

QUESTION 1 -Inbound Investment - 45 marks

Status of EPI

- s. 248(1) definition of "non-resident". 1/2 _____
- s. 250(4) does not apply. 1/2 _____
- De Beers*: central management and control. 1/2 _____
- Location of directors meetings determines residence. 1/2 _____
- EPI is a non-resident of Canada. 1/2 _____
- Can-US treaty s. IV.1: liability for tax and reason. 1/2 _____
- EPI is a resident of US under treaty. 1/2 _____
- Other _____

Disposition of vacant land

- Recognition of issue 1/2 _____
- s. 284(1) definition of "taxable Canadian property". 1/2 _____
- TCP includes real property situated in Canada. 1/2 _____
- The vacant land is TCP. 1/2 _____
- s. 2(3)(c): a NR who disposes of TCP is subject to tax. 1/2 _____
- EPI is about to dispose of TCP. 1/2 _____
- s. 116(3) requires NR seller of TCP to notify CRA. 1/2 _____
- s. 116(5) liability on buyer if no clearance certificate. 1/2 _____
- If EPI does not get clearance certificate, BAL may withhold 25%. 1/2 _____
- Can-US treaty s. XIII.1 - no treaty exemption. 1/2 _____
- Merlis Inv.*: CRA may require tax payment or security. 1/2 _____
- Other _____

Construction activity undertaken by EPI

- Recognition of alternative - branch operation. 1/2 _____
- Smidth & Firestone*: business is carried on where operations take place. 1/2 _____
- s. 253(a): a NR who constructs anything in Canada is COB in Canada. 1/2 _____
- s. 2(3)(b): a NR who COB in Canada is subject to tax. 1/2 _____
- R. 805(1): a NR COB in Canada is taxable under Part XIII except wrt income attributable to a PE in Canada. 1/2 _____
- R. 400(2): definition of PE for purpose of R. 805(1). 1/2 _____
- This definition refers to a fixed place of business, but does not include a construction site. 1/2 _____
- Each construction site is likely a PE. 1/2 _____
- EPI's construction income will be taxable under Part I, not Part XIII. 1/2 _____
- Other _____

Treaty exemption for business profits

- Recognition of issue 1/2 _____
- Can-US treaty s. VII.1: a NR's business profits are taxable in Canada if attributable to a PE in Canada. 1/2 _____
- Fowler*: a temporary business site may be a PE. 1/2 _____
- Blue Jays*: a PE must have a degree of permanency, and not be temporary. 1/2 _____
- Can-US treaty s. V.3: a construction project is a PE if it lasts more than 12 months. 1/2 _____
- ∴ EPI will have a PE in Canada. 1/2 _____
- Can-US treaty s. VII.2 imposes arm's-length terms on dealings between branch and head office 1/2 _____
- Other _____

Branch tax on construction income

- Recognition of issue 1/2 _____
- s. 219(1) imposes branch tax of 25% of taxable income earned in Canada. 1/2 _____
- s. 219.2 & s. 219.3 may limit rate of branch tax, but they don't apply in Canada-US context. 1/2 _____
- Can-US treaty s. X.6 limits branch tax rate to 5%. 1/2 _____
- Can-US treaty s. X.6(d) exempts first C\$500,000 of income from branch tax. 1/2 _____
- ∴ EPI may want to operate as a branch until it has earned C\$500,000 of income. 1/2 _____
- Other _____

Regulation 105 withholding

- Recognition of issue 1/2 _____
- s. 153(1)(g) imposes withholding wrt fees. 1/2 _____
- R. 105(1) imposes 15% withholding tax on fees to NR in respect of services rendered in Canada. 1/2 _____
- Ogden*: R. 105 applies even if NR has no net profit. 1/2 _____
- This tax is an instalment; excess tax may be refunded. 1/2 _____
- s. 227(8.4)(b): payer is liable for amount that should have been withheld. 1/2 _____
- s. 227(8)(a): 10% penalty for failure to withhold. 1/2 _____
- IC 75-6R2: if in doubt, withhold. 1/2 _____
- s. 153(1.1): CRA may reduce withholding rate to avoid undue hardship. 1/2 _____

- ∴ if EPI's profit margin is low, it may apply for a reduction. 1/2 _____
- Other _____

Foreign debt financing of branch

- Recognition of alternative 1/2 _____
- s. 212(1): Pt. XIII tax applies to interest paid by resident to NR. 1/2 _____
- s. 212(13)(f): if interest is secured by mortgage, NR is deemed to be a resident. 1/2 _____
- Here, EPI will not own office towers and will not secure debt with mortgage. 1/2 _____
- s. 212(13.2)(a) applies only if EPI's business is carried on principally in Canada. 1/2 _____
- ∴ Pt. XIII tax likely does not apply to debt financing of branch. 1/2 _____
- Easter Law Trust*: interest which is capitalized is not deductible, and is not subject to Pt. XIII tax. 1/2 _____
- Here, EPI will not own office towers and will not capitalize interest. 1/2 _____
- Other _____

