

**QUESTION 11 - Hypothetical Facts - 30 marks**

**Capital Gain**

Recognition of issue (taxable capital gain).  $\frac{1}{2}$  \_\_\_\_\_  
 \$200,000 is included in MAD's income.  $\frac{1}{2}$  \_\_\_\_\_  
 TCG is included in aggregate investment income.  $\frac{1}{2}$  \_\_\_\_\_  
 TCG does not qualify for general rate reduction.  $\frac{1}{2}$  \_\_\_\_\_  
 TCG does not qualify for small business deduction.  $\frac{1}{2}$  \_\_\_\_\_  
 s. 123.3 imposes 6 $\frac{2}{3}$ % tax on aggregate investment inc.  $\frac{1}{2}$  \_\_\_\_\_  
 The 6 $\frac{2}{3}$ % tax is refundable.  $\frac{1}{2}$  \_\_\_\_\_  
 s. 129(3): RDTOH includes 26 $\frac{2}{3}$ % of aggregate investment income.  $\frac{1}{2}$  \_\_\_\_\_  
 Other \_\_\_\_\_

**Capital Dividend**

Recognition of issue (capital dividend).  $\frac{1}{2}$  \_\_\_\_\_  
 s. 89(1): CDA includes non-taxable half of capital gain.  $\frac{1}{2}$  \_\_\_\_\_  
 \$200,000 is included in MAD's CDA.  $\frac{1}{2}$  \_\_\_\_\_  
 s. 83(2): a corp. may elect to pay a capital dividend.  $\frac{1}{2}$  \_\_\_\_\_  
 s. 83(2): the election must apply to full amount of div.  $\frac{1}{2}$  \_\_\_\_\_  
 s. 83(2): the election must be filed before dividend is pd.  $\frac{1}{2}$  \_\_\_\_\_  
 MAD filed the election late.  $\frac{1}{2}$  \_\_\_\_\_  
 s. 83(3): the election will be accepted if MAD pays a penalty.  $\frac{1}{2}$  \_\_\_\_\_  
 s. 83(4): formula for calculating penalty.  $\frac{1}{2}$  \_\_\_\_\_  
 s. 83(2)(a): if the election is filed, the dividend is a capital dividend to extent of CDA.  $\frac{1}{2}$  \_\_\_\_\_  
 MAD paid an excessive capital dividend (\$50,000).  $\frac{1}{2}$  \_\_\_\_\_  
 s. 184(2): a 75% tax applies to excess capital dividend.  $\frac{1}{2}$  \_\_\_\_\_  
 The excessive dividend tax is \$37,500.  $\frac{1}{2}$  \_\_\_\_\_  
 s. 83(2): the election must be in prescribed manner.  $\frac{1}{2}$  \_\_\_\_\_  
 Reg 2101: corp. must file certified copy of directors' res. and schedule showing computation of CDA.  $\frac{1}{2}$  \_\_\_\_\_  
 MAD did not file the above documents.  $\frac{1}{2}$  \_\_\_\_\_  
 s. 83(2)(b): a capital dividend is not included in shareholder's income.  $\frac{1}{2}$  \_\_\_\_\_  
 s. 89(1): a taxable dividend is a dividend other than a capital dividend.  $\frac{1}{2}$  \_\_\_\_\_  
 If election is invalid, the dividend is a taxable dividend.  $\frac{1}{2}$  \_\_\_\_\_  
 Other \_\_\_\_\_

**Shareholder Benefit**

Recognition of issue (shareholder benefit).  $\frac{1}{2}$  \_\_\_\_\_  
 s. 15(1): if a corp. confers a benefit on a shareholder, it is included in shareholder's income.  $\frac{1}{2}$  \_\_\_\_\_  
 Simon's use of cottage while on MAD's business is not a taxable benefit.  $\frac{1}{2}$  \_\_\_\_\_  
 The use of the cottage for vacation might be a taxable benefit.  $\frac{1}{2}$  \_\_\_\_\_  
*Youngman*: benefit is computed by determining the amount of rent that an arm's-length corp. would charge.  $\frac{1}{2}$  \_\_\_\_\_  
*Youngman*: benefit is computed by determining what corp. did for shareholder and what shareholder would have to pay to get same benefit from corp. of which he is not a shareholder.  $\frac{1}{2}$  \_\_\_\_\_  
*Donovan*: benefit is quantified by multiplying prescribed rate of interest by cost of property.  $\frac{1}{2}$  \_\_\_\_\_  
*Fingold*: the equity rate of return method is to be used.  $\frac{1}{2}$  \_\_\_\_\_  
*Fingold*: the benefit computed under equity rate of return method will generally be greater than FMV rental value.  $\frac{1}{2}$  \_\_\_\_\_  
 Reg. 4301(c): in July 2005 the prescribed rate of interest was 3%.  $\frac{1}{2}$  \_\_\_\_\_  
 Gross benefit = \$1,000,000  $\times$  0.03  $\div$  12 = \$2,500.  $\frac{1}{2}$  \_\_\_\_\_

