



ILE

JOURNAL OF ADMINISTRATIVE LAW
REVIEW

VOLUME 1 AND ISSUE 1 OF 2023

INSTITUTE OF LEGAL EDUCATION



ILE JOURNAL OF ADMINISTRATIVE LAW REVIEW

APIS – 3920 – 0051 | ISBN – 978-81-964391-3-2

(Free Publication and Open Access Journal)

Journal's Home Page – <https://jalr.iledu.in/>

Journal's Editorial Page – <https://jalr.iledu.in/editorial-board/>

Volume 1 and Issue 1 (Access Full Issue on – <https://jalr.iledu.in/category/volume-1-and-issue-1-of-2023/>)

Publisher

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ARTICLE ON EXPLORING THE CHANGING LANDSCAPE IN TAXATION LAW IN INDIA

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BEST CITATION – SANJANA KHANJIRE, ARTICLE ON EXPLORING THE CHANGING LANDSCAPE IN TAXATION LAW IN INDIA, ILE JOURNAL OF ADMINISTRATIVE LAW REVIEW (ILE JALR), 1 (1) OF 2023, PG. 12-16, APIS – 3920 – 0051 | ISBN – 978-81-964391-3-2.

Abstract

Taxation law is a dynamic and ever-evolving field, shaped by societal, technological, and economic developments. This abstract highlights some key contemporary issues in taxation law as of September 2021, shedding light on the challenges faced by governments worldwide. One of the major concerns in taxation law is international taxation. With the rise of multinational corporations and globalization, tax avoidance, and base erosion have become pressing issues. Efforts are underway to address these challenges through international tax reforms, aiming to tackle transfer pricing, base erosion, and profit shifting. Additionally, the taxation of the digital economy poses a significant challenge, as traditional tax rules struggle to capture revenue generated in the digital space. Governments are exploring ways to update tax regulations to ensure the fair taxation of digital businesses and address issues such as user data and digital advertising. Tax avoidance and evasion continue to be significant concerns. Sophisticated tax planning strategies, offshore tax havens, and complex corporate structures contribute to these issues. Governments are implementing stricter regulations and international cooperation mechanisms to combat tax evasion and improve tax transparency through some of the initiatives such as the Common Reporting Standard (CRS) and the Foreign Account Tax Compliance Act (FATCA).⁸ The rise of cryptocurrencies has introduced complexities in taxation. Issues such as the classification and valuation of cryptocurrencies, reporting obligations for transactions, and addressing tax evasion risks associated with decentralized transactions are being addressed. Moreover, environmental taxation has gained prominence as governments aim to incentivize environmentally friendly practices and discourage harmful behaviors through mechanisms like carbon taxes. This abstract provides a snapshot of contemporary issues in taxation law, but it is essential to acknowledge that tax laws and regulations vary across jurisdictions. Staying abreast of updates and seeking professional advice is crucial for a comprehensive understanding of the ever-evolving landscape of taxation law.

Keywords: Taxation, Environmental Taxation, Jurisdiction, Government, Globalisation.

⁸ <https://www.pwc.com/mt/en/publications/tax-legal/foreign-account-tax-compliance-act-and-the-common-reporting-standard.html>



I. Introduction:

Taxation is a fundamental component of any modern society, serving as a primary source of revenue for governments to finance public services and infrastructure. However, the complexities of the modern economic landscape and the emergence of new technologies have given rise to a range of contemporary issues in taxation law. These issues pose significant challenges for policymakers, tax authorities, and taxpayers alike. One prominent concern in the field of taxation is the globalized nature of the economy. Multinational corporations often exploit disparities in tax systems across countries to minimize their tax obligations, leading to concerns of tax avoidance and erosion of tax bases. This has prompted international efforts to combat such practices, with a focus on addressing transfer pricing, base erosion, and profit shifting. The digital economy has also brought about unique challenges in taxation. The borderless nature of online transactions and the difficulty in capturing the value created by digital businesses have created a disconnect between traditional tax rules and the economic activities occurring in the digital realm. Governments are grappling with how to effectively tax digital transactions, including issues such as the taxation of e-commerce, digital services, and cryptocurrencies. Additionally, there is an increasing focus on tax transparency and the exchange of information between jurisdictions. With the rise of offshore tax evasion and illicit financial flows, governments are working to enhance international cooperation and implement measures to improve tax transparency, detect tax evasion, and ensure fair tax compliance. Environmental concerns have further influenced contemporary issues in taxation law. Governments are exploring the use of environmental taxation as a policy tool to promote sustainable practices, address climate change, and incentivize businesses and individuals to adopt environmentally friendly behaviors. These contemporary issues in

taxation law highlight the need for ongoing discussions, reforms, and adaptations to ensure that tax systems remain effective, fair, and responsive to the evolving economic and technological landscape. Policymakers and tax professionals must navigate these challenges to strike a balance between promoting economic growth, addressing societal concerns, and maintaining a robust and equitable tax system.⁹

