

Table of Contents

Chapter 1: Introduction

1.1	Estate Planning.....	1-1
1.2	General Objectives.....	1-4
1.3	Tax Objectives.....	1-7
1.3.1	General.....	1-7
1.3.2	Income Tax.....	1-8
1.3.3	Succession Duty and Estate Tax.....	1-9
1.3.4	Gift Tax.....	1-19
1.3.5	Probate Fees.....	1-19
1.4	Tax Avoidance.....	1-21
1.4.1	General.....	1-21
1.4.2	Tax Avoidance.....	1-23
1.5	The General Anti-Avoidance Rule (GAAR).....	1-25
1.5.1	General.....	1-25
1.5.2	The GAAR Test.....	1-27
1.5.3	GAAR and Estate Planning.....	1-31
1.5.4	Summary.....	1-33
1.6	Provincial Anti-Avoidance.....	1-33
1.7	Civil Penalties.....	1-36
1.8	Professional Ethics.....	1-40
	<i>Darrell, Responsibilities of Lawyer in Tax Practice</i>	1-42
	<i>Professional Responsibility and Tax Practice</i>	1-47

Chapter 2: Income Taxation for the Terminal Year

2.1	Introduction.....	2-1
2.2	Income Accruing at Death.....	2-2
	<i>Interpretation Bulletin IT-210R2: Income of Deceased Persons</i> <i>— Periodic Payments and Investment Tax Credit</i>	2-4
2.3	Rights or Things.....	2-5
	<i>Interpretation Bulletin IT-212R3: Income of Deceased Persons</i> <i>— Right or Things</i>	2-6
	<i>Lamash (L.) Estate v. M.N.R.</i> , [1990] 2 C.T.C. 2534 (T.C.C.).....	2-14
	<i>Dushinsky (P.) Estate v. M.N.R.</i> , [1990] 2 C.T.C. 2012 (T.C.C.).....	2-19
	<i>Montreal Trust Co. (Tory Estate) v. M.N.R.</i> , [1973] C.T.C. 434 (F.C.A.).....	2-23

TABLE OF CONTENTS

2.4	Capital Property	2-25
2.4.1	General	2-25
	<i>Mastronardi Estate v. The Queen</i> , [1976] C.T.C. 572 (F.C.T.D.)	2-29
	<i>R. v. Landsman Estate</i> , [1984] C.T.C. 274 (F.C.A.)	2-34
	<i>Interpretation Bulletin IT-140R3: Buy-Sell Agreements</i>	2-37
2.4.2	Relieving Provisions for Capital Property	2-40
2.4.2(1)	General	2-40
2.4.2(2)	Property Transferred to, or in Trust for, a Spouse or Common-Law Partner	2-41
2.4.2(2)(a)	General Rules	2-41
	<i>Husel Estate v. M.N.R.</i> , [1995] 1 C.T.C. 2298 (T.C.C.)	2-44
	<i>Boger Estate v. M.N.R.</i> , [1993] 2 C.T.C. 81 (F.C.A.)	2-50
	<i>Greenwood (S.) Estate v. Canada</i> , [1994] 1 C.T.C. 310 (F.C.A.)	2-59
2.4.2(2)(b)	Trusts for a Spouse or Common-Law Partner (Conjugal Trusts)	2-68
	<i>Peardon Estate v. M.N.R.</i> , [1986] 1 C.T.C. 2083 (T.C.C.)	2-72
	<i>Guarantee Trust Co. of Canada</i> (<i>Johnson Estate</i>) v. <i>M.N.R.</i> , [1982] C.T.C. 2388 (T.R.B.)	2-75
2.4.2(2)(c)	Transfers as a Consequence of Death	2-81
2.4.2(2)(d)	Tainted Conjugal Trusts	2-86
	<i>Interpretation Bulletin IT-305R4:</i> <i>Testamentary Spouse Trusts</i>	2-87
2.4.2(2)(e)	Residence of Trusts	2-93
	<i>Garron Family Trust (Trustee of) v. R.</i> , 2012 CarswellNat 953 (S.C.C.)	2-93
2.4.2(2)(f)	Deemed Disposition on Death of the Spouse Beneficiary (Life Interest Beneficiary)	2-99
2.4.2(3)	Transfers of Farm or Fishing Property	2-99
2.4.2(4)	Net Income Stabilization Accounts	2-109
2.4.2(5)	Principal Residence	2-109
2.4.2(6)	Life Estates	2-114
2.4.2(7)	Taxable Canadian Property	2-116
2.5	Land Inventory	2-117
2.6	Resource Properties	2-118
2.7	Class 14.1 Assets (Eligible Capital Property)	2-119
2.8	Partnership Rights	2-121
2.8.1	General	2-121
2.8.2	Death of an Active Partner	2-122
2.8.3	Death of a Retired Partner	2-126

