

TAXATION 1

LAWs 2029

PROFESSOR BROOKS

COURSE OUTLINE AND READING GUIDE

FALL 2018

1. ADMINISTRATIVE DETAILS

1.1 CLASS LOCATION AND TIMES

There are two 2-hour classes each week.

Tuesday	9:00– 10:50	Room 105
Thursday	9:00– 10:50	Room 105

1.2 CONTACT DETAILS

Kim Brooks

Office: W323
Telephone: (902) 494-7112
Email: kim.brooks@dal.ca

1.3 OFFICE HOURS

Please feel free to call me, email me, or stop me in the hall to talk about tax. I will hold office hours on Tuesday from 1:00 – 3:00 and on Wednesday from 11:00 – 1:00.

While I will generally try to be in my office during office hours, occasionally I will have meetings or other commitments. If you want to make sure we can meet, please send me an email. I am happy to schedule appointments outside of office hours.

2. PURPOSES OF THE COURSE

This is the introductory course in tax law and it is primarily concerned with personal income taxation. By the end of the course you should be able to

- describe, apply, and evaluate the basic principles and rules of the income tax system as it applies to individuals;
- distinguish, contrast, and evaluate different approaches to statutory interpretation, and have some ability to apply those approaches when reading legislation;
- discuss with some confidence the major policy decisions that inform the personal income tax system;
- evaluate the potential advantages of, and problems with, the current tax system, including the impact of income tax law on different groups and individuals;
- explain the role of lawyers and policy makers in tax planning and tax reform, including the issues of professional responsibility and ethics;

- present a tax case orally with ease;
- draft an effective tax memorandum;
- conduct basic tax research on taxnetpro;
- appreciate the challenges of drafting tax legislation;
- add new areas of tax law doctrine to your tax law matrix independently; and
- begin an interview with a client with a tax problem.

We will look at the principles of income taxation, the different tax options available to legislators who design the income tax, and (to a limited extent) the development of Canada's income tax system. Tax policy issues of equity, efficiency and simplicity are themes throughout the course and will be examined in the context of particular tax provisions.

The course does not cover in any detail other types of taxes such as the GST (goods and services tax) or local property taxes. Nor does this course deal with:

- the special rules for the income taxation of business vehicles such as corporations, partnerships and trusts. We will at certain times discuss these business entities because they are subject to many of the same income tax rules as individuals and some of the basic elements of corporate taxation might be introduced. However, an in-depth study of those topics is reserved for corporate tax;
- the special rules that apply in the context of international transactions and cross-border activity. Those rules are discussed as part of the international taxation course;
- the rules that apply to create incentives for or subsidize particular types of activities. Those rules are canvassed in tax policy; and
- the rules that govern tax litigation and the administration of tax laws. Those rules are addressed in Taxation III.

3. MATERIALS

3.1 REQUIRED MATERIALS

- Duff, David et al., *Canadian Income Tax Law*, 6th ed. (Markham, ON: LexisNexis, 2018);

- *Income Tax Act* (you may purchase a copy from the bookstore, find a second hand version, or construct your own Act from sources on-line);
- materials available on brightspace and provided on email; and
- any other materials as may, from time to time, be identified by the instructor.

3.2 RECOMMENDED MATERIALS

- Li, Magee, and Wilkie, *Principles of Canadian Income Tax Law*, 9th ed. (Toronto: Carswell, 2018).
- Edgar, Cockfield and O'Brien, *Materials on Canadian Income Tax*, 15th ed. (Toronto: Carswell, 2015).
- Krishna, Vern, *Fundamentals of Income Tax Law*, v. 1 (Toronto: Carswell, 2014).
- Krishna, Vern, *Income Tax Law (Essentials of Canadian Law series)*, 2nd ed. (Concord, ON: Irwin Law, 2012).
- Cook, Ted, *Canadian Tax Research: A Practical Guide*, 5th ed. (Toronto: Carswell, 2010).

