Course Manual

LAW OF TAXATION & LAW OF TAXATION - I

LL. B
B.A.LL. B
B.B.A. LL. B

Course Instructors

Ms. Ananya Kapoor
Ms. Dhwani Mainkar
Mr. Kanishka Sewak
Mr. Kinshuk Jha
Mr. Rav Pratap Singh
Dr. Saurabh Jain
### Part I:

<table>
<thead>
<tr>
<th>Course Title</th>
<th>Law of Taxation</th>
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<tbody>
<tr>
<td><strong>Course Code</strong></td>
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<tr>
<td><strong>Course Duration</strong></td>
<td>One semester</td>
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<tr>
<td><strong>Level &amp; Program</strong></td>
<td>Fourth year of B.A.LL. B; B.B.A.LL. B; LL. B</td>
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<tr>
<td><strong>Medium of Instruction</strong></td>
<td>English</td>
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<tr>
<td><strong>Pre-requisites</strong></td>
<td>Nil</td>
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<tr>
<td><strong>Pre-curso</strong></td>
<td>Nil</td>
</tr>
<tr>
<td><strong>Equivalent courses</strong></td>
<td>Nil</td>
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<tr>
<td><strong>Exclusive courses</strong></td>
<td>Nil</td>
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</table>
Part II: Course Aim

India has a comprehensive tax structure. The power to levy taxes and duties is distributed among the three tiers of Government, in accordance with the provisions of the Indian Constitution. Broad classification of the taxes is done under the categories of direct and indirect taxation. The Central government, the state governments and the local bodies levy and collect different types of taxes in accordance with the provisions of the relevant legislation. Since taxes cannot be levied or collected without the authority of the Constitution, the course studies how specific legislations must satisfy the test of that any of these legislations shall not be in violation of the provisions of the Constitution. The taxes levied shall not be arbitrary or without legislation. The efficient collection of both, the income based and the consumption-based taxes, contribute towards the development of the nation and in meeting the costs of governance.

The tax system in India has undergone a radical change in line with the liberalization of policies since 1991. Some of the changes include rationalization of tax structure reduction in corporate tax rate; alignment of customs duty in accordance with bilateral treaties; introduction of value added tax and widening of the tax base. The latest entrant in the domain of taxes is the Goods and Services Tax (GST) which apparently deals with the minimization of taxes, elimination of their cascading effect and then not just improve the ease of doing business but also to help in reducing the cost of goods and services for the end consumer. It would be apt to say that tax laws form an integral part of the fiscal and trade policies of the nation.

Even though several tax laws have been restructured and contemporary provisions have been introduced to ensure better compliance, they still represent a complex system of legislations for the layman. The Indian courts have played a pivotal and incessant role in curtailing arbitrary taxation by the authorities and have laid down several guidelines for the effective implementation and valid interpretation of the tax laws. Contrary to the popular notion of it being a vast and arid subject, the study of tax laws is quite intriguing. It is highly utile for students of law as it elevates their general awareness of jurisprudential and contemporary taxation principles from personal as well as practice perspective.

This course shall seek to –

- provide students with the knowledge of the basic principles of taxation, for direct taxes, in India;
- develop comprehension and application of these principles as they have been interpreted by the Indian courts;
- develop an awareness of the concurrent issues in the domain of taxation laws through periodic case studies of the relevant domestic and international judicial pronouncements;
- introduce students to the co-relation between domestic taxation laws, fiscal policies and international trade;
- introduce students to basic practical skills required to conduct research in the domain of taxation of individuals and corporations;
### Intended learning outcomes of this course

