

**Fairleigh Dickinson University**  
**Silberman College of Business Administration**

**U.S. International Corporate Tax**  
**Tax 7705.91**

**Fall, 2012**

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**COURSE DESCRIPTION:**

THIS IS NOT A SURVEY COURSE. It is designed for corporate tax professionals who need a solid working knowledge of the subject, but who do not specialize in international tax issues on a daily basis. The course will emphasize U.S. taxation of international income earned by U.S. based multinational corporations or “outbound issues.” There will be only minimal discussion of US taxation of US sourced income earned by foreign persons or “inbound issues” or taxation of individuals. (However, see page 6.)

The basic topics covered in the course include the Source rules, Foreign Tax Credits, Subpart F, Transfer Pricing (Section 482), and Tax Treaties. Students interested in a more in depth treatment of these topics should consider enrolling in International Tax I, II, and III.

**PREREQUISITE:** One or more courses in corporate taxation, at the graduate or undergraduate level, or equivalent experience.

**TEXTS**

**Required:**

Moore, Michael L., Outslay, E., and McGill, Gary A., US Tax Aspects of Doing Business Abroad, AICPA, Sixth Edition, 2005. Full List Price: \$75 for AICPA members, \$93,75 non-members. Order at Amazon.com or through AICPA. Paperback. AICPA Product #061072. Note: Fifth Edition is an acceptable substitute.

**Optional:**

Doernberg, Richard, International Taxation in a Nutshell, Thomson, 2012. Available in paperback or Kindle® at amazon.com, under \$30.

Fox, Stephen C, Income Tax in the USA, 2012, at for Kindle® at amazon.com, \$9.95 after 10/1.

**COURSE REQUIREMENTS:**

<u>% of Grade</u>	<u>Description</u>
25	Mid-Term Exam
20	Short Paper on Selected Topic
10	Classroom Participation throughout Course
45	Final Exam

**OUTCOMES:** This course will enable the student to:

- a. Understand basic international tax terminology
- b. Differentiate U.S. from foreign source income
- c. Apply tax treaties to common outbound fact patterns
- d. Calculate direct and deemed paid foreign tax credits and limitations thereon
- e. Identify income from separate baskets
- f. Obtain a general understanding of taxation of foreign currency transactions
- g. Calculate Subpart F income
- h. Identify intercompany pricing issues (Section 482)
- i. Plan to use an appropriate entity in structuring international transactions
- j. Use check-the-box rules to improve tax effectiveness of a taxpayer's corporate structure

**COURSE OUTLINE & READING REQUIREMENTS:**

Target            Reading assignments refer to chapters or page numbers in AICPA text. Where  
Date .            the assignment says "lightly scan" or "skim", the reading covers the material in  
more depth than the class and should be read for concepts.

**1) Overview, administrative matters; basics of taxation of US corps. operating overseas**

Advance reading: S. Fox chapter on International Issues (distributed in advance as .pdf file, available as Kindle® book); Doernberg Chapters 1-3  
Follow-up reading: None

**2) Source of income: Generally**

An overview of rules concerning which tax jurisdiction has a right to tax particular types of income (sourcing of income).

Advance reading: None

Follow-up reading: Chapter 5 (pages 67-153); Note: There is a lot of information in this chapter. It will require more than one reading.

IRC §§861-865

Reg. §1.861-2 thru -7

**3) Source of Income: Sale of tangibles**

Income sourcing rules applicable to sale of tangible personal property, including inventory.

Advance reading: Section 863(b) and Reg. 1.863-3

Follow-up reading: Articles in April, 1996 and January, 1997 *Journal of Taxation* by Stephen Fox & John Kennedy on foreign title passage sales

IRC §861-865

Reg. §1.863-3

**4) Taxation of Nonresidents**

Light coverage of withholding taxes imposed on nonresidents on FDAPI. Graduated tax on ECI. This is NOT a focus area for the course, unless modified (page 6).

Readings: none

IRC §§871, 872, 873 881, 882, 884: for reference only

**5) Effect of treaties**

Other effects of tax treaties on U.S. taxation of foreign persons and foreign taxation of U.S. persons. Discussion of U. S. Model Treaty, Permanent Establishments, and Limitation on Benefits provisions in Tax Treaties.

Advance reading: Chapter 6 (pages 155-177). OECD Commentary: Permanent Establishments (old and current versions)

Follow-up reading: UK treaty, Article 26 (Limitation on Benefits)

IRC § 894

**6) Foreign Tax Credit**

Foreign tax credit rules applicable to U.S. persons, with concentration on corporate taxpayers. Includes: creditable taxes, limitations on credits, documentation requirements, redeterminations.

Advance reading: Chapter 7 (pages 209-235); Doernberg, Chapters 7 & 8

IRC §§901, 903, 905, 6511(d)

Reg. §§1.901-1; 1.901-2(a), (e)(1&2), (f), (g); 1.905-4T

**7) Deemed Paid Foreign Tax Credits**

Credit for taxes paid by subsidiaries: basic concepts, with examples.

Advance reading: Chapter 7 (pages 235-247) (CAUTION: 2 baskets in effect)

IRC §§902, 960

Reg. §§1.902-1, 301.7701-2

**8) Limitations on foreign tax credit**

In depth coverage of foreign tax credit limitation, including basket concepts, look thru, application to CFCs, and apportioning taxes between baskets.

