

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

Professor Mindy Herzfeld

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

Syllabus

Spring Semester 2023

International Tax II Course # LAW 7615

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Office: 374

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Office Hours: Mondays: 1PM-3PM

A. 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 and investment funds engaging in cross-border transactions.

B. 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.

C. 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 (13th edition) and from Bittker & Lokken, Fundamentals of International Taxation (2020-2021 ed.). The most recent edition of International Taxation in a Nutshell has been ordered to the bookstore (and is also available on Amazon) and I will also leave my personal copy on reserve in the library. The book is also available for free through the West Study Aid resource; you can contact the library for assistance in accessing if you are not familiar with the site. 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, 13 ed.

Reference Materials.

Bittker & Lokken Fundamentals of International Taxation.

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 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](#). 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.

H. 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.

I. Class Meetings/Attendance. Attendance is mandatory and excused only for excused absence per the office of student affairs.

J. Class schedule. This course will meet for the first 7 weeks of the semester, on the following days / times. Some of the meetings will be via zoom **Please note carefully online / in-person meetings, additional class-time in some cases, and invited guests.**

Wednesday, Jan 18: 9:40AM-11:50AM

Monday, Jan 23: 9:40AM-10:50AM

Wednesday, Jan 25: 9:40AM-10:50AM

Monday, Jan 30: 9:40AM-11:50 ONLINE

Monday, Feb 6: 9:40AM-11:50AM ONLINE

Wednesday, Feb 8: 9:40AM-11:50PM

Monday, Feb 13: 9:40AM-11:50AM ONLINE

Wednesday, Feb 15: 9:40AM-11:50AM ONLINE

Monday, Feb 20 9:40AM -11:50AM

Wednesday, Feb 22: 9:00AM-10:20AM

Monday, Feb 27: 9:00AM-10:20AM ONLINE

Wednesday, Mar 1: 1:15PM-2:35PM ONLINE

Class Readings/Assignments

Class 1: Wednesday, January 18

Topic 1: Intro to Outbound Taxation; Entity Classification

Topic 2: The Foreign Tax Credit (2021 final regs, 2022 proposed regs)

Primary sources reading:

1. IRC §§ 901(a) and (b); 903, 905
2. Reg. §§ 1.901-1, -2, 1.903-1, & preamble to 2019 proposed regs (84 FR 69124 (in canvas))
3. 2022 Proposed Regs 1.901-2, 1.903-1 (REG-112096-22; 87 FR 71271 (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 2: Monday, January 23

Topic 1: Subpart F: Controlled Foreign Corporations

Topic 2: 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
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: Wednesday, January 25

More on Subpart F + GILTI:

Topic 1: Calculating Subpart F Inclusions, Partnerships, Basis Adjustments, PTEP, Transition Tax, Individual Elections

Topic 2: GILTI

Primary Sources reading:

1. IRC §§ 951, 951A, 952, 956, 959, 961, 962, 964(a), *skim* 965(a), (b)
2. Reg. §§ 1.951A-1, 1.951A-2(a)-(c)(4), 1.951A-3(a)-(c), 1.951A-5,
3. Reg. §§ 1.952-1(b), -1(c), -1(e), -1(f)
4. Reg. § 1.954-1(a)-(f)
5. 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: Monday, January 30 (ONLINE)

Topic 1: The Indirect Credit, FTC Baskets, FTC Limitation, Allocating Expenses & Taxes

Topic 2: GILTI FTC Calc; Hi-Tax Election,

Primary sources reading:

1. IRC §§ 904(a), 904(d), 951A(c), 954(b)(4), 960
2. Reg. § 1.861-8(a)-(e); 1.904-4(a); 1.904-6(a); 1.904(b)-3; 1.960-1, 1.951A-2(c)(7)

Secondary sources reading (for reference):

3. Nutshell, Chapters 9.03(A)(7), 10.01-06
4. Bittker & Lokken: ¶ 72.6.1, 72.6.2, 72.7, 72.9

Wednesday February 1: No Class

Class 5: Monday, February 6 (MEETING ONLINE)

