

International Journal of Innovative Research in Science, Engineering and Technology

(A High Impact Factor, Monthly, Peer Reviewed Journal) | Impact Factor: 7.249|

Visit: www.ijirset.com

Vol. 8, Issue 9, September 2019

Tax Law or Revenue Law

TEJRAM MEENA

Assistant Professor, ABST, Govt. College, Gangapur City, Rajasthan, India

ABSTRACT: Tax law or revenue law is an area of legal study in which public or sanctioned authorities, such as federal, state and municipal governments (as in the case of the US) use a body of rules and procedures (laws) to assess and collect taxes in a legal context. The rates and merits of the various taxes, imposed by the authorities, are attained via the political process inherent in these bodies of power, and not directly attributable to the actual domain of tax law itself.^[1]

KEYWORDS: tax,law,revenue,legal,study,governments,domain,authorities,sanctioned,federal,municipal

I.INTRODUCTION

Tax law is part of public law. It covers the application of existing tax laws on individuals, entities and corporations, in areas where tax revenue is derived or levied, e.g. income tax, estate tax, business tax, employment/payroll tax, property tax, gift tax and exports/imports tax.^{[1][2]} There have been some arguments that consumer law is a better way to engage in large-scale redistribution than tax law because it does not necessitate legislation and can be more efficient, given the complexities of tax law.^[1,2,3]

Primary taxation issues differ among various countries, although similarities might exist.

Developed Countries

- Taxes can fail to raise sufficient revenue to cover government spending.^[4]
- Taxes are generally complex and can be viewed as benefitting high income earners more than they do to lower income earners (in the payment of relatively less tax).^{[4][5]}
- Tax evasion and avoidance occur, leading to reduced government revenue.^[6]
- Taxes can produce poor desired outcomes (lower productivity and provide less incentive for businesses to grow).^[4]
- Taxes can curb economic growth through inefficiency, e.g. corporate taxes/hurdles that could impede smaller entities to grow.^[4]
- Taxation can be viewed as disproportionate, as in the case of the taxation of capital gains versus labor income, in which investors generally pay less tax on investment income vs workers who proportionally pay more on their wages.^{[7][5]}
- Taxes can remain questionable in achieving desired goals, such the Ecotax which is primarily intended to promote environmentally friendly activities via economic incentives.^[8]

Developing Countries^[5,8,7]

- Taxes in developing economies can be hard to standardize since most workers work in small, and often unregulated enterprises.^[9]
- Tax systems without sound establishments and competent administration to run and manage them can be burdensome and inefficient.^{[9][10]}
- Tax systems without reliable data are hard to regulate and change.^{[9][10]}
- Tax systems tend to have the rich bear a heavier burden of taxation.^[9]

International Journal of Innovative Research in Science, Engineering and Technology

(A High Impact Factor, Monthly, Peer Reviewed Journal) | Impact Factor: 7.249|

Visit: www.ijirset.com

Vol. 8, Issue 9, September 2019

II.DISCUSSION

Australia

Tax law education is a specialisation of accountants, tax agents, and lawyers. Accountants are required by either CPA Australia to complete a course in law of taxation and law of financial services. There is a legal obligation to complete taxation law and commercial law for registration as a tax agent with the Tax Practitioner's Board. Law students are not typically required to complete a unit in tax law, but may opt to take it as an elective in Australian universities.

Pertaining to the US

Pre-requisites

- completion of a bachelor's degree - students contemplating tax law might have to consider majoring in economics, accounting or finance.^[11]
- sitting for Law School Admission Test (LSAT).

Law School

- in law school, the students take foundational courses from "constitutional law to civil procedures."^[11]
- at this level, law students can take more specialized courses in taxation, such as "limited partnerships and income taxes, business liquidations and acquisitions."^[11]
- Upon completion, the law students graduate with a Juris Doctor (J.D.) degree—which is sufficient for admission to an LL.M. in Taxation.^[11]

Post Law School

- JD graduates may then enroll in a Master of Laws in Taxation (LL.M.), a one-year program. Other concentrations available to students include: estate planning or business taxation.^[11]
- The Bar exam.

Pertaining to other countries

Post Law School

- JD graduates enroll in a Master of Laws (LL.M) program, as is seen in Canada, United Kingdom, Australia, and the Netherlands.

