INDEX

Α

Acquisitions, share for share

- dispositions, piecemeal, 438
- electability, 436
- generally, 436
- piecemeal dispositions, 438
- purchaser, effect on, 440
- • paid-up capital of, 440
- rollover
- • alternatives to, 441
- • availability of, 437
- • conditions for, 436
- • consequences of, 441
- value on V-day, 442
- vendor, effect on, 439

Adjustments of stated capital accounts, 57

- conversion or change of shares, 58
- reduction, 57

Advantages of corporations, 39

Amalgamations

• acquisitions, distinguished from, 447

- corporate law, 450
- • effect, 452
- • financial tests, 452
- • generally, 450
- • long-form amalgamation, 450
- • short-form amalgamation, 453
- • voting, 451
- form over substance, 449
- generally, 447
- long-form, 450
- new corporation, 455
- • account carry-forward, 456
- • attribution rules, 460
- • depreciable property, 457
- • destroyed property, 459
- • inventory, 456
- • lost property, 459
- • miscellaneous, 461
- • non-depreciable property, 458
- • options, 460
- • partnership interests, 460
- • pre-paid expenses, 459
- reserves, 458

Amalgamations (cont'd)

- • stolen property, 459
- • stop loss rules, 461
- • tax instalments, 455
- • tax year, 455
- paid-up capital, 463
- • carryover of losses, 467
- • deemed dividends, 466
- • election under section 87(3.1), 466
- • loss carryover, 467
- • parent corporation, issuance of shares by, 467
- predecessor corporations, 462
- • creditors of, 463
- • shareholders of, 469
- short-form, 453
- tax purposes, for, 454
- types of, 449

Authorized capital, effect of change of shares on, 59

С

Canadian-controlled private corporations, 29

Canadian corporations, 25

Capital structure, 40

- debt capital, 42
- equity capital, 41

- • contributed surplus, 42
- • retained earnings, 42
- • share capital, 41

Change of shares, effect on authorized capital, 59

Clearance certificates, 495, 567

Corporate distributions

- director's liability, 327
- • court powers, 329
- • dividends, legality of, 327
- • personal, 328
- dividends, of, 295
- • capital, 323
- • account, 324
- • election, 324
- • policy objectives, 323
- generally, 294
- imputation of corporate tax, 301
- inter-corporate dividends, 302
- • stock dividends and splits, 306
- • taxable, 303
- liability of directors, 327
- • court powers, 329
- • dividends, legality of, 327
- personal, 328
- resident individuals, 300
- taxation of, 308

Corporate distributions (cont'd)

- • acquisition of shares, 320
- • anti-avoidance, 308
- • cancellation of shares, 320
- • capital transactions, 310
- • double taxation, elimination of, 322
- • redemption of shares, 320

Corporate emigration, 495

Corporate veil, piercing of, 8

- common law, 8
- statutory, 9

D

Debt capital, 42

Debt financing, tax aspects of, 80

- · capitalizing interest
- • compound interest, 85
- • depreciable property, 83
- • election, 84
- • amount capitalized, 84
- • timing, 84
- • generally, 83
- reassessment, 85
- discounts and premiums, 81
- interest, 81
- • accrued, 82
- • expenses of issuing debt, 83

- • lump sum payments, 83
- • source of income, 82

Definitions

- business, 519
- · dividend, 298
- fixed, 526
- person, 3
- place of business, 527
- professional, 157
- shareholder benefits, 226
- taxable preferred shares, 78
- transfer, 264

Director's liability

- corporate distribution, for, 327
- • court powers, 329
- • dividends, legality of, 327
- • personal, 328

Disadvantages of corporations, 39

Dual residence, 507

Ε

Equity capital, 41

- contributed surplus, 42
- retained earnings, 42
- share capital, 41

Equity financing, 43

- adjustment of stated capital accounts, 57
- • conversion or change of shares, 58
- • reduction, 57
- authorized capital, effect of change of shares on, 59
- cancellation of shares, 60
- corporation holding its own shares, 60
- generally, 43
- hybrid debt, 85
- • convertible debt, 87
- • indirect gifts, 88
- • rollover into shares, 87
- • income bonds and debentures, 86
- • financial difficulty, 86
- • general rule, 86
- • taxable as dividends, 86
- • leases, 88
- • advantages, 89
- • disadvantages, 89
- • tax treatment of, 89
- issuing shares, 46
- • consideration for, 47
- • director liability, 48
- • limited liability, 47
- • no par value, 46
- • number of, 46
- preferred shares, taxable, 74
- • definition of, 78

