

U.S. INTERNATIONAL TAXATION

CASES AND MATERIALS

THIRD EDITION

REUVEN S. AVI-YONAH

DIANE M. RING

YARIV BRAUNER

FOUNDATION PRESS

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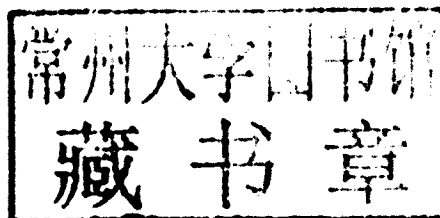
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For Ruthie and Noga, Leehee and Omri (Y.B.)

PREFACE

International taxation is an area of increasing importance in a world in which cross-border capital flows exceed \$1 trillion per day. Fifteen years ago, international tax was the specialty of a small number of attorneys, most of whom practiced in the large financial centers like New York,

Washington or Los Angeles. Today, almost any transaction over a certain dollar amount will involve an international component, and focusing solely on the U.S. domestic aspects is a luxury few tax lawyers can afford. In addition, the international tax rules are constantly changing as new areas of business develop (such as electronic commerce and derivatives) and an attempt is made to fit them into a framework that in its basic contours is now over 80 years old.

This book is an effort to provide law teachers with a relatively simple, easy to use casebook to teach U.S. international taxation. The field is notoriously complex—more so, perhaps, than any other area of Federal tax law. Thus, we have made a conscious effort to try to stick to the essentials: How does the U.S. tax law treat foreign investors deriving income from sources within the U.S. (inbound transactions), and how it treats U.S. taxpayers deriving foreign source income (outbound transactions). Throughout, the focus is on how the details of the tax law fit into a broader structure, which is described in the introduction. Thus, the book will hopefully enable students to fit the particular issues they are working on into a larger context, so as to develop an intuition for where the problem areas may lie. The rest they can learn (much faster) in practice.

The book is divided into an introduction and five parts. The introduction summarizes the entire course; it can be read profitably both before and after learning the details. Part A addresses general problems such as jurisdiction to tax and the source rules for income and deductions. Part B deals with inbound tax issues (which come first primarily because they are simpler). Part C is concerned with transfer pricing, which is common to inbound and outbound transactions and lies at the heart of the essential international tax problem of how to divide the revenue pie among competing jurisdictions. Part D is the hardest one since it involves deferral and the foreign tax credit, which are the most complicated topics in international taxation. Part E concludes by examining special topics like section 367 and the foreign exchange rules, and then discussing the relationship between the U.S. rules and the international tax regime, as embodied in the over 2,000 bilateral tax treaties. Part E also addresses some policy issues as to where international taxation may be headed in the 21st century, such as tax competition and tax arbitrage. For the second edition, we have updated

the entire text with recent cases and administrative rulings, as well as reflecting the significant changes enacted in the American Jobs Creation Act of 2004.

This first edition of this book had its origins in a joint project with Charlie Kingson and Phil West, and even though we ultimately decided to separate, it still benefits from their wisdom and advice, for which the first author is grateful. We would also like to thank Michael Graetz and Dan Shaviro for helpful comments on a draft of the book. We have benefited tremendously from the input of our students who wrestled with earlier drafts at Arizona State, Florida, Harvard, Penn, Michigan, Northwestern, and NYU. Finally, we would like to thank Steve Errick, Jim Coates and their colleagues at Foundation Press for their outstanding work in bringing this second edition to print.

TABLE OF CASES

Principal cases are in bold type. Non-principal cases are in roman type. References are to Pages.

