

School: Harry Radzyner Law School MA

Taxation and Technology

Lecturer:

Dr. Rifat Azam razam@idc.ac.il

Teaching Assistant:

Ms. Inbal Bar On inbal.baron@post.idc.ac.il

Course No.:	Course Type :	Weekly Hours :	Credit:
10529	Lecture	2	2

Course Requirements :	Group Code :	Language:
Final Paper	202105291	Hebrew

Course Description

Technology changed the world of trade, services and transactions. The global digital economy is growing rapidly to constitute a substantial share of the global economy. The intersection of taxation and technology raises fundamental challenges to the international tax regime as well as the national tax systems. In this course, we will explore main and current challenges and responses as well as the potential of technologies for better taxation. We will understand the debate on taxing technology Multinationals such as Facebook, Google and Apple including the recent efforts of the EU to impose digital services tax. We will analyze issues of international taxation of e-commerce and cloud computing. We will learn the Value Added Taxation of e-commerce and cloud computing according to the recent changes in EU Law and the Israeli Law. We will engage in the U.S. discussion of States Sales and Use taxation of online transactions following the recent U.S. Supreme Court landmark decision in *South Dakota v. Wayfair*. We will dig into taxation aspects of technologies that enabled sharing economy, such as Airbnb and Uber. We will examine the tax outcomes of selling technologies and intellectual properties including case studies of Israeli exits, such as Mobileye deal and Waze deal. Finally, we will explore the role and prospects of Block chain Technology, Big Data, and Artificial Intelligence in fighting tax avoidance and evasion, and administering tax systems fairly and efficiently.

Course Goals

Students completing this instructional offering are expected to:

1. Demonstrate a proficiency in reading critically the materials assigned for this course.
 2. Demonstrate a knowledge of substantive legal doctrine fundamental to this course, e.g. principles of international taxation, income taxation, value added taxation, sales and use taxation.
 3. Identify legal issues and apply legal reasoning and analysis to solve problems in a logical and structured manner to issues covered in this course. For example, issues of e-commerce and cloud computing taxation. Issues of sharing economy taxation. Issues of intellectual property taxation.
 4. Communicate orally or in writing, or both, the legal reasoning and analysis regarding issues covered in this course.
 5. Analyze the pros and cons of different proposals to cope with the challenges of taxation and technology.
 6. Develop a vision on future developments and uses of technologies for better taxation.
 7. Work with other students and develop collaborative and communication skills.
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Grading

- 100% course essay.
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Lecturer Office Hours

By appointment



Tutor Office Hours

By appointment



Reading List

I. International Income Taxation of the Digital Economy

- [פרק ראשון](#) (ע' 43-23) [ושלישי](#) (ע' 70-57) רפעות עזאם, המיסוי הבינלאומי של המסחר האלקטרוני (המכון למחקרי חקיקה, האוניברסיטה העברית בירושלים, נבו 2013)
- [רשות המסים, חוזר מס הכנסה 4/2016 בנושא פעילות תאגידים זרים בישראל באמצעות האינטרנט](#) (אפריל 2016)
- OECD/G20 Inclusive Framework on BEPS: [Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy](#) (May 2019)
- OECD, [Secretary General Tax Report to G20 Finance Ministers and Central Bank Governors](#) (Oct. 2019).
- Rifát Azam, [E-commerce Taxation and Cyberspace Law: The Integrative Adaptation Model](#), 12(5) Virginia Journal of Law and Technology 1 (2007).
- Rifát Azam, [Global Taxation of Cross Border E-commerce Income](#), 31 Virginia Tax Review 639 (2012).
- Reuven Avi Yonah, International Taxation of Electronic Commerce, 52 Tax L. Rev. 502 (1997).
- European Commission, [Fair Taxation of the Digital Economy](#)
- European Parliament, [Interim Digital Services Tax on Revenues from Certain Digital Services](#)
- Tax Foundation, [Digital Services Taxes in Europe](#) (January 30, 2020).

II. VALUE Added Tax (VAT) and the Digital Economy

- Rifát Azam, Orly Mazur, [Cloudy with a Chance of Taxation](#), 22 Florida Tax Review 500 (2019).
- Walter Hellerstein, Taxing Remote Sales in the Digital Age: A Global Perspective, 65 Am. U. L. Rev. 1195 (2016).
- Marie Lamensch, [European Value Added Tax in the Digital Era](#) (2015).

III. Sales Taxation and the Digital Economy

- Rifát Azam, Online Taxation Post Wayfair. New Mexico Law Review (2020).

