

Levin College of Law
Office of the Dean

Merritt McAlister
Interim Dean and Levin, Mabie & Levin Professor of Law

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November 5, 2024

MEMORANDUM

TO: Full-Time Faculty, Levin College of Law

FROM: Merritt McAlister, Interim Dean

RE: Faculty Meeting Agenda, November 12, 2024

Our fifth Faculty Meeting of the 2024-2025 academic year will take place in the Faculty Lounge on the third floor of Holland Hall on Tuesday, November 12, 2024. The meeting will begin at 12 noon and will end no later than 1:30 p.m.

The agenda is as follows:

1. Action Item: Approve Faculty Meeting Minutes for October 22, 2024, attached (Dean McAlister)
2. Action Item: Consideration from Curriculum Committee for permanent approval of the course, Taxation of Inbound Private Investment. (Erez-Navot and Dean Luke, co-chairs)
3. Action Item: Consideration from Adjunct Teaching Committee for adjunct faculty member Matthew Mauney to teach twice during same academic year. (Clausen, chair)
4. Information Item: Appointments Committee (Brauner and Bambauer, J., co-chairs)
5. Information Item: Update from Academic Standards Committee (Arnow-Richman, chair)
6. Information Item: Update on studio (Dean McAlister)
7. Information Item: Upcoming Brown Bags (Deans McAlister and Lopez)

If you are unable to attend, please contact Peter Molk, who will discuss available options. Otherwise, I look forward to seeing you.

UF Levin College of Law Faculty Meeting Minutes
October 22, 2024 - 12:00 noon

PRESENT: Stacy Biggart, Yariv Brauner, Annie Brett, Juan Caballero, Dennis Calfee, Julian Cook, Lisa De Sanctis, Donna Eng, Donna Erez-Navot, Barbara Evans, Ben Fernandez, Thomas Haley, William Hamilton, Christopher Hampson, David Hasen, Thomas Hawkins, Berta Hernandez-Truyol, Jiaying Jiang, Benjamin Johnson, Lea Johnston, Elizabeth-Ann Katz, Zachary Kaufman, Matthew Kim, Heather Kolinsky, Gary Lawson, Elizabeth Lear, Lyrisa Lidsky, Sabrina Lopez, Lynn LoPucki, Charlene Luke, Tracey Maclin, Pedro Malavet, Jonathan Marshfield, Merritt McAlister, Timothy McLendon, Silvia Menendez, Peter Molk, Lars Noah, Robert Rhee, Katheryn Russell-Brown, Joan Stearns Johnsen, Stacey Steinberg, John Stinneford, Lee-ford Tritt, Derek Wheeler, Sarah Wolking, Danaya Wright

PRESENT ON ZOOM: Rachel Arnow-Richman, Amy Stein, Michael Wolf

NOT PRESENT: Derek Bambauer, Karen Burke, Judy Clausen, Charles Collier, Teresa Drake, Mark Fenster, Kristen Hardy, Mindy Herzfeld, Grayson McCouch, Thinh Nguyen, Jane O'Connell, Paige Snelgro, Steven Willis, Wentong Zheng

Meeting called to order at 12:02 pm.

1. Action Item: Approve Faculty Meeting Minutes for October 15, 2024. (Dean McAlister)

Interim Dean McAlister presented, and faculty considered the faculty meeting minutes for October 15, 2024.

Outcome: Minutes were approved.

2. Information Item: Exam procedures and accommodations (Dean McAlister)

Interim Dean McAlister reviewed requirements and procedures related to student accommodations.

Outcome: Information only

3. Information Item: Dean search update (Dean McAlister)

Interim Dean McAlister provided an update on the dean search.

Outcome: Information only

4. Action Item: Presentation of candidates from the Appointments Committee (Bambauer, J. and Brauner, co-chairs)

Professor Johnson presented, and faculty discussed the appointment and rank of Alan Trammell. Professor Brett presented, and faculty discussed the appointment of James Phillips. Professor Brauner presented, and faculty discussed the appointment and rank of Sadie Blanchard.

Outcome: candidate voting will take place electronically shortly after the conclusion of the meeting and will be open until 5 pm.

Meeting adjourned at 1:31 pm.