<table>
<thead>
<tr>
<th>Course objective</th>
<th>Teaching and Learning Activities</th>
<th>Assessment Tasks/ Activities</th>
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<tbody>
<tr>
<td>By the end of the course students should be able to:</td>
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<tr>
<td><strong>Analytically and critically describe and explain the substantive principles of direct taxation pertaining to the topics to be covered in the syllabus.</strong></td>
<td>Reading of relevant cases and other material and research.</td>
<td><strong>End-of-course closed book, timed examination (50% of marks)</strong></td>
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<td>Students will acquire knowledge of the scheme of direct taxation pertaining to the topics to be covered in the syllabus.</td>
<td>Tutorials (25% of marks for attendance, presentation and participation)</td>
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<td>Students will be encouraged to participate in class discussion to develop their analytical and critical skills.</td>
<td>Assignment/s (25% of marks for case reviews/case studies, etc.)</td>
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<td></td>
<td>Students will, by responding to questions and performing exercises, develop their analytical and critical capabilities to discuss important issues of taxation on corporations and commodities.</td>
<td>Students’ ability to describe and explain the main substantive rules of direct taxation on topics covered in the syllabus will be tested on all three assessment parameters.</td>
</tr>
<tr>
<td><strong>Apply the principles of corporate taxation to solve legal problems by:</strong></td>
<td>Students will be introduced to issues and concerns and aspects of the operation of the principles of direct taxation.</td>
<td><strong>End-of-course examination +Tutorials +Assignments</strong></td>
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<td></td>
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<td>Students’ ability to analyze and critically evaluate will be tested by all three assessment tasks/activities to determine their ability to apply the legal principles to a given factual situation.</td>
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<td><strong>End-of-course examination</strong></td>
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<td>Students’ ability to apply the principles of law to given situations and resolve problems will be examined.</td>
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- **50% Weightage**
- **30% Weightage**
- researching issues of corporate taxation
- analyzing and innovating to resolve problems concerning issues of corporate taxation.
- communicating their solutions orally and in writing clearly, coherently, and accurately in their own words and in plain language

<table>
<thead>
<tr>
<th>20 % Weightage</th>
<th>Preparation for tutorials</th>
<th>Tutorials</th>
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<tbody>
<tr>
<td></td>
<td>Students will research on the issues of direct taxes, corporate taxation and international taxation.</td>
<td>Students will be required to make presentations on problems and questions allotted to them and all students will be required to participate and contribute to tutorial discussions whether they are making a presentation research, analyze and resolve problems, and communicate solutions orally will be tested.</td>
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<table>
<thead>
<tr>
<th>Lectures</th>
<th>Assignment/s</th>
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<tr>
<td>Students will be shown how legal problems are solved applying principles of corporate and international taxation.</td>
<td>Students’ ability to research, analyze and resolve problems, and communicate solutions in writing will be tested.</td>
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**Grading of Student Performance**

To pass this course, students must obtain a minimum of 50% in each of the coursework and the examination elements of the assessment. Coursework for this purpose means those ways in which students are assessed otherwise than by the end of session examination. End of semester exam will be in the form of a traditional 3 hours written exam.

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Percentage Of marks</th>
<th>Grade Values and Definitions</th>
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<tbody>
<tr>
<td>O</td>
<td>80 and above</td>
<td>Sound knowledge of the subject matter, excellent organizational capacity, ability to synthesize ideas, rules and principles, critically analyze existing materials and originality in thinking and presentation.</td>
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<tr>
<td>Letter Grade</td>
<td>Percentage of Marks</td>
<td>Grade Points</td>
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<tr>
<td>A+</td>
<td>75 to 79</td>
<td>7.5</td>
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<tr>
<td>A</td>
<td>70 to 74</td>
<td>7</td>
</tr>
<tr>
<td>A-</td>
<td>65 to 69</td>
<td>6</td>
</tr>
<tr>
<td>B+</td>
<td>60 to 64</td>
<td>5</td>
</tr>
<tr>
<td>B</td>
<td>55 to 59</td>
<td>4</td>
</tr>
<tr>
<td>B-</td>
<td>50 to 54</td>
<td>3</td>
</tr>
<tr>
<td>F</td>
<td>Below 50</td>
<td>0</td>
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</tbody>
</table>

