

COURSE ASSIGNMENTS PART III

NOTES:

- You should check the course web site (<http://mkirsch.nd.edu/intltax>) periodically for additions/modifications to these assignments
- You are responsible for preparing (prior to class) all assigned problems in the casebook

V. INTRODUCTION TO OUTBOUND INTERNATIONAL TAXATION: WORLDWIDE TAXATION AND THE U.S. METHODS FOR MITIGATING DOUBLE TAXATION OF U.S. PERSONS

A. Introduction

Text: p. 335

B. The Multiple Outbound Taxing Regimes

Text: pp. 335-341. Do not get too bogged down in the details of the various regimes at this point. We will discuss most of them in more detail over the rest of the semester, although we won't be spending much time on the "Transition Tax" (I will just briefly summarize it).

Problem: Omit the problem on pp. 341-342

C. What Remains of the Deferral Privilege?

Text: p. 342

D. Whether to Use a Branch or a Foreign Subsidiary to Conduct Business Abroad

Text: pp. 342-345

E. How International Double Taxation Arises and How It Can be Mitigated

Text: pp. 345-348 (some of this is a review of material we discussed at the beginning of the semester)

F. A U.S. Foray Into Territorial Taxation: The Section 245A Dividend Deduction Exemption System

Text: pp. 349-350. Because we will only be discussing this provision at a general level, you can stop reading on p. 350 when you get to the Example.

Code: § 245A(a), (b), (c)(1) & (d)

G. Introduction to the Foreign Tax Credit

Text: pp. 354-356

H. Taxpayers that May Use Foreign Tax Credits

Text: pp. 356-359 (you may omit the “Earnings through a partnership or S corporation” and “Earnings through a ‘hybrid entity’” paragraphs)

I. Creditable Taxes (Sections 901 and 903)

1. Introduction

Text: pp. 359-360

Code: § 901(a)-(b)

Reg.: §§ 1.901-2(a)(1), -2(a)(2)(i)

2. Creditability of Subnational Foreign Taxes

Text: pp. 360-361

3. When is a Foreign Levy a Tax?

Text: pp. 361-362 (only read the “Introduction: Creditable Tax or Royalty?” paragraphs)

4. Is the “Predominant Character” of the Foreign Tax that of an “Income Tax in the U.S. Sense”

Text: pp. 363-365 (¶5060 only; omit the Problem). Note that the casebook refers to proposed regulations. These proposed regulations are intended to create a more objective standard regarding the “net gain” requirement, reversing the more subjective approach reflected in the *PPL Corp.* case. These proposed regulations were issued in November 2020, after the statute/regulations volume was printed, so they do not appear in that volume. They have not yet been finalized, so I might only briefly mention them in class to put them in context.

Reg.: §§ 1.901-2(a)(3); 1.901-2(b)(1), (2)(i), (3)(i), (4)(i); 1.901-2(d)

5. Foreign Taxes “In Lieu Of” Income Taxes (Section 903)

Text: p. 368 (omit the Problem)

Code: § 903

Reg.: §§ 1.903-1(a), (b)(1)

6. Soak-Up Taxes

Text: pp. 369-370

Reg.: §§ 1.901-2(a)(3)(ii); 1.901-2(c)(1), (2) (Example 1); 1.903-1(b)(2)

7. Gross Income Taxes and Withholding Taxes

Text: pp. 370-372 (skip Revenue Ruling in ¶ 5100)

8. Foreign Taxes Must be Actually Paid and Must be a Compulsory Payment

Text: pp. 373-375

Problems; pp. 387-388 (Problems 13, 14)

Reg.: §§ 1.901-2(a)(2)(i); 1.901-2(e)(5)(i)

10. Denial of Foreign Tax Credits for International Political Policy Purposes

Text: pp. 384-385 (only ¶5125) (we probably won't discuss this during classtime)

Code: Skim § 901(j)

L. Introduction to Foreign Tax Credit Limitations

Text: pp. 392-406 (skip ¶¶ 5250 & 5265)

Problems: pp. 404; 406 (on p. 406, do Problem 1 only)

Code: §§ 904(a), (c), (d)(1), (j). Skim §§ 904(b), (d)(2)-(5)

N. Tax Exemptions for Certain U.S. Taxpayers Living and Working Abroad (Section 911)

Text: pp. 429–440; 449–450 (skip ¶ 5360, the *Jones* case). Note that the explanation of the housing cost amount calculation at the bottom of p. 437 and top of p. 438 is incorrect. The 30% cap in §911(c)(2)(A) is a limitation on the amount of housing expenses that can be considered in calculating the housing cost amount, not a cap on the housing cost amount itself. Using the non-inflation adjusted numbers in the casebook, if the employer paid \$40,000 for the employee’s housing expenses, the maximum housing expenses that can be used in the §911(c)(1)(A) formula are \$24,000 (i.e., the lesser of the \$40,000 actual expenses or 30% X \$80,000). This amount is reduced by the \$12,800 base amount in §911(c)(1)(B) (i.e., 16% X \$80,000), resulting in an excludible housing cost amount of \$11,200.

