

# FORWARD

A PUBLICATION OF THOMSON REUTERS TAX & ACCOUNTING CANADA

APRIL 2016



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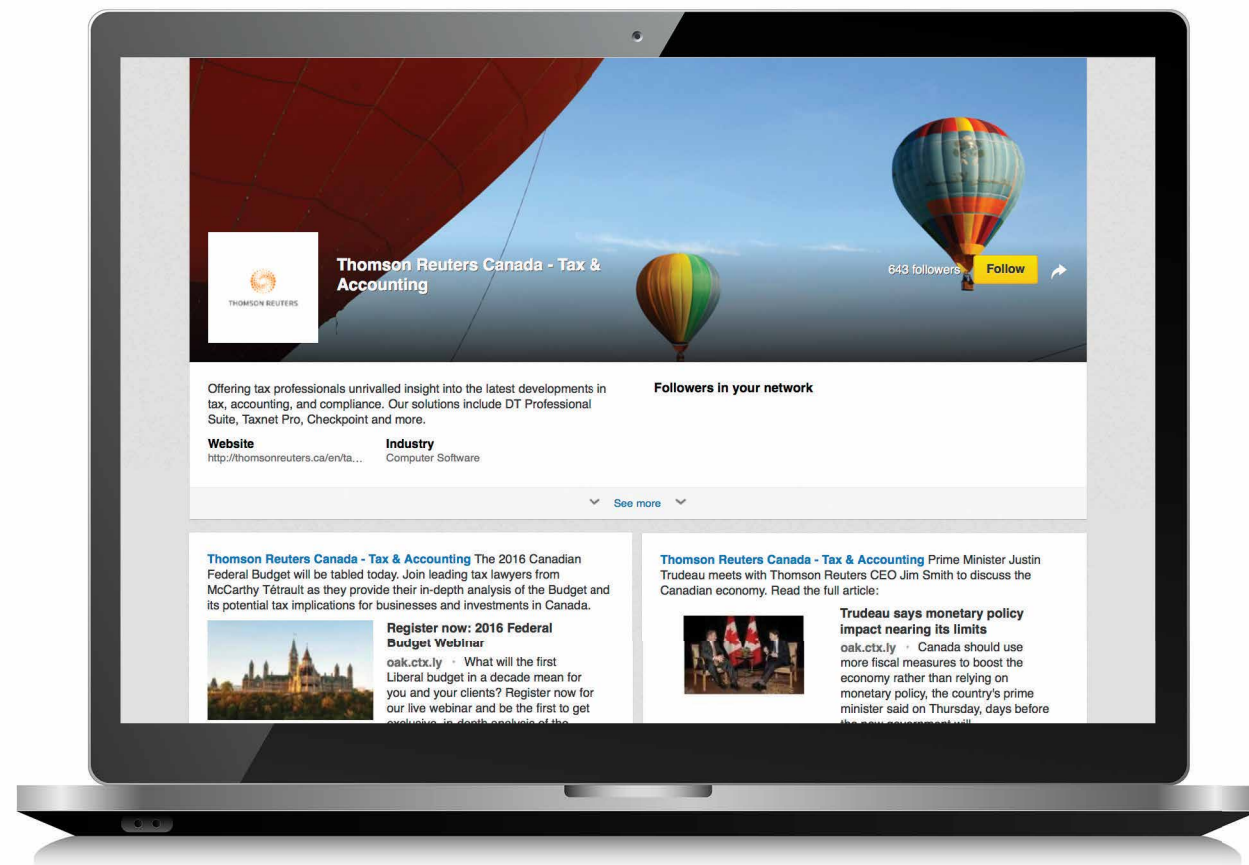
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## Director's Note

I've often thought Canadian tax practitioners would be well-served by an annual publication that reviews key development in tax from the prior year. In this edition of Forward, Ryan Keey has brought that thought one step closer to reality by summarizing what he considers to be the key 2015 cases and administrative development affecting corporate taxation. There are no surprises – think *BP Canada Energy Co*, *George Weston Ltd.*, and *Superior Plus* – but readers should benefit from the recap provided in Ryan's article.

Terry Hayes delivers another dispatch from the offices of Thomson Reuters Tax & Accounting Australia in his piece on the new tax compliance rules facing investors foreign to Australia, effective February 22, 2016 forward. Terry provides a concise list of the conditions on foreign investment applications, one noteworthy condition being that applicants must make "best endeavours" in relation to compliance of Australian taxation laws by "associates" as defined as defined in s.318 of the ITAA, 1936.

Paula Ideias' article on automobile expense deduction limits and taxable benefits is a concise and useful summary and includes a chart of rates for quick reference. This piece is written in plain language and may serve as a helpful guide for readers' clients. Paula is a regular contributor to both the Tax & Estate Planning Centre and

Corporate Tax Centre on Taxnet Pro, and many of her contributions are designed as practical, time-saving guides for our subscribers.

Craig Proctor outlines the recently-released design and policy details for the forthcoming Ontario Retirement Pension Plan, and Dennis Singh updates readers on recent developments in international trade and customs. Customs and trade are an important focus for our publishing team, and subscribers to Taxnet Pro now have access to comprehensive information on the Customs & Excise Centre. Canada's ability to take full advantage of global markets for its goods and services is going to be key to its ongoing economic wellbeing. The Customs & Excise Centre is our contribution to increasing Canada's ability to do so.

We are now in our second year of publication of Forward magazine. Please let us know what you think.

Fred Gladys, B.A., LL.B., LL.M.  
Director, Market Segment Solutions  
Carswell, a Thomson Reuters business





# AUTOMOBILE EXPENSE DEDUCTION LIMITS AND TAXABLE BENEFITS

Paula Ideias, Thomson Reuters

The *Income Tax Act*<sup>1</sup> provides various rules relating to the purchase, lease and use of company-owned automobiles. There are limitations on the amount that a business can deduct for tax purposes when purchasing or leasing an automobile. Additionally, there may be tax implications when an employer provides company automobiles to employees to assist them in carrying out their employment duties, provides automobile allowances to employees, or reimburses employees’ automobile expenses. For example, there are rules that impose tax on an employee’s personal use of an employer-supplied automobile and on certain automobile allowances, and limitations on the amount of automobile expenses that can be reimbursed to an employee on a tax-free basis. This article provides a brief discussion of these rules and limitations.

## AUTOMOBILE EXPENSE DEDUCTION LIMITS

Incorporated businesses may deduct all reasonable motor vehicle expenses, subject to the following prescribed limitations regarding the purchase or leasing of passenger vehicles:<sup>2</sup>

- The maximum cost amount for capital cost allowance (CCA) purposes is \$30,000 plus applicable federal and provincial sales taxes (less any GST or HST input tax credits claimed);
- The maximum deduction allowed for monthly lease costs per passenger vehicle is \$800 per month plus applicable federal and provincial sales taxes (less any GST or HST input tax credits claimed); and
- The maximum allowable interest deduction for amounts borrowed to purchase a passenger vehicle is \$300 per month.