TABLE OF CONTENTS

2.8.4 Limited Partnerships	2-129
2.9 Proceeds of Life Insurance	2-129
2.10 Other Property of the Deceased	2-131
2.10.1 General	2-131
2.10.2 Registered Retirement Savings Plans (RRSPs)	2-132
2.10.2(1) General	2-132
2.10.2(2) Receipts from the Plan	2-135
2.10.2(2)(a) Immature Plans	2-135
2.10.2(2)(b) Mature Plans	2-140
2.10.2(2)(c) Locked in RRSPs (LIRA)	2-141
2.10.3 Registered Retirement Income Funds (RRIFs)	2-141
2.10.4 Registered Pension Plans (RPPs)	2-143
2.10.4(1) General	2-143
2.10.4(2) Taxation of Pension Benefits	2-145
2.10.5 Deferred Profit Sharing Plans (DPSPs)	2-147
2.10.6 Registered Disability Savings Accounts (RDSPs)	2-148
2.10.61 Advanced Life Deferred Annuities	2-149
2.10.7 Tax-Free Savings Accounts	2-150
2.10.8 Other Assets	2-150
2.11 Deductions	2-151
2.11.1 General	2-151
2.11.2 From Income	2-151
2.11.2(1) Reserves	2-151
2.11.2(2) Capital Gains Deduction	2-152
2.11.2(2)(a) General	2-152
2.11.2(2)(b) Qualified Farm and Fishing Property	2-152
2.11.2(2)(c) Qualified Small Business Corporation Shares	2-153
2.11.2(2)(d) Deductible Amount	2-156
2.11.2(3) Capital Losses	2-156
2.11.3 Computation of Tax	2-158
2.11.3(1) Charitable Donations	2-158
2.11.3(1)(a) Charitable Gifts Made Prior to 2016	2-159
2.11.3(1)(b) Charitable Gifts Made After 2015	2-163
2.11.3(2) Medical Expenses	2-164
2.12 Debt Forgiveness	2-165
2.13 Minimum Tax	2-166
2.14 Other Separate Returns	2-167

Chapter 3: Taxation of the Estate, Testamentary Trusts and Beneficiaries

3.1 Introduction	3-1
3.1.1 Graduated Rate Estates	3-3
3.2 Deemed Realizations of Capital Gains and Capital Losses	3-5

TABLE OF CONTENTS

3.3	Allocation of Income and Taxable Capital Gains	3-10
3.3.1	General	3-10
3.3.2	Taxation of the Estate or Trust	3-12
3.3.3	Taxation of Beneficiaries	3-20
3.3.3(1)	Amounts Payable to Beneficiaries	3-20
3.3.3(1)(a)	General	3-20
3.3.3(1)(b)	Annuity Payments	3-26
3.3.3(1)(c)	Disclaimers, Releases and Surrenders	3-28
3.3.3(1)(d)	Direction to Maintain Infants or Other Persons	3-34
3.3.3(1)(e)	Capital Gains	3-36
3.3.3(1)(f)	Deemed Income	3-39
3.3.3(2)	Amounts Deemed to be Payable to a Minor — Subsection 104(18) Trusts	3-40
3.3.3(3)	Payments for the Maintenance of Property	3-44
3.3.3(4)	Amounts Subject to a Preferred Beneficiary Election	3-45
3.3.3(4)(a)	General	3-45
3.3.3(5)	Benefits	3-47
3.4	Ancillary Conduit Provisions	3-51
3.4.1	General	3-51
3.4.2	Taxable Dividends	3-51
3.4.3	Exempt Dividends	3-54
3.4.4	Taxable Capital Gains	3-55
3.4.5	Foreign Tax Credit	3-58
3.4.6	Refunds of Premiums under Registered Retirement Savings Plans	3-59
3.4.7	Pension Benefits	3-60
3.4.8	Payments from Deferred Profit Sharing Plans and Death Benefits	3-60
3.4.9	Non-Deductible Resource Royalties	3-62
3.4.10	Investment Tax Credits	3-62
3.4.11	Limitations	3-62
3.5	Winding Up	3-62
3.6	Disposition of Income or Capital Interests in a Trust	3-64
3.6.1	Income Interests	3-65
3.6.1(1)	Dispositions to Third Parties	3-65
3.6.1(2)	Distributions in Satisfaction of an Income Interest	3-66
3.6.2	Capital Interests	3-66
3.6.2(1)	Dispositions to Third Parties	3-66
3.6.2(2)	Distributions in Satisfaction of a Capital Interest	3-68
3.6.2(3)	Deemed Dispositions	3-73
3.6.3	Partial Dispositions and Non-Dispositions and Rights to Enforce Payments	3-74

