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978-1-107-03349-8 - The Taxation of Corporate Groups under Consolidation: An International Comparison

Antony Ting

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THE TAXATION OF CORPORATE GROUPS UNDER CONSOLIDATION

The rise of corporate groups in the last century dictates a shift in the income tax law: instead of treating each company as a separate taxpayer, the tax consolidation regime is increasingly common. Antony Ting presents the first comprehensive comparative study of eight consolidation regimes in Australia, France, Italy, Japan, the Netherlands, New Zealand, Spain and the USA. In the study, he critically analyses and compares alternative policy options with respect to ten key structural elements. The study improves understanding of the design and implementation of consolidation regimes, and sets the stage for the search for a model. It provides valuable information with respect to the best practices, as well as the pitfalls in the design of a consolidation regime. The book is essential to countries contemplating the introduction of a new consolidation regime and offers important insights into the management of such a complex structure through careful policy-orientated choices.

ANTONY TING is a senior lecturer at the University of Sydney Business School. He was previously a tax partner in a major international accountancy firm, advising multinational companies on corporate tax as well as international tax issues.

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P R E F A C E

Income tax law in general treats a company as a separate taxable unit, reflecting an application of the traditional separate entity doctrine. However, the rise of corporate groups in the last century poses a serious challenge to the doctrine and demands a paradigm shift. The tax consolidation regime is an increasingly common response of the tax law to the challenge, representing an application of the enterprise doctrine under which a corporate group is treated as one single taxable unit. This book aims to improve the understanding of the design and implementation of consolidation regimes by undertaking a comparative study of the regimes in eight countries, namely Australia, France, Italy, Japan, the Netherlands, New Zealand, Spain and the United States. These eight countries are all the countries in the world that, by the end of 2009, have introduced a consolidation regime in their income tax systems.

This book analyses and compares alternative policy options adopted in the eight countries for ten key structural elements of a consolidation regime, with the intention of searching for a model regime. The comparative analysis also aims to answer the following tax policy question: does a stronger application of the enterprise doctrine necessarily imply a better consolidation regime on policy grounds?

This book provides the first comprehensive comparative analysis of the consolidation regimes in the eight countries. The findings of this study should be useful for tax policy makers to design a new consolidation regime, as well as to refine existing consolidation regimes.

I am forever indebted to Richard Vann, without whose mentorship and inspiration this book would never have been completed. My research interest in consolidation regimes was inspired by a lecture delivered by Peter Harris, to whom I acknowledge my sincere gratitude. I am deeply grateful for the critiques and comments of Cynthia Coleman and Daniel Ho on earlier drafts of the book.

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GLOSSARY OF TERMS

Bloc group	A corporate group consisting of group members resident in a bloc of participating countries
Consolidation	A group taxation regime under which a corporate group files a consolidated tax return, allowing <i>both</i> intra-group loss offset and tax free intra-group asset transfer
Country group	A corporate group consisting of group members resident in a country
De-consolidation	The incidence of a consolidated group ceasing consolidation and every group member is treated as a separate taxpayer again
Enterprise doctrine	The doctrine under which a corporate group under the common control of a parent company is treated as a single enterprise
Head company	The parent company in a consolidated group
Intra-group asset transfer	The tax attribute of a group taxation regime that allows tax free transfer of assets within a corporate group without the need of a corporate restructure
Joining time	The time when a subsidiary joins a consolidated group
Leaving time	The time when a subsidiary leaves a consolidated group
Separate entity doctrine	The doctrine under which a company is treated as a separate entity, distinct from its shareholder(s)
Subsidiary member	A member of a consolidated group other than the head company
Taxable income	The net income of a taxpayer computed under the tax law after deducting allowable expenses
Worldwide group	A corporate group consisting of all group members in the world

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ABBREVIATIONS

Tax legislations and regulations

CGI	Code général des impôts (“General Tax Code” of France)
CTA	Corporation Tax Act (Japan)
IB	Wet op de inkomstenbelasting 2001 (“Personal Income Tax Act of 2001” of the Netherlands)
IRC	Internal Revenue Code (the United States)
ITA 2007	Income Tax Act 2007 (New Zealand)
ITAA 1936	Income Tax Assessment Act 1936 (Australia)
ITAA 1997	Income Tax Assessment Act 1997 (Australia)
LIS	Ley del Impuesto sobre Sociedades (“Corporate Income Tax Law” of Spain)
May 2002 Consolidation Act	New Business Tax System (Consolidation) Act (No.1) 2002 (Australia)
Reg.	Treasury Regulation (the United States)
TUIR	Testo unico delle imposte sui redditi (“Income Tax Code” of Italy)
Vpb	Wet op de vennootschapsbelasting 1969 (“Corporate Income Tax Law of 1969” of the Netherlands)

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LIST OF ABBREVIATIONS

Other terms

ACA	Allocable cost amount
ADI	Authorised deposit-taking institution
AF	Available fraction
ATO	Australian Taxation Office
CCCTB	Common Consolidated Corporate Tax Base
CFC	Controlled foreign company
CNOL	Consolidated net operating loss
EC	European Commission
ECJ	European Court of Justice
EM	Explanatory Memorandum
EU	European Union
FA	Formulary apportionment
FTC	Foreign tax credit
GDP	Gross domestic product
IFRS	International Financial Reporting Standard
IRD	Inland Revenue Department (New Zealand)
IRS	Internal Revenue Service (United States)
LBO	Leveraged buyout
MEC group	Multiple entry consolidated group
MS	Member State
NAFTA	North American Free Trade Agreement
NZ	New Zealand
OECD	Organisation of Economic Co-operation and Development
PE	Permanent establishment
PEX	Participation exemption
SER	Single entity rule
SRLY	Separate return limitation year
TCS rules	Tax cost setting rules
TD	Tax Determination
TR	Tax Ruling
UK	United Kingdom
US	United States
VAT	Value added tax