

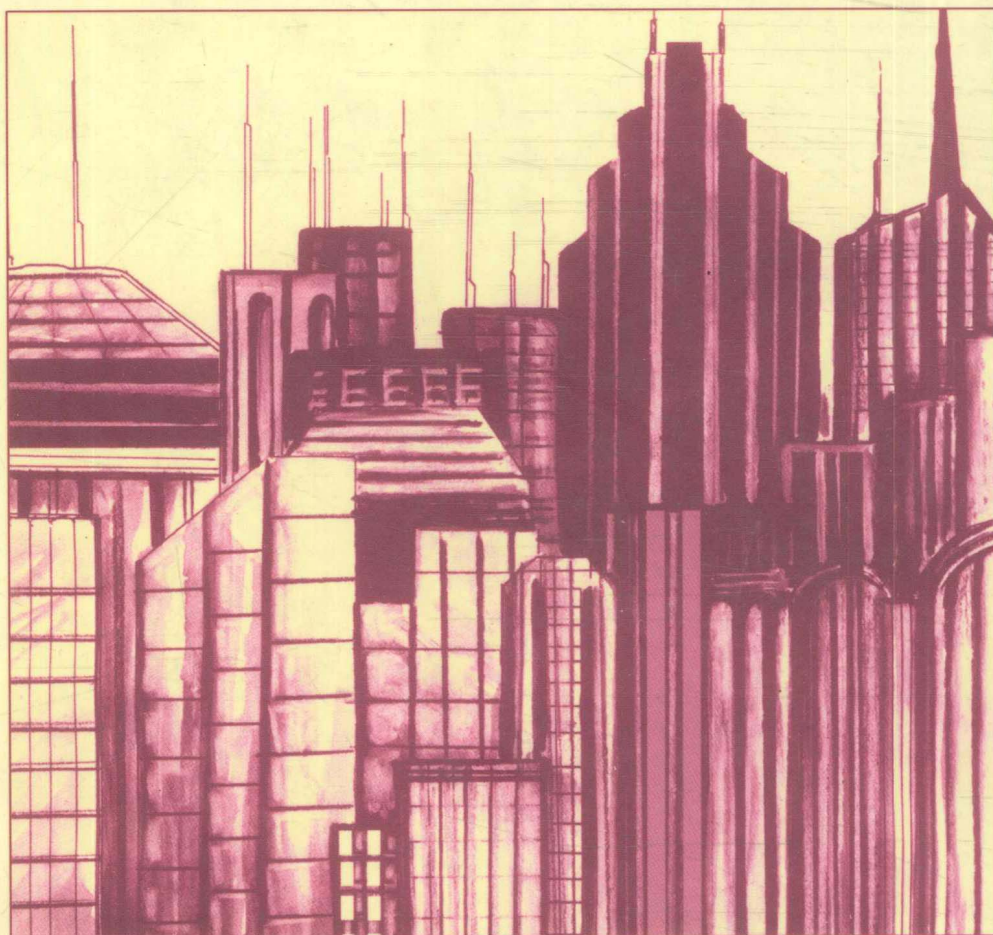
公司税 案例与解析 影印系列

Corporate Taxation

第二版

[美] 谢里尔·D·布洛克/著

Cheryl D. Block



中信出版社
CITIC PUBLISHING HOUSE

EXAMPLES & EXPLANATIONS

EXAMPLES & EXPLANATIONS

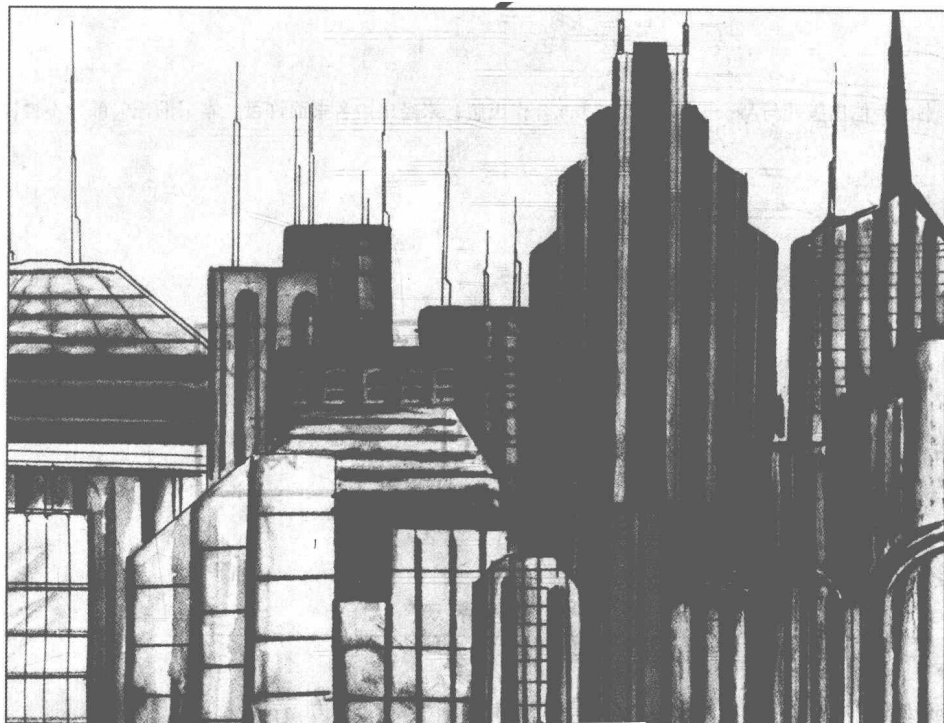
公司税 案例与解析 影印系列

Corporate Taxation

第二版

[美] 谢里尔·D·布洛克/著

Cheryl D. Block



图书在版编目（CIP）数据

公司税：案例与解析/（美）布洛克著. —影印本. —北京：中信出版社，2003.7

书名原文：Corporate Taxation:Examples and Explanations

ISBN 7-80073-756-X

I. 公… II. 布… III. 公司所得税—税法—案例—分析—美国—英文 IV. D971.222

中国版本图书馆CIP数据核字（2003）第041720号

This volume of Corporate Taxation:Examples and Explanations, by Cheryl D. Block, is an English Reprint Edition meant solely for publication in the country of China, published and sold by CITIC PUBLISHING HOUSE, by permission of ASPEN PUBLISHERS, INC., New York, New York, U.S.A., the owner of all rights to publish and sell same.

本书由中信出版社与Aspen Publishers, Inc.合作出版，未经出版者书面许可，本书的任何部分不得以任何方式复制或抄袭。

公司税：案例与解析

GONGSI SHUI ANLI YU JIEXI

著 者：[美] 谢里尔·D·布洛克

责任编辑：袁婉君

责任监制：朱 磊 王祖力

出版发行：中信出版社（北京市朝阳区东外大街亮马河南路14号塔园外交办公大楼 邮编 100600）

经 销 者：中信联合发行有限公司

承 印 者：北京牛山世兴印刷厂

开 本：787mm×1092mm 1/16 印 张：32.5 字 数：659千字

版 次：2003年7月第1版 印 次：2003年7月第1次印刷

京权图字：01-2003-2637

书 号：ISBN 7-80073-756-X/D·52

定 价：78.00元

版权所有·侵权必究

凡购本社图书，如有缺页、倒页、脱页，由发行公司负责退换。服务热线：010-85322521

E-mail:sales@citicpub.com

010-85322522

*To Hannah Ruth, whose arrival brought
unimaginable joy to my life and gave me the happiest
possible reason to delay this project.*

*And to Chad, whose love and support
helped me to finish it.*

NOTICE

As this Second Edition went to print, Congress retroactively repealed §536(a) of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. No. 106-170, 113 Stat. 1860 (1999). Section 536(a) of that Act added a new §453(a)(2), which disallowed installment reporting for most accrual basis taxpayers. As one of its last acts, the 106th Congress repealed this recent amendment and instructs that the Internal Revenue Code “shall be applied and administered as if that subsection (and the amendments made by that subsection) had not been enacted.” Installment Tax Correction Act of 2000, Pub. L. No. 106-573, 114 Stat. 3061, §2(b) (2000). Consequently, accrual basis taxpayers are entitled to use installment reporting as provided in §453. Any references in this Second Edition should be read as if §453(a)(2) had not been enacted.