- American Chicle Co. v. United States**, 316 U.S. 450, 62 S.Ct. 1144, 86 L.Ed. 1591 (1942), **396**
- A.P. Green Export Co. v. United States, 151 Ct.Cl. 628, 284 F.2d 383 (Ct.Cl.1960), 100
- Arkansas Best Corp. v. Commissioner, 485 U.S. 212, 108 S.Ct. 971, 99 L.Ed.2d 183 (1988), 111
- Arnett v. Commissioner, 473 F.3d 790 (7th Cir.2007), 40
- Ashland Oil, Inc. v. Commissioner**, 95 T.C. No. 25, 95 T.C. 348 (U.S.Tax Ct.1990), **327**
- Balanovski, United States v.**, 236 F.2d 298 (2nd Cir.1956), **94**
- Bank of America v. United States**, 230 Ct.Cl. 679, 680 F.2d 142 (Ct.Cl.1982), **64**
- Barba v. United States**, 2 Cl.Ct. 674 (Cl.Ct. 1983), **125**
- Bausch & Lomb Inc. v. Commissioner, 92 T.C. No. 33, 92 T.C. 525 (U.S.Tax Ct.1989), 218
- Biddle v. Commissioner**, 302 U.S. 573, 58 S.Ct. 379, 82 L.Ed. 431 (1938), **372**
- Black & Decker Corp. v. Commissioner**, T.C. Memo. 1991-557 (U.S.Tax Ct.1991), **105**
- Boulez v. Commissioner**, 83 T.C. No. 31, 83 T.C. 584 (U.S.Tax Ct.1984), **55**
- Brown Group, Inc. v. Commissioner**, 77 F.3d 217 (8th Cir.1996), **315**
- Brown Group, Inc. and Subsidiaries v. Commissioner**, 104 T.C. No. 5, 104 T.C. 105 (U.S.Tax Ct.1995), **291**
- Carding Gill, Ltd. v. Commissioner, 38 B.T.A. 669 (B.T.A.1938), 35
- Casa De La Jolla Park, Inc. v. Commissioner**, 94 T.C. No. 23, 94 T.C. 384 (U.S.Tax Ct.1990), **133**
- Commissioner v. ——— (see opposing party)**
- Compaq Computer Corp. and Subsidiaries v. Commissioner**, 277 F.3d 778 (5th Cir.2001), 427, **428**
- Compaq Computer Corp. and Subsidiaries v. Commissioner**, 113 T.C. No. 17, 113 T.C. 214 (U.S.Tax Ct.1999), **416**
- Container Corp. v. Commissioner**, 134 T.C. No. 5 (U.S.Tax Ct.2010), **74**
- Continental Illinois Corp. v. Commissioner**, 998 F.2d 513 (7th Cir.1993), **361**
- Cook v. Tait**, 265 U.S. 47, 44 S.Ct. 444, 68 L.Ed. 895 (1924), **21**
- DHL Corp. and Subsidiaries v. Commissioner**, 285 F.3d 1210 (9th Cir.2002), **220**
- Eder v. Commissioner**, 138 F.2d 27 (2nd Cir.1943), **272**
- E. I. Du Pont de Nemours and Co. v. United States**, 221 Ct.Cl. 333, 608 F.2d 445 (Ct.Cl.1979), **198**
- Estate of (see name of party)**
- Exxon Corp. v. Commissioner, T.C. Memo. 1993-616 (U.S.Tax Ct.1993), 265
- Ferro-Enamel Corporation, Commissioner v., 134 F.2d 564 (6th Cir.1943), 110
- Garlock Inc. v. Commissioner**, 489 F.2d 197 (2nd Cir.1973), **284**
- Goodyear Tire and Rubber Co., United States v.**, 493 U.S. 132, 110 S.Ct. 462, 107 L.Ed.2d 449 (1989), **399**
- Groetzinger, Commissioner v., 480 U.S. 23, 107 S.Ct. 980, 94 L.Ed.2d 25 (1987), 129
- Guardian Industries Corp. v. United States, 2005 WL 741755 (Fed.Cl.2005), 443
- Handfield v. Commissioner**, 23 T.C. 633 (Tax Ct.1955), **163**
- Hershey Foods Corp. v. Commissioner, 76 T.C. 312 (U.S.Tax Ct.1981), 474
- IES Industries, Inc. v. United States, 253 F.3d 350 (8th Cir.2001), 427
- Inland Steel Co. v. United States**, 230 Ct.Cl. 314, 677 F.2d 72 (Ct.Cl.1982), **378**

