

Table of Contents



Table of Cases xvii
Table of References to the Income Tax Act..... xcv

1. The Administrative Framework 1

1.1 Income Tax Administration in Canada 1

1.2 Agency Structure 7

1.3 Regulations 9

1.4 Income Tax Folios, Interpretation Bulletins, Information
 Circulars and Other Publications..... 11

1.5 Taxpayer Rights 14

1.5.1 *Taxpayer Bill of Rights* 18

1.5.2 *Taxpayers' Ombudsman*..... 19

1.6 Advance Income Tax Rulings and Technical Interpretations ... 20

1.7 Estoppel and the Administration of the Act 26

1.8 Domestic Taxpayer Information..... 34

1.9 Federal-Provincial Tax Collection Agreements 49

1.10 The Agency and the Pandemic 51

2. Books and Records..... 53

2.1 Introduction..... 53

2.2 Retention and Destruction of Records 56

2.3 Foreign Affiliates 58

2.4 Election Expenses and Contributions..... 59

3. Income Tax and Information Returns 61

3.1 Taxation Year and Fiscal Period 62

3.1.1 *Individuals* 64

3.1.2 *Fiscal Period for Business and Property Income of
 an Individual, Trust or Partnership of Individuals
 or Trusts* 66

3.1.3 *Corporate Partnerships* 68

3.1.4 *Sole Proprietorships* 72

3.1.5 *Partnerships* 74

3.1.6 *Trusts*..... 74

3.1.7 *Corporations* 76

3.2 Income Tax Returns 80

3.2.1 *General*..... 80

3.2.2 *Corporations* 85

3.2.3 *Trusts and Estates* 86

3.2.4 *Deceased Persons* 88

Administration of Income Tax

3.2.5	<i>Individuals</i>	89
3.2.6	<i>Demands</i>	90
3.2.7	<i>Non-Residents</i>	92
3.2.8	<i>Waiver of Filing of Forms or Documents</i>	93
3.3	Amended Returns and Elections	94
3.3.1	<i>Amended Returns</i>	94
3.3.2	<i>Amended or Revoked Elections</i>	99
3.4	Information Returns	102
3.4.1	<i>General</i>	102
3.4.2	<i>Electronic Filing</i>	104
3.4.3	<i>Remuneration</i>	105
3.4.4	<i>Investment Income</i>	106
3.4.5	<i>Payments to Non-Residents</i>	107
3.4.6	<i>Non-Arm's Length Transactions with Non-Residents</i>	109
3.4.7	<i>Estates and Trusts</i>	110
3.4.8	<i>Ownership Certificates</i>	110
3.4.9	<i>RESPs and RDSPs</i>	111
3.4.10	<i>Accrued Bond Interest</i>	111
3.4.11	<i>Employees' Profit-Sharing Plans</i>	112
3.4.12	<i>Pooled Registered Pension Plans</i>	112
3.4.13	<i>Registered Retirement Savings Plans</i>	112
3.4.14	<i>Registered Retirement Income Funds</i>	112
3.4.15	<i>Registered Charities, Canadian Amateur Athletic Associations and Registered Journalism Organization</i>	113
3.4.16	<i>Disposition of Interests in Annuities or Life Insurance Policies</i>	113
3.4.17	<i>Patronage Payments</i>	113
3.4.18	<i>Cash Bonuses on Canada Savings Bonds</i>	114
3.4.19	<i>Qualified Investments</i>	114
3.4.20	<i>Home Insulation and Energy Conversion Programs</i>	114
3.4.21	<i>Certified Films and Video Tapes</i>	114
3.4.22	<i>Refundable Investment Tax Credits</i>	114
3.4.23	<i>Resource Flow-Through Shares</i>	115
3.4.24	<i>Advanced Life Deferred Annuity</i>	115
3.4.25	<i>Partnership Returns</i>	115
3.4.26	<i>Securities Transactions</i>	116
3.4.27	<i>Worker's Compensation</i>	117
3.4.28	<i>Social Assistance</i>	117
3.4.29	<i>Farm Support Payments</i>	118