TABLE OF CONTENTS

3.6.4	Other Provisions	3-75
3.6.5	Prior Regime — Disposition of Income and Capital Interests	3-76
3.7	Graduated Rate Estates — Other Considerations	3-80
3.8	Conversion of a Testamentary Trust into an <i>Inter Vivos</i> Trust.....	3-82
3.9	Testamentary Trust Loss of Status as a Personal Trust.....	3-85
3.10	Loss Restriction Events	3-86

Chapter 4: Will Planning

4.1	Introduction.....	4-1
4.2	The Terminal Year.....	4-6
4.2.1	Compliance with Statutory Conditions.....	4-6
4.2.1(1)	General	4-6
4.2.1(2)	Testamentary Gifts to a Spouse, Common-Law Partner or to a Conjugal Trust.....	4-10
4.2.1(3)	Farming, Fishing or Farming and Fishing Property.....	4-18
4.2.1(4)	Shares of a Private Corporation.....	4-25
4.2.1(5)	Charitable Donations	4-32
4.2.1(5)(a)	Other Assets	4-36
4.2.1(6)	Avoiding the 21-year Deemed Disposition Rule	4-37
4.2.1(6)(a)	Deemed Disposition Date	4-38
4.2.1(6)(b)	Adding Beneficiaries	4-39
4.2.1(6)(c)	Discretionary Powers.....	4-39
4.2.2	Options and Elections of Legal Representatives.....	4-39
4.2.3	Probate Fees.....	4-41
4.2.4	Special Considerations.....	4-43
4.2.4(1)	Death Bed Planning.....	4-43
4.2.4(2)	Employees	4-44
4.2.4(3)	Special Needs Beneficiaries.....	4-45
4.3	The Estate, the Testamentary Trust and the Beneficiaries	4-47
4.3.1	General.....	4-47
4.3.2	Compliance with Statutory Conditions.....	4-48
4.3.2(1)	The Preferred Beneficiary Election.....	4-48
4.3.2(2)	Amounts “Paid” or “Payable”	4-49
4.3.2(3)	Infant Trusts	4-52
4.3.2(4)	CRA Guidelines	4-55
4.3.3	Fiduciary Standards and the Exercise of Statutory Options and Elections.....	4-57
4.3.4	Facilitating Post Mortem Planning	4-58
4.3.4(1)	General	4-58
4.3.4(2)	Separate Testamentary Trusts.....	4-59

TABLE OF CONTENTS

4.3.4(3) Discretionary Trusts and Preferred Beneficiary Elections.....	4-59
4.3.4(4) The Flow-Through of Income Sources	4-60
4.3.4(5) Losses.....	4-60
4.3.4(6) The 21-Year Deemed Realization	4-61
4.3.4(7) Freezing the Corpus of a Conjugal Trust.....	4-63
4.3.4(8) Acts of Third Parties	4-64
4.3.4(8)(a) Corporate Distributions	4-64
4.3.4(8)(b) Post Mortem Contributions	4-65

Chapter 5: Post Mortem Tax Planning

5.1 Introduction.....	5-1
5.1.1 General.....	5-1
5.1.1(1) Terminal Year.....	5-1
5.1.1(2) Graduated Rate Estate.....	5-3
5.1.1(3) Estates (Including Graduated Rate Estates).....	5-4
5.1.2 Disclaimers: Releases or Surrenders.....	5-7
5.1.3 Variation of Trusts.....	5-10
5.1.4 Dependants' Relief Legislation	5-11
5.1.5 Rectification.....	5-12
5.2 The Terminal Year.....	5-13
5.2.1 General.....	5-13
5.2.2 Deferring Tax.....	5-14
5.2.2(1) Spouses and Common-law Partners.....	5-14
5.2.2(1)(a) Capital Property	5-16
5.2.2(1)(b) "Tainted" Conjugal Trusts.....	5-18
5.2.2(1)(c) Post Mortem Conjugal Trusts	5-22
5.2.2(1)(d) Principal Residence	5-23
5.2.2(1)(e) Land Inventory.....	5-26
5.2.2(1)(f) Reserves	5-26
5.2.2(1)(g) Deferred Income Receipts: RRSPs, RRIFs and RPPs.....	5-27
5.2.2(1)(h) Debt Forgiveness	5-33
5.2.2(2) Rights or Things.....	5-34
5.2.3 Splitting Income.....	5-35
5.2.3(1) Rights or Things.....	5-35
5.2.3(2) Other Separate Returns.....	5-36
5.2.4 Maximizing the Benefit of Deductions or Credits.....	5-36
5.3 The Estate, the Trust and the Beneficiaries.....	5-38
5.3.1 General.....	5-38
5.3.2 Administration.....	5-39
5.3.2(1) Designation as a Graduated Rate Estate.....	5-39
5.3.2(2) Fiscal Period.....	5-39

