

**International Tax II
(Taxation of Outbound Transactions)**

Professor Mindy Herzfeld

**University of Florida Levin College of Law
Graduate Tax Program**

Syllabus

Spring Semester 2021

International Tax II Course # LAW 7615

Professor Mindy Herzfeld

Office: 374

Phone: 352-273-0932

Office Hours: by appointment

A. 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.] I am indifferent as to which source you choose; the Nutshell is 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 additional reading and are having trouble finding out which portfolio is most on point, feel free to ask me.

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 problem sets you will be assigned to submit over the course of the semester, along with your classroom participation. ***Note that you submissions will not be graded on correctness on the response, only for submitting something a response to the questions in timely fashion.***

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

E. Reading Assignments & Problem Sets. This course will meet for the first 6 weeks of the semester, on Tuesdays and Wednesdays from 1:00PM -3:15PM. You should be prepared to discuss the assigned reading and/or problem set in each class.

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

For the first 3 weeks, we will be meeting in person and will be going through an overview of the material, Code and regulations. For the second 3 weeks, we will be on a virtual platform and will be going through problem sets. Some of the problem sets will be presented by guest lecturers. In the first 3 weeks, you will be assigned reading but no problem sets. In the second 3 weeks, you will be assigned problem sets, to submit prior to each class. The problem sets will be graded for submission only (i.e., you will not be graded on accuracy of answers).

F. Guest Lecturers. Our learning will be enhanced by guest presentations from practitioners from law firms and Big4 accounting firms, who will expose you to fact patterns that they are confronting in their daily practice.

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.

1. 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 Fundamentals of International Taxation.

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

Bloomberg BNA Portfolios

2. **Office Hours**. My office hours are by appointment. If you have questions, please contact me by email at herzfeld@law.ufl.edu.

Class 1: Tuesday, January 19

Foreign Tax Credit: The Direct Credit: What's an Income tax, Who Can Claim It, The Limitation, The Current Environment

Primary sources reading:

1. IRC §§ 901(a); 901(b); 901(i); 901(j); 901(k); 901(l), 903, 904(a)
2. Treas. Reg. §§ 1.901-1(a)-(c); 1.901-2(a), (b), (c), (d)(1), (e)(1)-(e)(4), (e)(5)(i)-(iii); 1.904-1
3. Selection from Prop. Regulations REG-101657-20; 85 F.R. 72078-72156; 2020-49 IRB 1466, Preamble + Prop. Reg. § 1.901-2
4. *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, 72.6.1
3. BNA Portfolios 900, ¶ III; 6020.

Class 2: Wednesday, January 20

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

Primary Sources reading:

1. IRC §§ 951; 952, 954(a),(b),(c), 957, 958, 964(a)
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

Secondary sources reading (for reference)

1. Nutshell Chapter 9.02, 9.03(A)
2. Bittker & Lokken ¶ 69.1, 69.2, 69.4.1-4, 69.5, 69.6
3. BNA Portfolios 926, 6220, 6240

Class 3: Tuesday, January 26

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

Primary sources reading:

1. IRC §§ 951, 952, 956 (skim), 958, 959, 961, 962, 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. § 1.956-1(a)
5. Reg. § 1.959-1(a)-(b), -2(a), -3(a)
6. Reg. § 1.961, -2
7. Reg. § 1.962-1

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 27

GILTI & FDII, The Participation Exemption

Primary Sources Reading:

1. IRC §§ 951A; 250, 1248, 245A
2. Reg. § 1.951A-1, 2(a),(b), 3(a)-(d), 4, 5
3. Reg. § 1.250(a)-1
4. Reg. § 1.250(b)-1, -2, -3, -4(a)-(b)

Secondary sources reading (optional):

1. Nutshell Chapter 9.04, 9.06, 7.03, 704
2. Bittker & Lokken: ¶ 66.8, 66.9 69.17
3. TD 9866 (2019) (Preamble)

Class 5: Tuesday, February 2

The Indirect Foreign Tax Credit, The FTC Limitation

Primary Source Reading:

8. Sections 904, 960
9. Reg. § 1.861-8(a)-(e); 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: ¶ 72.7, 72.9
3. BNA 6040

Class 6: Wednesday, February 3

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

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. BNA Portfolio 6660

Transfer Pricing

Primary sources reading:

1. Section 482

Secondary sources reading: (optional)

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

Note: All Case Studies/Problem Sets are available in Canvas

Class 7: Tuesday, February 9

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

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

Class 8: Wednesday, February 10

GILTI Problem Set (Problem Set 3) (available in Canvas)

FDII + 245A Problem Set (Problem Set 4) (available in Canvas)

Class 9: Tuesday, February 16

Steven Hadjilogiou (MWE, Miami) Case Study

Scott Klein (BDO, Miami) Case Study

Class 10: Wednesday, February 17

Carlos Vaca Valverde (EY, Washington) Case Study

Hans Tanzler (PwC, Washington) Case Study

Class 11: Tuesday, February 23

Dave Warco (Deloitte, NY, retired) Case Study

James Sanderson (KPMG, Miami) Case Study

Class 12: Wednesday, February 24

Review

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](#) 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/. Summaries of course evaluation results are available to students [here](#).”

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.

Covid Policies

Many students will have face-to-face instructional sessions to accomplish the student learning objectives of this course. In response to COVID-19, the following policies and requirements are in place to maintain your learning environment and to enhance the safety of our in-classroom interactions. I may take noncompliance into account when grading students or determining if a student may remain in the course.

- You are required to wear approved face coverings at all times during class and within buildings. Following and enforcing these policies and requirements are all of our responsibility. Failure to do so will lead to a report to the Office of Student Conduct and Conflict Resolution. You also will no longer be permitted on the UF Law campus. Finally, Dean Inman will also report your noncompliance to the relevant state board of bar examiners.
- This course has been assigned a physical classroom with enough capacity to maintain physical distancing (6 feet between individuals) requirements. Please utilize designated seats and maintain appropriate spacing between students. Please do not move desks or stations.

- Sanitizing supplies are available in the classroom if you wish to wipe down your desks prior to sitting down and at the end of the class.
- Be mindful of how to properly enter and exit the classroom. Practice physical distancing to the extent possible when entering and exiting the classroom.
- 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 may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University's Office of Student Conduct and Conflict Resolution.