- • exemptions, 79
- • dividend allowance, 79
- • financial intermediaries, 80
- • short-term preferred shares, 80
- • substantial interest, 79
- • generally, 76
- • history, 74
- reduction of stated capital, 51
- • acquisition of corporation's own shares, 51
- • court orders, 53
- • dissenting shareholder, 53
- • financial tests, 52
- • alternative acquisition of corporation's own shares, 54
- • other
- • creditor's rights, 56
- • financial tests, 55
- • redemption of shares, 54
- share capital, 44
- • nature of shares, 44
- • shareholder rights, 45
- stated capital account, 48
- • continuances, 50
- • resolutions, 50
- • separate accounts for each class, 48
- • shares issued for property, 49
- • credit full consideration, 49
- • non-arm's length transactions, 49

Equity financing (cont'd)

- • stock dividends, 50
- tax aspects of, 60
- • adjusted cost base, 72
- • share redemptions and, 73
- • capitalizing retained earnings, 68
- • classes of shares, 67
- • conversion of shares, 70
- • cost of issuing shares, 71
- • amortization of issuance expenses, 72
- • commissions, 71
- • deductible expenses, 72
- • generally, 71
- • issuance expenses, amortization of,
- • paid-up capital, 62
- • consequences of subsections 84(2) and (3), 67
- • discontinuance of business, 67
- • high-low shares, 65
- • increase paid-up capital, 66
- • reorganization, 67
- • return of capital, 64
- • share redemption, 66
- • winding-up, 67
- • retained earnings, capitalization of, 68
- • share redemption and adjusted cost base, 73
- • stock dividends, 69

- • tax rates, 77
- • types of shares, 61

Estate freezing

- alternatives, 430
- anti-avoidance, 418
- • income sprinkling, 421
- • indirect gifts, 418
- estate planning, 408
- generally, 407
- holding company freeze, 427
- methods of, 408
- section 51, share conversion, 424
- • anti-gifting rule, 427
- • application of, 426
- section 86, pursuant to, 409
- • application of, 411
- • old shares, calculation of gain on, 416
- • requirements, 417
- share conversion under section 51, 424
- anti-gifting rule, 427
- • application of, 426
- share valuation, 422
- • reasonable dividends, 423
- • redeemable shares, 422
- trusts and, 429
- • factors, 429

Exempt corporations, 30

-	-

Holding companies

- anti-avoidance rules, 191
- · capital gains exemption, 187
- • connection corporations, 190
- • parent and subsidiary, 191
- • qualified small business corporation share, 189
- • small business corporation, 188
- • transfer of partnership interest to corporation, 190
- dividend sprinkling, 185
- double taxation, 185
- generally, 184
- inter-corporate loans, 187
- liability of, 184
- price adjustment clause, 192
- restructuring corporations, 192

Hybrid debt, 85

- convertible debt, 87
- • indirect gifts, 88
- • rollover into shares, 87
- income bonds and debentures, 86
- • financial difficulty, 86
- • general rule, 86
- • taxable as dividends, 86
- leases, 88
- • advantages, 89

• • disadvantages, 89

- • tax treatment of, 89
- • nature of lease, 90
- • rentals or instalments, 90
- • restrictions on after-tax financing,

Hybrid financing, 43

I

Income splitting, 232

Individuals, non-arm's length share sales by

- generally, 389
- non-arm's length relationships
- • application, 392
- • connected corporations, 393
- • deemed, 392
- • dispositions by trusts, 394
- • share ownership, 393
- price adjustment clauses, 400
- • administrative interpretation, 402
- • bona fide intention, 402
- • fair market value, determination of, 401
- • purpose, 400
- section 84.1
- • application, 391
- purpose, 391

Individuals, non-arm's length share sales by (cont'd)

- • scope, 394
- • deemed dividend, 396
- ••• reduction in paid-up capital, 395

Integration of corporate and individual taxation, 17

- advance corporate tax model, 20
- classical method, 17
- imputation model, 17

Ν

Nature of corporations, 4

- multiple relationships, 7
- parent, 7
- piercing corporate veil, 8
- • common law, 8
- • statutory, 9
- Salomon doctrine, 6
- separate legal entity, 4
- shareholders, personal liability of, 10
- subsidiary, 7

Non-arm's length, share sales by individuals

- generally, 389
- non-arm's length relationships
- • application, 392
- • connected corporations, 393