Table of Contents

	3.4.30 <i>Taxpayer Identification</i>	118
	3.4.31 <i>Federal Government Payments</i>	118
	3.4.32 <i>Contribution Payments</i>	118
	3.4.33 <i>Tax-Free Savings Accounts</i>	119
	3.4.34 <i>Tuition and Enrolment Certificates</i>	119
	3.4.35 <i>Accelerated Disclosure by Mutual Fund Trusts and Public Partnerships</i>	119
	3.4.36 <i>First Home Savings Account</i>	120
3.5	Tax Shelter Reporting	120
3.6	Foreign Reporting	127
	3.6.1 <i>Contributions to Foreign Trusts</i>	128
	3.6.2 <i>Foreign Property Reporting</i>	130
	3.6.3 <i>Foreign Affiliate Reporting</i>	132
	3.6.4 <i>Reporting of Distributions from Foreign Trusts</i>	133
	3.6.5 <i>Due Diligence Exemption in Respect of Transfers and Loans of Property and Foreign Affiliates</i>	134
3.7	Reporting of Aggressive Tax Avoidance Transactions	135
	Appendix: Returns for Special Taxes	142
	3.7.1 <i>Reportable Transactions</i>	135
	3.7.2 <i>Notifiable Transactions</i>	139
	3.7.3 <i>Uncertain Tax Treatments</i>	140
3.8	Reporting by Digital Platform Operators	141
4.	Payment of Tax	153
	4.1 Introduction	154
	4.1.1 <i>Electronic Payment</i>	155
	4.2 Source Deductions	155
	4.2.1 <i>Payer's Obligation</i>	155
	4.2.2 <i>Employee's Obligation</i>	161
	4.2.3 <i>Rights between Payer and Payee</i>	161
	4.2.4 <i>Payments Subject to Withholding</i>	163
	4.2.5 <i>Unclaimed Amounts</i>	170
	4.2.6 <i>Amount to be Withheld</i>	170
	4.3 Withholding from Payments to Non-Residents	172
	4.4 Director's Liability for Unremitted Withholdings	177
	4.4.1 <i>Procedure</i>	179
	4.4.2 <i>Possible Defences</i>	179
	4.4.2.1 Technical/Procedural Defences	180
	4.4.2.1(a) Procedural Requirements Not Met	180
	4.4.2.1(b) Wages Not Paid	181
	4.4.2.1(c) Invalid Assessment	181
	4.4.2.1(d) Limitation Period	182

Administration of Income Tax

4.4.2.2	Substantive Defences.....	184
4.4.2.2(a)	General	184
4.4.2.2(b)	Not a Director	185
4.4.2.2(c)	No Control	187
4.4.2.2(d)	Due Diligence.....	189
4.4.2.2(e)	Challenge of Underlying Assessment.....	196
4.4.2.3	Constitutional Arguments.....	197
4.4.2.4	Lack of Knowledge.....	197
4.4.2.5	Delegation.....	198
4.4.3	<i>Relationships with Fellow Directors</i>	198
4.4.4	<i>Corporation in Financial Difficulties</i>	198
4.4.5	<i>Quantum of Liability May Be Reduced</i>	199
4.4.6	<i>Preventative Measures</i>	200
4.5	Instalment Payments.....	200
4.5.1	<i>Corporations — General</i>	200
4.5.2	<i>“Small” CCPCs</i>	205
4.5.3	<i>Special Cases — Corporations</i>	206
4.5.4	<i>Farmers and Fishermen</i>	208
4.5.5	<i>Other Individuals</i>	209
4.5.6	<i>Special Cases — Individuals</i>	211
4.6	Time of Payment	212
4.7	Demand for Payment of Tax	213
4.8	Estimate of Tax.....	213
4.9	Recovery of Excess Refunds.....	214
4.10	Liability for Amounts Received Out of RRSPs, RRIFs, Retirement Compensation Arrangements and Registered Disability Savings Plans	215
4.11	Payment after Assessment.....	215
4.12	Payment by Legal Representatives and Agents.....	216
4.13	Security for Payment of Tax	216
4.13.1	<i>General</i>	216
4.13.2	<i>Security for Departure Tax</i>	216
4.14	Relief for Estate of Deceased Taxpayer	218
4.15	Liability of Legal Representatives.....	221
4.15.1	<i>Meaning of “Legal Representative”</i>	221
4.15.2	<i>Liability for Payments or Obligations of a Taxpayer</i>	221
4.15.3	<i>Distribution of Property Without a Certificate</i>	222
4.16	Transfer and Loans of Property to Spouse, to Person Under 18 or to Non-Arm’s Length Person.....	229
4.16.1	<i>Attribution Rules</i>	229

