

EMLE	
Course: Tax Law and Economics Type of course: Elective	Course: 2022-2023
	Term: 3
	Credits: 1,5
	Language: English
Professor: Artur Bogucki, Ph.D.	
Attention hours: To be arranged on an individual basis	
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Course description
<p>Knowledge: The course is devoted to delivering the knowledge on tax Law analysis with emphasis on International Taxation through the prism of Law and Economics. Starting with the possible applications of Law and Economics framework to the specific goals of taxation, showing the interconnection between law, public economics and corporate finance within the international tax law and economics topics. Continuing, the course provides the state of the art behavioral public finance overview of the problems of neoclassical approach to optimal taxation, by presenting the behavioral modeling approach to the commodity and income taxation. Following lecture is devoted the role of corrective taxation in a tax system and it's impact on efficiency and regulation of negative externalities. After establishing the theoretical framework of tax law and economics, the course will introduce students to the general characteristics of international taxation as well as specific topics of international double taxation, transfer pricing and international tax compliance in detail. In each of the subcategories the course will focus on the newest developments in the world of international taxation and present challenges to the field and global economy focusing on digital economy and big tech regulation. To provide students with hands on experience with such interdisciplinary framework, each lecture will consist of group tasks in which students will apply the qualitative and quantitative methods of international tax law analysis to the issues of transfer pricing, elimination of double taxation and intragroup tax base calculation among others. Subject to the group size, a Problem Based Learning approach will be employed, enabling students to internalize the notions presented throughout this course.</p> <p>Capacities and skills: Identification of the key components of the tax law and economics framework, with the ability to analyze and formulate implications for tax policymaking. Correct understanding of the goals and structure of international tax law as to it social, legal and financial nature. Understanding of technical and quantitative aspects of transfer pricing, optimal taxation and double taxation. Develop social and ethical awareness of tax policy instruments in relation to big tech companies as well as to regular market participants. The ability to conduct technical analysis of corporate finance structure, with focus on multinational holding companies and their intragroup dealings. Development of capacities related to the use of arguments through written assignments and oral presentations.</p>

Previous requirements

There are no pre-requisites to take the course, although background on Tax Law, Corporate Finance or Accounting would be of advantage.

Teaching methods

The course will develop along a full term, with ten 1,5 hour sessions. Each of them will consist of a lecture by the professor, a discussion about the required readings, and in some cases additional activities addressed to specific issues of the course. Depending of the nature of such, activities, active participation of students will be required. Readings for each session are compulsory as a basis for discussion.

Syllabus

Session 1 & 2

Tax Law and Economics framework – why the regular L&E approach does not work with tax law?

Assessing differences in the economic approach to tax law vs. other areas of law, appraising the possible optimal taxation solutions in tax law theory with focus on undeterrability problem, redistribution problem and baseline problem. Discussing the possible implementations of new tax regulation into international tax law regime, and challenges for international taxation in the 21st century in the specific context of the three problems with tax law and economics.

Readings:

1. Raskolnikov, A. (2012). Accepting the limits of tax law and economics. *Cornell L. Rev.*, 98.
2. Shaviro, D. (2017). Economics of Tax Law. *The Oxford Handbook of Law and Economics*
3. See Logue, K. D. (2007). Optimal tax compliance and penalties when the law is uncertain. *Va. Tax Rev.*, 27
4. Logue, K., & Avraham, R. (2002). Redistribution Optimally: Of Tax Rules, Legal Rules, and Insurance. *Tax L. Rev.*, 56
5. Mankiw, N. G., Weinzierl, M., & Yagan, D. (2009). Optimal taxation in theory and practice. *Journal of Economic Perspectives*, 23(4)

