

# TAX TREATIES

LAW 7682

2 CREDIT HOURS

FALL 2022

ROOM: HOLLAND HALL 359

FRI 9:00-11:15

**INSTRUCTOR:** *Yariv Brauner*

*Holland Hall 325  
brauner@law.ufl.edu  
(352) 273 0949*

**OFFICE HOURS:** 11:15-13:15 after class.

**COURSE COMMUNICATIONS:** via email.

**REQUIRED TEXT: NONE**

**ADDITIONAL RESOURCES:** Current Internal Revenue Code and Treasury Regulations.

**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 the international tax treaties.

**COURSE GOALS AND/OR OBJECTIVES:** *By the end of this course, students will apply the laws of the international tax embedded in tax treaties.*

**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 WILL BE TWO RESEARCH PAPER ASSIGNMENTS IN THIS CLASS.**

**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.

**ACADEMIC HONESTY:** 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>.

### GRADING:

The Levin College of Law's mean and mandatory distributions are posted on the College's website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

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

The law school grading policy is available at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>.

The law school policy on exam delays and accommodations can be found at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form>.

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. See <https://gatorevals.aa.ufl.edu/students/> for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may 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/>.

## UF POLICIES:

### **UNIVERSITY POLICY ON ACCOMMODATING STUDENTS WITH DISABILITIES:**

Students requesting accommodations for disabilities must first register with the Disability Resource Center (<https://disability.ufl.edu/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester.

**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>

### **CLASS RECORDING POLICY:**

The Office of Student Affairs will continue to record all classes via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will determine when students may have access to these recordings, and the recordings will be password protected. These recordings will be retained only for a short period of time and it is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.

## GRADING POLICIES:

*The final grade will be comprised of the grade awarded to the papers (66% of the final grade) and a grade assigned for contribution to the class discussion (34%).*

## COURSE SCHEDULE:

We will spend approx. one class on each unit. Assignments will be handed out in advance. For the first assignment, see below.

Unit I: Introduction, History and the Models

Unit II: Legal Status and Scope

Unit III: Business Income and Permanent Establishments

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

Unit V: Income from Employment & Capital Gains

Unit VI: Dividends and Interest

Unit VII: Royalties, E-commerce, etc.

Unit VIII: Relief of DT etc.

Unit IX: Non Discrimination & Partnerships

Unit X: MAP

Unit XI: Anti-avoidance

Unit XII: Application and triangular cases

**Oct. 28: International Tax Symposium – Participation and preparation of all of the papers presented is mandatory for this course.**

**The students are also expected to participate in all academic tax events (lectures, workshops, etc.) during the semester. Please discuss with the Professor in advance if you are unable to attend an event.**

First Assignment (prepare for the first meeting)

Required Text:

\* 2017 OECD Model Convention and Commentaries – available through the OECD library database

\* 2016 United States Model Convention and the Treasury's Technical Explanation – available on the web or through the Tax Analysts database.

\* 2017 UN Model Convention and Commentaries – available on the web or through the Tax Analysts database.

\* The 1969 Vienna Convention on the Law of Treaties

\* Current Internal Revenue Code and Regulations

\* Global Tax Treaty Commentary ("GTTC") – available through the IBFD platform on the library's site

Class I (Aug. 26, 2022): Introduction, History and the Models

- a. Treaties in International Law and the Vienna Convention
- b. History
- c. Model Conventions
- d. Protocols and Renegotiations

Read: 1. Introduction to the 2017 OECD Model.  
2. Introduction to the GTTC.

3. Skim League of Nations, Double Taxation and Tax Evasion Reports (1927/1928), available on several websites.

Familiarize yourself with:

- (a) OECD Model Convention
- (b) Vienna Convention on the Law of Treaties (“VCLT”)

Guiding Questions (for this class you do not have to prepare your answers in writing, but you should be prepared to orally respond in class. You may also be unsure whether you can comprehensively answer these questions – do not worry about it, just do your best (for now...)):

1. What is a treaty?
2. Are U.S. tax treaties subject to the VCLT?
3. What is the legal status of tax treaties signed by the U.S. under U.S. law?
4. What are the purposes of tax treaties? Are tax treaties necessary to accomplish their purposes?
5. What exactly is the concern with “double taxation”?
6. What is the distinction between juridical and economic double taxation?
7. What double taxation is relieved by tax treaties?
8. What is the exact effect of tax treaties?
9. How does a tax treaty come into effect in the U.S.?
10. Why do we sign tax treaties?
11. Think about the relationship between tax treaty provisions and domestic law?
12. What is tax treaty override? Consider Art. VI U.S. Constitution, IRC §§ 894(a) & 7852(d), *Whitney v. Robertson*, 124 U.S. 190 (1888), *Cook v. United States* 288 U.S. 102 (1933), and *Kappus v. Commissioner*, 337 F.3d 1053 (DC cir. 2003).
13. What happens when a tax treaty permits a country to tax income that would otherwise be exempt under its domestic law? For example, may a country that domestically does not tax dividend income require that its resident companies withhold tax on dividends paid to residents of their treaty partners?
14. Read IRC §§ 163(j), 884, and Treas. Reg. §1.881-3. Do they represent treaty override?

15. Read art. 1 of the 2017 OECD model convention. Can a U.S. LLC, wholly owned by a Canadian individual, and operating a warehouse in Mexico (its sole source of income) enjoy the benefits of the treaty between the United States and Mexico in order not to pay tax on its income above in Mexico (read also articles 4, 5, and 7 of the 2017 OECD model and assume that all relevant treaties are identical to this Model).

16. A is an individual citizen of country X. He works in country Y (just across the border of his hometown located in country X) as a technical service provider mostly for clients of corporation B that resides in country Z, out of an office located in country Y. 30% of his time he spends in another neighboring country, P, helping similar clients. A was trained for his very specific job in country T, and is required to travel for continuous training to country T at least 4 times a year, for three days of training each time. Training is done by a service provider of corporation B, corporation C that is resident in country T. Both corporations B and C are 50% owned by corporation D that resides in country U (the rest of their shares are owned by the public).

Which tax treaties may be relevant to the above simple scenario and how?

17. May a resident of a treaty country claim an exemption under a tax treaty in his country of residence with respect to income not taxed to him in the country of source?