Simon's benefit = \$2,500 - \$1,000 (rent paid) = \$1,500.  $\frac{1}{2}$  \_\_\_\_\_  
 Other \_\_\_\_\_

**Subsection 85(1) Rollover**

Recognition of issue (subsection 85(1) rollover).  $\frac{1}{2}$  \_\_\_\_\_  
 s. 85(1) applies to eligible property.  $\frac{1}{2}$  \_\_\_\_\_  
 s. 85(1.1)(a): real property which is capital property owned by a resident is eligible property.  $\frac{1}{2}$  \_\_\_\_\_  
 The Land was eligible property.  $\frac{1}{2}$  \_\_\_\_\_  
 s. 85(1): the consideration must include shares.  $\frac{1}{2}$  \_\_\_\_\_  
 The preferred shares were not authorized when the Land was transferred.  $\frac{1}{2}$  \_\_\_\_\_  
*Dale* (TCC): consideration may be executory.  $\frac{1}{2}$  \_\_\_\_\_  
*Dale* (TCC): it is sufficient if there is a binding obligation to issue shares.  $\frac{1}{2}$  \_\_\_\_\_  
*Dale* (TCC): shares may be issued after end of taxation year in which transfer occurs.  $\frac{1}{2}$  \_\_\_\_\_  
*Dale* (FCA): the share issue may have been invalid, but not null  $\frac{1}{2}$  \_\_\_\_\_  
*Dale* (dissent): shares should have been issued before year-end.  $\frac{1}{2}$  \_\_\_\_\_  
 s. 85(1)(a): agreed amount constitutes proceeds of disposition.  $\frac{1}{2}$  \_\_\_\_\_  
 By electing at \$225,000, Simon triggered capital gain of \$25,000.  $\frac{1}{2}$  \_\_\_\_\_  
 Capital gain = P/D - ACB.  $\frac{1}{2}$  \_\_\_\_\_  
 Capital gain = \$225,000 - \$200,000 = \$25,000.  $\frac{1}{2}$  \_\_\_\_\_  
 s. 85(6) election must be filed by earliest filing-due date.  $\frac{1}{2}$  \_\_\_\_\_  
 The election should have been filed by 30 April 2006.  $\frac{1}{2}$  \_\_\_\_\_  
 The election was filed late.  $\frac{1}{2}$  \_\_\_\_\_  
 s. 85(7): a late election will be accepted if a penalty is paid.  $\frac{1}{2}$  \_\_\_\_\_  
 s. 85(8): formula for calculating penalty.  $\frac{1}{2}$  \_\_\_\_\_  
 Other \_\_\_\_\_

**Director's Liability**

Recognition of issue (director's liability).  $\frac{1}{2}$  \_\_\_\_\_  
 s. 227.1(1): if corporation fails to withhold or remit source deductions, the directors are liable.  $\frac{1}{2}$  \_\_\_\_\_  
 s. 227.1(2): a director is not liable unless collection proceedings against corporation were unsuccessful.  $\frac{1}{2}$  \_\_\_\_\_  
 s. 227.1(3): standard of care = degree of care, diligence and skill that reasonably prudent person would exercise in comparable circumstances.  $\frac{1}{2}$  \_\_\_\_\_  
*Soper*: standard of care is objective subjective (hybrid).  $\frac{1}{2}$  \_\_\_\_\_  
*Peoples*: standard of care is objective.  $\frac{1}{2}$  \_\_\_\_\_  
*Peoples*: the objective subjective standard is no longer applicable.  $\frac{1}{2}$  \_\_\_\_\_  
 Analysis of whether Simon met standard of care.  $\frac{1}{2}$  \_\_\_\_\_  
 Conclusion: Simon is likely liable for \$5,000 source deductions.  $\frac{1}{2}$  \_\_\_\_\_  
 Other \_\_\_\_\_

