

# **INTERNATIONAL TAX**

*An introduction to U.S. taxation of U.S.  
and foreign persons engaged in cross-border activities*

*George Mason University – Antonin Scalia School of Law  
FALL 2022, LAW 250-001*

**Tuesdays and Thursdays  
1:30 to 2:55 PM – Hazel Hall Room tba**

*Professor:* **Adam M. Katz**  
[akatz7@gmu.edu](mailto:akatz7@gmu.edu)  
[adammkatzesq@gmail.com](mailto:adammkatzesq@gmail.com)

*Office Hours:* **Please come and talk to me. I am available either by appointment or before or after class. Please email to set a time.**

## **SYLLABUS**

### **COURSE GOAL**

This course covers the U.S. taxation of U.S. and foreign persons engaged in cross-border activities. The goal is to provide an overview of the relevant law and to identify and analyze the practical issues that most frequently arise in the international tax arena. Topics include:

- Nationality, residence, and U.S. jurisdiction to tax;
- The source of income and the allocation of deductions between taxing jurisdictions;
- The taxation of the U.S. non-business and business income of foreign taxpayers;
- The taxation of the foreign income of U.S. taxpayers, including the deferral and the foreign tax credit;
- The role of tax treaties;
- Transfer pricing;
- Treaty shopping and tax arbitrage;

- International tax administration and anti-avoidance;
- The future of the international tax regime: territorial versus worldwide taxation;
- Key international provisions of the 2017 Jobs Creation and Tax Act (JCTA) including “BEAT”, Section 965 Deemed Earnings Repatriation, “GILTI”, “FDII”, and the relevant Biden Administration proposed legislation;
- Global tax policy and harmonization through the OECD Inclusive Framework countries, the BEPS (Base Erosion and Profit Shifting) actions, and taxation of the Digital Economy.

## TEXTBOOK AND MATERIALS

The required textbook for this class is *U.S. International Taxation*, by Avi-Yonah, Ring, Brauner, & Wells, 5<sup>th</sup> Ed., Foundation Press/West Publishing, 2022 (ISBN: 978-1-64708-229-1). This book can be purchased from the campus bookstore.

You will also need access (either online, in print, or in the library) to a copy of the U.S. Internal Revenue Code and the U.S. Treasury Regulations on Income Tax. For convenience I have asked the campus bookstore to order the following: *Selected Sections, United States. International Taxation 2022 Edition* by Daniel J. Lathrope (Foundation Press). (ISBN: 9781636599601)

*Personal Note: Based on my tax lawyer career (and former law student) experience, I highly recommend access to a print version of the relevant U.S. IRC and Treasury Regulation sections as this will better facilitate your ability to work through and solve the various tax problems and more readily apply the law and regulations.*

Additional required course readings for each class will be posted for “U.S. Intl Taxation (250-001)” on Blackboard.

Recommended, optional and supplemental reading:

Isenbergh and Wells's *International Taxation*, 4th Edition Foundation Press 2020 (Concepts and Insights Series) ISBN: 9781684673636; and *International Taxation in a Nutshell*, by Mindy Herzfeld, 12th Edition, West Academic, 2020 ISBN: 9781684673469. Both contain an in-depth discussion of international tax rules which will supplement the Avi-Yonah, et. al. text material. (You will not be tested on anything not covered in class and not in the primary Text reading material, including anything “accretive” which might be contained in the supplemental materials.)

## COURSE PRE- OR CO-REQUISITE

Income Tax is either a pre- or co-requisite unless a student has prior tax experience. There are no other prerequisites, and a review of the relevant concepts from Income Tax will be done throughout this course as I teach in a foundational or “building block” manner.

