

DETAILED TABLE OF CONTENTS

| | |
|-------------------------------------|-------|
| References | xxiii |
| Table of Cases | xxv |
| Table of Statutory References | xli |

Part I: Legal Practice

Chapter 1: Employment Law

| | |
|---|----|
| §1.1 Employee or Independent Contractor? | 2 |
| §1.1.1 Distinguishing between employee and contractor..... | 2 |
| §1.1.2 Effects of being employee vs. contractor..... | 3 |
| §1.2 Employee Payroll and Benefits | 5 |
| §1.2.1 Income from employment..... | 5 |
| §1.2.2 Taxable and non-taxable benefits | 5 |
| §1.2.3 Withholding of tax at source | 13 |
| §1.3 Retroactive Averaging of Lump Sum Payments..... | 15 |
| §1.4 Wrongful Dismissal Awards and Settlements..... | 15 |
| §1.4.1 Taxability of payments to employee | 16 |
| §1.4.1.1 “Retiring allowance” vs. continuation of employment | 16 |
| §1.4.1.2 Interest on a wrongful dismissal award or settlement..... | 17 |
| §1.4.1.3 Reimbursement of expenses..... | 17 |
| §1.4.1.4 Non-taxable alternatives..... | 17 |
| §1.4.2 Deferral of taxation for pre-1996 employment — rollover into RRSP | 20 |
| §1.4.3 Deductibility of legal expenses..... | 22 |
| §1.4.4 Withholding of tax at source..... | 23 |
| §1.4.5 Non-resident recipient | 24 |
| §1.4.6 Additional information..... | 26 |
| §1.5 Non-Competition Payments | 26 |
| §1.6 Employment Insurance..... | 26 |
| §1.7 Tax Treatment of Disability Payments | 27 |
| §1.7.1 Payments by the employer..... | 27 |
| §1.7.2 Disability insurance payments | 27 |
| §1.7.3 Disability pension and similar payments..... | 28 |
| §1.7.4 Canada Pension Plan (CPP) disability payments..... | 28 |
| §1.7.5 Workers’ compensation benefits | 29 |
| §1.7.6 Accident benefits..... | 30 |
| §1.7.7 Social assistance payments | 31 |
| §1.7.8 Structured settlements | 31 |
| §1.8 Union Dues and Strike Pay..... | 31 |

The Lawyer's Guide to Income Tax and GST/HST

| | | |
|------|------------------|----|
| §1.9 | GST and HST..... | 32 |
|------|------------------|----|

Chapter 2: Family Law

| | | |
|----------|--|----|
| §2.1 | "Spouse" and "Common-Law Partner" | 35 |
| §2.1.1 | Common-law partners..... | 35 |
| §2.1.2 | Parties to a void or voidable marriage..... | 37 |
| §2.2 | Deductibility/Taxability of Support Payments | 38 |
| §2.2.1 | Reciprocal provisions | 38 |
| §2.2.2 | Spousal vs. child support..... | 38 |
| §2.2.3 | Alimony, support or maintenance | 38 |
| §2.2.3.1 | Main rule | 39 |
| §2.2.3.2 | Alternative rule | 41 |
| §2.2.4 | Payments to third parties | 41 |
| §2.2.5 | Child support..... | 43 |
| §2.2.6 | Payments before agreement signed | 44 |
| §2.2.7 | Repayments of support | 44 |
| §2.2.8 | Non-resident recipient | 44 |
| §2.2.9 | Non-resident payer..... | 45 |
| §2.2.10 | Legal fees..... | 45 |
| §2.3 | Division of Property..... | 45 |
| §2.3.1 | Effect on recipient of property | 45 |
| §2.3.2 | Effect on transferor | 45 |
| §2.3.2.1 | Automatic rollover | 46 |
| §2.3.2.2 | Electing out of rollover | 46 |
| §2.3.3 | Transfer of RRSP | 46 |
| §2.4 | Attribution Rules | 47 |
| §2.4.1 | General attribution rule..... | 47 |
| §2.4.2 | Exclusion for marital breakdown..... | 48 |
| §2.4.3 | Other exclusions..... | 48 |
| §2.4.4 | Attribution and other relatives | 49 |
| §2.5 | Liability for Transferor's Tax Debts..... | 49 |
| §2.5.1 | Joint liability | 49 |
| §2.5.2 | Exception on separation | 51 |
| §2.5.3 | GST/HST | 51 |

