
The introduction of a harmonized sales tax (HST) in British Columbia and Ontario will no doubt raise consumer prices to the extent that some goods that are taxed under the HST were not taxed under the retail sales tax that it replaces. However, the introduction of an HST reduces taxes on business through the elimination of tax on business inputs. The economic question is to what degree these cost savings reduce consumer prices and thus offset the extra tax on previously untaxed goods and services. To answer this question, Smart and Bird examine the change in consumer prices that followed the introduction of the HST in three Atlantic provinces in 1997. Improving on previous research by controlling for nationwide factors unrelated to the reform that may have affected the rate of price inflation after 1997, they conclude that relative price changes were quite similar to relative changes in taxes and business costs induced by the reform. Thus, distributional changes of the 1997 move to HST were small, but perhaps slightly regressive.

A.M.
These three papers, written by Canadian authors and presented at a conference about the possible introduction of a value-added tax (VAT) in the United States, offer interesting insights into the problems of the goods and services tax (GST) in Canada. In particular, the Bird-Gendron and Gendron papers discuss Canadian issues in great detail.

Satya Poddar notes that the theoretically pure approach to taxing residential housing under a VAT for both owners and renters is to tax owners annually on the imputed rental value of their houses and to include rent in the GST base. However, since the taxation of the imputed rental value of houses is both hard to explain to consumers and administratively impractical, an alternative must be found. The price of a house represents the present value of the services to be provided by that house; therefore, taxing the purchase price of the house could be an adequate substitute for taxing the imputed rental value. However, Poddar says that this alternative is poorly implemented in modern VAT systems (including Canada’s GST)—only the first sale of new residential dwellings is taxed, and an exemption is provided for both long-term residential rentals and the resale of used residential property. One problem is that housing services that flow from dwellings constructed before the introduction of the VAT are tax-free. Also, the first sale price may not fully capture increases in value that will happen in the future due to improvements in the facilities or the area surrounding the property.

Poddar attempts to solve this problem by developing a comprehensive option for reforming the modern VAT’s treatment of housing. Long-term residential rents and all sales, both new and resale, would be taxable. On resale, there would be a partially offsetting input tax credit, up to the tax paid on the original purchase.

The importance of the housing issue is shown in Ontario’s June 2009 enhancement of the new housing rebate under the HST. Also, data show that the net collections from housing represent 20 percent of total net GST collections.¹

Bird and Gendron’s paper is intended to refute the commonly held view that it was impossible to impose a standard VAT at the subnational level of government. Canada’s GST system demonstrates how this can be done, with the participation of Quebec since 1991 (through the Quebec sales tax [QST]), and three Atlantic provinces since 1997 (through the HST), and the proposed addition of province-specific

¹ Smart and Bird (reviewed above), at 420.
HSTs for Ontario and British Columbia beginning in 2010. Bird and Gendron present a detailed historical account of the changes and an explanation of how the QST and HST system is coordinated between the federal and provincial governments. Their most surprising finding is that the system of dual administration of the GST—by federal operation in most provinces, but in Quebec by delegation to the province to run in combination with its own largely harmonized QST—has been functioning well from the 1990s to the present despite the highly publicized disagreements of the governments, regardless of the political parties they represent, on other matters. Bird and Gendron’s explanation for this Canada-Quebec success story is that the harmonized nature of the tax makes it in Quebec’s interest to protect both governments’ revenues through good administration and protection against tax evasion. Essentially, Revenu Québec has no reason to act differently from the way in which the Canada Revenue Agency (CRA) would act in its place.

Gendron’s paper concerns goods and services supplied by government entities, public sector bodies, non-profit organizations, and similar tax-exempt bodies, which he refers to collectively as “the PnC sector.” Gendron regards the Australia-New Zealand model of treating these supplies as no different from private sector supplies (and possibly as fully taxable, depending on the nature of the good or service) as the best approach. He concludes that exemption for this sector violates the logic of VAT and produces widely varying results in different situations, from full taxation to zero-rating. Exemption is the most common situation for the PnC sector in Canada, although the system of MUSH (municipalities, universities, schools, and hospitals) sector rebates moves it toward the zero-rated position. In summary, “[w]hile the Canadian rebate model works reasonably well, it is complex, it gives rise to several non-neutralities, and [it] is too gradualist.”

