ON THE CUTTING EDGE

Tax policy issues and tax practice changed rapidly during the 1980s and 1990s in response to dramatic changes in the world for which the existing tax rules were formulated. Market exchanges increasingly involved services and intangible products. With the emergence of the Internet and other means of conducting commerce electronically, financial capital became even more mobile and a substantial amount of business could be conducted without a physical presence in a jurisdiction. North American businesses became more and more integrated. International competitive pressures increased the need for support for research and development, entrepreneurship, innovation, and risk taking in a knowledge-based economy. The prevailing ideas about the appropriate role of government, markets, the family, and civil society underwent a paradigm shift.

The articles published in the journal in the fifth decade anticipated these developments and reflected the influence they had on tax policy and practice. Lead articles dealt with such issues as taxes and international competitiveness, the optimal mix of taxes in a knowledge-based economy, the brain drain, the taxation of employee stock options, tax incentives for research and development, the problems of taxing income from capital in a globalized economy, the growing size of the underground economy, the taxation of financial instruments, tax policy and the time value of money, the impact of the Internet on the taxation of international transactions, the effective marginal tax rate schedules for taxes and transfers, the effect of the Charter of Rights and Freedoms on tax procedures, statutory interpretation and tax avoidance, the role of payroll taxes, the integration of corporate income and shareholder taxes, and the restructuring of the division of taxation powers between the federal and provincial governments.

In the reviews of the journal’s first four decades, the themes that ran through each decade were reflected through the prism of representative articles. We even republished a few of the classic articles from the first three decades, since they might not have been readily available to all readers. The articles published in the
journal's fifth decade, however, are not only available but also likely familiar to most readers. This review, therefore, will focus on the many changes in the journal itself over the decade. For the final instalment in this 50th-year review of the journal, to be published in the next issue, we will cover some general matters relating to the journal, examine trends in the articles published in the journal over the past five decades, and review a number of the articles published in the fifth decade.

THE JOURNAL AND ITS FEATURES

At the beginning of this decade of the journal, Douglas Sherbaniuk retired as director of the Foundation after more than 25 years of service. To commemorate his outstanding leadership, the Foundation dedicated its tax library to him and inaugurated the Douglas J. Sherbaniuk Distinguished Writing Award, given annually for the best writing undertaken for the Foundation. On Doug’s retirement, Thomas E. McDonnell became the new director of the Foundation.

In his first report as director, Tom paid tribute to the journal’s staff:

The Foundation’s editor is Laurel Amalia. Her efforts and those of the staff she supervises maintain the high quality of the Foundation’s publications. Much of her administrative burden is borne by Leesa Armstrong, editorial production co-ordinator. Michael Gaughan [who began working at the Foundation on a contract basis in August 1988] joined the editorial staff as reference editor and editorial assistant on a full-time basis in June 1994. His main responsibility is to verify the citations to literature and the quoted extracts in all of our published works.1

Both the indefatigable Leesa Armstrong and the meticulous Michael Gaughan continue to devote much of their time at the Foundation to the journal. Until recently, all editorial functions relating to the journal were undertaken or supervised by the Foundation’s editor. For the last 23 years, that has been Laurel Amalia. In 1999, to secure the journal’s reputation as a peer-reviewed publication of international status, Laurel convinced the Foundation to appoint an editorial board. Board members assist in the rigorous review of submitted manuscripts and encourage the submission of a broad range of interesting and topical papers in taxation and public finance. At present, the editorial board is made up of 38 members, drawn in about equal numbers from the tax law and accounting professions and from the legal, accounting, and public finance academies. In 2001, Laurel further convinced the Foundation to appoint an outside content editor for the journal. It is my privilege to be the first to serve in that capacity. Laurel remains the Foundation’s editor and has overall responsibility for all publications, including the journal. The journal editor’s responsibilities are, among other things, to assist in soliciting articles; to ensure that the journal’s articles are authoritative, comprehensible, and relevant to the journal’s mission; to help with the peer review of submitted manuscripts to ensure that the highest standards of scholarship are met and maintained; to create new features as appropriate in the light of evolving tax law and practice; and to assist in developing editorial standards, policies, and priorities.
During its fifth decade, the journal continued to increase in size. Each volume now averages about 2,000 pages. That’s a lot of reading. The journal has also changed somewhat in appearance. In 1995, a glossy cover was introduced. In 2001, footnotes were replaced by endnotes. (This design change has not been popular with readers, so with the first issue of the 2003 journal footnotes will be reinstated.) In 2002, a more substantial redesign was undertaken to give the journal a more contemporary, elegant look and to make it more readable. Most noticeably, the typeface of the text was changed from Times Roman to Janson. As all the fontologists among our readers are aware, the original Janson typeface was actually designed by the Hungarian punch-cutter Nicholas Kis around 1690, but was incorrectly credited to the Dutch typographer Anton Janson.

