TAX TREATIES
LAWG-897-08, Fall 2016
Wednesday - 5:45pm - 7:45pm
Room 5020, Hotung Building

SYLLABUS

NOTE: The views expressed in this course are those of the professors personally, and they do not necessarily reflect the views of the Department of the Treasury, the Internal Revenue Service, or the U.S. Government.

CONTACT INFORMATION:

Professor Jeffrey Vinnik
Professor Tracy Villecco

OFFICE HOURS: By appointment.

COURSE DESCRIPTION AND GOALS:

This is a basic tax treaty course that will cover fundamental tax treaty concepts such as residency, permanent establishment, business profits, limitation on benefits, and relief from double taxation (including operation of the U.S. foreign tax credit rules). There will be an overview of treaty provisions that apply to investment income and income from the performance of services. In addition, students will learn about the interaction of tax treaties with U.S. internal tax law, the role of international organizations in interpreting tax treaties, procedures for resolving tax treaty disputes through the competent authority process, and strategies for researching tax treaties. This course is designed for students with little or no background in tax treaties. However, students will be expected to have a basic understanding of the U.S. tax rules that apply to foreign persons who receive income from the United States and U.S. persons who receive income from abroad. The course will be based primarily on the United States Model Income Tax Convention, together with selected case law and administrative authority. We will also look at selected provisions of the OECD Model Tax Convention.

REQUIRED TEXTS:

* 2016 United States Model Convention (on the web)
* 2006 United States Model Convention and the Treasury’s Technical Explanation (on the web)
* 2014 OECD Model Convention and Commentaries (on the web)
* Current Internal Revenue Code and Regulations
* All other materials are posted on the course’s Canvas site.

FINAL EXAM: There will be an open book, take-home exam.
ATTENDANCE AND PARTICIPATION: There is no attendance policy. If you miss class, you are responsible for learning the material we cover. We would also like to note that there is a strong correlation between attending class and better performance on the final exam.

COURSE RECORDING POLICY: We are not recording our classes. However, you may record a class on a case-by-case basis, provided you contact us beforehand.

LAPTOP POLICY: Laptops are allowed for note-taking purposes only.

Class 1 (August 31, 2016) – Tax Treaty Overview and Scope

Assignment:
- Background:
  - Opening Statement of Robert B. Stack, Treasury Deputy Assistant Secretary (International Tax Affairs), Senate Committee on Foreign Relations, October 29, 2015, pp. 1-11 [available on Canvas course site]
  - Joint Committee on Taxation Explanation of Proposed Income Tax Treaty Between United States and Japan, October 29, 2015, pp. 4-8 [available on Canvas course site]
- 2016 U.S. Model
  - Article 1 (General Scope), Article 2 (Taxes Covered), Article 3 (General Definitions)
- IRC Sections 894(a) and 7852(d)

Class Discussion:
- Background (purpose, negotiation, ratification)
  - What is a treaty? What are the purposes of tax treaties? What is the concern with “double taxation”? What double taxation is relieved by tax treaties? How does a tax treaty come into effect in the U.S.?
- Interaction with domestic law
  - What is the legal status of tax treaty signed by the U.S. under U.S. law? What is a tax treaty override? What is the effect of tax treaties?
- Locating treaties and related documents
- Model treaties (US, OECD)
- Technical explanations, OECD commentary

Class 2 (Sept. 7, 2016) – Residency, Saving Clause, Fiscal Transparency

Assignment:
- 2016 U.S. Model (and corresponding TE sections for the 2006 U.S. Model)
  - Article 1 (General Scope), para. 4-7; and Article 4 (Residence)
- IRC Sections: 871(a) and (b), 877A, 894(a) and (c), and 7701(b)
• Treas. Reg. Sections: 1.894-1(d)(1) and 301.7701(b)-7
• Topsnik v. Commissioner, 143 T.C. 240 (2014)
• Revenue Rulings 2000-59 and 2004-76