Problem: pp. 450–451 (Problem 1 only)

Code: § 911

Reg.: §§ 1.911-2; 1.911-3(a)-(c); 1.911-4(a), (b)(1)-(4), (d), (e)

O. The Role of Tax Treaties in Mitigating the Double Taxation of U.S. Persons

Text: pp. 453–455 (skip the *Filler* case and the note and problem thereafter)

Model Treaty: Art. 1 (para. 4, 5). Skim Art. 23

VI. THE CONTROLLED FOREIGN CORPORATION PROVISIONS AND OTHER ANTI-DEFERRAL REGIMES

A. Introduction and Overview of the Anti-Deferral Regimes

Text: pp. 461–471

B. Overview of Controlled Foreign Corporation Provisions

Text: pp. 472–482 (skip ¶6020).

Code: Skim §§ 250(a)(1)(B); 951(a), (b); 951A; 957(a)

C. Definition of Controlled Foreign Corporation

1. Application of Indirect and Constructive Ownership Rules Under Section 958

Text: pp. 482–486 (skip Problems). You can merely skim this material, as we will not be covering these rules in detail.

Code: §§ 957(a), (c); 958(b); 318(a).

D. Some Mechanics of Income Inclusion Under Subpart F

1. Determination of U.S. Shareholder’s Pro Rata Share

Text: pp. 491–492 (stop at the end of the carryover paragraph on p. 492). We will only address this topic at a basic level, focusing on a (relatively) simple inclusion.

Problems: none

Code: §§ 250(a)(1)(B); 951(a); 959(a); 960(a); 961(a)

2. Exclusion of U.S. Trade or Business Income

Text: pp. 500–501

Code: § 952(b)

E. Definition of Foreign Base Company Income

Text: pp. 503-504 (this brief reading provides a good summary of the relationship between Subpart F income and GILTI tested income; we will see more about GILTI below)

1. Foreign Personal Holding Company Income

Text: pp. 504–506 (stop after the first two lines on p. 506). Note “Definition of Subpart F Income” diagram on p. 526.

Problems: p. 544 (Problems 1(a) & (b))

Code: §§ 954(a); 954(c)(1)(A), (c)(1)(B)(i), (c)(2)(A), (c)(3); 954(d)(3). Note § 954(h)

2. Foreign Base Company Sales Income

Text: pp. 519–522

Problems: p. 545 (Problems 1(f), (g) & (h))

Code: §§ 954(d)(1), (3)

3. Foreign Base Company Services Income

Text: pp. 522–524

Problems: p. 546 (Problems 1(o) & (p))

Code: § 954(e); 954(d)(3)

5. Definition of “Related Person” (Section 954(d)(3))

Text: p. 525

Code: § 954(d)(3)

6. Special Rules

a. De Minimis and Full-Inclusion Rules

Text: pp. 526–528

Problems: p. 546 (Problems 1(q) & (r))

Code: § 954(b)(3)

F. Section 951A: Current Inclusions of Global Intangible Low-Taxed Income (GILTI)

Text: pp. 547-555 (I will summarize the key components of the GILTI calculation in class)

G. Indirect Credit (Section 960)

Text: p. 555 (only read the three paragraphs on this page; I will give a very brief summary of the purpose of this provision in class, but we will not address the details)

Code: Note § 960

I. Previously Taxed Earnings and Profits (“PTEP”) and Ordering Rules

Text: p. 565 (only read the first paragraph on this page; I will give a very brief summary of the purpose of this provision in class, but we will not address the details)

Code: Note § 959(a)

K. Gains from Certain Sales or Exchanges of Stock in Foreign Corporations (Section 1248)

Text: pp. 570-571 (only read through the first full paragraph on p. 571; I will give a very brief summary of the purpose of this provision in class, but we will not address the details)

Code: Note § 1248

[THE FOLLOWING ASSIGNMENTS MIGHT BE SHORTENED, OR OMITTED, DEPENDING ON TIME:]

N. Passive Foreign Investment Company Provisions

1. Introduction

Text: pp. 576–578

2. Definition of PFIC

Text: pp. 578–579 (¶ 6235 only); 583–584 (¶ 6260 only)

Code: §§ 1297(a), (b), (f); 1298(a)

3. Tax and Interest Charge on Disposition of PFIC Stock or on Receipt of “Excess Distributions”

Text: p. 584 (only read first paragraph of ¶ 6265)

Code: Note §§ 1291(a)(1), (a)(2)

4. Treatment of “Qualified Electing Funds”

Text: pp. 586–588

Code: Note §§ 1293; 1294(a)

6. Mark-to-Market Election for Marketable PFIC Stock

Text: pp. 589–591

Code: Note § 1296

XI. INTERNATIONAL SALE OF GOODS

New Export Tax Incentive: Section 250 Deduction for “Foreign Derived Intangible Income” (FDII)

Text: pp. 898-903 (read the first three paragraphs, and merely skim the remaining details; I will provide a high-level overview of the calculation in class if time permits)

Code: Skim § 250