The adequacy of savings to finance future retirement incomes in Canada is an important public policy issue. Provincial governments and the federal government have had ongoing discussions, and possible changes to the public pension system (including proposals for radical changes) are under consideration.

Numerous research studies have been commissioned and released, and important summary reports have been published. Two recent publications are reviewed here. The summary report by Jack Mintz summarizes the results of the research studies commissioned by the Research Group on Retirement Income Adequacy of Federal-Provincial-Territorial Ministers of Finance. The Steering Committee report considers two proposals for increasing pension coverage: a national supplementary pension plan that would be a voluntary defined contribution add-on to the Canada Pension Plan (CPP); and, alternatively, expansion of the CPP that would involve increasing the upper income limit and/or increasing the CPP replacement rate (currently 25 percent).

The studies commissioned for the Research Working Group on Retirement Income Adequacy review detailed data on participation in registered pension plans (RPPs) and registered retirement savings plans (RRSPs), and retirement income replacement rates by income class and gender. Trends in participation in RPPs and RRSPs are also reviewed. One study compares Canada with other member countries of the Organisation for Economic Co-operation and Development (OECD) with respect to the adequacy of public and private retirement savings.

Taken as a whole, the results suggest that Canada’s system of public provision of pensions (through old age security [OAS], the guaranteed income supplement [GIS],

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and the CPP/Quebec Pension Plan (QPP), combined with private savings through RPPs and RRSPs is providing adequate retirement income for most current retirees. The system is particularly effective in providing retirement income for lower-income households, where post-retirement incomes are typically at or above pre-retirement incomes. This is a direct result of the design of the OAS/GIS pension system, combined with CPP/QPP.

However, as incomes rise, the replacement ratio from public pensions declines, so that the maintenance of adequate income replacement ratios is increasingly dependent upon private savings.

The evidence indicates that, on average, post-retirement incomes are close to 70 percent across a wide range of incomes for men, and are above 80 percent for women.¹ Despite these statistics, there are two reasons for concern. First, even though average replacement ratios are clearly adequate, many individuals do not save enough to achieve adequate retirement income. Second, and more important, declining participation in RPPs and declining contributions to RRSPs indicate that future retirement incomes may fall short of current replacement ratios.

To address these problems, a variety of measures have been recommended or are under consideration. The general view is that the potential problem of inadequate retirement incomes is concentrated within the broad range of middle income earners (those earning $30,000-$100,000 a year).

The most radical proposal may be described as “Big CPP.” This would entail expanding the CPP (and presumably the QPP) to include a mandatory, fully funded defined benefit pension.² Because lower income earners are already well provided for (and would suffer from additional forced saving during their working lives), Big CPP would start at an income level near the average industrial wage.

Alternative proposals involve the creation of public defined contribution (DC) pension plans. These could be targeted to the same income groups as a Big CPP. Participation in these DC plans could be mandatory (unless an adequate private RPP or group RRSP existed) or could involve automatic enrolment with opting out.³

Finally, a more modest approach involves facilitating the establishment of multi-employer RPPs. These would be designed to encourage small and medium-sized businesses to participate in RPPs. They could even allow participation by self-employed individuals.

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² See Jonathan R. Kesselman, “Big CPP’s Potential Role in Pension Reform,” a paper prepared for the National Retirement Income Summit, University of Calgary, School of Public Policy, April 13, 2010.
The proposals described in these two publications suggest that pension reform should focus on the following tax and funding issues:

1. **Possible changes to RRSP/RPP contribution limits.** Observers have pointed out that existing limits for contributions to retirement savings plans are too low to provide accumulation of adequate assets for retirement. Increasing the percentage of income and absolute dollar limits could help to facilitate savings within these tax-sheltered plans.\(^4\)

2. **Increasing the flexibility of the retirement savings system by moving to a lifetime averaged basis.** This would entail allowing larger contributions in years of high earnings to offset low contributions in years of low earnings. Individuals would also be allowed to replace withdrawals made from RRSPs (or RPPs) on a tax-deductible basis in future years. These two changes would shift Canada’s hybrid income-consumption tax system closer to a consumption base, with dynamic efficiency gains. However, they would also generate a net revenue loss, which may be difficult to accept under current fiscal conditions.