Visit www.corptax-ee.com for further semiannual updates, corrections, and addenda.

Preface

Corporate taxation has a reputation, among law students at least, as one of the most difficult courses in the law school curriculum. This perception magnifies as Congress continues its seemingly endless amendment process, regularly revising the Internal Revenue Code in general, and Subchapter C, in particular. Some of these revisions appear eminently sensible and others do not. Few of them can be said to simplify, however. The Taxpayer Relief Act of 1997 and the Miscellaneous Trade and Technical Corrections Act of 1999 are the last in this long series of legislative revisions, and their provisions are included, as appropriate, throughout this book. The Treasury Department has also entered the fray, recently rethinking and revising several of its longstanding positions, particularly in the area of tax-free reorganizations. With this book, I hope to assist in unraveling the mysteries of Subchapter C, dealing with corporate taxpayers and their shareholders.

Two unique features of this book distinguish it from other books on corporate taxation. First, and most important, are the series of questions and answers (referred to as “examples” and “explanations”) at the end of each chapter, with the exception of introductory Chapters 1 through 3 on “Preliminary Matters” and Chapter 11, an introductory chapter to the tax-free reorganization materials. For years, my students have been asking me whether a corporate tax book existed that offered hypothetical questions along with *answers*. Now it does. These problems should help to test your understanding and give you an opportunity to apply the textual material from each chapter. While I have attempted to make the problems as realistic as possible, they are unlike transactions in the real world in that the problems at the end of each chapter focus on the particular issues addressed in that chapter. Real world corporate transactions may not be quite so “compartmentalized,” but instead involve multiple issues in the same transaction. Once you have mastered the problems in these chapters, you should be in a position to advance to problems that combine multiple corporate tax issues. Although different professors look for different things in student responses to examination questions, the answers provided in the examples and explanations sections reflect the kind of answers I hope to see from my students.

The second unique feature of this book is that it includes numerous diagrams. I have joked with my students over the years that many corporate

transactions were planned out by creative tax planners on cocktail napkins. In many cases, the most difficult aspects of corporate taxation involve understanding the underlying transaction itself. Once you can “see” the transaction, the tax consequences often fall right into place. I encourage you to get into a regular habit of diagramming corporate transactions. Practice diagramming the transactions described in the examples and explanations sections.

One last problem in studying corporate tax is simply deciding where to start. One possibility is to start with incorporation, or birth, of the corporation and end with liquidation, or death, of the corporation. This is sometimes referred to as the “cradle to grave” approach. Another possibility is to begin with distributions. Since corporations are first taxed on their profits and shareholders are taxed *again* on those profits when they are distributed as dividends, double taxation really is the heart of the corporate tax regime. Why not start at the heart with distributions? A strong case can be made for either technique. Texts and courses on corporate taxation take different approaches. This book adopts the “cradle to grave” approach, modified by considering corporate liquidations prior to the more complex materials on tax-free reorganizations. Nevertheless, each of the chapters that follows is designed to operate independently so that the book can be used as a study guide regardless of the approach used in your particular course of study.

Perhaps the best advice that I can offer students is to work always to see the big picture, and not to get lost in the minutia that can sometimes be so overwhelming. In particular, I hope to assist students in developing skills that will enable them to identify the details that really matter in getting at the big picture. With the proper focus, corporate tax turns out not to be nearly as difficult as one first imagined. Better yet, corporate tax can be — dare I say it? — *fun*.