- Karrer v. United States**, 138 Ct.Cl. 385, 152 F.Supp. 66 (Ct.Cl.1957), **47**
- Korfund Co., Inc. v. Commissioner**, 1 T.C. 1180 (Tax Ct.1943), **85**
- Lewenhaupt v. Commissioner**, 20 T.C. 151 (Tax Ct.1953), **146**
- Liang v. Commissioner**, 23 T.C. 1040 (Tax Ct.1955), **142**
- Ludwig v. Commissioner**, 68 T.C. 979 (U.S.Tax Ct.1977), **344**
- MCA, Inc. v. United States**, 685 F.2d 1099 (9th Cir.1982), 314
- Neill v. Commissioner**, 46 B.T.A. 197 (B.T.A. 1942), 151
- Northumberland Ins. Co., Ltd., United States v.**, 521 F.Supp. 70 (D.N.J.1981), 175
- Piedras Negras Broadcasting Co., Commissioner v.**, 127 F.2d 260 (5th Cir. 1942), **176**
- Pinson v. Commissioner**, T.C. Memo. 2000-208 (U.S.Tax Ct.2000), 74
- Procter and Gamble Co. v. Commissioner**, 95 T.C. No. 23, 95 T.C. 323 (U.S.Tax Ct.1990), **259**
- Quill Corp. v. North Dakota By and Through Heitkamp**, 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992), **178**
- Scherf v. Commissioner**, 20 T.C. 346 (Tax Ct.1953), 313
- SDI Netherlands B.V. v. Commissioner**, 107 T.C. No. 10, 107 T.C. 161 (U.S.Tax Ct.1996), 40
- Spermacet Whaling & Shipping Co. S.A. v. Commissioner**, 30 T.C. 618 (Tax Ct.1958), **152**
- Stemkowski v. Commissioner**, 690 F.2d 40 (2nd Cir.1982), **89**
- Summitt v. Commissioner**, 134 T.C. No. 12 (U.S.Tax Ct.2010), 492
- Taisei Fire and Marine Ins. Co., Ltd. v. Commissioner**, 104 T.C. No. 27, 104 T.C. 535 (U.S.Tax Ct.1995), **167**
- Texasgulf, Inc. v. Commissioner**, 107 T.C. 51 (U.S.Tax Ct.1996), 390
- Tobey v. Commissioner**, 60 T.C. 227 (U.S.Tax Ct.1973), 60
- United States v. ——— (see opposing party)**
- United States Gypsum Co. v. U.S.**, 304 F.Supp. 627 (N.D.Ill.1969), **193**
- United States Steel Corp. v. Commissioner**, 617 F.2d 942 (2nd Cir.1980), **210**
- Veritas Software Corp. v. Commissioner**, 133 T.C. No. 14 (U.S.Tax Ct.2009), **235**
- Vulcan Materials Co. and Subsidiaries v. Commissioner**, 96 T.C. No. 13, 96 T.C. 410 (U.S.Tax Ct.1991), **407**
- Wodehouse, Commissioner v.**, 337 U.S. 369, 69 S.Ct. 1120, 93 L.Ed. 1419 (1949), **41**
- Xerox Corp. v. United States**, 41 F.3d 647 (Fed.Cir.1994), **537**
- Yaeger, Estate of v. Commissioner**, 889 F.2d 29 (2nd Cir.1989), 146

