



普通高等教育“十一五”
国家级规划教材

国际

International Tax Law

税法学

蒋新苗 主编

湖南人民出版社



普通高等教育“十一五”国家级规划教材

湖南省重点学科国际法学资助项目

新世纪优秀人才支持计划资助项目

国际税法学

International Tax Law

主编 蒋新苗

撰稿人 (以撰写章节先后为序)

蒋新苗 陈杰辉 黄文旭

张海燕 杨广平 刘亚军

杨小强 曾皓 何燕华

湖南人民出版社

图书在版编目 (CIP) 数据

国际税法学 / 蒋新苗主编 . —长沙：湖南人民出版社，
2010. 5

ISBN 978 - 7 - 5438 - 6537 - 2

I. 国… II. 蒋… III. 国际税法 - 法的理论
IV. D996. 3

中国版本图书馆 CIP 数据核字 (2010) 第 080209 号

国际税法学

蒋新苗 主编

出版人：李建国

责任编辑：戴 军

装帧设计：虢 剑

出版、发行：湖南人民出版社

网 址：<http://www.hnppp.com>

地 址：长沙市营盘东路 3 号

邮 编：410005

经 销：湖南省新华书店

印 刷：长沙市富洲印刷厂

印 次：2010 年 5 月第 1 版第 1 次印刷

开 本：787 × 1092 1 / 16

印 张：24

字 数：360000

印 数：1 - 5000

书 号：ISBN 978 - 7 - 5438 - 6537 - 2

定 价：45.00 元

营销电话：0731 - 82226732

(如发现印装质量问题请与承印厂调换)

目	录
(12)	国际税法的定义与特征
(12)	国际税法的内涵与外延
(28)	一、狭义国际税法说
(28)	二、广义国际税法说
(28)	三、国际税法狭义说与广义说之爭的根源
(28)	四、广义国际税法说盛行的依据
(28)	第二章 国际税法的性质
(28)	一、国际税法的相对独立性
(28)	二、国际税法是国际性法律与国内性法律的复合体
(28)	三、国际税法是实体法与程序法的融合体
(15)	四、国际税法具有明显的公法性
(15)	第三节 国际税法与邻近领域的关系
(15)	一、国际税法与国内税法的关系
(15)	二、国际税法与国际税收的关系
(15)	三、国际税法与国际公法的关系
(15)	四、国际税法与国际私法的关系
(15)	五、国际税法与国际经济法的关系
(15)	第四节 国际税法的基本原则
(15)	一、国际税法基本原则的定义与特征
(15)	二、国际税法基本原则的类型
第二章	国际税法的调整对象与法律渊源
(15)	第一节 国际税法的调整对象
(15)	一、国际税法调整对象的定义与特征
(15)	二、国际税法调整对象的基本结构
(15)	第二节 国际税法的规范类型

一、概述	(42)
二、国际税法规范的分类标准	(43)
三、国际税法的冲突规范的基本特征与功能	(44)
四、国际税法规范的体系	(50)
第三节 国际税法的法律渊源	(51)
一、国际税法的国际法渊源	(51)
二、国际税法的国内法渊源	(54)
第三章 国际税法的历史	(57)
(1) 第一节 国际税法的产生	(57)
(1) 一、国际经济交往的发展	(57)
(1) 二、各国所得税制度的广泛建立	(58)
(2) 第二节 国际税法的发展	(60)
(2) 一、“二战”前国际税法的发展	(60)
(2) 二、“二战”后国际税法的发展	(62)
(3) 第三节 国际税法的趋同化走势	(67)
(3) 一、国家税收主权将在相对弱化和不断强化中交织发展	(67)
(3) 二、各国税收制度趋同化发展	(68)
(4) 三、国际税收协调与合作的取向——由双边条约走向多边条约	
(4) ...	(71)
(5) ...	
第四章 国际税收管辖权	(74)
(1) 第一节 国际税收管辖权确立的基本理念	(74)
(1) 一、国际税收管辖权的含义与特征	(74)
(1) 二、国际税收管辖权的确立理念	(77)
(1) 三、国际税收管辖权的确立准则	(78)
(1) 四、国际税收管辖权的选择模式	(80)
(2) 第二节 居民税收管辖权	(81)
(2) 一、确立居民税收管辖权的一般标准	(82)
(2) 二、OECD 税收协定范本中确立居民税收管辖权的标准	(86)
(2) 三、我国税法确立居民税收管辖权的标准	(89)
(3) 第三节 来源地税收管辖权	(93)
(3) 一、对非居民的税收管辖权问题	(93)
(3) 二、确立来源地税收管辖权的一般标准	(94)
(4) ...	

