

TABLE OF CONTENTS

<i>Table of Cases</i>		Cases-i
Introduction		I-1
 Chapter 1: History of Mutual Funds		
1.1	Introduction.....	1-1
1.2	Joint-Stock Companies and “Deed of Trust” Companies — 1600s....	1-1
	1.2.1 The Emergence of the Joint Stock Companies.....	1-1
	1.2.2 Widespread Use of the Deed of Settlement Company	1-2
1.3	Dutch Funds — 1700s	1-3
1.4	Early British Funds — 1800s.....	1-4
1.5	Early North American Funds	1-4
 Chapter 2: Summary of Taxation of Trusts		
2.1	Classification of Trusts under the <i>Income Tax Act</i>	2-2
	2.1.1 Definitions of Trust	2-2
	2.1.2 The “Personal Trust”	2-7
	2.1.3 <i>Inter Vivos</i> Trust.....	2-8
	2.1.4 Testamentary Trust.....	2-8
	2.1.5 Commercial Trusts	2-10
	2.1.6 Residency of Trust.....	2-10
2.2	The General Rules of Taxation of Trusts in Canada	2-12
	2.2.1 Transfer of Property to a Trust	2-12
	2.2.2 Transfer of Property from a Trust	2-13
	2.2.3 Computation of Income of a Trust	2-14
	2.2.3(a) Taxation Year of Trust	2-14
	2.2.3(b) Taxed as Individual	2-16
	2.2.3(c) Rules Applicable to Computation of Income	2-18
	2.2.4 Losses.....	2-20
	2.2.5 Preservation of Source of Income	2-20.2
	2.2.6 Disposition of Interests in a Trust.....	2-20.3
	2.2.7 Benefits from a Trust.....	2-21
	2.2.8 Part XII.2 Tax	2-21
	2.2.9 Non-Residents.....	2-23
	2.2.9(a) Distributions of Income from a Trust.....	2-23
	2.2.9(b) Distributions of Capital Gains from a Trust	2-24
	2.2.9(c) Distributions of Returns of Capital.....	2-27
	2.2.9(d) Dispositions of Interest in a Trust.....	2-29
	2.2.9(e) Benefits from a Trust to a Non-Resident.....	2-31
	2.2.10 Variation of Trusts	2-31

Table of Contents

2.3	Subsection 75(2)	2-34
	2.3.1 Introduction.....	2-34
	2.3.2 History of Subsection 75(2)	2-36
	2.3.3 Application of Subsection 75(2)	2-37
Chapter 3: Summary of Taxation of Public Corporations		
3.1	Definition of Public Corporation	3-2
	3.1.1 General.....	3-2
	3.1.2 Corporation Resident in Canada.....	3-3
	3.1.3 Shares Listed on Designated Stock Exchange in Canada.....	3-3
	3.1.4 Election to be a Public Corporation — Prescribed Conditions	3-4
	3.1.4(a) “Qualified for Distribution to the Public”	3-4
	3.1.4(b) “Equity Share”	3-5
	3.1.4(c) “Insider of a Corporation”	3-6
	3.1.4(d) “Block of Shares”	3-7
	3.1.5 Election Not to be a Public Corporation	3-7
3.2	Taxation of Public Corporation	3-8
	3.2.1 Tax Rates	3-8
	3.2.2 Integration of Taxes.....	3-9
	3.2.3 Capital Taxes	3-10
	3.2.4 Paid-Up Capital	3-11
3.3	Mortgage Investment Corporations.....	3-11
	3.3.1 Qualification	3-12
	3.3.2 Taxation of Mortgage Investment Corporation	3-14
	3.3.3 Taxation of Shareholders of a Mortgage Investment Corporation	3-15
	3.3.4 Eligibility for Investment.....	3-15
3.4	Investment Corporations.....	3-16
Chapter 4: Taxation of Mutual Fund Trusts		
4.1	Introduction	4-2
4.2	The Benefits	4-3
	4.2.1 Non Application of “21-Year Rule”.....	4-3
	4.2.2 Non Application of Alternative Minimum Tax	4-3
	4.2.3 Non Application of Part XII.2.....	4-3
	4.2.4 Not Taxable Canadian Property	4-4
	4.2.5 Subsection 39(4) Election	4-5
	4.2.6 Exclusion from Section 116 Requirements	4-5
	4.2.7 Non Application of Mark-to-Market Rule (s. 142.2)	4-6
	4.2.8 Status as Qualified Investments for Registered Plans	4-7
	4.2.9 Prohibited Investment Rules	4-9
	4.2.10 Status as Foreign Property	4-10

