
The Process for Making Tax Policy in Canada

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OVERVIEW

Canada has a federal system of government. The federal government and each of the 10 provincial and 3 territorial governments develop and enact tax legislation. The federal and provincial governments do so under their own constitutional authority; the territorial governments do so under power delegated by the federal government.

At the federal level, legislation is enacted by the Parliament of Canada. Each province or territory has its own legislature that enacts provincial or territorial laws. Federal laws apply across the country. Provincial and territorial laws apply within the boundaries of the province or territory.

The federal and provincial governments each have jurisdiction to levy taxes on personal and corporate income and to impose sales taxes. However, the constitution of Canada¹ restricts provincial taxing powers to direct taxation within a province. Only the federal government can impose indirect taxes (such as import duties).

The description below outlines the federal tax policy process.

GENERAL DESCRIPTION OF THE PROCESS

Development Stage

Generation of Ideas for Tax Changes, Including Identification of Problems in the Existing Tax System

The Tax Policy Branch (TPB) of Canada's Department of Finance is responsible for the development of tax policy at the federal level. TPB personnel conduct internal research and analysis (for example, conducting economic analysis and reviewing case law) to generate ideas for tax initiatives and to analyze ideas for tax changes from other sources. The Canada Revenue Agency (CRA), which administers most federal taxes, is an important source of ideas for tax initiatives. In addition, TPB personnel are in regular contact with other branches of the Department of Finance, other federal departments, and representatives of provincial and territorial governments. Other sources of policy initiatives include

- elected officials (either individually or by way of recommendations of a parliamentary committee);

1 Constitution Act, 1867, 30 & 31 Vict., c. 3, section 92.

- submissions from individual taxpayers, tax advisers, industry groups, and tax practitioner groups (for example, the Joint Committee on Taxation of the Canadian Bar Association and the Chartered Professional Accountants of Canada [“the CBA-CPA joint committee”] and the Tax Executives Institute);
- expert panels appointed by government (for example, the Expert Panel on Financial Security for Children with Severe Disabilities and the Independent Panel on Federal Support to Research and Development);
- studies and research by private groups (for example, the C.D. Howe Institute and the Canadian Tax Foundation);
- international bodies (such as the Organisation for Economic Co-operation and Development [OECD] and the G8/G20); and
- academic research and advisers from the academic community.

Research, Information Gathering, and Study

The TPB is made up of five divisions: Personal Income Tax; Sales & Excise Tax; Business Income Tax; Tax Legislation; and Intergovernmental Tax Policy, Evaluation and Research. All except the Tax Legislation Division carry out quantitative and qualitative economic research and analysis regarding contemplated policy options. Members of the Tax Legislation Division and the Sales & Excise Tax Division review case law and commentary published by practitioners and academics. TPB staff review submissions by taxpayers, practitioners, and expert committees such as the CBA-CPA joint committee. The research undertaken depends on the nature of the issue.

The CRA has developed a large database using data from taxpayers’ return information. Department of Finance staff have access to this database for research and analytical purposes. It is a major source of information for the quantitative portion of the TPB’s policy analysis and allows TPB staff to model the projected outcomes of policy proposals.

Identification and Evaluation of Solutions

The annual federal budget is normally the major vehicle for the introduction of new tax policy initiatives; accordingly, the policy options analysis process normally tracks the annual budget cycle. Options are analyzed in anticipation of their potential acceptance as measures to be adopted in the budget.

For measures considered for inclusion in the budget, the legislative feasibility of various policy options, their consistency with the government’s priorities and with tax policy objectives (fairness, neutrality, simplicity, etc.), the economic and distributional impacts, the cost/revenue impact, potential provincial/territorial impacts, and other considerations are all reviewed. In addition, all tax measures are reviewed for their gender and environmental impacts. This is done by way of preparation of a briefing package for consideration for ministerial approval.

Similar analysis is conducted for potential tax changes considered outside the budget cycle.

Drafting of Legislation

Federal income tax legislation is drafted by members of the Tax Legislation Division in consultation with the Department of Justice and the CRA. Federal sales and excise tax legislation is drafted by members of the Sales & Excise Tax Division in consultation with the Department of Justice and the CRA (and the Canada Border Services Agency [CBSA] in some instances). Department of Justice lawyers are assigned to the Tax Counsel Division, which works within the TPB but is part of the Department of Justice. TPB staff also prepare the associated explanatory notes for use by parliamentarians and taxpayers.

