

Taxation of Outbound Transactions

Professor Mindy Herzfeld

**University of Florida Levin College of Law
Graduate Tax Program**

Syllabus

Spring Semester 2018

Taxation of Outbound Transactions Course # LAW 7931

Professor Mindy Herzfeld

Office: 325C

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Office Hours: Tuesday 1:00 pm.-3:00 p.m.

A. Course Materials: Access to an Internal Revenue Code and Treasury Regulations, in whatever format desired, is required and must be brought to each class

Class readings will be assigned from Bittker & Lokken, Fundamentals of International Taxtion, 2017/2018 student edition. For each class, however, there will be alternative secondary sources assigned that will cover the same topics.

Problem sets from Bittker & Lokken will also be assigned. If a student chooses not to purchase the treatise, I will make the problem sets available to them upon request.

B. Topics: The topics for class, along with the assigned readings, are described in the pages that follow.

C. Grade: Your grade will be based 100% on the exam to be administered at the end of class. Alternatively, you can submit up to 5 problem sets as outlined in the syllabus below, worth (10) points each, in which case the exam will be worth less, proportionately, as a percentage of your final grade.

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

D. Problem Sets.

If you elect to submit a problem set for credit worth up to 10 points of your final grade, it must be submitted before the start of class when it is due. No exceptions.

E. Reading Assignments. This course meets on Wednesday from 2:30PM -4:20PM. You should be prepared to discuss the reading assignment for the class.

The reading assignments are expected to take you approximately 4 hours for each class session.

F. Guest Lecturers. There will be a number of guest lectures throughout the semester as indicated in the syllabus. You will need to be prepared with assigned readings and any written assignment as if it was a regular class.

Summary of the Course

This course considers the tax implications for U.S. persons of investments overseas. For the first half of the course, we will focus on becoming familiar with the applicable code sections and other relevant authorities. For the second half of the class, we will analyze the law in connection with typical planning structures used by multinational companies.

Objectives of the course

This course has a number of objectives:

1. To gain an understanding of the U.S. tax rules that apply to U.S. persons on investments overseas;
2. To understand the planning opportunities these rules present;
3. To understand proposals relevant to potential changes in the rules;
4. To appreciate the analysis required to approach a complex cross-border transaction;
5. To develop presentation and writing skills necessary to engage in the practice of international taxation;
6. To become familiar with the newly passed Tax Cuts & Jobs Act as applied to U.S. persons' overseas investments.

1. Required Course Materials are:

Internal Revenue code and Regulations.

Bittker & Lokken Fundamental of International Taxation or other secondary source.

2. **Reference Materials**. I have included below a list of Reference Materials that can be consulted for further study.
3. **Office Hours**. My office hours are Tuesday 1PM-3PM. If you have questions, please contact me at Room 325C, or by telephone at 352.273.0932, or by email at herzfeld@law.ufl.edu.

Reference Materials

1. Isenbergh, International Taxation
2. BNA Portfolios, US International Taxation (numbers specified throughout the syllabus)
3. Other sources as specified in the syllabus

Class 1: Wednesday, January 10

International Tax Planning: Old and New Paradigms

Primary sources reading:

1. Jt Committee on Taxation, Present Law And Background Related To Proposals To Reform The Taxation Of Income Of Multinational Enterprises (Jul. 21, 2014) at <https://www.jct.gov/publications.html?func=startdown&id=4656> ; pp 1-7; 24-32
2. IRC Section 7701(a)(1); (a)(2); (a)(3); (a)(4); (a)(5); (a)(30)
3. IRC Section 482
4. Treas. Reg. 301.7701-1(a), (b)
5. Treas. Reg. 1.482-1(a), (b)(1)

Secondary sources reading: (all optional)

1. Bittker & Lokken ¶ 65.3.1; 65.3.2; 79.1.1
2. BNA Portfolio 900, III.A
3. Isenbergh Chapter 10

Bittker & Lokken Problems: Unit I, A and B

Bittker & Lokken Problems: Unit XI, A.1

Class 2: Wednesday, January 17

Foreign Tax Credit: section 901

Primary Sources reading:

1. IRC sections 901(a); 901(b); 901(i); 901(j); 901(k); 901(l)
2. Treas. Reg. 1.901-1(a)(1), (2); 1.901-2(a), (b), (c), (d), (e)(1)-(e)(4); (e)(5)(i)-(iii)

Secondary sources reading (optional):

1. Bittker & Lokken: ¶ 72.1, 72.2, 72.3, 72.4
2. BNA Portfolio 900, III.B., III.C
3. Isenbergh Chapter 12

Bittker & Lokken Problems: Unit VII, A & B

Class 3: Wednesday, January 24

Subpart F: Controlled Foreign Corporations, Subpart F

Primary Sources reading:

1. Sections 951; 952, 954(a)(b), 957, 958, 959, 960, 961, 962, 964(a), 964(e)

Secondary sources reading (optional)

1. Bittker & Lokken ¶ 69.1, 69.10
2. BNA Portfolio 900, III.F; IIIG; IIHH
3. Isenbergh Chapter 16

Bittker & Lokken Problems: Unit VIII A.1

Class 4: Wednesday, January 31

Outbound Transfers

Primary sources reading:

1. Section 367(a); 367(d); 7874
2. Section 936(h)(3)
3. Section 14102 of Conference Agreement
4. Section 14221 of Conference Agreement
5. Treas. Reg. 1.367(a)-3(a), (b), (c)

Secondary sources reading (optional)

1. Bittker & Lokken 71.1; 71.1A, 69.14
2. BNA Portfolio 900, IVA; IVB

Bittker & Lokken Problems Unit IV.A

Class 5: Wednesday, February 7

Cross-Border Transactions

Primary sources reading:

1. Sections 367(b), section 367(e)
2. Section 1248
3. Treas. Reg. 1.367(b)-1, -2, -3, and -4.
4. Take a look at Reg. 1.367(b)-7 and -8, but don't get too scared

Secondary sources reading: (optional)

1. Bittker & Lokken ¶ 71.1B; 71.2, 71.3

2. BNA Portfolio 900, IV.C
3. Isenbergh Chapter 17

Bittker & Lokken Problems: Unit IV.B

Class 6: Wednesday, February 14 (Guest Lecturer)

The Foreign Tax Credit Limitation, Then & Now

Primary Sources Reading:

1. Section 904
2. Treas. Reg. 1.904-1(a)-(c)
3. Treas. Reg. 1.901-4(a), (b)
4. Treas. Reg. 1.861-8

Secondary sources reading (optional):

1. Bittker & Lokken: ¶ 72.6, 72.7, 72.8
2. BNA 900 III.D
3. Isenbergh Chapter 13

Bittker & Lokken Problems: Unit VII.C

Class 7: Wednesday, February 21 (Guest lecture)

The GILTI (new section 951A)

Primary Source Reading:

1. Section 14201, 14202 of Conference Agreement

Secondary Source Reading: (optional)

BNA Portfolio 930, III and IV

Class 8: Wednesday, February 28

Subpart F

Primary Source Reading

1. Section 954
2. 1.954-1, -2
3. 1.954-3, -4 (skim)

Secondary Source Reading (optional):

1. Bittker & Lokken ¶ 70.1; 69.4; 69.5; 69.6; 74.1; 74.2; 74.3; 74.4
2. BNA Portfolio 900, III.J, K

Bittker & Lokken Problems: Unit XIII.A, problems 2-7

Spring Break ***

Class 9: Wednesday, March 14 (Guest Lecture)

Structuring Private Equity Investments / PFICs

Primary Source Reading:

1. Section 951, 958
2. Sections 14213, 14214 of Conference Report
3. Section 1291, 1293, 1297

Secondary Source Reading: (optional)

1. Bittker & Lokken ¶ 70.1.1-1.5
2. BNA Portfolio 900, III.N
3. Isenbergh Chapter 18

Bittker & Lokken Problems: Unit X, problems 1 and 2

Class 10: Wednesday, March 21 (Guest Lecture)

