Table of Contents

Table of Cases xvii
Table of References to the Income Tax Act xcvii

1. The Administrative Framework 1
1.1 Income Tax Administration in Canada 1
1.2 Agency Structure 7
1.3 Regulations 9
1.4 Income Tax Folios, Interpretation Bulletins, Information Circulars and Other Publications 11
1.5 Taxpayer Rights 14
1.5.1 *Taxpayer Bill of Rights* 18
1.5.2 *Taxpayers' Ombudsman* 19
1.6 Advance Income Tax Rulings and Technical Interpretations 20
1.7 Estoppel and the Administration of the Act 26
1.8 Domestic Taxpayer Information 34
1.9 Federal-Provincial Tax Collection Agreements 49
1.10 The Agency and the Pandemic 51

2. Books and Records 53
2.1 Introduction 53
2.2 Retention and Destruction of Records 56
2.3 Foreign Affiliates 58
2.4 Election Expenses and Contributions 59

3. Income Tax and Information Returns 61
3.1 Taxation Year and Fiscal Period 62
3.1.1 *Individuals* 64
3.1.2 *Fiscal Period for Business and Property Income of an Individual, Trust or Partnership of Individuals or Trusts* 66
3.1.3 *Corporate Partnerships* 68
3.1.4 *Sole Proprietorships* 72
3.1.5 *Partnerships* 74
3.1.6 *Trusts* 74
3.1.7 *Corporations* 76
3.2 Income Tax Returns 80
3.2.1 *General* 80
3.2.2 *Corporations* 85
3.2.3 *Trusts and Estates* 86
3.2.4 *Deceased Persons* 90

3.2.5 *Individuals* 90
3.2.6 *Demands* 92
3.2.7 *Non-Residents* 94
3.2.8 *Waiver of Filing of Forms or Documents* 95
3.3 Amended Returns and Elections 95
3.3.1 *Amended Returns* 95
3.3.2 *Amended or Revoked Elections* 100
3.4 Information Returns 103
3.4.1 *General* 103
3.4.2 *Electronic Filing* 106
3.4.3 *Remuneration* 106
3.4.4 *Investment Income* 108
3.4.5 *Payments to Non-Residents* 109
3.4.6 *Non-Arm's Length Transactions with Non-Residents* 110
3.4.7 *Estates and Trusts* 111
3.4.8 *Ownership Certificates* 112
3.4.9 *RESPs and RDSPs* 112
3.4.10 *Accrued Bond Interest* 113
3.4.11 *Employees' Profit-Sharing Plans* 113
3.4.12 *Pooled Registered Pension Plans* 113
3.4.13 *Registered Retirement Savings Plans* 113
3.4.14 *Registered Retirement Income Funds* 114
3.4.15 *Registered Charities, Canadian Amateur Athletic Associations and Registered Journalism Organization* 114
3.4.16 *Disposition of Interests in Annuities or Life Insurance Policies* 114
3.4.17 *Patronage Payments* 115
3.4.18 *Cash Bonuses on Canada Savings Bonds* 115
3.4.19 *Qualified Investments* 115
3.4.20 *Home Insulation and Energy Conversion Programs* 115
3.4.21 *Certified Films and Video Tapes* 115
3.4.22 *Refundable Investment Tax Credits* 116
3.4.23 *Resource Flow-Through Shares* 116
3.4.24 *Advanced Life Deferred Annuity* 116
3.4.25 *Partnership Returns* 116
3.4.26 *Securities Transactions* 117
3.4.27 *Worker's Compensation* 118
3.4.28 *Social Assistance* 119
3.4.29 *Farm Support Payments* 119

