

Introduction to U.S. International Taxation

Professor Mindy Herzfeld

University of Florida Levin College of Law

Syllabus

Fall Semester 2024

Introduction to U.S. International Taxation Course # LAW 7614 Section #22161

Professor Mindy Herzfeld

Office: 374

Phone: 352-273-0932

Email: herzfeld@law.ufl.edu

Office Hours: Monday 3:30pm.-5:30 p.m. or by appointment (contact me by email to set up appointment in person or by phone)

A. Course Materials:

Access to an Internal Revenue Code and Treasury Regulations, in whatever format desired, is required and must be accessible to you for each class. This single volume has (almost) all the relevant code and reg sections collected in one place: <https://shoptax.woltersklower.com/en/intl-inc-taxn-cd-reg-sel-sec-2024.html>

Class readings will be assigned from Herzfeld, International Taxation in a Nutshell, 13th ed. The book is available on Amazon.

You may also wish to use Bittker & Lokken, Fundamentals of International Taxation, as a reference book.

In lieu of purchasing the Nutshell, you can access it in the following manner:

West Academic Study Aids may be accessed at <https://subscription.westacademic.com/>. While physically on campus or connected through the VPN, students can create a free account in order to access this resource off-campus. Creating an account also allows you to add and save notes and highlight text. Use your @ufl.edu email account when creating your account."

All law students with a ufl.edu email address can create and access an account, including the part timers.

I have also provided references to BNA Portfolios, which provide helpful background on specific topics.

B. Topics: The topics for class, along with the assigned readings, are described in the pages that follow.

C. Grade: Your grade will be based on the following:

1. 20% on assignments, each student required to submit 4 assignments in total, on assigned dates, 5 points each.
2. 20% of the grade to be based on the submission of 4 problem sets (5 points each).
3. 10% of the grade on class participation through quizzes given during class.
3. 50% of the grade to be based on the exam.

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

D. Assignments and Problem Sets.

For each class (other than the first class and those classes for which Problem Sets are assigned), several of you will be required to submit a question / fact pattern relevant to the day's reading. The fact pattern is intended to prompt you to think about what questions the particular code sections we are studying are trying to answer. For example, if the assigned reading was IRC section 351, the question/fact pattern you might submit would be – *Jane contributed all rights and title to a painting she made/song she created to Corporation A in exchange for 100 percent of the shares of stock of Corporation A. Is that transaction a taxable event?* You will be randomly assigned a date for submission by Canvas. If the date assigned presents a problem for you, you may switch with another classmate. Part of our class time will be spent reviewing your fact patterns, and so you should be prepared to discuss your fact pattern in class.

In addition, there are 4 problem sets that we will discuss during the semester. You will be graded on each problem set and should be prepared to discuss your answers in class.

E. Reading Assignments

All secondary readings are optional. My expectation is that you become familiar with and understand the primary sources: the Code and Regulations, and relevant case law. The choice of what sources you use to help you understand this material is entirely up to you. All secondary source readings are provided for your reference and benefit only.

F. Attendance.

Per ABA requirements, you are required attend all classes, unless you e-mail me in advance with a legitimate excuse. Requirements for class attendance and make-up exams, assignments, and other work in this course are consistent with university policies that can be found at: <https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>.

This is a wholly online class. I expect your camera to be turned on for all of the class, if on a particular day you cannot turn your camera on, you should send me a note beforehand explaining the extenuating circumstances. Class participation will be graded via a series of quizzes to be offered during class (10% of grade).

You should come prepared to each class and expect to be called on.

G. Class Schedule. All classes will meet online, from 10:30-11:55am, **except as noted in the syllabus below.**

H. Exam. The exam will be an open book, take-home test, which you will have the option to take at any time during the reading period. It will consist of 5 questions, worth 10 points each.

Summary of the Course

This course is a survey course in U.S. international taxation. We will start the course with an overview of the questions and conundrums that international tax rules attempt to address, including questions of jurisdiction and residency. We will then move on to survey the U.S. tax rules that apply to the taxation of non-U.S. persons' U.S. taxable income, including business and non-business income. Included in this unit is an overview of tax treaties to understand how they interact with and overlay U.S. taxing rules. The third unit of the course will consider how the U.S. tax rules apply to tax U.S. persons' foreign earnings. Throughout, we will consider the dynamic development of the law and current developments. International tax is a field of law in the midst of upheaval, and there is considerable uncertainty in many of the particular topics we will be discussing. It's also a challenging course, because it sits at the intersection of U.S. tax law, international law, treaty law, and cross-border business. There is no substitute for in-depth preparation for class.