TABLE OF CONTENTS

5.3.2(3) Charitable Gifts	5-42
5.3.2(4) Loss Carry Back Planning.....	5-43
5.3.2(5) Other Designations and Elections.....	5-43
5.3.3 From Administration to Distribution	5-47
5.3.3(1) General	5-47
5.3.3(2) Income Payable to a Beneficiary	5-48
5.3.3(2)(a) General	5-48
5.3.3(2)(b) Capital Losses.....	5-49
5.3.3(2)(c) Capital Cost Allowance and Terminal Losses.....	5-53
5.3.3(2)(d) Other Flow-Through Provisions.....	5-53
5.3.3(2)(e) Powers of Encroachment	5-54
5.3.3(2)(f) Preferred Beneficiary Election.....	5-56
5.3.3(2)(g) Variation of the Trust	5-57
5.3.3(2)(h) Private Corporations: Share Redemptions and Other Dividends	5-62
5.3.3(2)(h)(i) General	5-62
5.3.3(2)(h)(ii) Timing Issues	5-63
5.3.3(2)(h)(iii) Pipeline Planning.....	5-64
5.3.3(2)(h)(iv) Payment of Dividends and the Even-Hand Rule	5-66
5.3.3(3) Income Payable at the Trustee’s Discretion	5-70
5.3.3(3)(a) General	5-70
5.3.3(3)(b) Infant Beneficiaries	5-73
5.3.3(3)(c) Preferred Beneficiary Election.....	5-73
5.3.3(3)(d) Amounts “Paid” or “Payable”	5-74
5.3.4 Distribution.....	5-75
5.3.4(1) General	5-75
5.3.4(2) Land.....	5-75
5.3.4(3) Personalty	5-76
5.3.4(4) Income Tax Considerations of In Specie Distributions	5-77
5.4 Deemed Realizations and Deferrals	5-78
5.4.1 General.....	5-78
5.4.2 Conjugal Trusts	5-79
5.4.3 Trust Subject to the 21-Year Rule	5-80
5.4.3(1) General	5-80
5.4.3(2) Trust to Trust Transfers.....	5-80
5.4.3(3) Variation of Trusts.....	5-81
5.4.4 21-Year Deemed Disposition Planning	5-82
5.4.4(1) Do Nothing	5-82
5.4.4(2) Reduce Value of Trust Assets.....	5-83
5.4.4(3) Distribute Trust Assets Directly to Beneficiaries	5-83
5.4.4(4) Roll Out to New Corporation for Non-Resident Beneficiaries	5-85

TABLE OF CONTENTS

5.4.4(5) Roll Out to Newco — “Internal Trust Freeze”	5-85
5.4.4(6) Vesting Indefeasibly	5-86
5.4.4(7) Conveying Remainder Interest in Real Property to Capital Beneficiary	5-87
5.4.5 Payment of Tax	5-87

Chapter 6: Gifts and Trusts *Inter Vivos*

Part I — General Principles	6-1
6.1 Introduction	6-1
6.2 Outright Gifts	6-1
6.2.1 General	6-1
6.2.2 Property	6-2
6.2.3 Donor	6-4
6.2.4 Transfer of the Beneficial Interest	6-4
6.2.4(1) General	6-4
6.2.4(2) Intention	6-5
6.2.4(3) Completing the Transfer	6-8
6.2.5 Acceptance, Renunciation and Disclaimer	6-10
6.3 Trusts	6-14
6.3.1 General	6-14
6.3.2 Fundamental Elements of the Law of Trusts	6-18
6.3.2(1) The Trust as a Relationship	6-18
6.3.2(2) Trusts and Contracts	6-22
6.3.2(3) Limited Liability	6-23
6.3.2(4) Trustees as Agents	6-25
6.3.2(5) Obligations of Trustees	6-29
6.3.2(6) Limitations on Disposing of an Interest in a Trust	6-30
6.3.2(7) Powers of Appointment and Other Dispositive Powers	6-33
6.3.3 Requirements for the Creation of Trusts	6-36
6.3.4 Methods and Formalities for Establishing Trusts	6-39
6.3.5 Variation and Revocation of Trusts	6-41
6.3.6 Other Trusts	6-43
6.3.6(1) Bare Trusts	6-43
6.3.6(2) Constructive and Resulting Trusts	6-45
6.3.6(2)(a) General	6-46
6.3.6(2)(b) Constructive Trusts	6-46
6.3.6(2)(c) Resulting Trusts	6-49
6.3.6(2)(d) Tax Issues with Respect to Constructive and Resulting Trusts	6-52
6.3.7 Transactions with Minors	6-53
6.4 Income Taxation Affecting Gifts and Transfers To and From Personal Trusts <i>Inter Vivos</i>	6-58