Gwyneth McGregor passed away in June 1998. As the journal’s first editor, from 1952 to 1970, she was the original major influence on the journal, and in the reviews of the journal’s first two decades she was featured, appropriately, as the dominant character. As was noted in the memorial to her published in the journal, she was “one of the persons who shaped the development of the foundation and the art of tax practice in Canada.” Furthermore, “[h]er skilful and sensitive editing encouraged many of the country’s leading and up-and-coming tax practitioners to write with clarity, precision, and elegance, and helped to establish the Canadian Tax Foundation as an organization that values the ability to communicate original and complex ideas effectively.”

During this decade, although the features themselves remained essentially the same, the editorships of the features underwent several changes. At the end of 1993, after 18 years of exemplary service as editor or co-editor of the popular feature Current Cases, Tom McDonnell retired his editorship to assume the associate directorship, and subsequently the directorship, of the Foundation. At the beginning of 1994, Stephen W. Bowman, now of Thorsteinssons, Toronto, joined Richard B. Thomas as co-editor of the feature. At the beginning of 2000, Stephen retired and was succeeded by Mary-Ann Haney, also of McMillan Binch, Toronto. She and Rick Thomas are the present co-editors.


At the beginning of 1994, after more than six years of service, Alan M. Dewling retired as co-editor of Personal Tax Planning. In the next issue, Robert E. Beam, of the School of Accountancy, University of Waterloo, and associated with Ernst & Young, Toronto, joined William E. Crawford as co-editor of the feature. After serving as editor or co-editor of this popular feature for 17 years, Bill Crawford
resigned at the end of 1997. In the headnote to the feature, he was paid tribute in the following terms:

The Canadian Tax Foundation and its members extend their warmest gratitude for longstanding expert service to William E. Crawford, FCA, of Ernst & Young, Toronto, who is retiring as co-editor of the Personal Tax Planning feature. Beginning with the January-February 1980 issue of the journal, Mr. Crawford’s dedication to the feature has resulted in a devoted following among journal readers. As co-editor of one of the most popular features in the journal, Mr. Crawford has always ensured that the subjects have been topical, the articles have been prepared with attention to detail, and the material has provided a consistent source of solid information in an important area of interest to taxpayers and their professional advisers.4

On Bill Crawford’s retirement, Thomas R. Burpee, of Ernst & Young, Montreal, became a co-editor. At the end of 1998, Pearl E. Schusheim, of Ernst & Young LLP, Toronto, succeeded Bob Beam as co-editor. At present, Personal Tax Planning is co-edited by Tom Burpee (now retired from Ernst & Young LLP, Montreal) and Pearl Schusheim.

Robert J. Spindler, of Coopers & Lybrand, Toronto, retired as co-editor of The Taxation of Corporate Reorganizations in 1994, issue no. 3. In the next issue, Daniel G. Le Rossignol, of Samson Bélair/Deloitte & Touche, Montreal, and Claude R. Rinfret, of Deloitte & Touche, Vancouver, joined Douglas S. Ewens as co-editors. After two issues, Daniel Le Rossignol was succeeded by Andrew W. Dunn, of Deloitte & Touche, Toronto. The feature was dormant during much of 1998 and throughout 1999 and 2000. It was revived in 2001, issue no. 2, under the co-editorship of Andrew W. Dunn, Derek G. Alty, Brian R. Carr, and Christopher J. Steeves. Andrew Dunn and Derek Alty are of Deloitte & Touche LLP, Toronto; Brian Carr and Christopher Steeves are of Fraser Milner Casgrain LLP, Toronto; they all remain the co-editors. At the beginning of 2002, the title of the feature was changed from The Taxation of Corporate Reorganizations to Corporate Tax Planning to reflect the broadened coverage:

The articles that appear in the feature will focus not only on the reorganization provisions of the Income Tax Act, as they have in the past, but also on issues relating to the day-to-day corporate activities of corporations and other commercial transactions involving corporations that are not distinctly reorganization transactions.5

Sanford H. Goldberg has edited Selected US Tax Developments since 1987. In 1998, he was joined by Peter A. Glicklich, a colleague at Roberts & Holland LLP, New York, New York and Washington, DC. They remain the co-editors.

