## CONTENTS

**Preface** 

 $\mathbf{X}\mathbf{V}$ 

Doctrine

## -- CO/O/OF-

About the Authors xviii
CHAPTER 1 Introduction to Tax Strategy 1
1.1 Why Do Tax Rules Influence Investment Decisions? 2
1.2 Structure and Themes of the Book 2  A Planning Approach 3
Taxing Authority as Investment Partner 3 The Importance of a Contractual Perspective 5
Implicit Taxes and Tax Clienteles 6
Tax Planning as a Tax-Favored Activity 6 Why Study Tax Planning? 7
1.3 Topics Covered in This Book 8
1.4 Intended Audience for This Book 10
Summary of Key Points 13
Appendix 1.1 Overview of Calculation of Income Tax Liability 14
Discussion Questions 15
Exercises 16
Tax-Planning Problems 17
References 18
CHAPTER 2 Tax Law Fundamentals 19
<ul> <li>2.1 Types of Tax Planning 21</li> <li>Converting Income from One Type to Another 21</li> <li>Shifting Income from One Pocket to Another 22</li> <li>Shifting Income from One Time Period to Another 23</li> </ul>
2.2 Restrictions on Taxpayer Behavior 25

Examples of Broad Restrictions on Taxpayer Behavior in the U.S. Constructive-Receipt

27

25

29

Substance-over-Form and Business-Purpose Doctrines

2.3 The Legislative Process and Sources of Tax Information

Regulations and Revenue Rulings That Result from the Passage of a Tax Act

Related-Party versus Arms-Length Contracts

Assignment-of-Income Doctrine

The Legislative Process

Primary and Secondary Authorities

31

The Role of Judicial Decisions 31 Secondary Authorities 32
Summary of Key Points 32
Appendix 2.1 Sources of Information on Tax Legislation 34
Appendix 2.2 Accounting for Corporate Income Taxes 36
Discussion Questions 58
Exercises 62
Tax-Planning Problems 64
References and Additional Readings 65
CHAPTER 3 Returns on Alternative Savings Vehicles 67
<ul> <li>3.1 Intertemporally Constant Tax Rates 68 Review of Compound Interest 70 Investments in Savings Vehicles I and II 70 Hybrid Savings Vehicles 73 Differences in After-Tax Accumulations in Savings Vehicles I and II as a Function of Pretax Rates of Return 73 Investments in Savings Vehicle III 73 Comparison of Savings Vehicles II and III 74 Investments in Savings Vehicle IV 75 Investments in Savings Vehicle V 76 Investments in Savings Vehicle VI 77 Dominance Relations and Empirical Anomalies 77</li> <li>3.2 Changes in Tax Rates over Time 78</li> <li>3.3 More on Pension Plans 79</li> </ul>
Traditional Deductible IRAs 80 Roth IRAs 80 Nondeductible IRAs 81 Comparison of the Deductible and Roth IRAs: New Contributions 81 Comparison of the Deductible and Roth IRAs: The Rollover Decision 84
Summary of Key Points 85
Discussion Questions 86
Exercises 87
Tax-Planning Problems 88
Reference and Additional Readings 90
CHAPTER 4 Choosing the Optimal Organizational Form 91
<ul> <li>4.1 Organizational Forms for Producing Goods and Services 93         After-Tax Returns to Pass-Through and Non-Pass-Through Forms of Organization 95         The Choice of Partnership or Corporate Form in Special Cases: Assuming Zero Dividends 97     </li> <li>4.2 Changing Preferences for Organizational Forms Induced by Tax-Rule Changes 98</li> </ul>
The Required Before-Tax Rates of Return on Corporate and Partnership Activities 98