Chapter 3: Immigration Law

| | | |
|--------|---|----|
| §3.1 | Overview | 54 |
| §3.2 | While the Client is Still Non Resident | 54 |
| §3.2.1 | Canadian tax on income while non-resident | 55 |
| §3.2.2 | Changing residence en route..... | 57 |
| §3.2.3 | GST/HST | 58 |
| §3.3 | Moving to Canada | 59 |
| §3.3.1 | Moving expenses | 59 |
| §3.3.2 | Customs duties and taxes on arrival | 60 |

Detailed Table of Contents

| | | |
|----------|---|----|
| §3.3.3 | Capital property “step up” | 61 |
| §3.3.4 | Starting employment | 62 |
| §3.3.5 | Immigration trust | 63 |
| §3.4 | Tax Issues After Becoming Resident..... | 63 |
| §3.4.1 | Tax on worldwide income | 63 |
| §3.4.2 | Foreign property, foreign trusts and foreign subsidiaries..... | 66 |
| §3.4.2.1 | Foreign subsidiaries..... | 66 |
| §3.4.2.2 | Foreign trusts..... | 67 |
| §3.4.2.3 | Foreign investment entities | 70 |
| §3.5 | U.S. Citizens or Green Card Holders | 70 |
| §3.5.1 | The worldwide U.S. income tax net..... | 70 |
| §3.5.2 | Foreign earned income exclusion | 72 |
| §3.5.3 | Foreign tax credit..... | 72 |
| §3.5.4 | Canada U.S. tax treaty..... | 73 |
| §3.5.5 | Differences in calculating income..... | 73 |
| §3.5.6 | U.S. estate taxes..... | 74 |
| §3.5.7 | U.S. reporting of foreign financial accounts | 75 |
| §3.5.8 | U.S. forms to be filed..... | 75 |
| §3.5.9 | U.S. Foreign Account Tax Compliance Act (FATCA) | 76 |
| §3.5.10 | More information..... | 77 |
| §3.6 | Planning Checklist..... | 78 |
| §3.6.1 | Before the client leaves home | 78 |
| §3.6.2 | Upon arrival in Canada | 79 |
| §3.7 | Further Information..... | 81 |

Chapter 4: Intellectual Property Law

| | | |
|------|--|----|
| §4.1 | Income Tax on Royalties | 84 |
| §4.2 | Withholding Taxes on Royalties..... | 85 |
| §4.3 | GST/HST on Royalties | 85 |
| §4.4 | GST/HST on Intangible Property Supplied to Non-Residents ... | 86 |
| §4.5 | GST/HST on Importations of Intangible Property | 87 |
| §4.6 | Acquisition or Creation of Intellectual Property | 88 |
| §4.7 | Tax Incentives | 89 |
| §4.8 | Additional Sources | 89 |

Chapter 5: Litigation

| | | |
|----------|---|----|
| §5.1 | Income Tax Treatment of Damages Received..... | 92 |
| §5.1.1 | General principle..... | 92 |
| §5.1.1.1 | Business | 92 |
| §5.1.1.2 | Personal injury | 92 |
| §5.1.1.3 | Interest..... | 93 |
| §5.1.1.4 | Wrongful dismissal..... | 94 |

The Lawyer's Guide to Income Tax and GST/HST

| | | |
|------|---|-----|
| §5.2 | §5.1.2 Deductibility of legal fees to obtain damages..... | 94 |
| | GST/HST Treatment of Damages | 94 |
| | §5.2.1 Breach of contract..... | 94 |
| | §5.2.2 Personal injury | 95 |
| | §5.2.3 Other torts | 95 |
| | §5.2.4 Wrongful dismissal..... | 95 |
| | §5.2.5 Further information | 96 |
| §5.3 | Suing for Unpaid GST/HST..... | 96 |
| | §5.3.1 GST/HST extra or included? | 96 |
| | §5.3.2 Right of supplier to sue | 98 |
| §5.4 | GST/HST on Costs Awarded by a Court | 98 |
| | §5.4.1 Do costs bear GST or HST? | 98 |
| | §5.4.2 5% or 13% or 15% added | 99 |
| | §5.4.3 5% or 13% or 15% not added | 100 |
| | §5.4.4 Awarding full GST as “disbursement” | 100 |
| §5.5 | Debt Forgiveness | 101 |
| | §5.5.1 Complex debt forgiveness rules..... | 101 |
| | §5.5.2 Application of forgiven amount | 101 |
| | §5.5.3 Effect on creditor | 103 |
| §5.6 | Mortgage Foreclosures and Repossessions..... | 103 |
| | §5.6.1 Income tax effects | 103 |
| | §5.6.2 GST/HST | 103 |
| §5.7 | CRA’s Super Priority Over Creditors | 104 |