Because Gendron’s paper is aimed at describing options for the United States, it does not mention how problems blocking the implementation of the proposals in Canada could be solved. In particular, under the constitution one government cannot tax another. Also, the rebate percentages offered to PnC bodies were created to match the rebates offered under the manufacturer’s sales tax that the GST replaced, and they will not be easily given up.

A.M.


Canadians may be surprised to learn from this article how unusual Canada’s GST is relative to VATs in other countries. One particularly Canadian feature is the very low GST rate (originally 7 percent, now 5 percent) compared with the rates in the European Union (15 to 25 percent). One reason for the low rate is the strong political opposition, for which Bird and Gendron partly fault the government: “Like many

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2 At 2.
taxes, the GST could undoubtedly have been better implemented from the beginning.”3 Another reason for the low rate is the “‘in your face’ visibility”4 of the tax: GST is added at the cash register instead of being included in sticker prices.

A second feature is that broadly defined reliefs (or tax expenditures)—rebates, zero-rating, exemptions, and the GST credit—are used more extensively in Canada than in other countries. Bird calculates that these reliefs amount to more than one-half of actual GST revenues and more than one-third of potential GST collections.5

Finally, Canada is notable in that there is both a dual VAT administration (federally operated in most provinces, but provincially operated in Quebec) and dual levels of VAT (federal and provincial). Indeed, the dual-level administration seems to be gathering momentum: both Ontario and British Columbia have announced plans to introduce their own HSTs.


There is a rich body of literature on tax avoidance. This article adds tremendously to this literature by “turning tax avoidance upside down and inside out.” After a brief overview of the nature of tax avoidance, the author shows the conflict between the ideology of tax avoidance and the ideology of income taxation. He then analyzes why the ideology of tax avoidance, which leads to a moral perspective that supports a right to avoid taxes over a duty to pay a fair share of taxes, is wrong. He argues that unless such ideology is exposed, it is difficult to confront a system that tolerates aggressive tax avoidance.

According to the author, the term “tax avoidance” does not have a limiting and definite meaning. Instead, it is a label for describing pragmatic decision making, which by “pricking a line through concrete applications”6 identifies abusive situations. Thus, it is the legal profession, and the judge in particular, who determines what really constitutes abusive avoidance. The prop that sustains tax avoidance is a legal method based on a strict or literal interpretation of tax statutes. Such judge-created legal methodology is outside tax legislation, and yet it has the power to negate the purpose of the legislation.

The ideological basis of the literal interpretation of tax legislation and the right to tax avoidance is the right of liberty. The right of liberty is defined by the author as “the liberty of the subject to be free from an overreaching government, the freedom of property, and the freedom to contract.” In the context of taxation, “[l]iberty . . . is

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3 At 415.
4 At 416.
5 At 420.
6 Bazley v. Commissioner of Internal Revenue, 331 US 737 (1947).
the value system of a particular social group, those with means, who follow the philosophy that ‘the prosperity of the middle and lower classes depend[s] upon the good fortunes and light taxes of the rich.’” The ideology of tax avoidance is at odds with the ideology of progressive income taxation that emphasizes substantive equality and redistributational justice based on the ability to pay.