3.4.30 *Taxpayer Identification* 119
3.4.31 *Federal Government Payments* 119
3.4.32 *Contruction Payments* 120
3.4.33 *Tax-Free Savings Accounts* 120
3.4.34 *Tuition and Enrolment Certificates* 120
3.4.35 *Accelerated Disclosure by Mutual Fund Trusts and Public Partnerships* 120
3.4.36 *First Home Savings Account* 121
3.4.37 *Tax Exempt Entities* 121
3.5 Tax Shelter Reporting 122
3.6 Foreign Reporting 129
3.6.1 *Contributions to Foreign Trusts* 129
3.6.2 *Foreign Property Reporting* 131
3.6.3 *Foreign Affiliate Reporting* 133
3.6.4 *Reporting of Distributions from Foreign Trusts* 135
3.6.5 *Due Diligence Exemption in Respect of Transfers and Loans of Property and Foreign Affiliates* 136
3.7 Reporting of Aggressive Tax Avoidance Transactions 136
3.7.1 *Reportable Transactions* 136
3.7.2 *Notifiable Transactionss* 140
3.7.3 *Uncertain Tax Treatments* 141
3.8 *Reporting by Digital Platform Operators* 142
Appendix: Returns for Special Taxes 144

4. Payment of Tax 155
4.1 Introduction 156
4.1.1 *Electronic Payment* 157
4.2 Source Deductions 157
4.2.1 *Payer's Obligation* 157
4.2.2 *Employee's Obligation* 163
4.2.3 *Rights between Payer and Payee* 163
4.2.4 *Payments Subject to Withholding* 165
4.2.5 *Unclaimed Amounts* 172
4.2.6 *Amount to be Withheld* 172
4.3 Withholding from Payments to Non-Residents 174
4.4 Director's Liability for Unremitted Withholdings 179
4.4.1 *Procedure* 181
4.4.2 *Possible Defences* 181
4.4.2.1 Technical/Procedural Defences 182
4.4.2.1(a) Procedural Requirements Not Met 182
4.4.2.1(b) Wages Not Paid 183
4.4.2.1(c) Invalid Assessment 183

4.4.2.1(d) Limitation Period 184
4.4.2.2 Substantive Defences 186
4.4.2.2(a) General 186
4.4.2.2(b) Not a Director 187
4.4.2.2(c) No Control 189
4.4.2.2(d) Due Diligence 191
4.4.2.2(e) Challenge of Underlying Assessment 198
4.4.2.3 Constitutional Arguments 199
4.4.2.4 Lack of Knowledge 199
4.4.2.5 Delegation 200
4.4.3 *Relationships with Fellow Directors* 200
4.4.4 *Corporation in Financial Difficulties* 200
4.4.5 *Quantum of Liability May Be Reduced* 201
4.4.6 *Preventative Measures* 202
4.5 Instalment Payments 203
4.5.1 *Corporations — General* 203
4.5.2 *"Small" CCPCs* 207
4.5.3 *Special Cases — Corporations* 209
4.5.4 *Farmers and Fishermen* 210
4.5.5 *Other Individuals* 211
4.5.6 *Special Cases — Individuals* 214
4.6 Time of Payment 215
4.7 Demand for Payment of Tax 215
4.8 Estimate of Tax 216
4.9 Recovery of Excess Refunds 216
4.10 Liability for Amounts Received Out of RRSPs, RRIFs, Retirement Compensation Arrangements and Registered Disability Savings Plans 217
4.11 Payment after Assessment 217
4.12 Payment by Legal Representatives and Agents 218
4.13 Security for Payment of Tax 218
4.13.1 *General* 218
4.13.2 *Security for Departure Tax* 218
4.14 Relief for Estate of Deceased Taxpayer 220
4.15 Liability of Legal Representatives 223
4.15.1 *Meaning of "Legal Representative"* 223
4.15.2 *Liability for Payments or Obligations of a Taxpayer* 223
4.15.3 *Distribution of Property Without a Certificate* 224
4.16 Transfer and Loans of Property to Spouse, to Person Under 18 or to Non-Arm's Length Person 231

