

## TABLE OF CONTENTS

<i>Preface</i> .....	v
<i>Table of Cases</i> .....	xxxiii
<b>Chapter 1 — Basic Principles of Corporate Tax ..... 1</b>	
I. General Comment .....	3
II. Nature of Corporate Entities .....	4
A. Separate Legal Entity .....	4
B. The Salomon Doctrine .....	6
C. Parent and Subsidiary .....	7
D. Multiple Relationships .....	7
E. Piercing the Corporate Veil .....	8
1. Common Law Piercing .....	8
2. Statutory Piercing .....	9
F. Personal Liability of Shareholders .....	10
III. Structure of Corporate Taxation .....	11
A. Why a Corporate Tax? .....	12
B. What Is the Ideal Tax Rate? .....	14
C. Double Taxation .....	15
D. Integration .....	17
1. The Classical Method .....	17
2. The Imputation Model .....	17
3. The Advance Corporate Tax Model .....	20
E. Tax Rates .....	21
1. General Rates .....	21
2. Flat Rate .....	22
3. Special Rates .....	22
F. Taxation of Shareholders .....	23
G. Factors Affecting Corporate Taxation .....	23
IV. Types of Corporations .....	25
A. Canadian Corporation .....	25
B. Taxable Canadian Corporation .....	25
C. Public Corporations .....	25
1. Electing Public Corporation Status .....	26
2. Ministerial Designation .....	27

Table of Contents

3.	Electing Out of Public Corporation Status . . . . .	28
D.	Private Corporations . . . . .	28
E.	Canadian-Controlled Private Corporations . . . . .	29
F.	Other Corporations . . . . .	30
G.	Special Status Corporations . . . . .	30
H.	Exempt Corporations . . . . .	30
	Selected Bibliography to Chapter 1 . . . . .	31
<b>Chapter 2 — Basic Corporate Finance . . . . .</b>		<b>33</b>
I.	General Comment . . . . .	38
II.	Capital Structures . . . . .	40
A.	Equity Capital . . . . .	41
1.	Share Capital . . . . .	41
2.	Contributed Surplus . . . . .	42
3.	Retained Earnings . . . . .	42
B.	Debt Capital . . . . .	42
C.	Hybrid Financing . . . . .	43
III.	Corporate Aspects of Equity Financing . . . . .	43
A.	General Comment . . . . .	43
B.	Share Capital . . . . .	44
1.	Nature of Shares . . . . .	44
2.	Shareholder Rights . . . . .	45
C.	Issuing Shares . . . . .	46
1.	No Par Value . . . . .	46
2.	Number of Shares . . . . .	46
3.	Limited Liability . . . . .	47
4.	Consideration for Shares . . . . .	47
5.	Liability of Directors . . . . .	48
D.	Stated Capital Account . . . . .	48
1.	Separate Accounts for Each Class . . . . .	48
2.	Shares Issued for Property . . . . .	49
(a)	Credit Full Consideration . . . . .	49
(b)	Non-Arm's Length Transactions . . . . .	49
3.	Stock Dividends . . . . .	50
4.	Continuances . . . . .	50
5.	Resolutions . . . . .	50
E.	Reduction of Stated Capital . . . . .	51
1.	Acquisition of Corporation's Own Shares . . . . .	51
(a)	Financial Tests . . . . .	52
(b)	Dissenting Shareholders . . . . .	53

## Table of Contents

(c) Court Order .....	53
2. Alternative Acquisition of Corporation's Own Shares .....	54
3. Redemption of Shares .....	54
4. Other Reductions of Stated Capital .....	55
(a) Financial Tests .....	55
(b) Creditor's Rights .....	56
F. Adjustments of Stated Capital Accounts .....	57
1. Reduction .....	57
2. Conversion or Change of Shares .....	58
G. Effect of Change of Shares on Authorized Capital .....	59
H. Cancellation of Shares .....	60
I. Corporation Holding Its Own Shares .....	60
IV. Tax Aspects of Equity Financing .....	60
A. General Comment .....	60
B. Types of Shares .....	61
C. Paid-up Capital (PUC) .....	62
D. Adjustments to Paid-up Capital .....	63
1. Return of Capital .....	64
2. High-Low Shares .....	65
3. Increase Paid-up Capital .....	66
4. Redemption of Shares .....	66
5. Winding-up, Discontinuance or Reorganization of Business .....	67
6. Other Tax Consequences of Subsections 84(2) and 84(3) .....	67
E. Classes of Shares .....	67
F. Capitalizing Retained Earnings .....	68
G. Stock Dividends .....	69
H. Conversion of Shares .....	70
I. Cost of Issuing Shares .....	71
1. General Comment .....	71
2. Commissions to Agents .....	71
3. Commissions to Purchaser .....	71
4. Deductible Expenses .....	72
5. Amortization of Issuance Expenses .....	72
J. Adjusted Cost Base (ACB) .....	72
K. Share Redemptions and Adjusted Cost Base .....	73
L. Taxable Preferred Shares .....	74
1. Background .....	74
2. Taxable Preferred Shares .....	76