The ideology of liberty leads to a moral perspective that tax avoidance is not only acceptable but legitimate. The author quotes Judge Learned Hand:

Over and over again courts have said that there is nothing sinister in so arranging one’s affairs as to keep taxes as low as possible. Everybody does so, rich or poor; and all do right, for nobody owes any public duty to pay more than the law demands: taxes are enforced exactions, not voluntary contributions. To demand more in the name of morals is mere cant.⁸

The author suggests that this attitude toward tax avoidance can be attributed to the traditional view of taxation and the right theory of avoidance. The tax statute is regarded as a value-neutral tool to be used by lawyers, administrators, and judges for particular ends of their choosing. Related to this traditional view of tax is the right theory of avoidance—that is, a tax saving generated by a legal form is a property right. This theory is rooted in core individual rights, including the right to choose the form of the transaction and the right to assume that tax statutes must be certain in their scope and subject to strict or literal interpretation. The author opines that such moral posturing of tax avoidance is problematic and is based on a deception. Tax law in the modern democratic world is not value-neutral. On the contrary, democracies are founded on the principles of fairness and equality in tax. The right to tax avoidance mocks these fundamental principles because it leads to an equality of tax opportunity for only a few who can afford expensive tax advice. The author argues that Learned hand got it wrong. He reverses the sentiment found in the above passage to the following:

Over and over again the courts have said that there is something sinister in so arranging one’s affairs so as to keep taxes as low as possible. The rich do so, but they do wrong; for everybody owes a public duty to pay what is fair and equitable. Taxes are exactions for the general welfare; they should not be voluntary contributions for the rich and forced exactions for the poor. To demand less in the name of the people is to recant the values of democracy.⁹

In the final part of the paper, the author challenges the traditional distinction between tax avoidance and tax evasion. He writes: “[w]hereas the tax evader solely exploits the uncertainty of detection and not the law, the tax avoider exploits both

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⁷ At 234.
⁹ At 229.
the uncertainty of the tax law and of detection.” The so-called uncertainty exists to a large extent because of the judicial approach to interpreting tax statutes. If the domain of tax law is understood to go beyond the finite words of the statute to include the totality of language, purpose, and intent that aims to achieve certain social goals, there will be much less room for uncertainty. According to the author, the accepted ideology of tax avoidance conditions the judge to construe tax statutes at face value, thus formally rendering the statute vague.

In the author’s view, judges have failed to advance through tax a society that is committed to maintaining and enforcing substantive equality for every taxpayer. They must be freed from this ideology in order to start developing a sustainable approach to curbing avoidance.

J.L.


In 1962, the United States was the first jurisdiction to enact controlled foreign corporation (CFC) rules to end the deferral of domestic taxation of foreign passive income earned by CFCs. Foreign active income earned by CFCs remains tax-free in the United States until dividends are repatriated to US-resident shareholders. Such dividends are taxable in the United States, subject to a credit for foreign taxes paid in respect of the dividends. Many countries have since introduced similar rules. Some have gone further by exempting dividends from CFCs paid out of foreign active income.

There has been a vigorous debate in Canada about replacing the current credit system with an exemption system. On May 4, 2009, U.S. President Barack Obama proposed major changes to curtail the benefit of tax deferral and to get tough on tax havens. If legislation is enacted, the United States will initiate a major change in international tax policy. In this short paper, Avi-Yonah, a renowned tax scholar, reviews the Obama proposals and urges the administration to go even further in some areas.

With respect to the taxation of foreign active income, three major proposals are reviewed:

1. Curtailing the benefit of deferral by limiting deductions (other than research and experimentation deductions) taken by US-based multinational enterprises on their tax returns that are associated with earning income eligible for deferral until the underlying earnings have been repatriated. These deductions include interest and various forms of headquarters expenses allocated to foreign-source income. This proposal is similar to the one that was initially

10 At 250.

put forward by Canadian Finance Minister Jim Flaherty but retracted on the basis of recommendations by the Advisory Panel on Canada’s System of International Taxation.\textsuperscript{12}

2. Reining in foreign tax credit abuses.
3. Preventing multinational enterprises from abusing the check-the-box rules by, for example, making flows of passive income between CFCs disappear for subpart F purposes.\textsuperscript{13}

Like similar reform proposals in Canada, the US proposals raised a serious concern about competitiveness: the proposals would induce US-based multinationals to migrate their headquarters to jurisdictions with laxer rules and would discourage new companies from setting up their headquarters in the United States. Avi-Yonah is not sympathetic: “I doubt that too many CEOs of US-based parents would actually be willing to move to tax havens in response (since the level of services in the havens is commensurate with the level of taxation).”\textsuperscript{14}

The author also reviews the proposal to impose a refundable withholding tax on US-source passive payments to individuals in circumstances where the US withholding agent will not know who the real payee is (the tax is refundable upon a showing that the true recipient is a non-US resident). This proposal is aimed at preventing US persons from avoiding US tax through the use of financial intermediaries. It is not intended to change the US tax policy of exempting passive payments to non-residents from US withholding tax.