Table of Contents

4.16.2	<i>Joint and Several Liability Arising from Non-Arm's Length Transfers</i>	229
4.16.2.1	Attribution Liability.....	229
4.16.2.2	Transfer of Tax Benefits	230
4.16.2.3	Attribution of Liability for Tax on Split Income ("TOSI")	230
4.16.2.4	Attribution of Liability for Tax on Split Pensions.....	231
4.16.2.5	Transfers of Property to Defeat Tax Liability	231
4.17	Joint and Several Liability for Tax Liability of Non-Resident Trusts.....	242
4.18	Blocked Currencies	243
4.19	Tax Transfer Payments and Collection Agreements	244
4.20	Set-Off and Application of Refunds	245
4.21	Transfers Among Accounts	246
4.22	Payment of Special Taxes	247
	Appendix: Payment of Special Taxes	248
5.	Interest	255
5.1	Prescribed Rate	255
5.2	Balance-Due Day	256
5.3	Unpaid Tax	257
5.4	Excess Refunds.....	259
5.5	Late or Deficient Instalments.....	260
5.6	"Contra" Interest.....	263
5.7	Carry-Back of Losses and Other Amounts.....	263
5.8	Interest on Penalties	266
5.9	Interest on Refunds	267
5.10	Non-Residents	268
5.11	Compounding of Interest	269
5.12	Waiver or Cancellation of Interest.....	270
5.13	Prepayment of Tax	270
5.14	Offset of Refund Interest against Arrears Interest	270
	Appendix: Special Taxes.....	272
6.	Refunds	275
6.1	General	275
6.1.1	<i>Refunds by Administrative Discretion</i>	284
6.1.2	<i>Small Amounts</i>	285
6.2	Special Refundable Taxes	285
6.3	Non-Residents	285
	Appendix: Refunds of Special Taxes.....	288

Administration of Income Tax

7.	Audit and Investigation	289
7.1	Introduction	289
7.2	Audit and Inspection	290
7.3	Demand for Information	296
7.3.1	<i>Charter Restrictions on the Use of Evidence Obtained under Sections 231.1 and 231.2</i>	314
7.3.2	<i>Treaty-Based Demand for Information</i>	321
7.4	Search Warrant	322
7.5	Inquiry	326
7.6	Copies and Compliance	329
7.7	Demand for Foreign-Based Information	330
7.8	Claim of Privilege	334
7.8.1	<i>Solicitor-Client Privilege</i>	334
7.8.2	<i>Procedure</i>	344
7.8.3	<i>Accountant's Privilege</i>	349
7.9	Exchanges of Information between Revenue Authorities	351
7.9.1	<i>Federal-Provincial Collection Agreements</i>	351
7.9.2	<i>Treaty-Based Exchanges of Information</i>	352
7.10	Reporting International Electronic Funds Transfers	360
7.11	Exchange of Information with the United States relating to FATCA	361
7.12	The GAAR Committee	363
7.13	The Transfer Pricing Review Committee	364
7.14	Offshore Tax Informant Program	365
8.	Collection	367
8.1	Introduction	367
8.1.1	<i>Limitation Period</i>	371
8.2	Restrictions on Collection Action	374
8.3	Collection in Jeopardy Provisions	377
8.4	Registration of Certificate	382
8.5	Garnishment	386
8.5.1	<i>General</i>	386
8.5.2	<i>Garnishment Priority in Respect of Withholdings</i>	390
8.5.3	<i>Garnishment Procedure</i>	396
8.5.4	<i>Collection by Set-Off</i>	396
8.5.5	<i>Seized Funds</i>	397
8.6	Statutory Trust in Respect of Withholdings	397
8.7	Seizure of Chattels	402
8.8	Foreclosures	403
8.9	Collection Outside Canada — Tax Treaties	403