(001) 三、OECD 税收协议范本中对来源地税收管辖权的确立标准	(96)
(001) 第五章 避免国际双重征税的方法	(103)
(001) 第一节 国际双重征税的概念	(103)
(001) 一、双重征税的含义与特征	(103)
(001) 二、双重征税的表现形式	(105)
(001) 三、国际双重征税的概念与特征	(106)
(001) 第二节 国际双重征税产生的原因	(109)
(001) 一、国际双重征税产生的原因	(109)
(001) 二、国际法律性双重征税的表现形式	(110)
(001) 三、国际经济性双重征税的表现形式	(113)
(001) 四、国际双重征税的影响	(113)
第三节 避免国际双重征税的方式	(114)
(001) 一、避免国际双重征税的国内法规范——单边消除方式	(115)
(001) 二、避免国际双重征税的国际规范——双边消除方式	(134)
(001) 第六章 国际逃税的防范对策	(140)
(001) 第一节 国际逃税的定义	(140)
(001) 一、逃税的概念与特征	(140)
(001) 二、国际逃税的概念与特征	(144)
(001) 第二节 国际逃税的主要手段	(145)
(001) 一、不进行纳税申报或者在申报时隐瞒应税所得	(146)
(001) 二、伪造财务账簿及记账凭证	(146)
(001) 三、虚构成本和扣除项目以减少应税所得	(146)
(001) 四、逃避税务登记和税收监管	(147)
(001) 五、漏税	(147)
(001) 第三节 国际逃税的解决办法	(147)
(001) 一、国际逃税的国内法规制	(147)
(001) 二、国际逃税的国际法规制	(151)
第七章 国际避税的防范对策	(159)
(001) 第一节 避税港的概念与特征	(159)
(001) 一、避税港的概念	(159)
(001) 二、避税港的特征	(161)
(001) 第二节 避税港的形成与分类	(166)

一、避税港的形成	(166)
(四) 二、避税港的分类	(167)
(五) 第三节 利用避税港避税的主要手段	(167)
(六) 一、利用基地公司 (Base Company) 作为中转销售公司	(168)
(六) 二、利用离岸公司雇佣高级雇员进行税收筹划	(169)
(七) 三、设置信托	(169)
(八) 四、离岸养老金计划	(170)
(九) 五、离岸投资基金	(170)
(十) 六、建立航运公司和办理船舶注册	(171)
(十一) 第四节 避税港的国际法律规制	(171)
(十二) 一、避税港为全球金融秩序带来的挑战	(172)
(十三) 二、解决避税港的国际避税问题的对策	(174)
第八章 国际税收合作法律机制 (181)	
(十四) 第一节 国际税收协定的历史与发展	(181)
一、国际税收协定的概念与分类	(181)
(十五) 二、国际税收协定的历史演进	(182)
(十六) 三、国际税收协定的地位与功能	(185)
(十七) 四、国际税收协定的发展趋势	(185)
(十八) 第二节 国际税收协定传统内容与创新	(186)
(十九) 一、国际税收协定的传统内容	(186)
(二十) 二、国际税收协定内容的创新	(189)
(二十一) 第三节 国际税收协定的解释与适用规则	(190)
一、国际税收协定的解释规则	(190)
二、国际税收协定的适用规则	(192)
(二十二) 第四节 国际税收协定滥用的法律规制	(194)
一、国际税收协定滥用的定义	(194)
二、国际税收协定滥用的方式	(196)
三、国际税收协定滥用规制的具体措施	(198)
第九章 国际税务争端的解决方式 (203)	
(二十三) 第一节 国际税务争端的基本形态	(203)
一、国际税务争端的概念	(203)
二、国际税务争端的种类	(203)
三、国际税务争端的特点	(205)

