A leasehold interest in a housing unit may qualify as a principal residence if the housing unit covered by the leasehold interest is ordinarily inhabited as described above. Where the taxpayer acquires shares of a co-operative housing corporation solely for the purpose of acquiring the right to inhabit a housing unit owned by the corporation, the shares qualify as a principal residence if the usual rules of ordinary inhabitation are met.

The expression "ordinarily inhabited" is not defined in the Act. It will be noted, however, that the housing unit must only be ordinarily inhabited "in" the year, not throughout the year. This means, for example, that if a taxpayer sells one house and buys another in the same year, the taxpayer may be considered to ordinarily inhabit both of them in the year so that either may be the principal residence. Inhabitation on a periodic basis (such as in the case of a vacation property) would appear to constitute ordinary inhabitation even where the total time spent on the property is only a small portion of the year. However, where the taxpayer intended to live in a newly purchased condominium but was transferred to another city before the building was completed, it was found that the taxpayer did not ordinarily inhabit the residence even though the taxpayer had spent 24 hours in the unit in an attempt to satisfy the technical requirements of a principal residence.[357]

Land upon which a housing unit is built and surrounding land which can reasonably be regarded as contributing to the use and enjoyment of the housing unit are included in the principal residence.[358] Where the land area exceeds 0.5 hectares (approximately one acre), the taxpayer must establish that the excess land is necessary for the use and enjoyment of the housing unit; otherwise the excess will not be considered to be part of the principal residence. The CRA's administrative position is to consider the minimum lot sizes imposed by municipal authorities in determining principal residence status. Where a taxpayer purchased a 10-acre parcel of land for a residence (10 acres being the minimum acreage required by municipal zoning for a residence), the subsequent sale by the taxpayer of a 9.3-acre parcel which did not include the housing unit was held to be a sale of the taxpayer's principal residence.[359] Further, where the zoning changes during ownership such that the property can be subdivided, the determination and the designation of whether a property constitutes a "principal residence" of a taxpayer is made on a year-by-year basis during the period of ownership. It follows that for those years that the zoning restrictions preclude the ability to obtain a severance of excess lands in a particular year when the property is ordinarily inhabited by the taxpayer, the taxpayer is able to designate the excess portion in those years as a principal residence.[360] Land is not, however, considered to be part of a principal residence where the residence consists of shares of a co-operative housing corporation.

See page ii for explanation of footnotes.

357 Ennist, 85 DTC 669.
358 Fourt, 91 DTC 5631.
359 Yates, 86 DTC 6296, Augart, 93 DTC 5205.
360 Cassidy, 2011 DTC 5157.

[¶5270] Election Where Change in Use of Principal Residence

A housing unit, leasehold interest, or share in a co-operative housing corporation may qualify as a principal residence for a year, notwithstanding the fact that it was not ordinarily inhabited by the taxpayer or the taxpayer's family in that year. This would occur where use of a housing unit changes from being a home for its owner or the owner's family to being a rental property.[361] A taxpayer built a home and, when transferred to another province, was forced to rent it out. When the taxpayer returned nine years later to occupy the home, it was held that a deemed disposition of the property had occurred when the use of the property was changed from a rental property to a principal residence and that the taxpayer had been correctly assessed for recaptured capital cost allowance and a capital gain on the disposition.[362] The taxpayer is entitled to elect that, for tax purposes, no change in use is considered to have taken place. Where this election is made for a particular year, the housing unit will qualify as the taxpayer's principal residence for that year.[363] Subject to one exception discussed below, the property may only qualify as a principal residence for four years of the period to which the election applies.

