

Table of Contents

Volume I

| | | |
|-------------|---|------------|
| §1.0 | Introduction | 1-1 |
| §2.0 | The Tax Treatment of Damages | 2-1 |
| §2.01 | Commercial Litigation..... | 2-4 |
| §2.02 | Damages Paid or Payable..... | 2-7 |
| §2.03 | Damages which Represent Amounts Paid for the Purposes of Gaining or Producing Income, or which Represent Amounts Paid as or on Account of Capital | 2-7 |
| §2.04 | The General Cases | 2-10.3 |
| §2.05 | Case (i) The Enduring Benefit Test | 2-10.3 |
| §2.06 | Case (ii) The Development of the Enduring Benefit Test | 2-11 |
| §2.07 | Case (iii) Establishment of the Multiple Test Approach..... | 2-14 |
| §2.08 | Case (iv) The Application of the Business Principle Test | 2-17 |
| §2.09 | Case (v) The Application of the Common Sense Test | 2-19 |
| §2.10 | Case (vi) The Modern Approach — Dealing with Ambiguous Situations | 2-21 |
| §2.11 | The Specific Cases | 2-22.5 |
| §2.12 | Case (i) Ordinary Principles of Commercial Trading — Common Business Practices..... | 2-22.5 |
| §2.13 | Case (ii) Damages Representing Payments for Goodwill ... | 2-24 |
| §2.14 | Case (iii) Termination of a Distributorship..... | 2-28.2 |
| §2.15 | Case (iv) Payments Made on Account of Commercial Reality | 2-28.4 |
| §2.16 | Case (v) The Modern Approach..... | 2-29 |
| §2.17 | Case (vi) Canada Revenue Agency's Policy — Interpretation Bulletin IT-467R2 — Damages, Settlements and Similar Payments..... | 2-30 |
| §2.18 | Damage Payments Representing Eligible Capital Expenditures | 2-36.2 |
| §2.19 | Damages Received or Receivable | 2-36.3 |
| §2.20 | Damages Representing Income from a Business or Property | 2-36.8.12 |
| §2.21 | Case (i) Material Impact on Income-Producing Apparatus | 2-36.19 |
| §2.22 | Case (ii) Distinct Business Operations..... | 2-37 |
| §2.23 | Case (iii) Substance over Form..... | 2-40 |
| §2.24 | Case (iv) Damages in Tort Actions | 2-42 |
| §2.24.01 | Case (iv)(a) Characterization of Breached Contracts — Indirect Breach of Contractual Relationship | 2-44.7 |
| §2.24.02 | Case (iv)(b) Forfeited Deposits | 2-47 |
| §2.24.03 | Case (iv)(c) Compensation for Termination of a Contract | 2-48 |
| §2.24.04 | Case (iv)(d) Compensation for Breach of Insurance Contract | 2-52.14 |
| §2.24.05 | Case (iv)(e) Breach of Collective Agreement | 2-54.15 |

| | | |
|-------------|--|------------|
| §2.25 | Case (v) The Canada Revenue Agency's Position | 2-54.17 |
| §2.26 | Damages Representing Capital Gains from the Disposition of Property | 2-55 |
| §2.26.01 | Lifetime Capital Gains Exemption | 2-56.2 |
| §2.26.02 | Damages Representing Eligible Capital Receipts .. | 2-56.3 |
| §2.28 | Damages as Tax-Free Capital Receipts | 2-59 |
| §2.29 | Where Damages Include Interest | 2-62.4 |
| §2.29.01 | Some Practical Considerations | 2-62.4 |
| §2.30 | Personal Injury Litigation | 2-65 |
| §2.31 | Taxation of Personal Injury Damages | 2-65 |
| §2.32 | Taxation after Receipt of an Award | 2-70.6 |
| §2.33 | Structured Settlements | 2-70.6 |
| §2.33.01 | Revenue Canada's Policy | 2-70.7 |
| §2.33.02 | Tax Treatment to Claimant | 2-72 |
| §2.33.03 | Tax Treatment to Casualty Insurer | 2-74.1 |
| §2.33.04 | Non-Tax Considerations of Structured Settlements .. | 2-76 |
| §2.33.05 | Tax Policy and the Future | 2-78 |
| §2.34 | Minors | 2-78 |
| §2.35 | Taxation Factors and Quantum of the Award | 2-79 |
| §2.36 | Claims by Person Injured | 2-80 |
| §2.36.01 | Taxation of Earnings Lost | 2-80 |
| §2.36.02 | Taxation of Invested Award | 2-84.4 |
| §2.37 | Fatal Injury/Dependents' Relief Cases | 2-84.6 |
| §2.37.01 | Taxation of Earnings Lost | 2-85 |
| §2.37.02 | Taxation of Invested Award | 2-86.1 |
| §2.40 | Damages for Wrongful Dismissal | 2-88 |
| §2.41 | Deductibility to Employer | 2-88 |
| §2.42 | Taxation of Employee — the Former Regime | 2-92.59 |
| §2.43 | The Current Retiring Allowance Regime | 2-94 |
| §2.43.01 | General Rules | 2-94 |
| §2.43.02 | Tax Deferral Through Rollover | 2-96.17 |
| §2.43.02A | Qualifying Retroactive Lump Sum Payments | 2-97 |
| §2.43.03 | Requirement for Employer to Withhold Tax | 2-98.2 |
| §2.43.04 | Legal Expenses | 2-98.3 |
| §2.44 | Characterization of Payments as Retiring Allowances | 2-100.2.7 |
| §2.44.01 | General Considerations | 2-100.2.7 |
| §2.44.02 | Timing and Circumstances of Payment | 2-100.8.5 |
| §2.44.03 | Contractual Payments | 2-100.9 |
| §2.44.04 | Amount of the Termination Payment | 2-100.12 |
| §2.45 | Retirement Compensation Arrangements | 2-100.12 |
| §2.46 | Restrictive Covenants (s. 6(3.1)) | 2-109 |
| §3.0 | Issues in Real Estate Litigation | 3-1 |
| §3.01 | Mortgage Foreclosures and Repossessions | 3-1 |
| §3.02 | Forgiveness of Debt | 3-6.03 |
| §3.03 | Involuntary Dispositions and the Replacement Property Rules | 3-6.15 |
| §4.0 | Disputes Between Corporations and Their Shareholders | 4-1 |
| §4.01 | The Tax Implications of a Corporate Repurchase of Shares | 4-1 |
| §4.02 | Individual Shareholders | 4-1 |
| §4.03 | Corporate Shareholders | 4-4.2 |
| §4.04 | The Repurchasing Corporation | 4-5 |
| §4.05 | The Stop Loss Rules | 4-5 |