Tax legislation is normally released in draft form and the public has the opportunity to submit comments, usually for a period of 60-120 days. Comments received on the draft legislative proposals are considered in finalizing the legislation before its introduction in Parliament.

Legislative Phase

The Department of Justice prepares government bills for introduction in Parliament. Tax legislation is normally tabled in Parliament by the minister of finance. Federal legislation must be passed by both chambers of Parliament (the House of Commons and the Senate). The House and the Senate will generally study proposed legislation in committee before passing it. Legislation becomes law upon receiving royal assent (received from the governor general).

Post-Enactment Review Stage

Administration of tax legislation is the responsibility of the CRA. If the CRA identifies issues with the application of the legislation, it will advise the TPB accordingly. TPB staff also have ongoing contact with stakeholders and review court decisions to identify issues in existing legislation.

Individual taxpayers may find that legislation has an impact that they believe is not within the policy intent of the legislation. In such circumstances, taxpayers (or their advisers) may contact the TPB. If, upon review, TPB officials consider that the technical application of a particular provision is not in accord with its underlying policy intent, a senior TPB representative may issue a comfort letter advising of their intention to recommend to the minister of finance an appropriate technical amendment to the legislation. Taxpayers (and their advisers) generally rely on comfort letters issued by the Department of Finance in proceeding with transactions and in preparing tax returns—although accounting standards may require certain firms to identify in their financial reports that a legislative amendment is required to support the tax position that the firm has taken. The CRA will also rely on these comfort letters, either to assess tax in accordance with the policy articulated by the Department of Finance or, in certain cases, to suspend an assessment of tax pending enactment of the particular change.

GOVERNMENT DEPARTMENTS AND ADVISORY BODIES WITH A ROLE IN OR RESPONSIBILITY FOR TAX POLICY FORMULATION

Primary Responsibility for Formulating Tax Policy

The Department of Finance is responsible for formulating federal tax policy. The department develops policies and provides advice to the government with the goal of creating a healthy economy for all Canadians. Activities include the following:

- analyzing and designing tax policy and carrying out the related research and evaluation;
- recommending policy and legislative changes to the minister of finance;
- planning and preparing the tax portion of the federal government's budget;
- drafting amendments to the tax statutes and related regulations;
- consulting provincial governments regarding tax policy and legislation;
- negotiating tax treaties and tax information exchange agreements with foreign governments;
- consulting with stakeholders; and
- negotiating tax administration agreements with aboriginal governments, and tax collection and sales tax harmonization agreements with provincial governments, as well as making payments pursuant to these agreements.

Responsibility for the Administration of the Tax System

The CRA is the agency responsible for the administration of the federal income tax. In addition, the CRA administers

- the personal income tax of the territories and all provinces except Quebec;
- the corporate income tax systems of the territories and all provinces except Quebec and Alberta;
- the federal goods and services tax (GST) in all provinces except Quebec; and
- the provincial sales taxes of the five provinces that have adopted the harmonized sales tax (HST), which combines the 5 percent federal GST with a provincial component whose rate is set by the province.

In general, Quebec administers the Quebec sales tax (the QST, its value-added tax) as well as the GST/HST in Quebec. Quebec entered into a sales tax harmonization agreement with Canada in March 2012, the terms of which require that the QST be harmonized with the GST on a going-forward basis. British Columbia, Manitoba, and Saskatchewan administer their own retail sales taxes. (Alberta does not impose a provincial sales tax.) The CBSA collects applicable federal and provincial sales tax at the border.

Taxpayers are generally required to self-assess their income taxes payable (if any) and to report them in annual returns (signed declarations) filed with the CRA.

The CRA reviews these returns and may reassess taxes payable. The tax law contains authority for the CRA to review the records of taxpayers that are relevant to the determination of their taxes payable, and also provides certain collection powers not available to ordinary creditors. Taxpayers are entitled to an internal review within the CRA of the amount of tax assessed and have a further right of appeal to the courts (in the first instance to the Tax Court of Canada, then to the Federal Court of Appeal, and finally, with leave, to the Supreme Court of Canada).