New Course Proposal Form

To: Curriculum Committee

From: _____

Date: _____

Type of Proposal <small>(check one)</small>	<input type="checkbox"/> Provisional course offering (2 offerings within 4 years) <input type="checkbox"/> Semester of 1 st proposed offering: <input type="checkbox"/> Proposal to make provisional offering permanent <input type="checkbox"/> Enrollment for prior offering:
Course Title	
Number of credits	<input type="text"/> hours <input type="checkbox"/> I have reviewed the proposed syllabus and other course materials and I believe that the proposed course requires <input type="text"/> hours of in-class instruction and at least <input type="text"/> hours of out-of-class work on the part of the students.*
Brief Course Description <small>(50 words or less; for public posting on the UF Law website)</small>	
Pre-requisites or Co-Requisites?	
Educational Objectives <small>Why are you proposing this course? Why should it be added to the UF Law curriculum?</small>	
Enrollment cap requested? <small>If requested, what is pedagogical justification?</small>	

Method of evaluation	_____ % Final exam _____ % Skills assessment _____ % Paper	_____ % Classroom participation _____ % Other
Casebook or other source of readings? (If casebook, include title, author, publisher, edition)		
Have you discussed this proposal with members of the UF Law faculty or administration? If so, please detail the date and substance of your discussions to streamline the Curriculum Committee's deliberations.		
Attachment checklist	_____ <u>Detailed course syllabus</u> Include topic for each class session; if possible, designate also the assigned readings for each session. Full-time faculty members proposing a one-time offering may substitute a general description of course coverage for each class session. _____ The syllabus meets the requirements of the UF Policy on Course Syllabi (syllabus.ufl.edu), i.e. it includes all required components. _____ The syllabus includes student learning outcomes, per the UF Law Faculty Policy on Student Learning Outcomes. *The syllabus and/or other information submitted in support of this course proposal must demonstrate to the committee that for every one credit hour sought, the course will provide 15 hours of classroom instruction and will require at least 30 hours of out-of-class work. See ABA Standard 310. _____ <u>Casebook</u> Include photocopy of condensed table of contents _____ <u>CV and qualifications to teach proposed course</u> (N/a for full-time faculty members) _____ <u>Teaching evaluations</u> If this is a proposal for a permanent course, please supply teaching evaluations from previous course offering. N/a for full time faculty members.	

Taxation of Inbound Private Investment

Professor Mindy Herzfeld

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

Syllabus

Compressed Course Spring Break 2024

Taxation of Inbound Private Investment

LAW 7931

Professor Mindy Herzfeld

Office: 374

Phone: 352-273-0932

Office Hours: Tuesday 1-3PM or by appointment, scheduled by email

This course will meet for 4 days during spring break, Monday March 11-Thursday, March 14. Class meetings will take place at the offices of local law and accounting firms in Miami. The location and precise times for meeting each day are noted below.

A. Course Materials: The required reading/video links/tools to be utilized can be accessed through links provided below or are posted on Canvas.

The course will loosely follow chapter 5 of my book on Structuring Cross-Border Transactions: U.S. Tax Considerations. [A copy of the book will be available on reserve in the library and the e-book version as well; it is also available to purchase online from Amazon or the e-version is available for purchase at [Amazon.com: Structuring Cross-Border Transactions: US Tax Considerations: 9789403528908: Herzfeld, Mindy: Books](https://www.amazon.com/Structuring-Cross-Border-Transactions-US-Tax-Considerations-9789403528908-herzfeld-mindy-books/dp/9789403528908)].

Readings from the Code and the regulations (and any treaty articles/cases and/or revenue rulings assigned) are mandatory. Reviewing at least one of the secondary sources (“listed as background”) is highly recommended to make sense of the Code and regulations; you may choose from one of the available options.

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 on the following:

2. Class Participation/Attendance. (20% of grade). Because this is a compressed course, attendance is mandatory. You will be expected to come prepared to the lectures each day, having read the assigned materials, and to participate with the guest lecturers throughout the week.

3. Problem sets (80% of grade) You will be required to submit (by March 31) final versions of the problem sets presented during the week.

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

Problem Sets will be graded on the following metrics (5 points each):

- Accuracy of solutions
- Demonstration of utilization of primary sources
- Timeliness
- Clarity of writing and organization
- Comprehensiveness of solutions

E. Reading Assignments. You should be prepared to discuss the reading assignment for each class.

F. Attendance. Per ABA requirements, you will be expected to attend a minimum of 80 percent of all classes. Because this is a compressed course, attendance at each class is required and absence is reflected in the grading, without an excused absence from Student Affairs.

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>.

G. Class Preparation

Because this is a compressed course, you should be prepared to spend several hours of preparation time before the course begins. During the week of the course, you should be prepared to spend several hours each day reading and preparing assignments. In total, you can expect to spend approximately 30 hours in preparation for class, including reading and working on problem sets.

H. Guest Lecturers. Each class will be led by a different practitioner. These individuals are giving their time in large part because they enjoy interacting with you. You will need to be prepared with the readings and engaged in the problem sets for discussion with them.

Summary of the Course

Taxation of cross-border transactions is a complex topic that incorporates many different areas of tax law, including international tax, subchapter C, and partnership taxation. This course will build on all those topics and focus on one particular aspect of cross-border taxation – taxation of inbound private investment. Basic knowledge of international tax law and corporate tax is required. Some familiarity with partnership taxation is recommended.

