

San José State University
Lucas Graduate School
BUS 225C
US Corporations with Foreign Activities
Spring 2021

Instructor:	<i>William Skinner, Partner - Fenwick & West LLP Julia Ushakova-Stein, Partner – Fenwick & West LLP</i>
Office Location:	Zoom – find login information on Canvas calendar
Telephone:	<i>650.335.7669 (Will) and 650.335.7848 (Julia)</i>
Email:	<i>wrskinner@fenwick.com jushakova-stein@fenwick.com Jennifer Duret Khaleghi – Will's assistant (jduretkhaleghi@fenwick.com).</i>
Office Hours:	<i>20 minutes after class + by appointment. Also, please feel free to email with questions at any time.</i>
Class Days/Time:	<i>Wednesdays 6 pm – 10 pm beginning on April 21 and ending on June 9 Also Saturday 5/8 from 9 am – 5 pm Zoom</i>
Prerequisite:	<i>BUS 223A, 223G, and 225W; or MST Director approval</i>

Course Description

Taxation of outbound investment and activities of the US corporations. Topics include sourcing, foreign tax credit, subpart F, Sections 482 and 367, income tax treaties, foreign currency, establishing foreign operations, and issues affecting expanding US multinational technology firms.

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. Be able to relate key rules and concepts to U.S. tax compliance obligations associated with international operations.

Textbooks and Other Required Reading

- Mindy Herzfeld, “International Taxation in a Nutshell” (West 12th Ed. 2020) [hereinafter, “**Nutshell**”]. This is available for electronic purchase through following website: <https://www.westacademic.com/Herzfelds-International-Taxation-in-a-Nutshell-12th-9781684673469>.
Note: Do **not** buy a used version for an earlier year as it is out-of-date.
- 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)- not assigned, for information purposes
 - Nov. 13, 2017 JCT Report – [Description of the Senate Finance Committee Description of the Chairman’s Mark](#) (253 Pages) – not assigned, for information purposes
 - [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.

- 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.

Quiz #1 (in-class, non-cumulative)		15
Quiz #2 (in-class, non-cumulative)		15
Quiz #3 (in-class, non-cumulative)		15
Final Exam (in-class cumulative)	45	
<u>Presentation</u>		<u>10</u>
Total		100

The final exam is take-home and all quizzes are in-class. The final exam and all quizzes are open book, but work is required to be done individually by each student. Working in groups or comparing answers of the final exam and each quiz 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 19) 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 12. 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>.

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/>.

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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Subject to change with advance notice.

	Date	Topic / Learning Objectives	Assignments
1	Wednesday April 21	<p><u>Introduction & FDII</u></p> <ul style="list-style-type: none"> • Primer on basic Subchapter C rules that will be used throughout class • Review of basic international tax rules and preview topics to be covered in course • Entity classification rules • Foreign-Derived Intangible Income (FDII) 	<p>IRC §§250, 301, 302, 312(a)-(d), 316(a), 331, 332(a) & (b), 336, 337, 351</p> <p>FDII Regulations Treas. Reg. §§ 1.250(a)-1 and 1.250(b)-1 through -6</p> <p>Check-the-Box Regulations Treas. Reg. § 301.7701-3</p> <p>Bluebook pp. 322-347 (description of prior law); pp. 377-383 (FDII)</p> <p>NUTSHELL: Introduction (§§ 1.05, 1.06, 2.02, 14.02) and FDII (§ 7.04)</p> <p>BNA Portfolios: Portfolio 750-2nd: Corporate Overview, Detailed Analysis, I. Organization of a C Corporation, A. Elements of a Tax-Free Incorporation; Portfolio 750-2nd: Corporate Overview, Detailed Analysis, IV. Corporate Distributions, A-D; Portfolio 750-2nd: Corporate Overview, Detailed Analysis, VI. Complete Liquidations, A-D.</p>
2	Wednesday April 28	<p><u>GILTI</u></p> <ul style="list-style-type: none"> • GILTI calculations • Foreign tax credit calculation in GILTI <ul style="list-style-type: none"> ○ Exceptions to GILTI and Exempt Earnings • High-Tax Exclusion 	<p>IRC §§ 951, 951A, 960(d), 961</p> <p>GILTI Regulations Treas. Reg. § 1.951A-1 through -3, -5 and -6</p> <p>Bluebook at pp. 368-77 (GILTI)</p> <p>NUTSHELL: GILTI (§§ 9.01, 9.02, 9.04)</p> <p>Portfolio 926-3rd: CFCs — General Overview, XVIII. Global Intangible Low-Taxed Income and Foreign-Derived Intangible Income, A-D.</p>
3	Wednesday May 5	<p><u>Subpart F</u></p> <ul style="list-style-type: none"> • Common Subpart F Planning Structures and Relevant Rules under 	<p>IRC §§ 952, 954(a), (b), (c)(1)(A), (c)(1)(B), (c)(2)(A), (c)(3), (c)(6), (d), and (e); 957</p> <p>Treas. Regs. § 1.954-2 through -4</p>