**NEW COURSE LETTER GRADES AND THEIR INTERPRETATION**

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Percentage of Marks</th>
<th>Grade Points</th>
<th>Interpretation</th>
</tr>
</thead>
<tbody>
<tr>
<td>P1</td>
<td>45 - 49</td>
<td>2</td>
<td>Pass 1: Pass with Basic understanding of the subject matter.</td>
</tr>
<tr>
<td>P2</td>
<td>40 - 44</td>
<td>1</td>
<td>Pass 2: Pass with Rudimentary understanding of the subject matter.</td>
</tr>
<tr>
<td>F</td>
<td>Below 40</td>
<td>0</td>
<td>Fail: Poor comprehension of the subject matter; poor critical and analytical skills and marginal use of the relevant materials. Will require repeating the course.</td>
</tr>
<tr>
<td>P</td>
<td>Pass</td>
<td></td>
<td>‘P’ represents the option of choosing between Pass/Fail grading system over the CGPA grading system in the COVID 19 semester in Spring 2020. The option is provided when students attain a minimum of 40 percentage marks under the current grading structure in a given subject.</td>
</tr>
<tr>
<td>I</td>
<td>Incomplete</td>
<td></td>
<td>Extemuating circumstances preventing the student from completing coursework assessment, or taking the examination; or where the Assessment Panel at its discretion assigns this grade. If an &quot;I&quot; grade is assigned, the Assessment Panel will suggest a schedule for the completion of work, or a supplementary examination.</td>
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</tbody>
</table>
Student Participation

Students are required to prepare for lectures and tutorials and to participate in them. Their participation will be assessed and graded.

Cases and other Reading Material

- **Systematic Approach to Income Tax (2019), 42nd edition, Ed, by Dr. Girish Ahuja & Dr. Ravi Gupta** shall be used as the main textbook for this course,

- Further, chapters may be suggested for reading from *Taxation Principles and Applications - A Compendium*, 2014 Ed, by Parthasarathi Shome, and

- **Corporate Tax Planning and Business Tax Procedures, (2019), 23rd edition, Ed, Taxmann by Dr. Vinod Kr. Singhania and Dr. Monica Singhania.**

Communication regarding relevant chapters/reading material and specific cases to be studied for each week’s lecture will be sent to students in advance.

Plagiarism

Any idea, sentence or paragraph that the students cull out from the internet must be credited with the original source. Paraphrasing or directly quoting from a web source in the exam, presentation, or essays, would require disclosure of the source. The university has strict rules with consequences for students involved in plagiarism.

*This is an issue of academic integrity on which no lenience should be expected.*

Disability Support and Accommodation Requirements

JGU endeavors to make all its courses accessible to students. All students with a known disability needing academic accommodations are required to register with the Disability Support Committee dsc@jgu.edu.in. The Committee has so far identified the following conditions that could possibly hinder student’s overall well-being. These include: physical and mobility related difficulties; visual impairment; hearing impairment; medical conditions; specific learning difficulties e.g. dyslexia; mental health.

The Disability Support Committee maintains strict confidentiality in its discussions. The students should preferably register with the Committee in the month of June/January as disability accommodation requires early planning. DSC will approve and coordinate all the disability related services such as appointment of academic mentors, specialized interventions and course related requirements such as accessible classrooms for lectures, tutorials and examinations.

All faculty members are required to refer students with any of the above-mentioned conditions to the Disability Support Committee for addressing disability-related accommodation requirements.

Part III: KEYWORD SYLLABUS

Direct taxation, tax planning, avoidance and evasion, tax incidence and impact, residential status, capital gains, exemptions and deductions, Double taxation avoidance agreements, transfer pricing, Authority for Advanced Ruling, Indirect Taxation
Part IV: DETAILED SYLLABUS

- Introduction to General Principles of taxation- tax planning- avoidance- evasion
- Key features of direct and indirect taxes, canons of taxation
- Constitutional provisions with respect to taxation laws
- Key concepts of the Income Tax
- Residential Status and incidence of tax
- Concepts of Previous Year and Assessment Year, Assessment Procedure
- Concept of Residential status
- Digital Taxation
- International Taxation- Double Taxation Agreements- Transfer Pricing- BEPS
- Dispute Resolution Mechanism
- Introduction to Indirect Taxes - The changing landscape with the advent of GST

Part V: READINGS FOR THE COURSE

The lecture handouts or any relevant literature will be circulated a week in advance. They will have a significant role as they would be a customized source of pertinent information on the upcoming topics. Students are advised to keep a regular record of them.

