Nutshell Series

International Taxation

in a nutshell®

RICHARD L. DOERNBERG

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INTERNATIONAL TAXATION

IN A NUTSHELL®

TENTH EDITION

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To My Family, including Edie and Noa
who may one day like to see
their names in print
(when they learn how to read)

PREFACE

For those who are or will be involved in international business and investment transactions, it is important to have some basic understanding of the relevant tax laws. This book is intended to serve as an introduction to the U.S. law of international taxation. It is primer aimed at law and accounting students, foreign tax practitioners or scholars, U.S. tax practitioners seeking an introduction to the area or a refresher, and others who might benefit from an overview of the U.S. tax laws governing international trade and investment. The book attempts to summarize the law, offering some attention to the purposes of the various legal rules. However, it is beyond the scope of the book to offer a critical evaluation of the provisions summarized or to delve deeply into tax planning structures and techniques. Actually practicing international tax in reliance solely on this primer could be hazardous to your career.

It will come as no revelation that the U.S. income tax laws are wondrously complex. Moreover, the student of U.S. international tax law should have some grounding in U.S. individual, partnership, state, employment and corporate tax principles. U.S. international tax does not exist in a vacuum. Knowledge of foreign tax systems is also useful. But realistically, many practitioners have their hands full trying to understand the U.S. system and collaborate with foreign colleagues on cross-border transactions. Ironically it is because of the complexity that it is important to present a straight-forward conceptual framework of the U.S. international tax provisions. Even with a framework, the intricate rules governing U.S. taxation of international transactions can be mind-numbing. Without an understanding of the structure of the U.S. international tax provisions (and often even with such an understanding), the rules are all but incomprehensible. Unfortunately, that is all too often the case even with an understanding of the structure.

To use this book effectively, it is helpful to have the Internal Revenue Code open at all times. If you are truly ambidextrous, you should have the Income Tax Regulations at hand as well. Frequent references are made to both the Code and the Regulations. There are some citations to caselaw and administrative rulings where they help illustrate the subject matter. However, the book is not a treatise, and so there is no attempt to treat comprehensively the caselaw and rulings.

To consider fully the international tax laws affecting international trade would require the study not only of U.S. international tax laws but also of foreign tax laws. However, such a study is beyond the scope of this book. So too is any consideration of the non-tax legal concerns affecting international transactions, including private international law, European Union law, the WTO, NAFTA, the internal laws of other nations, customs law, tariffs, and non-tax international treaties. The tax laws of the individual states of the United States are not discussed. The focus here is on U.S. international tax laws and U.S. income tax treaties.

The book is divided into three Parts. After an introduction to the fundamentals of U.S. international taxation and the source rules, the second Part addresses the U.S. activities of foreign taxpayers—that is, investment and business activities carried on by nonresident individuals and foreign corporations in the United States. After a consideration of what a nonresident is for U.S. tax purposes, the basic U.S. jurisdictional tax principles are considered in this Part. Special attention is given to the branch profits tax and the provisions affecting foreign investment in U.S. real estate. Also included in this Part is a chapter on U.S. income tax treaties and a chapter on filing withholding and reporting requirements.

The third Part of the book is directed at foreign activities of U.S. citizens and residents—that is, investment and business activities of U.S. citizens and residents, including domestic corporations that generate income outside the United States. The centerpiece of this Part is a consideration of the U.S. foreign tax credit. This Part also discusses intercompany pricing, controlled foreign corporations, the treatment of foreign currency, and international tax-free transactions. There is also a chapter on tax arbitrage—the heart of much international tax planning. Those income tax provisions regulating the "ethics" of U.S. business behavior abroad are also briefly addressed.

Hopefully, this book kindles an interest in international taxation. If it does, the reader must move beyond this primer into the maw of the Internal Revenue Code, Regulations, rulings and caselaw that make up the substance of U.S. international taxation. In addition, there are ample secondary sources that explore the subject more comprehensively.

The material presented is current through October 15, 2015 with occasional attempts to gaze into the tax crystal ball in order to anticipate likely changes to U.S. international tax law.

I would like to thank George Soba and Ivan Gutierrez for their contributions to Chapter 9 dealing with Intercompany Pricing. They have more years of experience in the intercompany pricing areas than they probably care to admit.

Please send any comments, suggestions or corrections to rdoernberg@gmail.com.

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Atlanta, Georgia
October 15, 2015

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