

CONCEPTS AND INSIGHTS SERIES

International Taxation

Second Edition

Joseph Isenbergh



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TAXATION**

SECOND EDITION

By

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CONSUMER RECYCLED PAPER



Special Note on Sources and Citations

Here follows an overview of the principal sources of U.S. law on international taxation and a brief explanation of the conventions of citation and reference followed in this book.

Internal Revenue Code

The basic scripture of U.S. taxation is the Internal Revenue Code, a codification of the currently applicable provisions of income tax statutes extending back to 1913. The Code is a law of the United States; its provisions accordingly have full force to the extent consistent with the U.S. Constitution. The Code has been recodified twice since its introduction as the Internal Revenue Code of 1939. The Code currently in force is styled the “Internal Revenue Code of 1986.” Provisions of the Code are cited in this book by section number only. E.g., “section 78” or “§78.”

Income Tax Treaties

Income tax treaties between the United States and other countries also have the force of laws. There is no overarching priority or precedence between treaties and statutes. They simply coexist, and inconsistencies are resolved largely ad hoc, with the help of some partly codified rules. This book follows no special form of citation to income tax treaties, which are identified simply by the country with which they are in force.

Treasury Regulations

Expounding and expanding the Code (and many income tax treaties) are extensive regulations issued by the U.S. Treasury Department. The Treasury Regulations arise under a general grant of authority in the Code (section 7805) as well as under specific sections. Many regulations are interpretations of Code provisions, and contain mostly interstitial and illustrative matter. Some entire segments of U.S. tax law, however, exist principally as regulations issued under broad-framed (and sometimes skeletal) statutory mandates.

International Taxation

Treasury Regulations, to the extent consistent with the Code, have the force of laws. They can, however, be attacked by taxpayers and set aside as inconsistent with statutes or treaties. Courts show some deference to Treasury Regulations on close or doubtful questions, but taxpayers do succeed from time to time in persuading courts that specific regulations are inconsistent with the Code, overreaching, or otherwise invalid. Treasury Regulations are cited in this book as “Reg. §___”. Regulations are usually numbered by “1.” followed by the number of the Code section under which they arise. For example, “Reg. §1.902-1(a)” is a Regulation arising under section 902.

IRS Rulings

Below the Regulations in the hierarchy of official pronouncements on taxation stand IRS rulings. These contain positions taken by the Internal Revenue Service in response to specific transactions and situations. Typically they represent more narrowly focused applications of the tax laws than the Regulations. Rulings are issued in great numbers, with many fewer formalities than regulations. Rulings are valid only if consistent with the Code *and* the Regulations. They are frequently attacked by taxpayers as invalid, sometimes with success.

Rulings come in two types: published and unpublished.

Revenue Rulings. Published rulings (known as “Revenue Rulings”) are collected in the Cumulative Bulletin of the Internal Revenue Service (cited here as “Cum. Bull.”). A Revenue Ruling bears the number of the year and the order of its issuance. Similarly, the volumes of the Cumulative Bulletin are numbered according to the year in which their contents were issued. Thus “Rev. Rul. 78-113, 1978-2 Cum. Bull. ___” is a citation to the 113th Revenue Ruling issued in 1978, contained in the 1978 volume (Part 2) of the Cumulative Bulletin. Revenue Rulings issued in 2000 and later are numbered with the full year of issuance, as for example in “Rev. Rul. 2001-42.” The Revenue Service acknowledges published Revenue Rulings as binding precedents.

Private Rulings. Unpublished or “private” rulings are issued directly by the Revenue Service to taxpayers who seek advance knowledge of the Revenue Service's position on transactions they are planning. These are known as “Private Letter Rulings” and have binding force only between the Revenue Service and the taxpayer to whom they are addressed. Similar to Private Letter Rulings are Field Service Advice letters and Technical Advice Memoranda. These generally concern transactions already carried out by a taxpayer involved in administrative proceedings with the Internal Revenue Service.

Court Cases

Tax disputes can be heard before three different courts: the Tax Court, the Court of Claims, and the District Courts of the United States. The District Courts are constitutional courts of the United States under Article III of the Constitution; the other two are administrative law courts. Appeals can be taken from the decisions of all three, however, to the federal courts of appeals and ultimately the United States Supreme Court. Decisions of the Tax Court are cited here to the Tax Court Reports (abbreviated “T.C.”); decisions of its predecessor, the Board of Tax Appeals (which sat until 1942), are cited to volumes of the “B.T.A.” Reports.

The 2004 Act

In October 2004 Congress adopted a law with the most farreaching effect on U.S. international taxation of any since the Tax Reform Act of 1986: The American Jobs Creation Act of 2004. The name given this law (which I will refer to from here on as the “2004 Act”) does not even hint at its international focus. Notwithstanding, the 2004 Act came about in reponse to longstanding international trade and tax controversies, and it reshapes several pockets of the U.S. international tax system. The 2004 Act’s origins in international tax issues, and how it came by its generically misleading name, are covered briefly in chapter 21 of this book. The 2004 Act’s provisions on international taxation, however, surface ubiquitously.

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Basic Elements of International Taxation