Repatriation of funds by branch to HO

- Recognition of issue 1/2 _____
- s. 212(1): Pt. XIII tax applies to amounts paid by res. to NR. 1/2 _____
- s. 212(13.2)(a) applies only if EPI's business is carried on principally in Canada. 1/2 _____
- s. 212(2): Pt. XIII tax applies to dividends paid by Canadian corporation to NR. 1/2 _____
- ∴ No Pt. XIII tax applies to distributions by branch to HO. 1/2 _____
- Can-US treaty s. VII.3: executive and administrative expenses incurred at HO are deductible by PE. 1/2 _____
- Other _____

Construction activity undertaken by subsidiary

- Recognition of alternative 1/2 _____
- Subsidiary (not EPI) is taxpayer in Canada. 1/2 _____
- Other _____

Construction activity undertaken by ABULC

- Recognition of alternative 1/2 _____
- ABULC (not EPI) is taxpayer in Canada. 1/2 _____
- Provides flow-through treatment of Canadian losses, taxes, etc. for US purposes. 1/2 _____
- Other _____

Management fees paid by subsidiary to EPI

- Recognition of issue 1/2 _____
- s. 212(1)(a): 25% tax on management fee paid to NR. 1/2 _____
- s. 212(4)(a)(ii): requires an arm's-length relationship. 1/2 _____
- Cundill*: parent and subsidiary are NAL because they have same directing mind. 1/2 _____
- s. 212(4)(b): no withholding wrt reimbursement of specific expenses. 1/2 _____
- ∴ if management fees are used to repatriate profits, s. 212(1)(a) will apply. 1/2 _____
- Can-US treaty s. VII.1: if EPI has no PE in Canada, the management fees are exempt. 1/2 _____
- Can-US treaty s. V.8: a subsidiary is not a PE. 1/2 _____
- Other _____

Dividends paid by subsidiary to EPI

- Recognition of issue 1/2 _____
- s. 212(2): 25% tax on dividends paid to NR. 1/2 _____
- Serco*: Pt. XIII tax applies to deemed dividends. 1/2 _____
- Can-US treaty s. X.2(a): rate is reduced to 5% here. 1/2 _____
- Dividends paid by subsidiary to EPI will be taxed at 5%. 1/2 _____
- Other _____

Interest paid by subsidiary to NR lender

- Recognition of issue 1/2 _____
- s. 212(1)(b): 25% tax on interest paid to NR. 1/2 _____
- Can-US treaty s. XI.2: reduces rate to 10% for US lender. 1/2 _____
- s. 212(1)(b)(vii) exempts debt from arm's-length lender if term is more than 5 years. 1/2 _____
- ∴ subsidiary should try to qualify for this exemption. 1/2 _____
- Other _____

Thin capitalization rules

- Recognition of issue 1/2 _____
- s. 18(4) limits debt-to-equity ratio to 2:1. 1/2 _____
- s. 18(4) applies only if lender owns 25% or more of shares of borrower. 1/2 _____
- If ratio exceeds 2:1, some of the interest becomes non-deductible. 1/2 _____
- Spec. Mfg.*: Can-US treaty cannot be used to avoid thin capitalization rules. 1/2 _____
- Other _____

Rent paid by tenants to EPI

- Recognition of issue 1/2
s. 212(1)(d): 25% tax on rent paid to NR. 1/2
s. 212(1)(d)(i) includes payment for use of property. 1/2
Can-US treaty does not reduce rate. 1/2
s. 215(1): tenants are required to withhold and remit 25%. 1/2
s. 215(3): QCC may be required to withhold and remit 25%. 1/2
Other

Alternative regarding withholding

- Recognition of alternative 1/2
s. 216(1): NR may choose to pay Pt. I tax on net rent, rather than Pt. XIII tax on gross rent. 1/2
s. 216(1): NR is to file tax return within 2 years. 1/2
s. 216(4): NR and agent may file NR6 undertaking before year begins. 1/2
s. 216(4): agent withholds wrt net payments to NR. EPI and QCC should file NR6 undertaking. 1/2
Other

Other issues or alternatives

Other

QUESTION 2: Foreign Affiliates - 20 marks

Residence of Canco and Mapco

- s. 250(4)(a): a corporation incorporated in Canada is a resident of Canada. 1
Canco was incorporated in Canada. 1/2
Canco is a resident of Canada. 1/2
Mapco was incorporated in Canada. 1/2
Mapco is a resident of Canada. 1/2
Other

