

U.S. Taxation of Cross Border Transactions

Summer 2023

Professor Omri Marian

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Class schedule and location: June 12 - June 23, Mon, Wed, Fri, 9:00 a.m. - 12:00 p.m., and 2:00 p.m. - 5:00 p.m. ALRD room 114

Course objectives: The course explores U.S. federal income taxation of cross-border transactions. The course has three distinct units:

- (1) Introduction on the U.S. tax system, and U.S. jurisdictional thresholds;
- (2) Taxation of foreign taxpayers' income earned in the United States (inbound taxation); and,
- (3) Taxation of U.S. taxpayers' income earned in foreign jurisdictions (outbound taxation).

Grading and Exam: 100 percent of your grade in the course will be based on an anonymously graded two-hour final examination.

The exam will be open-book. You can bring in any book as well as any *self-prepared* notes.

Texts:

1. Required (the "Nutsell"): Mindy Herzfeld & Richard L. Doernberg, International Taxation in a Nutshell (13th ed., 2023). You may access this text online. It is available on several legal databases such as Westlaw.
2. Legislation: You may rely on any reputable database to access the Internal Revenue Code (cite 26 USCA s [section number]) and Treasury Regulations (cite 26 CFR s [section number]).
3. United States Model Income Tax Convention of February 17, 2016 ("U.S. Model").
4. United States – Canada Income Tax Convention, including Protocols 1 thru 4 (the "U.S. – Canada Treaty")

Problems sets; Class preparation: Most classes will consist of a short lecture complementing the assigned materials, followed by a review of the problems assigned. I understand that given the condensed nature of the class you will not have time to fully explore all the problems before each class. All I ask is that you review the problems and understand the questions.

Attendance: If you must miss a class session or other class-related meeting due to an unavoidable urgent matter, illness, or other personal reason, please contact me **by e-mail**,

preferably before that class. If you miss a class, you are responsible for learning the information you missed.

Course Subject Matters

This list serves as a general guideline for the class. I may delete, add, or change the order of subjects and assignments based on the progress of the class and other factors. You are responsible for keeping track of changes made to the syllabus.

I will assign reading assignments and problems at least two weeks before classes begin.

1) Introduction, Jurisdiction to Tax

- a) The U.S. tax system: sources of law, procedure, and basic concepts
- b) Tax Residence of Individuals
- c) Tax Residence and Classification of Business Entities
- d) Source Rules for Income

2) Taxation of Non-Residents' U.S. Income

- a) Business Income of Nonresidents (Effectively Connected Income with a U.S. Trade or Business)
- b) Allocation and Apportionment of Deductions
- c) Taxation of Non-Residents' Passive Income (FDAP)
- d) Taxation of Non-Residents' Real Estate Income (FIRPTA)
- e) Inbound Anti-Abuse Rules:
 - i) Branch Taxes
 - ii) Earning Stripping
 - iii) Limitation on Benefits
 - iv) Conduit Financing Arrangements
 - v) Anti-Hybrid Rules
 - vi) BEAT – Base Erosion Anti Abuse Tax

3) Taxation of Residents' Foreign Income

- a) General Rules, Introduction to the Foreign Tax Credit
- b) The Participation Exemption for Corporations
- c) Outbound Anti-Abuse Rules
 - i) Controlled Foreign Corporations
 - ii) Passive Foreign Investment Companies
 - iii) GILTI (Global Intangible Low Taxed Income) and FDII (Foreign Derived Intangible Income)