Law of Taxation

KSLU LL.B. — Complete Exam-Ready Study Bundle (Income Tax & GST · All Five Units)

KSLU LL.B. Study Bundle

Medha-Academy

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Contents

> ***Read this first page, then go to your unit.*** *This single file holds the whole subject: how to use the notes, the rules that win marks, and all five units of content. Everything is in plain English, every Latin maxim is translated in [brackets], and every topic is built backwards from the real exam questions.*

How to Use These Notes

What this is. A complete, exam-focused bundle covering all five units of KSLU Law of Taxation. Every topic is built from one question: *what will the examiner ask, and how do I score full marks?* High-frequency questions get the most space; the years listed under each question tell you where to spend revision time.

Who it is for. The first-time learner (understand before memorising), the revision student (fast high-yield recall), and the last-week crammer (which questions repeat and how to answer them).

A word about a computation subject. Taxation is partly a *skill* subject — the exam asks you to *compute* income from a house, capital gains, or GST payable after input tax credit. So many topics teach a **scheme and its steps** with a small worked sum. Slab rates and limits change almost every year, so learn the **method** first; where a figure is stated it is illustrative ("for the relevant assessment year"), and you should plug in the current year's numbers in the exam.

What is inside every topic — the same blocks, in the same order:

Block	Its job	The mark it earns
Previous Year Questions	Real questions + years asked	What to prepare and how often it repeats
The Hook	A true story / landmark-case opener	Memorable; a strong opening line
Jurist / Statutory Quotes	Exact sections & definitions	Examiners reward precise authority
In Simple Terms	Plain-English translation	Ensures you *understand*
The Visual (chart)	Maps the topic structure	Recall and structure at a glance

Block	Its job	The mark it earns
Case Laws	Landmark judgments + ratio	Case names with years are pure marks

Each unit closes with a **Quick Revision & Case Law Table** for the final hour.

These notes **teach** the subject. The **Question Bank** is the companion volume that turns that knowledge into marks — it carries a model answer for every past question, each opening with a ▤ **Answer Outline** (the skeleton to reproduce under time pressure) and, where two questions are easily confused, a ⚠ **Don't Confuse** box.

The 4-step study plan. (1) Read the PYQ box first. (2) Understand, then memorise. (3) Trace the chart from memory. (4) Rehearse the matching answers in the Question Bank.

The 10 Rules That Win Marks

1. **Lead with a definition + roadmap.** Open with the section number and a one-line map of the answer.
2. **Follow the Question Bank's Answer Outline** step by step.
3. **Name the case AND the year** every time.
4. **Quote the exact section** where given (Art. 265, s.9 CGST, s.45 IT Act, and so on).
5. **Translate every Latin maxim in [brackets].**
6. **Show your working in computation answers** — set out the format line by line, then the total.
7. **Always give a definite verdict** — "this income is exempt", "IGST applies", "the goods are liable to confiscation".
8. **Use the chart's structure** to organise the body of the answer.
9. **Close with a short, confident conclusion.**
10. **Manage time** so no high-mark question is left unwritten.

> ***Disclaimer.*** *A study aid, not a substitute for the bare Acts (the Income Tax Act, 1961; the CGST/IGST/UTGST Acts, 2017; the Customs Act, 1962) and prescribed texts. Tax rates, slabs and limits change yearly by the annual Finance Act — cross-check every figure and section against the current official text.*

UNIT 1 — General: Concept & Constitutional Basis of Taxation

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In this unit.

Everything in this subject sits on one idea — a tax is money the State takes from you by law, and for which you get no direct service in return. Before any specific tax (income tax, GST, customs) makes sense you must see the family tree: what a tax *is*, how it differs from a fee or a cess, and the honest-versus-dishonest line between tax planning, avoidance and evasion. Then comes the constitutional frame: in India *no tax can be levied except by authority of law* (Article 265), and the Constitution divides the power to tax between the Union and the States. It looks like nine topics, but it is really two questions — *what is a tax, and who is constitutionally allowed to impose which one?*

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1. Concept, Nature & Characteristics of Tax; Kinds of Taxes

Previous Year Questions

- **[16M]** Define tax. Explain the nature, characteristics and kinds of taxes. *(Dec 2013, Dec 2019, Apr 2022, Mar 2024, Aug 2024, Jan 2025, Jul 2025, Jan 2026)* ★★★
- **[16M]** "Tax is a compulsory exaction of money by a public authority." Discuss. *(Mar 2024, Aug 2024, Jan 2025, Jul 2025)* ★★★

The Hook

In 1938 an Australian judge, Chief Justice Latham, was asked what a "tax" actually is, in ***Matthews v Chicory Marketing Board (1938)***. His one-sentence answer has been quoted by Indian courts ever since: a tax is "a compulsory exaction of money by public authority for public purposes enforceable by law, and is not a payment for services rendered." Learn that line — it packs every essential of a tax into eighteen words.

What is a tax?

Start with the everyday picture. The State runs an army, courts, roads, hospitals and schools. None of that is free. So the State takes a slice of the wealth of the people to pay for it — that slice is **tax**. The crucial feature is that you pay it *because the law commands it*, not because you bought anything in particular. You cannot walk into a tax office and say "I don't use the army, so I won't pay for it."

A tax has these **essential characteristics** — learn each, because "define tax" is really "list these":

- **It is a compulsory payment.** You have no choice; refusal is met with penalty or prosecution. It is not a voluntary gift or donation.
- **It is imposed by a public authority** — the Union or a State legislature — and only that authority. A private person cannot levy a tax.
- **It is imposed by, and collected under, the authority of law.** No tax stands without a valid statute behind it (this is the whole point of Article 265, Topic 5).
- **There is no direct** *quid pro quo* **[something in return].** This is the heart of the concept: the taxpayer gets no specific, measurable service in exchange. Your income tax does not buy you a particular road; it goes into the common pool (the Consolidated Fund) from which the State spends for the general public good.
- **It is for a public purpose** — to meet the common expenses of the State, not to enrich any individual.

- **It is a personal obligation**, not a charge that arises from a bargain; and it is a payment of *money* (or money's worth).

Why the "no direct return" point matters so much. It is the single feature that separates a tax from a **fee** (where you *do* get a service — a passport, a licence) and from a **price** (where you buy a good). Keep it ready; the examiner tests it constantly (Topic 3).

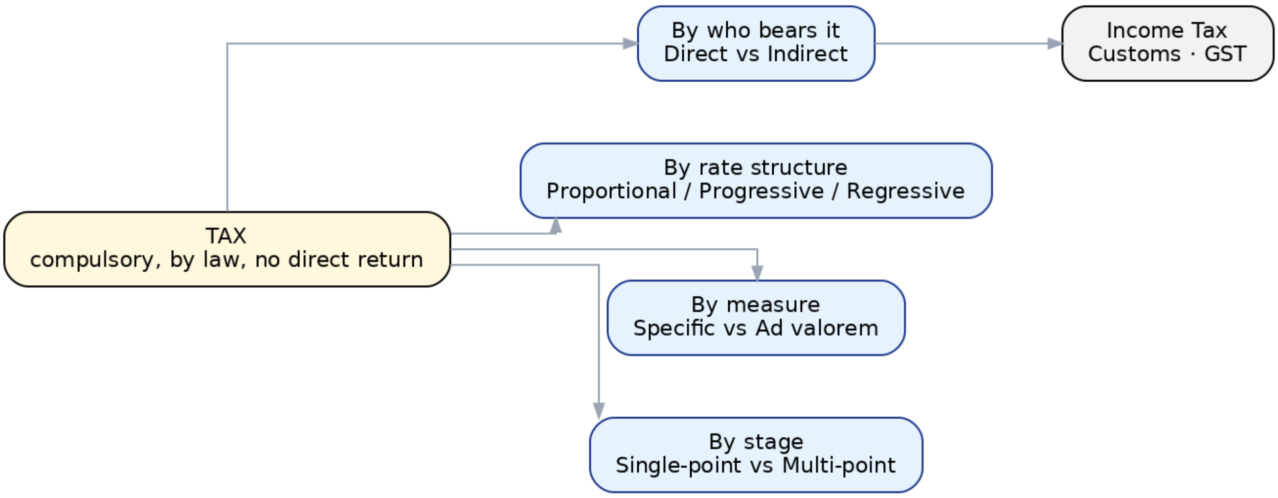
Kinds of taxes. Taxes are classified in several overlapping ways:

1. **Direct vs Indirect** — by who ultimately bears the burden. A **direct tax** is paid by, and its burden stays on, the same person (income tax). An **indirect tax** is collected from one person (a seller) but its burden is passed on to another (the buyer) — GST, customs duty. This is the most-examined classification (Topic 2).
2. **Proportional vs Progressive vs Regressive** — by how the rate moves with the base. A **proportional** tax keeps one flat rate (a single-rate GST slab). A **progressive** tax rises as income rises — the rich pay a higher *rate* (income-tax slabs). A **regressive** tax takes a larger share from the poor than the rich (a flat tax on a necessity hits low earners harder).
3. **Specific vs Ad valorem** — a **specific** duty is a fixed sum per unit (₹ per litre); an **ad valorem** [according to value] duty is a percentage of value (customs duty at 10% of value).
4. **Single-point vs Multi-point** — whether the tax is charged once in the chain or at every stage (GST is multi-point but, through input tax credit, effectively taxes only the value added).

> ***Latham CJ in Matthews v Chicory Marketing Board (1938):*** *"a compulsory exaction of money by public authority for public purposes enforceable by law, and is not a payment for services rendered."*

In Simple Terms: A tax is money the State forces you to pay, under a law, to run the country — and you get no particular service back for it. That last part ("no service back") is what makes it a *tax* and not a *fee*.

The Visual



Case Laws

- ***Matthews v Chicory Marketing Board (1938)*** — the classic definition of tax: compulsory, by public authority, for public purposes, with no *quid pro quo*.
- ***Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar (Shirur Mutt) (1954)*** — the Supreme Court adopted the compulsory-exaction test and drew the tax/fee line in India.

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2. Direct Tax vs Indirect Tax

Previous Year Questions

- **[16M]** Distinguish between direct tax and indirect tax with examples. *(Aug 2024)* ★★
- **[Short Note]** Direct tax and indirect tax. *(Jun 2013, Jul 2025, Jan 2026)* ★★

The Hook

When the government raised the GST rate on a packet of biscuits, no biscuit-maker's own wealth fell — they simply printed a higher price and the *buyer* paid the extra. That everyday shift of the burden from the person who *pays* the tax to the person who *bears* it is the whole difference between a direct and an indirect tax.

What is the difference?

The line is drawn by asking **one question: can the person who pays the tax to the government shift that burden on to someone else?**

A direct tax is one where the person who pays it *also* bears it — the impact and the incidence fall on the *same* person, and it cannot be passed on. Income tax is the textbook example: if you earn the income, you pay the tax on it, and you cannot bill your grocer for it.

An indirect tax is one where the person who pays it to the government *shifts* the burden on to another. GST and customs duty are the examples: the trader deposits the tax, but recovers it in the price from the customer, who actually bears it.

Two Latin-free terms make this precise:

- **Impact** — on whom the tax is first *levied* (who is legally liable to pay the government).
- **Incidence** — on whom the burden *finally rests*.

In a **direct** tax, impact and incidence are on the *same* person. In an **indirect** tax, they fall on *different* persons.

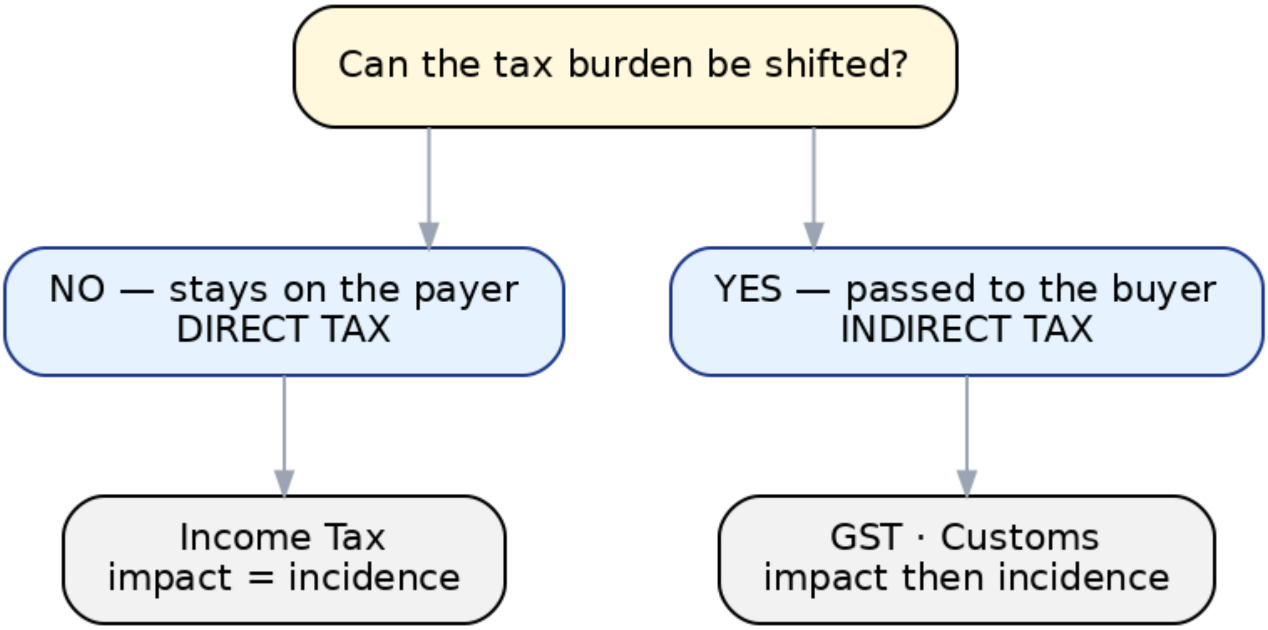
The **points of distinction** (write them as a contrast — this is what earns the marks):

1. **Shifting of burden** — direct: cannot be shifted; indirect: shifted to the consumer.
2. **Who bears it** — direct: the assessee himself; indirect: the ultimate buyer.
3. **On what it is levied** — direct: on income or wealth; indirect: on goods and services (supply, import).
4. **Progressive vs regressive** — direct taxes can be made progressive (rise with income), so they help reduce inequality; indirect taxes are regressive (the same rate falls on rich and poor buyer alike).
5. **Awareness / "pinch"** — a taxpayer *feels* a direct tax (he writes the cheque), but an indirect tax is hidden in the price, so it is less resented and easier to collect.
6. **Cost of collection** — indirect taxes are collected at few points (the seller) and are cheaper to administer; direct taxes need assessment of each person.
7. **Examples** — direct: income tax, (former) wealth tax; indirect: GST, customs duty, (former) excise/service tax.