II. Historical Perspective:

To understand the contemporary issues in taxation law, it is crucial to examine them from a historical perspective. Taxation has been a fundamental element of societies throughout history, serving as a means for governments to generate revenue for public goods and services. Over time, taxation laws and practices have evolved in response to changing economic, political, and social landscapes. Historical shifts such as the industrial revolution, globalization, and technological advancements have shaped today's contemporary taxation issues. One significant historical development was the establishment of income tax in the early 20th century. This transformed the way individuals and businesses were taxed, shifting the focus from indirect taxes to direct taxes based on income. The introduction of progressive tax systems aimed to promote fairness by taxing higher-income individuals at higher rates.¹⁰ Globalization brought new challenges to taxation. In response, countries started developing international tax frameworks to address these issues, leading to discussions on base erosion and profit shifting (BEPS) and the need for international tax reforms. The digital revolution presented further complexities. The rapid growth of e-commerce and digital business models challenged traditional tax rules designed for brick-and-mortar operations. Tax authorities faced difficulties in capturing

⁹ <https://tclf.in/2021/09/06/tclf-one-on-one-ep-26-contemporary-issues-in-taxation-law-ft-ankit-namdeo/>

¹⁰ <https://unacademy.com/content/bank-exam/study-material/general-awareness/what-is-the-history-of-taxation-in-india/#:~:text=It%20was%20in%201850%20that,moment%20for%20taxati on%20in%20India.>

revenue generated in the digital economy, leading to ongoing debates on how to tax digital transactions and ensure a level playing field between traditional and digital businesses. Environmental concerns have also influenced taxation law. With growing awareness of climate change and the need for sustainability, governments have introduced environmental taxes and incentives to encourage environmentally friendly behavior and discourage activities that harm the environment. Examining the historical context of contemporary taxation issues allows us to understand how tax systems have adapted and transformed over time. It highlights the need for continuous updates and reforms to address emerging challenges in taxation law and ensure that tax systems remain effective, fair, and responsive to the evolving needs of societies.¹¹

III. Constitutional Provision:

The Constitution provides for several provisions related to taxation. Here are some key constitutional provisions of taxation law in India:

A. Article 265: This article states that no tax shall be levied or collected except by the authority of law. It ensures that no tax can be imposed or collected without the authority of a law passed by the Parliament or State Legislature.

B. Article 246: This article deals with the distribution of legislative powers between the Union (central government) and the States. It divides the subjects of taxation into three lists:

1. Union List: It includes subjects on which only the central government can make laws, such as income tax, customs duties, central excise, etc.

2. State List: It includes subjects on which only the state governments can make laws, such as sales tax, stamp duty, state excise, etc.

3. Concurrent List: It includes subjects on which both the central and state governments can make laws, such as goods and services tax (GST), bankruptcy and insolvency, etc.

C. Article 265A: This article deals with the Goods and Services Tax (GST), which is a comprehensive indirect tax levied on the supply of goods and services. It provides for the power of the Parliament and state legislatures to make laws on GST.

D. Article 246A: This article deals with the Goods and Services Tax Council, which is a constitutional body responsible for making recommendations on issues related to GST. It comprises each state's Union Finance Minister and Ministers of Finance or Taxation.

E. Article 265(1): This article states that no tax can be levied or collected except for the Union or a State. It ensures that taxes can be imposed only for public purposes and not for private purposes.

F. Article 265(2): This article prohibits the imposition or collection of a tax without the authority of law. It emphasizes the need for a valid law to support the imposition or collection of taxes.

These are some of the constitutional provisions related to taxation law in India. Tax laws are further detailed through acts, rules, regulations, and notifications passed by the central and state governments under constitutional provisions.^{12,13}

IV. Types of Taxation:

There are several types of taxation that governments employ to generate revenue. Here are some common types:

A. Income Tax: This tax is imposed on the income earned by individuals, corporations, or other entities. It is typically levied based on a progressive tax rate system, where higher-income earners pay a higher percentage of their income as tax.

