2017 Georgetown University Law Center

U.S. Taxation of Foreign Persons in the United States ("Inbound")
Spring Semester, 2017

COURSE SYLLABUS AND ASSIGNMENTS

Instructors
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Students are encouraged to contact professors with questions at any time throughout the semester via E-mail or phone.

Class Time
Mondays, 5:45 p.m. to 7:45 p.m. -- January 17, 2016 - April 24, 2017

- No classes on Monday, January 16, 2017 (Martin Luther King Holiday); Monday, February 20, 2017 (President’s Day); Monday, March 13, 2017 (Spring Break)
- Class on Thursday, February 23, 2017

Course Structure
The course will be divided into modules of material, some of which will occupy more or less than one of the 13 class sessions. (Estimates of the class session during which a module will be covered are included in this syllabus.)

Exam/Grades
There will be a 3 hour final exam (date/time to be confirmed by/with registrar). Grades will be based on final exam performance, but may be adjusted up to reflect thoughtful class participation.

Course Materials

- Internal Revenue Code
- Treasury Regulations (Students are advised that they should “skim” the assigned regulations (many of which contain outdated, “deadwood” material) in advance of class. We will identify and focus on the most relevant aspects of the regulations in class.)
- U.S. Model Income Tax Convention (2016) (available on Canvas)
- Cases & Rulings (available on Canvas)
- Recommended: Bittker & Lokken, Fundamentals of International Taxation, Student Edition. This treatise is recommended as background reading for students seeking a clear exposition of the general rules. This syllabus identifies those sections most relevant to the material to be covered in class. (NB: The treatise provides technical details at a much deeper level than students are responsible for mastering. When using the treatise, students are reminded to keep an eye on the “forest,” not the “trees.”)
- Other materials may be posted on the website as legislative developments warrant.
Reading Assignments:

1. **Overview of “Inbound” Regime; Residence and Entity Classification** (Class #1)
   a. **Shapiro** (Course Overview)
      
      Code: 2(d); 11(d); 61; 872(a); 882(b)
      Bittker & Lokken: ¶ 65.1 (excluding ¶ 65.1.4 and ¶ 65.1.5)
   
   b. **Cousin** (Residence and Entity Classification)
      
      Code: 7701(a)(4) and (5), (a)(30) and (31); 7701(b)
      Regs: 1.871-13(a), (b) and (c); 301.7701-5; 301.7701-3T; 301.7701(b)-1(a)-(c) and (e); 301.7701(b)-2, -3(a) and (b)(1)-(5); -4 (but not -4(c)(3)), and -6.
      Skim 301.7701-2, -3, and -4(a)-(c) (plus examples)
      Bittker & Lokken: ¶ 65.2 through ¶ 65.3.5

2. **Source Rules (Classes #2-3) -- Shapiro**
   
   Code: 861(a)-(c); 862; 863 (a)-(b); 865(a)-(e), (g), (j)
   Regs: 1.861-1; 1.861-2; 1.861-3(a)(1)-(3) (skip (a)(3)(ii), relating to the foreign tax credit); 1.861-4(a); 1.861-5, -6, -7(a) and (c); 1.862-1; 1.863-3(a), (b) and (c)
   *Container Corp. v. Commissioner*, 134 TC No 5 (Feb. 17, 2010)
   *Piedras Negras Broadcasting Co.,* 43 B.T.A. 297 (1941)
   *Korfund Co. v. Commissioner*, 1 T.C. 1180 (1943)
   *Goosen v. Commissioner*, 136 T.C. No 36 (2011)
   Bittker & Lokken: ¶ 73.1 through ¶ 73.9 (skim ¶ 73.7 and ¶ 73.8)

3. **Taxation of U.S. Source Non-Business Income (FDAP) (Class #3-4) -- Shapiro**
   
   Code: 871(a)-(b), (g)-(j), (m); 872(a); 881(a), (c)-(e); 882(b)
   Regs: 1.871-1, -7(a), (b)(1), (d), -14(a)-(c), (e); 1.881-1(a), (b); 1.881-2; 1.1441-2(b)
   *Barba v. United States*, 2 Cl. Ct. 674 (1983)
   Bittker & Lokken: ¶ 67.1 and ¶ 67.2
4. **Withholding on Non-Business Income** (Class #5) – Cousin

**Code:** 1441; 1442; 1461; 1462; 1463

**Regs:** skim. 1.1441-1 except -1(b)(2)(iv); -1(b)(2)(vii)(C)-(F), -1(b)(3)(ii)(C); -1(b)(3)(iv) and (vi) through (viii); -1(b)(4)-(6); -1(b)(8); -1(e)(3)(ii)-(v); -1(e)(4)(iv)-(vi); -1(e)(4)(vii)(c) through -1(f).

