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# Inter-governmental Immunity from Taxation

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**Abstract**

*Union and the States have no concurrent powers of taxation. The absence of joint occupancy of tax fields is to avoid duplication in administration and minimize tax rivalry between the Centre and States, and among the States themselves. The residuary powers of taxation, as in general legislation, belong to the Union. Both the articles 285 and 289 envisage inter-governmental immunity from taxation-that of the Union absolute but that of the State qualified. Functionaries under the income tax give thousands of job opportunities to the people. Hundreds of branches of studies are conducted based on the taxing statutes. An effectively administered tax system in the hands of the government becomes a major weapon against many odds.*

**Keywords:** Concurrent powers, corporate personality, immunity, residuary powers, zero tax

## INTRODUCTION

Taxes are the basic source of Governmental revenue. Taxation is no longer a means of raising revenue; but it is also instrument of regulating economy. Taxes fall in the realm of public finance which is one of the most developing branches of economic theory. The tax system of the country, tax rate system, yearly update of taxable property and zero tax slab level, etc., reflects the social, economic and political aims of the government.

Article 265 of the Constitution specifically states that no taxes shall be levied or collected expect by the authority of law. The word 'tax' is used in Art.265 in a comprehensive sense and it includes any tax imposed general, special or local. Entries 82 to 92B of List I in the Seventh schedule refer to the taxation power of the Union Government. Entries 45 to 63 of List II in the same list specify the taxation powers of the State Government. List III does not contain any head of taxation which means the Union and the States have no concurrent powers of taxation. The absence of joint occupancy of tax fields is to avoid duplication in administration and minimize tax rivalry between the Centre and States, and among the States themselves. The residuary powers of taxation, as in general legislation, belong to the Union wide entry 97 of List I in the Seventh schedule. For example, Gift tax imposed by the Union derives its authority from these residual powers [1].

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Article 276 deals with taxes on professions, trades, e.g. on the bale of ginned cotton, trade of husking milling and grinding grains, callings or employment for the benefit of a State or of a municipality, district board, local board or any other authority. It corresponds to legislative entry 60 of List II. But now when it is imposed on a person it would amount to a tax on income, but income tax is an exclusive subject in Entry 82 of the List I. The State may assign any of the taxes in the State list to the local bodies. The taxes generally assigned to local Governments are property tax, octroi, and taxes on vehicles. The tax may be imposed on profession including service, even though the employee is already paying income tax, or the taxable income is computed according to the provisions of the Income Tax Act. Articles 285 and 289 provide for the immunity of the property of the Union and State from mutual taxation. According to the federal principle, while Article 285 provides that property of the Union shall be exempted from State or local taxation, Article 289 declares that the property and income of the State shall be immune from Union tax expecting commercial undertakings carried on by the State, unless such undertakings are declared by the Parliament to be incidental to the ordinary functions of Government. Both the articles envisage inter-governmental immunity from taxation-that of the Union absolute but that of the State qualified. The property includes lands, buildings, chattels, shares, debts and in fact everything that has money value in the market and comes within the purview of any taxing statute. The property owned by the government or Statutory Corporation which have corporate personality of their own cannot be said to be the property of the Union and may be liable to State or municipal taxation, e.g. Food Corporation of India [2].

The income derived from particular trade or business may still be immune from Union taxation if Parliament declares that the said trade is incidental to the ordinary functions of the government.

**RESTRICTION ON THE TAXATION POWERS OF THE STATE**

Although a State Legislature enjoys the power to levy any of the taxes mentioned in List II, in the case of certain taxes this power is subject to certain restrictions imposed by the substantive provisions of the Constitution.

The powers to impose taxes on the sale or purchase of goods other than newspapers belong to the States vide Entry 54 of List II. In view of this, Article 286 places the following restriction on the power of the State to enact sales tax legislation.

State shall not impose a tax on the sale or purchase of goods if it is:

- Outside the State or
- In the course of import into or export out of the territory of India.