Passenger vehicles are normally included in Class 10, which provides for a CCA rate of 30% (15% in the year of purchase). However, passenger vehicles costing greater than \$30,000 are each required to be included in a separate class 10.1, which also allows CCA at a 30% rate (15% in the year of purchase and the year of disposal), calculated on the \$30,000 (plus applicable taxes) cost limit. A formula is applied to determine deductible lease costs in respect of a passenger vehicle.<sup>3</sup> A lease cost deduction calculator is available in the Tools and Solutions section of the Corporate Tax Centre on Taxnet Pro™ (also, see Motor Vehicle Leasing Costs – Employees at [cra-arc.gc.ca](http://cra-arc.gc.ca)).

## EMPLOYEE TAXABLE BENEFITS

When an employer (or a person related to the employer) makes a company-owned or -leased automobile available to an employee (or a person related to the employee) for personal use, the employee must pay income tax on the benefit related to the personal use of the vehicle. For example, when the motor vehicle is taken home by the employee, the travel between home and work is normally considered personal use of the vehicle by the employee, and the

benefit from that use must be included in employment income as a taxable benefit. There are two components to the automobile employment taxable benefit: the standby charge benefit and the operating cost benefit.

### STANDBY CHARGE BENEFIT<sup>4</sup>

The standby charge benefit recognizes that the employee is receiving a benefit by having the automobile available to them during the year for their personal use.

The standby charge is calculated based on:

- The original cost of a purchased automobile or the monthly lease cost of a leased automobile (including GST/HST and PST if applicable);
- The number of months the automobile is available to the employee for personal use (which normally includes driving to and from work);
- The number of kilometres driven for both personal and business purposes; and
- Any reimbursement by the employee for the availability of the vehicle.

**When the automobile is owned by the employer, the standby charge is:**  
 $2\% \times \text{cost of automobile} \times \# \text{ of months available to the employee in the year}$

Therefore, where the automobile is available 12 months of the year, 24% of the cost of the automobile is included in the employee’s income each year.

**When the automobile is leased by the employer, the standby charge is:**  
 $\frac{2}{3} \times \text{monthly lease costs (excluding insurance)} \times \# \text{ of months available to the employee in the year}$

The standby charge may be reduced if:

- The kilometres driven for business use are at least 50% of the total kilometres driven, *and*
- Less than 20,004 km per year, or an average of 1,667 km per month, are driven for personal use

OPERATING COST BENEFIT<sup>5</sup>

If the employer has paid the operating costs of an automobile which has been available for the personal use of an employee, an operating cost benefit must be included in the employee’s income, less any reimbursements by the employee to the employer. Operating costs include items such as fuel, oil, maintenance charges, licences and insurance. Operating costs do not include items such as interest, lease costs for a leased automobile or parking costs.

The operating cost benefit is based on kilometres driven for personal use by the employee. For 2015, the rate was \$0.27 per kilometre. For 2016, the rate has decreased by one cent to \$0.26 per kilometre.

If the employee uses the automobile primarily (at least 50%) for business purposes, the operating cost benefit may be calculated as 50% of the standby charge, less any reimbursements.

Example

An employee is provided with an employer-owned vehicle for all 12 months of 2016. The cost of the vehicle, including taxes was \$28,000. The employee drives 30,000 total kilometres in 2016, 12,000 of which are for personal use (i.e., 40% personal use). The employee has not made any reimbursements to the employer.

The **standby charge benefit** for 2016 is \$6,720 (2% x \$28,000 x 12 months). However, since the automobile was used more than 50% for business and less than 20,004 km were driven for personal use, the standby charge benefit to the employee is reduced to **\$4,031** (2% x \$28,000 x 12 months x 12,000/20,004 km).

The **operating cost benefit** for 2016 is \$3,120 (12,000 km x \$0.26 per km). However, since the automobile was used at least 50% for business purposes, the operating cost benefit can be calculated as 50% of the standby charge benefit, or **\$2,016**.

Thus, the total taxable benefit to the employee is **\$6,047** (\$4,031 standby charge benefit + \$2,016 operating cost benefit).

When a vehicle is used partially for business purposes and partially for other purposes, the CRA requires taxpayers to retain logbook records (see Documenting the Use of a Vehicle at cra-arc.gc.ca).

The CRA provides a calculator on its website to allow employers to estimate automobile benefits for withholding purposes (cra.gc.ca/autobenefits-calculator). Employees can also use the calculator to estimate the taxable benefit related to an employer-provided automobile. See also Form RC18, *Calculating Automobile Benefits*, and CRA Guide T4130: *Employers’ Guide – Taxable Benefits and Allowances*.

TAX-FREE AUTOMOBILE ALLOWANCES

The Act sets out a per-kilometre amount that may be paid tax-free to employees as reimbursement for motor vehicle expenses incurred while travelling for business purposes where the employee is using their personal vehicle. For 2016, the limit on the deduction of tax-exempt allowances paid by employers to employees that use their personal vehicle for business purposes is 54 cents per kilometre for the first 5,000 kilometres driven and 48 cents for each additional kilometre (these amounts are 4 cents higher in the Northwest Territories, Nunavut and Yukon). The allowance amounts reflect the key cost components of owning and operating an automobile, such as depreciation, financing, insurance, maintenance and fuel costs. ●

The federal government reviews these limits and rates annually, and announces any planned changes prior to the end of the calendar year.

1. RSC 1985, c. 1 (5th Supp.), as amended (herein referred to as “the Act”).


2. For purposes of the Act, a “passenger vehicle” is an automobile that was purchased or leased after June 17, 1987. An “automobile” is a motor vehicle designed to carry people on highways and streets, and can carry a driver and no more than 8 passengers. Note that motor vehicles which are not considered passenger vehicles are not subject to these prescribed limitations. See also CRA Guide T4044 under “Vehicle definitions chart”.

3. Contained in section 67.3 of the Act.

4. See paragraph 6(1)(e) and subsection 6(2) of the Act.

5. See paragraph 6(1)(k) of the Act and section 7305.1 of the *Income Tax Regulations*.

6. If an individual is “employed principally” in selling or leasing automobiles, then the standby charge and operating cost benefits will be decreased as follows: (1) for the standby charge benefit, if the employer has purchased one or more automobiles in the year, then, at the option of the employer, 1.5% is used instead of 2%, and the cost of the automobile is the greater of the average cost of all new automobiles purchased by the employer during the year, and the average cost of all new and used automobiles purchased by the employer during the year; and (2) for the operating cost benefit, \$0.23 is used instead of \$0.26.