Chapter 6: Real Estate Transactions

| | | |
|------|---|-----|
| §6.1 | Purchase of Real Estate..... | 110 |
| | §6.1.1 GST/HST | 110 |
| | §6.1.2 Land transfer tax | 114 |
| | §6.1.3 Income tax deductibility | 114 |
| | §6.1.3.1 Inventory | 114 |
| | §6.1.3.2 Building (capital)..... | 115 |
| | §6.1.3.3 Land (capital) | 116 |
| | §6.1.4 Interest expense..... | 116 |
| | §6.1.5 Loss of source | 117 |
| | §6.1.6 Soft costs | 117 |
| | §6.1.7 Non-resident purchaser | 118 |
| §6.2 | Rental of Real Estate | 118 |
| | §6.2.1 Rental income | 118 |
| | §6.2.2 Capital cost allowance..... | 119 |
| | §6.2.3 RRSP earned income | 120 |
| | §6.2.4 Non-resident owner renting out real estate | 120 |
| §6.3 | Sale of Real Estate | 120 |
| | §6.3.1 Inventory | 120 |
| | §6.3.2 Building (capital)..... | 121 |

Detailed Table of Contents

| | | |
|----------|--|-----|
| §6.3.3 | Land (capital) | 121 |
| §6.3.4 | Allocate purchase price | 121 |
| §6.3.5 | Pooling assets by class..... | 122 |
| §6.3.6 | Capital gains exemption | 122 |
| §6.3.7 | Principal residence..... | 122 |
| §6.3.8 | Non-resident vendor..... | 122 |
| §6.3.9 | Partnership vendor | 122 |
| §6.3.10 | GST/HST | 122 |
| §6.3.11 | Vendor take-back mortgage risk..... | 123 |
| §6.4 | Non-Resident Purchasers | 123 |
| §6.4.1 | Income tax | 123 |
| §6.4.2 | GST/HST | 123 |
| §6.4.3 | Land transfer tax | 124 |
| §6.5 | Non-Resident Vendors | 124 |
| §6.5.1 | Who is a non-resident?..... | 124 |
| §6.5.2 | Taxable Canadian property | 124 |
| §6.5.3 | Section 116 certificate requirement | 125 |
| §6.5.4 | GST/HST | 126 |
| §6.6 | Principal Residence Exemption..... | 126 |
| §6.6.1 | Definition..... | 127 |
| §6.6.2 | Calculation of exemption | 128 |
| §6.7 | GST or HST — When Does it Apply? | 129 |
| §6.7.1 | Is a sale of real property taxable?..... | 129 |
| §6.7.2 | Exemptions: sales | 130 |
| §6.7.2.1 | Used housing | 130 |
| §6.7.2.2 | Vacant land..... | 132 |
| §6.7.2.3 | Farmland sold to family members | 133 |
| §6.7.2.4 | Parking space | 133 |
| §6.7.2.5 | Sale by public service body..... | 133 |
| §6.7.2.6 | Special exemptions | 134 |
| §6.7.3 | Exemptions: leases and rentals | 135 |
| §6.7.3.1 | Small supplier | 135 |
| §6.7.3.2 | Residential rent | 135 |
| §6.7.3.3 | Parking space | 135 |
| §6.7.3.4 | Special exemptions | 136 |
| §6.7.4 | Condominium fees | 136 |
| §6.7.5 | Laundry machines..... | 136 |
| §6.7.6 | Collection and remittance of GST/HST..... | 136 |
| §6.7.7 | GST/HST extra or included? | 138 |
| §6.7.8 | GST/HST on legal fees and disbursements | 138 |
| §6.7.9 | More on GST/HST | 138 |
| §6.8 | GST/HST — Self-Supply Rules for Builders | 138 |
| §6.8.1 | Self-supply of home, condominium, etc | 139 |
| §6.8.2 | Self-supply of apartment building..... | 141 |

