

# **INTERNATIONAL TAXATION**

*An introduction to U.S. taxation of U.S.  
and foreign persons engaged in cross-border activities*

*George Mason University – Antonin Scalia School of Law  
FALL 2021, LAW 250-001*

**Tuesdays and Thursdays  
4:00 to 5:25 PM**

*Professor:* **Adam M. Katz**  
**Mobile: 646 217-9580**  
[akatz7@gmu.edu](mailto:akatz7@gmu.edu)  
[adammkatzesq@gmail.com](mailto:adammkatzesq@gmail.com)

*Office Hours:* **Please come and talk to me. I am available either by appointment or before or after class. Please email to set a time.**

## **SYLLABUS**

### **COURSE GOAL**

This course covers the U.S. taxation of U.S. and foreign persons engaged in cross-border activities. The goal is to provide an overview of the relevant law and to identify and analyze the practical issues that most frequently arise in the international tax arena. Topics include:

- Nationality, residence, and U.S. jurisdiction to tax;
- The source of income and the allocation of deductions between taxing jurisdictions;
- The taxation of the U.S. non-business and business income of foreign taxpayers;
- The taxation of the foreign income of U.S. taxpayers, including the deferral and the foreign tax credit;
- The role of tax treaties;
- Transfer pricing;
- Treaty shopping and tax arbitrage;

- International tax administration and anti-avoidance;
- The future of the international tax regime: territorial versus worldwide taxation;
- Key international provisions of the 2017 Jobs Creation and Tax Act (JCTA) including “BEAT”, Section 965 Deemed Earnings Repatriation, “GILTI”, “FDII”, and the relevant Biden Administration proposed legislation;
- Global tax policy and harmonization through the OECD Inclusive Framework countries, the BEPS (Base Erosion and Profit Shifting) actions, and taxation of the Digital Economy.

## TEXTBOOK AND MATERIALS

The required textbook for this class is *U.S. International Taxation*, by Avi-Yonah, Ring and Brauner, Fourth Edition, Foundation Press/West Publishing, 2019 (ISBN: 978-1-68328-650-9). This book can be purchased from the campus bookstore.

You will also need access (either online, in print, or in the library) to a copy of the U.S. Internal Revenue Code and the U.S. Treasury Regulations on Income Tax. For convenience I have asked the campus bookstore to order the following: *Selected Sections, United States. International Taxation 2021 Edition* by Daniel J. Lathrope (Foundation Press). (ISBN: 9781647089030)

*Personal Note: Based on my tax lawyer career (and former law student) experience, I highly recommend access to a print version of the relevant U.S. IRC and Treasury Regulation sections as this will better facilitate your ability to work through and solve the various tax problems and more readily apply the law and regulations.*

Additional required course readings for each class will be posted for “U.S. Intl Taxation (250-001)” on Blackboard.

Recommended, optional and supplemental reading:

Isenbergh and Wells's *International Taxation*, 4th Edition Foundation Press 2020 (Concepts and Insights Series) ISBN: 9781684673636; and *International Taxation in a Nutshell*, by Mindy Herzfeld, 12th Edition, West Academic, 2020 ISBN: 9781684673469. Both contain an in-depth discussion of international tax rules which will supplement the Avi-Yonah, et. al. Text material. (You will not be tested on anything not covered in class and not in the primary Text reading material, including anything “accretive” which might be contained in the supplemental materials.)