The course will be led by Miami practitioners whose practices focus on cross-border inbound taxation.

Assigned readings are noted below.

Objectives of the course

This course has a number of objectives:

1. To become familiar with different structures relevant for inbound private investment;

2. To understand the different Code provisions that are relevant in structuring such investments and analyzing their tax outcomes;
3. To apply that knowledge to structuring questions that arise in practice;
4. To appreciate the type of analysis and risk management utilized in advising clients regarding the tax consequences of cross-border investments.

Required Course Materials

All required readings are posted in canvas or linked to in the syllabus.

1. **Reference Materials**. Additional reference materials are noted below and for each class.
2. **Office Hours**. I will be available Wednesday afternoon March 13 between 11:30-2 for in-person office hours. I will also be available for phone/zoom consultations, which can be scheduled by email at herzfeld@law.ufl.edu.

Reference Materials

The primary secondary source is chapter 5 of my book, *Structuring Cross-Border Transactions: U.S. Tax Considerations* (2022). Physical and electronic copies are available at the library.

Other helpful secondary source materials include:

- *International Taxation in a Nutshell*, 13th ed. Available online through West Academic Study Aids (for free) or via Amazon.
- *U.S. International Tax Portfolios*, published by Bloomberg/BNA. Specific portfolios for each topic below are indicated in the assigned reading. The portfolios are available online at Bloomberg's website.
- *Bittker & Lokken, Fundamentals of International Taxation*. Specific sections are noted below. You can access the treatise online but if you are serious about pursuing this area of the law, you may wish to purchase a copy of the treatise. The hard copy of the 1-volume book that focuses on international taxation is only available as a student edition and is not available for purchase online.

Class 1: Monday, March 11

Morning Session (10am-1PM)

Inbound Investment into the United States: Primer, including financing, structuring, sourcing rules, withholding, and permanent establishment

Presentation by James Barrett, Mathew Sloatsky, Baker McKenzie,

We'll be meeting at the offices of Berger Singerman, 1450 Brickell Ave, Suite 1900

Required Reading: Primary Sources

IRC §§ 163(j), 861-865, 871, 881, 882, 884, 897, 894, 163(j), 1441, 1442, 1446, 1471-1474, 7701(b)

Reg. §§ 1.881-3, 1.894-1(d), 1.1441-5, 301.7701-1, 2, 3

US Model Treaty Art. 5, 7, 22

Additional Background Reading

International Tax in a Nutshell, Chapters 3, 4, 5 and § 2.01 on entity classification (to review if you are not up to speed on this topic)

BNA Portfolio No. 910-2d, 6855.

Bittker & Lokken ¶ 67.1- 67.6

Afternoon Session (still at BM) (2:00-3:00pm)

Primer on Income, Estate, and Gift Tax Considerations applicable to Non-U.S. Persons with U.S. Investments

By: Daniel Hudson, Binger Singerman, Miami (2-3pm)

Required Reading: Primary Sources

IRC §§ 2501, 2503, 2505, 2511, 2513, 2523, 2663, 2001, 2010(c), 2038, 2101-2108, 2105(b), 2502, 2641(a), 7701(a)(3)

Reg. §§ 301.7701-4

Rev. Rul. 2004-64

Background Reading: Secondary Sources

1. Bloomberg BNA Portfolio 854-4th
2. Bittker & Lokken ¶ 65.5-65.8, Chapter 83

Class 2: Tuesday, March 12

Morning Session (10:30am-2pm)

Income Tax, Estate & Gift Planning Considerations in Inbound Investment

At Greenberg Traurig, Miami. Presentation by Seth Entin

Required Reading: Primary Sources

IRC §§; 672; 951; 957; 958; 1014; 1291-1298

Reg. §§ 301.7701-2, §301.7701-3, §301.7701-4.

Fillman v. United States, 355 F.2d 632 (Ct. Cl. 1966)

TAM 9507044

Additional Background Reading

Bloomberg Portfolio No. 837-4th I, VI, VII, VIII; 6420 I-VII.

Bittker & Lokken ¶ 67.5, 134.1-.4

Lunchtime Session: 12:30-2

Presentation by Pedro Corona, Procopio Washington DC and San Diego

Required Reading: Primary Sources

IRC §§ 651; 661, 672, 679, 668, 684, 877A, 2501

Class 3/4: Wednesday, March 13

Morning Session (10:00am-noon)

Presentation by Chris Callahan, Fox Rothschild

Inbound USTB Considerations

Required Reading: Primary Sources

IRC §§ 861, 862, 863, 864, 865

US Model Treaty Art 5, 7

Pinchot v. Commissioner, 113 F.2d 718 (2nd Cir. 1940)

