

# INTERNATIONAL TAXATION

Spring 2020

Syllabus

Professor Michael Kirsch

Room 3116

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<https://mkirsch.nd.edu/intltax>

## Course Materials:

Required: Charles Gustafson, Robert Peroni, Richard Pugh, TAXATION OF INTERNATIONAL TRANSACTIONS[:] MATERIALS, TEXT AND PROBLEMS (4<sup>th</sup> ed. West)

2018 Update Memorandum to the Gustafson, Peroni & Pugh casebook (distributed to the class via email). Note that the first part of this Memorandum contains updates to the casebook, while the remainder of the Memorandum contains a reprint of the 2016 U.S. Model Tax Treaty.

INTERNATIONAL INCOME TAXATION: CODE AND REGULATIONS SELECTED SECTIONS, 2019-2020 EDITION (Robert J. Peroni ed.) (Wolters Kluwer CCH)

Additional material will be assigned from time to time, as necessary to supplement casebook, statutory and regulatory materials. To the extent the material lends itself to online publication, it will be posted on the website rather than being handed out in class (See *Web Page* section, below)

Optional: A simple calculator

## Course Description:

With the increased magnitude of cross-border investment and trade, as well as the increased mobility of individuals, the international aspects of the U.S. income tax system have become increasingly important. This course will focus on these international aspects. In particular, it will address the manner in which the United States taxes foreign business entities and foreign individuals on income earned in the United States (so-called “inbound” transactions), and the manner in which the United States taxes U.S. business entities and U.S. individuals on income earned abroad (so-called “outbound” transactions). To a lesser extent, we will discuss the manner in which a foreign country might also tax those same entities or individuals.

The relevant law in this area is governed in the first instance by the Internal Revenue Code of 1986, as amended (the “Code”). These statutory provisions are supplemented by Regulations and other administrative guidance issued by the U.S. Treasury Department and the Internal Revenue Service, as well as case law interpreting the statutes. In addition, international tax treaties, which are negotiated on a bilateral basis between countries, play an important role in this area, and will be examined throughout the course.

In addition to focusing on the statutory and treaty rules, the course will address the complex policy issues that arise in the international tax arena, including recent policy changes reflected in significant amendments to the Code in late 2017. Also, we will discuss the extent to which the current U.S. tax rules adequately address modern developments in the worldwide economy, such as electronic commerce.

### **Reading Assignments**

The reading assignments for the course will be distributed in multiple parts. The first set of reading assignments is available on the course website (See *Web Page* section, below).

The assignments generally will consist of material from the casebook (including problems) and the casebook update memorandum, as well as sections of the Code and Regulations and relevant articles of the U.S. Model Income Tax Treaty (which is representative of the many bilateral tax treaties the United States has entered into). In addition, supplemental material will be assigned from time to time (see *Web Page* section, below). While time limitations may prevent class discussion of some materials, you are responsible for assigned materials in their entirety. Reading assignments are subject to change to reflect current developments or lack of time.

### **Attendance & Preparation**

You are expected to attend each class session having read the assigned materials and having prepared the assigned problems.

Because of the subject matter of the class, I often will use a problem-method approach in the classroom – *i.e.*, the discussion will focus on problems that are in the casebook or that have been distributed previously. In order for you to benefit from this approach, it is important that you take time to read the assigned materials and **prepare answers to the problems prior to class**. In doing so, you should be prepared to discuss your reasoning. As discussed below, I expect that the substantive knowledge and skills you develop by regular advance preparation of answers to the problems will serve as valuable preparation for the final exam (See *Examination* section, below).

I intend to call on students in class on a regular basis, primarily to get the discussion of the problems and questions underway. While I prefer to solicit volunteers, I will also randomly call on students in an attempt to give everyone the opportunity to participate during the semester. I expect that you will be prepared to engage in a meaningful and informed dialogue if called on. In the rare circumstance where you have been unable to prepare, I would appreciate it if you let me know by email before the start of class.

Your grade in the class will be based primarily on a final exam. (See *Examination* section, below). However, I may increase a student's final grade by one step (e.g., from a B- to a B, or from a B+ to an A-) for exceptional class participation, measured by quality, not just quantity. I also may decrease a student's final grade by one step in the event of excessive lack of preparedness or excessive unexcused absences.

### **Office Hours & Contacting Me**

I generally am in my office throughout the work week and am available to meet with students at any time that I am in my office (Room 3116) – feel free to stop by. If you would like to schedule a specific time to meet, please contact me by e-mail.

I also will respond to e-mail questions as time permits. I may forward interesting exchanges with a student to the whole class (in which case I will delete the identifying information of the student submitting the inquiry to me, unless the student indicates it is ok to include his/her name).

Out-of-class exchanges, while welcome, will not be taken into consideration in determining whether a student receives a grade adjustment based on class participation (see *Attendance & Preparation* section, above).

### **Scheduling**

From time to time, circumstances may require me to reschedule class. In the event that a class needs to be rescheduled, I will attempt to give as much advance notice as possible. I will attempt to videotape the make-up class for those students who have conflicts.

### **Examination**

Your grade will be based on a comprehensive final examination. The examination primarily will test your understanding of, and ability to apply, the rules and principles set forth in the assigned materials. In addition, a portion of the examination may raise issues of tax policy. As noted above, I may adjust a student's final grade by one step up or down based on factors discussed in the *Attendance & Preparation* section, above.

The final exam will be “open book.” At a minimum, you definitely should bring your Code and Regulations volume to the exam, as well as a copy of the 2006 U.S. Model Income Tax Treaty (reprinted in Appendix A of the casebook). In addition, you may bring any other non-electronic materials that you desire (e.g., notes, outlines, commercial outlines, etc.). You may not, however, share materials with other students during the exam, and the only electronic devices you may use are a simple calculator and a computer running the Electronic Bluebook software (see below). Keep in mind that the exam, like the course itself, will cover a significant number of issues, and you probably will not have enough time during the exam to look at materials beyond your notes/outline. Moreover, the exam grading will be based solely on the materials in the required reading assignments and/or materials discussed in class (you will not, for example, receive credit for citing Code sections, cases, or other authority from commercial outlines that are not in the required readings and are not discussed in class).

**You will be required to take the exam on a computer running Electronic Bluebook.** If you do not have a laptop, please arrange to borrow one from a friend or from the law school. If you believe that your circumstances prevent you from taking the exam in this manner, you must request an exemption from Peter Horvath.

### **Web Page**

I will maintain a web page for this course, which you are responsible for checking periodically. The address is:

**<http://mkirsch.nd.edu/intltax>**

The web page will contain the reading assignments for the class, as well as administrative information. To the extent they lend themselves to online publication, I will also post supplemental assigned material on the web site. When supplemental assigned material is posted on the web site, I do not intend to hand out hard copies in class, but I will inform you (either in class, in the list of reading assignments, or by email) that the supplemental assigned materials are available on the web page. I may also communicate with you from time to time by email.

I will also periodically post links to various tax-related web sites. I hope that at least some of you will find those links useful and/or interesting. Viewing those sites is purely optional.