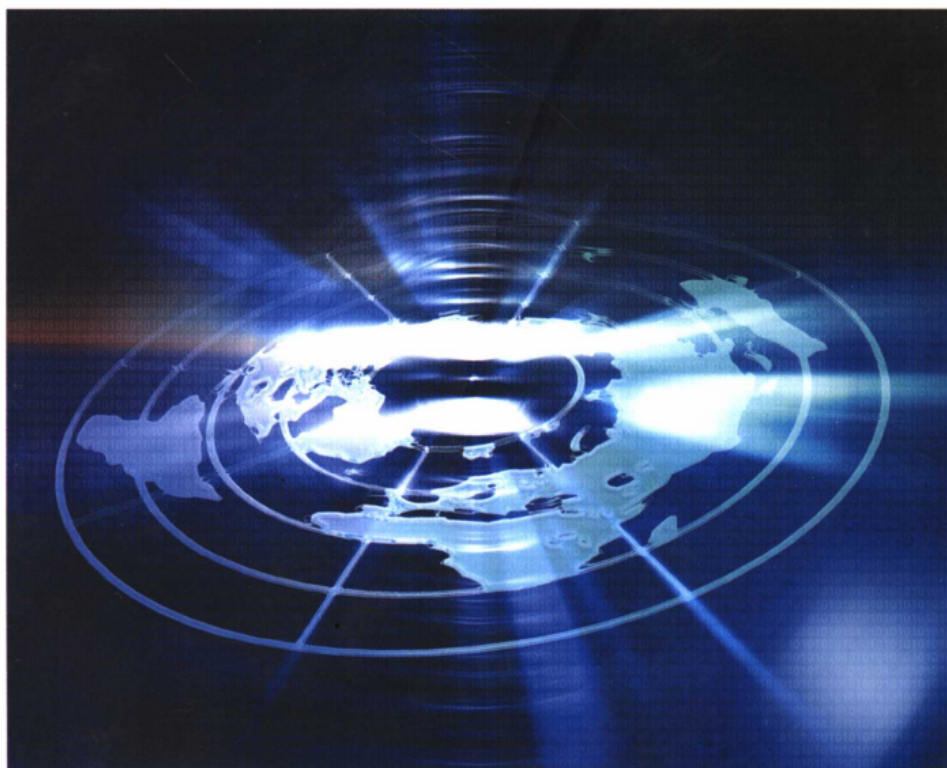


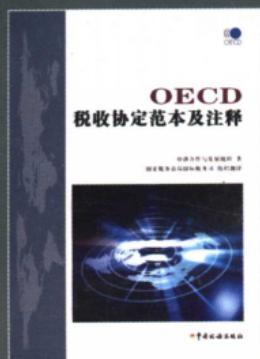
# OECD

## 税收协定范本及注释

经济合作与发展组织 著

国家税务总局国际税务司 组织翻译





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# 序

谨向广大读者推荐《经济合作与发展组织关于对所得和财产避免双重征税和防止偷漏税的协定范本》(以下简称“OECD 范本”) 2005 年版的中文译本。

OECD 范本包括协定条文和注释。注释是对各条文的解释和说明。OECD 范本自 1963 年面世以来影响日益扩大,对税收协定的谈签与执行具有重要的指导意义,成为包括我国在内的很多国家税收协定工作的重要参考资料。

税收协定是划分国际税收管辖权的重要法律依据,既涉及主权国家的税收权益,也关系到缔约国之间的经济、技术与人员交流。我国自上世纪 80 年代初开始对外谈签税收协定至 2006 年 10 月底,已对外谈签了 89 个税收协定,其中 83 个已经生效执行,与香港和澳门两个特别行政区也签署了税收安排。这些协定和安排在吸引投资,促进“走出去”战略的实施以及维护我国税收权益等方面发挥着重要作用。

OECD 特别授权国家税务总局出版中、英对照文本。国家税务总局国际税务司委托厦门大学法学院对本书进行了翻译。希望本书能够帮助我国热爱和从事国际税收工作的人员更好地理解 and 执行税收协定,从而促进我国涉外(国际)税务事业的发展。