The Required Rule of Return on Stocks in the Fresence
of Dividends 100
The Effective Annualized Tax Rate on Shares: t <sub>s</sub> 102
Required Before-Tax Rate of Return: Corporations Versus Partnerships: R <sup>*</sup> <sub>c</sub> 102
Pre-1981 Economic Recovery Tax Act (ERTA 1981) 104
Post-1981 Economic Recovery Tax Act (1981–1986) 105
Post-1986 Tax Reform Act (1987, 1988–1990) 105
Post-1990 Revenue Reconciliation Tax Acts (1991–1996) 105
Post-1997 Taxpayer Relief Act (1997–2000) 106
Post-2000 Economic Growth and Tax Relief Reconciliation Act (2001–2002)
and the Jobs and Growth Tax Relief Reconciliation Act of 2003
(2003 On) 106
Further Analysis of the 2003 Tax Act 107
Cross-Sectional Variation in Corporate, Personal, and the Shareholder-Level Tax Rates 109
Net Operating Losses and the Corporate Tax Rate 109
Further Complications in Determining the Shareholder-Level
Tax Rate, t <sub>s</sub> 110
Progressive Personal Income Tax Rates, $t_p$ and $t_{cg}$ 112
4.3 Other Organizational Forms Used to Organize Production
Activities 112
Hybrid Corporate Forms 112
Other Noncorporate Organizational Forms 115
4.4 Nontax Advantages of Operating in Corporate Form 117
Summary of Key Points 118
Appendix 4.1 Dividend Imputation in the Corporate Form 120
Appendix 4.2 Other Investment Vehicles 123
Discussion Questions 124
Exercises 125
Tax-Planning Problems 126
References and Additional Readings 128
TOTOLONOUS UNA L'INDIVIDUAL SAVARA-LO
CHAPTER 5 Implicit Taxes and Clienteles, Arbitrage, Restrictions,
CHAPTER 5 Implicit Taxes and Clienteles, Arbitrage, Restrictions, and Frictions 130
5.1 Tax-Favored Status and Implicit Taxes 132
5.2 The Implicit Tax Rate, the Explicit Tax Rate, and the Total
Tax Rate 137
Computing the Implicit Tax 137
Total Tax Rates in a Competitive Market 138
5.3 The Importance of Adjusting for Risk Differences 139
5.4 Clienteles 142
Evidence on the Existence of Implicit Taxes and Clienteles 143
5.5 Implicit Taxes and Corporate Tax Burdens 145
*
5.6 Tax Arbitrage 147

5.7 Organizational-Form Arbitrage 148 Immediate Tax Rebates When Taxable Income Is Negative 148 No Tax Rebates on Negative Taxable Income 149 Restrictions on Organizational-Form Arbitrage 150 Full Taxation with Deferral and Organizational-Form Arbitrage 151 The Effects of Frictions on Organizational-Form Arbitrage 151 Bankruptcy Rules and Organizational-Form Arbitrage 153 Buying and Selling Implicitly Taxed Assets to Effect Organizational-For Arbitrage 154
5.8 Clientele-Based Arbitrage 155 Clientele-Based Arbitrage with Investments in Tax-Favored Assets Other Than Tax-Exempt Bonds 157 Market Equilibrium with Tax-Exempt Entities 157
Summary of Key Points 158
Appendix 5.1 Adjusting for Risk Using the Capital Asset Pricing Model 161
Discussion Questions 161
Exercises 162
Tax-Planning Problems 164
References and Additional Readings 166
CHADDED C N C . ACC
<b>-</b>
6.1 Symmetric Uncertainty, Progressive Tax Rates, and Risk Taking 172 R&D and O&G Activities 174 Progressive Tax Rates and Hedging 176
6.2 Tax Planning in the Presence of Risk-Sharing and Hidden-Action Considerations 176 Contracting in Capital Markets 177 Contracting in Labor Markets 179 Conflicts Between Risk Sharing and Tax Minimization 180 Conflicts Between Incentive Contracting and Tax Minimization 180
6.3 Tax Planning in the Presence of Hidden-Information Considerations 181
6.4 Tax Planning and Organizational Design 183
6.5 Conflicts Between Financial Reporting and Tax Planning Income Shifting Across Time 186 LIFO/FIFO Studies 187 LIFO Adoption 187 LIFO Liquidation 187 LIFO Abandonment 188 Regulatory Costs 188 Asset Purchases, Sales, and Divestitures 189
Dollar Estimates of Firms' Willingness to Forgo Tax Savings 190 Political Cost Impediments to Tax Planning 191 Other Book-Tax Conformity Costs 192 Other Informational Cost Impediments to Tax Planning 193