Avi-Yonah welcomes the Obama proposals and would like to see them go even further. He suggests that the proposals be enacted as soon as possible in order to retain some progressivity in the US tax system.

\textbf{J.L.}


The Advisory Panel on Canada’s System of International Taxation recommended a number of changes to the outbound rules.\textsuperscript{15} One recommendation is to extend the exemption system in respect of active business income earned by a foreign affiliate in a country that has a tax treaty or tax information exchange agreement. Another recommendation is to narrow the scope of the foreign affiliate rules. According to the author, these recommendations are consistent with the general trends in some other

\begin{itemize}
  \item \textsuperscript{12} Ibid.
  \item \textsuperscript{13} The equivalent Canadian rules are found in paragraph 95(2)(a) of the Income Tax Act, RSC 1985, c. 1 (5th Supp.), as amended.
  \item \textsuperscript{14} At 6.
  \item \textsuperscript{15} Supra note 11. For a review of the advisory panel’s report, see “Current Tax Reading” (2009) vol. 57, no.1 Canadian Tax Journal 193-211, at 194-98.
\end{itemize}
OECD countries. The author provides a succinct overview of the recent developments in outbound taxation in Canada, the United Kingdom, the United States, Australia, and New Zealand. The policy objective shared by policy makers in those countries is to have competitive tax rules for outbound foreign direct investment. The author anticipates that the shift to the territorial system of taxation will affect other domestic and international tax policies, such as those related to corporate tax rates, interest allocation rules, transfer pricing, and low-tax jurisdictions.

J.L.


“Tax Treaty Monitor” is an interesting feature that appears in every issue of the Bulletin for International Taxation (formerly Bulletin for International Fiscal Documentation). This issue publishes commentaries by the world’s leading international tax scholars and practitioners on various key aspects of the 2008 update to the OECD model tax convention.16

Brian Arnold contributes two pieces: “Tax Treaty News” and “The 2008 Update of the OECD Model: An Introduction.” In “Tax Treaty News,” Arnold reviews and compares cases on beneficial ownership, including Canada v. Prévost Car Inc.17 and PT Transportasi Gas Indonesia v. Direktur Jenderal Pajak.18 He concludes that the “international case law on beneficial ownership for treaty purposes is growing and inconsistent. Some courts consider the term to have a domestic law meaning; others give it an international meaning. Some courts treat it as an anti-avoidance concept; others do not.”19 Arnold hopes that the OECD will clarify that “beneficial ownership is a legal, rather than an economic, concept and is not an anti-avoidance rule.”20 He also discusses and criticizes a case decided by the Income Tax Appellate Tribunal for Mumbai, which held that fees earned by a Bollywood star from her Canadian performances were not taxable in India, her resident country.

In his introduction, Arnold gives an overview of the changes made in the 2008 update, including article 4 (residence), article 5 (the alternative services permanent establishment [PE] rule), article 7 (the attribution of profits to PEs), article 12 (royalties), article 24 (non-discrimination), and article 25(5) (mandatory binding arbitration). He concludes that these changes represent a significant development in the OECD model tax convention.

17 2009 FCA 57.
18 Decided on March 14, 2008.
19 At 176.
20 Ibid.
In “2008 OECD Model: Place of Effective Management—What One Can Learn from the History,” John F. Avery Jones notes that the OECD commentary on article 4 changed the meaning of “place of effective management” by deleting the sentence that had been added in 2000. Given the uncertainty that has accompanied this expression from the beginning, he suggests that it is probably time to abandon it altogether.

