# International Tax III

# (Taxation of Cross-Border Transactions)

**Professor Mindy Herzfeld**

**University of Florida Levin College of Law**

**Graduate Tax Program**

**Syllabus**

**Spring Semester 2022**

**International Tax III**

**Course # LAW 7931**

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

1. Summary of the Course

This course provides an overview of the tax considerations implicated in structuring cross-border transactions. It reviews the relevant tax considerations for outbound and inbound, strategic and private investment, as well as joint ventures. Rules applicable to taxable and tax-free cross-border transactions (sections 338 and 367) and inversions (section 7874) are discussed, as well as cross-border structuring for transactions trending in the market (SPACs). Familiarity with international tax rules, corporate tax rules (subchapter C) and partnership tax rules (subchapter K) is required in order to be successful in the course.

1. Objectives of the course

This course has a number of objectives:

1. To understand the tax issues presented in different types of cross-border investment;
2. To become familiar with the interaction of the international tax rules and rules in other areas of the Code that implicate cross-border transactions;
3. To be able to issue spot the relevant Code sections implicated in a cross-border investment;
4. To be able to advise on the structuring a cross-border investment, minimizing adverse tax consequences.
5. 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.

The primary text for this course will be drafts of book I am working on, tentatively titled, Structuring Cross-Border Transactions. Drafts of the chapters will be posted on canvas.

Each of the chapters includes references to primary sources (Code, regulations, or possibly US Model Treaty). You will need to read the primary sources referenced in the relevant chapters in preparation for each class.

Structuring cross-border transactions requires familiarity with a wide range of tax topics. For background reading, you may find the following materials helpful:

Bittker & Lokken, Fundamentals of International Taxation (2020-2021 ed.)

Herzfeld, International Taxation in a Nutshell (12th edition)

Bittker & Eustice, Federal Income Taxation of Corporations and Shareholders

Ginsburg, Levin & Rocap, Mergers, Acquisitions and Buyouts

McKee, Nelson & Whitmire, Federal Taxation of Partnerships and Partners

BNA tax portfolios (organized by code section/subject matter)

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

E. Grade: 100% of your grade will be based on submission of robust analyses of the case studies assigned. This will be a take-home assignment due on the first day of exam period.

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).

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. This course will meet for 3 weeks, the weeks of March 14, 21 and 28, on **Mondays from 9-10:20AM, Tuesdays from 1:15-2:35 and Wednesdays from 9:00AM -10:20AM**. You should be prepared to discuss the assigned reading and/or problem set in each class.

**We will be meeting online on March 28, 29, and 30.**

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.

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 by set forth above. If those times do not workyou’re your schedule, you may request an alternative time by contacting 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 .

**Class 1: Monday, March 14**

*Introduction to Structuring Cross-Border Transactions*

Reading:

*Treatise, Chapter 1*

Review: IRC §§ 951, 952, 951A, 1248, and applicable regulations

**Class 2: Tuesday, March 15**

*Structuring Outbound Transactions: Strategic Acquisitions*

Reading:

*Treatise Chapter 2*

IRC §§ 338, 901(m); 1248, and applicable regulations

**Class 3: Wednesday, March 16**

*Structuring Inbound Transactions: Strategic Acquisitions*

Reading:

*Treatise Chapter 3*

**Class 4: Monday, March 21**

Reading*:*

*Treatise Chapter 4*

*IRC §§ 1(h)(11), 881, Reg. § 1.881-3*

**Class 5: Tuesday, March 22**

Reading*:*

*Treatise Chapter 5 [note: you can skip the SPAC section, we’ll be discussing it next Monday]*

*IRC §§ 892, 897, 864(c)(8), 1446(f), 864(b) (and applicable regulations)*

**Class 6: Wednesday, March 23**

Reading*:*

*Treatise Chapter 6*

*IRC §§ 367(a), (b), (d), 1248, 7874*

*Reg. § 1.367(a)-3; 1.7874-4, -8, 1.367(d)-1*

**Class 7: Monday, March 28 (meeting online)**

*Guest Presentation: Devon Bodoh, Weil Gotshal: SPACs*

**Class 8: Tuesday, March 29 (meeting online)**

*Guest presentation: Paul Oosterhuis, Skadden*

*The New Section 367(b)*

**Class 9: Wednesday, March 30**

*Guest Presentation: Michael Steinsaltz, Deloitte*

**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.