab Emirates, Estonia, Gabon, Hong Kong, India, Indonesia, Israel, Kazakhstan, Latvia, Lithuania, Malesia, Morocco, Phlippines, Romania, Russia, Serbia, South Africa, Thailand, Tunisia, Ukraine and Vietnam)
- The Commentary includes the observations and reservations made by member States on each article

Structure of the OECD Model Convention

- Chap. I: Scope of the Convention (Artt. 1-2).
- Chap. II: Definitions (Artt. 3-5)
- Chap. III: Taxation of Income (Artt. 6-21)
- Chap. IV: Taxation of Capital (Art 22)
- Chap. V: Methods for elimination of double taxation (Art. 23 A e B)
- Chap. VI: Special Provisions (Artt. 24-29)
- Chap. VII: Final Provisions (Artt. 29-30)

Model Convention and taxation of income (Artt. 6-22)

- Unlimited right to tax of the State of Source (SS):income from immovable property, permanent establishment, entertainers and sportspersons, income from employment
- Limited right to tax of the SS: dividends, interest, (royalties)
- No right to tax of the SS: capital gains, business profits without a PE, (royalties)

Model Convention and Special Provisions (Artt. 24-29)

- Non-discrimination
- Mutual agreement procedure
- Exchange of information
- Members of diplomatic missions and consular posts
- Territorial extension

Elimination of international juridical double taxation

- **Exemption method**
  - Full exemption
  - Exemption with progression (Art. 23 A)
- **Credit method**
  - Full tax credit
  - Ordinary tax credit (Art. 23 B)
- **Deduction method**

Typologies of ordinary tax credit

- Overall tax credit (*e.g*. Italy)

- Per country limitation (*e.g*. Italy)

- Per income category limitation (*e.g*., USA)