Tax-Planning Problems 198 References and Additional Readings 199  CHAPTER 7 The Importance of Marginal Tax Rates and Dynamic Tax-Planning Considerations 202  7.1 Marginal Tax Rate: Definitional Issues 204 Evidence on NOLs for U.S. Corporations 207 Estimating Corporate Marginal Tax Rates 208 Foreign, State, and Local Corporate Taxes 210 Individual Taxpayers' Marginal Tax Rate 211 Average and Effective Tax Rates 211 Problems with Effective Tax Rates 212  7.2 Tax Planning for Low Marginal-Tax-Rate Firms 213  7.3 Adaptability of the Tax Plan 215 Transaction Costs and Tax Clienteles 216 Adaptability in Investment and Financing Decisions 217  7.4 Reversibility of Tax Plans 217  7.5 Ability to Insure Against Adverse Changes in Tax Status 219  7.6 Tax Planning When a Taxpayer's Marginal Tax Rate Is Strategy Dependent 223 Summary of Key Points 224 Appendix 7.1 Medical Savings Plans and Dynamic Tax Planning 226 Discussion Questions 226 Exercises 227 Tax-Planning Problems 229 References and Additional Readings 230  CHAPTER 8 Compensation Planning 233  8.1 Salary versus Deferred Compensation 233 Employer and Employee Tax Rates Both Expected to Fall 236  8.2 Salary versus Fringe Benefits 237 Analysis for Taxable Employer 239 Analysis for Tax-Exempt Employer 239 Analysis for Tax-Exempt Employer 239  8.3 Cash Bonus Plans 240  8.4 Stock-Based Compensation Components 240 Employee Tax Rates Expected to Rise 244 Employee Tax Rates Expected to Rise 244 Employee Stock Options and Stock Appreciation Rights 245	Exercises 196	
CHAPTER 7 The Importance of Marginal Tax Rates and Dynamic Tax-Planning Considerations 202  7.1 Marginal Tax Rate: Definitional Issues 207     Estimating Corporate Marginal Tax Rates 208     Foreign, State, and Local Corporate Taxes 210     Individual Taxpayers' Marginal Tax Rate 211     Average and Effective Tax Rates 212  7.2 Tax Planning for Low Marginal-Tax-Rate Firms 213  7.3 Adaptability of the Tax Plan 215     Transaction Costs and Tax Clienteles 216     Adaptability in Investment and Financing Decisions 217  7.4 Reversibility of Tax Plans 217  7.5 Ability to Insure Against Adverse Changes in Tax Status 219  7.6 Tax Planning When a Taxpayer's Marginal Tax Rate Is Strategy Dependent 223  Summary of Key Points 224  Appendix 7.1 Medical Savings Plans and Dynamic Tax Planning 226  Discussion Questions 226  Exercises 227  Tax-Planning Problems 229  References and Additional Readings 230  CHAPTER 8 Compensation Planning 233  8.1 Salary versus Deferred Compensation 233     Employer and Employee Tax Rates Both Expected to Fall 236  8.2 Salary versus Fringe Benefits 237     Analysis for Taxable Employer 239  8.3 Cash Bonus Plans 240  8.4 Stock-Based Compensation Components 240     Employee Tax Rates Expected to Rise 244	Tax-Planning Problems 198	
202  7.1 Marginal Tax Rate: Definitional Issues 204 Evidence on NOLs for U.S. Corporations 207 Estimating Corporate Marginal Tax Rates 208 Foreign, State, and Local Corporate Taxes 210 Individual Taxpayers' Marginal Tax Rate 211 Average and Effective Tax Rates 211 Problems with Effective Tax Rates 211 Problems with Effective Tax Rates 212  7.2 Tax Planning for Low Marginal-Tax-Rate Firms 213  7.3 Adaptability of the Tax Plan 215 Transaction Costs and Tax Clienteles 216 Adaptability in Investment and Financing Decisions 217  7.4 Reversibility of Tax Plans 217  7.5 Ability to Insure Against Adverse Changes in Tax Status 219  7.6 Tax Planning When a Taxpayer's Marginal Tax Rate Is Strategy Dependent 223 Summary of Key Points 224 Appendix 7.1 Medical Savings Plans and Dynamic Tax Planning 226 Discussion Questions 226 Exercises 227 Tax-Planning Problems 229 References and Additional Readings 230  CHAPTER 8 Compensation Planning 233  8.1 Salary versus Deferred Compensation 233 Employer and Employee Tax Rates Both Expected to Fall 236  8.2 Salary versus Pringe Benefits 237 Analysis for Taxable Employer 239 Analysis for Tax-Exempt Employer 239  8.3 Cash Bonus Plans 240  8.4 Stock-Based Compensation Components 240 Employee Tax Rates Expected to Rise 244	References and Additional Readings 199	