> **⚠ DON'T CONFUSE — Direct tax vs Indirect tax**
>
> The test is **not** "who collects it" — the government collects both. The test is **who ultimately bears the burden, and can it be shifted?** Direct tax: borne by the payer, cannot be shifted (income tax). Indirect tax: paid by the trader but *shifted* to the consumer in the price (GST, customs). If the burden can travel down to the buyer, it is indirect.

In Simple Terms: If you cannot pass the tax on to anyone else, it is direct (income tax). If it hides in the price and the buyer really pays it, it is indirect (GST, customs).

The Visual



Case Laws

- ***McDowell & Co. Ltd. v Commercial Tax Officer (1985)*** — describes how an indirect tax (there, excise) is built into and recovered through the price, confirming the shifting feature.

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3. Tax vs Fee; Tax vs Cess; Compensatory/ Regulatory Tax

Previous Year Questions

- **[16M]** Distinguish between tax and fee. *(Mar 2021, Nov 2021, Apr 2022, Nov 2022, Mar 2023, Oct 2023, Jan 2025, Jan 2026)* ★★★
- **[Short Note]** Tax and cess. *(Dec 2012, Dec 2019, Mar 2021, Nov 2021, Apr 2022, Nov 2022, Mar 2023, Oct 2023, Aug 2024, Jan 2025, Jan 2026)* ★★★
- **[Short Note]** Compensatory / regulatory tax. *(Apr 2022, Nov 2022, Mar 2023, Oct 2023)* ★★

The Hook

A temple's managers were charged a levy by the State to fund the department that supervised religious endowments. Was that a *tax* (which needs no return) or a *fee* (which must be matched by a service)? In ***Shirur Mutt (1954)*** the Supreme Court held it was a valid fee — because the money was earmarked for services rendered to that very class of institutions. That case is where the tax/fee line was first drawn in India, and it is asked almost every year.

Tax vs Fee

Both are compulsory payments to the State. The difference is **the return the payer gets**:

- **A tax** is levied for the *general* public good and carries **no** *quid pro quo* — you get no specific service in return, and the collection goes into the common Consolidated Fund.
- **A fee** is a charge for a *particular service* rendered to the payer — a court fee, a licence fee, a passport fee. It must bear a **broad correlation** to the cost of that service, and it is normally kept for that service.

The **points of distinction**:

1. **Return** — tax: no direct return; fee: a specific service in exchange.
2. **Correlation to cost** — tax: none needed; fee: must broadly correlate to the cost of the service.
3. **Who benefits** — tax: the general public; fee: the particular payer (or his class).
4. **Where the money goes** — tax: the general Consolidated Fund; fee: usually a separate fund for the service.
5. **Basis of the power** — a tax rests on the State's *taxing* entries; a fee rests on the "fees in respect of any matter in this List" entry attached to each legislative list.

The correlation need **not be exact**. Early cases demanded a close *quid pro quo*, but the modern view (in ***Sreenivasa General Traders v State of A.P. (1983)*** and ***Kewal Krishan Puri v State of Punjab (1980)***) is that only a **broad, reasonable correlation** between the fee and the cost of the service is required — not arithmetical equivalence.

Tax vs Cess

A **cess** is a **tax levied for a specific, earmarked purpose** — an education cess, a health cess, a Swachh Bharat cess, a GST compensation cess. It is collected *as a tax* (so it needs no *quid pro quo*), but unlike an ordinary tax it is **tied to a named object** and, in principle, spent only on that object. So a cess is a *tax*, not a fee; the difference from an ordinary tax is only the earmarking. It is usually levied as a percentage *on top of* an existing tax.

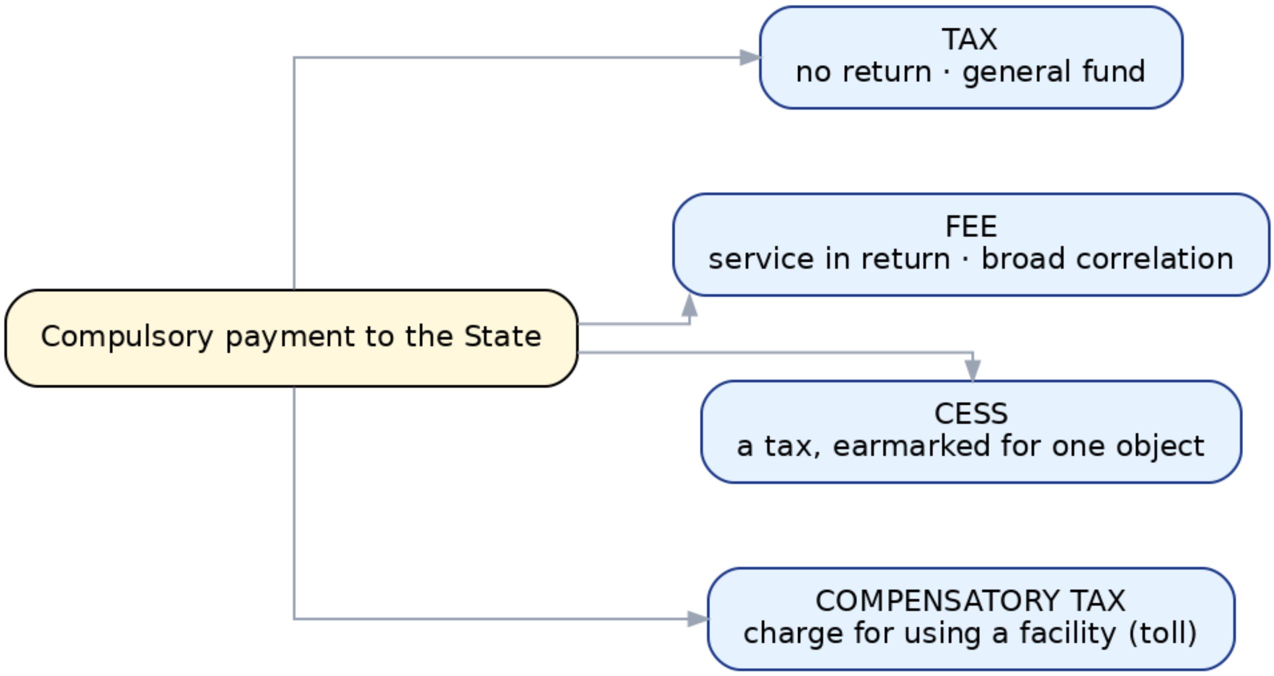
Compensatory / Regulatory Tax

A **compensatory tax** is one charged as a *recompense* for a specific facility the State provides — classically, a toll or road tax charged for the use of roads or bridges. It sits *between* a tax and a fee: like a fee it relates to a facility, but it is levied on a class of users rather than for an individual service. A **regulatory** levy is charged mainly to *regulate* an activity (a licence to control a trade) and only incidentally to raise revenue. The importance of the compensatory idea is historical — it was used to save inter-State levies from the free-trade guarantee of Article 301 (Topic 7), until a nine-judge Bench in ***Jindal Stainless Ltd. v State of Haryana (2016)*** discarded the doctrine.

> ***The Supreme Court in Shirur Mutt (1954):*** *a fee is "a payment for a special benefit or privilege… payments demanded for services rendered", and must have a correlation, while a tax is "a common burden… for the general benefit of all".*

In Simple Terms: Tax = pay, get nothing specific back. Fee = pay, get a specific service back (and the charge roughly matches its cost). Cess = a tax, but locked to one purpose (like education). Compensatory tax = a charge for using a facility, like a road toll.

The Visual



Case Laws

- ***Commissioner, HRE, Madras v Shirur Mutt (1954)*** — laid down the tax/fee distinction; a fee needs a correlation to services, a tax does not.
- ***Kewal Krishan Puri v State of Punjab (1980)*** — a fee must have a reasonable correlation with the cost of the service (later relaxed).
- ***Sreenivasa General Traders v State of A.P. (1983)*** — only a *broad*, not exact, correlation between fee and service cost is needed.
- ***Jindal Stainless Ltd. v State of Haryana (2016)*** — nine-judge Bench discarded the "compensatory tax" doctrine under Art. 301.

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4. Tax Evasion, Tax Avoidance & Tax Planning; Retrospective Taxation

> **Previous Year Questions**
>
> - **[16M]** Distinguish between tax evasion, tax avoidance and tax planning. *(Dec 2019, Dec 2020, Mar 2023, Mar 2024, Aug 2024, Jan 2025, Jul 2025)* ★★★
> - **[Short Note]** Tax evasion / tax avoidance / tax planning. *(Dec 2013, Jul 2014, Dec 2015, Jul 2018, Dec 2019, Mar 2021, Nov 2021, Mar 2023, Mar 2024, Aug 2024, Jan 2025, Jul 2025, Jan 2026)* ★★★
> - **[Short Note]** Retrospective taxation. *(Mar 2023, Mar 2024, Aug 2024)* ★★

The Hook

In ***McDowell & Co. Ltd. v Commercial Tax Officer (1985)***, Justice Chinnappa Reddy delivered a line that shook Indian tax practice: tax avoidance through "colourable devices" is not to be admired, and it is "not wisdom to encourage or connive at" dodges dressed up as clever planning. For years that made *all* avoidance suspect — until the Court softened it in ***Union of India v Azadi Bachao Andolan (2003)*** and ***Vodafone (2012)***, holding that arranging your affairs lawfully to pay less tax is legitimate.

The three ideas, on one line each

Picture three people facing the same tax bill:

- **The evader** hides the income or lies about it. **Tax evasion is illegal** — it is the deliberate suppression of facts, non-disclosure, false claims, or fake bills to escape a tax that is *lawfully due*. It attracts penalty and prosecution.
- **The avoider** discloses everything but exploits **gaps and loopholes** in the law to reduce tax in a way the law did not intend — often through artificial or "colourable" arrangements. **Tax avoidance is (in form) legal but not bona fide**; it uses the letter of the law against its spirit.
- **The planner** uses the **reliefs the Act itself offers** — deductions, exemptions, the right investment — to reduce tax exactly as the legislature intended. **Tax planning is legal and legitimate**; the law *invites* it.

The **line that decides which is which**: evasion breaks the law; avoidance bends it (uses loopholes the Act never meant to give); planning follows it (uses the Act's own reliefs).

Points of distinction:

1. **Legality** — evasion: illegal; avoidance: technically legal but improper; planning: legal and proper.

2. **Means** — evasion: concealment, fraud, false accounts; avoidance: loopholes, artificial devices; planning: exemptions/deductions in the Act.
3. **Disclosure** — evasion: facts hidden; avoidance and planning: facts disclosed.
4. **Consequence** — evasion: penalty + prosecution; avoidance: may be struck down as a sham; planning: fully allowed.
5. **Morality** — evasion: fraud; avoidance: sharp practice; planning: honest use of the law.

> ⚠ **DON'T CONFUSE — Tax evasion vs tax avoidance vs tax planning**
>
> All three try to reduce tax, so students blur them. The dividing lines: **Evasion** = *hiding* income or lying (illegal — fraud, penalty). **Avoidance** = *disclosing* everything but using loopholes/colourable devices the law never intended (legal in form, improper, may be struck down). **Planning** = using the Act's *own* deductions and exemptions (legal and encouraged). Memory hook: evasion *breaks* the law, avoidance *bends* it, planning *follows* it.

Retrospective taxation

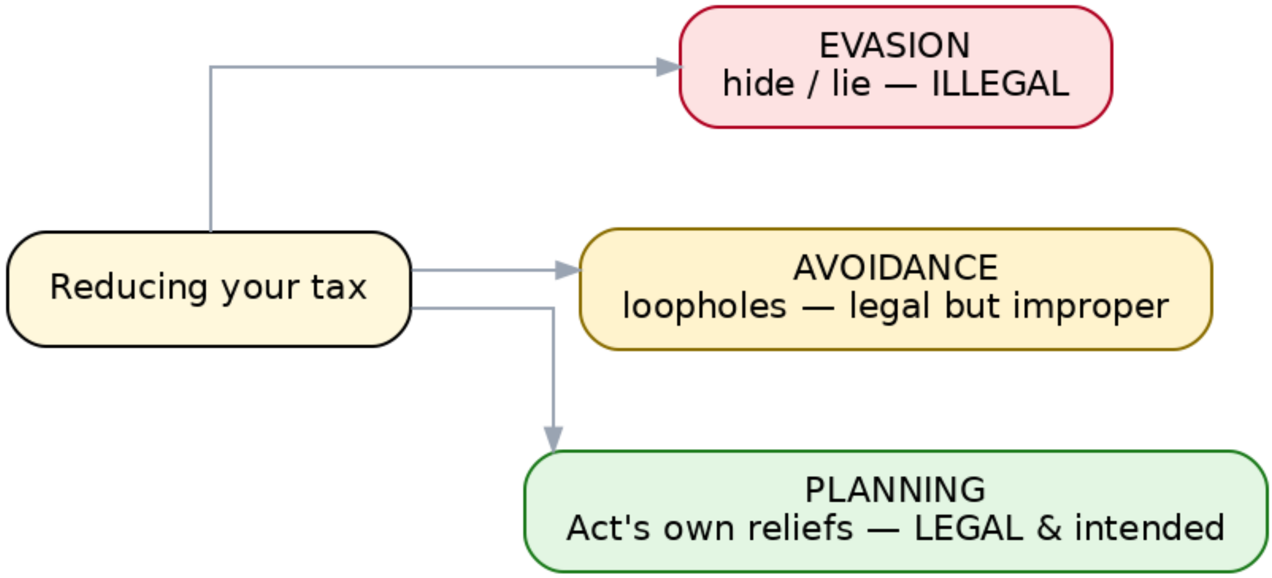
A **retrospective tax** is a tax imposed by a law that reaches *back in time* to tax a transaction that had already happened before the law was passed. It is controversial because it upsets settled expectations — a person who arranged his affairs lawfully under the *old* law suddenly finds a *new* law taxing him for the past. Parliament has the *power* to legislate retrospectively (a validating or clarificatory amendment), but courts insist it must be clear and reasonable, and it can be tested under Article 14 if arbitrary.