Where the housing unit is not ordinarily inhabited by the taxpayer or the taxpayer's family in the year because the taxpayer or the taxpayer's spouse/common-law partner is required by his or her employer to move to some other locality, the housing unit may continue to be the taxpayer's principal residence indefinitely.[364] If the unit was rented out during the taxpayer's absence, the taxpayer could elect that no change in use has taken place for each year in question, and, as long as the taxpayer's absence is owing to the requirements of the employer, none of these years will be included in the four-year limitation ordinarily imposed on such elections. This applies only if the taxpayer subsequently satisfies one of the following three conditions:

(1) the taxpayer resumes living in the home during the term of the taxpayer's or the taxpayer's spouse/common-law partner's employment with that employer;

(2) if the employment with that employer is terminated, the taxpayer resumes living in the home before the end of the next taxation year; or

(3) the taxpayer dies during the term of the taxpayer's or the taxpayer's spouse/common-law partner's employment with that employer.

It is also a condition that the housing unit in question be at least 40 kilometres farther from the new place of employment than is the taxpayer's subsequent place of residence. It should be noted that for purposes of calculating the principal residence deduction, only those years in which the taxpayer is resident in Canada will be considered.

See page ii for explanation of footnotes.

361 CCH ¶6820; Sec. 45(2); Interp. Bul. IT-120R6.
362 Woods, 78 DTC 1576.
363 CCH ¶7851; Sec. 54"principal residence".
364 CCH ¶7950; Sec. 54.1.

Similarly, when a property that has been used to earn income becomes the principal residence of a taxpayer, the recognition of any gain or loss on the deemed disposition arising from the change in use can be deferred. The taxpayer elects out of the deemed disposition by means of a letter to the Minister.[365] This election does not defer the recapture of capital cost allowance on the change in use and, in fact, the election will not be allowed if any capital cost allowance has been claimed on the property after 1984 and before the property becomes the principal residence of the taxpayer. By making this election, the taxpayer can also designate the property as a principal residence for up to four years prior to the change in use.

Example:

Ned owns and lives in a home from 2000 to 2008. On January 1, 2008, Ned moves to an apartment and rents the home to another family. In 2011, Ned sells the home without returning to live in it. The home was purchased in 2000 for $85,000. The fair market value on January 1, 2008 was $120,000. Ned sells the home for $130,000.

If Ned files an election in 2008 deeming no change in use to have occurred, there will be no deemed disposition in 2008. The whole gain of $45,000 in 2011 will be exempt from tax, since the home can be designated as Ned's principal residence for the entire period of ownership.

If no election is filed, there would be a deemed disposition on January 1, 2008, resulting in a gain of $35,000 which would be entirely tax-free due to the principal residence exemption. The property would be deemed to be reacquired by Ned at a cost of $120,000. In 2011, Ned would incur a capital gain of $10,000 which would not be eligible for the principal residence exemption, since in 2008 the home changed in use from a principal residence to a rental property.

[¶5275] Principal Residence Designation

In order to qualify as a principal residence for a particular taxation year, a housing unit, leasehold interest, or share must be designated as such by the taxpayer in prescribed form.[366] This designation is to be made in the return filed for the year of disposition or when an option is granted to someone to acquire the property. The prescribed form is T2091. Only one property may be designated as the taxpayer's principal residence for a particular taxation year, either directly or through a personal trust.

The definition of "principal residence" restricts the ability of a taxpayer to designate a property as a principal residence for a particular year. A designation cannot be made by a taxpayer where any other housing unit, leasehold interest, or share has been designated for that particular year:

(a) by a person who was throughout the year the taxpayer's spouse/common-law partner (other than a spouse or common-law partner who was throughout the year living apart from and was separated, pursuant to a judicial separation or written separation agreement, from the taxpayer);

See page ii for explanation of footnotes.

[365] CCH ¶6830, ¶6831; Sec. 45(3), 45(4).

[366] CCH ¶7851, ¶39,268; Sec. 54 "principal residence"; Reg. 2301; Form T2091.

