

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
SPRING 2024, LAW 250-001 Arlington Campus - **Room TBA.**

Monday and Wednesdays – 4:00 – 5:25 pm

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Office Hours: Available by appointment – Immediately before/after
class is difficult but please email and I will be happy to
arrange another time that can work.

SYLLABUS

Course Overview:

The successful lawyer in today's challenging business environment should be prepared to help their clients with commercial transactions that trigger cross border tax issues. What we see with our clients is expanding global operations into regions that present vast business expansion opportunities. These successful business expansions employ technology innovations, including the internet, making it far easier to conduct business in multiple countries. A zoom meeting involving professionals from ten different countries advising a client on a transaction or their day-to-day business operations is now routine especially since the pandemic.

The area of international tax law is an unquestionably complex area of the law to master especially in a one academic semester period. Many legal

practitioners spend their entire career practicing and mastering a single area of international tax law thereby becoming subject matter experts finding themselves in huge demand commanding copious amounts fees and compensation.

Perhaps the better title for this course should be “Fundamentals of International Tax Law” as this course is not designed to make you a subject matter expert in international tax law Rather, the goal of this course is to help you improve your critical thinking ability and prepare you to identify the structural implications of cross-border tax issues such that, if it makes sense, you can even enlist the assistance of a subject matter international tax expert in a particular area of emphasis to a transaction or business operation issue you may be advising on with a client. Can you imagine your client hearing you say, “this issue may raise some significant transfer pricing exposure for your business, let’s take a deeper look into this issue.” A good lawyer knows the boundaries of their skill set and knows when to consult a subject matter expert but the key to your successful law practice is to not only know *when* but *who* to consult. During your legal career never find yourself in the boat by yourself! This course is designed to help you identify areas in international tax law that you can assist a client with either by yourself or with the assistance of a subject matter expert.

If during or at the conclusion of this course you decide that tax is not for you, that is perfectly fine! As a practitioner of now thirty plus years I strongly advise against jumping into a practice area that is of no real personal/professional interest. Conversely, if you feel like tax may be something you would want practice, which would be great, let us discuss it! Pursuing an LL.M. graduate law degree in Tax (strongly recommended) or working for the Treasury Department or Internal Revenue Service may be something to consider. Yes, even working in the tax practice of an accounting firm might make sense!

Course Topics Will Address:

- Residency classification rules
- The source of income rules and allocation of deductions between taxing jurisdictions
- Foreign Earned Income of United States Person

- Overview of the Foreign Tax Credit and related limitations
- The role of Tax Treaties
- Transfer Pricing
- An introduction to Controlled Foreign Corporations
- A look at Global Tax Policy through the OECD Framework and the BEPs actions
- Any updates in US Federal Tax Law that may have international tax complications

Textbooks and Materials:

The required textbook for the class is: *United States International Taxation*, by Philip E. Postlewaite, Genevieve A. Tokic & Mitchell B. Weiss, 5th Edition, Caroline Academic Press, 2023, (ISBN 978-1-5310-2473-4). This book will be available from the campus bookstore.

You will also need access to either print, on-line or the library to the U.S. Internal Revenue and U.S. Treasury Regulations on Income Tax. Please obtain *Selected Federal Taxation Statutes and Regulations, 2023 with Motro Tax Map (Selected Statutes)*, 2023rd Edition by Daniel J. Lathrop, West Academic Publishing, 2022, (ISBN-978-16585614386). This will be available for purchase from the campus bookstore. It is also available for purchase online from Amazon and Amazon Prime.

You may also consider as a resource (but not required): *International Taxation in a Nutshell*, 13th Edition by Mindy Herzfeld, West Academic Publishing, 2023, (ISBN-13-1978-1636590578). This can be available for purchase online from Amazon and Amazon Prime.

Course Pre or Co Requisite

Income Tax is either as a pre-or requisite unless a student has prior tax experience which can provide the student with a broad overview of tax law. However, there are no other requisites as this is fundamentals course.

Reading Assignments

A Reading Assignment Sheet will be posted prior to the start of the course that will identify the topic, required reading along with problem assignments for that respective topic. Students should be prepared to discuss the reading assignment for each class pursuant to the Reading Assignment Sheet. Should

we not cover all the scheduled topics in a particular class session, please be prepared to pick up discussions where we left off in the next class session plus the assignments scheduled for that class. We have many topics to cover which will require us to be as efficient as possible while still ensuring sufficient discussions take place. The foregoing being said, please know that changes in Reading Assignments may occur through the course due to timing issues. Any such changes will be made known in advance (or as soon as practicable).