The Lawyer's Guide to Income Tax and GST/HST

| | | |
|--------|---|-----|
| §6.8.3 | Later sale | 141 |
| §6.8.4 | More detail | 141 |
| §6.9 | GST — New Housing Rebate | 141 |
| §6.9.1 | New housing rebate..... | 141 |
| §6.9.2 | More detail | 146 |
| §6.9.3 | New housing rebate for rental property | 146 |
| §6.10 | Mortgage Lending — Risk of Losing Security..... | 147 |

Chapter 7: Advising the Small Business

| | | |
|----------|---|-----|
| §7.1 | Business Income Calculation | 151 |
| §7.1.1 | Income calculation | 151 |
| §7.1.2 | Timing | 154 |
| §7.1.3 | Business losses..... | 154 |
| §7.2 | Proprietorship | 157 |
| §7.2.1 | Individual carrying on business | 157 |
| §7.2.2 | Year-end | 157 |
| §7.3 | Partnership..... | 158 |
| §7.3.1 | What is a partnership? | 158 |
| §7.3.2 | Year-end | 158 |
| §7.3.3 | Income from partnership..... | 159 |
| §7.3.4 | Partnership interest | 160 |
| §7.3.5 | Transfer of property to partnership | 160 |
| §7.3.6 | Dissolution of partnership..... | 161 |
| §7.3.7 | Information returns..... | 161 |
| §7.3.8 | “Determination” of partnership’s income | 161 |
| §7.3.9 | GST/HST | 162 |
| §7.4 | Corporation | 163 |
| §7.4.1 | Distinct from shareholders | 163 |
| §7.4.2 | Income tax returns | 163 |
| §7.4.3 | Income | 164 |
| §7.4.3.1 | Dividends..... | 164 |
| §7.4.4 | Tax rates..... | 165 |
| §7.4.4.1 | Surtax | 165 |
| §7.4.4.2 | Provincial tax | 166 |
| §7.4.4.3 | Small business deduction..... | 166 |
| §7.4.4.4 | Manufacturing and processing credit | 166 |
| §7.4.4.5 | Investment tax credit for R&D..... | 167 |
| §7.4.4.6 | Personal services business | 169 |
| §7.4.5 | Extracting funds from a corporation | 170 |
| §7.4.5.1 | Salary..... | 170 |
| §7.4.5.2 | Consulting income..... | 171 |
| §7.4.5.3 | Dividend | 171 |
| §7.4.5.4 | Capital dividend | 172 |
| §7.4.5.5 | Repayment of capital | 173 |

Detailed Table of Contents

| | | |
|----------|--|-----|
| §7.4.5.6 | Repayment of loan from shareholder | 174 |
| §7.4.5.7 | Loan to shareholder..... | 174 |
| §7.4.5.8 | Selling shares of the corporation for a capital gain.... | 175 |
| §7.4.5.9 | Shareholder appropriation..... | 176 |
| §7.4.6 | Directors..... | 176 |
| §7.5 | Purchase and Sale of Business | 177 |
| §7.5.1 | Overview only | 177 |
| §7.5.2 | Assets vs. shares..... | 177 |
| §7.5.3 | Structuring the purchase..... | 178 |
| §7.6 | GST/HST Registration, Collection and Remittance | 180 |
| §7.6.1 | Registration | 180 |
| §7.6.2 | Types of supplies..... | 181 |
| §7.6.3 | Collection of GST/HST..... | 181 |
| §7.6.4 | Remittance of GST/HST | 182 |

Chapter 8: Wills and Estates

| | | |
|--------|--|-----|
| §8.1 | Taxation on Death..... | 186 |
| §8.1.1 | Income tax of the deceased on death | 186 |
| §8.1.2 | Probate fees (estate administration tax) | 189 |
| §8.1.3 | Estate taxes in other jurisdictions | 189 |
| §8.2 | Taxation of the Estate After Death | 189 |
| §8.2.1 | Estate taxed as trust | 189 |
| §8.2.2 | Testamentary trusts..... | 190 |
| §8.3 | Estate Planning | 190 |
| §8.3.1 | Estate freezing..... | 190 |
| §8.3.2 | Life insurance..... | 192 |
| §8.3.3 | Spousal trusts and <i>alter ego</i> trusts | 195 |
| §8.3.4 | U.S. beneficiaries..... | 198 |
| §8.3.5 | Additional sources..... | 199 |

