Welcome to the Tax Treaties course.

This course is intended to be both an academic and a participatory experience designed around academic content with examples drawn from actual practice. In other words, this is not a course where the professor lectures from the front of the classroom. You should expect to participate by volunteering in class, to be asked to explain why a particular approach is being used and to challenge and explore all of the factors that are integrated into a tax treaty based corporate structure. We will be doing practice exercises in class to develop how to work through issues in a group. Do not be afraid of making a mistake or taking a position that turns out to have difficulties; many very experienced practitioners do the same thing!

A. Learning Outcomes

This course is intended to teach the concepts underlying the United States Model Tax Treaty and the OECD Model Tax Treaty. By the end of the course, students are expected to understand how tax treaties are organized and be able to apply the model tax treaties to factual situations in which the tax treaties are applicable.

At the same time, the course is intended to challenge the student to be aware of the ethical challenges and risks of practice in the area of international taxation. By the end of the course, students are expected to be able to understand where the borders of ethical behavior are when developing international tax structures and to be able to analyze risks to the clients and themselves when working in this area.
Finally, the course is intended to reinforce principles of close reading and attention to the specific wording used in the tax treaties and cases interpreting the tax treaties. By the end of the course, students are expected to be able to read and understand why specific words are used in tax treaties and the significance of these words.

B. Schedule

We are meeting for three hours on Fridays, from 1:20 pm to 4:20 pm.

We will not meet on March 31 and April 1. I will be away that weekend overseas. The reason why we meet on three hours on Friday is to accommodate the one week when I cannot teach without lessening the classroom time in the course.

I plan to take one break in each class for fifteen minutes at some convenient time between one and a quarter and one and three quarter hours into each three hour class where we come to a natural break in class discussion.

C. Class Materials

The textbook for this course is Volume A of the 2016-2017 edition of Materials on International, TP and EU Tax Law (2016-2017 edition). This book hopefully will be available from the bookstore. This book contains the current United States Model Tax Treaty, the OECD Model Tax Treaty and the official commentaries and technical explanations issued by the United States Treasury Department and OECD Centre for Tax Policy and Administration as well as other materials which we will be discussing.

We will also be working with case law materials from different jurisdictions. The citations to these materials are included in the course assignments. Depending on new developments, I may assign additional materials that reflect these new developments.

The best source for up to date materials in this subject area is Tax Notes International published by Tax Analysts. It is available to you on line. I recommend that you begin to read it on a weekly basis.
D. Class Preparation

Our discussion of the provisions of tax treaties and analysis of how these provisions come into play in real world situations requires that you prepare for class by reading the tax treaty provisions that we will be discussing and the other materials in the course assignments for the class. I do not plan on simply lecturing about the tax treaty provisions themselves. If you have not prepared for the class, you will be at a significant disadvantage in understanding what we are talking about in class and will not obtain the full benefit of what I am trying to accomplish in our time together.

E. In Class Problem Solving

We will be working in class with fact patterns drawn from actual practice from different industries and businesses to see how businesses are organized and why they are organized in the way that they are. I will be asking you to comment on fact patterns that are not presented to you in advance. Unfortunately, that is part of the practice world, and you should develop some experience in dealing with complex problems under time pressure.

I also plan to divide the class into working groups for fact patterns on which we will work in class. If you would like to work together with other students in a group, I suggest that you sit near each other in the first class. I also suggest that if you do have friends who are taking this course who have a different background from you, either by training, culture, nationality, or background, you might want to sit with them and include them in part of your group.

For students taking this course through distance learning, I intend to circulate the fact patterns used in class within a few days after the class in which the fact patterns are used. Unfortunately, the technology is not yet available to permit you to participate in in class problem solving in real time.
F. Examination

The examination will be a take home, open book examination. The exam will be available at the beginning of the examination period on May 2, 2017. It must be returned no later than 5:00 pm on Friday, May 12, 2017. I plan to grade the examination over the weekend of May 13 and 14, 2017 so that I can submit grades no later than May 16, 2017 in time for your graduation. In designing the examination, it is intended that you will be able to fully answer the examination in approximately three hours. You may take as much or as little time as you like to complete the examination between May 2, 2017 and May 12, 2017.

The examination will consist of a fact pattern or fact patterns and ask you to design or comment upon a proposed solution to the fact pattern. Ethical considerations will be involved in the examination, and should be discussed where they arise.

If you wish to look at past examinations in this course in the library, please remember that professors are only required to designate the best examination. The examination paper so designated is not a perfect examination with correct answers. One or more of the answers may be wrong.

