# San José State UniversityLucas Graduate SchoolBUS 225WIntroduction to International TaxationLate Spring 2016

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| Instructor:  | *William Skinner* |
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| Office Hours: | *20 minutes before and after class + by appointment. Also, please feel free to email me with any questions at any time.* |
| Class Days/Time: | *Tuesdays 6 pm – 10 pm, Plus One Saturday 4/30/2016 from 9 am – 5:30 pm**Lucas Business Complex* *2933 Bunker Hill Suite 120**Santa Clara CA 95054* |
| Prerequisite: | *BUS 223A* |
| *Co-requisite:* | *BUS 223G* |

## Course Description

Introduction to the structure, basic rules, and policies of U.S. federal income taxation of foreign persons and cross-border taxation. Topics include residency, source of income, U.S. taxation of foreign persons, tax treaties, transfer pricing, the foreign tax credit, and controlled foreign corporations.

## Student Learning Objectives

1. Understand the statutory framework of the international provisions of the Internal Revenue Code.
2. Be able to identify the primary federal income rules that apply to international transactions of domestic taxpayers and how the U.S. tax rules avoid double taxation of foreign income.
3. Understand deferral and the treatment of foreign subsidiaries of a US corporation.
4. Apply transfer pricing concepts and source of income rules to determine the jurisdiction where income is deemed to arise for US international tax purposes.
5. Understand the U.S. tax reporting obligations of foreign persons with income or activities within the United States.
6. Be able to explain and apply common federal income tax rules such as residency, sourcing, foreign tax credit, permanent establishment, and transfer pricing.
7. Be able to relate key rules and concepts to U.S. tax compliance obligations associated with international operations.
8. Be familiar with proposals for changing the U.S. international tax rules.

## Required Texts/Readings

### Textbooks

* BNAPortfolio 900-2nd: *Foundations of U.S. International Taxation* (available on the King Library database for MST students) [hereinafter, “**BNA – Foundations**”]
* Richard L. Doernberg, “International Taxation in a Nutshell” (West 10th Ed. 2016) [hereinafter, “**Nutshell**”] (Alternatively, the Ninth Edition, Year 2012) might also be used.
* Optional Additional Text for your convenience - International Income Taxation: Code and Regulations Selected Sections (Editors Pugh, Peroni and Gustafson – CCH / Wolters Kluwer) – Older editions from 2009-2010 forward are acceptable.

### Other Readings

* Primary Sources noted on the syllabus: the Internal Revenue Code, the Treasury Regulations, case law and administrative rulings (available from RIA Checkpoint and CCH, among other sources).

Note: I have generally moved relevant citations to the Code and Regulations to the preparation assignments, so that you can look these answers up in the context of specific problems / fact patterns.

* Slides / Lecture Outlines to be distributed to enrolled students via email and Canvas
* Selected other BNA Portfolio assignments and secondary sources (see syllabus below)
* **Selected IRS Forms and Publications**
* **Training manuals published by the IRS International Practice Units [Hereafter – “IPU Manuals”], available at (**<http://www.irs.gov/Businesses/Corporations/International-Practice-Units>

## ASSIGNMENTS AND GRADING POLICY

The course will be graded on a curve, with grades following the pattern of 90% or higher for an A, 80% or higher for a B, 70% or higher for a C, etc. Plus and minus grades will be used for scores within two percentage points of the grade breakpoint.

Homework assignments 75

In-class presentation (group) 25

In-class participation (speaking up

during class, providing good contributions

on preparation assignments) 10

Final exam 90

 **Total 200**

**Graded homework assignments are listed on the syllabus column (Graded Homework) below.** There will be three assignments (25 points each) that consist of problems that test understanding of prior classes’ material. These homework assignments will be done outside of class and you may consult with other students if desired; however, each student is responsible for writing and handing in his or her own assignment written in his or her own words. All homework must be turned in when due for full credit.

In addition, as preparation for each lecture, you will be assigned a series of problems to work through that are designed to help you understand the material for that class. **The answers to these problems will be important to understanding the material and preparing adequately for each class.** You are expected to work through these problems as part of preparing for that night’s class and read the Code, regulation and other authorities cited as relevant to each of these problems. We will also discuss some these problems together in groups as part of the class. **However, the answers to the preparation questions will not be graded.**

**The final exam will be an in-class, modified closed-book Exam**. For the exam, you can bring copies of Code and Regulations Book and a three-page (single sided) outline that you have prepared yourself. No other materials or internet access during the final exam will be permitted.