The famous episode: in ***Vodafone International Holdings B.V. v Union of India (2012)*** the Supreme Court held that the indirect transfer of Indian assets through an offshore share sale was *not* taxable in India. Parliament responded with a **retrospective amendment (Finance Act, 2012)** to tax such indirect transfers back to 1961. It drew heavy criticism and international arbitration; finally the **Taxation Laws (Amendment) Act, 2021** withdrew that retrospective effect for transactions before 28 May 2012. The lesson for the exam: retrospective taxation is *permissible but disfavoured*, and India has retreated from it.

> ✎ **EXAM TIP — Score the evasion/avoidance/planning question**
>
> **The trap.** Most candidates define the three loosely and never state the *legality line*, so the answer reads as three vague paragraphs that could be swapped around.
>
> **What to write.** Give the one-sentence legality test up front — "evasion is illegal, avoidance is legal-in-form but improper, planning is legal and intended" — then a 5-row distinction table, then close with McDowell (1985) and its softening in Azadi Bachao (2003)/Vodafone (2012).
>
> **Why it scores.** The examiner is testing whether you can *classify*, not just describe; the legality line plus one case each is what separates a full-marks answer from a listing.

In Simple Terms: Evasion is cheating (illegal). Avoidance is using loopholes (legal on paper, frowned upon). Planning is using the discounts the law gives you (perfectly fine). Retrospective tax = a new law that taxes something you already did in the past.

The Visual



Case Laws

- ***McDowell & Co. Ltd. v Commercial Tax Officer (1985)*** — "colourable devices" for tax avoidance are not legitimate; disapproved artificial dodges.
- ***Union of India v Azadi Bachao Andolan (2003)*** — legitimate tax planning within the law is permissible; softened McDowell.
- ***Vodafone International Holdings B.V. v Union of India (2012)*** — offshore indirect transfer not taxable; triggered the retrospective amendment later withdrawn in 2021.

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5. Power of Taxation under the Constitution (Art. 265; the Federal Base)

> **Previous Year Questions**
>
> - **[16M]** Explain the constitutional provisions relating to the power of taxation in India. *(Mar 2021, Nov 2021, Apr 2022, Nov 2022, Mar 2023, Mar 2024, Jan 2025, Jul 2025, Jan 2026)* ★★★
> - **[16M]** "No tax shall be levied or collected except by authority of law." Discuss Article 265. *(Mar 2021, Nov 2021, Mar 2024)* ★★★
> - **[Short Note]** Article 265. *(Jan 2025, Jul 2025)* ★

The Hook

When the State of Kerala tried to charge a land tax on a flat, per-acre basis regardless of whether the land yielded anything, the Supreme Court struck it down in ***K.T. Moopil Nair v State of Kerala (1961)***. The reason is the theme of this whole topic: a tax is valid *only* if a competent legislature passed a valid law imposing it — and even then it must respect the Constitution's other limits. In India, the taxman's power begins and ends with the Constitution.

The constitutional scheme of taxation

Three pillars hold up the power to tax in India. Learn them as a set — the essay wants all three.

A. Article 265 — the foundation. No tax may be levied or collected except by *authority of law*. This means (i) there must be a *law* (a statute, not a mere executive order); (ii) that law must be *valid* — passed by a legislature that had the competence and following a valid procedure; and (iii) both the *levy* and the *collection* must be authorised. If any of these fails, the tax is unconstitutional and refundable.

> ***Article 265:*** *"No tax shall be levied or collected except by authority of law."*

B. Article 246 + the Seventh Schedule — who may tax what. Article 246 divides legislative power between the Union and the States using three lists in the **Seventh Schedule**:

- **List I (Union List)** — taxes only Parliament may levy: income tax (Entry 82), customs (Entry 83), (formerly) excise (Entry 84 — now limited to petroleum, tobacco), corporation tax (Entry 85).

- **List II (State List)** — taxes only State legislatures may levy: tax on agricultural income (Entry 46), land revenue (Entry 45), tax on sale of alcohol/petroleum, tolls, taxes on professions (Entry 60), etc.
- **List III (Concurrent List)** — historically carries *no* tax entries (taxation was kept out of the Concurrent List, so a tax must belong clearly to List I or List II).

A key rule: **taxation entries are distinct from general (regulatory) entries**. The power to *regulate* a subject does not include the power to *tax* it unless a separate taxing entry exists. So each tax must be traced to its *own* taxing entry.

> ***Article 246A (added by the 101st Amendment, 2016):*** *Parliament and every State legislature have concurrent power to make laws on goods and services tax. GST is the great exception to the "no tax in the Concurrent List" rule — see Unit III.*

C. Residuary power — Article 248 + Entry 97, List I. Any tax not mentioned in any list falls to **Parliament** under the residuary power. This is how new levies (e.g. the former gift tax) found a home.

Other constitutional limits worth naming:

- **Article 286** — a State cannot tax a supply that takes place *outside* the State or in the course of *import/export*; the boundary of a State's taxing reach.
- **Article 301–304** — the free-trade guarantee; a tax must not impede inter-State trade (Topic 7).
- **Articles 285 & 289** — mutual tax immunity of Union and State property (Topic 6).
- **Fundamental Rights** — a tax law, like any law, must not violate Article 14 (arbitrariness) or Article 19(1)(g) (freedom of trade) (Topic 6).

> ***Article 286(1):*** *"No law of a State shall impose… a tax on the supply of goods or of services… where such supply takes place outside the State; or in the course of the import… into, or export… out of, the territory of India."*

The scope of Parliament's taxing power is therefore very wide: everything in List I, plus the residuary power, plus the concurrent GST power — subject only to the Fundamental Rights and the free-trade guarantee. But it is *not* unlimited: it cannot cross into the States' exclusive List II entries, and it must obey Article 265.

◈ **WORKED EXAMPLE — Is the levy constitutionally valid?**

Facts. A State legislature passes a law taxing the *income* of companies operating in the State.

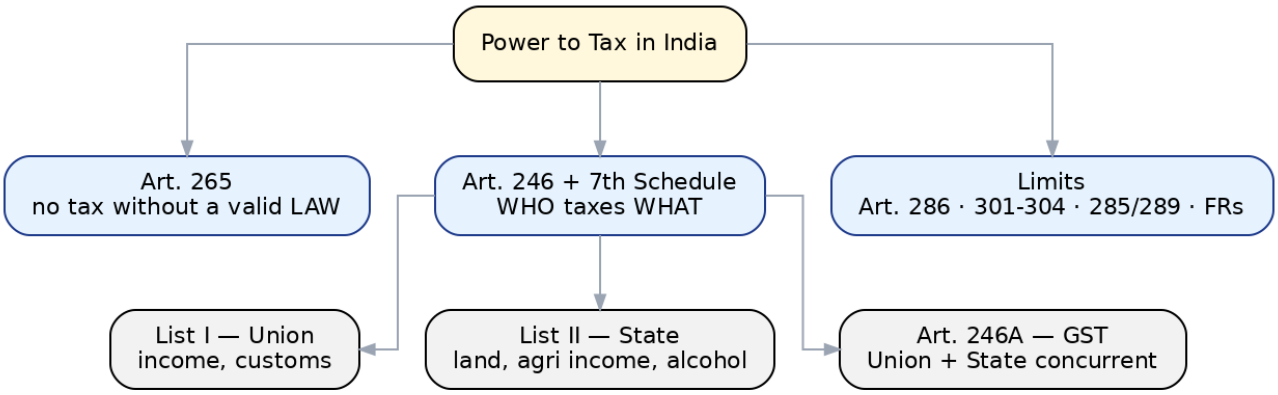
Rule. Article 246 read with the Seventh Schedule: tax on income (other than agricultural income) is Entry 82 of List I — an *exclusively Union* subject. Article 265 requires a *competent* legislature.

Apply. The State has legislated on a Union List entry it has no competence over. Even though it followed proper procedure, the *authority of law* under Article 265 is missing, because the law itself is beyond the State's power.

Conclusion. The tax is unconstitutional and void; any amount collected is refundable. (A State *may* tax *agricultural* income — Entry 46, List II — but not general income.)

In Simple Terms: No law, no tax (Art. 265). And even with a law, only the *right* legislature can pass it — the Constitution's lists say who taxes what. Parliament gets the big taxes (income, customs); States get land, agriculture, alcohol; GST is shared.

The Visual



Case Laws

- ***K.T. Moopil Nair v State of Kerala (1961)*** — an arbitrary, confiscatory tax violating Art. 14 is void; a tax law is subject to Fundamental Rights.
- ***Kesoram Industries Ltd. v Union of India (2004)*** — the power to *tax* must be traced to a specific taxing entry; regulatory entries do not carry it.
- ***A.V. Fernandez v State of Kerala (1957)*** — in a taxing statute one must look merely at what is clearly said; the subject is taxed only if the letter of the law catches him.

6. Immunity of State Agencies; Fundamental Rights & the Power of Taxation

Previous Year Questions

- **[16M]** Explain the doctrine of immunity of State instrumentalities from taxation. *(Dec 2019, Dec 2020, Mar 2021, Mar 2023, Oct 2023, Mar 2024, Aug 2024)* ★★
- **[16M]** "A tax must be levied in conformity with the Fundamental Rights." Discuss. *(Dec 2020, Mar 2023, Oct 2023)* ★★

The Hook

Can the Union tax the property of a State, or a State tax the property of the Union? The framers said largely *no* — a federation works only if neither government can cripple the other by taxing it. The nine-judge Bench in ***New Delhi Municipal Council v State of Punjab (1997)*** wrestled with exactly this, deciding how far the Union's immunity from State taxation (Article 289) really reaches.

The doctrine of mutual immunity

In a federation the Union and the States are co-ordinate governments. If one could tax the other's property freely, it could use the taxing power as a weapon. So the Constitution grants a **mutual (reciprocal) immunity**:

- **Article 285 — Union property exempt from State taxation.** The property of the Union is exempt from all taxes imposed by a State or by any authority within a State (subject to Parliament providing otherwise).
- **Article 289 — State property and income exempt from Union taxation.** The property and income of a State are exempt from Union taxation. *But* there is a vital exception: if a State carries on a **trade or business** (a commercial activity), the Union *may* tax that trade or the income from it, unless Parliament declares it incidental to the ordinary functions of government.

> ***Article 285(1):*** *"The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State."*

> ***Article 289(1) and (2):*** *"The property and income of a State shall be exempt from Union taxation." But "nothing… shall prevent the Union from imposing… any tax in respect of a trade or business of any kind carried on by… a State…"*

So the immunity is **not absolute**: it protects the *governmental* functions of a State, not its *commercial* ventures. This asymmetry (Union property is broadly immune; a State's *business* income is taxable) was the subject of the *In re Sea Customs Act (1963)* advisory opinion and *NDMC (1997)*.

Fundamental Rights and the power to tax

A tax law is a *law*, and Article 13 makes every law subject to the Fundamental Rights. So although the taxing power is wide, it must pass through the Fundamental-Rights filter:

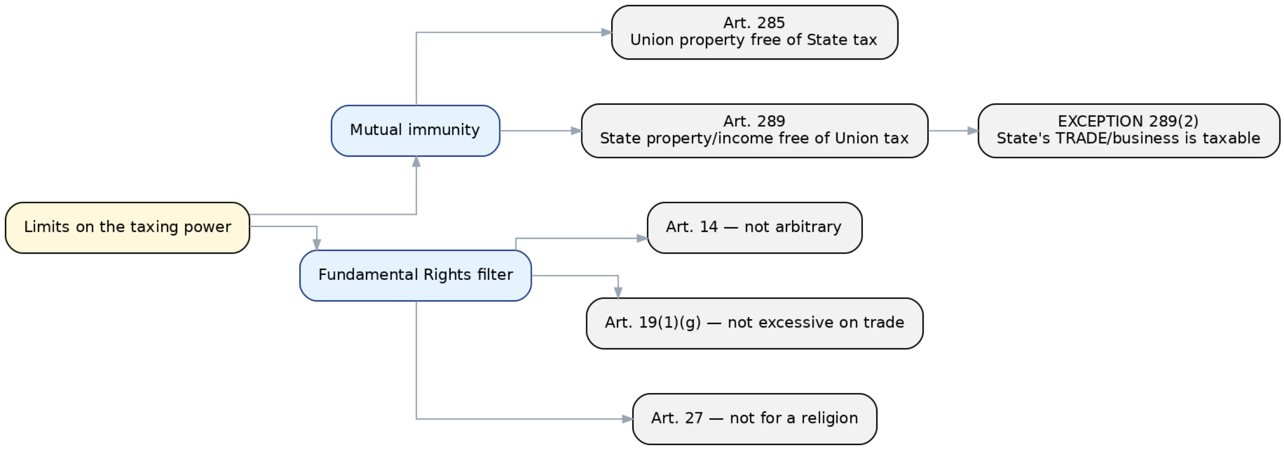
- **Article 265 itself** — no tax without authority of law — is a guarantee against arbitrary exaction.
- **Article 14 (equality)** — a tax must not be *arbitrary* or *discriminatory*. The State has wide latitude to classify (it may tax luxuries higher than necessities), but a tax with *no rational basis* is void — as in *Moopil Nair (1961)*, where a flat land tax ignoring income was struck down.
- **Article 19(1)(g) (trade & profession)** — a tax must not be so *excessive* as to be a *restriction* on the freedom to carry on trade; but a reasonable tax is a permissible restriction under Art. 19(6).
- **Article 301** — a tax must not impede the free flow of inter-State trade (Topic 7).
- **Article 27** — no person may be *compelled to pay a tax* whose proceeds are spent on *promoting a particular religion*.

