

INTERNATIONAL TAXATION

Spring 2021

Syllabus

Professor Michael Kirsch

Room 3116

Course website: mkirsch.nd.edu/intltax

Office Hours Appointments: [Calendly.com/MichaelKirsch](https://calendly.com/MichaelKirsch)

Monday/Thursday – 12:30-1:45pm – Eck Hall 3140

Course Materials:

- Required: 1) Robert Peroni, Richard Pugh, Karen Brown & J. Clifton Fleming, TAXATION OF INTERNATIONAL TRANSACTIONS[:] MATERIALS, TEXT AND PROBLEMS (5th ed. West)

Note: Due to publishing delays, the print version of this new edition will not be available in time for us to use it this semester. Instead, we will use an e-book edition of the new book. I will send an email to students registered in the class regarding access to this new e-book.

- 2) INTERNATIONAL INCOME TAXATION: CODE AND REGULATIONS SELECTED SECTIONS, 2020-2021 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)

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), 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). In preparing for class, it is important that you read and focus on the specific language of the assigned Code and Regulation sections—the casebook summary alone sometimes will not provide you with enough information to answer the assigned problems. Reading assignments are subject to change to reflect current developments or time constraints.

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 *Grades & 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 a broad range of 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 at least 15 minutes before the start of class.

Health & Safety Protocols

Facemasks that completely cover your nose and mouth must be worn at all times in the classroom (both by you and by me). Also, as stated on the University's [here.nd.edu](http://www.here.nd.edu) website:

[C]ompliance with [health and safety] protocols is an expectation for everyone enrolled in this course. If a student refuses to comply with the University's health and safety protocols, the student must leave the classroom and will earn an unexcused absence for the class period and any associated assignments/assessments for the day. Persistent deviation from expected health and safety guidelines may be considered a violation of the University's "Standards of Conduct," as articulated in *du Lac: A Guide for Student Life*, and will be referred accordingly.

Seat Assignments

In order to facilitate contact tracing if necessary, each student is required to sit in their assigned seat. Prior to the first class, my Administrative Assistant Alicia Cummins will provide each of you with access to a Google Sheet via Sakai in which you can pick the seat that will be assigned to you for the semester. Your seat location recorded in the Google Sheet as of the end of the add/drop period will be your permanent assigned seat during the semester.

Illness and Zoom Procedures

If you have a documented health condition that places you at high risk according to CDC COVID-19 guidelines, or if you have other special circumstances that you believe necessitate an accommodation, you should make an accommodation request through the University's Sara Bea Accessibility Services office.

For the significant majority of you without a formal accommodation, while the University's objective is for students to be on campus and present in person, I understand that there might be days when you are not able to attend in-person due to health-related issues. This situation is most likely to occur if the online daily health check instructs you to not come to campus that day. If the online system instructs you to not come to campus, or if you otherwise reasonably believe that you are sick or present a risk of infecting others, you should stay home and not come to the classroom that day. Under the circumstances, it is better to err on the side of caution.

Except in the case of a formal accommodation from Sara Bea Accessibility Services that provides otherwise, if on any day you cannot come to class due to the above-mentioned health-related issues, you should do the following:

- 1) Notify me via email (mkirsch@nd.edu) at least 15 minutes prior to the start of class that you are not attending class in person that day due to health-related issues. If your illness prevents you from meeting this time deadline, please notify me as soon as you are feeling well enough to do so.

- 2) Unless your illness prevents you from doing so, I expect that you will join that day's class remotely in real-time via Zoom. There will be a permanent Zoom link that will remain the same for the entire semester (unless security concerns require me to change it). Rather than post that link in this syllabus (which is viewable on the course website by the public), I will send an email to the class prior to the start of the semester containing that Zoom link. **Please save that email, as it contains the Zoom link you will need if your health circumstances require you to join remotely on a particular day.** If a health-related issue prevents you from attending in person, you still might be called on when you join remotely via Zoom. However, if you are not feeling well enough to participate that day, please indicate that in the notification email you send me before class (in which case you can still join via Zoom if you are able, but I will not call on you).

- 3) As a general matter, I do not plan to make class recordings available to students for asynchronous viewing. Instead, as discussed above, I expect students who are unable to come to class due to a health-related issue to notify me in advance and join the class synchronously (*i.e.*, in real-time) via Zoom. However, if your illness prevents you from joining synchronously via Zoom on a particular day, I anticipate allowing students to have access to a class recording on a case-by-case basis. If your illness prevents you from participating synchronously via Zoom on a particular day, please inform me as soon as you are able (preferably in the pre-class email described in step 1, above) and I will arrange for you to access relevant recordings. If your illness lasts for an extended period of time, we can coordinate through Christine Holst-Haley regarding appropriate options.

