Overview and Course Objective:

This seminar class provides an overview of various cross-border tax issues relating to engaging in business or making investments between the United States and Canada. The Course Objectives are to gain a basic familiarity and understanding of the United States international income tax system, specifically addressing how bi-lateral tax treaties affect global tax planning, the avoidance of double taxation and the relationship between tax authorities from different jurisdictions. The Course will use the United States tax relationship with Canada as an example of such a multi-jurisdictional tax relationship; however, comparisons to the U.S. model treaty and the Organization of Economic Development (OECD) income tax treaty will also be drawn. The Course will provide students with a brief overview of Canadian income tax, residency for Canadian tax purposes, principles relating to various alternatives for operating a Canadian business in the United States and investments in Canada and issues relating to the establishment and operation of U.S.-owned businesses in Canada. Repatriation issues and the tax ramifications will also be addressed.

The course will be graded by class participation and a final examination.

Topics to be covered:

Week 1 – 9/23: An Overview of the U.S International Tax

- Taxation Base
- Residence
- Source of Income
- U.S. Taxation of Investment Income
- Engaged in U.S. Trade or Business
- Relief of Double Taxation

Assignment: Read handout – U.S. Taxation of International Activities and Transactions
Read IRS Publication 519
Review IRC §§ 7701, 877, Treas. Reg. §§ 301.7701, 301.7701(b)
Review IRC §§ 861-863
Review IRC §§ 871 and 881
Review IRC §§ 901-904
Week 2 – 9/30: U.S. International Tax cont. and the Tax Treaty System, including the:
- Implementation of a U.S. Tax Treaty
- Tax Treaties v. the Internal Revenue Code
- U.S. – Model Treaty
- U.S. – Canada Income Tax Treaty

Assignment: Read handout – Introduction to U.S. Income Tax Treaties
Read handout – Overview U.S. Model Treaty
Review IRS Publication 597
Review the OECD Model Income Tax Treaty, updated January 2010
Review the U.S. – Canada Income Tax Treaty and the Technical Explanation
Review the U.S. Model Treaty and Technical Explanation
Review the Internal Revenue Code and regulations

Week 3 – 10/7: Residence
- Treaty residence for individuals and entities
- Dual status
- Exchange of information between the United States and Canada

Assignment: Read handout - Residence and Applicability of the Tax Treaty
Read handout – Canada – U.S. Treaty – Article IV paragraphs 6 and 7
Read handout – TD Securities (USA) LLC v. Her Majesty the Queen
Read handout – Canada Revenue Agency Clarifies Views on Anti-hybrid, Look-Through Rules in Canada – U.S. Treaty
Read IRC §§ 7701 and Treasury Regulations 301.7701 and 301.7701(b)
Read Treaty Article IV and Technical Explanation

Week 4 – 10/14: Business Profits and Permanent Establishments
- U.S. trade or business
- Definition of permanent establishment
- Consequences of a permanent establishment
- Taxation of Canadian companies doing business in the United States
- ECI
- FDAP

Assignment: Read handout - Business Profits and Permanent Establishments
Read – Unger v. Com’r., 936 F.2d 1316
Read - Consolidated Premium Iron Ores Ltd., 28 TC 127
Read – Rev. Rul. 65-263 1965-2 CB 561
Read – Rev. Rul. 63-113 1963-1 CB 410
Read – *Samann v. Com’r.*, 313 F.2d 461
Read – *Frank Hanfield*, 23 TC 633
Read – Canada – U.S. Treaty – Articles V and VII and Technical Explanation
Review the OECD Model Income Tax Treaty, updated January 2003
Review the U.S. – Canada Income Tax Treaty and the Technical Explanation
Review the Internal Revenue Code and regulations

**Week 5 - 10/21:**  
**Investment Income, Royalties, Capital Gains and Immovable Property, Services and Other Classes of Income**

- Taxation of Dividends, Branch Profits, Interest, Rents and Royalties
- Income from the disposition of capital assets
- Disposition of U.S. real property interests
- Real property net election under the U.S. – Canada Income Tax Treaty
- Permanent establishment issues regarding ownership of U.S. real property
- Taxation of personal services
- Athletes and Artistes
- Government Service
- Taxation of pensions and annuities, including annuity paid to a nonresident alien, Canadian pensions and annuities paid to U.S. residents
- Taxation of Foreign Governments

**Assignment:** Read handout - Passive Income Categories: Dividends, Interest, Royalties; Foreign Tax Credits
Read handout – Creating a Canada – U.S. Service Joint Venture
Read handout - US Taxation of Foreign Investments in US Real Estate
Read handout – Nonresident Investment in Canadian Real Estate
Review the U.S. – Canada Income Tax Treaty and the Technical Explanation – Articles VI and X – XIII, XV – XXIII.
Review Internal Revenue Code Section 897 and regulations

**Week 6 – 10/28:**  
**Treaty Abuse and Limitations of Benefits; Nondiscrimination, Competent Authority, Arbitration and Exchange of Information**

**Assignment:** Read handout – Treaty Shopping, Exchange of Information, Collections
Read handout – Thoughts on the New LOB Clause in the Canada – U.S. Treaty.
Read handout – Memorandum of Understanding between the Competent Authorities of Canada and the United States of America and Arbitration Board Operation Guidelines

**Week 7 – 11/4:** Basic Canadian Taxation of Residents and Nonresidents in Canada
- Basic pattern of Canadian income taxation and key differences from the U.S. tax system
- Other Canadian taxes

Guest Lecturer: *Len Glass*, Partner, Lawson Lundell LLP Vancouver, British Columbia

**Assignment:** Read Handout - Doing Business in Canada or the United States
Review the U.S. – Canada Income Tax Treaty and the Technical Explanation
Review Internal Revenue Code and regulations

**Week 8 – 11/18:** International Estate Planning – Canada and the U.S.
- Overview of U.S. Estate Tax for Foreign Persons
- Overview of Canada-U.S. Estate Tax Treaty

**Week 9 - 11/25:** FBARS, Reporting Requirements and Expatriation
- Overview of U.S. Persons Reporting Obligations for Foreign Assets and Accounts
- Expatriation rules in Canada and the U.S.

**Week 10 – 12/2:** Course Evaluation & Review

**Required Materials:**

1. Assigned Materials and Problems
2. Internal Revenue Code of 1986, as amended
3. Income Tax Regulations, including a current set of Proposed Income Tax Regulations
5. OECD Model Income Tax Treaty
6. IRS Publication 597, Information on the United States – Canada Income Tax Treaty
**Method of Instruction:**

Class will meet once a week and consist of a mixture of lecture and discussion of assigned materials. Students may be assigned a particular topic and lead the discussion each week. Students are expected to be prepared and participate in the discussions. There may be written assignments throughout the quarter and a take home exam. Grading will consist of attendance, and a written exam.

I may be reached during business hours at (206) 223-7137, and by e-mail at davisp@lanepowell.com. Mailing address: 1420 Fifth Avenue, Suite 4200, Seattle, Washington, 98101.

**Disability-Related Needs:**

To request accommodations due to a disability, please contact Disability Resources for Students (DRS), # 448 Schmitz Hall, (206) 543-8924 (V), (206) 543-8925 (TTY). If you have a letter from DRS, please make an appointment to see me so we can discuss any accommodations you might need in this class.