## CLASS SESSIONS

Class sessions will enable you to accomplish the course goal by reviewing and analyzing the relevant U.S. Internal Revenue Code (“IRC”) and corresponding U.S. Treasury Regulation Sections, relevant case law and IRS Rulings, U.S. Income Tax Treaties, and other international legal standards such as comparing other countries’ taxation systems and output from the OECD on Base Erosion and Profit Shifting and Digital Taxation. Classes will include lecture of the assigned reading material (including cases and rulings), and presentation of selected homework problems by me and by students upon request. *Due to the Rosh Hoshana and Yom Kippur Jewish holidays, the September 7 and 16 classes may consist of pre-recorded “asynchronous” lectures in lieu of live class time.*

## COURSE SCHEDULE AND CLASS ASSIGNMENTS

The following schedule is subject to change:

Date	Topic	Assignment
<p><b>2021</b> <b>Aug 24 &amp; 26</b></p>	<p><b>Ch 1: Basic principles of US International Taxation: Foreign Persons, US Persons.</b> Taxation of worldwide income of individuals, corps, partnerships, and trusts. Overview of Income Tax Treaties and the International Framework.</p>	<p>Read Ch.1, pp. 1-32. Problems: pp. 32-33, #1-5.</p>
<p><b>Aug 31 &amp; Sep 2</b></p>	<p><b>Ch 2: Source rules for income and deductions</b> Interest, Dividends, Rents/Royalties, Personal Services Comp, Sale of Real and Personal Property.</p>	<p>Read Ch. 2, pp. 35-58, 68-97. Problems: p. 104, #1 a-j.</p>
<p><b>Sep 7*</b> <b>*Asynchronous recorded lecture</b>  <b>Sep 9</b></p>	<p><b>Ch 3: The Allocation of Deductions</b> General rule Interest expense – allocation and apportionment</p>	<p>Read Ch.3, pp 105-120. Problems: pp. 120-21 #1-2.</p>

<p><b>Sep 14 &amp; 16*</b></p> <p><b>*Sep 16 class guest professor or asynchronous recorded lecture, tbc.</b></p>	<p><b>Ch. 11: The Role of Treaties</b></p> <p>Withholding Taxes, Permanent Establishment, Procedural elements – Mutual Agreement, Relationship of IRC v Treaty.</p>	<p>Read Ch 11, pp. 549-607 (U.S. Model Treaty, pp 549-596 should be a high-level read)</p> <p>Problems: p. 638, #1-2.</p>
<p><b>Sept. 21 &amp; 23</b></p>	<p><b>Ch 4: Foreign Persons: “Non-business” US Source Income</b></p> <p>FDAP – interest, dividends, other; Withholding tax on FDAP; Treaty Shopping; Gains from sale of property; Financing – Debt v Equity, interest earnings stripping</p>	<p>Read Ch. 4, pp. 124-144.</p> <p>Problems: pp. 144-45, #1-3; p. 638, #3.</p>
<p><b>Sep 28 &amp; 30</b></p>	<p><b>Ch. 5: Foreign Persons: US Trade or Business Income</b></p> <p>US Trade or Business; Amount Taxed: “ECI” (Effectively Connected); Deductions and Credits to ECI – business expenses, interest. BEAT; Effect of Tax Treaties.</p>	<p>Read Ch. 5, pp. 147-157, 168-199.</p> <p>Problems: pp. 202-203, #1-3; p. 638, #4.</p>
<p><b>Oct 5 &amp; 7</b></p> <p><b>Oct 12 – No Class Scheduled</b></p>	<p><b>Transfer Pricing (Part 1)</b></p> <p>Overview; IRC Sec 482; Tangible Property, “Comparables” and economic analysis, What is the “OECD BEPS” initiative?</p>	<p>Read Chapter 6, pp. 207-234.</p> <p>Problems: p. 282, #1-4.</p>