The settled position: **the power to tax is not outside the Constitution.** Courts give the legislature great freedom in fiscal matters (they will not sit as a super-tax-tribunal), but a tax that is confiscatory, arbitrary, or that violates a Fundamental Right will be struck down.

> **◈ WORKED EXAMPLE — Can the Union tax a State's electricity board's trading income?**
>
> **Facts.** A State runs a profit-making commercial undertaking selling electricity. The Union seeks to levy income tax on its profits.
>
> **Rule.** Article 289(1) exempts a State's income from Union taxation, *but* Article 289(2) allows the Union to tax the income of a *trade or business* carried on by a State.
>
> **Apply.** Selling electricity for profit is a trade/business, not an ordinary governmental function. It therefore falls in the Art. 289(2) exception.
>
> **Conclusion.** The Union may tax that trading income (unless Parliament has declared this activity incidental to ordinary government functions). The immunity protects governmental, not commercial, activity.

In Simple Terms: The Union and the States generally cannot tax each other's property (Arts. 285 & 289) — but if a State runs a *business*, the Union *can* tax that business income. And every tax law must still respect equality (Art. 14) and freedom of trade (Art. 19) — an arbitrary tax is void.

The Visual



Case Laws

- ***New Delhi Municipal Council v State of Punjab (1997)*** — nine-judge Bench on the scope of Art. 289; State property immunity examined.
- ***In re Sea Customs Act, S.20(2) (1963)*** — a State's immunity (Art. 289) does not bar an indirect duty like customs/excise on a State's imports; clarified that the immunity covers direct taxes on State property/income, not indirect duties.
- ***K.T. Moopil Nair v State of Kerala (1961)*** — a tax violating Art. 14 (arbitrary, confiscatory) is unconstitutional.

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7. Commerce Clause; Inter-State Commerce and Taxation

> **Previous Year Questions**
>
> - **[Short Note]** Commerce clause; taxation of inter-State commerce. *(Nov 2022, Mar 2023, Oct 2023)* ★

The Hook

Assam taxed tea being carried *through* the State to Calcutta port. Tea growers said this was a tax on the very *movement* of goods and choked inter-State trade. In ***Atiabari Tea Co. Ltd. v State of Assam (1961)*** the Supreme Court agreed — a tax that *directly* burdens the free flow of trade offends Article 301. That case opened India's "commerce clause" story.

The free-trade guarantee (Articles 301–304)

India is meant to be **one economic unit** — goods should flow across State borders without being choked by internal tariffs. Part XIII of the Constitution secures this:

- **Article 301** — trade, commerce and intercourse throughout India shall be **free**.
- **Article 302** — Parliament may impose *reasonable* restrictions in the public interest.
- **Article 303** — neither Parliament nor a State may *discriminate* between States (no preference to one State over another), save for scarcity.
- **Article 304** — a State may (a) tax imported goods *provided* it taxes its own like goods equally (**no discrimination**), and (b) impose reasonable restrictions in the public interest, with the President's prior sanction for a Bill.

> ***Article 301:*** *"Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free."*

> ***Article 304(a):*** *a State may impose "on goods imported from other States… any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced."*

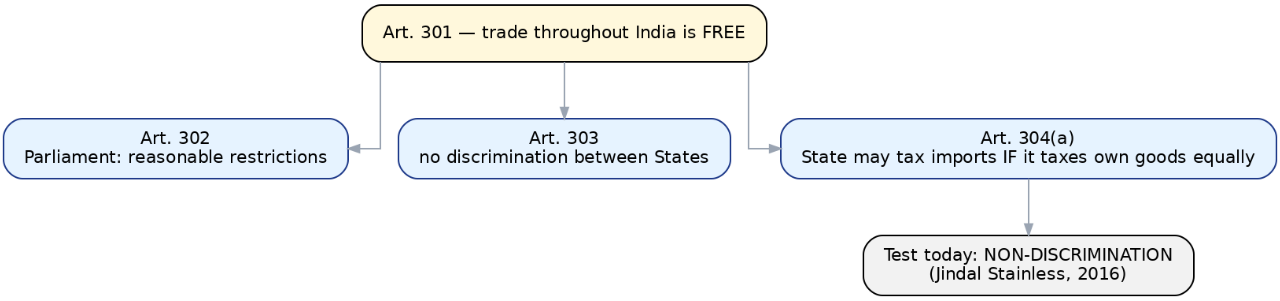
How the doctrine developed:

- *Atiabari (1961)* — a tax that *directly and immediately* restricts the movement of trade violates Art. 301.
- *Automobile Transport (Rajasthan) Ltd. v State of Rajasthan (1962)* — added the **compensatory tax** exception: a tax that is really a *charge for facilities* (roads, bridges) used by the trader does *not* impede trade, so it is valid even without Art. 304 sanction.
- *Jindal Stainless Ltd. v State of Haryana (2016)* — a **nine-judge Bench discarded the compensatory-tax doctrine**, holding that a non-discriminatory tax is valid under Art. 304(a) and that the key test is now **discrimination**, not "compensation". Entry tax that does not discriminate against goods from other States is valid.

The upshot for the exam: a State *can* tax inter-State goods, but the tax must **not discriminate** against goods coming from other States (Art. 304(a)). Under GST, this whole area is largely settled by the IGST model (Unit IV), which is destination-based and neutral between States.

In Simple Terms: Goods should move freely across India (Art. 301). A State may still tax goods from other States, but only if it taxes its *own* goods the same way — no favouring local producers (Art. 304(a)). The old "toll for facilities" excuse (compensatory tax) was scrapped in 2016; the real test is *no discrimination*.

The Visual



Case Laws

- ***Atiabari Tea Co. Ltd. v State of Assam (1961)*** — a tax directly restricting the movement of trade violates Art. 301.
- ***Automobile Transport (Rajasthan) Ltd. v State of Rajasthan (1962)*** — compensatory taxes (charges for facilities) are outside Art. 301's bar.
- ***Jindal Stainless Ltd. v State of Haryana (2016)*** — nine-judge Bench; discarded the compensatory-tax doctrine, made non-discrimination the test.

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8. Delegation of Taxing Power; Centre-State Tax Relations

> **Previous Year Questions**
>
> - **[Short Note]** Delegation of taxing power to State legislatures and local bodies. *(Mar 2021, Nov 2021, Nov 2022, Oct 2023, Mar 2024, Jan 2026)* ★★

The Hook

A municipality cannot pass its own "Act" — yet your city charges you property tax every year. How? Because the State legislature *delegates* the power to fix and collect certain taxes to local bodies, within limits the legislature itself lays down. The question the courts keep asking is: *how much* of the taxing power can be handed down before the legislature has abdicated its job?

What may be delegated, and what may not

The rule against **excessive delegation** says a legislature may delegate the *details and machinery* of a tax, but must itself decide the **essential legislative function** — the *subject* of the tax, the *taxable person*, and the *maximum rate* or the policy that guides the rate. It cannot hand a naked, unguided power to tax to another body.

So a valid delegation of taxing power keeps this shape:

1. **The legislature fixes the essentials** — it identifies the tax, the persons liable, and lays down a policy or an outer limit for the rate.
2. **The delegate (executive or local body) fills the gaps** — it sets the exact rate within the ceiling, prescribes the procedure, grants exemptions, within the legislature's guidance.

In ***Devi Das Gopal Krishnan v State of Punjab (1967)*** the Supreme Court struck down a provision that let the government fix a sales-tax rate with *no ceiling* (unguided), but upheld a later version that set a maximum. That is the test: **guidance and a ceiling save the delegation; a blank cheque destroys it.**

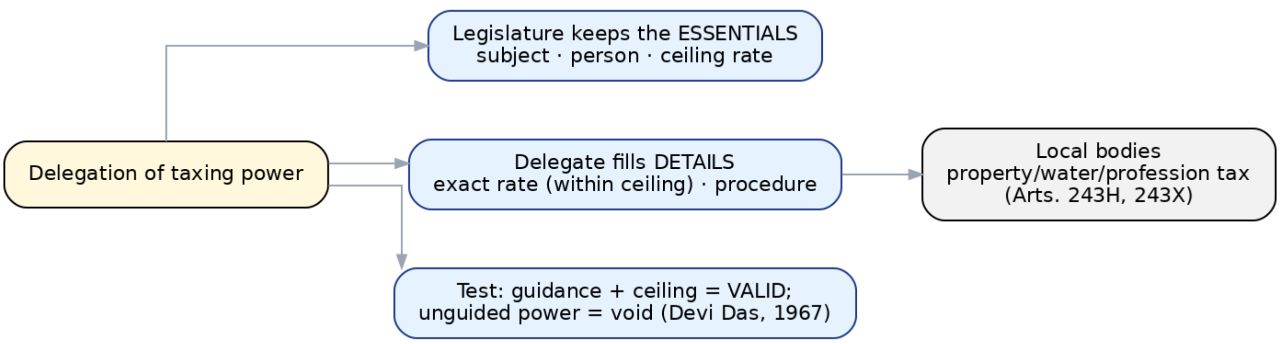
Delegation to local bodies. State laws (municipal Acts, panchayat Acts) authorise **local bodies** to levy taxes such as **property tax, water tax, tax on trades and professions, entertainment tax, and (formerly) octroi**. The local body's power is entirely **derivative** — it exists only because a State statute conferred it, and only to the extent conferred. Article 243H and 243X (added by the 73rd and 74th Amendments) enable States to authorise panchayats and municipalities to levy and collect such taxes.

Centre-State tax relations. The Constitution not only *divides* taxing power (Art. 246) but also *shares the proceeds*:

- Some taxes are levied by the Union but **shared** with the States (income tax is distributed under Art. 270).
- The **Finance Commission** (Art. 280 — Topic 9) recommends how central taxes are divided.
- Under **GST**, the **GST Council** (Art. 279A) now co-ordinates Centre and State rates, and the Union **compensates** States for revenue loss (Unit IV).

In Simple Terms: A legislature can let the government or a municipality fix the exact rate and run the machinery of a tax — but it must first decide *what* is taxed, *who* pays, and the *maximum* rate. A local body's power to tax is only borrowed from a State law. And beyond dividing taxes, the Constitution shares their proceeds (Finance Commission, GST Council).

The Visual



Case Laws

- ***Devi Das Gopal Krishnan v State of Punjab (1967)*** — an unguided power to fix a tax rate is excessive delegation and void; a ceiling/guidance saves it.
- ***Corporation of Calcutta v Liberty Cinema (1965)*** — the power to fix a licence-fee/rate may be delegated to a local body where the statute lays down sufficient guidance.

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9. Finance Commission

> **Previous Year Questions**
>
> - **[Short Note]** Finance Commission and its functions. *(Nov 2021)* ★

The Hook

The Union collects the largest taxes, but the States do most of the day-to-day spending on health, roads and schools. Who decides how the central pool is split so a poorer State is not starved? A constitutional body appointed every five years — the **Finance Commission** under Article 280.

What the Finance Commission is and does

The **Finance Commission** is a body the President must constitute every **five years** (or earlier if needed) under **Article 280** to recommend how the financial resources of the Union and the States are shared. It is the balancing wheel of Indian fiscal federalism.

> ***Article 280(1):*** *"The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission…"*

Composition. A **Chairman** and **four other members**, appointed by the President. Parliament prescribes their qualifications; the Chairman is usually a person with experience in public affairs, and members have expertise in finance, economics or administration.

Functions (Art. 280(3)) — its recommendations cover:

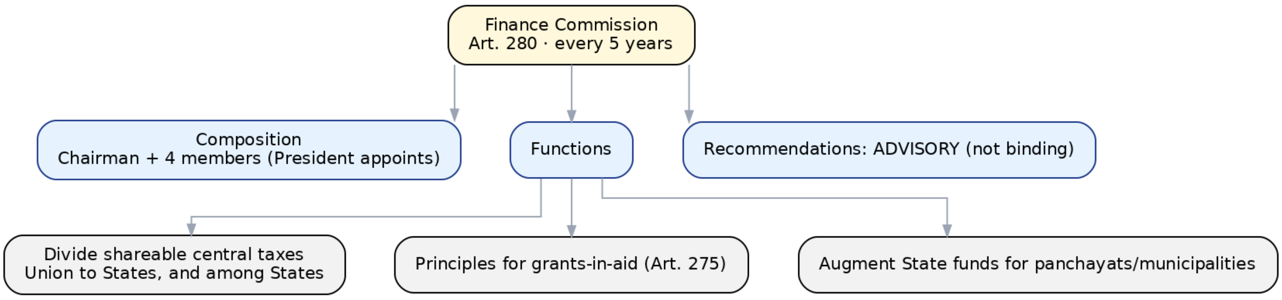
1. The **distribution** of the net proceeds of taxes that are to be shared between the Union and the States, and the **allocation** among the States of their respective shares (vertical and horizontal devolution).
2. The **principles governing grants-in-aid** to the States out of the Consolidated Fund of India (Art. 275).

3. Measures to **augment the Consolidated Fund of a State** to supplement the resources of panchayats and municipalities (added by the 73rd/74th Amendments).
4. Any other matter referred to it by the President in the interests of sound finance.

Nature of its recommendations. The Commission's recommendations are **advisory / recommendatory** — not binding — but by convention the Union accepts them, and they are laid before Parliament. **GST-era relevance:** even after GST centralised indirect-tax rate-setting in the GST Council, the Finance Commission still divides the *shareable central taxes* and recommends grants, so it remains central to Centre-State finance.

In Simple Terms: Every five years the President sets up a five-member Finance Commission (Art. 280) to advise how central tax money is split between the Union and the States, and among the States. Its advice is not binding, but the government almost always follows it.

The Visual



Case Laws

- ***Jagjit Singh v State of Punjab (2006)*** — recognised the constitutional role of the Finance Commission in the scheme of fiscal devolution (referred to in Centre-State finance disputes).