The Role of Advisory Bodies and Parliamentary Committees

From time to time, expert committees and advisory panels are appointed to advise the government on specific issues or in respect of specific areas of tax. Examples in recent years include

- the Advisory Panel on Canada's System of International Taxation,
- the Expert Panel for the Children's Fitness Tax Credit,
- the Expert Panel on Financial Security for Children with Severe Disabilities,
- the Technical Advisory Committee on Tax Measures for Persons with Disabilities, and
- the Technical Committee on Business Taxation.²

In addition, parliamentary committees issue reports that may provide input for ongoing policy development. Recent examples include reports of the House of Commons Standing Committee on Finance on tax evasion and the use of tax havens,³ and on the use of tax incentives to encourage charitable giving by Canadians.⁴

Recommendations of these committees and advisory panels are seriously considered and in some cases implemented by the government. For example, a number of recommendations of the Advisory Panel on Canada's System of International Taxation have been implemented.

2 The findings and recommendations of these various panels and committees can be found in the following reports: respectively, Advisory Panel on Canada's System of International Taxation, *Final Report: Enhancing Canada's International Tax Advantage* (Ottawa: Department of Finance, December 2008); Canada, *Report of the Expert Panel for the Children's Fitness Tax Credit* (Ottawa: Department of Finance, October 2006); Canada, *A New Beginning: The Report of the Minister of Finance's Expert Panel on Financial Security for Children with Severe Disabilities* (Ottawa: Department of Finance, December 2006); Canada, *Disability Tax Fairness: Report of the Technical Advisory Committee on Tax Measures for Persons with Disabilities* (Ottawa: Department of Finance, December 2004); and Canada, *Report of the Technical Committee on Business Taxation* (Ottawa: Department of Finance, April 1998).

3 Canada, House of Commons, *Tax Evasion and the Use of Tax Havens: Report of the Standing Committee on Finance*, 41st Parl., 1st sess., May 2013.

4 Canada, House of Commons, *Tax Incentives for Charitable Giving in Canada: Report of the Standing Committee on Finance*, 41st Parl., 1st sess., February 2013.

RESOURCES DEVOTED TO THE FORMULATION OF TAX POLICY

Professional and Other Staff

The TPB currently has approximately 160 staff, including both professional and support staff. As of April 1, 2013, the active staffing complement for the TPB was as follows:

Senior Assistant Deputy Minister's Office	7
Personal Income Tax Division	32
Tax Legislation Division	27
Sales & Excise Tax Division	44
Business Income Tax Division	29
Intergovernmental Tax Policy, Evaluation and Research Division	17

The majority of the professional staff of the TPB are economists and other social policy professionals. The Tax Legislation Division and parts of the Sales & Excise Tax Division are staffed primarily by lawyers and accountants. Most of the economists on staff have a graduate degree, and a number of the professionals in the TPB have graduate degrees in tax, business, or public policy.

Typically, new staff are hired through university recruitment or from other branches of the Department of Finance or other federal departments, rather than as experienced hires from the private sector. New staff are trained as tax policy professionals within the TPB.

Private Sector Consultants

Depending on the nature and complexity of the issue, advice from the private sector may be sought to ensure that all possible considerations associated with the contemplated policy change are looked at. This is particularly relevant when the contemplated policy change has the potential to significantly affect market transactions or stakeholders in a particular segment of the economy.

Temporary Secondments from the Private Sector

The TPB arranges for the secondment of private practitioners to fill senior roles within the branch on an as-needed basis. For example:

- A senior tax partner with a major accounting firm recently joined the Department of Finance under the federal government's executive interchange program and acted as director of the Tax Legislation Division for almost two years.
- A partner from another major national accounting firm has joined the Tax Legislation Division under the same program, to work on foreign affiliate issues.
- On the sales tax side, accountants and a lawyer from major national firms have assisted with the examination of the GST/HST treatment of financial services.

CONSULTATIONS WITH THE PUBLIC AND TAX PROFESSIONALS

Consultation Process

The minister of finance engages in a series of consultations with members of the public prior to each budget. The House of Commons Standing Committee on Finance also holds pre-budget hearings and presents a report on these hearings.