(40) 第二节 国际税务争端解决的基本原则	(206)
(30) 一、维护国家税收管辖权的原则	(206)
二、维护纳税人合法的税收权益原则	(207)
三、促进国际税收的国际协调与合作原则	(207)
(20) 第三节 国际税务争端解决的主要方法	(208)
一、国内法的解决方法	(208)
二、国际法的解决方法	(208)
(20) 第四节 国际税务争端解决的国内法机制	(209)
一、各国解决国际税务争端程序的国内法机制概述	(209)
二、我国的税务行政复议程序	(214)
三、我国的税务行政诉讼程序	(220)
第五节 国际税务争端解决的国际法机制	(224)
一、相互协商程序	(224)
二、国际税收仲裁	(228)
三、我国处理国际税务争端的国际法方法	(237)
 第十章 中国涉外税法的立法与司法实践	(239)
第一节 中国涉外税法的产生和发展	(239)
一、涉外税法的概念	(239)
二、涉外税法的产生和发展	(241)
第二节 中国涉外税法的调整对象	(250)
一、概述	(250)
二、涉外税收关系的构成要素	(251)
三、涉外税收关系的认定	(253)
四、涉外因素与涉外税收关系及涉外税法的关系	(254)
第三节 中国涉外税法的渊源	(254)
一、国内法渊源	(255)
二、国际税收协定	(257)
三、国际税收惯例	(258)
第四节 中国涉外税法的基本原则	(260)
一、维护国家主权和经济利益的原则	(260)
二、坚持平等互利原则	(261)
三、参照国际惯例原则	(261)
第五节 中国涉外税法的体系	(262)
一、对涉外税法体系的理解	(262)

3. The Relationship between International Tax Law and Internal Tax Law	(1)
4. The Relationship between International Tax Law and Public Law	(1)
5. The Relationship between International Tax Law and International Tax Law	(1)
Contents of International Tax Law	
Section I Basic Principles of International Tax Law	
1. Definition and Characteristics of International Tax Law	
2. The Basic Principles of International Tax Law	
3. The Basic Principles of International Tax Law	

Chapter One Definition and Characteristics of International Tax Law	
(1) (1)	
Section 1 Intension and Extension of International Tax Law	
1. Narrowed Meaning of International Tax Law (1)	
2. Widened Meaning of International Tax Law (2)	
3. Origin of the Argument between Narrowed Meaning and Widened Meaning of International Tax Law (4)	
4. Foundation of the Popularity of International Tax Law in Widened Meaning (4)	
Section 2 Nature of International Tax Law (7)	
1. The Relative Independence of International Tax Law (7)	
2. International Tax Law is the Complex of International Laws and Internal Laws (9)	
3. International Tax Law is the Integration of Substantive Law and Adjective Law (11)	
4. International Tax Law Shares Many Common Characteristics with Public Law (11)	
Section 3 Relationship between International Tax Law and Its Adjacent Fields (12)	
1. The Relationship between International Tax Law and Internal Tax Law (12)	
2. The Relationship between International Tax Law and International Tax (14)	

3. The Relationship between International Tax Law and International Public Law	(16)
4. The Relationship between International Tax Law and Private International Law	(18)
5. The Relationship between International Tax Law and International Economic Law	(19)
Section 4 Basic Principles of International Tax Law	(21)
1. Definition and Characteristics of the Basic Principles of International Tax Law	(21)
2. Types of the Basic Principles of International Tax Law	(25)

Chapter Two Adjustment Object and Legal Source of International Tax Law (1)	Tax Law	(37)
Section 1 Adjustment Object of International Tax Law	(37)	
(1) 1. Definition and Characteristics of the Adjustment Object of International Tax Law	(37)	
(1) 2. Basic Structure of the Adjustment Object of International Tax Law	(38)	
Section 2 Standard Types of International Tax Law (4)	(42)	
(1) 1. Summarize	(42)	
(1) 2. Classification Criteria of the Standard of International Tax Law	(43)	
(1) 3. Basic Characteristics and Functions of the Conflict Standard of International Tax Law	(44)	
(1) 4. System of the Standard of International Tax Law	(50)	
Section 3 Legal Source of International Tax Law (11)	(51)	
(1) 1. The International Law Source of International Tax Law	(51)	
(1) 2. The Internal Law Source of International Tax Law	(54)	
Chapter Three History of International Tax Law (57)	(57)	
Section 1 Formation of International Tax Law (57)	(57)	
(1) 1. Development of International Economic Contact	(57)	
(1) 2. Formation of Income Taxation in Various Countries	(58)	
Section 2 Development of International Tax Law (41)	(60)	
(1) 1. Development of International Tax Law before World II	(60)	