Skim. 1.1441-2 except -2(e)(3).

Skim. 1.1441-3 (except -3(c)(3) through -3(d); -3(f)).

Skim. 1.1441-4(a)(1) and (a)(2)(i); 1.1441-7(a)(1), (2), (4)

**Cases & Rulings:** Casa de la Jolla Park, Inc. v. Commissioner, 94 T.C. 384 (1990)  
Central de Gas de Chihuahua v. Commissioner, 102 T.C. 515 (1994)  

**Bittker & Lokken:** ¶ 67.4.1 through ¶ 67.4.4; ¶ 67.4.6 through ¶ 67.4.8; ¶ 67.5

5. **Foreign Account Tax Compliance (“FATCA”)** (Class #5) – Cousin

**Code:** 1471-1474 (skim)

6. **Taxation of Business Income: What is a “U.S. Trade or Business”?** (Class #6) -- Shapiro

**Code:** 864(b); 875

**Regs:** 1.864-2 (1.864-2(c)(2)(iii) “principal office” requirement for historical background only); Prop. Reg. § 1.864(b)-1 (derivatives trading safe harbor).

**Cases & Rulings:** Chang Hsiao Liang v. Commissioner, 23 T.C. 1040 (1955)  
Lewenhaupt v. Commissioner, 20 T.C. 151 (1953)  
Pinchot v. Commissioner, 113 F.2d 718 (2d Cir. 1940)  
Commissioner v. Spermacet Whaling, 30 T.C. 618 (1958)  
Handfield v. Commissioner, 23 T.C. 633 (1955)  
United States v. Balanovski, 236 F.2d 298 (2d Cir. 1956)

**Article:** Shapiro & Maddrey, "The Importance of a 'Customer Relationship' in Loan Origination," 126 Tax Notes 659 (Feb. 1, 2010), T.A. Doc. 2010-1182, 2010 TNT 20-5. (Copies available upon request. Also will be posted on courseware.)

**Bittker & Lokken:** ¶ 67.6.1-67.6.2

7. **Taxation of Business Income: “Effectively Connected Income”** (Class #7) – Shapiro, Cousin

**Code:** 864(c); 871(b); 873; 874(a); 882; 1446

**Regs:** 1.864-4; 1.864-3; 1.864-4(a)-(c)(4); 1.864-5(a)-(b); 1.864-6(a), (b)(1), (b)(2)(i) and (iii), (b)(3)(i) and (iii); 1.864-7; skim 1.882-5
8. Branch Profits Tax (Class #8) – Cousin

Code: 884

Regs: 1.884-1(a)-(c), (d)(1), (e)(1), (f), (g); Skim 1.884-4(a)-(c) and 1.884-2 and -2T

U.S. Model Treaty: Article 10(8) + Technical Explanation

Bittker & Lokken: ¶ 67.8

9. FIRPTA - Taxing Investments in U.S. Real Property (Class #9) – Cousin

Code: 897; 1445; 871(d); 882(d); 871(d); 882(d)

Regs: 1.897-1 (except -1(d)(2)(ii), -1(d)(3)(ii), -1(e)(3) and (4), -1(m) -(p))

Bittker & Lokken: ¶ 67.7

10. Financing U.S. Operations: Earnings Stripping (Class #10) -- Shapiro

Code: 163(j), 385

Regs: Proposed 1.163(j)-1, -2, -3, -8; (1.385-1, -2, -3 to be confirmed)

U.S. Model Treaty: Article 24.4

Bittker & Lokken: ¶ 66.5

11. Treaties: General Principles (Class #11) – Cousin

Code: 7852(d)

Regs: 1.884-5

U.S. Model Treaty: 2006 Model: Article 5 in particular; skim all

Bittker & Lokken: ¶ 67.3.3

12. Treaties: Limitation on Benefits and Conduit Financing (Class #12) – Cousin

Code: 7701(1); 894

Regs: 1.881-3 (including examples in (e)), 1.1441-3(g); 1.894-1(d)(1)-(5)

U.S. Model Treaty: 2006: Article 22; Article 4(1); 2016: preamble

Cases & Rulings: Aiken Industries v. Commissioner, 56 T.C. 925 (1971)
Northern Indiana Public Service Co. v. Commissioner, 115 F.3d 506 (7th Cir. 1997).
Del Commercial Properties, Inc. v. Commissioner, 251 F.3d 210 (D.C. Cir. 2001)


Bittker & Lokken: ¶ 67.3.1 through ¶ 67.3.3

13. Review (Class #13) – Shapiro, Cousin