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The Taxation of Aquaculture in Canada: A Comparison with the Taxation of Agriculture and Its Policy Implications

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7 The taxation of aquaculture in Canada

A comparison with the taxation of agriculture and its policy implications

Faye Woodman

Introduction

In Canada, at both the federal and the provincial government levels, the tax rules applicable to agricultural producers under the *Income Tax Act*[1] and other taxing statutes often apply with relatively few modifications to the aquaculture sector. The agriculture rules differ in significant aspects from those applied to other taxpayers. They also tend to be more generous. Thus, the aquaculture sector operates under regimes of taxation in Canada that may be characterized as preferential, but may also have been developed with the needs and circumstances of agriculture, not aquaculture, in mind. This chapter will examine the rationales underlying the various special rules and their application to the aquaculture sector. The policy implications of the agriculture model when it is applied to aquaculture will be addressed.

There are, of course, many different taxes levied on aquaculture producers – whether incorporated or unincorporated – by the federal and provincial/municipal levels of Canadian government. The federal government is responsible for the imposition of an income and a capital tax on certain large corporations.[2] In addition, it imposes a value added tax, the goods and services tax (GST).[3] The provinces also levy income and capital taxes on individuals and corporations, although in some provinces the federal government may collect the tax on their behalf.[4] They impose retail sales taxes,[5] except in three Atlantic provinces in which the proceeds of a 15 percent value added tax (harmonized sales tax, HST) are shared between particular provinces and the federal government.[6] Provinces also levy property taxes.[7] These taxes may be imposed in addition to or in lieu of property taxes levied by local units of government. Finally, provincial governments exact license and leasehold fees from the operators of aquaculture concerns. These license and leasehold fees are not, strictly speaking, taxes. Taxes are compulsory levies by government that are not, at least directly, for goods or services. Nonetheless, these levies will be briefly considered in this chapter.[8] Their connection with market values is in many instances tenuous, and they are worth canvassing to derive a more complete picture of the government–aquaculture sector fiscal relationship.

It is not possible to survey the specific rules governing the taxation of aquaculture under all these regimes. The following discussion, while considering the three main categories of taxes – income, property and sales – will concentrate on income taxation. The income tax system is more complex than the others, draws more completely on the agricultural model and ultimately seems to yield more insights concerning the particular position of aquaculture. Nonetheless, the other types of taxes have significant effects on aquaculture operations, and in unprofitable years may be the only taxes to which they are subject. So too, the focus will be on the federal/provincial taxation regimes of British Columbia and the Atlantic provinces. While aquaculture operations can be found in all the provinces of Canada, in 2001 British Columbia and New Brunswick accounted for over 81 percent of the gross value of the Canadian sector.[9]

The emphasis here will be on primary producers in the marine aquaculture sector. The situation of the suppliers, processors and marketers who surround the producers will not be specifically addressed. Like their equivalents in the agricultural sector, these others do not have an unique taxation regime devoted to their special circumstances.

Finally, it must be remembered that primary producers in aquaculture, like primary producers in agriculture, are a diverse lot. They are of different sizes, they operate differently and they are connected to the market in different ways. Most producers, it is true, are incorporated. The corporations include, however, a range of operations. Many of the shellfish farms on both coasts are run through small family corporations. In the west, salmon producers are generally Canadian subsidiaries of large multinational corporations. In New Brunswick, there are locally based but substantial "independent" finfish operations. On both coasts, First Nations may be involved in aquaculture, and for reasons unrelated to the industry, but due to historical entitlements, may be exempt from some taxes. In addition, aquaculturalists may carry on their businesses differently. There are many instances of vertical integration where one entity controls production from hatcheries through to and including value added processing. Other producers may concentrate on fish-raising only but be contractually tied to other concerns. They may own the fish in the operation but be constrained by marketing and supply relationships. In some cases, the corporation may simply offer "management" services of aquaculture sites to some other body. In considering the various tax regimes, it is important to keep these differences in mind. Tax rules that lack an appropriate policy rationale when applied to taxpayers with one type of profile may be quite justified when imposed on other taxpayers with different characteristics. In this regard, the distinction between shellfish operators, which tend to be smaller, closely held corporations, and finfish concerns, which are, in many cases, large multinationals, is particularly important.

Income tax

The federal *Income Tax Act* does not specifically refer to aquaculture. Rather, the courts have held that a "farmer" includes a fish farmer. Thus, the Tax Review Board in *Les Immeubles Dramis Inc.* v. *M. N. R.*[10] held that a trout farmer was a "farmer" for the purposes of the Act. It said:

> The fact that fish are raised in the water rather than on land or in the air has nothing to do with the point at issue. In my view, there is no real distinction for income tax purposes between growing, keeping and catching marine animals – that is, fish-breeding – and performing the same activities with respect to other animals.[11]

Interestingly, in that case the Crown, not the taxpayer, argued for the designation in order to have the "hobby farming" limitation of losses provisions in the Act apply. It is not clear whether at any time the government, through the Department of Finance (the department responsible for tax policy), ever actively considered the position from a public policy perspective.

The provisions relating to the taxation of farmers in the Act, while extensive, do not in themselves constitute an altogether separate system for the taxation of agriculture.[12] The calculation of income for tax purposes is generally the same as that for other taxpayers. So too, the rate of tax, either corporate or individual, is the same as for other corporations or individuals. The main differences are when income is recognized for tax purposes (timing) and the taxation of capital gains.