(b) by a person who was the taxpayer's child (other than a child who was during the year a married person or a person who was in a common-law partnership or 18 years of age or over); or

(c) where the taxpayer was not during the year a married person or a person who was in common-law partnership or a person 18 years of age or over, by a person who was the taxpayer's mother or father, or the taxpayer's brother or sister who was not during the year a married person or a person who was in a common-law partnership or a person 18 years of age or over.[367]

A personal trust may make a principal residence designation for a property as long as each individual who, in the calendar year ending in the taxation year, is beneficially interested in the trust and ordinarily inhabits the housing unit, or has a spouse/common-law partner, former spouse/common-law partner, or child that ordinarily inhabits it, is listed in the designation. No other property may be designated as a principal residence for the year by any specified beneficiary of the trust, the beneficiary's spouse/common-law partner (other than a spouse or common-law partner who was throughout the year living apart from and was separated, pursuant to a judicial separation or written separation agreement, from the beneficiary), the beneficiary's child (other than a child who was during the year a married person or a person who was in a common-law partnership or 18 years of age and over), or, where the beneficiary was not a married person or a person who was in common-law partnership or 18 years of age and over, by the beneficiary's mother, father, brother, or sister where that brother or sister was not a married person or person in a common-law partnership or a person 18 years of age or over.[368] If a corporation or partnership other than a registered charity is beneficially interested in the personal trust at any time in the year, the trust is not entitled to make a principal residence designation.

The above restrictions effectively limit each "family unit", either directly or through a trust, to one principal residence for tax purposes. Prior to 1982, each spouse could designate a different property as a principal residence.

A transitional provision[369] will apply where a person owned a dwelling prior to January 1, 1982, which would have qualified as a principal residence before the change. Specifically, the taxpayer's gain on a dwelling disposed of at a later time will be computed on the assumption that the taxpayer disposed of the property on December 31, 1981, for its then fair market value. The capital gain is determined on the basis of the number of years prior to December 31, 1981 during which the taxpayer owned the dwelling and it was designated the principal residence under the rules as they applied prior to January 1, 1982 (i.e., each member of a family could designate a different principal residence). To this amount is added the gain

See page ii for explanation of footnotes.

[367] CCH ¶7851; Sec. 54 "principal residence".

[368] CCH ¶7851; Sec. 54 "principal residence".

[369] CCH ¶6485; Sec. 40(6).

(b) the amount of the Quebec tax abatement and the Aboriginal government tax abatement deemed to have been paid on account of tax (see ¶8020 and ¶8021).

[¶8565] Business Income Tax — Foreign Tax Credit

A taxpayer who carries on business in a foreign country is permitted to deduct from his or her Part I tax otherwise payable, a portion of the "business income tax" paid by the taxpayer for the year in respect of the business carried on by him or her in that country, plus the taxpayer's "unused foreign tax credit" in respect of that country for the year.[452] See ¶8600 for a discussion of the carryforward and carryback provisions. The deduction is limited to the lesser of the following two amounts:

(1) The proportion of the "tax for the year otherwise payable under this Part" that:

(a) the taxpayer's income for the year from business carried on by the taxpayer in that country, other than any portion that was deductible under a tax convention[453] and "tax-exempt income", i.e., income not subject to tax in the foreign country because of a treaty exemption,[454] is of:

(b) the aggregate of the taxpayer's income for the year and any previously forward-averaged amounts included in taxable income for the year, minus:

(i) capital gains deducted under the lifetime capital gains exemption for individuals;[455]

(ii) net capital losses;[456]

(iii) an amount deductible in respect of an employee stock option plan;[457]

(iv) any amount deductible in respect of prospectors' and grubstakers' shares and shares received from a deferred profit sharing plan;[458]

(v) amounts deductible in respect of a home relocation loan;[459]

(vi) amounts deductible in respect of tuition fee assistance received for adult basic education;[460]

(vii) amounts deductible in respect of social assistance payments, workers' compensation payments, amounts exempt from tax in

See page ii for explanation of footnotes.

452 CCH ¶19,702, ¶19,703; Sec. 126(2), 126(2.1).
453 CCH ¶15,290; Sec. 110(1)(f).
454 CCH ¶19,794; Sec. 126(9).
455 CCH ¶15,975a–15,979; Sec. 110.6.
456 CCH ¶16,003; Sec. 111(1).
457 CCH ¶15,015, ¶15,272; Sec. 110(1)(d), 110(1)(d.1).
458 CCH ¶15,274, ¶15,276; Sec. 110(1)(d.2), 110(1)(d.3).
459 CCH ¶15,305; Sec. 110(1)(j).
460 CCH ¶15,293; Sec. 110(1)(g).