My principal objective is to facilitate your health and safety along with the health and safety of your classmates and the rest of the Law School community. I plan to be flexible in administering these issues, but reserve the right to modify them (whether with respect to the entire class or a particular student) if I believe that my flexibility is being taken advantage of in a manner not intended.

In the event that I am unable to come to campus to teach on any specific day (whether due to my daily health screening or otherwise), I will attempt to email the class as soon as I can. In that email, I will inform you of how we will proceed that day. If possible, I will teach remotely from home via Zoom (in which case you can either participate by reporting to the classroom or by joining via Zoom from outside of the Law School building). If teaching via Zoom is not possible, the email will inform you of my plans,

which may involve the use of asynchronous recordings in place of that day's class. In the (unlikely, I hope) event that I become ill and am unable to teach for an extended period of time, an alternate instructor might teach a portion of the class. If in-person classes are suspended by the University or Law School, I intend to continue teaching the course via synchronous Zoom sessions at our regularly scheduled times, although I might substitute asynchronous recordings (or other approaches) for some of our sessions.

Restrictions on Use of Video and Recordings

This course is a community built on trust; in order to create the most effective learning experience, our interactions, discussions, and course activities must remain private and free from external intrusion. As members of this course community, we have obligations to each other to preserve privacy and cultivate inquiry. We are also obliged to respect the individual dignity of all and to refrain from actions that diminish others' ability to learn. Please note the following course policies, adapted from the University's here.nd.edu website:

Using learning materials

Course materials (videos, etc.) are for use in this course only. You may not upload them to external sites, share with students outside of this course, or post them for public commentary without my written permission.

Recordings

Although you are allowed to synchronously participate in the course via Zoom under circumstances outlined in this syllabus, you are not authorized or permitted to record any class session in any format, whether you are attending live in person or participating via Zoom. As noted above, under limited circumstances I may arrange for the IT department to make recordings to be used by authorized students for a limited period of time. The University (as well as my policy for this course) strictly prohibits anyone from duplicating, downloading, or sharing class recordings with anyone outside of this course, for any reason.

Office Hours & Contacting Me

Due to COVID-19 restrictions, I will not be able to utilize my regular open door policy this semester. Instead, all office hours must be scheduled in advance. While virtual meetings via Zoom are preferred, I can also meet with you in-person in my office. For in-person office hours, only one student is allowed in my office at a time, and we will both be wearing facemasks. In contrast, multiple students can participate in a Zoom meeting if desired (the wearing of facemasks in a Zoom meeting will be dictated by the safety requirements in the location from which you join the Zoom meeting).

In order to schedule a meeting with me, you should use the Calendly website at [Calendly.com/michaelkirsch](https://calendly.com/michaelkirsch). At that site you will have the choice between scheduling an in-person meeting or a virtual Zoom meeting. Remember, no drop-in office meetings are allowed (and no lining up in the office suite is allowed).

The Calendly website will allow you to schedule a meeting during any open time on my calendar during the following time periods:

Mondays, 2:45-4:00pm (in-person or Zoom)

Tuesdays, 2:00-3:30 (Zoom only)

Wednesdays, 2:00-3:30 (Zoom only)

These days and times are subject to change. If none of these times fits with your schedule, please email me and we can arrange a different time.

I will respond to e-mail questions that lend themselves to brief answers as time permits. For questions that require more than a brief answer, it is best that you schedule a meeting via Calendly.

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 *Grades & Examination* section, below).

Grades & Examination

Your grade will be based on a comprehensive final examination, which will test your understanding of, and ability to apply, the rules and principles set forth in the assigned materials. However, on rare occasion 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 (based primarily on quality, not quantity). I also may decrease a student's final grade by one step in the event of excessive lack of preparedness or for unexcused absences.

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 2016 U.S. Model Income Tax Treaty (available in Appendix A of the casebook). I anticipate that there will not be restrictions on the type of materials you may access during the exam, such as notes, outlines, commercial outlines, etc. 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 (or other computer in the event of remote exam administration), 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 the law school's student services office. Exemptions will be granted only in rare circumstances.

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.