Inez de Amodio v. Commissioner, 34 TC 894 (1960) aff'd 62-1 USTC ¶ 9283 (1962)

Scottish American Investment Co. v. Commissioner, 12 T.C. 49 (1949)

Spermacet Whaling and Shipping Co. v. Commissioner, 281 F. 2d 646 (6th Cir. 1960)

Linen Thread Co. v. Commissioner, 14 T.C. 725 (1950)

Handfield v. Commissioner, 23 T.C. 633 (1955)
Amalgamated Dental Co. v. Commissioner, 6 T.C. 1009 (1946)
Taisei Fire and Marine Company, Ltd. v. Commissioner, 104 T.C. 535 (1995)
Miller v. Commissioner, 73 T.C.M. (CCH) 2319 (1997), aff'd, 166 F.3d 1218 (9th Cir. 1998)
InverWorld, Inc. v. Commissioner, 71 TCM 3231 (1996)

Additional Background Reading

Nutshell Chapter 4

Real Estate

Afternoon Session (2:30pm-4:00pm)

Presentation by Stewart Kasner, Holland & Knight, 701 Brickell Ave Unit 3300.

Taxation of Inbound Investment in US Real Estate

Required Reading: Primary Sources

IRC §§ 871(b); 882(a); 897; 1445

Reg. §§ 1.897-1; 1.897-2; 1.1445-2

Additional Background Reading

Herzfeld ¶ 503.3.2, 506.2

BNA Portfolio No. 6540

Bittker & Lokken Chapter ¶ 67.7

Diego Embón, Steffen Kranz & James A. Schmidt, *Tax-Efficient Real Estate Investment: A Multijurisdictional View*, 92 TAX NOTES INT'L 1299 (2018).

Michael Bolotin, *Why Private Investment Funds Are Using REITs to Invest in Real Estate*, 166 TAX NOTES FED. 1087 (2020).

Reception to follow at H&K offices

Class 5/6: Thursday, March 14

Inbound Private Equity: Top-Side Considerations (10am-12:00pm)

Presentation by Devon Bodoh, Weil, Gotshal & Manges, 1395 Brickell Avenue, Suite 1200

Weil will host a breakfast beginning at 9:30.

Required Reading: Primary Sources

IRC §§ 721, 731, 741, 871(b), 881, 892, 1446 [and see sources noted in Weil presentation]

US Model Treaty Art 10, 11, 22

Other Background Reading

Herzfeld ¶ 502, 503

BNA Portfolio No. 6585

Bittker & Lokken ¶ 67.6

Lunchtime Session

Private Equity: Inbound Real Estate (12:30pm-2:00pm)

At PwC Miami, 545 NW 26th Street

Presentation by: Eric Pinto, Hannah LaJoie

Required Reading: Primary Sources

IRC §§ 721, 731, 741, 871(b), 881, 892, 1446

US Model Treaty Art 10, 11, 22

Other Background Reading

Herzfeld ¶ 502, 503

BNA Portfolio No. 6585

Bittker & Lokken ¶ 67.6

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.

<http://teach.ufl.edu/docs/NetiquetteGuideforOnlineCourses.pdf>

Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University's Office of Student Conduct and Conflict Resolution.

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.

Course evaluation:

“Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.”

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Foreword by Kim Blanchard

I was delighted to provide some observations on the portions of Mindy Herzfeld's ambitious book dedicated to cross-border transactions involving partnerships and investment funds. This book fills a huge gap in the existing tax literature by focusing on how the tax law affects the ways in which transactions are put together in the real world. It should be of great interest to students and tax practitioners, whether they are faced with a cross-border deal for the first time or want a thorough reference guide to tax issues they are already familiar with.

Kim Blanchard

Foreword by Pat Brown

For many of us who practice in the field of taxation, the appeal is obvious (at least to us!). The tax law is dynamic, with rules that are constantly changing—tax never gets old. Tax materially affects economic outcomes, and in so doing, it can often influence the shape and structure of commerce as much or more than any other single factor. Tax is also ubiquitous, and, as the inscription above the Internal Revenue Service’s main office in Washington, DC reminds passersby, it is vital to maintaining a functioning government and society.

What is true in general of taxation is true in abundance with respect to international taxation. As cross-border commerce has exploded in recent decades, the appropriate taxation of cross-border transactions has attracted significant attention from government policymakers. This ensures that the rules change frequently. As a result of these changes, the shape and structure of commercial transactions will inevitably adapt to keep pace. Policymakers, in turn, react to changes in commercial activity with further rule changes, in the belief that appropriately taxing cross-border income is vital to preserving the confidence of citizens in the integrity of the tax system. And the cycle continues.