Structuring Global Supply Chains / subpart F / Transfer Pricing

Primary Source Reading:

1. Same as class 8
2. Section 14221 of Conference Report

Secondary Source Reading:

1. Same as class 8
2. Stuart Webber, *The Tax-Efficient Supply Chain: Considerations for Multinationals*, Tax Notes Int'l, January 10, 2011, p. 149 <http://corit-academic.org/wp-content/uploads/2011/12/61TI0149-Webber.pdf>
3. HoganLovells, *Complex Contracting Supply Chain* <http://www.hlcomplexcontracting.com/supply-chain-tax-and-transfer-pricing>
4. Bittker & Lokken ¶ 79.1

Class 11: Wednesday, March 28

Reorganizations and 304 Transactions

Primary Source Reading:

1. Same as class 4 and 5
2. Section 304

3. Treas. Reg. 1.304-2, 1.304-3, 1.304-4
4. Rev. Rul. 92-85
5. Rev. Rul. 92-86

Secondary Source Reading: (optional)

1. BNA Portfolio 6380 VI
2. BNA Portfolio 768 II.C.3
3. Bittker & Lokken ¶ 71.5

Class 12: Wednesday, April 4

[Tentative: no class]

Class 13: Wednesday, April 11 (Guest Lecture)

Structuring private investments/ export subsidies / foreign currency

Primary Source readings

1. Sections 985, 986, 987, 988, 989
2. Joint Comm. on Tax'n, BACKGROUND AND HISTORY OF THE TRADE DISPUTE RELATING TO THE PRIOR-LAW FOREIGN SALES CORPORATION PROVISIONS AND THE PRESENT-LAW EXCLUSION FOR EXTRATERRITORIAL INCOME AND A DESCRIPTION OF THESE RULES (2002) <http://www.jct.gov/x-10-02.pdf>

Secondary Source readings (all optional):

1. Bittker & Lokken ¶ 74.1, 74.2, 74.3, 74.4
2. Bittker & Lokken ¶ 71.3
3. BNA Portfolio 900 III.R

Bittker & Lokken Problems: Unit XIII, Problems 1-4

Class 14: Wednesday, April 18

Review

University Policy on Accommodating Students with Disabilities:

Students requesting accommodation for disabilities must first register with the Dean of Students Office (<http://www.dso.ufl.edu/drc/>). The Dean of Students Office will provide documentation to the student who must then provide this documentation to the Office of Student Affairs when requesting accommodation. You must submit this documentation prior to submitting assignments or taking the quizzes or exams. Accommodations are not retroactive, therefore, students should contact the office as soon as possible in the term for which they are seeking accommodations.

University Policy on Academic Misconduct:

Academic honesty and integrity are fundamental values of the University community. Students should be

sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

**Netiquette: Communication Courtesy: All members of the class are expected to follow rules of common courtesy in all email messages, threaded discussions and chats. [Describe what is expected and what will occur as a result of improper behavior] <http://teach.ufl.edu/docs/NetiquetteGuideforOnlineCourses.pdf>

Getting Help:

For issues with technical difficulties for E-learning in Sakai, please contact the UF Help Desk at:

- Learning-support@ufl.edu
- (352) 392-HELP - select option 2
- <https://lss.at.ufl.edu/help.shtml>

** Any requests for make-ups due to technical issues MUST be accompanied by the ticket number received from LSS when the problem was reported to them. The ticket number will document the time and date of the problem. You MUST e-mail your instructor within 24 hours of the technical difficulty if you wish to request a make-up.

Other resources are available at <http://www.distance.ufl.edu/getting-help> for:

- Counseling and Wellness resources
- Disability resources
- Resources for handling student concerns and complaints
- Library Help Desk support

Should you have any complaints with your experience in this course please visit <http://www.distance.ufl.edu/student-complaints> to submit a complaint.

Class Preparation/Workload:

- Students should expect to spend, on average, approximately two hours preparing for every hour of class.
- It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class.