## 2016 Automobile Deduction Limits and Expense Benefit Rates

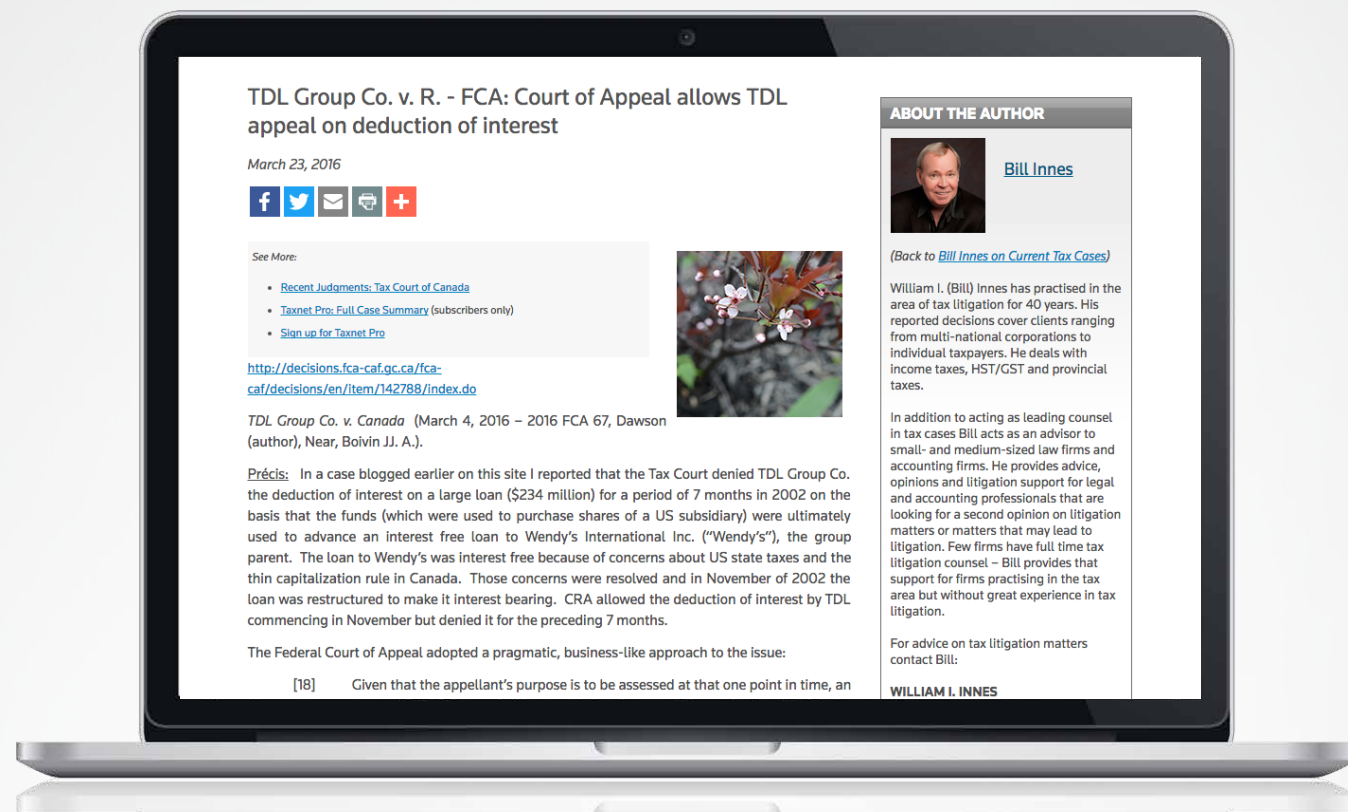
Automobile Expense Deduction Limits	
Maximum cost for capital cost allowance purposes	\$30,000
Maximum deductible monthly lease payment	\$800/month
Maximum deductible interest expense on vehicle loan to employee	\$300/month
Employee Taxable Benefits <sup>6</sup>	
Standby Charge Benefit: Employer-leased automobile Employer-leased automobile	2% of original cost/month 2/3 of monthly lease cost
Operating Cost Benefit	\$0.26/km
Tax-Free Automobile Allowances (per/km reimbursement rate)	
Provinces	First 5,000 km: \$0.54 >5,000 km: \$0.48
Yukon, the Northwest Territories, Nunavut	First 5,000 km: \$0.58 > 5,000 km: \$0.52

### About the Author

**Paula Ideias, B.A., LL.B., LLM (Tax)**

Paula Ideias is a Senior Tax Writer at Thomson Reuters. She has her law degree from Osgoode Hall Law School and was called to the Ontario Bar in 2000. Paula completed her Masters in Tax Law in 2014.





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# FOREIGN INVESTORS IN AUSTRALIA FACE NEW TAX COMPLIANCE RULES

Terry Hayes, Thomson Reuters

**“Where companies fail to do so, I will have powers to take action, including ordering divestment of Australian assets,” Mr. Morrison said.**

Australian Treasurer Scott Morrison announced on February 22, 2016 that the Australian government “will apply new requirements on foreign investment applications to ensure multinational companies investing in Australia pay tax here on what they earn.”

He said the government is committed to ensuring companies operating in Australia pay tax on their Australian earnings. “Where companies fail to do so, I will have powers to take action, including ordering divestment of Australian assets,” Mr. Morrison said.

The Treasurer said “foreign investment applications will have to comply with Australian taxation law, Australian Taxation Office (ATO) directions to provide information in relation to the investment, and advise the ATO if investors enter into any transactions with non-residents to which transfer pricing or anti-avoidance measures of Australian tax law may potentially apply.”

Mr. Morrison said “additional conditions may also be applied where a significant tax risk is identified in a particular case. These may include requiring the investor to enter into advance pricing arrangements with, or seek rulings from, the ATO, or comply with other directions from the ATO that are specific to their circumstances.” “A breach of these conditions could result in prosecution, fines and potentially divestment of the asset,” he added. The Treasurer said the changes will apply prospectively and it is understood they in fact apply from the date of his announcement (February 22, 2016). “The additional requirements on foreign investors add to the existing national interest test, which also considers a range of factors, such as national security, the impact on competition, the character of the investor, and the impact on the economy and the community,” Mr. Morrison said.

**“The additional requirements on foreign investors add to the existing national interest test...”**



CONDITIONS ON FOREIGN INVESTMENT APPLICATIONS

Details of the standard conditions to be imposed by the government on foreign investment applications are reproduced below.

Standard conditions to be met for an application not to be against the national interest

1.

The applicant must comply with Australia’s taxation laws in relation to the action, and any transactions, operations or assets in connection with the assets or operations acquired, directly or indirectly, as a result of the action.
2.

The applicant must use their best endeavours to ensure, and within their powers must ensure, that its associates\* comply with Australia’s taxation laws in relation to the action and any transactions, operations or assets in connection with the assets or operations acquired, directly or indirectly, as a result of the action.
3.

The applicant must provide any documents or information^ requested by the ATO in connection with the application or potential application of Australia’s taxation laws in relation to the action and any transactions, operations or assets in connection with assets or operations acquired, directly or indirectly, as a result of the action. These documents or information must be provided within the time frame specified by the ATO.
4.

The applicant must use their best endeavours to ensure, and within their powers must ensure, that its associates provide any documents or information^ requested by the ATO in connection with the application or potential application of Australia’s taxation laws in relation to the action and any transactions, operations or assets in connection with assets
5.

