

INTERNATIONAL TAX

Professor Bret Wells

University of Houston Law Center

Syllabus

Spring Semester 2014

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1. **Why Take This Course?** In choosing upper-level courses, law students should use at least two criteria in your course selection process to ensure that you get the maximum benefit from your tuition dollars. First, you should evaluate whether the course provides important knowledge that you need to know for your expected area of practice. Second, you should evaluate whether mastery of the subject matter of the course would be exceedingly difficult to accomplish on your own. If a course would be difficult to master on your own and if the material is important for your expected area of practice, then you should strongly consider taking the course while you are a law student at UHLC.

Based on the above two metrics set forth above, International Taxation represents a good upper-level course for many of our students to take. Today's lawyers, more than at any other time, are likely to represent clients with commercial transactions involving cross-border issues. Technological improvements in communication, including the explosive growth of the internet, has made the world smaller and created a closer global community. In prior decades, only those lawyers who represented the largest companies or the wealthiest individuals dealt with international commerce, but in today's business environment lawyers can expect that many of their clients will conduct business activities in multiple countries. Consequently, lawyers who want to represent sophisticated clients will need to understand the structural implications of the U.S. international tax laws. Thus, in terms of the first metric of importance, the International Taxation course is likely to be very important to the practice of many of our graduates. And, as to the second metric, U.S. international taxation is an unquestionably difficult area of the law to master on your own. If you believe it will be helpful to your practice to understand U.S. international taxation, then you will be well served to take this course because doing so gives you the best chance of learning this material in an efficient and effective manner.

2. **Course Objective.** This course will provide you with an overview of common international tax planning issues so that you understand the manner in which the U.S. tax system asserts taxing jurisdiction over cross-border activities. This course can be further sub-divided into two general categories of international (i.e., cross-border) taxation as follows:

- a) **Inbound Taxation:** the United States taxation of non-resident aliens and foreign corporations with respect to their activities conducted within the territory of the United States; and
- b) **Outbound Taxation:** the United States taxation of U.S. persons with respect to their activities conducted outside the territory of the United States.

In examining these subject areas, significant attention will be given to the important provisions included in the U.S. Internal Revenue Code and in U.S. income tax treaties (including, particularly, the current U.S. Model Income Tax Treaty). As we study these tax laws, we will also discuss the significant judicial decisions and regulatory pronouncements that have interpreted them. Specific topics to be covered during the semester will include: (a)

sourcing rules for allocating income and deductions among several national taxing jurisdictions; (b) extra-territorial taxation of U.S. citizens and enterprises realizing income (and paying foreign income taxes) in foreign locations; (c) income tax incentives for exports; (d) reallocation of income and deductions between U.S. and related foreign enterprises (i.e., transfer pricing); (e) taxation of foreign persons with respect to their income derived from US portfolio investments, from U.S. trade or business activities, and from U.S. real property investments. An important focus will be the examination of structuring alternatives and the related tax risks in various international trade and investment tax planning situations.

3. **Class Sessions and Reading Assignments.** This course meets on both Monday & Wednesday from 2:30 PM until 4:00 PM. The Reading Assignment Sheet attached to this syllabus identifies the class sessions. As indicated in the Reading Assignment Sheet, I anticipate that we will have 28 class sessions and in those 28 class sessions we will cover 26 discreet topics. As indicated in the Reading Assignment Sheet, we will move quickly through Chapter 1, but thereafter you should anticipate that we will reduce our pace. You should be prepared to discuss the reading assignment where we left off in the prior class and then be prepared to discuss the next succeeding reading assignment set forth in the Reading Assignment Sheet. Please note that the dates for covering these materials may shift, and when this occurs I will post an updated **Reading Assignment (As Revised)** sheet to my website at least 24 hours before class. Thus, even if you missed the prior class, you can easily determine the scope of coverage for the upcoming class.
4. **Class Preparation.** Some students are tempted to read materials lightly before class and to use their lecture notes to focus their minds on where further self-study is needed. That strategy is **not** a good strategy for this course. If you attempt to employ it, you will not have the background needed to keep up with the lecture. This strategy will create an enormous loss of time on your part as you try to learn the material by self-study in a triage fashion. In the end, this technique will waste time.