4.16.1 *Attribution Rules* 231
4.16.2 *Joint and Several Liability Arising from Non-Arm's Length Transfers* 232
4.16.2.1 Attribution Liability 232
4.16.2.2 Transfer of Tax Benefits 232
4.16.2.3 Attribution of Liability for Tax on Split Income ("TOSI") 232
4.16.2.4 Attribution of Liability for Tax on Split Pensions 233
4.16.2.5 Transfers of Property to Defeat Tax Liability 234
4.17 Joint and Several Liability for Tax Liability of Non-Resident Trusts 245
4.18 Blocked Currencies 246
4.19 Tax Transfer Payments and Collection Agreements 247
4.20 Set-Off and Application of Refunds 248
4.21 Transfers Among Accounts 249
4.22 Payment of Special Taxes 250
Appendix: Payment of Special Taxes 251

5. Interest 259
5.1 Prescribed Rate 259
5.2 Balance-Due Day 260
5.3 Unpaid Tax 261
5.4 Excess Refunds 263
5.5 Late or Deficient Instalments 264
5.6 "Contra" Interest 267
5.7 Carry-Back of Losses and Other Amounts 267
5.8 Interest on Penalties 270
5.9 Interest on Refunds 271
5.10 Non-Residents 272
5.11 Compounding of Interest 274
5.12 Waiver or Cancellation of Interest 274
5.13 Prepayment of Tax 274
5.14 Offset of Refund Interest against Arrears Interest 275
Appendix: Special Taxes 277

6. Refunds 279
6.1 General 279
6.1.1 *Refunds by Administrative Discretion* 288
6.1.2 *Small Amounts* 289
6.2 Special Refundable Taxes 289
6.3 Non-Residents 289

Appendix: Refunds of Special Taxes 292

7. Audit and Investigation 293
7.1 Introduction 293
7.2 Audit and Inspection 294
7.3 Demand for Information 300
7.3.1 *Charter Restrictions on the Use of Evidence Obtained under Sections 231.1 and 231.2* 318
7.3.2 *Treaty-Based Demand for Information* 325
7.4 Search Warrant 326
7.5 Inquiry 330
7.6 Copies and Compliance 333
7.7 Demand for Foreign-Based Information 335
7.8 Claim of Privilege 338
7.8.1 *Solicitor-Client Privilege* 338
7.8.2 *Procedure* 349
7.8.3 *Accountant's Privilege* 353
7.9 Exchanges of Information between Revenue Authorities 355
7.9.1 *Federal-Provincial Collection Agreements* 355
7.9.2 *Treaty-Based Exchanges of Information* 356
7.10 Reporting International Electronic Funds Transfers 364
7.11 Exchange of Information with the United States relating to FATCA 365
7.12 The GAAR Committee 368
7.13 The Transfer Pricing Review Committee 369
7.14 Offshore Tax Informant Program 369

8. Collection 373
8.1 Introduction 373
8.1.1 *Limitation Period* 377
8.2 Restrictions on Collection Action 380
8.3 Collection in Jeopardy Provisions 383
8.4 Registration of Certificate 388
8.5 Garnishment 392
8.5.1 *General* 392
8.5.2 *Garnishment Priority in Respect of Withholdings* 396
8.5.3 *Garnishment Procedure* 402
8.5.4 *Collection by Set-Off* 402
8.5.5 *Seized Funds* 403
8.6 Statutory Trust in Respect of Withholdings 403
8.7 Seizure of Chattels 408
8.8 Foreclosures 409
8.9 Collection Outside Canada — Tax Treaties 409

