SUMMARY OF CONTENTS

PREFACE v
TABLE OF INTERNAL REVENUE CODE SECTIONS xxvii
TABLE OF TREASURY REGULATIONS li
TABLE OF REVENUE RULINGS lix
TABLE OF MISCELLANEOUS RULINGS lxi
TABLE OF CASES lxiii
TABLE OF AUTHORITIES lxix

PART ONE Introduction 1

CHAPTER 1 An Overview of the Taxation of Corporations and Shareholders 2

A. Introduction 2
  1. Taxation of Business Entities 2
  2. Influential Policies 4
  3. The Common Law of Corporate Taxation 10
B. The Corporation as a Separate Taxable Entity 14
  1. The Corporate Income Tax 14
  2. The Corporate Alternative Minimum Tax 19
  3. Multiple Corporations 22
  4. The S Corporation Alternative 23
C. Corporate Classification 27
  1. In General 27
  2. Corporations vs. Partnerships 29
  3. Corporations vs. Trusts 33
D. Recognition of the Corporate Entity 34
E. Tax Policy Issues 39
  1. Corporate Integration 39
  2. Other Corporate Tax Reform Options 51

PART TWO Taxation of C Corporations 55

CHAPTER 2 Formation of a Corporation 56

A. Introduction to Section 351 56
B. Requirements for Nonrecognition of Gain or Loss Under Section 351 60
  1. "Control" Immediately After the Exchange 61
  2. Transfers of "Property" and Services 67
  3. Solely for "Stock" 68
C. Treatment of Boot 71
  1. In General 71
  2. Timing of Section 351(b) Gain 76

D. Assumption of Liabilities 79
E. Incorporation of a Going Business 99
F. Collateral Issues 109
1. Contributions to Capital 109
2. Intentional Avoidance of Section 351 110
3. Organizational and Start-Up Expenses 112

CHAPTER 3 Capital Structure 114

A. Introduction 114
B. Debt vs. Equity 121
1. Common Law Standards 121
2. Hybrid Instruments 135
3. Section 385 139
C. Character of Gain or Loss on Corporate Investment 143

CHAPTER 4 Nonliquidating Distributions 148

A. Introduction 148
1. Dividends: In General 148
2. Qualified Dividends 151
3. Economic Impact of Dividend Rate Reductions 153
B. Earnings and Profits 155
C. Distributions of Cash 158
D. Distributions of Property 163
1. Consequences to the Distributing Corporation 163
2. Consequences to the Shareholders 167
E. Constructive Distributions 168
F. Anti-Avoidance Limitations on the Dividends Received Deduction 174
1. In General 174
2. Special Holding Period Requirements 175
3. Extraordinary Dividends: Basis Reduction 176
4. Debt-Financed Portfolio Stock 178
5. Section 301(e) 179
G. Use of Dividends in Bootstrap Sales 181

CHAPTER 5 Redemptions and Partial Liquidations 194

A. Introduction 194
B. Constructive Ownership of Stock 198
C. Redemptions Tested at the Shareholder Level 200
1. Substantially Disproportionate Redemptions 200
2. Complete Termination of a Shareholder's Interest 205
3. Redemptions Not Essentially Equivalent to a Dividend 223
D. Redemptions Tested at the Corporate Level: Partial Liquidations 236
E. Consequences to the Distributing Corporation 240
1. Distributions of Appreciated Property in Redemption 240
2. Effect on Earnings and Profits 241
3. Stock Reacquisition Expenses 247

F. Redemption Planning Techniques 249
1. Bootstrap Acquisitions 249
2. Buy–Sell Agreements 251
3. Charitable Contribution and Redemption 266
G. Redemptions Through Related Corporations 274
H. Redemptions to Pay Death Taxes 287

CHAPTER 6 Stock Dividends and Section 306 Stock 290

A. Introduction 290
B. Taxation of Stock Dividends Under Section 305 292
C. Section 306 Stock 304
1. The Preferred Stock Bailout 304
2. The Operation of Section 306 305

CHAPTER 7 Complete Liquidations 318

A. Introduction 318
B. Complete Liquidations Under Section 331 319
1. Consequences to the Shareholders 319
2. Consequences to the Liquidating Corporation 323
C. Liquidation of a Subsidiary 336
1. Consequences to the Shareholders 336
2. Consequences to the Liquidating Subsidiary 344