General Requirements

- A bachelor's degree - required for entry into law school.
- Law School Admission Test (LSAT) - Required for law school admission in United States, Canada and a growing number of countries. J.D. (Juris Doctor) or First degree in law.
- The Juris Doctor (JD) program is offered by only a number of countries. These include: United States, Australia, Canada, Hong Kong (China), Japan, Philippines, Singapore and the United Kingdom. The courses vary in duration of years, curriculum and whether or not further training is required, depending on which country the program is in.

In Africa

Most African countries use the British legal education curriculum in their law educational system to train lawyers.^[12]

Overall, legal education, across African countries, starts at the university level as an undergraduate course although a few universities have promulgated a law degree as a graduate program "akin to [that] ... in the United States, Canada, and India."^[12]

International Journal of Innovative Research in Science, Engineering and Technology

(A High Impact Factor, Monthly, Peer Reviewed Journal) | Impact Factor: 7.249|

Visit: www.ijirset.com

Vol. 8, Issue 9, September 2019

In most African countries, a law degree does not necessarily qualify one to practice as a lawyer. Further post-graduate practical training is required.^[12]

Graduates earn an undergraduate law degree, viz. the Bachelor of Laws (LL.B.), via a four-year program (as in Malawi, Kenya, Zambia, and most of South African law universities). Subsequently, graduates with the Bachelor of Laws seek to earn the Master of Laws or greater in order to become practitioners of the law. Some law institutions offer tracks to a Master of Philosophy (M.Phil.), a Doctor of Philosophy degree (Ph.D.), or a Doctor of Laws degree (LL.D.) with emphasis on tax law.^[12]

A list of tax faculty ranked by publication downloads is maintained by Paul Caron at TaxProf Blog.^[13]

III.RESULTS

A corporate tax, also called corporation tax or company tax, is a type of direct tax levied on the income or capital of corporations and other similar legal entities. The tax is usually imposed at the national level, but it may also be imposed at state or local levels in some countries. Corporate taxes may be referred to as income tax or capital tax, depending on the nature of the tax.

The purpose of corporate tax is to generate revenue for the government by taxing the profits earned by corporations. The tax rate varies from country to country and is usually calculated as a percentage of the corporation's net income or capital. Corporate tax rates may also differ for domestic and foreign corporations.

Many countries have tax laws that require corporations to pay taxes on their worldwide income, regardless of where the income is earned. However, some countries have territorial tax systems, which only require corporations to pay taxes on income earned within the country's borders.[13,15,17]

A country's corporate tax may apply to:

- corporations incorporated in the country,
- corporations doing business in the country on income from that country,
- foreign corporations who have a permanent establishment in the country, or
- corporations deemed to be resident for tax purposes in the country.

Company income subject to tax is often determined much like taxable income for individual taxpayers. Generally, the tax is imposed on net profits. In some jurisdictions, rules for taxing companies may differ significantly from rules for taxing individuals. Certain corporate acts or types of entities may be exempt from tax.

The incidence of corporate taxation is a subject of significant debate among economists and policymakers. Evidence suggests that some portion of the corporate tax falls on owners of capital, workers, and shareholders, but the ultimate incidence of the tax is an unresolved question.^[1]

Most systems that tax corporations also impose income tax on shareholders of corporations when earnings are distributed.^[42] Such distribution of earnings is generally referred to as a dividend. The tax may be at reduced rates. For example, the United States provides for reduced amounts of tax on dividends received by individuals and by corporations.^[43]

The company law of some jurisdictions prevents corporations from distributing amounts to shareholders except as distribution of earnings. Such earnings may be determined under company law principles or tax principles. In such jurisdictions, exceptions are usually provided with respect to distribution of shares of the company, for winding up, and in limited other situations.

Other jurisdictions treat distributions as distributions of earnings taxable to shareholders if earnings are available to be distributed, but do not prohibit distributions in excess of earnings. For example, under the United States system each corporation must maintain a calculation of its earnings and profits (a tax concept similar to retained earnings).[21,22,23] A distribution to a shareholder is considered to be from earnings and profits to the extent thereof

International Journal of Innovative Research in Science, Engineering and Technology

(A High Impact Factor, Monthly, Peer Reviewed Journal) | Impact Factor: 7.249|

Visit: www.ijirset.com

Vol. 8, Issue 9, September 2019

unless an exception applies.[18,19,20] Note that the United States provides reduced tax on dividend income of both corporations and individuals.

Other jurisdictions provide corporations a means of designating, within limits, whether a distribution is a distribution of earnings taxable to the shareholder or a return of capital.