In addition, the government engages in public consultations on specific issues. Examples of recent public consultations on tax issues include the following:

- *Scientific research and experimental development (SR & ED) tax incentive program.* In October 2007, the Department of Finance and the CRA issued a consultation paper and invited submissions on how the SR & ED tax incentive program could be made more effective for Canadian businesses and how it could be designed to play an even greater role in fostering a more competitive and prosperous Canadian economy.⁵
- *Non-resident trusts.* A consultation was completed in 2010 pursuant to revised proposals for the taxation of non-resident trusts and foreign investment entities outlined in the 2010 federal budget.⁶ The consultation consisted of a panel of experts commenting on detailed proposals.
- *Reporting of tax-avoidance transactions.* The 2010 budget released for consultation a proposal that avoidance transactions that met certain benchmarks be required to be reported to the CRA.⁷
- *Taxation of corporate groups.* The 2010 budget announced that Canada was exploring new rules for the taxation of corporate groups, such as a more formalized system of loss transfers or a form of consolidated reporting.⁸ A discussion paper was released in November 2010 and comments were invited.⁹
- *Employee profit-sharing plans (EPSPs).* As announced in the 2011 federal budget,¹⁰ the government undertook consultations for the purpose of reviewing the existing rules for EPSPs. As part of these consultations, the Department of Finance invited comments on the rules that apply to EPSPs.¹¹

5 See Canada, Department of Finance, *Tax Incentives for Scientific Research and Experimental Development: Consultation Paper* (Ottawa: Department of Finance, October 2007).

6 Canada, Department of Finance, 2010 Budget, Budget Plan, March 4, 2010, at 371-78.

7 *Ibid.*, at 382-84.

8 *Ibid.*, at 386.

9 Canada, Department of Finance, *The Taxation of Corporate Groups: Consultation Paper* (Ottawa: Department of Finance, November 2010).

10 Canada, Department of Finance, 2011 Budget, Budget Plan, June 6, 2011, at 291.

11 Canada, Department of Finance, "Consultations on the Tax Rules for Employee Profit Sharing Plans," August 30, 2011 (www.fin.gc.ca/activty/consult/epsp-rpeb-eng.asp#a1).

- *Registered disability savings plans (RDSPs)*. In October 2011, the Department of Finance announced that it was undertaking a review of RDSPs, to ensure that such plans are meeting the needs of Canadians with severe disabilities and their families.¹² The review sought public input on a number of matters that are crucial to the success of RDSPs, including access to plan savings, plan termination, and the administration of the RDSP program.
- *Life insurance policyholder taxation*. The 2012 federal budget proposed changes to the life insurance policyholder taxation rules and announced a related consultation with key stakeholders.¹³ A consultation paper was released to an industry working group on May 31, 2012. TPB officials discussed the proposals outlined in the paper extensively with industry representatives.
- *Contingency fees related to the SR & ED tax incentive program*. As announced in the 2012 federal budget,¹⁴ the government undertook consultations on contingency fees charged by SR & ED tax preparers to determine whether these fees diminish the benefits of the SR & ED tax incentive program to Canadian businesses and the economy.

As noted earlier, tax legislation is generally released in draft form for public comment before it is introduced in Parliament. Written comments are solicited, and may be provided by either mail or e-mail. Meetings are also often held with stakeholders, either in relation to particular measures that affect a particular taxpayer or group, or, in the case of input provided by organizations such as the CBA-CPA joint committee or the Tax Executives Institute, on most or all of the measures put forward in the particular package of draft legislative proposals.

Parliamentary committees, of both the House of Commons and the Senate, hold hearings on proposed tax legislation as part of its passage by Parliament.

TPB staff have regular meetings with stakeholder groups such as the commodity tax committees of the Canadian Bar Association and the Chartered Professional Accountants of Canada, and the Tax Executives Institute.

Issues Considered Suitable for Public Consultation

Public consultation can be particularly useful in the following circumstances:

- Where new policies are proposed, consultations may reveal unintended consequences or, alternatively, may reveal a gap in the policy.
- With policies that may be sensitive or controversial, consultations may provide an opportunity to explain concerns that might be addressed in the legislation.

12 Canada, Department of Finance, "Consultation on Ensuring the Effectiveness of Registered Disability Savings Plans," October 2, 2011 (www.fin.gc.ca/activty/consult/rdsp-reeci-eng.asp#Ensuring).