All of this change makes international taxation fascinating—and not infrequently terrifying—for the practitioner. Particularly for those in the early stages of their careers, it is simply overwhelming, a labyrinthine maze of overlapping and occasionally contradictory statutory and regulatory provisions, coupled with the need to analyze simultaneously the laws of multiple jurisdictions and the concerns of different types of investors. Confronted with all of this complexity in the face of a real-world business transaction on a tight timeline, the young practitioner can justifiably lament, where do I even begin?

Fortunately for such a practitioner, that question now has an excellent answer: Mindy Herzfeld’s [*Structuring Cross-Border Transactions: US Tax Considerations*]. Of course, no single volume (or, indeed, set of volumes) can comprehensively address every issue with respect to the taxation of cross-border transactions, and Mindy does not attempt to do so. The single-minded focus here is an overview of the landscape from a U.S. tax perspective. Which type of acquisition vehicles are most commonly

Foreword by Pat Brown

used in particular transactions, and why? What are the concerns of particular classes of investors that will influence the form of a transaction? What are the typical points of friction between buyers and sellers in the cross-border context? All of these fundamental questions, and many more, are carefully examined in this work. The book also helpfully contains extensive references to the work of other authors that dive deeper into particular areas.

For these reasons, this book rightfully belongs on the desk of every young international tax practitioner (in addition to the not-so-young of us!), but it will prove useful to many others as well, including corporate lawyers, corporate finance professionals, and anyone else whose work will benefit from a solid understanding of the fundamentals of this fascinating and ever-changing field. Mindy has done all of us a great service in providing a comprehensive yet eminently approachable work of research and analysis that directly answers many questions and provides references to the answers to many more. Congratulations on your good judgment in choosing to pick it up. Happy reading!

Pat Brown

Foreword by Paul Oosterhuis

Mindy Herzfeld is among the most prolific international tax authors of this generation. Her frequent articles in *Tax Notes* command a wide readership. Her book, *International Tax in a Nutshell*, is a must-read for anyone beginning to learn international tax. Now she has brought forth a second book, *Structuring Cross-Border Transactions: US Tax Considerations*; it will become an indispensable reference tool for transactional tax practitioners.

Twenty years ago, U.S. international tax was the domain of a small subset of tax practitioners based in Washington, D.C., New York City and a few other major financial centers. Today everyone who practices tax law in a transactional setting must understand various aspects of U.S. international tax because most transactions of any size involve some cross-border elements. Even transactions between two U.S. companies implicate international tax rules, given the importance of integrating worldwide operations of target and acquirer in most settings.

While the demand for international tax expertise in a transactional setting has expanded, the rules themselves have become more complex, less systematic, at times more illogical, and thus more difficult to penetrate. The 2017 Tax Cuts and Jobs Act made deferral irrelevant without repealing the legal infrastructure that provided its foundation (what is section 956 for?). It piled new foreign tax credit rules on top of the shaky foundations from the 1986 Tax Reform Act (what is a high-tax passive basket kick-out accomplishing?). It bolted GILTI onto the mechanics of Subpart F (what lower-tier CFC basis adjustments apply for GILTI inclusions?). And it layered BEAT over the already complicated restrictions on inbound planning (how many ways can interest expense deductions be disallowed?). Each of these provisions created systems of rules that cannot be intuited or even rationalized. The result is a plethora of planning opportunities for those with expertise and multiple traps for those lacking it.

It is in this context that Mindy's book will be indispensable to transactional tax practitioners. Its deep dives into the issues raised in specific types of transactions will help teach young practitioners how to think about the tax aspects of their own transactions and will remind more senior practitioners of the arcane issues that must be resolved, and the opportunities that may be considered, in the transactions before

them. One need not read this book, or even any chapter in it, for its own sake. It is best read when faced with specific transactions that raise cross-border issues.

Mindy's book is unique in its approach and scope. By focusing on specific examples, with financial metrics included, Mindy forces readers to pierce through and understand how the rules really operate in specific fact patterns. Given their frequent illogical nature, that is often the only way to develop--and verify--a practitioner's complete understanding of the rules and their operation. By separately discussing strategic corporate transactions, fund and other private investor transactions, and joint venture transactions, Mindy is able to illustrate how the same set of rules can apply differently in different settings; how rules that create opportunities in one context can turn into traps in others.

The result is a book that is best kept at a practitioner's side, with paper clips or dog-ears marking the discussions that arise again and again in a tax lawyer's transactional practice.

Paul Oosterhuis

Foreword by Dave Warco

Structuring cross-border merger and acquisition transactions is perhaps the most interesting, challenging and often frustrating experience that a tax practitioner can have, whether acting as an external advisor or working on a deal in-house. Evaluating and implementing cross-border M&A transactions is a team effort and involves multiple disciplines (e.g., specialists in treasury, accounting, legal) in addition to both domestic and international tax specialists. The U.S. tax implications in cross-border transactions are often very material— immediate in the case of the seller, and with lasting implications for the buyer. Estimating the results is usually a key input into modeling the financial deal, the most sophisticated of which include detailed tax projections. Doing so requires an in-depth understanding of the key U.S. tax provisions and how they interrelate. *Structuring Cross-Border Transactions: US Tax Considerations* authored by Mindy Herzfeld will be one of the most useful tools to practitioners involved in the M&A process.