<p>Session 3 & 4</p>	<p>Behavioral Tax Law and Economics – dealing with the baseline problem, compliance and tax salience.</p> <p>Addressing the limitations of the regular L&E approach in the tax law context by pointing out the complexity issues and the implications of bounded reality <i>sensu largo</i> for optimal tax modeling. Employing behavioral economics to discuss responses to taxation and it’s impact on understanding of tax compliance. Revision of state of the art advancements in behavioral public finance with focus on optimal commodity and income taxation.</p> <p>Readings:</p> <ol style="list-style-type: none"> 1. Farhi, E., & Gabaix, X. (2020). Optimal taxation with behavioral agents. <i>American Economic Review</i>, 110(1) 2. Stanovich, K., (2011). <i>Rationality and the Reflective Mind</i>, Oxford University Press. 3. Banerjee, A. V., & Mullainathan, S. (2008). Limited attention and income distribution. <i>American Economic Review</i>, 98(2) 4. Chetty, R., Looney, A., & Kroft, K. (2009). Salience and taxation: Theory and evidence. <i>American economic review</i>, 99(4) 5. Rees-Jones, A., & Taubinsky, D. (2020). Measuring “schmeduling”. <i>The Review of Economic Studies</i>, 87(5) 6. Kanbur, R., Pirttilä, J., & Tuomala, M. (2006). Non-welfarist optimal taxation and behavioural public economics. <i>Journal of Economic Surveys</i>, 20(5)
<p>Session 5</p>	<p>Corrective taxation</p> <p>Establishing the theoretical differences between fiscal and corrective taxes and their real life application with focus on modern use of Pigovian taxation. Negative externalities regulation and tax law & economics. Optimum allocation and the efficiency of corrective taxation. Correction taxation and deadweight loss. Regulation by tax vs legal liability, damages and sanctions. Economic theory and examples of cost-internalizing taxes including carbon tax and sin taxes as well as tax incentives. Nudge and corrective tax approach for cost internalization.</p> <p>Readings:</p> <ol style="list-style-type: none"> 1. Jacobs, B., & De Mooij, R. A. (2015). Pigou meets Mirrlees: On the irrelevance of tax distortions for the second-best Pigouvian tax. <i>Journal of Environmental Economics and Management</i>, 71, 90-108. 2. Carattini, S., Kallbekken, S., & Orlov, A. (2019). How to win public support for a global carbon tax, 289-291. 3. Marron, D. B., & Toder, E. J. (2014). Tax policy issues in designing a carbon tax. <i>American Economic Review</i>, 104(5), 563-68. 4. Jeanne, O., & Korinek, A. (2019). Managing credit booms and busts: A Pigouvian taxation approach. <i>Journal of Monetary Economics</i>, 107, 2-17. 5. Nerudová, D., & Dobranschi, M. (2016). Pigouvian Carbon Tax Rate: Can It Help the European Union Achieve Sustainability?. In <i>Competitiveness, Social Inclusion and Sustainability in a Diverse European Union</i> (pp. 145-159). Springer, Cham. 6. Jacobs, B., & van der Ploeg, F. (2019). Redistribution and pollution taxes with non-linear Engel curves. <i>Journal of Environmental Economics and Management</i>, 95, 198-226.
<p>Session 6</p>	<p>The general characteristics of International Taxation – joint legal and financial perspective</p>

