LW6143E: INTERNATIONAL TAX LAW

Effective Term
Semester A 2025/26

Part I Course Overview

Course Title
International Tax Law

Subject Code
LW - Law

Course Number
6143E

Academic Unit
School of Law (FL)

College/School
School of Law (FL)

Course Duration
One Semester

Credit Units
3

Level
P5, P6 - Postgraduate Degree

Medium of Instruction
English

Medium of Assessment
English

Prerequisites
Nil

Precursors
Nil

Equivalent Courses
Nil

Exclusive Courses
Nil

Additional Information
Nil

Part II Course Details

Abstract

Globalisation and the ease with which multinational corporations are able to shift profits across national borders have posed significant challenges to the existing international tax rules formulated in the 1920s. This course focuses on the international dimensions of corporate income tax law, with particular reference to the legal frameworks of Hong Kong and the PRC. The course commences with foundational concepts and policy issues in the international tax system, including the principles of jurisdiction to tax and the double taxation problem. It then explores international tax planning and avoidance strategies employed by multinational enterprises, as well as tax competition among governments in the globalised economy. Country responses to both problems of double taxation and tax minimisation schemes, including bilateral and multilateral treaties, anti-avoidance rules and international efforts against base erosion and profit shifting (BEPS) are reviewed. Finally, the course considers challenges posed by the digital economy and recent proposals and policy responses at both national and international levels.

The course will enhance study in other areas of international law and commercial law and prepare students for a career in a wide range of global employment destinations, including but not limited to legal profession, legal practice in accountancy, house company counsel and government agencies. Students are not expected to have prior knowledge of tax law.

Course Intended Learning Outcomes (CILOs)

	CILOs	Weighting (if app.)	DEC-A1	DEC-A2	DEC-A3
1	Demonstrate detailed knowledge of basic principles, core policy issues and the complex body of rules and case law in the field of international taxation		x	x	x
2	Understand the roles played by international organisations (e.g., the OECD and the UN) in the development of international tax system, and identify the key challenges involved in designing international tax law and policy in a globalised economy		x	x	x
3	Demonstrate ability to evaluate the different approaches adopted by countries in developing their international tax rules, and analyse how the tax systems of sovereign states interact with one another		x	x	x
4	Critically analyse current debates in international tax and demonstrate the ability to apply legal reasoning to solve problems in complex, cross-border tax scenarios		x	x	x

A1: Attitude
Develop an attitude of discovery/innovation/creativity, as demonstrated by students possessing a strong sense of curiosity, asking questions actively, challenging assumptions or engaging in inquiry together with teachers.

A2: Ability
Develop the ability/skill needed to discover/innovate/create, as demonstrated by students possessing critical thinking skills to assess ideas, acquiring research skills, synthesizing knowledge across disciplines or applying academic knowledge to real-life problems.

A3: Accomplishments
Demonstrate accomplishment of discovery/innovation/creativity through producing /constructing creative works/new artefacts, effective solutions to real-life problems or new processes.

Learning and Teaching Activities (LTAs)

	LTAs	Brief Description	CILO No.	Hours/week (if applicable)
1	Lectures	The course leader will present the substantive law and policy on the topics listed below in the course syllabus.	1, 2, 3, 4	
2	Interactive class discussion	Students will be engaged in debates to develop a critical view on international taxation problems.	1, 2, 3, 4	

Additional Information for LTAs

3 hours/week

Assessment Tasks / Activities (ATs)

	ATs	CILO No.	Weighting (%)	Remarks ("-" for nil entry)	Allow Use of GenAI?
1	Class participation [including mainly class attendance, class discussion, concentration in the classes, and oral presentation (if presentation tasks are assigned by the instructor)]	1, 2, 3, 4	20	While generally students are not encouraged to rely on AI, they are permitted to use GenAI for assignment completion. The pedagogical objectives limit the use of AI to three specific purposes: 1. Utilising AI instead of traditional search engines to gather sources; 2. Developing the skills to pose questions to AI that effectively prompt useful answers; 3. Garnering inspiration from the points of knowledge/ideas/thoughts generated by AI. Students are strictly prohibited from directly incorporating sentences or expressions produced by Gen AI into their assignments. This would be viewed as plagiarism. When AI has been utilised in their work, it is crucial that students acknowledge this fact.	Yes

Continuous Assessment (%)

20

Examination (%)

80

Examination Duration (Hours)

3

Minimum Examination Passing Requirement (%)

40

Additional Information for ATs

The course leader will announce whether the examination will be closed book or open book. The use of Generative AI tools is not allowed.

<u>Applicable to students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter</u>
Students must obtain a minimum mark of 40% in the final examination and an overall mark of 40% in order to pass the course.

<u>Applicable to students admitted from Semester A 2022/23 to Summer Term 2024</u>
Students must obtain a minimum mark of 50% in the final examination and an overall mark of 50% in order to pass the course.

Assessment Rubrics (AR)

Assessment Task

Class Participation (for students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter)

Criterion

Demonstration of understanding of concepts, principles, and theories.
Demonstration of ability to identify legal and policy issues.
Application of knowledge to specific legal and policy problems, to discuss questions, and to comment on legal and policy phenomena.
Application of legal writing and research skills.
Demonstration of ability to engage in argument-based analysis based on critical thinking.
Demonstration of aptitude for formulating innovative solutions to fact-based questions.