The better strategy for this course is to adequately prepare before each class so that you are familiar with the material before hearing the lecture. Your prior preparation allows you to listen to the lecture with the objective of fine-tuning and clarifying your thinking. If you are prepared beforehand, then you can ask questions immediately when things are not as you expected. After class, you can then review your lecture notes and your outline to make sure you have properly synthesized the topic. Your synthesis of the material on a timely basis is important because the material covered later in the course builds upon your correct synthesis of material covered in the earlier part of the course. If you prepare for each class and you actively listen and participate during the class sessions, then you should be well positioned to efficiently and accurately learn this material.

5. **Attendance.** Consistent with University of Houston Law Center policy, 80 percent attendance of the classes is required. An attendance list will be circulated at each class session. Those individuals not satisfying the attendance requirement will be reported to Law Center administrative officials for appropriate action.

6. Required Course Materials are:

- a) West Publishing Co., Gustafson, Peroni & Pugh, "Taxation of International Transactions--Materials, Text and Problems," Fourth Edition (2011); and
- b) CCH (Wolters Kluwer), "International Income Taxation--Code & Regulations, Selected Sections, 2013-2014 Edition," or a similar current Internal Revenue Code volume.
- c) Course Supplement. Further, various photocopied materials for use in this course will be periodically provided by me and made available for download from my website at <http://www.law.uh.edu/faculty/bwells/international-taxation.html>.

7. Recommended Supplemental Materials. I have attached to this syllabus a list of Suggested Supplemental Reference Materials that can be consulted for further study. In particular, Item #1 through Item #3 on the Suggested Supplemental Reference Materials list are shorter works that provide a good conceptual overview without the need for excessive reading, and so I would recommend those books as your first area of further study. If you have questions that are not answered in those two resources, then the other more exhaustive works listed in the Suggested Supplemental Reference Materials can also be consulted.

8. Required Prerequisite. The four-hour Federal Income Tax course is a prerequisite for this course. Although we will study international transactions that involve corporate entities and partnership entities, it is not required that you have taken either partnership taxation or corporate taxation in order to successfully master the material in this class.

9. Grade and examination.

a) **Final Examination.** Subject to ¶8.b. below, the grade in this course will be entirely dependent upon a final examination. This examination will be administered according to the regular examination schedule. Course materials will be permitted in the examination room but will be limited to: (i) the student's casebook, (ii) the CCH code and regulations volume, (iii) the syllabus, (iv) any supplemental materials (as provided during the semester), and (v) student prepared outlines. Not permitted in the examination room are commercially prepared materials (including commercial outlines) or any other study materials not prepared by you.

b) **Impact of Class Participation.** Class participation is expected in this class. Significant class participation may positively impact your grade.

10. Powerpoint Slides. I regularly use Powerpoint slide presentations as part of my lectures. Once the relevant chapter has been completed, I will post these slides to my website at: <http://www.law.uh.edu/faculty/bwells/international-taxation.html>. Slides from prior years remain posted until replaced by the current year slides.

11. Questions to professor. My office hours are Monday through Wednesday from 9:00 a.m. to 1:00 p.m. If you have questions, please contact me at Room 128, Teaching Unit II, or by telephone at 713-743-2502, or by email at bwells@uh.central.edu. I am available to answer questions until the end of the last Reading Day (i.e., April 29, 2014).

Suggested Supplemental Reference Materials

1. Isenbergh, International Taxation, Foundation Press (Concepts and Insights Series), Third Edition (2010).
2. Doernberg, International Taxation--In a Nutshell, Ninth Edition, West Publishing Co./Thomson Reuters (2012).
3. Misey & Schadewald, A Practical Guide to U.S. Taxation of International Transactions, Ninth Edition, Kluwer Law--CCH Incorporated (2013).
4. McDaniel, Ault & Repetti, Introduction to United States International Taxation, Fifth Edition, Aspen Publishers (2005).
5. Ault & Arnold, Comparative Income Taxation--A Structural Analysis, Third Edition, Aspen Publishers (2010).
6. Bittker & Lokken, Fundamentals of International Taxation--U.S. Taxation of Foreign Income and Foreign Taxpayers, 2010 Edition, Warren, Gorham & Lamont - RIA.
7. Kuntz & Peroni, U.S. International Taxation, Three Volumes, Warren, Gorham & Lamont (as supplemented) (and available electronically on RIAG Checkpoint).
8. Streng & Salacuse, International Business Planning--Law and Taxation-United States, Matthew Bender, six volume treatise (current updates through 2010) (under complete revision for 2011 publication).
9. BNA Tax Management, Inc., various "Foreign Income" series and Transfer Pricing series "Tax Management Portfolios" (also available electronically on Lexis-Nexis).