**Other Issues**

Other \_\_\_\_\_

**QUESTION 12 - Tax Plan and Steps - 25 marks**

**Associated Corporations**

Recognition of issue (associated corporations). 1 \_\_\_\_\_  
 s. 256(1)(c): two corporations are associated if they are controlled by related persons and one person holds at least 25% of the shares (other than shares of a specified class) of each corporation. 1 \_\_\_\_\_  
 s. 256(1.1): definition of "specified class". 1 \_\_\_\_\_  
 MMH's voting common shares are not shares of a specified class. 1 \_\_\_\_\_  
 MMH and BRI are associated. 1 \_\_\_\_\_  
 Reason: Albert controls MMH; Sonja controls BRI; Sonja owns 40% of shares of MMH. 1 \_\_\_\_\_  
 Other \_\_\_\_\_

**Shared Small Business Deduction**

- Recognition of issue (shared SBD). 1 \_\_\_\_\_
- s. 125(2): associated corps. have a nil business limit, unless they agree otherwise. 1 \_\_\_\_\_
- s. 125(3): associated corps. may file an agreement to share business limit. 1 \_\_\_\_\_
- If MMH and BRI disassociate, they need not share business limit. 1 \_\_\_\_\_
- Other \_\_\_\_\_

**Reorganization of Capital**

- Recognition of issue (s. 86 reorg.). 1 \_\_\_\_\_
- s. 86(1) permits a corp. to reorganize its capital on a tax-deferred basis. 1 \_\_\_\_\_
- Under s. 86(1), MMH may change common shares held by Sonja into preferred shares which will be shares of a specified class. 1 \_\_\_\_\_
- s. 86(1): the shares must be held as capital property. 1 \_\_\_\_\_
- Sonja likely holds her shares of MMH as cap. property. 1 \_\_\_\_\_
- s. 86(1): all of Sonja’s shares of MMH must be disposed of. 1 \_\_\_\_\_
- s. 86(1): Sonja must receive new shares of MMH. 1 \_\_\_\_\_
- Other \_\_\_\_\_

**Steps**

- MMH must prepare articles of amendment (“A/A”). 1 \_\_\_\_\_
- A/A must authorize new class of preferred shares. 1 \_\_\_\_\_
- Preferred shares must satisfy criteria of s. 256(1.1). 1 \_\_\_\_\_
- Preferred shares must be non-voting. 1 \_\_\_\_\_
- Pref. shares’ dividend entitlement cannot exceed prescribed rate of interest. 1 \_\_\_\_\_
- Pref. shares’ redemption price cannot exceed FMV of Sonja’s common shares. 1 \_\_\_\_\_
- ABCA s. 173(1)(f): A/A should change Sonja’s common shares into preferred shares. 1 \_\_\_\_\_
- ABCA s. 173(1): A/A must be approved by special res. 1 \_\_\_\_\_
- ABCA s. 177(1): A/A must be filed with Registrar of Corporations. 1 \_\_\_\_\_
- Other \_\_\_\_\_

**Other Analysis or Steps**

Other \_\_\_\_\_

**QUESTION 13 – Dividend – 5 marks**

- s. 82(1)(a)(i): a taxable dividend is included in income. 1 \_\_\_\_\_
- s. 82(1)(b)(i): if shareholder is an individual, ¼ of the dividend is included in income. 1 \_\_\_\_\_
- Taxable dividend = \$120,000. 1 \_\_\_\_\_
- Gross-up = ¼ × \$120,000 = \$30,000. 1 \_\_\_\_\_
- Income inclusion = \$120,000 + \$30,000 = \$150,000. 1 \_\_\_\_\_
- s. 121(a): DTC = ⅔ of the gross-up. 1 \_\_\_\_\_
- DTC = ⅔ × \$30,000 = \$20,000. 1 \_\_\_\_\_
- Other \_\_\_\_\_

**FACULTY OF LAW**

**FINAL EXAMINATION – April 28, 2007**

**LAW 665:Y5 - CORPORATE TAXATION**

Code No. \_\_\_\_\_

<u>Question</u>	<u>Marks</u>
1	_____
2	_____
3	_____
4	_____
5	_____
6	_____
7	_____
8	_____
9	_____
10	_____
11	_____
12	_____
13	_____
<b>SUBTOTAL</b>	_____
<b>CLASS PARTICIPATION</b>	_____
<b>TOTAL</b>	_____
<b>GRADE</b>	_____