(001) 2. Development of International Tax Law after World War II	(62)
Section 3 Convergence Tendency of International Tax Law	
(001)	(67)
(011) 1. Development of State Sovereignty of Taxation	(67)
(011) 2. Convergence Tendency of Taxation in Various Countries	(68)
(011) 3. Ways for International Tax Coordination and Cooperation	(71)
Chapter Four International Tax Jurisdiction	(74)
Section 1 The Definition of International Tax Jurisdiction	(74)
(011) 1. The Signification and Feature of International Tax Jurisdiction	(74)
(011) 2. The Idea on the Definition of International Tax Jurisdiction	(77)
(011) 3. The Criterion on the Definition of International Tax Jurisdiction	(78)
(011) 4. The Model on The Definition of International Tax Jurisdiction	(80)
Section 2 The Resident Tax Jurisdiction	(81)
(011) 1. The General Criterion on the Definition of the Resident Tax Jurisdiction	(82)
(011) 2. The Criterion of OECD on the Definition of the Resident Tax Jurisdiction	(86)
(011) 3. The Criterion of Internal Taxation Law on the Definition of the Resident Tax Jurisdiction	(89)
Section 3 The Source-based Tax Jurisdiction	(93)
(011) 1. The Problems of the Tax Jurisdiction on the Non-resident	(93)
(011) 2. The General Criterion on the Definition of Source-based Tax Jurisdiction	(94)
(011) 3. The Criterion of OECD on the Definition of the Source-based Tax Jurisdiction	(96)
Chapter Five The Method of Elimination of International Double Taxation	
Section 1 Concept of International Double Taxation	(103)
1. The Signification and Feature of Double Taxation	(103)
2. Forms of Double Taxation	(105)

(2a) 3. Concept and Feature of International Double Taxation	(106)
Section 2 The Cause of International Double Taxation	(109)
(2a) 1. The Cause of International Double Taxation	(109)
(2a) 2. Forms of International Legal Double Taxation	(110)
(2a) 3. Forms of International Economic Double Taxation	(113)
(2a) 4. The Effect of International Double Taxation	(113)
Section 3 The Method of Elimination on International Double Taxation	(114)
(2a) 1. The Internal Criterion of Elimination on International Double Taxation-Unilateral Eliminating Method	(115)
(2a) 2. The International Criterion of Elimination on International Double Taxation-Bilateral Eliminating Method	(134)
Chapter Six Countermeasures against International Tax Evasion	(140)
Section 1 Definition of International Tax Evasion	(140)
(2a) 1. Definition and Characteristics of Tax Evasion	(140)
2. Definition and Characteristics of International Tax Evasion	(144)
Section 2 Measures of International Tax Evasion	(145)
1. Concealment of Incomes	(146)
2. Forgery of Books or Receipts	(146)
3. Fabrication of Cost	(146)
4. Evasion the Obligation of Tax Registration	(147)
5. Tax Dodging	(147)
Section 3 Countermeasures to International Tax Evasion	(147)
1. National Regulation on International Tax Evasion	(147)
2. International Regulation on International Tax Evasion	(151)
Chapter Seven Countermeasures against International Tax Avoidance	(159)
Section 1 Concept and Characteristics of Tax Haven	(159)
(2a) 1. Concept of Tax Haven	(159)
(2a) 2. Characteristics of Tax Haven	(161)
Section 2 Formation and their Classification of Tax Havens	(166)

(801) 1. Formation of Tax Havens	(166)
(801) 2. Classification of Tax Havens	(167)
Section 3 Main Means of Tax Avoidance by Tax Havens	(167)
(802) 1. Making Use of Base Company as a Transit Sales Company.....	(168)
(802) 2. Making Use of Offshore Company to Hire the Senior Employees for Tax Planning	(169)
(802) 3. Establishment of Trust	(169)
(802) 4. Offshore Pension Plan.....	(170)
(802) 5. Offshore Investment Fund.....	(170)
(802) 6. Establishing the Shipping Company and Making Ship Registration	
(802)	(171)
Section 4 International Legal Regulation concerning Tax Havens	
(803)	(171)
1. Challenges to the Global Financial Order Brought by Tax Havens	
(803)	(172)
2. Resolutions to the Problems of International Tax Avoidance Caused by Tax Havens	(174)
Chapter Eight Legal Mechanism of International Tax Cooperation	
(804)	(181)
Section 1 History and Development of Tax Treaty	
(805) 1. Conception and Classification of Tax Treaty	(181)
2. Development of Tax Treaty	(182)
(805) 3. Status and Function of Tax Treaty	(185)
(805) 4. Developing Trend of Tax Treaty	(185)
Section 2 Traditional Content and Innovation of Tax Treaty	
(806)	(186)
1. Traditional Content of Tax Treaty	(186)
2. Innovation of Tax Treaty	(189)
Section 3 Interpretation and Application Rules of Tax Treaty	
(807)	(190)
1. Interpretation Rules of Tax Treaty	(190)
2. Application Rules of Tax Treaty	(192)
Section 4 Restricting Measures of Treaty Abuse	
1. Definition of Treaty Abuse	(194)