		<ul style="list-style-type: none"> ○ Foreign Personal Holding Company Income ○ Sales and Manufacturing of Property ○ Services ○ Branch Rule <p>Quiz #1 (in-class, non-cumulative) on topics from Classes 1 & 2</p>	<p>NUTSHELLL: Subpart F (§ 9.03)</p> <p>BNA Portfolio No. 6220-1st, CFCs: Foreign Personal Holding Company Income, Part III (Overview), Part V (Dividends, Interest, Rents, Royalties, and Annuities), and Part VI (Gains from Certain Property Transactions)</p> <p>BNA Portfolio No. 6240-1st, CFCs: Foreign Base Company Income (Other than FPHCI), Part VII (Foreign Base Company Sales Income); Part VIII (Foreign Base Company Services Income).</p> <p>Rev. Rul. 75-7, revoked by Rev. Rul. 97-48 IRS TAM 8509004</p>
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4	<p>Saturday May 8</p> <p>9 am- 1 pm</p>	<p><u>Foreign Tax Credit Part I – Creditability and Direct and Indirect Credits</u></p> <ul style="list-style-type: none"> • What is the definition of a creditable foreign income tax under IRC Section 901 and the regulations thereunder • Mechanics and other requirements for claiming a §901 credit, including compulsory payment requirement • Indirect credit rules under §960 (subpart F income) and §960(d) (GILTI) 	<p>Nutshell Chapters 8 and 9 (Foreign Tax Credit)</p> <p>Skinner FTC Outline, Unit I</p> <p>Code Sections 901 and 903, Section 960(a) and 960(d)</p> <p>Bluebook- FTC prior law (pg. 343-345), Modifications related to FTC System (pg. 392-397)</p> <p>TCJA Conference Report p. 628-630, 635-645</p>
5	<p>Saturday May 8</p> <p>1 pm- 5 pm</p>	<p><u>Foreign Tax Credit Part II – Foreign Tax Credit Limitation and Section 905(c)</u></p> <ul style="list-style-type: none"> • Application of Section 904 on a Per-Basket Basis • Rules for determining the Section 904 baskets • Overall Foreign Loss and Overall Domestic Loss accounts • Redeterminations of the foreign tax credit through foreign audits, refunds and other adjustments 	<p>Nutshell at Chapter 10</p> <p>Skinner FTC Outline, Unit II</p> <p>Skinner, The Branch Basket Takes Final Shape Fenwick & West LLP (published in International Tax Journal).</p> <p>Section 904</p> <p>Section 905(c)</p>
6	<p>Wednesday, May 12</p>	<p><u>Foreign Tax Credit Part III- Source of Income and Allocation of Expenses</u></p> <ul style="list-style-type: none"> • Source of Income Rules for Common Types of Income (Inventory, Services, IP, etc.) • Allocation and Apportionment of Expenses for the FTC Limitation: <ul style="list-style-type: none"> ○ Interest expense ○ Research (R&E) expense ○ Misc. expenses such as stewardship <p>Quiz #2 (in-class, non-cumulative) on topics from Classes 3-5</p>	<p>Nutshell Chapter 3</p> <p>Skinner FTC Outline, Unit III</p> <p>Sections 861, 862 and 865</p>