3. **Replacing the CPP tax credit with a deduction for CPP contributions.** Again, this is consistent with a consumption tax base, but it also entails a net revenue loss.

4. **Addressing the disincentive effects of clawbacks of GIS.** It is well known that the 50 percent clawback of GIS, combined with the personal income tax on other income, can generate effective marginal tax rates of 70 percent or more for low income earners. The relatively new tax-free savings accounts provide a savings vehicle that avoids the GIS clawback. However, there remains a strong disincentive to work (at least in the above-ground economy) and to save through RRSPs and RPPs. This disincentive can be mitigated by ensuring that the GIS clawback zone does not overlap with the personal income tax.

Other changes that have been proposed include raising the age limit for RRSP/RPP contributions from 71 to 73 years or more, and reducing the clawback rate on OAS.\(^6\) All of these changes would entail a net revenue loss. Given Canada’s current fiscal situation, it may be appropriate to consider a gradual phase-in of such changes.

T.A. Wilson

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\(^4\) Recently, William Robson recommended that the limits be raised to 34 percent and $42,000, respectively. See William B.P. Robson, *Cutting Through Pension Complexity: Easy Steps Forward for the 2010 Federal Budget*, C.D. Howe Institute Backgrounder no. 126 (Toronto: C.D. Howe Institute, February 2010).

\(^5\) The approach was recommended by Jack M. Mintz and Thomas A. Wilson, *Saving the Future: Restoring Fairness to the Taxation of Savings*, C.D. Howe Institute Commentary no. 176 (Toronto: C.D. Howe Institute, November 2002).

\(^6\) In a recent paper, Gunderson and Wilson recommended that the age limit be raised to 74. Morley Gunderson and Thomas Wilson, “Encouraging Small and Medium Sized Firms To Participate in Pension Plans,” a report prepared for Advocis, September 2009 (http://link.advocis.ca/pdf/Pension-Study-se11-09.pdf).


Tax history is an area of tax scholarship that has been shamefully neglected. Tax policy analysts tend to be preoccupied with current issues, while sociologists and historians tend to avoid taxation as an ostensibly dry subject of inquiry. Although the tax literature is sprinkled with some very good historical work, it is only recently that tax history has come into sharper focus for a broader range of tax scholars. These three publications are evidence of this deeper inquiry.

*The New Fiscal Sociology* consists of 14 papers, most of which were presented at a conference held at Northwestern University on May 4-5, 2007. The papers are organized around three general issues: the social bases of tax policy; the determinants of taxpayer consent; and the social consequences of taxation. The papers are genuinely cross-disciplinary, with contributions from tax policy analysts, sociologists, political scientists, and historians. While many of them focus on the US experience, there are two papers on the Japanese tax system and one on the development of tax administration in African states. Some papers also have a broader focus that is relevant to the experience in many countries. In the introduction to the collection, the editors provide the usual overview of the papers that follow, but they also go much further, describing the origins and development of “the new fiscal sociology.” In fact, the book is worth purchasing for the introduction alone.

*The Victorian Taxpayer and the Law* is an extensive case study of the determinants of taxpayer consent. More particularly, Stebbings explores the development of legal safeguards in Victorian England intended to ensure that taxpayers are not subject to arbitrary taxation. She concludes that these safeguards (which consisted of a requirement that taxes be consented to by Parliament, local administration, and a power to appeal to specialist tribunals and the courts) were profoundly affected by changing social, economic, and political conditions. She argues, in fact, that these legal safeguards were conceived in the context of a predominantly agrarian economy and had to change with the increasing industrialization of Victorian England. Stebbings first describes how the notion of parliamentary consent was altered in response to changing political values and the extension of the franchise. She then turns to the changing nature of local administration in the face of a society with an increasingly national identity. Another chapter examines the role of a conservative judiciary in exercising control over tax tribunals and bringing tax within the legal system, rather than leaving
its execution to administrative fiat. A related chapter details the development of increasing access to each of the three legal safeguards.

