

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
- You are responsible for preparing (prior to class) all assigned problems in the casebook

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

A. Introduction

Text: pp. 163-164; review pp. 39-41 (¶¶ 1140-1145)

Code: §§ 871(b); 882(a)

B. U.S. Trade or Business

Text: pp. 164-193 (skip ¶¶ 3015, 3070 & 3075). Merely skim the extensive discussion of OECD proposals regarding electronic commerce in ¶ 3092. I will summarize relevant aspects of these proposals when we get to the treaty discussion later.

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

Regs: §§ 1.864-2(e)

C. Determining Amount to be Taxed

Text: pp. 193-208. In ¶ 3120, the only fact pattern we will focus on involves foreign source interest in the limited circumstances described at the top of p. 200. You may skip the paragraph on pp. 204-205 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: pp. 209-210 (Problems 1 and 2 only). Skip the remaining problems on pp. 210-212.

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. 212-254. Skip ¶¶ 3187 & 3188 (*National Westminster Bank* case and related Note) and ¶ 3205 (Rev. Rul. 84-17) and ¶ 3215 (Rev. Rul. 90-80). Review ¶ 3092 on pp. 189-192 (regarding recent OECD developments with electronic commerce, which I will briefly summarize in class)

Problems: pp. 254-255 (skip Problem 3). Omit the problems on pp. 227-228

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

E. Branch Profits Tax

Text: pp. 255-258

Problems: p. 259 (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. 259-261

Problem: p. 261 (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. 263-265. Review pp. 41-42 (§ 1150)

Code: §§ 871(a)(1); 881(a)

B. What is FDAP Income?

Text: pp. 265-269 (skip *Central de Gas de Chihuahua* case and following Problems and Note)

Problems: p. 267 (skip Problem 4)

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. 275-279 (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. 280-284, 293-294 (§ 4090). Skip pp. 284-293 (§§ 4070-4085). Merely skim § 4095 (Anti-Conduit Regulations) and § 4105 (Treaties and Hybrid Entities)

Problems: p. 296 (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. 281-282, 294.

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. 300-301

Code: Skim § 871(a)(2)

Regs: § 1.1441-2(b)(2)(i)

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

F. Withholding Mechanism

Text: pp. 301-319 (skip ¶ 4175 regarding partnerships)

Problems: none

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. 320-332. Skip ¶¶ 4210-4230, 4245, 4250.

Problem: p. 332 (Problem 1(a)-(c) only). Omit the remaining problems on pp. 332-333 and the problem on pp. 322-323.

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

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

H. Earning Stripping/Base Erosion and Anti-Abuse Tax (“BEAT”)

Text: Skim pp. 333-340 (you need not focus on the statutory details, and can omit the Problem). Our focus will be the basic contours of the BEAT, which I will summarize in class.

I. Tax Planning Considerations for Inbound Transactions

Text: p. 341 (skip the Problems in ¶ 4280)

K. Some Reflections on the Taxation of Foreign Persons

Text: pp. 344-348 (skip ¶ 4300)