## Table of Contents

(a)	General Scheme .....	76
(b)	Rates of Tax .....	77
(c)	Meaning of “Taxable Preferred Shares” .....	78
3.	Exemptions .....	79
(a)	“Substantial Interest” .....	79
(b)	“Dividend Allowance” .....	79
(c)	Financial Intermediaries .....	80
(d)	Short-Term Preferred Shares .....	80
V.	Tax Aspects of Debt Financing .....	80
A.	Discounts and Premiums .....	81
B.	Interest .....	81
1.	Source of Income .....	82
2.	Accrued Interest .....	82
3.	Expenses of Issuing Debt .....	83
4.	Lump Sum Payments .....	83
C.	Capitalizing Interest .....	83
1.	General Comment .....	83
2.	Depreciable Property .....	83
3.	Election .....	84
(a)	Timing .....	84
(b)	Amount Capitalized .....	84
4.	Reassessment .....	85
5.	Compound Interest .....	85
VI.	Hybrid Debt .....	85
A.	Income Bonds and Debentures .....	86
1.	General Rule .....	86
2.	Financial Difficulty .....	86
3.	Taxable as Dividends .....	86
B.	Convertible Debt .....	87
1.	Rollover into Shares .....	87
2.	Indirect Gifts .....	88
VII.	Leases .....	88
A.	Advantages .....	89
B.	Disadvantages .....	89
C.	Tax Treatment .....	89
1.	Nature of Lease .....	90
2.	Rentals or Installments .....	90
(a)	Option to Purchase at Fair Market Value .....	92
(b)	Option to Purchase at Less than Fair Market Value .....	92

Table of Contents

D.	Restrictions on After-Tax Financing .....	94
1.	The Lessor's Position .....	94
2.	The Lessee's Position .....	95
3.	Anti-Avoidance Rule.....	96
4.	Financing a U.S. Subsidiary .....	97
5.	Meaning of Debt.....	97
	Selected Bibliography to Chapter 2 .....	98
	<b>Chapter 3 — Corporate Business Income .....</b>	<b>107</b>
I.	The Statutory Structure .....	109
A.	General Corporation Tax Rates on Business Income (2018) ..	109
B.	Policy Objectives .....	111
1.	Prevention of Double Taxation .....	111
2.	Tax Integration .....	112
C.	The Gross-up Factor .....	113
II.	Types of Dividends .....	116
A.	Eligible Dividends.....	116
B.	Non-Eligible (Ordinary) Dividends .....	118
III.	Special Tax Incentives.....	118
IV.	Canadian-Controlled Private Corporations .....	119
V.	Active Business Income .....	123
A.	Presumptions .....	124
B.	Business versus Investment Income .....	125
C.	Incidental Business Income .....	125
D.	Specified Investment Business .....	126
E.	Personal Services Business Income .....	127
VI.	The Small Business Deduction (SBD) .....	129
A.	Who May Claim the SBD? .....	129
B.	Calculation of the SBD .....	129
C.	Corporate Partnerships .....	131
D.	Associated Corporations .....	133
1.	Interrelated Shareholdings .....	134
(a)	Control of One Corporation by Another .....	134
(b)	Control of Corporations by Same Person.....	135
(c)	Cross-Ownership of Shares .....	137
(d)	Group Control and Cross-Ownership .....	138
(e)	Control by Related Group and Cross- Ownership .....	139
2.	Association with Third Corporation .....	140
VII.	Corporate Control in Determining Association .....	140

## Table of Contents

A.	De Jure Control .....	141
1.	Voting Power .....	141
2.	Appropriation of Assets .....	141
3.	“Group of Persons”.....	141
4.	Control by Two Groups .....	142
5.	Market Value Control .....	142
6.	Holding Corporations .....	143
7.	Partnerships .....	143
8.	Trusts .....	144
9.	Attribution Rules .....	144
10.	Options and Rights .....	144
11.	Tax Avoidance .....	145
B.	De Facto Control .....	146
1.	“Directly or Indirectly in Any Manner Whatever” .....	146
VIII.	Factors to Consider in Incorporating Active Business Income.....	147
A.	Advantages .....	147
B.	Disadvantages .....	147
	Selected Bibliography to Chapter 3 .....	148
	<b>Chapter 4 — Professional Corporations .....</b>	<b>155</b>
I.	General Comment .....	157
A.	Meaning of Professional .....	157
B.	Rationale .....	158
II.	Fundamental Business Concepts .....	158
III.	Enabling Statutes .....	159
A.	Void Voting Agreements .....	160
B.	Continued Existence of Corporation .....	161
C.	Unlimited Liability .....	161
D.	Limited Liability Partnerships .....	161
E.	Regulatory Restrictions .....	161
F.	Certificate of Authorization .....	162
IV.	Accounting for Professional Corporations .....	162
A.	The Small Business Deduction .....	163
B.	Specified Partnership Income .....	165
C.	Income Shifting .....	165
D.	Tax Deferral .....	165
1.	February 27, 2018 Budget .....	167
E.	Remuneration .....	169
F.	Costs of Administration .....	170
G.	Holding Companies .....	170