Experience has taught us that the more each discipline knows about the objectives, deal breakers, and nuances that the other specialty areas face, the more efficient the process of evaluating and implementing a cross-border deal is. Because the M&A process is often competitive, it is even more valuable when the M&A teams understand the likely tax profile of other potential bidders, which are often very different from each other—e.g., U.S. public company as compared to private equity funds or non-U.S. companies compared to privately owned domestic and foreign companies. The treatise provides information that is useful for everyone involved, especially those who are confused about why the international tax specialists can sometimes spoil the party in certain scenarios; in other circumstances, there may be value in structuring a deal one way versus another even if less than ideal from a nontax perspective.

The U.S. international tax provisions, especially the anti-deferral provisions (subpart F and GILTI), that normally impact a cross-border M&A deal are far reaching—whether one is (or is representing) the buyer or the seller. The author, who is experienced in both practicing in this area and effectively communicating relevant

issues in an easy-to-understand manner, explains what an M&A practitioner needs to consider, and conversely, what can be ignored in a variety of common scenarios.

The treatise is segregated into very logical components and subcomponents. For example, the book separates out the different issues faced by U.S. and non-U.S. multinationals. When addressing buyers, the classic life-cycle approach addressing implications starting at the inception of the deal, the holding period and the potential ultimate exit is used. A fairly extensive matrix of possibilities covered from both the buy side and sell side is considered, including U.S. multinational company's purchase of a foreign target from either another U.S. multinational or a non-U.S. seller; a purchase by a non-U.S. multinational of a U.S. target company from another non-U.S. seller or the sale by another U.S. corporate group, in addition to purchases and sales by private equity funds.

Enabling the reader to compare how the U.S. international provisions impact buyers and sellers with different tax profiles, Chapters 4 and 5 provide insight into the issues that private equity funds face—including both the sponsors and different types of investors. The author avoids confusing readers by simplifying common private equity structures down to their most important components (e.g., comparing a U.S. partnership relative to a non-U.S. partnership as the direct and/or indirect vehicle to acquire the target company), and addressing those issues most critical to both the sponsors and different types of investors. There is a comprehensive analysis of the tax considerations relevant for both tax exempts and sovereign wealth funds which are often significant investors in private equity funds. While a highly specialized area, understanding the implications for these niche groups of investors is critical for anyone involved in working with private equity transactions to understand.

The last chapter includes a comprehensive set of issues involved in ever common joint venture scenarios. Consistent with the first five chapters, the last chapter is equally as thorough, covering various permutations and combinations of joint venture investors and target companies (U.S., non-U.S., and a combination of both). Given the prevalence of joint ventures in the M&A world, the information should be very useful to practitioners.

Overall, the analysis contained in each part of the M&A matrix is thorough, yet not overbearing. It focuses on those provisions that in cross-border scenarios either represent traps or alternatively pose opportunities. For example, the excruciatingly complex rules governing inversions—an area that is either often overlooked or misunderstood—are addressed in detail. Also addressed are the rules that govern how the dividends received deduction regulations apply when a controlled foreign corporation target is sold in the middle of a year and is no longer a controlled foreign corporation after the sale. Even for those readers who are not as familiar as international tax specialists with the most frequently applicable provisions that impact cross-border M&A deals, the illustrative examples will assist in the understanding of key drivers materially impacting results. The author addresses the complex rules and breaks them down in a manner that is far easier to understand compared to reading the Code and accompanying regulations.

While many of the relevant provisions, including those that may be affected by changes in the global tax landscape (such as the GILTI provisions), will likely be

Foreword by Dave Warco

modified at some point, the logical framework of the treatise is set up to facilitate updates. Knowing the passion that the author has for the M&A world, anyone who practices in the area will be well served to use as a reference this treatise and the updates that are sure to follow.

Dave Warco

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EXPERIENCE:

ResMed Inc., Gainesville, Florida (remote)
Senior Tax Counsel, November 2021 – Current

Advise company on all tax related matters, including corporate and international tax planning, M&A, and post-acquisition integrations. Lead U.S. and European income tax audits and company's global transfer pricing planning and policy, including the design and implementation of Oracle intercompany system. Advise executive committee on potential changes to global structure.

Baker & McKenzie, LLP, Houston, Texas
Counsel, April 2011 – November 2021

Practice involved multinational corporate restructurings, inbound and outbound investment, M&A, income tax treaty interpretation, corporate inversions, and SEC tax disclosures for clients in the professional services, software, medical device, pharmaceutical, oil field services, oil and gas, and industrial manufacturing industries.