7	Wednesday, May 19	<p><u>Presentations & Income Tax Treaties</u></p> <p>In-Class Presentation Topics:</p> <ul style="list-style-type: none"> • Open issues on any international TCJA provision (e.g., BEAT, GILTI, FDII) • Current developments on digital taxation in major jurisdictions • Current OECD related developments (e.g., Pillar 1 and/or Pillar 2) • Propose topic of choice <p>Income Tax Treaties:</p> <ul style="list-style-type: none"> • What is an Income Tax Treaty and why do we have them? • Eligibility for invoking a tax treaty – Limitation on Benefits, Conduit, and “Substance” tests • Withholding tax reductions under a Treaty (Interest, Dividends, Rents, Royalties and Capital Gains) • Permanent Establishment protection of a Treaty • Mutual Agreement Procedure and Transfer Pricing issues 	<p>Prepare for Presentation</p> <p>IRC § 6114</p> <p>NUTSHELL: Treaties (§§2.06, 5.01-5.06)</p> <p>2016 US Model Income Tax Treaty, in particular focus on the following articles:</p> <ul style="list-style-type: none"> -Article 4 (Resident); -Articles 5 and 7 (Permanent Establishment and Business Profits); -Articles 10 – 12 (Dividends, Interest and Royalties) -Article 13(3) (Gains) -Article 22 (Limitation on Benefits) -Article 23 (Relief from Double Taxation) <p>Handout - Additional Guidance on the Attribution of Profits to a Permanent Establishment under BEPS Action 7</p>
8	Wednesday, May 26	<p><u>Transfer Pricing & BEAT</u></p> <p>Transfer Pricing:</p> <ul style="list-style-type: none"> • “Common control” and historical development of transfer pricing as a concept • Arm’s length standard and general process of determining a transfer price • Transfer pricing for intercompany services, loans, sales of good and IP • Impacts of Transfer Pricing adjustments on the taxpayer <p>BEAT:</p> <ul style="list-style-type: none"> • Key terms and definitions in applying the BEAT – base erosion payments • How to calculate the BEAT • Common problems and issues in BEAT for US-parented companies and related restructuring 	<p>NUTSHELLL: Transfer Pricing (§§ 11.01-11.08) and BEAT (§ 4.09(B))</p> <p>IRC § 482</p> <p>IRS Revenue Procedure 99-32</p> <p>IRS IPU Manuals, “Overview of Section 482” (August 2015)</p> <p>“Arms-Length Standard” (December 2014)</p> <p>“Sale of Tangible Property from a CFC to USP – CUP” (December 2014)</p> <p>“License of Intangible Property from U.S. Parent to a Foreign Subsidiary” (November 2015)</p> <p>IRC § 59A</p> <p>Bluebook on BEAT (pg. 399-409)</p> <p>BNA Portfolio 900-2nd: Foundations of US International Taxation, II.G. Base Erosion and Anti-Abuse Tax</p> <p>Treas. Reg. § 1.59A-1 through -5</p>

9	Wednesday, June 2	<u>Foreign Currency</u> <ul style="list-style-type: none"> • Basic Overview of Foreign Currency and Functional Currency Concept • Section 988 Transactions • Foreign exchange translation <ul style="list-style-type: none"> ○ PTEP Accounts and Section 986(c) ○ Non-functional currency branches – Section 987 • Q&A for Student Review questions <p>Quiz #3 (in-class, non-cumulative) on topics from Classes 6-8</p>	Nutshell Chapter 11 Skinner FX Outline Section 960(b), Section 986(c), Section 988 and Section 954(c)(1)(D) Notice 2019-3 Reg. 1.960-3
10	Wednesday, June 9	<u>Selected International M&A Topics and Review</u> <ul style="list-style-type: none"> • Sec. 245A Participation Exemption <p>Final Exam (in-class cumulative)</p>	Nutshell Chapter 12 BBNA Portfolio No. 6280 (draft), Section IX (Section 245A) Section 245A