February 2001

Cheryl D. Block

Acknowledgments

I would like to thank my students and colleagues over the years, who have helped me think through the issues reflected here. Also, special thanks go to my colleagues, Professors Karen Brown and Robert Peroni, who were always willing to listen, guide and commiserate, especially when complex legislative changes made our lives difficult. I am very grateful for the help of my research assistants, particularly Pamela Burke, Tejpal Chawla, Daniel Fisher, Bernard Gallagher, Karen Howat, and Jim Keller, and to the George Washington University Law School, which provided funding for my research assistants, as well as summer research grants. I am also grateful for proofreading assistance from Christina Verleger and for the assistance of the secretaries at the George Washington University Law School, particularly David Foss. Finally I would like to thank my extended family, and the Osborn family of Miami, Oklahoma.

**CORPORATE
TAXATION**

Examples and Explanations

Summary of Contents

<i>Contents</i>	XIII
<i>Preface</i>	XXV
<i>Acknowledgments</i>	XXVII
Part One Some Preliminary Matters	1
Chapter 1. Introduction	3
Chapter 2. Choice of Form and Entity Classification	17
Chapter 3. The Corporate Capital Structure	33
Part Two Corporate Formation	49
Chapter 4. Incorporation and Other Contributions to Capital	51
Part Three Corporate Midlife Events	107
Chapter 5. Nonliquidating Distributions	109
Chapter 6. Redemption Distributions	143
Chapter 7. Stock Dividends	195
Part Four Corporate Liquidation and Related Issues	227
Chapter 8. General Liquidation Rules	229
Chapter 9. Liquidation of Subsidiaries	255
Part Five Corporate Acquisitions, Divisions, and Other Corporate Restructuring	271
Subpart A Taxable Acquisitions	273
Chapter 10. Taxable Mergers and Acquisitions	275
Subpart B Tax-Free Reorganizations	323
Chapter 11. Introduction to Basic Corporate Reorganization Principles	325
Chapter 12. Acquisitive Reorganizations	361
Chapter 13. Corporate Divisions	415

Chapter 14. Recapitalization and Other Corporate Restructuring	449
<i>Table of Cases</i>	471
<i>Table of Internal Revenue Code Sections</i>	473
<i>Table of Treasury Regulations and Revenue Rulings</i>	479
<i>Index</i>	483

Contents

<i>Preface</i>	XXV
<i>Acknowledgments</i>	XXVII

PART ONE SOME PRELIMINARY MATTERS 1

Chapter 1. Introduction	3
The Corporate Income Tax—A Double Tax Regime	3
Computation and Rate Structure for the Tax on Corporate Income	5
General Computation and Rates	5
The Corporate Alternative Minimum Tax	6
Penalty Taxes on Undistributed Corporate Income	7
The Accumulated Earnings Tax	8
The Personal Holding Company Tax	8
Affiliated Corporations	9
Capital Gains vs. Ordinary Income Rates: The Influence on Subchapter C	10
Difference in Tax Treatment for Capital Gains and Losses	10
Overview of Capital Asset Definition	12
Nonrecognition in the Subchapter C World	14
Incidence of the Corporate Tax	14
Chapter 2. Choice of Form and Entity Classification	17
Introduction	17
Choice of Business Form	18
The Options	18
Nontax Factors	19
Tax Factors	21
Double Taxation	21
Tax Rate Issues	22
Classification of the Business Entity	23
Initial Classification Issues	23
Incorporated Entities	25