- • deemed, 392
- • dispositions by trusts, 394
- • share ownership, 393
- price adjustment clauses, 400
- • administrative interpretation, 402
- • bona fide intention, 402
- • fair market value, determination of,
- • purpose, 400
- section 84.1
- • application, 391
- • purpose, 391
- • scope, 394
- • deemed dividend, 396
- • reduction in paid-up capital, 395

Non-resident corporations

- business organizations, forms of, 570
- • agency, 571
- • branch operations, 572
- • considerations, 576
- holding companies, 576
- • subsidiary corporations, 574
- capital gains, 578
- • taxable income, 578
- corporate residence, 503
- • factual residence, 505
- • deemed non-resident by treaty, 509
- • dual residence, 507

Non-resident corporations (cont'd)

• • • generally, 506

• • • treaty shopping, 508

• • statutory rules, 504

• forms of business organizations, 570

• • agency, 571

• • branch operations, 572

• • considerations, 576

• • holding companies, 576

• • subsidiary corporations, 574

• generally, 503

• residence of corporation, 503

• • factual residence, 505

• • statutory rules, 504

• shareholders, *see* Non-resident shareholders

• tax liability, 510

• • business in Canada, 518

• • • business versus investment, 518

• • • definition of business, 519

••• fixed place of business permanent establishment, 525

• • employment in Canada, 510

• • • Canada-U.S. treaty, 514

• • • international transport personnel, 517

• • • stock options, 513

• • • treaty provisions, 511

• • taxable Canadian property, 567

• • • clearance certificates, 567

• • • excluded property, 568

• tax rates, 569

• • corporations, 570

• • individuals, 569

• • trusts, 570

• treaty limitations on, 520

• • article 5(1), 525

• • article 5(2), 535

• • article 5(3), 536

• • article 5(4), 545

• • article 5(4.1), 547

• • article 5(5), 548

• • article 5(6), 555

• • article 5(7), 560

• • article 5(8), 562

• • fixed place of business, 525

• • • definitions, 526

• • • geographical coherence, 531

• • • permanency, 532

• • • temporal limits, 533

••• through fixed place of business, 533

• income allocation, 522

• • • capital gains, 522

• • • employment income, 522

• • • investment income, 522

• • • non-discrimination, 522

• • • other income, 522

• • permanent establishment, 523

Non-resident corporations (cont'd)

- • OECD Model, 524
- • types of, 525
- ••• UN Model, 524
- withholding taxes, 580
- • dividends, 584
- • other payments, 588
- • payments subject to, 582

Non-resident shareholders, 252

- amounts owed by, 254
- · deemed payments to, 253
- withholding tax, 253

Р

Partnership, transfer of property by, 379

- real property, 379
- winding-up, 380

Person, definition of, 3

Piercing corporate veil, 8

- common law, 8
- statutory, 9

Preferred shares, taxable, 74

- definition of, 78
- exemptions, 79
- • dividend allowance, 79
- • financial intermediaries, 80
- • short-term preferred shares, 80

- • substantial interest, 79
- generally, 76
- history, 74

Private corporations, 28

- investment income of, 197
- • capital dividends, 212
- • dividend income, 200
- • conceptual model of integration,
- • part IV tax, 202
- • incorporation of, 215
- • advantages, 216
- • integration, 212
- • other, 206
- • aggregate, 208
- • foreign, 209
- • refundable dividend tax on hand, 213
- • tax refunds, 210
- • conceptual integration of corporate capital gains, 211
- • conceptual integration of corporate investment income, 210
- • types of, 199
- tax objectives, 197

Professional corporations

- accounting for, 162
- • costs of administration, 170
- • holding companies, 170
- • restrictions on, 170

Professional corporations (cont'd)

- • income shifting, 165
- • lifetime capital gains exemption, 176
- • remuneration, 169
- • small business deduction, 163
- • specified partnership income, 165
- • split income, tax on, 170
- • adults over age of 25, 172
- • children under 18, 171
- ••• children 18–24, 171
- • inherited property, 174
- • reasonable return, 172
- • specified exclusions, 176
- • spouses, age 65+, 176
- • tax deferral, 165
- anti-avoidance rules, 177
- • corporations, 180
- • tax avoidance, 180
- definition of, 157
- · disadvantages of, 176
- enabling statutes, 159
- • certificate of authorization, 162
- • continued existence of corporation, 161
- limited liability partnerships, 161
- • regulatory restrictions, 161
- • unlimited liability, 161
- • void voting agreements, 160
- fundamental business concepts, 158

