

Syllabus

INTERNATIONAL TAXATION – Spring 2024

Tuesday/Thursday • 9:30am-10:45pm

Course website: mkirsch.nd.edu/intltax

Professor Michael Kirsch

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

Course Materials:

- Required: 1) Robert Peroni, Karen Brown & J. Clifton Fleming, TAXATION OF INTERNATIONAL TRANSACTIONS[:] MATERIALS, TEXT AND PROBLEMS (5th ed. West American Casebook Series, 2021)
- 2) INTERNATIONAL INCOME TAXATION: CODE AND REGULATIONS SELECTED SECTIONS, 2023-2024 EDITION (Robert J. Peron et al., eds.) (Wolters Kluwer CCH)

Additional material may 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, as well as opportunities that exist for taxpayers to minimize their worldwide tax exposure.

The relevant U.S. 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 U.S. statutory and treaty rules, the course will address the complex policy issues that arise in the international tax arena, including policy changes reflected in significant amendments to the Code in late 2017. Moreover, we will discuss significant recent developments at the international level involving cooperation among a broad range of countries to update the century-old international tax system to take into account the globalized and digitized 21st century economy.

Learning Objectives

By the end of the semester, students will have an understanding of:

- The policy complications that arise in creating and enforcing the income tax in a cross-border setting, including questions of taxing jurisdiction, source vs. residence taxation, competing views of neutrality (capital import vs capital export neutrality), and methods for mitigating double-taxation
- The principal U.S. tax rules for determining the “source” of income
- The principal U.S. rules for taxing foreign business entities and foreign individuals on income earned in the United States (so-called “inbound” transactions)
- The principal U.S. rules for taxing U.S. business entities and U.S. individuals on income earned abroad (so-called “outbound” transactions)
- The ways in which bilateral income tax treaties alter the “inbound” tax rules (and, to a lesser extent, the “outbound” tax rules)
- The additional policy complications that arise in attempting to apply traditional international tax principles, which were developed in the early 20th century, to the modern globalized and digitalized economy, and recent efforts at the international level to address these complications

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 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

We will follow University health and safety protocols. Of course, even if not required, you are free to wear a mask if you prefer to for health and safety purposes. The health and safety protocols (including mask requirements) for the class are subject to change during the semester as circumstances warrant.

Office Hours & Contacting Me

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. The Calendly website will allow you to schedule a meeting during any open time on my calendar during the following time periods (if these times don't fit your schedule, feel free to email me and we can arrange a different time):

Wednesday: 2:30pm-4:00pm
Thursday: 12:00pm-1:00pm

I will respond to e-mail questions that lend themselves to brief answers and as time permits.

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* section, below).

Grades

Your grade in the class will be based on a final exam. (See *Final Exam* section, below). 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 unexcused absences.

Final Exam

The final exam will be comprehensive and primarily will test your understanding of, and ability to apply, the rules and principles set forth in the assigned materials and in class discussion. In addition, a relatively minor part of the examination may raise issues of tax policy discussed in class. As noted above, I may adjust a student's final grade by one step up or down based on factors discussed in the *Grades* 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 2016 U.S. Model Income Tax Treaty (available 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 stand-alone calculator and a computer running the official law school exam software (see below). I anticipate that the law school exam software will be in "blocked" format, meaning you will not be able to access the internet or any files on your computer during the exam. **Accordingly, I advise against relying on electronic copies of the casebook or statutory volume during the semester as you will not be able to access them during the exam.** 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. Please note that NDLS students taking this course in the past have not been authorized to retain any copies of past exams, **and current students are not allowed to be in possession of any of my past International Tax exams during the semester** (with the exception of an old exam in the Library's exam bank website).

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 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:

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.

I will communicate with you periodically by email, so you are responsible for periodically checking your Notre Dame email account.

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.