Quick Revision & Case Law Table

One-line memory hooks

- **Concept & kinds of tax:** compulsory, by law, no *quid pro quo*, for public purpose; classify direct/indirect, progressive/proportional, specific/ad valorem.
- **Direct vs indirect:** can the burden be *shifted*? No = direct (income tax); Yes = indirect (GST, customs).
- **Tax vs fee vs cess:** tax = no return; fee = service (broad correlation); cess = a tax earmarked for one object.
- **Evasion / avoidance / planning:** evasion *breaks* the law, avoidance *bends* it, planning *follows* it; retrospective tax = new law reaching back (India retreated in 2021).

- **Constitutional power:** Art. 265 (no tax without valid law) + Art. 246/7th Schedule (who taxes what) + residuary + Art. 246A (GST).
- **Immunity & FRs:** Arts. 285/289 mutual immunity (but a State's *business* income is taxable); every tax must clear Art. 14/19.
- **Commerce clause:** Art. 301 free trade; a State may tax imports only without discriminating (Art. 304(a)); compensatory-tax doctrine scrapped in 2016.
- **Delegation:** legislature keeps subject/person/ceiling; delegate fixes rate within it; local-body tax is borrowed from a State law.
- **Finance Commission:** Art. 280, every 5 years, Chairman + 4, divides central taxes, advisory only.

Master Case List for Unit 1

Case	Topic	One-line ratio
Matthews v Chicory Marketing Board (1938)	Concept of tax	Classic definition: compulsory exaction, no *quid pro quo*.
Shirur Mutt (1954)	Tax vs fee	A fee needs correlation to services; a tax does not.
Kewal Krishan Puri v State of Punjab (1980)	Tax vs fee	Fee must reasonably correlate with cost of service.
Sreenivasa General Traders v State of A.P. (1983)	Tax vs fee	Only broad, not exact, correlation needed.
McDowell & Co. v CTO (1985)	Avoidance	Colourable devices for avoidance are not legitimate.
Union of India v Azadi Bachao Andolan (2003)	Planning	Legitimate tax planning is permissible.
Vodafone International Holdings v Union of India (2012)	Retrospective tax	Offshore indirect transfer not taxable; sparked the retrospective amendment.

Case	Topic	One-line ratio
K.T. Moopil Nair v State of Kerala (1961)	Constitution / FRs	Arbitrary, confiscatory tax violates Art. 14.
Kesoram Industries v Union of India (2004)	Taxing entries	Power to tax needs a specific taxing entry.
New Delhi Municipal Council v State of Punjab (1997)	Immunity	Scope of Art. 289 State immunity examined.
In re Sea Customs Act (1963)	Immunity	State immunity (Art. 289) does not bar customs on a State’s imports.
Atiabari Tea Co. v State of Assam (1961)	Commerce clause	Direct restriction on movement of trade violates Art. 301.
Automobile Transport v State of Rajasthan (1962)	Commerce clause	Compensatory taxes are outside Art. 301’s bar.
Jindal Stainless v State of Haryana (2016)	Commerce clause	Discarded compensatory-tax doctrine; test is non-discrimination.
Devi Das Gopal Krishnan v State of Punjab (1967)	Delegation	Unguided power to fix a tax rate is void; a ceiling saves it.

End of Unit 1.

Law of Taxation

KSLU LL.B. — Model Answers: Essays, Short Notes & Problems (All Five Units) · 100-mark pattern

KSLU LL.B. Question Bank

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Notes Version: **v1.0**

August 2026

Contents

> ***Read this first, then go to your unit.*** *This companion to the study notes gives you a full, exam-ready* ***model answer*** *to every 16M essay, every 8-mark Q8 short note, and every fact-pattern / computation problem asked in past KSLU Law of Taxation papers — grouped by unit and topic in the same order as the notes. Sub-8-mark short notes (5M / 6M) are answered in the notes bundle, not here.*
>
> ***Built for the 100-mark paper.*** *KSLU sets an* ***80-mark*** *and a* ***100-mark*** *paper; this bank is the* ***100-mark*** *edition (* `Question_Bank_100_TAX.pdf` *), which most students sit. Its essays and short notes are the 100-mark questions, but its* ***problems (§C) cover every fact-pattern and computation from both patterns*** *— problems repeat, so none is left out. Sitting the 80-mark paper? An 80-mark edition can be generated on request.*

How to Use This Question Bank

What this is. A rehearsal book. The study notes teach the concept; this bank shows you how to *write the marks* — a complete answer in the exact shape an examiner rewards.

The 3-step drill. (1) Read the question and try a 2-minute plan from memory.

1. Read the model answer; note the structure, the cases, the verdict. (3) For problems, re-do the IRAC — and, for computation sums, re-work the **line-by-line format** with figures — in your own words under time.

Priorities. The ★ rating shows how often a question repeats — ★★★ (5+ times) is a near-certainty; do these first. The Priority Index below lists them ranked.

House rules that win marks. Lead with a definition + roadmap; name the case **and** the year; cite the exact section (`s.10`, `Art. 265`); for problems use the four IRAC headings and always give a definite verdict; for computation sums, show the **full working** and end with a definite figure.

Exam Pattern & Mark Weights

> ***100-mark paper*** *— Q.No. 9 (and Q.11) carry the* ***computation / fact-pattern problems*** *(10 marks each); Q1–Q8 are 16 marks each (Q8 being the short-note question). Answer the problem question* ***and any five*** *of the essays. Attempt the computation problems first — the format is easy marks.* ***80-mark paper*** *— five Units; from each Unit one essay (10) + one short-note / problem (6). Sub-8-mark short notes are in the notes bundle.*

Mark slot	What it is	Where it's drilled
16M (100) / 10M (80)	Long essay	Section A of each unit
8M (Q8) short note	Short explanatory note	Section B of each unit
Problems (10M/6M)	Fact-pattern & computation, IRAC + format	Section C of each unit

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Priority Index — Questions by Frequency

Rank	Question (short)	Type	Frequency	Unit
1	Income from Salaries; perquisites; deductions	Essay	★★★	2
2	Income from House Property; annual value & deductions	Essay/ Prob	★★★	2
3	Income-tax authorities; ITAT; CBDT; waive penalty	Essay	★★★	2
4	Residential status & scope of total income	Essay/ Prob	★★★	2
5	Incomes exempt under s.10; casual income	Essay	★★★	2
6	Agricultural income & partial integration	Essay/ Prob	★★★	2
7	Clearance of imported goods from the port	Essay	★★★	5
8	Dual GST model; CGST/SGST vs IGST; salient features	Essay	★★★	3
9	Levy & collection of GST on "supply"	Essay	★★★	3

Rank	Question (short)	Type	Frequency	Unit
10	Registration under GST — procedure & advantages	Essay	★★★	3
11	Concept, nature & kinds of tax	Essay	★★★	1
12	Tax vs fee; tax vs cess; compensatory tax	Essay/SN	★★★	1
13	Evasion vs avoidance vs planning	Essay/SN	★★★	1
14	Power of taxation under the Constitution (Art. 265)	Essay	★★★	1
15	IGST; inter-State supply; place of supply	Essay	★★★	4
16	Compensation to States; impact on State revenue	Essay	★★★	4
17	Securities Transaction Tax; GST exemption on securities	Essay/SN	★★★	4
18	Customs officers — appointment, powers & functions	Essay	★★★	5
19	Search, seizure & arrest; smuggling	Essay	★★★	5
20	Levy, assessment & valuation of customs duty	Essay	★★★	5
21	Baggage; duty-free allowance	Essay/SN	★★★	5
22	Restrictions/prohibitions; prohibited goods (s.11)	Essay/SN	★★★	5
23	Salary / house-property / other-sources computation format	Problem	★★★	2
24	GST Council — structure, powers & functions	Essay/SN	★★★	3

Year Index — Questions by Paper

Year (paper)	Essays asked (by topic)	Short notes asked	Problems asked
2026(100)	Tax concept; Constitution; agri income; GST supply; IGST; UTGST; drawback	Tax vs cess; delegation; GST Council; STT; prohibited goods; by post	Salary/agri/NR salary format problems

Year (paper)	Essays asked (by topic)	Short notes asked	Problems asked
2025(100)	Salaries; house property; capital gains; GST concept; registration; IGST; customs officers; baggage; valuation	Art. 265; casual income; PAN; CGST/ SGST; STT; SEZ; exemption	House-property & capital-gains format; NR salary; musician gift
2024(100)	Direct vs indirect; agri income; s.10; authorities; GST dual model; registration; UTGST; customs officers; clearance; baggage	AY/PY; perquisites; recovery; UTGST; RCM; prohibited goods; drawback	Salary format; prize money; forest fruit; tractor
2023(100)	Salaries; house property; PGBP; capital gains; GST dual model; supply; GST Council; IGST; STT; search & seizure; baggage	Residential status; capital vs revenue; GST Council; exemption; prohibited goods	RCM advocate; agri (dairy); NR residence
2022(100)	Tax vs fee; house property; PGBP; Chapter VIA; GST dual model; registration; IGST; compensation; STT; prohibitions	Compensatory tax; ITC; works contract; RCM; STT	Works contract; jasmine flowers; format problems
2021(100)	Constitution; immunity; salaries; house property; PGBP; GST concept; registration; compensation; search & seizure; valuation	Delegation; Finance Commission; GST Council; ITC; RCM; STT	RCM advocate; senior-citizen tax; place of supply; NR salary
2019(100)	Person/PY-AY; residential status; s.10; salaries; house property; GST concept; UTGST; STT; customs officers	AY/PY; other sources; 101st Amendment; GST Council; registration	Speculative loss; company letting; KSRTC compensation; other-sources format
2018(100)	Residential status; salaries; house property; PGBP; TDS; GST dual model; supply; registration; baggage	Perquisites; TDS; 101st Amendment; ITC; works contract	Prize money; uniform allowance; property reverting; senior-citizen tax

Year (paper)	Essays asked (by topic)	Short notes asked	Problems asked
2017(100)	Residential status; salaries; house property; capital gains; other sources; authorities; appeals; GST dual model	Annual value; capital asset; ITC	Foreign agri income; rose grower; Sony inter-State; formats
2015–2012(100)	Tax concept; income; s.10; house property; other sources; authorities; wealth tax (repealed); pre-GST taxes; customs valuation; clearance	Tax & cess; other sources; excise/VAT (mapped); dutiable goods; warehousing	Foreign agri income; formats; Sony inter-State (CST → IGST)

> ***This bank is built for the 100-mark paper.*** *Its* ***essays*** *(§A) and* ***short notes*** *(§B) are the long and Q8 questions asked on a* ***100-mark*** *KSLU Law of Taxation sitting; its* ***problems*** *(§C) cover* ***every*** *computation / fact-pattern problem from both the 80- and 100-mark papers, because problems recur across sittings and are the easiest marks to lose. Every unit, in the notes' topic order. Sub-8-mark short notes (5M / 6M) are answered in the study-notes bundle, not here.*

UNIT 1 — General: Concept & Constitutional Basis of Taxation

A. Essay Questions (16M) — Model Answers

Q1.1 — `[16M]` Define tax. Explain the nature, characteristics and kinds of taxes. (“Tax is a compulsory exaction of money by a public authority.” Discuss.)

Asked: Dec 2013 (100), Dec 2019 (100), Apr 2022 (100), Aug 2024 (100), Jul 2025 (100), Jan 2026 (100) · Pattern: both · ★★★ · Notes: Unit 1 → Topic 1 (Concept, Nature & Kinds of Tax)

▤ ***ANSWER OUTLINE***

1. *Define tax + the classic Matthews (1938) definition.*
2. *The six essential characteristics, each explained.*
3. *Why “no direct return” is the master feature.*
4. *Kinds of taxes — the four classifications.*
5. *Leading cases — Matthews (1938), Shirur Mutt (1954).*
6. *Conclusion — the working idea of a tax.*

Introduction.

A **tax** is money the State takes from the citizen **by law**, for the common expenses of government, and for which the citizen gets **no direct service in return**. The State runs an army, courts, roads, hospitals and schools; none of that is free, so it takes a slice of the people’s wealth to pay for it — and that slice is tax. The classic definition is Chief Justice Latham’s in *Matthews v Chicory Marketing Board (1938)*: a tax is “a compulsory exaction of money by public authority for public purposes enforceable by law, and is not a payment for services rendered.” Those eighteen words carry every essential of a tax.

A. The essential characteristics

1. **It is a compulsory payment.** The citizen has no choice; refusal is met with penalty or prosecution. A tax is not a voluntary gift or donation, and one cannot decline it by saying “I do not use the army.”

2. **It is imposed by a public authority.** Only the Union or a State legislature — the bodies the Constitution empowers — may levy a tax; a private person can never impose one.
3. **It is levied and collected under the authority of law.** No tax stands without a valid statute behind it. This is the whole of **Article 265** (Topic 5) — both the levy and the collection must be authorised by law.
4. **There is no direct *quid pro quo* [something in return].** This is the heart of the concept. The taxpayer receives no specific, measurable service in exchange; the money goes into the common pool — the Consolidated Fund — from which the State spends for the general good.
5. **It is for a public purpose.** A tax meets the common expenses of the State; it may not be levied to enrich any individual.
6. **It is a personal obligation and a payment of money.** It arises from the command of law, not from any bargain, and is paid in money or money's worth.

B. Why "no direct return" is the master feature

The single feature that separates a tax from every neighbour is the **absence of a direct return**. A **fee** buys you a service — a passport, a licence, a court hearing — and must broadly match the cost of that service; a **price** buys you a good. A tax buys you nothing in particular. Your income tax does not purchase a specific road or school; it funds the State at large. Keep this ready, because the examiner tests the tax/fee line almost every year (Topic 3).

