

UNIVERSITY OF FLORIDA GRADUATE TAX PROGRAM

Transfer Pricing
Law 7683
Spring Semester 2024
2 Credits

Professor David N. Bowen
University of San Diego School of Law
Warren Hall 319 I
5998 Alcalá Park
San Diego, CA 92110-2492
619-610-8227 (c)
DBowen@Sandiego.edu

OFFICE HOURS – The Professor (me) lives in Washington, D.C., but works in San Diego, California, commuting coast-to-coast. Because of uncertainties, difficulties, and frustrations of airline transportation, I will teach entirely by Zoom at UF. I am available online (Zoom or email or text) throughout the semester am available for questions and assistance by text, phone, or email (contact information above). As for a specific time, I reserve WEDNESDAYS for two hours in the morning, 10:00 AM to Noon EST, as my official office hours, during which we may conduct a virtual session (Zoom).

IMPORTANT: 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>

LOCATION (Instructional Methods): ZOOM Live Lecture

MEETING TIMES: 9:40 to 11:50 AM Tuesdays and Thursdays on these dates:

Class 1:	Tuesday Jan 16
Class 2:	Thursday Jan 18
Class 3:	Tuesday Jan 23
Class 4:	Thursday Jan 25
Class 5:	Tuesday Jan 30
Class 6:	Thursday Feb 1
Class 7:	Tuesday Feb 6
Class 8:	Thursday Feb 8

Class 9:	Tuesday Feb 13
Class 10:	Thursday Feb 15
Class 11:	Tuesday Feb 20
Class 12:	Thursday Feb 22

COURSE DESCRIPTION AND OBJECTIVES

This LL.M. course provides a practical, historical, and theoretical understanding of international transfer pricing, with exposure to related areas of taxation, such as Subpart F, FTC, and Tax Treaties.

LEARNING OBJECTIVES AND OUTCOMES: AT THE END OF THIS COURSE STUDENTS WILL BE ABLE TO:

- Describe the relevant rules, regulations, guidance, foundations, concepts, principles, policies, practices, and procedures for determining taxable income in connection with controlled transactions among controlled taxpayers.
- Demonstrate an understanding of the rules, statutes, regulations, case law, guidance, and other relevant matters that govern the area of transfer pricing.
- Explain the various doctrines that apply for transfer pricing, competent authority, double taxation, permanent establishments, MAP (mutual agreement procedures), treaty based relief, APAs (Advance Pricing Agreements), documentation, dispute avoidance, dispute resolution, and similar matters.
- Describe the basic accounting and financial concepts that govern and underlie transfer pricing in the context of a multinational enterprise that conducts international commercial transactions using its supply chain network of controlled entities.
- Identify the U.S. statutes that are directly relevant to transfer pricing considerations, aside from the basic allocation provision of IRC section 482.
- Provide basic planning and compliance advice to future clients on transfer pricing laws, policies, practices, documentation, penalty avoidance, and procedural matters.
- Understand the practical and considerations for MNEs, including consistent strategies for effective management of the MNE's worldwide effective tax rate (ETR).

To master these concepts, students must do the assigned reading. I design my lectures to augment the learning that the student brings to class by doing the assigned readings. Moreover, new developments occur constantly in transfer pricing. It is highly likely that we change and supplement the reading assignments during our term.

REQUIRED READING MATERIALS:

- **UF has a subscription service to BNA Tax Management Portfolios. We will use the Foreign Income Portfolios, Numbers 886-2nd (by Warner) and 6880 (by Bowen).**
- The text used in the past in this course became outdated (Levey and Wrappe, Transfer Pricing: Rules, Compliance and Controversy (4th Ed. 2012). Although recently updated to the “fifth edition,” I do not recommend that you purchase this text – at least, not at full

retail (it is *very* expensive, and not significantly different from the 4th edition to justify the high premium price). You generally can find the 4th Edition text second hand for a drastically discounted price (\$10 or thereabouts). Some students have commented that they found that a desk copy came in handy, other students, no so much. Trust me - we will be fine with the BNA Portfolios, plus the following ...