Certain Unincorporated Entities: Per Se Corporations	25
Associations Taxable as Corporations: Movement from the "Corporate Resemblance" Test to the New Elective Regime	26
The New Elective Classification Regulations: Check-the-Box	28
Summary and Implications	30
Chapter 3. The Corporate Capital Structure	33
Introduction	33
Distinguishing Debt from Equity	34
Why Does It Matter?	34
Why Should It Matter?	36
The Tax Advantages of Debt vs. Equity	37
Absence of a Precise Standard	38
Overview of Factors Used to Distinguish Debt from Equity	40
Observing the Formalities of a Debt Instrument	40
The Debt-Equity Ratio or Thin Capitalization	41
Subordination to Other Claims	41
Contingency of Payment	42
Right to Participate in Profits	42
Voting and Other Rights of Control	42
Identity Between Shareholders and Creditors	42
Acquisition of Essential Assets	43
Intent of the Parties	43
Bifurcation of Hybrid Securities	43
Losses from Investments in the Corporate Enterprise	44
General Losses	44
Section 1244 Stock Losses	45
Gains from Investments in the Corporate Enterprise	46
Conclusion	47
PART TWO	
CORPORATE FORMATION	49
Chapter 4. Incorporation and Other Contributions to Capital	51
Introduction	51
Shareholder Nonrecognition: §351 Eligibility	
Requirements and Underlying Policy	52
Overview	52
Exceptions to Nonrecognition Rules	54
Why Permit Nonrecognition for Incorporation Transactions?	55
A Closer Look at the §351 Requirements	57

The Transfer Requirement	57
The Property Requirement	57
The Solely in Exchange for Stock Requirement	60
Control Immediately After the Exchange Test	61
Disproportionate Contributions and Other	
Variations	63
Operation of Shareholder Nonrecognition Rules	64
Overview of Basis Rules: Deferral of Gain or Loss	64
Effect of Boot	66
Taxation of "Boot Gain": §351(b)(1)	66
Securities, Notes, or Other Evidence of	
Indebtedness as Boot	68
"Nonqualified Preferred Stock" Treated as	
Boot	69
No Recognition of Loss: §351(b)(2)	71
Tax Consequences to the Corporation	71
Nonrecognition Rule: §1032	71
The Corporate Basis Rules: §362	72
Contribution vs. Sale	74
Additional Contributions to Capital	76
Shareholder Level Issues	76
Nonrecognition	76
Basis	78
Corporate Level Issues	78
Effect of Liabilities: §357 and Related Matters	79
The General Rule: §357(a)	79
Contributions with Liabilities	79
What Constitutes Assumption of Liability?	81
Multiple Assets Securing the Same Liability	82
Exceptions to the §357(a) General Rule	83
Tax Avoidance Purpose: §357(b)	83
Liabilities in Excess of Basis: §357(c)	83
Avoiding the §357(c) "Trap"	85
Comparison of §357(b) and (c)	90
Special Rules Applicable to Accounts Payable:	
§357(c)(3)	91
The Corporation's Transfer of Its Own Stock—	
Special Issues Under §351	92
Examples	94
Explanations	96

PART THREE

CORPORATE MIDLIFE EVENTS 107

Chapter 5. Nonliquidating Distributions	109
Introduction	109
Tax Consequences to the Shareholders	110

Overview of §301 Distributions with Respect to Stock	110
A Closer Look at the §301 Trilogy	111
Why Limit Dividends to Amounts Paid Out of Earnings and Profits?	112
The Tax Stakes: Timing and Character of Shareholder Income	114
A Matter of Timing	114
The Character Issue	115
In-Kind Distributions	116
Definitions of Earnings and Profits	116
General Concepts	116
Upward Adjustments	117
Downward Adjustments	118
Additional Timing Issues	119
Special Rules for Corporate Shareholders	120
The Dividends-Received Deduction: §243	120
Special Rules for Corporations Filing a Consolidated Return	121
Congressional Response to Dividends-Received Deduction Abuses	121
Dividends-Received Deduction in a “Bootstrap Acquisition”	123
Tax Consequences to the Distributing Corporation	125
In-Kind Distributions: §311	125
In General	125
Why the Lack of Symmetry in §311?	127
Adjustments to E&P: §312	127
No Deductions for Dividends Paid	129
Distributions Involving Liabilities	129
Shareholder Tax Consequences	129
Distributing Corporation Tax Consequences	130
Constructive Dividends	132
Examples	132
Explanations	135
Chapter 6. Redemption Distributions	143
Introduction	143
Tax Consequences to Redeemed Shareholders	145
Overview	145
The §302(b) Tests for Sale or Exchange Treatment	146
Complete Termination of Interest: §302(b)(3)	146
Substantially Disproportionate Distribution: §302(b)(2)	147
Redemptions Not Equivalent to Dividends: §302(b)(1)	148
Partial Liquidations: §302(b)(4)	152

