

READING ASSIGNMENTS PART I

NOTES:

- You should check the course web site (<http://mkirsch.nd.edu/intltax>) periodically for additions/modifications to these assignments
- Unless otherwise stated, you are responsible for preparing (prior to class) all problems in the assigned text of the casebook
- Note that the 2018 Update Memorandum (sent by email) contains significant updates, many of which are attributable to statutory changes in late 2017. Be sure to read the update memorandum when assigned. The Update Memorandum is sometimes referred to as “UM” in the following assignments. Note that while some of the numbered paragraphs in the UM merely supplement the text in the corresponding numbered casebook paragraphs (thereby necessitating the reading of both the casebook text and the UM text), a few UM paragraphs completely replace paragraphs in the casebook. I have attempted to highlight those UM paragraphs that completely replace the corresponding casebook paragraphs, where applicable. Otherwise, assume that the UM paragraphs supplement the corresponding casebook paragraphs, and read both.

I. INTRODUCTION AND OVERVIEW

A-D. Introductory and Policy Issues (Designing a System for Taxing International Transactions; Reach of U.S. Tax Jurisdiction & the Role of International Law; Basic Conceptual and Policy Issues)

Text: pp. 1-36 (including the 2018 Update Memorandum). Note that UM ¶1021 completely replaces casebook ¶1020. In reading UM ¶1100 (which supplements, rather than replaces, the corresponding paragraph in the casebook), don't get bogged down in the details of the 2017 changes. This is meant merely as an introduction as to how the recent changes altered certain policies; we will cover the details of the various new provisions (e.g., dividend participation exemption, GILTI, etc.) later in the semester. More generally, don't get too bogged down in any of the details in this introductory material—it will all make more sense after we have covered more details (accordingly, you might want to go back and re-read this material later in the semester).

E. Some Basic Principles of U.S. International Taxation

Text: 2018 Update Memorandum ¶¶1165a-1165f (these UM paragraphs completely replace casebook pp.36-41)

Code: §§ 2(d); 11(d). Note §§ 871(a) & (b); 881(a); 882(a)

F. Who is Taxed on Worldwide Income?

1. Individuals

a. & b. (Citizens and Resident Aliens)

Text: pp. 41-47

Problems: pp. 47-48 (In Problem 3 on p. 48, skip the final subquestion regarding “when does Mary’s U.S. residency begin and when does it end?”)

Code: §§ 7701(a)(30)(A); 7701(b). Note § 911 (we’ll cover § 911 in greater detail later in the semester).

Regs: §§ 1.1-1; 301.7701(b)-1(b)(1); 301.7701(b)-2(c)(1); 301.7701(b)-2(d)(1); 301.7701(b)-3(a), (b)(1), (c), (d)

c. Certain Former U.S. Citizens and Long-Term Permanent Residents

Text: pp. 49-56 (including 2018 Update Memorandum)

Problem: p. 56 (focus on the application of post-2008 § 877A)

Code: § 877A; 6039G; 7701(a)(50); 7701(b)(10). Note § 2801

2, 3, 4, & 5. U.S. Corporations, Partnerships, Business Entity Classification, Trusts and Estates

Text: pp. 56-60 (skip the Problem on pp. 61)

Code: §§ 7701(a)(4), (a)(5); 7701(a)(30)(B)-(E); 7701(a)(31).

Regs.: Note §§ 301.7701-2(a), (b); -3(a), (b)

G. The Role of Income Tax Treaties in International Taxation

This is intended to be an introduction to tax treaties. We will discuss various substantive provisions of tax treaties in more detail later in the course in connection with the related Code provisions. Accordingly, don’t get bogged down in the substantive details of the Handouts or the “Scope of Treaty Benefits” casebook text.

Text: pp. 62-75 (including 2018 Update Memorandum). On page 62, note that an income tax treaty between the United States and Malta entered into force on Nov. 23, 2010 (after the casebook went to press). An income tax treaty with Chile was signed in February 2010, but the Senate has not yet approved it (similarly, the Senate has held up approval of tax treaty revisions with Hungary and Poland during the past decade, although it recently approved updates to the Japan, Luxembourg, Spain, and Switzerland treaties after long delays). An income tax treaty with Vietnam was signed in July 2015, but it has not yet been sent to the Senate for approval.

