

**UNIVERSITY OF BALTIMORE GRADUATE TAX PROGRAM/SCHOOL OF LAW
SPRING 2020**

General Information and Syllabus

Course: Foreign Taxation
LAWT/974/491; TAXA/662/185; LAW/974/512

Instructor: Professor Fred Brown
Office: AL 540
Telephone: 410-837-4537
Email: fbrown@ubalt.edu
Office Hours: Monday, Thursday – 5 pm to 6 pm; also by appointment

Days/Time: Thursday, 6:15 to 9 pm

Location: Room assignments are available through MyUB.

Course Description:

Analysis of the federal income tax provisions applying to U.S. inbound and outbound transactions and investments. Course covers U.S. resident status, source-of-income rules, graduated tax on effectively connected income, withholding tax on FDAP income, branch profits tax, FIRPTA, tax treaties, foreign tax credit, foreign earned income exclusion, subpart F, and transfer pricing.

Required Materials

- Taxation of International Transactions (Fourth Edition) By Gustafson, Peroni, and Pugh along with Update Memo to text (Update Memo available on TWEN page for the course) (“G, P, & P”)
- Internal Revenue Code (“Code”)
- Regulations (“Regs”)

With regard to the Code and the Regs, **you may use either the complete versions of these authorities or a selected sections version**, the latter being Peroni, International Income Taxation: Code and Regulations -- Selected Sections.

Student Learning Outcomes:

- Explain Federal income tax rules governing the taxation of U.S. inbound and outbound transactions and investments.
- Make use of the policy underlying these rules.
- Identify legal issues related to taxation of U.S. inbound and outbound transactions and investments.
- Apply and analyze statutory and regulatory provisions governing the taxation of U.S. inbound and outbound transactions and investments.

Grades:

Your grade for the course will be determined as follows:

- 70 percent of your grade will be based on a three-hour, completely open book final exam given at the end of the semester.
- 20 percent of your grade will be based on a 50 minute, completely open book, take-home mini exam given at about the midpoint of the semester; the date for the mini exam will be announced at least a month before the mini exam.
- 10 percent of your grade will be based on class participation; this will include my evaluation of your preparedness if called upon (very prepared, prepared, or unprepared), along with your responses when you volunteer to answer questions.

Course Expectations:

American Bar Association Standards for Law Schools establish guidelines for the amount of work students should expect to complete for each credit earned. Students should expect approximately one hour of classroom instruction and two hours of out-of-class work per week for each credit earned in a class, or an equivalent amount of work for other academic activities, such as simulations, externships, clinical supervision, co-curricular activities, and other academic work leading to the award of credit hours.

You are expected to complete all reading and problem assignments before class and to participate consistently in class discussion to demonstrate that you have read and reflected on the material in the assignment. This course involves very difficult tax rules and concepts, and thus it is very important that you prepare for class, which includes working through the assigned problems in the textbook. It is important to keep your class preparation current. Much of the course will be built on subjects previously discussed, and the various Code and Regs sections work in conjunction with one another. If you miss and/or do not prepare for one class, the next class may use terms and concepts you do not understand, which will compound the difficulty of understanding this complex area of the tax law. Moreover, as discussed above, part of your grade will be based on class participation.

Please be sure to raise any unaddressed questions you still have after class, or during my office hours by appointment, or through e-mail: fbrown@ubalt.edu or by phone: 410-837-4537. In addition, as we will be actively using TWEN to address and discuss issues students raise outside of class, posting your query on TWEN will serve a very useful contribution. I will be monitoring and responding to queries on TWEN on a regular basis.

Attendance Policy for J.D. Students:

Class attendance is a primary obligation of each J.D. student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. A J.D. student who exceeds the maximum allowed absences may be compelled to withdraw from the course, or may be barred from sitting for the final exam. J.D. students who are forced to withdraw for exceeding the allowed absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with American Bar Association Standards for Law Schools. In this course, J.D. students are allowed a maximum of two absences. Attendance will be taken at the beginning of each class. Attending a class online counts as being present.

While LL.M. and M.S. students should endeavor to attend each class, there is no attendance policy applying to these students.