Canada by virtue of a tax convention with another country, and income from employment with a prescribed international organization such as the United Nations;[461]

(viii) taxable dividends that are deductible, received by a corporation from a corporation resident in Canada;[462] and

(ix) dividends that are deductible, received from a foreign affiliate.[463]

To this figure a taxpayer that is a corporation may add an amount to taxable income that will increase the foreign tax credit claim.[464] An individual will also add, if applicable, that proportion of the 48% surtax on income not earned in a province that the individual's income as described above in (a) is of the individual's income as described above in (b) that is not earned in a province.[465]

(2) The amount by which the "tax for the year otherwise payable under this Part", exceeds the deduction for the non-business income tax credit, thereby allowing non-business income taxes to be deducted first (see ¶8555).

Where the taxpayer is an individual who was resident in Canada only part of the year[466] (see ¶14,005), the taxpayer's income is apportioned. The above fraction in (1) is then modified so that only income for the period or periods in the year during which the taxpayer was resident in Canada is included in the amounts in (a) and (b) and the denominator described in (b) above will include the individual's taxable income earned in Canada while the individual was not resident in Canada.[467] Taxable income earned in Canada will be determined before deductions for certain items such as an employee stock option plan, prospectors' and grubstakers' shares, social assistance and workers' compensation payments, income earned from employment with a prescribed international organization, and income exempt by treaty and loss carryovers.[468]

The calculation of the amount of foreign business tax credit that can be claimed is done for the business tax paid in each foreign country in which the taxpayer does business.

[¶8570] Limitation on Business Income Tax Credit

For the purpose of calculating the limitation on the business income tax credit in ¶8565, the phrase "tax for the year otherwise payable under this Part" means the tax for the taxation year otherwise payable under Part I before making:

See page ii for explanation of footnotes.

461 CCH ¶15,290; Sec. 110(1)(f).
462 CCH ¶16,301; Sec. 112.
463 CCH ¶16,500; Sec. 113.
464 CCH ¶15,970; Sec. 110.5.
465 CCH ¶18,900; Sec. 120(1).
466 CCH ¶17,003; Sec. 114.
467 CCH ¶17,003, ¶19,703; Sec. 114, 126(2.1).
468 CCH ¶17,101; Sec. 115(1)(d)–(f).

(a) any addition for income not earned in a province or for tax on CPP/QPP disability benefits received in one year that relate to preceding years;

(b) any addition for the additional 6⅔% tax on investment income of CCPCs; or

(c) any deduction for the following:

(i) dividend tax credit;

(ii) overseas employment tax credit;

(iii) the corporate tax credits in respect of provincial income;

(iv) the corporate small-business and manufacturing and processing deductions;

(v) the foreign tax credit;

(vi) the logging tax credit;

(vii) the political donation credit;

(viii) the investment tax credit;

(ix) the share-purchase tax credit;

(x) the scientific research and experimental development tax credit;

(xi) the labour-sponsored funds tax credit; or

(xii) the credit for beneficiaries of qualifying environmental trusts.[469]

Non-business income taxes are to be deducted first and business income taxes second, thereby preserving any foreign business tax carryover.

[¶8572] Short-Term Securities Acquisitions

When shares or debt acquired after February 23, 1998 are held for one year or less, the amount of creditable foreign tax available to a Canadian taxpayer is limited to a notional rate (30% for business income tax, 40% for non-business income tax) of the taxpayer's gross profit from the transaction. This would include the net gain or loss from holding the security together with the amount of distributions on the security.[470]

The above restriction does not apply to capital property, debt issued to the taxpayer having a term of less than one year and held to maturity, or securities which would be subject to the restrictions in ¶8573.[471] This rule only applies to foreign withholding taxes on dividends and interest which would otherwise be included in business or non-business tax for foreign tax credit purposes. In general terms, the amount of foreign withholding tax

See page ii for explanation of footnotes.

