

# **Introduction to U.S. International Taxation**

**Professor Mindy Herzfeld**

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

**Syllabus**

**Fall Semester 2018**

## Introduction to U.S. International Taxation Course # LAW 7614 Section #5190

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Office Hours: Thursday 8:00 am.-10:00 a.m. or by appointment (contact me by email to set up appointment in person or by phone)

#### 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. Copies of Lathrope's Selected Sections on United States International Taxation (2018) have been ordered to the book store. This volume makes it easy to access just the relevant international tax provisions.

Class readings will be assigned from Herzfeld & Doernberg, International Taxation in a Nutshell, 11th ed. [NOTE that the 10<sup>th</sup> edition is out of date as a result of the tax law changes enacted in 2017. Most other international tax treatises are also out of date.]

Note that this book will not be available until early September.

In the meantime, or in lieu of purchasing the book, I am told by West (publisher) that you can access it in the following manner:

To access Study Aid Subscription, go to the website link below. You will have to log in and note your school but otherwise it is fully accessible and free (this is a flat subscription already paid):

- <https://subscription.westacademic.com/>

I have included references to alternative secondary sources that will cover the same topics from BNA portfolios as **optional additional readings** but care needs to be taken as they have been sporadically updated in regard to new law. The same goes for other optional readings / reference materials included in the syllabus.

For each class, there will also be problems assigned via canvas.

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.

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.

This class meets twice on Thursdays: once in the morning and once in the afternoon. The morning class will be a lecture. In the afternoon we will work through the problem sets assigned. Every person should come prepared on Thursday afternoons to discuss these problems. They are an integral part of the learning of the course.

#### E. Reading Assignments and Problem Sets.

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

#### F. Attendance.

Per ABA requirements, you are required attend all classes, unless you e-mail me in advance with a legitimate excuse. Requirements for class attendance and make-up exams, assignments, and other work in this course are consistent with university policies that can be found at: <https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>.

F. Guest Lectures. **There will be no class on September 13.** Instead, a number of guest lectures have been scheduled, as follows. Note that because these lectures involve practitioners who will be traveling to Gainesville for this purpose, dates and times are subject to change. *These lectures are mandatory and an important part of the class.*

#### Tuesday, Oct 30, 4:00-5:30PM

Adrienne Figur, EY Atlanta

*Financial accounting considerations in international taxation*

#### Wednesday, Oct 31, Noon-1PM

Scott Klein, Deloitte Miami

*The BEAT: New Section 59A*

#### Wednesday, November 7, Noon-1PM

Pedro Corono, Procopio

*Cross-Border Trust & Estate considerations*

### Summary of the Course

This course is a survey course in U.S. international taxation. For the first half of the course, we will focus on the taxation of non-U.S. persons with tax nexus in the U.S. For the second part of the course, we will focus on the taxation of U.S. persons with income from overseas. We will also cover topics that intersect both areas, including tax treaties, taxation of foreign currency,

transfer pricing, and cross-border transactions. We end with consideration of the topic of tax arbitrage, relevant for planning for tax advisory practices, and filing and compliance obligations. Throughout, we will consider the dynamic development of the law and possible future changes.

### Objectives of the course

The objectives of this course are to provide students with the following knowledge and skills:

1. An understanding of the U.S. international tax system, including the rules that apply to non-U.S. persons investing into the U.S. and the rules that apply to U.S. persons with respect to their investments overseas, as relevant primarily to individuals and business entities;
2. Familiarity with the primary and secondary source materials relevant to further in-depth research in these areas;
3. An appreciation of the type of analysis required to approach questions inherent to the taxation of a complex cross-border transaction;
4. A basic understanding as to the interaction of U.S. and non-U.S. tax rules in cases of taxation of cross-border transactions;
5. An understanding of the development of U.S. international tax rules and expectations of future evolution of these rules.

## Reference Materials

1. BNA Portfolios, US International Taxation series (numbers specified throughout the syllabus; accessible online with UF ID)
2. Bittker & Lokken, Fundamentals of International Taxation (student edition 2017/2018) [*Note that this volume has NOT been updated for the 2017 tax law changes and so should be used with caution. However, it does provide some background into fundamental concepts and explanation of technical provisions that can be useful.*]
3. Isenbergh, International Taxation (3d. ed. 2010) [*with same caveats and cautions as above*]

### Week 1: Thursday, August 16

*AM: Introduction to International Taxation; Jurisdictional Principles*

#### Primary sources reading:

1. [Cook v. Tait, 265 U.S. 47 \(1924\)](#)
2. IRC sections 1(h); 7701; 911; 877A
3. Treas. Reg. § 1.1-1(c); 301.7701-1; 301.7701-2; 301.7701-3; 301.7701-4