许旭人

二〇〇六年十二月二十日

# Contents

FOREWORD .....	1
INTRODUCTION .....	3
MODEL CONVENTION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL .....	22
COMMENTARY ON ARTICLE 1 ..... CONCERNING THE PERSONS COVERED BY THE CONVENTION	55
COMMENTARY ON ARTICLE 2 ..... CONCERNING TAXES COVERED BY THE CONVENTION	89
COMMENTARY ON ARTICLE 3 ..... CONCERNING GENERAL DEFINITIONS	94
COMMENTARY ON ARTICLE 4 ..... CONCERNING THE DEFINITION OF RESIDENT	103
COMMENTARY ON ARTICLE 5 ..... CONCERNING THE DEFINITION OF PERMANENT ESTABLISHMENT	116
COMMENTARY ON ARTICLE 6 ..... CONCERNING THE TAXATION OF INCOME FROM IMMOVABLE PROPERTY	162
COMMENTARY ON ARTICLE 7 ..... CONCERNING THE TAXATION OF BUSINESS PROFITS	165
COMMENTARY ON ARTICLE 8 ..... CONCERNING THE TAXATION OF PROFITS FROM SHIPPING, INLAND WATERWAYS TRANSPORT AND AIR TRANSPORT	200

# 目 录

前言 .....	1
导言 .....	3
经济合作与发展组织关于对所得和 财产征税的协定范本 .....	22
第 1 条注释 ..... 关于协定适用的人	55
第 2 条注释 ..... 关于协定适用的税种范围	89
第 3 条注释 ..... 关于一般定义	94
第 4 条注释 ..... 关于居民的定义	103
第 5 条注释 ..... 关于常设机构的定义	116
第 6 条注释 ..... 关于不动产所得的征税	162
第 7 条注释 ..... 关于营业利润的课税	165
第 8 条注释 ..... 关于海运、内河运输和空运利润的征税	200



COMMENTARY ON ARTICLE 9 .....	212	第 9 条注释 .....	212
CONCERNING THE TAXATION OF ASSOCIATED ENTERPRISES		关于联属企业的征税	
COMMENTARY ON ARTICLE 10 .....	219	第 10 条注释 .....	219
CONCERNING THE TAXATION OF DIVIDENDS		关于股息的征税	
COMMENTARY ON ARTICLE 11 .....	249	第 11 条注释 .....	249
CONCERNING THE TAXATION OF INTEREST		关于利息的征税	
COMMENTARY ON ARTICLE 12 .....	273	第 12 条注释 .....	273
CONCERNING THE TAXATION OF ROYALTIES		关于特许权使用费的征税	
COMMENTARY ON ARTICLE 13 .....	298	第 13 条注释 .....	298
CONCERNING THE TAXATION OF CAPITAL GAINS		关于财产收益的征税	
COMMENTARY ON ARTICLE 15 .....	317	第 15 条注释 .....	317
CONCERNING THE TAXATION OF INCOME FROM EMPLOYMENT		关于受雇所得的课税	
COMMENTARY ON ARTICLE 16 .....	336	第 16 条注释 .....	336
CONCERNING THE TAXATION OF DIRECTORS' FEES		关于董事费的征税	
COMMENTARY ON ARTICLE 17 .....	339	第 17 条注释 .....	339
CONCERNING THE TAXATION OF ARTISTES AND SPORTSMEN		关于艺术家和运动员的征税	
COMMENTARY ON ARTICLE 18 .....	347	第 18 条注释 .....	347
CONCERNING THE TAXATION OF PENSIONS		关于退休金的征税	
COMMENTARY ON ARTICLE 19 .....	381	第 19 条注释 .....	381
CONCERNING THE TAXATION OF REMUNERATION IN RESPECT OF GOVERNMENT SERVICE		关于为政府服务的报酬的征税	
COMMENTARY ON ARTICLE 20 .....	389	第 20 条注释 .....	389
CONCERNING THE TAXATION OF STUDENTS		关于对学生的征税	
COMMENTARY ON ARTICLE 21 .....	391	第 21 条注释 .....	391
CONCERNING THE TAXATION OF OTHER INCOME		关于其他所得的征税	

