# San José State UniversityLucas Graduate SchoolBUS 225WIntroduction to International TaxationFall 2015

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| Office Hours: | *20 minutes before and after class + by appointment* |
| Class Days/Time: | *Mondays 6 pm – 10 pm, Plus One Saturday 9/26 from 9 am – 1 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 the U.S. tax reporting obligations of foreign persons with income or activities within the United States.
4. Be able to explain and apply common federal income tax rules such as residency, sourcing, foreign tax credit, permanent establishment, and transfer pricing.
5. Be able to relate key rules and concepts to U.S. tax compliance obligations associated with international operations.
6. Be familiar with proposals for changing the U.S. international tax rules.
7. Detailed learning objectives by lesson to be distributed by the instructor to enrolled students.

## 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 9th Ed. 2012) [hereinafter, “Nutshell”]

### Other Readings

* Primary Sources: the Internal Revenue Code, the Treasury Regulations, case law and administrative rulings (available from RIA Checkpoint and CCH, among other sources)
* Slides / Lecture Outlines to be distributed to enrolled students via email and Canvas
* Selected other BNA Portfolio assignments and secondary sources to be distributed to enrolled students via Canvas (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

Assignments are listed below. All homework must be turned in when due for full credit. Late homework will be docked 10 percent of total points for each day it is late and not accepted after answers to the assignment have been distributed. The grade of 100 points for homework will be based on the 4 highest scores of the 5 total homework assignments.

The final exam will be an in-class Exam. For the exam, you can bring copies of Code and Regulations, and an up to five-page outline that you have prepared yourself. Commercially purchased outlines and any secondary source material will not be allowed into the final.

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 100

In-class presentation (group) 30

In-class quizzes 30

Final exam 140

 Total 300

## 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*)

1. To identify, understand and resolve complex and multijurisdictional tax issues within the context of our global economy and society.
2. To learn and acquire research skills for exploring both familiar and novel areas of the tax law and to communicate the findings using clear terms.
3. To develop conceptual and critical analytic skills with real world applications.
4. To appreciate tax policy issues and foundations of the tax law.
5. To understand the ethical implications of tax practice.
6. To develop skills for effective tax practice including keeping current, interacting with others, and career advancement.

# BUS 225W – Fall 2015

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|  | Date | Topic | Reading | Selected IRS Forms & Publications | Homework Due |
| 1 | Monday, 9/21 | Introduction to the course and key concepts: US worldwide system Source vs. Residence taxation Separate entity principle and treatment of foreign subsidiariesOverall tax policy goals of the international tax system (Capital Export Neutrality vs. Capital Import Neutrality)US tax residency rules for individuals and entitiesPreview basic examples of direct and indirect foreign tax credit calculation, U.S. taxation at source, and indirect credit | BNA – FOUNDATIONS, Chapter I NUTSHELL, Chapters 1 and 2IRC 7701(a)(30), 7701(b)(1) – (b)(3), 7701(b)(6)*Cook v. Tait*, 265 U.S. 47 (1924)IRS IPU Manuals on Determining Tax Residency of Lawful Permanent Residents (2014), Substantial Presence Test (2014) and First-Year Election under § 7701(b)(4)  | Non-Resident Alien Tax Return, Form 1040-NRCloser Connection Statement for Certain Aliens, Form 8840IRS Publication No. 519, U.S. Tax Guide for Aliens | N/A – Reading only |
| 2 | Saturday, 9/269 am – 1 pm | 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
* Source rules for investment income, including Section 865
* Source rules for software income

Allocation of Expenses* Why allocation of expenses is necessary in the cross-border context
* Allocation process for General and Administrative expenses
* Allocation Formula for Interest Expense
 | BNA - FOUNDATIONS Chapter I.H.1 – 1.H.7, I.H.9; Chapter VI. A-BNutshell, Chapters 3.01 and 3.02IRC §§ 861(a); 862(a); 863(a), (b); 864(c)(5); 865(a); 865(c); 865(d) and 865(e)Treas. Reg. §§ 1.861-2(a); 1.861-4(a), (b); 1.861-7(a), (c), (d); 1.861 18; 1.863-3(a) – (d); 1.864-6; 1.864-7.Treas. Reg. § 1.861-8A.P. Green Export Co. v. United States, 284 F.2d 383 (Ct. Cl. 1960) (edited version provided through course website)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) | IRS Form 1116, Part 1 IRS Form 1118, Schedules A, F and H | Assignment #1 |
|  | 9/28 | No Class – next class is Monday 10/5 |
| 3 | 10/5 | Taxation of Foreign Taxpayers under the Code* Withholding tax on Foreign taxpayers earning U.S. source investment income

-Basis of US FDAP withholding taxation-Withholding mechanics* Taxation of foreign taxpayers engaged in a U.S. business

