

**Corporate Taxation  
Through the Lens of  
Mergers & Acquisitions**



**Corporate Taxation  
Through the Lens of  
Mergers & Acquisitions**  
*Including Cross-Border Transactions*

SECOND EDITION

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# Dedication

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This book is dedicated to the late Professor Bernard Wolfman, who first introduced me to this subject in his Corporate Tax course in my third year at the University of Pennsylvania School of Law and to the late Professor James S. Eustice who deepened my understanding of this subject in his Advanced Corporate Tax Problems course in the Graduate Tax Program at the NYU School of Law.



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# Preface

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I have long thought that the most interesting issues in corporate taxation revolve around the treatment of taxable and tax free mergers and acquisitions. This is particularly true now that a uniform 20% maximum rate applies to long term capital gains and to dividend income. Thus, this book approaches corporate taxation through the lens of the merger and acquisition provisions of Subchapter C of the Internal Revenue Code, which deals with the tax treatment of corporations.

To ensure that the reader has the appropriate background to explore merger and acquisition concepts, Chapter 1 introduces several basic Federal income tax concepts, and Chapter 2 introduces the basic provisions of Subchapter C. The concepts introduced in Chapter 1 include:

- The basic tax treatment of the four principal forms for conducting business: C corporations, S corporations, partnerships, and LLCs;
- The realization and recognition concept;
- The treatment of like kind exchanges;
- The treatment of liabilities, including the *Crane* case;
- The treatment of capital gains and losses;
- The impact of Sections 1231 and 1245 on the disposition of property;
- The cash and accrual accounting methods; and
- The treatment of original issue discount.

Chapter 2 introduces the following provisions of Subchapter C:

- Section 351, which deals with the organization of a corporation;
- Section 301, which deals with the treatment of shareholders on the distribution of property;
- Section 302, which deals with the treatment of shareholders on the redemption of their stock;
- Section 311, which deals with the treatment of the corporation on the distribution of dividends;
- Section 331, which deals with the treatment of shareholders on receipt of a liquidating distribution; and
- Section 336, which deals with the treatment of a corporation that makes a liquidating distribution.

Because of the globalization of business activity, it will be virtually impossible for any law student today who goes into a corporate tax practice to avoid dealing with cross-border issues, and for this reason, this book also introduces many of the issues under the Federal income tax affecting both inbound and outbound cross-border mergers and acquisitions.

I want to thank my research assistants for their excellent help in the preparation of this book. The following students at Penn State Law assisted with the second edition: Zachary Burley, Vasilios Vlahakis, Ying Zeng, and Matt Robida. The following former students assisted with the first edition: Robert Allen Clary, II, a graduate of the University of Miami School of Law and the Graduate Tax Program at the NYU School of Law, Matthew Sgnilek, a graduate of the UCLA School of Law, and Daniel Davis, a graduate of the UCLA School of Law. Finally, I want to thank my lovely wife, Becky Sue, and our son, Tommy, for their love and support.

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