Università Carlo Cattaneo – LIUC

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International Tax Law

The Scope of International Tax Law

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Topics

- International Tax Law
- International Double Taxation
- Sources of international double taxation
- Measures against international double taxation
- Model DTC
- OECD Model DTC
- OECD Model DTC and State of source
- OECD Model DTC and State of residence
- International Tax Avoidance and Evasion
- Measures against International Tax Avoidance and Evasion

International Tax Law

- International Tax Law deals with all those rules (both domestic and international) which relate to the taxation of cross border activities and investments.

International double taxation

- Juridical double taxation: imposition of comparable taxes in two (or more) States on the same taxpayer in respect of the same item and for identical periods.
- Economic double taxation: imposition of comparable taxes in two (or more) States on different taxpayers in respect of the same item (substantialy).

Sources of international double taxation

- Conflict between residence and source:
  - World-wide taxation principle: residents are subject to tax on their income produced everywhere in the world;
  - Source taxation principle: non-residents are subject to tax only on the income produced within the State's territory.

Case 1: international juridical double taxation

Country F
(source State)

owns house
and rents it

Rent	100
Tax F (30%)	30

Italy
(residence State)

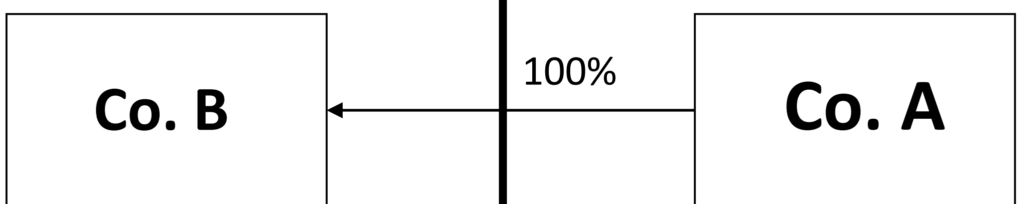
Co. A

Rent	100
Tax Italy (40%)	40

Overall tax = 70
Net profits = 30

Case 2: international economic double taxation

Country F | Italy



Profits	100
Tax F (30%)	30
Net Profits (Dividends)	70

Dividends	70
Tax Italy (40%)	28
Net Profits	42

Overall tax = 58

Case 3: international juridical and economic double taxation

Country F | **Italy**

Co. B ← 100% — **Co. A**

Country F	
Profits	100
Tax F (30%)	30
Net Profits (Dividends)	70
WHT 20 %	14
Net Dividends	56

Italy	
Dividends	70
Tax Italy (40%)	28
Net Profits	28

Overall tax = 72

Sources of international double taxation

- Dual residence
- Conflict 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)

Measures against international double taxation

- Domestic unilateral measures
- International bilateral or multilateral measures (Double Taxation Conventions - DTC)

Model DTC

- The OECD (Organization for Economic Co-operation and Development) Model DTC is used by Member States as a basis for negotiations of tax treaties
- Developing Countries prefer to use the UN Model DTC
- The tax authorities of some jurisdictions (particularly USA) prepared models that are different than the OECD and the UN Models in order to take into account the peculiarities of their tax systems

OECD Model DTC

- In addition to the text of the Model DTC (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
- The Commentary includes the observations and reservations made by member States on each article

OECD Model DTC and State of source

- 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).

