GEORGETOWN UNIVERSITY LAW CENTER

ADVANCED INTERNATIONAL TAXATION
(LL.M Course 710 - 2 credit hours)

Spring 2017
Thursdays 5:45-7:45 pm
Room McDonough 200

Professor Ron Dabrowski

Professor John Merrick

Office Hours: By Appointment

I. Course Description

This course is designed for those students that wish to gain a deeper understanding of the effect of certain U.S. rules governing the taxation of U.S. persons doing business overseas and foreign persons doing business in the United States. The course will cover a broad range of topics with particular emphasis on the tax consequences of cross-border reorganizations, liquidations and taxable acquisitions and dispositions. The course will cover the tax consequences of outbound transfers of assets, foreign-to-foreign transfers of assets, and inbound transfers of assets. Students will be expected to have a working knowledge of corporate taxation, and transactional aspects of the subpart F and foreign tax credit rules.

II. Prerequisites

- Corporate Income Tax Law I (or Taxation II)
- US Taxation of International Transactions (or US Taxation of Domestic Persons Outside the United States)
- Recommended: prior or concurrent enrollment in Corporate Income Tax Law II (if student has not completed Taxation II).

III. Course Materials


- Supplemental materials may be assigned/distributed from time to time.
IV. Examination Procedures, Grading and Attendance

The course will be graded based upon a final take-home examination. The final take-home examination is to be completed in a 3-hour period. It will be anonymously graded and open-book. You will be permitted to consult any written materials during the examination, including the course textbooks and other course materials. However, you may not copy into your examination answers any passages from materials previously prepared. In addition, you will not be permitted to confer or otherwise collaborate with anyone else -- classmates or otherwise -- in answering the examination questions. Your answers to the examination questions must be entirely your own, written during the examination period.

Expected class participation includes regular attendance and arrival on time (subject to health issues or other unforeseen circumstances).

V. Class Assignments

Set forth below is a tentative schedule of assignments. The instructors may adjust the assignments periodically over the course of the semester. In advance of each class, students should also review any PowerPoint slides for a particular class, which the instructors will have uploaded to Canvas.

Class 1 (January 19) Introduction; Overview of Selected International Tax Provisions; Entity Classification [Merrick]


*Skim:* Code §§ 861(a)-(b); 862(a)-(b); 865; 27(a); 901(a), (b), (m); 904(a) and (d); 951; 952; 954(a), (b), (c)(1), (c)(3), (c)(6); 956; 959; 961; 964(a), (e); 78; 902(a); 960.

“Present Law and Background Related to Proposals to Reform the Taxation of Multinational Enterprises,” Joint Committee on Taxation, July 21, 2014 (JCX-90-14), Pages 1-32 only (“I. PRESENT LAW”).

B. Entity Classification

Section 7701(a)(1)-(5).

Reg. §§ 301.7701-1; -2(a), (b), (c)(1)-(2)(i); -3(a)-(b)(ii), (c)(1)(i)-(iv), (c)(2), (f), and (g).

Dolan: ¶26.01-.26.02, 26.03[3]-[5].
Class 2 (January 26) Taxable Acquisition of a Foreign Target – Domestic Buyer/Foreign Seller [Dabrowski]

A. No Section 338 Election; Treatment of Post-Acquisition Distributions; Subpart F Income for Year of Acquisition

Code §§ 902(a), (c)(1)-(3); 78; 904(a), (d)(1); 904(d)(2)(E); 904(d)(4); 951(a)

_Elek v. Comm’r_, 30 T.C. 731 (1958)

Dolan: ¶2.05[1] (skip 2.05[1][a])

B. Section 338 Election

Code §§ 338(a), (d)(3), (g), (h)(3); 951(a)(1)

Dolan: ¶¶ 2.01[1]-[3]

C. “Synthetic” Section 338 Transactions

Dolan: ¶ 2.01[4]

Class 3 (February 2) – Taxable Acquisition of First-Tier Foreign Target – Domestic Buyer/Domestic Seller [Merrick]

A. No Section 338 Election

(1) Seller Considerations

Code §§ 1248(a), (c), (d)(1); 902(a); 956(a); 951(a)(1)(B); 961(a)

Reg. §§ 1.1248-1(a)-(d), 1.1248-2

Rev. Ruls. 71-388 and 90-31

(2) Buyer Considerations

Code §§ 959(a), (e); 961(b); 951(a)(1); 951(a)(2)

Dolan: ¶¶ 2.03[1][a][i], [b]

B. Section 338 Election

(1) Seller Considerations
Reg. § 1.338-9(a), (b)(1)-(2), (d), (f) Examples 3-4; Code § 961(a); Reg. § 1.954-2(e)(3)

Code § 338(h)(16)

Dolan: ¶ 2.03[2][a], [b][i]-[iv]

(2) Buyer Considerations

Code §§ 951(a)(1)(B); 956(a), (b)(1), (b)(2), (c)(1)

Reg. § 1.338-2(e)(3)-(4)

Dolan ¶ 2.03[2][c][ii]-[v]

Class 4 (February 9) – Taxable Acquisitions (continued) [Dabrowski]

A. Taxable Acquisition of Lower-Tier Foreign Target – Domestic Buyer/Domestic Seller

Code §§ 964(e); 959(e); 1248(c); 954(c)(1)(A)-(B); 954(c)(3), (c)(6); 960(a), (c); 961(a)-(c)

Dolan: ¶ 2.04[1]-[3]

B. Taxable Acquisition of U.S. Target with Foreign Target Subsidiaries

Code § 338(e), (f) and (h)(10)

Dolan: ¶ 2.02[1] and ¶ 2.02[3]

Class 5 (February 16) – Outbound Transfers of Assets (Other Than Stock) in Nonrecognition Transactions [Merrick]