-Basis of taxation (Sec. 871(b), 882).-Definition of US trade or business-Section 864 – categories of Effectively Connected Income* Basics of FIRPTA Withholding and When it Applies
 | BNA - FOUNDATIONS – Chapter IINutshell, Sections 4.01-4.04 and 4.06, and Sections 6.01 – 6.04IRC 871(a), (h), (i); 881(a), (c), (d); 1441(a), (b), (c)(1), (c)(8) – (10); 1442(a), (b); 1461.Treas. Regs. §§ 1.871-7(a) – (c); 1.871-14(a) – (c).IRC 864(b) and 864(c); 865(e)(2); 871(b); 882(a) and 882(c).Treas. Reg. § 1.864-2.*De Amodio v. Commissioner*, 34 T.C. 894 (1960) *Lewenhaupt v. Commissioner*, 20 T.C. 151 (1953)IRC 897(a) and 897(c); 1445(a) and 1445(b)IRS IPU Manuals, “Overview of FDAP” (December 2014)“Effectively Connected Income (ECI)” (December 2014) | IRS – NRA - <http://www.irs.gov/Individuals/International-Taxpayers/Taxation-of-Nonresident-Aliens>Form 1120FForm W-8BEN and Form W-8BEN-E (skim Form W-8BEN-E)Form W-8ECIForm 1042 | Assignment #2 – Source of Income Handout Problems |
| 4 | 10/12 | Impact of Tax Treaties* What is a Tax Treaty, and who is generally entitled to claim treaty benefits
* Impact of treaties on investment income
* Impact of treaties on business income
	+ Definition of Permanent establishment
	+ How profits attributable to a Permanent Establishment are taxed
* Review material covered so far (please bring your questions).
 | BNA - FOUNDATIONS, chapter VNutshell, Chapter 52006 US Model Income Tax Treaty and Technical Explanation, in particular focus on the following articles: -Article 4 (Resident);  -Articles 5 and 7 (Permanent Establishment and Attribution of Profits);  -Articles 10 – 12 (taxation of dividends, interest and royalties) -Article 13(6) (gains) -Article 14 (Employee income) -Article 22 (Limitation on Benefits) -Article 23 (Relief from Double Taxation)Handout - Excerpt from OECD Model Commentary on Article 5, Permanent Establishment Handout – Excerpt from OECD BEPS Discussion Drafts, Action Item No. 7, “Preventing Artificial Avoidance of Permanent Establishment Status” IRC 6114 | IRS website - <http://www.irs.gov/Individuals/International-Taxpayers/Tax-Treaties>Form 8233 (Exemption from Withholding on Services income)Form 8833 (Disclosure of Treaty-Based Return Position) | Assignment #3 – Problems Listed Below |
| 5 | 10/19 | Direct Foreign Tax Credit and Limitation* Why is a foreign tax credit necessary
* Definition of Creditable Income taxes under § 901
* Section 904 Limitation –
	+ Basic calculation
	+ Understanding of separate Section 904 baskets for Passive Income vs. General Income
	+ Carryovers and carrybacks
 | BNA - FOUNDATIONS, Chapter III, B – DNutshell, Section 8.01-8.04JCT Report, at pp. 43-46IRC 164(a)(3), 275(a)(4), 901, 903, IRC 904(a), (c), (d)(1) and (d)(2) Reg. § 1.901-2(a), 1.901-2(b), 1.901-2(e)(5)(i) (non-compulsory amounts) and 1.901-2(f)(1) (who is the taxpayer)*PPL Corp. v. Commissioner*, 2013-1 U.S.T.C. ¶50,335 (US Supreme Court 2013) (edited)IRS IPU Manuals, “Exhaustion of Remedies” (December 2014), “Exhaustion of Remedies – Non-Transfer Pricing Situations” (December 2014) and “French Foreign Tax Credits” (December 2014) | Remainder of IRS Form 1116 not addressed in Class No. 2IRS Pub. No. 514 – How to Claim the Credit and Examples  | Reading Only  |
| 6 | 10/26 | Taxation of US Shareholders in Foreign Corporations, Part I* Earnings and profits
* Calculate the basic section 902 Deemed-Paid Credit
* Introduction to Subpart F
	+ Concept of an “Anti-Deferral Rule” and Impact on the U.S. Shareholder
* Subpart F Mechanics – Inclusions, Previously Taxed Income
 | BNA - FOUNDATIONS, Chapter III, A, E– NBNA 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).Nutshell, Sections 8.05-8.08 and 10.01-10.06JCT, pages 46-53IRC 902IRC 951(a)(1), 951(a)(2), 951(b) 952(a), 952(b), 957 – 961, IRC 964IRS IPU Manual, “Subpart F Overview” (December 2014) | Remainder of IRS Form 1118 (<http://www.irs.gov/pub/irs-pdf/f1118.pdf>) IRS Form 5471, Schedule H and Schedule J | Assignment #4 – Handout on Foreign Tax Credit and FTC Limitation |
| 7 | 11/2 | Taxation of US Investors in Foreign Corporations, Part II* High-Level Review of 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)
* How different categories of subpart F income are reported
 | Same BNA - FOUNDATIONS as previous classNutshell, Sections 10.01.-10.06 (same as previous class)IRC 954(a), (b), (c)(1) and (c)(2), (d) and (e)Treas. Reg. §§ 1.954-2(c) and 1.954-2(d), 1.954-3(a)(1)(iii) Examples 1 – 5, 1.954-3(a)(4)(i) and -3(a)(4)(iii), IRS Notice 2007-13IRS IPU manuals, “Computing Foreign Base Company Income” (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) | IRS Form 5471 Schedule I and (http://www.irs.gov/pub/irs-pdf/i5471.pdf), and Schedule I Instructions – (**Note to class:** in the instructions, please focus on Worksheets A and B (computing subpart F income and Sec. 956 investment)). | Reading only |
| 8 | 11/9 | Transfer Pricing* Concept of transfer pricing and what it means for there to be a transfer pricing adjustment
* Review concept of arm’s length standard, functional analysis and comparability adjustments by reviewing examples of the different specified methods of transfer pricing for tangible property:
	+ CUT
	+ Resale minus
	+ Cost-Plus
	+ CPM

