Georgetown University Law Center

U.S. Taxation of Foreign Persons in the United States
Course No. LG-986-10
Fall Semester, 2015

Course Syllabus and Assignments

Instructors:
Prof. Fred Murray
Prof. Paul Schmidt

Class Time and Place:
Tuesdays 5:45 pm to 7:45 pm (except for Tuesday, October 13 — Monday classes meet).
McDonough 200.

Course Structure:
The course will be divided into modules of material, some of which may be discussed in more or less than one of the 13 classes.

Grades:
There will be a 3-hour take home final exam that will be open to Limited Materials (materials used in class). We will discuss the permissible materials in class. The format of the exam will be essay and problems. Your grade will be based approximately 90% on the final exam and 10% on attendance and class participation.

Exam instructions will state:
This is an OPEN book exam. Users are permitted to access other documents, outlines, notes, files, etc. on their hard drives, or other materials in their possession. IPads, e-readers and other electronic devices that store information may be used. Calculators may be used.
Notwithstanding the foregoing, students may not access the Internet, except as necessary to use the Georgetown Online Exam/Paper Management System, during the examination and before submitting their examination. Doing so is a disciplinary violation of the Student Disciplinary Code. Students may not consult one another or any other person by computer or other electronic device or otherwise, and may not consult any materials not specifically permitted.

Required Course Materials:
Internal Revenue Code and Treasury Income Tax Regulations.

*In addition, additional materials will be supplied for particular topics, by Faculty Support at the beginning of the term, and by the professors during the term of the course.

August 22, 2015
**Reading Assignments:**

Materials not marked as “Skim” or “Helpful Supplementary Reading” are required reading. Outline numbers correspond to modules in the readings handout from Faculty Support.

Class 1  
FM and PS  
Sept 1  
1. Principles for Taxing the Income of Foreign Persons - Overview  
   a. Code section 61  
   b. Cases and Rulings: Cook v. Tait, 265 U.S. 47 (1924)  
   c. Helpful Supplementary Reading: B&L § 65.1

Class 2  
FM  
Sept 8  
2. Basis for Taxation - Residence and Entity Classification  
   a. Code sections 7701(a)(4) and (5); 7701(a)(30) and (31); 7701(b), 871, 872, 881  
   b. Skim Treas. Reg. §§301.7701-1 through -7; 301.7701(b)-1 through -6; U.S. Model Treaty Article 4 and Technical Explanation  
   d. Helpful Supplementary Reading: B&L §65.2 through §65.3.6, §66.1, §66.1A, §66.2, §67.9

Class 3 & 4  
PS  
Sept 15 & 22  
3. Determining the Source of Income  
   a. Code sections 861, 862, 863, 865; Treas. Reg. § 1.861-7(c)  
   c. Helpful Supplementary Reading: B&L §73.1 through §73.9, §73.10; Bank of America v. United States, 680 F.2d 142 (Ct. Cl. 1982); Container Corp. v. Commissioner, T.C. No. 3607-05 (Feb. 17, 2010)
4. Taxation of the U.S. Trade or Business Income of a Foreign Person
   a. Code sections 864(b), (c); 865(e); 865(g); 871(b); 873; 874(a); 875; 882(a), (b), (c),(d), 1441(c)(1); 1446(a); Treas. Reg, § 1.864-4(c)(1)(i); -4(c)(2); -4(c)(3).
   b. Skim Treas. Reg. § 1.882-5
   d. Helpful Supplementary Reading: B&L §67.6.1 through §67.6.9.

5. Taxation of Non-Business Income (FDAP) of Foreign Persons Derived In the U.S.
   a. Code sections 871, 872, 881
   b. Treas. Reg. §§1.871-1, -7, -14; 1.873-1; 1.881-1(a), (b); 1.881-2; 1.1441-2
   d. Helpful Supplementary Reading: B&L §67.2.1 through §67.2.10.

6. Collecting U.S. Taxes on the FDAP Income of Foreign Persons Through Withholding; FATCA
   a. Code sections 1441; 1442; 1461, 1462, 1463, 1471-1474
   b. Skim Treas. Reg. §1.1441-1, -2, -7, Notice 2011-34
   d. Helpful Supplementary Reading: B&L §§67.4.1 through .3 and §§67.4.5 through 67.5.2; §65.7
Class 9
PS
Nov 3
7. Branch Profits Taxes
   a. Code section 884
   b. Skim Treas. Reg. §§1.884-1(a), (b), (c), (d)(1), (e)(1) & (2), (f)(1)& (2)
   c. Helpful Supplementary Reading: B&L §67.8.1 through §67.8.4.

Class 10
FM and PS
Nov 10
8. Taxation of U.S. Real Property Interests (FIRPTA); and Miscellaneous provisions, including Transfer Pricing, Transportation and Foreign Governments.
   a. Code sections 897, 871(d), 882(d), 1445; 482; 887; 883; 892.
   b. Skim Treas. Reg. §§ 10897-1, -2, -5T, -6T; 1.1441-1, -2, -5
   c. Skim U.S. Model Treaty Articles 6, 10 ¶ 8, and 13, and Treasury Technical Explanation
   e. Helpful Supplementary Reading: B&L 67.7.1 through §67.7.10; §79.1 through §79.3.9, 79.5.1, 79.5.4, and §79.7.1 through §79.7.6, 79.8.1 through 79.8.6, 79.9; 79.10, 79.15, 67.10; 67.6.7.

Class 11
PS
Nov 17
   a. Code section 163(j); 7701(l)
   b. Treas. Reg. §§ 1.881-3
   d. Helpful Supplementary Reading: B&L §66.6.

Class 12 & 13
FM
Nov 24 & Dec 1
10. Tax Treaties – Concepts and General Principles
   a. Code sections 894(a), 7852(d)
   b. Skim U.S. Model Treaty
   c. Helpful Supplementary Reading: B&L §67.1.3, §65.2.8, §65.3.6, §65.4.1 through §65.4.8, §66.4.

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11. Tax Treaties – Taxation of Business Profits (Definition of Permanent Establishment)
   a. US Model Treaty Articles 5 and 7, and Treasury Technical Explanation
   b. Treas. Reg. §§ 1.1441-3(g); 301.7701(b)-7
   d. Helpful Supplementary Reading: B&L §67.6.9

12. Tax Treaties – Treaty Shopping and Limitations on Treaty Benefits
   a. Code sections 884, 894
   b. Skim Treas. Reg. §1.884-5, 1.894-1(d)(1)-(5)
   c. U.S. Model Treaty Article 22
   d. Helpful Supplementary Reading: B&L §67.3.1 through §67.3.3; U.S. Model Treaty Treasury Technical Explanation of Article 22

Class 14
FM and PS (optional)

13. Review Session
   December ?

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