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# European Tax Law

1052241  
(6 credits)

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## **Module Convenors**

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## **Course Objectives**

The course will focus on the analysis of the main characteristics of European taxation law. During the course, the following topics will be addressed: General features of European taxation law; positive tax integration; negative tax integration; the role of the European Commission; the role of the European Court of Justice; actions against harmful tax competition and tax avoidance; territorial tax incentives and European taxation law.

## **Learning Outcomes**

- Knowledge of the fundamentals of European taxation law, with particular reference to the general principles of the treaties, the system of legal sources in the field of direct taxes and indirect taxes, the role of the European institutions and the different forms in which the process of harmonization of national regulations is carried out.
- Ability to develop an independent critical assessment on the main current issues of the subject, such as the issue of national sovereignty in the context of the integration process at European level and the problem of harmful tax competition
- Knowledge of the main Decisions of the European Courts of Justice related to tax matters

## **Course Structure**

There will be 24 lectures taking place, each lasting 2 hours. An overview of the content for these is outlined below, and these will aim to provide an introduction to the subject matter.

## **Course Assessment**

A written exam takes place at the end of the course. The evaluation will consider not only the adequacy of the solutions proposed, but also the quality of the arguments, the capacity to understand the broader context of the cases and the ability to participate in the debates with the other students during the sessions centered on the discussion of the activities. Students should aim to spend no more than 2 hours on this essay.

## Reading List

P. Boria, Taxation in European Union, Second Edition, Springer International Publishing, 2017.

## Lecture Overview

Lecture	Topic	Overview of Topics
Lecture 1	Introduction to the Course	
Lecture 2	European Tax Law; general overview	<ul style="list-style-type: none"> <li>• What is European Law?</li> <li>• The importance of European Tax Law</li> <li>• The importance of European Tax Law</li> <li>• The “negative” function of the European Tax Law</li> </ul>
Lecture 3	The Rule of Taxation	<ul style="list-style-type: none"> <li>• The Establishment of the EU Legal System</li> <li>• The European Constitution and the Treaty of Lisbon</li> <li>• The Regulation of Fiscal Policy in the EU</li> <li>• The Presence of EU Contributory Competences in Taxation and the Implementation of the Principle of Subsidiarity</li> <li>• The Procedures for Approval of EU Rules Related to Taxation</li> <li>• The Stability Pact and the Fiscal Compact</li> <li>• The Relations Between European Union and National Legal Systems</li> </ul>
Lecture 4	The sources of European Tax law	<ul style="list-style-type: none"> <li>• The System of the European Sources of Law and the Treaties of the European Union</li> <li>• The Fundamental Principles of the Taxation Law Expressed by the Treaties of the European Union</li> <li>• The Regulations Relating to the Taxation Matters</li> <li>• The EU Directives on Taxation</li> <li>• The Adoption of the Soft Law Instruments to Regulate the Taxation Matters</li> </ul>
Lecture 5	Secondary Law: the role of directives: The Parent Subsidiarity	<ul style="list-style-type: none"> <li>• The EU Directives on tax matters. 3 different categories.</li> <li>• The Directives removing tax obstacles in internal market</li> <li>• The Parent – subsidiary directive</li> </ul>
Lecture 6	The Interest and Royalty Directive	<ul style="list-style-type: none"> <li>• The interest and royalties directive 2003/49/EC</li> </ul>
Lecture 7	The Role of the European Court of Justice	<ul style="list-style-type: none"> <li>• The Role of the Jurisprudence of the Court of Justice Within the EU Taxation Law</li> <li>• The Role of the European Court of Justice in the System of Sources of the EU Taxation Law</li> <li>• The Main Guidelines Followed by the European Jurisprudence on Taxation</li> </ul>