Member of the firm's tax reform working group, providing thought leadership on the implications and applications of tax reform; co-chair of the pro bono committee; member of the recruiting committee; presented at a number of Tax Executives Institute and firm sponsored CLE and CPE seminars.

Representative matters:

- Assisted U.S. biopharmaceutical company analyze the impact of historic restructuring activities on their tax basis and plan the repatriation of \$800 million of cash via a stock redemption; drafted tax opinion describing the U.S. federal income tax consequences.
- Advised university on \$350 million joint venture with the U.S. subsidiary of a Japanese medical testing company; including the licensing of various life science intellectual property.
- Provided advice on the U.S. federal income tax consequences of the \$16 billion merger of two publicly-traded semiconductor manufacturers.
- Advised multinational semiconductor manufacturer on \$5 billion acquisition of publicly-traded manufacturer of data and storage networking products.
- Assisted client with the \$80 million purchase of closely-held payment processing company.
- Assisted client with the \$19.5 million purchase of assets from publicly-traded bank.
- Advised a multinational group of concessionaires and investors in entering into a joint-venture to develop and operate a \$20 billion liquefied natural gas facility.
- Advised publicly-traded Australian company in the \$420 million acquisition of a multinational drilling services provider.
- Drafted tax sections of SEC filings addressing the tax consequences of owning, holding, and disposing of stock in both domestic and foreign companies listed on a U.S. exchange.
- Advised oil field services company on tax aspects of a \$6 billion merger with a Swiss company.
- Advised multinational oil and gas company on the tax aspects of the disposition of \$1.4 billion in assets.
- Advised university on the tax aspects of its intellectual property commercialization agreement with one of its top executives/researchers.
- Advised companies in various industries, including the medical technology, pharmaceutical, and medical device manufacturing industries, on the section 7874 implications of potential mergers with foreign target companies.
- Advised university on tax aspects of a \$2 billion project with a for-profit enterprise.
- Advised closely-held company on the disposition of its assets through an auction-bid process.
- Assisted client analyze the tax consequences of reaching a large post-arbitration settlement with a foreign government.
- Advised Norwegian client on alternative structures to invest in Mexico.
- Advised on the tax consequences of a taxable section 331 liquidation of a publicly-traded company, and drafted the tax sections within the company's SEC disclosure.

- Guided client through a \$100 million withholding tax audit that resulted the issuance of a "no change" letter.
- Assisted a Chinese parented group acquire an industrial manufacturer worth \$26 million.

PricewaterhouseCoopers, LLP, Raleigh, North Carolina

Associate, July 2009 – March 2011

Practice focused on inbound/outbound multinational corporations in the software, pharmaceutical research, telecommunications, and manufacturing industries; advised on tax-free reorganizations, offshore intellectual property transfers, application of the consolidated return regulations, transfer pricing rules; audited public company tax provisions; assisted clients with IRS audits; prepared corporate and partnership returns with various international issues.

Internal Revenue Service, Office of Chief Counsel, Jacksonville, Florida

Intern, May 2007 – August 2007

Initiated suits to enforce federal tax assessments; drafted Counsel opinion letters; and reviewed Offers in Compromise.

PRO BONO:

Tahirih Justice Center, Houston, Texas

Pro Bono Attorney, December 2011 – Current

Assisted immigrant women and young girls who were the victims of gender-based violence obtain temporary legal status in the United States through the U-Visa and T-Visa programs.

Volunteer Income Tax Assistance, Gainesville, Florida; Durham, North Carolina; and Houston, Texas

Volunteer, Various

Assisted families, individuals, and international students file their U.S. federal income tax returns.

Veterans' Legal Clinic, Houston Bar Association, Houston, Texas

Volunteer, October 2012 – October 2014

Helped low-income veterans access legal resources to address a variety of issues.

PUBLICATIONS:

Lipeles, S., Odintz, J., Rimpfel, K., Mauney, M., "The TCJA is Not for Losers" *48 TMJ 9*, September 13, 2019

Christenson, E., Mauney, M., Block, N., "Foreign-Derived Intangible Income: Unanswered Questions on Foreign Use" *47 TM Int'l. J. 240*, April 13, 2018

Mauney, M., Staine, R., "'Not GILTI' — Changes to Subpart F under the New 'Territorial' Regime Other Than the Addition of Section 951A" *Tax News and Developments*, Baker & McKenzie, February 2018

Mauney, M., "The OECD Moves Forward on Initiatives to Curb Treaty Abuse, while US Tax Treaties are Stalled in the US Senate" *Tax News and Developments*, Baker & McKenzie, October 2014

