# Introduction to U.S. International Taxation

**Professor Mindy Herzfeld**

**University of Florida Levin College of Law**

**Syllabus**

**Fall Semester 2021**

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

**Course # LAW 7614**

**Section #5190**

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Office Hours: Tuesday 1:00 pm.-3:00 p.m. or by appointment (contact me by email to set up appointment in person or by phone)

1. Course Materials:

Access to an Internal Revenue Code and Treasury Regulations, in whatever format desired, is required and must be brought to each class. This volume makes it easy to access just the relevant international tax provisions.

Class readings will be assigned from Herzfeld, International Taxation in a Nutshell, 12th ed. The book is available on Amazon.

You may also wish to use Bittker & Lokken, Fundamentals of International Taxation, as a reference book.

## In lieu of purchasing the Nutshell, 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:

* [**https://subscription.westacademic.com/**](https://urldefense.proofpoint.com/v2/url?u=https-3A__subscription.westacademic.com_&d=DwMFAg&c=pZJPUDQ3SB9JplYbifm4nt2lEVG5pWx2KikqINpWlZM&r=QBYXFlZCHGNS8cWUObenSk7O0kVzLt4vSjkwcFvcs6o&m=QKyWITiq-L8O_pyl3JrdoKqRImAZH8DceT73c8fKmUA&s=oe9Yyz-YCVrK3U3k9OqrlyP5BvQr8IQxmse1eeZkxVc&e=)

I have also provided references to BNA Portfolios, which provide helpful background on specific topics.

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:

1. 80% on the exam to be administered at the end of class.

2. 10% of the grade to be based on the submission of 10 problem sets (1 point each), graded solely on submission of responses to questions posed, and not on the accuracy of the response.

3. 10% of the grade to be based on presentation of 1 problem to the class during the semester, as described below.

|  |  |
| --- | --- |
| **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 format of this class will be a series of lectures followed by discussions of problem sets. You will be responsible for presenting to the class 1 problem set (with a group of other students) during the semester. The preparation of this problem set and your presentation will count for 10% of your grade (5 points each).

Your assignment, including the date and the specific problem set, will be randomly assigned via canvas. You are responsible for working with your fellow students on presenting the problem to the class and submitting your responses to be shared by the class.

E. Reading Assignments and Problem Sets.

***All secondary readings are optional. My expectation is that you become familiar with and understand the primary sources: the Code and Regulations, and relevant case law. The choice of what sources you use to help you understand this material is entirely up to you. All secondary source readings are provided for your reference and benefit only.***

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>.

G. Class Schedule. As per the course schedule, t**here will be no class on September 7, 8, 14, 15, 21, 22, and 28, 29.** Class meetings on September 13, 21, and 27, and October 25, 26, and 27 will be on zoom.

**Summary of the Course**

This course is a survey course in U.S. international taxation. We will start the course with an overview of the questions and conundrums that international tax rules attempt to address, including questions of jurisdiction and residency. We will then move on to survey the U.S. tax rules that apply to the taxation of non-U.S. persons’ U.S. taxable income, including business and non-business income. Included in this unit will be an overview of tax treaties to understand how they interact with and overlay U.S. taxing rules. The third unit of the course will consider how the U.S. tax rules apply to tax U.S. persons’ foreign earnings. Throughout, we will consider the dynamic development of the law, which may be changing as the semester progresses.

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 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. 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 2020/2021)

**Module 1: International Taxation Principles**

***Monday August 23***

*Jurisdictional Principles*

Primary sources reading:

1. Background And Selected Policy Issues On International Tax Reform JCX-45-17 (September 28, 2017) <https://www.jct.gov/publications/2017/jcx-45-17/>
2. [Cook v. Tait, 265 U.S. 47 (1924)](http://www.westlaw.com/find/default.wl?ft=Y&db=0000780&rs=ap2.0&rp=%2ffind%2fdefault.wl&serialnum=1924120627&fn=_top&findtype=Y&vr=2.0&wbtoolsId=1924120627&HistoryType=F)