Tax is not imposed on sale or purchase in the course of export out or import into the territory of India subject to two limitations:

- The power to impose sale tax in course of inter-state trade and commerce is within the exclusive competence of Parliament and,
- Even though the sale does not take place in course of Inter-State Commerce State Taxation is subject to the restrictions imposed by the Parliament if the sale is related to goods declared by Parliament to be of special importance.

Once the forgoing limitation imposed by Article 268 are not transgressed and the subject matter of tax is Intra-State, it would be within the competence of the State to impose a surcharge, at a specified rate of such tax on the dealers whose turn over exceeds specified sum i.e. to bear an additional burden who position of economic superiority and to classify excluded transactions.

As per Article 276, a State is empowered to levy a tax on professions, trades, callings, and employments vide Entry 60 of State List in the Seventh schedule. This tax can be for the benefit of the State itself or of a municipality, district board, local board or other local authority therein. However, the total amount payable in respect of such tax by one person shall not exceed to Rs. 500 per annum.

Although the taxing powers are allocated to the Union and the States, but they are not mutually exclusive. All taxes levied by the Union are not entirely meant for the purpose of the Union. Because of the sources of revenue allocated to the State may not prove sufficient in view of growing welfare, maintenance, and developmental activities certain taxes and duties levied by the Union are totally assigned or shared with the States to supplement their revenues in accordance with their needs. Hence specific portions are set apart for the benefit of the States. Articles 268 to 270 empower the Parliament to formulate the principles for the appropriation of the fund. They also make distinctions between the legislative powers to levy a tax and the power to appropriate the proceeds of a tax so levied [3].

## RATIONALE FOR CONSTITUTION ARRANGEMENTS

Constitutional division of taxing powers between the Union and the States rests on the economic and administrative considerations. Taxes with an inter-state base, and those in the case of which uniformity in rates is desirable, are vested in Central Government. Taxes which are location-specific and relate to subject of local consumption are with the States. Broadly speaking, taxes on production with some exception are levied by the Centre and taxes on sales by the State Governments. Now, Goods and Service Taxes are governed by the GST rules. Commenting upon the soundness of constitutional arrangements regarding division of taxing powers, the commission on Centre–State relations 1988 observed:

"A well-balanced distribution of heads of taxation based on economic and administrative rational between the Union and States and adequate arrangements for sharing of resources is vital for proper functioning of two-tier polity. We are of the firm view that the basic scheme of Constitution dividing the field of taxation between the Union and States and incorporating adequate arrangements for sharing of resources between them is sound and no major modifications in it are called for" [4].

## CONSTITUTIONAL LIMITATIONS UPON THE TAXING POWER

Apart from the limitation by the division of taxing power between the Union and State legislature by the relevant entries in the legislative lists, taxing power of either legislature is subjected to the following limitations imposed by particular provisions of our Constitution, namely,

1. It must not contravene Article 13;
2. It must not deny equal protection of laws under Article 14 and must not be discriminatory or arbitrary;
3. It must not constitute an unreasonable restriction upon the right of business guaranteed under Article 19(1)(g);
4. No tax shall be levied the proceeds of which are specially appropriated in payment of expense for the promotion or maintenance of any particular religion or religious denominations under Article 27;
5. A State Legislature or any authority within the State cannot tax upon the property of the Union under Article 285;
6. The Union cannot tax upon the property and income of any State as per Article 289;
7. The power of a State to levy tax on sale or purchase of goods is subject to Article 286;
8. Save in so far Parliament may be law; otherwise provide, a State shall not tax the consumption or sale of electricity in the cases specified in Article 287.

## CONCLUSION

Direct taxes serve several functions in addition to financing federal government expenditure through the mechanism of tax incentives. Functionaries under the income tax give thousands of job opportunities to the people. Hundreds of branches of studies are conducted based on the taxing statutes. An effectively administered tax system in the hands of the government becomes a major weapon against many odds. Taxes now serve several functions in addition to financing government's expenditure. They are used to improve the quality of life of the people by providing public utility services as whole and special care to needy people through cess and surcharges.

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