

LAW 7931 Sec. 22154: International Tax Planning and Reporting Issues for Cross-Border Transactions (LLM)

Spring 2019

Class Meetings: Monday @ 10:00 AM – 11:50 AM
Location: HH - 270
Instructor: Professor Fred Murray
Office Hours: Available most weekdays, except when traveling. Best to send me an email in advance if possible to coordinate a time to get together
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COURSE DESCRIPTION

As our world and our business and investment transactions become increasingly more globalized, it has become more and more important, even imperative, for all tax advisors and counsel to understand the complexities of cross-border taxation, and how to properly and legally plan to minimize double taxation and to comply with new and complex reporting regimes and other compliance requirements put in place to monitor taxpayer behaviors.

LEARNING OBJECTIVES

As a result of taking this course, students will:

- Gain a solid foundation from a broad overview of the United States Internal Revenue Code, regulations, and interpretive cases and administrative guidance that constitute the U.S. system of international tax rules applicable to international transactions.
- Apply and recognize the implications of the foreign tax credit rules, controlled foreign corporation regimes, and other complex tax regimes.
- Use income tax treaties in interpreting the tax consequences of cross-border transactions.
- Recognize international tax planning and structuring concepts.
- Recognize issues surrounding global tax compliance concerns regarding base erosion and profit shifting.
- Recognize information reporting requirements due to national governments and their implications.
- In that light, it is to be recognized that there are more materials in the course book and accompanying documents than can be addressed in this course. However, it

is hoped that while the course and the classes set out below will focus on key concepts that are the building blocks of cross-border operations, the materials will serve students well in further studies of them.

These objectives will be accomplished through:

- Review and study of the relevant authorities, particularly the United States Internal Revenue Code.
- Discussion of the operation of the rules and processes created by those authorities.
- Working and discussion of hypothetical problems posed by examples.

Course Approach:

There is an ancient Chinese proverb attributed to Confucius (551–479 BCE) that is roughly translated: “*Teachers open doors, but you must enter by yourself.*” I will do my best to help you succeed, to provide you with knowledge, at least at an overarching level that is high enough that we may fit it in the time we have together but sufficient to give you the framework and principles that guide further scrutiny and action. But, as in any work setting, you must accept that knowledge and apply the necessary effort to fully comprehend it and then to apply it.

The class problem will test your grasp of what we do together in class. We will discuss that in the first class, and in a Review session in the last class.

Class Preparation and Participation: Come to class having completed the assignments to the best of your ability and prepared to discuss the assignment. You are expected to attend class and to be prepared to respond to questions about the assigned problems and reading; attendance will be taken each class.

Students should expect to spend, on average, approximately two hours preparing for every hour of class. Reading assignments are posted on the “Modules” link on the Canvas site (located on the left side of the Canvas site).

Participation is important to you, your classmates, and your professor. Below-average participation means no contributions to class and/or comments that detract from the discussion; average participation includes comments that contribute positively to the discussion; above-average participation means comments that contribute positively to the discussion and display some insight, analysis, creativity, and/or synthesis; and excellent participation means comments that contribute positively to the discussion and display significant insight, analysis, creativity, and/or synthesis.

Repeated lack of preparedness may be counted as an unexcused absence. Repeated class disruption (e.g., excessive noise, texting, personal internet use, arriving late, leaving early) may be counted as an unexcused absence. You will be notified each time you accrue an unexcused absence on account of lack of preparedness and/or disruptive behavior.

If you are absent because of a special situation (religious holiday, sickness, family emergency, job interview, etc.), the absence **may** be excused at Prof. Murray's discretion after you have provided any documentation of the situation requested by Prof. Murray and you have completed a make-up assignment, if requested. If you are dealing with a personal situation of high difficulty and prolonged duration, please seek assistance from Student Affairs as soon as possible.

If you have more than two unexcused absences from regularly scheduled classes, your participation grade will be 0, and further more than 2 unexcused absences will result in a half a grade reduction in your final grade.

Course Structure:

The course will be divided into modules of material, some of which may be discussed in more or less than one class.

Grades:

Your grade will be based approximately 80% on a written problem that will be distributed during the semester and 20% on attendance and class participation. You may elect to form a team with some of your classmates to construct the submission on the problem. All of you will receive the same grade on the submission you make.

