

Tax Treaties
UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW
FALL 2024 SYLLABUS – LAW 7682 – 2 CREDITS

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#325

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Office Hours: F 9:00-9:30; 11:30-12:00 and any other time by appointment or simply drop-in

MEETING TIME: F 9:30-11:30

LOCATION: HH359

COURSE DESCRIPTION AND OBJECTIVES:

The United States rules applicable to transactions and investment by foreigners in the United States and by United States residents abroad, compared to a coherent set of rules constructing the international tax regime via bilateral income tax conventions between countries.

STUDENT LEARNING OUTCOMES:

At the end of this course, students should be able to apply the rules of tax treaties.

REQUIRED READING MATERIALS:

Immediate access to the Internal Revenue Code and Regulations. Other readings will be assigned in class occasionally.

COURSE EXPECTATIONS AND GRADING EVALUATION:

Attendance and class contribution are mandatory. The students are also expected to participate in all academic tax events (lectures, workshops, etc.) during the semester. Please discuss with the Professor in advance if you are unable to attend an event.

Students will be evaluated based upon contribution to class discussion (34%), quizzes and two research papers (66%).

CLASS ATTENDANCE POLICY:

Attendance in class is required by both the ABA and the Law School. Attendance will be taken at each class meeting. Students are allowed no absences during the course of the semester. Students are responsible for ensuring that they are not recorded as absent if they come in late. A student who fails to meet the attendance requirement will be dropped from the course. The law school's policy on attendance can be found [here](#).

UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICIES:

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>.

ABA OUT-OF-CLASS HOURS REQUIREMENTS: ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every "classroom hour" of in-class instruction. Each weekly class is approximately 2 hours in length, requiring at least **4 hours of preparation** outside of class including reading the assigned materials and preparing the problems for class discussion.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS

This syllabus is offered as a guide to the direction of the course. Our pace will depend in part on the level of interest and the level of difficulty of each section and is subject to change. We will spend 1-2 classes on each unit. Make sure you follow the canvas page for updates and weekly reading assignments. On Canvas you will also find the problems set for the entire course.

Unit I: Introduction, History and the Models

Unit II: Legal Status and Scope

Unit III: Business Income, Permanent Establishment

Unit IV: Attribution of Profits & Transfer Pricing

Unit V: Dividends / Interest Income

Unit VI: Royalties / Digital Economy

Unit VII: Employment Income

Unit VIII: Gains / Real Property / Other Income

Unit IX: Relief of DT and Improper Use of Tax Treaties

Unit X: Nondiscrimination and Other Treaties.

Unit XI: Contemporary Issues, Triangular Cases and BEPS

Nov. 8: International Tax Symposium – Participation and preparation of all of the papers presented is mandatory for this course.

The students are also expected to participate in all academic tax events (Colloquium sessions, lectures, workshops, etc.) during the semester.

First Class Assignment

Required Text:

- * 2017 OECD Model Convention and Commentaries – available through the OECD library database
- * 2016 United States Model Convention and the Treasury's Technical Explanation – available on the web or through the Tax Analysts database.
- * 2017 UN Model Convention and Commentaries – available on the web or through the Tax Analysts database.
- * The 1969 Vienna Convention on the Law of Treaties
- * Current Internal Revenue Code and Regulations
- * Global Tax Treaty Commentary ("GTTC") – available through the IBFD platform on the library's site

Class I: Introduction, History and the Models

- a. Treaties in International Law and the Vienna Convention
- b. History
- c. Model Conventions
- d. Protocols and Renegotiations

Read: 1. Introduction to the 2017 OECD Model.

2. Introduction to the GTTC.

3. Skim League of Nations, Double Taxation and Tax Evasion Reports (1927/1928), available on several websites.

Familiarize yourself with:

- (a) OECD Model Convention
- (b) Vienna Convention on the Law of Treaties (“VCLT”)

Guiding Questions (for this class you do not have to prepare your answers in writing, but you should be prepared to orally respond in class. You may also be unsure whether you can comprehensively answer these questions – do not worry about it, just do your best (for now...)):

1. What is a treaty?
2. Are U.S. tax treaties subject to the VCLT?
3. What is the legal status of tax treaties signed by the U.S. under U.S. law?
4. What are the purposes of tax treaties? Are tax treaties necessary to accomplish their purposes?
5. What exactly is the concern with “double taxation”?
6. What is the distinction between juridical and economic double taxation?
7. What double taxation is relieved by tax treaties?
8. What is the exact effect of tax treaties?
9. How does a tax treaty come into effect in the U.S.?
10. Why do we sign tax treaties?
11. Think about the relationship between tax treaty provisions and domestic law?
12. What is tax treaty override? Consider Art. VI U.S. Constitution, IRC §§ 894(a) & 7852(d), *Whitney v. Robertson*, 124 U.S. 190 (1888), *Cook v. United States* 288 U.S. 102 (1933), and *Kappus v. Commissioner*, 337 F.3d 1053 (DC cir. 2003).
13. What happens when a tax treaty permits a country to tax income that would otherwise be exempt under its domestic law? For example, may a country that domestically does not tax dividend income require that its resident companies withhold tax on dividends paid to residents of their treaty partners?
14. Read IRC §§ 163(j), 884, and Treas. Reg. §1.881-3. Do they represent treaty override?
15. Read art. 1 of the 2017 OECD model convention. Can a U.S. LLC, wholly owned by a Canadian individual, and operating a warehouse in Mexico (its sole source of income) enjoy the benefits of the treaty between the United States and Mexico in order not to pay tax on its income above in Mexico (read also articles 4, 5, and 7 of the 2017 OECD model and assume that all relevant treaties are identical to this Model).

16. A is an individual citizen of country X. He works in country Y (just across the border of his hometown located in country X) as a technical service provider mostly for clients of corporation B that resides in country Z, out of an office located in country Y. 30% of his time he spends in another neighboring country, P, helping similar clients. A was trained for his very specific job in country T, and is required to travel for continuous training to country T at least 4 times a year, for three days of training each time. Training is done by a service provider of corporation B, corporation C that is resident in country T. Both corporations B and C are 50% owned by corporation D that resides in country U (the rest of their shares are owned by the public).

Which tax treaties may be relevant to the above simple scenario and how?

17. May a resident of a treaty country claim an exemption under a tax treaty in his country of residence with respect to income not taxed to him in the country of source?