Objectives of the course

The objectives of this course are to provide students with the following knowledge and skills:

1. An understanding of the U.S. international tax system, including the rules that apply to non-U.S. persons investing into the U.S. and the rules that apply to U.S. persons' investments overseas, as relevant to individuals and business entities;
2. Familiarity with the primary and secondary source materials relevant to further in-depth research in these areas;
3. An appreciation of the type of analysis required to approach questions inherent to the taxation of a complex cross-border transaction;
4. An understanding of the development of U.S. international tax rules and how they may evolve in the future.

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>

Reference Materials

1. BNA Portfolios, US International Taxation series (numbers specified throughout the syllabus; accessible online with UF ID)
2. Bittker & Lokken, Fundamentals of International Taxation (student edition 2022/2022) (a little out of date but still worthwhile)

Module 1: International Taxation Principles

Class 1: Monday August 19

Jurisdictional Principles

Primary sources reading:

1. Background And Selected Policy Issues on International Tax Reform JCX-45-17 (September 28, 2017) <https://www.jct.gov/publications/2017/jcx-45-17/>
2. [Cook v. Tait, 265 U.S. 47 \(1924\)](#)

Secondary sources reading

1. Nutshell Chapters 1 & 2
2. B&L ¶¶ 65.1.1, .65.1.2, 65.1.3
3. BNA Portfolio 900-2nd

Class 2: Wednesday, August 24

Residency

Primary sources reading:

1. IRC sections 7701; 877A; 7874(a), (b)
2. Reg. § 301.7701(b)-1

Secondary sources reading

1. Nutshell Chapter § 2.04, 2.05
2. B&L ¶¶ 65.2, 65.3.1, 65.3.2
3. BNA Portfolio 900 I.G.

Class 3: Monday, August 26

Entity Classification

Primary sources reading

1. IRC sections 7701(a), 267A
2. Reg. § 301.7701-1, 2, 3, 4

Secondary Sources Reading

1. Nutshell Chapter § 2.05
2. B&L ¶¶ 65. 3.5
3. BNA Portfolio 6460 II.B

Class 4: Wednesday August 28

Source Rules I: Interest, Dividends

Primary Sources:

1. IRC sections 861; 862; 863
2. Reg. § 1.861-2(a); 1.861-4(a), (b)
3. [Bank of America v. United States, 680 F.2d 142 \(Ct.Cl. 1982\)](#)
4. [Stenkowski v. Commissioner, 690 F.2d 40 \(2d Cir. 1982\)](#)
5. Piedras Negras Broadcasting Co. v. Commissioner, 43 B.T.A. 297 (1941), aff'd, 127 F.2d 260 (5th Cir. 1942).

Secondary Sources:

1. Nutshell Chapter 3
2. BNA Portfolio 6620
3. B&L ¶ 73.1, 73.2, 73.3, 73.5

Monday September 2: Labor Day, no class

Class 5: Wednesday Sept 4

Source Rules II: Property Sales, Special Rules

Primary Sources:

1. IRC sections 861; 862; 863; 865
2. Reg. § 1.863-2; 1.863-3

Secondary Sources:

1. Nutshell Chapter 3
2. BNA Portfolio 6620
3. B&L ¶ 73.4, .73.6, 73.10

Class 6: Mon Sept 9

Source Rules III: Services, Rents and Royalties

Primary Sources:

3. IRC sections 861; 862; 863
4. Reg. § 1.861-18
5. Prop. Reg. § 1.861-19
6. *Commissioner v. Wodehouse*, 337 U.S. 369 (1949)
7. *Boulez v. Commissioner*, 83 T.C. 584 (Tax Ct. 1984)

8. Rev. Rul. 84-78
9. Rev. Rul. 68-443

Secondary Sources:

4. Nutshell Chapter 3
5. BNA Portfolio 6620
6. B&L ¶ 73.4, .73.6, 73.10

Class 7: Wed Sept 11

Source Rules: Allocating Deductions

Primary Sources:

10. IRC sections 861; 862
11. Reg. §§ 1.861-8(e); 1.861-9T; 1.861-17 (skim)

Secondary Sources:

7. Nutshell Chapter 3
8. BNA Portfolio 6620
9. B&L ¶ 73.4, .73.6, 73.10

Class 8: Monday Sept 16

Problem Set 1, Residency and Entity Classification

Class 9: Wednesday Sept 18

Problem Set 2: Source Rules

Module 2 Inbound Taxation

Class 10: Monday Sept 23

FDAP and Withholding

Primary Sources:

1. IRC §§ 871; 881
2. Reg. §§ 1.871-10; 1.882-1; 1.1441-2
3. *Commissioner v. Wodehouse*, 337 U.S. 369 (1949)
4. Rev. Rul. 73-522

Secondary Sources:

1. Nutshell Chapter 4.04
2. BNA Portfolio 6400, 6460
3. B&L ¶ 67.2; 67.4

Class 11: Wed Sept 25

US Trade or Business

Primary Sources:

1. IRC §§ 864(b); 872; 882
2. Reg. §§ 1.864-2; 1.864-7
3. *Scottish American Investment Co., Ltd. v. Commissioner*, 12 T.C. 49, 59 (1949)
4. *Lewenhaupt v. Commissioner*, 20 T.C. 151 (1953)
5. *Handfield v. Commissioner*, 23 T.C. 633 (1955)
6. *United States v. Balanovski*, 236 F.2d 298 (2d Cir. 1956)

Secondary Sources:

1. Nutshell Chapter 4.02
2. BNA Portfolios 900 II.
3. B&L ¶¶ 67.6.2

Class 12: Mon Sept 30

Effectively Connected Income

Primary Sources:

1. IRC sections 864(c)(1)-(4)
2. Reg. §§ 1.864-3; 1.864-4; 1.864-5; 1.864-6
3. *InverWorld, Inc. v. Commissioner*, T.C. Memo. 1996-301 (1996)

Secondary Sources:

1. Nutshell Chapter 4.03
2. BNA Portfolios 900 II
3. B&L ¶¶ 67.6

Class 13: Wed October 2

FIRPTA, The Branch Profits Tax

Primary Sources:

1. IRC §§ 897, 884
2. Reg. §§ 1.897-1; 1.897-2

Secondary Sources:

4. Nutshell Chapter 4.05, 4.07
5. BNA Portfolios 6540
6. B&L ¶ 67.7

Class 14: Mon October 7

Treaties

Primary Sources:

1. 2016 U.S. Model Treaty <https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/Treaty-US%20Model-2016.pdf>
2. IRC § 894(d)
3. *SDI Netherlands B.V. v. Commissioner*, 107 T.C. 161 (1996)
4. *Northern Ind. Pub. Serv. Co. v. Commissioner*, 105 TC 341 (1995)

Secondary Sources:

1. Nutshell Chapter 5
2. B&L ¶¶ 65.3.6.; 65.4; 66.4; 67.3
3. BNA Portfolio 900 V.

Class 15: Wednesday Oct 9

Inbound: Base Erosion & Attempts to Stop It; Transfer Pricing

Primary Source Reading:

1. IRC §§ 163(j); 482; 59A
2. Reg. § 1.482-1
3. OECD Transfer Pricing Guidelines (Chapter 1) <http://www.oecd.org/tax/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-20769717.htm>

Secondary Source Reading:

1. Nutshell Chapter 4.10, 11.01, 11.02
2. BNA Portfolios 886; 6125
3. B&L ¶¶ 66.6; 66.10; 79.1-3

Class 16: Monday Oct 14

Reporting and Withholding Obligations

Primary Sources:

1. IRC sec. 1441; 1442, 1445, 1446, 1471-1474
2. Reg. § 1.1441-1

Secondary sources:

1. Nutshell Chapter 6

Class 17: Wednesday Oct 16: NOTE: Meeting at 3:30pm today

Problem Set: FDAP

Class 18: Monday Oct 21

Problem Set: USTB/ECI

Module 3 Outbound

Class 19: Wednesday Oct 23: NOTE: Meeting at 3:30pm Today

Review of Inbound / Introduction to Outbound: Worldwide Taxation

Primary Source Reading:

1. Sections 1(h)(11); 911
2. Jt. Committee on Taxation, PRESENT LAW AND SELECTED POLICY ISSUES IN THE U.S. TAXATION OF CROSS-BORDER INCOME (JCX-51-15 2015)
<http://intltax.typepad.com/x-51-15.pdf>
3. Conference Report of TCJA pp. 595-601 <https://www.gpo.gov/fdsys/pkg/CRPT-115hrpt466/pdf/CRPT-115hrpt466.pdf>

Secondary Sources:

1. Nutshell Chapter 7
2. B&L ¶¶ 66.3; 66.8; 66.9
3. BNA Portfolio 6080; 6130; 6360

Class 20: Monday Oct 28

Introduction to the Foreign Tax Credit: What is a Foreign Tax?

