

**UNIVERSITY OF SYDNEY
FACULTY OF LAW**

**MASTER OF LAWS
MASTER OF TAXATION**

COMPARATIVE CORPORATE TAXATION

INTENSIVE COURSE 2002 SEMESTER 1

RESEARCH ESSAY / TAKE HOME EXAM

EXAM AVAILABLE FRIDAY 31 MAY 2002

ESSAY AND EXAM ARE DUE 5.00 PM MONDAY 3 JUNE 2002 (by delivery to the Law School, fax to Nancy Carrasco (02) 9351 0290 or, **if at all possible, email nancyc@law.usyd.edu.au**)

RESEARCH ESSAY

Where the essay is to form 1/3 of your assessment, its length must not exceed a maximum of 3,600 words (12 pages). Where the essay is to form 2/3 of your assessment, its length must not exceed a maximum of 7,200 words (24 pages).

EXAM

If you submit a 1/3 essay you must answer two of the following three exam questions (you can choose whichever questions you like). If you submit a 2/3 essay you must answer only one of the following three exam questions (you can choose whichever question you like). Each exam answer will form 1/3 of your assessment. The length of an answer must not exceed a maximum of 2,400 words (8 pages) (if you do two answers, each answer must not exceed this limit).

YOUR ESSAY AND EXAM ANSWERS MUST BE YOUR OWN WORK.

QUESTION 1 (1/3 of your assessment)

Collat-Benefits Co is a resident company. Bonnie and her husband Clyde are the only members of Collat-Benefits. Collat-Benefits owns a portfolio of shares in resident listed corporations. Some of these corporations paid dividends to Collat-Benefits during the current year. One corporation bought back its shares from Collat-Benefits from which Collat-Benefits realised a handsome profit. Collat-Benefits loaned the funds received from the buy back to Bonnie on interest free terms. At the start of the current year Bonnie and Clyde transferred their house to Collat-Benefits in return for shares in Collat-Benefits. They continue to live in the house but do not pay rent.

Outline the tax consequences of these facts under the income tax laws of **THREE** of the following countries: Australia, Germany, the UK and the US. In particular, your answer should consider the following:

- (a) The tax treatment of the dividends and buy-back profits received by Collat-Benefits;
- (b) The tax consequences for Bonnie and Clyde of transferring their home to Collat-Benefits;
- (c) Whether Collat-Benefits has distributed a dividend during the current year and if so its tax treatment for Collat-Benefits and Bonnie and Clyde; **and**
- (d) Whether it would be more tax efficient for Bonnie and Clyde to hold the house and shares personally.

QUESTION 2 (1/3 of your assessment)

Loss Co and Profit Co are resident corporations. Various parties hold shares in Loss including individuals, companies and non-residents. Loss and Profit carry on similar businesses. Loss has substantial carry forward trading losses. Profit feels it can turn around the fortunes of Loss. Profit makes an offer to purchase all the shares in Loss. Each shareholder is offered one share in Profit in exchange for one share in Loss. The merger is successful. Afterwards, Profit proceeds to transfer a number of lucrative orders from its existing clients to Loss.

Outline the tax consequences of these facts under the income tax laws of **THREE** of the following countries: Australia, Germany, the UK and the US. In particular, your answer should consider the following:

- (i) The capital gains tax consequences for the shareholders that accept the merger offer;
- (ii) Whether, after the merger, the carry forward losses of Loss can be used and, if so, in what manner;
- (iii) How any losses incurred by Loss after the merger might be used; **and**
- (iv) The tax consequences if sometime after the merger the business of Loss is transferred to Profit and Loss is then liquidated.

QUESTION 3 (1/3 of your assessment)

Resident Co is a corporation resident in Resident Country. Foreign Co is a corporation resident in Foreign Country that is wholly owned by Resident Co. For year one, Foreign Co derives \$100 business profits from Foreign Country, which it distributes (net of Foreign Country tax) to Resident Co. In addition for year one, Resident Co derives \$100 business profits from Resident Country. Resident Co distributes to its shareholders both these profits and the dividends received from Foreign Co.

Foreign Country taxes domestic source income of corporations at the rate of 20%. Foreign Country taxes all dividends distributed by resident corporations and foreign dividends received by residents at the rate of 10% of the dividends and the dividends may not be reduced by deductions, i.e. it taxes dividends on a gross basis. Foreign Country provides foreign tax relief by not taxing foreign source income of resident corporations and grants a direct foreign tax credit to other residents with foreign source income. Resident Country offers foreign tax relief in the form of a direct and an indirect foreign tax credit.

Outline the income tax treatment of the above facts where Resident Country is, alternately, **THREE** of the following countries: Australia, Germany, the UK and the US (that is, you must answer this question from the perspective of each of three different countries). In particular, your answer should consider the treatment where Resident Co distributes its year one profits to-

- (a) a Resident Country individual shareholder;
- (b) a Resident Country corporate shareholder (including one with current year losses), **and**
- (c) a Foreign Country corporate shareholder.

What are the possible rationales for any different treatment where international factors (foreign income and foreign shareholders) are introduced? What would be the result if the corporate shareholder in (c) further distributes the profits to a Resident Country individual shareholder? For the purpose of this problem, ignore the potential application of any accrual regimes, the US S corporation regime and the UK small company profits regime. Further assume that US corporation tax is imposed at a flat rate of 35%.