The article by Vossblamer asks a deceptively simple question: how much income tax did New Zealand wage or salary earners pay from 1893, when the tax was introduced, to 1984? Consistent with the experience of many western countries, Vossblamer finds that tax levels on employment income rose in a lumpy fashion, largely in response to crises, which included two world wars and the Great Depression of the 1930s. This trend resulted in the “democratization” of the income tax as it changed from a tax limited to high incomes to a tax on increasing numbers of the middle class. Broadening of the tax was accompanied by increasing differentiation, with single individuals paying more than married couples with children. Vossblamer also finds that tax policy changes did not reflect political party lines.

Vossblamer suggests three interesting extensions of his research. One would involve extending his data series to include 1984 to the present. This period was marked by what was sold to the New Zealand public as an economic crisis. Another extension would provide a more fine-grained view of the dynamics at work, including how tax changes reflected changing perceptions of fairness. Finally, Vossblamer suggests that further work on alternative definitions of income might provide a more nuanced perspective on the effect of tax on employment incomes.

T.E.


This article by a senior, and extremely thoughtful, US tax lawyer provides a brutally frank assessment of the current state of tax planning and judicial anti-avoidance doctrines in the United States. Hariton observes first that all tax-motivated financial structures are designed to permit taxpayers to avoid tax payable on an alternative, higher-taxed transaction. He then observes that any tax-motivated financial structure can be made to look like a “tax shelter” by focusing on the relevant tax-motivated structuring steps rather than the broader non-tax purpose attributable to the broader structure. He argues that the Internal Revenue Service (IRS) routinely challenges tax-motivated structures as tax shelters by focusing on the narrower tax-motivated structuring steps. The battle in the courts is primarily over the framing of a transaction as consisting of either the tax-motivated structuring steps only or the broader business objectives associated with the overall structure. Hariton concludes, however, that this battle does little to assist an understanding of the line between permissible and impermissible tax planning. In fact, there is nothing in the case law and the administrative positions of the IRS that provides any basis for predicting the likely success of a particular structure.

Hariton illustrates his argument by reviewing some leading tax-avoidance cases in the United States, as well as some particular structures used in mergers and acquisitions, corporate finance, and international tax. Although the parameters of US tax-avoidance law differ somewhat from Canada’s general anti-avoidance rule
Hariton’s observations should resonate with Canadian tax practitioners, especially regarding the identification of a series of transactions for the purposes of applying GAAR.


This article contributes to a growing empirical literature on the tax risk management function within multinational enterprises (MNEs). The authors report the findings of a research study conducted in the United States of in-house tax professionals working with US-based MNEs in the information technology sector. The study consists of 20 in-depth interviews, conducted in 2005, of 26 senior individuals from 15 firms and 3 professional tax advisers.

The authors find a general trend toward the adoption of a more conservative approach to tax planning in the face of the more stringent regulatory environment implemented by Sarbanes-Oxley in the United States. Concerns with reputation, both internally and externally, were identified as significant influences, with the media playing a powerful role in changing the attitude to the tax law. The chief financial officer was also seen as a key influencer of a firm’s tax risk profile. Despite the more stringent regulatory environment, it is unclear whether firms have implemented formal risk management structures, although there appears to be much more documentary evidence of the process. But such documentation may be more ceremonial than substantively significant. Obtaining advance rulings and consulting external advisers remain the dominant formal mechanisms of tax risk management. “Applying the ‘smell test’ and assessing the ‘atmospherics’ of the situation, however, remain important less formal risk management mechanisms that are in place.”