## LEARNING GOALS, OUTCOMES AND DETAILED ASSESSMENTS

GOALS	OUTCOMES	ASSESSMENTS
<p>Improve your critical thinking ability.</p>	<p><i>You will be able to apply complex rules and doctrines in different contexts.</i></p>	<p><i>You must use critical thinking to engage in the class discussion which is assessed through the class participation expectation, the midterm, and in the final exam.</i></p>
<p>Improve your logical reasoning when faced with alternative fact patterns or rules. Understand the tax legislative process, the intent of U.S. tax legislation, and the interaction between Congress and the U.S. Treasury/IRS.</p>	<p><i>You will be able to create arguments for what the law could be in different situations.</i></p>	<p><i>You must show comfort engaging in logical reasoning in both your contributions in class and in your final exam. For example, you will apply the US IRC and Treasury Regs to various problems and case studies.</i></p>
<p><b>Learn the basic rules of U.S. taxation of cross-border transactions, and the types of taxation regimes and international framework subscribed to by the U.S. and other OECD member countries.</b></p>	<p><i><b>You will be able to demonstrate a basic understanding of the U.S. business taxation system in the context of cross-border transactions including forms of doing business, inbound/taxation of foreign persons doing business in the U.S., transfer pricing, and taxation of U.S.-based businesses operating outside the U.S.</b></i></p>	<p><i><b>This is assessed through a mid-term and a final exam, class participation, and working through assigned problems.</b></i></p>
<p>Better understand the value of hard work. This is both an independent goal and one that is important for students to do well after graduation on the bar exam and in their careers.</p>	<p><i>You will be able to demonstrate that they have done the work necessary to understand a complex and specialized area of law.</i></p>	<p><i>The midterm and final exams assess many things, including ability to work hard to digest a large amount of relatively complex material, and apply this material to real-life business fact patterns.</i></p>
<p>Become interested and enthusiastic about international business, tax law and related topics.</p>	<p><i>You may or may not become enthusiastic about International Business Taxation. This is also an excellent foundation course in pursuing a legal career in business</i></p>	<p><i>Not assessed directly. Follow-up relationships with students are frequent and encouraged.</i></p>

	<i>taxation and a possible L.LM – Taxation.</i>	
--	---	--

**OVERALL COURSE ASSESSMENT**

**Assessment:** Corresponding Assessment Methods include problems and case studies in which you will apply the various laws and regulations to every-day business scenarios involving cross-border transactions and legal structures. As noted, you may be asked to present solutions to the problems either individually or in small groups.

There will be a mid-term examination (30%) and final examination (70%) (both “open book”) which will test your ability to apply the relevant material in a manner similar to the problems and case studies covered in class. Class attendance and participation will also be taken into account in calculating a student's final grade, but only in an upward fashion (and only by increasing a grade by one-half point (such as increasing a grade from B to B+)).

**CLASS SESSIONS**

Class sessions will enable you to accomplish the course goals by reviewing and analyzing the relevant U.S. Internal Revenue Code (“IRC”) and corresponding U.S. Treasury Regulation Sections, relevant case law and IRS Rulings, U.S. Income Tax Treaties, and other international legal standards such as comparing other countries’ taxation systems and output from the OECD on Base Erosion and Profit Shifting and Digital Taxation. Classes will include lecture of the assigned reading material (including cases and rulings), and presentation of selected homework problems by me and by students upon request.

**COURSE SCHEDULE AND CLASS ASSIGNMENTS**

The following schedule is subject to change:

Date	Topic	Assignment
<p>2022 Aug 23 &amp; 25</p>	<p><b>Ch 1: Basic principles of US International Taxation: Foreign Persons, US Persons.</b> Taxation of worldwide income of individuals, corps, partnerships, and trusts. Overview of Income Tax Treaties and the International Framework.</p>	<p>Read Ch.1, pp. 25-34</p> <p>Problem set 1: pp. 30-31, #1-5. Problem set 2: p. 32</p>

<p><b>Aug 30 &amp; Sep 1</b></p>	<p><b>Ch 2: Source rules for income and deductions</b>  Interest, Dividends, Rents/Royalties, Personal Services  Comp, Sale of Real and Personal Property.</p>	<p>Read Ch. 2, pp. 35-99, 106-114.</p> <p>Problem set 1: p. 53  Problem set 2: p. 105</p>
----------------------------------	--	---

<p><b>Sep 6 &amp; 8</b></p>	<p><b>Ch 8, 8.4.b.: Expense Allocation</b>  General rule;  Interest expense – allocation and apportionment;  R&amp;E expense.</p>	<p>Read Ch.8.4.b, pp 597-615</p> <p>Problems set 1: p. 615</p>
<p><b>Sept. 13 &amp; 15</b></p>	<p><b>Ch 4: Foreign Persons: “Non-business” US Source Income</b>  FDAP – interest, dividends, other; Withholding tax on FDAP;  Withholding Agent role</p>	<p>Read Ch. 4, pp. 227-272.</p> <p>Problem set 1: pp. 271-272.</p>

<p><b>Sept. 20 &amp; 22</b></p>	<p><b>Ch. 5: Foreign Persons: US Trade or Business Income</b>  US Trade or Business;  Amount Taxed: “ECI” (Effectively Connected);  Deductions and Credits to ECI – business expenses, interest.  Effect of Tax Treaties.</p>	<p>Read Ch. 5, pp. 273-287, 299-329.</p> <p>Problem set 1: pp. 229-231.</p>
---------------------------------	---	---