4. TEACHING METHOD

Many students have misconceptions about what they will learn in tax. You might be surprised to discover that the course has much less to do with mathematics and accounting than with legal concepts, statutory interpretation, and public policy. You do not need a business or economics background to do well. While a business background certainly is relevant and helpful in certain respects, students will find that knowledge in fields such as literature, history, political science, gender and women's studies, public administration and other disciplines is also pertinent to the study of tax law. My assumption is that most students are not familiar with business or financial concepts and terminology, and I try to ensure that I define technical terms and explain any tax or business jargon.

My teaching methods in this course rely primarily on class discussion and team-based problem solving; however, each class will also include some framing comments. Participating in the class in an engaged way will require you to have read and thought about the required materials before you come to class and to have listened to any recorded materials available on brightspace.

5. ASSESSMENT

5.1 Requirements

Each student is **required** to complete four assessments and **may** complete a fifth assessment over the course of the term. If you complete four assessments, each assessment is worth 25% of your overall grade. If you complete five assessments, each assessment is worth 20% of your overall grade.

The aim of this form of evaluation is to encourage distributed practice: in other words, to encourage you to learn more about the material as the course progresses, rather than waiting until the end of the course. In addition, this format enables me to provide you with feedback on your progress during the course, rather than waiting to assess your learning at the course conclusion.

You must complete one employment assessment (of three), two business/capital gains assessments (of five), and the final assessment.

There is an option to present a case or to complete a statutory interpretation assessment. If you want to present a case, you must meet with me to choose a case before September 25.

Assessments are not based only on the material from the class where they are distributed. Instead, they are cumulative in nature, although they will generally (but not exclusively) be focused on the 'source' to which they relate. Some assessments may require research. Where that is the case, the assessment will directly request you engage in research on taxnetpro. Otherwise, you are expected to rely only on the material assigned for or discussed in the course.

When you draw from the casebook or any additional materials, you are expected to footnote your sources using the McGill guide style.

5.2 Length of Assessment and Due Dates

Each assessment will come with its own length restrictions, but as a general practice, assessments will be three pages.

One assessment question will be posted on Tuesday of each week, commencing in week two. Assessments will be due two days after they are distributed. A hard copy of your assessment is to be handed in at the start of class on Thursday and to be posted to brightspace. **No late assessments will be accepted.**

If a Tuesday class is cancelled and it was anticipated that an assessment would be distributed in that class, an assessment will still be distributed via brightspace.

5.3 Independent Work

Students are expected to complete each assessment independently. Working with another student on an assessment is plagiarism. The requirement for independent

work is a serious one and I will be disappointed by students who act in contravention of our policies. For the general articulation of our academic integrity policies, see the section below.

5.4 Evaluation

Assessments will be evaluated periodically over the term. I will aim to return every assessment within two weeks of the date it is submitted.

GENERAL GUIDELINES FOR WRITTEN WORK

Criteria for Evaluation

Written work will be assessed against the following criteria:

a. Writing

-no errors in grammar or punctuation, individualized and interesting style, skillful transitions between paragraphs and arguments, well-chosen vocabulary and variety in sentence structure, topic sentences to paragraphs and appropriate paragraphing, technical terminology used appropriately, citations flawless, writing precise and clear, paragraphs at least three sentences

b. Organization

-arguments identified separately, each argument contains an assertion and evidence to support the assertion, possible objections are identified, arguments that cannot be rebutted are conceded, conclusion reached is supported by the evidence, ideas presented logically and coherently, no irrelevant information included and discussion complete, appropriate emphasis placed on each argument, headings and argument have parallel structure, reader is given direction (a road map) of the arguments if necessary, good use of headings (if they have been used)

c. Substance

-the submission reveals a superior understanding of the focused subject being explored, the perspective presented is more than a mere repetition of the material readily available and instead adds a fresh perspective

6. IMPORTANT COURSE INFORMATION

Student Requests for Accommodation. Requests for special accommodation for reasons such as illness, injury or family emergency will require an application to the Law School Studies Committee. Such requests (for example, for assignment extensions) must be made to Associate Dean, Academic Michael Deturbide or the Director of Student Services and Engagement Dana-Lyn Mackenzie as soon as

possible, before a scheduled exam or a deadline for an assignment, and will generally require documentation. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation for either classroom participation or the writing of tests and exams due to barriers related to disability, religious obligation, or any characteristic under the Nova Scotia Human Rights Act. Students who require such accommodation must make their request to the Advising and Access Services Center (AASC) at the outset of the regular academic year. Please visit www.dal.ca/access for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at (902) 494-2836.