Class Sessions, Participation and Attendance

To get the most out of class sessions, it is strongly recommended that you prepare in advance and be ready to participate in class. While many law classes employ the Socratic Method of teaching, that approach is not necessarily as useful for certain tax courses. I prefer for students not to be worried about “being called on” to recite but to freely participate by volunteering to recite a case or revenue ruling or by answering assigned problems. If no one is volunteering to participate in discussions, **the right to call upon students at random is reserved (but not desired).** ***Significant class participation will have a positive impact on your grade.*** Tied to class participation is class attendance which will be taken in every session. It is strongly recommended that you attend the class sessions. The final exam will include topics from every session without exception and for obvious reasons will impact your grade.

Class Logistics

The use of personal laptops is permitted solely for the purpose of reviewing prepared notes for class and taking notes during class. In the interest of being courteous to fellow students, personal laptops should not be used for messaging and/or other distracting activities during class. I will be using power point presentations to deliver lectures. Once the section is completed, I will make the presentations available but not necessarily answers to problems that may be included in a presentation. The plan is that all classes will be presented in person on campus. Given that I do maintain substantive responsibilities on behalf of Deloitte, it is possible that some travel event may impact a class session. I will advise the class on such situations as they may arise.

Assessments

The grade for this course will be based entirely on your final examination which will be administered pursuant to the regular examination schedule. However, as previously noted, your examination grade can be *positively* impacted by the depth/degree of class participation which I will record in each class. The practice of tax law “in real life” is not based on memorization (nor should it be!). In dealing with client issues, consulting the Internal Revenue Code, applicable Treasury Regulations and other applicable sources is part of the normal practice of tax law. In keeping with this “real life” approach, the examination for this course will be a take home exam subject to an Honor Code. I would suggest you plan nothing less than three hours to complete the exam. Student prepared outlines and class notes are acceptable tools to consult during the examination along with the class syllabus, required textbook, Internal Revenue Code and Treasury Regulations. Commercially prepared outlines are not allowed. See also below on Problem Sets.

Reading Assignment Sheet

Below is the class Reading Assignment Sheet. Each session identifies the topic along with assigned readings and problems. As noted, students should come to class prepared to discuss readings and problems. Also as noted this schedule is subject to change depending on how we move through the course. There are some “open” sessions near the end of the course which are reserved for further discussions on those sections we run over and/or for additional review purposes. Note also included in the Reading Assignment Sheet are “Problem Sets” **Completed problem sets will be part of the final assessment. Each student should submit their respective completed Problem Set not later than 11:59 pm of the evening preceding the first date of the class discussion for that problem set.** For example, Completed Problem Set 1 should be submitted not later than Tuesday January 16 at 11:59 pm and so on.

International Taxation: Reading Problem Assignment Sheet			
	Class Date (2024)	Topic	Reading Material & Problem Sets
1	Wednesday January 17	Introduction to International Tax & Residency Classification Rules	Postlewaite: Unit 1 - Residency Classification Rules - Pages 3-22; Please read IRC Secs & Treasury Regulations as noted on page 3. Problems for Class Discussion- 1-1 See Page 3. Problem Set 1.
2	Monday January 22	Residency Classification Rules (cont.)	Postlewaite: pages 19 & 20; <i>Cook v. Tait</i> , 265 U.S. 47 (1924); Revenue Rules 2004-77 2004-2 C.B. 119; Problems for Class Discussion – 1-2 – 1-5. See pages 4 & 5. Problem Set 1.
3	Wednesday January 24	Source Rules	Postlewaite; Unit 2 - Source Rules – Pages 23-43; Problems for Class Discussion – 2-1 – 2-4 – See pages 23 & 24. Problem Set 2. Please read IRC Secs & Treasury Regulations as noted on page 23.
4	Monday January 29	Source Rules (cont.)	Postlewaite: Problems for Class Discussion – 2-4 – 2-8 See pages 24-25. Problem Set 2. Please read <i>Boulez v. Commissioner</i> , United States Tax Court, 83 T.C. 684(1984); Revenue Rule 2004-25 2004-C.B. 109 See pages 38-43.
5	Wednesday January 31i	Foreign Earned Income of United States Persons – Methods to Avoid Double Taxation	Postlewaite: Unit 3 – Foreign Earned Income of US Persons - Pages 45 – 64; Please read IRC Secs & Treasury Regulations as noted – See Page 45; Problems for Class Discussion 3-1 – 3.2 – See Page 45 -46. Problem Set 3.
6	Monday February 5	Foreign Earned Income of United States Persons (cont.)	Postlewaite: Notice 2006-87 2006 – 2 C.B. 766; <i>Jones v. Commissioner</i> , United States Court of Appeals, Fifth Circuit 927 F2d 849 (1991) See pages 57-64. Problem Set 3 (continued from above)
7	Wednesday February 7	The Dividends Received Deduction (“DRD”)	Postlewaite; Unit 4 – The 245A Dividends Received Deduction - Pages 65-82; Please read IRC Secs & Treasury Regulations as noted on page 65. Problems for Class Discussion – 4.1 & 4.2 See Page 65 Problem Set 4.
8	Monday February 12	The DRD (cont.) Foreign Tax Credit;	Postlewaite; Problems for Class Discussion 4.3 – 4.5 See Page 65 & 66. Problem Set 4. Please read Joint Committee on Taxation, Background and Selected Policy Issues on International Tax Reform JCX -45-