• rationale, 158

Public corporations, 25

- ministerial designation, 27
- status
- • electing into, 26
- • electing out of, 28
- • special, 30
- taxable Canadian, 25

S

Salomon doctrine, 6

Share capital, 44

- nature of shares, 44
- shareholder rights, 45

Shareholder managers, compensation of, 222

- bonuses, 222
- • accrued, 224
- • contingent liabilities, 223
- • small business deduction, 224
- salaries, 222

Shareholders

- agreements, 275, see also Shareholders' agreements
- appropriation, 238
- consideration, 239
- property cost, 240

Shareholders (cont'd)

- • winding-up, 240
- automobile standby charge, 251
- benefits, 225
- • conferral of, 228
- • definition of, 226
- • exempt, 230
- • indirect, 231
- • repayment, 233, 236
- • taxable, 229
- • tax avoidance, 251
- • tax treatment of, 228
- • valuation, 233
- • consideration, 234
- • fair market value, 236
- • non-arm's length transaction, 234
- compensation, managers, 222
- • bonuses, 222
- • accrued, 224
- • contingent liabilities, 223
- • small business deduction, 224
- • salaries, 222
- debt, 241
- • imputed value of benefits from, 249
- • exclusions, 250
- • interest, deduction of, 250
- • taxability of, 244
- income splitting, 232
- loans, 242

- • excluded, 247
- • imputed interest on, 248
- • inter-corporate, 247
- • taxability of, 244
- non-resident, 252
- • amounts owed by, 254
- • deemed payments to, 253
- • withholding tax, 253
- personal liability of, 10
- rights, re share capital, 45
- tax liability of, 23, 268
- tax treatment of benefits, 228

Shareholders' agreements, 275

- associated corporations, 278
- capital gains, 282
- clauses, 283
- • deemed disposition, 285
- • funding, 285
- • mandatory purchases, 286
- • market for share, 283
- • right of first refusal, 288
- • valuation, 287
- considerations, 289
- control, 277
- funding of, 282
- inter vivos, 276
- key considerations, 289
- market for shares, 280

Shares, change of, effect on authorized capital, 59

Shares, non-arm's length sales by individuals

- · generally, 389
- non-arm's length relationships
- • application, 392
- • connected corporations, 393
- • deemed, 392
- • dispositions by trusts, 394
- • share ownership, 393
- price adjustment clauses, 400
- • administrative interpretation, 402
- • bona fide intention, 402
- • fair market value, determination of, 401
- • purpose, 400
- section 84.1
- • application, 391
- • purpose, 391
- • scope, 394
- • deemed dividend, 396
- • reduction in paid-up capital, 395

Stated capital accounts

- adjustment of, 57
- • conversion or change of shares, 58
- • reduction, 57
- continuances, 50
- resolutions, 50

- separate accounts for each class, 48
- shares issued for property, 49
- • credit full consideration, 49
- • non-arm's length transactions, 49
- stock dividends, 50

Statutory structure, 109

- active business income, 123
- business versus investment income,
 125
- • factors to consider in incorporating income of, 147
- • advantages, 147
- • disadvantages, 147
- • incidental business income, 125
- • personal services business, from, 127
- presumptions, 124
- • specified investment business, 126
- Canadian-controlled private corporations, 119
- corporate control, determining association and, 140
- • de facto control, 146
- directly or indirectly or in any manner whatsoever, 146
- • de jure control, 141
- • appropriation of assets, 141
- • attribution rules, 144
- ••• control by two groups, 142
- • group of persons, 141
- • holding corporations, 143

Statutory structure (cont'd)