COMMENTARY ON ARTICLE 22 .....	397	第 22 条注释 .....	397
CONCERNING THE TAXATION OF CAPITAL		关于财产的征税	
COMMENTARY ON ARTICLES			
23A AND 23B .....	401	第 23A 条和第 23B 条注释 .....	401
CONCERNING THE METHODS FOR		关于消除双重征税的方法	
ELIMINATION OF DOUBLE TAXATION			
COMMENTARY ON ARTICLE 24 .....	448	第 24 条注释 .....	448
CONCERNING NON-DISCRIMINATION		关于非歧视待遇	
COMMENTARY ON ARTICLE 25 .....	476	第 25 条注释 .....	476
CONCERNING THE MUTUAL AGREEMENT		关于相互协商程序	
PROCEDURE			
COMMENTARY ON ARTICLE 26 .....	499	第 26 条注释 .....	499
CONCERNING THE EXCHANGE OF		关于情报交换	
INFORMATION			
COMMENTARY ON ARTICLE 27 .....	525	第 27 条注释 .....	525
CONCERNING THE ASSISTANCE IN THE		关于税款征收协助	
COLLECTION OF TAXES			
COMMENTARY ON ARTICLE 28 .....	540	第 28 条注释 .....	540
CONCERNING MEMBERS OF DIPLOMATIC		关于外交代表和领事官员	
MISSIONS AND CONSULAR POSTS			
COMMENTARY ON ARTICLE 29 .....	543	第 29 条注释 .....	543
CONCERNING THE TERRITORIAL		关于协定适用区域的扩大	
EXTENSION OF THE CONVENTION			
COMMENTARY ON ARTICLES			
30 AND 31 .....	544	第 30 条和 31 条注释 .....	544
CONCERNING THE ENTRY INTO FORCE AND		协定的生效和终止	
THE TERMINATION OF THE CONVENTION			
NON-MEMBER COUNTRIES' POSITIONS		非成员国关于经合组织税收协定	
ON THE OECD MODEL TAX		范本的立场 .....	546
CONVENTION .....	546		
		译者说明 .....	587



## FOREWORD

This is the sixth edition of the condensed version of the loose-leaf publication entitled “MODEL TAX CONVENTION ON INCOME AND ON CAPITAL”, first published in loose-leaf format in 1992 and periodically updated since then.

This condensed version includes the text of the Model Tax Convention as it read on 15 July 2005 after the adoption of the sixth update by the Council of the OECD. Historical notes included in Volume I of the loose-leaf version as well as the detailed list of tax conventions between OECD Member countries and the background reports that are included in Volume II have not been reproduced in this version.

## 前 言

本书是活页出版物《对所得和财产征税的协定范本》的精缩本第六版，范本于 1992 年首次以活页形式出版，此后定期更新。

本精缩本包括 OECD 理事会于 2005 年 7 月 15 日通过的第六次更新的税收协定范本条款。活页本第一册中的历史纪录、OECD 成员国之间的税收协定列表和第二册中的背景报告未在此本重现。



## INTRODUCTION

1. International juridical double taxation can be generally defined as the imposition of comparable taxes in two (or more) States on the same taxpayer in respect of the same subject matter and for identical periods. Its harmful effects on the exchange of goods and services and movements of capital, technology and persons are so well known that it is scarcely necessary to stress the importance of removing the obstacles that double taxation presents to the development of economic relations between countries.

2. It has long been recognized among the Member countries of the Organisation for Economic Co-operation and Development that it is desirable to clarify, standardize, and confirm the fiscal situation of taxpayers who are engaged in commercial, industrial, financial, or any other activities in other countries through the application by all countries of common solutions to identical cases of double taxation.