	<p>Analysis of the structure and main issues of international taxation. Changes to the spectrum of international taxation, from watching over double taxation to the regulation of multinational corporations and holding companies. The rising issues of aggressive tax planning. Initial analysis of <i>Inclusive Framework on Base Erosion and Profit Shifting (BEPS)</i>, <i>Model Tax Convention on Income and on Capital</i>; and <i>Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI)</i> in the light of the <i>Anti Tax Avoidance Directive (ATAD)</i>.</p> <p>Readings:</p> <ol style="list-style-type: none"> 1. Arnold, B. J. (2019). <i>International tax primer</i>. Kluwer Law International BV. 2. Oats, L. (2021). <i>Principles of international taxation</i>. Bloomsbury Publishing. Chapter 2; 5 and 16. 3. Holmes, K. (2007). <i>International tax policy and double tax treaties: an introduction to principles and application</i>. IBFD, p. 19-97. 4. Lang, M. (2021). <i>Introduction to the law of double taxation conventions</i>. Linde Verlag GmbH, p. 13-33.
<p>Session 7</p>	<p>Methods for elimination of double taxation – general principles</p> <p>Deep dive into the general principles of international double taxation. Evolution of the model of double taxation convention, and spectrum of the OECD convention. Focus on chosen general definitions crucial for international taxation of residency, permanent establishment, income from immovable property, business profits, associated enterprises, dividends, interest, royalties and capital gains. The notions of the Exemption method and Credit methods of elimination of double taxation and their efficiency in practice. Influence of the MLI convention on tax treaties and the fiscal impact that follows.</p> <p>Readings:</p> <ol style="list-style-type: none"> 1. OECD, <i>Neutralizing the Effects of Hybrid Mismatch Arrangements, Action 2 – 2015 Final Report</i>, chapter 14 2. Oats, L. (2021). <i>Principles of international taxation</i>. Bloomsbury Publishing, chapters 7 – 10. 3. Weber, D. M., & Van Weeghel, S. (Eds.). (2011). <i>The 2010 OECD Updates: Model Tax Convention & Transfer Pricing Guidelines: a Critical Review</i>. 4. Becker, J., Reimer, E., & Rust, A. (2015). <i>Klaus Vogel on double taxation conventions</i>. Kluwer Law International, chapter 5.

<p>Session 8</p>	<p>Methods for elimination of double taxation – specific problems</p> <p>Continuation on the vast topic of international double taxation issues with the analysis and impact assessment of specific double taxation rules on tax engineering and tax planning. Specific problems consist of tax residence, corporate taxpayers, controlled foreign companies, exit taxation, permanent establishment, force of attraction principle, beneficial owner concept and capital gains. Insights into the quantitative finance aspects of determining the optimal method of eliminating double taxation through the lens of MLI.</p> <p>Readings:</p> <ol style="list-style-type: none"> 1. Sasseville, J. (2009). The Meaning of «Place of Effective Management». <i>Residence of Companies under Tax Treaties & EC Law/ed. by Prof. G. Maisto.-Amsterdam: IBFD.</i> 2. Lang, M. (2021). <i>Introduction to the law of double taxation conventions.</i> Linde Verlag GmbH, p. 94-104. 3. Avi-Yonach, R. S., & Clausing, K. A. (2008). Business profits (article 7 OECD model convention). <i>Source Versus Residence: Problems Arising from the Allocation of Taxing Rights in Tax Treaty Law and Possible Alternatives (Eucotax Series on European Taxation), Wolters Kluwer–Law and Business.</i> 4. Baker, Ph. (2012) The Meaning of “Beneficial Ownership” as applied to dividends under the OECD Model Tax Convention/ ed. Maisto, G. <i>Taxation of Intercompany Dividends under Tax Treaties and EU Law,</i> Amsterdam. 5. Simontacchi, S. (2007). <i>Taxation of capital gains under the OECD Model Convention: with special regard to immovable property</i> (Vol. 29). Kluwer Law International BV, chapter 2.
<p>Session 9</p>	<p>Transfer pricing – permeation of law, public economics and corporate finance in international taxation</p> <p>Tax engineering analysis of transfer pricing planning methods in multinational holding companies. With focus on main law and economics rule of arm’s length principle. Revision of specific goals and technical financial regulations of BEPS and OECD’s Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. Debate on practical issues of aggressive intragroup pricing of debt and intangibles, form the perspective of optimal public fiscal policy and sustainable corporate finance. Quantitative approach to optimal transfer pricing. The interrelated developments on big tech minimum international taxation.</p> <p>Readings:</p> <ol style="list-style-type: none"> 1. Gresik, T. A., & Osmundsen, P. (2008). Transfer pricing in vertically integrated industries. <i>International Tax and Public Finance</i>, 15(3), 231-255. 2. Halperin, R., & Srinidhi, B. (1996). US income tax transfer pricing rules for intangibles as approximations of arm's length pricing. <i>Accounting Review</i>, 61-80. 3. Davies, R. B., Martin, J., Parenti, M., & Toubal, F. (2018). Knocking on tax haven’s door: Multinational firms and transfer pricing. <i>Review of Economics and Statistics</i>, 100(1), 120-134. 4. Keuschnigg, C., & Devereux, M. P. (2013). The arm's length principle and distortions to multinational firm organization. <i>Journal of International Economics</i>, 89(2), 432-440. 5. Peralta, S., Wauthy, X., & Van Ypersele, T. (2006). Should countries control international profit shifting?. <i>Journal of International Economics</i>, 68(1), 24-37.