Submission of Major Papers and Assignments. Major papers and assignments must be submitted in hard copy. Students should hand papers in to the place stipulated by the instructor and ensure they are date and time stamped. Please read the law school policy on late penalties: <https://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>

Please note students may also be required to provide an identical electronic copy of their paper to the instructor by the due date. Papers may be submitted by the instructor to a text-matching software service to check for originality. Students wishing to choose an alternative method of checking the authenticity of their work must indicate to the instructor, by no later than the add/drop date of the course, which one of the following alternative methods they choose:

- a) submit copies of multiple drafts demonstrating development of their work
- b) submit copies of sources
- c) submit an annotated bibliography

Plagiarism. All students must read the University policies on plagiarism and academic honesty <http://academicintegrity.dal.ca/> and the Law School policy on plagiarism <https://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>. Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and

familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

7. GRADING GUIDELINES

This course is subject to the large-class distribution and median rules. The permissible grade distribution for the course:

	Grades
A	10-20%
B	40-60%
A & B together	60-75%
C	15-25%
D	0-15%
F	0-5%

The median is 70-72.

8. DETAILED OUTLINE

Page numbers refer to *Canadian Income Tax Law*. I plan to move relatively systematically through the casebook.

In an effort to focus more on rigor and less on volume, I have adjusted my approach to advance materials in this course. In the reading list below, you will see that I have assigned approximately two cases as “required” reading for each class. I expect you will carefully read those two cases. (You are not required to read the notes following those cases, unless I draw your attention to them.)

I have indicated that some cases will be summarized in an audiocast. The audiocasts are available on brightspace. Please listen to my discussion of those cases.

From time to time I might also post threshold concept or review audiocasts. I will prepare those as I think they may support your learning through the course. You are also responsible for that material.

1. INTRODUCTION

September 6 (in room 305) – introduction to the course, design, expectations. If you want additional reading, you *may* review pages 3 to 82. I suspect that later in the course everyone will benefit from reviewing the sections on the Haig-Simons definition of income (page 51) and evaluating income tax provisions (pages 80 – 82) as well as the article by Allison Christians posted in “Extra Materials”.

2. INCOME FROM OFFICE OR EMPLOYMENT

September 11 – Introduction and Characterization

Read: Wiebe (p. 204)

September 13 (Part 1) – Inclusions (Remuneration); more information on tax ethics option

Read: Curran (p. 246), Moss (p. 252)

Audio: Quance (p. 258), Cirella (p. 266), Goldman (p. 271)

Read: Fries (p. 277)

September 18 – Inclusions (Benefits)

Read: Lowe (p. 285), Savage (p. 302), Spence (p. 309), Hoefele (p. 338)

Audio: McArdle (p. 342), Thomas (p. 348)

Employment Assessment 1

September 20 - Inclusions (Allowances); Deductions (Travelling Expenses); section 87 exemption (employment)

Read: MacDonald (p. 367)

Audio: Blackman (p. 374)

Read: Nelson (p. 395)

Audio: Cival (p. 402), Yurkovich (p. 405), Luks (p. 410)

Read: Nowegijick and Williams (from brightspace)

September 25 – Deductions (part 2) (**last day to sign up for a case presentation**)

Read: Healy (p. 416), Werle (p. 420), Montgomery (p. 425), Lucas (p. 433), Martyn (p. 439), Prewer (p. 445), Cruikshank (p. 450)

Timing Issues and Employment Review

Audio: Cliffe (p. 471)

Employment Assessment 2

September 27 – this class will be hosted by Sam Mackenzie from Thomson Reuters. She will review how to use taxnetpro. Please make sure you have your taxnetpro password etc. in advance of this class. After this class, assessments *may* include a research component – where that is expected it will be clearly indicated on the assessment.