David B. Perry continued to write and edit Fiscal Figures throughout the journal’s fifth decade. The feature, a particular favourite with media reporters and commentators, invariably deals with an important and topical area of tax or government spending policy. Each article in Fiscal Figures usually presents a series of
tabulations of significant government finance figures, as well as a textual summary and analysis of the data. Although the feature has appeared less frequently since his retirement from full-time work at the Foundation, David has continued to provide his annual international tax comparisons.

Tim Edgar, who had been a regular contributor to reviews in Current Tax Reading, joined Brian Arnold as co-editor in 1993. Brian Arnold retired as co-editor in mid-1997. The note announcing his retirement lauded his contribution to the feature:

The Canadian Tax Foundation and its members extend their warmest thanks and appreciation for exemplary service to Brian J. Arnold, associated with Goodman Phillips & Vineberg, Toronto, who is retiring as co-editor of the Current Tax Reading feature. Beginning as editor of the feature in the September-October 1983 issue of the journal, Mr. Arnold has provided our readers with years of informative, topical, well-written, and sometimes witty reviews. Never intending the feature to be a traditional book review column, Mr. Arnold provided a wide-ranging review of selected pieces of all forms of tax literature—government reports, books, articles, conference proceedings, and even the occasional novel. At a time when the proliferation of tax literature on a worldwide basis is truly intimidating, we are grateful for Mr. Arnold’s dedication to keeping readers informed.6

At the beginning of 1998, Tim Edgar was joined as co-editor by Alan Macnaughton, of the School of Accountancy, University of Waterloo. Alan Macnaughton took a leave of absence from his co-editorship midway through 1999 and was succeeded by Glenn Feltham, of the College of Commerce, University of Saskatchewan. Near the end of 2001, Alan Macnaughton resumed his co-editorship. At the same time, David Duff, of the Faculty of Law, University of Toronto, joined the team. These four academics remain the co-editors of the feature.

Correspondence is a sometimes overlooked feature of the journal that appears on the last pages of the issues in which it is found. From time to time, readers are sufficiently provoked by a journal article to pen a letter to the editor. The following review of some recent letters will, I hope, provide a sense of the contents of these letters and encourage readers to diligently read the journal right to the last page.

In response to an article on the tariff classification of imported goods, Todd-Jeffrey Weiler argued that such goods should be classified using a contextual interpretation, which would consider the use to which the goods would be put, instead of classified solely on the basis of an observation of the physical characteristics of the goods. The title of his comment wittily caught the gist of his argument: “Sure it has feathers, but is it a duck?”7 Colin Campbell wrote a letter in 1998 dealing with a number of technical aspects of the proposed merger of the Trial Division of the Federal Court and the Tax Court of Canada.8 Barry Elkin, from the Office of the Auditor General of Canada, wrote a letter, also in 1998, responding to an article published in the 1996 Conference Report. In his letter he defended the role of the auditor general of Canada in its reporting of the movement out of Canada of at least $2 billion of assets held in family trusts. After replying point by
point to the criticisms of the auditor general’s report, he concluded, “The office is well aware that if it lost its enthusiasm for reviewing difficult taxation and other issues, it would not be serving the best interests of Parliament, members of the Canadian Tax Foundation, and other Canadians.”

Tom Clearwater and Glenn May, each of whom had published journal articles on the taxation of financial instruments, had a little dust-up over which policy makers—judges or government finance officials—are institutionally best suited to deal with the problems posed by financial derivatives.

John Allen understood the author of an article about employee stock options to be suggesting that the government had introduced more generous rules for employee stock options in response to concerns expressed by right-wing think-tanks over the brain drain, even though the rules would not likely provide much benefit to employees and there is little evidence of a brain drain. In his rejoinder to the article, John Allen concluded: “Perhaps the answer is that the hardworking souls in Finance are not as gullible as [the author] would have us believe and that in response to a perceived brain drain they have introduced a perceived tax benefit—one that will seldom be used by employees, will cost the fisc nothing, and will mollify the right-wing think tanks.”