C. Kinds of taxes

Taxes are classified in several overlapping ways, and a full-marks answer lists all four:

1. **Direct vs indirect** — by who ultimately bears the burden. A **direct** tax is borne by the very person who pays it and cannot be shifted (income tax); an **indirect** tax is collected from one person but its burden is passed on to another (GST, customs). This is the most-examined classification (Topic 2).
2. **Proportional, progressive or regressive** — by how the rate moves with the base. A **proportional** tax keeps one flat rate; a **progressive** tax rises as income rises, so the rich pay a higher *rate* (income-tax slabs); a **regressive** tax takes a larger share from the poor (a flat tax on a necessity).
3. **Specific vs ad valorem** — a **specific** duty is a fixed sum per unit (so many rupees per litre); an **ad valorem** [according to value] duty is a percentage of value (customs at, say, 10% of value).
4. **Single-point vs multi-point** — whether the tax is charged once in the chain or at every stage. GST is multi-point but, through input tax credit, effectively taxes only the value added at each stage.

D. Leading cases

- *Matthews v Chicory Marketing Board (1938)* — the classic definition: a tax is compulsory, by public authority, for public purposes, with **no** *quid pro quo*.
- *Commissioner, HRE, Madras v Shirur Mutt (1954)* — the Supreme Court adopted the compulsory-exaction test in India and drew the tax/fee line: a fee needs a correlation to services, a tax does not.

E. Conclusion

A tax, then, is a **compulsory** contribution imposed **by law**, by a **public authority**, for a **public purpose**, without any **direct return** to the payer. Its many kinds — direct or indirect, progressive or flat, specific or ad valorem — are only different ways of laying that one burden. The idea to carry into every later topic is simple: it is the “no service back” feature that makes a payment a *tax* and not a *fee* or a *price*.

Q1.2 — `[16M]` Distinguish between direct tax and indirect tax with examples.

> *Asked: Aug 2024 (100) · Pattern: both · ★★ · Notes: Unit 1 → Topic 2 (Direct Tax vs Indirect Tax)*

> ▤ ***ANSWER OUTLINE***
>
> 1. *The one test — can the burden be shifted?*
> 2. *Define direct and indirect; impact vs incidence.*
> 3. *Seven points of distinction, each explained.*
> 4. *Merits and demerits of each.*
> 5. *McDowell (1985) on the shifting feature; conclusion.*

> ⚠ **DON’T CONFUSE**
>
> **Looks like:** the “kinds of tax” essay (Q1.1, Unit 1), which lists direct/indirect as one of four classifications. **How it differs:** this question is a *focused contrast* — it wants the shifting test, impact vs incidence, and a full points-of-distinction table, not a survey of all classifications. **Tell them apart by:** the words “distinguish between” — a compare-and-contrast answer, not a definition-and-list answer.

Introduction.

The whole difference between a direct and an indirect tax is answered by **one question: can the person who pays the tax to the government shift that burden on to someone else?** When the GST rate on biscuits rises, the biscuit-maker’s own wealth does not fall — he prints a higher price and the *buyer* pays the extra. That shift of the burden from the person who *pays* to the person who *bears* is the dividing line.

A. The two key terms

Two plain terms make the distinction precise:

1. **Impact** — the point at which the tax is first *levied*, i.e. on whom the law places the legal liability to pay the government.
2. **Incidence** — the point at which the burden *finally rests*, i.e. who really goes poorer by the tax.

In a **direct** tax, impact and incidence fall on the **same** person. In an **indirect** tax, they fall on **different** persons — the seller pays, the consumer bears.

B. Direct tax and indirect tax defined

A **direct tax** is one where the person who pays it also bears it, and the burden cannot be passed on. **Income tax** is the textbook example: if you earn the income you pay the tax, and you cannot bill your grocer for it. An **indirect tax** is one where the person who pays it to the government shifts the burden on to another. **GST** and **customs duty** are the examples: the trader deposits the tax but recovers it in the price from the customer, who actually bears it.

C. Points of distinction

1. **Shifting of burden.** Direct — cannot be shifted; indirect — shifted down to the consumer.
2. **Who bears it.** Direct — the assessee himself; indirect — the ultimate buyer.
3. **On what it is levied.** Direct — on income or wealth; indirect — on goods and services (supply, import).
4. **Progressive vs regressive.** Direct taxes can be made **progressive** (rise with income) and so help reduce inequality; indirect taxes are **regressive** — the same rate falls on rich and poor buyer alike.
5. **Awareness or “pinch”.** A taxpayer *feels* a direct tax because he writes the cheque; an indirect tax hides in the price, so it is less resented and easier to collect.
6. **Cost of collection.** Indirect taxes are gathered at a few points (the sellers) and are cheaper to administer; direct taxes need the assessment of each person.
7. **Examples.** Direct — income tax and the former wealth tax; indirect — GST, customs duty, and the former excise and service tax.

D. Merits and demerits

Direct taxes are **equitable** (they can be graduated to ability to pay) and **certain**, but they are **inconvenient** to pay and invite **evasion**. Indirect taxes are **convenient** (paid in small amounts hidden in the price) and **broad-based** (even the poorest consumer contributes), but they are **regressive** and can push up prices. A sound tax system therefore uses **both**, balancing equity against ease of collection.

E. The shifting mechanism, illustrated

It helps to trace the burden through a chain of transactions, because that is where the "shifting" becomes visible. When a manufacturer sells goods to a wholesaler, he **adds the GST to the invoice**; the wholesaler pays it but **recovers it** from the retailer, who in turn recovers it from the final consumer. At every stage the trader who deposits the tax is out of pocket only momentarily, because he **passes it forward** in the price, and **input tax credit** lets him set off the tax he paid against the tax he collects. The result is that the **whole burden comes to rest on the last buyer**, who has no one to pass it to — the classic mark of an **indirect** tax. In a **direct** tax such as income tax there is **no such chain**: the person who earns the income pays the tax and simply bears it, with no invoice on which to shift it. This is also why the Constitution matters here — income tax is a **Union** levy (Entry 82, List I), while GST is a **shared** levy under **Art. 246A**, and customs is a Union levy (Entry 83) — the classification into direct and indirect maps onto the distribution of taxing power the earlier topics describe.

F. Leading case and conclusion

- *McDowell & Co. v CTO (1985)* — describes how an indirect tax is built into and recovered through the price, confirming the shifting feature that defines the class.

To conclude, the test is **not** who collects the tax — the government collects both — but **who ultimately bears it and whether the burden can travel**. If it stays on the payer it is **direct** (income tax); if it hides in the price and the buyer really pays, it is **indirect** (GST, customs). That single question decides every case.

Q1.3 — `[16M]` Distinguish between tax and fee. (Explain tax, fee, cess and compensatory tax.)

> *Asked: Mar 2021 (100), Nov 2021 (100), Apr 2022 (100), Mar 2023 (100), Jan 2025 (100), Jan 2026 (100) · Pattern: both · ★★★ · Notes: Unit 1 → Topic 3 (Tax vs Fee; Cess; Compensatory Tax)*

> ▤ ***ANSWER OUTLINE***
>
> 1. *Both are compulsory; the difference is the return.*
> 2. *Tax vs fee — five points of distinction.*
> 3. *The correlation rule — broad, not exact.*
> 4. *Cess and compensatory/regulatory tax.*
> 5. *Shirur Mutt (1954), Sreenivasa (1983); conclusion.*

Introduction.

Both a **tax** and a **fee** are compulsory payments to the State, so what separates them? The answer is **the return the payer gets**. A tax is levied for the *general* public good and carries **no** *quid pro quo*; a fee is a charge for a *particular service* rendered to the payer and must broadly match the cost of that service. The line was first drawn in India in *Commissioner, HRE, Madras v Shirur Mutt (1954)*, where a levy on a temple's managers to fund the department supervising religious endowments was upheld as a valid **fee**, because the money was earmarked for services to that very class of institutions.

A. Tax versus fee — the points of distinction

1. **Return.** A **tax** gives no direct return; a **fee** gives a specific service in exchange — a court fee, a licence fee, a passport fee.
2. **Correlation to cost.** A tax needs no correlation; a fee must **broadly correlate** to the cost of the service rendered.
3. **Who benefits.** A tax benefits the **general public**; a fee benefits the **particular payer** or his class.
4. **Where the money goes.** A tax goes into the general **Consolidated Fund**; a fee is usually kept in a **separate fund** for the service.
5. **Basis of the power.** A tax rests on the State's **taxing entries** in the legislative lists; a fee rests on the "**fees in respect of any matter in this List**" entry attached to each list.

B. The correlation need not be exact

Early cases demanded a close *quid pro quo* between the fee and the service. The modern view relaxes this: only a **broad, reasonable correlation** between the fee and the cost of the service is required, not arithmetical equivalence. This was settled in *Kewal Krishan Puri v State of Punjab (1980)* and *Sreenivasa General Traders v State of A.P. (1983)* — so a fee does not fail merely because it yields a little more or less than the exact cost.

C. Tax versus cess

A **cess** is a **tax levied for a specific, earmarked purpose** — an education cess, a health cess, a Swachh Bharat cess, a GST compensation cess. It is collected *as a tax*, so it needs no *quid pro quo*; but unlike an ordinary tax it is **tied to a named object** and, in principle, spent only on that object. A cess is therefore a **tax, not a fee**; the only difference from an ordinary tax is the **earmarking**. It is usually levied as a percentage *on top of* an existing tax.

D. Compensatory and regulatory tax

A **compensatory tax** is charged as a *recompense* for a specific facility the State provides — classically a **toll** or road tax for the use of roads and bridges. It sits *between* a tax and a fee: like a fee it relates to a facility, but it is levied on a **class of users** rather than for an individual service. A **regulatory** levy is charged mainly to *regulate* an activity (a licence to control a trade) and only incidentally to raise revenue. The compensatory idea was historically used to save inter-State levies from the free-trade guarantee of **Article 301** (Topic 7), until a nine-judge Bench in *Jindal Stainless Ltd. v State of Haryana (2016)* discarded the doctrine.

E. Leading cases and conclusion

- *Commissioner, HRE, Madras v Shirur Mutt (1954)* — laid down the tax/fee line; a fee needs a correlation to services, a tax does not.
- *Kewal Krishan Puri v State of Punjab (1980)* — a fee must reasonably correlate with the cost of the service.
- *Sreenivasa General Traders v State of A.P. (1983)* — only a **broad**, not exact, correlation is required.

To conclude: a **tax** is a common burden for the general benefit with no return; a **fee** is a charge for a service the payer receives, broadly matched to its cost; a **cess** is a tax locked to one object; and a **compensatory tax** is a charge for using a facility. The master test that runs through all four is the **return** — what, if anything, does the payer get back? A tax gives nothing specific, a fee gives a **service**, a cess gives nothing but is **earmarked**, and a compensatory tax gives the use of a **facility**. Keeping these four apart, each with its own case and its own place in the Consolidated Fund, is what a full-marks answer demonstrates, and it is why this comparison recurs almost every year.

Q1.4 — `[16M]` Distinguish between tax evasion, tax avoidance and tax planning.

> *Asked: Dec 2019 (100), Dec 2020 (100), Mar 2023 (100), Aug 2024 (100), Jan 2025 (100), Jul 2025 (100) · Pattern: both · ★★★ · Notes: Unit 1 → Topic 4 (Evasion, Avoidance & Planning)*

> ▤ ***ANSWER OUTLINE***
>
> 1. *The one-line legality test up front.*
> 2. *Define evasion, avoidance, planning — one paragraph each.*
> 3. *Five-point distinction table.*
> 4. *The case journey — McDowell (1985) → Azadi Bachao (2003) → Vodafone (2012).*
> 5. *Conclusion — evasion breaks, avoidance bends, planning follows.*

⚠ **DON'T CONFUSE**

Looks like: the "retrospective taxation" short note (S1.3, Unit 1), which shares the *Vodafone* (2012) case. **How it differs:** this essay classifies three *ways of reducing tax*; retrospective taxation is about a *law reaching back in time*. *Vodafone* appears in both, but for different reasons — here as the end of the avoidance story, there as the trigger of the retrospective amendment. **Tell them apart by:** "evasion / avoidance / planning" (a classification) versus "retrospective" (a timing question).

Introduction.

All three ideas try to reduce a tax bill, which is why students blur them; but they sit on opposite sides of the law. The **one-line test** to state up front is this: **evasion is illegal, avoidance is legal in form but improper, and planning is legal and intended.** Picture three people facing the same bill — the evader lies, the avoider exploits a loophole, the planner uses the reliefs the Act itself offers.

A. Tax evasion

Tax evasion is illegal. It is the deliberate suppression of facts, non-disclosure, false claims or fake bills to escape a tax that is *lawfully due*. The income is hidden or misdescribed. Because it is fraud on the revenue, it attracts **penalty and prosecution**. Examples are keeping the income out of the books, inflating expenses with bogus vouchers, or claiming a deduction one is not entitled to.

B. Tax avoidance

Tax avoidance is legal in form but not bona fide. The taxpayer *discloses* everything but exploits **gaps and loopholes** in the law to reduce tax in a way the legislature never intended — often through artificial or "colourable" arrangements. It uses the **letter of the law against its spirit**. It is not fraud (nothing is hidden), but the arrangement may be struck down as a **sham** where the courts see through the device.

C. Tax planning

Tax planning is legal and legitimate. The taxpayer uses the **reliefs the Act itself provides** — deductions, exemptions, the right investment, the right form of holding — to reduce tax exactly as the legislature intended. The law *invites* it; there is no impropriety at all. Investing in an approved savings scheme to claim a deduction is planning, not avoidance.

D. Points of distinction

1. **Legality.** Evasion — illegal; avoidance — technically legal but improper; planning — legal and proper.
2. **Means.** Evasion — concealment, fraud, false accounts; avoidance — loopholes and artificial devices; planning — the exemptions and deductions in the Act.

3. **Disclosure.** Evasion — the facts are hidden; avoidance and planning — the facts are disclosed.
4. **Consequence.** Evasion — penalty plus prosecution; avoidance — may be struck down as a sham; planning — fully allowed.
5. **Morality.** Evasion — fraud; avoidance — sharp practice; planning — honest use of the law.

E. The case journey

The judicial attitude has swung across three landmarks:

1. In *McDowell & Co. v CTO (1985)*, Justice Chinnappa Reddy held that tax avoidance through **"colourable devices"** is not to be admired and it is "not wisdom to encourage or connive at" dodges dressed up as clever planning. For years this made *all* avoidance suspect.
2. In *Union of India v Azadi Bachao Andolan (2003)* the Court **softened** McDowell, holding that arranging one's affairs lawfully to pay less tax — legitimate tax planning within the four corners of the Act — is permissible.
3. In *Vodafone International Holdings v Union of India (2012)* the Court confirmed that a genuine, legally structured transaction cannot be taxed merely because it saves tax; the offshore indirect transfer there was not taxable in India.