Meaning of "foreign affiliate"

- s. 95(1): a FA is a NR corp. in which T has a 1% equity percentage and total equity percentages of T and related persons is 10% or more. 1
s. 95(4): equity percentage = direct equity percentage + indirect look-through equity percentage. 1
s. 95(4): direct equity percentage = highest class shareholding percentage. 1
Other

Foreign affiliate status of Amco

- Amco is a non-resident. 1/2
Amco is a corporation. 1/2
Canco has an 80% direct equity percentage in Amco. 1
Canco has no indirect equity percentage in Amco. 1
Canco has an 80% equity percentage in Amco. 1
Amco is a foreign affiliate of Canco. 1/2
Other

Foreign affiliate status of Westco

- Westco is a non-resident. 1/2
Westco is a corporation. 1/2
Canco has a 5% direct equity percentage in Westco. 1
Canco has a 16% (80% of 20%) indirect equity percentage in Westco. 1
Canco has a 21% (5% + 16%) equity percentage in Westco. 1
Westco is a foreign affiliate of Canco. 1/2
Other

Meaning of "controlled foreign affiliate"

- s. 95(1): a CFA is a FA of T controlled by T and/or 4 or fewer residents of Canada. 1
Other

CFA status of Amco

- Amco is controlled by Canco. 1/2
Amco is a CFA of Canco. 1/2
Other

CFA status of Westco

- Westco is controlled by Mapco or by Mapco and Canco. 1
Westco is a CFA of Canco. 1
Other

Loan by Canco to Westco

- Recognition of issue 1
s. 17(1): if resident corp. lends money to NR, interest-free, for more than a year, interest at prescribed rate is included in lender's income. 1
Here, all the above conditions are met. 1/2
s. 17(8): s. 17(1) does not apply to a loan to a CFA which uses money to earn ABI. 1

- Here, the above conditions are met. 1/2
∴ s. 17(1) does not apply. 1/2
Massey-Ferguson: proper loan documentation is advisable. 1/2
Here, there is no mention of documentation. 1/2
Other

QUESTION 3: Residence - 15 marks

Meaning of "resident" under ITA

- ITA does not define "residence". 1/2
s. 250(1)(a): 183-day sojourner rule. 1
s. 250(3): ordinarily resident. 1
Thomson: a person with settled abode in Canada is resident. 1
Thomson: a person may be resident in cross-border region. 1
Thomson: a person is resident where he regularly lives. 1
Thomson: a person may be resident in more than 1 country. 1
Other

CRA Policy

- IT-221R3: key residential ties are dwelling place and spouse. 1
IT-221R3: secondary ties include vehicles, social ties, employment, bank accounts, immigration status, and medical insurance. 1
Other

Canada-US tax treaty

- s. IV.1: to be resident of US, taxpayer must be subject to tax in US. 1
s. IV.2: tie-breaker rules. 1
Allchin: habitual abode is a function of length of stay, lifestyle and activities. 1
Wolf: application of tie-breaker rules. 1/2
Other

2002

- Only 180 days in Canada ∴ s. 250(1)(a) does not apply. 1
Analysis of residential ties. 1
No tax treaty between Canada and Bermuda. 1/2
Conclusion 1/2
Other

2003

- 190 days in Canada ∴ s. 250(1)(a) applies. 1
Analysis of residential ties. 1
Application of tie-breaker rules. 1
Conclusion 1/2
Other

2004

- Only 175 days in Canada ∴ s. 250(1)(a) does not apply 1
Analysis of residential ties. 1
Application of tie-breaker rules. 1
Conclusion 1/2
Other

QUESTION 4: Treaty Interpretation - 10 marks

Interpretive principles

- Vienna Con., s. 31: ordinary meaning, object and purpose. 1
Vienna Con., s. 32: supplementary means of interpretation. 1
Income Tax Conventions Interpt. Act, s. 3: undefined terms 1
CFI: goal is to find the meaning of the words in question. 1
CFI: look to language used and intentions of parties. 1
CFI: a treaty's purpose is relevant to its interpretation. 1
Gladden: a treaty is to be given a liberal interpretation. 1
Coblentz: literalism has no role to play. 1
Other

Extrinsic materials

- CFI: court may refer to extrinsic materials, including model treaties and official commentaries. 1
CFI: foreign treaty partner may intervene. 1
Coblentz: US Tech. Expl. facilitates understanding. 1
Kubicek: US Tech. Expl. is of interest, but not decisive. 1
Other

STUDENT: _____ Marks

Question 1 (45 marks) _____

Question 2 (20 marks) _____

Question 3 (15 marks) _____

Question 4 (10 marks) _____

TOTAL _____

GRADE _____