# International Tax II

# (Taxation of Outbound Transactions)

**Professor Mindy Herzfeld**

**University of Florida Levin College of Law**

**Graduate Tax Program**

**Syllabus**

**Spring Semester 2022**

**International Tax II**

**Course # LAW 7615**

**Professor Mindy Herzfeld**

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Office Hours: Mondays: 1PM-2PM; Tuesdays 10-11AM

1. 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.

1. 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.
6. 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 (2020-2021 ed.). The most recent edition has been ordered to the bookstore and I will also leave my copy on reserve in the library. Note that prior editions (used) that are available through online booksellers may not reflect current law.

## 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.

Bloomberg BNA Portfolios

D. Topics: The topics for class, along with the assigned readings, are described in the pages that follow.

E. Grade: 80% of your grade will be based 80% on final submission of the case studies that will be discussed during class. Final submissions of these case studies are expected to include a comprehensive discussion of all relevant statutory and regulatory authorities (and cases and IRS authorities as relevant).

The other 20% of the grade will be based on submission of drafts of the problem sets assigned over the course of the semester (10%) and class attendance and participation (10%). ***Note that your submissions will not be graded on correctness on the response, only for submitting something in response to the questions in timely fashion.***

This course follows the Levin College of Law’s grading policies found [here](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies). The below 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 |

F. Reading Assignments & Problem Sets.

The readings or assigned problems are expected to take you approximately 4 hours for each class session.

The class will be a mix of lectures and problem sets. Some of the problem sets will be presented by guest lecturers. When problem sets are assigned, you will be required to submit answers prior to each class. You will be graded for submission only (i.e., you will not be graded on accuracy of answers). In addition, each of you will be responsible for presenting 1 of the problem sets during the course. For that problem set, you will also be graded on your presentation and the quality of your submission.

G. Guest Lecturers. Our learning will be enhanced by guest presentations from practitioners from law firms and the international tax practices of the national accounting firms, who will expose you to fact patterns that they are confronting in their daily practice.

1. **Office Hours**. My office hours are set forth above. If you have questions that you are not able to address during office hours, please contact me by email at [herzfeld@law.ufl.edu.](mailto:herzfeld@law.ufl.edu.)
2. **Class Meetings/Attendance.** Attendance is mandatory. Zoom attendance is permitted only for covid-related illness/quarantine requirements.
3. **Class schedule**. This course will meet for the first 6 weeks of the semester, on the following days / times. Please note carefully online / in-person meetings, additional class-time in some cases, and invited guests.

**Tuesday, Jan 18: 1:15PM-2:35PM**

**Wednesday, Jan 19: 9:00AM-10:20AM**

**Monday, Jan 24: 9:00AM–10:20AM**

**Tuesday, Jan 25: 1:15PM -2:35PM**

**Wednesday, Jan 26: 9:00AM–10:20AM**

**Monday, Jan 31: 9:00AM-10:20 ONLINE**

**Tuesday, Feb 1: 1:15PM-2:35PM ONLINE**

**Wednesday, Feb 2: 9:00AM-10:20AM ONLINE**

**Monday, Feb 7: 9:00AM-10:20AM**

**Tuesday, Feb 8: 1:15PM-2:35PM**

**Wednesday, Feb 9: 9:00AM-10:20AM**

**Monday, Feb 14: 9:00AM-10:20AM**

**Tuesday, Feb 15: 1:15PM- 2:35PM**

**Tuesday, Feb 15 3:00PM - 3:45PM ADDITIONAL CLASS**

**Wednesday, Feb 16: 9:00AM-10:20AM**

**Monday, Feb 21: 9:00AM-10:20AM ONLINE**

**Tuesday, Feb 22: 1:15PM-2:35PM ONLINE**

**Wednesday, Feb 23: 9:00AM-10:20AM ONLINE**

# Class Readings/Assignments

# NOTE: SUBJECT TO REVISION PENDING POSSIBLE ENACTMENT OF BBB

**Class 1: Tuesday, January 18**

*Review: Outbound*

*The Participation Exemption, FDII*

Primary Sources Reading:

1. IRC § 245A, 250
2. Reg. § 1.250(a)-1
3. Reg. § 1.250(b)-1, -3, -4(a)-(b), 5
4. Preamble, T.D. 9865 (in canvas)
5. H.R. 5376 as passed by the House <https://www.congress.gov/bill/117th-congress/house-bill/5376/text>, Sec’s. 138121, 138128

Secondary sources reading (optional):

1. Nutshell Chapter 7.03
2. Bittker & Lokken: ¶ 66.8, 66.9

**Class 2: Wednesday, January 19**

*Review: Subpart F*

*Controlled Foreign Corporations, Who has an Inclusion (Partnerships), Defining Subpart F Income, Section 956*

Primary Sources reading:

1. IRC §§ 951; 952, 954(a),(b),(c), 956, 957, 958
2. Reg. §§ 1.951-1(a)(1)-(2), -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. Reg. § 1.956-1(a)

Secondary sources reading (for reference)

1. Nutshell Chapter 9.01-9.03, 908
2. Bittker & Lokken ¶ 69.1, 69.2, 69.4.1-4, 69.5, 69.6, 69.9, 69.10, 69.12
3. BNA Portfolios 926, 6220, 6240

**Class 3: Monday, January 24 ONLINE**

***More on Subpart F:*** *Calculating Subpart F Inclusions, Basis Adjustments, PTEP, Transition Tax,*

Primary Sources reading:

1. IRC §§ 951, 952, 956, 959, 961, 962, 964(a), 965(a), (b) (skim)
2. Reg. §§ 1.952-1(b), -1(c), -1(e), -1(f)
3. Reg. § 1.954-1(a)-(f)
4. Reg. § 1.959-1(a)-(b), -2(a), -3(a)

Secondary Source Reading: (for reference)

1. Nutshell Chapter §§ 9.05, 9.07, 9.08
2. Bittker & Lokken ¶ 69.9, ¶ 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 4: Wednesday, January 25**

*The Foreign Tax Credit (new regs)*

Primary sources reading:

1. IRC §§ 901(a) and (b); 903, 905
2. Final 901/903/905 Regs T.D. 9959 (in canvas), + preamble to proposed regs (in canvas)

Secondary sources reading (for reference):

1. Nutshell, Chapter 8, 10.01-06
2. Bittker & Lokken: ¶ 72.1, 72.2, 72.3, 72.4, 72.5, 72.6.1, 72.7, 72.9

**Class 4: Wednesday, January 25**

*FTC Baskets, FTC Limitation, Allocating Expenses & Taxes*

Primary sources reading:

1. IRC §§ 904(a), 904(d), 960
2. Reg. §§ 1.904-4, 1.904-6, 1.861-8, 1.861-20

Secondary sources reading (for reference):

1. Nutshell, Chapter 8, 10.01-06
2. Bittker & Lokken: ¶ 72.1, 72.2, 72.3, 72.4, 72.5, 72.6.1, 72.7, 72.9

**Class 5: Monday, January 31 (meeting online)**

GILTI: CFCs owned by Partnerships; Section 962 Election

*Problem Set*

*Reading:*

IRC § 962

Reg. §§ 1.951A-1(e), 1.961, -2

Prop. Reg. § 1.958-1(d)(1)

**Class 6: Tuesday, February 1 (meeting online)**

*The FTC Limitation: Baskets & Expense Allocation*

*Problem Set*

*Reading:*

Reg. § 1.861-8(a)-(e); 1.904-4(a); 1.904-6(a); 1.904(b)-3; 1.960-1, 1.861-20

**Class 7: Wednesday, February 2 (meeting online)**

*GILTI: Expense Allocation & High-Tax Election*

*Problem Set*

Reading:

Reg. § 1.951A-2(c)(7)

Reg. § 1.861-17(g)

Reg. § 1.861-8(e)(4)

**Class 8: Monday, February 7**

***Foreign Currency***

Primary sources reading:

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

Secondary sources reading (for reference)

1. Nutshell Chapter 12
2. Bittker & Lokken ¶ 74
3. BNA Portfolio 6660

**Class 9: Tuesday, February 8**

***Transfer Pricing***

Primary sources reading:

1. Section 482
2. OECD Model Treaty Art. 9

Secondary sources reading: (optional)

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

**Class 10: Wednesday, February 9**

***John Stowell, Disney: Case Study***

**Class 11: Monday, February 14**

Hans Tanzler (PwC, Washington) Case Study

*Reading*

IRC §§ IRC 951(a)(1), 951(a)(2)(B), 954(c)(6), 959(c)

Reg. §§ 1.951-1(b), 1.245A-5(e) and (f)

Preamble, T.D. 9865 (in canvas)

**Class 12: Tuesday, February 15**

Scott Klein (BDO, Miami) Case Study

*Reading*

IRC § 250

Reg. §§ 1.250(b)-1, -2, -3, -4, -5, -6

**Class 13: Tuesday, February 15**

***PFICs***

1. IRC §§ 1291, 1293, 1297
2. T.D. 9865 (preamble)

Secondary sources reading (optional)

1. Nutshell Chapter 9.09
2. Bittker & Lokken ¶ 70.1
3. BNA Portfolio 6300

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**Class 14: Wednesday, February 16**

Carlos Vaca Valverde (DLA Piper, Washington) Case Study

*Reading*

Final 901 regulations, T.D. 9959

**Class 15: Monday, February 21 (meeting online)**

Dave Warco (Deloitte, retired) Case Study

*Reading*

Reg. §§ 1.951A-2(c)(7), 1.861-9T.

**Class 16: Tuesday, February 22 (meeting online)**

Gary Sprague, Baker McKenzie Case Study

*Reading*

Final 901 regulations, T.D. 9959

**Class 16: Wednesday, February 23 (meeting online)**

Steven Hadjilogiou (MWE, Miami) Case Study

*Reading:*

IRC §§ 951A, 250, 962

Reg § 1.962-1(b)(1)(i)(B)(3)

Reg § 1.951A-2(c)(7)

**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.

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 can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via [ufl.bluera.com/ufl/](file:///C:\Users\rmcilhenny\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\QH37XRU4\ufl.bluera.com\ufl\). Summaries of course evaluation results are available to students [here](https://gatorevals.aa.ufl.edu/public-results/).”

**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.](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.

**Covid Policies**

* If you are experiencing COVID-19 symptoms (<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>), please do not come to campus or, if you are already on campus, please immediately leave campus. Please use the UF Health screening system and follow the instructions about when you are able to return to campus.  <https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/>.
* Course materials will be provided to you with an excused absence, and you will be given a reasonable amount of time to make up work.<https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/>.

**Recordings of class discussions**

Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code.