Evidence on NOLs for U.S. Corporations Estimating Corporate Marginal Tax Rates 208 Foreign, State, and Local Corporate Taxes 210 Individual Taxpayers' Marginal Tax Rate 211 Average and Effective Tax Rates 211 Problems with Effective Tax Rates 212  7.2 Tax Planning for Low Marginal-Tax-Rate Firms 213  7.3 Adaptability of the Tax Plan 215 Transaction Costs and Tax Clienteles 216 Adaptability in Investment and Financing Decisions 217  7.4 Reversibility of Tax Plans 217  7.5 Ability to Insure Against Adverse Changes in Tax Status 219  7.6 Tax Planning When a Taxpayer's Marginal Tax Rate Is Strategy Dependent 223  Summary of Key Points 224 Appendix 7.1 Medical Savings Plans and Dynamic Tax Planning 226  Discussion Questions 226 Exercises 227 Tax-Planning Problems 229 References and Additional Readings 230  CHAPTER 8 Compensation Planning 233  8.1 Salary versus Deferred Compensation 233 Employer and Employee Tax Rates Both Expected to Fall 236  8.2 Salary versus Fringe Benefits 237 Analysis for Taxable Employer 239 Analysis for Tax-Exempt Employer 239  8.3 Cash Bonus Plans 240  8.4 Stock-Based Compensation Components 240 Employee Tax Rates Expected to Rise 244		202
7.3 Adaptability of the Tax Plan 215 Transaction Costs and Tax Clienteles 216 Adaptability in Investment and Financing Decisions 217  7.4 Reversibility of Tax Plans 217  7.5 Ability to Insure Against Adverse Changes in Tax Status 219  7.6 Tax Planning When a Taxpayer's Marginal Tax Rate Is Strategy Dependent 223  Summary of Key Points 224  Appendix 7.1 Medical Savings Plans and Dynamic Tax Planning 226  Discussion Questions 226  Exercises 227  Tax-Planning Problems 229  References and Additional Readings 230  CHAPTER 8 Compensation Planning 233  8.1 Salary versus Deferred Compensation 233 Employer and Employee Tax Rates Both Expected to Fall 236  8.2 Salary versus Fringe Benefits 237 Analysis for Taxable Employer 239 Analysis for Tax-Exempt Employer 239  8.3 Cash Bonus Plans 240  8.4 Stock-Based Compensation Components 240 Employee Tax Rates Expected to Rise 244	Evidence on NOLs for U.S. Corporations 207 Estimating Corporate Marginal Tax Rates 208 Foreign, State, and Local Corporate Taxes 210 Individual Taxpayers' Marginal Tax Rate 211 Average and Effective Tax Rates 211	
Transaction Costs and Tax Clienteles 216 Adaptability in Investment and Financing Decisions 217  7.4 Reversibility of Tax Plans 217  7.5 Ability to Insure Against Adverse Changes in Tax Status 219  7.6 Tax Planning When a Taxpayer's Marginal Tax Rate Is Strategy Dependent 223  Summary of Key Points 224  Appendix 7.1 Medical Savings Plans and Dynamic Tax Planning 226  Discussion Questions 226  Exercises 227  Tax-Planning Problems 229  References and Additional Readings 230  CHAPTER 8 Compensation Planning 233  8.1 Salary versus Deferred Compensation 233  Employer and Employee Tax Rates Both Expected to Fall 236  8.2 Salary versus Fringe Benefits 237  Analysis for Taxable Employer 239  Analysis for Tax-Exempt Employer 239  8.3 Cash Bonus Plans 240  8.4 Stock-Based Compensation Components 240  Employee Tax Rates Expected to Rise 244	7.2 Tax Planning for Low Marginal-Tax-Rate Firms 2	13
7.5 Ability to Insure Against Adverse Changes in Tax Status 219  7.6 Tax Planning When a Taxpayer's Marginal Tax Rate Is Strategy Dependent 223  Summary of Key Points 224  Appendix 7.1 Medical Savings Plans and Dynamic Tax Planning 226  Discussion Questions 226  Exercises 227  Tax-Planning Problems 229  References and Additional Readings 230  CHAPTER 8 Compensation Planning 233  8.1 Salary versus Deferred Compensation 233  Employer and Employee Tax Rates Both Expected to Fall 236  8.2 Salary versus Fringe Benefits 237  Analysis for Taxable Employer 239  Analysis for Taxebee Employer 239  Analysis for Taxebee Employer 239  8.3 Cash Bonus Plans 240  8.4 Stock-Based Compensation Components 240  Restricted Stock 240  Employee Tax Rates Expected to Rise 244	Transaction Costs and Tax Clienteles 216	
in Tax Status 219  7.6 Tax Planning When a Taxpayer's Marginal Tax Rate Is Strategy Dependent 223  Summary of Key Points 224  Appendix 7.1 Medical Savings Plans and Dynamic Tax Planning 226  Discussion Questions 226  Exercises 227  Tax-Planning Problems 229  References and Additional Readings 230  CHAPTER 8 Compensation Planning 233  8.1 Salary versus Deferred Compensation 233  Employer and Employee Tax Rates Both Expected to Fall 236  8.2 Salary versus Fringe Benefits 237  Analysis for Taxable Employer 239  Analysis for Tax-Exempt Employer 239  8.3 Cash Bonus Plans 240  8.4 Stock-Based Compensation Components 240  Restricted Stock 240  Employee Tax Rates Expected to Rise 244	7.4 Reversibility of Tax Plans 217	