TABLE OF CONTENTS

6.4.1	General	6-58
6.4.2	Taxation of the Donor at the Time of the Gift or Disposition	6-59
6.4.2(1)	General	6-59
6.4.2(2)	Gifts to a Trust.....	6-61
6.4.2(2)(a)	The Tax “Trust”	6-61
6.4.2(2)(b)	Transfer of Assets to a Trust	6-63
6.4.2(2)(b)(i)	General	6-63
6.4.2(2)(b)(ii)	Dispositions.....	6-64
6.4.2(2)(b)(iii)	Exceptions to Dispositions	6-65
6.4.2(2)(b)(iv)	Transfers that are Ignored	6-65
6.4.2(2)(b)(v)	Consequences of a Disposition.....	6-66
6.4.2(3)	Is There a Rollover? Qualifying Transfers and Qualifying Dispositions	6-66
6.4.2(3)(a)	Trusts Involving a Spouse or Common Law Partner.....	6-67
6.4.2(3)(a)(i)	Spouse or Common Law Partner Trust (“Conjugal Trust”).....	6-67
6.4.2(3)(a)(ii)	The Joint Spousal or Common Law Partner Trust (“Joint Conjugal Trust”).....	6-69
6.4.2(3)(b)	Trusts for One’s Own Benefit.....	6-71
6.4.2(3)(b)(i)	Protective Trust	6-71
6.4.2(3)(b)(ii)	Alter Ego Trust	6-72
6.4.2(3)(b)(iii)	Subsection 73(1.01) “Self-Benefit” Trust.....	6-72
6.4.2(3)(b)(iii)(I)	Pre-2001 Position	6-79
6.4.2(3)(b)(iii)(II)	2001 Amendments	6-80
6.4.2(3)(c)	Qualifying Dispositions	6-80
6.4.2(4)	Gifts of Farm or Fishing Property	6-84
6.4.2(5)	Interests in Personal Trusts.....	6-88
6.4.2(5)(a)	General	6-88
6.4.2(5)(b)	Income Interests	6-89
6.4.2(5)(b)(i)	Dispositions to Third Parties.....	6-90
6.4.2(5)(b)(ii)	Distributions in Satisfaction of an Income Interest.....	6-91
6.4.2(5)(c)	Capital Interests.....	6-92
6.4.2(5)(c)(i)	Dispositions to Third Parties.....	6-93
6.4.2(5)(c)(ii)	Distributions in Satisfaction of a Capital Interest.....	6-95
6.4.2(5)(c)(iii)	Dispositions to Third Parties, Partial Dispositions, Non-Dispositions, and Rights to Enforce Payments.....	6-99

TABLE OF CONTENTS

6.4.2(5)(d) Effect of a Disclaimer, Release, or Surrender	6-100
6.4.2(6) Deemed Dispositions on Death and on a 21st Anniversary	6-105
6.4.2(6)(a) General	6-105
6.4.2(6)(b) Personal Trusts.....	6-105
6.4.2(6)(b)(i) Alter Ego Trusts, Joint Conjugal Trusts, and Post-1971 Conjugal Trusts.....	6-107
6.4.2(6)(b)(ii) Self-Benefit Trusts	6-109
6.4.2(6)(b)(iii) Trusts That are the Result of a Qualifying Disposition	6-110
6.4.2(6)(c) Deemed Dispositions When a Trust Ceases to be Resident in Canada	6-110
6.4.2(7) Taxation of <i>Inter Vivos</i> Personal Trusts.....	6-111
6.4.2(7)(a) General	6-111
6.4.2(7)(b) The Rate of Tax	6-112
6.4.2(7)(c) Preferred Beneficiary Election — Settlor of a Trust.....	6-112.1
Part II — Attribution	6-113
6.4.3 Attribution to the Donor After the Gift.....	6-113
6.4.3(1) General	6-113
6.4.3(2) Transfers to a Spouse, Common-Law Partner or to Certain Minor	6-114
6.4.3(2)(a) Income and Losses.....	6-114
6.4.3(2)(a)(i) General	6-114
6.4.3(2)(a)(ii) Transactions That Attract Attribution	6-115
6.4.3(2)(a)(ii)(A) What is a Transfer?.....	6-115
<i>Fasken Estate v. M.N.R.</i> , [1948] C.T.C. 265 (Can. Ex. Ct.)	6-116
6.4.3(2)(a)(ii)(B) Loans.....	6-129
<i>Interpretation Bulletin IT-511R: Interspousal and Certain Other Transfers and Loans of Property</i>	6-131
6.4.3(2)(a)(iii) Transfers Through a Trust.....	6-132
6.4.3(2)(a)(iv) Other Indirect Transfers of Property.....	6-133
<i>Murphy v. R.</i> , [1980] C.T.C. 386 (F.C.T.D.).....	6-137
<i>R. v. Kieboom</i> , [1992] 2 C.T.C. 59 (F.C.A.).....	6-140
6.4.3(2)(a)(iv.1) Corporate Attribution.....	6-146
6.4.3(2)(a)(v) Community of Property.....	6-148