9. Assessments and Reassessments 415
9.1 Duties of the Minister 415
9.2 All Due Dispatch 418
9.3 Sending the Notice of Assessment 423
9.4 Assessment and Liability for Tax 431
9.5 Quick Assessments and Nil Assessments 433
9.6 Partnership Reassessments 435
9.7 Reassessments 438
9.8 Reassessment or Further or Additional Assessment 440
9.9 Form of the Notice of Reassessment 442
9.10 Time Limits for Reassessment 445
9.10.1 *Normal Reassessment Period* 445
9.10.2 *Extended Reassessment Period* 446
9.10.3 *Misrepresentation or Fraud* 456
9.10.4 *Waiver* 464
9.10.5 *Failure to Disclose a Disposition of Real Estate* 468
9.10.6 *Tax Shelter Reassessments* 468
9.10.7 *Treaty Limitations* 468
9.11 Disposition of Appeals 469
9.12 Consequential Assessments 469
9.13 "Fairness Package" Assessments 471
9.14 Net Worth Assessments 471
9.15 GAAR Assessments 474
9.16 Determination of Losses 475
9.17 Non-Residents 478
Appendix: Special Taxes 480

10. Objections 481
10.1 Introduction 481
10.2 Limits on Right to Object 482
10.3 Time Limits 485
10.4 Extensions of Time 488
10.5 Notice of Objection 493
10.6 Objections by Large Corporations 494
10.7 Service of Notice of Objection 496
10.8 By-Passing Notice of Objection 496
10.9 Consideration and Disposition of Notice of Objection 497
10.10 Objection to Subsequent Reassessment 498

11. Penalties 503
11.1 Failure to File Returns or to Provide Information 504

11.1.1 *General* 504
11.1.2 *Failure to File Returns* 506
11.1.3 *Failure to File Returns by Large Corporations* 509
11.1.4 *Failure to Complete Ownership Certificate* 510
11.1.5 *Failure to Provide Information* 510
11.1.6 *Failure to Provide Claim Preparer Information* 510
11.1.7 *Failure to Provide Identification Number* 511
11.1.8 *Failure to File Information Return* 511
11.1.9 *Failure to File Partnership Information Return* 513
11.1.10 *Failure of Tax Preparer to File Electronically* 513
11.1.11 *Tax Shelter Identification Numbers* 514
11.1.12 *Foreign Reporting* 514
11.1.13 *Repeated Failure to File Returns* 516
11.1.14 *Penalty for Late-Filed, Amended or Revoked Elections* 517
11.1.15 *Failure to Make Electronic Payment* 517
11.2 False Statements or Omissions 517
11.2.1 *General Penalty* 517
11.2.2 *Penalties Relating to Flowed-Through Resource Expenditures* 519
11.2.3 *Penalties Relating to Reporting of Foreign Transactions and Property* 520
11.2.3A *Penalty Relating to Trust Returns* 521
11.2.4 *Gross Negligence* 522
11.2.5 *Electronic Suppression of Sales* 538
11.3 False Statements or Omissions by Third Parties 539
11.3.1 *Penalty for Misrepresentation* 540
11.3.2 *Penalty for Participating in a Misrepresentation* 541
11.3.3 *Good Faith Reliance* 542
11.3.4 *Valuations* 542
11.3.5 *Reassessments* 542
11.3.6 *Maximum Penalty* 543
11.3.7 *Responsibility of Employees* 543
11.3.8 *Onus on Minister* 543
11.4 Late or Deficient Instalments 543
11.5 Failure to Withhold and Remit Taxes 544
11.5.1 *Failure to Deduct and Withhold under Ss. 153(1) and 215* 544
11.5.2 *Failure to Deduct or Withhold from Patronage Dividends or Payments to Non-Residents* 545
11.5.3 *Failure to Remit or Pay an Amount Deducted or Withheld* 546

