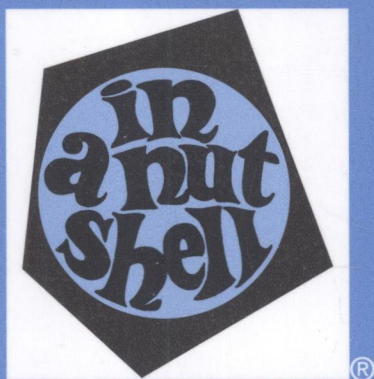


International Taxation



RICHARD L. DOERNBERG

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WEST

INTERNATIONAL TAXATION IN A NUTSHELL

Eighth Edition

By

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*

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 a 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 even after—or perhaps especially because of—the simplification attempts over the past two decades. Moreover, the student of U.S. international tax law should have some grounding in U.S. individual, partnership and corporate tax principles. U.S. international tax does not

PREFACE

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.

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 trans-

PREFACE

actions, 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, residents and domestic corporations 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

PREFACE

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 addressed.

I hope 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 August 15, 2008 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, Ivan Gutierrez, Steve Wrappe and the Members of the Deloitte Tax LLP Transfer Pricing Consultant Think Tank for their contributions to Chapter 9 dealing with Intercompany Pricing. They have many years of experience in the intercompany pricing areas.

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

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Atlanta, Georgia
August, 2008

TABLE OF CASES

References are to Pages

- Abbot Laboratories Intern. Co. v. United States, 160 F.Supp. 321 (N.D.Ill.1958), 226
- ACM Partnership v. Commissioner, 157 F.3d 231 (3rd Cir.1998), 496, 499
- Aiken Industries, Inc. v. Commissioner, 56 T.C. 925 (U.S.Tax Ct.1971), 150
- Amoco Corp. v. Commissioner, 138 F.3d 1139 (7th Cir.1998), 229
- Andantech L.L.C. v. Commissioner, 331 F.3d 972, 356 U.S.App. D.C. 387 (D.C.Cir.2003), 495
- Ashland Oil, Inc. v. Commissioner, 95 T.C. No. 25, 95 T.C. 348 (U.S.Tax Ct.1990), 349
- Balanovski, United States v., 236 F.2d 298 (2nd Cir.1956), 77
- Bank of America v. United States, 230 Ct.Cl. 679, 680 F.2d 142 (Ct.Cl.1982), 34
- Bank of America Nat. Trust & Sav. Ass'n v. United States, 198 Ct.Cl. 263, 459 F.2d 513 (Ct.Cl.1972), 223
- Biddle v. Commissioner, 302 U.S. 573, 58 S.Ct. 379, 82 L.Ed. 431 (1938), 226
- Black & Decker Corp. v. United States, 436 F.3d 431 (4th Cir.2006), 495
- Boulez v. Commissioner, 83 T.C. No. 31, 83 T.C. 584 (U.S.Tax Ct.1984), 37
- Brown Group, Inc. v. Commissioner, 77 F.3d 217 (8th Cir.1996), 352
- Central de Gas de Chihuahua, S.A. v. Commissioner, 102 T.C. No. 19, 102 T.C. 515 (U.S.Tax Ct.1994), 85, 173
- Chevron Corp. v. Commissioner, 104 T.C. No. 35, 104 T.C. 719 (U.S.Tax Ct.1995), 58

TABLE OF CASES

Coltec Industries, Inc. v. United States, 454 F.3d 1340 (Fed.Cir. 2006), 495

Commissioner v. _____ (see opposing party)

Compaq Computer Corp. and Subsidiaries v. Commissioner, 277 F.3d 778 (5th Cir.2001), 496

Cook v. Tait, 265 U.S. 47, 44 S.Ct. 444, 68 L.Ed. 895 (1924), 19

Cook v. United States, 220 Ct.Cl. 76, 599 F.2d 400 (Ct.Cl.1979), 36

De Amodio v. Commissioner, 34 T.C. 894 (Tax Ct.1960), 135

Del Commercial Properties, Inc. v. Commissioner, 251 F.3d 210, 346 U.S.App.D.C. 149 (D.C.Cir.2001), 496, 502

Derr, United States v., 968 F.2d 943 (9th Cir.1992), 302

Donroy, Ltd. v. United States, 301 F.2d 200 (9th Cir.1962), 19, 74

Dover Corp. and Subsidiaries v. Commissioner, 122 T.C. No. 19, 122 T.C. 324 (U.S.Tax Ct.2004), 343

Exxon Corp. v. Commissioner, 113 T.C. No. 24, 113 T.C. 338 (U.S.Tax Ct.1999), 215

Goodyear Tire and Rubber Co., United States v., 493 U.S. 132, 110 S.Ct. 462, 107 L.Ed.2d 449 (1989), 236

Gregory, Helvering v., 69 F.2d 809 (2nd Cir.1934), 497

Guardian Industries Corp. v. United States, 2005 WL 741755 (Fed.Cl.2005), 228, 490

Handfield v. Commissioner, 23 T.C. 633 (Tax Ct.1955), 76

Hawaiian Philippine Co., Commissioner v., 100 F.2d 988 (9th Cir.1939), 34

Helvering v. _____ (see opposing party)

