

# TAX TREATIES

LAW 7682

2 CREDIT HOURS

FALL 2018

ROOM 283

TUE. 10:00-11:40

**INSTRUCTOR:** *Yariv Brauner*

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(352) 2730949*

**OFFICE HOURS:** Tue. 11:45-12:45 or drop by.

**COURSE COMMUNICATIONS:** via email.

**REQUIRED TEXT: NONE**

**ADDITIONAL RESOURCES:** 2017 OECD Model Tax Convention

2017 U.N. Model Tax Convention

2016 U.S. Model Tax Convention

**COURSE DESCRIPTION:** Bilateral income tax conventions between countries to alleviate double taxation of income from international investments and activities and to provide for exchanges of tax information and consultation between tax authorities.

**PREREQUISITE KNOWLEDGE AND SKILLS:** International Tax I taken in parallel.

**PURPOSE OF COURSE:** Acquaintance with tax treaties.

**COURSE GOALS AND/OR OBJECTIVES:** *By the end of this course, students will apply the laws embedded in double tax conventions.* They will be able to describe the historical background for the evolution of tax treaties and tax treaty law, explain the key pressure points that require interpretation of bilateral tax treaties and prepare clients for international tax controversy when tax treaties are applicable.

**TEACHING PHILOSOPHY:** Problem based instruction. Preparation ahead of class and participation is mandatory in this class.

**INSTRUCTIONAL METHODS: PROBLEM BASED, CLASS DISCUSSION.**

## COURSE POLICIES:

**ATTENDANCE POLICY: ATTENDANCE IS MANADATORY.**

**THERE MAY BE QUIZES IN THIS CLASS. THE STUDENTS WILL BE ASKED TO WRITE TWO PAPERS DURING THE SEMESTER. NO FINAL EXAM.**

**ASSIGNMENT POLICY:** all assignments are mandatory.

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.

## UF POLICIES:

**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 Assistant Dean of Student Affairs, Brian Mitchell 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. <http://teach.ufl.edu/docs/NetiquetteGuideforOnlineCourses.pdf>

## GRADING POLICIES:

*The final grade will be comprised of the grades awarded to each of the two assigned papers (each 33% of the final grade) and a grade assigned for contribution to the class discussion (34%).*

**GRADING SCALE:** *[List the specific grading scale for this course. For more information, see: <http://www.isis.ufl.edu/minusgrades.html>]*

## COURSE SCHEDULE:

Unit I: Introduction, History and the Models

Read:

1. Introduction to Klaus Vogel et. al., Klaus Vogel on Double Taxation Conventions. 3<sup>rd</sup>. ed.
2. Introduction to the OECD Model.
3. A.J. van den Tempel, Relief from Double Taxation, Developments in Taxation Since World War I, No. 7, IBFD (1967).
5. The 2010 U.S.-Chile treaty (not yet in effect).
6. Familiarize yourself with: (a) 2017 OECD Model Convention  
(b) Vienna Convention on the Law of Treaties (1969)

Additional Reading:

- 1-2. League of Nations, Double Taxation and Tax Evasion Reports (1927&1928)
3. Introductions to the 2016 U.S. and 2017 U.N Models

Unit II: Legal Status and Scope

Prepare to answer the guiding questions (handout distributed in class).

Read:

1. Articles 1(3) and 22 to 2016 U.S. Model; Articles 1-4 2014 OECD, 2011 U.N. and 2016 U.S. models, including commentary
  2. Rocco V. Femia and Layla J. Aksakal, The Use of Tax Treaty Status in Legislation and the Impact on U.S. Tax Treaty Policy, Tax Notes International (April 26, 2010)
  3. Kees van Raad, Dual Residence, European Taxation 241 (1988)
  4. John Avery Jones, UNDERSTANDING THE OECD MODEL TAX CONVENTION: THE LESSON OF HISTORY, 10 Fla. Tax Rev. 1 (2009).
6. Familiarize yourself with: 2016 U.S. Model Convention

Additional reading:

1. J. Avery Jones et al., "Dual resident of individuals: the meaning of the expressions in the OECD Model Convention-I", British Tax Review (1981), at 15, 104.

Unit III: Business Income and Permanent Establishments

Prepare to answer the guiding questions (handout distributed in class).