IV. Taxation of the Shared Economy

- Diane M. Ring and Shu-Yi Oei. "Can Sharing Be Taxed?" *Washington University Law Review* Vol. 93 Iss. 4 (2016) p. 989 – 1069.

V. The Role of Technology in Tax Compliance

- OECD, [Technology Tools to Tackle Tax Evasion and Tax Fraud](#) (2017)
- KPMG, [Transforming the Tax Function Through Technology](#) (A Practical Guide to 2020)
- EY, [Tax Technology and Transformation: Tax Functions 'Go Digital'](#)

VI. Taxation and Technology: Case Studies & Conclusions

I. COURSE TITLE: E-commerce Taxation

Semester & Year: [Fall 2017](#)

Course Start and End Dates: 8/28/2017-12/1/2017

Meeting Days and Times: Wednesday's 1:08 pm – 3:00 pm.

Building and Room: AB LAW BLDG / 203

II. INSTRUCTOR:

Name: Prof. Rifat Azam

Email: razam@wustl.edu; razam@idc.ac.il ;

Phone: 646-664-7229 Office Hours: By appointment.

III. COURSE DESCRIPTION:

E-commerce is one important scene of today's global digital economy. E-commerce raises substantial tax challenges. In this course, we will explore the main challenges and responses in three areas of taxation. The U.S. taxation of international e-commerce income; The U.S. States Sales Taxation of e-commerce transactions; The EU Value Added Taxation of e-commerce. We will analyze issues such as: Sourcing of E-commerce Income; E-commerce U.S. Trade or Business; Transfer Pricing and E-commerce; The Challenges of imposing U.S. States Sales Tax on out of state e-commerce; E-commerce and the commerce clause after Quill, Amazon Tax Laws; current and prospected EU directives concerning Value Added Taxation of E-commerce. We will conclude by some conclusions and recent analysis of issues of e-commerce taxation and generally the taxation of digital economy in the 21st century including issues of cloud computing.

IV. LEARNING OUTCOMES:

Students completing this instructional offering are expected to:

1. Demonstrate a knowledge of substantive legal doctrine fundamental to this course (e.g., case law, legal concepts, legal principles, regulations and statutes).
2. Identify legal issues and apply legal reasoning and analysis to solve problems in a logical and structured manner to issues covered in this course.
3. 3. Communicate orally or in writing, or both, the legal reasoning and analysis regarding issues covered in this course.
4. Demonstrate a proficiency in reading critically the materials assigned for this course.

V. REQUIRED TEXTS AND MATERIALS:

Charles H. Gustafson, Robert J. Peroni, Richard Crawford Pugh, **Taxation of International Transactions: Materials, Text and Problems** (Fourth Edition, West Publishing 2011).

Arthur Cockfield, Walter Hellerstein, Rebecca Millar & Christophe Waerzeggers, **Taxing Global Digital Commerce** (2013).

Tax Code, Regulations and Official Guidance

<https://www.irs.gov/tax-professionals/tax-code-regulations-and-official-guidance#26cfr>

U.S. Model Tax Treaty 2016

<https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/treaties.aspx>

OECD Model Tax Treaty 2014

<http://www.oecd.org/ctp/treaties/model-tax-convention-on-income-and-on-capital-2015-full-version-9789264239081-en.htm>

Each week an announcement will be posted to the course website indicating the specific items required for the upcoming class meeting. In some cases, you will be referred to specific page numbers within the reading items. This means that only those assigned excerpts will be mandatory. The items marked (**) are elective readings that would enrich your knowledge. We will be referring and learning provisions from the Internal Revenue Code and please have it with you in each class. Please follow the site to track possible changes in our schedule.

VI. COURSE REQUIREMENTS:

A. General

All students are required to read the reading assignment. All students are expected to attend class and contribute to class discussion. I will call upon students randomly in order to move along the discussion, but I prefer an interested and engaged crowd. Class readings and discussions constitute an important part of the course grading.

I encourage you to ask as many questions as you can in class. No question is insignificant. If, due to time constraints, I cannot answer your questions in class, please feel free to meet with me after class or at any other time that is mutually convenient. You also should feel free to email me any of your questions.

Note that all of the rules and policies of the Law School and the University are in effect in this class. Please completely familiarize yourself with all rules and policies governing student

conduct and responsibilities.

I hope you enjoy learning this course as much as I enjoy teaching it! I look forward to meeting each one of you individually before the semester is over.

B. Attendance Policy:

Regular class attendance and preparation are required. Students should notify the professor by email of the reason for any class absence.

