

TRANSFER PRICING

Responsible Faculty Instructor:
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Associate Professor

Credits: 4

Credits Type: Law

Cross-registration: NA

Pre-requisites: Law of Taxation/ Law of Taxation I

COURSE DESCRIPTION (COURSE VISION):

This course is offered to students with a background in Law of Taxation, who are willing to learn more on the theory and technicalities of Transfer Pricing.

Cross border transactions have been an area of incessant intrigue and complications for traders across the world. Until a generation back, international transactions, particularly between associated enterprises or commonly referred to as 'related entities', could be underpriced or overpriced as a tax mitigation strategy. A tool in the form of 'transfer pricing' was developed by tax administrators which gradually became an effective instrument in tackling tax abuse across the world. Therefore, it becomes an interesting investigation to understand the background and evolution of transfer pricing norms in key jurisdictions of the world. In the Indian context, application of transfer pricing provisions has resulted in a peculiar situation. Almost 75% of global transfer pricing disputes have Indian entity as one of the parties. Hence, it becomes imperative for students of tax law to understand the intricacies of this concept.

This course aims to trace the jurisprudence, challenges and amendments to the transfer pricing law in India and its counterparts. The two decades of legislative journey of transfer pricing law in India will be traced and critical amendments will be examined.

Key concepts in transfer pricing law such as the Arm's Length Principle, International Transactions, Associated Enterprises, Arm's Length Price etc. shall be analyzed with the help of case laws. Once the foundation is set, case studies will be undertaken to comprehend different ways to determine the Arm's Length Price. In this context, key adjudication by the courts of law to distinguish between different computation techniques will be referred to as well. Further, contentious transfer pricing issues like intangibles, intra-group services, and attribution of profits to permanent establishments shall also be inspected.

In the Base Erosion and Profit Shifting (BEPS) era, transfer pricing has gained to be one of the most sought-after specializations for tax professionals, not just in India but globally. Students, through this course, will get an opportunity to understand specific Action Plans of OECD BEPS viz. Action Plan 8-10 and 13. The interplay of Mutual Agreement Procedure (MAP) and transfer pricing will also be examined.

It is going to be a highly demanding and engaging course since case studies shall test the analytical skills of students comprehensively. It is highly recommended that only students genuinely interested in undertaking tax as a profession should enroll, given the technical rigor of the course.

TEACHING METHODOLOGY:

In-class lectures shall be conducted by the course Instructor. Students are required to prepare for lectures and tutorials to participate in class.

INTENDED LEARNING OUTCOMES:

Course Intended Learning Outcomes	Weightage in %	Teaching and Learning Activities	Assessment Tasks/ Activities
By the end of the Course, Students should be able to:			
Analytically and critically describe and explain the transfer pricing mechanism including key concepts and principles pertaining to transfer pricing.	50%	Reading of relevant research material, case laws and other books as suggested. Students will be encouraged to participate in class discussion to develop their analytical and critical skills.	Internal Assessments, End Term Examination. Tutorials Students' ability to describe and explain the key concepts in transfer pricing with the help of presentations, research papers and/or case studies.
Identify, analyse and critically evaluate: <ul style="list-style-type: none"> • Major areas of transfer pricing dispute • Reasons behind such disputes • Judicial trend in respect of transfer pricing disputes 	30%	Students will, by responding to questions and performing exercises, develop their analytical and critical capabilities to discuss vexed issues concerning transfer pricing law.	Internal Assessments, End-term Examination, Tutorials and Assignments. All these assessments/ tasks and activities shall be essential to determine their ability to apply legal principles to a given factual situation.
Apply principles in transfer pricing law	20%	Students shall be required to research on	Students will be required to make presentations on

