

# The Language of Taxation

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Lesson 01



# Programme of the Day 01

- What is a Tax (what is Tax Law)?
- How taxation has been developed in History and in different regional systems in the world;
- Building up a common glossary as to understand better the forthcoming lessons.



# Tax and the Law

- The Law is a system or intertwined rules and principles aimed at regulating social phenomena such as communities, states, empires;
- In its very essence Law is *Language* ... and the use of language in one of the most sophisticated form;
- Any society is regulated by the law “*Ubi societas, ibi ius*” (*where you have a community, then you must have some sort of law regulating it*);
- The same definition is true for Taxation;
  - Taxation is therefore a legal phenomenon.



# What does “Tax” mean ?

- The word has an uncertain origin. It depends on the Country it is used within;
- In European Continental Law:
  - *Tributum* (from Latin *tribuere* “to give”; *Tribus* “tribe”, also “clan” or “group” “Something to be given to the Group”;
  - Later on the “Group” became the “State”;
- In Common law:
  - *Tithe* ? That is “*The Tenth part of ...*” ?
  - Earliest kind of payment to be given to the Ruler of the land in consideration of a specific service (namely, protection and public order).



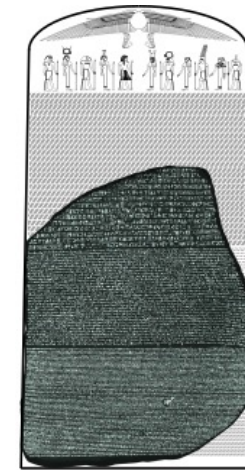
# A Lesson from History

- Some specific features emerge from this preliminary approach:
  1. Tax is a **burden** on the payer (to be accomplished with money, in kind or with a specific performance);
  2. This burden is **imposed** on the payer not considering his/her will (**lack of consensus** to the specific performance);
  3. As to be imposed, the payee must be in the position to **enforce unilaterally** this request;
  4. The weight of the burden is somehow (loosely) determined taking into account the **economic / social situation** of the payer.



# Other Evidence

- The Rosetta Stone (196 bC) granted special tax privileges;
- The Cuneiform writings in Lagash celebrating Sumer King *Urukagina* (c.a. XXIV century bC) who reformed taxation in Mesopotamia.





# And in China ?

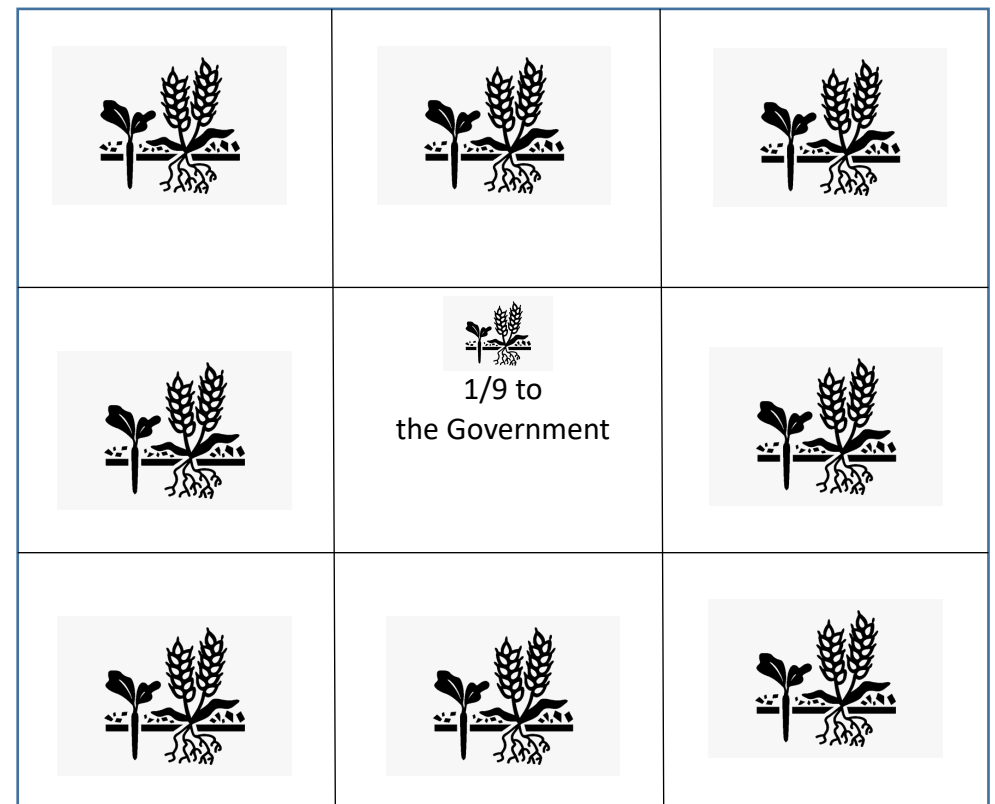
- Philosophical Pillars of Taxation are set by Confucius (500 bC) and later by Mencius (372 – 289 bC);
- Philosophers argued that the appropriate tax would be charged with a rate of 10%.
  - Any divergence from that would be counterproductive;
  - Alas, they did not specify the tax *base*;
- Ancient Romans shared this opinion introducing the *decuma* (“tenth part of”).