A Look at Attribution Rules: §318	154
Overview	154
Categories of Attribution	155
Family Attribution: §318(a)(1)	156
Attribution <i>from</i> Entities: §318(a)(2)	156
Attribution <i>to</i> Entities: §318(a)(3)	158
Options Treated as Stock: §318(a)(4)	159
Multiple Attribution	159
Waiver of Family Attribution Rules: §302(c)(2)	161
Waiver by Individual Shareholders	161
Waiver by an Entity	164
The Mystery of Disappearing Basis	166
Special Issues for Corporate Shareholders	167
Redemptions of Stock to Pay Death Taxes: §303	168
Redemptions Related to Inter-Shareholder Transfers and Bootstrap Acquisitions	169
Inter-Shareholder Transfers	169
In General	169
Redemptions Incident to Divorce	171
Other Bootstrap Acquisitions	173
Redemptions by Related Corporations: §304	176
Overview	176
Measuring Control for Purposes of §304	177
Commonly Controlled or Brother-Sister Corporations: §304(a)(1)	178
Acquisitions by Subsidiaries: §304(a)(2)	181
Overlaps Between §304(a)(1) and (a)(2)	183
Tax Consequences to the Corporation	184
Examples	185
Explanations	187
 Chapter 7. Stock Dividends	 195
Introduction	195
Tax Consequences to the Shareholders	197
The Basic §305(a) Nonrecognition Rule	197
Basis Rules: §307	198
The Shareholder's Holding Period	198
The §305(b) Exceptions	199
In General	199
Election to Take Other Property: §305(b)(1)	200
Disproportionate Distributions: §305(b)(2)	201
Distributions of Common and Preferred: §305(b)(3)	202
Distributions on Preferred Stock: §305(b)(4)	203
Distributions of Convertible Preferred: §305(b)(5)	203
Deemed Stock Distributions: §305(c)	204

Tax Consequences to the Corporation	206
The Preferred Stock Bailout: §306 Stock	207
Background and History	207
Tainted §306 Stock	209
The Definition of §306 Stock	209
Disposition of §306 Stock	212
Dispositions by Redemption	212
Dispositions Other than by Redemption	213
Exceptions to the §306 Rules: §306(b)	216
Charitable Bailout	218
Examples	219
Explanations	221
 PART FOUR	
CORPORATE LIQUIDATION AND RELATED ISSUES	227
 Chapter 8. General Liquidation Rules	229
Introduction	229
Tax Consequences to Individual Shareholders: §331	231
Overview	231
Dividends Distinguished	232
Liquidation in Installments	233
Series of Liquidation Payments	233
Contingent Payments over Time	236
Corporate Sale of Assets Followed by	
Distribution of Notes to Shareholders	236
Distributions Involving Liabilities	237
Tax Consequences to the Liquidating Corporation: §336	238
Overview of the New World (1986 and Beyond)	238
Distributions Involving Liabilities	239
Treatment of Losses	239
General Loss Recognition	239
Loss Limitations	239
The Old World of <i>General Utilities</i>	243
Examples	244
Explanations	247
 Chapter 9. Liquidation of Subsidiaries	255
Introduction	255
Tax Consequences to the Parent Corporation: §332	256
Overview	256
Observations About “Outside” and “Inside” Basis	258
Tax Consequences to Minority Shareholders: §331	259
Tax Consequences to the Liquidating Subsidiary: §337	260
Distributions to the Parent Corporation	260
Distributions to Minority Shareholders	261
Additional Anti-Abuse Provisions	262