International Taxation  
Spring 2002  
Professor Gazur

Summary:  
This course deals with the U.S. taxation of international activities, in the context of U.S. persons doing business abroad and foreign persons doing business in the U.S. We will work with some tax treaties and provisions of tax systems of other countries. However, the principal focus will be on the U.S. Internal Revenue Code, and we won’t, for example, study the revenue laws of the U.K., Germany, etc. The book that we will be using is interesting. It goes beyond simply discussing the relevant principles and takes a transactional business approach to this area. The authors for the most part successfully walk the difficult line between excessive numbing detail and complexity, on the one hand, and glib, oversimplified, generalized commentary, on the other. This is difficult material but worth the trip. To study or practice in the taxation area or the business arena without understanding the full circle presented by the international component is to be blindfolded.

Required Materials:  

Grading:  
There will be no final examination in this class. Instead, there will be three (3) short papers addressing selected problems in the book. The papers will have a page limit of five–seven pages, typewritten, single–spaced.

A. Problems 5-6 on p. 188; work carefully with the treaties and Code. The paper cannot exceed three (3) pages, 
typewritten, single–spaced. This will be due as item 13A of the syllabus. (30% of the course grade.)

B. Problems 11 pp. 217–218 and 16-17 on p. 247. The paper cannot exceed five (5) pages, typewritten, single–spaced. This will be due as item 19A of the syllabus. (35% of the course grade.)

C. Problems 1 on p. 594 and 2-5 on p. 659. The paper that will be due as item 34A in the syllabus cannot exceed three (3) pages, typewritten, single–spaced. (30% of the course grade.)

D. Class Participation and Attendance. (5% of the course grade.)

Other Resources:  
Joseph Isenbergh, International Taxation (a very readable four–volume treatise); Boris I. Bittker & Lawrence Lokken, Volume 3 of their multi–volume treatise, Federal Taxation of Income, Estates and Gifts (a very technical explanation
of international tax provisions); Richard Kaplan, *Federal Taxation of International Transactions* (a case book which has some valuable overviews and code section flowcharts).

**Office Hours:**
My office is 414 in the law school, and my telephone number is 492–7013. My e–mail address is wayne.gazur@colorado.edu. My spring office hours are: Tuesday and Thursday, 1:00–2:00 p.m.; or by appointment. I maintain a TWEN site for this course on which I may post solutions to the problems.

**Assignments**

1. **Introduction and Overview**
   Read text pp. 1–32. Tax neutrality principles and deferral are important concepts.

2. **U.S. Tax Jurisdiction—Individuals**
   b. Read text pp. 38–48 and I.R.C. §§ 877, 7701(b) (10), and 6039G. In connection with the French Tax Treaty benefits mentioned in the fourth paragraph, right column, p. 41, read Article 1, Section 4, and Article 10 of the Model Treaty at p. 1035. Try to find the applicable provisions of the French treaty at p. 1151. Do problem on p. 45.

3. **U.S. Tax Jurisdiction—Entities**
   a. Read text pp. 48–51 and I.R.C. §§ 7701(a)(4), 7701(a)(5), 7701(a)(31), 269B, 1503(d), 1504(b)(3), 1504(d), 11(d), 672 and 679. Consider how the burden of worldwide taxation of U.S. corporations is reduced through the foreign tax credit and the use of foreign subsidiaries.
   b. Read text pp. 942–948 and I.R.C. §§ 901(a), (e). Read Treas. Reg. § 301.7701–1 through 301.7701.4, and text pp. 948–992. At this point much of this will be beyond your knowledge — we will revisit this.
   c. Read text pp. 715–750 and do problems 1–6 on pp. 749–750. I.R.C. §§ 351 and 367 will be the principal focus.

4. **Tax Treaties—Introduction**
   The text introduces treaties at this point. We will be examining specialized applications later. Read text pp. 51–63 and the Code provisions referred to therein, plus Articles 1, 2, 3, 4, 5, 22, 23, 24, 25, and 26 of the Model Treaty at p. 1035. Do problems on pp. 59-60.

5. **Sourcing—Interest, Dividends, Services, Rents & Royalties**
   Before immersion in the technical details appreciate the many purposes served by “sourcing” described on text pp. 64–65. Then read text pp. 65–80 and I.R.C. §§ 861 (a)(1), (2), (3), (4), and (8), 861(b), 861(c), 861(d), 884(f)(1), and 862. Consider Articles 12, 14, 15, and

6. **Sourcing—Sales of Property**
   Read text pp. 80–98 and I.R.C. §§ 861(a)(5), 862(a)(5), 861(a)(6), 865, (particularly 865(b), 865(d)(3), 865(e)(2), 865(f), 865(i)), 897(c), 1248(a) and Treas. Reg. §§ 1.861–6, 1.861–7(c), 1.863–2, –3, –3T, Prop. Reg. 1.863–3(b) and (c), and 1.864–7. Do you see how the sourcing of inventory profit is essentially at the taxpayer’s election? If a U.S. company has no foreign subsidiaries where will they want the source to be? Do problem on p. 92 and then do problems 6–10 and 12–14 on pp. 110–111.