## Table of Contents

I.	1.    Restrictions on Holding Companies . . . . .	170
H.	Tax on Split Income (TOSI) . . . . .	170
	1.    Children Under 18 . . . . .	171
	2.    Children Aged 18 to 24 . . . . .	171
	3.    Adults Aged 25+ . . . . .	172
	4.    Reasonable Return . . . . .	172
	(a)    CRA's Assessment Policies . . . . .	173
	(b)    Notice of Objection . . . . .	174
	5.    Inherited Property . . . . .	174
	6.    Specified Exclusions . . . . .	176
	7.    Spouses Aged 65 and Over . . . . .	176
I.	Lifetime Capital Gains Exemption . . . . .	176
V.	Disadvantages of Incorporation of Professional Corporation . . . . .	176
VI.	Anti-Avoidance Rules . . . . .	177
	A.    Corporations . . . . .	180
	B.    Tax Avoidance . . . . .	180
VII.	Conclusion . . . . .	182
	Selected Bibliography to Chapter 4 . . . . .	182
	<b>Chapter 5 — Holding Companies . . . . .</b>	<b>183</b>
I.	Overview . . . . .	184
II.	Liability . . . . .	184
III.	Double Taxation . . . . .	185
IV.	Dividend Sprinkling . . . . .	185
V.	Inter-Corporate Loans . . . . .	187
VI.	Capital Gains Exemption . . . . .	187
	A.    Small Business Corporation . . . . .	188
	B.    Qualified Small Business Corporation Share . . . . .	189
	C.    Transfer of Partnership Interest to Corporation . . . . .	190
	D.    Connected Corporations . . . . .	190
	E.    Parent and Subsidiary Corporations . . . . .	191
VII.	Anti-Avoidance Rules . . . . .	191
VIII.	Restructuring Corporations . . . . .	192
IX.	Price Adjustment Clause . . . . .	192
X.	Conclusion . . . . .	192
	Selected Bibliography to Chapter 5 . . . . .	193
	<b>Chapter 6 — Private Corporation Investment Income . . . . .</b>	<b>195</b>
I.	General Comment . . . . .	197

## Table of Contents

II.	Tax Objectives . . . . .	197
III.	Types of Investment Income . . . . .	199
IV.	Dividend Income . . . . .	200
	A. Conceptual Model of Integration . . . . .	201
	B. Part IV Tax . . . . .	202
	1. Rationale . . . . .	202
	2. Application . . . . .	203
	3. Taxable Dividends . . . . .	203
	4. Connected Corporations . . . . .	204
	5. Excluded Dividends . . . . .	205
	6. Dividend Refund . . . . .	205
V.	Other Investment Income . . . . .	206
	A. “Investment Income” . . . . .	208
	1. Aggregate Investment Income . . . . .	208
	(a) Presumptions . . . . .	208
	(b) Specified Investment Business . . . . .	209
	2. Foreign Investment Income . . . . .	209
	B. Refund of Tax . . . . .	210
	1. Conceptual Integration of Corporate Investment Income . . . . .	210
	2. Conceptual Integration of Corporate Capital Gains . . . . .	211
	C. Capital Dividends . . . . .	212
	D. Integration . . . . .	212
	E. Refundable Dividend Tax on Hand . . . . .	213
VI.	Factors to Consider in Incorporating Investment Income . . . . .	215
	A. Advantages . . . . .	215
	B. Disadvantages . . . . .	216
	Selected Bibliography to Chapter 6 . . . . .	216
 <b>Chapter 7 — Shareholder Compensation . . . . .</b>		<b>219</b>
I.	General Comment . . . . .	222
II.	Shareholder-Manager Compensation . . . . .	222
	A. Salaries and Bonuses . . . . .	222
	1. Contingent Liabilities . . . . .	223
	2. Accrued Bonuses . . . . .	224
	3. “Bonusing Down” for Small Business Deduction . . . . .	224
III.	Shareholder Benefits . . . . .	225
	A. What Is a Benefit? . . . . .	226
	1. Is the Appropriation a Benefit? . . . . .	227
	2. Tax Treatment of Benefits . . . . .	228

## Table of Contents

3.	Prospective Shareholders . . . . .	228
4.	Capacity in which Benefit Is Conferred . . . . .	228
B.	Taxable Benefits . . . . .	229
C.	Exempt Benefits . . . . .	230
D.	Indirect Benefits . . . . .	231
E.	Income Splitting Corporate Structures . . . . .	232
F.	Repayment of Benefits . . . . .	233
IV.	Valuation of Benefits . . . . .	233
A.	Inadequate Consideration . . . . .	234
B.	Excessive Consideration . . . . .	234
C.	Non-Arm's Length Transactions . . . . .	234
D.	Repayment of Benefits . . . . .	236
E.	Fair Market Value . . . . .	236
1.	Opportunity Costs . . . . .	236
2.	Rental Value . . . . .	236
3.	Imputed Value . . . . .	237
4.	Deemed Dividends . . . . .	237
V.	Appropriations . . . . .	238
A.	Inadequate Consideration . . . . .	239
B.	Cost of Property . . . . .	240
C.	Winding-up . . . . .	240
VI.	Shareholder Debt . . . . .	241
A.	Overview . . . . .	241
B.	Loans and Indebtedness . . . . .	242
C.	Basic Rule . . . . .	243
D.	Application . . . . .	244
E.	Criteria for Taxability . . . . .	244
1.	Repayment . . . . .	245
F.	Inter-Corporate Loans . . . . .	247
G.	Excluded Loans . . . . .	247
H.	Imputed Interest on Loans . . . . .	248
1.	Relationship between Parties . . . . .	249
I.	Imputed Value of Benefits from Indebtedness . . . . .	249
1.	Deduction of Interest . . . . .	250
2.	Exclusions . . . . .	250
(a)	Commercial Rate Loans . . . . .	250
(b)	Principal Sum Taxed . . . . .	251
VII.	Automobile Standby Charge . . . . .	251
VIII.	Tax Avoidance Benefits . . . . .	251
IX.	Non-Residents . . . . .	252