<p><b>Oct 14</b></p> <p><b>Oct 15 or 16, TBC</b></p>	<p><b>Transfer Pricing (Part 2)</b> Intangible Property Exploitation TP Services and TP</p> <p><b>Optional review session for mid-term</b></p>	<p>See Oct 5 &amp; 7</p>
<p><b>Oct 19</b></p>	<p><i>Mid-Term exam to be given in lieu of class time (synchronized, details tbc)</i></p>	<p><i>Mid-term will cover Aug 24 through Oct 14 classes and topics; i.e., Chapters 1-6, 11.</i></p>
<p><b>Oct 21, 26, 28 &amp; Nov 2</b></p>	<p><b>Outbound Taxation: Deferral and its Limits</b> CFC and other anti-deferral provisions; Subpart F Income; Foreign Base Company Income – FPHCI, FBC Sales Income; FBC Services Income; Pass-through Income, JCTA Changes (GILTI, FDII, Sec. 163(j))</p>	<p>Read Chapter 7, pp. 287-291, 300-307, 337-357, 361-400. Problems: pp. 401-02, #1-3.</p>
<p><b>Nov 4 &amp; 9</b></p>	<p><b>Outbound Taxation: The Foreign Tax Credit (Part 1)</b> Introduction What is a “tax paid”? Who paid the tax? Was the tax “creditable”? 2017 and JCTA Changes;</p>	<p>Read Chapter 8, pp 403-434 (top); Problem: pp 498-99, #1 a-d.</p>

	Treatment of Losses; Look-Through	
<b>Nov 11 &amp; 16</b>	<p><b>Outbound Taxation: The Foreign Tax Credit (Part 2)</b></p> <p>Foreign Tax Credit limitation Indirect FTC (old Sec 902 and current Sec 960) FTC Abuse TCJA Changes</p>	Read Chapter 8, pp. 434-479, 495-498. Problems: p. 499, #2 a-d; p. 639, #5.
<b>Nov 18</b>	<p><b>Outbound Taxation: Sec. 367 and Cross-border Transfers of Property</b></p> <p>Non-gain recognition transactions; Sec. 367(a) Outbound Transfers; Inversions; Intangibles special rules /JCTA; Branch Loss Recapture</p>	Read Chapter 9, pp. 503-533.  Problems: p. 533, #1-3.
<b>Nov 23 (Last scheduled class)</b>	<p><b>The International Tax Regime after BEPS and the TCJA; OECD and Digital Taxation; Other Miscellaneous – International Boycott and Foreign Bribery Provisions</b></p>	Read Chapter 12, pp. 685-709. <i>Supplemental Reading and Problems, tbc.</i>
<i>Date TBD</i>	<i>Optional review session for final exam; date tbc</i>	<i>Final Exam will cover Oct 21 – Nov 23 classes and topics; i.e., Chapters 7-9, 12, plus any suppl. materials and Chapter 6 transfer pricing.</i>

## **COURSE PREREQUISITE**

Income Tax is a prerequisite, unless a student has prior tax experience. There are no other prerequisites, and a review of the relevant material from Income Tax will be done throughout this course as I teach in a foundational or “building block” manner.

## **GMU LEARNING GOALS, OUTCOMES, AND ASSESSMENT FOR INTERNATIONAL FOR INTERNATIONAL TAXATION**

**Learning Goals:** The learning goal for this course is for students to learn the basic legal rules applicable to of U.S. taxation of cross-border transactions, and the types of taxation regimes and international framework subscribed to by the U.S., other OECD member countries, and the OECD “inclusive framework” countries.

**Learning Outcome:** Students will be able to interpret tax statutes, regulations, and income tax treaties, based on the text and Congressional (or agency) intent behind the rules, and they will, in addition, learn how judicial pronouncements also play a significant role in establishing tax law. *You will be able to demonstrate a basic understanding of the U.S. business taxation system in the context of cross-border transactions including forms of doing business, inbound/taxation of foreign persons doing business in the U.S., transfer pricing, and taxation of U.S.-based businesses operating outside the U.S.*

**Assessment:** Corresponding Assessment Methods include problems and case studies in which you will apply the various laws and regulations to every-day business scenarios involving cross-border transactions and legal structures. As noted, you may be asked to present solutions to the problems either individually or in small groups.

There will be a mid-term examination (40%) and final examination (60%) (both “open book”) which will test your ability to apply the relevant material in a manner similar to the problems and case studies covered in class. Class attendance and participation (either by virtue of cold calling or volunteering) will also be taken into account in calculating a student's final grade, but only in an upward fashion (and only by increasing a grade by one-half point (such as increasing a grade from B to B+)).