3. This is the main purpose of the OECD Model Tax Convention on Income and on Capital, which provides a means of settling on a uniform basis the most common problems that arise in the field of international juridical double taxation. As recommended by the Council of the OECD,<sup>[1]</sup> Member countries, when concluding or revising bilateral conventions, should conform to this Model Convention as interpreted by the Commentaries thereon and having regard to the reservations contained therein and their tax authorities should follow these Commentaries, as modified

## 导 言

1. 法律性质的国际双重征税一般可以定义为两个或多个国家在同一时期内对同一纳税人的相同所得征收类似的税收。它对货物和服务的交换, 资本、技术以及人员的流动所产生的有害影响已广为人知, 因而无需再强调消除双重征税给各国之间经济关系发展造成的阻碍是何等重要了。

2. 经济合作与发展组织(简称经合组织)的成员国一直清楚地认识到, 有必要通过各国对相同的双重征税情形采用共同的解决方法, 从而明确、规范和确定在他国从事商业、工业、金融或其他活动的纳税人的税收地位。

3. 这正是经合组织关于对所得和财产征税协定范本的主要宗旨, 即针对法律性质的国际双重征税方面产生的最普遍问题, 规定统一的解决方法。经合组织<sup>[1]</sup>理事会建议, 成员国在缔结或修订双边协定时, 应与此协定范本保持一致, 并应考虑到范本注释的解释以及相关的保留意见(reservation); 成员国税务当局在适用和解释本国以范本为基础缔结的双边协定的规定时, 也应遵循范本不断修订更新的注释, 除非他们已对有关的注释内容持有异议意见。

from time to time and subject to their observations thereon, when applying and interpreting the provisions of their bilateral tax conventions that are based on the Model Convention.

[1] Cf. Annex.

## A. Historical background

4. Progress had already been made towards the elimination of double taxation through bilateral conventions or unilateral measures when the Council of the Organisation for European Economic Co-operation (OEEC) adopted its first Recommendation concerning double taxation on 25 February 1955. At that time, 70 bilateral general conventions had been signed between countries that are now Members of the OECD. This was to a large extent due to the work commenced in 1921 by the League of Nations. This work led to the drawing up in 1928 of the first model bilateral convention and, finally, to the Model Conventions of Mexico (1943) and London (1946), the principles of which were followed with certain variants in many of the bilateral conventions concluded or revised during the following decade. Neither of these Model Conventions, however, was fully and unanimously accepted. Moreover, in respect of several essential questions, they presented considerable dissimilarities and certain gaps.

5. The increasing economic interdependence and co-operation of the Member countries of the OEEC in the post-war period showed increasingly clearly the importance of measures for preventing international double taxation. The need was recognised for extending the network of bilateral tax conventions to all Member countries of the OEEC, and subsequently of the OECD, several of which had so far concluded only very few conventions and

[1] 见附件。

## A. 历史背景

4. 当欧洲经济合作组织（简称欧经合组织）理事会 1955 年 2 月 25 日通过其第一个关于双重征税的建议案时，通过双边协定或单边措施消除双重征税已经取得一定的进展。当时，经合组织现有成员国之间已经签署了 70 个综合性的双边协定。这在很大程度上要归功于国际联盟自 1921 年开始在这方面所做的工作。国际联盟的工作产生了 1928 年的第一个双边税收协定范本，并最终形成了 1943 年墨西哥协定范本以及 1946 年伦敦协定范本。此后十年期间所缔结或修订的许多双边协定除某些变动外，均遵循了上述范本的原则。然而，这些范本并未被完全一致地接受，甚至在一些基本问题上还存在相当程度的差异和分歧。

5. 战后欧经合组织各成员国间经济的相互依赖与合作增强，使得采取措施防止国际双重征税显得日益重要。人们认识到需要将双边税收协定网络扩展到所有的欧经合组织成员国，以及后来的经合组织的所有成员国。当时，一些成员国只签署了为数不多的协定，而有些成员国则根本尚未签订此类协定。同时，按照统一的原则、定义、规则和方法协调这些双边协定，并就此类协定的共同解释取得一致意见，也越

some none at all. At the same time, harmonization of these conventions in accordance with uniform principles, definitions, rules, and methods, and agreement on a common interpretation, became increasingly desirable.