Table of Contents

A.	Non-Resident Shareholders and Corporations . . . . .	252
B.	Relationship between Subsection 15(2) and Section 80.4 . . . . .	253
C.	Deemed Payments to Non-Residents and Withholding Tax . . . . .	253
D.	Amounts Owing by Non-Resident . . . . .	254
	Selected Bibliography to Chapter 7 . . . . .	254
<b>Chapter 8 — Shareholder Liability for Corporate Taxes . . . . .</b>		<b>259</b>
I.	Overview . . . . .	261
II.	The Rule in Subsection 160(1) . . . . .	261
	A. Purpose of Rule . . . . .	263
	B. Strict Liability . . . . .	263
	C. Meaning of Transfer . . . . .	264
	D. Non-Arm's Length . . . . .	264
	E. No Limitation Period . . . . .	265
	F. The Power of Section 160 . . . . .	265
III.	Corporate Law of Dividends . . . . .	266
	A. Fair Market Value of Dividends . . . . .	267
	B. Potential Liability of Shareholders . . . . .	268
	1. Fournier v. Minister of National Revenue . . . . .	268
	2. Algoa Trust . . . . .	269
	C. Dividends in Exchange for Services . . . . .	270
	D. Loans . . . . .	271
	E. Attributed Income . . . . .	271
IV.	Liability Before Assessment . . . . .	271
	Selected Bibliography to Chapter 8 . . . . .	271
<b>Chapter 9 — Shareholders' Agreements . . . . .</b>		<b>273</b>
I.	General Comment . . . . .	275
II.	Inter Vivos Agreements . . . . .	276
	A. Control . . . . .	277
	B. Associated Corporations . . . . .	278
	1. Option to Acquire Shares . . . . .	278
	2. Right of Refusal . . . . .	279
	C. Market for Shares . . . . .	280
	1. Right of First Refusal . . . . .	280
	2. Shotgun Clause . . . . .	280
	3. Private Auction . . . . .	281
	4. Compulsory Offer . . . . .	281
	5. Piggyback Clause . . . . .	281

## Table of Contents

D.	Funding the Agreement . . . . .	282
	1. Corporation Party to Agreement . . . . .	282
	2. Corporation Not Party to Agreement . . . . .	282
E.	Capital Gains . . . . .	282
III.	Shareholders' Agreement Clauses . . . . .	283
A.	Market for Shares . . . . .	283
B.	Deemed Disposition on Death . . . . .	285
C.	Funding . . . . .	285
D.	Mandatory Purchases . . . . .	286
E.	Valuation . . . . .	287
1.	Arm's Length Relationships . . . . .	287
2.	Non-Arm's Length Relationships . . . . .	287
3.	Insurance . . . . .	287
F.	Right of First Refusal . . . . .	288
IV.	Key Items to Consider . . . . .	289
	Selected Bibliography to Chapter 9 . . . . .	290
 <b>Chapter 10 — Corporate Distributions . . . . .</b>		<b>291</b>
I.	General Comment . . . . .	294
II.	Dividend Distributions . . . . .	296
A.	The Classical System . . . . .	296
B.	Meaning of "Dividend" . . . . .	298
C.	Types of Dividends . . . . .	298
1.	Cash . . . . .	299
2.	Stock . . . . .	299
3.	In Kind . . . . .	300
D.	Resident Individuals . . . . .	300
1.	From Taxable Canadian Corporations . . . . .	300
(a)	Imputation of Corporate Taxes . . . . .	301
2.	From Non-Resident Corporations . . . . .	302
III.	Inter-Corporate Dividends . . . . .	302
A.	General Comment . . . . .	302
B.	"Taxable Dividend" . . . . .	303
C.	Deduction for Taxable Dividends . . . . .	303
1.	Restrictions on Deduction for Dividends . . . . .	304
2.	Dividends on Collateralized Preferred Shares . . . . .	304
3.	Term Preferred Shares . . . . .	305
D.	Stock Dividends and Stock Splits . . . . .	306
1.	Accounting . . . . .	307
2.	Taxable as Dividends . . . . .	307