• • • market value control, 142

• • • options and rights, 144

• • • partnerships, 143

• • • tax avoidance, 145

• • • trusts, 144

• • • voting power, 141

• gross-up factor, 113

• policy objectives, 111

• • double taxation, prevention of, 111

• • tax integration, 112

· small business deduction, 129

• • association with third corporation, 140

• • availability of, 129

• • calculation of, 129

• • corporate partnerships, 131

• • interrelated shareholdings, 134

• • • control of corporation, 134

• • • cross-ownership of shares, 136

• tax incentives, 118

• types of dividends, 116

• • eligible, 116

• • non-eligible, 118

Т

Tax liability, 261

• attributed income, 271

· dividends, law of, 266

• • exchanged for services, 270

• • fair market value of, 267

• • shareholders, liability of, 268

• loans, 271

• rule in subsection 160(1), 261

• • limitation period, 265

• • non-arm's length, 264

• • power of, 265

• • purpose of, 263

• • strict liability, 263

• • transfer, meaning of, 264

Taxable preferred shares, 74

• definition of, 78

• exemptions, 79

dividend allowance, 79

• • financial intermediaries, 80

• • short-term preferred shares, 80

• • substantial interest, 79

• generally, 76

• history, 74

Taxation

• double, 15

• factors affecting, 23

• ideal rate, 14

• integration of, 17

advance corporate tax model, 20

• • classical method, 17

Taxation (cont'd)

- • imputation model, 17
- justification for, 12
- rate
- • corporate rate 2018, 109
- • double, 15
- • flat rate, 22
- • general discussion, 14
- • general rate, 21
- · · non-residents
- • corporations, 570
- • individuals, 569
- • trusts, 570
- • special rate, 22
- shareholders, of, 23
- • benefits, 228
- structure of, 11

Transfer of property, 338

- conflicting rules, 364
- • cost of consideration, 370
- • cost of property, 368
- • indirect benefits rule, 365
- • paid-up capital of issued shares, 374
- consideration, 355
- • allocation, 356
- • boot, 356
- • shares, 355
- double taxation, potential for, 376

- • problem defined, 376
- • solution, 378
- elected amounts, 357
- • limits, 357
- • general, 357
- • specific, 361
- election, 352
- • assets, listing of, 352
- • election filing, 355
- • late, 353
- • going concern, sale of business as,
- • legal fiction, 352
- • price adjustment clauses, 354
- partnership, by, 379
- • real property, 379
- • winding-up, 380
- rollover, eligibility for, 348
- • eligible capital property, 351
- • individual asset test, 351
- • real estate, 349
- • receivables, 350
- section 85, 339
- • application, 342
- • availability of, 347
- election of values, 346
- • examples, 342
- • exclusion of, 348
- • partnership, 346

Transfer of property (cont'd)

- • tax deferred rollover, 341
- • values, election of, 346

Transfer pricing

- adjustments, 607
- • ministerial powers, 608
- • recharacterization, 608
- • section 347(2), 607
- arm's length principle and, 601
- • application of, 605
- • comparability of transactions, 606
- • corporations, 603
- • individuals, 602
- • meaning of, 601
- • related persons, 601
- • special rules and, 603
- audit requirements, 620
- • purpose, 620
- • reportable transactions, 621
- • when to file, 621
- • who must file, 620
- competent authority procedures, 625
- • foreign based information, 626
- · documentation of transactions, 614
- • document package, 615
- intra-group services, 629
- law regarding, 600
- OECD guidelines, 603

- • judicial reception of, 605
- penalties, 610
- • adjustments, 610
- • credit for, 611
- • competent authority negotiations, 612
- consideration of by TPRC, 612
- • defences to, 611
- principal judicial decisions, 631
- provincial taxes, 628
- reporting requirements, 620
- • purpose, 620
- • reportable transactions, 621
- • when to file, 621
- • who must file, 620
- rules
- • purpose of, 599
- specific provisions, 609
- • tax benefit, 609
- tax havens, 621
- • audit screening, 622
- • burden of proof, 622
- • transfer pricing methods, 623
- transactions, documentation of, 614
- • document package, 615

Treaty shopping, 508

Types of corporations, 25

• Canadian, 25

Types of corporations (cont'd)

- Canadian-controlled private, 29
- exempt, 30
- other, 30
- private, 28
- public, 25
- • ministerial designation, 27
- • status
- • electing into, 26
- • electing out of, 28
- • special, 30
- • taxable Canadian, 25

W

Winding-up

- 90% subsidiary, of, 482
- • eligibility for rollover, 483
- • losses, 491
- • minority shareholders, disposition of property to, 490
- • parent corporation

- • acquisition of property by, 487
- • disposition of subsidiary's shares by, 490
- • losses of, 491
- • rollover, eligibility for, 483
- • subsidiary corporation
- • liability of, 486
- • property of, 483
- clearance certificates, 495
- corporate emigration, 495
- corporate law, 480
- • dissolution
- • by court order, 482
- • involuntary, 482
- • voluntary, 481
- generally, 479
- non-resident corporations, 493
- • generally, 494
- other Canadian corporations, of, 493
- • deemed dividends, 493
- • proceeds of disposition, 493