Chapter 9: Legal Fees

| | | |
|---------|--|-----|
| §9.1 | Deductibility of Legal Fees..... | 202 |
| §9.1.1 | Business expenses | 202 |
| §9.1.2 | Property expenses..... | 203 |
| §9.1.3 | Collecting wages..... | 203 |
| §9.1.4 | Collecting pension, severance pay or a wrongful dismissal award | 204 |
| §9.1.5 | CPP/EI benefits..... | 204 |
| §9.1.6 | Commission employees..... | 204 |
| §9.1.7 | Disputes with the CRA | 204 |
| §9.1.8 | Divorce and support proceedings | 205 |
| §9.1.9 | Moving expenses — home sale and purchase..... | 206 |
| §9.1.10 | Organ or bone marrow transplant | 206 |
| §9.1.11 | Adoption expenses | 207 |

The Lawyer's Guide to Income Tax and GST/HST

| | | |
|------|---|-----|
| §9.2 | §9.1.12 Reimbursed legal fees..... | 207 |
| | GST and HST on Legal Fees | 207 |
| | §9.2.1 Non-resident clients..... | 208 |
| | §9.2.2 Provincial governments | 209 |
| | §9.2.3 Indians..... | 209 |
| | §9.2.4 Legal aid..... | 210 |
| | §9.2.5 Services before introduction of the GST or HST | 210 |
| | §9.2.6 Awards of costs..... | 210 |
| | §9.2.7 Disbursements..... | 210 |
| | §9.2.8 Harmonized Sales Tax (HST)..... | 212 |
| | §9.2.9 Calculating tax on a contingency fee | 215 |

Part II: Tax Law Fundamentals

Chapter 10: Personal Taxation

| | | |
|-------|---|-----|
| §10.1 | The Personal Income Calculation | 221 |
| | §10.1.1 Income..... | 221 |
| | §10.1.2 Deductions..... | 221 |
| | §10.1.3 Net income | 222 |
| | §10.1.4 Taxable income | 223 |
| | §10.1.5 Federal tax..... | 223 |
| | §10.1.6 Federal non-refundable credits | 224 |
| | §10.1.7 Basic federal tax..... | 226 |
| | §10.1.8 Federal surtaxes | 226 |
| | §10.1.9 Provincial tax | 226 |
| | §10.1.10 Refundable amounts | 227 |
| §10.2 | Investments and Tax Shelters | 228 |
| | §10.2.1 Interest..... | 228 |
| | §10.2.2 Dividends..... | 229 |
| | §10.2.3 Capital gains | 229 |
| | §10.2.4 Limited partnerships | 229 |
| | §10.2.5 Flow-through shares..... | 229 |
| | §10.2.6 Income trusts | 230 |
| | §10.2.7 Tax shelter expenses | 232 |
| | §10.2.8 Minimum tax | 233 |
| | §10.2.9 Offshore trusts | 234 |
| §10.3 | Income Splitting..... | 234 |
| | §10.3.1 Why split income? | 234 |
| | §10.3.2 Attribution rules | 235 |
| | §10.3.3 Income splitting tax (“kiddie tax”) on children | 236 |
| | §10.3.4 Techniques available | 236 |
| §10.4 | Retirement Savings and Deferred Income Plans..... | 239 |
| | §10.4.1 Tax support for retirement | 239 |

Detailed Table of Contents

| | | |
|-----------|---|-----|
| §10.4.2 | Registered pension plans | 239 |
| §10.4.3 | RRSPs | 240 |
| §10.4.3.1 | Contributions | 241 |
| §10.4.3.2 | Growth | 243 |
| §10.4.3.3 | Withdrawals | 244 |
| §10.4.3.4 | Death | 245 |
| §10.4.3.5 | Termination | 245 |
| §10.4.4 | RRIFs | 246 |
| §10.4.5 | DPSPs | 246 |
| §10.4.6 | Taxation of pension income | 247 |
| §10.4.6.1 | Non-residents | 247 |
| §10.4.7 | Life insurance | 248 |
| §10.4.8 | Tax free savings accounts (TFSAs) | 248 |
| §10.4.9 | Registered education savings plans (RESPs) | 249 |
| §10.4.10 | Registered disability savings plans (RDSPs) | 251 |
| §10.5 | Immigration and Emigration | 253 |
| §10.5.1 | What is a non-resident? | 253 |
| §10.5.2 | Immigration | 253 |
| §10.5.3 | Emigration | 254 |
| §10.5.4 | Tax treaties | 254 |