Review taxation of outbound transactions (FTC and Subpart F) (please bring your questions) | Nutshell, Chapter 9IRC 482, 6662(e)Treas. Reg. §§ 1.482-1(a), 1.482-1(b), 1.482-1(d)(1) to -1(d)(3)(ii)(C), 1.482-1(e), 1.482-3(b) and 1.482-3(c) Article 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) |  | Assignment #5 |
| 9 | 11/16 | Overview of tax compliance requirements for US Persons with Ownership of Foreign Assets and ActivitiesStudent presentations | BNA Portfolio No. 947-1st, Reporting Requirements under the Code for International Investments, Chapters III and IVIRS Form 5471 and InstructionsIRS Form 926 and InstructionsIRS Form 8938 IRS Form 8621 FBARIRC §§ 1298(f), 6038, 6038B and 6038D | See assigned reading |  |
|  | Thursday, 12/36:00 pm | Optional Review Session for Final Exam at 2933 Bunker Hill – Please bring your questions |  |  |  |
| 10 | 12/7 | Final Exam |  |  |  |

### Graded Homework Assignments

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| **#** | **DUE** | **ASSIGNMENT** |
|  | 9/21 | First class – no assignment other than reading |
| 1 | 9/26 | 20 points* Obtain the annual report of a Fortune 500 company. Review it to learn of its worldwide operational structure in terms of parent and subsidiary operations. Find out where it headquarters is, key manufacturing (or similar operations), offices, and employees. List the countries where it has operations. Review the income tax footnote and disclosure and summarize any international issues noted there.
* Assume you own a jewelry store. You want to start selling online. List the income tax considerations you think you’ll have to deal with if you have customers in the EU and Japan.
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| 2 | 10/5 | 20 points* Answer Problems in Handout (Source of Income).
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| 3 | 10/12 | 20 points* Read the US tax treaty with the UK (available on the IRS website) and prepare an outline of the topics covered.
* In which circumstances will withholding of U.S. taxes on fixed, determinable, annual or periodic income be required. Please explain what statutory and/or Treaty rule you are applying:
	1. US company with earnings and profits of $200 million distributes $150 million in quarterly dividends to its shareholders.
	2. US company pays interest coupons on bonds held by individual investors in Europe.
	3. UK parent company licenses IP to its wholly owned US subsidiary to make and sell patented products in the United States.
	4. Chinese individual resident outside the United States recognizes capital gains on sale of portfolio of stock in a U.S. company
* Complete the US tax compliance matrix for non-resident aliens in handout #2
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|  | 10/19 | No assignment – reading only |
| 4 | 10/26 | 20 pointsAnswer Problems in Handout #3 (Foreign Tax Credit and FTC Limitation). |
|  | 11/2 | No assignment – reading only |
|  | 11/9 | 20 points* Answer Problems in Handout #4 (Subpart F).
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|  | 11/16 | Presentation (30 points) – At the beginning of the course, you’ll sign up for a court case tied to course topics together with 1 – 2 co-presenters. You are to review the case and make a presentation about it and its relevance to understanding international taxation. The following court cases are suggested for student review:* *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
* *SDI Netherlands, B.V. v. Commissioner,* 107 T.C. 161 (1996)
* *Inverworld v. Commissioner*, TC Memo. 1996-301 (edited version distributed by instructor)
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