The applicant must notify the ATO if it enters or has entered into any material (as defined by the ATO) transaction(s) or other dealing(s) in connection with the action, and any material transactions, operations or assets in connection with assets or operations acquired, directly or indirectly, as a result of the action, to which the transfer pricing rules in Div. 815-B of the ITAA 1997 or the anti-avoidance rules in Pt. IVA of the ITAA 1936 may potentially apply, where such transactions or dealings have not been previously notified to the Commissioner.
6.

The applicant must use its best endeavours to ensure, and within its powers must ensure, that its associates must notify the ATO if they enter or have entered into any material (as defined by the ATO) transaction(s) or other dealing(s) in connection with the action and any material transactions, operations or assets in connection with assets or operations acquired, directly or indirectly, as a result of the action, to which the transfer pricing rules in Div. 815-B of the ITAA 1997 or the anti-avoidance rules in Pt. IVA of the ITAA 1936 may potentially apply, where such transactions, dealings, operations or assets have not been previously notified to the Commissioner.
7.

The applicant must pay any outstanding taxation debt, and must use their best endeavours to

or operations acquired, directly or indirectly, as a result of the action. These documents or information must be provided within the time frame specified by the ATO.

ensure, and within their powers must ensure, that its associates pay any outstanding taxation debt, which is due and payable at the time of the proposed action.

8. The applicant must provide an annual report to the Foreign Investment Review Board on compliance with these conditions. The first report must cover the first 12-month period commencing on the date of this notice. All subsequent reports must cover a 12-month period beginning on each anniversary of the date of this notice. Each report must be provided within 30 days after the end of the 12-month period to which it relates. ●

- \* “Associates” has the meaning in s. 318 of the ITAA 1936.
- ^ This includes documents or information held, possessed or stored outside Australia.

Possible additional conditions for cases where a significant tax risk is identified

1.

The applicant must engage in good faith with the ATO to resolve any tax issues in relation to this transaction and its holding of the investment.\*
2.

The applicant must provide information as specified by the ATO on a periodic basis including at a minimum a forecast of tax payable.^
- \* Depending on the issues raised by the ATO, this might include entering into the negotiation of an advance pricing arrangement or the obtaining of a private ruling with the ATO within a certain time frame, or compliance with thin capitalization requirements or changes to the structure of the takeover. The relevant requirements would be included and tailored as appropriate in each case.
- ^ This could include a requirement to advise the ATO, and provide an explanation, of significant variations from the forecast of tax payable.

About the Author

Terry Hayes, BBus, CPA, CTA

Terry Hayes is a Senior Tax Writer with Thomson Reuters in Sydney, Australia. He heads the Thomson Reuters Tax Newsroom, and is also a columnist for various professional journals and websites. Terry’s experience stems from 12 years at the Australian Taxation Office and the “Big 4” environment at PricewaterhouseCoopers in Sydney.

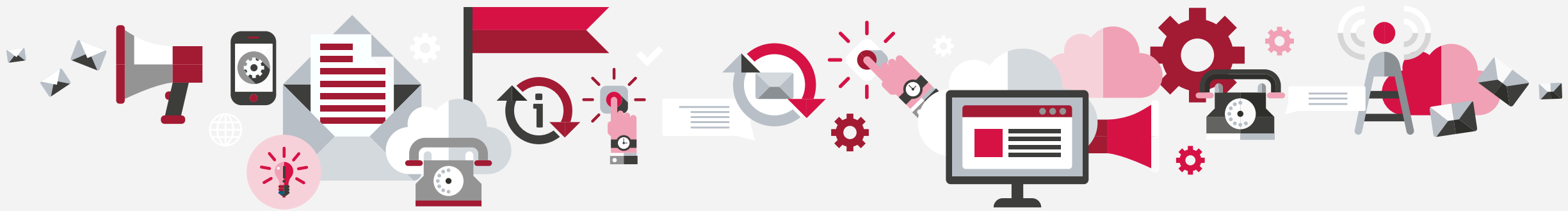
CORPORATE TAX HIGHLIGHTS

Significant tax decisions and administrative developments at year-end

Ryan Keey, Thomson Reuters







This article highlights some of the more significant 2015 federal corporate tax judicial and administrative developments that are covered in the *Corporate Tax Return and Provisions Guide, 2016 Edition*.

SIGNIFICANT CASES

**BP Canada Energy Co.** (2015, FC): The taxpayer was required to disclose its internally generated uncertain tax positions working papers to the CRA in the course of an audit.

**TDL Group Co.** (2015, TCC (under appeal to FCA)): An interest deduction was denied in relation to borrowed funds used by a Canadian holding company to acquire additional shares in a U.S. wholly-owned operating subsidiary on the basis that the taxpayer did not have reasonable expectation to earn income in respect of the shares purchased. In forming its conclusion, the Court also took into consideration the indirect use of the funds, which was to facilitate an interest-free loan to the ultimate parent company of the corporate group.

**Kruger Inc.** (2015, TCC (under appeal to FCA)): Court held that the taxpayer was not permitted to mark-to-market foreign exchange derivate contracts (other than certain purchased contracts under ITA 10(1)) for tax purposes).

**George Weston Ltd.** (2015, TCC): Contrary to CRA’s published views on the matter, the Court found that the taxpayer’s gain on a disposition of foreign currency hedging contracts was on capital account even though the taxpayer, a Canadian parent holding company, did not own the underlying assets being hedged and had no intention of disposing of the hedged assets. The purpose of the contracts in question was to hedge the currency risks of an acquired U.S. business carried on by a subsidiary of the taxpayer.

**Birchcliff Energy Ltd.** (2015, TCC (under appeal to FCA)): The GAAR applied on the basis that the taxpayer abusively circumvented the loss streaming restrictions by avoiding the special rule ITA 256(7)(b)(iii) that deems control to have been acquired upon an amalgamation.

**Superior Plus** (2015, TCC): The taxpayer was entitled to review a wide-range of documents, as well as receive answers to questions, regarding deliberations undertaken by the CRA and Finance leading to a GAAR assessment dealing with third-party loss utilizations.

**Devon Canada** (2015, FCA): The Court ruled that a notice of objection filed by the taxpayer should include any issues raised in any amendments or additional submissions to the original object that were accepted by the CRA while the matter was still at the objection stage.

**Solutions MindReady** (2015, TCC): Consistent with the decision in *Lyrtech RD Inc.* (2013, TCC (affd 2014, FCA)), a public corporation was found to exercise dominant economic influence over the taxpayer such that the taxpayer was not a CCPC.

**1057513 Ontario Inc.** (2015,TCC) and **Presidential MSH Corporation** (2015, TCC): If a corporation fails to file a timely return and consequently is ineligible to receive a dividend refund, the Court held that the RDTOH account should not be reduced in respect of the dividend paid for which a dividend refund was not received. The CRA has stated it also accepts that the dividend recipient should not be subject to Part IV tax in such a case.

**Kruger Wayagamack Inc.** (2015, TCC (under appeal to FCA): When applying ITA 256(1.2)(c) (association rules), for valuation purposes, issues of control must be ignored by virtue of ITA 256(1.2)(g). Also, the Court held that operational control without strategic control does not give rise to de facto control.