## Table of Contents

3.	Cost Base of Shares . . . . .	308
IV.	Part II.1 Tax on Corporate Distributions . . . . .	308
A.	Anti-Avoidance Tax . . . . .	308
1.	Dividends from Non-Resident Corporations . . . . .	309
B.	Capital Transactions . . . . .	310
1.	Paid-up Capital . . . . .	310
(a)	Corporate Law . . . . .	311
(b)	Separate Accounts . . . . .	312
(c)	Exchange of Property . . . . .	314
(d)	Consideration . . . . .	314
(e)	Adjusted Cost Base . . . . .	315
2.	Deemed Dividends . . . . .	315
(a)	Increase in Paid-up Capital . . . . .	315
(b)	Inadequate Consideration . . . . .	316
(c)	Adjusted Cost Base . . . . .	316
(d)	Stock Dividends . . . . .	316
(e)	Pro Rata Dividend . . . . .	317
(f)	Conversion of Shares . . . . .	318
3.	Liquidating Distributions . . . . .	318
(a)	Deemed Dividends . . . . .	318
(b)	Reduction in Proceeds . . . . .	319
C.	Redemption, Acquisition or Cancellation of Shares . . . . .	320
1.	Deemed Dividend . . . . .	320
2.	Reduction in Proceeds . . . . .	320
3.	Capital Gain . . . . .	321
4.	Reduction of Paid-up Capital . . . . .	322
(a)	Deemed Dividend . . . . .	322
(b)	Pro Rata Distribution . . . . .	322
(c)	Public Corporations . . . . .	322
D.	Eliminating Double Taxation . . . . .	322
V.	Capital Dividends . . . . .	323
A.	Policy Objectives . . . . .	323
B.	The Capital Dividend Account . . . . .	324
C.	The Election . . . . .	324
1.	Private Corporation Status . . . . .	325
2.	Late-Filed Election . . . . .	325
3.	Penalty for Late Filing . . . . .	325
4.	Excessive Elections . . . . .	326
5.	Capital Dividend Transfers . . . . .	326
VI.	Directors' Liability . . . . .	327

Table of Contents

A.	Legality of Dividends .....	327
B.	Personal Liability of Directors .....	328
C.	Power of Court .....	329
1.	Complainant .....	329
(a)	Proper Complainant .....	329
(b)	Time of Complaint .....	329
	Selected Bibliography to Chapter 10 .....	330
<b>Chapter 11 — Transfers of Property to a Corporation .....</b>		<b>335</b>
I.	General Comment .....	338
II.	Section 85.....	339
A.	Tax Deferred “Rollover” .....	341
B.	Section 85 Application .....	342
C.	Examples of Section 85 Rollovers .....	342
1.	Incorporation of Business .....	342
2.	Capital Gains Exemption .....	343
3.	Tax Deferral .....	343
4.	Incorporation of Portfolio .....	343
5.	Removing Excess Cash from Corporation .....	343
6.	Estate Planning and Income Splitting.....	344
7.	Transfer of Assets within a Corporate Group .....	344
8.	Butterfly Reorganizations .....	345
D.	Partnerships .....	346
E.	Election of Values .....	346
F.	Who Can Use Subsection 85(1)? .....	347
1.	Transferors .....	347
2.	Transferees .....	347
G.	Exclusion of Subsection 86(1) .....	348
III.	Properties Eligible for Rollover .....	348
A.	Real Estate .....	349
1.	Inventory .....	349
2.	Non-Residents.....	350
3.	Partnerships .....	350
B.	Receivables .....	350
C.	Eligible Capital Property .....	351
D.	Individual Asset Test .....	351
IV.	The Election .....	352
A.	A Legal Fiction.....	352
B.	Individual Listing of Assets .....	352
C.	Late-Filed Elections .....	353

## Table of Contents

1.	Within Three Years . . . . .	353
2.	Beyond Three Years . . . . .	353
3.	“Just and Equitable” Reasons . . . . .	354
D.	Price Adjustment Clauses . . . . .	354
E.	Filing of Election . . . . .	355
F.	Sale of Business as Going Concern . . . . .	355
V.	Consideration Received . . . . .	355
A.	Share Consideration . . . . .	355
B.	Boot . . . . .	356
C.	Allocation . . . . .	356
VI.	Elected Amounts . . . . .	357
A.	General Limits . . . . .	357
1.	Elected Amount Cannot Exceed Fair Market Value . . . . .	357
2.	Elected Amount Cannot Be Less than Boot . . . . .	358
3.	Fair Market Value Determines Upper Limit . . . . .	359
4.	Liabilities Are Boot . . . . .	360
B.	Specific Limits . . . . .	361
1.	Inventory and Non-Depreciable Capital Property . . . . .	361
2.	Depreciable Properties . . . . .	362
(a)	General Rule . . . . .	362
(b)	Company Cars . . . . .	363
3.	Ordering of Dispositions . . . . .	363
VII.	Conflict between Rules . . . . .	364
A.	Indirect Benefits Rule . . . . .	365
1.	Purpose . . . . .	365
2.	Scope of Rule . . . . .	366
3.	Penal Provision . . . . .	367
4.	Bump-up . . . . .	367
5.	Related Persons . . . . .	367
6.	Post-Transfer Benefits . . . . .	368
7.	Transfers between Corporations . . . . .	368
8.	Value of Transferred Property . . . . .	368
B.	Cost of Property to Corporation . . . . .	368
1.	General Rule . . . . .	368
2.	Pre-1972 Property . . . . .	369
3.	Depreciable Properties . . . . .	369
C.	Cost of Consideration Received by the Transferor . . . . .	370
1.	Boot . . . . .	371
2.	Preferred Shares . . . . .	372
3.	Common Shares . . . . .	373