C. Credit Hour Requirements:

Out-of-Classroom Expectations: Students are expected to read all assigned materials and be prepared for all classes. ABA Standard 310 requires “not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week or the equivalent amount of work over a different amount of time” for each credit hour awarded. This course is designed to meet this requirement, and each student is expected to spend on average no less than two hours of out-of-class time for each one hour of in-class time, per credit hour.

VII. COURSE Assessment and Grading:

Take home final exam will be held at the conclusion of the course.

Grading will follow the school policies: <https://law.wustl.edu/registrar/pages.aspx?id=2129>

Grading Scale: 4.30 – 2.50 (formerly 100 - 70), translated to letter grades of A+ - F, per the Conversion scale below.

Conversion Scale:

A+ = 4.30 – 4.00 (100 – 95)

A = 3.94 – 3.76 (94 – 91)

A- = 3.70 – 3.58 (90 – 88)

B+ = 3.52 – 3.34 (87 – 84)

B = 3.28 – 3.16 (83 - 81)

B- = 3.10 – 3.04 (80 – 79)

C+ = 2.98 – 2.92 (78 – 77)

C = 2.86 – 2.80 (76 – 75)

D = 2.74 (74)

F = 2.68 – 2.50 (73 – 70)

LL.M. in Taxation: A grade of 3.04 (B-) or better is necessary to earn credit in a course. There is no minimum grade point average requirement.

VIII. COURSE SCHEDULE AND TOPIC OUTLINE:

Class schedule subject to modification, but not without prior notification.

Part I: Introduction

Class 1: Background and Overview

- A. E-commerce & Cloud Computing
 - 1. Cockfield, pp. 11-34.
- B. Some Basic Principles of U.S. International Taxation:
 - 2. Gustafson pp. 36-41.
- C. Generating International Tax Norms in the Era of Globalization
 - 3. Rifat Azam, Ruling the World: Generating International Tax Norms in the Era of Globalization (2017).

Part II: U.S. Taxation of International E-commerce Income

Class 2: Worldwide Taxation and Digital Economy Corporations

- A. Who is Taxed on Worldwide Income
 - 1. Gustafson pp. 41-61.
- B. Digital Economy Corporations avoiding U.S. Worldwide Taxation
 - 2. Edward Kleinbard, Stateless Income, 11 Florida Tax Review 700 (2011).
 - 3. iTax – Apple's International Tax Structure and the Double Non-Taxation Issue, British Tax Review (2014).
- C. Worldwide Taxation and Territorial Taxation
 - 4. Adam Rosenzweig, Source as a Solution to Residence, 17 Florida Tax Review (2015).

Class 3: Sourcing E-commerce and Cloud Computing

- A. Source Rules for Income
 - 1. Interest: Gustafson pp. 78.
 - 2. Dividends: Gustafson pp. 79.
 - 3. Rentals and Royalties: Gustafson pp. 79-81.
 - 4. Compensation for Personal Services: Gustafson pp. 81-99.

5. Sale of Personal Property: Gustafson pp. 99-116.

B. The Application of Source Rules on E-commerce

6. Gustafson, pp. 114-116.

7. Excerpt from U.S. Treasury Department, [*Selected Tax Policy Implications of Global Electronic Commerce*](#) (1996) pp. 21-33.

8. Rifat Azam, [E-commerce Taxation and Cyberspace Law: The Integrative Adaptation Model](#), 12(5) Virginia Journal of Law and Technology 1 (2007).

9. Michael Kirsch, [The Role of Physical Presence in the Taxation of Cross-Border Personal Services](#), 51 Boston College Law Review (2010).

C. The Application of Source Rules on Cloud Computing

10. Peter Barnes, [A Break in the Clouds: A Proposed Framework for Analyzing Cloud Computing Transactions](#) (2013).

Class 4: When E-commerce & Cloud Computing Establish U.S. Trade or Business or Permanent Establishment

A. U.S. Trade or Business:

1. Gustafson pp. 142-165.

B. The Treaty concept of Permanent Establishment

2. Joel Nitikman, The Meaning of "Permanent Establishment" in the 1981 U.S. Model Income Tax Treaty, 15 Int'l Tax Journal 159 & 257 (1989).

C. E-commerce and Cloud Computing

3. OECD, Electronic Commerce: Taxation Framework Conditions (1998). Available at: <https://www.oecd.org/ctp/consumption/1923256.pdf>

4. Monica Gianni, The OECD's Flawed and Dated Approach to Computer Servers Creating Permanent Establishments, 17 Vanderbilt Journal of Entertainment & Technology Law 1 (2014).