Is Strategy Dependent 223  Summary of Key Points 224  Appendix 7.1 Medical Savings Plans and Dynamic Tax Planning 226  Discussion Questions 226  Exercises 227  Tax-Planning Problems 229  References and Additional Readings 230  CHAPTER 8 Compensation Planning 233  8.1 Salary versus Deferred Compensation 233  Employer and Employee Tax Rates Both Expected to Fall 236  8.2 Salary versus Fringe Benefits 237  Analysis for Taxable Employer 239  Analysis for Tax-Exempt Employer 239  8.3 Cash Bonus Plans 240  8.4 Stock-Based Compensation Components 240  Restricted Stock 240  Employee Tax Rates Expected to Rise 244		
Appendix 7.1 Medical Savings Plans and Dynamic Tax Planning 226  Discussion Questions 226  Exercises 227  Tax-Planning Problems 229  References and Additional Readings 230  CHAPTER 8 Compensation Planning 233  8.1 Salary versus Deferred Compensation 233  Employer and Employee Tax Rates Both Expected to Fall 236  8.2 Salary versus Fringe Benefits 237  Analysis for Taxable Employer 239  Analysis for Tax-Exempt Employer 239  8.3 Cash Bonus Plans 240  8.4 Stock-Based Compensation Components 240  Restricted Stock 240  Employee Tax Rates Expected to Rise 244		
Tax Planning 226 Discussion Questions 226 Exercises 227 Tax-Planning Problems 229 References and Additional Readings 230  CHAPTER 8 Compensation Planning 233 8.1 Salary versus Deferred Compensation 233 Employer and Employee Tax Rates Both Expected to Fall 236 8.2 Salary versus Fringe Benefits 237 Analysis for Taxable Employer 239 Analysis for Tax-Exempt Employer 239 8.3 Cash Bonus Plans 240 8.4 Stock-Based Compensation Components 240 Restricted Stock 240 Employee Tax Rates Expected to Rise 244	Summary of Key Points 224	
Exercises 227 Tax-Planning Problems 229 References and Additional Readings 230  CHAPTER 8 Compensation Planning 233  8.1 Salary versus Deferred Compensation 233 Employer and Employee Tax Rates Both Expected to Fall 236  8.2 Salary versus Fringe Benefits 237 Analysis for Taxable Employer 239 Analysis for Tax-Exempt Employer 239  8.3 Cash Bonus Plans 240  8.4 Stock-Based Compensation Components 240 Restricted Stock 240 Employee Tax Rates Expected to Rise 244	* *	
Tax-Planning Problems 229 References and Additional Readings 230  CHAPTER 8 Compensation Planning 233  8.1 Salary versus Deferred Compensation 233 Employer and Employee Tax Rates Both Expected to Fall 236  8.2 Salary versus Fringe Benefits 237 Analysis for Taxable Employer 239 Analysis for Tax-Exempt Employer 239  8.3 Cash Bonus Plans 240  8.4 Stock-Based Compensation Components 240 Restricted Stock 240 Employee Tax Rates Expected to Rise 244	Discussion Questions 226	
References and Additional Readings 230  CHAPTER 8 Compensation Planning 233  8.1 Salary versus Deferred Compensation 233  Employer and Employee Tax Rates Both Expected to Fall 236  8.2 Salary versus Fringe Benefits 237  Analysis for Taxable Employer 239  Analysis for Tax-Exempt Employer 239  8.3 Cash Bonus Plans 240  8.4 Stock-Based Compensation Components 240  Restricted Stock 240  Employee Tax Rates Expected to Rise 244	Exercises 227	
CHAPTER 8 Compensation Planning 233  8.1 Salary versus Deferred Compensation 233  Employer and Employee Tax Rates Both Expected to Fall 236  8.2 Salary versus Fringe Benefits 237  Analysis for Taxable Employer 239  Analysis for Tax-Exempt Employer 239  8.3 Cash Bonus Plans 240  8.4 Stock-Based Compensation Components 240  Restricted Stock 240  Employee Tax Rates Expected to Rise 244	Tax-Planning Problems 229	
<ul> <li>8.1 Salary versus Deferred Compensation 233</li></ul>	References and Additional Readings 230	
Employer and Employee Tax Rates Both Expected to Fall 236  8.2 Salary versus Fringe Benefits 237  Analysis for Taxable Employer 239  Analysis for Tax-Exempt Employer 239  8.3 Cash Bonus Plans 240  8.4 Stock-Based Compensation Components 240  Restricted Stock 240  Employee Tax Rates Expected to Rise 244	CHAPTER 8 Compensation Planning 233	
Analysis for Taxable Employer 239 Analysis for Tax-Exempt Employer 239 8.3 Cash Bonus Plans 240 8.4 Stock-Based Compensation Components 240 Restricted Stock 240 Employee Tax Rates Expected to Rise 244		236
8.4 Stock-Based Compensation Components 240 Restricted Stock 240 Employee Tax Rates Expected to Rise 244	Analysis for Taxable Employer 239	
Restricted Stock 240 Employee Tax Rates Expected to Rise 244	8.3 Cash Bonus Plans 240	
	Restricted Stock 240 Employee Tax Rates Expected to Rise 244	245

