# International Tax II

# Taxation of Outbound Transactions

**Professor Mindy Herzfeld**

**University of Florida Levin College of Law**

**Graduate Tax Program**

**Syllabus**

**Spring Semester 2020**

**Taxation of Outbound Transactions**

**Course # LAW 7615**

**Section #26H8**

**Professor Mindy Herzfeld**

Office: 374

Phone: 352-273-0932

Office Hours: Tuesday 3:00 pm.-5:00 p.m. or by appointment

1. Course Materials: Access to an Internal Revenue Code and Treasury Regulations is required and must be brought to each class. Hard copies are highly recommended.

Each class assignment will include reading assignments from primary sources (Code, regulations, or possibly US Model Treaty). Primary source readings are mandatory. Each class assignment will also note secondary source readings from both International Taxation in a Nutshell (12th edition) and from Bittker & Lokken, Fundamentals of International Taxation. [The most recent edition has been ordered to the bookstore and I will also leave my copy on reserve in the library. Note that only prior editions (used) are available through online booksellers and that these have not been fully updated for TCJA.] I am indifferent as to which source you choose; the Nutshell is obviously shorter and the Bittker & Lokken treatise more comprehensive. You may also wish to supplement your knowledge with reading from BNA tax portfolios, which are organized by subject matter. If you are interested in this additional reading and are having trouble finding out which portfolio is most on point, feel free to ask me.

Each week there will be a problem set assigned.

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 50% on the exam to be administered at the end of class. The other 50% of the grade will be based on the two problem sets you will be assigned to submit over the course of the semester, along with your classroom presentation of those problem sets.

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| **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.

There will be two problem sets assigned over the course of the semester.

Problem Set 1: each student will be assigned to submit answers to 1 (one) problem set as part of a groups of 6 (six) in the first half of the course. You will be expected to present in class, together with the others assigned to that problem set, the material in the problem set.

Problem Set 2: each student will be assigned to submit answers to 1 (one) problem set in the second half of the semester.

E. Reading Assignments. This course meets on Tuesday from 1:00PM -2:35PM, and on Wednesday from 9:00am-9:55am, on the following dates. You should be prepared to discuss the reading assignment for the class.

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

Tuesday, January 14 and Wednesday, January 15

Tuesday, January 21, and Wednesday, January 22

Tuesday, January 28, and Wednesday, January 29

Tuesday, February 4, and Wednesday, February 5

Tuesday, February 18, and Wednesday, February 19

Tuesday, February 25, and Wednesday, February 26

Tuesday, March 17, and Wednesday, March 18

Tuesday, March 24, and Wednesday, March 25

Tuesday, March 31, and Wednesday, April 1

F. Guest Lecturers. In the second half of the course, we will have three guest lectures, leading practitioners who will present complex fact patterns that they experience in their practice. You will need to be prepared with assigned readings in order to participate in the classroom.

Summary of the Course

This course considers the tax implications for U.S. persons of investments overseas. For the first half of the course, we will focus on becoming familiar with the applicable code sections and other relevant authorities. For the second half of the class, we will analyze the law in connection with the types of questions faced by multinational companies and by individuals investing overseas.

Objectives of the course

This course has a number of objectives:

1. To gain an understanding of the U.S. tax rules that apply to U.S. persons on investments overseas;
2. To understand the planning opportunities these rules present;
3. To appreciate the analysis required to approach a complex cross-border transaction;
4. To develop presentation and writing skills necessary to engage in the practice of international taxation;
5. To understand the potential for future regulatory changes.

## Required Course Materials are:

##  Internal Revenue Code and Regulations (including final, temporary and proposed).

##  Herzfeld, International Taxation in a Nutshell, 12 ed.

##  Reference Materials.

Bittker & Lokken Fundamental**s** of International Taxation.

Isenbergh and Wells, International Taxation (4th ed.)

Bloomberg BNA Portfolios

1. **Office Hours**. My office hours are Tuesday 3PM-5PM. If you have questions, please contact me at Room 374, or by telephone at 352.273.0932, or by email at herzfeld@law.ufl.edu.

**Class 1: Tuesday, January 14**

*Foreign Tax Credit: The Direct Credit: What’s an Income tax, Who Can Claim It, The Limitation*

Primary sources reading:

1. IRC sections 901(a); 901(b); 901(i); 901(j); 901(k); 901(l), 904(a), (b), (c), (d)(1)
2. Treas. Reg. 1.901-1(a)(1), (2); 1.901-2(a), (b), (c), (d), (e)(1)-(e)(4), (e)(5)(i)-(iii) [Prop. Reg. § 1.904-1, 2 Note: may be finalized before class meets]
3. *PPL v. Commissioner*, 133 S. Ct. 1897 (2013)

Secondary sources reading (for reference):

1. Nutshell, Chapter 8
2. Bittker & Lokken: ¶ 72.1, 72.2, 72.3, 72.4 (probably want to skip 72.4.6A), 72.5, 72.7
3. BNA Portfolios 900, ¶ III; 902; 6020, 6060; 6640.