# Meng-Tse and the Land Taxation

- Taxation in kind of the land;
  - The basic unit was the *li* (900 acres);
  - Each *Li* was divided into 9 parts (100 acres each) and attributed to 8 farms;
  - The crops of the *ninth* were to be given to the Government.







# Going back to the Features of a Tax

- Taxation is strongly regulated by domestic / national tradition, culture, principles, *academia*, judge made rules and positive law (that is, acted passed by the Government, by the Representative bodies: statutory law);
- Common understanding: Tax is a Compulsory unrequited payment to the Government with no direct consideration for it under the law;
  - Tax is not a fine: no consequence of a violation of a rule;
- Political control over the decision-making process;
- Consistency with over-arching principles.



# Why Taxation

- Taxes are more or less present in every Country around the world, although they can be higher or lower depending on the policy pursued;
- Taxation is one of the most remarkable sources or revenue for every modern state;
  - Exceptions occur: Gulf States, Countries with important natural resource, ...
- Taxation may be used to *nudge* citizens to specific behaviours:
  - “Go Green”, “Eat healthy”, “Save energy”, “Buy domestic products” ...



# The Legal Structure of a Tax

- Taxes differ from each other, but most of them have the same structure, including:
  - **Tax Base:**
    - The target of the tax. It is generally, but not necessarily, an item economically measurable;
  - **Rate of Tax:**
    - The percentage of the Base to be given to the Taxing Entity;
  - **The Taxpayer:**
    - The subject obliged to pay;
  - **The Taxing Entity:**
    - The legal entity with the power to tax (according to the law).