CASES AND MATERIALS

U.S. INTERNATIONAL TAXATION

SUMMARY OF CONTENTS

PREFACE.....	v
TABLE OF CASES	xix
Introduction: The International Tax Regime	1
PART A. General	17
CHAPTER 1. Jurisdiction to Tax and Definitions	18
1.1 Jurisdiction to Tax: In General.....	18
1.2 Definitions	20
1.3 Review Problems—Chapter 1	29
CHAPTER 2. The Source of Income	31
2.1 Introduction and Overview	31
2.2 Substantive v. Formal Rules	32
2.3 To What Category Does Income Belong?	40
2.4 What About Income That Does Not Belong to Any Category? ...	85
2.5 What if Income Is Generated Both Inside and Outside the United State?.....	89
2.6 How Much Control Do Taxpayers Have Over Sourcing Income? ..	94
2.7 Conclusion	100
2.8 Review Problems—Chapter 2	100
CHAPTER 3. The Allocation of Deductions	102
3.1 Introduction and Overview	102
3.2 Allocation of Deductions.....	105
3.3 The Allocation and Apportionment of Interest Expense (Sec- tion 864(e)).....	112
3.4 The Sourcing of R & E Expense.....	117
3.5 Review Problems—Chapter 3	118
PART B. U.S. Income of Foreign Taxpayers	119
CHAPTER 4. The Taxation of Non-Business Income	120
4.1 Introduction	120
4.2 Overview.....	120
4.3 Taxation of Nonresident Individuals	123
4.4 Taxation of Foreign Corporations	124

4.5	The Heart of Gross Basis Taxation of Nonresidents: “Fixed or Determinable, Annual or Periodical” Income	125
4.6	Beyond FDAP	129
4.7	Exceptions	130
4.8	Collections	133
4.9	Conclusion	139
4.10	Review Problems—Chapter 4	140
CHAPTER 5. The Taxation of Business Income		141
<hr/>		
5.1	Introduction and Overview	141
5.2	What Is a U.S. Trade or Business?	141
5.3	What Is Effectively Connected?	181
5.4	Review of Basic Regime for Nonresidents	183
5.5	The Branch Profits Tax	183
5.6	The Earnings Stripping Rule	185
5.7	Review Problems—Chapter 5	187
PART C. The Transfer Pricing Problem		191
<hr/>		
CHAPTER 6. The Transfer Pricing Problem		192
<hr/>		
6.1	The Root of the Problem	193
6.2	A Classic Example	198
6.3	The Problem of Comparables	210
6.4	More on the Operation of the Transfer Pricing Rules	219
6.5	The Interaction With Foreign Law	259
6.6	Conclusion: Is There a Feasible Alternative?	266
6.7	Review Problems—Chapter 6	266
PART D. Foreign Income of U.S. Taxpayers		269
<hr/>		
CHAPTER 7. Deferral and its Limits		270
<hr/>		
7.1	The Problem of Deferral	270
7.2	Limitations Primarily for Individuals	271
7.3	Limitations Primarily for Corporations	275
7.4	The Operation of Subpart F and Other Provisions That May Affect CFCs	343
7.5	The Future of Deferral	357
7.6	Review Problems—Chapter 7	358
CHAPTER 8. The Foreign Tax Credit		360
<hr/>		
8.1	Introduction	360
8.2	The Three Hoops	361

8.3	The Foreign Tax Credit Limitation	391
8.4	The Indirect Credit	396
8.5	Foreign Tax Credit “Abuse”	416
8.6	Review Questions—Chapter 8	451
PART E. The U.S. and the International Tax Regime		453
CHAPTER 9. Section 367 & Cross-Border Transfers of Property		454
9.1.A:	In General	454
9.1.B:	Incorporation of a Loss Branch	471
9.2	The Operation of Section 367	479
9.3	Review Questions—Chapter 9	483
CHAPTER 10. Foreign Currency		485
10.1	Introduction	485
10.2	Origin and Overview of the Regime—	486
10.3	Qualified Business Units, Functional Currency and the Calculation of Income and Loss	488
10.4	Section 988 Foreign Currency Transactions	491
10.5	Return to Original Hypotheticals	496
10.6	Review Questions—Chapter 10	497
CHAPTER 11. The Role of Treaties		498
11.1	The U.S. Model	498
11.2	The Relationship Between Treaties and the Code	526
11.3	Judicial Interpretation of Treaties	537
11.4	International Tax as International Law	554
11.5	Review Questions: Chapter 11	568
CHAPTER 12. The Future of the International Tax Regime		569
12.1	The U.S. and the International Tax Regime	569
12.2	The Tax Competition Problem	586
12.3	The Tax Arbitrage Problem	601
INDEX		613