Course Website:

You are required to register for this course on TWEN. You are responsible for all information posted on or disseminated from TWEN.

Computers:

Students may use laptop computers for class related purposes only, as well as on the exam (with the School-provided exam software).

Class Cancellation:

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web site or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.

Academic Integrity:

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or the School of Law. Violations of academic integrity include, but are not limited to: cheating; plagiarism; misuse of library materials; use of another's book or study materials without consent; unapproved multiple submissions; material misrepresentation of one's academic history or standing; misrepresentation of any academic matter; intentionally giving another student false or inaccurate information about class requirements; inappropriate discussion of exams; and misrepresenting or falsifying class attendance reports.

LL.M. and M.S. students must adhere to the University of Baltimore's Academic Integrity Policy, which can be found at http://www.ubalt.edu/campus-life/student-handbook.cfm#Academic_Integrity.

J.D. students must adhere to the School of Law Honor Code. The School of Law Honor Code and information about the process is available at http://law.ubalt.edu/academics/policiesandprocedures/honor_code/.

Course Evaluations:

It is a requirement of this course that students complete a course evaluation. The evaluation will be available later in the semester and is entirely anonymous. Faculty members will not have access to the feedback provided on course evaluations until after all grades are submitted.

Title IX Sexual Harassment and Sexual Misconduct Policy:

The University of Baltimore's Sexual Harassment and Sexual Misconduct policies are compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the University any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB's nondiscrimination policies can be found at: <http://www.ubalt.edu/titleix>.

Disability Policy:

If you are a student with a documented disability who requires an accommodation for academic programs, exams, or access to the University's facilities, please contact the Office of Academic Affairs, at ublawaacadaff@ubalt.edu or (410) 837-4468.

Course Outline:

- I. Basic Principles of U.S. International Taxation
- II. The Role of Income Tax Treaties in International Law
- III. U.S. Persons and Foreign Persons
- IV. Source Rules
- V. Foreign Persons: U.S. Trade or Business Income
- VI. Foreign Persons: Nonbusiness U.S.-Source Income
- VII. Branch Profits Tax
- VIII. Dispositions of U.S. Real Property Interests
- IX. Base-Erosion and Anti-Abuse Tax
- X. Foreign Tax Credit and Other Methods for Mitigating Double Taxation of U.S. Persons
- XI. Controlled Foreign Corporation Provisions
- XII. Global Intangible Low-Taxed Income
- XII. Transfer Pricing

First Class Assignment:

Please complete all of the assignments under Parts I and II of the Syllabus.

Please complete the following assignments under Part III of the Syllabus:

Code: sections 7701(b), 7701(a)(4), (a)(5), (a)(30), (a)(31)
Regs: sections 301.7701(b)-2(c), (d), (skim -3, -4)
G, P, & P: paragraphs 1170-1185, 1205-1225
Problems: G, P, & P paragraph 1190 (problems 2, 4, and 5)

Syllabus (Partial) (and subject to change):

- I. Basic Principles of U.S. International Taxation**

G,P,&P: ¶¶ 1165a, 1165b, 1165c, 1165d, 1165e, 1165f

II. The Role of Income Tax Treaties in International Taxation

Code: §§ 894(a), 7852(d)

G,P,&P: ¶¶ 1235-1295, skim United States Model Income Tax Convention of November 15, 2006 [“2006 U.S. Model Treaty”] (set forth in Appendix A); United States Model Income Tax Convention of February 17, 2016 [“U.S. Model Treaty”] (set forth in Appendix A1)

III. U.S. Persons and Foreign Persons

Code: §§ 7701(b), 877(a)(2), (e)(2), (skim the rest of 877), 877A, 7701(a)(4), (a)(5), (a)(30), (a)(31), (a)(50), 6039G

Regs: §§ 301.7701(b)-2(c), (d), (skim -3, -4)

G,P,&P: ¶¶ 1170-1225

Problems: G,P,&P ¶¶ 1190 (problems 2, 4, and 5), 1200

IV. Source Rules

Code: §§ 861(a), 862(a), 7701(a)(9), 861(c), 884(f)(1), 865, 863(b), (c), (d), (e), 1248(a), 861(b), 862(b), 863(a), 864(e)(2)