TABLE OF CONTENTS

6.4.3(2)(a)(vi)	Income from Business.....	6-150
6.4.3(2)(a)(vii)	Residence	6-150
	<i>Wertman v. M.N.R.</i> , [1964]	
	C.T.C. 252 (Ex. Ct.).....	6-151
6.4.3(2)(a)(viii)	Reverse Attribution — Artificial Transactions	6-152
6.4.3(2)(a)(ix)	The General Anti-Avoidance Rule (GAAR)	6-152
	<i>Lipson v. Canada</i> , [2007] 3 C.T.C. 110.....	6-154
6.4.3(2)(b)	Taxable Capital Gains and Allowable Capital Losses.....	6-168.1
6.4.3(3)	Controlled Trusts	6-168.2
6.4.3(3)(a)	Property That May Revert.....	6-170
6.4.3(3)(b)	Pass to Persons to be Determined	6-180
6.4.3(3)(c)	Consent.....	6-182
6.4.3(3)(d)	Application of Subsection 75(2)	6-183
	<i>Interpretation Bulletin IT-369R:</i> <i>Attribution of Trust Income to Settlor</i>	6-184
6.4.3(3)(e)	Subsection 75(2) Post the <i>Sommerer</i> Decision	6-187
6.4.3(4)	Diversion of Income — Income Splitting	6-189
6.4.3(4)(a)	Subsections 56(2) and 56(4)	6-189
	<i>Neuman v. Minister of National Revenue</i> , [1998] 3 C.T.C. 177 (S.C.C.).....	6-193
6.4.3(4)(b)	Tax on Split Income.....	6-202
6.4.3(4)(c)	Subsection 56(4.1)	6-206.4
Part III — Tax Planning		6-207
6.5	Gifts and Tax Planning	6-207
6.5.1	Dispositions of Interests in a Personal Trust.....	6-207
6.5.2	<i>Inter Vivos</i> Personal Trusts	6-208
6.5.2(1)	General	6-208
6.5.2(2)	Powers of Revocation and Other Powers Reserved by the Settlor	6-209
6.5.2(3)	Trusts and Attribution	6-211
6.5.2(4)	Rates of Tax.....	6-211
6.5.2(5)	Non-Residential Settlers	6-212
6.5.2(6)	The Preferred Beneficiary Election.....	6-213
6.5.2(7)	Tainting a Testamentary Trust.....	6-213
6.5.2(8)	Tainting a Personal Trust.....	6-213
6.5.2(9)	Variation of Trusts	6-216
6.5.3	The Release of a Promissory Note.....	6-219
6.5.4	Deferring Tax	6-220
6.5.4(1)	Transfers to a Spouse or Common Law Partner	6-221
6.5.4(2)	Transfers of Farm and Fishing Property	6-223

TABLE OF CONTENTS

6.5.4(3) Alter Ego Trusts	6-223
6.5.4(4) Probate Planning.....	6-224
6.5.5 Splitting Income.....	6-225
6.5.5(1) Is It Payable?.....	6-226
6.5.5(2) Discretionary Trusts: Has an Amount Been Paid?	6-227
6.5.5(3) Third Party Payments.....	6-229
6.5.5(4) Amounts Deemed Paid to Minors — Subsection 104(18).....	6-232
6.5.6 Trust Relationships	6-236
6.5.6(1) Related, Affiliated, and Arm’s Length Issues.....	6-236
6.5.6(1)(a) Settlor/Trustee.....	6-236
6.5.6(1)(b) Settlor/Trust.....	6-237
6.5.6(1)(c) Settlor/Beneficiaries.....	6-237
6.5.6(1)(d) Trustee/Trust.....	6-237
6.5.6(1)(e) Beneficiaries/Trustee.....	6-238
6.5.6(1)(f) Beneficiaries/Trust	6-238
6.5.6(1)(g) Other Relationships: The Trust as an Individual	6-239
6.5.6(1)(g)(i) What Does “Beneficially Owned” Mean?	6-239
6.5.6(1)(g)(ii) Who is the Vendor if the Shares are Held by a Trust?	6-240
6.5.7 Charitable Donations.....	6-242
6.5.7(1) Charitable Donations — Tax Benefits.....	6-242
6.5.7(1)(a) Gifts of Publicly Traded Shares.....	6-246
6.5.7(1)(b) Gifts of Non-Qualifying Securities.....	6-247
6.5.7(2) Gifts of Cultural Property	6-247
6.5.7(2)(a) Gifts of Ecologically Sensitive Land.....	6-249
6.5.7(3) Charitable Gifts — Tax Risks.....	6-249
6.5.7(4) Charitable Gift Planning	6-253

Chapter 7: Estate Freezing

7.1 Introduction.....	7-1
7.2 Simple Freezes	7-3
7.2.1 A Sale	7-3
7.2.2 A Trust.....	7-4
7.3 The Holding Corporation Freeze.....	7-6
7.4 The Question of Consideration.....	7-8
7.4.1 General.....	7-8
7.4.2 Non-Share Consideration.....	7-8
7.4.3 The Value of the Consideration (Shares).....	7-10
7.4.3(1) The Indirect Gift Rule.....	7-10
7.4.3(2) Control Premium	7-14
7.4.4 Attribution	7-17

