San José State University
Lucas Graduate School
BUS 225P
Advanced International Tax - US Corporations with Foreign Activities
Spring 2019

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Julia Ushakova-Stein, Associate – Fenwick & West LLP |
| Office Location: | Lucas School Silicon Valley Site |
| Telephone: | 650.335.7669 (Will) and 650.335.7848 (Julia) |
| Email: | wrskinner@fenwick.com  
jushakova-stein@fenwick.com  
Jennifer Duret Khaleghi – Will’s assistant  
(jduretkhaleghi@fenwick.com). |
| Office Hours: | 20 minutes after class + by appointment. Also, please feel free to email with questions at any time. |
| Class Days/Time: | Thursdays 6 pm – 10 pm beginning on April 18 and ending on June 6  
Also Saturday 4/27 from 1pm – 5 pm and Saturday June 1, 9 am – 1 pm.  
Lucas Business Complex  
2933 Bunker Hill Suite 120  
Santa Clara CA 95054 |
| Prerequisite: | BUS 223A and 225C (so also BUS 225W); or MST Director approval |

Course Description

Advanced study of income tax treatment of international corporate transactions including international reorganizations and Section 367, Section 304 and corporate inversions. Planning for intangibles, subpart F planning, foreign entity structuring including use of check-the-box entities, foreign currency transactions, and foreign tax credit planning. Plus, TCJA new rules such as BEAT. **Prerequisite: BUS 223A and BUS 225C**
Student Learning Objectives

1. Understand the key international tax changes made by the Tax Cuts and Jobs Act (“TCJA”) insofar as they relate to US parented companies with foreign subsidiaries, including GILTI, BEAT and FDII.
2. Understand key US international tax planning areas and issues for US parented corporations in areas such as subpart F planning, source of income and foreign tax credit utilization, financing and cash management.
3. Understanding major rules of Section 367 and Section 338(g) and how they affect tax planning for international mergers and acquisitions (M&A) and restructuring transactions.
4. Be able to relate key rules and concepts to U.S. tax compliance obligations associated with international operations.

Textbooks and Other Required Reading


- Primary Sources noted on the syllabus: the Internal Revenue Code of 1986, as amended by the Tax Cuts and Jobs Act, the Treasury Regulations, and assorted case law and IRS rulings (available from RIA Checkpoint and CCH, among other sources). Much of the class will focus on Tax Reform-related regulations and other guidance. This material is helpfully collected by the IRS on the following website: https://www.irs.gov/newsroom/tax-reform-guidance.

- Legislative History of the 2017 Tax Cuts and Jobs Act (TCJA), consisting of:
  - House Report on the House Bill – HR 115-409 (495 Pages)
  - Nov. 13, 2017 JCT Report – Description of the Senate Finance Committee Description of the Chairman’s Mark (253 Pages)
  - Conference Committee Report – HR 115-466 (708 Pages)
  - Joint Committee on Taxation General Explanation of the Tax Law (Public Law 115-97) – “Bluebook” (457 pages)

These documents are available on many public sources online, and PDFs are also being posted to the Course website.

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.

- Mid-term #1 (Take home Non-cumulative) 30
- Final (in-class cumulative) 50
- Group presentation 20
- Total 100

In-class group work will consist of a series of discussion problems, calculations, etc., that will be done together in groups as part of class time to reinforce the concepts in class. Each student should hand in a written response.

The midterm will cover the material from classes #1 - #4 and will be distributed after class #5 (May 9), and due by the beginning of Class #6 (May 16). The final exam will be in-class during Class #10 (June 6). The final exam will be cumulative (cover classes #1 - #9). The midterm exam is take-home and open book, but work is required to be done individually by each student. Working in groups or comparing answers of the midterm is not permitted, and violations of this rule are subject to the University Academic Integrity policy below.

Group presentations will be given in groups of 2-3 students during class #7 (May 23) and should cover one of the topics listed on the syllabus for Class No 7 below. Topic selections and group compositions will be due by May 16. Please email the instructors and their assistant, Jennifer Duret Khaleghi, with your topic choice and group members. The group will have 10-15 minutes (5 minutes per student) to present orally on the topic, and will also be responsible for handing in a PowerPoint to the instructor prior to class. The grade will be the same for all members of the group and based on quality of research, written PowerPoint materials, and oral presentation.

