# Comparative International Tax Law

## Prof. Guglielmo Maisto

***COURSE AIMS AND INTENDED LEARNING OUTCOMES***

The course aims to provide students with the fundamental principles of comparative international tax law and the main rules of internal law and the law of treaties that regulate the Italian taxing rights with reference to the application of income taxes characterised by elements that are foreign to the national legal system.

At the end of the course, students will be able to:

* apply the fundamental principles of international tax law;
* compare the institutions of the substantial tax law of different national legal systems and conventions in order to eliminate double taxation;
* apply the internal rules concerning the determination of tax residence for taxpayers;
* apply the internal rules concerning the determination of the source of income of non-resident taxpayers;
* apply the fundamental principles and the most relevant rules of *transfer pricing* provided by the national legal system and by the specific guidelines defined by the OECD;
* interpret and apply the provisions of conventions in order to avoid the double taxation concluded by Italy;
* use the OECD Model Tax Convention against double taxation, and the relative Commentaries in order to interpret conventions and avoid the double taxation concluded by Italy.

***COURSE CONTENT***

Income taxes in international relations. Connecting factors between State and income. International juridical and economic double taxation. The methods to eliminate juridical double taxation.

International tax law. The sources of tax law in the Italian legal system. National legislation: the concept of tax residence; the taxation of residents on worldwide income and foreign tax credit; the taxation of non-residents on the income generated in Italy.

The *transfer pricing*. General principles. Comparability analysis. The methods to determine the market price of intercompany transactions. The selection of the most appropriate method. The unilateral or multilateral administrative procedure aimed at the elimination of the double taxation deriving from the application of *transfer pricing* amendments.

The international treaties against double taxation. Their classification as public international law tools. The structure and the goals of treaties. The OECD Model Tax Convention and the relative Commentaries. The subjective and the objective scope of treaties. The interpretation of treaties. The concept of tax residence for the implementation of the treaties. The distribution rules that are usually included in treaties: business and self-employed income; dividends, interests, royalties, income from immovable property, capital gains, and other different sources of income; employment income, pensions, the income generated by artists and sportspeople, non-discrimination statements. The application of treaties to triangular cases.

Tax avoidance and tax evasion in international relations. The relationship between national anti-avoidance provisions and treaties. The abuse of treaties. The collaboration between States to combat tax avoidance and evasion. Harmful tax competition and the international actions to combat it.

***READING LIST***

G. Maisto (edited by), *Convenzioni internazionali per evitare le doppie imposizioni,* Giuffrè editore, Milan, last edition.

Further teaching material will be made available on the lecturer’s blackboard page.

***TEACHING METHOD***

The course programme will be illustrated in class during the lectures. Each lecture will be supported by the use of the slides prepared by the lecturer, and the commentary on the supplementary material that will be made available by the lecturer.

Students will be informed in advance on the dates in which some external guests – from either the academic or the business world – will be invited in class to introduce specific topics that are relevant to the course content.

***ASSESSMENT METHOD AND CRITERIA***

The final assessment will consist of a written exam composed of three questions (two theoretical questions and a practical case study) on the taxation of non-residents for the income generated in Italy, the taxation of residents for the income generated abroad, and the application of the international conventions against double taxation. The duration of the exam is two hours.

Furthermore, students will be assessed on the written papers, carried out in groups or individually, that may be assigned during the course.

The assessment criteria will include the relevance and accuracy of the answers and the assignments, the appropriate use of technical terminology, the structure and coherence of the arguments developed, the reference to the documents (judgments, administrative practice, OECD Commentaries) mentioned during the lectures and made available with the teaching material (on blackboard).

***NOTES AND PREREQUISITES***

Class attendance is strongly recommended.

Students should have a good knowledge of the principles of tax law related to personal income tax (Irpef) and corporate income tax (Ires).

Information on office hours available on the teacher's personal page at http://docenti.unicatt.it/.