Regs: §§ 1.861-4(b)(1), (b)(2)(i), (ii)(A), (ii)(E), 1.861-7(c), 1.861-18(a), (b),(c), (d), (e), (f) (except (f)(3)), (g), 1.861-8(a), (b), (c), (e)(9), -8T(c), -9T(a), (skim (d), (e) and (f)), (g)(1), (g)(2)(i), (g)(2)(iii), (g)(3), -10T(a), (b)(1), (b)(2), (c), -17(a)(1), (a)(2), (a)(4), (b)(1), (c)(1), (d), (e)

G,P,&P: ¶¶ 2000-2050, 2070, 2095-2170 (skim 2160 in main text; read 2160 in Update Memo), 2055-2065, 2175-2205, 2211, 2220-2245

Problems: G,P,&P ¶¶ 2215 (problems 1-5) (omit 11), 2235

V. Foreign Persons: U.S. Trade or Business Income

Code: §§ 871(b), 882(a), 872(a), (skim 872(b) and 883), 882(b), 864(b), 875, 871(d), 882(d), 864(c), 873, 874, 882(c), 864(e)(2), (skim 887)

Regs: §§ 1.864-2(e), -4(c)(1), (c)(2), (c)(3), (c)(4), (c)(5)(ii), (c)(5)(iii), (c)(6), -5(a), -6(b)(1), (b)(2)(iii), -7(d)(3),(e), (review 1.861-8(a) and -8T(c)),

1.882-5(a)(1)(i), (a)(2), (b)(1)(i), (c)(1), (c)(2)(i), (c)(4), (d)(1), (4), (5), (e)(1)

G,P,&P: ¶¶ 3000-3120, 3135-3147, 3150-3170, 3180-3185, 3188-3200, 3210-3220, 2006 U.S Model Treaty Articles 7, 5, 14 (set forth in Appendix A); skim 2016 U.S Model Treaty Articles 7, 5, 14 (set forth in Appendix A1)

Problems: Handout Problem A, Handout Problem B, G,P,&P ¶¶ 3155 (problems 1(a), (b), (c), (d), (e)), 3225 (problems 1, 4-6)

VI. Foreign Persons: Nonbusiness U.S.-Source Income

Code: §§ 871(a), (skim (g)), (h), (i), (l), (skim 871(m)), 881(a), (c), (d), 884(e)(3)(A), 1441(a), (b), (c)(1), (c)(2), (c)(5), (c)(8), (c)(9), (c)(10), 1442(a), 1461, 7701(a)(16), 7701(l), 1446(a), (b), (e), (skim 1471, 1472, 1473)

Regs: §§ 1.1441-1(b)(1), (b)(2)(i), (b)(3)(i), 1.1441-1(c)(1), 1.1441-1(c)(2)(i), 1.1441-1(c)(6), -2(b)(1), (b)(2), (c), 1.1441-4(a)(1), (a)(2)(i), (b)(1), (skim -6, 6T)

G,P,&P: ¶¶ 4000-4020, 4027-4047, 4110-4140, 4155-4160, 4170-4182, 4050-4065, 4075, 4090-4102, 3240, 2006 U.S. Model Treaty Articles 10, 11, 12, 22 (set forth in Appendix A); skim 2016 U.S. Model Treaty Articles 10, 11, 12, 22 (set forth in Appendix A1)

Problems: Handout Problem C, G,P,&P ¶¶ 4280 (problem 1), 4105 (problems 1, 3, 4, 7)

VII. Branch Profits Tax

Code: § 884 (skim (e))

Regs: §§ 1.884-1(d)(1), (e)(1), (e)(3), -4(a)(1), (a)(2), (b)(1)

G,P,&P: ¶¶ 3230, 2006 U.S. Model Treaty Article 24, 10, 11 (set forth in Appendix A); skim 2016 U.S. Model Treaty Articles 24, 10, 11 (set forth in Appendix A1)

Problems: G,P,&P ¶ 3235 (problems 1, 3, and 4).

