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CHAPTER 1

MSell – A Fast Growth Company Considers Corporate Taxation

Notes from an MSell litigation preparatory session: January 3, 2012

Jim Dread lowered his head, knowing too well what would come next. Why had he taken on this tax litigation case?

"Never, ever second guess me on the economics of this business," screeched Karen Wu, CEO of MSell.

Ms. Wu's outbursts were a surprise to none of the roomful of lawyers, experts, and business associates. Jim Dread had been recommended by Karen Wu's ex-husband, who was trying his hardest to protect the value of the MSell shares he had hoped to receive in an eventual settlement from their divorce. Attorney Dread sat stone-faced, saying nothing. "On legal matters, I would defer to lawyers. On statistics, I defer to our economists, but none of you, not even Amy or Jay," pointing to Amy Parker, her Chief Financial Officer, and Jay Patel, her Tax Director, "None of you would know the first thing about what drives MSell's business. We cannot change our position at this point. Our expert witness has already testified."¹

Attorney Dread, breaking his silence, turned to the firm's advisor, Bruce Balaban, who had originally advised on the international structure that was the subject of the instant Tax Court case, "Mr. Balaban, was your entire structure predicated on Karen Wu being the single most important value driver for the business?" Waiting for an answer that never came, he tried again, "Is that how you concluded that you could effectuate a massive change in MSell's tax position following her relocation to China, by basically having a large amount of taxable income follow her?"

1. Please note that all references to trial preparation, the trial itself, Rules of Civil Procedure and/or U.S. Tax Court rules, as well as qualifying experts for testimony, are beyond the scope of this book.