

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.



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, acts 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).



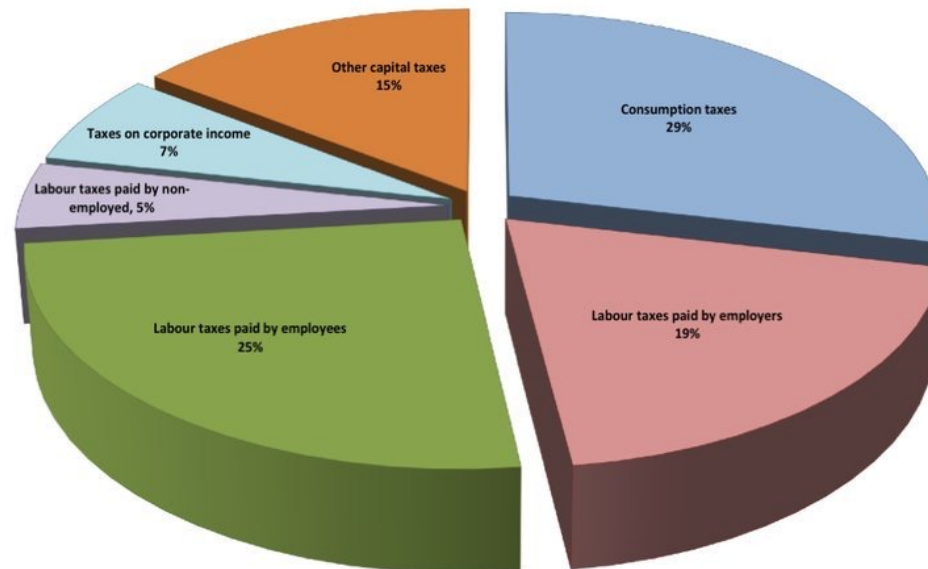
Types of Taxes

- **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
#TaxTrends





Customs and Taxation

- Customs Duties are Taxes applied on goods imported (introduced) into a Country;
 - Imposed on an “*Ad Valorem*” (that is, on the value of the goods imported) basis that may be adjusted on some occasion according to political decisions;
 - They are not applied to services (NEVER!);
 - ...



Continued ...

- 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 and Kazakhstan):
 - 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:
 1. Ability to pay;
 2. Attribution to the Power to tax;
 3. 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;
 - Affects the judiciary and legislators to some degree depending on cases.

End of Lesson 01