G. Evaluation and Grading

Grades will be based primarily upon the examination results. After the examinations are scored anonymously, I reserve the ability to increase a grade if we believe that an individual had a bad day in taking an exam based upon their class participation and demonstrated learning in class, or to decrease a grade due to absence and being unprepared in class.

My prior experience is that this course need not be graded on a curve, but that students can expect to do well in the course if they participate and think about the materials.
This will be a large class for a seminar course. I have no hesitancy in giving very high grades for performance that deserves them. I also will have no hesitancy in giving very poor grades to students who do not attend class and who not attempt to master the subject matter of this course. If you are not interested in the course subject and do not want to work together with me to master it, please drop the course.

H. Missed Classes

I understand that you may miss classes because of job interviews, illness or other reasonable cause. Our classes are recorded both on video and audio. I understand that you need to obtain my permission to either view or listen to the recordings. Leave to do so will be freely given. I point out, however, that the educational experience of being in class is significantly better than simply watching or listening.

If you would do me the courtesy of letting me know when you are missing class for these reasons, I would appreciate it. The notification means that you are interested in the class and are missing the class for a good reason.

I. Pet Peeves

Every professor has pet peeves.

I ask that you do not use your computers to chat with friends or surf the web, or text your friends, while you are in class. I ask that telephones be switched off while in class. If I find that you are chatting on your computer, texting or otherwise not concentrating on the class while I class, I may ask you to leave the class. In the case of multiple infractions, I reserve the possibility of dropping you from the course.

I also ask you to be on time.

I make time to teach this course as an adjunct professor, and I ask that you respect this. If you do not want to be in this course and participate in the learning experience wholeheartedly, then please do us all a favor and do not take the course.
J. Contact and office hours

My office is in New York. I am often not in this office, so the best way to contact me is by telephone or through e-mail.

I plan to be available on Friday afternoons after class, and appointments can be scheduled during that time for private discussions about the course or legal practice in general. I also plan to have lunch after teaching for three hours on Saturdays, and anyone who wishes to join me to talk about anything is welcome to do so.

For distance students, in addition to my being available by telephone and e-mail, I will meet with distance students if we both happen to be in the same location at the same time. I do travel extensively for my practice. While I cannot promise to meet with you, I will be happy to discuss whether we will be in the same location at the same time and meet with you if we can arrange a convenient time and place to meet.

K. Individual Class Description and Assignments

L. General Assignments

For each class where an article number is stated below, please read that Article of the OECD Model Treaty, the commentary to that Article for the OECD Model Treaty, the corresponding provision of the United States Model Tax Treaty and the United States Treasury Department Technical Explanation for that provision of the United States Model Tax Treaty.

What we will cover in each class is approximate. We may go faster or slower depending on how well I believe the class is understanding the concepts and the materials.
2. **Class 1 – 3 March**

Course introduction and setting the stage for discussions about tax treaties; Model treaties; Capital export neutrality vs. capital import neutrality; Discussion about the role of treaties vs. domestic law and which governs; Discussion of EU internal laws as compared to treaties; Differences between civil law and common law; Trusts as compared to foundations; Structure and organization of Tax Treaties; Ethics; Close Reading; Rule of Law; Jurisdiction to tax: source, residence, citizenship.

Article 1 and the concept of person; Article 1 and partnerships; Article 1, Section 6 and fiscally transparent entities; Article 1, Section 4 and the United States savings clause; Article 1 and treaty status flow through.

*Additional readings:*


*EC Court of Justice Joined Cases C-283/94, C-291/94 and C-292/94, Dekavit International BV, found at* [http://curia.europa.eu/juris/showPdf.jsf;jsessionid=9ea7d2dc30dd933c27fc6df4d75b08ca9c7abf2e4eb.e34KaxiLe3qMb40Rch0SaxuSahr0?text=&docid=64720&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=890982](http://curia.europa.eu/juris/showPdf.jsf;jsessionid=9ea7d2dc30dd933c27fc6df4d75b08ca9c7abf2e4eb.e34KaxiLe3qMb40Rch0SaxuSahr0?text=&docid=64720&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=890982).


*HMRC v. Anson (UK Supreme Court, 2015), found at* [https://www.supremecourt.uk/cases/docs/uksc-2013-0068-judgment.pdf](https://www.supremecourt.uk/cases/docs/uksc-2013-0068-judgment.pdf)
IRS Announcement Clarifying Treatment of Passthrough Entities under U. S. – Norway Treaty, found at

3. Class 2 – 4 March

Further discussion of ethics and close reading; Conclude discussion of Article 1; Article 2 and taxes covered by tax treaties; Article 3 and the importance of definitions; Article 3, Section 2 and “ambulatory” reading of tax treaties.