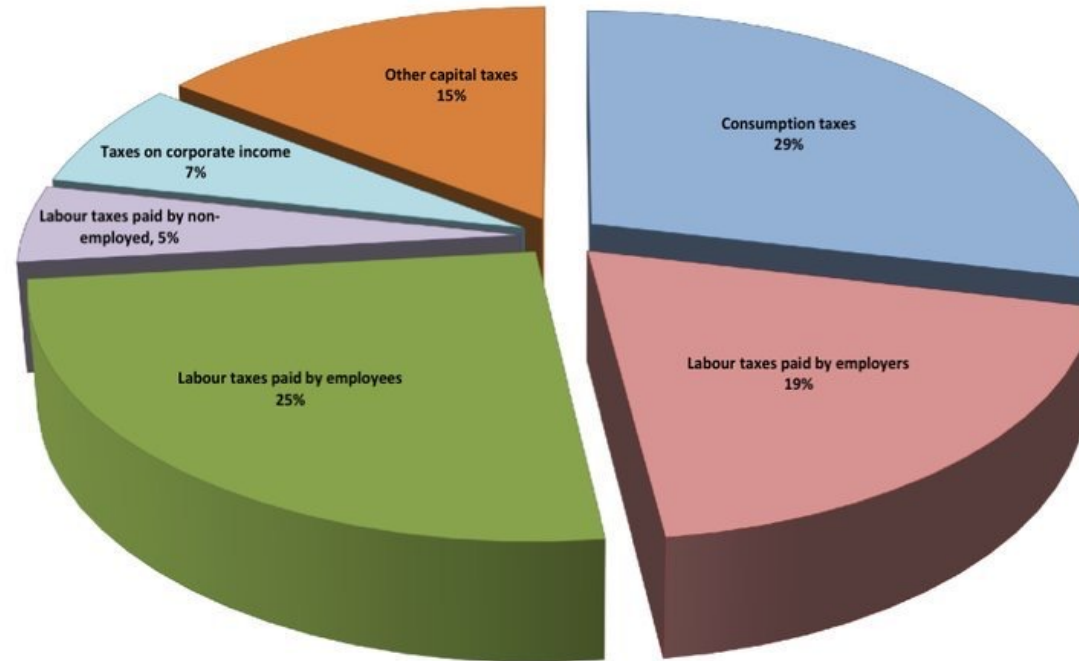
# Types of Taxes

- **Income Taxes;**
  - Personal Income Tax (Business profits, wages, ...);
  - Corporation Tax (if companies are separated entities under Law);
- **Wealth Taxes;**
  - Transfers or on Wealth as such;
- **Consumption Taxes;**
  - Currently applied on retailers or producers;
- **Capital Gain Taxes;**
  - Increase in value of assets not part of the owner's stock in trade.



# How much important are taxes ? The EU Case

## Tax revenue by source



[ec.europa.eu/taxtrends](https://ec.europa.eu/taxtrends)  
#TaxTrends



# Customs and Taxation

- Customs Duties are Taxes applied on **goods imported** (introduced) into a Country;
  - Imposed on an “*Ad Valorem*” basis that may be adjusted on some occasion according to political decisions;
  - They are not applied to services;
- Customs Union (EU):
  - Common Customs Duties applied to Third Countries and no customs duties applied to goods moved between States of the Union;
- Free Trade Area (Central Asia):
  - No Customs duties applied to goods originated from States of the area, but different Duties applicable to goods originated from Third Countries.



# The Boundaries of Taxation

- Sovereign State and the Power to Tax;
  - In Western Culture: no taxation without representation;
- Power to pass taxes is in the Parliament (Representative Body);
- Limits derived from a theoretical approach:
  - Apportionment of the Tax Burden, Protection of property rights, need for neutrality;
- Limits derived from the Law:
  - Constitution (if any), Customary law, International treaties.



# Constitutionalism and Taxation

- Constitution: fundamental legal charter of the State, setting rights and duties and empowering the other public bodies;
  - Variable impact on taxation, including:
    - Ability to pay;
    - Attribution to the Power to tax;
    - Protection of Fundamental goods;
- Fine Tuning of Taxation as to achieve Political Goals:
  - Redistribution of Wealth;
  - Neutrality;
  - ...





# Hard Law and Soft Law

- Taxation, both Domestic and International is molded by Hard Law and Soft Law:
- **Hard Law – Binding:**
  - Either derived by Acts passed by Parliament, Constitution, Treaties, Legal precedents, Regulations, ...;
  - Enforceable by the Judiciary in the everyday practice;
- **Soft Law – Persuasive:**
  - Derived by policymakers, stakeholders, academics, various Influencers;
  - Affect the judiciary and legislators to some degree depending on cases.



# End of lesson 01

- Suggested reading (B, elective): C. Adams, *For Good and Evil. The Impact of Taxes in the Course of Civilization*, New York, 2001, pages 45 – 51.