In “2008 OECD Model: Operation and Effect of Article 4(1) in Dual Residence Issues Under the Updated Commentary,” Kees van Raad examines the new dual residence rule. A person who, under the domestic laws of states A and B, is a resident of both states but who, under the tax treaty between states A and B, is a resident only of state A cannot, as a domestic-law resident of state B, have access to a tax treaty between state B and a third state from which he derives income. Van Raad notes that this update may be in blatant contradiction of the text of the OECD model, and it therefore “raises the interesting issue whether additions to the Commentaries that are not supported by the text of the OECD Model have any interpretational value at all.”

In “2008 OECD Model: Changes to the Commentary on Article 5 Regarding the Treatment of Services: More Choices, Less Clarity,” Carol A. Dunahoo and Gary D. Sprague discuss the new “services PE” alternative and question whether this change is part of a broader erosion of the historic OECD PE standard. More clarity is needed.

In “2008 OECD Model: Changes to the Commentary on Article 7 and the Attribution of Profits to Permanent Establishments,” Philip Baker and Richard Collier examine the changes and their background. One of the major changes is in paragraph 11 of the updated commentary on article 7, with specific support for the separate enterprise approach in attributing profits to a PE. Under this approach, dealings between the PE and the other parts of the enterprise can give rise to taxable profits, even when no profit has been generated on a transaction with an outside third party. The authors suggest that the adoption of this approach raises significant difficulties for states that apply the realization principle, under which no profit can be taxed until it is actually realized. Another controversial change is the allocation of interest costs. The 2008 update adopts a form of “symmetry,” where “the residence state of the enterprise is asked to accept, for the purpose of determining the interest deduction to be used in computing the double taxation relief, the attribution of capital in accordance with the approach used by the host state of the PE.”

Many OECD member countries reject this approach, and almost a quarter of OECD countries have added observations on this point.

In “2008 OECD Model: Conflicts of Qualification and Double Non-Taxation,” Michael Lang discusses the changes to paragraph 32.6 of the commentary on article 23 (elimination of double taxation) that deal with double non-taxation arising

21 At 190.
22 At 202.
from conflicts of qualification. Such conflicts arise under article 23 in cases where the source state views the treaty as preventing it from taxing an item of income and the residence state believes that it is obliged to provide relief (for example, exempting income earned in the source state). Paragraph 32.6 of the commentaries on article 23 essentially says that the state of residence is not required to exempt the item of income in order to prevent double non-taxation. Lang reviews the criticisms of the OECD approach and questions whether the wording of article 23 A of the OECD model tax convention provides a sound legal basis for the position taken in the 2008 update.

In “2008 OECD Model: The New Arbitration Provision,” Hugh Ault and Jacques Sasseville discuss the only change to the articles of the OECD model tax convention—the addition of new article 25(5) (mutual agreement procedure). The authors examine various factors that led to the adoption of article 25(5), the stages of its development by the OECD, and the technical aspects of the new arbitration provision. They note that tax treaty arbitration is fast gaining acceptance among the OECD countries.

J.L.

**Canadian Tax and Credit Simulator (CTaCS),** software and database developed by Keven Milligan (available online at http://www.econ.ubc.ca/kevinmil/ctacs/).

CTaCS is a free computer program for not-for-profit tax policy research on individuals. Given a series of inputs of types of income, family structure, etc. for an individual or a couple, the program computes federal and provincial tax liability as well as a variety of refundable tax credits. The program covers all provinces and territories from 1962 to the present. Although it can be used on purely hypothetical data, its most likely use is to impute tax liabilities for individuals responding to Statistics Canada surveys. Of course, the level of detail provided by the program’s inputs and outputs is much more limited than it is in software for tax return preparation. The program generally does not include tax-planning choices, such as pension income splitting.

Stata (data analysis and statistical software) is required to run CTaCS, although the input parameters (for example, tax rates and various tax credit amounts) are viewable in a standard spreadsheet such as Excel. The complete source code for CTaCS is available, so all calculations are transparent.

