TABLE OF CONTENTS

PREFACE v
TABLE OF CASES xxiii
TABLE OF AUTHORITIES xxv

CHAPTER 1. Money and Tax Deferral 1

Sec.
A. The Time Value of Money 1
1. The Metaphorical Bank Account 1
2. Multiple years 2
3. The interest rate 2
4. Multiple payments 4
B. Deferred Compensation 4
1. The effect of income taxes 5
2. The prototypical deferral situation 5
3. Constructive receipt doctrine 6
4. Aside: Tax Accounting; Employer Deduction 7
5. Economic benefit doctrine 8
6. Rabbi trusts 9
Cases and Readings 11

CHAPTER 2. Qualified Retirement Plans: Background 21

Sec.
A. Overview of Qualified Retirement Plans 21
1. The need for special tax provisions 21
2. Benefits for the rank and file 22
B. The Traditional Pension Formula 22
1. The Formula. 22
2. Forms of payment and actuarial equivalence. 25
C. Taxonomy of Retirement Plans: Defined Benefit vs. Defined Contribution Plans 26
D. 401(k) Plans 27
E. Special Plan Design Issues 29
1. Distinguishing precisely between defined benefit and defined contribution plans: "target benefit" and "cash balance" plans 29
2. Vesting 30
3. Early or late retirement 32
Cases and Readings 33

CHAPTER 3. Qualified Retirement Plans: Rules 41

Sec.
A. Overview of the Qualified Plan Rules 41
1. The doctors' office 41
2. The potential for abuse 42

Sec.
B. The Anti-Discrimination Rules 43
1. The minimum coverage rule 43
2. The need for other rules 44
3. The nondiscrimination rule 44
4. The controlled group rules 46
5. The minimum participation rule 47
6. The minimum vesting rule 47
7. The top-heavy rule 48
8. The 401(k) rules (a special case) 48
C. Other Qualified Plan Rules 49
1. The aggregate limits of Section 415 50
2. The early distribution penalty 50
3. The minimum distribution requirement 50
4. The maximum funding rules 50
D. The IRS and Qualified Plans 51
1. The problematic binary enforcement scheme 51
2. Administrative accommodations to the binary enforcement scheme: determination letters and compliance resolution 51
Cases and Readings 53

CHAPTER 4. Retirement Plans: Issues and Policy 60

Sec.
A. Defined Benefit Plan Funding 60
1. The defined benefit problem 60
2. Title IV of ERISA 62
3. Minimum funding 62
4. Termination liability 65
5. The PBGC 66
6. Accounting concerns 67
B. Portability: Individual Retirement Accounts and Simplified Employee Pensions 67
1. Portability 67
2. Overview of IRAs 70
a. "Traditional" IRAs 70
b. Roth IRAs 71
3. Role as repository for qualified plan distributions 72
4. SEPs and SIMPLE Plans 73
5. Saver's Credit 73
C. Retirement Plan Policy 74
1. The three-legged stool 74
2. Social Security 74
3. Gaps in private coverage 77
4. The (academic) debate over qualified plans 77
5. The shift from defined benefit to defined contribution plans 78
Cases and Readings 79

CHAPTER 5. Welfare Benefit Plans 93

Sec.

A. Welfare Benefits 93
1. Terminology 93
2. Common types of "welfare benefit plan" 94
a. Health Insurance Plans 94
b. Life Insurance Plans 94
c. Disability Plans 95
d. Accident Plans 95
e. Termination Pay (Severance) Plans 95
3. Life insurance plans: special issues 96
a. Tax Rules 96
b. Split–Dollar Insurance 96
4. Fringe benefits 99
5. Cafeteria plans 100
a. Flexible spending arrangements 101
b. Proposed regulations 101
c. Effect of Health Insurance Reform; Simple Cafeteria Plans 102

B. Employer–Provided Health Insurance: Background 102
1. History of and rationale for employer-provided health insurance in the U.S. 102
a. History 102
b. Rationale 104
2. Elements of health insurance plans 104
3. Tax treatment of employer health insurance 105

C. Health Insurance Reform of 2010 105
1. The general approach 106
2. Provisions most directly relevant to employers 106
3. Coverage of individuals under PPACA 108

D. Pre–Health Insurance Reform Measures 109
1. COBRA Continuation Coverage 109
2. HIPAA 110
3. Coordination of benefits; Medicare secondary rule 110

E. Retiree Health Benefits 111
1. "Traditional" Retiree Health Benefits 112
2. Defined Contribution Retiree Health Benefits 112

F. Funding of Health Plans; VEBAs 113

G. Health Funding Arrangements Made by Individuals 114
1. Self-employed medical expenses 114
2. Health savings accounts 114

Cases and Readings 115