VIII. Dispositions of U.S. Real Property Interests

Code: §§ 897 (skim (h), (j), (k), (l)), 1445 (skim (d), (e)), (skim 6039C)

Regs: §§ 1.897-1(b)(1), (d)(1), (d)(2)(i), (o)(2)(i), (o)(2)(iii), -2(e)(4), 1.1445-

1(f)(1), (g)(5), (skim -3)

G,P,&P: ¶¶ 4185-4225, 4235-4260, 2006 U.S. Model Treaty Article 13 (set forth in Appendix A); skim 2016 U.S. Model Treaty Article 13 (set forth in Appendix A1)

Problems: G,P,&P ¶ 4280 (problems 12-16)

IX. Base-Erosion and Anti-Abuse Tax (BEAT)

Code: §59A

G,P,&P: ¶¶ 3148, 4270

X. Foreign Tax Credit and Other Methods for Mitigating Double Taxation of U.S. Persons

A. Creditable Taxes, etc.

Code: §§ 27(a), 901(a), (b)(1), (skim 901(b)(2)-(5), 906), 901(i), (skim 901(j)), 903, (skim 909)

Regs: §§ 1.901-2(a)(1), (2)(i), (ii)(A),(3), -2(b)(1), (skim -2(b)(2)-(4),-2(c)(1), 2(d)(1), -2(e)), 1.903-1(a), (b)(1)

G,P,&P: ¶¶ 5000, 5005-5025, 5050, 5060, 5067-5080, 5090-5095, 5105-5110, 5120 (notes 1, 2), 5125

Problem: G,P&P ¶ 5130 (##1, 2, 3, 5, 6)

B. Credit Limitations

Code: §§ 904(a), (c), (d), (f) (skim (3), omit (4)), (g), (j), (skim 904(b), (h)), 905, 164(a), 275(a)(4), 901(j), (k), (skim (m))

Regs: §§ 1.904-4(a), (b), 1.954-2(c)(1)

G,P,&P: ¶¶ 5215-5235, 5245-5275, 7000-7010, 7020, 7030-7035, 7045-7145, 7160-7165, 5133, 5315

Problems: G,P,&P ¶¶ 5260, 5280

C. Exemption System for Certain Foreign Source Dividends

Code: §§ 245A, 246(c), 961(d), (skim 965)

G, P, & P: ¶ 5002

D. Exemption for Certain Taxpayers Living Abroad

Code: § 911

G,P,&P: ¶¶ 5325-5335, 5345-5355, 5365-5370

E. Role of Treaties

G,P,&P: 5380, 5390, 2006 U.S. Model Treaty Articles 1(4), 1(5), 23 (set forth in Appendix A); skim 2016 U.S. Model Treaty Articles 1(4), 1(5), 23 (set forth in Appendix A1)

XI. Controlled Foreign Corporation Provisions

Code: §§ 951(a), (b), 952(a), (b), (c)(1)(A), (skim 952(c)(1)(B), (c)(1)(C), (c)(2)), 953(a), 954(a), (b), (c) (omit (4), (5)), (d), (e), (skim (h), (i)), 956(a), (b)(1), (skim 956(c)), 957(a), 7701(a)(30), 958(a), 958(b), 959(a), (c), (d), (f), 960(a), 961(a), (b), (skim 962, 1248), 78

Regs: §§ 1.954-3(a)(4)(i), (ii), (iii) (omit examples), (iv) (omit examples), - 4(b)(1)

G,P,&P: ¶¶ 1100, 6000-6015, 6020-6030, 6065, 6075-6175, 6200-6205, 6240-6245, 6255, 6060, 10,088

Problems: ¶¶ 6035 (#1, #2, #3), 6070 (##1, 2), 6195 (## 1(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (o), (p), (q), (r), (s))

XII. Global Intangible Low-Taxed Income (GILTI)

Code: §§ 951A, 250, 960(d), 78

G,P,&P: ¶ 6017

Problems ¶ 6070 (#3)

XIII. Transfer Pricing

Code: § 482

G,P,&P: ¶¶ 8000-8020, 8040-8060, 8075-8080, 8115, 8122, 8130, 8140-8190, 8200