It is appropriate that the first and last letters in the Correspondence feature of the journal in this decade were written by Wolfe Goodman. He penned one of the first letters to the journal in 1954, volume 2, issue no. 2. Thus, his correspondence has spanned almost all of the journal’s 50 years of publication—a remarkable record. His letters are always gracious yet to the point, subtle, and closely argued. At the beginning of the fifth decade of the journal, he took issue with an article that had proposed that alimony payments cease to be tax-deductible. He was, as always, generous in acknowledging the strengths of the article, but he simply felt that its central point was illogical. He noted that “[w]hile [the article by two professors]... contains much that is worthwhile, I am totally unconvinced by the logic of their proposal to reduce drastically the level of taxation of the recipients of support payments and the degree of deductibility of such payments.” He argued that because the payer is able to deduct such payments, and would typically be in a higher tax bracket than the recipient, recipients would usually be better off under the existing deduction/inclusion tax treatment. As he often does in his letters, he also demonstrated his encyclopedic knowledge of the history of tax law by inserting a brief encapsulation of the reasons why alimony payments were first made deductible during the Second World War.

In 1998, Wolfe Goodman wrote a letter taking issue with the government’s proposed tax rules on the emigration of Canadian residents. He began:

A recent front-page article in *The Globe and Mail* discussing how the federal government is closing a major “tax loophole” available to those who leave Canada indicates that some of the media may have swallowed the government’s propaganda hook, line, and sinker. However, even a modest acquaintance with the underlying tax policies would reveal the fallacies of the legislation.
The next year he wrote a letter noting that since the publication of a journal article that had reported on a Supreme Court of Canada case which had held that a tenant inducement payment received by a taxpayer was income, the Privy Council had decided a New Zealand case holding that it was not and had expressly refused to follow the decision of the Canadian Supreme Court. In 2002, commenting on an article that argued that interest should always be considered a current expense, Wolfe Goodman once again demonstrated his sure grasp of the arcane history of tax law by pointing out that in an early case holding that generally an interest expense was “a payment on account of capital,” the Supreme Court of Canada had misread the legislative basis of the British jurisprudence on which it had relied.

Another regular feature of the journal is the Provincial Budget Roundup, which runs once a year. It is a summary and analysis of the provincial budgets and usually appears in issue no. 3 or 4 of the journal, depending on the tabling dates of the budgets. At the beginning of the decade, the roundup was written by David Perry, sometimes with Karin Treff and Ted Cook. At the end of the decade, it was being written by David Perry and Deborah L. Ort, a lawyer from Ancaster, Ontario.

During the 1990s, two new features were started but subsequently discontinued. Near the end of 1994, a feature called Tax Announcements, Distinctions, and Appointments was initiated. Readers were invited to submit announcements “of moves to new firms or institutions; promotions; relocations; expansions or reorganizations; and professional or civic awards, honours, or appointments.” It ran for a number of issues but was discontinued in 1995.

Also in 1994, the journal began carrying summaries of the papers presented at the Foundation’s regional tax conferences in the Regional Conference Report feature, edited by Deborah Ort. The purpose of this feature was explained in the following terms:

The enormous amount of information that can be found in the regional conference reports of the Canadian Tax Foundation is generally unknown, unavailable, and untapped. This new feature in the Canadian Tax Journal aims to make the contents of the reports known to journal readers and foundation members across the country.

The feature ran until near the end of 1998.

**The Issue of a Golden Year**

In 1995, the Foundation turned 50, and the journal, as the Foundation’s leading publication, was the vehicle of celebration. Every year Laurel Amalia chooses the colour of the journal cover after some deliberation, but the choice of gold and blue for the 43d volume was easy and obvious. Essays commemorating the Foundation’s 50th anniversary were published in issue no. 5 of that volume, and it was, in many respects, a special issue indeed. Former director Doug Sherbaniuk was enlisted by the Foundation’s board of governors to plan the issue, and 42 authors of 31 articles responded to his invitation to contribute essays “on fundamental and enduring aspects of the Canadian tax system.” That issue of the journal ran to 862 pages,
more than twice the length of a typical issue, included no features, and was almost half a year in production. It was the longest journal issue that had ever been published—and, if Laurel has any say, that ever will be published, at least until 2045.