TABLE OF CONTENTS

7.4.4(1) Introduction.....	7-17
7.4.4(2) Section 74.4.....	7-18
7.4.4(3) Section 120.4.....	7-21
7.5 After the Holding Corporation.....	7-23
7.5.1 General.....	7-23
7.5.2 Subsection 164(6) Loss Carry Backs.....	7-25
7.5.2(1) Life Insurance, the Capital Dividend Account, and Subsection 112(3.2).....	7-25
7.5.2(2) Subsection 40(3.6) Affiliated Persons.....	7-30
7.5.3 Winding Up the Holding Corporation.....	7-33
7.5.4 Winding-Up Under Section 88 (Paragraph 88(1)(d) “Bump”).....	7-36
7.5.5 Amalgamation and Subsection 87(11) “Bumps”.....	7-37
7.6 Deemed Dividends.....	7-38
7.7 Freezing the Control Interest in an Operating Corporation.....	7-40
7.7.1 General.....	7-40
7.7.2 Section 85 Freeze.....	7-41
7.7.3 Section 86 Reorganization.....	7-47
7.7.4 Section 51 Conversion.....	7-52
7.7.5 Other Freeze Techniques.....	7-53
7.8 Other Considerations.....	7-54
7.8.1 The Capital Gains Deduction.....	7-54
7.8.1(1) Accessing the Capital Gains Deduction after the Freeze.....	7-55
7.8.1(1)(a) Tax on Split Income (TOSI).....	7-57
7.8.1(2) Alternative Minimum Tax.....	7-58
7.8.2 Goods and Services Tax.....	7-59
7.9 Price Adjustment Clauses.....	7-60
7.10 Trusts and Common Shares.....	7-63
7.11 Terminating the Estate Freeze, Thawing and Refreezing.....	7-65
7.11.1 Introduction.....	7-65
7.11.2 The Thaw.....	7-66
7.11.3 Refreeze.....	7-68
7.12 Conclusion.....	7-69

Chapter 8: Disposal of Business Interests: Buy-Sell Agreements and Corporate Share Repurchase Plans

8.1 Introduction.....	8-1
8.2 Shareholders’ Agreements.....	8-3
8.2.1 What is a Shareholders Agreement?.....	8-3
8.2.1(1) Why Have a Shareholders’ Agreement?.....	8-4
8.2.2 Structuring the Buy-Sell Provisions.....	8-5
8.2.2(1) Cross-Purchase Agreements.....	8-5
8.2.2(2) Share Redemption Agreements.....	8-6

TABLE OF CONTENTS

8.2.3	Price Determination	8-7
8.2.4	Funding the Purchase Price.....	8-9
8.2.4(1)	General	8-8
8.2.4(2)	Life Insurance and Buy-Sell Planning	8-11
8.2.4(2)(a)	Taxation of Life Insurance Policies	8-11
8.2.4(2)(b)	Life Insurance Products	8-12
8.2.4(2)(b)(i)	Term Insurance	8-12
8.2.4(2)(b)(ii)	Permanent Insurance.....	8-13
8.2.4(3)	Ownership of Life Insurance — Corporate Versus Personal.....	8-17
8.2.5	Additional Planning Clauses	8-24
8.2.6	Taxation Factors	8-26
8.2.6(1)	General Considerations.....	8-26
8.2.6(2)	Determination of Fair Market Value Under Buy-Sell Agreements	8-29
8.2.6(3)	Life Insurance and the Capital Gains Deduction	8-34
8.2.6(3)(a)	General	8-34
8.2.7	Alternative Parties to the Buy-Sell Agreement.....	8-37
8.3	Insurance Funded Buy-Sell Structures — Tax Considerations.....	8-39
8.3.1	Cross-Purchase Method.....	8-39
8.3.2	Promissory Note Method.....	8-40
8.3.3	Redemption Method.....	8-42
8.3.3(1)	Application of the Stop-Loss Rules	8-43
8.3.3(2)	Grandfathering Rules	8-44
8.3.3(3)	Planning Under the New Regime.....	8-48
8.3.4	Hybrid (Combination) Method.....	8-54
8.3.5	Other Planning Options.....	8-55
8.3.6	Subsection 164(6) Loss Carry Backs and Subsection 40(3.6) — “Affiliated” Persons.....	8-56
8.3.6(1)(a)	Who Are Affiliated Persons?	8-57
8.3.6(1)(b)	Subsection 40(3.6) Planning	8-61
8.3.6(2)	Advantages and Disadvantages of Corporate Share Repurchase Plans and Buy-Sell Agreements	8-64
8.3.7	Disability and Buy-Sell Agreements.....	8-65
8.3.8	Partnership Interests	8-67
8.3.8(1)	General	8-67
8.3.8(2)	Withdrawing or Retiring Partner.....	8-67
8.3.8(3)	Death of a Partner.....	8-70