Note Appendix A (text of 2006 U.S. Model income tax treaty) and Appendix B (Treasury Dept. technical explanation of 2006 U.S. Model income tax treaty). Also, note that the Treasury Department recently published a new model treaty (the 2016 U.S. Model), available as part of the 2018 Update Memorandum that was emailed to you. We will discuss relevant differences between 2006 and 2016 models later in the course.

2006 Model Treaty: Arts. 2; 3; 4; 7 (para. 1); 11 (para. 1).

Skim Arts. 1 (para. 4). Note Art. 22

Regarding the residence tie-breaker for corporations, compare Art. 4(4) of the 2006 Model Treaty with Art. 4(4) of the 2016 Model Treaty.

Handouts: Excerpt from Michael S. Kirsch, *The Limits of Administrative Guidance in the Interpretation of Tax Treaties* (available on course website); also skim the IRS Tax Treaty Tables, which compare provisions of various treaties (the link is available in the *Handouts* section of the course website—there is no need to print these tables)

Code: §§ 894(a), 7852(d)

Problems: pp. 70-71

II. SOURCE RULES FOR INCOME AND DEDUCTIONS

A. Introduction: The Relevance of Source Rules

Text: pp. 76-77

B. Interest

Text: p. 78

Problem: pp. 128-129 (Problem 1)

Code: §§ 861(a)(1); 862(a)(1); 884(f)(1)(A)

Regs: § 1.861-2(a)(2), (3)

C. Dividends

Text: p. 79

Problem: p. 129 (Problem 2)

Code: §§ 861(a)(2)(A), (B); 861(c); 862(a)(2)

D. Rentals & Royalties

Text: pp. 79-81

Problems: p. 129 (Problems 4 & 5)

Code: §§ 861(a)(4); 862(a)(4). Note § 865(d)(1)

E. Compensation for Personal Services

Text: pp. 81-99 (including 2018 Update Memorandum)

Problem: p. 129 (Problem 3)

Code: §§ 861(a)(3); 862(a)(3)

Regs: § 1.861-4(b)

F. Sale of Real Property

Text: p. 99

Code: §§ 861(a)(5); 862(a)(5). Note § 897(c)(1), (2)

G. Sale of Personal Property

Text: pp. 99-116 (including 2018 Update Memorandum). Note that UM ¶ 2160 completely replaces ¶ 2160 in the casebook (pp. 109-111).

Problems: pp. 129-130 (Problems 6-10 – skip the “Fabulair” trademark/goodwill subquestion at the end of Problem 7)

Code: §§ 861(a)(6); 862(a)(6); 863(b)(2); 865 (skip 865(h))

Regs: § 1.861-7(c); 1.863-3(c)(1)(i)(A) & -3(c)(1)(ii)

H. Special Rules

Text: pp. 116-128 (including 2018 Update Memorandum). Because the 2017 tax law repealed the treatment of alimony as income to the recipient, you can skip casebook ¶¶ 2195 & 2200. Also, in the *Bank of America* case, don't worry about the intricacies of banking practice and transactions; focus instead on the application of §§ 861 and 862 to the facts beginning near the bottom of p. 123.

Problems: pp. 130-131 (Problems 11, 14).

Code: § 861(a)(8). Note §§ 863(c), (d), (e)

Regs: § 1.863-1(d)(1), (2)

I. Source Rules for Deductions

Text: pp. 131-139 (including 2018 Update Memorandum)

Problem: p. 137 (Problem 1 only)

Code: §§ 861(b); 862(b); 863(a)

Regs: Skim § 1.861-8

J. Reflections on Source Rules

Text: pp. 139-140. Note that the OECD currently is engaged in a project (so-called “BEPS 2.0”) that seeks to develop a multilateral approach to address the tax challenges related to the digital economy. They hope to achieve consensus during 2020. I expect that we will briefly discuss this at some point during the semester.