New York University School of Law

International Tax III

Professor Victor Zonana

General Information and Syllabus

REQUIRED MATERIALS

Materials from John P. Steines, Jr., INTERNATIONAL ASPECTS OF U.S. INCOME TAXATION (5TH edition, 2015) to be posted through the semester as and when available from the author

INTERNAL REVENUE CODE (latest edition)

INCOME TAX REGULATIONS (latest edition)

VERY STRONGLY RECOMMENDED

Boris I. Bittker and Lawrence Lokken, FUNDAMENTALS OF INTERNATIONAL TAXATION (Student edition, Thomson Reuters, 2014-15)

OBJECTIVES

The aim of this course is to gain an understanding of yet another set of principal US tax rules that apply to investment and business activity of US persons outside the United States (so-called “outbound taxation”). It is the third of a trilogy of courses that focus on the US tax rules that apply to international activities. The first course (International Tax I) addresses “inbound taxation”, i.e., the rules that apply to foreign persons who conduct activities in the United States. The second course (International Tax II) focuses on the principal US tax rules that apply to investment and business activity of US persons abroad, principally the relief of potential double taxation through the availability of a foreign tax credit, the rules related to allocations and apportionment of deductions, limited aspects of the transfer pricing rules and finally the entity classification rules.

This course addresses the US tax issues that arise when US multinationals decide to conduct their foreign activities through foreign subsidiaries, otherwise referred to as “controlled foreign corporations” (“CFC”). The CFC rules, first enacted more than 50 years ago, have gone through a fair number of changes over the years. At bottom, these rules are designed to prevent what is considered by some an unwarranted deferral of taxation of foreign income earned by US multinationals. They served as a model for many countries that sought to establish similar rules for their own multinationals. Today they reflect, with a great degree of complexity, an admixture of tax policies that are not always reconcilable. Our objective will be to gain a solid understanding of the
fundamental rules, to appreciate the nuances, and to consider the policies reflected in these rules.

We will review initially the basic legal and economic principles that are the foundation of the US international tax rules and focus briefly on possible approaches to structure the tax system to address the taxation of foreign earnings. We thus contrast a tax system such as ours, which provides for deferral of taxation coupled with a limited tax credit for foreign taxes upon repatriation of earnings, with the approach of certain other countries, which provide for partial or total exemption of foreign earnings.

After this brief tour d’horizon, we will plunge into the first principal part of the course – the rules applicable to controlled foreign corporations. We will begin with a consideration of definitional rules that help us define what is a CFC, who is a “US shareholder and the application of the indirect and constructive ownership rules. We then examine the various components of subpart F income and turn to the rules regarding the operation of Subpart F. We will consider briefly the recapture rule under section 1248 (to which we will return in more detail as we go through the second major part of the course).

Complementing the CFC rules in their function as anti-deferral provisions, are the dreaded passive foreign investment company (“PFIC”) rules. These rules apply to any US shareholder of a PFIC and impose severe tax penalties on distributions by PFICs or dispositions of PFIC stock. We wind up this phase of the course with a brief look at the other anti-deferral regimes – passive foreign investment companies, the accumulated earnings tax and personal holding companies.

In the second part of the course, we will focus on international reorganizations – including outbound stock and asset transfers and subsidiary liquidations, inbound subsidiary liquidations and asset transfers, foreign-to-foreign stock and assets transfers, cross-border spin-offs and outbound intangible transfers. This is a very active area of the tax practice these days as many US multinationals have consummated or are considering “re-domiciliation” transactions – commonly known as “corporate inversions.” Here again, we will be dealing with enormously complex rules that will require you to be up to speed with the corporate reorganizations provisions you studied in Corporate Tax I and II.

**APPROACH**

The Syllabus (attached) sets out the assigned readings in the required materials. I have also set out the relevant sections in the Bittker & Lokken (“B&L”) treatise that you will find useful to supplement the materials in Steines. There will be additional required and suggested readings for each of the topics. Some of the additional readings will be focused on tax policy issues – it is important that you grasp early on the foundations of international taxation and the policies that underlie the rules that we will be studying. Other readings will focus on recent legislative, regulatory and judicial developments. The readings will be posted on NYU Classes. You should be checking NYU Classes regularly for additional messages, changes in the syllabus, and questions to consider for the following session of the class, etc.
Many students find it useful to refer to leading treatises or study aids to deepen their understanding of what at times will appear to be most complex statutory provisions. In addition to the strongly recommended Bittker and Lokken treatise, which can be purchased at the Bookstore, you may wish to consult the following (available in the Library):


BUREAU OF NATIONAL AFFAIRS, Tax Portfolios (various authors and dates)


We will follow the traditional problem-method approach for dissecting the relevant materials. It is important to have read and digested the assigned materials and to have prepared answers to the problems before coming to class. Your participation in the discussions is extremely important. I generally call on students in the class to initiate and move along the discussion of a problem. I will be looking for both rigorous technical analysis and demonstration that we have considered the relevant policy issues.

EVALUATION

There will be an open-book, three-hour final examination at the end of the semester. The class meets on Tuesdays from 12:00 to 1:50 p.m. I will be posting office hours shortly and I will be available generally in my office (Room 615 Wilf Hall). I can be reached by e-mail at victor.zonana@nyu.edu and by telephone at (212) 998-6271 or at (917) 833-0035 (cell).
SYLLABUS
(as of January 8, 2015, subject to updating)

January 20  Introduction and Policy Considerations
Bittker & Lokken ("B&L") 69.1

January 27  Definition of Controlled Foreign Corporation
B&L  69.2

  Problem 17

February 3  Subpart F Income -- FPHC Income
B&L  69.4

  Problem 18

February 10 and 24  Subpart F Income – Foreign Base Company Sales Income
B&L  69.5 and 69.13.2

  Problem 20

March 3  Subpart F Income – Foreign Base Company Services Income
B&L  69.6

  Problem 21

March 10 and 24  Operation of Subpart F
B&L  69.9 and 69.10; 69.11.1; 69.12.1 to 69.12.3; 69.12.5 69.13.3 to .5

  Problem 22

March 31  Section 1248
B&L  69.14; 71.2

  Problems 23
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<tr>
<th>Date</th>
<th>Topic</th>
<th>Sections</th>
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<tr>
<td>April 7</td>
<td>Outbound Reorganizations</td>
<td>B&amp;L 71.1 and 71.1A</td>
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<td><strong>Problem 25</strong></td>
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<td>April 14 and 21</td>
<td>Inbound Reorganizations</td>
<td>B&amp;L 71.2</td>
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<td><strong>Problems 26, 27 and 28</strong></td>
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<td>April 28</td>
<td>Other Anti-Deferral Regimes (PFICs)</td>
<td>B&amp;L 70.1 and 70.2</td>
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<td><strong>Problem 24</strong></td>
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<td>May 5</td>
<td>Outbound Intangible Transfers</td>
<td>B&amp;L 71.1.5</td>
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