Summary of Contents

	Page
Preface	v
Table of Internal Revenue Code Sections	xxxi
Table of I.R.S. Notices	liii
Table of I.R.S. Revenue Procedures	lv
Table of I.R.S. Revenue Rulings	lvii
Table of Cases	lix
Chapter 1. Introduction and Overview	**1**
A. Background	1
B. Basic Questions: Designing a System for Taxing International Transactions	9
C. Reach of U.S. Tax Jurisdiction: The Role of International Law	16
D. Some Basic Conceptual and Policy Issues	19
E. Some Basic Principles of U.S. International Taxation	36
F. Who Is Taxed on Worldwide Income?	41
G. The Role of Income Tax Treaties in International Taxation	62
Chapter 2. Source Rules for Income and Deductions	**76**
A. Introduction: The Relevance of Source Rules	76
B. Interest	78
C. Dividends	79
D. Rentals and Royalties	79
E. Compensation for Personal Services	81
F. Sale of Real Property	99
G. Sale of Personal Property	99
H. Special Rules	116
I. Source Rules for Deductions	131
J. Reflections on Source Rules	139
Chapter 3. Foreign Persons: U.S. Trade or Business Income	**141**
A. Introduction	141
B. U.S. Trade or Business	142
C. Determining Amount to Be Taxed	166
D. Effect of Tax Treaty Provisions	181
E. Branch Profits Tax	222
F. Exceptions Based Upon Foreign Policy Considerations	226
Chapter 4. Foreign Persons: Nonbusiness U.S.–Source Income	**228**
A. Basic Mechanism	228
B. What Is FDAP Income?	230

Page
C. Untaxed Items of U.S.–Source FDAP Income 238
D. Effect of Treaties on Withholding Taxes 242
E. Gains From Sale of Property Not Effectively Connected With a U.S. Trade or Business 260
F. Withholding Mechanism 262
G. Treatment of Gains From U.S. Real Property 277
H. Financing the U.S. Enterprise 287
I. Tax Planning Considerations for Inbound Transactions 291
J. Tax Planning Problems 296
K. Some Reflections on the Taxation of Foreign Persons 298

Chapter 5. Introduction to Outbound International Taxation; The Foreign Tax Credit and Other Methods For Mitigating the Double Taxation of U.S. Persons 302
A. Introduction 302
B. The Foreign Tax Credit: Overview 307
C. Taxpayers That May Use Foreign Tax Credits 308
D. Creditable Taxes (Sections 901 and 903) 313
E. Election and Accounting Rules for Foreign Tax Credits 366
F. Indirect Credit (Section 902) 367
G. Tax–Sparing Credits 403
H. Introduction to Foreign Tax Credit Limitations 406
I. Anti–Abuse Limitations on the Foreign Tax Credit 430
J. Tax Exemption for Certain U.S. Taxpayers Living and Working Abroad (Section 911) 453
K. The Role of Tax Treaties in Mitigating the Double Taxation of U.S. Persons 478

Chapter 6. The Controlled Foreign Corporation Provisions and Other Anti–Deferral Regimes 485
A. Introduction and Overview of the Anti–Deferral Regimes 485
B. Overview of Controlled Foreign Corporation Provisions 494
C. Definition of Controlled Foreign Corporation 502
D. Some Mechanics of Subpart F Income Inclusions 530
E. Definition of Foreign Base Company Income 540
F. Earnings Invested in U.S. Property 584
G. Previously Taxed Income and Ordering Rules 603
H. Gains From Certain Sales or Exchanges of Stock in Controlled Foreign Corporations (Section 1248) 605
I. Effect of Controlled Foreign Corporation Status on Calculation of U.S. Shareholder's Foreign Tax Credits 609
J. Sales and Exchanges of Patents and Other Industrial Property Rights to Controlled Foreign Corporations (Section 1249) 610
K. Passive Foreign Investment Company Provisions 611
L. Reporting Requirements and Other Miscellaneous Provisions 627
M. Accumulated Earnings Tax 630
N. Policy Discussion of Alternatives to the Current Anti–Deferral Regimes 632

Page

Chapter 7. Foreign Tax Credit Limitations: Separate Baskets, Losses and Look-Through Rules **664**
A. Introduction 664
B. Definitions of the Separate Categories of Income Under Section 904(d)(1) 664
C. Treatment of Losses 677
D. Look-Through Rules 683
E. Allocation and Apportionment of Deductions in Calculating Limitations 691
F. Deconsolidation to Manipulate Foreign Tax Credit Limitations 693
G. Preserving U.S.-Source Income 695
H. Tax Planning Under Separate Limitations 697
I. Methodology for Analysis 697
J. Policy Considerations 703

Chapter 8. Transfer Pricing **710**
A. Statement of the Problem 710
B. Statutory Response: Section 482 712
C. Approaches to Arm's Length Pricing 721
D. Exploitation of Intangible Property 751
E. Administration of Transfer Pricing Issues 757

Chapter 9. Foreign Currency **769**
A. Introduction 769
B. Structure of Code Provisions 773
C. Separate Transactions Method 778
D. Profit and Loss Method 795

Chapter 10. International Tax-Free Exchanges **814**
A. Introduction 814
B. Nonrecognition-of-Gain Transactions 816
C. Legislative and Administrative Background 823
D. Section 367(a) Requirements for Outbound Transfers 826
E. Transfers of Appreciated Property to a Partnership or Trust 867
F. Application of Section 367(b) to Nonoutbound Transfers 867

Chapter 11. International Sale of Goods **881**
A. Overview 881
B. Arrangements For Handling Export Sales Into a Particular Foreign Country 883
C. Introduction to Use of Foreign or U.S. Corporation to Handle Export Sales 905
D. Use of a Foreign Export Corporation 907
E. U.S. Tax Subsidies to Encourage U.S. Exports 941
F. Tax Treatment of the Foreign Sales Corporation 945
G. Demise of the FSC and Enactment and Demise of its Successor, the Extraterritorial Income Exclusion Regime 949
H. Special Rules For Small Businesses: Interest-Charge DISC 951
I. The Extraterritorial Income Exclusion Regime 957

Page
J. Financing of Exports 962
K. Export Incentive Policy Issues 963

Chapter 12. Exploitation of Intangible Property Rights Abroad 966
A. Introduction 966
B. Licensing Intangible Property Rights to an Independent or Affiliated Licensee in Consideration for Continuing Royalties 968
C. Capital Gains Licensing 973
D. Transfer of Intangible Property Rights to a Foreign Corporation in Exchange for Stock or as Contribution to Capital 1010
E. Base Company Licensing 1030
F. The Requirement for Arm's Length Pricing Between Related Persons 1038

Chapter 13. Direct Investment Abroad 1073
A. Direct Investment Abroad Through Foreign Branch or Foreign Company 1073
B. Some Tax Aspects of International Joint Ventures 1117
C. Possible Tax Savings Through Interposition of a Foreign Holding Company 1147

Chapter 14. International Boycott and Foreign Bribery Provisions 1150
A. Using Tax Law to Advance Foreign Policy Objectives 1150
B. International Boycott Provisions 1151
C. Treatment of Bribes, Kickbacks or Similar Payments to Foreign Government Officials or Agents 1171
D. Some Policy Considerations 1172

App.
A. United States Model Income Tax Convention of November 15, 2006 1174
B. 2006 United States Model Income Tax Treaty—U.S. Treasury Department's Technical Explanation 1203

INDEX 1303