F. Effects and the modern response

A rounded answer notes both the **harm** each does and the **State's response**. Evasion and aggressive avoidance **starve the exchequer**, shift the burden on to honest taxpayers, and breed a parallel black economy; planning, by contrast, is **harmless** because the legislature deliberately built the reliefs it uses. To curb the middle case — avoidance — India moved from a purely judicial attitude to a **statutory** one: the swing from *McDowell* (1985) through *Azadi Bachao* (2003) and *Vodafone* (2012) showed that case-by-case disapproval was uncertain, so Parliament enacted a **General Anti-Avoidance Rule (GAAR)** to strike down an "impermissible avoidance arrangement" that lacks commercial substance and exists mainly to obtain a tax benefit. The same period saw the **retrospective-tax** controversy that followed *Vodafone*, and India's eventual **retreat** from it in 2021 — a reminder that the State's tools against avoidance must themselves stay within fair and predictable limits. The practical prevention measures — disclosure requirements, TDS, information-matching through PAN, and GAAR — all aim at the avoider without troubling the planner.

G. Conclusion

The dividing lines are best fixed by a memory hook: **evasion *breaks* the law, avoidance *bends* it, and planning *follows* it.** Evasion is met with prosecution; avoidance may be defeated as a sham; planning is encouraged. A full-marks answer states the legality test first, gives one paragraph and one case for each, and never lets the three read as three interchangeable descriptions.

Q1.5 — `[16M]` Explain the constitutional provisions relating to the power of taxation in India. ("No tax shall be levied or collected except by authority of law" — discuss Article 265.)

> *Asked: Mar 2021 (100), Nov 2021 (100), Apr 2022 (100), Nov 2022 (100), Mar 2023 (100), Mar 2024 (100), Jan 2025 (100), Jul 2025 (100), Jan 2026 (100) · Pattern: both · ★★★ · Notes: Unit 1 → Topic 5 (Power of Taxation under the Constitution)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Article 265 — the foundation; its three requirements.*
>
> *2. Article 246 + Seventh Schedule — who taxes what.*
>
> *3. Article 246A — the GST exception; residuary power.*
>
> *4. Other limits — Arts. 286, 301–304, 285/289, Fundamental Rights.*
>
> *5. Moopil Nair (1961), Kesoram (2004); conclusion.*

Introduction.

In India the taxman's power **begins and ends with the Constitution**. The controlling command is **Article 265**: "No tax shall be levied or collected except by authority of law." Around it stand the distribution of taxing power between the Union and the States (Article 246 with the Seventh Schedule), the special concurrent power over GST (Article 246A), the residuary power, and a set of outer limits. A full answer must set out all of these as a scheme.

A. Article 265 — the foundation

Article 265 means three things, and if any fails the tax is void and refundable:

1. **There must be a law** — a statute passed by a legislature, not a mere executive order or notification standing alone.
2. **That law must be valid** — passed by a legislature that had the **competence** to pass it and following a valid procedure.
3. **Both the levy and the collection must be authorised** — the section speaks of "levied *or* collected", so an unauthorised collection is as bad as an unauthorised levy.

> ***Article 265:*** *"No tax shall be levied or collected except by authority of law."*

B. Article 246 and the Seventh Schedule — who may tax what

Article 246 divides legislative power using three lists in the **Seventh Schedule**:

1. **List I (Union List)** — taxes only Parliament may levy: income tax (Entry 82), customs (Entry 83), the former Union excise (Entry 84, now limited to petroleum and tobacco), corporation tax (Entry 85).
2. **List II (State List)** — taxes only State legislatures may levy: tax on agricultural income (Entry 46), land revenue (Entry 45), taxes on the sale of alcohol and petroleum, tolls, and taxes on professions (Entry 60).
3. **List III (Concurrent List)** — historically carries **no** tax entries, so a tax must belong clearly to List I or List II.

A crucial rule runs through this: **a taxing entry is distinct from a general regulatory entry.** The power to *regulate* a subject does not include the power to *tax* it unless a separate taxing entry exists — so each tax must be traced to its **own** taxing entry.

C. Article 246A (GST) and the residuary power

The **101st Amendment, 2016** inserted **Article 246A**, giving Parliament and every State legislature **concurrent** power to tax goods and services. GST is thus the great exception to the "no tax in the Concurrent List" rule (Unit III). Any tax **not** mentioned in any list falls to **Parliament** under the **residuary power** — Article 248 with Entry 97 of List I.

> ***Article 246A:*** *Parliament and the State legislatures have concurrent power to make laws with respect to goods and services tax.*

D. Other constitutional limits

The taxing power, though wide, is fenced by several provisions:

1. **Article 286** — a State cannot tax a supply that takes place *outside* the State or in the course of *import or export*.
2. **Articles 301–304** — the free-trade guarantee; a tax must not impede inter-State trade, and a State taxing imported goods must tax its own like goods equally (Topic 7).
3. **Articles 285 and 289** — the mutual tax immunity of Union and State property (Topic 6).
4. **The Fundamental Rights** — a tax law, like any law, must respect **Article 14** (no arbitrariness) and **Article 19(1)(g)** (freedom of trade), and by **Article 27** no one may be compelled to pay a tax whose proceeds promote a particular religion.

E. Scope of Parliament's power, cases and conclusion

Parliament's taxing power is therefore very wide — everything in List I, plus the residuary power, plus the concurrent GST power — subject only to the Fundamental Rights and the free-trade guarantee. But it is **not unlimited**: it may not cross into the States' exclusive List II entries, and it must obey Article 265.

- *K.T. Moopil Nair v State of Kerala (1961)* — an arbitrary, confiscatory tax that violates **Article 14** is void; a tax law is subject to the Fundamental Rights.
- *Kesoram Industries Ltd. v Union of India (2004)* — the power to *tax* must be traced to a specific taxing entry; a regulatory entry does not carry it.
- *A.V. Fernandez v State of Kerala (1957)* — in a taxing statute one looks merely at what is clearly said; the subject is taxed only if the letter of the law catches him.

In sum, the Indian scheme is: **no tax without a valid law (Art. 265); the lists decide who taxes what (Art. 246); GST is shared (Art. 246A); and every tax must clear the Fundamental Rights and the free-trade guarantee.** Power to tax is a sovereign power, but in India it is a **constitutional** power, exercised only within these limits.

Q1.6 — `[16M]` Explain the doctrine of immunity of State instrumentalities from taxation.

> *Asked: Dec 2019 (100), Dec 2020 (100), Mar 2021 (100), Mar 2023 (100), Oct 2023 (100), Mar 2024 (100), Aug 2024 (100) · Pattern: both · ★★ · Notes: Unit 1 → Topic 6 (Immunity of State Agencies)*

> ▤ ***ANSWER OUTLINE***
>
> 1. *Why a federation needs mutual immunity.*
> 2. *Article 285 — Union property free of State tax.*
> 3. *Article 289 — State property/income free of Union tax; the trade exception.*
> 4. *The immunity is not absolute — governmental vs commercial.*
> 5. *NDMC (1997), In re Sea Customs Act (1963); conclusion.*

Introduction.

In a federation the Union and the States are **co-ordinate governments**. If one could freely tax the other's property, it could use the taxing power as a **weapon** to cripple the other. So the Constitution grants a **mutual (reciprocal) immunity** — the doctrine of immunity of State instrumentalities. The nine-judge Bench in *New Delhi Municipal Council v State of Punjab (1997)* examined exactly how far this immunity reaches.

A. Article 285 — Union property exempt from State taxation

The **property of the Union** is exempt from all taxes imposed by a State or by any authority within a State, save in so far as Parliament may by law provide otherwise. This protects central assets — railways, defence land, public buildings — from being taxed away by a State.

> ***Article 285(1):*** *"The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State."*

B. Article 289 — State property and income exempt from Union taxation

The **property and income of a State** are exempt from Union taxation. But there is a **vital exception**: if a State carries on a **trade or business** — a commercial activity — the Union *may* tax that trade or the income from it, unless Parliament declares the activity incidental to the ordinary functions of government.

> ***Article 289(1) and (2):*** *"The property and income of a State shall be exempt from Union taxation." But "nothing… shall prevent the Union from imposing… any tax in respect of a trade or business of any kind carried on by… a State…"*

C. The immunity is not absolute

The key to the doctrine is that it is **not absolute** — it protects the **governmental** functions of a State, not its **commercial** ventures. There is also an **asymmetry**: Union property is broadly immune from State tax under Article 285, but a State's *business* income is taxable by the Union under Article 289(2). The reason is policy: a government should not gain a competitive advantage in ordinary trade merely by wrapping a business in the cloak of the State.

D. Direct taxes versus indirect duties

The immunity was further confined in *In re Sea Customs Act, S.20(2) (1963)*: a State's immunity under Article 289 covers **direct taxes** on the State's property and income, but does **not** bar an **indirect duty** such as **customs or excise** on goods the State imports or manufactures. The duty there is on the goods, not on the State as such, so the immunity does not reach it.

E. The rationale and the asymmetry explained

The doctrine rests on a simple federal insight worth developing: in a federation the Union and the States are **co-ordinate, not subordinate**, and a power to tax is, in Chief Justice Marshall's famous phrase, a **power to destroy**. If either government could freely tax the other's property, it could **cripple** the other and upset the constitutional balance, so the framers granted a **reciprocal immunity** in Articles 285 and 289. Yet the immunity is deliberately **asymmetrical**, and explaining why earns marks. **Article 285** protects **Union property** broadly from State taxation, because central assets are spread across every State and should not be at the mercy of local levies. **Article 289** protects a State's property and income from Union tax, **but** withdraws that protection where the State runs a **trade or business** — because a State selling electricity, running a factory or trading in goods competes with private enterprise, and to exempt its commercial profits would give it an **unfair advantage** and erode the Union's tax base. The line, in every case, is **governmental function versus commercial venture**.

F. Leading cases and conclusion

- *New Delhi Municipal Council v State of Punjab (1997)* — a nine-judge Bench examined the scope of Article 289 and the reach of State immunity from Union taxation.
- *In re Sea Customs Act, S.20(2) (1963)* — the immunity covers direct taxes on State property/income, not indirect duties like customs.
- *K.T. Moopil Nair v State of Kerala (1961)* — a companion reminder that even outside immunity, a tax violating Article 14 is void.

To conclude: the doctrine of immunity of State instrumentalities secures the **federal balance** by preventing either government from taxing the other's property. Under **Article 285** Union property is immune from State tax; under **Article 289** State property and income are immune from Union tax — **except** a State's trade or business, which the Union may tax. The immunity shields **government**, not **commerce**, and it does not extend to indirect duties on goods.

Q1.7 — `[16M]` "A tax must be levied in conformity with the Fundamental Rights." Discuss.

> *Asked: Dec 2020 (100), Mar 2023 (100), Oct 2023 (100) · Pattern: both · ★★ · Notes: Unit 1 → Topic 6 (Fundamental Rights & the Power of Taxation)*

> ▤ ***ANSWER OUTLINE***
>
> 1. *A tax law is a "law" — Article 13 subjects it to the Rights.*
> 2. *Article 265 and Article 14 — no arbitrary or confiscatory tax.*
> 3. *Article 19(1)(g) and Article 27 — trade freedom and religion.*
> 4. *The legislature's wide fiscal latitude, and its limit.*
> 5. *Moopil Nair (1961); conclusion.*

Introduction.

A tax law is a **law**, and **Article 13** makes every law subject to the Fundamental Rights. So although the power to tax is very wide, it is **not outside the Constitution**: a tax must pass through the Fundamental-Rights filter. The statement in the question is therefore correct — a tax that is confiscatory, arbitrary, or that violates a guaranteed right will be struck down.

A. Article 265 as a guarantee

Article 265 — no tax without authority of law — is itself the **first guarantee** against arbitrary exaction. It ensures the citizen is taxed only under a valid statute passed by a competent legislature, not at the will of an official.

B. Article 14 — no arbitrary or discriminatory tax

Under **Article 14** a tax must not be **arbitrary** or **discriminatory**. The State has **wide latitude to classify** — it may tax luxuries higher than necessities, or one trade differently from another, provided the classification is reasonable. But a tax with **no rational basis** is void. In *K.T. Moopil Nair v State of Kerala (1961)* a flat, per-acre land tax that ignored whether the land yielded any income was struck down as **arbitrary and confiscatory**.

C. Article 19(1)(g) — freedom of trade

Under **Article 19(1)(g)** a tax must not be so **excessive** as to amount to a **restriction** on the freedom to carry on trade, business or profession. A reasonable tax is a permissible restriction under **Article 19(6)**; but a tax pitched so high that it makes a lawful trade impossible ceases to be a mere tax and becomes an unconstitutional restraint.

D. Articles 27 and 301

Two further limits deserve mention:

1. **Article 27** — no person may be **compelled to pay a tax** whose proceeds are spent on **promoting or maintaining a particular religion**. The State is secular, so it cannot fund one faith out of a compulsory levy.
2. **Article 301** — a tax must not impede the **free flow of inter-State trade**; a State may tax imported goods only without discriminating against them (Topic 7).

E. The legislature's latitude and its limit

Courts give the legislature **great freedom in fiscal matters**. They will not sit as a **super-tax-tribunal**, second-guessing the rate or the policy of a tax, because taxation involves complex economic choices best left to the elected legislature. But this deference has a floor: a tax that is **confiscatory**, **arbitrary**, or that **violates a Fundamental Right** will be struck down. Deference is not abdication.

