THE TAXATION OF CORPORATE GROUPS UNDER CONSOLIDATION

The rise of corporate groups in the last century dictates a shift in the income tax law: instead of treating each company as a separate taxpayer, the tax consolidation regime is increasingly common. Antony Ting presents the first comprehensive comparative study of eight consolidation regimes in Australia, France, Italy, Japan, the Netherlands, New Zealand, Spain and the USA. In the study, he critically analyses and compares alternative policy options with respect to ten key structural elements. The study improves understanding of the design and implementation of consolidation regimes, and sets the stage for the search for a model. It provides valuable information with respect to the best practices, as well as the pitfalls in the design of a consolidation regime. The book is essential to countries contemplating the introduction of a new consolidation regime and offers important insights into the management of such a complex structure through careful policy-orientated choices.

ANTONY TING is a senior lecturer at the University of Sydney Business School. He was previously a tax partner in a major international accountancy firm, advising multinational companies on corporate tax as well as international tax issues.
CAMBRIDGE TAX LAW SERIES

Tax law is a growing area of interest, as it is included as a subdivision in many areas of study and is a key consideration in business needs throughout the world. Books in this series will expose the theoretical underpinning behind the law to shed light on the taxation systems, so that the questions to be asked when addressing an issue become clear. These academic books, written by leading scholars, will be a central port of call for information on tax law. The content will be illustrated by case law and legislation.

The books will be of interest for those studying law, business, economics, accounting and finance courses.

Series Editor
Dr Peter Harris, Law Faculty, University of Cambridge, Director of the Centre for Tax Law.

Dr Harris brings a wealth of experience to the Series. He has taught and presented tax courses at a dozen different universities in nearly as many countries and has acted as an external tax consultant for the International Monetary Fund for more than a decade.
THE TAXATION OF CORPORATE GROUPS UNDER CONSOLIDATION

An International Comparison

ANTONY TING
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Income tax law in general treats a company as a separate taxable unit, reflecting an application of the traditional separate entity doctrine. However, the rise of corporate groups in the last century poses a serious challenge to the doctrine and demands a paradigm shift. The tax consolidation regime is an increasingly common response of the tax law to the challenge, representing an application of the enterprise doctrine under which a corporate group is treated as one single taxable unit. This book aims to improve the understanding of the design and implementation of consolidation regimes by undertaking a comparative study of the regimes in eight countries, namely Australia, France, Italy, Japan, the Netherlands, New Zealand, Spain and the United States. These eight countries are all the countries in the world that, by the end of 2009, have introduced a consolidation regime in their income tax systems.

This book analyses and compares alternative policy options adopted in the eight countries for ten key structural elements of a consolidation regime, with the intention of searching for a model regime. The comparative analysis also aims to answer the following tax policy question: does a stronger application of the enterprise doctrine necessarily imply a better consolidation regime on policy grounds?

This book provides the first comprehensive comparative analysis of the consolidation regimes in the eight countries. The findings of this study should be useful for tax policy makers to design a new consolidation regime, as well as to refine existing consolidation regimes.

I am forever indebted to Richard Vann, without whose mentorship and inspiration this book would never have been completed. My research interest in consolidation regimes was inspired by a lecture delivered by Peter Harris, to whom I acknowledge my sincere gratitude. I am deeply grateful for the critiques and comments of Cynthia Coleman and Daniel Ho on earlier drafts of the book.