International Taxation: Reading Assignment Sheet

	Class Date	Topic	Reading Material
1	Monday, January 13, 2014	Introduction to International Tax	Gustafson: Ch. 1 (pp 1-75)
2	Wednesday, January 15, 2014	Source Rules	Gustafson: Ch. 2 (pp 76-99)
Martin Luther King Holiday			
3	Wednesday, January 22, 2014	Source Rules (cont.)	Gustafson: Ch. 2 (pp 99-140)
4	Monday, January 27, 2014	US Trade or Business	Gustafson: Ch. 3 (pp 141-166)
5	Wednesday, January 29, 2014	US Trade or Business (cont.)	Gustafson: Ch. 3 (pp 166-181)
6	Monday, February 03, 2014	US Trade or Business (cont.)	Gustafson: Ch. 3 (pp 181-227)
7	Wednesday, February 05, 2014	Non-US Trade or Business Income	Gustafson: Ch. 4 (pp 228-260)
8	Monday, February 10, 2014	Non-US Trade or Business Income (cont.)	Gustafson: Ch. 4 (pp 260-298)
9	Wednesday, February 12, 2014	Outbound Taxation (Foreign Tax Credit)	Gustafson: Ch. 5 (pp. 302-366)
10	Monday, February 17, 2014	Outbound Taxation (Foreign Tax Credit)	Gustafson: Ch. 5 (pp. 366-403)
11	Wednesday, February 19, 2014	Outbound Taxation (Foreign Tax Credit)	Gustafson: Ch. 5 (pp. 403-453)
12	Monday, February 24, 2014	Outbound Taxation (Foreign Income Exclusion)	Gustafson: Ch. 5 (453-484)
13	Wednesday, February 26, 2014	Controlled Foreign Corporations	Gustafson: Ch. 6 (pp. 485-540)
14	Monday, March 03, 2014	Controlled Foreign Corporations	Gustafson: Ch. 6 (pp. 540-609)
15	Wednesday, March 05, 2014	Controlled Foreign Corporations	Gustafson: Ch. 6 (pp. 609-663)
Spring Break			
16	Monday, March 17, 2014	Foreign Tax Credit Limitations	Handout materials
17	Wednesday, March 19, 2014	Transfer Pricing	Gustafson: Ch. 8 (pp. 710-751)
18	Monday, March 24, 2014	Transfer Pricing	Gustafson: Ch. 8 (pp. 751-769)
19	Wednesday, March 26, 2014	International Tax-Free Exchanges	Gustafson: Ch. 10 (pp. 814-880)
20	Monday, March 31, 2014	International Sale of Goods	Gustafson: Ch. 11 (pp. 881-940)
21	Wednesday, April 02, 2014	International Sale of Goods	Gustafson: Ch. 11 (pp. 941-965)
22	Monday, April 07, 2014	Intangibles	Gustafson: Ch. 12 (pp. 966-1010)
23	Wednesday, April 09, 2014	Intangibles	Gustafson: Ch. 12 (pp. 1010-1072)
24	Monday, April 14, 2014	Direct Foreign Investment	Gustafson: Ch. 13 (pp. 1073-1117)
25	Wednesday, April 16, 2014	Direct Foreign Investment (Joint Venture Issues)	Gustafson: Ch. 13 (pp. 1117-1149)
26	Monday, April 21, 2014	Foreign Currency Issues	Gustafson: Ch. 9 (pp. 769-813)
27	Wednesday, April 23, 2014	TBD	
28	Monday, April 28, 2014	TBD	
	Tuesday, April 29, 2014	Reading Day/Make-Up Class if Needed	
Exam Wednesday, May 07, 2014 1:00 pm to 4:00			