

A Brief History on the Unpleasant Subject of Taxes

By

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Taxes are compulsory expropriations levied to support necessary government expenditures. The law is complex, and the government has large budgets to administer it. Tax disputes are expensive and often involve protracted litigation. Hence, most persons consider tax an “unpleasant subject”. However, they are necessary for the public good and to maintain the rule of law in a democratic society.

Historically, taxes had some religious significance, particularly in ancient Greece and in the Roman Empire. We see this in the Brancacci Chapel in Florence, where the fresco “Rendering of the Tribute Money” depicts the gods approving the Florentine income tax. However, tax is also associated with unpleasant events, such as, wars and revolutions.

The religious association of taxes was replaced by the sovereign’s rights to impose new levies. We see the origins of the “newer” taxes in the medieval English feudal system of landholding, where the King held all land through a complex web stretching down from the monarch to the rural peasantry. Everyone in this hierarchy had allocated feudal rights, which came with obligations regulated by custom.

The King was entitled to many forms of payments. For example, he could demand money from his tenants-in-chief on the marriage of their eldest daughter, or when his tenants’ heirs inherited their estates. He had the lucrative right of wardship over tenants’ heirs who were minors, and he could control the marriage of his tenants’ widows and heirs. The barons also owed ‘scutage’ to the King, a payment in lieu of military service. The payments were compulsory appropriations; hence, they were, in effect, “taxes”.

King John (1199-1216) repeatedly breached the bounds of traditional practices by exploiting his feudal [taxing] rights to excess. After many years of unsuccessful foreign policies and heavy taxation demands, King John was facing down a possible rebellion by the country's powerful barons. In May 1215, a group of barons, who were discontented with the King, rebelled. Led by Robert fitz Walter (1162-1235), who called himself 'Marshal of the Army of God and Holy Church', the rebel barons captured London on 17 May 1215, and the following month finally forced King John to sign *Magna Carta* ("the Great Charter") on June 18.

Under duress, the King agreed to a charter of liberties that would place him and all of England's future sovereigns within the rule of law. The barons then made peace with the King and renewed their allegiance to him. The *Magna Carta* also contained a clause that provided that 25 barons should oversee the enforcement of its provisions. Over a third of the 63 clauses in the 1215 *Magna Carta* dealt directly with rights defining and limiting the extent of the King's authority.

Though it was not initially successful, the document was reissued (with alterations) in 1216, 1217 and 1225, and eventually became the foundation for the English system of common law and the rule of law.

Prior to 1798, the English revenue system relied primarily on customs and excise duties. By then, the medieval system of taxes on property contributed a very small proportion of general revenues. However, after England declared war with France in 1793, it needed to increase its revenues. Pitt the Younger introduced the first income tax in England in 1800 to finance the fight against Napoleon.

Following the Battle of Waterloo (June 18, 1815), where the Duke of Wellington (the "Iron Duke") defeated Napoleon, opponents of the income tax forced it to be abolished and even demanded the destruction of all documents that referred to the law. An official saved one copy in the basement of the English tax court and it became the model of the modern-day tax system.

The story of income tax in the United States is similarly rooted in war. The Boston Tea Party was essentially a revolution against Great Britain's Stamp Tax on everything from tea to legal documents. The revolution gave birth to the phrase "No taxation without representation", which underlies the American Constitution and is also incorporated in the Westminster parliamentary tradition of Canadian tax law.¹

Similarly, before World War I, the principal sources of Canadian revenues were federal customs duties, excise taxes and revenues from postal services. Prime Minister Sir Robert Borden introduced the federal income tax on business profits in 1916 and a tax on personal income on September 20, 1917. Both taxes were tabled as *temporary* measures to finance the costs of World War I. By 1916, the cost of the war had reached \$600 million, an enormous sum at that time. In introducing the tax, Sir Thomas White - Minister of Finance, speaking to the Committee of the Whole in the House of Commons, said:

"Mr. Chairman, I desire today to lay before this committee proposals for a national measure of income taxation. Hitherto we have relied upon duties of customs and of excise, postal rates and other miscellaneous sources of revenue. Canada has been and will continue during the lifetime of those present today, to be a country inviting immigration. I have, therefore, thought it desirable that we should not be known to the outside world as a country of heavy individual taxation.

We are, however, confronted with grave conditions arising out of the war. The time has arrived when we must resort to direct taxation. I am confident, Mr. Chairman, that the people of Canada, whose patriotism during this war has been so often and so nobly proven, will, in light of present conditions, which call for it, cheerfully accept the burden and the sacrifice of this additional taxation.

¹ The Westminster system is a parliamentary system of government modelled after that which developed in the United Kingdom. The term comes from the Palace of Westminster, the seat of the British Parliament. The system is a collective series of procedures for operating a legislature.

We cannot see very far ahead in these days. We do not know how long this war will last. We do not know what the attitude of the people of this country will be upon the many questions, social, industrial, financial and fiscal.

Therefore, I have placed no time limit upon this measure but merely have placed upon Hansard the suggestion that, a year or two after the war is over, the measure should be reviewed by the minister of finance of the day, with a view of judging whether it is suitable to the conditions which then prevail”.