193

195

Summary of Key Points

Discussion Questions

Tax Issues Relating to Incentive Stock Options and Nonqualified Stock Options 247
NQOs versus ISOs 249
Evidence on the Role of Taxes in the Choice of ISOs 252
Disqualifying Dispositions of ISOs 252
The Role of Taxes in the NQO Exercise Decision 254
Backdating Exercise Dates 257
Tax Rates Are Expected to Increase 258
Financial Accounting and Tax Comparison of Restricted Stock, Stock
Appreciation Rights, and Stock Options 259
Other Differences Between Restricted Stock and ESOs 262 Compensation in Venture-Capital-Backed Start-Ups 263
Other Influences of Taxes on Compensation Structure 263
Concluding Remarks 264
Summary of Key Points 264
•
Appendix 8.1 Accounting for the Tax Benefits of Employee Stock Options 267
Appendix 8.2 Backdating Stock Option Grants 278
Appendix 8.3 Incentive Stock Options and Alternative Minimum
Tax Complications 282
Discussion Questions 285
Exercises 287
Tax-Planning Problems 290
References and Additional Readings 292
CHAPTER 9 Pension and Retirement Planning 294
9.1 Types of Pension Plans 295
9.2 A Comparison of Salary and Pension Compensation 298 Rates of Return on Investments In and Out of Pension Accounts 299 Antidiscrimination Rules 300
9.3 Deferred Compensation versus Pension 301
9.4 The Stocks-versus-Bonds Puzzle 302
9.5 Does It Pay to Maintain an Overfunded Pension Plan? 306 Advantages and Disadvantages 306 Empirical Evidence on Determinants of Defined Benefit Plan Pension Funding 309
9.6 Funding Postemployment Health Care Benefits 310  The Sweetened Pension Benefit Approach 311  The Pay-as-You-Go Approach 312  Other Factors Relevant to the Funding Decision 313
9.7 Employee Stock Ownership Programs 314
Summary of Key Points 316
Appendix 9.1 Excise Tax Complications 319
Discussion Questions 320

Tax-Planning Problems 321	
References and Additional Readings 324	
CHAPTER 10 Multinational Tax Planning: Introduction and Investment Decisions 325	
10.1 Overview of Multinational Taxation 326  Avoiding Worldwide Taxation 328  Operating as a Branch, Partnership, or a Foreign Subsidiary 329  Foreign Tax Credits 331  Subpart F Income and Controlled Foreign Corporations (CFCs) 335  Inversion Transactions 337	
10.2 How Taxes Affect the Location and Structure of Investments  Large Implicit Taxes and Foreign Investment Incentives 343	
<ul> <li>10.3 The Decision to Repatriate or Reinvest 345</li> <li>Subpart F Income and Controlled Foreign Corporations 347</li> <li>A Tax Holiday for Repatriations 348</li> <li>Investment and Repatriation Policy When the Foreign Tax Rate Exceeds the Domestic Tax Rate 348</li> </ul>	
Summary of Key Points 349	
Discussion Questions 350	
Exercises 350	
Tax-Planning Problems 351	
References and Additional Readings 356	
CHAPTER 11 Multinational Tax Planning: Foreign Tax Credit Limitations and Income Shifting 358	
11.1 Foreign Tax Credit Limitations and Incentives 358  Example of Excess FTC Limitation 359  Example of Excess FTC Credit 361	
Example of FTC with Multiple Subsidiaries 363 Country-by-Country FTC Limitations 364 Separate Basket Limitations 364 FTC Limitations and the Capital Structure of Foreign Subsidiaries 365	
Country-by-Country FTC Limitations 364 Separate Basket Limitations 364	
Country-by-Country FTC Limitations 364 Separate Basket Limitations 364 FTC Limitations and the Capital Structure of Foreign Subsidiaries 365  11.2 Shifting Income Across Jurisdictions 366 Transfer Pricing 366	
Country-by-Country FTC Limitations 364 Separate Basket Limitations 364 FTC Limitations and the Capital Structure of Foreign Subsidiaries 365  11.2 Shifting Income Across Jurisdictions 366 Transfer Pricing 366 Source of Income Rules 367	
Country-by-Country FTC Limitations 364 Separate Basket Limitations 364 FTC Limitations and the Capital Structure of Foreign Subsidiaries 365  11.2 Shifting Income Across Jurisdictions 366 Transfer Pricing 366 Source of Income Rules 367  11.3 Attempts to Encourage Exports and/or Domestic Production 368	
Country-by-Country FTC Limitations 364 Separate Basket Limitations 364 FTC Limitations and the Capital Structure of Foreign Subsidiaries 365  11.2 Shifting Income Across Jurisdictions 366 Transfer Pricing 366 Source of Income Rules 367  11.3 Attempts to Encourage Exports and/or Domestic Production 368 11.4 U.S. Tax Treatment of Foreign Investors 369	
Country-by-Country FTC Limitations 364 Separate Basket Limitations 364 FTC Limitations and the Capital Structure of Foreign Subsidiaries 365  11.2 Shifting Income Across Jurisdictions 366 Transfer Pricing 366 Source of Income Rules 367  11.3 Attempts to Encourage Exports and/or Domestic Production 368 11.4 U.S. Tax Treatment of Foreign Investors 369 Summary of Key Points 370	
Country-by-Country FTC Limitations 364 Separate Basket Limitations 364 FTC Limitations and the Capital Structure of Foreign Subsidiaries 365  11.2 Shifting Income Across Jurisdictions 366 Transfer Pricing 366 Source of Income Rules 367  11.3 Attempts to Encourage Exports and/or Domestic Production 368 11.4 U.S. Tax Treatment of Foreign Investors 369 Summary of Key Points 370 Discussion Questions 371 Exercises 371	
Country-by-Country FTC Limitations 364 Separate Basket Limitations 364 FTC Limitations and the Capital Structure of Foreign Subsidiaries 365  11.2 Shifting Income Across Jurisdictions 366 Transfer Pricing 366 Source of Income Rules 367  11.3 Attempts to Encourage Exports and/or Domestic Production 368 11.4 U.S. Tax Treatment of Foreign Investors 369 Summary of Key Points 370 Discussion Questions 371 Exercises 371	