5. Orly Mazur, Taxing the Cloud, 103 California Law Review 1 (2015).

Class 5: Transfer Pricing, E-commerce & Cloud Computing

1. OECD Tax Policy Studies, E-Commerce: Transfer Pricing and Business Profits Taxation (2005) pp. 1-67.

2. Orly Mazur, Transfer Pricing Challenges in the Cloud, 57 B.C.L. Rev. 2 (2016)

Class 6: Rethinking and Reform

1. Reuven Avi Yonah, International Taxation of Electronic Commerce, 52 Tax L. Rev. 502 (1997).
2. Rifat Azam, [Global Taxation of Cross Border E-commerce Income](#), 31 Virginia Tax Review 639 (2012).
3. Jinyan Li, International Taxation in the Age of Electronic Commerce: A Comparative Study (2003) pp. 507-556.

Part III: U.S. States Sales Taxation of E-commerce & Cloud Computing

Class 7: The Basic Framework of US State Sales Tax

A. Overview

1. Cockfield pp. 375-392.

B. Application of Sales Tax to Multijurisdictional Transactions

2. Cockfield pp. 392-400.
3. National Bellas Hess, Inc. v. Department of Revenue, 386 US 753 (1967).
4. Quill Corp. v. North Dakota, 504 U.S. 298 (1992).

C. Beyond Quill

5. Edward Zelinsky, The Political Process Argument for the Supreme Court to Overrule Quill, 82 Brooklyn Law Rev. (2016).

Class 8: The Challenges of E-commerce and Cloud Taxation

1. Cockfield pp. 403-458.
2. Walter Hellerstein, State Taxation of Electronic Commerce, 52 Tax. L. Rev. 425 (1997).
3. Charles E. McLure, Jr., Taxation of Electronic Commerce: Economic Objectives, Technological Constraints, and Tax Laws, 52 Tax L. Rev. 269, 403 (1997).
4. Walter Hellerstein and Jon Sedon, State Taxation of Cloud Computing: A Framework for Analysis, 117 J. Tax'n 11 (2012).

Class 9: Amazon Tax Laws

1. **Scott Gaylord, Andrew Haile**, Constitutional Threats in the E-Commerce Jungle: First Amendment and Dormant Commerce Clause Limits on Amazon Laws and Use Tax Reporting Statutes, *North Carolina Law Review* (2011).
2. **Brian Baugh, Itzhak Ben David**, Hoosnuk Park, Can Taxes Shape an Industry? Evidence From the Implementation of the Amazon Tax (NBER Working Paper No. 20052 (2014)).

Class 10: Rethinking and Reform

1. Kendall Houghton & Walter Hellerstein, State Taxation of Electronic Commerce: Perspectives on Proposals for Change and Their Constitutionality, *2000 B.Y.U.L.Rev.* 9 (2000).
2. David Gamage & Devin Heckman, A Better Way Forward for State Taxation of E-commerce, *92 Boston University Law Review* 483 (2012).
3. Walter Hellerstein, Taxing Remote Sales in the Digital Age: A Global Perspective, *65 American University Law Review* 1195 (2016).

Part IV: VAT on E-commerce and Cloud Transactions: Challenges and Responses

Class 11: Challenges

1. [COUNCIL DIRECTIVE 2006/112/EC of 28 November 2006 on the common system of value added tax.](#)
2. Cockfield, pp. 247-256, pp. 268-282, pp. 297-331.
3. Emilie Fridenskold, Vat and the Internet: The application of consumption taxes to e-commerce transactions, *Information & Communications Technology Law*, 13:2, 175-203
4. Charles Mclure, The Value Added Tax on Electronic Commerce in the European Union, *International Tax and Public Finance*, 10, 753–762, 2003.

Class 12: Responses

1. Matthias Weidmann, 'The New EU VAT Rules on the Place of Supply of B2C E-Services: Practical Consequences - The German Example' (2015) *24 EC Tax Review*, Issue 2, pp. 105–118.

2. [COM\(2016\) 757 final 2016/0370 \(CNS\) Modernising VAT for cross-border B2C e-commerce Proposal for a COUNCIL DIRECTIVE](#) (Brussels, Dec. 1, 2016)
3. Organization for Economic Cooperation and Development, International VAT/GST Guidelines (2015).
4. Walter Hellerstein, Taxing Remote Sales in the Digital Age: A Global Perspective, 65 Am. U. L. Rev. 1195 (2016).

Part V: Conclusion

Class 13: Prospects

1. OECD, [Addressing the Tax Challenges of the Digital Economy, BEPS Action 1 – 2015 Final Report](#).
2. EU Commission, [Expert Group on Taxation of the Digital Economy Report](#) (2014) pp. 1-41.