By providing a deduction for corporate interest expense while denying the deduction of dividends, corporate income tax systems commonly bias the capital structure in favour of debt. This article provides a useful review of capital structure theory, which attempts to explain the use of corporate debt, as well as the empirical evidence of the effect of a tax bias in favour of debt. Gordon suggests that the market for corporate debt presents a classic “lemons problem” in which lenders cannot distinguish between borrowers on the basis of credit quality and must charge a single price in the form of the prevailing interest rate. In this kind of market, poor-quality borrowers dominate, with better-quality borrowers using other types of finance in the face of a borrowing cost that is too high. Gordon argues that the lemons problem, in fact, explains the under-use of corporate debt, given the prevailing tax bias. Moreover,

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8 At 698.
the tax bias leans in the right direction in the sense that it provides a subsidy to high-quality corporate borrowers who otherwise have suboptimal levels of debt in their capital structures because of the lemons problem. Loss limitations also provide a form of corrective tax for poor-quality corporate borrowers, who receive a lower tax benefit from the corporate interest expense deduction in the presence of such limitations. Gordon emphasizes, however, that the explanatory power of the lemons problem is limited to corporate borrowers in a domestic context. The tax benefits associated with the sourcing of interest expense by MNEs through the use of internal borrowings mean that it is more costly to use a tax debt bias to correct the lemons problem in a domestic context.

T.E.


The term “international tax arbitrage” refers to cross-border transactions that are classified inconsistently by the residence and source countries, with the inconsistent classification resulting in non-taxation of the associated income in both countries. The tax literature on this subject splits into two camps. One asserts that international tax arbitrage does not present a policy problem. The other asserts that such transactions violate a norm of international taxation that income from cross-border transactions should be subject to tax in at least one country (“the single tax principle”).

Greenaway argues that this first camp is representative of the US tax policy-making stance, which sees a unilateral response to international tax arbitrage transactions as driving away needed investment in the case of inbound transactions and undermining the competitiveness of US-based businesses in the case of outbound transactions. The article provides an accessible account of the development of international tax arbitrage transactions in the United States and the various responses of the IRS in challenging some of these transactions. Vigorous anti-arbitrage enforcement efforts are seen as a function of a tax administration’s aversion to erosion of the tax base and the playing off of one administration against the other. Greenaway suggests, however, that unilateral responses are counterproductive in the absence of any consensus regarding the so-called single tax principle. He prefers a combination of simplification of domestic rules that are susceptible to international tax arbitrage transactions and a minimization of tax differences with US treaty partners.

The recent protocol to the Canada-US tax treaty is a good example of an attempt to use the treaty negotiation process as a mechanism to minimize differences

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in tax treatment that are the focus of international tax arbitrage transactions. The article by Milet and Seraganian provides a thorough overview of the relevant treaty provisions introduced in the protocol. After a brief overview of these “anti-hybrid rules,” the authors discuss their application to some representative transactions involving non-deductible payments, deductible payments, and capital gains.

T.E.


Treaty-shopping transactions are nothing more than a specific type of tax-avoidance transaction in which taxpayers attempt to take advantage of a tax treaty to reduce or eliminate source-country taxation. Although tax policy makers have developed a now-familiar set of anti-treaty-shopping measures, the application of such measures to particular transactions remains uncertain.10 This uncertainly is attributable to an imprecise distinction between acceptable and abusive treaty-shopping transactions. The distinction parallels the more general distinction between acceptable and abusive tax avoidance.

Avi-Yonah and Panayi argue that the uncertain application of anti-treaty-shopping measures is attributable to an undeveloped working definition of such transactions that can be characterized as abusive. They illustrate forcefully how this definitional failure is a result of weaknesses in the various rationales offered for the prohibition on a range of treaty-shopping transactions. Not surprisingly, therefore, the articulation of anti-treaty-shopping measures is confused. After reviewing some of these measures under both the OECD model treaty and the US model treaty, the paper concludes with a discussion of anti-treaty-shopping measures in the context of EU law.

T.E.

