This course covers advanced topics in U.S. international taxation. It meets during the first seven weeks of the spring semester. U.S. International Tax I is a prerequisite for the course. An optional continuation of the course, U.S. International Tax III, meets during the second half of the semester. U.S. International Taxation II is a prerequisite for the latter course.

U.S. International Taxation II is about U.S. income taxation of U.S. persons, principally domestic corporations, investing and doing business in other countries, principally through foreign corporations. The first part of the course is a study of the credit allowed to U.S. citizens and residents and domestic corporations for income taxes paid to other countries. Most countries, including the United States, tax residents (including domestic corporations) on worldwide income, with relief for double taxation, and tax nonresidents (including foreign corporations) on income from domestic sources. The United States allows a foreign tax credit to U.S. citizens and residents and domestic corporations to alleviate double taxation that often results when they have income from sources in other countries, which those countries tax. The credit follows an international consensus that primary responsibility for alleviating double taxation rests with the country of which the taxpayer is a resident, not the country of source. Many other countries exempt their residents from tax on income likely to be taxed fully in the country of origin (e.g., income from a permanent establishment in a foreign country) and allow credit only for foreign taxes on income not qualifying for the exemption (e.g., passive income).

This part of the course includes extensive examination of the §904 limitation and the indirect credit. The §904 limitation, which is designed to confine the credit to its role of alleviating double taxation, essentially restricts the credit to offsetting U.S. tax on income from foreign sources. Assume a domestic corporation has taxable income from foreign sources of $100 and pays $40 of foreign income taxes on this income. If the corporation’s U.S. tax rate is 35 percent, the credit is $35 because only this amount of precredit U.S. tax is attributable to the foreign income.

The indirect credit rules potentially allow a domestic corporation credit for foreign income taxes paid by its foreign subsidiaries. Because the United States does not tax foreign corporations on their foreign incomes, a U.S. shareholder’s tax on dividends from a foreign corporation is usually the first U.S. tax on the corporation’s profits. If these profits have been taxed by a foreign country, economic double taxation results. The indirect credit relieves this double taxation by allowing the shareholder credit for foreign income taxes of the foreign corporation if the shareholder is a domestic corporation and owns at least 10 percent of the foreign corporation’s voting stock when it receives the dividend. Apart from the indirect credit, credit for a foreign income tax is only allowed to the person on whom the tax is imposed.
The second topic of the course is the U.S. CFC rules (known as subpart F), which tax U.S. shareholders of U.S.-controlled foreign corporations (CFCs) on some corporate income, even if the income is retained by the foreign corporations. Subpart F is an inroad on the general principle that U.S. shareholders of foreign corporations, like shareholders of domestic corporations, are usually taxed on corporate profits only when distributed as dividends. A foreign corporation differs from a domestic corporation in that the United States does not tax it on income from foreign investments and businesses, even if its shareholders are U.S. persons. A foreign corporation, unlike a domestic corporation, can therefore be used as a shield against U.S. taxation. Generally, this deferral of U.S. tax is allowed for income from active businesses of CFCs, but under subpart F, a CFC’s passive income and other income easily sheltered in tax haven countries is taxed directly to U.S. shareholders, whether distributed or not. U.S. shareholders are also taxed on earnings and profits of a CFC that are invested in U.S. property (generally, tangible property located in the United States and some securities issued by U.S. companies). Moreover, a U.S. shareholder’s gain on selling stock of a CFC is taxed as a dividend to the extent of the shareholder’s share of corporate income accumulated while the shareholder held the shares being sold.

The third topic of the course is the rules on Passive Foreign Investment Companies (PFICs), under which a U.S. person owning stock of a foreign corporation (not a CFC) may face special, often not pleasant, tax consequences if the corporation’s income or assets are primarily passive. The PFIC rules were conceived as an analogue to the tax rules for mutual funds, which only apply to funds organized in the United States, but the PFIC rules can often apply to shareholders of foreign corporations that bear little resemblance to U.S. mutual funds.

Planning structures using hybrid entities are the subject of many of the problems studied in the course. The term “hybrid entity” generally refers to an entity that is taxed as a corporation under the tax laws of one or more foreign countries but is treated as a disregarded entity or partnership for U.S. tax purposes. For example, a German GmbH (Gesellschaft mit beschränkter Haftung) is a corporation for German tax purposes, but under the so-called check-the-box rules, a GmbH may elect to be a disregarded entity for U.S. tax purposes. A GmbH that so elects is a hybrid entity. The term “reverse hybrid entity” refers to an entity that is a pass-thru under the laws of one or more foreign countries but is taxable as a corporation for U.S. tax purposes. For example, under the U.S. check-the-box regulations, a partnership may elect to be a corporation for U.S. tax purposes, even if it is a pass-thru entity under the tax laws of all relevant foreign countries. Such a partnership is a reverse hybrid.