Excellent

(A+, A, A-) Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.

Good

(B+, B, B-) Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.

Fair

(C+, C, C-) Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.

Marginal

(D) Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.

Failure

(F) Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

Assessment Task

Examination (for students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter)

Criterion

Demonstration of understanding of concepts, principles, and theories.
Demonstration of ability to identify legal and policy issues.
Application of knowledge to specific legal and policy problems, to discuss questions, and to comment on legal and policy phenomena.
Application of legal writing and research skills.
Demonstration of ability to engage in argument-based analysis based on critical thinking.
Demonstration of aptitude for formulating innovative solutions to fact-based questions.

Excellent

(A+, A, A-) Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.

Good

(B+, B, B-) Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.

Fair

(C+, C, C-) Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.

Marginal

(D) Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.

Failure

(F) Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

Assessment Task

Class Participation (for students admitted from Semester A 2022/23 to Summer Term 2024)

Criterion

Demonstration of understanding of concepts, principles, and theories.
Demonstration of ability to identify legal and policy issues.
Application of knowledge to specific legal and policy problems, to discuss questions, and to comment on legal and policy phenomena.
Application of legal writing and research skills.
Demonstration of ability to engage in argument-based analysis based on critical thinking.
Demonstration of aptitude for formulating innovative solutions to fact-based questions.

Excellent

(A+, A, A-) High

Good

(B+, B) Significant

Marginal

(B-, C+, C) Moderate

Failure

(F) Inadequate

Assessment Task

Examination (for students admitted from Semester A 2022/23 to Summer Term 2024)

Criterion

Demonstration of understanding of concepts, principles, and theories.
Demonstration of ability to identify legal and policy issues.
Application of knowledge to specific legal and policy problems, to discuss questions, and to comment on legal and policy phenomena.
Application of legal writing and research skills.
Demonstration of ability to engage in argument-based analysis based on critical thinking.
Demonstration of aptitude for formulating innovative solutions to fact-based questions.

Excellent

(A+, A, A-) High

Good

(B+, B) Significant

Marginal

(B-, C+, C) Moderate

Failure

(F) Inadequate

Part III Other Information

Keyword Syllabus

Jurisdiction to tax; double taxation; tax treaties; permanent establishment; transfer pricing; tax competition; tax havens; base broadening and profit shifting (BEPS); OECD Pillar 1 and Pillar 2

Detailed Syllabus

I. Introduction to taxation and international tax law

A. Tax basics

B. Corporate income tax: key elements

C. International tax system

II. urisdiction to tax: source and residence principles

A. Source and residence principles

B. Residence rules

1. Incorporation test
2. Central management and control test

C. Source rules

III. Double taxation, double tax relief and tax sparing

A. Double taxation problem

B. Double tax relief methods

1. Exemption
2. Foreign tax credit

C. Tax sparing

IV. Tax treaties

A. Treaties and tax treaty network

B. Types of tax treaties

C. Legal nature and effects of tax treaties

D. History of tax treaties
E.The role and objectives of tax treaties
F. OECD and UN models
G. Interpretation of tax treaties
  1. OECD commentary
  2. Schedular nature
H. Permanent establishment (PE)
  1. Fixed place PE
  2. Construction PE
  3. Agency PE
  4. Services PE
I. Tax treaties and developing countries
J. Treaty abuse
  1. Anti-abuse law
  2. Treaty shopping
  3. Anti-treaty-abuse measures

V. Transfer pricing and thin capitalisation

A. Transfer pricing
  1. Transfer pricing problem
  2. Arm’s length principle
  3. Formulary apportionment
B. Thin capitalisation
  1. The debt-equity tax bias
  2. Thin capitalisation rules

VI. Controlled foreign companies (CFC) rules

A. The tax deferral problem
B. Rationale of CFC rules
C. Structural features of CFC rules

VII. Tax competition

A. What is tax competition
B. Why and how do countries tax compete
C. Harmful tax competition
D. The tension between tax competition and anti-avoidance measures

VIII. Tax havens

A. Definition and features of a tax haven
B. Tax avoidance and evasion by use of tax havens
C. Anti-tax haven measures

IX. **Base erosion and profit shifting (BEPS)**

A. Background and contents
B. Multilateral Instrument (MLI)
C. The limits of BEPS
D. Country responses to BEPS
E. BEPS 2.0: Pillar One and Pillar Two

Reading List

Compulsory Readings

	Title
1	While no single textbook covers all the issues discussed in this course, the following textbook and reference books provide overviews of selected issues. These texts are supplemented by journal articles and other resources listed in the course handbook, which address contemporary developments in international taxation and current issues under debate in academic literature and policy forums.
2	B. J. Arnold, International Tax Primer (5th edn, Kluwer Law International 2023)

Additional Readings

	Title
1	Reference books and materials
2	O. Ostaszewska and others (eds), Roy Rohatgi on International Taxation – Volume 1: Principles (IBFD 2018)
3	J. Schwarz, Schwarz on Tax Treaties (6th edn, Kluwer Law International 2021)
4	OECD Model Tax Convention on Income and on Capital 2017
5	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017
6	OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
7	OECD BEPS 2015 Final Reports <http://www.oecd.org/ctp/beps-2015-final-reports.htm>