Introduction to foreign personal holding company income.

Advance reading: Chapter 7 (pages 247-298)

Follow-up reading:

IRC §§954(c), 904

Reg. §§1.904-0, -2, -4, -5, -6

**9) Allocation and Apportionment of Deductions in Computing FSTI**

Basic concepts and principles of allocating and apportioning deductions in computing foreign source taxable income; allocating and apportioning R&D; identifying and apportioning stewardship expenses.

Advance reading: Re-read Chapter 5 (pages 109-142). Read advance handout, before class

Follow-up reading: Regulations cited below

Reg. §§1.861-8, -14 and -17 (only these three sections)

**10) Allocating and Apportioning Interest Expense**

Computational details, with extensive examples, including consolidated apportionment and apportionment for CFCs.

Advance reading: Lightly scan the regulations below before class

Follow-up reading: Reread the regulations

Reg. §§1.861-9 thru -12

**11/26 MID-TERM EXAMINATION (COVERING TOPICS 1-9)**

**11) Foreign Exchange Overview**

Overview of tax treatment of transactions in nonfunctional currencies; determination of functional currency. Introduction to SFAS 52 & APB 23.

Advance reading: Chapter 18 (pages 639-657; skim pages 657 to 682)

IRC §§985-989

**12) Earnings & Profits**

Calculation of earnings and profits

Advance reading: Chapter 11 (pages 387-405)

Follow-up reading: None

IRC §§312, 964

Reg §1.964-1 (Note: (d) and (e) were repealed after 1986); 1.902-2

**13) CFCs; Foreign Base Company Income**

Overview of Controlled Foreign Corporation rules; definition of CFC; details on Subpart F treatment of passive income (FPHCI), sales income, and services income; overview of remainder of §954.

Advance reading: optional: Doernberg Chapter 10

Follow-up reading: Chapter 8 (pages 299-347). Note that these pages contain a lot of information and will require more than one reading.

IRC §951, 954, 957, 958 (Note: §954(c)(6) expired after 2009)

Reg. §§1.954-1T, -2T, -3, -4,

**14) Investment of Earnings in U.S. Property**

Income inclusions due to acquisition of US property or other actions of CFC.

Advance reading: Chapter 8 (pages 349-367)

Follow-up reading: None

IRC §956

Reg. §§1.956-1, -1T, -2, -2T, -3T

**15) Earnings & Profits Limitations on Subpart F income**

Interaction of E&P rules with Subpart F; limitation on current Subpart F inclusions based on E&P; recovery of amounts excluded due to E&P limitations. Tax years of CFCs.

Advance reading: Chapter 11 (pages 431-450)

Follow-up reading: None

IRC §§952, 898

Reg. §1.952-1(d); Prop. Reg. §1.952-1(e) & (f)

**16) Coordination of Subpart F and Dividends**

Tax effects when earnings previously taxed under Subpart F are distributed as dividends.

Advance reading: Chapter 8 (see above)

Follow-up reading: None

IRC §§959, 961

Reg. §§1.959-1, -2, -3; 1.961-1, -2

**17) International Corporate Transactions of CFCs**

Taxation of shareholders of CFCs on disposition of shares. Taxation of foreign corporations and their U.S. shareholders on formation, reorganization, liquidation, or cross chain sale of shares.

Advance reading: Chapter 15 (pages 507-550). Note: This material is complex.

IRC §§1248, 367, 304, 332, 331, 165(g)

Reg. §§1.1248-1; 1.367(a)-1T, -2T, 1.367(b)-0, -1; 1.332-1, -2, -7

## **1/4 Paper Due (by e-mail)**

### **18) Foreign Currency Issues**

Further coverage of translation of foreign currency transactions, qualified business units, and SFAS 52.

Advance reading: AC 830 (formerly SFAS 52)

Follow-up reading: Chapter 18 (pages 697-701 ONLY)

IRC §§985-989

### **19) Intercompany Pricing: §482**

Introduction to issues in pricing of intercompany transfers of goods, services and intangibles, including penalties.

Advance reading: Chapter 17 (pages 641-645, 648-666, 678-691 ONLY)

Follow-up reading: 581-638

IRC §§482, 6662

Reg. §§1.482-0, -1, -2(a)(1)-(3), -2(b)[excluding examples], -3, -5, -8

## **Final Exam: Target date January 7, 2013**

### **20) Paper and Exam Review & Feedback**

### **21) Choice of Entity and Check the Box: Improving the Results**

Cross border tax planning involving hybrid entities and hybrid instruments.

Advance reading: Case study facts; 2002 JTax article; Chapter 2

Follow-up reading: None

IRC §§ None

Reg. §§301.7701-2, -3

**Optional Modification, if most of class is in public accounting: Replace Topics 18 and 19 with the following:**

### **18) Inbound Issues**

Withholding tax on FDAPI; Effectively Connected Income; 1446 payments by partnerships; FIRPTA issues; Branch Profits Tax

Readings: To be provided by instructor

IRC §§862, 871-884

### **19) International Assignees**

Foreign earned income exclusion; sourcing deferred compensation; inbound planning; travel vs. tax home

Readings: IRS Publications 54, 519