TABLE OF CONTENTS

Chapter 9: International Estate Planning

9.1	Introduction.....	9-1
9.2	Canadian Residents	9-4
9.2.1	Beneficial Interests in Non-Resident Trusts and Estates ...	9-4
9.2.1(1)	Overview	9-4
9.2.1(2)	The Common Law Test of Residency	9-5
9.2.1(3)	Deemed Resident Trusts	9-6
9.2.1(3)(a)	Introduction.....	9-6
9.2.1(3)(b)	The Mechanics.....	9-8
9.2.1(3)(b)(i)	Resident Contributor and Resident Beneficiary.....	9-8
9.2.1(3)(b)(ii)	Contributions and Contributors..	9-9
9.2.1(3)(b)(iii)	Meaning of Transfer or Loan....	9-10
9.2.1(3)(b)(iv)	Meaning of “Arm’s Length Transfer”	9-11
9.2.1(3)(b)(v)	Restricted Property	9-11
9.2.1(3)(b)(vi)	The “Exempt Foreign Trust”	9-12
9.2.1(3)(c)	Tax Implications for Non-Resident Trusts Deemed to be Resident in Canada	9-13
9.2.1(3)(c)(i)	Overview.....	9-13
9.2.1(3)(c)(ii)	Liability for Tax.....	9-14
9.2.1(3)(c)(iii)	Electing Contributors	9-15
9.2.1(3)(c)(iv)	Other Considerations	9-15
9.2.1(3)(d)	Immigrant Trusts	9-15
9.2.1(4)	The Former Non-Resident Trust Regime (NRT Regime).....	9-16
9.2.1(5)	Non-Resident Trusts	9-18
9.2.1(5)(a)	Overview	9-18
9.2.1(5)(b)	Distributions from a Non-Resident Trust.....	9-18
9.2.1(5)(c)	Other Provisions Affecting Non-Resident Trusts.....	9-19
9.2.2	Departure Tax for Canadian Resident Taxpayers.....	9-20
9.2.2(1)	Overview	9-20
9.2.2(2)	The Mechanics.....	9-21
9.2.2(2)(a)	Introduction.....	9-21
9.2.2(2)(b)	Double Taxation.....	9-22
9.2.2(2)(b)(i)	Treaty Relief.....	9-22
9.2.2(2)(b)(ii)	Foreign Tax Credit.....	9-23
9.2.2(2)(b)(iii)	Post-Emigration Losses	9-23
9.2.2(2)(c)	Relief for Returning Former Residents	9-24
9.2.2(2)(d)	Security	9-27
9.2.2(2)(e)	Other Provisions	9-28
9.2.2(2)(f)	Issues and Planning	9-28
9.3	Non-Residents.....	9-31

TABLE OF CONTENTS

9.3.1	Distributions from Canadian Resident Trusts or Estates ...	9-31
9.3.1(1)	Withholding Tax.....	9-31
9.3.1(2)	Part XII.2 Tax.....	9-33
9.3.1(3)	Disposition by a Non-Resident of an Income or Capital Interest.....	9-35
9.3.2	Taxable Canadian Property	9-36
9.4	Foreign Reporting Requirements.....	9-37
9.4.1	General	9-37
9.4.2	Transfers or Loans to a Specified Foreign Trust	9-38
9.4.2(1)	Reporting Requirements	9-38
9.4.2(2)	Interests in Specified Foreign Property	9-39
9.4.2(2)(a)	Reporting Requirements	9-39
9.4.2(2)(b)	Definitions	9-40
9.4.2(3)	Distributions or Loans from Non-Resident Trust.....	9-40
9.4.2(3)(a)	Reporting Requirements	9-40
9.4.2(3)(b)	Definitions	9-40
9.4.2(4)	Foreign Affiliates.....	9-41
9.4.2(4)(a)	Reporting Requirements	9-41
9.4.2(4)(b)	Definitions	9-41
9.4.3	Penalty Provisions	9-41
9.4.3(1)	General	9-41
9.4.3(2)	Penalties for Sections 233.1 to 233.4.....	9-42
9.4.3(3)	Penalties for Section 233.6.....	9-42
9.4.3(4)	Due Diligence Exception	9-42
9.4.3(5)	Exception for First-Year Residents.....	9-43
9.4.4	Non-Arm's Length Transactions with Non-Residents	9-43
9.5	Canada's Tax Treaties.....	9-43
9.5.1	General.....	9-43
9.5.2	Treaty Interpretation.....	9-44
9.5.3	Income	9-48
9.5.4	Capital Gains	9-48
9.5.5	Other Taxes on Death	9-50