Exercises

320

ents
CHAPTER 12 Corporations: Formation, Operation, Capital Structure, and Liquidation 376
12.1 Corporate Formation 377
12.2 Taxation of Corporate Operations 379  Book-Tax Differences: Taxable Income versus GAAP Income 380  Net Operating Losses 381  Gains and Losses and Tax Basis 381  Capital Gains and Losses 381  Section 1231 Assets 382  Dividends Received Deduction 382  Consolidated Tax Returns 382
12.3 Possible Tax Benefits of Leverage in Firms' Capital Structures 383 Theory of the Tax Benefits of Leverage 383 Empirical Work on the Tax Benefits of Leverage 385
12.4 Debt-Equity Hybrids 386 Traditional Preferred Stock 386 Trust Preferred Stock 387 Zero-Coupon Bonds 390
12.5 Taxation of Distributions and Share Repurchases 392  The Concept of Earnings and Profits 393  Special Kinds of Distributions 395  Taxation of Share Repurchases 396
12.6 Tax Planning Using the Tax Rules for Distributions and Share Repurchases 397
12.7 Taxation of Liquidations 398  Parent-Subsidiary Liquidations 398
Summary of Key Points 399
Discussion Questions 400
Exercises 400
References and Additional Readings 402
CHAPTER 13 Introduction to Mergers, Acquisitions, and Divestitures 404
13.1 Overview of Issues 405 Reasons for Mergers, Acquisitions, and Divestitures 405 Types of Mergers, Acquisitions, and Divestitures 406
<ul> <li>Major Tax Issues Associated with Mergers, Acquisitions, and Divestitures 407</li> <li>Shareholder Tax Liabilities 407</li> <li>Effect on Tax Attributes 408</li> </ul>

Target Corporate-Level Tax Effect of the Merger, Acquisition, or Divestiture Change in the Tax Basis of the Target or Divested Subsidiary Assets Effect of Leverage on Mergers and Acquisitions

13.3 Nontax Issues in Mergers, Acquisitions, and Divestitures

409

13.4	Five Basic Methods to Acquire a Freestanding C Corporation 412
13.5	Four Methods to Divest a Subsidiary or Line of Business 413
13.6	Tax Deductibility of Goodwill and Other Intangible Assets Under Section 197 414
Sumi	mary of Key Points 418
Disc	ussion Questions 419
Refe	rences and Additional Readings 419
СНАРТ	TER 14 Taxable Acquisitions of Freestanding C Corporations 421
14.1	Tax Consequences of Alternative Forms of Corporate Acquisitions 422 Case 1: Taxable Asset Acquisition without a Complete Liquidation of the Target 423 Case 2: Sale of the Target Firm's Assets Followed by a Liquidation 426 Case 3: Purchase of the Target's Stock Followed by a Section 338 Election 427 Case 4: Purchase of the Target's Stock without a Section 338 Election 430
14.2	Comparison of Taxable Acquisition Structures  Analysis of Acquiring Firm Indifference Price 436  431
14.3	Practical Issues Associated with Structuring and Pricing an Acquisition 438  Estimating the Net Tax Basis of a Target's Assets 438
Sum	mary of Key Points 443
Disc	ussion Questions 444
Tax-	Planning Problems 445
Refe	erences and Additional Readings 446
СНАРТ	FER 15 Taxable Acquisitions of S Corporations 447
15.1	Tax Consequences of Taxable S Corporation Acquisition Structures 448 Case 1: Taxable Asset Acquisition 450 Case 2: Taxable Stock Acquisition with a Section 338(h)(10) Election 453 Case 3: Taxable Stock Acquisition without a Section 338(h)(10) Election 455 Which Structure Is Optimal in the Sale of an S Corporation? 456 Advanced Analysis: S Corporation Acquisition 458
15.2	Comparison of the Sale of Similar S and C Corporations 462  Tax Consequences for T1 and T2 Shareholders in a Taxable  Stock Sale 464  Tax Consequences for a Corporation 464  Indifference Point for T1's Shareholders (C Corporation) with an Asset Sale  Structure 464  Indifference Price for T2's Shareholders (S Corporation) with an Asset Sale  Structure 464  Will the Acquirer Pay T1's (C Corporation) Indifference Price in a Taxable Asset  Sale? 465