Table of Contents

iii

| | | |
|--------------|---|--------------|
| §4.06 | Reversed Transactions | 4-7 |
| §4.07 | Non-Competition Agreement Payments | 4-8.9 |
| §4.07.01 | Restrictive Covenants [Non-Competition Agreements] (s. 56.4) | 4-16.2.1 |
| §4.08 | Planning Considerations | 4-22.3 |
| §5.0 | Disputes Between Members of a Partnership | 5-1 |
| §5.01 | The Taxation of Partnerships Generally | 5-1 |
| §5.02 | Actions Resulting in Dispositions of Property to Partners | 5-4.7 |
| §5.03 | Tax-Free Transfers of Partnership Property | 5-4.8 |
| §5.04 | Transfer of Property to a Corporation | 5-5 |
| §5.05 | Transfer of Assets to a New Partnership | 5-6 |
| §5.06 | Distribution of All Assets to Partners | 5-7 |
| §5.07 | Continuation of Sole Proprietorship | 5-7 |
| §5.08 | Non-Competition and Non-Solicitation Agreements | 5-8 |
| §6.0 | The Tax Consequences of Bankruptcy and Insolvency | 6-1 |
| §6.01 | Bankrupt Corporations | 6-2 |
| §6.02 | Bankrupt Individuals | 6-12.2.5 |
| §6.03 | Planning Opportunities | 6-12.15 |
| §7.0 | Issues in Separation and Divorce | 7-1 |
| §7.01 | Spousal and Child Support | 7-2 |
| §7.02 | Spousal Support: Income Inclusions and Deductions | 7-2 |
| §7.02.1 | Child Support | 7-6.24 |
| §7.02.2 | Support Amounts to be Included in Income | 7-6.42 |
| §7.02.3 | Agreements or Orders Made Before May 1997 | 7-6.43 |
| §7.02.4 | Calculating Annual Income | 7-10.14 |
| §7.02.5 | Non-Spousal Support: Income Inclusions and Deductions | 7-16 |
| §7.03 | Planning Opportunities | 7-22.2 |
| §8.0 | Trust and Estate Litigation | 8-1 |
| §8.01 | The Taxation of Trusts: The Basic Rules | 8-1 |
| §8.02 | Planning Opportunities | 8-8.3 |
| §9.0 | The Deductibility of Litigation Expenses | 9-1 |
| §9.01 | Salary Disputes | 9-2 |
| §9.02 | Regulatory Litigation | 9-6.7 |
| §9.03 | Income Tax Objections and Appeals | 9-6.8.4.1 |
| §9.04 | Commercial Litigation Expenses | 9-6.8.29 |
| §9.05 | Disputes Between Shareholders of a Corporation | 9-12.6 |
| §9.06 | Marital Disputes | 9-12.20 |
| §9.07 | Criminal Defence Fees | 9-14.36 |
| §9.08 | Contingency Fees | 9-20.11 |
| §10.0 | Goods and Services Tax/Harmonized Sales Tax (GST/HST) | 10-1 |
| §10.01 | Introduction | 10-2 |
| §10.02 | Basics of the GST | 10-6 |
| §10.02.1 | How Does the GST Work? | 10-6 |
| §10.02.2 | Zero-rated Supplies | 10-10.8.10.3 |
| §10.02.3 | Exempt Supplies | 10-10.8.30 |
| §10.02.4 | Small Suppliers | 10-10.8.50 |
| §10.02.5 | Rebates | 10-10.8.51 |
| §10.03 | Suing for Unpaid GST | 10-10.30 |
| §10.03.1 | Preconditions for a Claim Under Section 224 | 10-10.31 |