**Class 2: Wednesday, January 15**

FTC Problem Set (Problem Set 1) (available in Canvas)

**Class 3: Tuesday, January 21**

*Subpart F: Controlled Foreign Corporations, Who has an Inclusion, Defining Subpart F Income*

Primary Sources reading:

1. Sections 951; 952, 954(a),(b),(c), 957, 958, 964(a)
2. Reg. 1.951-1(a), -1(b)(1), -1(e)(1), (2), -1(g)
3. Reg. 1.952-1(a)
4. Reg. 1.954-2(a)(1)-(5)
5. Reg. 1.954-3(a)
6. Reg. 1.954-4
7. Notice 2007-13

Secondary sources reading (for reference)

1. Nutshell Chapter 9.02, 9.02, 9.03
2. Bittker & Lokken ¶ 69.1, 69.2, 69.4, 69.5, 69.6, 69.9, 69.10
3. BNA Portfolios 926, 6220, 6440

**Class 4: Wednesday, January 22**

Subpart F Problem Set (Problem Set 2) (available in Canvas)

**Class 5: Tuesday, January 28**

*More Subpart F: Section 956, Section 962 Election, Basis Adjustments, Calculating Subpart F Inclusions, Transition Tax, PTEP*

Primary sources reading:

1. Sections 951, 952, 956, 958, 959, 961, 962, 965
2. Reg. §§ 1.952-1(b), -1(c), -1(e), -1(f)
3. Reg. § 1.954-1
4. Reg. § 1.956-1 [make sure you’re reading the 2019 revisions]
5. Reg. § 1.959-1, -2, -3(a)
6. Prop. Reg. § 1.96-1, -2
7. Prop. Reg. § 1.962-1
8. Reg. § 1.964-1(a)

Secondary Source Reading: (for reference)

1. Nutshell Chapter §§ 9.05, 9.07, 9.08
2. Bittker & Lokken ¶ 69.10; 69.11; 69.12.1; 69.12.2; 69.12.3; 69.13.4; 69.13.6; and 69.14; 69.12.6; 70.1.
3. BNA Portfolios 926; 930; 6260

**Class 6: Wednesday, January 29**

Subpart F Problem Set II (Problem Set 3) (available in Canvas)

**Class 7: Tuesday, February 4**

*GILTI + FDII*

Primary Sources Reading:

1. Section 951A; section 250
2. Reg. § 1.951A-1, 2, 3, 4, 5
3. Prop. Reg. § 1.250(a)-1
4. Prop. Reg. § 1.250(b)-1, -2, -3, -4

Secondary sources reading (optional):

1. Nutshell Chapter 9.04
2. Bittker & Lokken: ¶ 69.17
3. TD 9866 (2019) (Preamble)

**Class 8: Wednesday, February 5**

GILTI/FDII Problem Set (Problem Set 4) (available in Canvas)

**Class 9: Tuesday, February 18**

*Participation Exemption, PFICs*

1. Sections 245A, 1291, 1293, 1297
2. T.D. 9865 (preamble)

Secondary sources reading (optional)

1. Nutshell Chapter §§ 7.03, 7.04, 9.09
2. Bittker & Lokken ¶ 66.6.5, 70.1; 71.1; 71.1A, 69.14
3. BNA Portfolio 900, IVA; IVB

**Class 10: Wednesday, February 19**

245A / PFIC Problem Set (Problem Set 5) (available in Canvas)

**Class 11: Tuesday, February 25**

*The Indirect Foreign Tax Credit*

Primary Source Reading:

1. Sections 904, 960
2. T.D. 9882, Preamble: II.A, II.B.1, B.3, II.E, V
3. Reg. § 1.861-8(d)(2); 1.861-12; 1.904-4(a); 1.904-6(a); 1.904(b)-3; 1.960-1

Secondary sources reading (optional):

1. Nutshell Chapter 10
2. Bittker & Lokken: ¶ 72.9
3. BNA 6040

**Class 12: Wednesday, February 26**

Indirect FTC Problem Set (Problem Set 6) (available in Canvas)

**Class 13: Tuesday, March 17**

*Guest Presentation: Problem Set 7*

**Class 14: Wednesday, March 18**

*TBD: Transfer Pricing OR Anti-Hybrid Rules*

1. IRC Section 482
2. Treas. Reg. 1.482-1(a), (b)(1)

**Class 15: Tuesday, March 24**

*Guest Presentation: Problem Set 8*

**Class 16: Wednesday, March 25**

*Foreign Currency*

Primary sources reading:

1. Sections 985, 986, 987, 988, 989

Secondary sources reading (for reference)

1. Bittker & Lokken ¶ 74.1, 74.2, 74.3, 74.4
2. Bittker & Lokken ¶ 71.3
3. BNA Portfolio 6660

**Class 17: Tuesday, March 31**

*Guest Presentation:* Problem Set 9

**Class 18: Wednesday, April 1**

*Cross Border Transactions*

Primary sources reading:

1. Sections 304, 367, 964(e), 1248
2. Reg. § 1.367(a)-1,2,3

Secondary sources reading: (optional)

1. Nutshell Chapter 13
2. Bittker & Lokken ¶ 71.1; 71.2
3. BNA Portfolio 919, 920

**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
* (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.