(801) 2. Manners of Treaty Abuse	(196)
(801) 3. Restricting Measures of Treaty Abuse	(198)
(801)	
Chapter Nine Resolution of International Tax Disputes	(203)
Section 1 Introduction of International Tax Disputes	(203)
(801) 1. Concept of International Tax Disputes	(203)
(801) 2. Category of International Tax Disputes	(203)
(801) 3. Character of International Tax Disputes	(205)
Section 2 The Basic Principles of International Tax Disputes	
Settlement	(206)
(801) 1. Principle of Maintenance of State Tax Jurisdiction	(206)
2. Principle of Maintenance of the Legal Taxation Right of Taxpayer	
(801)	(207)
3. Principle of Promotion of Harmonization and Cooperation of	
(801) International Taxation	(207)
Section 3 Methods of International Tax Disputes Settlement	
(801)	(208)
1. Approaches of Domestic Law to International Tax Disputes	(208)
2. Approaches of International Law to International Tax Disputes	
(801)	(208)
Section 4 Domestic Legal System of International Tax Disputes	
Settlement	(209)
(801) 1. Introduction of Domestic Legal System in the Procedure of	
(801) International Tax Disputes Settlement in Various Countries	(209)
(801) 2. Administrative Reconsideration in China	(214)
3. Administrative Litigation in China	(220)
Section 5 International Legal System of International Tax Disputes	
Settlement	(224)
(801) 1. Mutual Agreement Procedure	(224)
2. International Tax Arbitration	(228)
(801) 3. International Methods of International Tax Disputes Settlement in	
(801) China	(237)
(801)	
(801)	
(801)	
(801)	
Section 6 Measures of Treaty Abuse	
(801)	

Chapter Ten Legislation Practice of Chinese Foreign-related Tax Law	
(第八章)	(239)
Section 1 Emergence and Development of Chinese Foreign-related Tax Law	(239)
(第八节)	(239)
1. Concept of Foreign-related Tax Law	(239)
2. Emergence and Development of Foreign-related Tax Law	(241)
Section 2 Regulatory object of Foreign-related Tax Law	(250)
1. Posing the Questions	(250)
2. Understandings about Foreign-related Tax Relations	(251)
3. Recognition of Foreign-related Tax Relations	(253)
4. Interrelation bewteen Foreign Factors, Foreign-related Tax Relations and Foreign-related Tax Law	(254)
Section 3 Source of Chinese Foreign-related Tax Law	(254)
1. The National Law Source	(255)
2. International Tax Agreements	(257)
3. International Tax Convention	(258)
Section 4 Basic Principles of Chinese Foreign-related Tax Law	(260)
1. Principle of Guarding National Sovereignty and Economic Interests	(260)
2. Principle of Equality and Mutual Benefit	(261)
3. Principle of Reference to International Convention	(261)
Section 5 System of Chinese Foreign-related Tax Law	(262)
1. Understandings about the System of Foreign-related Tax Law	(262)
2. Individual Income Tax Law	(264)
3. Enterprise Income Tax Law	(270)

Appendix

1. Organization for Economic Co-operation and Development, Model Tax Convention on Income and on Capital	(275)
2. Department of Economic & Social Affairs, United Nations Model Double Taxation Convention between Developed and Developing Countries	(313)

3.1 The Catalogue of the Foreign-related Tax Conventions Signed by China	(353)
Section 1 Emergence and Development of Chinese Foreign-related Tax Law	
Selected Bibliography	(360)
Postscript	(364)
3. Emergence and Development of Foreign-related Tax Law	(341)
Section 2 Analysis of Foreign-related Tax Law	(320)
1. Legal Definition	(320)
2. Classification of Foreign-related Tax Relations	(321)
3. Recognition of Foreign-related Tax Relations	(323)
4. Differentiation between Foreign-related Tax Relations and Foreign-related Tax Law	(324)
Section 3 Source of Chinese Foreign-related Tax Law	(324)
1. The National Tax Law	(324)
2. International Tax Agreement	(325)
3. International Tax Convention	(326)
Section 4 Basic Principles of Chinese Foreign-related Tax Law	(326)
1. Principle of Chinese National Sovereignty and Territoriality	(326)
2. Principle of Equality and Mutual Benefit	(327)
3. Principle of Reciprocity of International Convention	(327)
Section 5 System of Chinese Foreign-related Tax Law	(328)
1. Characteristics about the System of Chinese Foreign-related Tax Law	(328)
2. Legislative Process of Tax Law	(329)
3. Implementing Process of Tax Law	(329)
Appendix	
Comments	
1. Classification for Promoting Co-operation and Exchange, Model Tax Convention on Promote and Protect	(325)
2. The Agreement of Economic & Social Affairs, Bilateral Model	(325)
3. People's Taxation Convention on Promote and Develop	(313)