**McGillivray Restaurant** (2014, TCC (under appeal to FCA)): Court held that taxpayer had de facto control of a corporation, 76% of the shares of which were held by the taxpayer’s spouse. The taxpayer was the sole director and officer of the company and effectively managed the restaurant owned by the company.

**Barejo Holdings ULC** (2015, TCC (under appeal to FCA)): Court held that certain instruments issued by non-resident subsidiaries of Canadian banks were debt for Canadian tax purposes. An extensive analysis of the meaning of debt for Canadian tax purposes was undertaken.

**St-Hilaire** (2014, TCC), **Gaumont** (2014, TCC): When the taxpayer waived his right to share in the particular corporation’s debt as part of its bankruptcy proposal to creditors, the taxpayer did not own the debt at year-end and was unable to elect under ITA 50(1) and claim an ABIL.

**Donne** (2015, TCC): A debt can be found to be doubtful at year-end based on information available as of the T2 return filing-due date.

**Fisher** (2015, FCA): Bad debt deduction denied applying *Rich* criteria.

**Livingston** (2015, TCC): The taxpayer was not permitted to defer a capital gain since various farm assets acquired were found not to qualify as replacement properties in respect of farmland disposed of to a developer, despite that fact that the farmland and the acquired farm assets were used in the same dairy business.

**568864 B.C. Ltd.** (2014, TCC): A terminal loss of \$3.8 million was allowed to be claimed in respect of patents that had been seized by the taxpayer in bankruptcy proceedings. The Court rejected the Crown’s argument that the taxpayer did not acquire the patents for the purpose of earning income.

**Les Abeilles Service de Conditionnement Inc.** (2014, TCC): Four projects undertaken to improve the taxpayer’s assembly line involving the development of new or improved manufacturing processes for mechanical and electrical systems were found to qualify as SR&ED. The Court found that separate but related projects should be considered as a whole. Also, the Court noted that contemporaneous documentation relating to SR&ED projects is not an essential condition for a claim to be allowable.

**Highweb & Page** (2015, TCC), **Hypercube Inc.** (2015, TCC), **2037625 Ontario Inc.** (2015, TCC), **Acsis EHR (Electronic Health Record) Inc.** (2015, TCC): SR&ED claims in respect of software development were denied in the first three cases but allowed in Acsis EHR.

**6379249 Canada Inc.** (2015, TCC): SR&ED claim allowed since only an incremental scientific advance is required to qualify as a technological advancement. As in Acsis, testimonial evidence was considered to have sufficiently demonstrated a systematic investigation.

**Feedlot Health Management Services Ltd.** (2015, TCC): When making a SR&ED claim using the proxy method, the Court held that the phrase “in respect of” as used in ITA 37(8)(a)(ii)(B)(II) has a wide scope.

**Emotion Picture Studios Inc.** (2015, TCC): SR&ED claim denied in respect of research related to improving Google search ranking since the process did not result in a technological advancement.

**Anson v. Revenue and Customs** (2015, U.K. S.C.): The U.K. Supreme Court effectively treated an LLC as a partnership for purposes of applying the U.S.-U.K. Tax Treaty. The CRA has confirmed it continues to consider LLCs to be corporations for Canadian tax purposes.

**Discovery Trust** (2015, Nfld. T.D.) and **Boettger** (2015, Q.C. C.S.): In these provincial trust residency cases, *Discovery* was found to be resident in Alberta, as asserted by the taxpayer, whereas *Boettger* was found to be resident in Quebec, as argued by the Crown.

**Veracity Capital Corp.** (2015, B.C. S.C.): Provincial GAAR found to apply to Quebec year-end shuffle transaction.

**Foster** (2015, TCC): Reassessments made pursuant to ITA 165(3) are subject to the limitation on reassessing found in ITA 152(5). In making a reassessment pursuant to ITA 165(3) after the expiry of the normal reassessment period, the CRA may not change the basis of the reassessment against the taxpayer even if the dollar amount of the reassessment would be unchanged.

**Guindon** (2015, S.C.C.): The Supreme Court of Canada held that the tax preparer penalty under ITA 163.2(4) is an administrative penalty, not a criminal fine, such that its imposition does not require conviction by a provincial court, with *Charter of Rights* protection and proof beyond a reasonable doubt.

ADMINISTRATIVE DEVELOPMENTS

**Interest deductibility:** The CRA released Income Tax Folio S3-F6-C1: Interest Deductibility, on March 6, 2015, replacing and cancelling IT-533.

**Surplus stripping** (2015 CTF Conference Roundtable (q. 4, q. 14)): The CRA stated it would not apply the GAAR to certain transactions involving the intentional triggering of ITA 55(2) the overall effect of which was to pay less total tax in respect of corporate distributions (i.e., by effectively removing surplus as a capital gain rather than a dividend). However, the CRA stated it will apply the GAAR to surplus stripping situations similar to those in *Descarries* (2014, TCC), where a capital gain is offset by basis created via the capital gains deduction or V-day.

**Election not to be a CCPC** (VDs 2014-0550191I7, 2014-0523171E5): It is possible to avoid a deemed year-end under ITA 249(3.1) (deemed year-end when a corporation ceases to be a CCPC) by electing under ITA 89(11). Neither the filing of an election under ITA 89(11), nor the revocation of such an election, triggers a deemed year-end under ITA 249(3.1).

**Recapture** (VD 2015-0575921I7): CCA recapture resulting from an adjustment of the capital cost of property previously acquired in a statute-barred taxation year can be included in the taxpayer’s income in its first non-statute-barred taxation year.

**Thin capitalization** (2015 Annual CTF Conference Roundtable (q. 10)): By virtue of the enactment of ITA 261(2), the CRA is now of the view that foreign denominated outstanding debts to specified non-residents should be converted based on the spot rate on the date the debt was issued for purposes of applying the thin capitalization rules.



**Transfer pricing:** The CRA issued TPM-15: Intra-group Services and Section 247 of the *Income Tax Act*, and TPM-16: Role of Multiple Year Data in Transfer Pricing Analyses, during the year. It is also significant to note the OECD released its final BEPS report on October 5, 2015. The CRA has been applying the new guidance on a retroactive basis.

**Upstream loans** (VD 2015-0581501C6): The CRA takes a flexible approach in applying ITA 90(9) (deduction available in respect of upstream loan income inclusion).

**Late-filed PLOI election** (VDs 2014-0542061E5, 2014-0519431E5): If a PLOI election is late-filed, the taxpayer's withholding tax liability will be reassessed at that time (i.e., as ITA 15(2) and 214(3) will no longer apply). To be eligible for a Part XIII tax refund under ITA 227(6), a refund application must be made no later than two years after the end of the calendar year in which the Part XIII tax was paid.

**Foreign tax credits** (VD 2014-0525231I7): Foreign tax paid in excess of the amount due is not eligible for an FTC. Also, the CRA's position is that a taxable capital gain resulting from a deemed disposition of property pursuant to a provision of the ITA (such as ITA 40(3)) is Canadian-source income that cannot be included in computing foreign non-business income for purposes of claiming an FTC.