Morales, I.A., Bendemire, K.T., Mauney, M., "Cost Sharing Final Regs. Clarify and Refine 2008 Temporary Regs." *Journal of International Taxation*, Vol. 23 No. 5, May 2012

EDUCATION:

University of Florida, Levin College of Law, Gainesville, Florida

L.L.M. in Taxation, May 2009

University of Florida, Levin College of Law, Gainesville, Florida

Juris Doctor, *Cum Laude*, May 2008

University of Florida, Gainesville, Florida

Bachelor of Science in Finance, *Cum Laude*, April 2005

BAR ADMISSION:

Florida and Texas

Levin COL Policy on Finality of Grades & Grade Grievances

I. Finality of grades

All grades are final. Instructors are not permitted to alter a grade once they have submitted their final grades to the registrar. The sole exception to this policy is a numeric error by the instructor. Examples of numeric errors include a mistake in adding up points or in entering values into a grade calculation worksheet. The amount of points/percentage an instructor assigns to any portion of an assessment and the amount awarded to a student's performance on any portion of an assessment are a matter of academic judgment and not a numeric error.

II. Course performance review

All students are encouraged to review their course performance with their instructors as a learning experience. Students may not argue or bargain for better grades. If during the course of review, the instructor identifies a numeric error, the correction of which would justify a change in the student's assigned final grade, the professor must submit a Grade Error Certification to the registrar. The Grade Error Certification must include the revised grade, an explanation of the error, and the appropriateness of the revised grade. Determining whether the correction of a numeric error justifies a change in a student's grade is a matter of academic judgment by the instructor.

III. Grade grievances

In narrow circumstances, a student may grieve a final grade. The student is ultimately responsible for providing sufficient evidence to establish grounds for their grievance and the appropriateness of any requested relief. Grounds are limited to the following:

- A. The instructor has failed to provide relief following the identification of a numeric error that justifies a change in the student's grade.
- B. The student's grade was the result of discrimination or personal animosity and, in a case where the grievance relates to a grade assigned anonymously, there is evidence of breach of anonymity.
- C. The student's grade was determined by criteria that constitute a substantial and manifestly unreasonable deviation from the instructor's officially posted grade criteria (e.g., in the course syllabus) made without reasonable notice to the class.

IV. Grievance Procedure

- A. Preliminary meeting. A student must meet with their instructor no later than thirty days after the posting of their grade as a prerequisite to pursuing a grievance. If the instructor is not responsive to the student's attempts to meet, the student may bypass this requirement as indicated below.

- B. Notice of grievance. A student must notify the Academic Affairs Office of their intent to grieve a grade no later than 15 days from the preliminary meeting or 45 days from the posting of the grade, whichever is sooner. The notice must be by email to gatoraid@law.ufl.edu with a copy to the instructor. The email must:
1. State the date, time and place of the preliminary meeting and a brief statement of the outcome of the meeting. In the event the student has not met with the instructor due to the instructor's non-responsiveness, the student must demonstrate that they have made at least two attempts to contact the instructor.
 2. Identify the grounds for the grievance, which must be one of the three grounds listed in Section 3 above.
 3. Contain a short statement, not to exceed 500 words, of the basis for the grievance and the relief sought.

The student may provide no more than 5 pages of additional information or documentary evidence in support of the grievance.

- C. Initial assessment. No later than 45 days after receiving a Notice of Grievance the Academic Affairs Office will make an initial assessment as to whether the grievance has merit and notify the instructor and the student. In making its initial assessment, the Academic Affairs Office may seek any information that it deems relevant from the student and/or the instructor.
- D. Notice of Appeal. If the student is dissatisfied with the assessment of the Academic Affairs Office, or if the student does not receive an initial assessment within 45 days of submitting the Notice of Grievance, the student may submit a Notice of Appeal to the Academic Standards Committee. The Notice of Appeal must be submitted by email to the Committee Chair with a copy to the instructor and Academic Affairs Office no later than 15 days after the student receives the Academic Affairs Office's initial determination or 45 days after submitting the Notice of Grievance, whichever is sooner. In the event that the committee chair is the instructor who issued the grade being appealed, the student may send the Notice of Appeal to any member of the committee.
- E. Determination by subcommittee. A subcommittee consisting of all faculty members of the Academic Standards Committee will decide the appeal. In the event that the instructor who issued the grade is a faculty member of the Academic Standards

Committee, that member will recuse themselves and the Dean will appoint a replacement. In deciding the appeal, the subcommittee may seek any additional information that it deems relevant from the student, the instructor, and/or the Academic Affairs Office. No later than 45 days from receipt of the Notice of Appeal, the subcommittee will decide the appeal and notify the student, the instructor, and the Academic Affairs Office of its determination. The notification will include a statement of any relief to be granted. The decision of the subcommittee is final and may not be further appealed.

DRAFT