Skim quickly Siegel, 45 T.C. 566 (1966)
Code § 367(a)(1), (a)(3), (a)(4), (a)(5); (c)(2); (d) (& cross-reference to § 936(h)(3)(B); (f); 367(e)(2)

Reg. §§ 1.367(a)-1 and -1T; -2; -4; 1.367(d)-1T(a), -1(b) and -1T(c); 1.367(e)-2(a)-(b), (d)


Dolan: ¶¶ 10.01 (but not 10.01[4]) – 10.02[1]–[5] (but not 10.02[2][d]); 10.02[7][a]; 10.03; 15.05

February 23rd – No Class

Class 6 (March 2)– Outbound Transfers of Foreign Stock in Nonrecognition Transactions [Dabrowski]

A. Stock Transfers – In General

Code §§ 367(a)(1), (a)(2), (a)(5), (a)(6); 367(b)

Reg. §§ 1.367(a)-1T(c)(1); 1.367(a)-3(a)

Dolan: ¶¶ 9.01[1], 9.01[5][a]-[b]

B. Transfer by U.S. Persons of Foreign Stock to Foreign Corporations

Reg. §§ 1.367(a)-3(b); 1.367(a)-3(c), (e); 1.367(b)-4(a), (b)(1)(i)

Dolan: ¶¶ 9.01[5][c]-[d]; 12.02[2][a]-[f]; ¶¶ 9.04[1][a]-[c] (ignore former/prior law discussion); 904[2][a]-[d] (ignore former/prior law discussion)

C. Gain Recognition Agreements

Dolan: ¶ 9.01[7]
D. Outbound Transfers of Foreign Stock in Asset Reorganizations

Code § 367(a)(5)
Reg. §§ 1.367(a)-3T(e); 1.367(b)-4(b)(1)(ii); 1.367(b)-4(b)(1)(iii), Example 4.
Dolan: Skim ¶¶ 9.04[1][d]-[e] and ¶¶ 9.04[2][e]-[f]

Class 7 (March 9) – Stock Transfers (Continued) and Inbound Reorganizations [Merrick]

A. Indirect Stock Transfers in Certain Nonrecognition Transactions

Reg. § 1.367(a)-3(d) (skim (d)(3) Examples)
Dolan: Skim ¶ 9.05 (ignore discussion of prior regulations)

B. Inbound Reorganizations/Liquidations

1. In General

Code §§ 334(b); 367(b); skim Code § 1248(a), (c), (d)
Reg. § 1.367(b)-1; (b)-2

2. Repatriation of Foreign Corporation Assets in Certain Nonrecognition Transactions

Reg. § 1.367(b)-3

Skim Notice 2016-73 (only as it relates to Reg. § 1.367(b)-3; ignore triangular reorganization aspects).


March 16th – No Class (Spring Break)

Class 8 (March 23) – Foreign-to-Foreign Transactions [Dabrowski]

A. Foreign-to-Foreign Reorganizations, Section 351 Exchanges, and Liquidations

Sections 368(a)(1)(F) and 367(e)(2)
Reg. §§ 1.367(b)-4(a), (b)(1); (c); 1.367(b)-2(f); skim 1.1248-8; 1.367(e)-2(c)

Dolan: ¶¶ 2.03[1][a][iii]; 12.04 (ignore prior regulations discussion); 15.04[1]-[2]

B. Carryover of Earnings and Profits and Foreign Taxes

Code § 381(a), (c)(2)
Reg. §§ 1.367(b)-7, -9

Skim Dolan: ¶ 12.05

Class 9 (March 30) – Application of Section 304 to International Transactions [Merrick]

Code § 304 (but not 304(b)(3)(C)-(D) or 304(b)(4))
Reg. §§ 1.304-4; 1.367(a)-3(a); 1.367(b)-4(a)
Notice 2012-15

Dolan: ¶¶ 17.01, 17.02[1] (but not 17.02[1][b][i] or 17.02[1][c][i]), 17.02[3]-[4], 17.04[3]

Class 10 (April 6) – Sections 901(m), 1248(f) and 385 [Merrick]

A. Asset Purchases and Section 901(m)

Code § 901(m)

Dolan: ¶ 2.05[3]

B. Distributions of Stock of Foreign Corporations under Section 1248(f)

Code § 1248(f)

Only Section C ("Section 1248(f)") of preamble to Proposed Regulations under Section 1248(f) (REG-209006-89 Notice of Proposed Rulemaking – Transfers by Domestic Corporations that are Subject to Section 367(a)(5); Distributions by Domestic Corporations that are Subject to Section 1248(f))

C. Treatment of Certain Interests as Stock under Section 385

Kraft Foods Co. v. Comm’r, 232 F.2d 118 (2d Cir. 1956).
Skim: Preamble (and not proposed regulation text) to Proposed Regulations under Section 385 (REG-10806-15 Notice of Proposed Rulemaking Treatment of Certain Interests in Corporations as Stock or Indebtedness).

Skim: Dolan: ¶4.01[3]-[4].

Class 11 (April 13) – Other Select Inbound Provisions [Dabrowski]

Code §§ 367(e), 864(b) & (c), 897, 1445

Dolan: ¶13.01-13.03, 13.05, 15.05

Class 12 (April 20) Inversions & Other Foreign Acquisition of U.S. Targets (and Course Evaluation) [Dabrowski]

A. Treatment of Transferors

Code §§ 367(a)(1), (2), (6); 4985

Reg. § 1.367(a)-3(c)(1)-(3)

Dolan: ¶9.01[3]

B. Corporate-Level Treatment

Code § 7874

Dolan: ¶¶ 24.01[1][a]-[e]; ¶24.06

Class 13 (April 27) Review [Merrick/Dabrowski]