



**THE UNIVERSITY OF AUCKLAND**  
**BUSINESS SCHOOL**

## **The University of Auckland Business School**

### **Course Outline 2014**

### **COMLAW 741 A&B**

### **Semester 1 and 2**

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#### **Course Prescription**

An advanced study of New Zealand's international tax regime. The course covers the test of residence for individuals and corporates, and the wider tax base for off-shore income of New Zealand residents. It also covers the taxation of income derived by overseas residents from New Zealand activities and the application of the Double Tax Conventions to various sources of income and transactions. The course also addresses the selecting of country of residence in the form of treaty shopping, anti-avoidance measures directed at transaction activity and the use of tax havens.

#### **Goals of the Course**

The paper is an advanced course studying New Zealand's international tax regime. The objectives of the course are to provide students with both a theoretical background and high level of technical knowledge of the scope and application of the most significant aspects of inbound and outbound investment under the Income Tax Act 2007 and the Double Tax Agreements. Where appropriate, a comparison is made with the international regimes of our major trading partners, in order to provide a deeper understanding of the policy behind New Zealand's international tax regime.

The course provides students with an opportunity to increase their research, writing and group presentation skills by the completion of one major seminar paper on a topic chosen by each student, which is presented to the class. The final exam requires students to apply all aspects of the international tax regime they have mastered during the course. Emphasis is therefore placed on good analytical skills and presentation of researched, comprehensive and well reasoned solutions.

#### **Learning Outcomes**

Students who take and pass this course will be able to:

1. Identify and comprehend the major aspects of the international tax regime in the Income Tax Act 2007
2. Analyse the policies and principles underlying those regimes
3. Appraise and analyse between the different tax treatment of comparable structures and types of income and expenditure
4. Analyse and evaluate the application of the international tax regimes to business transactions for the purposes of providing advice or administering the tax system

5. Demonstrate by synthesis enhanced research, writing and presentation skills
6. Evaluate the scope of the New Zealand tax base, the policy underpinning it, including the role, purpose and interpretation of Double Tax Agreements

## **Learning and Teaching**

International Tax is a mix of lecturing and research and seminar-based course.

The course will be taught on an intensive basis over two parts of 3 days each (1 part per semester) on:

- Part A: Thurs – Sat, 3<sup>rd</sup> -5<sup>th</sup> April 2014
- Part B: Thurs – Sat, 30<sup>th</sup> of October – 1<sup>st</sup> November 2014

Times for the sessions each day will be detailed with a course contents schedule but broadly is 9am to 5pm. It is likely that the finishing time for Saturday is earlier than 5pm.

### *Teaching Staff:*

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There will also be a number of guest lecturers presenting throughout the course.

## **Learning Resources**

There is no prescribed text but it is essential that students have a copy of the Income Tax Act 2007. In preparation of their papers, students will be expected to be able to make use of the appropriate library and internet resources, including but not limited to:

- New Zealand, United Kingdom, Australian and other case law;
- Academic journals (held in the Auckland University collections or on Lexis/Nexis);
- New Zealand Government materials, including:
  - All published New Zealand IRD material
  - New Zealand Government Discussion Documents
  - New Zealand Consultative Committee Documents
  - Statutory material both current and historical.
- Tax treaties.

There are a variety of on-line resources available that will assist students in this course. Davis Law Library staff are available to assist students in accessing all on-line materials available. A course book will be distributed to students prior to the course. Please endeavour to have read as much as you can.

## Assessment

The final grade for the course is made up by the following:

Seminar Paper (including 10% for presentation)	50%
Attendance and Participation in seminars	10%
Final Take-home Exam	40%

Due to the technical nature of the Income Tax Act 2007, the course assessments test research and analytical skills. Each piece of written work requires students to demonstrate knowledge of a number of different regimes of the Act, thereby testing their depth of knowledge and understanding of the underlying policy.

Plusage does not apply.

Please refer to the Postgraduate Guide 2014 for further information.

## Seminars:

Students must complete one seminar paper worth 50% each of the final mark. The grade for this seminar has two components, covering both the written paper and the quality of its presentation.

40% of the grade for the seminar is based upon a seminar paper of approximately 7,000 words. 10% of the grade is based upon the presentation of the seminar paper by the student to the class in Part B of the course. The mark is based upon presentation skills, interest generated among the class and ability to communicate the topic clearly. The seminar and presentation grades are separately assessed (meaning an excellent paper may be presented badly or a poor paper may be presented well – and the separate marks will reflect those differences).

Students must select their seminar topics from the list provided below.

Students must hand in their seminar paper to the Department on Friday 17<sup>th</sup> of October 2014 (i.e. a fortnight prior to the date of presentation in Part B). Copies of the papers will be distributed to all students before Part B commences.

Seminar papers have a **maximum** limit of 7,000 words, which is to be strictly observed. Students struggling to contain themselves within the word limits should discuss their paper with Professor Elliffe at an early stage.

Papers are expected to be well researched and considered works, which set out clearly their intended scope and deal with the subject in a well-structured fashion. Perspectives on a topic may be gained from a historical or comparative analysis, or from insights provided by other disciplines, eg accounting or economics. Their presentation should be of a high standard, similar to that required for submission to an academic journal. Case, text and journal citations should be in the format prescribed by the New Zealand Law Style Guide. Grades will be

awarded in accordance with the Department's policy "*The Basis for Assessment of Legal Writing*".

### **Attendance and Participation**

Attendance and participation are worth 10% of the final grade. Allocating marks to class participation reflects the desire to encourage feedback and discussion within the course. As all seminar papers are circulated one week before presentation, all students need to have read and considered these papers prior to the class, and be prepared to discuss them. The small size of the classes encourages interaction and student participation.

### **Final Exam**

At the completion of the course, all students will be required to complete a take-home exam worth 40% of their final grade. Unlike the seminars (where topics are chosen by students) the final exam will be the same for all students and will raise a number of issues and topics covered during the course. Students will have two-three weeks to complete the final exam paper.

### **Suggested seminar topics**

Students are expected to demonstrate a high level of knowledge regarding the application of the Income Tax Act 2007 and Double Tax Agreements to their chosen seminar topic. Students must be able to demonstrate an understanding of the policy and structure of the New Zealand international tax regime.

- The extraterritoriality of taxation and the inter-nation allocation of tax revenue
- The relationship between Double Tax Agreements and domestic legislation with respect to the role of CFC legislation
- The relationship between Double Tax Agreements and domestic legislation with respect to domestic law override
- The relationship between Double Tax Agreements and domestic legislation with respect to section GB 1
- The taxation of business profits and the concept of permanent establishments
- The interpretation of Double Tax Agreements
- The history of New Zealand's taxation of foreign profits
- Treaty shopping (withholding tax and interposed entities)
- Tax havens
- Transfer pricing
- Human endeavour and tax treaties (employment and services income, pensions, etc)

- Transport operators (domestic regimes and tax treaties)
- Non-resident entertainers (domestic regimes and treaties) and non-resident film renters
- Foreign tax credits
- Controlled Foreign Companies
- Foreign Investment funds
- Foreign Trusts
- Non-resident insurers
- The collection of foreign taxes

**Programme and Course Advice**

Prerequisite: Selected Applicants with BCom, BCom(hons), LLB, LLB(hons) or similar.