CHAPTER 8 Taxable Corporate Acquisitions 349

A. Introduction 349
B. Asset Acquisitions 351
1. Tax Consequences to the Parties 351
2. Allocation of Purchase Price 352
C. Stock Acquisitions 357
1. Background 357
2. Operation of Section 338 361
3. Acquisition of Stock of a Subsidiary 367
4. Section 336(e) 369
D. Comparison of Acquisition Methods 372
E. Tax Treatment of Acquisition Expenses 375
F. Policy Issues: Corporate Acquisitions and the Problem of Excessive Debt 379

CHAPTER 9 Acquisitive Reorganizations 392

A. Introduction 392
1. Historical Background 392
2. Overview of Reorganizations 393

B. Types of Acquisitive Reorganizations 396
1. Type A: Statutory Mergers and Consolidations 396
2. Type B: Acquisitions of Stock Solely for Voting Stock 416
3. Type C: Acquisitions of Assets for Voting Stock 419
4. Triangular Reorganizations 423
5. Multi–Step Acquisitions 426
C. Treatment of the Parties to an Acquisitive Reorganization 438
1. Consequences to Shareholders and Security Holders 438
2. Consequences to the Target Corporation 444
3. Consequences to the Acquiring Corporation 446
D. Tax Policy Issues 450

CHAPTER 10 Corporate Divisions 455

A. Introduction 455
1. Types of Corporate Divisions 455
2. Non–Tax Motives for Corporate Divisions 457
3. Historical Background of Section 355 459
4. Overview of Section 355 463
B. The Active Trade or Business Requirement 465
C. Judicial and Statutory Limitations 483
1. Business Purpose 483
2. Continuity of Interest 487
3. The "Device" Limitation 488
4. Disqualified Investment Corporations 494
D. Tax Treatment of the Parties to a Corporate Division 496
1. Introduction 496
2. Consequences to Shareholders and Security Holders 497
3. Consequences to the Distributing and Controlled Corporations 503
4. Consequences of Failed Divisions 505
E. Use of Section 355 in Corporate Acquisitions 506
1. Limitations on Use of Section 355 in Taxable Acquisitions 506
2. Dispositions of Unwanted Assets in Conjunction With Tax–Free Reorganizations 513

CHAPTER 11 Nonacquisitive, Nondivisive Reorganizations 518

A. Type E: Recapitalizations 518
1. Introduction 518
2. Types of Recapitalizations 519
B. Nondivisive Type D Reorganizations 529
C. Type F: Mere Change in Identity, Form, or Place of Organization 541
D. Type G: Insolvency Reorganizations 546

CHAPTER 12 Carryovers of Corporate Tax Attributes 552

A. Introduction 552
B. Section 381 Carryover Rules 553
C. Limitations on Net Operating Loss Carryforwards: Section 382 556
1. Introduction 556
2. The Ownership Change Requirements 559

3. Results of an Ownership Change 574
4. Section 382 Relief for Distressed Businesses 579
D. Limitations on Other Tax Attributes: Section 383 581
E. Other Loss Limitations 582
1. Acquisitions Made to Evade Tax: Section 269 582
2. Limitations on Use of Preacquisition Losses to Offset Built-In Gains: Section 384 583
3. Consolidated Return Rules 586

CHAPTER 13 Affiliated Corporations 588

A. Restrictions on Affiliated Corporations 588
1. Introduction 588
2. Limitations on Multiple Tax Benefits 588
3. Section 482 592
B. Consolidated Returns 598
1. Introduction 598
2. Eligibility and Election to File a Consolidated Return 599
3. Computation of Consolidated Taxable Income 601
4. Stock Basis Adjustments 607
5. Advantages and Disadvantages of Filing a Consolidated Return 608

CHAPTER 14 Anti-Avoidance Rules 610

A. Introduction 610
B. The Economic Substance Doctrine 610
1. Background: Corporate Tax Shelters 610
2. Common Law Roots 618
3. Codification 622
C. The Accumulated Earnings Tax 626
1. Introduction 626
2. The Proscribed Tax Avoidance Purpose 627
3. The Reasonable Needs of the Business 630
4. Calculation of Accumulated Taxable Income 642
D. The Personal Holding Company Tax 645
1. Introduction 645
2. Definition of a Personal Holding Company 646
3. Taxation of Personal Holding Companies 655

PART THREE Taxation of S Corporations 661

CHAPTER 15 S Corporations 662

A. Introduction 662
B. Eligibility for S Corporation Status 664
C. Election, Revocation and Termination 671