University Policies

Academic Integrity
Students should know the University’s Academic Integrity Policy that is available at [http://www.sjsu.edu/senate/docs/F15-7.pdf](http://www.sjsu.edu/senate/docs/F15-7.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.sjsu.edu/studentconduct/](http://www.sjsu.edu/studentconduct/).

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 on your own unless otherwise specified.

University Policies (Required)
Per University Policy S16-9, university-wide policy information relevant to all courses, such as academic integrity, accommodations, etc. will be available on Office of Graduate and Undergraduate Programs’ Syllabus Information web page at [http://www.sjsu.edu/gup/syllabusinfo/](http://www.sjsu.edu/gup/syllabusinfo/)
MST Program Goals
(Not all program learning goals are covered in every course)

1. To identify and understand complex tax issues within the context of the global business world.

2. To learn research skills that will assist in exploring both familiar and new areas of the tax law and communicate the findings clearly.

3. To be aware of multi-jurisdictional tax issues.

4. To develop conceptual and analytic skills with real world applications.

5. To develop an appreciation for tax policy issues that underpin our tax laws.

6. To understand the ethical implications of tax practice.
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<tr>
<th>Date</th>
<th>Topic / Learning Objectives</th>
<th>Assignments</th>
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<td>Thursday</td>
<td>• <strong>Introduction</strong>&lt;br&gt;• Review of basic international tax rules and preview topics to be covered in course&lt;br&gt;Understanding the Section 965 transition tax, why it was necessary and what continuing relevance it has today&lt;br&gt;&lt;br&gt;<strong>GILTI</strong>&lt;br&gt;• GILTI calculations&lt;br&gt;• Foreign tax credit calculation in GILTI&lt;br&gt;• Exceptions to GILTI and What Happens to Exempt Earnings</td>
<td>NUTSHELL on GILTI (Sec. 8.03) and Section 965 (Sec. 8.07)&lt;br&gt;Bluebook at pp. 322-348 (description of prior law); pp. 355-368 (Sec. 965) and pp. 368-77 (GILTI).&lt;br&gt;IRC Section 965(b), Section 965(g) and Section 965(h)&lt;br&gt;IRC Section 951A (in its entirety), IRC Section 960(d)&lt;br&gt;IRC Sections 961 and 962 (old law applicable to the new situation)&lt;br&gt;Final Regulations under Section 965: Section 1.965-2(e), 1.965-2(f) and 1.965-2(g)&lt;br&gt;Proposed Regulations under Section 951A (Reg. Project REG-104390-18 – <a href="https://www.federalregister.gov/documents/2018/10/10/2018-20304/guidance-related-to-section-951a-global-intangible-low-taxed-income">https://www.federalregister.gov/documents/2018/10/10/2018-20304/guidance-related-to-section-951a-global-intangible-low-taxed-income</a>).&lt;br&gt;We will cover the following parts of the GILTI regulations - Prop. Regs. 1.951A-2, 1.951A-3, 1.951A-4 and 1.951A-6. Please read Preamble Sections I &amp; II (other than I.F related to partnerships, which is pages 1-11 of the Preamble on the IRS website).&lt;br&gt;Problem Set #1 (GILTI).</td>
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<td>April 18</td>
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<td>(Sec. 7.03)</td>
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<td>Thursday</td>
<td>• Understanding the TCJA’s export incentive for Foreign-Derived Intangible Income (FDII)&lt;br&gt;</td>
<td>Bluebook on FDII p. 377-383&lt;br&gt;Code Section 250&lt;br&gt;FDII Proposed Regulations Preamble (p. 1-57)</td>
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<td>April 25</td>
<td>o Definition of qualifying exports&lt;br&gt; o Calculation of FDII deduction&lt;br&gt; o Allocation of expenses between FDII and other income</td>
<td>(Sec. 7.03)</td>
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<tr>
<th>Day</th>
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<th>Event Title</th>
<th>Key Topics</th>
<th>Resources</th>
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<td>3</td>
<td>Saturday</td>
<td>Foreign Tax Credit – Part I</td>
<td>• Makeup of the 4 Baskets and Use of General Basket</td>
<td>Code Sections 904(a), 904(c), 904(d), Section 960(a) and 960(d)</td>
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<td>April 27</td>
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<td>• Allocation of Income to the Branch Basket</td>
<td>Bluebook FTC prior law (pg. 343-345), Modifications related to FTC System (pg. 392-397)</td>
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<td>1 P.M.</td>