On all problems (Exam and homework), please show your work for possible partial credit.

For the group project, a group of 2 -3 students is expected to prepare a Power-point presentation (no more than 8-10 slides) and present for approximately 15 minutes. The group presentation will be graded on quality of the Power-point materials / handout, quality of the analysis, and oral presentation skills. **Please submit your in-class presentation case choice and members of your group by the end of class No. 5 (May 3, 2016).**

## University Policies

### Academic integrity

Students should know the University’s Academic Integrity Policy that is available at
<http://www.sa.sjsu.edu/download/judicial_affairs/Academic_Integrity_Policy_S07-2.pdf>
Your own commitment to learning, as evidenced by your enrollment at San Jose State University and the University’s integrity policy, require you to be honest in all your academic course work. Faculty members are required to report all infractions to the office of Student Conduct and Ethical Development. The website for Student Conduct and Ethical Development is available at
<http://www.sa.sjsu.edu/judicial_affairs/index.html>

Instances of academic dishonesty will not be tolerated. Cheating on exams or plagiarism (presenting the work of another as your own, or the use of another person’s ideas without giving proper credit) will result in a failing grade and sanctions by the University. For this class, all assignments are to be completed by the individual student unless otherwise specified. If you would like to include in your assignment any material you have submitted, or plan to submit for another class, please note that SJSU’s Academic Policy F06-1 requires approval of instructors.

### Campus Policy in Compliance with the American Disabilities Act

If you need course adaptations or accommodations because of a disability, or if you need to make special arrangements in case the building must be evacuated, please make an appointment with me as soon as possible, or see me during office hours. Presidential Directive 97-03 requires that students with disabilities requesting accommodations must register with the DRC (Disability Resource Center) to establish a record of their disability.

**MST Program Goals***(Not all program learning goals are covered in every course*)

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| MST Program Learning Goals |
| 1 | **Complex and Multi-jurisdictional Tax Issues** | To identify, understand and resolve complex and multijurisdictional tax issues within the context of our global economy and society.  |
| 2 | **Research Skills** | To learn research skills for exploring both familiar and novel areas of the tax law and to communicate the findings in clear terms. |
| 3 | **Analytical Skills** | To develop conceptual and analytic skills with real world applications. |
| 4 | **Tax Policy** | To appreciate tax policy issues and foundations of the tax law. |
| 5 | **Ethical Implications of Tax Practice** | To understand the ethical implications of tax practice. |
| 6 | **Tax Practice and Career Advancement** | To develop skills for effective tax practice including keeping current, interacting with others, and career advancement. |

# BUS 225W – Intro to International Tax - Late Spring 2016

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|  | Date | Topic / Learning Objectives | Assigned Background Reading | Graded Homework Due |
| **1** | Tuesday April 19 | Introduction to the course and key concepts* Source vs. Residence taxation
* Separate entity principle
* Treatment of foreign branches and subsidiaries

Overall tax policy goals of the international tax system (Capital Export Neutrality vs. Capital Import Neutrality)US tax residency rules for individuals and entities (Substantial Presence Test and Greencard test)Impact of US entity classification rules on international taxationPreview basic examples of direct and indirect foreign tax credit calculation, U.S. taxation at source, and indirect credit | NUTSHELL, Chapters 1 and 2, Chapter 13 (Page 511- Page 525 (end of discussion of check-the-box elections)BNA – FOUNDATIONS, Chapter I (Essential Elements of US International Taxation)BNA Portfolio No. 704, Part II.B – Initial Classification of a Disregarded EntityIRS IPU Manuals on Determining Tax Residency of Lawful Permanent Residents (2014), Substantial Presence Test (2014) and First-Year Election under § 7701(b)(4)  | None, but please complete preparation assignment #1 (available on Canvas) in advance of class. |

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| **2** | Tuesday April 26 | Source of Income* Why source of income is important to U.S. and foreign taxpayers
* Source rules for inventory property: title passage, § 863(b)
* Source rules for personal services performed by individuals and entities
* Source rules for investment income (interest, dividends and gains from the sale of personal property)
* Understand how the US tax rules treat transactions in software programs, and how this treatment impacts source of income