7. **Sourcing—Special Rules**
   Read text pp. 98–109 and I.R.C. §§ 863(c), (d), and (e). Do problem 11 on p. 110.

8. **Sourcing—Deductions**
   Read text pp. 111–117 and I.R.C. §§ 861(b), 862(b), 863(b), 864(c), 864(f), and Treas. Reg. §§ 1.861–8(a), (b), skim 1.861–8T(a), –(e), skim 1.861–9T, –10T. Try problem 1 on p. 115.

9. **Inbound Transactions—Business Income—“Trade or Business”**
   Read text pp. 118–140 and I.R.C. §§ 871(a)(1), 871(b), 864(b), 864(c), 882(a)(1), 875, 871(d), 882(d) and Treas. Reg. § 1.864–2(e).

10. **Inbound Transactions—Business Income—“Effectively Connected” and Deductions.**

11. **Treaties—Part II**

12. **Inbound Transactions—Branch Profits Tax**

13. **U.S. Tax Jurisdiction—Foreign Governments**
    Read text p. 193 and I.R.C. §§ 892, 893, and 895. Do problems on p. 194. Consider whether the following activities are taxable by the U. S. The regulations are helpful:
    A. Two foreign governments form an investment partnership that pools funds which are in turn invested in U.S. stocks and bank accounts.
    B. A foreign government invests in “net leases” of real property as an investment, collecting rents.
    C. A culture bureau of a foreign government collects income for ballet performances in the U.S.
    D. The subsidiary of a foreign government owns 60% of the stock of a “national” airline like Lufthansa.
    E. A foreign government owns 10% of IBM and receives cash dividends.

13A. Problems 5 and 6 on pp. 188–189 are due two weeks after completing assignment 13.

14. **Inbound Transactions—Nonbusiness Income**
    Read text pp. 195–218, and I.R.C. §§ 871(a), 881(a), 871(h), 871(i), 881(c), 881(d), 865(e), 163(j)Treas. Reg. 1.864–4(c), articles 10–13 and 22 of the Model Treaty. Do problems 1–10 on pp. 216–217.

15. **Non–FDAP Gains**
    Read text pp. 218–219.
16. **Withholding**  
Read text pp. 219–231 and I.R.C. §§ 1441, 1442, 1446, and 1461. I hope that you appreciate the risk that a U.S. person assumes in deciding not to withhold.

17. **Inbound Transactions–Gains from U.S. Real Property–“FIRPTA”**  

18. **Planning**  
Read text pp. 240–244 (there is overlap with assignment #14). Do problems 1–11 on pp. 244–246. These comprehensive problems raise issues from prior assignments.

19. **Corporate Exits by Foreign Persons**  
Re–read text pp. 744–746.  

20. **Foreign Tax Credit–Part I–Eligible Taxes**  

21. **Foreign Tax Credit–Part I–Direct and Indirect Credits**  

22. **Foreign Tax Credit–Part I–Indirect Credit Computations**  

23. **Foreign Tax Credit–Part I–Introducing the “Baskets”**  

24. **U.S. Tax Jurisdiction–An Exception For Taxpayers Abroad; Treaties**  
   b. Read text pp. 392–398 and do the problem on p. 398.

25. **Controlled Foreign Corporations–Overview**  

26. **Controlled Foreign Corporations–Status**  
Read text pp. 414–436 and I.R.C. § 269B. Recognize that the control statute in effect today is tighter than that in Kraus, CCA, Inc., and Koehring.

27. **Controlled Foreign Corporations–Mechanics; Income Components**  

28. **Controlled Foreign Corporations–Other Deemed Distributions**  
29. **U.S. Shareholder Exits**
   Read text pp. 492–496 and pp. 750–759.

30. **Foreign Personal Holding Companies; PFICs**

31. **Foreign Tax Credit—Part II—Basket Limitations**
   c. Read text pp. 617–624.

32. **Transfer Pricing—Overview**

33. **Transfer Pricing—Services**

34. **Transfer Pricing—Sales of Tangible Property**

34A. The solutions to problem 1 on p. 594 and 2–5 on p. 659 are due on the earlier of: two weeks after we complete assignment 34, or the last day of class.

35. **Transfer Pricing—Intangibles**

36. **Transfer Pricing—Reporting Requirements and Administrative Alternatives**

37. **Foreign Currency—Separate Transactions Method**

38. **Foreign Currency—Profit and Loss Method**
   Read text pp. 708–713. Do problems on pp. 713–714.

39. **Structuring International Sales of Goods, Export Companies, Foreign Sales Corporations**
   a. Read text pp. 760–812. Much of this is review. We will spend some time on Dave Fischbein and Ashland Oil.
   b. Read text pp. 812–856. Even the successor to the FSC is under attack in the WTO, so we won’t deal with the details of the mechanics.

40. Due to time constraints chapters 14 and 15 are omitted.