## Table of Contents

D.	Paid-up Capital of Shares Issued by Purchaser Corporation . . .	374
1.	In Excess of Fair Market Value of Property	
Acquired . . . . .		374
2.	Reduction of Paid-up Capital of Shares . . . . .	375
3.	Taxable Canadian Property . . . . .	376
4.	Identical Properties . . . . .	376
VIII.	Potential for Double Taxation . . . . .	376
A.	The Problem . . . . .	376
B.	The Solution . . . . .	378
IX.	Transfer of Property by a Partnership . . . . .	379
A.	Real Property . . . . .	379
B.	Winding-up . . . . .	380
	Selected Bibliography to Chapter 11 . . . . .	381
 <b>Chapter 12 — Non-Arm's Length Sale of Shares by Individual . . . . .</b>		<b>387</b>
I.	Overview . . . . .	389
II.	Purpose of Section 84.1 . . . . .	391
III.	Application of Section 84.1 . . . . .	391
IV.	“Non-Arm’s Length” Relationships . . . . .	392
A.	Deemed Non-Arm’s Length Relationships . . . . .	392
B.	Deemed Ownership of Shares . . . . .	393
C.	“Connected” Corporations . . . . .	393
D.	Dispositions by Trusts . . . . .	394
V.	Scope of Section 84.1 . . . . .	394
A.	Reduction in Paid-up Capital of Shares . . . . .	395
B.	Deemed Dividend . . . . .	396
1.	Avoiding Reduction in Paid-up Capital . . . . .	398
2.	Avoiding a Deemed Dividend . . . . .	398
3.	Averaging Paid-up Capital . . . . .	399
4.	Special Anti-Avoidance Rules . . . . .	400
VI.	Price Adjustment Clauses . . . . .	400
A.	Purpose . . . . .	400
B.	Determination of Fair Market Value . . . . .	401
C.	Bona Fide Intention . . . . .	402
D.	Administrative Interpretation . . . . .	402
	Selected Bibliography to Chapter 12 . . . . .	402
 <b>Chapter 13 — Estate Freezing &amp; Reorganizations of Capital . . . . .</b>		<b>405</b>
I.	General Comment . . . . .	407

## Table of Contents

A.	Estate Planning .....	408
B.	Methods of Estate Freezing .....	408
II.	Section 86 Estate Freeze .....	409
A.	Application of Subsection 86(1) .....	411
1.	“Reorganization of Capital”.....	413
2.	“In the Course of” .....	413
3.	Disposition of Shares .....	414
	(a) Capital Property .....	416
4.	Dispose of All Shares .....	416
B.	Calculation of Gain on “Old Shares” .....	416
C.	Summary of Section 86 Requirements .....	417
III.	Anti-Avoidance Provisions .....	418
A.	Indirect Gifts .....	418
1.	Cost Base of New Shares .....	420
2.	Deemed Dividends .....	420
3.	Capital Loss .....	421
B.	Income Sprinkling .....	421
1.	Children Under 18 .....	421
2.	Children Over 17 .....	422
3.	Anti-Income Sprinkling Rules .....	422
IV.	Valuation of Shares .....	422
A.	Redeemable Shares .....	422
B.	Reasonable Dividends .....	423
V.	Section 51 Share Conversion .....	424
A.	Application of Section 51 .....	426
B.	Anti-Gifting Rule .....	427
VI.	Holding Company Freeze .....	427
VII.	Estate Freeze with Trusts .....	429
A.	Factors to Consider in Using Trusts .....	429
VIII.	Summary of Estate Freezing Alternatives .....	430
	Selected Bibliography to Chapter 13 .....	431
 <b>Chapter 14 — Share-for-Share Acquisitions .....</b>		<b>435</b>
I.	General Comment .....	436
A.	Not Elective .....	436
II.	Conditions for Rollover .....	436
A.	When Rollover Is Not Available .....	437
III.	Piecemeal Dispositions .....	438
IV.	Effect of Exchange on Vendor .....	439
V.	Effect of Exchange on Purchaser .....	440

