**Write Your Exam Code Here:** ________________
Return this exam question paper to your invigilator at the end of the exam before you leave the classroom.

THIS EXAMINATION CONSISTS OF 4 PAGES (INCLUDING THIS PAGE)
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION –APRIL 2019

Law 410.001/565.001

International Taxation

Professor Cui

TOTAL MARKS: 100

TIME ALLOWED: 2 HOURS
Plus 30 minutes reading time

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NOTE:

1. This is an open book examination.

2. The exam has three parts. You have a choice of which questions to answer in Parts I and II; Part III contains one question that you must answer. The allocation of marks among the three parts is indicated below.

## Short questions (30 points)

Please choose **6** from the following 8 questions to answer. Where relevant, please consider the rules of both the Income Tax Act (ITA) and tax treaties.

1. USCo, a company resident in the United States, is a part owner of CanLP, an entity that is considered fiscally transparent for Canadian tax purposes, but is not considered fiscally transparent for U.S. tax purposes. CanLP receives a dividend from a Canadian company in which it owns stock. Under Canadian tax law USCo is viewed as deriving a Canadian-source dividend through CanLP. For U.S. tax purposes, CanLP, and not USCo, is viewed as deriving the dividend. Would the benefits of the U.S.-Canada treaty be applicable to the dividend payment received by CanLP?

2. "Beneficial ownership" is a criterion that supposedly limits a non-resident's ability to claim treaty benefits in some circumstances. Does the criterion apply to claiming treaty benefits under the capital gain article (e.g. Article XIII of the U.S.-Canada treaty)? Why or why not?

3. What are some situations in which it is advantageous for a taxpayer to make an ITA Section 93(1) election?

4. What was the main holding of CUDD Pressure Control Inc. v. Canada, [1998] F.C.J. No. 1493?

5. A U.S. company very recently purchased real property in Canada, with the consequence that about 60% of the current valuation of the company is represented by Canadian real estate assets. These assets have not shown substantial appreciation since their recent purchase. The other 40% of the value of the company, however, is attributable to U.S. real estate assets that are valued at 2 times their original purchase price. The sole U.S. shareholder of the U.S. company sells the shares of the company and realizes capital gain of USD 1 million. Is this capital gain taxable in Canada, and if so, how much?

6. The CRA's appeal to the General Anti-Avoidance Rule under ITA Section 245 has more often than not been unsuccessful. Identify one case discussed in our course where the court handed the CRA a win on GAAR grounds, and explain why GAAR was invoked in the case.

7. A Canadian resident corporation makes an interest payment to a non-resident related party, and that related party is not a resident in a country with which Canada has a tax treaty. Name at least one circumstance under which such interest payment may nonetheless be free from Section 212 withholding.

8. Which of the following foreign taxes are creditable under ITA Section 126:
    a) the Singapore Goods and Services Tax;
    b) the base erosion and anti-abuse tax introduced in the Tax Cut and Jobs Act of 2017;
    c) the UK diverted profit tax;
    d) the German church tax;
    e) the U.S. federal social security tax; and
    f) U.S. federal income tax imposed on gambling winnings?

## Short essay questions (30 points)

Please choose **2** from the following 4 questions to answer. Each answer is given 15 points, hence you should spend not much more than 20 minutes writing each answer.

### Question #1

What are some of the arguments that one might make for the view that the Tax Court decision in Knights of Columbus v. Canada ([2008] T.C.J. No. 229) was wrong?

### Question #2

It is often claimed that apart from “residence”, “source” is the other main basis countries assert jurisdiction in international income taxation. Is there a notion of “source” that determines how the ITA subjects cross-border transactions to tax? How do the rules on “source” in ITA Sections 3 and 4 help delimit Canada’s taxing jurisdiction with respect to cross-border transactions?

### Question #3

Evaluate the legislative response to the FCA’s decision in Lehigh Cement Ltd. v. Canada ([2010] F.C.J. No. 658)

### Question #4

In Canada v. GlaxoSmithKline Inc.([2012] S.C.J. No. 52), the CRA unsuccessfully argued that Glaxo Canada’s purchase price of ranitidine from a related party should have been set at the price at which generic drug-makers were able to purchase ranitidine. What else could the CRA have done to challenge GlaxoSmithKline’s transfer pricing practice in this case?

## Foreign affiliate income exercise (40 points)

Allard Co is a taxable Canadian corporation that holds shares in two non-resident corporations. Bel Co is resident in Belgium, with 100% of its shares held by Allard Co. HK Co is resident in Hong Kong, with which Canada has an income tax treaty (just as Canada does with Belgium). Allard Co holds 7% of the shares of HK Co directly; Bel Co is another 7% direct shareholder of HK Co. Other shares of HK Co are held by parties unrelated to Allard Co and Bel Co. All three corporations use the calendar year as their fiscal year.

On December 31, HK Co makes a pro rata dividend distribution to Bel Co and Allard Co each of CAD 70,000. Hong Kong imposes no withholding tax on dividends paid to non-residents. On January 30, 2019, Bel Co makes a 100,000 dividend distribution to Allard Co, which was subject to Belgian withholding tax as the reduced treaty rate of 5%.

The following describes the simplified finances of Bel Co and HK Co in 2018. All amounts are in CAD.

| Bel Co 2018 | |
|---|---|
| Active business income | 200,000 |
| Dividends from HK Co | 70,000 |
| Gross capital gain on the disposition of commercial premises used in business | 50,000 |
| Interest on corporate deposits | 20,000 |
| Belgian corporate tax at 30% | 102,000 |
| After tax profit | 238,000 |

| HK Co 2018 | |
|---|---|
| Net rental income from a rental business with eight active employees | 100,000 |
| Gross capital gain on dispositions of portfolio investments (not subject to taxation in Hong Kong) | 1,000,000 |
| Hong Kong corporate tax at 16.5% | 16,500 |
| After tax profit | 1,083,500 |

Outline the Canadian tax consequences of Allard Co's shareholding of Bel Co and HK Co in 2018 and its receipt of dividends from the two foreign companies in 2018 and 2019. Assume that all surplus accounts of the two foreign subsidiaries were zero at the beginning of 2018, and that Allard Co is subject to a 25% tax rate in Canada. If you need to make further assumptions to answer the question, please state them explicitly.

**END OF EXAMINATION**