469 CCH ¶19,789e; Sec. 126(7) "tax for the year otherwise payable under this Part".

470 CCH ¶19,732; Sec. 126(4.2).

471 CCH ¶19,733; Sec. 126(4.3).

eligible to be recognized for FTC purposes will be limited to 40% or 30% (depending on whether the foreign tax constitutes business or non-business income tax) of the taxpayer's gross profit from the share or debt. Gross profit from the security will include both the dividend and interest income payment while the security is owned and any gains or loss on resale.

[¶8573] No Economic Profit

Where property is acquired after February 23, 1998 and it is reasonable to expect that the "economic profit" on the property would be insubstantial relative to the amount of foreign tax that is expected to be payable in respect of the property and "related transactions", no amount may be included in business or non-business income tax for purposes of calculating foreign tax credits.[472]

Any credit denied under this anti-avoidance rule may be available as a deduction from income, but only to the extent of income for the year attributable to the property or related transactions.[473] An "economic profit" is defined to be computed on the basis that the only permitted expenses were:

(a) interest and related financing expenses;

(b) Canadian and foreign taxes; and

(c) other directly attributable outlays and expenses relating to the acquisition, holding, or disposition of the property.[474]

Economic profit is calculated for the period of continuous ownership of the property from acquisition to disposition, but includes income attributable to the property for that period and income in respect of related transactions. "Related transactions" are defined as transactions entered into by the taxpayer as part of the arrangement under which the property was owned.[475]

Example:

Mr. X has a bond of a United States corporation with an underlying value of 10,000, on which a regular interest payment of $500 is about to be paid. The interest is subject to withholding tax in the United States of 10%. Therefore, Mr. X will receive $450, net of $50 of withholding tax. Assume that Mr. X is not able to use a foreign tax credit.

Mr. X sells the bond to Mr. Y, just prior to the interest payment date for $10,450. Mr. Y also receives the $500 interest payment on which $50 has been withheld. Assume that Mr. Y has a federal tax rate of 30%.

A few months later, Mr. Y sells the bond on the market for $10,000, plus accrued interest of $100.

See page ii for explanation of footnotes.

472 CCH ¶19,731; Sec. 126(4.1).

473 CCH ¶5140d; Sec. 20(12.1).

474 CCH ¶19,760; Sec. 126(7) "economic profit".

475 CCH ¶19,789d; Sec. 126(7) "related transactions".

record of a lawyer, including any supporting voucher or cheque, is deemed not to be such a communication.

A lawyer may refuse to disclose information to, or to produce documents relating to the affairs of a client for, the taxation authorities. To be so privileged, the communications must be of a professional nature. Thus, communications to a solicitor in a matter on which the solicitor's advice is not sought are not privileged. The privilege does not extend to any communications made for the purpose of committing a fraud or a crime. The privilege belongs to the client, who can waive it.

[¶15,165] Defence

Where a lawyer is prosecuted for failure to give information or produce a document, it is a valid defence for the lawyer to establish that he or she had reasonable grounds to believe that the client had a solicitor-client privilege with respect to the relevant information or document, and that such privilege had been claimed on behalf of a named client to the Minister or some person duly authorized to act for the Minister.[143] The lawyer must give the client's last known address so that the Minister may get in touch with the client to see if he or she wants to waive the privilege.

[¶15,170] Seizure of Documents

Where an officer is about to seize a document in a lawyer's possession and the lawyer claims, in the course of an on-site inspection or following a written request, a solicitor-client privilege on behalf of a named client, the officer is (without inspecting, examining, or making copies of the document) to seize the document and any other documents in respect of which the privilege is claimed on behalf of the same client and to place them in a package. The package is then placed, after being sealed and identified, in the custody of the sheriff of the district or county where the seizure was made or in the hands of a custodian agreed upon in writing by the officer and the lawyer.[144]

Documents may only be seized and placed into custody where a warrant authorizing seizure has been obtained.