- Internal Revenue Code and Treasury Regulations, IRS Revenue Procedures, IRS Actions on Decisions, and other written guidance.
- OECD materials available from www.oecd.org. Do NOT purchase any OECD materials. That is expensive and wasteful. The OECD continually posts, substitutes, augments, and updates the information on its website. The chances are substantial that during our class, the OECD will post further material that supplants anything that you may have purchased. Thus, please – *please* – use the “read online” feature in that website.
- Other materials to be identified in class.

To emphasize: You do ***NOT*** have to purchase a transfer-pricing-specific textbook for this class. The information that is available online is significantly more useful and up-to-date. To the extent possible, please save trees (and forests) by using electronic (internet) means to access materials from public sources. If you absolutely feel the need to purchase a TP book, we will discuss reasonable options during the class.

Recording of Class: All Zoom classes are recorded. Note: The purposes for which the 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. State law also permits all students to make their own video or audio recordings of all “class lectures,” and professors may not prohibit or interfere with such recordings.

A “class lecture” is defined as 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. Students may use such recordings only for the purposes stated in (1)-(3) above. All other purposes are prohibited, and students may not “publish” recorded lectures without the written consent of the instructor. 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, or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code. “Publish” is defined as sharing, transmitting, circulating, distributing, or providing 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 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 or tutoring service.

Per University Policy, students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University's Office of Student Conduct and Conflict Resolution.

Course Communications – ZOOM, email, cell phone (above)

CLASS ATTENDANCE POLICY

Attendance is required by both the ABA and the Law School. Attendance will be taken for each Zoom session. Students are allowed to Session absences during the semester but should review the Class recording as soon as possible. A student who does not meet the attendance requirement will be dropped from the course.

Please note - this is a live-lecture class where I substantially augment the reading material, including information, examples, and specific discussions that go beyond the text of any reading materials. Since I expect students to know and understand those matters, including specific matters on which the students may be tested, contemporaneous in-person attendance is highly recommended. Moreover, under Law School policy, anonymous grading may be adjusted for class participation, in the instructor's discretion.

COMPLIANCE WITH UF HONOR CODE

Academic honesty and integrity are fundamental values of the Gator community. Students should fully understand the UF Law Honor Code. That Code prohibits use of artificial intelligence including (but not limited to) ChatGPT and Havey to assist in completing exams or other assessments. See "University Policies" below.

WORKLOAD/CLASS PREPARATION AND THE 2:1 OUT OF CLASS: IN CLASS REQUIREMENT (ABA STANDARD 310)

Students should expect to spend, on average, approximately two hours preparing for every hour of class. Reading assignments are posted on the "Modules" link on the Canvas site (located on the left side of the Canvas site). 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. ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every "classroom hour" of in-class instruction. Course 7682 has 2 classroom hours of in-class instruction each session, requiring at least 4 hours of preparation outside of class. You will have about 60-100 pages of reading each week. Because the course includes statutory and regulatory excerpts that require careful reading, and discussion problems that require thoughtful advance preparation, you should spend at least one hour on every 20-25 pages of reading.

INFORMATION ON UF LAW GRADING POLICIES

This course follows the Levin College of Law's grading policies, and the policy on exam delays and accommodations. Grades are determined based on a **SINGLE FINAL WRITTEN TAKE**

HOME EXAM. The Levin College of Law's mean and mandatory distributions are posted on the College's website and this class adheres to that posted grading policy. The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>. The following chart describes the specific letter grade/grade point equivalent in place:

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

GRADING SCALE: For more information, see <http://www.isis.ufl.edu/minusgrades.html>

The EXAM consists of four parts: True/False, multiple choice, short answers, and one essay.

The law school policy on exam delays and accommodations can be found at [Exam Delays & Accommodations - Levin College of Law Levin College of Law \(ufl.edu\)](#)

<https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-forms>

UNIVERSITY POLICIES:

UNIVERSITY POLICY ON ACCOMMODATING STUDENTS WITH DISABILITIES: Students requesting accommodation for disabilities must first register with the Disability Resource Center (DRC) at <http://disability.ufl.edu/>. Once registered, a student will receive an accommodation letter, which the student must present to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). It is important for the student to share the accommodation letter with the instructor and discuss their access needs as early as possible in the semester. The student also should submit this documentation prior to submitting assignments or taking the quizzes or exams. Accommodations are not retroactive and

therefore, students should follow these procedures as early as possible in the semester. Students with disabilities who experience learning barriers and would like to request academic accommodations should connect with the DRC. Finally, students may access information about various resources on the UF Law Student Resources Canvas page, available to <https://ufl.instructure.com/courses/427635>.