11.5.4 *Separate Establishments* 546
11.5.5 *Assessments* 546
11.6 Charities, Canadian Amateur Athletic Associations and Registered Journalism Organizations 547
11.6.1 *Carrying on Business* 547
11.6.2 *Acquiring Control of a Corporation* 548
11.6.3 *Conferral of Undue Benefits* 548
11.6.4 *Failure to File a Return* 548
11.6.5 *Improper Issuance of Receipt* 549
11.6.6 *False Statements* 549
11.6.7 *Delay of Expenditure* 549
11.6.8 *Suspension of Right to Issue Receipts* 549
11.6.9 *Reduction of Penalties* 551
11.7 Non-Residents 551
11.8 Waiver or Cancellation of Interest and Penalties 552
11.9 Penalties Not Deductible 562
Appendix: Calculation of s. 163(2) Penalty 563

12. Offences 569
12.1 Introduction 569
12.2 Failure to File a Return or Comply with Specific Sections: Section 238 570
12.3 Tax Evasion: Section 239 571
12.3.1 *False or Deceptive Statements* 571
12.3.2 *Destruction of Records* 572
12.3.3 *False Entries* 572
12.3.4 *Tax Evasion* 573
12.3.5 *Conspiracy* 577
12.3.5.1 Refund or Credit Claims 577
12.3.6 *Tax Shelter Identification Numbers* 577
12.3.7 *Communication of Information* 577
12.3.8 *Social Insurance Numbers* 578
12.3.9 *Electronic Suppression of Sales* 578
12.3.10 *Relationship with Civil Penalties* 578
12.4 Interest Coupons: Section 240 579
12.5 Liability of Directors and Officers: Section 242 579
12.6 Voluntary Disclosures Program 581
12.7 Institution of Prosecution 584
12.8 Procedural Matters 585
12.9 Punishment 587
12.9.1 *Fines and Imprisonment* 587
12.9.2 *Publicity* 590
12.9.3 *Sentencing* 590

13. Appeals to the Tax Court of Canada 595
13.1 History and Jurisdiction of the Tax Court of Canada 595
13.2 Classification of Appeals 606
13.2.1 *General* 606
13.2.2 *Informal Procedure* 606
13.2.3 *General Procedure* 609
13.2.4 *Election* 609
13.2.5 *Representation* 612
13.3 Institution of Appeals 613
13.3.1 *General* 613
13.3.2 *Time Limits* 620
13.3.3 *Judicial Review of Assessments* 624
13.3.4 *Commencing an Informal Procedure Appeal* 632
13.3.5 *General Procedure* 634
13.3.6 *No Reasonable Grounds for Appeal* 637
13.4 Settlement 637
13.5 Procedure on Appeals 644
13.5.1 *Informal Procedure Appeals — Pre-Trial* 644
13.5.2 *General Procedure Appeals — Pre-Trial* 645
13.5.3 *Case Management* 648
13.5.4 *Expert Evidence* 651
13.5.5 *Procedure at Trial* 653
13.5.6 *Costs* 654
13.5.7 *In Camera Proceedings* 660
13.6 Disposition of Appeals 662

14. References to the Tax Court of Canada 665
14.1 Question of Law, Fact or Mixed Law and Fact 665
14.1.1 *Section 173 of the Act* 665
14.1.2 *Determination of Questions of Law or Fact under Rule 58* 666
14.2 Common Question of Law, Fact or Mixed Law and Fact 668

15. Appeals to the Federal Court of Appeal 673
15.1 Appeals from the Tax Court of Canada 673
15.1.1 *General Procedure Judgments* 673
15.1.2 *Informal Procedure Judgments* 675
15.2 Direct Appeal 677
15.3 Revocation of Registration of Canadian Charities, Canadian Amateur Athletic Associations and Journalism Organizations 680

16. Appeals to the Supreme Court of Canada 687

Appendix 691
Administration of the Tax Court of Canada 691
Administration of the Federal Court 699
Administration of the Federal Court of Appeal 707
Administration of the Supreme Court of Canada 715
Registrars of the Supreme Court of Canada 719
Canada Revenue Agency Directory 721
Limitations and Contingent Dates 737
Penalties 741
Offences 747
Prescribed Interest Rates 749

Index 751