## Table of Contents

A.	Paid-up Capital of Purchaser's Shares . . . . .	440
VI.	Summary of Rollover Consequences . . . . .	441
VII.	Alternative Subsection 85(1) Rollover . . . . .	441
VIII.	V-Day Value . . . . .	442
	Selected Bibliography to Chapter 14 . . . . .	443
 <b>Chapter 15 — Amalgamations . . . . .</b>		<b>445</b>
I.	General Comment . . . . .	447
	A. Distinguished from Other Acquisitions . . . . .	447
	B. Types of Amalgamations . . . . .	449
	C. Form Over Substance . . . . .	449
II.	Corporate Law . . . . .	450
	A. General Comment . . . . .	450
	B. Long Form Amalgamation . . . . .	450
	C. Voting . . . . .	451
	D. Effect . . . . .	452
	E. Financial Tests . . . . .	452
	F. "Short-Form" Amalgamation . . . . .	453
	1. Legal Consequences . . . . .	453
	2. Stated Capital . . . . .	454
III.	"Amalgamation" for Tax Purposes . . . . .	454
IV.	The New Corporation . . . . .	455
	A. Taxation Year . . . . .	455
	B. Tax Instalments . . . . .	455
	C. Carry Forward of Accounts . . . . .	456
	D. Inventory . . . . .	456
	E. Depreciable Property . . . . .	457
	F. Non-Depreciable Capital Property . . . . .	458
	G. Reserves . . . . .	458
	1. General Comment . . . . .	458
	2. Debts . . . . .	458
	3. Capital Gains Reserve . . . . .	459
	H. Property Lost, Destroyed or Taken . . . . .	459
	I. Pre-Paid Expenses . . . . .	459
	J. Options . . . . .	460
	K. Attribution Rules . . . . .	460
	L. Partnership Interests . . . . .	460
	M. "Stop-Loss" Rules . . . . .	461
	N. Other . . . . .	461
V.	Predecessor Corporations . . . . .	462

## Table of Contents

VI.	Creditors of Predecessor Corporations . . . . .	463
VII.	Paid-up Capital . . . . .	463
	A.    Election under Subsection 87(3.1) . . . . .	466
	B.    Deemed Dividends . . . . .	466
	C.    Amalgamation Involving Issuance of Shares by Parent Corporation . . . . .	467
	D.    Carryover of Losses . . . . .	467
	E.    Shareholders of Predecessor Corporations . . . . .	469
	1.    General Comment . . . . .	469
	2.    Indirect Gifts . . . . .	471
	3.    Computation of Paid-up Capital . . . . .	472
	Selected Bibliography to Chapter 15 . . . . .	473
 <b>Chapter 16 — Winding-up of a Corporation . . . . .</b>		<b>477</b>
I.	Overview . . . . .	479
II.	Corporate Law . . . . .	480
	A.    Voluntary Dissolution . . . . .	481
	B.    Involuntary Dissolution . . . . .	482
	C.    Dissolution by Court Order . . . . .	482
III.	Winding-up a 90% Subsidiary . . . . .	482
	A.    Eligibility for Rollover . . . . .	483
	B.    Property of the Subsidiary Corporation . . . . .	483
	1.    Non-Depreciable Capital Property . . . . .	484
	2.    Depreciable Capital Property . . . . .	484
	3.    Accounts Receivable and Reserves . . . . .	485
	4.    Inventory . . . . .	485
	5.    Partnership Interests . . . . .	485
	C.    Liabilities of the Subsidiary . . . . .	486
	1.    Owing to the Parent Corporation . . . . .	486
	2.    Owing to Third Parties . . . . .	486
	D.    Acquisition of Property by Parent Corporation . . . . .	487
	1.    General Comment . . . . .	487
	2.    Non-Depreciable Capital Property . . . . .	488
	(a)    The “Bump” . . . . .	488
	E.    Disposition of Property to Minority Shareholders . . . . .	490
	F.    Disposition of Subsidiary’s Shares by Parent Corporation . . . . .	490
	G.    Losses . . . . .	491
IV.	Winding-up of Other Canadian Corporations . . . . .	493
	A.    Deemed Dividends . . . . .	493
	B.    Proceeds of Disposition . . . . .	493

## Table of Contents

V.	Non-Resident Corporations .....	493
VI.	Clearance Certificates .....	495
VII.	Corporate Emigration .....	495
	Selected Bibliography to Chapter 16 .....	497
 <b>Chapter 17 — Non-Residents.....</b>		<b>499</b>
I.	General Comment .....	503
II.	Residence of Corporations .....	503
	A. Statutory Rules .....	504
	B. Factual Residence .....	505
	1. General Propositions .....	506
	2. Dual Residence .....	507
	3. Treaty Shopping .....	508
	4. Deemed Non-Resident by Treaty .....	509
III.	Liability for Tax .....	510
	A. Employed in Canada .....	510
	1. Treaty Provisions .....	511
	2. Stock Options .....	513
	(a) Options Exercised Outside Canada .....	513
	3. Canada-U.S. Treaty .....	514
	4. International Transport Personnel .....	517
	B. Business in Canada .....	518
	1. Business versus Investment.....	518
	2. Definition of “Business”.....	519
	C. Treaty Limitations on Business in Canada .....	520
	1. Income Allocation .....	521
	(a) Investment Income .....	522
	(b) Other Income .....	522
	(c) Capital Gains .....	522
	(d) Employment Income .....	522
	(e) Non-Discrimination .....	522
	2. Permanent Establishment (PE) .....	523
	(a) OECD Model (2017) .....	524
	(b) UN Model (2011) .....	524
	(c) Types of PEs .....	525
	3. Article 5(1): Fixed Place of Business PEs .....	525
	(a) “Fixed” .....	526
	(b) “Place of Business” .....	527
	(i) Right to Use .....	528
	(ii) The Dudney Case .....	530