Class Discussion:
• Residence
• Saving clause
• Article 1(6)

**Class 3 (Sept. 14, 2016) – Permanent Establishments, Business Profits, and Associated Enterprises**

Assignment:
• Articles 3, 5, 7, and 9 of US Model (and corresponding TE sections for the 2006 U.S. Model)
• Article 5 of OECD Model and Commentary to Article 5, paragraphs 2-11 (except for paragraphs 8 and 9) and 36-38.8
• The Taisei Fire and Marine Ins. Co., Ltd. V. Commissioner, 104 T.C. 535 (1995)

Class Discussion:
• Definitions
• Permanent establishments
• Business profits
• Associated enterprises

**Classes 4 and 5 (Sept. 21 and 28, 2016) – Investment Income and Branch Profits Tax**

Assignment:
• Articles 1(6), 6, 10-13, and 21 of US Model (and corresponding TE sections for the 2006 U.S. Model)
• JCT Explanation of Proposed Income Tax Treaty Between the United States and the United Kingdom, March 5, 2003, pg. 71-75; https://www.jct.gov/publications.html?func=startdown&id=1693

Class Discussion:
• Dividends
• Interest
• Royalties
• Gains
• Income from real property
• Other income
• Branch profits tax

**Class 6 (Oct. 5, 2016) – Personal Services Income and Pensions**

Assignment:
• Articles 14, 15, 17-19 of US Model (and corresponding TE sections for the 2006 U.S. Model)

Class Discussion:
• Personal services (dependent and independent)
• Government services
• Pensions and social security
• Pension funds

**Class 7 (Oct. 12, 2016) – Athletes and Entertainers / Students, Teachers and Researchers**

Assignment:
• Articles 16 and 20 of US Model (and corresponding TE sections for the 2006 U.S. Model)
• **Santos v. Commissioner**, 135 T.C. 447 (2010).

Class Discussion:
• Entertainers and sportsmen
• Students and teachers

**Class 8 (Oct. 19, 2016) – Limitation on Benefits and Treaty Abuse**

Assignment:
• Article 22 of US Model (and corresponding TE sections for the 2006 U.S. Model)
• Code section 7701(l) and Treas. Reg. § 1.881-3
• **Aiken Industries v. Commissioner**, 56 T.C. 925 (1971)
• **Johansson v. United States**, 336 F.2d 809 (5th Cir. 1964)
• Rev. Rul. 84-152

Class Discussion:
• Treaty abuse
• Limitation on benefits
Class 9 (Oct. 26, 2016) – Double Taxation (“3-Bite Rule”) and Non-Discrimination Clause

Assignment:
- Articles 2 and 23-24 of US Model (and corresponding TE sections for the 2006 U.S. Model)

Class Discussion:
- Double taxation
- Non-discrimination

Class 10 (Nov. 2, 2016) – Mutual Agreement Procedure, Arbitration, Information Exchange

Assignment:
- Article 25-26 of US Model (and corresponding TE sections for the 2006 U.S. Model)
- Rev. Proc. 2015-40

Class Discussion:
- Mutual agreement procedure
- Arbitration
- Exchange of information
- Collection assistance

Class 11 (Nov. 9, 2016) – Effective Dates, Subsequent Changes in the Law, Termination, Special Tax Regimes, Claiming Treaty Benefits

Assignment:
- Articles 1, 28-30 of US Model (and corresponding TE sections for the 2006 U.S. Model)
- Forms W-8BEN, 8802, 8833
- Skim Treas. Reg. § 301.6114-1

Class Discussion:
- Entry into force
- Effective dates
- Termination
- Special Tax regimes
- Claiming treaty benefits

Class 12 (Nov. 16, 2016) – Transportation Income

Assignment: TBD

NO CLASS (Nov. 23, 2016)
Class 13 (Nov. 30, 2016) – Estate and Gift Tax Treaties

Assignment: TBD