SYMPOSIUMS, SEMINARS, AND AWARDS

During the journal’s fifth decade, the Foundation began holding symposiums on important issues of tax policy and public finance. Distinguished scholars, practitioners, and government and business leaders have presented papers at these symposiums, and the papers have been published in the journal. Publication in the journal ensures that the papers are made available to a wider audience and that they are included in the numerous services that index the journal’s articles. A symposium on personal income tax reform was held in Ottawa on April 9-10, 1999 and the papers were published over four issues of volume 47, 1999. A conference on Canada’s competitiveness was held in Ottawa on February 3-4, 2000 and the papers were published in the first three issues of volume 48, 2000. A policy conference on aboriginal tax, treaties, and self-government was held in Saskatoon on May 31-June 1, 2000 and the papers were published in the last three issues of volume 48, 2000. The Foundation also held a symposium on municipal finance and governance reform in Toronto on November 8-9, 2001 and selected papers were published in the first three issues of volume 50, 2002. The journal has also published summaries of the proceedings of national and international seminars dealing with key issues in tax law and policy and of which the Foundation is a co-sponsor, such as Brian J. Arnold, Jacques Sasseville, and Eric Zolt, “Summary of the Proceedings of an Invitational Seminar on Tax Treaties in the 21st Century,” which appeared in the first issue of volume 50, 2002. These papers and proceedings are published in the journal because they make important contributions to our knowledge of tax and public finance and serve as a valuable resource for the members of the Foundation and the tax community. However, to clearly distinguish them from the fully refereed scholarly articles that are published in the journal, these papers and proceedings, beginning with volume 50, are published under a separate heading, Symposium.

A new feature, Policy Forum, was added to the journal in the first issue of 2002. The editor’s note to the first forum described its purpose:

With this issue of the journal, the Policy Forum feature is being introduced as a venue for lively, thoughtful, and controversial discussion about current and perennial tax policy issues. The forum will usually consist of one or a series of articles that address the pros and cons of a recent or longstanding policy problem, or speculate and reflect on an unsettled issue in government finance. Articles may advance or critique contrarian points of view, demonstrate how recent theoretical and empirical work has informed the debate, or lay out the paths to new perspectives. Sometimes the forum will centre on a current book or monograph that embodies rigorous analysis and original research on a particular topic, giving commentators an opportunity to discuss common points of interest, differences of approach, and the general development of thought on a major tax policy subject.


Beginning in the 1997-98 academic year, the Foundation also began awarding annual prizes for student papers written on some matter affecting the Canadian tax system. Depending on the merit of the papers, one prize might be awarded for each of the four regions of the country: Atlantic Canada, Quebec (the Canadian Tax Foundation Jean Potvin Award), Ontario (the Canadian Tax Foundation Fasken Martineau DuMoulin Award), and western Canada (the Canadian Tax Foundation Bert W. Nitikman Award). All submitted papers are reviewed by three independent reviewers. The best papers are selected for publication in the journal. So far, six papers have been published.

As mentioned at the outset of this brief review of the journal’s fifth decade, several of the themes developed in the articles published during this period will be
examined in the sixth and final instalment of this tribute to the journal’s 50th anniversary.

NOTES
3 Ibid.
6 Headnote to the Current Tax Reading feature (1997) vol. 45, no. 3 Canadian Tax Journal 643.
7 Todd-Jeffrey Weiler, “Sure It Has Feathers, But Is It a Duck?” Correspondence feature (1994) vol. 42, no. 4 Canadian Tax Journal 1168-71.
14 Wolfe D. Goodman, “Re: Tenant Inducement Payments,” Correspondence feature (1999) vol. 47, no. 3 Canadian Tax Journal 738-39. This letter was followed in the next issue by a letter from Joel Nitikman, who noted a decision of the Australian High Court in which the majority, expressly disagreeing with the Privy Council, held that such payments were income. Joel Nitikman, “Re: Tenant Inducement Payments,” Correspondence feature (1999) vol. 47, no. 4 Canadian Tax Journal 1074-75.
16 Headnote to the Tax Announcements, Distinctions, and Appointments feature (1994) vol. 42, no. 4 Canadian Tax Journal 1172.