**CCPC status** (VD 2014-0552711E5): The CRA's position is that ITA 251(5)(b) applies to a letter of intent (LOI) to acquire shares of a private corporation once it is established that the LOI is a contract.

**De facto control exceptions** (VD 2015-0565741E5): In a particular situation, the CRA took the view that a private corporation was not a CCPC on the basis that ITA 251(5)(b)(i) applied to a contingent right to acquire shares of the corporation upon a default event (the right was held by a public corporation).

**Refundable SR&ED credit claims** (VD 2015-0567981I7): A corporation can request that a determination of its refundable SR&ED credits be made in an otherwise statute-barred taxation year where certain conditions are met.

**Financing expenses** (VD 2015-0595751C6): The series of borrowings or other transactions and repayments exclusion from the application of the financing expenses write-off rule in ITA 20(1)(e)(v) may apply where the debt of a taxpayer is settled by transferring assets to a subsidiary in consideration for an assumption of the relevant debt or where the relevant debt is repaid with funds obtained from a new borrowing by a related corporation.

**Deductibility of fines and penalties:** Folio S4-F2-C1 was released effective July 10, 2015, replacing and cancelling IT-104R3.

**Replacement property rules** (VDs 2014-0551841E5, 2014-0561101E5): If ITA 69(11) (disposition at less than fair market value) deems a corporation to have disposed of property for fair market value proceeds, the CRA accepts that the corporation is considered to have received those proceeds at that time for purposes of the replacement property rules in ITA 44(1). Additionally, the fact that a rental property, such as a warehouse, is replaced with another rental property, such as an office building, would not, in and of itself, preclude the office building from being considered a replacement property for the warehouse.

**Amalgamations** (VD 2014-0553731I7): Depreciable property retains its character as such even if the parent corporation does not use the property (i.e., if the property is left idle) and the property is then sold.

**Loss carryforward utilization** (VD 2014-0533871E5): If a loss reported is in dispute, the loss does not have to be accepted by the CRA in order for the loss to be claimed against income in other years. Rather, when the deduction is denied, a notice of objection should be filed in respect of the year in which the deduction was claimed in order to protect the corporation's ability to utilize the disputed loss.

**Reserves** (VD 2014-0538131C6): An ITA 20(1)(m) reserve may not be claimed in respect of the sale of video game app points that may be used by a consumer at a later date to access enhanced features of a video game app.

**Waivers** (VD 2015-0583081I7): Where the details of a waiver also provide for a refund as a reasonable outcome of an audit, a refund request may be considered to have been made as part of the waiver.

**ACB of partnership interests** (VD 2014-0538161C6): The CRA considers all units that a corporation holds in a limited partnership to constitute a single capital property, regardless of whether the partnership may issue different classes of units. ●

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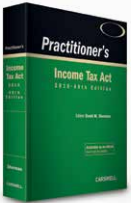
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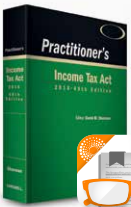
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## About the Author

### Ryan Keey, MAcc, CPA, CA

Ryan Keey, a Senior Tax Writer for Thomson Reuters, has written extensive tax commentaries on all aspects of corporate taxation and has co-authored numerous books, including foreign affiliate, depreciable property, and tax elections guides. He has also published a wide variety of articles, checklists, calculators, and guides available on Taxnet Pro.



# DESIGN AND POLICY DETAILS ANNOUNCED FOR THE ONTARIO RETIREMENT PENSION PLAN

Craig Proctor, Thomson Reuters

In a series of announcements on January 26 and February 16, 2016, the Ontario government provided concrete design and policy details for the forthcoming Ontario Retirement Pension Plan (ORPP). The ORPP is modelled on the principles of the Canadian Pension Plan (CPP) and is intended to provide retirement income security for the estimated 2/3 of Ontarians currently without a workplace pension plan. The government’s objective is to have every eligible employee in Ontario enrolled in the ORPP or a comparable workplace pension plan by 2020.

The implementation of enrolment in the ORPP will be gradational in order to ensure that workers currently without workplace pension security will be prioritized, but also in order to provide employers with time to adjust and to allow for the administration of new or expanded coverage to more than 4 million employees. As such, while plan members would begin to make contributions in 2018, benefits would not be provided by the ORPP until 2022.

Employers who offer voluntary workplace pension plans have until January 1, 2020 to revise their plans (if necessary) to accommodate the minimum total mandatory contribution rate for defined contribution plans. Those who offer a comparable workplace pension plan are not required to participate. Employers enrolled in the plan will tender up to 1.9% of an employee’s annual earnings up to \$90,000. Rates will be graduated from the time a business commences contributing to a maximum of 3.8% by 2021. Eligible employees between the ages of 18 and 70 earning over a minimum of \$3,500 will make equal contributions.

### BENEFITS

As currently devised, the ORPP would bestow an inflation-indexed income stream after retirement by replacing 15% of an individual’s earnings to a maximum of \$90,000 (in 2017 dollars). The amount of pension benefits would be determined by calculating the average yearly earnings over the time frame in which ORPP contributions are made. But benefits will also be indexed according to the average

Employers enrolled in the plan will tender up to 1.9% of an employee’s annual earnings up to \$90,000.

growth of wages and salaries (according to Statistics Canada), so that past earnings would be accorded “present-day value” upon retirement. After retirement, these benefits would be indexed according to the Consumer Price Index in order to allow for and safeguard against inflation.

In the event of the death of a plan member prior to retirement, a survivor benefit in the form of a lump sum reflecting the actuarial equivalent value of the contributor’s pension will be paid to an eligible spouse, beneficiary or estate. If a plan member’s death occurs after retirement, a survivor benefit equal to 60% of the contributor’s adjusted pension will provided for life to a member’s spouse; or the full pension for up to 10 years to the beneficiary or estate of contributors without spouses.

All details regarding qualification, enrolment, contribution rates and scheduling for employers and employees are subject to legislative approval.

### ENROLMENT SCHEDULE

On February 16, 2016, Finance Minister Charles Sousa announced that while employer enrolment will commence in January 2017, payroll deductions will be postponed until January 1, 2018 . The ORPP Administration Corporation (ORPP AC) will initiate the process of verifying and assessing existing workplace pension plans and enrolling businesses in 2017.

All details regarding qualification, enrolment, contribution rates and scheduling for employers and employees are subject to legislative approval.

Prior to Sousa’s announcement of the one-year delay, program enrolment was scheduled to be implemented in four stages or “waves” as follows:

Type of Employer	2017	2018	2019	2020	2021
Wave 1: large employers without registered workplace plans	0.8%	1.6%	1.9%	1.9%	1.9%
Wave 2: medium employers without registered workplace plans	0%	0.8%	1.6%	1.9%	1.9%
Wave 3: small employers without registered workplace plans	0%	0%	0.8%	1.6%	1.9%
Wave 4: employers with registered plans that do not meet test	0%	0%	0%	1.9%	1.9%

Wave 1:  
Large employers (500 or more employees) without registered workplace pension plans. Contributions to start: January 1, 2017.