A.M.


This article provides a description and initial assessment of British Columbia’s carbon tax. The author concludes that although the tax was initially popular, opposition grew as gas prices increased and the economy deteriorated, and it was uncertain
whether the tax would be supported in hard times. The answer appears to be yes, given the BC government’s re-election in May 2009 after the article was written.

A.M.

**Louis Kaplow, The Theory of Taxation and Public Economics**  

This new text on public economics emphasizes optimal taxation theory. Because it claims on the inside front cover to be “an original treatment of the subject rather than a textbook synthesis,” the author is free to include or exclude subjects as he sees fit. Taxation is covered in approximately 230 pages, while the rest of the book covers topics in public expenditures and social welfare theory. Throughout, the author emphasizes intuition and the development of concepts rather than formal mathematical derivations.

A.M.

**Joseph Bankman, “Using Technology To Simplify Individual Tax Filing”**  
(2008) vol. 61, no. 4, part 2 National Tax Journal 773-89

Law professor Joseph Bankman suggests that technology could be used to reduce the compliance cost of individuals’ filing of personal income tax returns. Taxing authorities would prepare pro forma returns (more commonly called prepopulated returns) for taxpayers, and individuals could then use those returns as a starting point. Although there is relatively little new here relative to Bankman’s previous writings, the article provides a convenient summary of California’s experience with the “ready return” in 2004-5 and the current thinking on this issue.

A.M.

**Mihir A. Desai and Dhammika Dharmapala, “Earnings Management, Corporate Tax Shelters, and Book-Tax Alignment”**  

The percentage of large US corporations that reported no tax liability rose from 32.7 percent in 1995 to 45.3 percent in 2000. Instead of examining the reasons that corporations avoid taxes, the authors attempt to find out why all corporations don’t avoid taxes. In other words, why do firms pay taxes at all when they could reduce or eliminate tax obligations without suffering significant consequences? After reviewing recent research that embeds corporate tax-avoidance decisions within an agency framework that emphasizes managerial motivations, the authors show that managers can use tax shelters to pursue their own interests rather than shareholders’ interests. There is a link between earnings management and corporate tax avoidance. For example, managers may use aggressive tax shelters to manufacture financial statement income, which is the basis for determining executive compensation. They suggest a better book-tax alignment in order to reduce managerial incentives for using tax shelters.

J.L.
“Tax Avoidance—Judicial Developments World-Wide”

[2009] no. 2 British Tax Review 159-200

This issue of the British Tax Review contains an editorial note and four case notes from jurisdictions that have a legislative general anti-avoidance rule (GAAR)—Canada, New Zealand, Hong Kong, and Italy. The editorial note by Sandra Eden and Judith Freedman summarizes each of the case notes and draws four common themes: (1) the nature of the judicial decisions on avoidance is unpredictable (the Lipson case is given as an example); (2) the relationship between judicial anti-avoidance doctrines and GAAR is difficult; (3) the spread of influences across borders is striking; and (4) the willingness to apply GAAR is growing. The case notes are as follows:

- David Duff, “Lipson v. Canada—Whither the Canadian GAAR?” 161-69;
- Michael Littlewood, “Ben Nevis Forestry Ventures Ltd and Others v CIR; Glenharrow Ltd v CIR—New Zealand's New Supreme Court and Tax Avoidance,” 169-80;
- Andrew Halkyard and Jefferson Vanderwolk, “CIR v HIT Finance Ltd; CIR v Tai Hing Cotton Mill (Development) Ltd—Tax Avoidance Doctrine in Hong Kong with Australasian Characteristics,” 180-86; and

J.L.