6. It was against this new background that the Fiscal Committee set to work in 1956 to establish a draft convention that would effectively resolve the double taxation problems existing between OECD Member countries and that would be acceptable to all Member countries. From 1958 to 1961, the Fiscal Committee prepared four interim Reports, before submitting in 1963 its final Report entitled "Draft Double Taxation Convention on Income and Capital".<sup>[1]</sup> The Council of the OECD adopted, on 30 July 1963, a Recommendation concerning the avoidance of double taxation and called upon the Governments of Member countries, when concluding or revising bilateral conventions between them, to conform to that Draft Convention.

[1] Draft Double Taxation Convention on Income and Capital, OECD, Paris, 1963.

7. The Fiscal Committee of the OECD had envisaged, when presenting its Report in 1963, that the Draft Convention might be revised at a later stage following further study. Such a revision was also needed to take account of the experience gained by Member countries in the negotiation and practical application of bilateral conventions, of changes in the tax systems of Member countries, of the increase in international fiscal relations, and of the development of new sectors of business activity and the emergence of new complex business organisations at the international level. For all these reasons, the Fiscal Committee and, after 1971, its successor the Committee on Fiscal

发显得有必要。

6. 正是在当时这种新的背景下,为了拟订一份能够有效解决经合组织成员国之间的双重征税问题,并能为所有成员国所接受的协定草案,财政委员会于1956年着手工作。1958年至1961年间,财政委员会草拟了四份过渡性报告,并于1963年正式提交了题为《关于对所得与财产双重征税协定草案》<sup>[1]</sup>的最终报告。1963年7月30日,经合组织理事会通过了一份关于避免双重征税的建议,并呼吁成员国政府之间在缔结或修订双边协定时与该协定草案保持一致。

[1] 《关于对所得与财产双重征税协定草案》,经合组织,巴黎,1963年。

7. 在呈交1963年报告时,经合组织财政委员会就已经预计到随着研究的深入,今后可能对协定草案做出修订。考虑到如下这样一些因素,协定草案也需要进行修订:各成员国在谈判和实际执行双边协定过程中所取得的经验;成员国税收制度的变化;国际税收关系的发展;新的商业活动领域的发展以及新的复杂的国际商业组织形式的出现。正因如此,财政委员会及其继承者财政事务委员会(1971年后)对1963年协定草案及其注释进行了修订,并于1977年公布了新的范本和注释。<sup>[1]</sup>

Affairs, undertook the revision of the 1963 Draft Convention and of the commentaries thereon. This resulted in the publication in 1977 of a new Model Convention and Commentaries.<sup>[1]</sup>

【1】 Model Double Taxation Convention on Income and on Capital, OECD, Paris, 1977.

8. The factors that had led to the revision of the 1963 Draft Convention continued to exert their influence and, in many ways, the pressure to update and adapt the Model Convention to changing economic conditions progressively increased. New technologies were developed and, at the same time, there were fundamental changes taking place in the ways in which cross-borders transactions were undertaken. Methods of tax avoidance and evasion became more sophisticated. The globalisation and liberalisation of OECD economies also accelerated rapidly in the 1980s. Consequently, in the course of its regular work programme, the Committee on Fiscal Affairs and, in particular, its Working Party No.1, continued after 1977 to examine various issues directly or indirectly related to the 1977 Model Convention. This work resulted in a number of reports, some of which recommended amendments to the Model Convention and its Commentaries.<sup>[1]</sup>

【1】 A number of these reports were published and appear in Volume II of the loose-leaf version of the OECD Model Tax Convention.

