

READING & PROBLEM ASSIGNMENTS PART II

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. In this set of reading materials, 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).

III. TAXATION OF FOREIGN PERSONS: U.S. TRADE OR BUSINESS INCOME

A. Introduction

Text: pp. 141-142 (including 2018 Update Memorandum). Review pp. 36-37 (¶¶ 1140-1145)

Code: §§ 871(b); 882(a)

B. U.S. Trade or Business

Text: pp. 142-165 (including 2018 Update Memorandum; however, merely skim the UM update regarding ¶ 3070)

Code: §§ 864(b); 864(c)(5); 875; 871(d)(1)

Regs: §§ 1.864-2(e)

C. Determining Amount to be Taxed

Text: pp. 166-179 (including 2018 Update Memorandum). Merely skim ¶ 3140 in both the casebook and the UM, concerning interest deductions, and skip the related problem in ¶ 3145. In the UM, merely skim the discussion in ¶ 3147, regarding the Qualified Business Income Deduction (we won't worry about the details of this in the international context). In the UM, read the discussion in ¶ 3148, regarding the BEAT, but don't get too bogged down in the details. I will provide an overview of the relevant aspects in class.

Problems: 180-181. Note that the Traditions problem serves as a review of the "U.S. trade or business" and the "effectively connected income" rules (which, in turn, depend on the application of the sourcing rules). Be sure to methodically walk through the requirements in order to answer each part of the problem.

Code: §§ 63(c)(6); 864(c); 865(e)(2); 873; 874(a); 882(b), (c); 864(e)(2)

Regs: § 1.864-6(b)(3)(i). Skim § 1.864-4(c)(1)-(4)

D. Effect of Tax Treaty Provisions

Text: pp. 181-213 (including 2018 Update Memorandum). Skip ¶¶ 3187 & 3188 (*National Westminster Bank* case and related Note) and ¶ 3215 (Rev. Rul. 90-80).

Problems: pp. 220-222

2006 Model Treaty: Article 5; Art. 7; Art. 14; Art. 16 (para. 1); Art. 20. Note that Art. 16 of the 2016 Model Treaty proposes raising the threshold for entertainers/sportsmen from \$20,000 to \$30,000.

E. Branch Profits Tax

Text: pp. 222-225

Problems: p. 225 (skip Problem 3)

Code: §§ 884(a) – (c). Skim remaining subsections of § 884

2006 Model Treaty: Art. 10 (para. 8)

F. Exceptions Based Upon Foreign Policy Considerations

Text: pp. 226-227 (including 2018 Update Memorandum)

Problem: p. 227 (Problem 2 only)

Code: §§ 892, 893

2006 Model Treaty: Note Arts. 19 & 27

IV. FOREIGN PERSONS: NONBUSINESS U.S.-SOURCE INCOME

A. Basic Mechanisms

Text: pp. 228-230 (note on page 230 that, under the 2017 tax legislation, the maximum stated marginal tax rate on an individual's net income is now 37%, and the corporate income tax rate is now 21%). Review pp. 38-39 (§ 1150)

Code: §§ 871(a)(1); 881(a)

B. What is FDAP Income?

Text: pp. 230-234 (skip *Central de Gas de Chihuahua* case and following Note)

Code: Review §§ 871(a)(1); 881(a)

Regs: § 1.1441-2(b)(1)(ii)

C. Untaxed Items of U.S.-Source FDAP Income

Text: pp. 238-242

Code: §§ 871(i); 881(d); 871(h); 881(c) (skip 881(c)(5)); 871(j)

D. Effect of Treaties on Withholding Taxes

Text: pp. 242-259 (including 2018 Update Memorandum)

Problems: p. 259-260 (Problems 1-6 only). In doing the problems, focus on Article 22 of the 2006 Model Treaty in Appendix A of the casebook (you need not apply the modifications referred to in the UM regarding the 2016 model treaty).

2006 Model Treaty: Art. 10 (skip paras. 4 and 7); Art. 11 (skip para. 5); Art. 12 (skip para. 4); Art. 22. Skim Arts. 17 & 18. Note that the 2016 Model Treaty contains a much more detailed Article 22 (Limitation on Benefits) – I will briefly mention the 2016 version of Article 22 in class, but you should focus on Article 22 of the 2006 Model.

U.S.-France Treaty (1994): Art. 12 (paras. 1-4) (available on course website)

2001 U.S.-United Kingdom Treaty (2001): Art. 10 (paras. 1-3) (available on course website)

E. Gains from Sale of Property Not Effectively Connected with U.S. Trade or Business

Text: pp. 260-261

Code: Skim § 871(a)(2)

Regs: § 1.1441-2(b)(2)(i)

2006 Model Treaty: Art. 13 (para. 6)

F. Withholding Mechanism

Text: pp. 262-277 (including 2018 Update Memorandum)

Code: §§ 1441(a), (b), (c)(1), (c)(9)-(11); 1442(a), (b); 1461. Skim §§ 1446; 1471-1473.
Review §§ 861(a)(4); 862(a)(4)

G. Treatment of Gains from U.S. Real Property

Text: pp. 277-287 (including 2018 Update Memorandum). Skip ¶¶ 4210-4230, 4245, 4250.

Problem: pp. 294-295 (Problem 14(a)-(c) only)

Code: §§ 897(a)(1), (b), (c); 1445(a), (b).

2006 Model Treaty: Art. 13 (paras. 1 and 2)

H. Financing the U.S. Enterprise

Text: Skim pp. 287-291 (including 2018 Update Memorandum). We will focus on general issues, not on statutory details.

I. Tax Planning Considerations for Inbound Transactions

Text: pp. 291-292 (skip the Problems)

K. Some Reflections on the Taxation of Foreign Persons

Text: pp. 298-301