UNIVERSITY POLICY ON ACADEMIC HONESTY: 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>. UF Students are bound by The Honor Pledge, which states, “We, the members of the University of Florida Community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: ‘On my honor, I have neither given nor received unauthorized aid in doing this assignment.’” Unauthorized aid includes using artificial intelligence, including but not limited to ChatGPT and Harvey, as noted previously (above). The Honor Code specifies behaviors that violate the Code, and the possible sanctions. You are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with me.

ETIQUETTE: COMMUNICATION COURTESY: All members of the class are expected to follow rules of common courtesy in all email messages, threaded discussions, and chats. See also <http://teach.ufl.edu/docs/NetiquetteGuideforOnlineCourses.pdf>. Please do not arrive late the the Zoom room, and please turn on your video screen so that I can see you – and please MUTE when not speaking. If you take a break, please use Chat to indicate BRB (be right back). As a matter of professionalism, you are expected to be on time for class – meaning, Zoomed In and ready when class begins. Arriving late is disruptive to your fellow professionals. Please do not arrive late or leave early absent extenuating circumstances. Of course, please do not multitask during class. I have extensive experience with Zoom presentations, and I am fully aware of the various “creative” practices that persons will use to disguise non-attentive behaviors. Rightfully, those behaviors should (and will) be counted as a class absence.

PREFERRED NAMES AND PRONOUNS: Please make certain that your Zoom square indicates your entire name. You might have a preferred name that is not the name given to me on the official roll. It is important to the learning environment that you feel welcome and safe in this class. I want you to be comfortable participating in class discussions and communicating with me on any issues related to the class. If you would like for me to refer to you by your preferred pronoun and last name, then if your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by email or otherwise before the first day of class. Feel free to ask for instructions on changing your display name on the Zoom screen (use “rename”). You may also change your Display Name in Canvas, which used the “Display Name”

as set in myUFL. The Display Name is what you want people to see in the UF Directory. To update your display name, go to one.ufl.edu, click on the dropdown at the top right, and select “Directory Profile.” Click “Edit” on the right of the name panel, uncheck “Use my legal name” under “Display Name,” update how you wish your name to be displayed, and click “Submit” at the bottom. This change may take up to 24 hours to appear in Canvas. This does not change your legal name for official UF records.

RELIGIOUS HOLIDAYS: UF Law respects students’ observance of religious holidays. Students, upon prior notification to their instructors, shall be excused from class or other scheduled academic activity to observe a religious holy day of their faith. Students are permitted a reasonable amount of time to make up the material or activities covered in their absence. Students shall not be penalized for absences from class or other scheduled academic activities because of religious observances.

VACCINES: The UF Student Health center continues to offer vaccines to students at no charge, and strongly encourages all students to become vaccinated if they have not already done so.

CIVIL DISCOURSE: As a law student and future (or current) lawyer, it is important that you engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may evoke strong emotions. As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, political lines, and other identities. As we enter one of the great learning spaces in the world – the law school class – and develop our unique personal and professional identities, we should all:

- Commit to self-examination of our values and assumptions
- Speak honestly, thoughtfully, and respectfully
- Listen carefully and respectfully
- Reserve the right to change our mind and allow for others to do the same
- Allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs and as a method of sharpening our skills as lawyers.

GETTING HELP:

For issues with technical difficulties for E-learning, 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.

Law school can be a daunting experience, especially when life outside the law becomes challenging. UF Law provides numerous resources for your support, and I encourage you to seek help if you have concerns. Any student who has difficulty accessing sufficient food or lacks a safe place to live is encouraged to contact the Office of Student Affairs. If you are comfortable doing so, you may also notify me so that I can direct you to further resources.

