Legal policies affecting the initial tax consolidation decision.

by

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A dissertation submitted to the Bond University Faculty of Law in partial fulfilment of the requirements for the Degree of Doctor of Legal Science

May 2004

Gold Coast

Australia

CERTIFICATE

This dissertation is submitted to Bond University in partial fulfilment of the

requirements for the Degree of Doctor of Legal Science.

This dissertation represents my own work and contains no material which has

been previously submitted for a degree or diploma at this University or any other

institution, except where due acknowledgement is made.

Thomas Dlught

Date: 1st of May 2004

ACKNOWLEDGEMENTS

I would like to acknowledge my gratitude to numerous persons whose support

proved crucial for the successful completion of this dissertation:

Assistant Professor for Accounting Lyndal Drennan, Bond University Faculty

of Business, provided expertise in the area of group accounting;

Professor of Law John Farrar, Bond University Faculty of Law, advised me on

corporate governance issues.

My supervisor, Professor of Law Duncan Bentley, Dean of the Bond University

Faculty of Law, provided continuous support and guidance. The discussions

following the presentation of milestones were challenging in the best sense of

academic practice.

Last but certainly not least, the loving support of my family and partner

Anna Kuballa made my efforts endurable and rewarding.

Thomas Schostok

Gold Coast, May 2004

ABSTRACT

In the course of 2002 and 2003, the Australian Government introduced a fundamental change to the taxation of corporate groups. The new tax consolidation legislation allows wholly-owned groups to be regarded as one homogenous entity for income tax purposes from 1st of July 2002. After making an irrevocable decision to implement the elective consolidation provisions, a group, consisting of a head company and at least one other wholly-owned entity (company, trust or partnership), lodges a single income tax return and pays a single set of PAYG instalments over the period of consolidation.

The assessment of the policies, principles and rules governing the implementation and operation of the consolidation regime reveals far-reaching implications for the accessibility of tax attributes and changes to the tax cost / adjusted values of capital / depreciating assets. Tax accounting systems and corporate governance guidelines established by groups are also affected.

Groups deciding against the implementation of the consolidation rules, on the other hand, face the removal of previous grouping concessions, such as loss transfer provisions, CGT asset roll-overs and inter-corporate dividend rebates. Furthermore, a number of modified anti-avoidance and integrity measures affect intra-group transactions undertaken outside the consolidation regime.

This thesis identifies and analyses the areas of taxation, accounting and corporate governance which are relevant for the initial consolidation decision. The following analysis is structured with primary regard to legal concepts stipulated by the consolidation legislation. However, frequent references to policies underlying the relevant provisions, for instance the wholly-owned approach, allow a deeper understanding of the consolidation core rules and the effects arising for groups deciding to implement them.

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Finally, this thesis also provides a comparative perspective through the discussion of consolidation policies and rules delivered by German tax

legislation, accounting regulations and corporations law.

Law and materials are stated to 1st of January 2004.

Gold Coast, May 2004

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Worrell v Harford (1802) 32 ER 250, 252	98

LEGISLATION

Australia (Commonwealth)

A New Tax System (Goods And Services Tax) Act 1999

Corporations Act 2001

Income Tax Assessment Act 1936

Income Tax Assessment Act 1997

New Business Tax System (Consolidation) Act (No.1) 2002

New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002

New Business Tax System (Consolidation and Other Measures) Act (No.1) 2002

New Business Tax System (Consolidation and Other Measures) Bill (No.2) 2002

Taxation Administration Act 1953

Taxation Laws Amendment Act (No. 5) 2003

Taxation Laws Amendment Act (No. 6) 2003

FOREIGN LEGISLATION

Germany

Aktiengesetz (Joint Stock Company Act)

Einkommenssteuergesetz (Income Tax Act)

Gewerbesteuergesetz (Trade Tax Act)

Handelsgesetzbuch (Code of Commercial Law)

Körperschaftssteuergesetz (Corporation Income Tax Act)

Steuersenkungsgesetz (Tax Reduction Act)

United States of America

Internal Revenue Code 1986

ACCOUNTING STANDARDS

AASB 1004 Revenue (1998)

AASB 1013 Accounting for Goodwill (1996)

AASB 1020 Accounting for Income Tax (Tax-effect Accounting) (1989)

AASB 1024 Consolidated Accounts (1992)

AASB 1044 Provisions, Contingent Liabilities and Contingent Assets (2001)

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LIST OF ABBREVIATIONS

AASB	Australian Accounting Standard Board
ACA	Allocable Cost Amount
ATO	Australian Taxation Office
CGT	Capital Gains Tax
DVS	Direct Value Shift
ICAA	Institute of Chartered Accountants in Australia
EM	Explanatory Memorandum
ESAS	Employee Share Acquisition Scheme
FTC	Foreign Tax Credit
GST	Goods and Services Tax
ITAA	Income Tax Assessment Act
ITTP	Income Tax (Transitional Provisions) Act
IVS	Indirect Value Shift
MEC	Multiple Entry Consolidated
SAP	Substituted Accounting Period
SME	Small and Medium Enterprise
TSA	Tax Sharing Agreement