Primary Source Reading:

1. IRC §§ 901, 903
2. Reg. § 1.901-2; 1.903-1 (these regs have been withdrawn but they are the ones still relevant)
3. *Biddle v. Commissioner*, 302 U.S. 573 (1938)

Secondary Source Reading:

1. Nutshell Chapter 8.01-.03 (plus supplement)
2. B&L ¶ 72.1-5
3. BNA Portfolio 6020 I., II

Class 21: Wednesday Oct 30

Anti-Deferral Rules: Subpart F, GILTI, PFIC: What is a CFC?

Primary Sources:

1. IRC §§ 951, 951A, 957, 958, 1291-1297
2. Reg. § 1.957-1; 1.958-1

Secondary Sources:

1. Nutshell Chapter 9.01-.02, 9.04
2. B&L ¶¶ 69.1-69.2
3. BNA Portfolio 926

Class 22: Monday Nov 4

Subpart F: What is Subpart F Income?

Primary Sources:

3. IRC §§ 952, 954
4. Reg. § 1.954-1(a)-(b)

Secondary Sources:

4. Nutshell Chapter 9.03
5. B&L ¶¶ 69.4-5; 9-19
6. BNA Portfolio 926

Class 23: Wednesday Nov 6

The GILTI Regime

Primary Sources:

1. Section 951A
2. Reg. § 1.951A-1(a)
3. TCJA Conference Report <https://www.congress.gov/115/crpt/hrpt466/CRPT-115hrpt466.pdf> pp. 635-645

Secondary Sources:

1. Nutshell Chapter 9.04
2. B&L ¶ 69.17
3. BNA Portfolio 926 XVIII

Monday Nov 11, Veterans Day, No Class

Class 24: Wednesday Nov 13

Taxing Dividends and the Sale of Stock

Primary Sources:

1. IRC § 245A, 1248

Secondary sources:

2. Nutshell Chapter 7.03, 10.01-02

3. UF Tax Incubator, U.S. Ownership of Foreign Stock: Dividends and Gains on Sale (posted in canvas)

Class 25: Monday Nov 18

International Tax Developments: Pillars and More

Primary Sources:

1. OECD Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (Oct. 2021) at <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf>
2. OECD Global Anti-Base Erosion Model Rules Pillar 2 <https://www.oecd.org/en/topics/sub-issues/global-minimum-tax/global-anti-base-erosion-model-rules-pillar-two.html>
3. *General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals, Reform of International Taxation* (available in canvas)

Secondary sources:

Herzfeld,; Pillar 2 and GILTI: Coexistence, Conformity or Fracture? (2023). Available at SSRN: <https://ssrn.com/abstract=4576025> or <http://dx.doi.org/10.2139/ssrn.4576025>

Class 26: Wednesday, November 20

Exam Review

Class Preparation/Workload:

- It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class.

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](#) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via ufl.bluera.com/ufl/. Summaries of course evaluation results are available to students [here](#)."

University Policy on Accommodating Students with Disabilities:

Students requesting accommodation for disabilities must first register with the Dean of Students Office (<http://www.dso.ufl.edu/drc/>). The Dean of Students Office will provide documentation to the student who must then provide this documentation to the Office of Student Affairs when requesting accommodation.

You must submit this documentation prior to submitting assignments or taking the quizzes or exams. Accommodations are not retroactive, therefore, students should contact the office as

soon as possible in the term for which they are seeking accommodations.

University Policy on Academic Misconduct:

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

****Netiquette: Communication Courtesy:** All members of the class are expected to follow rules of common courtesy in all email messages, threaded discussions and chats. [Describe what is expected and what will occur as a result of improper behavior]
<http://teach.ufl.edu/docs/NetiquetteGuideforOnlineCourses.pdf>

Getting Help:

For issues with technical difficulties for E-learning in Sakai, please contact the UF Help Desk at:

- Learning-support@ufl.edu
- (352) 392-HELP - select option 2
- <https://lss.at.ufl.edu/help.shtml>

**** Any requests for make-ups due to technical issues MUST be accompanied by the ticket number received from LSS when the problem was reported to them. The ticket number will document the time and date of the problem. You MUST e-mail your instructor within 24 hours of the technical difficulty if you wish to request a make-up.**

Other resources are available at <http://www.distance.ufl.edu/getting-help> for:

- ☐ Counseling and Wellness resources
- ☐ Disability resources
- ☐ Resources for handling student concerns and complaints
- ☐ Library Help Desk support

Should you have any complaints with your experience in this course please visit <http://www.distance.ufl.edu/student-complaints> to submit a complaint.

Recordings of class discussions

Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about

a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code.