Read:

1. Articles 5 & 7 (OECD, U.N. and U.S. models), including OECD Commentary and U.S. Treasury Technical Explanation
2. OECD releases revised discussion draft of a new Article 7 (Business Profits) of its

Model Tax Convention:

[http://www.oecd.org/document/27/0,3343,en\\_2649\\_33747\\_44117467\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/27/0,3343,en_2649_33747_44117467_1_1_1_1,00.html)

and comments:

[http://www.oecd.org/document/6/0,3343,en\\_2649\\_33747\\_44461574\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/6/0,3343,en_2649_33747_44461574_1_1_1_1,00.html)

3. OECD, MLI, available at: <https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.htm>

Familiarize yourself with:

1. 2017 U.N. Model Convention
2. Application of article 7 to ecommerce (2 oecd reports)

Unit IV: Attribution of Income to Permanent Establishments & Transfer pricing

Prepare to answer the guiding questions (handout distributed in class).

Read: 1. Reread materials from last class

2. OECD report on attribution of profits to PE – Part I (skim the rest of the document)

Try to skim also:

### 3. OECD Transfer Pricing Guidelines

## Unit V: Income from Employment & Capital Gains

Prepare to answer the guiding questions (handout distributed in class).

Read:

1. Read carefully Art. 6, 13, 15 and commentary.
2. OECD report on Art. 14
3. Read and skim the commentary: Art. 16-20, 28.

## Unit VI: Dividends and Interest

Prepare to answer the guiding questions (handout distributed in class).

- Read:
1. Read carefully Art. 10, 11 and commentary.
  2. 2006 OECD report on Investment – Chapter 5

## Unit VII: Royalties, E-commerce, etc.

Prepare to answer the guiding questions (handout distributed in class).

- Read:
1. Read carefully Art. 12, 17, 21 and commentary.
  2. BEPS reports on the taxation of the digital economy,  
<https://www.oecd.org/tax/beps/beps-actions.htm>

3. Brauner, Yariv and Baez Moreno, Andres, Withholding Taxes in the Service of BEPS Action 1: Address the Tax Challenges of the Digital Economy (February 2, 2015). WU International Taxation Research Paper Series No. 2015 - 14. Available at SSRN: <https://ssrn.com/abstract=2591830> or <http://dx.doi.org/10.2139/ssrn.2591830>

4. OECD report on artists etc..

Unit VIII: Relief of DT etc.

Prepare to answer the guiding questions (handout distributed in class).

Read: 1. Read carefully OECD Model Art. 23A/B and commentary.

2. Read carefully U.S. Model Art. 23 and the Treasury Technical Explanation.

Identify 2 treaties that the U.S. concluded with countries using a different double taxation relief mechanism for presentation in class

**Nov. 9: International Tax Symposium – Participation and preparation of all of the papers presented is mandatory for this course**

Unit IX: Non Discrimination & Partnerships

Prepare to answer the guiding questions (handout distributed in class).

Read: 1. Read carefully OECD Model Art. 24 and commentary.

2. Read carefully U.S. Model Art. 24 and the Treasury Technical Explanation.

3. IRC §§ 894 & 7852(d)

6. Skim OECD's partnership report

7. Skim Lang on the partnership report

Unit X: MAP etc.

Prepare to answer the guiding questions (handout distributed in class).

Read: 1. Read carefully OECD Model Art. 25-27 and commentary.

2. Read carefully U.S. Model Art. 25-26 and the Treasury Technical Explanation.

3. Convention on Mutual Assistance

4. OECD Protocol on MUA 2010

5. OECD 2007 arbitration report

Unit XI: Anti-avoidance etc.

Prepare to answer the guiding questions (handout distributed in class).

Read: 1. Read carefully OECD 2002 report.

2. Read carefully U.S. Model Art. 22 and the Treasury Technical Explanation.

3. IFA 2010 US report

Unit XII: Application and triangular cases

Prepare to answer the guiding questions (handout distributed in class).

Read: TBA.



Disclaimer: This syllabus represents my current plans and objectives. As we go through the semester, those plans may need to change to enhance the class learning opportunity. Such changes, communicated clearly, are not unusual and should be expected.