Table of Contents

	4.2.11 Capital Tax.....	4-11
	4.2.12 Reduction in Cost Base of Capital Interest	4-11
	4.2.13 Foreign Reporting	4-14
	4.2.14 Capital Gains Refund Mechanism.....	4-14
	4.2.15 Allocation of Capital Gains and Income to Redeeming Unitholders.....	4-15
4.3	Mutual Fund Trust Requirements.....	4-17
	4.3.1 The Definition.....	4-17
	4.3.2 Open-Ended — Paragraph 108(2)(a) Requirements.....	4-18
	4.3.3 Closed-Ended — Paragraph 108(2)(b) Requirements	4-20.1
	4.3.3(a) The 80% Test.....	4-20.2
	(i) Marketable Security	4-21
	(ii) Cost or Fair Market Value.....	4-22
	4.3.3(b) The 95% Test.....	4-22
	4.3.3(c) The 10% Test.....	4-23
	4.3.4 Requirements of Unit Trust to be a Mutual Fund Trust.....	4-24
	4.3.4(a) Restriction on Activities	4-24
	4.3.4(b) Dispersal Requirements.....	4-28
	(i) Qualified Distribution	4-28
	(ii) Meaning of “Lawful Distribution” – Grenon Case	4-29
	(iii) Meaning of Block of Units.....	4-32
	(iv) Counting 150 Beneficiaries	4-32.1
	4.3.4(c) Limitation on Non-Resident Beneficiaries.....	4-32.2
	4.3.4(d) Deemed Mutual Fund Trust: The Subsection 132(6.1) Election.....	4-32.4
	4.3.4(e) The Subsection 132(6.2) Deeming Rule.....	4-33
4.4	Refund Mechanism — Capital Gains Redemptions	4-36
4.5	Mergers of Mutual Funds — Section 132.2.....	4-36
4.6	Year End: December 31 Versus December 15	4-40
4.7	Expenses of a Fund	4-41
	4.7.1 Nature of Income Earned by the Fund.....	4-41
	4.7.2 Deductibility of Expenses	4-43
	4.7.3 Cost of Issuing Units	4-45
	4.7.4 Fees Paid to Non-Residents.....	4-46
4.8	Year-End Distributions	4-47
Chapter 5: Taxation of Mutual Fund Corporations		
5.1	The Definition.....	5-1
5.2	The Benefits	5-2
	5.2.1 Flow Through of Income	5-2
	5.2.2 Refund Mechanisms	5-5
	5.2.3 Qualified Investments Status.....	5-7
	5.2.4 Prohibited Investment Rules.....	5-8

Table of Contents

	5.2.5 Foreign Property Status	5-9
	5.2.6 Capital Tax Issues	5-10
	5.2.7 Exclusion from Section 84 Treatment	5-10
	5.2.8 Generally Not Taxable Canadian Property	5-11
	5.2.9 Subsection 39(4) Election	5-12
	5.2.10 General Exclusion from Section 116 Requirements	5-12
	5.2.11 Non Application of Mark-to-Market Rule (s. 142.2)	5-13
	5.2.12 Foreign Reporting	5-13
5.3	Comparison of Taxation Mutual Fund Trust and Corporations	5-13
	5.3.1 Liability	5-13
	5.3.2 Transparency and Double Taxation	5-14
	5.3.3 Flow Through of Losses	5-14
	5.3.4 Mergers of Funds	5-14
Chapter 6: Real Estate Investment Trusts (“REITs”)		
6.1	Mutual Fund Trust Qualification	6-1
6.2	Simple Structure: Direct Ownership	6-5
6.3	Complex Structure: Indirect Ownership	6-5
6.4	Dividend Reinvestment Plans (“DRIPs”)	6-8
Chapter 7: Income Trusts		
7.0	New Tax Regime for Income Trusts	7-2
7.1	Domestic Income Trusts: The Typical Trust on Trust on Partnership Structure	7-8
	7.1.1 Classification of the Trusts — The Fund	7-8.1
	7.1.2 Classification of the Trusts — The Trust	7-9
	7.1.3 Foreign Property Issues	7-9
	7.1.4 Issues with the Notes	7-9
	7.1.5 Tax Shelter Rules	7-11
7.2	Cross-Border Income Trusts	7-12
7.3	Converting a Company into an Income Trust	7-12.2
7.4	Tax Issues for Investors	7-17
	7.4.1 Returns of Capital	7-17
	7.4.2 <i>In-Specie</i> Distributions	7-18
7.5	Royalty Trusts	7-18
7.6	Converting an Income Trust to a Public Corporation	7-19
	7.6.1 Exchange Method	7-20
	7.6.2 Distribution Method	7-23
Chapter 8: Split Share Corporations		
8.1	Mutual Fund Corporation Status	8-1
8.2	Part VI.1 Tax	8-3
8.3	Capital Tax	8-4
8.4	Suspended Loss Rules	8-5