An officer who is about to inspect or examine rather than seize documents in the course of an on-site inspection or following a requirement in writing cannot inspect or examine them if the solicitor-client privilege is claimed. Again the document is to be placed in a sealed package, identified by initials, numbering or otherwise. However, the package or document does not have to be delivered into the hands of a sheriff or other custodian. Rather, the lawyer is required to retain and preserve the package or document and produce it to be dealt with according to a judge's order.[145] This

See page ii for explanation of footnotes.

[143] CCH ¶27,515; Sec. 232(2).
[144] CCH ¶27,518; Sec. 232(3).
[145] CCH ¶27,519; Sec. 232(3.1).

procedure does not apply when the lawyer deals with the documents immediately upon receipt of the Requirement to Produce.[146]

No officer may inspect, examine, or seize a document in a lawyer's possession without giving that lawyer a reasonable opportunity to claim the privilege.[147] A lawyer claiming solicitor-client privilege must communicate to the Minister the last known address of the client on whose behalf the privilege is claimed, so that the Minister may endeavour to advise the client of the claim of privilege and to find out if the client is willing to waive the privilege, if it is practicable so to do before the right to privilege is decided.[148] After the documents are placed in custody, the lawyer may be granted a court order authorizing him or her to examine or make a copy of the documents in the presence of the custodian or judge.[149] The documents are then to be repackaged and resealed without alteration or damage.

[¶15,175] Production of Documents

Where a document has been seized and placed in custody, or is being retained, the client or the lawyer may apply to a judge for an order to determine whether the claim of privilege is justified and to require the custodian to produce the document to the judge at the hearing.[150] The application is to be heard *in camera*, and the judge may inspect the document, ensuring that it is repackaged and resealed.[151] If the judge finds that there is a privilege in connection with the document, he or she will order that it be returned to the lawyer. If, on the other hand, the judge decides that there is no privilege, the document will be delivered to the appropriate official. This application must be disposed of without costs to either party.[152]

If the judge of the application cannot act or continue to act for any reason, other applications may be made to another judge.[153] Where a question arises as to the course to be followed in connection with anything done or to be done and the Act does not give any direction, a judge may give directions which, in his or her opinion, are most likely to afford solicitor-client privilege for proper purposes.[154] Documents deposited with a custodian cannot be delivered to any person except in accordance with a judge's order or consent of the parties.[155] The documents may, however, be delivered to the custodian's own officer or servant for the purpose of safeguarding them.

[¶15,180] Types of Documents to which Privilege Attaches

An illustration of the types of documents in which the solicitor-client privilege attaches was provided by rulings made by the Manitoba Court of

See page ii for explanation of footnotes.

[146] Cappell, 92 DTC 6591.
[147] CCH ¶27,554; Sec. 232(12).
[148] CCH ¶27,562; Sec. 232(14).
[149] CCH ¶27,558; Sec. 232(13).
[150] CCH ¶27,524; Sec. 232(4).
[151] CCH ¶27,526; Sec. 232(5).
[152] CCH ¶27,542; Sec. 232(9).
[153] CCH ¶27,538; Sec. 232(8).
[154] CCH ¶27,546; Sec. 232(10).
[155] CCH ¶27,550; Sec. 232(11).

Queen's Bench.[156] The following were the main documents seized by the Minister at a solicitor's office and the rulings by the Court:

(1) *Correspondence between the solicitor and another firm of solicitors pertaining to the purchase of shares and to a dispute between the vendor of the shares and the purchasers.* The solicitor-client privilege applied. The correspondence was in respect of obtaining and giving of counsel's opinion.

(2) *Bill of costs received by the solicitor from another firm of solicitors.* The privilege did not apply. The document was a voucher and as such it was part of the solicitor's accounting records.