		(Overview)	17 (September 28, 2017) See page 78. Postlewaite; Unit 5 Foreign Tax Credit; Overview – Pages 83-100; Problems for Class Discussion 5.1 – See Page 83. Problem Set 5. Please read IRC Secs and Treasury Regulations as noted on page 83.
9	Wednesday February 14	Foreign Tax Credit (cont.) Foreign Tax Credit – Limitations	Postlewaite; Problems for Class Discussion 5.2-5.4 – See Pages 83 & 84. Problem Set 5. Please read <i>Wada v. Commissioner</i> , United States Tax Court T.C. Memo 1995-241. See page 99. Postlewaite; Unit 6 – Foreign Tax Credit: The Section 904 Limitations – Pages 101-119. Problems for Class Discussion – 6.1 – 6.2 See pages 101 102. Problem Set 6. Please read IRC Secs and Treasury Regulations as noted on page 101.
10	Monday February 19	Foreign Tax Credit - Limitations	Postlewaite; Problems for Class Discussion -6.3 – 6.5 Pages 101-103. Problem Set 6. Revenue Ruling 62-67 1962 C.B. 128 See Page 117.
11	Wednesday February 21	Treatment of Foreign-Owned United States Investment Income	Postlewaite; Unit 8 – Treatment of Foreign – Owned United States Investment Income - Pages 137-150.; Problems for Class Discussion – 8.1 Page 137 – 138. Problem Set 7. Please read IRC Secs and Treasury Regulations as noted on page 137.
12	Monday February 26	Treatment of Foreign Owned United States Investment Income (cont.)	Postlewaite; Problems for Class Discussion - 8.2-8.3 See Page 138. Problem Set 7. Please read Joint Committee on Taxation, General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984; (H.R. 4170, 98 th Congress, Public Law 98-369), JCS-41-84 December 31, 1984. See Pages 145-150.
13	Wednesday February 28	Treatment of Foreign-Owned United States Business Income	Postlewaite; Unit 9 – Treatment of Foreign Owned United States Business Income - Pages 151-180. Problems for Class Discussion – 9.1- 9.2 See pages 151 – 152. Problem Set 8. Please read IRC Secs and Treasury Regulations as noted on page 151.
14	Monday March 11	Treatment of Foreign Owned United States Business Income (cont.)	Postlewaite; Problems for Class Discussion – 9.3 – 9.5. Problem Set 8. See Pages 152. Please read Revenue Ruling 88-3 1988 C.B. 268. See Page 168. Please read: <i>United States v. Balanovski</i> , United States Court of Appeals, Second Circuit 236 F.2d 298 (1956) See Pages 171-174; <i>Scottish American Investment Co. LTD. V Commissioner</i> , United States Tax Court 12 T.C. 49 (1949). See Pages 174-180.

