1. Maria, a Spanish citizen and resident for all years in question, after communicating with her psychic friend (@psychicchic.con), decides to leave staid Spain for NY city. She travels to NY on a visitor's (tourist) visa, and spends here 365 days in 1998; 180 in 1999; and 30 in 2000. (Assume that her visitor's visa allows her to spend all of those days in the U.S.) Her only assets are one share of IBM stock (basis $100, fair market value of $200) and one share of Santander (basis of $200, FMV $100). In 1999, she applies for a Green Card (and today, she is still waiting for the Green Card). She maintains a separate apartment, bank account, and boyfriend in both countries for all years.
   1. For what years–1998, 1999, and/or 2000--if any, is she a U.S. resident under the Code?
   2. Assuming Maria is a U.S. resident under the Code for either 1998, 1999, or 2000, is there any argument she could make under the Code that she is not a U.S. resident?
   3. Assuming Maria is a U.S. resident under the Code for 1998, 1999, or 2000, is there any argument that she could make under the Treaty that she is not a U.S. resident?
   4. Prior to coming to the U.S., Maria talks to you, her U.S. tax advisor, and tells you that she will need to liquidate her assets sometime during her U.S. sojourn to pay bills. Assuming Maria is not subject to Spanish tax on the sale of stock, what tax advice would you give her with respect to the timing of the sales of the assets?
2. Diana, a U.S. citizen, works in New York for TT&A LLP, a New York law firm. In 2007, she is sent to Brazil to head up the Rio office for a long-term, indefinite assignment. She sells her NY apartment, closes her U.S. bank account, and moves to Rio where she buys an apartment, opens a bank account, and begins work. In 2008, she receives $1,000 of interest paid with respect to bonds of Bank Royal, a UK company. Under UK law, the interest is subject to a 30% withholding tax, unless reduced by an applicable treaty.
   1. What effect, if any, does the Treaty have with respect to the interest?
   2. Assume that the Treaty lowers the UK tax to 15%–this may or may not be the correct answer to 3.a. In completing her U.S. tax return, Diana takes the position that the Treaty prohibits the US from taxing the interest at a rate greater than 15%. Briefly explain why there is or is not any merit to Diana’s position. (Note, disregard any possible application of section 911 and be specific.)
3. On Dec. 31, 2006, DC, a US corporation, forms FC, a UK corporation, and purchases 100% of the stock of FC for $15,000. (DC’s holding period begins on Jan. 1, 2007, so there is no need to pro rate any number. Also, prior to 2007, FC has no earnings and profits.) For 2007, FC earns $20,000 in bank interest and $25,000 of active (non-subpart F) business income, and distributes $21,000 to DC. For 2008, FC earns $14,000 in bank interest and $18,000 of active (non-subpart F) business income, and distributes $7,000. DC sells all of the stock of FC on Dec. 31, 2008 for $60,000. (Remember: DC’s holding period includes all of 2008.)
   1. What’s DC’s income for 2007 and 2008 (not including the gain, if any, from the sale of FC).
   2. Into what basket(s) does (do) the amounts in a. fall into? (Don’t do any FTC calculations.)
   3. Calculate the amount of DC's gain on the sale of the FC stock and the character of the gain (i.e., ordinary or capital).
4. Peter Piper, a UK citizen and resident, is traveling in the U.S. and buys a winning lottery ticket in Florida. The winning number, 666, pays $6 million.

* 1. What is (are) the source(s) of Peter’s lottery winnings?

* 1. How are his winnings taxed by the U.S.?
  2. How would your answers above be affected by the Treaty?