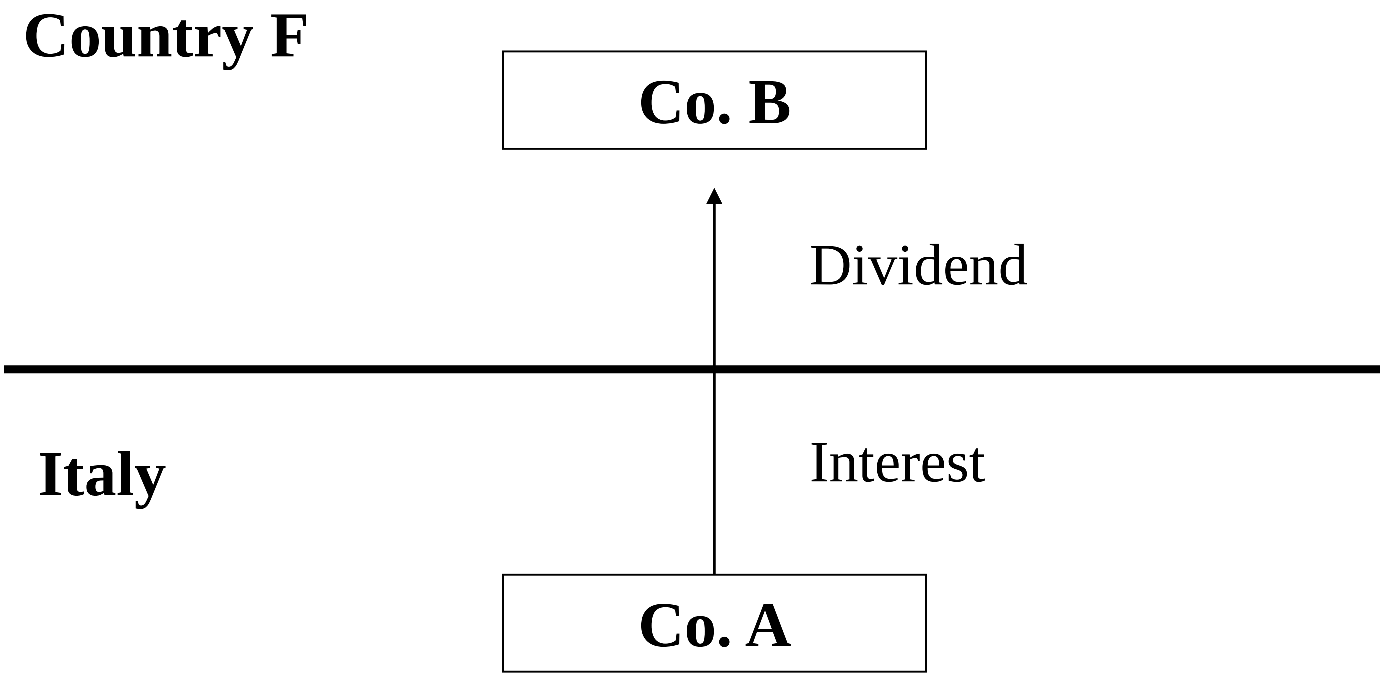
OECD Model DTC and State of residence

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

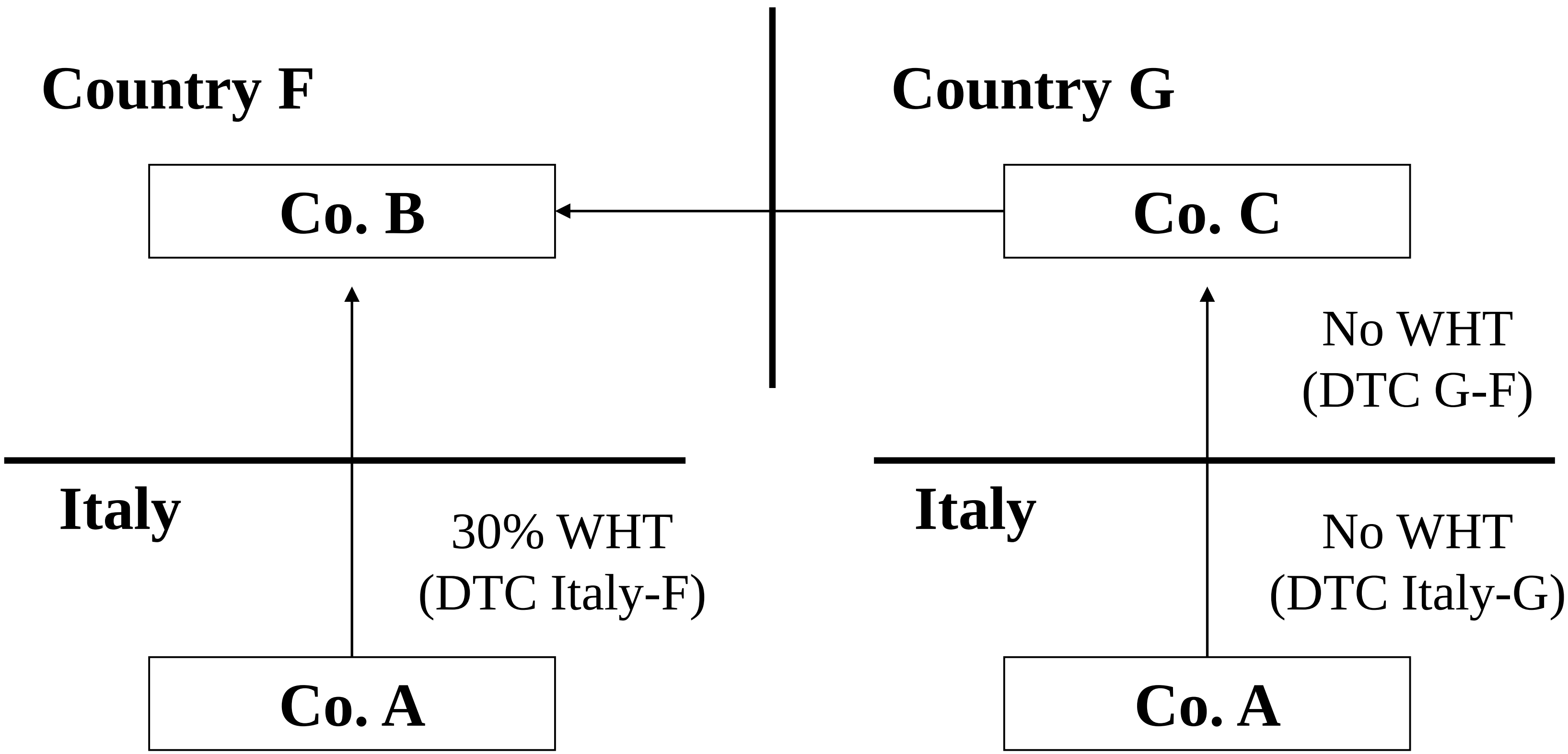
International Tax Avoidance

- Tax planning vs. tax avoidance/tax abuse vs. tax evasion.
- Multinational Enterprises (MNEs) may take advantage of the differences among different jurisdictions and of the benefits available under the DTCs in order to pursue a more efficient tax structure.

Mismatches in entity and instrument characterization



Tax treaty abuse



Measures against international tax avoidance

- Domestic unilateral measures
- International bilateral or multilateral measures (BEPs)