Rent paid by tenants to EPI
Recognition of issue ½
s. 212(1)(d): 25% tax on rent paid to NR. ½
s. 212(1)(d)(i) includes payment for use of property. ½
Can-US treaty does not reduce rate. ½
s. 215(1): tenants are required to withhold and remit 25%. ½
s. 215(3): QCC may be required to withhold and remit 25%. ½
Other ½
Alternative regarding withholding
Recognition of alternative ½
s. 216(1): NR may choose to pay Pt. I tax on net rent, rather than Pt. XIII tax on gross rent. ½
s. 216(1): NR is to file tax return within 2 years. ½
s. 216(4): NR and agent may file NR6 undertaking before year begins. ½
s. 216(4): agent withholds wrt net payments to NR. ½
EPI and QCC should file NR6 undertaking. ½
Other ½
Other issues or alternatives
Other ½

QUESTION 2: Foreign Affiliates - 20 marks
Residence of Canco and Mapeco
s. 250(4)(a): a corporation incorporated in Canada is a resident of Canada. 1
Canco was incorporated in Canada. ½
Canco is a resident of Canada. ½
Mapeco was incorporated in Canada. ½
Mapeco is a resident of Canada. ½
Other ½

Meaning of “foreign affiliate”
s. 95(1): a FA is a NR corp. in which T has a 1% equity percentage and total equity percentages of T and related persons is 10% or more. 1
s. 95(4): equity percentage = direct equity percentage + indirect look-through equity percentage. 1
s. 95(4): direct equity percentage = highest class shareholding percentage. 1
Other ½

Foreign affiliate status of Amco
Amco is a non-resident. ½
Amco is a corporation. ½
Canco has an 80% direct equity percentage in Amco. 1
Canco has no indirect equity percentage in Amco. ½
Canco has an 80% equity percentage in Amco. ½
Amco is a foreign affiliate of Canco. ½
Other ½

Foreign affiliate status of Westco
Westco is a non-resident. ½
Westco is a corporation. ½
Canco has a 5% direct equity percentage in Westco. 1
Canco has a 16% (80% of 20%) indirect equity percentage in Westco. 1
Canco has a 21% (5% + 16%) equity percentage in Westco. 1
Westco is a foreign affiliate of Canco. ½
Other ½

Meaning of “controlled foreign affiliate”
s. 95(1): a CFA is a FA of T controlled by T and/or 4 or fewer residents of Canada. 1
Other ½

CFA status of Amco
Amco is controlled by Canco. ½
Amco is a CFA of Canco. ½
Other ½

CFA status of Westco
Westco is controlled by Mapeco or by Mapeco and Canco. 1
Westco is a CFA of Canco. 1
Other ½

Loan by Canco to Westco
Recognition of issue ½
s. 17(1): if resident corp. lends money to NR, interest-free, for more than a year, interest at prescribed rate is included in lender’s income. ½
Here, all the above conditions are met. ½
s. 17(8): s. 17(1) does not apply to a loan to a CFA which uses money to earn ABI. 1

Here, the above conditions are met. ½
s. 17(1) does not apply. ½
Masissey-Ferguson: proper loan documentation is advisable. ½
Here, there is no mention of documentation. ½
Other ½

QUESTION 3: Residence - 15 marks
Meaning of “resident” under ITA
ITA does not define “residence”. ½
s. 250(1)(a): 183-day sojourner rule. 1
s. 250(3): ordinarily resident. 1
Thomson: a person with settled abode in Canada is resident. 1
Thomson: a person may be resident in cross-border region. 1
Thomson: a person is resident where he regularly lives. 1
Thomson: a person may be resident in more than 1 country. 1
Other ½

CRA Policy
IT-221R3: key residential ties are dwelling place and spouse. 1
IT-221R3: secondary ties include vehicles, social ties, employment, bank accounts, immigration status, and medical insurance. 1
Other ½

Canada-US tax treaty
s. IV.1: to be resident of US, taxpayer must be subject to tax in US. 1
s. IV.2: tie-breaker rules. 1
Allchin: habitual abode is a function of length of stay, lifestyle and activities. 1
Wolf: application of tie-breaker rules. ½
Other ½

2002
Only 180 days in Canada : s. 250(1)(a) does not apply. 1
Analysis of residential ties. 1
No tax treaty between Canada and Bermuda. ½
Conclusion ½
Other ½

2003
190 days in Canada : s. 250(1)(a) applies. 1
Analysis of residential ties. 1
Application of tie-breaker rules. 1
Conclusion ½
Other ½

2004
Only 175 days in Canada : s. 250(1)(a) does not apply 1
Analysis of residential ties. 1
Application of tie-breaker rules. 1
Conclusion ½
Other ½

QUESTION 4: Treaty Interpretation - 10 marks
Interpretive principles
Vienna Con., s. 31: ordinary meaning, object and purpose. 1
Vienna Con., s. 32: supplementary means of interpretation. 1
Income Tax Conventions Interp. Act, s. 3: undefined terms 1
CPI: goal is to find the meaning of the words in question. 1
CPI: look to language used and intentions of parties. 1
CPI: a treaty’s purpose is relevant to its interpretation. 1
Gladden: a treaty is to be given a liberal interpretation. 1
Coblenz: literalism has no role to play. 1
Other ½

Extrinsic materials
CPI: court may refer to extrinsic materials, including model treaties and official commentaries. 1
CPI: foreign treaty partner may intervene. 1
Coblenz: US Tech. Explan. facilitates understanding. 1
Kubicek: US Tech. Explan. is of interest, but not decisive. 1
Other ½

STUDENT: __________________________ Marks
Question 1 (45 marks) __________________________
Question 2 (20 marks) __________________________
Question 3 (15 marks) __________________________
Question 4 (10 marks) __________________________
TOTAL: __________________________
GRADE: __________________________