Chapter 11: Capital Gains and Losses

| | | |
|-----------|---|-----|
| §11.1 | Income vs. Capital | 259 |
| §11.1.1 | Intention | 259 |
| §11.1.2 | Secondary intention | 260 |
| §11.1.3 | Indicators of intention | 260 |
| §11.1.4 | Shares of corporations — capital property? | 261 |
| §11.1.5 | More detail | 261 |
| §11.2 | How Capital Gains are Taxed | 261 |
| §11.2.1 | Tax only on disposition | 261 |
| §11.2.2 | Calculating the tax | 262 |
| §11.2.2.1 | Gain | 262 |
| §11.2.2.2 | Capital gain or capital loss | 263 |
| §11.2.2.3 | Taxable capital gain | 263 |
| §11.2.2.4 | Allowable capital loss | 264 |
| §11.2.3 | Allowable business investment loss | 264 |
| §11.2.4 | Depreciable property | 265 |
| §11.2.5 | History | 266 |
| §11.3 | The Capital Gains Exemption | 266 |
| §11.3.1 | \$100,000 exemption | 266 |
| §11.3.2 | Qualified small business corporation shares | 267 |
| §11.3.3 | Qualified farm or fishing property | 268 |
| §11.3.4 | Limitations on the exemption | 269 |
| §11.3.4.1 | Cumulative net investment loss | 269 |

The Lawyer's Guide to Income Tax and GST/HST

| | |
|---|-----|
| §11.3.4.2 Allowable business investment losses | 269 |
| §11.3.4.3 Pre-1986 capital losses | 269 |
| §11.3.4.4 Failure to report the gain | 269 |
| §11.3.4.5 Gain attributable to insufficient dividends | 270 |
| §11.3.4.6 Corporate reorganizations | 270 |
| §11.3.4.7 General anti-avoidance rule..... | 270 |
| §11.4 Deemed Dispositions..... | 271 |
| §11.4.1 Death..... | 271 |
| §11.4.2 Emigration | 271 |
| §11.4.3 Gift | 272 |
| §11.4.4 Property of a trust | 273 |
| §11.4.5 Bankruptcy of corporation | 274 |
| §11.4.6 Change in use | 274 |
| §11.4.7 Immigration | 274 |
| §11.4.8 Mark-to-market property | 274 |
| §11.4.9 Synthetic disposition arrangement | 275 |
| §11.5 Special Rules..... | 275 |
| §11.5.1 Attribution rules | 275 |
| §11.5.2 Stop-loss rules..... | 275 |
| §11.5.3 Identical properties..... | 276 |
| §11.5.4 Personal-use property..... | 276 |
| §11.5.4.1 Listed personal property..... | 276 |
| §11.5.5 Pre-1972 property..... | 277 |
| §11.5.6 Principal residence..... | 278 |
| §11.5.7 Reserves..... | 278 |
| §11.5.8 Rollovers..... | 279 |
| §11.5.9 Taxable Canadian property | 280 |

Chapter 12: Non-Residents

| | |
|--|-----|
| §12.1 Who is a Non Resident?..... | 283 |
| §12.1.1 Individuals | 283 |
| §12.1.2 Emigrants from Canada | 283 |
| §12.1.3 Deemed residents | 286 |
| §12.1.4 Corporations..... | 286 |
| §12.1.5 Trusts..... | 287 |
| §12.1.6 GST/HST | 287 |
| §12.2 Withholding Tax on Passive Income..... | 288 |
| §12.2.1 Principles of withholding tax | 288 |
| §12.2.2 Penalty..... | 289 |
| §12.2.3 Tax treaties — reduction of withholding tax..... | 289 |
| §12.2.4 Dividends..... | 291 |
| §12.2.5 Interest..... | 291 |
| §12.2.6 Management fees | 291 |
| §12.2.7 Pension income | 292 |