Matthias Dischinger and Nadine Riedel, The Role of Headquarters in Multinational Profit Shifting Strategies, Oxford University Centre for Business Taxation Working Paper WP10/03 (Oxford: Oxford University Centre for Business Taxation, February 2010), 20 pages (http://www.sbs.ox.ac.uk/centres/tax)

There is a large body of empirical literature confirming that MNEs shift profits from high-tax to low-tax countries to reduce the overall tax burden of the group. With the

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10 See, for example, Prévost Car Inc. v. The Queen, 2008 DTC 3080; [2008] 5 CTC 2306 (TCC); aff’d. 2009 DTC 5053; [2009] 3 CTC 160 (FCA); and MIL (Investments) SA v. The Queen, 2006 DTC 3307; [2006] 5 CTC 2552 (TCC).
exception of research and development intensive MNEs, there is much less evidence of the profile of firms that engage in such profit shifting. This paper makes an important contribution on this particular question.

The authors’ data base consists of detailed accounting information on European subsidiaries and parent corporations for 1995-2007. Controlling for heterogeneity among subsidiaries, the authors find statistically significant evidence of profit-shifting behaviour in response to changes in the corporate rate difference between subsidiaries and parent corporations. Much more interestingly, they also find that the intensity of profit-shifting behaviour depends on the location of the headquarters in a high-tax or a low-tax country. After the sample of subsidiaries is split into two groups—those with tax rates higher than the parent and those with tax rates lower than the parent—the data indicate that profit-shifting behaviour is more than 50 percent smaller when the MNE headquarters is subject to a corporate tax rate higher than the subsidiary. The authors draw the conclusion that MNEs are particularly willing to shift profits out of a subsidiary to the parent where the latter is subject to a lower corporate tax rate. But where the relative rates are reversed, profit-shifting behaviour declines significantly. This decline presumably reflects central management’s incentive to keep profits under its control for various reasons, including agency costs.

T.E.


Sovereign wealth funds (SWFs) are state-owned and state-controlled investment funds actively managed as independent entities. They have recently attracted considerable political attention in the United States in the face of some substantial investments in the financial services sector. A principal concern is that SWFs can be used to serve the geopolitical interests of other countries vis-à-vis the United States. For example, they could, in principle at least, be used to transfer technology or destabilize key sectors by threatening to divest when a foreign power disapproves of US foreign policy. US tax law has been implicated in the controversy over SWFs, with the issue being whether SWFs enjoy a tax advantage in acquiring US assets. The presence of such a tax advantage can lower the hurdle rate for acquisition of an asset, allowing SWFs to offer a higher price. This dynamic was readily apparent in the recent investments of SWFs in the US financial services sector, although it is unclear to what extent a relative tax advantage was responsible for the lower hurdle rate and higher bid prices. Because SWFs potentially invest on the basis of non-financial factors, their lower hurdle rates may be attributable to a range of these factors.
Portfolio investment by SWFs into the United States receives the benefit of exemption from US tax under section 892 of the Internal Revenue Code,11 which exempts foreign sovereigns from income tax on non-commercial activities in the United States. In the first of the two articles reviewed here, Fleischer argues that this exemption advantages SWFs as against foreign private investors in acquiring US equities. Moreover, as extended to SWFs, the exemption is misconceived; it allows them to be treated like sovereigns acting to further geopolitical interests for income tax purposes, while being treated like any other private foreign investor for purposes of corporate law, banking law, and national security law. Fleischer concludes that the more logical presumption is that SWFs should pay US source-country tax like other private foreign investors. However, he also considers the case for adoption of an excise tax on SWFs as a means to correct for the negative externalities associated with their non-financial motivations in acquiring US assets. Because SWFs are heterogeneous in the prevalence of these motivations, he believes that an excise tax would be target-ineffective. In particular, an excise tax could discourage investment by professionally managed SWFs with strong separation of financial and geopolitical motivations for investment. Fleischer suggests instead the limitation of an excise tax to those SWFs that do not comply with “best practices” related to disclosure, investment goals, and accountability.