Table of Contents

9.	Assessments and Reassessments	409
9.1	Duties of the Minister.....	409
9.2	All Due Dispatch	412
9.3	Sending the Notice of Assessment.....	417
9.4	Assessment and Liability for Tax.....	424
9.5	Quick Assessments and Nil Assessments.....	426
9.6	Partnership Reassessments	429
9.7	Reassessments	432
9.8	Reassessment or Further or Additional Assessment	433
9.9	Form of the Notice of Reassessment.....	435
9.10	Time Limits for Reassessment.....	438
9.10.1	<i>Normal Reassessment Period</i>	438
9.10.2	<i>Extended Reassessment Period</i>	439
9.10.3	<i>Misrepresentation or Fraud</i>	449
9.10.4	<i>Waiver</i>	456
9.10.5	<i>Failure to Disclose a Disposition of Real Estate</i>	460
9.10.6	<i>Tax Shelter Reassessments</i>	461
9.10.7	<i>Treaty Limitations</i>	461
9.11	Disposition of Appeals	462
9.12	Consequential Assessments	462
9.13	“Fairness Package” Assessments	463
9.14	Net Worth Assessments	464
9.15	GAAR Assessments	466
9.16	Determination of Losses	468
9.17	Non-Residents	471
	Appendix: Special Taxes.....	472
10.	Objections	473
10.1	Introduction.....	473
10.2	Limits on Right to Object.....	474
10.3	Time Limits.....	477
10.4	Extensions of Time	480
10.5	Notice of Objection.....	485
10.6	Objections by Large Corporations.....	486
10.7	Service of Notice of Objection	488
10.8	By-Passing Notice of Objection.....	488
10.9	Consideration and Disposition of Notice of Objection.....	489
10.10	Objection to Subsequent Reassessment.....	490
11.	Penalties	495
11.1	Failure to File Returns or to Provide Information	496
11.1.1	<i>General</i>	496
11.1.2	<i>Failure to File Returns</i>	498

Administration of Income Tax

11.1.3	<i>Failure to File Returns by Large Corporations</i>	501
11.1.4	<i>Failure to Complete Ownership Certificate</i>	502
11.1.5	<i>Failure to Provide Information</i>	502
11.1.6	<i>Failure to Provide Claim Preparer Information</i>	502
11.1.7	<i>Failure to Provide Identification Number</i>	503
11.1.8	<i>Failure to File Information Return</i>	503
11.1.9	<i>Failure to File Partnership Information Return</i>	505
11.1.10	<i>Failure of Tax Preparer to File Electronically</i>	505
11.1.11	<i>Tax Shelter Identification Numbers</i>	505
11.1.12	<i>Foreign Reporting</i>	506
11.1.13	<i>Repeated Failure to File Returns</i>	507
11.1.14	<i>Penalty for Late-Filed, Amended or Revoked Elections</i>	509
11.1.15	<i>Failure to Make Electronic Payment</i>	509
11.2	<i>False Statements or Omissions</i>	509
11.2.1	<i>General Penalty</i>	509
11.2.2	<i>Penalties Relating to Flowed-Through Resource Expenditures</i>	511
11.2.3	<i>Penalties Relating to Reporting of Foreign Transactions and Property</i>	512
11.2.3A	<i>Penalty Relating to Trust Returns</i>	513
11.2.4	<i>Gross Negligence</i>	513
11.2.5	<i>Electronic Suppression of Sales</i>	529
11.3	<i>False Statements or Omissions by Third Parties</i>	531
11.3.1	<i>Penalty for Misrepresentation</i>	532
11.3.2	<i>Penalty for Participating in a Misrepresentation</i>	533
11.3.3	<i>Good Faith Reliance</i>	534
11.3.4	<i>Valuations</i>	534
11.3.5	<i>Reassessments</i>	534
11.3.6	<i>Maximum Penalty</i>	535
11.3.7	<i>Responsibility of Employees</i>	535
11.3.8	<i>Onus on Minister</i>	535
11.4	<i>Late or Deficient Instalments</i>	535
11.5	<i>Failure to Withhold and Remit Taxes</i>	535
11.5.1	<i>Failure to Deduct and Withhold under Ss. 153(1) and 215</i>	536
11.5.2	<i>Failure to Deduct or Withhold from Patronage Dividends or Payments to Non-Residents</i>	537
11.5.3	<i>Failure to Remit or Pay an Amount Deducted or Withheld</i>	538
11.5.4	<i>Separate Establishments</i>	538
11.5.5	<i>Assessments</i>	538