IV.CONCLUSIONS

Corporate law (also known as business law, company law or enterprise law) is the body of law governing the rights, relations, and conduct of persons, companies, organizations and businesses. The term refers to the legal practice of law relating to corporations, or to the theory of corporations. Corporate law often describes the law relating to matters which derive directly from the life-cycle of a corporation.^[1] It thus encompasses the formation, funding, governance, and death of a corporation.

While the minute nature of corporate governance as personified by share ownership, capital market, and business culture rules differ, similar legal characteristics and legal problems exist across many jurisdictions. Corporate law regulates how corporations, investors, shareholders, directors, employees, creditors, and other stakeholders such as consumers, the community, and the environment interact with one another.^[1] Whilst the term company or business law is colloquially used interchangeably with corporate law, the term business law mostly refers to wider concepts of commercial law, that is the law relating to commercial and business related purposes and activities. In some cases, this may include matters relating to corporate governance or financial law.[23,25,28] When used as a substitute for corporate law, business law means the law relating to the business corporation (or business enterprises), including such activity as raising capital, company formation, and registration with the government.

Overview

Academics identify four legal characteristics universal to business enterprises. These are:

- Separate legal personality of the corporation (access to tort and contract law in a manner similar to a person)
- Limited liability of the shareholders (a shareholder's personal liability is limited to the value of their shares in the corporation)
- Transferable shares (if the corporation is a "public company", the shares are traded on a stock exchange)
- Delegated management under a board structure; the board of directors delegates day-to-day management of the company to executives.^{[1][2]}

Widely available and user-friendly corporate law enables business participants to possess these four legal characteristics and thus transact as businesses. Thus, corporate law is a response to three endemic opportunism: conflicts between managers and shareholders, between controlling and non-controlling shareholders; and between shareholders and other contractual counterparts (including creditors and employees).[32,33,31]

A corporation may accurately be called a company; however, a company should not necessarily be called a corporation, which has distinct characteristics. In the United States, a company may or may not be a separate legal entity, and is often used synonymous with "firm" or "business." According to Black's Law Dictionary, in America a company means "a corporation — or, less commonly, an association, partnership or union — that carries on industrial enterprise."^[3] Other types of business associations can include partnerships (in the UK governed by the Partnership Act 1890), or trusts (Such as a pension fund), or companies limited by guarantee (like some community organizations or charities). Corporate law deals with companies that are incorporated or registered under the corporate or company law of a sovereign state or their sub-national states.

The defining feature of a corporation is its legal independence from the shareholders that own it. Under corporate law, corporations of all sizes have separate legal personality, with limited or unlimited liability for its shareholders. Shareholders control the company through a board of directors which, in turn, typically delegates control of the corporation's day-to-day operations to a full-time executive. Shareholders' losses, in the event of liquidation, are limited

International Journal of Innovative Research in Science, Engineering and Technology

(A High Impact Factor, Monthly, Peer Reviewed Journal) | Impact Factor: 7.249 |

Visit: www.ijirset.com

Vol. 8, Issue 9, September 2019

to their stake in the corporation, and they are not liable for any remaining debts owed to the corporation's creditors. This rule is called limited liability, and it is why the names of corporations end with "Ltd." or some variant such as "Inc." or "plc." [29,30,31]

Under almost all legal systems corporations have much the same legal rights and obligations as individuals. In some jurisdictions, this extends to allow corporations to exercise human rights against real individuals and the state,^[4] and they may be responsible for human rights violations.^[5] Just as they are "born" into existence through its members obtaining a certificate of incorporation, they can "die" when they lose money into insolvency. Corporations can even be convicted of criminal offences, such as corporate fraud and corporate manslaughter.^[6]