In the second article, Knoll challenges the proposition that the section 892 exemption provides SWFs with a competitive tax advantage over both US investors and private foreign investors in the acquisition of US equities, debt, and real estate. His principal point is that assessment of any such relative tax advantage is a complex process that requires consideration of the party with which an SWF is being compared, the particular asset in question, the correlation among rates of return across asset categories, and the tax laws in the United States and other countries. He nonetheless suggests that this kind of careful assessment reveals some general patterns. First, SWFs do not appear to have a tax-induced advantage relative to US investors in competing for the acquisition of US portfolio equities and US real estate. Second, any tax-induced advantage of SWFs relative to foreign private investors depends on the tax regime in the private investor’s home country. In this respect, SWFs are at a tax-induced advantage for strategic, but not controlling, equity investments, as well as non-controlling investments in US real estate, when there is no residual home-country tax for private foreign investors. It is much less clear whether SWFs have a tax-induced advantage when foreign private investors are subject to residual home-country taxation. Knoll concludes that creation of a non-distortionary income tax system requires the application of source-country tax equally to foreign investors, in combination with the application of home-country tax equally to all residents with a deduction (not a foreign tax credit) for source-country tax.

T.E.

11 Internal Revenue Code of 1986, as amended (herein referred to as “the IRC”).
With the United Kingdom and Japan moving to exemption systems for outbound direct investment, the United States is the last major capital-exporting country operating a foreign tax credit system for such investment. This paper constructs a unique argument against the continued acceptance of a foreign tax credit system.

Shaviro begins with the proposition that clear thinking about foreign tax credits requires a distinction between two behavioural margins. One margin is the decision to undertake outbound investment. A credit for foreign taxes is generally seen to be preferable to a deduction because of the additional burden associated with the latter treatment of foreign taxes, which is assumed to deter otherwise desirable outbound direct investment. Shaviro challenges this conventional wisdom by pointing out that the statutory tax rate on outbound direct investment can be lowered under a deduction system and brought in line with a credit system by lowering the statutory rate on such investment in the country of residence of the investor. The other behavioural margin relates to the incurrence of foreign tax liabilities. Under a foreign tax credit system, the marginal reimbursement rate for foreign taxes is 100 percent, which makes US taxpayers insensitive to the level of foreign taxes at the margin. In contrast, a deduction for foreign taxes lowers the reimbursement rate to that of the residence-country statutory rate on outbound direct investment. From a national welfare standpoint, Shaviro emphasizes that this reimbursement rate is, in fact, exactly right in terms of the marginal incentive to engage in foreign tax planning.

Shaviro’s reconceptualization of a foreign tax credit system is not intended to support the case for movement to a deduction for foreign taxes. In the face of various constraints on this kind of reform—including the requirement under tax treaties to relieve double taxation through either a credit or an exemption system—Shaviro suggests that his reconceptualization can be seen to support adoption of an exemption system, which he characterizes as tantamount to a deduction system with a zero residence-country tax rate on outbound direct investment. The characterization follows from a focus on the effect of a credit system versus an exemption system on foreign tax planning behaviour at the margin.

T.E.


This article presents the results of survey data collected in 2006-7 from a sample of 300 small business taxpayers in Australia. The principal finding was that a majority of the taxpayers included in the survey recognized that discharge of tax compliance obligations improved their record keeping and knowledge of their financial affairs. There was nonetheless a reluctance to acknowledge the value of any such benefits.
The study focused on small businesses because of the likelihood that the managerial benefits of tax compliance are greatest in this sector. Moreover, Lignier suggests that recognition of the possibility of managerial benefits may make the burden of tax compliance for the small business sector more sustainable.

Although the findings of the study are important, its limitations are acknowledged. Most important, Lignier observes that the sample size was relatively small, making it difficult to generalize to the population of small businesses in Australia. The small sample size also did not allow for data analyses at the subsample level; consequently, the influence of personal characteristics on the perception of managerial benefits could not be tested in a way that would provide significant results.

T.E.


This paper, co-authored by a number of tax practitioners and academics, describes the rules and doctrines for the classification of securities as debt or equity in six countries: Austria, France, Germany, Switzerland, the United Kingdom, and the United States. Although each country description focuses primarily on the tax-law classification rules and doctrines, there is also some description of the classification approaches for corporate-law and commercial-law purposes, as well as financial accounting. The country reports are followed by a final section that compares and contrasts the various tax-law classification rules and doctrines. Readers should find the level of detail in each of the country descriptions useful.