Ajay K. Mehrotra, “‘Render unto Caesar . . .’: Religion/Ethics, Expertise, and the Historical Underpinnings of the Modern American Tax System”


The Social Gospel movement of the late 19th and early 20th centuries sought to solve the social problems of industrialization and urbanization by the practical application of Protestant ethics. The influence of the movement has been well documented by historians. The author points out that academics and social commentators have recently drawn parallels between the late 19th century and our own era, citing the relationship between the Bush administration’s tax cuts and the rise of religiously inspired “market fundamentalism.” However, scholarship on the influence of the Social Gospel in the development of modern taxation has not directly addressed the links between liberal theology and progressive tax reform; it has simply presumed that a link existed between the movement and US tax reform at the turn of the 20th century. The author challenges this presumption and suggests that the reality was a more tensioned discourse between religious leaders, ethnically inclined academics, and the public.

Previous scholarship has depicted the social gospel movement as principally composed of Protestant moral and ethical leaders and adherents, but historical evidence shows that this was not the case: the movement included liberal Catholic priests, rabbis of Reform Judaism, and non-theistic ethical leaders who did not espouse a universal approach to applying ethics to social policy. Among the latter
group was a group of ethically inclined academic professionals, including Richard T. Ely, Henry Carter Adams, and Edwin Seligman, who acted as “pivotal intermediaries”\(^\text{23}\) between state-centred public opinion and the populist appeals of religious and moral reformers. On the issue of whether a single tax should be imposed on increased values in land, the reformers called “for a tax on land, specifically ground rent, as the exclusive source of all government revenue.”\(^\text{24}\) Religious leaders supported the single tax on the ground that it reconciled individual faith with social reform; the academic professionals opposed the religious leaders on the ground that their approach was unscientific and ultra-conservative, violating the principles of universality, equality, and justice. The academics appealed to middle-class reformers who had the necessary influence and weight, with ethically based ideas of progressivity. Thus, the progressive nature of early 20th-century tax reform cannot be attributed to a monolithic Social Gospel movement at large; rather, it was a result of facilitation by a subgroup of academics in the secularization of religiously inspired tax reform and the privileging of scientific expertise over populist protest.

D.P.-S.


The reform of tax assistance for retirement savings in the late 1980s and early 1990s was based on the idea of a unified limit, under which the tax assistance provided for all of the different vehicles for retirement savings was intended to be equal.\(^\text{25}\) Thus, contribution limits for registered retirement savings plans (RRSPs) were set equal to contribution limits for defined contribution (DC) registered pension plans (RPPs). Although it was not practical to set contribution limits for defined benefit (DB) RPPs, the maximum benefits that could be paid out under such plans were set at a level that was intended to match the benefits that could be provided under RRSPs and DC RPPs. The mechanism used to achieve the matching was the “factor of 9,” which was based on two key simplifying assumptions: (1) an amount set aside to provide for retirement income provided the same amount of income regardless of the particular individual’s length of time to retirement; and (2) “ancillary benefits” in DB RPPs (such as the indexing of pension plan benefits for inflation, subsidized early retirement, and bridging payments to provide extra income until Canada Pension Plan payments begin at age 65) would be disregarded.

Pierlot constructs his study around two hypothetical couples with earnings at retirement of $100,000. The couples differ principally in the nature of their employment

\(^{23}\) At 323.

\(^{24}\) At 362.

(in one example, both partners are public sector workers; in the other, both are private sector workers). Both couples are said to have pension plans that are average for their sectors, although many of the assumptions used (such as the reduction for early retirement) are omitted. The annual pension incomes are strikingly different—$50,622 for the public sector family versus $11,652 for the private sector family. Pierlot appears to attribute this difference to three principal factors.

1. Because the factor of 9 excludes ancillary benefits in DB RPPs, the rules are biased in favour of workers with such plans. The rules for DB RPPs allow retirement savings of as much as 40 percent of earnings (as opposed to 18 percent of earnings for workers covered by RRSPs or DC RPPs).26

2. DB RPPs are far more common among public sector workers than they are among private sector workers. Eighty percent of public sector workers participate in DB RPPs,27 while less than 30 percent of private sector workers participate in any type of RPP.28 The proportion of private sector plans that are of the DC (rather than the DB or the DC-DB hybrid) type is rising and is now at 25 percent.29 Private sector employers are increasingly reluctant to offer DB RPPs because of the risk of having to make additional payments if investment returns are poor, the potential for a costly fight over the ownership of actuarial surpluses, and the accounting treatment of pension obligations.