Grade Scale & Grading Policies:

<u>Grade</u>	<u>Points</u>
A (Excellent)	4.0
A-	3.67
B+	3.33
B (Good)	3.00
B-	2.67
C+	2.33
C (Satisfactory)	2.00
C-	1.67
D+	1.33
D (Poor)	1.00
D-	0.67
E (Failure)	0.00

The law school grading policy is available at <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>. **Note that the mandatory mean does not apply to LL.M. students.**

Required Course Materials:

All students must have access to the United States *Internal Revenue Code of 1986*, and the relevant *Income Tax Regulations*. (Note that this information also is available via the web using the RIA, CCH, or LEXIS Tax Research Services.)

Bittker & Lokken, Fundamentals of International Taxation, Thomson Reuters WG&L, most current edition (strongly suggested but not required).

Materials (PowerPoint Decks, cases, rulings, and other interpretive material) will be supplied for particular topics by the professor. These readings (including current event course related items), lecture slides, cases, and other handouts are available from the Canvas course web page with postings announced via the class email list.

Materials not marked as “Skim” or “Helpful Supplementary Reading” in the Reading Assignments set forth below are required reading.

Class Web Page:

The course materials are in the UF Canvas E-Learning system. You will need your GATORLINK USERID and PASSWORD to access the course information. If you don't have a GatorLink account, create your GatorLink account at gatorlink.ufl.edu.

Web-based Information Resources:

All students in the course have access to several electronic tax research libraries. These include Tax Analysts Tax Notes, CCH Tax Research Library, RIA Checkpoint Tax Research Service, LEXIS/NEXIS, and BNA Tax Management Portfolios. Although there is substantial overlap across these services, all provide useful and unique research tools, including complete versions of tax research services (commentary and explanation), Code, regulations, court cases, rulings, tax treaties, etc. You may access these libraries from anywhere you can access the internet. Both LEXIS/NEXIS and CCH require no password as long as you access the database via a UF computer account. There are several methods (e.g., proxy server or VPN) for making your computer think it is linked to a UF sever via a few special commands; if you need this information, see “<http://web.uflib.ufl.edu/ufproxy.html>” or the class web site.

Proxy info: <https://www.law.ufl.edu/library/library-information/remote-access>

For Checkpoint: Register on campus at <http://www.checkpoint-registration.riag.com/schools> (need to register on campus; use off campus through VPN)

For Tax Analyst: Register at <http://www.taxnotes.com> (need to register on campus; use off campus through VPN)

For Bloomberg (BNA): Register at <https://essential.bna.com/login/signin?msg=deny&url=https%3A%2F%2Fwsauth.bna.com%2Fwsauth%2Fblawauth%3Ftarget%3Dhttps%3A%2F%2Fwww.bloomberglaw.com%2Fstart&lddy=-518&pcv=> (can use off campus without going through VPN)

Note that these accounts last approximately a year and you may already have a valid account from a prior signup. For problems, see Sarah Lewis in the library or at slewis@law.ufl.edu.

Class Policies:

All University of Florida and Levin College of Law rules apply. Particularly note University policies regarding software use and the honor code.

READING ASSIGNMENTS

The attached assignment sheet lists the materials that will be covered during each class. I strongly suggest that you study the resource materials very carefully before each class. I may also assign other materials that should be studied as well.

I expect you to be prepared and to participate in the discussion. I will call on students to join in the discussion and encourage you to ask questions. I strongly recommend that you attend all classes and pay careful attention to the discussion. The issues discussed in class are typical of the problems that will be on the final examination.

You should bring to class whatever you will need to discuss the assignment for that day. I strongly suggest that you also bring the Internal Revenue Code and Treasury Regulations, or copies of the provisions that we will be studying that day. You may not record any class.

As we look at traditional planning in the areas we discuss, you should also think about and we will discuss how the major reforms made in U.S. law in 2017 affect that planning.