Course Intended Learning Outcomes	Weightage in %	Teaching and Learning Activities	Assessment Tasks/ Activities
<p>to solve legal problems by:</p> <ul style="list-style-type: none"> • Conducting in-dept research on the issue in question • Analysing and innovating to resolve problems concerning transfer pricing law • Communicating their solutions orally and in writing in a clear, coherent and accurate manner. 		<p>topics of transfer pricing disputes.</p> <p>In lectures, students shall be shown how legal problems are solved by applying principles of international tax and transfer pricing law.</p> <p>Students shall be required to give presentations on selected topics in which they shall evaluate issues concerning international tax in general and transfer pricing law in specific.</p>	<p>problems and questions allotted to them.</p> <p>All students will be required to participate and contribute to tutorial discussions whether by means of a presentation, research etc.</p>

READING LIST (upto 10 select readings):

OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 2022 <https://www.oecd.org/tax/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-20769717.htm>

United Nations Practical Manual on Transfer Pricing for Developing Countries, 2021 https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2021-04/TP_2021_final_web%20%281%29.pdf

Transfer Pricing: The Indian Landscape *Two Decades On*, Mukesh Butani, LexisNexis, 2021

Transfer Pricing Developments around the World, Raffaele Petruzzi, Michael Lang, Kluwer Law International, Wolters Kluwer

Fundamentals of Transfer Pricing, Edited by Raffaele Petruzzi, Giammarco Cottani, Michael Lang, June 2022, Kluwer Law International, Wolters Kluwer

Guidance Note on Report Under Section 92E of the Income-tax Act, 1961 (Transfer Pricing), ICAI

WEEKLY READING PLAN (WEEKLY OUTLINE):

A weekly plan is provided below:

MODULES	WEEK(S)
Module 1: Basics of International Taxation <ul style="list-style-type: none"> • Residence and source-based taxation • Collusion of taxing rights • Types of double taxation • Objects and purpose of Double Taxation Avoidance Agreements (DTAA) • Methods for relief of double taxation • Concept of tax evasion and tax avoidance • Introduction to OECD BEPS 	1-2
Module 2: Introduction to Transfer Pricing <ul style="list-style-type: none"> • Introduction to transfer pricing: need and concept • Fundamental sources of transfer pricing law • History and evolution of transfer pricing law in India • Structure of transfer pricing provisions in India 	3
Module 3: Key Concepts in Transfer Pricing Law <ul style="list-style-type: none"> • Associated enterprises • International transactions • Specified domestic transactions • Arm's length principle 	4
Module 4: Determination of Arm's Length Price <ul style="list-style-type: none"> • Methods prescribed under the <ul style="list-style-type: none"> ○ OECD transfer pricing guidelines ○ UN transfer pricing guidelines and ○ Indian transfer pricing law • Transfer pricing analysis <ul style="list-style-type: none"> ○ Functional analysis ○ Comparability analysis 	5-7
Module 5: Permanent Establishments (PE) <ul style="list-style-type: none"> • Permanent Establishments: Concept, Types • Indian and International Case Laws on the existence of PE • Attribution of profits to permanent establishments 	8
Module 6: Transfer Pricing of Intangibles OECD BEPS Action Plan 8-10: <i>Aligning transfer pricing outcomes with value creation</i>	9
Module 7: Intra-Group Services	10

<p>Module 8: Transfer Pricing Documentation OECD BEPS Action Plan 13: <i>Transfer Pricing Documentation and Country-by-Country Reporting</i></p> <ul style="list-style-type: none"> ○ Master File ○ Local File ○ Country-by-Country Report 	<p>11-12</p>
<p>Module 9: Transfer Pricing Disputes</p> <ul style="list-style-type: none"> ● Alternate Dispute Resolution Mechanism: <ul style="list-style-type: none"> ○ Dispute Resolution Mechanism (DRP) ○ Advance Pricing Agreement (APA) ○ Safe Harbours ○ Mutual Agreement Procedure (MAP) ● Key dispute areas ● Major International transfer pricing disputes 	<p>13-14</p>
<p style="text-align: center;">REVISION WEEK</p>	<p style="text-align: center;">Week 15</p>