Essential Readings:

- Corporate Tax Planning and Business Tax Procedures, (2019), 23rd edition, Ed, Taxmann by Dr. Vinod Kr. Singhania and Dr. Monica Singhania

Scholarly Articles:


Malini Chakravarty, GST Answers to some basic questions, Centre for Budget Governance and Accountability, Electronic copy available at http://www.cbgaindia.org/primers-manual/gst-answers-basic-questions/


Mukesh Butani, Tax Dispute Resolution Challenges and Opportunities for India, LexisNexis, 2016 (New Delhi), pp.113-142.


Additional Readings:

Granville Austin, The Indian Constitution Cornerstone of a Nation, 14th imp. (New Delhi, Oxford University Press 2009), Chapter 9.


**Statutory References:**
- Income Tax Act, 1961

**Part VI: LECTURE PROGRAMME**

The following lecture schedule is tentative and may be adjusted by the instructor(s) as they proceed.

- **Week 1: Introduction to General Principles of taxation- Ideologies- Fiscal policy**
  - Canons of Taxation
  - Concept of incidence and impact of tax for understanding direct & indirect tax categories
  - Introduction to Fundamental principles of taxation (Concept of Income based taxes and consumption-based taxes, purpose and goals of a tax system)
  - Introduction to Fiscal Policy Design in India
  - Union-State Financial Relations

  **This week’s readings:**

- **Week 2: Sources of Tax Laws, Constitutional Provisions related to Indian Taxation system**
  - Conceptual differences between Tax, Fee, Compensatory Tax, and other categories
  - Sources of Tax Laws: Where does the tax law come into place – discuss politics in legislative process, administrative circulars & judgments of courts & tribunals
  - Basic introduction to the constitutional provisions pertaining to power & limitations on power to taxation
  - Discuss Arts. 246 and 248 for understanding the scheme of distribution of legislative powers between the Centre and State
  - Art. 301, 304, Freedom of Trade Commerce and Intercourse, restrictions, legality of entry tax, and the current position under law.

  **This week’s readings:**
  1. Jindal Stainless Ltd. & Anr. Vs. State of Haryana & Ors. [TS-455-SC-2016-VAT];

  **Additional Readings:**
  4. Granville Austin, The Indian Constitution Cornerstone of a Nation, 14th imp. (New Delhi, Oxford University Press 2009), Chapter 9.
  - Art. 280 (Establishment of the Finance Commission of India, Qualifications of members, Role and duties
**Week 3: Direct Taxes: Introduction to the key concepts in the law of Income Tax**

- Key concepts and principles of the Income Tax - Concept of Income, Previous Year, Financial Year, Assessment Year;
- Capital & revenue receipts;
- Accounting Entries & its impact on the nature of receipt to be classified as ‘income’ or not;
- Introduction to Assessment Procedure & computation of taxable income;
- Introduction to the 5 heads of ‘income’ along with statutory provisions;

**This week’s readings:**

2. Emil Webber v. C. I. T., 200 ITR 483 (SC);
3. Minister of Finance v. Smith, 1927 A.C. 193;
5. Poona Electric Supply v. C. I. T., 57 ITR 521;

**Week 4,5 & 6: Residence & Source Rules under the Income Tax Act, 1961**

- Rules relating to determining the ‘residential status’ of different persons under the Income Tax Act, 1961;
- Going over computation exercises to understand the application of the rules relating to residence;
- Introduce the recently implemented Place of Effective Management Test (PoEM test) for individual & companies under the new tax law regime;
- Source rules under the Income Tax Act and analyzing their application through Vodafone case;
- Concept of accrual & arising of income, Business Connection & rules relating to it in Section 9;
- Interplay of source & rules in practical cases;
- Introduction to Royalties and FTS

**This week’s readings:**

4. CIT v. M/s Vazir Sultan & Sons, 1959 AIR 814;
5. Honda Siel Cars India Ltd. v. CIT [2017] 395 ITR 713 (SC)
6. E. D. Sassoon and Company Ltd v. CIT, 1954 AIR 470;
7. Radha Rani Holdings (P) Ltd. vs Additional Director of Income Tax, (2007) 110 TTJ Delhi 920;
8. V.V.R.N.M. Subbayya Chettiar vs CIT, 1951 AIR 101;
9. The Anglo-French Textile Co. Ltd. v. CIT, AIR 1951 Mad 597;
10. GVK Industries v ITO (Civil Appeal no.7796 of 1997)
11. Ebay International Ag. Mumbai v Assessee, ITA, No.6784/M/2010
12. Formula One World Championship Ltd. v. Commissioner of Income-tax (International Taxation) [2017] 394 ITR 80 (SC)