Topic 1: PFICs

Topic 2: The Participation Exemption + FDII

PFICs

1. IRC §§ 1291, 1293, 1297

Secondary sources reading (for reference)

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

Topic 2 Reading

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)

Secondary sources reading (optional):

1. Nutshell Chapter 7.03, 7.04
2. Bittker & Lokken: ¶ 66.8, 66.9

Class 6: Wednesday, February 8

Topic 1: BEAT + CAMT

Topic 2: Foreign Currency

Primary sources reading:

1. IRC §§ 59A, 55(b), 56A, 59(l), 985, 986, 987, 988, 989
2. Reg. §§ 1.59A-3

Secondary sources reading (for reference)

1. Nutshell Chapter 4.10, 12, 14.04
2. Bittker & Lokken ¶ 74.1-74.7, 66.10
3. Jasper Cummings, *The 2022 Corporate AMT*, 176 Tax Notes Federal 2005 (Sept. 26, 2022) (in canvas)

Class 7: Monday, February 13 (MEETING ONLINE)

Topic 1: OECD Pillar 2

Topic 2: BEAT and FTC Planning [to be posted on canvas prior to class]

Guest Presenter Maruti Narayan, DLA Piper

Sources:

1. OECD Pillar 2 Model Rules (in canvas)
2. IRC §§ 59A, 904(d), 861
3. Reg. § 1.901-2, 1.861-8

Class 8: Wednesday, February 15 (MEETING ONLINE)

Topic 1: Supply chain problem set [to be posted on canvas prior to class]

Guest Presenter Pat Brown, PwC Washington National Tax

Topic 2: FTC Regs Case Study [to be posted in canvas prior to class]

Guest Lecture by Gary Sprague, Baker McKenzie, and Kevin Nichols, Uber

Reading:

Review reading for FTC lecture (Class 1), in particular, Reg. § 1.901-2 and proposed regulations,

Class 9: Monday, February 20

Topic 1: FDII Problem Set [to be posted in canvas prior to class]

Guest Presenter Scott Klein, BDO Miami

Topic 2: Placeholder: CAMT problem set

Reading: review reading for FDII lecture, **plus**

Reading for CAMT Lecture

Class 10: Wednesday, February 22

Topic 1: Problem Set: Operating through Branches

Guest Presenter John Stowell, VP Tax, Disney

Topic 2: Problem Set: Reg. § 1.245A-5

Guest Presenter Hans Tanzler (International Tax Director, FIS, Jacksonville)

Reading for Topic 1

1. IRC §§ 904(f), 904(g), 1503(d), 91, 367(a)

Reading for Topic 2

1. IRC §§ 245A, 951(a)(1), 951(a)(2)(B), 954(c)(6), 959(c)

2. Reg. §§ 1.245A-5, 1.951-1(b)
3. Preamble, T.D. 9865 (in canvas)

Class 11: Monday, February 27

Topic 1: Case Study, GILTI NOL Problem Set

Guest Presenter Dave Warco (Deloitte, retired)

Topic 2: Case Study, GILTI and Entity Classification

Guest Presenter James Sanderson, KPMG, Miami

Reading for Topic 1

1. IRC § 250, 951A
2. Reg. §§ 1.951A-2(c)(7), 1.861-9T.
3. Reg. § 1.861-8(a)-(e); 1.904-4(a); 1.904-6(a); 1.904(b)-3; 1.960-1, 1.861-20, 301.7701-2, 3

Reading for Topic 2

IRC §§ 250(a); 951A(a), 951(e)(2); 951(c), 961, 962

Reg. § 1.951A-1(e), 1.961-1, -2, -3.

Class 12: Wednesday, March 1

Topic 1: Case Study: Outbound Private Equity Structures

Guest Presenter David Saltzman, Ropes & Gray, Boston

Reading:

Review: IRC §§ 957, 958, 961, 1248, 1297, 1446(f), 1.951-1(d),

Topic 2: Review

Additional Topic if time permits:

Transfer Pricing

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 Preparation/Workload:

- 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.

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.