3. INCOME OR LOSS FROM A BUSINESS OR PROPERTY

October 2 – Introduction to Business Income and Characterization

Read: Morden (p. 492), Taylor (p. 501), Stewart (p. 516)

Employment Assessment 3 (LAST EMPLOYMENT ASSESSMENT)

October 4 – Inclusions (part 1)

Audio: No. 275 (p. 539), Manley (p. 544)

Read: Federal Farms (p. 553)

Audio: Abraham (p. 562)

Read: Perini (p. 566), Groulx (p. 577), O'Neil (p. 584)

October 9 – Inclusions (part 2)

Read: Morrison (p. 593), Huffman (p. 598)

Audio: Pitman (p. 603), Iron Ore (p. 612)

Business/Capital Gains Assessment 1

October 11 – Deductions (part 1)

Read: Espie (p. 622), Imperial Oil (p. 626), 65302 (p. 639), Thayer (p. 663), Rolland Paper (p. 668), Ace Salvage (p. 677), Royal Trust (p. 684), No. 360 (p. 701), Locke (p. 705), Cumming (p. 715)

October 16 – Deductions (part 2) and Introduction to Timing

Read: Bronfman Trust (p. 726), Publishers Guild (p. 758)

Business/Capital Gains Assessment 2

October 18 – Business Income (Timing Issues, Deductions, Part 1), assign case comment

Read: Neonex (p. 780), Guay (p. 822), Johns-Manville (p. 832)

Audio: Ben's Limited (p. 883)

I will introduce the concept of “capital cost allowance” in class. If you think it is helpful, you may want to review the materials at pages 876 - 905.

October 23 – Business Income (Timing Issues, Deductions, Part 2)

Read: Dominion Stores (p. 906)

More capital cost allowance practice.

Business/Capital Gains Assessment 3

October 25 – Review (Business Income); Bastien (investment income under s. 87 – on brightspace)

5. TAXABLE CAPITAL GAINS AND ALLOWABLE CAPITAL LOSSES

October 30 – Introduction and Characterization (Capital Gains)

Read: Regal Heights (p. 945)

Audio: Kodak (p. 957), Irrigation Industries (p. 964), Wood (p. 976)

Read: Vancouver Art Metal Works (p. 983), Tip Top Tailors (p. 991)

Business/Capital Gains Assessment 4 (IF YOU HAVE NOT YET COMPLETED A BUSINESS/CAPITAL GAINS ASSESSMENT YOU MUST COMPLETE THIS ONE AND THE NEXT ONE)

November 1 – Computation (General)

Read: Robert (p. 1006), Sterling/Stirling (p. 1013 and 1016), Avis (p. 1020), Reserves (p. 1025-2016)

November 6 – Computation (Special Rules)

Audio: Burnet (p. 1029)

Read: Listed personal property (1036-1038), Duthie (p. 1072), Mastronardi (p. 1082)

Business/Capital Gains Assessment 5 (IF YOU HAVE ONLY COMPLETED 1 BUSINESS/CAPITAL GAINS ASSESSMENT, YOU MUST COMPLETE THIS ONE.)

6. OTHER INCOME AND DEDUCTIONS

November 8 – Review of Capital Gains and Other Income Inclusions: Section 3, Prizes, Scholarships, and Grants

Read: Schwartz (p. 1127), Savage (p. 1158)

Audio: Foulds (p. 1162), DiMaria (p. 1168)

Read: Amyot (p. 1183)

November 13 and 15 – Reading week

November 20 – Statutory Interpretation (audio, no in person class)

Statutory Interpretation Assessment (for those who wish to do 5 assessments)

7. RULES RELATING TO THE COMPUTATION OF INCOME

November 22 - Limitations on Deductions and Deemed Proceeds; review of section 3 problems

Read: Legal expenses (p. 1212-1213), Cipollone (p. 1299), Stapley (p. 1318), Marcantonio (p. 1334)

November 27 – Review

Final Assessment

November 29 – Final Assessment Due