2016 Georgetown University Law Center

U.S. Taxation of Foreign Persons in the United States (“Inbound”)  
Spring Semester, 2016

COURSE SYLLABUS AND ASSIGNMENTS

Instructors
David H. Shapiro, Office Direct: [redacted]
Bernard E. Moens, Office Direct: [redacted]
Nils Cousin, Office Direct: [redacted]

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 19, 2016 - April 25, 2016

- No classes on Monday, January 18, 2016 (Martin Luther King Holiday); Monday, February 15, 2016 (President’s Day); Monday, March 7, 2016 (Spring Break)
- Class on Thursday, February 18, 2016

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- Treasury Regulations (Students are advised that they should “skim” the assigned regulations (many of which contain outdated, “deadwood” material) in advance of class.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.)
- 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. Moens (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; 301-7701-5T; 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)
   
   Cases & Rulings: Karrer v. United States, 152 F. Supp. 66 (Ct. Cl. 1957)
   
   
   
   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)
   
   Cases & Rulings: Commissioner v. Wodehouse, 337 U.S. 369 (1949)
   
   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/Moens

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(c)(3)(ii)v(v); -1(e)(4)(iv)-(vi); -1(e)(4)(vi)(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/Moens

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 & Moens

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

Regs:
1.882-4; 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/Moens**
   - **Code:** 884
   - **Regs:** 1.884-1(a)-(c), (d)(1), (e)(1), (f), (g); **Skim** 1.884-4(a)-(c)
   - **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/Moens**
   - **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)
    - **Regs:** Proposed 1.163(j)-1, -2, -3, -8
    - **U.S. Model Treaty:** Article 24.4
    - **Bittker & Lokken:** ¶ 66.5

11. **Treaties: General Principles (Class #11) – Cousin/Moens**
    - **Code:** 7852(d)
    - **Regs:** 1.884-5
    - **U.S. Model Treaty:** Article 5 in particular; **skim all**
    - **Bittker & Lokken:** ¶ 67.3.3

12. **Treaties: Limitation on Benefits and Conduit Financing (Class #12) – Cousin/Moens**
    - **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:** Article 22; Article 4(1)
    - **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