Table of Contents

8.5	Tax Under Section 206.1/207.1(5)	8-7
8.6	Cost of Stock Dividends.....	8-7
8.7	Capital Gains.....	8-8
8.8	Issues with Voting Rights on Capital Shares.....	8-9
8.9	Typical Prospectus Disclosure.....	8-9
Chapter 9: Split Trusts		9-1
Chapter 10: Switch Funds		
10.1	Structure of Switch Fund	10-4
	10.1.1 Mutual Fund Trusts	10-4
	10.1.2 Mutual Fund Corporations	10-4
10.2	Issues with Switch Funds	10-5
	10.2.1 Sharing of Tax Attributes.....	10-5
	10.2.2 Increased Turn Over	10-6
	10.2.3 Switching Versus Redeeming	10-6
	10.2.4 Suspended Loss Rules.....	10-6
Chapter 11: Labour-Sponsored Venture Capital Corporations		
11.1	Introduction	11-1
11.2	Registration Requirements	11-2
11.3	Investment Restrictions	11-4
11.4	Federal Penalty Taxes	11-5
11.5	Revocation of Registration.....	11-6
11.6	Restrictions on Transfers.....	11-6
11.7	Restrictions on Redemption by Holders	11-7
11.8	Tax Credits Available to Purchaser of Class A Shares	11-8
11.9	RRSP Eligibility.....	11-9
11.10	Taxation of LSVCC.....	11-11
11.11	Mergers and Termination of LSVCC	11-11
Chapter 12: Miscellaneous Issues		
12.1	Offshore Investment Fund Property	12-1
12.2	Using Special Classes of Units/Shares for Differing Management Fees.....	12-4
	12.2.1 Class T Units	12-7
12.3	Segregated Funds: The Near Perfect Solution?.....	12-8
	12.3.1 Qualified Investment Status	12-10
12.4	Borrowing from Non-Residents	12-10
12.5	Clone Funds	12-11
12.6	Appeal Process.....	12-13
	12.6.1 Assessments	12-13
	12.6.2 Objections.....	12-14
	12.6.3 Appeals	12-16

Table of Contents

12.7	Canadian Service Provider — Carrying on Business in Canada	12-17
	12.7.1 Background on Carrying on Business in Canada	12-17
	12.7.2 Section 115.2	12-19
	12.7.3 Treaty Relief	12-21
	12.7.4 Summary	12-22
12.8	FACTA	12-22
	12.8.1 Background	12-22
	12.8.2 Application to Canadian Investment Funds	12-22
	12.8.3 Obligations under FATCA	12-24
	12.8.3(a) Registration with IRS	12-24
	12.8.3(b) Due Diligence—Financial Accounts	12-24
	12.8.3(c) Due Diligence—Procedure	12-25
	12.8.3(d) Due Diligence—Timelines—Individual Accounts	12-25
	12.8.3(e) Due Diligence—Timelines—Entity Accounts	12-26
	12.8.3(f) Annual Reporting to CRA	12-26
	12.8.4 OECD Common Reporting Standard	12-26
12.9	Loss Restriction Event Rules	12-27
Abbreviations		ABBR-1
Appendix		APP-i
	A. <i>Income Tax Act</i> [excerpts]	A-1
	A.1 <i>Income Tax Regulations</i> [excerpts]	A.1-1
	B. Interpretation Bulletins	B-1
	C. Forms	C-1
Index		Index-1