4. Class 3 – 10 March

Article 4 - residence of persons, trusts, foundations and corporate entities with emphasis on treaty tie breaker provisions; The Apple structure.

5. Class 4 – 11 March

Issues of corporate residence in tax treaty planning; Introduction of limitation of benefits and Article 26 of the US Model Treaty; The effect of substance in the OECD Model Treaty compared to limitation of benefits under the US Model Treaty; Article 5 - Permanent establishments; Article 5 and service permanent establishments; Article 5 and dependent agents; Article 5 and tax treaty planning to avoid permanent establishment status.

Additional Readings:

Fifth Protocol to US-Canada Tax Treaty, found at

Zimmer case in France, article found at http://www.bna.com/zimmer-case-lifting-n2147485075/
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Dell Computer case in Norway, article found at
http://www.adeb.no/Global/publikasjoner/English%20publications/Article_1
LO Financial Assistance Implications For lenders of proposed legislati
ve amendments.pdf

6. Class 5 – 24 March

Article 6 and the immovable cow; Article 7 – Business profits; Article 7, permanent establishments and branches; Article 7 and branches and triangular structures; Article 7 and limited risk structures; Article 8 – Shipping, Aviation and Space; Articles 7 and 8 and instrumentalities of shipping, aviation and space; Article 8 and ancillary activities; Article 9 – Associated Enterprises; Article 9 and secondary adjustments;

7. Class 6 – 25 March

Article 10 – Dividends; Article 10 and beneficial ownership; Article 10 and controlled foreign corporations; Article 10 and secondary adjustments; Article 11 – Interest; Article 11 and artificially high interest; Article 12 – Rents and Royalties; Article 12 and sales vs. leasing; Article 12 and exclusivity; Article 12 and distribution agreements; Article 12 and know-how; Article 12 and software programs; Article 12 and films; Article 12 and intellectual property cross-licenses; Article 13 – Gains; Article 13 and relationship to capital; Article 13 and realization vs. recognition.

Additional Readings:


8. Class 7 – 7 April

Articles 15 and employment income; Articles 4, 15 and employment income; Article 15 - Employment income and stock options; Employment income and employment related damages; Article 16, directors fees and employment income; Article 17 and entertainers and sportsmen; Article 17, Bill Clinton and Tony Blair; Article 18 and pensions; Compensation vs.
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royalties; Totalization Agreements; The problems of global employment organizations; Article 20 – Students; Article 21 Other income; Article 21 and “subject to tax requirements; Article 22 – Capital; Articles 23A/B – Exemption/Credit Method of Elimination of Double Taxation.

Additional Readings:

Boulez v. Commissioner, 83 TC 584 (1984)

Social Security Agreement between the United States and the United Kingdom found at https://www.ssa.gov/international/Agreement_Pamphlets/uk.html and https://www.ssa.gov/international/Agreement_Texts/uk.html

9. Class 8 – 8 April

Article 26 – exchange of information; Article 26 and information to be exchanged; Article 26, foreseeably relevant and fishing expeditions; Article 26 and “on request”, automatic and spontaneous disclosures: Article 26 and third country disclosure; Article 26, bank secrecy and fiduciaries; Voluntary disclosure; US and UK FATCA; Common Reporting and what is to come.

Additional Readings:


United States v. Walder et al. indictment found at http://www.woodllp.com/Publications/Articles/pdf/Bachmann_Indictment.pdf

Bank Wegelin Farewell to America found at http://www.peakprosperity.com/forum/switzerland-no-love-wegelin-bank-says-goodbye-us/26660


10. Class 9 – 21 April

Article 24 – Non-discrimination; Article 25 – Mutual Agreement Procedures and Competent Authority; Article 25 and arbitration; Article 27 - Cross-border enforcement; Article 27 and how to challenge seizures; Article 1 and state aid; The tax haven world; Guest lecturer about the role of the trust company and service provider; Review and problem solving about the structure and reorganization of global enterprises.

Additional Readings:

Bayfine UK v. HMRC (UK Court of Appeal) found at https://www.pumptax.com/wp-content/uploads/old/documents/bayfine23.3.11.pdf

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Pepsico Puerto Rico Inc. v. Commissioner, T. C. Memo 2012-269 (2012)

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I look forward to getting to know you in class and to exploring this subject with you.