| | | |
|--------------|---|-------------|
| §10.03.2 | Can the Supplier Sue if the Conditions of Section 224 Are Not Met? | 10-10.32 |
| §10.03.3 | Can the Supplier Sue for Interest and Penalties? .. | 10-15 |
| §10.04 | Who Bears the GST When the Contract is Silent? | 10-16 |
| §10.05 | GST on Breach of Contract-Section 182..... | 10-31 |
| §10.05.1 | Conditions | 10-32 |
| §10.05.2 | Subsection 182(1)..... | 10-34 |
| §10.05.3 | Transitional Rules for Pre-1991 Contracts — Paragraph 182(1)(b) | 10-34.1 |
| §10.05.4 | Scope of Subsection 182(1)..... | 10-34.1 |
| §10.05.5 | Subsection 182(2)—Extinguishment of Debt..... | 10-34.2 |
| §10.05.6 | Subsection 182(3)—Exclusions..... | 10-34.2 |
| §10.05.7 | Planning Issues..... | 10-34.2.1 |
| §10.06 | Suing in Tort vs. Suing in Contract..... | 10-34.3 |
| §10.07 | GST on Awards of Costs by a Court | 10-34.4 |
| §10.08 | Foreclosures, Seizures and Repossessions—Section 183 .. | 10-34.6.4 |
| §10.08.1 | Subsection 183(1)—No GST on Seizure or Repossession | 10-34.13 |
| §10.08.2 | Paragraphs 183(1)(c) and (d)—Input Tax Credit or Rebate for Embedded Tax on Real Property | 10-34.13 |
| §10.08.3 | Subsection 183(2)—Sale or Lease of Seized Property | 10-34.14 |
| §10.08.4 | Subsection 183(3)—Court Seizures | 10-34.15 |
| §10.08.5 | Subsection 183(4)—Use of Real Property..... | 10-34.15 |
| §10.08.6 | Subsection 183(5)—Use of Personal Property Seized Before 1994..... | 10-34.16 |
| §10.08.7 | Subsection 183(6)—Use of Personal Property Seized After 1993 | 10-34.16 |
| §10.08.8 | Subsection 183(7)—Sale of Seized Personal Property | 10-34.17 |
| §10.08.9 | Subsection 183(8)—Lease of Seized Personal Property | 10-34.18 |
| §10.08.10 | Subsection 183(9)—Quitclaim or Other Voluntary Transfer..... | 10-34.19 |
| §10.08.11 | Subsection 183(10)—Power of Sale..... | 10-34.19 |
| §10.08.11.1 | Subsection 183 (10.1) Redemption of Property | 10-34.19 |
| §10.08.12 | Subsection 183(11)—Receivership..... | 10-34.20 |
| §10.09 | Transfer of Property to Insurer on Settlement of Claim | 10-34.20 |
| §10.10 | Timing of Liability-Appeals..... | 10-34.20 |
| §10.11 | Legal Aid and Legal Services..... | 10-34.21 |
| §10.12 | Directors' Liability..... | 10-34.22.2 |
| §10.13 | Rules of Thumb..... | 10-34.49 |
| §10.13A | Relief Under Fairness Provisions..... | 10-36.7 |
| §10.14 | Directors Held Liable | 10-36.12 |
| §10.15 | Directors Held Not Liable | 10-42.23 |
| §10.16 | Joint and Several Liability of Directors | 10-56.5 |
| §10.17 | Bibliography | 10-60 |
| §11.0 | Directors' Liability - The Cases and the Rules of Thumb | 11-1 |
| §11.01 | Introduction and Comments | 11-1 |
| §11.02 | Rules of Thumb..... | 11-8.1 |

Table of Contents

v

| | |
|--|-----------|
| §11.02A Relief Under Fairness Provisions | 11-8.4.1 |
| §11.02B Quasi-Criminal Consequences..... | 11-8.4.14 |
| §11.03 Case Digests..... | 11-8.5 |
| §11.04 Directors Held Liable | 11-8.5 |
| §11.05 Directors Held Not Liable | 11-26.17 |

Volume II

| | |
|--|------|
| §20.0 Statutory Materials | 20-1 |
| §25.0 Interpretation Bulletins/Income Tax Folios | 25-1 |
| §26.0 CRA Guide..... | 26-1 |
| §27.0 Forms | 27-1 |
| §30.0 Information Circulars | 30-1 |
| §35.0 GST/HST Memoranda | 35-1 |
| §40.0 GST/HST Policy Statements | 40-1 |
| §45.0 Structured Settlements | 45-1 |