REFERENCES

1. Houtte & McLure, Baron Jean M.J. van & Charles E. (13 June 2011). "Tax law". Encyclopædia Britannica. Retrieved 6 October 2017.
2. ^ "Tax Law - Guide to Taxation Law". HG.org Legal Resources.
3. ^ Van Loo, Rory (2018-11-01). "Broadening Consumer Law: Competition, Protection, and Distribution". *Notre Dame Law Review*. 95 (1): 211.
4. ^ Krupkin & Gale, Aaron and William G. (29 September 2016). "Major tax issues in 2017". Brookings Institution.
5. ^ Steverman, Ben (12 September 2017). "Why American Workers Pay Twice as Much in Taxes as Wealthy Investors". Bloomberg.
6. ^ SLEMROD & YITZHAKI, JOEL & SHLOMO (2002). *Handbook of Public Economics*. Elsevier Science B. V. pp. 1425, Chapter 22.
7. ^ Block & McBride, David & William (27 June 2012). "Why Capital Gains are taxed at a Lower Rate". The Tax Foundation.
8. ^ "Ecotax championed, contested and still marginal in EU". France 24. 7 September 2018.
9. ^ Tanzi & Zee, Vito & Howell. "Tax Policy for Developing Countries". International Monetary Fund.
10. ^ Carnahan, Michael (28 January 2015). "Taxation Challenges in Developing Countries". *Asia & the Pacific Policy Studies*. 2: 169–182. doi:10.1002/app5.70. S2CID 154105543.
11. ^ "Tax Lawyer: Educational Requirements and Career Summary". Study.com. Retrieved 14 September 2018.
12. ^ Manteaw, Samuel O. "Legal Education in Africa: What Type of Lawyer Does Africa Need". *McGeorge Law Review*. 39 (4): 919 to 928 – via Scholarly Commons (2016).
13. ^ Caron, Paul (January 28, 2016). "SSRN Tax Professor Rankings". TaxProf Blog.
14. John Armour, Henry Hansmann, Reinier Kraakman, Mariana Pargendler "What is Corporate Law?" in *The Anatomy of Corporate Law: A Comparative and Functional Approach* (Eds Reinier Kraakman, John Armour, Paul Davies, Luca Enriques, Henry Hansmann, Gerard Hertig, Klaus Hopt, Hideki Kanda, Mariana Pargendler, Wolf-Georg Ringe, and Edward Rock, Oxford University Press 2017)1.1
15. ^ RC Clark, *Corporate Law* (Aspen 1986) 2; H Hansmann et al., *Anatomy of Corporate Law* (2004) ch 1 set out similar criteria, and in addition state modern companies involve shareholder ownership. However this latter feature is not the case in many European jurisdictions, where employees participate in their companies.
16. ^ *Black's Law Dictionary*, 8th edition (2004), ISBN 0-314-15199-0
17. ^ e.g. South African Constitution Art.8, especially Art.(4)
18. ^ Phillip I. Blumberg, *The Multinational Challenge to Corporation Law: The Search for a New Corporate Personality*, (1993) has a very good discussion of the controversial nature of additional rights being granted to corporations.
19. ^ e.g. Corporate Manslaughter and Corporate Homicide Act 2007
20. ^ In England the first joint stock company was the East India Company, which received its charter in 1600. The Dutch East India Company received its charter in 1602, but is generally recognized as the first company in the world to issue joint stock. Not coincidentally, the two companies were competitors.

International Journal of Innovative Research in Science, Engineering and Technology

(A High Impact Factor, Monthly, Peer Reviewed Journal) | Impact Factor: 7.249|

Visit: www.ijirset.com

Vol. 8, Issue 9, September 2019

21. ^ In England, see *Edmunds v Brown Tillard* (1668) 1 Lev 237 and *Salmon v The Hamborough Co* (1671) 1 Ch Cas 204
22. ^ *Salomon v. Salomon & Co.* [1897] AC 22.
23. ^ Although it did attach to documents within the husband's custody or control.
24. ^ *Macaura v. Northern Assurance Co Ltd* [1925] AC 619
25. ^ *Adams v. Cape Industries plc* [1990] Ch 433
26. ^ *Goode Principles of Corporate Insolvency Law* (3rd Edn, Sweet & Maxwell 2013)
27. ^ *Williams v Natural Life* [1998] 1 WLR 830
28. ^ See the frustration expressed by the House of Lords in *Cotman v. Brougham* [1918] AC 514
29. ^ Lin, Tom C. W. (2018). "Incorporating Social Activism". 98 *Boston University Law Review*. Temple University Legal Studies Research Paper No. 2018-01. Rochester, NY. 1535.
30. ^ *Ashbury v. Watson* (1885) 30 Ch D 376
31. ^ *Shalfoon v Cheddar Valley* [1924] NZLR 561
32. ^ "TITLE 8 - CHAPTER 1. GENERAL CORPORATION LAW - Subchapter IV. Directors and Officers". delcode.delaware.gov.
33. ^ See also, Listing Rule 10 for public companies, setting out a scale of transactions requiring shareholder approval and disclosure.
34. ^ Shareholders must approve sale of "all or substantially all assets", held in *Gimbel* (1974) to be those "qualitatively vital to the existence and purpose" of the corporation; which in *Katz v. Bregman* (1981) was held to include assets under 50% of the company's value