	Will the Acquirer Pay T2's (S Corporation) Indifference Price in a Taxable Asset Sale (Stock Sale with a Section 338(h)(10) Election)? 465 Valuation Consequences and Issues 466
	Installment Sale Tax Treatment 467
	nmary of Key Points 467
	cussion Questions 467
	-Planning Problems 468
Ref	erences and Additional Readings 470
СНАР	TER 16 Tax-Free Acquisitions of Freestanding C Corporations 471
16.1	Basic Types of Tax-Free Reorganizations 472 General Requirements for Tax-Free Treatment Under Section 368 472
16.2	Requirements to Qualify for Tax-Free Treatment Under Section  368(a)(1)(A) 474  Tax Consequences of a Section 368 "A" 474
	Triangular Mergers 478  477  Triangular Mergers 478
16.3	Section 368 "B" Reorganization: Stock-for-Stock Acquisition Requirements to Qualify for Tax-Free Treatment Under Section 368(a)(1)(B) 478  Tax Consequences of a Section 368 "B" 480  Nontax Issues Associated with the Section 368 "B" Structure 481
16.4	Section 368 "C" Reorganization: Stock-for-Assets Acquisition 481 Requirements to Qualify for Tax-Free Treatment Under Section 368(a)(1)(C) 482 Tax Consequences of a Section 368 "C" 483
16.5	Tax-Free Reorganizations Under Section 351 483 Requirements for Tax-Free Treatment Under Section 351 484 Tax Consequences of a Section 351 Merger 484 Comparison of Tax-Free Acquisition Structures 487
16.6	Limitations on Target Firm Tax Attributes 488  Limitations on Acquiring Firm Tax Attributes 491  Taking Advantage of Expiring NOLs: Sale/Leaseback 491
16.7	Quantifying Pricing Differences Between Taxable and Tax-Free Acquisitions of Freestanding C Corporations 492  Additional Complexities 497  Implications for Corporate Valuation 498  Trends in Acquisition Volume and Structure Across Time 501
16.8	Comparison of Taxable and Tax-Free Acquisitions of Freestanding C Corporations 501  Advanced Techniques to Provide Diversification and Tax-Free Treatment 503

504

505

**Summary of Key Points** 

**Discussion Questions** 

Tax-Planning Problems 506
References and Additional Readings 509
CHAPTER 17 Tax Planning for Divestitures 510
17.1 Subsidiary Sales 511  Tax-Free Subsidiary Sales 511  Taxable Subsidiary Sales 513  Comparison of Taxable Acquisition Structures 518  Additional Complexities: Subsidiary Sale 524  Difference Between Subsidiary Sales and Sales of Freestanding  C Corporations 526  Valuation Effects 527
17.2 Tax-Free Divestiture Methods 527  Equity Carve-Outs 527  Tax-Free Spin-Offs 529  Other Variants of the Spin-Off: Split-Ups, Split-Offs,  and Tracking Stock 533  Factors That Influence Divestiture Method Choice 534
17.3 Advanced Divestiture Techniques 534  Tax-Free Subsidiary Sale Under Section 351 Followed by Secured Borrowing 534  Derivative-Based Divestiture Techniques 537
Summary of Key Points 538
Discussion Questions 538
Tax-Planning Problems 539
References and Additional Readings 542
CHAPTER 18 Estate and Gift Tax Planning 543
18.1 Fundamentals of Estate and Gift Taxation 546  Specifics of the Gift Tax 547  Specifics of the Estate Tax 548  Generation-Skipping Transfer Tax 550
18.2 Estate- and Gift-Planning Strategies 550  Making Full Use of the Annual Gift Tax Exclusion 551  Gifting in Excess of the Annual Exclusion 551  Using Each Spouse's Unified Credit and Lower Brackets 552  Using the Marriage Deduction to Defer Estate Taxation 552  Keeping Life Insurance Out of the Gross Estate 553  Family Limited Partnerships 554  Transfers of Knowledge, Information, and Services 555  Charitable Remainder Trusts and Grantor Retained Trusts 555
18.3 Monetizing Appreciated Assets without Triggering Taxation: A Case Study 556  Taxation of Short Sales 557 The Strategy 557 Congress Takes Action 558 Avoiding the Constructive Sale Rules 559

## xiv Contents

18.4 The Tax Subsidy to Charitable Giving 560 18.5 A Model of the Trade-Offs Between Gifting Now versus by Bequest 561 The Trade-Offs Between Gifting and Losing the Step-Up in Basis on Bequests Summary of Key Points 564 **Discussion Questions** 565 **Exercises** 565 **Tax-Planning Problems** 565

567

Glossary 568

References and Additional Readings

Index 585