TABLE OF CONTENTS

PREFACE	v
TABLE OF CASES	xix
Introduction: The International Tax Regime	1
Notes and Questions	16
PART A. General	17
CHAPTER 1. Jurisdiction to Tax and Definitions	18
1.1 Jurisdiction to Tax: In General	18
Notes and Questions	19
1.2 Definitions	20
a. Nonresident Alien	20
<i>Cook v. Tait</i>	21
Notes and Questions	22
b. Foreign Corporations and Partnerships	22
(i) Before “Check The Box”	22
Notes and Questions	26
(ii) After “Check the Box”	27
c. Foreign Trusts and Estates	27
Notes and Questions	29
1.3 Review Problems—Chapter 1	29
CHAPTER 2. The Source of Income	31
2.1 Introduction and Overview	31
2.2 Substantive v. Formal Rules	32
Notes and Questions	39
2.3 To What Category Does Income Belong?	40
a. Royalties v. Sales	41
<i>Commissioner v. Wodehouse</i>	41
Notes and Questions	46
b. Services v. Royalties	47
<i>Karrer v. United States</i>	47
Notes and Questions	54
<i>Boulez v. Commissioner</i>	55
Notes and Questions	59
c. Services v. Interest (The Transfer of Money)	60
Notes and Questions	64
<i>Bank of America v. United States</i>	64
Notes and Questions	73
<i>Container Corporation v. Commissioner</i>	74

	Notes and Questions	84
2.4	What About Income That Does Not Belong to Any Category? ...	85
	<i>Korfund Co. v. Commissioner</i>	85
	Notes and Questions	88
2.5	What if Income Is Generated Both Inside and Outside the United State?	89
	<i>Stemkowski v. Commissioner</i>	89
	Notes and Questions	93
2.6	How Much Control Do Taxpayers Have Over Sourcing Income?	94
	<i>United States v. Balanovski</i>	94
	Notes and Questions	99
2.7	Conclusion	100
2.8	Review Problems—Chapter 2	100
CHAPTER 3. The Allocation of Deductions		102
3.1	Introduction and Overview	102
3.2	Allocation of Deductions	105
	<i>Black & Decker v. Commissioner</i>	105
	Notes and Questions	110
3.3	The Allocation and Apportionment of Interest Expense (Sec- tion 864(e))	112
	a. Why a Special Interest Expense Rule?	112
	b. Interest Expense of U.S. Affiliated Groups—The Look Through Rule	113
	c. The Unfairness of Not Looking—Through Foreign Affili- ates?	114
3.4	The Sourcing of R & E Expense	117
3.5	Review Problems—Chapter 3	118
PART B. U.S. Income of Foreign Taxpayers		119
CHAPTER 4. The Taxation of Non-Business Income		120
4.1	Introduction	120
4.2	Overview	120
4.3	Taxation of Nonresident Individuals	123
4.4	Taxation of Foreign Corporations	124
4.5	The Heart of Gross Basis Taxation of Nonresidents: “Fixed or Determinable, Annual or Periodical” Income	125
	<i>Fernando Barba v. United States</i>	125
	Notes and Questions	129
4.6	Beyond FDAP	129
4.7	Exceptions	130
	Notes and Questions	131
4.8	Collections	133
	<i>Casa De La Jolla Park, Inc. v. Commissioner</i>	133