Class	Topic	Learning Outcomes	Assignment
Topic 1 – Review and Basic Concepts January 7, 14, 28	Review and Basic Concepts 1. Discussion of important concepts and rules 2. International Tax Planning 2.1. What is International Tax Planning and Why It is Needed 2.2. International Tax Planning Techniques 2.3. Role of International Tax Planner 3. International Tax Structures 3.1. General 3.2. Examples of Tax-efficient Structures 3.3. Forms of Business Entity 3.4. Financing of Overseas Entities 4. Tax Planning for Cross-border Transactions - Some Examples 4.1. Mergers and Acquisitions 4.2. Repatriation of Profits 4.3. Conversion of a Foreign Branch to a Foreign Subsidiary 4.4. Liquidation of Companies 4.5. Cross-border Leasing	-Be able to understand generally important tax concepts, rules, restraints, and client needs when it comes to helping them to accomplish cross-border transactions in a tax-efficient manner - Gain a general understanding of planning techniques and structures that have been used for such transactions	Handouts

	<ul style="list-style-type: none"> 5. Foreign Direct Investment – Some Considerations 6. International Tax Planning for Individuals <ul style="list-style-type: none"> 6.1. General 6.2. Treaty Provisions 6.3. Tax Planning Considerations 6.4. Country Examples 6.5. Cross-border Pensions 7. Planning Techniques – An Overview <ul style="list-style-type: none"> 7.1. Hybrid Entities: Check-the-Box Rules (United States) 7.2. Hybrid Financial Instruments 7.3. Derivative Financial Instruments (DFI) 7.4. Transfer Pricing and Tax Planning 7.5. Use of Offshore Trusts 7.6. Examples of Intermediary Entities <ul style="list-style-type: none"> 7.6.1. International Holding Company 7.6.2. International Finance Company 7.6.3. Licensing or Royalty Routing Company 		
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	<p>7.6.4. Offshore Trading Company</p> <p>7.6.5. Group Administration Office or Co-ordination Centre</p> <p>7.6.6. Employee Leasing Company</p> <p>7.6.7. Offshore Banking Unit</p> <p>7.6.8. Captive Insurance Company</p> <p>7.6.9. International Shipping (or Aircraft) Company</p>		
<p>Topic 2 – Structures for Inbound Real Estate Investment Feb 4, 11</p>	<p>7.7. Relevant Considerations</p> <p>7.7.1. Typical Structures</p>	<p>- Gain an understanding of specific planning techniques and structures that have been used for such transactions</p>	<p>Handouts</p>
<p>Topic 3 – Cross-Border Sales and Contract Manufacturing Feb 18, 25</p>	<p>7.8. International Sales of Goods</p> <p>7.8.1. Relevant tax rules</p> <p>7.8.2. Choices for export sales entity arrangements and structures</p> <p>7.8.3. Foreign Base Company Sales Income and subpart F</p>	<p>- Gain an understanding of specific rules that apply to cross-border sales transaction and relevant planning techniques and structures</p> <p>- Gain an understanding of specific rules that apply to new manufacturing techniques involving contract manufacturing, including</p>	<p>Handouts</p>

	7.8.4. Branch Rules 7.9. Contract Manufacturing Taxation Rules	the application of the branch rules of subpart F to typical structures	
Topic 4 – Private Equity Funds Structures Feb 25, March 11	7.10. Relevant Considerations 7.10.1. Typical Types of Funds and Typical Structures 7.10.2. Acquiring a Target Company Investment	- Gain an understanding of specific planning techniques and structures that have been used for such transactions	Handouts
Topic 5 – Tax Havens, BEPS and Anti-Avoidance Rules March 18, 25, April 1	8. Anti-Avoidance Measures 8.1. General 8.1.1. What is Tax Avoidance 8.1.2. Common Anti-avoidance Provisions 8.2. OECD Base Erosion and Profit Shifting Project (“BEPS”) 8.2.1. BEPS Action Items 8.2.2. Implementation 8.3. European Union 8.3.1. State Aid Cases 8.3.2. ATAD 1 & 2 8.4. Controlled Foreign Corporation 8.4.1. General 8.4.2. Anti-deferral or CFC Legislation 8.4.3. Country Examples 8.4.4. Comments	- Gain a general understanding of regimes and specific rules that governments have used and/or are developing to combat tax planning that they view to be overly aggressive or even abusive and how these rules restrict or otherwise affect all cross-border tax planning	Handouts