15	Wednesday March 13	Taxation of Branch Profits, Investments in United States Real Property, and the Base Erosion Anti-Abuse Tax	Postlewaite; Unit 10 – Taxation of Branch Profits, Investments in United States Real Property, and the Base Erosion Anti-Abuse Tax - Pages 181-197. Problems for Class Discussion 10-1 -10.3 See pages 181-182. Problem Set 9. Please read IRC Secs and Treasury Regulations as noted on page 181.
18	Monday March 18	Taxation of Branch Profits (cont.) Tax Treaties – Overview	Postlewaite; Problems for Class Discussion 10.4-10.5 See Pages 182-183. Problem Set 9 Postlewaite; Unit 11 – Tax Treaties – Overview - Pages 199-199-221. Problems for Class Discussion – 11.1-11.2 See page 199. Problem Set 10. Please read IRC Secs and Treasury Regulations as noted on page199.
19	Wednesday March 20	Tax Treaties – Overview (cont.) Tax Treaties and Investment Income	Postlewaite; Problems for Class Discussion 11-3-11.4 See Pages 19-9-200; Revenue Ruling 2004-76 2004-2 C.B. 11 See Pages 208-211. Problem Set 10 Postlewaite; Unit 12 – Tax Treaties and Investment Income - Pages 213-221. Problems for Class Discussion 12.1 – 12.2 See Pages 213-214. Problem Set 11. Please read United States – Canada Tax Treaty, Articles 4, 6, 10-13 See Page 398.
20	Monday March 25	Tax Treaties and Investment Income (cont.) Tax Treaties and Business Income	Postlewaite; Problems for Class Discussion – 12.2-12.3 See page 214. Problem Set 11. Postlewaite; Unit 13 – Tax Treaties and Business Income - Pages 223- 258. Problems for Class Discussion 13.1-13.2 See Pages 223-224. Problem Set 12. Please read Articles 5, 7, and 15 of the United States – Canada Treaty and accompany relevant portions of the Technical Explanation of the United States – Canada Tax Treaty – See page 398.
21	Wednesday March 27	Tax Treaties and Business Income (cont.)	Postlewaite; Problems for Class Discussion 13.3-13.4 See Pages 224-225, Problem Set 12. Please read Revenue Ruling 58-63 1958-1 C.B. 624 and Revenue Ruling 72-418 1972 C.B. 661 & <i>Unger v. Commissioner, United States Court of Appeals, District of Columbia Circuit</i> 936 F2d 316 (1991). See pages 241- 246.
21	Monday April 1	Tax Treaties and Business Income	Postlewaite; Problems for Class Discussion 13.5 See Pages 224-225. Problem Set 12. Please read

		(cont.)	Revenue Ruling 58-63 1958-1 C.B. 624. See pages 24 242; Revenue Ruling 72-418 1972 C.B. 661 See Pages 242-242 & <i>Unger v. Commissioner</i> , United States Court of Appeals, District of Columbia Circuit 936 F2d 316 (1991).
22	Wednesday April 3	Introduction to Controlled Foreign Corporations ("CFC")	Postlewaite; Unit 15 –Introduction to Controlled Foreign Corporations- Pages 281-293. Problems for Classroom Discussion 15.1-15.2 See Pages 281-282. Problem Set 13. Please read IRC Secs and Treasury Regulations as noted on page 281.
23	Monday April 8	Introduction to CFC (cont.) CFCs – Subpart F Inclusions	Postlewaite; <i>Framatome Connectors USA, Inc. v. Commissioner</i> , United States Tax Court, 118 T.C. 32 (2002) See Pages 288-292. Postlewaite; Unit 16 – Controlled Foreign Corporations = Subpart F Inclusions - Pages 293- 321; Problems for Classroom Discussion – 16.1 – 16.2 See Pages 293-294 Problem Set 14. Please read IRC Secs and Treasury Regs as noted on Page 293.
24	Wednesday April 10	CFCs – Subpart F Inclusions (cont.)	Postlewaite; Problems for Classroom Discussion 16.3 -16.4 See Pages 294-295. Problem Set 14; Notice 2007-13 2007 1 C.B. 410. See Pages 317 – 321.
25	Monday April 15	Passive Investment Companies	Postlewaite; Unit 17 – Passive Foreign Investment Companies - Pages 323-338. Problems for Classroom Discussion 17.1 & 17.2 See Pages 323- 324. Problem Set 15. Please read IRC Secs and Treasury Regulations as noted on page 323.
26	Wednesday April 17	International Tax – OECD	Materials provided in advance
27	Monday April 22	Open	