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

- *Counseling and Wellness Center*: Visit the Counseling and Wellness Center website or call 352-392-1575 for information on crisis and non-crisis services.
- *Student Health Care Center*: Call 352-392-1161 for 24/7 information to help you find the care you need, or visit the Student Health Care website.
- *University Police Department*: Visit UF Police Department website or call 352-392-1111 or dial 911 for emergencies.
- *UF Health Shands Emergency Room/Trauma Center*: For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville Florida 32608. Also visit the UF Health Emergency Room and Trauma Center website.
- Visit the Disability Resources Center website.
- Use the Library Help Desk support.
- *U Matter, We Care*: If you or someone you know is in crisis, please contact umatter@ufl.edu, 352-392-1575, available 24/7, or visit the U Matter, We Care website to refer or report a concern and a team member will reach out to the student in crisis.

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

CLASS EVALUATIONS

Students should provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Please see [Students - Faculty Evaluations - University of Florida \(ufl.edu\)](https://gatorevals.aa.ufl.edu/students/), available at <https://gatorevals.aa.ufl.edu/students/> 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 <https://ufl.bluer.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-relations>.

CLASS SCHEDULE

The following schedule is offered as a guide to the Course's direction. Our pace will depend in part on the level of interest and difficulty of each section and is subject to change.

Class One Reading Assignment: IRC § 482 and Treas. Reg. § 1.482-1(a)

Read as far as you can into Chapter One of Warner's Tax Management Portfolio. There will come a point where reading, with context via lecture, will not make much sense to you. So, stop when the subject matter becomes unclear. Also, please introduce yourself to the wealth of information contained on www.oecd.org. This site contains an overwhelming amount of information and thus, presents a "rabbit hole" situation. Do not attempt to digest the entirety. Your mission should focus on general familiarity with the site and its offerings – in a sense, you are simply a Week-One OECD "curious tourist" – so, drop into the website and look around a bit. In particular, use the search function for "transfer pricing," and then we will discuss your observations and impressions.

Week 1: Introduction to Transfer Pricing

Welcome - Overview, Introductions, and Class Logistics

Lesson Plan/Learning Objectives:

- Transfer Pricing Overview
 - Introduction
 - Example(s)
 - Key Concepts
 - The Statute (short) and Regulations (long)
- Control
- The Arm's Length Principle
- Introduction to the U.S. Regulations
 - Introduction
 - Structure ("Transactions and Methods")
 - Nature and Authority

Reading Assignment:

Treas. Reg. §§ 1.482-1, -3

OECD Guidelines, Chapter One, available at

https://read.oecd-ilibrary.org/taxation/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2022_0e655865-en#page9

Week 2: The U.S. Transfer Pricing Regulations

Lesson Plan/Learning Objectives:

- Understanding the “Methods for Determining Taxable Income” Approach
- Controlled Transactions involving Tangible Goods
- CSTs (Controlled Services Transactions)
- The CPM (Comparable Profits Method)

Reading Assignment:

Treas. Regs. §§ 1.482-3, -5, -9
Selected OECD material (to be discussed)

Week 3: The U.S. Transfer Pricing Regulations, Continued

Lesson Plan/Learning Objectives:

- Intangible Property Transfers
- CSTs (Cost Sharing Transactions) and CSAs (Cost Sharing Arrangements)
- Recent Important Case Developments

Reading Assignment:

Treas. Regs. §§ 1.482-4, -7
IRC section 367(d) and its Treasury Regulations (just skim the regulations)
IRC section 936(h)(3)(B) (no longer in effect)
IRC section 197
Selected OECD material (to be discussed)

Optional:

Veritas v. Commissioner, Tax Court Opinion and AOD:

133 T.C. No. 14 (2009); AOD 2010-05 (Dec. 6, 2010)

Xilinx v. Commissioner, Tax Court and 9th Circuit Opinions, AOD:

598 F.3d 1191 (9th Cir. 2010, aff'g 125 T.C. 37 (2005))

567 F.3d 482 (9th Cir. 2009), withdrawn Jan. 13, 2010

AOD 2010-03 (July 16, 2010)