F. How the courts actually test a tax law

It helps to state **how** a court applies these limits, because the examiner rewards the method, not just the list. The starting point is that a **fiscal statute enjoys a strong presumption of constitutionality**: taxation involves complex economic judgments, and the legislature is allowed **wide latitude** to select the subjects, rates and exemptions of a tax. A court will therefore **not** strike a tax down merely because it is heavy, or because another scheme would have been fairer. The challenge succeeds only where the tax crosses a clear line — where, under **Article 14**, the classification is **arbitrary** or has **no rational nexus** to the object (as with the flat, income-blind land tax in *Moopil Nair*

(1961)); where, under **Article 19(1)(g)**, the levy is so **confiscatory** that it destroys the very trade it taxes and cannot be saved as a reasonable restriction under Article 19(6); or where **Article 265** is breached because the levy lacks the authority of a valid law. Articles **14, 19 and 21** operate together as the "**golden triangle**", so a tax that is arbitrary is also an unreasonable restriction. The court's role is thus **supervisory**, policing the outer boundaries while leaving the design of the tax to the legislature.

G. Leading case and conclusion

- *K.T. Moopil Nair v State of Kerala (1961)* — an arbitrary, confiscatory tax that violates Article 14 is unconstitutional; the leading authority that a tax law is subject to the Fundamental Rights.

To conclude: the power to tax is **not immune** from the Fundamental Rights. It must satisfy **Article 265** (a valid law), **Article 14** (no arbitrariness), **Article 19(1)(g)** (no excessive burden on trade), and **Article 27** (not for a religion). Within those limits the legislature is free to design its taxes; beyond them, the tax is void. The statement in the question is thus a settled principle of Indian constitutional law.

B. Short Notes (8M — Q8) — Model Answers

S1.1 — `[8M]` Tax and cess.

> *Asked: Dec 2012 (100), Dec 2019 (100), Mar 2021 (100), Nov 2021 (100), Apr 2022 (100), Mar 2023 (100), Aug 2024 (100), Jan 2025 (100), Jan 2026 (100) · Pattern: both · ★★★ · Notes: Unit 1 → Topic 3 (Tax vs Fee; Cess)*

> ▤ ***ANSWER OUTLINE***
>
> 1. *Define tax and cess.*
> 2. *A cess is a tax, earmarked for one object.*
> 3. *How it is levied — on top of an existing tax.*
> 4. *Examples; distinction from an ordinary tax.*
> 5. *Conclusion.*

Introduction.

A **tax** is a compulsory exaction by a public authority, for the general public good, with **no** *quid pro quo*, and its proceeds go into the common **Consolidated Fund**. A **cess** is a **species of tax** distinguished only by its purpose.

A. A cess is an earmarked tax

1. A **cess** is a **tax levied for a specific, earmarked purpose** — an education cess, a health cess, a Swachh Bharat cess, a GST compensation cess. It is collected *as a tax*, so, like any tax, it needs **no service in return**.
2. The single difference from an ordinary tax is the **earmarking**: a cess is **tied to a named object** and, in principle, spent only on that object, whereas an ordinary tax merges into the general fund and may be spent on anything.

B. How it is levied

1. A cess is usually levied as a **percentage on top of** an existing tax — for example, a 4% health-and-education cess computed on the income-tax payable. It rides on the base tax rather than standing as an independent levy.
2. Because it is a tax and not a fee, it does **not** require any correlation to a service; the earmarking is a matter of **appropriation**, not of *quid pro quo*.

C. Distinction from an ordinary tax

1. **Purpose.** Ordinary tax — general revenue; cess — one named object.
2. **Destination.** Ordinary tax — the general Consolidated Fund; cess — in principle, a fund for its object.
3. **Form.** Ordinary tax — a stand-alone levy; cess — usually an addition on top of another tax.

Conclusion.

A cess is therefore **a tax, not a fee** — compulsory and without return — but a tax **locked to a single purpose**. Whenever an examiner pairs “tax and cess”, the scoring point is that the two are the **same in nature** and differ only in that the cess is **earmarked**.

S1.2 — `[8M]` Compensatory / regulatory tax.

> *Asked: Apr 2022 (100), Mar 2023 (100) · Pattern: both · ★★ · Notes: Unit 1 → Topic 3 (Compensatory/Regulatory Tax)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Compensatory tax — a charge for a facility.*
>
> *2. It sits between a tax and a fee.*
>
> *3. Regulatory levy — mainly to regulate.*
>
> *4. Its historical role under Article 301; Jindal (2016).*
>
> *5. Conclusion.*

Introduction.

A **compensatory tax** and a **regulatory levy** are two special charges that borrow features of both a tax and a fee, and they matter chiefly because of their place in the free-trade story of the Constitution.

A. Compensatory tax

1. A **compensatory tax** is one charged as a **recompense for a specific facility** the State provides — classically a **toll** or road tax for the use of roads and bridges. The user pays because he uses the facility.
2. It sits **between a tax and a fee**: like a fee it relates to a facility, but it is levied on a **class of users** rather than for an individual, measured service. There is a rough, not exact, link between the charge and the facility.

B. Regulatory levy

1. A **regulatory levy** is charged mainly to **regulate an activity** — a licence to control a trade or a dangerous occupation — and only **incidentally** to raise revenue. Its dominant purpose is control, not collection.

C. Constitutional significance

1. The compensatory idea was historically used to **save inter-State levies** from the free-trade guarantee of **Article 301**: a charge that was really payment for facilities used by traders was held **not** to impede trade, so it needed no special sanction.
2. That doctrine was **discarded** by a nine-judge Bench in *Jindal Stainless Ltd. v State of Haryana (2016)*, which held that the true test under **Article 304(a)** is **non-discrimination**, not “compensation”.

Conclusion.

A compensatory tax is thus a **charge for using a facility** (a toll), and a regulatory levy is a **charge to control an activity**. Both once escaped Article 301 as “compensatory”, but after *Jindal Stainless* (2016) the surviving test is simply whether the levy **discriminates** against goods from other States.

S1.3 — `[8M]` Retrospective taxation.

> *Asked: Mar 2023 (100), Aug 2024 (100) · Pattern: both · ★★ · Notes: Unit 1 → Topic 4 (Retrospective Taxation)*

> ▤ ***ANSWER OUTLINE***
>
> *1. Define retrospective tax.*
>
> *2. Why it is controversial.*
>
> *3. Parliament's power, and the limits.*
>
> *4. The Vodafone (2012) episode and the 2021 retreat.*
>
> *5. Conclusion — permissible but disfavoured.*

Introduction.

A **retrospective tax** is a tax imposed by a law that **reaches back in time** to tax a transaction that had already been completed before the law was passed.

A. Why it is controversial

1. Retrospective taxation **upsets settled expectations**. A person who arranged his affairs lawfully under the *old* law suddenly finds a *new* law taxing him for the past — something he could not have planned for.
2. It offends the ordinary principle that laws should operate **prospectively**, giving fair notice before conduct is taxed.

B. Parliament's power and its limits

1. Parliament **has the power** to legislate retrospectively — for instance by a **validating** or **clarificatory** amendment that cures a defect or makes plain what the law always meant.
2. But the courts insist the retrospective law be **clear and reasonable**, and it can be tested under **Article 14** if it is **arbitrary**. The power exists, but it is closely watched.

C. The Vodafone episode

1. In *Vodafone International Holdings v Union of India (2012)* the Supreme Court held that the indirect transfer of Indian assets through an **offshore share sale** was **not** taxable in India.
2. Parliament responded with a **retrospective amendment (Finance Act, 2012)** taxing such indirect transfers back to 1961. It drew heavy criticism and international arbitration.
3. Finally the **Taxation Laws (Amendment) Act, 2021 withdrew** that retrospective effect for transactions before 28 May 2012 — India's public retreat from retrospective taxation.

Conclusion.

The lesson for the exam is that retrospective taxation is **permissible but disfavoured**: Parliament may do it, but it is constitutionally suspect if arbitrary, and India has stepped back from its most famous use of it after the *Vodafone* saga.

S1.4 — `[8M]` Commerce clause; taxation of inter-State commerce.

> *Asked: Nov 2022 (100), Mar 2023 (100), Oct 2023 (100) · Pattern: both · ★ ·*
> *Notes: Unit 1 → Topic 7 (Commerce Clause)*

> ▤ ***ANSWER OUTLINE***
>
> *1. India as one economic unit — Article 301.*
>
> *2. Articles 302–304 — the scheme.*
>
> *3. The case journey — Atiabari (1961) to Jindal (2016).*
>
> *4. The surviving test — non-discrimination.*
>
> *5. Conclusion.*

Introduction.

India is meant to be **one economic unit** — goods should flow across State borders without being choked by internal tariffs. Part XIII of the Constitution (the "**commerce clause**") secures this free flow of trade.

A. The scheme of Articles 301–304

1. **Article 301** — trade, commerce and intercourse throughout the territory of India shall be **free**.
2. **Article 302** — Parliament may impose **reasonable restrictions** in the public interest.
3. **Article 303** — neither Parliament nor a State may **discriminate** between States, save to meet scarcity.
4. **Article 304(a)** — a State may tax imported goods **provided** it taxes its own like goods equally — **no discrimination** — and under 304(b) may impose reasonable restrictions in the public interest.

B. How the doctrine developed

1. In *Atiabari Tea Co. Ltd. v State of Assam (1961)* a tax that **directly and immediately** restricted the movement of trade was held to violate Article 301.
2. In *Automobile Transport (Rajasthan) Ltd. v State of Rajasthan (1962)* the Court added the **compensatory-tax exception** — a charge for facilities used by the trader does not impede trade.
3. In *Jindal Stainless Ltd. v State of Haryana (2016)* a nine-judge Bench **discarded** the compensatory-tax doctrine and made **non-discrimination** the test.

Conclusion.

So a State **can** tax inter-State goods, but the tax must **not discriminate** against goods coming from other States (Article 304(a)). Under GST this area is now largely settled by the destination-based IGST model (Unit IV), which is neutral between States. The commerce clause thus balances two goals — a single national market under Article 301, and the States' legitimate power to tax — and the modern reconciling test, after *Jindal Stainless* (2016), is simply **non-discrimination**.

S1.5 — `[8M]` Delegation of taxing power to State legislatures and local bodies.

> *Asked: Mar 2021 (100), Nov 2021 (100), Nov 2022 (100), Oct 2023 (100), Mar 2024 (100), Jan 2026 (100) · Pattern: both · ★★ · Notes: Unit 1 → Topic 8 (Delegation of Taxing Power)*

> ▤ ***ANSWER OUTLINE***
>
> 1. *The rule against excessive delegation.*
> 2. *What may be delegated; what must be kept.*
> 3. *Delegation to local bodies — a derivative power.*
> 4. *Devi Das (1967) — the guidance/ceiling test.*
> 5. *Conclusion.*

Introduction.

A municipality cannot pass its own "Act", yet your city charges you property tax every year. It can do so because a State legislature **delegates** the power to fix and collect certain taxes — within limits the legislature itself lays down.

A. What may and may not be delegated

1. The rule against **excessive delegation** allows a legislature to delegate the **details and machinery** of a tax, but requires it to decide the **essential legislative function** itself — the **subject** of the tax, the **taxable person**, and the **maximum rate** or the policy that guides the rate.
2. The delegate — the executive or a local body — then **fills the gaps**: it sets the exact rate within the ceiling, prescribes the procedure and grants exemptions, all within the legislature's guidance. A **naked, unguided** power to tax cannot be handed down.

B. Delegation to local bodies

1. State laws — municipal Acts, panchayat Acts — authorise **local bodies** to levy **property tax, water tax, taxes on trades and professions, entertainment tax and (formerly) octroi**.
2. This power is entirely **derivative**: it exists only because a State statute conferred it, and only to the extent conferred. **Articles 243H and 243X** enable States to authorise panchayats and municipalities to levy and collect such taxes.

C. The controlling test

1. In *Devi Das Gopal Krishnan v State of Punjab (1967)* the Court struck down a provision letting the government fix a sales-tax rate with **no ceiling**, but upheld a later version that set a **maximum**. The test is therefore: **guidance and a ceiling save the delegation; a blank cheque destroys it.**

Conclusion.

A legislature may let the government or a municipality fix the exact rate and run the machinery of a tax, but it must **first** decide *what* is taxed, *who* pays and the *maximum* rate. A local body's power to tax is only **borrowed** from a State law.

S1.6 — `[8M]` Finance Commission and its functions.

> *Asked: Nov 2021 (100) · Pattern: both · ★ · Notes: Unit 1 → Topic 9 (Finance Commission)*

> ▤ ***ANSWER OUTLINE***
>
> 1. *What it is — Article 280, every five years.*
> 2. *Composition.*
> 3. *Functions under Article 280(3).*
> 4. *Nature of its recommendations; GST-era relevance.*
> 5. *Conclusion.*

Introduction.

The Union collects the largest taxes, but the States do most of the day-to-day spending on health, roads and schools. The body that decides how the central pool is split is the **Finance Commission** under **Article 280** — the balancing wheel of Indian fiscal federalism.

A. What it is and its composition

1. The **Finance Commission** is a body the President must constitute **every five years** (or earlier if needed) under **Article 280** to recommend how the financial resources of the Union and the States are shared.
2. **Composition:** a **Chairman and four other members**, appointed by the President. Parliament prescribes their qualifications — the Chairman usually a person with experience in public affairs, the members experts in finance, economics or administration.

B. Functions under Article 280(3)

1. The **distribution** of the net proceeds of shareable taxes between the Union and the States, and the **allocation** among the States of their shares (vertical and horizontal devolution).
2. The **principles governing grants-in-aid** to the States out of the Consolidated Fund of India (Article 275).
3. Measures to **augment a State’s Consolidated Fund** to supplement the resources of panchayats and municipalities.
4. Any other matter referred to it by the President in the interests of sound finance.

C. Nature of its recommendations

1. The Commission’s recommendations are **advisory / recommendatory** — not binding — but by convention the Union accepts them, and they are laid before Parliament.
2. **GST-era relevance:** even after GST centralised indirect-tax rate-setting in the GST Council, the Finance Commission still divides the **shareable central taxes** and recommends grants, so it remains central to Centre-State finance.

Conclusion.

Every five years, then, the President sets up a five-member Finance Commission (Article 280) to advise how central tax money is split between the Union and the States, and among the States. Its advice is **not binding**, but the government almost always follows it.