	<ul style="list-style-type: none"> 8.5. Thin Capitalization <ul style="list-style-type: none"> 8.5.1. General 8.5.2. What is Thin Capitalization 8.5.3. Thin Capitalization Rules 8.5.4. Tax Treatment of Interest Costs 8.5.5. Impact of Tax Treaties 8.5.6. Country Examples 8.5.7. Comments 8.6. 2017 U.S. Tax Reform <ul style="list-style-type: none"> 8.6.1. What Happened 8.6.2. Effects on Tax Planning for International Business and Investment 8.6.3. “Cycles” of Tax Planning 8.7. Some Other Anti-avoidance Measures <ul style="list-style-type: none"> 8.7.1. Exchange of Information 8.7.2. Transfer of Tax Residence and Exit Taxes 8.7.3. Exchange Controls 8.7.4. Branch Profits Tax 8.7.5. Use of Tax Havens 		
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	<p>8.8. Major Offshore Financial Centers</p> <p>8.8.1. Historical Use of Tax Havens</p> <p>8.8.2. Base Havens</p> <p>8.8.3. Treaty Havens</p> <p>8.8.4. Special Concession Havens</p>		
<p>Topic 6 – Treaty Issues March 18, 25, April 1</p>	<p>8.9. Permanent Establishment Issues</p> <p>8.9.1. BEPS-related modifications to established norms</p> <p>8.10. Anti-treaty Shopping Measures</p> <p>8.10.1. General</p> <p>8.10.2. Impact of Treaty Shopping</p> <p>8.10.3. U.S. LOB Provisions</p> <p>8.10.4. Principal Purpose Test Provisions</p> <p>8.10.5. Treaty Shopping under the OECD Model Treaty and Commentaries</p> <p>8.10.6. Beneficial Ownership Requirement</p> <p>8.10.7. Country Examples</p>	<p>- Gain a general understanding of treaty based rules that affect the taxation of business income in particular jurisdictions, including developing rules that subject more business income to such tax in particular jurisdictions</p> <p>- Gain a general understanding of various rules that are employed in treaties to restrict their use to particular taxpayers, including developing rules in this area (particularly the limitation on benefits tests developed by the U.S. and the principal purpose tests developed by other jurisdictions)</p>	<p>Handouts</p>

	8.11. Other Modifications to the U.S. Model Treaty		
Topic 7 – Information Reporting and Exchange of Information April 8, 15	10.10. U.S. and Other Country Information Reporting 10.10.1. Treasury and IRS Forms Reporting Foreign Items 10.10.2. FATCA and CRS 10.10.3. OECD Base Erosion and Profit Shifting Project (“BEPS”) 10.10.4. Country-by-Country Reporting	-Gain a general understanding of information reporting regimes and specific exchange and use of it that governments have used and/or are developing to combat tax planning that they view to be overly aggressive or even abusive and how these rules restrict or otherwise affect all cross-border tax planning	Handouts
Topic 8 – Review and Problem Discussion April 22		A discussion of the problem solutions developed by class team members to the class problem	

Syllabus Addendum

Attendance: Attendance will be taken at every class, and students are expected to attend and participate in class. Students should prepare for all classes even if they miss and are responsible for material covered in their absence. Students may not attend a class unless they are officially registered for the course. The Levin College of Law does not approve requests to audit its courses. Students who do not attend at least one of the first two class meetings of a course or laboratory in which they are registered, and who have not contacted the School to indicate their intent, may be dropped from the course. The instructor adheres to all UF attendance policies.

Honesty: Academic dishonesty will not be tolerated. Students are required to know and comply with the university's policy on academic honesty. 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>.

Civility: This course will be conducted in a courteous and professional manner. Inappropriate classroom behavior of any form will not be tolerated. At the instructor's discretion, students acting in an uncivil manner will receive a grade reduction commensurate with the infraction. Students can be withdrawn from the course for excessive unacceptable behavior.

Disabilities: The University of Florida is committed to providing academic accommodations for students with disabilities. Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, the Dean of Students Office will provide documentation to the student who must then provide this documentation to Dean Rachel Inman 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.

If your accommodation regards special testing arrangements, you must then submit an Accommodated Test Request (ATR) online for each exam/quiz. Students with disabilities are encouraged to follow these procedures as early as possible within the semester. If you do not follow the Disability Resource Center procedures or meet the deadline for requesting accommodations or for submitting your ATRs, you will have to take the exam with your class without accommodations.

Evaluation: Students are expected to provide feedback on the quality of instruction in this course based on 10 criteria. These evaluations are conducted online at <https://evaluations.ufl.edu>. Students will be given specific times when they are open. Summary results of these assessments are available to students at <https://evaluations.ufl.edu/results/>.