Altera v. Commissioner, Tax Court opinion

Eaton v. Commissioner, Tax Court opinion

Amazon.com v. Commissioner, Tax Court opinion

Coca Cola v. Commissioner, Tax Court opinion

OECD Intangibles BEPS Deliverable – New Chapter VI (library/online)

Week 4: The U.S. Transfer Pricing Regulations, Continued

Lesson Plan/Learning Objectives:

- Cost Sharing – General Rules, *Altera & Veritas* aftermath, and related topics
 - Arm’s Length Standard (“Rise and Fall” debates, etc.)
 - Role of Experts (Economic, Business, other)
 - Litigation vs. ADR
- The Profit Split Method – Treas. Reg. § 1.482-6
- Other Provisions (Loans and Leasing, Global Dealing, “Other”)
- Relevant Code Sections – IRC §§ 367(d), 936(h)(3)(B), 1059A
- CWI – Commensurate With Income Standard
 - Overview – derivation and necessity (TRA 1986, etc.)
 - Historical Perspective/Review
 - IRS Chief Counsel viewpoint

Reading Assignment:

Skim – *Bausch & Lomb, Inc. v. Commissioner*, 92 T.C. 523 (1989), *aff’d* 933 F.2d 1084 (2nd Cir. 1991)

Read – Treas. Reg. §§ 1.482-2A(d)(2)(ii)-(iii), -2A(e)(4)(1)(ii)

Read – *Compare* Treas. Reg. § 1.482-4(f)(2) *with* Treas. Reg. § 1.482-4

Skim – Treas. Reg. §§ 1.482-2 (loans, leasing), -8T (examples)

Skim – Prop. Treas. Reg. § 1.482-8 (Global Dealing)

Look over – Treas. Reg. §§ 1.482-0

IRS Chief Counsel Memorandum AM-2007-007 (3/23/07) (available by Google search)

Skim quickly – House report to TRA 86 (H. Rep. 99-841) –
Can you find the intangibles discussion?

Week 5: Transfer Pricing – Transfer Pricing Disputes and their Resolution

Lesson Plan/Learning Objectives:

- Compliance & Controversy – PIDD model
- “Self Help”
- The ACU (arbitrary, capricious and unreasonable) legal standard
- Penalties and Documentation
- Administrative Process
- Economic Double Taxation
- APA and Competent Authority
- Customs

Reading Assignment:

IRC § 6662(e)
Treas. Reg. §§ 1.6662-6, 1.6664-4
Treas. Reg. § 1.482-1(g)(3)
Treas. Reg. § 1.482-1(a)(3)
Skim – Rev. Proc. 99-32 (*and for true history aficionados, Rev. Proc. 65-17*)
IRC § 1059A
Rev. Proc. 2015-40, 2015-41
IRS Notices (citations to be supplied)
Selected OECD materials (to be discussed)

Legal Research:

What is “MAP,” where is it found, and why is it important?
Can you find the APA Annual Report? What is it?
What can you find out (if anything) about GlaxoSmithKline? Eaton?
What is the difference between Yamaha v. Commissioner, and Yamaha v. U.S.? What is the Starr case?

Week 6: Transfer Pricing – International Aspects (OECD)

Lesson Plan/Learning Objectives:

- The OECD (and time permitting, UN) Approaches to Transfer Pricing
- The “Pillars” (one and two)
- Selected Country-by-Country Considerations
- The “Comprehensive Resolution” Concept
- Tax Planning
- Relevant non-tax concepts (comity, practice considerations)
- What is BEPS?
- What are the BEPS Deliverables?

Reading Assignment:

OECD selected readings (citations provided during Class 5)
Anticipated BEPS readings: Action Items and others (to be updated)

FINAL REVIEW

Lesson Plan/Learning Objectives:

- OECD - Tangibles
- OECD - Intangibles

- Business Restructurings (time permitting)
- Cost Contribution Arrangements
- Documentation

Reading Assignment:

Selected OECD readings (BEPS citations to be supplied by Professor)

Legal Research:

None

Lesson Plan/Learning Objectives:

- Review – what you need to know and what you need to study for the Exam

New Reading Assignment: Review Your Outline

WRITTEN FINAL EXAM

TBD - Check Exam Schedule for Time