Because the course is strongly focused on international activities and transactions of corporations, a solid grounding in corporate taxation is essential. A significant proportion of the tax provisions studied in this course are an overlay on subchapter C. It is recommended, but not required, for you to be registered in Corporate Taxation II.

The required materials for the course are (1) problems and materials available on TWEN and (2) Boris I. Bittker & Lawrence Lokken, Fundamentals of International Taxation (WG&L 2014). The Bittker & Lokken book may be purchased at the law school bookstore, but it is also available on WestLaw and CheckPoint, where it is a part of a larger treatise, Federal Taxation of Income, Gifts & Estates (In Westlaw, follow the trail: Home > Secondary Sources > Tax Secondary Sources > Warren Gorham & Lamont (WG&L) > Business Entities Treatises
The classes will consist almost entirely of discussions of the problems. Advance preparation of the problems is essential to success in the course. Each class begins promptly at 8:30 a.m. Please be on time.

All students registered for the course must signup on TWEN for this course. TWEN will be the instructor’s means of communicating with the students. The problems studied in the course are posted on TWEN.

The examination for the course will be a six-hour take-home exam (nine hours for students entitled to language accommodation). You may take the exam at any time during the period Thursday, 26 February 2015 thru Sunday, 8 March 2015. The examination will be administered through TWEN. You will download the examination on TWEN and submit your answers on TWEN. A sample examination, and answers to the exam questions, are posted on TWEN.

Grades for the course will be based principally on the examination, but class participation and the written assignment described in the next paragraph will also be taken into account.

There is one written assignment due during the term. You must prepare a written answer to Problem 1 in Unit VII, part C. You must submit your answer thru TWEN not later than Tuesday, 20 January 2015. We will cover the problem in class on Wednesday, 22 January 2013. You must submit a second draft of your answer, again thru TWEN, not later than Wednesday, 28 January 2015.

The instructor’s office hours are Mondays and Wednesdays, 11 a.m. thru noon. Feel free to drop by the instructor’s office at any other time, but please keep the questions brief if you come during the hour before class. The instructor’s office is Room 312J.

The day-to-day assignments given below are tentative beyond the first few weeks. The syllabus will be revised periodically during the semester to reflect our actual progress thru the material.

<table>
<thead>
<tr>
<th>Day</th>
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<tbody>
<tr>
<td>5 January</td>
<td>Unit VII.A: Foreign Tax Credit—Generally</td>
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<td>Unit VII.B: Definitions of “Foreign Income Tax” and “Taxpayer”</td>
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<td>Problem 1</td>
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<td>7 January</td>
<td>Unit VII.B: Definitions of “Foreign Income Tax” and “Taxpayer”</td>
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<td>12 January</td>
<td>Unit VII.B: Definitions of “Foreign Income Tax” and “Taxpayer”</td>
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<td>Problems 5(e), 5(f), 6, 7</td>
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<td>14 January</td>
<td>Unit VII.C: Credit Limitation</td>
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<td>Problems 2–5</td>
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20 January  Written answers to Problem 1 in Unit VII.C must be submitted on TWEN not later than 11:59 p.m. today

21 January  Unit VII.C:  Credit Limitation
            Problem 1, 6

26 January  Unit VII.D:  Indirect Credit
            Problems 1, 2

28 January  Unit VII.D:  Indirect Credit
            Problems 3–5
            Unit VII.E:  Credit Splits
            Problems 1, 2

28 January  Second draft of written answers to Problem 1 in Unit VII.C must be submitted on TWEN not later than 11:59 p.m. today

2 February  Unit VII.E:  Credit Splits
            Problem 3
            Unit VIII.A:  Subpart F—Generally
            Problem 1

4 February  Unit VIII.A:  Subpart F—Generally
            Problem 2

9 February  Unit VIII.A:  Subpart F—Generally
            Problem 3

11 February Unit VIII.A:  Subpart F—Generally
            Problems 4, 5

16 February Unit VIII.A:  Subpart F—Generally
            Problems 6, 7, 8

18 February Unit VIII.B:  CFC Ownership of U.S. Property
            Problems 1, 2
23 February  Unit VIII.B:  CFC Ownership of U.S. Property
                      Problems 3, 4
Unit VIII.C:  Partnerships and Hybrid Entities
              Problem 1
Unit IX.A:  Effects of losses on credit limitation
             Problems 1–2

25 February  Unit X:  Passive Foreign Investment Companies
                      All Problems