Holman v. Johnson, 1775 WL 22 (KB 1775), 159

IES Industries, Inc. v. United States, 253 F.3d 350 (8th Cir. 2001), 499

InverWorld, Inc. v. Commissioner, T.C. Memo. 1996-301 (U.S.Tax Ct.1996), 76, 79

Jones v. Commissioner, 927 F.2d 849 (5th Cir.1991), 197

TABLE OF CASES

- Karrer v. United States, 138 Ct.Cl. 385, 152 F.Supp. 66 (Ct.Cl. 1957), 36
- Lewenhaupt v. Commissioner, 20 T.C. 151 (Tax Ct.1953), 75
- Liggett Group, Inc. v. Commissioner, T.C. Memo. 1990-18 (U.S.Tax Ct.1990), 42
- Limited, Inc. v. Commissioner, 286 F.3d 324 (6th Cir.2002), 496
- National Westminster Bank, PLC v. United States, 512 F.3d 1347 (Fed.Cir.2008), 125, 140
- Piedras Negras Broadcasting Co., Commissioner v. ,127 F.2d 260 (5th Cir.1942), 35
- Rice's Toyota World, Inc. v. Commissioner, 752 F.2d 89 (4th Cir.1985), 499
- Rousku v. Commissioner, 56 T.C. 548 (U.S.Tax Ct.1971), 198
- SDI Netherlands B.V. v. Commissioner, 107 T.C. No. 10, 107 T.C. 161 (U.S.Tax Ct.1996), 39, 40
- Sochurek v. Commissioner, 300 F.2d 34 (7th Cir.1962), 197
- Stemkowski v. Commissioner, 690 F.2d 40 (2nd Cir.1982), 35
- Swallows Holding, Ltd. v. Commissioner, 515 F.3d 162 (3rd Cir.2008), 162
- Taisei Fire and Marine Ins. Co., Ltd. v. Commissioner, 104 T.C. No. 27, 104 T.C. 535 (U.S.Tax Ct.1995), 125, 136
- TIFD III-E, Inc. v. United States, 459 F.3d 220 (2nd Cir.2006), 495
- United Parcel Service of America, Inc. v. Commissioner, 254 F.3d 1014 (11th Cir.2001), 496
- United States v. _____ (see opposing party)**
- Vetco Inc. v. Commissioner, 95 T.C. No. 40, 95 T.C. 579 (Tax Ct. 1990), 349
- Whitney v. Robertson, 124 U.S. 190, 8 S.Ct. 456, 31 L.Ed. 386 (1888), 123

TABLE OF CASES

- Winn-Dixie Stores, Inc. v. Commissioner, 254 F.3d 1313 (11th Cir.2001), 496
- Wodehouse, Commissioner v. ,337 U.S. 369, 69 S.Ct. 1120, 93 L.Ed. 1419 (1949), 100

TABLE OF INTERNAL REVENUE CODE SECTIONS

UNITED STATES

UNITED STATES CODE ANNOTATED 26 U.S.C.A.—Internal Revenue Code

Sec.	This Work Page
1	11
1	14
1	15
1	20
1	108
1	155
1(h)(11)	334
1(h)(11)(C)(iii)	381
2(d)	14
8.08	65
11	11
11	14
11	17
11	18
11	102
11	108
11	111
11	155
11(d)	14
61	172
78	237

TABLE OF INTERNAL REVENUE CODE SECTIONS

UNITED STATES CODE ANNOTATED
26 U.S.C.A.—Internal Revenue Code

Sec.	This Work Page
78	239
78	241
78	265
78	369
78	373
78	479
78	489
117	50
117	170
162	56
162	416
162	433
162	514
162(a)(2)	52
162(c)(1)	516
163	67
163	305
163(f)(2)(B)	89
163(j)	68
163(j)	93
163(j)	94
163(j)	95
163(j)	96
163(j)	155
163(j)	441
163(j)(6)(D)	95
164	514
164(a)(3)	210
164(a)(3)	219
165	494
168(g)(1)(A)	12
174	433
197	479
199(a)(1)	201
199(b)(1)	202
199(c)(1)	202
199(c)(4)(A)	202
199(c)(5)	202
212	416
243	232

TABLE OF INTERNAL REVENUE CODE SECTIONS

UNITED STATES CODE ANNOTATED
26 U.S.C.A.—Internal Revenue Code

Sec.	This Work Page
243(e)	232
243(e)	240
245	232
245	240
245(a)(8)	240
245(b)	240
267	424
267(a)(3)	68
267(a)(3)(B)	487
269	488
275(a)(4)(A)	210
275(a)(4)(A)	243
301(c)(2)	480
316	236
318	332
318(a)(2)(C)	333
318(a)(3)	332
331	420
331	424
332	372
332	420
332	424
332	446
332	449
332	450
336	420
336	425
337	420
337	421
337	425
337	446
337	450
338(g)	478
338(g)	479
351	114
351	258
351	414
351	418
351	419
351	420

TABLE OF INTERNAL REVENUE CODE SECTIONS

UNITED STATES CODE ANNOTATED
26 U.S.C.A.—Internal Revenue Code

Sec.	This Work Page
351	422
351	423
351	424
351	431
351	432
351	433
351	436
351	437
351	441
351	447
351	449
354	421
354	437
354	438
354	449
354	452
355	445
355	449
355	455
356	449
361	421
361	425
361	429
361	433
361	449
367	419
367	420
367	422
367	424
367	425
367	426
367	445
367	448
367(a)	419
367(a)	423
367(a)	424
367(a)	425
367(a)	426
367(a)	427
367(a)	430