

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

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

A. Introduction

Text: pp. 159-160; review pp. 38-40 (¶¶ 1140-1145)

Code: §§ 871(b); 882(a)

B. U.S. Trade or Business

Text: pp. 160-188 (skip ¶¶ 3070 & 3075). Merely skim the extensive discussion of OECD proposals regarding electronic commerce in ¶ 3092.

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

Regs: §§ 1.864-2(e)

C. Determining Amount to be Taxed

Text: pp. 188-203. Merely skim the paragraph on pp. 199-200 (relating to hybrids). Merely skim ¶ 3140 concerning interest deductions, and skip the related problem in ¶ 3145. 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).

Problems: The “Traditions” problem that I will send you via email (from the 4th edition of the casebook). 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. Omit the problems on pp. 203-205 of the eBook version of the casebook.

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. 205-243. Skip ¶¶ 3187 & 3188 (*National Westminster Bank* case and related Note) and ¶ 3205 (Rev. Rul. 84-17) and ¶ 3215 (Rev. Rul. 90-80).

Problems: pp. 247-248 (some of these problems relate back to the “Traditions” problem that I emailed to you in the prior section). Omit the problems on pp. 220-221

2016 Model Treaty: Article 5; Art. 7; Art. 14; Art. 16 (para. 1); Art. 20.

E. Branch Profits Tax

Text: pp. 248-251

Problems: p. 252 (skip Problem 3)

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

2016 Model Treaty: Art. 10 (para. 8)

F. Exceptions Based Upon Foreign Policy Considerations

Text: pp. 252-254

Problem: p. 254 (Problem 2 only)

Code: §§ 892, 893

2016 Model Treaty: Note Arts. 19 & 27

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

A. Basic Mechanisms

Text: pp. 255-257. Review pp. 40-41 (¶ 1150)

Code: §§ 871(a)(1); 881(a)

B. What is FDAP Income?

Text: pp. 257-262 (skip *Central de Gas de Chihuahua* case and following Problems and Note)

Problems: p. 259

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. 267-271 (Omit the Problems)

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

D. Effect of Treaties on Withholding Taxes

Text: pp. 271-290 (merely skim ¶ 4095 (Anti-Conduit Regulations) and ¶ 4102 (Treaties and Hybrid Entities))

Problems: p. 286-287 (Problems 1-6 only). In doing the problems, focus on Article 22 (especially paras. 1 & 2) of the 2016 Model. Omit the Problems on pp. 284-285.

2016 Model Treaty: Art. 10 (skip paras. 3, 4, 6 and 9); Art. 11 (focus on paras. 1, 4, 5, and 6; merely skim para. 2, and skip paras. 3, 7, and 8); Art. 12 (focus on paras. 1, 4, 5 and 6; ; merely skim para. 2, and skip paras. 3 and 7); Art. 22 (focus on paras. 1, 2 and 6 and relevant definitions in 7; merely skim the rest). Skim Arts. 17 & 18.

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. 290-291

Code: Skim § 871(a)(2)

Regs: § 1.1441-2(b)(2)(i)

2016 Model Treaty: Art. 13 (para. 6)

F. Withholding Mechanism

Text: pp. 291-308

Problems: Omit the problems in this unit

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. 309-320. Skip ¶¶ 4210-4230, 4245, 4250.

Problem: pp. 313-314 (Problem 1(a)-(c) only). Omit the problem in ¶ 4203.

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

2016 Model Treaty: Art. 13 (paras. 1 and 2)

H. Earning Stripping

Text: Skim pp. 320-327 (you need not focus on the statutory details, and can omit the Problem). I will summarize the BEAT in class.

I. Tax Planning Considerations for Inbound Transactions

Text: pp. 327-328 (skip the Problems)

K. Some Reflections on the Taxation of Foreign Persons

Text: pp. 331-334