T.E.


New Zealand recently moved to an exemption system for active business income earned through a controlled foreign corporation (CFC). This paper describes a suggested approach to the extension of exemption to non-controlling interests of New Zealand corporations in foreign corporations. The new approach would extend the active income exemption to interests of 20 percent or more in foreign corporations where the passive income content is less than 5 percent of total gross income. Where this income test is not met, a New Zealand corporation with an interest of more than 20 percent would be subject to current attribution of the passive income. The active income exemption would continue to apply to New Zealand taxpayers with a 10 percent or greater interest in a CFC. A taxpayer with an interest of less than 20 percent
in a non-CFC would be subject to current attribution under the New Zealand foreign investment fund (FIF) regime. Portfolio investment entities would be unable to hold income interests of 10 percent or more in a CFC unless the CFC was itself a portfolio investment entity.

Adoption of these proposals would provide New Zealand with conceptually coherent systems of active income exemption and passive income attribution. Although it may be too late in the legislative day, Canada’s Department of Finance could do much worse than to copy the New Zealand FIF rules, including these latest proposals for extension of an income exemption, as a model for the revision of the Canadian FIF rules.

T.E.


An instalment warrant is a leveraged purchase of an underlying asset on which the warrant is written. With a typical instalment warrant, the investor makes an upfront payment consisting of prepaid interest and borrowing fees. The underlying asset on which the warrant is written is held on trust during the life of the loan to provide security for the lender, and the investor is required to make one or more future instalment payments. This paper proposes to clarify Australia’s income tax treatment of instalment warrants. In particular, it proposes that legislation be introduced to ensure that the investor is considered the owner of the asset during the term of an instalment warrant. The proposed legislation would bring Australian income tax law in line with accepted practice reflected in a number of rulings issued by the Australian Taxation Office.

T.E.


An “S corporation” is a creature of US tax law (subchapter S of the IRC) that, within specified conditions, can elect to be treated as a flowthrough entity consistent with the income tax treatment of partnerships. This report issued by the Government Accountability Office (GAO) presents some interesting findings on non-compliance by S corporations, which is a subset of the small business sector generally. For the

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2003 and 2004 tax years, it was found that 68 percent of S corporation returns misreported at least one item. Approximately 80 percent of the reporting errors favoured the taxpayer, resulting in a reduction of tax payable. The GAO reports that the majority of these errors involved the deduction of otherwise non-deductible expenses. Other significant issues were the miscalculation of shareholder cost base when losses were recognized at the shareholder level, and underpayment of compensation for owner-managers who provide employment services.

T.E.

Wake Forest Law Review 79-122

This article is the latest contribution to the US literature on the appropriate income tax treatment of “carried interests.” These are a type of partnership interest provided to investment fund managers as part of their compensation. Because carried interests entitle investment fund managers to a share of capital gains realized by funds under management, they allow this portion of a manager’s compensation to be taxed at lower capital gain tax rates.

Brunson argues that the debate over the appropriate income tax treatment of carried interests has been incorrectly framed; that is, it has focused incorrectly on whether carried interests most resemble employee compensation or an investment return. Brunson argues instead that the standard rationales for the lower rate of tax for capital gains do not support, or only weakly support, extension to carried interests. He suggests that fund managers should be taxed at standard rates on the amount of fund appreciation, whether realized or not, that is allocated to them.

T.E.


This book includes the following papers, which were delivered at an international tax seminar of the Canadian branch of the International Fiscal Association (IFA) held in Toronto on May 21-22, 2009:

- Gabrielle Richards and Angelo Nikolakakis, “International Tax Planning for Hard and Volatile Times”
- Michael C. Durst, “The US President’s International Tax Reform Proposals in Historical Perspective”
- Penelope Woolford, “Holding Companies Update and Repatriation Planning”
There are also brief summaries of Canada’s national reports on the two selected subjects for the general IFA congress held in Vancouver in August 2009 (the concept of a permanent establishment and foreign exchange issues in international taxation). The book concludes with questions and answers from a Canada Revenue Agency round table.

T.E.