#### Secondary sources reading

1. Nutshell Chapter 1 & 2
2. B&L ¶¶ 65.1, 65.2, 65.3
3. BNA Portfolio 900 (optional)

#### Problem Sets

Accessible in Canvas

### Week 2: Thursday, August 23

*Source Rules / FDAP Income*

#### Primary Sources:

1. IRC sections 861; 862; 863; 865; 871; 881; 1441, 1442
2. Treas. Reg. §§ 1.861-2; 1.861-3; 1.861-4; 1.861-8; 1.861-17 (skim)
3. [Bank of America v. United States, 680 F.2d 142 \(Ct.Cl. 1982\)](#)
4. [Commissioner v. Hawaiian Philippine Co., 100 F.2d 988 \(9th Cir. 1939\)](#) (optional)
5. *Commissioner v. Piedras Negras Broadcasting Co.*, 127 F.2d 260 (5th Cir. 1942) (optional)
6. *Stemkowski v. Commissioner*, 690 F.2d 40 (2d Cir. 1982) (optional)
7. *Karrer v. United States*, 152 F.Supp. 66 (Ct.Cl. 1957) (optional)
8. *Boulez v. Commissioner*, 83 T.C. 584 (U.S. Tax Ct.1984)

Secondary Sources:

1. Nutshell Chapter 3; Chapter 4.04
2. BNA Portfolio 905; 907; 908; 6640
3. B&L ¶¶67.2; 67.4; chapter 73

Problem Sets

Accessible in Canvas

**Week 3: Thursday, August 30**

*US Trade or Business, Effectively Connected Income, Branch Profits Tax; FIRPTA*

Primary Sources:

1. IRC sections 864; 882; 884; 897; 887; 59A; 892
2. Treas. Reg. §§ 1.864-2; 1.864-3; 1.864-4; 1.864-5; 1.864-6; 1.864-7; 1.882-5
3. *Scottish American Investment Co., Ltd. v. Commissioner*, 12 T.C. 49, 59 (1949) (optional)
4. *Lewenhaupt v. Commissioner*, 20 T.C. 151 (Tax Ct. 1953)
5. *InverWorld, Inc. v. Commissioner*, T.C. Memo. 1996-301 (U.S. Tax Ct. 1996)
6. *Handfield v. Commissioner*, 23 T.C. 633 (Tax Ct. 1955)
7. *United States v. Balanovski*, 236 F.2d 298 (2d Cir. 1956)
8. *Commissioner v. Spermacet Whaling & Shipping Co.*, 281 F.2d 646 (1960), *affg* Tax Court, 30 T.C. 618 (1958) (optional)

Secondary Sources:

1. Nutshell Chapter 4
2. BNA Portfolios 912; 6480; 6520
3. B&L ¶¶ 67.6; 67.7; 67.8; 67.10

Problem Sets

Accessible in Canvas

**Week 4: Thursday, September 6**

*Income Tax Treaties*

Primary Sources:

1. OECD Model Treaty 2017 <http://www.oecd.org/ctp/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm>
2. 2016 U.S. Model Treaty <https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/Treaty-US%20Model-2016.pdf>
3. U.N. Model Treaty (Introduction) [http://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT\\_2017.pdf](http://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf)

4. *SDI Netherlands B.V. v. Commissioner*, 107 T.C. 161 (U.S. Tax Ct.1996) (optional)
5. *Northern Ind. Pub. Serv. Co. v. Commissioner*, 105 TC 341 (1995)
6. Reg. § 1.881-3; 1.894-1

Secondary Sources:

1. Nutshell Chapter 5
2. B&L ¶¶ 65.4; 67.3

Problem Sets

Accessible in Canvas

**Week 5: Thursday, September 13**

*Class cancelled/rescheduled. You should use the opportunity to review the materials below. We will cover them in the last weeks of the course.*

*Filing, Withholding, Reporting, FATCA*

1. Sections 1441, 1442, 1445, 1461, 1471, 1472, 1473, 1474
2. Reg. 1.1441-1, 1.1441-2, 1.1441-5, 1.1441-6,
3. T.D. 9773
4. Forms 1118, 5471, 5472, 8858, 8975

Secondary Source Reading: (optional)

1. Nutshell Chapter 6
2. BNA Portfolio 915; 6565
3. B&L ¶¶ 65.6; 65.7; 65.8

**Week 6: Thursday, September 20**

*Outbound Intro*

Primary Source Reading:

1. Sections 312; 911; 245A
2. Reg. § 1.312-6
3. Jt. Committee on Taxation, PRESENT LAW AND SELECTED POLICY ISSUES IN THE U.S. TAXATION OF CROSS-BORDER INCOME (JCX-51-15 2015)  
<http://intltax.typepad.com/x-51-15.pdf>
4. Conference Report of TCJA pp. 595-601 <https://www.gpo.gov/fdsys/pkg/CRPT-115hrpt466/pdf/CRPT-115hrpt466.pdf>

Secondary Source Reading: (optional)

1. Nutshell Chapter 7
2. BNA Portfolio 932
3. B&L ¶ 69.13.6

## Problem Sets

Accessible in Canvas

### **Week 7: Thursday, September 27**

*Subpart F, PFICs*

#### Primary Sources Reading:

1. Sections 951, 952, 954, 957, 958, 1291, 1296, 1297, 1298
2. Reg. § 1.957-1; 1.958-1

#### Secondary sources reading (optional):

1. Nutshell Chapter 8, §§ 8.02, 8.03(A), 8.03(B), 8.08
2. BNA Portfolio 926; 6220; 6240; 6300
3. B&L ¶¶ 69.1-69.10; 70.1

## Problem Sets

Accessible in Canvas

### **Week 8: Thursday, October 4**

*GILTI, More FDII, Section 956, PTI and Basis Adjustments*

#### Primary sources reading:

1. Sections 951A, 250, 956, 959, 961, 962
2. TCJA Conference Report pp. 635-645
3. Reg. §§ 1.956-2; 1.961-1; 1.961-2
4. Perhaps, regulations will be out by then!

#### Secondary sources reading

1. Nutshell Chapter 8, §§ 8.03(C), 8.04
2. BNA Portfolio 930; 6260
3. 69.11; 69.13.4

## Problem Sets

Accessible in Canvas

### **Week 9: Thursday, October 11**

*The Foreign Tax Credit*

#### Primary Source Reading:

5. Sections 901; 904; 960, 962
6. Reg. § 1.901-2; 1.904-4; 1.904-5; 1.904-6

#### Secondary Source Reading:



1. Nutshell Chapter 9
2. BNA Portfolio 902; 6020; 6060; 6640
3. B&L Chapter 72

Problem Sets

Accessible in Canvas

**Week 10: Thursday, October 18**

*Transfer Pricing*

Primary Source Reading:

1. Sections 482; 367(d)
2. Reg. § 1.482-1
3. OECD Transfer Pricing Guidelines (Chapter 1) <http://www.oecd.org/tax/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-20769717.htm>

Secondary Source Reading:

1. Nutshell Chapter 10
2. BNA Portfolios 551, 552, 553
3. B&L Chapter 79

Problem Sets

Accessible in Canvas

**Week 11: Thursday, October 25**

*Foreign Currency*

Primary sources reading:

1. Sections 985, 986, 987, 988, 989
2. Treas. Reg. 1.985-1; 1.985-2; 1.988-2
3. T.D. 9794 (Preamble)
4. Notice 2018-57; 2018-26 IRB 1

Secondary sources reading:

1. Nutshell Chapter 11
2. BNA Portfolio 6660
3. B&L Chapter 74

Problem Sets

Accessible in Canvas

**Week 12: Thursday, November 1**

*Cross-Border Transactions*

Primary sources reading:

1. Sections 367(a), section 367(b), 367(d), 367(e), 1248
2. Treas. Reg. 1.367(b)-1, (b)-2, (b)-3, (b)-4, (b)-5, (e)-1, (e)-2

Secondary sources reading:

3. Nutshell Chapter 12
4. Nutshell Chapter 8.05
5. Bittker & Lokken ¶ 71.2, 71.2A
6. BNA Portfolio 919, 920 II, IV

Problem Sets

Accessible in Canvas

**Week 13: Thursday, November 8**

*Tax Arbitrage*

Primary Source readings

1. Sections 1(h)(11), 163(j), 267(a), 267A, 338, 338(g), 901(m)
2. Regulation §1.338-9
3. OECD Report, Neutralizing the Effect of Hybrid Mismatch Arrangements (2015)  
<http://www.oecd.org/ctp/neutralising-the-effects-of-hybrid-mismatch-arrangements-action-2-2015-final-report-9789264241138-en.htm>

Secondary Source readings:

4. Nutshell Chapter 13
5. BNA Portfolio 6380, 6580

*Part II: Filing, Withholding, FATCA and Exchange of Information (see Week 5, above)*

**Week 14: Thursday, November 15**

Exam Review. Come prepared with questions

**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](mailto: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.