Table of Contents

11.6	Charities, Canadian Amateur Athletic Associations and Registered Journalism Organizations	539
11.6.1	<i>Carrying on Business</i>	539
11.6.2	<i>Acquiring Control of a Corporation</i>	540
11.6.3	<i>Conferral of Undue Benefits</i>	540
11.6.4	<i>Failure to File a Return</i>	540
11.6.5	<i>Improper Issuance of Receipt</i>	541
11.6.6	<i>False Statements</i>	541
11.6.7	<i>Delay of Expenditure</i>	541
11.6.8	<i>Suspension of Right to Issue Receipts</i>	541
11.6.9	<i>Reduction of Penalties</i>	543
11.7	Non-Residents	543
11.8	Waiver or Cancellation of Interest and Penalties.....	544
11.9	Penalties Not Deductible.....	554
	Appendix: Calculation of s. 163(2) Penalty.....	555
12.	Offences	561
12.1	Introduction.....	561
12.2	Failure to File a Return or Comply with Specific Sections: Section 238	562
12.3	Tax Evasion: Section 239	563
12.3.1	<i>False or Deceptive Statements</i>	563
12.3.2	<i>Destruction of Records</i>	564
12.3.3	<i>False Entries</i>	564
12.3.4	<i>Tax Evasion</i>	565
12.3.5	<i>Conspiracy</i>	569
	12.3.5.1 Refund or Credit Claims.....	569
12.3.6	<i>Tax Shelter Identification Numbers</i>	569
12.3.7	<i>Communication of Information</i>	569
12.3.8	<i>Social Insurance Numbers</i>	570
12.3.9	<i>Electronic Suppression of Sales</i>	570
12.3.10	<i>Relationship with Civil Penalties</i>	570
12.4	Interest Coupons: Section 240	571
12.5	Liability of Directors and Officers: Section 242	571
12.6	Voluntary Disclosures Program.....	573
12.7	Institution of Prosecution	576
12.8	Procedural Matters	577
12.9	Punishment.....	578
12.9.1	<i>Fines and Imprisonment</i>	578
12.9.2	<i>Publicity</i>	581
12.9.3	<i>Sentencing</i>	581



Administration of Income Tax

13. Appeals to the Tax Court of Canada	585
13.1 History and Jurisdiction of the Tax Court of Canada	585
13.2 Classification of Appeals	595
13.2.1 <i>General</i>	595
13.2.2 <i>Informal Procedure</i>	595
13.2.3 <i>General Procedure</i>	598
13.2.4 <i>Election</i>	599
13.2.5 <i>Representation</i>	602
13.3 Institution of Appeals	603
13.3.1 <i>General</i>	603
13.3.2 <i>Time Limits</i>	609
13.3.3 <i>Judicial Review of Assessments</i>	614
13.3.4 <i>Commencing an Informal Procedure Appeal</i>	622
13.3.5 <i>General Procedure</i>	624
13.3.6 <i>No Reasonable Grounds for Appeal</i>	627
13.4 Settlement	627
13.5 Procedure on Appeals.....	634
13.5.1 <i>Informal Procedure Appeals — Pre-Trial</i>	634
13.5.2 <i>General Procedure Appeals — Pre-Trial</i>	635
13.5.3 <i>Case Management</i>	637
13.5.4 <i>Expert Evidence</i>	641
13.5.5 <i>Procedure at Trial</i>	643
13.5.6 <i>Costs</i>	643
13.5.7 <i>In Camera Proceedings</i>	649
13.6 Disposition of Appeals	652
14. References to the Tax Court of Canada	655
14.1 Question of Law, Fact or Mixed Law and Fact.....	655
14.1.1 <i>Section 173 of the Act</i>	655
14.1.2 <i>Determination of Questions of Law or Fact under Rule 58</i>	656
14.2 Common Question of Law, Fact or Mixed Law and Fact.....	658
15. Appeals to the Federal Court of Appeal	663
15.1 Appeals from the Tax Court of Canada	663
15.1.1 <i>General Procedure Judgments</i>	663
15.1.2 <i>Informal Procedure Judgments</i>	665
15.2 Direct Appeal	667
15.3 Revocation of Registration of Canadian Charities, Canadian Amateur Athletic Associations and Journalism Organizations.....	670

Table of Contents

16. Appeals to the Supreme Court of Canada 677

Appendix 679

 Administration of the Tax Court of Canada 681

 Administration of the Federal Court 689

 Administration of the Federal Court of Appeal 697

 Administration of the Supreme Court of Canada 703

 Registrars of the Supreme Court of Canada 707

 Canada Revenue Agency Directory 709

 Limitations and Contingent Dates 723

 Penalties 727

 Offences 733

 Prescribed Interest Rates 735

Index 737