Detailed Table of Contents

| | | |
|-----------|---|-----|
| §12.2.8 | Rental income | 293 |
| §12.2.9 | Royalties..... | 293 |
| §12.2.10 | Spousal and child support | 294 |
| §12.2.11 | Trust income..... | 294 |
| §12.3 | Tax on Canadian Source Business and Employment Income | 294 |
| §12.3.1 | Business income | 294 |
| §12.3.1.1 | Tax on business profits | 294 |
| §12.3.1.2 | Branch tax | 295 |
| §12.3.1.3 | Tax treaty relief — business income | 295 |
| §12.3.2 | Employment income..... | 296 |
| §12.3.3 | Capital gains | 297 |
| §12.4 | GST/HST on Sales to Non-Residents..... | 297 |

Chapter 13: GST (Goods and Services Tax) and HST (Harmonized Sales Tax)

| | | |
|---------|---|-----|
| §13.1 | Basics of the GST | 301 |
| §13.1.1 | GST is a VAT..... | 301 |
| §13.1.2 | Example..... | 302 |
| §13.1.3 | Refund | 303 |
| §13.1.4 | GST/HST extra or included?..... | 303 |
| §13.2 | What Does the GST/HST not Cover? | 303 |
| §13.2.1 | Taxable supplies | 303 |
| §13.2.2 | Zero-rated supplies..... | 304 |
| §13.2.3 | Exempt supplies | 304 |
| §13.2.4 | Small suppliers | 305 |
| §13.2.5 | Purchasers who pay no tax..... | 307 |
| §13.3 | Rebates | 308 |
| §13.3.1 | Public service body rebates..... | 308 |
| §13.3.2 | Full rebates | 309 |
| §13.3.3 | New housing rebates | 310 |
| §13.3.4 | Employee and partner rebates | 310 |
| §13.3.5 | Other | 311 |
| §13.4 | Input Tax Credits..... | 311 |
| §13.4.1 | General | 311 |
| §13.4.2 | Requirement for commercial activity | 312 |
| §13.4.3 | Restrictions on ITCs | 313 |
| §13.4.4 | Deemed ITCs on reimbursements and allowances..... | 317 |
| §13.4.5 | Documentation requirements for ITCs | 318 |
| §13.5 | Special Rules Under the GST/HST | 320 |
| §13.6 | GST/HST Collection, Remittance and Administration | 324 |
| §13.6.1 | Collection of GST/HST by vendors..... | 324 |
| §13.6.2 | Returns | 324 |
| §13.6.3 | Audit | 324 |
| §13.6.4 | Assessment or reassessment | 325 |
| §13.6.5 | Objection and appeal | 325 |

The Lawyer's Guide to Income Tax and GST/HST

| | | |
|---------|---|-----|
| §13.7 | Harmonized Sales Tax (HST)..... | 325 |
| §13.7.1 | What is the HST?..... | 325 |
| §13.7.2 | Registration and collection of HST | 327 |
| §13.7.3 | Application of the HST — place of supply..... | 328 |
| §13.7.4 | Importations and HST self-supply rules | 331 |
| §13.7.5 | HST rebates | 332 |
| §13.7.6 | Transitional rules | 333 |
| §13.7.7 | Temporary ITC recapture for large businesses..... | 334 |

Part III: Dealing With The Government

Chapter 14: The Role of Government Departments

| | | |
|---------|--|-----|
| §14.1 | The Canada Revenue Agency..... | 340 |
| §14.1.1 | Tax services offices and tax centres — addresses and phone numbers..... | 342 |
| §14.2 | Department of Finance | 350 |
| §14.2.1 | Legislation | 350 |
| §14.2.2 | Regulations | 351 |
| §14.2.3 | Proposed amendments..... | 351 |
| §14.3 | Department of Justice | 352 |