It was not until 1949 that Louis St. Laurent finally made income taxes permanent in Canada. The *Income War Tax Act* of 1917 was all of ten pages. It has since grown through several reincarnations of “tax reform” to over 3,500 pages and expands annually at a healthy pace.² Of course, the nature of the Canadian income tax system has also changed significantly since its introduction. For example, in 1917, the *Income War Tax Act* exempted the first \$1,500 of income — about \$30,720 in 2020 dollars — from any tax whatsoever. The top rate of 25% applied only to income over \$2,048,000 in 2020 dollars. The top federal marginal rate of 33% now kicks in at \$216,512 (2021).

The income tax was transformed after 1945 from war time revenues to social, economic, and political objectives. Income redistribution is now one of the dominant themes of tax legislation. Tax law became a tool for behavioral finance. The law is used to invoke behavioural responses from taxpayers to respond to economic incentives and sanctions. Some examples: there are special tax rules to encourage Canadian culture and foreign films made in Canada [sections 125.4 125.5], discourage advertising in foreign magazines [subsection 19(1)], provide labour credits for journalism organizations [section 125.6] and digital news subscriptions [section 118.02], and promote gender equality. The February 2018 Federal Budget comprised 362 pages mentioned women 358 times].

“Tax reform” has become a mere trope, a phrase that is trotted out every four years during elections. There have been numerous studies of the tax law with the purported purpose of “tax

² Up from 2,000 pages since 2004.

reform”. The most significant was the Report of the *Carter Commission* (1966), which received universal acclaim from informed scholars. As Boris I. Bittker, Southmayd Professor of Law, Yale University said of the *Report* in *The University of Chicago Law Review*, Volume 35, 637:

“The 1966 Report of the Royal Commission on Taxation, established with a sweeping mandate to examine the federal tax laws of Canada and to make recommendations for their improvement, has few peers among modern proposals for income tax reform.”

Rare praise indeed from an American source for a Canadian proposal. Regrettably, the acclaim did not capture the imagination of Canadian politicians of the day. The Bill (tabled in the House of Commons June 18, 1971, exactly 156 years later to the day after the Battle of Waterloo) ignored the most significant proposals of the *Report*, including the concept that “a buck is a buck”. Instead, we chose to tax different sources of income differently and devised a complex structure of rules for each source.

Since the Tax Reform Bill of 1971, there have been numerous calls for “reform” and “simplification” of the statute. Serious analysis of tax reform requires an analytical examination of fairness, simplicity, and efficiency. There has been no such effort.

The Income Tax Act is now incomprehensible to the average person. As the *Joint Committee on Taxation* of the Canadian Bar Association and the Canadian Institute of Chartered Accountants, in addressing the House of Commons Committee on Finance and Economic Affairs, said:

“For any taxpayer to pick up some of this legislation we are looking at today and understand how these rules are going to impact on him when he sits down to fill out his tax return is almost impossible.

There is no quick fix to the complexity issue. It is a very long-term problem, but I fear that the Government’s priority for tax simplification has fallen down to the bottom of the various objectives set out for tax reform.”

Tax professionals have abandoned any hope of tax simplification. In 1997, for example, the Report of the Technical Committee on Business Taxation reported:³

“[I]n a complex society that is part of a world economy, where the form and processes of business activities are increasingly sophisticated, and where the tax system is also used for purposes other than raising revenue, it is unrealistic to expect our tax system to be simple.”

That was in 1997. Today, in 2021, as we engage in digital technology that crosses national boundaries, the size, scope and complexity of our tax rules is exponentially greater. International tax bureaucrats of the Organisation for Economic Co-operation and Development (OECD), a club of 37 advanced economies, must balance the politics of numerous states. They endeavour to reach “consensus” on higher rates and new taxes, which results in even more complex legislation [See, for example, the latest effort in the *Multilateral Instrument (MLI)*, which came into effect in 2020]. Their latest mission is to reach consensus on global digital taxation.

Tax treaties are generally structured to allocate corporate profits based on where the corporation creates value in bricks and mortar economies. However, modern multinationals corporations (MNCs) — particularly those with digital offerings, such as, Amazon, Facebook and Google — can sell their products across borders in ways that leave little taxable profit in the country where their products are consumed.

Hence, the battle between technology companies and the new wave of digital taxation. The U.S., on January 6, 2021, the U.S. imposed tariffs on \$1.3 billion of French imports, including cosmetics and handbags. Washington has pending investigations that could lead to similar tariffs on 10 other countries, including the U.K., Italy, India and Spain.

Regardless of the ultimate outcome, taxpayers must live with the complexity of domestic tax statutes and international tax treaties. They pay for professional advice to comply with the ever-

³ Report of the Technical Committee on Business Taxation (December 1997), A Report to the Minister of Finance, at 1.2.

changing law, and then pay legal counsel to resolve their disputes in the courts. Tax litigation is slow, arduous, and expensive. Tax litigation can drag on for 10-15 years.

Hence, the unpleasantness of taxes.

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