	Notes and Questions	138
4.9	Conclusion	139
4.10	Review Problems—Chapter 4	140
CHAPTER 5. The Taxation of Business Income		141
5.1	Introduction and Overview	141
5.2	What Is a U.S. Trade or Business?	141
a.	Investment Activities	142
	<i>Chang Hsiao Liang v. Commissioner of Internal Revenue</i>	142
	Notes and Questions	145
b.	Real Estate	146
	<i>Jan Casimir Lewenhaupt v. Commissioner of Internal Revenue</i>	146
	Notes and Questions	151
c.	Active Business	152
	<i>Spermacet Whaling & Shipping Co. S.A. v. Commissioner of Internal Revenue</i>	152
	Notes and Questions	162
d.	Operation Through an Agent	162
	<i>Frank Handfield v. Commissioner of Internal Revenue</i>	163
	Notes and Questions	165
	<i>The Tasei Fire and Marine Insurance Co., Ltd. v. Commissioner of Internal Revenue</i>	167
	Notes and Questions	175
e.	The Physical Presence Requirement	175
	<i>Commissioner v. Piedras Negras Broadcasting Co.</i>	176
	Notes and Questions	178
	<i>Quill Corp. v. North Dakota</i>	178
	Notes and Questions	180
5.3	What Is Effectively Connected?	181
5.4	Review of Basic Regime for Nonresidents	183
5.5	The Branch Profits Tax	183
5.6	The Earnings Stripping Rule	185
5.7	Review Problems—Chapter 5	187
PART C. The Transfer Pricing Problem		191
CHAPTER 6. The Transfer Pricing Problem		192
6.1	The Root of the Problem	193
	<i>United States Gypsum Company and United States Gypsum Export Company v. United States of America</i>	193
	Notes and Questions	197
6.2	A Classic Example	198
	<i>E.I. Du Pont de Nemours and Company v. United States</i>	198
	Notes and Questions	207

6.3	The Problem of Comparables	210
	<i>United States Steel Corporation v. Commissioner of Internal Revenue</i>	210
	Notes and Questions	217
6.4	More on the Operation of the Transfer Pricing Rules	219
a.	Tangible Property	219
b.	Transactions With Intangible Property	220
	<i>DHL Corporation and Subsidiaries v. Commissioner of Internal Revenue</i>	220
	Notes and Questions	232
	<i>Veritas v. Commissioner</i>	235
	Notes and Questions	257
c.	Services	259
6.5	The Interaction With Foreign Law	259
	<i>The Procter & Gamble Company v. Commissioner of Internal Revenue</i>	259
	Notes and Questions	265
6.6	Conclusion: Is There a Feasible Alternative?	266
6.7	Review Problems—Chapter 6	266
PART D. Foreign Income of U.S. Taxpayers		269
CHAPTER 7. Deferral and its Limits		270
7.1	The Problem of Deferral	270
7.2	Limitations Primarily for Individuals	271
a.	Early Limitations on Deferral	271
b.	Realization v. Receipt	272
	<i>Eder et al. v. Commissioner of Internal Revenue</i>	272
	Notes and Questions	273
c.	Passive Foreign Investment Companies (PFIC, Sections 1291–1298)	273
7.3	Limitations Primarily for Corporations	275
a.	From Equity to Neutrality	275
b.	Subpart F (Sections 951–960)	283
1.	Definition of CFC	283
	<i>Garlock, Inc. v. Commissioner of Internal Revenue</i>	284
	Notes and Questions	290
2.	The Base Company Rule	290
	<i>Brown Group, Inc. and Subsidiaries v. Commissioner of Internal Revenue</i>	291
	<i>Brown Group, Inc. and Subsidiaries v. Commissioner of Internal Revenue</i>	315
	Notes and Questions	319
3.	The Branch Rule (and Contract Manufacturing)	324
	Notes and Questions	327
	<i>Ashland Oil, Inc. v. Commissioner of Internal Revenue</i>	327
	Notes and Questions	340