		<ul style="list-style-type: none"> <li>• The Main Guidelines Followed by the European Jurisprudence on Taxation</li> <li>• The Casuistic Attitude of the Court of Justice on Excises or Duties, as Well as on the State Aids</li> <li>• The Creative Jurisprudence in Relation to the Direct Taxes</li> </ul>
Lecture 8	The Merger Directive (1)	<ul style="list-style-type: none"> <li>• The Merger Directive.90/434/EEC; 2005/19/EC; 2009/133/E</li> </ul>
Lecture 9	The European Custom Union	<ul style="list-style-type: none"> <li>• The Abolition of the National Borders in the Relationships Among the States</li> <li>• The Institution of the Customs Union</li> <li>• The Prohibition of Taxes with an Equivalent Effect</li> </ul>
Lecture 10	The Merger Directive (2)	<ul style="list-style-type: none"> <li>• The Merger Directive.90/434/EEC; 2005/19/EC; 2009/133/EC</li> </ul>
Lecture 11	The European Freedoms	<ul style="list-style-type: none"> <li>• The fundamental role of the freedoms of movement within the European framework</li> <li>• The principle of non-restriction of the freedoms of movement for tax purposes</li> <li>• The free movement of goods</li> <li>• The free movement of people</li> <li>• The free movement of services</li> <li>• The free movement of capital</li> </ul>
Lecture 12	Coordinating Corporate tax in the EU. From Newmark proposal to Anti Avoidance Directive	<ul style="list-style-type: none"> <li>• The ATAD Directive 2016/1164/EU</li> </ul>
Lecture 13	The principle of tax non discrimination	<ul style="list-style-type: none"> <li>• The principle of Tax non-discrimination – The centrality of the principle in the EU legal system</li> <li>• Types of discriminations</li> <li>• The judgment of discrimination</li> <li>• The juridical clarification of the principle</li> <li>• The comparability of situations</li> <li>• The evolution of the ECJ jurisprudence</li> </ul>
Lecture 14	Mutual Assistance in Tax Matters. (1)	<ul style="list-style-type: none"> <li>• The Directive on Administrative Cooperation.</li> <li>• The Directive on Mutual Assistance in Recovery of tax Claims, The saving Directive (1)</li> </ul>
Lecture 15	The discipline of state aid	<ul style="list-style-type: none"> <li>• The general framework regarding the State aids – The prohibition of the State aids as measure to promote the free competition in the common market</li> <li>• Procedural nature and degree of competence of the EU guidelines on the State aids</li> <li>• The character of the State aids prohibited under the EU law</li> <li>• The procedure for the judgment on the EU compatibility of the State aids</li> <li>• The tax relief as a possible State aid</li> <li>• The recovery is state aid</li> </ul>
Lecture 16	Mutual Assistance in Tax Matters. (2)	<ul style="list-style-type: none"> <li>• The Directive on Administrative Cooperation; The Directive on Mutual Assistance in Recovery of tax Claims, The saving Directive (2)</li> </ul>
Lecture 17	The Harmful Tax competition	<ul style="list-style-type: none"> <li>• The notion of ‘harmful tax competition’</li> </ul>

		<ul style="list-style-type: none"> <li>• The fight against harmful tax competition within the EU legal system – The Monti Package and the introduction of the Code of conduct</li> <li>• The content of the Code of conduct</li> <li>• The BEPS Project</li> </ul>
Lecture 18	The Excise Duties and Custom duties	<ul style="list-style-type: none"> <li>• The Excise Duties</li> <li>• The harmonization of excise duties</li> </ul> Custom Duties
Lecture 19	The Direct Taxes	<ul style="list-style-type: none"> <li>• Direct Taxes in the UE regulation</li> <li>• Business taxation</li> <li>• Business taxation - multilateral convention on the subject of transfer pricing</li> <li>• Capital Taxation</li> </ul>
Lecture 20	The VAT system	<ul style="list-style-type: none"> <li>• The harmonization of VAT in the European legal system.</li> <li>• The institution of VAT</li> <li>• Legal Nature of VAT</li> <li>• The neutrality</li> <li>• The right of redress</li> <li>• The right of deduction</li> <li>• Vat Object</li> <li>• The Vat Subjects</li> </ul>
Lecture 21	The ECJ cases in various tax matters	
Lecture 22	The negative taxation	<ul style="list-style-type: none"> <li>• The « negative» taxation in the European Tax Law</li> <li>• The link between fiscal sovereignty and tax law</li> <li>• The fiscal sovereignty under European law</li> <li>• The function of the negative taxation</li> <li>• Advantages deriving from fiscal neutrality</li> <li>• The instrumentality of the taxation power</li> <li>• The Anti-Sovereign</li> <li>• The remedies against the Anti- Sovereign</li> </ul>
Lecture 23	EJC cases in various tax matters	
Lecture 24	Final Exam	