Wave 2:  
Medium employers (50- 499 employees) without registered workplace pension plans. Contributions to start: January 1, 2018.

Wave 3:  
Small employers (49 or fewer employees) without workplace pension plans. Contributions to start: January 1, 2019.

Wave 4:  
Employers with a workplace pension plan that is not modified or adjusted to meet the comparability test, as well as employees who are not members of their workplace’s comparable plan. Contributions to start: January 1, 2020.

Full details of a new enrolment schedule have yet to be announced.

### EXEMPTIONS

As per the CPP, the ORPP will establish an exemption for individuals who are employed by a religious order, have taken a vow of perpetual poverty, or who are members of a sect that opposes the conferring of any public/private benefits. Similarly, on-reserve First Nations employers or employees who voluntarily opt-in to the ORPP will reserve the right to opt-out of the ORPP at any time.

### FUNDING POLICY

The government has also established a funding policy in order to ensure the sustainability of ORPP benefits for the next 100 years. This policy features measuring plan sustainability rates against the lowest contribution rates and adjusting contribution rates by up to 0.2% in the event of a long-term shortfall in plan funding.

### NOT A PAYROLL TAX

While the Conservative opposition has criticized the ORPP by characterizing it as a “payroll tax” , the government has insisted that all funds collected as a result of the program will be allocated exclusively for the benefit of enrolled members. As such, ORPP funds are never to be co-opted into the government’s general revenue stream. ●

*‘Governments of Canada and Ontario Announce an Agreement Towards Improving Pensions for Canadians*, joint Department of Finance Canada and Ontario Ministry of Finance news release, February 16, 2016

*‘ORPP for Employers*, Ontario Ministry of Finance news release, January 26, 2016.

*‘Julia Munro*, MPP for York-Simcoe and Ontario PC critic for the ORPP, Queen’s Park, February 18, 2015.

### About the Author

#### Craig Proctor, English B.A. Hon., M.A.

Craig Proctor is a Product Writer with Thomson Reuters where he serves as editor of *Provincial & Territorial Tax News*, and chief product writer for *Provincial TaxPartner*, *Practitioner’s British Columbia Tax Annotated* and *Practitioner’s Ontario Taxes Annotated*. He is responsible for content enhancement in all provincial areas of Taxnet Pro.





**Canada concludes Free Trade Agreement with Trans-Pacific Partners**

On October 5, 2015, Canada successfully concluded the Free Trade Agreement with the members of the Trans-Pacific Partnership (TPP). The TPP will be the largest trading bloc in the world, and will deepen Canada's trading in the fast-growing markets in the Asia-Pacific region.

This agreement will give Canadian business preferential access to Asia-Pacific markets and ensure that tariffs and other barriers faced by Canadian products from various sectors will be cut. The sectors that will benefit greatly include agriculture and agri-food, fish and seafood, forestry and value-added wood products, metals and mining, and manufactured industrial goods. It will also provide improved access into financial, professional, architectural and engineering, research and development, environmental, construction and transportation services.

A comprehensive set of programs was put into place to protect supply-managed producers and processors throughout the implementation of the TPP and the government was able to protect the three pillars of Canada's supply management system, which will remain intact.

On January 25, 2016, the Honourable Chrystia Freeland, Minister of International Trade, wrote an open letter to Canadians on the TPP, outlining the actions being taken by her government to conduct a full and open debate with all parties in Parliament. This means that Canada and the other 11 countries will convene to sign the Agreement. Not attending would mean withdrawing from the TPP altogether, even before Canadians have had an opportunity to fully debate its implications.

**Minister Freeland welcomes expansion of WTO Agreement on Information Technology**

On December 16, 2015, the Honourable Chrystia Freeland, Minister of International Trade, announced the conclusion of negotiations on the expansion of the World Trade Organization (WTO) Information Technology Agreement (ITA). The expanded ITA will eliminate tariffs on approximately 201 information and communication technology (ICT) and related products imported from all WTO members within seven years, with a majority of tariffs eliminated immediately upon implementation of the agreement.

**Canada gains market access for live breeding cattle and swine to Georgia (Agriculture and Agri-Food Canada)**

Lawrence MacAulay, Minister of Agriculture and Agri-Food, and Chrystia Freeland, Minister of International Trade, announced on February 2, 2016 that the Government of Canada has secured export market access for live breeding cattle and live breeding swine to the country of Georgia. Canadian cattle and swine breeders can immediately begin exporting to this market. Georgian breeders also benefit by gaining access to Canada's world-class animal genetics. Canadian industry estimates that the total gains from access to this new market could be worth up to \$2.5 million annually. ●



**About the Author**

**Dennis Singh**

Dennis Singh is a Product Writer at Thomson Reuters. He is involved in monitoring regulatory and industry changes to ensure that Taxnet Pro is maintained and enhanced on an ongoing basis. Dennis is responsible for adding value to the Tax & Estate Planning Centre and Customs & Excise Centre.

# INTERNATIONAL TRADE AND CUSTOMS UPDATE

Dennis Singh, Thomson Reuters

**Canada and Hong Kong sign investment agreement**

On February 10, 2016, the Honourable Chrystia Freeland, Minister of International Trade, and Gregory So, Secretary for Commerce and Economic Development of the Hong Kong Special Administrative Region, signed a Canada-Hong Kong foreign investment promotion and protection agreement (FIPA) in Toronto.

Hong Kong offers many investment opportunities for Canadian businesses, especially in areas of potential growth such as financial investment

services, sustainable technologies, professional services, agricultural products and processed food, transportation, information and communications technology, and education. Canadian investment in Hong Kong reached \$6.1 billion in 2014. Hong Kong's foreign direct investment in Canada reached HK\$73.9 billion (\$11.1 billion) in 2014. Canadian merchandise exports to Hong Kong totalled \$3.9 billion in 2015, making Hong Kong Canada's eighth-largest export market for goods; in 2014, Hong Kong was Canada's seventh-largest market for services.



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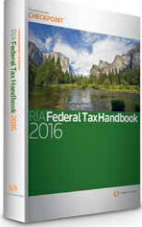
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Ryan Keey, MAcc, CPA, CA

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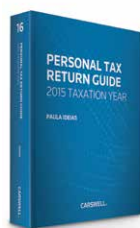
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MARCH

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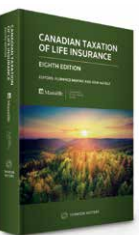
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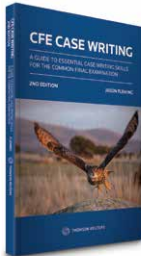
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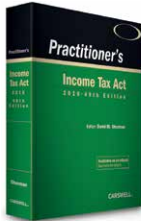
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Richard W. Pound, O.C., O.Q., Q.C., FCPA, FCA

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Other formats available.