13 Canada, Department of Finance, 2012 Budget, Budget Plan, March 29, 2012, at 400-2.

14 *Ibid.*, at 71.

- Often, changes that are required to tighten existing legislation take effect at the time they are announced, in order to prevent revenue losses. In these cases, consultations occur after the announcement, and generally relate to technical issues rather than the policy aspects of the tightening change.
- Consultations may be used to review the effectiveness of existing tax measures.
- Through the release of draft legislation, the tax practitioner community is given an opportunity to comment on proposed amendments addressing technical issues identified by the TPB, the CRA, or taxpayers and their advisers.

Timing and Form of Public Consultation

The stage at which consultation is carried out varies with the purpose of the consultation. For example, the consultation process

- may occur at an early stage and provide the impetus for a tax change (such as when a parliamentary committee studies a particular issue or the minister of finance engages in pre-budget consultations);
- may be carried out to elicit views on a range of options, or on one particular option, to address an issue;
- may be carried out with respect to the implementation of a tax change that has been announced by the government; or
- may occur on the release of draft legislation for comment.

The Department of Finance's main approach to formal consultation involves a news release and the posting of a consultation paper or draft legislation on the department's website inviting comments from interested stakeholders.

Consultations may also be in the form of informal meetings between TPB staff and taxpayers, industry groups, tax practitioners, or the other stakeholders.

Effectiveness of the Consultation Process

Consultations are useful for learning about new policy ideas, for identifying issues associated with new tax policies, and for identifying technical issues with proposed legislation. Consultations are also useful for identifying sensitive aspects of policies and for explaining government positions on policy issues.

OTHER ISSUES

Academic Research

The tax policy community would benefit from more academic scholarship in the area of tax law. Canada has a limited number of academics at universities and other organizations who focus their research on tax policy issues.

Transparency

The budget process and the development of legislation are generally secret. Consequently, there are important limits to the extent that information is shared with

respect to the development of tax initiatives. However, comfort letters issued by the Department of Finance are made public, as are advance tax rulings and technical interpretations issued by the CRA.

The Department of Finance and the CRA are both subject to the Access to Information Act,¹⁵ which may require the release of information in certain circumstances.

The Role of Politics and Politicians

In the field of taxation, only the government can introduce a measure that would impose a new or additional tax. However, measures to reduce taxes may be introduced either by the government, or by parliamentarians as private members' bills.¹⁶

In addition to the House of Commons Standing Committee on Finance, the Senate's Standing Committee on Banking, Trade and Commerce and the Senate's Committee on National Finance study tax legislation, and tax issues more generally, as part of their respective mandates.

The Role of International Organizations

The Department of Finance and the CRA are actively involved with the OECD at the working-party level and with the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes. As well, a senior representative of the Department of Finance sits on the OECD Committee on Fiscal Affairs. The Department of Finance actively supports the work of the International Monetary Fund and the World Bank. The OECD model tax convention¹⁷ generally serves as a model for Canada's tax treaties.

The Role of Independent Tax Reform Bodies

There are several non-governmental organizations in Canada that play an important role in the development of tax policy and the advancement of tax reform:

- The Canadian Tax Foundation promotes and facilitates the study of, and discussion about, Canada's tax system. Drawing its members from all branches of the tax community, in Canada and abroad, the Foundation is the predominant Canadian organization in this area. Its publications include the *Canadian Tax Journal*, conference reports, regular tax updates, and monographs on a range of tax topics.
- The CBA-CPA joint committee acts as a nexus for the tax practitioner community to present concerns to the Department of Finance.

15 RSC 1985, c. A-1, as amended.

16 Audrey O'Brien and Marc Bosc, eds., *House of Commons Procedure and Practice*, 2d ed., 2009 (Ottawa: House of Commons, 2009), 1114.

17 Organisation for Economic Co-operation and Development, *Model Tax Convention on Income and on Capital: Condensed Version* (Paris: OECD, July 2010).

- The Tax Executives Institute represents corporate in-house tax professionals.
- A number of independent think tanks, other research institutions, and professional bodies (for example, the C.D. Howe Institute, the Fraser Institute, the Association de planification fiscale et financière, and the University of Calgary's School of Public Policy) publish work relating to the economics of taxation and other aspects of tax policy.