(3) *Correspondence between the solicitor's client company and another firm of solicitors (this firm was eventually replaced as counsel by the solicitor) in respect of termination and holiday pay and union contracts.* The privilege applied. "A communication or document once privileged is always privileged." The protection was not lost on change of solicitors.

(4) *Letter from a client to the solicitor, only part of which contained privileged matters.* Where there is intermingling of privileged and non-privileged material, the whole of the document is privileged. However, with present copying facilities it should be easy to block out the privileged part and provide the Minister with a copy of the non-privileged part. This was so ordered by the Court.

(5) *Letter to the solicitor from other solicitors relating to corporate reorganization; copy of the letter was sent to the comptroller of a client company.* The privilege applied. The sending of the copy to a responsible officer was not a communication to a third party, which would void the privilege.

(6) *Unexecuted agreement.* Since the agreement was not signed, the inference was that the solicitor's advice was not taken. The document was in the same category as a draft opinion and was privileged.

(7) *Memoranda from accountants pertaining to a proposed corporate reorganization.* It had to be concluded from the evidence that these documents were prepared at the request of the solicitor's clients for submission for the solicitor's advice. They were privileged. However, a letter from the auditors to the client of the solicitor which volunteered some additional suggestions on the reorganization was not a privileged document.

(8) *Correspondence between a firm of solicitors and a trust company, Written, allegedly, on behalf of the solicitor's client, pertaining to an offer to be made to minority shareholders.* The documents were not privileged.

(9) *Check list for closing the sale.* The privilege applied. A document prepared by the solicitor for guidance was privileged.

See page ii for explanation of footnotes.

[156] Sokolov, 68 DTC 5266, Playfair Developments Ltd., 85 DTC 5155.

Solicitor-client privilege also extends to communications between the Minister and the lawyers for the Department of Justice.

[¶15,185] Collection Agreements

[¶15,190] Tax Collection Agreements with Provinces

Under the *Federal–Provincial Fiscal Arrangements* and the *Federal Post-Secondary Education and Health Contributions Act, 1977*, the Minister of Finance may make agreements with individual provinces respecting the collection of provincial personal and corporate taxes by the federal authorities. Such agreements have been concluded with all provinces except Quebec, in respect of its own personal and corporate income taxes, and Alberta, in respect of its own corporate income tax. Ontario previously collected its own corporate income tax, but for taxation years ending after December 31, 2008, Ontario's corporate income tax will be collected by the federal government.

The Minister is authorized to allocate the tax collected in accordance with such agreements and to disregard any directions made by a taxpayer as to allocation of tax or the fact that no such direction was made. The taxpayer is discharged from liability to pay tax only in accordance with such allocation.[157]

[¶15,195] Ownership Certificates

[¶15,200] Obligation to Complete Ownership Certificates

Banks and other encashing agents in Canada are obliged to obtain ownership certificates from the payee before cashing or negotiating:

(a) bearer coupons or warrants representing either interest or dividends payable by any debtor;

(b) cheques representing dividends or interest payable by a non-resident debtor on behalf of a resident of Canada; and

(c) bearer coupons and warrants negotiated by or on behalf of non-residents subject to tax on such coupons or warrants.

The ownership certificates are to be delivered to the debtor or encashing agent at the time of negotiation and the debtor or cashing agent must forward the certificate to the Minister on or before the 15th day of the month immediately following the month in which the coupon, warrant, or cheque was negotiated.[158]

See page ii for explanation of footnotes.

[157] CCH ¶27,330; Sec. 228.

[158] CCH ¶27,580, ¶27,586; Sec. 234; Reg. 207.

[¶15,205] Penalty

A penalty of $50 for each failure may be imposed on the cashing agent for failing to secure and file ownership certificates and the same penalty is applicable to the payee who fails to make out the certificate, and also where the payee fails to deliver the certificate.[159]

[¶15,210] Signing Officers

[¶15,215] Authorized Person

Returns, certificates, or other documents prepared by a corporation must be signed by the president, secretary, or treasurer of the corporation or by any other officer or person duly authorized by the Board of Directors or other governing body of the corporation.[160] Thus, the corporation is made responsible for incorrect information reported on any return, and is subject to a fine. For the liability of company officers, etc., see ¶15,280.