1. UKCO, a private UK corporation owned by UK residents and citizens, is engaged in various business activities in the UK. Its software division writes, produces, manufactures, and distributes its famous program, WindozeBloz (“WB”), which cleans up your computer after it has been infected with gobs of spyware from eastern European artistic web sites. UKCO also has a small printing business in NY with various employees, who have nothing to do with the software business. The NY operation prints and distributes eastern European artistic magazines solely in the US. Because of a surfeit of spyware on its servers, Fordham decides it needs WB, and it signs a license agreement with UKCO under which Fordham agrees to pay UKCO an initial flat payment of $10,000 and $1 royalty per year per copy installed on student computers. Fordham can make copies of the program for distribution other than for its students in the US for the remaining term of the WB copyright and prepare derivative works based on WB. For 2006, Fordham pays UKCO the flat payment of $10,000 and a royalty payment of $5,000 (5,000 copies installed in 2006). In addition, UKCO earns $75,000 from the printing business and $15,000 of bank interest on its working capital for the printing business deposited in a US bank account. (Disregard any application of the branch profits tax.)
   1. What is (are) the source(s) of the payments by Fordham to UKCO, the income from the printing business, and bank interest?
   2. How are the income items in A taxed by the US under the Code?
   3. How would your answers above be affected by the Treaty?
2. T, a UK citizen and resident, is the sole shareholder of UKCO, a UK corporation, whose only asset is a shopping center in New Jersey. UKCO has leased the shopping center to a US real estate manager, who subleases to the mall to such wonderful retailers as Wendys. UKCO receives $5,000 per month in rent and pays $2,000 per month in property taxes and $2,000 per month of interest on a mortgage securing the property. (In the US, these expenses are deductible.) The lender is a US bank. At the end of 2005, the shopping center’s adjusted basis is $250,000, the mortgage is $170,000, and UKCO has a cash balance of $1,000. At the end of 2006, the shopping center’s adjusted basis is $235,000, UKCO’s cash balance is $6,000, and the mortgage is $155,000.
   1. Should UKCO make the election under section 882(d)?

* 1. Assume that UKCO makes the election under section 882(d), what US taxes are imposed on the income of UKCO?

* 1. How would your answer in B above be affected by the Treaty?

1. James, a UK resident and citizen, owns 100% of the sole class of common stock of UKCO, a UK company that invests in US securities. A, a resident and citizen of \*\*\*itstan (take your pick), a country with which the US does not have a treaty, is offering to invest in UKCO. UKCO’s only income for 2006 is $10,000 of dividends from Microsoft received on July 1, 2006. (UKCO owns 3% of Microsoft.) What are the US tax consequences to UKCO under the Treaty if (each choice is distinct):
   1. A buys 50% of James’ stock on May 5, 2006.

* 1. A buys $100,000 of UKCO debt and the interest on the debt is $10,000 for 2006.

* 1. A buys 100% of a new class of stock issued by UKCO that entitles the holder to all of the US source dividends earned by UKCO, regardless of UKCO’s results. The new class of stock entitles A to 10% of the vote of UKCO and represents 10% of the value of UKCO.

1. Sylvia, a UK citizen and resident not engaged in a U.S. trade or business, receives in 2003 $10,000 of interest from Fool’s Gold Inc (“FGI”), a U.S. corporation. For the period 2000 through 2002, FGI earned each year $10,000 of U.S. source income from bank deposits and $90,000 of foreign source income from its active Internet trade or business. Under the terms of the debt, FGI has to pay Sylvia interest equal to 15% of the net profits from its Internet business. Sylvia also owns 20% of the stock of FGI. (Assume that under U.S. tax principles, the instrument Sylvia owns is debt and not equity.) Sylvia also entered into an equity swap with Citigroup, a U.S. investment bank with respect to GoUp Inc., a U.S. corporation. In 2003, Sylvia receives a $1,000 swap payment from Citigroup, representing $900 of equity appreciation, $200 of dividends paid on the underlying stock, less $100 of LIBOR on the notional amount of the swap.
   1. What is (are) the source(s) of the interest and equity swap payments?
   2. Under the Code, how are the interest and equity swap payment taxed by the U.S.?

* 1. What could FGI and/or Citigroup do to reduce Sylvia’s U.S. tax liability?
  2. How would the Treaty affect your answers above in B above?