## Table of Contents

(c) Geographical Coherence .....	531
(d) Permanency .....	532
(e) Through the Fixed Place of Business .....	533
(f) Temporal Limits .....	533
4. Article 5(2) .....	535
5. Article 5(3): Construction Sites .....	536
(a) Temporal Considerations .....	537
(b) Supervisory Activities .....	537
(c) Duration of Construction .....	538
(d) UN Model .....	539
(e) Contentious Issues .....	540
(i) Construction Project .....	541
(ii) Installation Project .....	541
(iii) Several or Composite Construction PE .....	544
6. Article 5(4): Exclusions .....	545
(a) Article 5(4.1): Anti-Fragmentation Rule .....	547
7. Article 5(5): Agency PEs .....	548
(a) Authority to Conclude Contracts .....	549
(b) Commissionnaire Arrangements .....	553
(c) UN Model .....	555
(d) Article 5(6): Independent Agent Exception .....	555
8. Service PEs .....	556
(a) Canada-U.S. Treaty .....	559
9. Article 5(7): Subsidiary Companies .....	560
10. Article 5(8): Closely Related Enterprises .....	562
11. Electronic Commerce .....	563
(a) Taxable Nexus .....	564
(b) Preparatory or Auxiliary .....	566
D. Taxable Canadian Property .....	567
1. Clearance Certificates .....	567
2. Excluded Properties .....	568
IV. Tax Rates .....	569
A. Individuals .....	569
B. Corporations .....	570
C. Trusts .....	570
V. Forms of Business Organizations .....	570
A. Agency .....	571
B. Branch Operations .....	572
1. Branch Tax .....	573
C. Subsidiary Corporations .....	574

## Table of Contents

1.	Conversion of a Branch to a Subsidiary .....	575
D.	Summary of Considerations in Canadian Business Structures .....	576
E.	Holding Companies .....	576
VI.	Capital Gains.....	578
A.	Taxable Income .....	579
VII.	Withholding Taxes .....	580
A.	General Comment .....	580
B.	Payments Subject to Withholding .....	582
C.	Dividends .....	584
1.	Meaning of Dividend .....	584
2.	OECD Model .....	585
3.	Appropriate Rate .....	586
D.	Other Payments .....	588
1.	Management Fees.....	588
2.	Interest.....	589
3.	Estate or Trust Income .....	590
4.	Rents and Royalties .....	591
5.	Pension Benefits.....	592
6.	Retiring Allowances .....	593
7.	Registered Retirement Savings Plan Payments.....	593
8.	Payments out of Deferred Income Plans .....	593
	Selected Bibliography to Chapter 17 .....	593
 <b>Chapter 18 — Transfer Pricing .....</b>		<b>597</b>
I.	Purpose of Transfer Pricing Rules.....	599
II.	Summary of the Law .....	600
III.	Arm's Length Principle .....	601
A.	Meaning of "Arm's Length" Principle .....	601
B.	Related Persons .....	601
1.	Definition of "Related Persons".....	602
C.	Individuals .....	602
D.	Corporations .....	603
E.	Special Arm's Length Rule for Transfer Pricing .....	603
IV.	OECD Guidelines .....	603
A.	Judicial Reception of OECD Transfer Pricing Guidelines .....	605
V.	Application of the Arm's Length Principle .....	605
A.	Comparability of Transactions .....	606
VI.	Transfer Pricing Adjustments .....	607
A.	Subsection 247(2) .....	607

## Table of Contents

B.	Minister's Powers to Adjust Terms and Conditions .....	608
C.	Recharacterization .....	608
VII.	Other Specific Provisions of the Act .....	609
A.	Tax Benefit .....	609
VIII.	Penalties .....	610
A.	Adjustments .....	610
B.	Credit for Adjustments .....	611
C.	Defence to Penalty .....	611
D.	Competent Authority Negotiations .....	612
E.	Consideration of Penalties by the TPRC .....	612
IX.	Documentation for Transfer Pricing Transactions .....	614
A.	The Document Package .....	615
1.	Continuing Transaction Requirements .....	620
2.	Contemporaneous Documentation Due Date .....	620
X.	Audit and Reporting Requirements .....	620
A.	Purpose of Filing .....	620
B.	Who Must File? .....	620
C.	Reportable Transactions .....	621
D.	When to File? .....	621
XI.	Tax Havens .....	621
A.	Burden of Proof .....	622
B.	Audit Screening .....	622
1.	Management System Database .....	622
2.	Foreign Reporting Returns (FRR) .....	622
C.	Transfer Pricing Methods .....	623
1.	The Comparable Uncontrolled Price (CUP) Method ..	624
XII.	Competent Authority Procedures .....	625
A.	Foreign Based Information .....	626
1.	Requirement to Provide .....	626
2.	Nature of Information .....	626
3.	Authority to Serve .....	627
4.	Requirement to Produce .....	627
5.	Time to Produce Information .....	627
6.	Contents of Notice .....	627
7.	Failure to Produce Information .....	628
8.	Peremptory Applications .....	628
XIII.	Provincial Taxes .....	628
XIV.	Intra-Group Services .....	629
XV.	Principal Judicial Decisions .....	631
	Selected Bibliography to Chapter 18 .....	633

Table of Contents

<i>Glossary</i> .....	637
<i>Index</i> .....	861