[¶15,220] Social Insurance Number (SIN)

[¶15,225] Application for Assignment of SIN

Every individual (other than a trust) who was resident or employed in Canada at any time in a taxation year and who files an income tax return under Part I must apply to the Minister of Human Resources Development for a SIN, unless that individual already has or has made an application for such a number. The individual's SIN must be supplied for all information and reporting purposes established by regulation.[161]

The application must be made on a prescribed form to the local office of the Canada Employment Insurance Commission not later than February 1, by a taxpayer who is filing a return for the preceding year, or within 15 days after being requested to do so by a person required to complete an information return.

A person required to make an information return requiring an individual's SIN must make a reasonable effort to obtain the number and to not knowingly use, communicate, or allow to be communicated, otherwise than as required, the number without the individual's written consent.[162]

A penalty of $100 for each failure is imposed on every individual who has failed to provide a SIN on a return of income, unless the individual had applied for the assignment of the SIN and had not received it at the time the return was filed. Where an individual fails to provide a SIN on request by another person who requires that number for an information return, that

See page ii for explanation of footnotes.

[159] CCH ¶22,857; Sec. 162(4).
[160] CCH ¶27,630; Sec. 236.
[161] CCH ¶27,640; Sec. 237(1); Reg. 3800; Inf. Cir. 82-2R2.
[162] CCH ¶27,644, ¶27,687; Sec. 237(2), 239(2.3).

individual is liable to a penalty of $100, unless, within 15 days of that request, the individual has applied for a SIN and has provided the SIN to that other person within 15 days of its receipt.[163] See also ¶15,270.

[¶15,230] Tax Shelters

[¶15,235] Identification Number Required

A promoter of a tax shelter must apply to the Minister for a shelter identification number.[164] The Minister will issue an identification number for a tax shelter upon receipt of an application, providing prescribed information and an undertaking that books and records for the tax shelter be kept in a place in Canada that is satisfactory to the Minister.[165] Effective June 29, 2012, a tax shelter identification number will only be valid for the calendar year identified in the application.[166] The prescribed information includes the name and address of the promoter, the location of the books and records of the tax shelter, the price per unit, and the number of such units offered for sale. All relevant documents with respect to the tax shelter, such as sales brochures, prospectuses, or offering memoranda are to be attached to the application. As mentioned, the application must be accompanied by an undertaking by a person proposing to sell interests in the tax shelter to keep the books and records of the tax shelter in a satisfactory place. The CRA considers that a satisfactory place would be that person's formal place of business in Canada.

Every promoter of a tax shelter is to make reasonable efforts to ensure that all investors in the tax shelter are provided with the identification number, and must explain on every statement that the issuance of the number does not in any way confirm approval by the Minister of the tax shelter. The tax shelter identification number must be prominently displayed on the right-hand corner of any statement of earnings, as well as on copies of the information return.[167]

[¶15,240] Meaning of "Promoter" and "Tax Shelter"

A "promoter" is any person who, whether as a principal, agent, or adviser, sells, issues, or promotes the sale, issuance, or acquisition of a tax shelter or accepts consideration for it. This definition will apply to all persons responsible for the sale of a tax shelter, as well as to the issuer itself. Typically, brokers, sales agents, and advisers, like lawyers and accountants, will be included. There will usually be more than one promoter for the same tax shelter.[168]

See page ii for explanation of footnotes.

[163] CCH ¶22,858, ¶22,859; Sec. 162(5), 162(6).
[164] CCH ¶27,652; Sec. 237.1(2); Inf. Cir. 89-4.
[165] CCH ¶27,653; Sec. 237.1(3); Inf. Cir. 89-4.
[166] Sec. 237(4).
[167] CCH ¶27,655; Sec. 237.1(5).
[168] CCH ¶27,651; Sec. 237.1(1) "promoter".