Allocation of Expenses* Why allocation of expenses is necessary in the cross-border context
* Allocation process for General and Administrative expenses
* Understand how the “asset method” applies for allocation of Interest Expense to foreign source income
* How are losses sourced
 | NUTSHELL, CHAPTER 3BNA Portfolio 905-2d, Source of Income Rules: Part XIV Transactions in Computer ProgramsA.P. Green Export Co. v. United States, 284 F.2d 383 (Ct. Cl. 1960) Intel Corp v. Commissioner, CA-9, 95-2 USTC ¶50,581, 67 F3d 1445 (only read discussion of Section 863(b), not DISC / R&E expense allocation issue)International Multifoods Co. v Commissioner, 108 TC 25, Dec. 51,855 (1997).IRS IPU Manual, “Overview of Interest Expense Allocation and Apportionment in Calculation of the FTC Limitation” (December 2014)“Section 861 Home Office and Stewardship Expenses” (December 2014)Preamble, Notice of Proposed Rulemaking on Classification of Software Programs , NPRM REG-251520-96 (Nov. 8, 1996), IRB 1996-48 | No, but please complete preparation assignment #2 (available on Canvas) in advance of class. |
| **3** | **Saturday,** **April 30** **Morning Session** | US Taxpayers with Foreign Activities: Foreign Tax Credit Part I – Direct and Indirect Credit * Why we have the foreign tax credit in the U.S. International System for direct and indirect credits
* Identification of creditable foreign income taxes under § 901
* Section 901 credit mechanics – deduct vs. credit, technical taxpayer, and compulsory payment requirement
* Introduction to the section 902 “deemed paid” or indirect credit
	+ Stock ownership requirement
	+ Dividend mechanic with the gross-up
	+ Post-1986 undistributed earnings and profits
 | NUTSHELL, Chapter 8BNA - FOUNDATIONS, Chapter III, A – EPPL Corp. v. Commissioner, 2013-1 U.S.T.C. ¶50,335 United States v. Goodyear Tire & Rubber, 89-2 USTC ¶9658, 110 S.Ct 462First Chicago Corp v. Commissioner, 96 T.C. 421 (1991) The Procter & Gamble Company v. United States, 2010-2 U.S.T.C. ¶50,593 (S. D. Ohio 2010)Law Firm tax alerts on creditability of Mexican IETU and Puerto Rico excise taxes (posted on Canvas)IRS IPU Manuals, “Exhaustion of Remedies” (December 2014), “Exhaustion of Remedies – Non-Transfer Pricing Situations” (December 2014) and “French Foreign Tax Credits” (December 2014) | None, but please complete preparation assignment #3/#4 for class. |
| **4** | **Saturday, April 30****Afternoon Session** | US Taxpayers with Foreign Activities: Foreign Tax Credit Part II – Indirect Credit continued and the Foreign tax Credit Limitation * More detailed Section 902 Deemed Paid Credit calculations
	+ Distributions up a chain of entity
	+ Maintaining the E&P and tax pools across multiple years
* Understanding the Section 904 Limitation
	+ Passive vs. General basket income
	+ Section 904(c) carryforwards
	+ Impact of US and foreign losses on the limitation
* In-class group work bringing it all together: sourcing income and expense, calculating the direct and indirect credits and applying the section 904 limitation
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| **5** | Tuesday May 3 | Taxation of US Taxpayer’s Foreign Activities: Controlled Foreign Corporations Part I* Historical underpinning and legislative development of “Subpart F”
* Definition of a “controlled foreign corporation” and “United states shareholder” – example of identifying a CFC in the context of a closely held, VC-backed foreign company
* Subpart F inclusions and impact on the United States shareholders
* Identify three main types of Subpart F income
	+ Foreign personal holding company income (Sec. 954(c))
	+ Foreign base company sales income (Sec. 954(d))
	+ Foreign base company services income (Sec. 954(e)
 | NUTSHELL, Chapter 10.01 – 10.06 (i.e., read the entire chapter, except for the part on PFICs, which are not covered in this course).BNA – FOUNDATIONS, Chapter III.F – Chapter III.MBNA Portfolio No. 926-3rd, CFCs – General Overview, Chapter II.A – B (Legislative Background) and Worksheet 1 (Excerpt from 1962 House Ways & Means Committee Report Introducing Subpart F).IRS IPU manuals, “Computing Foreign Base Company Income” (December 2014)IRS IPU Manual, “Subpart F Overview” (December 2014)“CFC Purchased from a Related Party with Same Country Sales” (July 2015)“CFC Sold to a Related Party with Unrelated Same Country Manufacturing” (July 2015) | Choose your in-class presentation topic and presentation group (see class No. 9 below) No preparation assignment for this week.**Graded homework #1 (Source of Income / Allocation of Expenses) is due by Thursday, May 7.** |