9. In 1991, recognizing that the revision of the Model Convention and the Commentaries had become an ongoing process, the Committee on Fiscal Affairs adopted the concept of an ambulatory Model Convention providing periodic and more timely updates and amendments without waiting for a complete revision. It was therefore decided

【1】 《关于对所得和财产双重征税协定》，经合组织，巴黎，1977年。

8. 导致修订 1963 年协定草案的那些因素在持续产生着影响，在许多方面，更新范本以适应不断变化的经济情况的压力也日趋增大。新技术的发展，以及与此同时从事跨国交易的方式也在发生重大的变化。避税和逃税的方式变得更加复杂。20 世纪 80 年代期间，经合组织成员国经济的全球化和自由化程度也迅速加剧。因此，1977 年以后，财政事务委员会，特别是其第一工作小组，在其日常工作过程中继续探讨与 1977 年范本直接或间接相关的各种问题，并形成了一系列的研究报告。其中有些报告建议修改协定范本及其注释。<sup>[1]</sup>

【1】 其中有些报告登载于《经合组织税收协定范本》（活页版）的第二卷中。

9. 1991 年，考虑到范本及其注释的修订已成为一项长期性的工作，财政事务委员会采用了变动式协定范本的概念，即不等待全面的范本修订，而是提供定期的、更及时的更新和修订内容。因此，决定出版协定范本的最新修订本，将上述报告所提出的许多建议内容吸收进来，使范本能够体现 1977 年以来的工作进展。

to publish a revised updated version of the Model Convention which would take into account the work done since 1977 by integrating many of the recommendations made in the above-mentioned reports.

10. Because the influence of the Model Convention had extended far beyond the OECD Member countries, the Committee also decided that the revision process should be opened up to benefit from the input of non-Member countries, other international organizations and other interested parties. It was felt that such outside contributions would assist the Committee on Fiscal Affairs in its continuing task of updating the Model Convention to conform with the evolution of international tax rules and principles.

11. This led to the publication in 1992 of the Model Convention in a loose-leaf format. Unlike the 1963 Draft Convention and the 1977 Model Convention, the revised Model was not the culmination of a comprehensive revision, but rather the first step of an ongoing revision process intended to produce periodic updates and thereby ensure that the Model Convention continues to reflect accurately the views of Member countries at any point in time.

11.1 Through one of these updates, produced in 1997, the positions of a number of non-Member countries on the Model Convention were added in a second volume in recognition of the growing influence of the Model Convention outside the OECD countries (see below). At the same time, reprints of a number of previous reports of the Committee which had resulted in changes to the Model Convention were also added.

10. 由于协定范本的影响已经远远超越了经合组织成员国的范围, 因此, 委员会也决定, 范本的修订过程应面向各非成员国、其他国际组织以及其他感兴趣的团体开放。来自外部的意见有助于委员会开展其长期性任务, 即不断更新协定范本, 适应国际税收规则和原则的发展。

11. 这就促成了 1992 年活页版形式的协定范本的出台。与 1963 年协定草案和 1977 年协定范本不同的是, 修订后的范本并非最终的综合性修订本, 而是一个持续性修订过程的第一步, 它旨在定期提供最新修订内容, 从而确保协定范本能及时准确地反映各成员国的观点。

11.1 在 1997 年的更新中, 一些非成员国关于协定范本的立场被列入本注释的第二卷中, 以顾及协定范本在经合组织成员国范围之外日益扩大的影响 (见后)。同时, 委员会之前发表的一些研究报告文本也被加入到注释中, 正是这些报告导致了协定范本的修订。



## B. Influence of the OECD Model Convention

12. Since 1963, the OECD Model Convention has had wide repercussions on the negotiation, application, and interpretation of tax conventions.

13. First, OECD Member countries have largely conformed to the Model Convention when concluding or revising bilateral conventions. The progress made towards eliminating double taxation between Member countries can be measured by the increasing number of conventions concluded or revised since 1957 in accordance with the Recommendations of the Council of the OECD. But the importance of the Model Convention should be measured not only by the number of conventions concluded between Member countries<sup>[1]</sup> but also by the fact that, in accordance with the Recommendations of the Council of the OECD, these conventions follow the pattern and, in most cases, the main provisions of the Model Convention. The existence of the Model Convention has facilitated bilateral negotiations between OECD Member countries and made possible a desirable harmonization between their bilateral conventions for the benefit of both taxpayers and national administrations.