Chapter 15: Administration of Income Tax and GST/HST Returns

| | | |
|-----------|---|-----|
| §15.1 | Returns and Payment of Tax and Interest | 354 |
| §15.1.1 | Deadline for returns | 354 |
| §15.1.1.1 | Individuals | 354 |
| §15.1.1.2 | Corporations..... | 354 |
| §15.1.1.3 | Trusts..... | 355 |
| §15.1.1.4 | Partnerships | 355 |
| §15.1.1.5 | GST/HST returns..... | 355 |
| §15.1.1.6 | Payment of balance | 355 |
| §15.1.2 | Interest..... | 356 |
| §15.1.3 | Instalments..... | 356 |
| §15.1.3.1 | Individuals | 356 |
| §15.1.3.2 | Trusts..... | 357 |
| §15.1.3.3 | Corporations..... | 357 |
| §15.1.3.4 | Offset interest..... | 357 |
| §15.1.3.5 | GST/HST instalments | 358 |
| §15.2 | The Assessment of a Return: Interest and Refunds..... | 359 |
| §15.2.1 | Initial assessment | 359 |
| §15.2.2 | Interest..... | 360 |
| §15.2.3 | Refund..... | 360 |

Detailed Table of Contents

Chapter 16: Audit and Enforcement

| | | |
|-----------|--|-----|
| §16.1 | Audit and Reassessment..... | 364 |
| §16.1.1 | Audit | 364 |
| §16.1.2 | Reassessment..... | 364 |
| §16.1.3 | Limitation period | 365 |
| §16.2 | Investigation Powers | 367 |
| §16.2.1 | Audit and inspection | 367 |
| §16.2.2 | Search warrant..... | 367 |
| §16.2.3 | Demand for information | 368 |
| §16.2.4 | Solicitor-client privilege | 369 |
| §16.3 | Collection Powers..... | 370 |
| §16.3.1 | Tax payable when assessed..... | 370 |
| §16.3.2 | Collection restrictions..... | 370 |
| §16.3.3 | Federal Court certificate..... | 372 |
| §16.3.4 | Garnishment | 372 |
| §16.3.5 | Set-off..... | 373 |
| §16.3.6 | Seizure of chattels | 373 |
| §16.3.7 | Corporate directors | 373 |
| §16.3.8 | Assessment of transferee of property | 376 |
| §16.3.9 | Interfering with collection action | 376 |
| §16.4 | Tax Evasion and Penalties..... | 376 |
| §16.4.1 | Evasion | 376 |
| §16.4.2 | Penalties (assessed)..... | 377 |
| §16.4.2.1 | Assessment of penalty | 377 |
| §16.4.2.2 | Deductibility of penalty..... | 377 |
| §16.4.2.3 | Deductibility of legal fees | 377 |
| §16.4.3 | Offences | 380 |
| §16.4.3.1 | Minimum fine | 380 |
| §16.4.3.2 | Directors and officers..... | 381 |
| §16.4.3.3 | Deductibility | 381 |
| §16.4.3.4 | Legal fees | 381 |
| §16.4.4 | Voluntary disclosure..... | 381 |
| §16.4.5 | More detail | 382 |

Chapter 17: Tax Dispute Resolution — Objections and Appeals

| | | |
|---------|---|-----|
| §17.1 | Objecting to an Assessment | 385 |
| §17.1.1 | Notice of Objection..... | 385 |
| §17.1.2 | Extension of time to object | 386 |
| §17.1.3 | Response to objection | 387 |
| §17.1.4 | What can the CRA do to resolve a dispute? | 388 |
| §17.1.5 | Deductibility of fees | 389 |
| §17.1.6 | Should you pay an assessment while it's under dispute?..... | 389 |
| §17.2 | Appeal to the Tax Court of Canada..... | 390 |

The Lawyer's Guide to Income Tax and GST/HST

| | | |
|-----------------|--|-----|
| §17.2.1 | Appeal to Tax Court..... | 390 |
| §17.2.2 | Extension of time to appeal..... | 391 |
| §17.2.3 | General Procedure..... | 392 |
| §17.2.4 | Informal Procedure | 392 |
| §17.2.5 | Deductibility of fees | 393 |
| §17.3 | Appeal Beyond the Tax Court of Canada | 394 |
| §17.3.1 | Appeal to Federal Court of Appeal..... | 394 |
| §17.3.2 | Supreme Court of Canada..... | 394 |
| §17.3.3 | Deductibility of fees | 394 |
| §17.4 | Disputes Outside the Objection/Appeal Process..... | 395 |
| Appendix | | |
| | More Information — Recommended Sources | 397 |
| | Tax Reference Tables | 401 |
| Index | | 453 |