| **6** | Tuesday May 10 | Taxation of US Taxpayer’s Foreign Activities: Controlled Foreign Corporations Part II* Continue discussion of the three main types of subpart F income
* Subpart F Mechanics –Calculation of a subpart F inclusion and indirect credit, impact of an inclusion on Previously Taxed Income (PTI), E&P / tax pools & stock basis
* Section 956 Investments in United States Property
* Example of maintaining E&P pools of undistributed E&P and PTI
* Review Material Covered to Date.
 | Same Nutshell and BNA Foundations reading as class No.5Greenfield v. Commissioner, 60 TC 425 (1973)Excerpts from the Senate PSI Subcommittee Report on Profit Shifting (September 2012)Excerpts from Notice of Proposed Rulemaking on Contract Manufacturing under § 954(d), NPRM REG-124590-07 (Feb. 28, 2008)IRS Notice 2007-13IRS Notice 98-11 and IRS Notice 98-35 (withdrawing IRS Notice 98-11) | No graded homework, but please complete preparation assignment #5/#6. |
| **7** | Tuesday May 17 | Intercompany Pricing under Section 482* Arm’s Length standard under the Code and US tax treaties
* Examples of how transfer pricing applies to sales of tangible property, intercompany services, and IP transactions
* Review and understand important differences between transfer pricing methods for tangible property sales by the taxpayer:
	+ CUT
	+ Resale minus / Cost-Plus
	+ CPM
* Procedural aspects of transfer pricing: documentation requirements, competent authority, collateral effects of a transfer pricing adjustment
 | NUTSHELL, Chapter 9Article 9 of 2006 US Model Income Tax Convention and Related Portion of Technical Explanation IRS IPU Manuals, “Overview of Section 482” (August 2015)“Arms-Length Standard” (December 2014) “Sale of Tangible Property from a CFC to USP – CUP” (December 2014)“CPM Simple Outbound Distributor” (December 2014)Reuven Avi-Yonah, “BETWEEN FORMULARY APPORTIONMENT AND THE OECD GUIDELINES: A PROPOSAL FOR RECONCILIATION” (2009) | **Graded Homework No. 2 (Foreign Tax Credit / Subpart F) is due today, May 17**Please also complete preparation assignment #7. |
| **8** | Tuesday May 24 | Taxation of Foreign Taxpayers’ United States activities* Withholding taxes
	+ Code rules for FDAP income
	+ Common treaty reductions
	+ Tax reporting and compliance requirements for US payors of FDAP income
* Taxes on foreign taxpayers doing business in the U.S. under the Code
	+ Concept of a “US trade or business”
	+ ECI and the “Force of Attraction” rule
	+ Tax return filing requirement – the timely filing rule
* Impact of tax treaties & the definition of a permanent establishment
	+ Preparatory or auxiliary exceptions
	+ Agency PE
	+ What must be done to qualify for treaty benefits and how this is certified to a payor of treaty eligible income.
 | NUTSHELL, Chapter 4, Parts 4.01-4.04 (ECI and Withholding Tax) and Part 4.06 (FIRPTA)NUTSHELL, Chapter 5 (Tax Treaties)NUTSHELL, Chapter 6, Parts 6.01, 6.04 and 6.05 (Filing Requirements and Withholding) BNA Foundations, Chapter V, Parts C (Taxation of Business Profits) and E (Interest, Dividends, Royalties and Gains) only | Preparation Assignment No. 8**Graded homework No.3 (Foreign Taxpayers and Transfer Pricing) is due by Thursday, May 27**  |
| **9** | Tuesday May 31 | Student presentations – Please choose one of the following cases:* *Liggett Group*, 58 TCM 1167
* *Boulez*, 83 T.C. 584
* *Dave Fischbein Manufacturing Co.*, 59 T.C. 338
* *Taisei Fire*, 104 T.C. 535
* *Piedras Negras*, 43 B.T.A 297 and 127 F.2d 260
* *Xilinx*, 125 T.C. 37 (Aug. 30, 2005), aff’d 2010-1 USTC ¶ 50,302 (9th Cir. 2010)
* *Altera*, 145 T.C. 3 (July 2015)
* *SDI Netherlands, B.V. v. Commissioner,* 107 T.C. 161 (1996)

Course review and questions for the final exam | None – please focus on preparing your group presentation and bring any questions you may have for review for the final exam. | No preparation assignment.**Group presentation and accompanying powerpoint slides are due today**. |
|  | Tuesday June 7 | In-Class Final Exam |  |  |