	<p>6. Mintz, J., & Smart, M. (2004). Income shifting, investment, and tax competition: theory and evidence from provincial taxation in Canada. <i>Journal of public Economics</i>, 88(6), 1149-1168.</p> <p>7. Pankiv, Marta. (2016). Post-BEPS Application of the Arm's Length Principle to Intangibles Structures. <i>International Transfer Pricing Journal (IBFD)</i>. 23.</p> <p>8. Knoll, B., & Riedel, N. (2014). Transfer pricing laws. <i>CESifo DICE Report</i>, 12(4), 22-26.</p>
Session 10	<p>International tax law avoidance – public and corporate finance perspective</p> <p>Overview of capital structures and profit shifting strategies used in aggressive international tax planning. Deep dive into the international tax General Anti-avoidance Rules (GAAR) and Mandatory Disclosure Regime (MDR). The importance of the economic substance in tax planning and international tax regulation. The thin legal and economic line between tax avoidance and tax evasion. Quantitative approach to tax base. Behavioral aspects of tax compliance.</p> <p>Readings:</p> <ol style="list-style-type: none"> 1. Slemrod, J. (2007). Cheating ourselves: The economics of tax evasion. <i>Journal of Economic perspectives</i>, 21(1), 25-48. 2. Lang, M., Rust, A., Schuch, J., Staringer, C., Owens, J., & Pistone, P. (Eds.). (2016). <i>GAARs: A Key Element of Tax Systems in the Post-BEPS World</i>. IBFD, chapter 1. 3. De Broe, L. (2008). <i>International Tax Planning and Prevention of Abuse: A Study Under Domestic Tax Law, Tax Treaties, and EC Law in Relation to Conduit and Base Companies</i> (Vol. 13). Ibfd, p. 720-730. 4. EATLP Congress, Dourado, A. P., & International Bureau of Fiscal Documentation., (2017). <i>Tax avoidance revisited in the EU BEPS context</i>, chapter 1-3. 5. Zamir, E., & Teichman, D. (2018). <i>Behavioral law and economics</i>. Oxford University Press, p. 474-480.

Activities and assessment		
<p>Apart from lectures, course will imply writing and reading assignments, as well as active participation in class. The evaluation of the course will combine continuous assessment and a final examination, according to the given criteria:</p>		
Activities	%	Assessment guidelines
Written assignments	50	Precision, pertinence and originality of content will be highly valued.
Final Examination	40%	Quality of arguments, originality and precision of answers will be highly valued.
Class Participation	10%	Originality of active participation will be highly valued.
<p>Retaking conditions:</p> <p>For students failing the course after the final examination, it will be possible to retake the exam while grades for course assignments and class participation are maintained.</p>		

Materials and references

Bibliography:

Islam, A. (2020). *International taxation* (Ser. Aicpa ser). John Wiley & Sons, Incorporated.

Treidler, O. (2020). *Transfer pricing in one lesson: a practical guide to applying the arm's length principle in intercompany transactions* (First, Ser. Management for professionals). Springer International Publishing.

Guerard, J., Saxena, A., & Gültekin Mustafa N. (2021). *Quantitative corporate finance* (Second). Springer.

Kaplow, L. (2011). *The theory of taxation and public economics*. Princeton University Press.

Required readings and additional materials:

Required readings will be available for students at the beginning of the course.

Additional materials may be required to prepare course activities. The professor will give indicators about such activities and the required materials. All extended literature will be provided for students.