Finally, I would like to thank my wife, Florence and my daughter, Joanne, for their support, encouragement and forbearance over the past few years.
Glossary of Terms

Bloc group
A corporate group consisting of group members resident in a bloc of participating countries

Consolidation
A group taxation regime under which a corporate group files a consolidated tax return, allowing both intra-group loss offset and tax free intra-group asset transfer

Country group
A corporate group consisting of group members resident in a country

De-consolidation
The incidence of a consolidated group ceasing consolidation and every group member is treated as a separate taxpayer again

Enterprise doctrine
The doctrine under which a corporate group under the common control of a parent company is treated as a single enterprise

Head company
The parent company in a consolidated group

Intra-group asset transfer
The tax attribute of a group taxation regime that allows tax free transfer of assets within a corporate group without the need of a corporate restructure

Joining time
The time when a subsidiary joins a consolidated group

Leaving time
The time when a subsidiary leaves a consolidated group

Separate entity doctrine
The doctrine under which a company is treated as a separate entity, distinct from its shareholder(s)

Subsidiary member
A member of a consolidated group other than the head company

Taxable income
The net income of a taxpayer computed under the tax law after deducting allowable expenses

Worldwide group
A corporate group consisting of all group members in the world
ABBREVIATIONS

Tax legislations and regulations

CGI
CTA
IB
IRC
ITAA 1936
ITAA 1997
LIS
May 2002 Consolidation Act
Reg.
TUIR
Vpb

Code général des impôts ("General Tax Code” of France)
Corporation Tax Act (Japan)
Wet op de inkomstenbelasting 2001 (“Personal Income Tax Act of 2001” of the Netherlands)
Internal Revenue Code (the United States)
Income Tax Act 2007 (New Zealand)
Income Tax Assessment Act 1936 (Australia)
Income Tax Assessment Act 1997 (Australia)
Ley del Impuesto sobre Sociedades ("Corporate Income Tax Law” of Spain)
New Business Tax System (Consolidation) Act (No.1) 2002 (Australia)
Treasury Regulation (the United States)
Testo unico delle imposte sui redditi ("Income Tax Code” of Italy)
Wet op de vennootschapsbelasting 1969 ("Corporate Income Tax Law of 1969” of the Netherlands)
### LIST OF ABBREVIATIONS

#### Other terms

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<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACA</td>
<td>Allocable cost amount</td>
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<tr>
<td>ADI</td>
<td>Authorised deposit-taking institution</td>
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<td>AF</td>
<td>Available fraction</td>
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<td>ATO</td>
<td>Australian Taxation Office</td>
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<tr>
<td>CCCTB</td>
<td>Common Consolidated Corporate Tax Base</td>
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<tr>
<td>CFC</td>
<td>Controlled foreign company</td>
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<td>CNOL</td>
<td>Consolidated net operating loss</td>
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<td>EC</td>
<td>European Commission</td>
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<td>ECJ</td>
<td>European Court of Justice</td>
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<td>EM</td>
<td>Explanatory Memorandum</td>
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<td>EU</td>
<td>European Union</td>
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<td>FA</td>
<td>Formulary apportionment</td>
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<td>FTC</td>
<td>Foreign tax credit</td>
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<td>GDP</td>
<td>Gross domestic product</td>
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<td>IFRS</td>
<td>International Financial Reporting Standard</td>
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<td>IRD</td>
<td>Inland Revenue Department (New Zealand)</td>
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<td>IRS</td>
<td>Internal Revenue Service (United States)</td>
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<tr>
<td>LBO</td>
<td>Leveraged buyout</td>
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<td>MEC group</td>
<td>Multiple entry consolidated group</td>
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<td>MS</td>
<td>Member State</td>
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<td>NAFTA</td>
<td>North American Free Trade Agreement</td>
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<td>NZ</td>
<td>New Zealand</td>
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<tr>
<td>OECD</td>
<td>Organisation of Economic Co-operation and Development</td>
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<td>PE</td>
<td>Permanent establishment</td>
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<td>PEX</td>
<td>Participation exemption</td>
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<td>SER</td>
<td>Single entity rule</td>
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<td>SRLY</td>
<td>Separate return limitation year</td>
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<td>TCS rules</td>
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<td>Tax Determination</td>
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<td>Tax Ruling</td>
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<td>United Kingdom</td>
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<td>United States</td>
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<tr>
<td>VAT</td>
<td>Value added tax</td>
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