Taxation at Death: A Practitioner’s Guide 2016  
Grace Chow, CPA, CA, FCCA, FTIHK, TEP and Michael Cadesky, B.Sc., M.B.A., FCPA, F.C.A., TEP

Softcover | 978-0-7798-7197-1 | \$101



This book outlines the special taxation rules that arise at death. It is a detailed guide to Canadian taxation at death and is written primarily for accountants, lawyers, trust officers in trust companies, insurance professionals or other financial advisors. The book gives a thorough explanation of the relevant matters through the main text itself as well as the use of practical examples, reference checklists, tables, tax planning tips, cautions, undecided issues, and extensive reference to authoritative sources. The book also includes a sample deceased taxpayer tax return and a glossary of terms.

Written in a user-friendly and easy to read format, this book is arranged in a logical order to allow the reader to progress through the subject areas in a way that follows the preparation of a tax return for the deceased taxpayer and onwards.

APRIL

Portable Tax Court Practice, Act and Rules 2016 / Loi et Règles de procédure de la Cour canadienne de l’impôt  
Robert McMechan, B.A., LL.B., LL.M., Ph.D., Gordon Bourgard, LL.B., LL.M.

Cerlox | 978-0-7798-7216-9 | \$47



*Portable Tax Court Practice, Act and Rules 2016 / Loi et Règles de procédure de la Cour canadienne de l’impôt* is a handbook containing the Act, the Rules and Practice Notes, in a portable version, which will be easy to take to court. Used by tax litigators, this publication provides the rules on how to litigate in Tax Court and is an accompaniment to the *Tax Court Practice* looseleaf edition.

Key Features:

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Current subscribers to *Tax Court Practice*, the looseleaf edition, will receive this book at no cost with the next release.

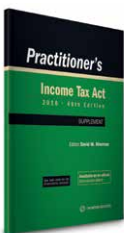
MAY

Practitioner’s Income Tax Act 2016, 49th Edition - Supplement  
David M. Sherman, B.A., LL.B., LL.M.

Softcover | 978-0-7798-7204-6 | \$39

ProView\* | A23549-49S1 | \$39

Print + ProView\* | L7798-7194BS | \$43



*The Practitioner’s Income Tax Act 2016, 49th Edition Supplement* allows you to be up-to-date with the latest changes to the *Income Tax Act*. This supplement will include all recent legislation since the publication of the 49th edition. And more than

just legislative updates, this comprehensive supplement also includes up-to-date amendments and David Sherman’s expert insight and detailed annotations.

The Supplement features page references to PITA 49, draft legislation in grey shading, and Thomson Reuters ProView™ digital version.



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French edition also available.

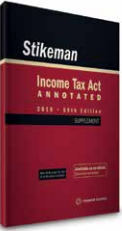
Supplement available only with purchase of Mainwork.

Stikeman Income Tax Act, Annotated 2016, 59th Edition - Supplement  
Richard W. Pound, O.C., O.Q., Q.C., FCPA, FCA

Softcover | 978-0-7798-7205-3 | \$39

ProView\* | A23563-59S1 | \$39

Print + ProView\* | L7798-7195BS | \$43



This supplement will include all recent legislation since the publication of the 59th edition. More than just legislative updates, this comprehensive supplement also includes up-to-date amendments and Richard Pound’s expert insight and detailed annotations.

The Supplement features page references to SITA 59 and Thomson Reuters ProView™ digital version.



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Supplement available only with purchase of Mainwork.

JUNE

Administration of Income Tax, 2016  
Colin Campbell, B.A., M.Sc., Ph.D., LL.B.

Softcover | 978-0-7798-7218-3 | \$159



*Administration of Income Tax* is a comprehensive treatment of the law governing the administration of federal income tax in Canada (and provincial income taxes administered by the CRA under collection agreements). It is written from a taxpayer’s perspective and provides the framework for tax returns, payments, audits, assessments and reassessments, objections and appeals.

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David M. Sherman, B.A., LL.B., LL.M.

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*GST Memoranda, Bulletins Policies & Info Sheets* provides the complete text of all GST Memoranda, GST/HST New Memoranda Series, Technical Information Bulletins, Policy Statements and Info Sheets (including draft documents) released by the Canada Revenue Agency (CRA) with respect to the Goods and Services Tax (GST) and Harmonized Sales Tax (HST).

The work includes extensive annotations, editorial comments and footnotes to assist the reader in understanding and cross-referencing the information contained in the CRA documents.

Insightful annotations and comprehensive cross-referencing of government documents make this an indispensable resource for the time-conscious tax professional. Updated annually with all essential GST administrative documents to ensure compliance, this work comes complete with useful finding tools such as a sectional look-up table and an exhaustive topical index.

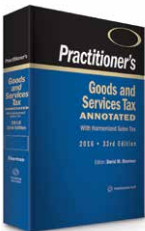
Practitioner’s Goods and Services Tax Annotated With Harmonized Sales Tax 2016, 33rd Edition

David M. Sherman, B.A., LL.B., LL.M.

Softcover | 978-0-7798-7212-1 | \$148

ProView\* | A23667-33ON | \$148

Print + ProView\* | L7798-7212BE | \$177



The primary information related to GST is all contained in this one handy, softcover volume – the complete, authoritatively updated texts of the GST, HST and non-GST portions of the *Excise Tax Act* and Regulations, augmented by draft legislation, GST-related Remission Orders and Technical Notes – all cross-referenced with detailed annotations to related provisions, definitions, case annotations summarizing each case’s relevance, memoranda, technical information bulletins, policy papers, forms, history and much more. The book also features a *Topical Index*, newly updated, comprising more than 13,000 separate line entries with extensive references to all legislation, regulations and Canada Revenue Agency publications.



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Practitioner’s Ontario Taxes Annotated 2016, Spring Edition

Giselle Feldman, MBA, MTax

Softcover | 978-0-7798-7219-0 | \$119

ProView\* | A23675-16ON | \$119

Print + ProView\* | L7798-7219BE | \$143



*Practitioner’s Ontario Taxes Annotated* contains, in an easy-to- use format, the core tax statutes and regulations of Ontario – fully annotated. It also includes complete History annotations for major statutes with former readings of provisions and application notes. Finding tools include comprehensive topical indexes for each tax statute and its related regulations and a comprehensive directory of Ontario’s Ministry of Finance – Tax Revenue Division Branches and Tax Offices. Also included are comparative tax reference tables with federal and provincial rates for individuals and corporations.



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MAY

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May 1–4, 2016  
Ottawa, ON  
[www.tei.org](http://www.tei.org)

CALL (Canadian Association of Law Librarians) Conference

May 15–18, 2016  
Vancouver, BC  
[www.callacbd.ca](http://www.callacbd.ca)

IFA (International Fiscal Association) International Tax Seminar

May 26–27, 2016  
Montréal, QC  
[www.ifacanada.org](http://www.ifacanada.org)

APFF (association de planification fiscale et financière) Spring Conference

May 29–31, 2016  
Estérel, QC  
[www.apff.org](http://www.apff.org)

JUNE

Canadian Petroleum Tax Society

June 2016  
Calgary, AB  
[www.cpts.ca](http://www.cpts.ca)



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