B. Sales Tax and Value Added Tax (VAT): Sales tax is imposed on the sale of goods and services, usually at the point of purchase. VAT is a type of sales tax that is levied at each stage of

¹¹ <https://www.levare.co.in/articles/history-taxation-india>

¹² <https://nacin.gov.in/resources/file/downloads/53ce2a715edb1.pdf>

¹³ <https://www.legalserviceindia.com/legal/article-5378-law-of-taxation-and-constitution.html>

production and distribution, with credit for taxes paid on inputs.

C. Property Tax: This tax is based on the value of real estate or other types of property owned by individuals or businesses. It is typically assessed annually and used to fund local government services.

D. Corporate Tax: Corporations are subject to corporate tax on their profits. The tax rate may vary based on the company's size, industry, and jurisdiction.

E. Excise Tax: Excise taxes are imposed on specific goods such as tobacco, alcohol, gasoline, or luxury items. These taxes are often intended to discourage consumption or to fund specific programs.

F. Estate and Inheritance Tax: These taxes are imposed on the transfer of wealth from one generation to another, either during a person's lifetime (gift tax) or upon their death (estate tax or inheritance tax).

G. Customs Duties: Customs duties or tariffs are taxes imposed on imported or exported goods between countries. They are designed to protect domestic industries or generate revenue for the government.

H. Payroll Tax: This tax is deducted from employees' wages and is used to fund social security programs, healthcare, and other benefits.¹⁴

V. Emerging Issues in Taxation Law:

As of my last knowledge update in September 2021, here are some emerging issues in taxation law that were relevant at that time. Please note that there may have been further developments since then:

A. International Taxation: Globalization has raised concerns about tax avoidance and

multinational corporations' erosion of tax bases. Countries are working on international tax reforms to address issues such as transfer pricing, base erosion and profit shifting (BEPS), and the digital economy's taxation.

B. Tax Avoidance and Evasion: Governments face challenges in combating tax avoidance and evasion. Sophisticated tax planning strategies, offshore tax havens, and the use of complex corporate structures contribute to these issues. Governments are implementing stricter regulations and cooperation mechanisms to tackle these problems.

C. Tax Transparency and Exchange of Information: Many jurisdictions are enhancing tax transparency and exchanging information among tax authorities to combat tax evasion. Measures like the Common Reporting Standard (CRS) and the Foreign Account Tax Compliance Act (FATCA) aim to improve transparency and detect offshore tax evasion.

D. Taxation of the Digital Economy: The digital economy presents challenges for tax authorities as traditional tax rules may not effectively capture revenue generated in the digital space. Governments are exploring options to update tax rules to ensure that digital businesses are appropriately taxed, considering factors like user data and digital advertising.

E. Taxation of Cryptocurrencies: The rise of cryptocurrencies like Bitcoin has created complexities in taxation. Issues include determining how to classify and value cryptocurrencies, reporting obligations for cryptocurrency transactions, and addressing tax evasion risks associated with decentralized and anonymous transactions.

F. Environmental Taxation: With increasing concerns about climate change and environmental sustainability, governments are exploring the use of taxation as a policy tool to

¹⁴ <https://www.legalserviceindia.com/legal/article-749-tax-laws-in-india.html>

incentivize environmentally friendly behaviors and discourage harmful practices. Carbon taxes and other environmental levies are being implemented in various jurisdictions.

G. Taxation of Sharing Economy: The sharing economy, characterized by platforms like Uber and Airbnb, presents challenges in terms of tax compliance. Determining the tax obligations of participants, addressing regulatory gaps, and ensuring a level playing field between traditional and sharing economy businesses are areas of focus.

H. Tax Incentives and Economic Development: Governments often use tax incentives to attract investment, stimulate economic growth, and encourage specific industries or activities. However, the effectiveness and fairness of these incentives are debated, with concerns about revenue loss and potential distortions in the economy.¹⁵

VI. Conclusion:

In conclusion, contemporary issues in taxation law reflect the evolving economic landscape and the challenges posed by globalization, digitalization, and environmental concerns. The issues of international tax avoidance, digital economy taxation, and environmental taxation have garnered significant attention. Governments are adapting their tax systems and collaborating internationally to address these challenges and ensure fair and equitable taxation. Striking a balance between promoting economic growth, addressing tax avoidance, and incentivizing sustainable practices is crucial. As taxation continues to evolve, policymakers and tax authorities must remain vigilant, adopt innovative approaches, and ensure that tax systems are responsive to the changing needs of society and the economy.

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3. Babita Lila v. UOI
4. V. A. Haseeb and Co. (Firm) v. CCIT
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¹⁵ <https://www.fiscalpublications.com/media/1276/981906201630.pdf>