

Tax Notes

Book Reviews

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A PRACTICAL GUIDE TO CORPORATE TAX PLANNING.

Corporate Taxation, by **Robert W. Wood**

Prentice Hall (October 1989), Two Volumes

"Oh, do not ask 'What is it?' "/1/

No, this two-volume set is not Bittker and Eustice,^{2/} nor was meant to be.^{3/} Rather, according to its author, it was meant to be a "complete planning and practice guide" in corporate taxation. Does it live up to that expectation?

"Let us go and make our visit."^{4/}

A look at the organizational structure and scope of the text reveals: a very detailed Table of Contents (47 pages), 19 Chapters (1,500 pages) covering the broad spectrum of corporate entities (C, S, REIT, PHC, Foreign, etc.), and other corporate subjects (executive compensation, alternative minimum tax, liquidations, redemptions, reorganizations, carryover and survival of corporate tax attributes, etc.), and a generous offering (121 pages) of sample forms and agreements, the numbering and arrangement of which are keyed to the relevant chapters. For example, Form 19.1 sets forth a model of "Minutes of a Special Meeting of Board Directors of XYZ Corp." regarding reasonableness of earnings accumulations (Chapter 19's subject matter).

In addition, helpful examples are sprinkled liberally throughout the text and informative "planning pointers" are found in each chapter. An example of the latter follows a discussion of a compensation plan involving the use by a corporation of shared appreciation rights (SARs).

****PLANNING POINTER**** -- There are a number of distinct advantages to an SAR plan: most important, it avoids giving employees shareholder status. This can eliminate concerns over voting rights, as well as simplify disclosure requirements. From an employee perspective, SARs are beneficial in that they do not

require employee investments. And from the employer's viewpoint, to the extent that benefits are payable, the employer receives an income tax deduction.

The major disadvantage of an SAR plan is rather disadvantageous accounting treatment. The stock appreciation rights must be entered as an expense and booked as a liability for financial statement purposes when and as accrued. This creates a charge to earnings that may have an adverse impact on the company's financial statements. See, FASB Interpretation No.

28, Accounting Principles Board No. 25.

And there are unexpected treats. For example, while a reader of a corporate tax book reasonably expects to find a segment on associations taxable as corporations, and, in fact, might even reasonably expect one on publicly-traded partnerships, a segment on partnership and trust classifications was an unexpected bonus.

As for the author's writing style, note the following excerpt from his overview on section 351:

It is not surprising that this favorable nonrecognition treatment should be accorded. Indeed, in the archetypal case, the owner of assets conducting a business merely changes the form of his ownership by transferring the assets he owns to a corporation in which he will own the stock. As we will see, however, the pattern becomes significantly more complex in cases where the business owner is but one of the many transferors, where a business has already been conducted for some time, and where no additional stock is issued to the transferors in exchange for the transferred property. Each of these areas will be covered in the pages that follow.

Nicely done. The writing is clear, easily readable, and conversational in tone, nicely complementing the pragmatic theme of his text.

What about the author's promise of completeness? Consider his coverage of the broad area of "Tax-Free and Partially Tax-Free Reorganizations," the subject of Chapter 6. In that chapter, he discusses, in detail, the basic reorganization concepts such as the various types (A through G), their overlaps inter se and with sections 351 and 304, the judicial requirements and limitations, liquidation-reincorporations, and the rather often neglected area of post-reorganization adjustments or unwindings. Each subset of issues inherent in these concepts is covered comprehensively. To illustrate: in his coverage of potential problems presented by the "solely for voting stock" standard in the B definition, he

addresses this issue in the contexts of employee compensation, assumption of liabilities, contribution to capital, dividends, additional dividends and shares, and poison pill rights. And [P. 1700] with respect to each, he suggests a solution. On the question of shareholder/employee compensation as possible "boot" in a B, for example, he suggests that the employment agreement provide "that the consideration to be received by the employee be voting stock in the acquiring entity." (Sound, practical advice of this nature permeates each chapter of his text.) Finally, the chapter covers several rather obscure sections of the Code that provide reorganization-like treatment, such as sections 1071 (Exchanges to Effectuate F.C.C. policies), 1081 (Exchanges in Obedience to S.E.C. Orders), and 1101 (Distributions pursuant to Bank Holding Company Act). Such extensive coverage of a broad subject area within a chapter is not atypical.

Is his coverage of narrow, discrete subject areas just as extensive? Consider the following: After fully dissecting the issue of loans to shareholders, he cautions "even where loans are properly documented and the terms are followed, section 7872 (c)(1)(C) provides dividend treatment to shareholders receiving below-market interest rate loans." He then describes these types of loans in the contexts of demand and term loans. Next, he informs readers that the shareholder's interest payment may be deductible (depending on the purpose of the loan), that the corporation will earn interest income but will have no offsetting deduction (because imputed interest is treated as a dividend), that there is a de minimis exception to this rule (if the loan does not exceed \$10,000), and, finally, that there is an exception to the exception (if the purpose of the loan is the avoidance of federal income tax). Again, such thoroughness is not atypical.

"And would it have been worth it, after all, Would it have been worthwhile,"/5/

In sum, CORPORATE TAXATION, by **Robert W. Wood**, lives up to his expectation. While it is not an exercise in intellectual theorizing or probing of unresolved corporate tax issues, it is an honest and useful basic reference text on corporate tax with concrete solutions and planning techniques. The book, and its updates, will be of tremendous value to the corporate tax practitioner. Indeed, in this era of General Utilities repeal, the author's list of 19 valid corporate business purposes for a spin-off, each of which is validated by a citation of authority, may alone make the purchase of his book worthwhile.

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FOOTNOTES

¹ T.S. Eliot, "The Love Song of J. Alfred Prufrock."

² Federal Income Taxation of Corporation and Shareholders, Boris I. Bittker and James S. Eustice.

³ With apologies to Eliot, supra, "No! I am not Prince Hamlet, nor was meant to be;"

⁴ Eliot, supra.

⁵ Eliot, supra.

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48 Tax Notes 1699 (Sept. 24, 1990)