- **Week 7: Capital Gains Taxation**
  - Concept of Capital Gains
  - Kinds of gains: Long Term and short term
  - Computation exercises
  - Exemption under Section 54
  - Case Study of Vodafone (2012)

- **Week 8 and 9: Digital Taxation**
  - Taxation of e-commerce: an overview
  - Importance of Digital Taxation in the COVID period
  - AI, Blockchain, Cryptocurrencies
  - Equalization Levy
  - Tax implications through the Significant Economic Presence Test
  - Digital Services Tax: Google Tax
  - OECD's Unified Approach

**This week’s readings:**
2. Premier Automobiles Ltd. vs. Income Tax Officer and Anr. [2003] 264 ITR 193 (Bom)
5. Rashmin Sanghvi, Digital Taxation-a holistic view, 1st edition (New Delhi, Taxmann, 2019), Chapters 1-5

- **Week 10: Exemptions and Deductions**
  - Exemptions and deductions – concept and difference
  - Different exemptions under Section 10 of the Income Tax Act, 1961
  - Agricultural income – scope of the exemption – need for reform?
  - Different deductions under Section 80 of the Income Tax Act, 1961

**This week’s readings:**
**Week 11: Interpretation of Tax Statutes, Tax Avoidance & Evasion**

- Discussion on the rule of interpretation of Tax Statutes (strict rule), issues in adherence to the rule of interpretation
- Discuss working of international tax structures for avoidance using Apple Case Study
- Discuss Cyprus or Mauritius Treaty negotiation case study
- Tax Information Exchange Agreements
- Impact of GAAR on interpretation of tax law as it stands today
- Discussion on Base Erosion Profit Shifting (BEPS) Action Plan

**This week’s readings:**

1. Union of India v. Azadi Bachao Andolan and Ors., 263 ITR 706 (SC);


**Week 12: Double Taxation Avoidance Agreements**

- Broad Features of DTAA
- UN and OECD Model Conventions
- Methods for elimination of Double Taxation
- Misuse of DTAA
- Discuss one DTAA (Mauritius, UAE)
- Discuss MLI and the evolving framework

**This week’s readings:**


**Week 13: Transfer Pricing: Key concepts**

- An overview of concepts under Section 92 A to E
- TP Documentation: requirements and penalties
- Advance Pricing Agreements
- TP in COVID
This week’s readings:

➢ Week 14: Dispute Resolution Mechanisms

- Traditional litigation / appellate framework
- Authority for Advance Ruling - scope and limitations
- Settlement Commission – scope and utility
- Dispute Resolution Panel – scope and review of performance
- Relaxations and measures during COVID period

This week’s readings:
1. Mukesh Butani, Tax Dispute Resolution Challenges and Opportunities for India, LexisNexis, 2016 (New Delhi), pp.113-142.
2. Columbia Sportswear Company v DIT, Bangalore (Special Leave Petition (C) No. 31543 of 2011);
4. Instrumentarium Corporation Finland- 272 ITR 499;
5. Airport Authority of India 299 ITR 102;
7. Tiger Global International II Holdings, Mauritius, AAR No. 04/2019 order dated 26.03.2020

➢ Week 15: Introduction to GST

- Background of GST (Discussion on the basic concepts of the major outgoing Indirect Tax Statutes such as Central Excise, Central Sales Tax, VAT, Service Tax, etc.)
- Constitutional amendments in relation to GST
- The role and importance of GST Council
- GST form and structure (CGST, SGST and IGST, Compensation Mechanism)
- GST Tax slabs

This week’s readings:
1. Malini Chakravarty, GST Answers to some basic questions, Centre for Budget Governance and Accountability, Electronic copy available at http://www.cbgaindia.org/primers-manual/gst-answers-basic-questions/