Secondary sources reading

1. Nutshell Chapter 1 & 2
2. B&L ¶¶ 65.1.1, .65.1.2, 65.1.3
3. BNA Portfolio 900-2nd

***Tuesday, August 24***

*Residency*

Primary sources reading:

1. IRC sections 7701; 877A; 7874(a), (b)
2. Reg. § 301.7701(b)-1

Secondary sources reading

1. Nutshell Chapter §2.04, 2.05
2. B&L ¶¶ 65.2, 65.3.1, 65.3.2
3. BNA Portfolio 900 I.G.

***Wednesday, August 25***

*Entity Classification*

Primary sources reading

1. IRC sections 7701(a), 267A

2. Reg. § 301.7701-1, 2, 3, 4

Secondary Sources Reading

1. Nutshell Chapter § 2.04, 2.05
2. B&L ¶¶ 65. 3.5
3. BNA Portfolio 6460 II.B

***Monday August 30***

*Source Rules*

Primary Sources:

1. IRC sections 861; 862; 863; 865
2. Treas. Reg. § 1.861–2
3. [Bank of America v. United States, 680 F.2d 142 (Ct.Cl. 1982)](http://www.westlaw.com/find/default.wl?ft=Y&db=0000350&rs=ap2.0&rp=%2ffind%2fdefault.wl&serialnum=1982125948&fn=_top&findtype=Y&vr=2.0&wbtoolsId=1982125948&HistoryType=F)
4. Rev. Rul. 84-75
5. Rev. Rul. 68-443

Secondary Sources:

1. Nutshell Chapter 3.01(A), (B), (D)
2. BNA Portfolio 6620
3. B&L ¶ 73.1, .73.2, 73.3, 73.5

***Tues August 31***

*Source Rules, cont.*

Primary Sources:

1. IRC sections 861; 862; 863; 865
2. Treas. Reg. §§ 1.861-8(e); 1.861-9T; 1.861-17 (skim)
3. Prop. Reg. § 1.861-18(h)
4. *Commissioner v. Wodehouse*, 337 U.S. 369 (1949)
5. [*Boulez v. Commissioner*, 83 T.C. 584 (Tax Ct. 1984)](http://www.westlaw.com/find/default.wl?ft=Y&db=0000838&rs=ap2.0&rp=%2ffind%2fdefault.wl&serialnum=1985207950&fn=_top&findtype=Y&vr=2.0&wbtoolsId=1985207950&HistoryType=F)

Secondary Sources:

1. Nutshell Chapter 3
2. BNA Portfolio 6620
3. B&L ¶ 73.4, .73.6, 73.10

**Module 2 Inbound Taxation**

***Wednesday September 1***

*FDAP and Withholding*

Primary Sources:

1. IRC §§ 871; 881; 1441, 1442
2. Reg. §§ 1.871-10; 1.882-1; 1.1441-2
3. *Commissioner v. Wodehouse*, 337 U.S. 369 (1949)
4. Rev. Rul. 73-522

Secondary Sources:

1. Nutshell Chapter 4.04
2. BNA Portfolio 6400, 6460
3. B&L ¶ 67.2; 67.4

***Monday September 13***

Problem Set 1: Residency & Entity Classification

***Monday September 20***

Problem Set 2: Source Rules

***Monday September 27***

Problem Set 3: FDAP

**Module 2 Inbound Taxation (cont.)**

***Monday Oct 4***

*US Trade or Business*

Primary Sources:

1. IRC §§ 864(b); 872; 882
2. Reg. §§ 1.864-2; 1.864-7
3. [*Scottish American Investment Co., Ltd. v. Commissioner*, 12 T.C. 49, 59 (1949)](http://www.westlaw.com/find/default.wl?ft=Y&referencepositiontype=S&rs=ap2.0&rp=%2ffind%2fdefault.wl&serialnum=1949000611&fn=_top&referenceposition=59&findtype=Y&vr=2.0&db=0000838&wbtoolsId=1949000611&HistoryType=F)
4. [*Lewenhaupt v. Commissioner*, 20 T.C. 151 (1953)](http://www.westlaw.com/find/default.wl?ft=Y&db=0000838&rs=ap2.0&rp=%2ffind%2fdefault.wl&serialnum=1953298314&fn=_top&findtype=Y&vr=2.0&wbtoolsId=1953298314&HistoryType=F)
5. [*Handfield v. Commissioner*, 23 T.C. 633 (1955)](http://www.westlaw.com/find/default.wl?ft=Y&db=0000838&rs=ap2.0&rp=%2ffind%2fdefault.wl&serialnum=1955000886&fn=_top&findtype=Y&vr=2.0&wbtoolsId=1955000886&HistoryType=F)
6. [*United States v. Balanovski*, 236 F.2d 298 (2d Cir. 1956)](http://www.westlaw.com/find/default.wl?ft=Y&db=0000350&rs=ap2.0&rp=%2ffind%2fdefault.wl&serialnum=1956111676&fn=_top&findtype=Y&vr=2.0&wbtoolsId=1956111676&HistoryType=F)

Secondary Sources:

1. Nutshell Chapter 4.02
2. BNA Portfolios 900 II.
3. B&L ¶¶ 67.6.2

***Tuesday Oct 5***

*Effectively Connected Income*

Primary Sources:

1. IRC sections 864(c)(1)-(4)
2. Reg. §§ 1.864-3; 1.864-4; 1.864-5; 1.864-6
3. [*InverWorld, Inc. v. Commissioner*, T.C. Memo. 1996–301 (1996)](http://www.westlaw.com/find/default.wl?ft=Y&db=0001051&rs=ap2.0&rp=%2ffind%2fdefault.wl&serialnum=1996144317&fn=_top&findtype=Y&vr=2.0&wbtoolsId=1996144317&HistoryType=F)

Secondary Sources:

1. Nutshell Chapter 4.03
2. BNA Portfolios 900 II
3. B&L ¶¶ 67.6

***Wednesday October 6***

*FIRPTA*

Primary Sources:

1. IRC §§ 897; 1445
2. Reg. §§ 1.897-1; 1.897-2; 1.1445-1

Secondary Sources:

1. Nutshell Chapter 4.07
2. BNA Portfolios 6540
3. B&L ¶ 67.7

***Monday October 10***

*Inbound: Base Erosion & Attempts to Stop It; Transfer Pricing*

Primary Source Reading:

1. IRC §§ 163(j); 482; 367(d); 59A [if still in the Code]
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 4.09; 10
2. BNA Portfolios 886; 6125
3. B&L ¶¶ 66.6; 66.10; 79.1-3

***Tuesday October 11***

*Treaties*

Primary Sources:

1. 2016 U.S. Model Treaty <https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/Treaty-US%20Model-2016.pdf>
2. IRC § 894(d)
3. Reg. § 1.894-1
4. [*SDI Netherlands B.V. v. Commissioner*, 107 T.C. 161 (1996)](http://www.westlaw.com/find/default.wl?ft=Y&db=0000838&rs=ap2.0&rp=%2ffind%2fdefault.wl&serialnum=1996222940&fn=_top&findtype=Y&vr=2.0&wbtoolsId=1996222940&HistoryType=F)
5. *Northern Ind. Pub. Serv. Co. v. Commissioner*, 105 TC 341 (1995)

Secondary Sources:

1. Nutshell Chapter 5
2. B&L ¶¶ 65.3.6.; 65.4; 66.4; 67.3
3. BNA Portfolio 900 V.

**Module 3 Outbound**

***Wednesday October 12***

*Review of Inbound*

*Introduction to Outbound: Worldwide Taxation*

Primary Source Reading:

1. Sections 1(h)(11); 245A; 911
2. 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>
3. Conference Report of TCJA pp. 595-601 <https://www.gpo.gov/fdsys/pkg/CRPT-115hrpt466/pdf/CRPT-115hrpt466.pdf>

Secondary Sources:

1. Nutshell Chapter 7
2. B&L ¶¶ 66.3; 66.8; 66.9
3. BNA Portfolio 6080; 6130; 6360

***Monday October 17 and Tuesday, October 18***

*Introduction to the Foreign Tax Credit: What is a Foreign Tax? Who can claim the Credit?*

Primary Source Reading:

1. IRC §§ 901, 903, 909, 960
2. Reg. § 1.901-2; 1.903-1
3. *Biddle v. Commissioner*, 302 U.S. 573 (1938)

Secondary Source Reading:

1. Nutshell Chapter 8.01-.03
2. B&L ¶ 72.1-5
3. BNA Portfolio 6020 I., II

***Wednesday Oct 19***

*The Foreign Tax Credit Limitation*

Primary Source Reading:

1. IRC § 904
2. Reg. § 1.904-1

Secondary Source Reading:

1. Nutshell Chapter 8.03(G); 8.04; 10.03(A), (B)
2. B&L ¶ 72.6-.7
3. BNA Portfolio 6060

***Monday October 24***

Problem Set 4 USTB/ECI

***Tuesday October 25***

Problem Set 5 Outbound Intro

***Wednesday October 26***

Problem Set 6 The Foreign Tax Credit

***Monday November 1***

*Introduction to Subpart F: What is a CFC?*

Primary Sources:

1. IRC §§ 951, 957, 958
2. Reg. § 1.957-1; 1.958-1

Secondary Sources:

1. Nutshell Chapter 9.01-.02
2. B&L ¶¶ 69.1-69.2
3. BNA Portfolio 926

***Tuesday November 2***

*Subpart F: What is Subpart F Income?*

Primary Sources:

1. IRC §§ 952, 954
2. Reg. § 1.954-1(a)-(b)

Secondary Sources:

1. Nutshell Chapter 9.03
2. B&L ¶¶ 69.4-5; 9-19
3. BNA Portfolio 926

***Wednesday November 3***

*Calculating the Subpart F Inclusion*

Primary Sources:

1. IRC §§ 951, 952
2. Reg. § 1.951-1, 1.952-1

Secondary Sources:

1. Nutshell Chapter 9.03
2. B&L ¶¶ 69.9-10
3. BNA Portfolio 926

***Monday November 8***

*The GILTI Regime*

Primary Sources:

1. Section 951A
2. Reg. § 1.951A-1(a)
3. TCJA Conference Report <https://www.congress.gov/115/crpt/hrpt466/CRPT-115hrpt466.pdf> pp. 635-645

Secondary Sources:

1. Nutshell Chapter §9.04
2. B&L ¶ 69.17
3. BNA Portfolio 926 XVIII

***Tuesday November 9***

*The Indirect FTC*

Primary Sources:

1. IRC § 960
2. Reg. § 1.960-1

Secondary sources:

1. Nutshell Chapter 10.01-02
2. B&L ¶¶ 72.9
3. BNA Portfolio 6040

***Wednesday November 10***

*Foreign Currency*

Primary Sources:

1. IRC § 960
2. Reg. § 1.960-1

Secondary sources:

1. Nutshell Chapter 10.01-02
2. B&L ¶¶ 72.9
3. BNA Portfolio 6040

***Monday, November 15***

*Problem Set, CFCs*

**Tuesday, November 16**

Problem Set Subpart F

**Wednesday, November 17**

Problem Set GILTI/The Indirect FTC

**Exam Review (optional): Monday, November 22**

**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>

**Exam Accommodations**

The law school policy on exam delays and accommodations can be found [here](http://www.law.ufl.edu/student-affairs/current-students/forms-applications/exam-delays-accommodations-form).

**Course Evaluations**

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](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 [here](https://gatorevals.aa.ufl.edu/public-results/).

## 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.