3. The investment returns earned in RRSPs or DC RPPs are much lower than the returns earned in DB RPPs, principally because the investments are selected by pension plan members rather than by a pension plan board. Pension plan members do a poorer job of selecting investments, and the expenses of fund management are high (0.4 percent of value for a large DB RPP versus more than 2.0 percent of value for a small investor holding a balanced mutual fund in an RRSP).30

Pierlot’s perceptive diagnosis of the problems with the current system of tax assistance for retirement savings draws attention to real inequities between private sector workers and public sector workers. His solution to the problem has the attractive feature of raising the pensions of private sector workers to the public sector DB level rather than reducing anyone’s pension benefits: “DB pension plans are the gold standard for delivery of secure, predictable and adequate post-work income replacement with remarkably low administration costs.”31

26 At 4. See also table 1, at 5.

27 At 2.

28 At 6.

29 Ibid.

30 Ibid.

31 At 15.
Essentially, Pierlot proposes an RPP in which an employer may make a contribution payment (if an employer is involved) but the investment and funding risk falls on the pension plan member. This is a DC plan from the point of view of the employer, but a DB plan from the point of view of the contributions permitted by the plan member. Thus, the pension plan member would have the ability to contribute whatever amounts are required to fund the same level of pension benefits that a member of a DB RPP would receive at retirement. Instead of having a fixed contribution of 18 percent of earned income, the amount that could be contributed would be exactly the amount required to fund a generous target pension given the present account balance and the member's age. For example, if the balance in the pension account is too low to fund the target pension because of poor investment returns or a lack of previous contributions, larger contributions could be made.

The key question about this proposal is not addressed in the document: who will make the calculations for each individual, and can the retirement system cope with this level of complexity?

A.M.


This article represents a new foray by Canadian historians into the history of taxation in Canada—a realm dominated by tax lawyers, accountants, and economists. The author examines the historical relationship between the effects of tax policy as a social instrument and gender relations. The individual has been the taxation unit since the inception of the 1917 Income War Tax Act, a policy choice fraught with a history of middle-class bureaucratic presumptions and cross-class pressures.

The author explores the foundation of the Canadian income tax treatment of the family and individuals and its development through to the Carter commission (1963-66) and the Royal Commission on the Status of Women (1968-70). Superficially, the choice of the individual as the taxation unit implied a level of independence and individuality for single women and for wives who filed separately. However, the author suggests that the 1917 Income War Tax Act’s features designed to attribute income between the husband and wife illustrate the presumption and enforcement of a patriarchal familialist tax regime. The perception of the family as an inseparable economic unit with only one real earner was further enforced by the tax authorities and the Income Tax Act (as amended in 1942), but not without great discord and some change. The author traces the reactions to alimony and estate rules in the 1940s; dependants, contributors, and exemptions; and alimony and income splitting

in the 1950s. This historical analysis suggests that the transformation in 1942 of the income tax to a “mass tax” brought into the tax regime new families who undermined this presumption. It thus became necessary that tax rules balance wives as simultaneous contributors of income and claimants of subsistence support for their husbands. This balancing brought to the fore the tensions between the differing and changing views of the role of women in the post-war economy. The author’s historical analysis also demonstrates how slow the tax system is to change.

The debates and changes to the income tax regime, she concludes, are still relevant today. Income splitting and the implications of the family economy still affect the individual’s and family’s comparative tax burdens and their reliance on the welfare state. Examining the Carter commission’s report and the protests of the Canadian Committee on the Status of Women, the author presents the well-known arguments in support of income splitting. She suggests that during the post-war era (broadly, from the 1940s to the 1970s) the arguments of gender bias and lack of realism were insufficient to support change. Therefore, the tax rules have continued to endorse a limited number of family configurations. By doing so, she concludes, “[t]ax systems quietly limit and direct the economics of family life for all of us.”

D.P.-S.