<p><b>Sept. 27</b></p>       <p><b>Sept. 29 &amp; Oct. 4</b></p>	<p><b>Ch. 7: Inbound Base Protections</b>  Gains from sale of property/FIRPTA;  Financing – Debt v Equity, interest earnings stripping;  BEAT</p>     <p><b>Ch. 6: The Role of Treaties</b></p> Perm. Establishment, Procedural elements – Mutual Agreement, Relationship of IRC v Treaty; Withholding taxes by type of income; Limitation on Benefits	<p>Read Ch 7, pp. 455-474; 481-488</p>       <p>Read Ch 6, pp. 333-348, 369-407, 413-434.  Also skim over Sec 6.8, 442-453,</p> <p>Problems: Questions 1 &amp; 2 (see handout)</p>
<p><b>Oct. 6</b></p>      <p><b>Oct 11 Monday schedule - no class</b></p>     <p><b>Oct 13</b></p>      <p><b>Oct. 18</b></p>	<p><b>Transfer Pricing (Part 1)</b>  Overview; IRC Sec 482; Tangible Property, “Comparables” and economic analysis, What is the “OECD BEPS” initiative?</p>      <p><b>Transfer Pricing (Part 2)</b>  Collateral Adjustments  Intangible Property  Exploitation TP  Services and TP  Foreign law impact</p>      <p><b>Finish TP / Class review for mid-term</b></p>	<p>Read Chapter 3, pp. 115-162</p> <p>Problem set 1: p. 162.</p>      <p>Read Chapter 3, 163-224.</p> <p>Problem set 2, p. 216</p>

<p><b>Oct 20</b></p>	<p><i>Mid-Term exam to be given in lieu of class time (synchronized, details tbc)</i></p>	<p><i>Mid-term will cover Aug 23 through Oct 18 classes and topics.</i></p>
<p><b>Oct. 25 &amp; 27</b></p>	<p><b>Outbound Taxation: The Foreign Tax Credit, Pt I</b>  Introduction  What is a “tax paid”?  Who paid the tax?  Was the tax “creditable”?  2017 and JCTA Changes;  Treatment of Losses;  FTC Abuse; FTC Limitation</p>	<p>Read Ch. 8, pp. 491-556, 565-579.</p> <p>Supp. problems per handout (not in text)</p>
<p><b>Nov. 1 &amp; 3</b></p>	<p><b>Outbound Taxation: The Foreign Tax Credit, Pt II</b>  Foreign Tax Credit limitation  Indirect FTC (old Sec 902 and current Sec 960)  FTC Abuse  TCJA 2017 Changes</p>	<p>Read Ch. 8, pp. 590-596, 616-617</p> <p>Suppl. problems per handout (not in text)</p>
<p><b>Nov 8 &amp; 10</b></p>	<p><b>Outbound Taxation: Deferral and its Limits</b>  What is “deferral”/ CFC Subpart F / Foreign Base Company Income types (FB Sales income; FB Services income; FPHCI) Subpart F (con’t)?</p>	<p>Read Chapter 9, pp 619-622, 630-641, 654-675, 704-728</p> <p>Problem set 2, p. 756</p>

<p><b>Nov 15 &amp; 17</b></p>	<p><b>Outbound Taxation: Deferral and its Limits</b></p> <p><b>SEC 245A (Ch 9.5) PARTICIPATION EXEMPTION GILTI (Ch 9.6) CFC SH/Sec 962 (Ch 9.7) FDII (Ch 9.8)</b></p>	<p>Read Chapter 9, pp.730-755</p> <p>Suppl. problems per handout (not in text)</p>
<p><b>Nov 22 (Last Class)</b></p>	<p><b>Outbound Taxation: Sec. 367 and Cross-border Transfers of Property</b> Sec. 367(a) Outbound Transfers of Intangibles; Inversions; Branch Loss Recapture</p> <p><b>Other Miscellaneous – International Boycott and Foreign Bribery Provisions</b></p> <p><b>The International Tax Regime after OECD BEPS and the TCJA; Digital Taxation.</b></p>	<p>Read Casebook Introduction, pp 1-22.</p> <p><i>Supplemental Reading and Problems, See Canvas Assignments</i></p>
<p><i>Date tbc, Nov. 29</i></p>	<p><i>Optional review session for final exam</i></p>	
<p><i>December 2</i></p>	<p><b><i>FINAL EXAM (IN-PERSON, 12 NOON TO 3:30 PM)</i></b></p>	<p><b><i>Final Exam will cover Oct 21 – Nov 22 classes and topics plus transfer pricing and treaty chapters from first half of the semester</i></b></p>