[1] For the list of these conventions, cf. Appendix I in Volume II of the loose-leaf version of the OECD Model Tax Convention.

14. Second, the impact of the Model Convention has extended far beyond the OECD area. It has been used as a basic document of reference in negotiations between Member and non-Member countries and even between non-Member countries, as well as in the work of other worldwide or regional international organisations in the field of

## B. 经合组织税收协定范本的影响

12. 自 1963 年以来, 经合组织税收协定范本对税收协定的谈判、适用和解释产生了深远的影响。

13. 首先, 经合组织成员国在缔结或修订双边税收协定时很大程度上均遵循协定范本的规定。成员国在消除相互间的双重征税方面取得了显著进展, 这一点从 1957 年以来根据经合组织理事会的建议所缔结或修订税收协定数量的激增可以看出。协定范本的重要性不仅可以用成员国间缔结协定的数目来衡量<sup>[1]</sup>, 还体现在这些协定均依照经合组织理事会的建议采纳了税收协定范本的模式和在大多数情况下遵循了其规定。税收协定范本的存在在方便经合组织成员国之间双边谈判的同时, 也使这些国家双边税收协定彼此必要地协调一致成为可能, 这既利于纳税人, 也利于各国税务机关。

[1] 参见《经合组织税收协定范本》(活页版) 第二卷附录 I: 经合组织成员国之间缔结协定一览表。

14. 其次, 协定范本的影响已经远远超出了经合组织国家的范围。范本已成为成员国与非成员国之间乃至非成员国之间谈判的基本参考文件, 同时, 它还是其他世界性或区域性国际组织关于双重征税及相关问题的基本文件。最值得一提的是, 协定范本还成为起草及修订《联合国关于发达国家与发展中国家避免双重征税

double taxation and related problems. Most notably, it has been used as the basis for the original drafting and the subsequent revision of the United Nations Model Double Taxation Convention between Developed and Developing Countries<sup>[1]</sup>, which reproduces a significant part of the provisions and Commentaries of the OECD Model Convention. It is in recognition of this growing influence of the Model Convention in non-member countries that it was agreed, in 1997, to add to the Model Convention the positions of a number of these countries on its provisions and Commentaries.

【1】United Nations Model Double Taxation Convention between Developed and Developing Countries, United Nations Publications, New York, first edition 1980, second edition 2001.

15. Third, the worldwide recognition of the provisions of the Model Convention and their incorporation into a majority of bilateral conventions have helped make the Commentaries on the provisions of the Model Convention a widely-accepted guide to the interpretation and application of the provisions of existing bilateral conventions. This has facilitated the interpretation and the enforcement of these bilateral conventions along common lines. As the network of tax conventions continues to expand, the importance of such a generally accepted guide becomes all the greater.

## C. Presentation of the Model Convention

### Title of the Model Convention

16. In both the 1963 Draft Convention and the 1977 Model Convention, the title of the Model Convention included a reference to the elimination of double taxation. In recognition of the fact

协定范本》的蓝本<sup>[1]</sup>, 后者沿用了经合组织协定范本的大部分条文及其注释。鉴于协定范本在非成员国中影响日大, 经同意从1997年起, 在协定范本中加入一些非成员国关于范本条文及其注释的立场。

【1】《联合国关于发达国家与发展中国家避免双重征税协定范本》, 联合国出版物, 纽约, 1980年第一版, 2001年第二版。

15. 再次, 协定范本条文得到世界范围的认可, 并在大多数双边税收协定中得以采纳, 使协定范本的注释也成为普遍接受的解释和适用现有双边税收协定规定的指南, 从而促进了按照共同的准则解释和实施双边税收协定。随着税收协定网络的不断扩展, 注释这一通行指南的重要性也会日益增加。

## C. 协定范本简介

### 协定范本的标题

16. 1963年范本草案及1977年范本的标题中均包括有关消除双重征税的用语。鉴于协定范本并不局限于消除双重征税, 还涉及其他问题, 如防止逃税以及无差别待遇, 因此, 经合