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<td>• High-taxed exception</td>
<td>TCJA Conference Report p. 628-630, 635-645</td>
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<td>• New Indirect Credit Rules (Sec. 960(a) and 960(d))</td>
<td>Preamble to Proposed FTC Regulations (REG-105600-18) pages 1-10, 29-31, 37-63, 64-66.</td>
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<td>BNA Portfolio 6060-1st: I, II, IV.D, V.A, VI.A-C</td>
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<td>Thursday</td>
<td>Foreign Tax Credit Part II – Source of Income and Allocation of Expenses</td>
<td>• Interest Expense Allocation Rules, as modified by the TCJA</td>
<td>IRS IPU Manuals, “How to Allocate and Apportion Research and Experimental (R&amp;E) Expenses” (September 2014)</td>
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<td>May 2</td>
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<td>• Rules for Allocating and Apportionment of R&amp;E Expense</td>
<td>Treas. Reg. 1.861-17</td>
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<td>• How Section 163(j) Applies Internationally</td>
<td>Regs. 1.861-9, 1.861-10, 1.861-12 and 1.861-13, as modified by the Proposed FTC Regulations</td>
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<td>• US Parent-Level and CFC Level</td>
<td>Prop. Reg. 1.163(j)-7</td>
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<td>• Repeal of the 50/50 Rule and Obtaining Foreign Source Income on Export Sales</td>
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<td>5</td>
<td>Thursday</td>
<td>BEAT</td>
<td>• Key terms and definitions in applying the BEAT – base erosion payments</td>
<td>Section 59A</td>
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<td>May 9</td>
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<td>• How to calculate the BEAT</td>
<td>TCJA Conference Report p. 653-660</td>
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<td>• Common problems and issues in BEAT for US-parented companies and related restructuring</td>
<td>Bluebook on BEAT (pg. 399-409)</td>
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<td>Proposed Regulations REG–104259–18 Preamble (pg. 1-74)</td>
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| Thursday, May 16 | Previously Taxed Income and Currency                  | Withholding taxes on distributions of PTI – Section 960(b)  
FX Gain or Loss and Basis Adjustments for Distributions of PTI  
FX Translation rules for Subpart F income and GILTI  
FX Transactions – Section 988 |
| Thursday, May 23 | In-Class presentations & Subpart F                   | In-Class Presentation Topics:  
Open issues after release of proposed regulations on any international TCJA provision (e.g., BEAT, GILTI, sec. 163(j); FDII)  
Current developments on digital taxation in major jurisdictions  
Overview of Value-Added Taxes (how do they work and where they are applicable)  
EU Anti-tax Avoidance Directive  
Propose topic of choice  
Subpart F:  
Common Subpart F Planning Structures and Relevant Rules under Section 954(d) and 954(e)  
Manufacturing of Property  
Services  
Licensing / Leasing  
Branch Rule |
| Thursday, May 30 | International M&A – Taxable Transactions            | Understanding issues in US Company Buying a Foreign Target –  
Section 338(g)  
Post-acquisition restructuring  
Issues for a US Company in Selling a Foreign Target / Division  
Issues for US Company Buying US Target with CFCs or with Foreign IP that needs to be |
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| 9 | Saturday, June 1 | **International M&A – Section 367**  
- Rules for outbound asset transfers  
  - Sec. 367(a)  
  - Sec. 367(d)  
  - DCLs / Loss Recapture Rules  
- Outbound stock transfers and gain recognition agreements (GRAs)  
- Sec. 367(b) Inbound Transactions | Nutshell Chapter 12  
Section 367(a), (b), and (d)  
Section 936(b)(3)(B)  
Treas. Regs. §§ 1.367(a)-1, 1.367(a)-1T, 1.367(a)-2, 1.367(a)-4, 1.367(a)-6T, 1.367(b)-1, 1.367(b)-3, 1.367(d)-1T, and 1.367(d)-1  
Treas. Reg. § 1.904(f)-2  
Treas. Reg. § 1.1503(d)-6(d) and -6(e)  
Bluebook – IP transfers (p. 386-388)  
Bluebook - DCLs prior law (p.345) and TCJA changes (p. 351-354)  
BNA Portfolio 919-3rd: U.S.-to-Foreign Transfers Under Section 367(a)  
BNA Portfolio 920-3rd: Other Transfers Subject to Section 367, II. Section 367(b) Transactions  
BNA Portfolio 920-3rd: Other Transfers Subject to Section 367, III. Section 367(d) Transactions  
| 10 | Thursday, June 6 | **In Class Final** |