These differences, or tax preferences, which are really deviations from the normative tax system, are difficult to quantify. In the 2002 tax expenditure budget, it is estimated that the CDN$500,000 capital gains exemption for all farm property will cost CDN$230,000,000 for the year.[13] Many of the other benefits extended to farmers through the tax system, such as the intergenerational rollover and cash-basis accounting, are not assigned a value since data are not available to support a meaningful estimate. Aquaculture, of course, generates only a fraction of the total Canadian agricultural revenue and it could be expected to generate only a corresponding fraction of tax expenditures.

The differences between the taxation of farmers and the taxation of other taxpayers developed over many years and, some would argue, on an *ad hoc* basis with *ad hoc* rationales. One of the earliest concessions was to amend the Act to recognize the prevailing practice of permitting farmers to account for income on a cash, not on an accrual, basis. In its 1966 report, however, the Royal Commission on Taxation (the Carter Commission) recommended that this and other preferences for farmers be abolished. In its words:

> In general, we have found that many of the special tax provisions and practices are no longer appropriate. Because of the changing nature of

> the industry, farmers, or at least those with larger incomes, should now be able to report income on a basis similar to that followed by other small businessmen.[14]

As the Commission reasoned, and its remarks apply, in part, to aquaculture operations today:

> The taxation of farming income must take into consideration the special characteristics of this natural resource industry, the vagaries of nature and markets, the prevalence of small individual operators, and the close relationship of personal and business activities. On the other hand, if equity is to be achieved, the importance of these special characteristics must be considered in comparison with those encountered by taxpayers in other lines of endeavor. In making this comparison it is necessary to keep in mind the changes which have been taking place in agriculture and, in particular, the increase in the size of the farm unit, the increased technical assistance from government authorities, improved marketing arrangements, and the increased use of scientific knowledge and business methods.[15]

However, despite the Commission's recommendations, the 1972 reform legislation left many of the preferences intact. Indeed, tax reform, and in particular the introduction of the taxation of capital gains, which many felt had a particularly adverse effect on farmers, precipitated a further spate of special concessions to farmers. So too, the reformed tax system incorporated a number of income recognition and averaging provisions that were either specifically orientated to farmers or, in some aspects, modified for farmers. The policy implications for aquaculture of these provisions can be best addressed under four rationales for the adoption or continuation of special concessions to agriculture.

Administrative expediency

One of the most significant differences between the taxation of farmers, including fish farmers, and other taxpayers is that the former, unlike the latter, are specifically permitted to use the cash method of accounting in computing their (farming) incomes.[16] The cash method of accounting is a considerable advantage to a taxpayer. It permits the concern to recognize income for tax purposes when it is received and to deduct expenses (including the cost of inventory) when they are paid. A taxpayer's inventory is otherwise not recognized until it is sold. In contrast, the accrual method recognizes income when it is earned and expenses (generally) when they are incurred. The difference between the cost of the taxpayer's opening and closing inventories reduces the cost of goods sold in any particular taxation year. Since the cash method permits the calculation of taxable income based

on cash flows rather than income earned and because of the treatment of inventory, it is far more susceptible to manipulation by the taxpayer for the purpose of deferring the recognition of income and therefore tax.

Until the introduction of a specific provision in the *Income Tax Act 1948* there was some uncertainty whether, under the Canadian Act, the accrual method of accounting was authorized for any taxpayers. The definition of income in the 1948 Act clarified that the accrual method was permitted (and, in fact, practically required) in most calculations of business income. Farmers and fishermen, the latter by administrative fiat, were permitted to continue using the cash method of accounting. Farmers were allowed to use the cash basis of accounting because it was thought that some, at least, of the many farmers (at that time, many more Canadians lived on farms) would find it too burdensome to deal with the more complicated accounting required under the accrual method.

The use of the cash method of accounting by farmers was subsequently reviewed by the Carter Commission, which recommended its abolition in most circumstances.[17] It said:

> The failure of the cash basis to reflect accounts receivable and payable would not materially affect the income of most farms, but its failure to take inventories into account is serious because of the substantial inventories of livestock or grain which are maintained on many farms. In such cases, the cash basis permits the cost of building up the inventories to be deducted immediately, thereby giving the farmer the advantage of a tax deferment equal to the tax which would have been exigible on an amount equal to the cost of the inventory. It is true that the advantage under the present tax system is only a deferment of tax in that the cost would ultimately be allowed as a deduction; however, the deferment is equivalent, in relative terms, to an interest-free, unsecured loan, which could be of material amount, and is not granted to business generally.[18]

The government failed to adopt the Commission's recommendation for this reform, and, indeed, formally extended the provisions to fishermen. Further, two important adjustments were introduced to address some of the difficulties inherent in the cash basis system. The provisions adopted sought both to enhance and to limit the advantage of cash-basis accounting. They are the optional inventory adjustment[19] and the mandatory inventory adjustment.[20] The former provision is intended to assist farmers who stand to "lose" loss years. Under the cash method of accounting, the costs of inventory are recognized when they are paid, but revenue is not recognized until it is sold. As a result, some farmers might generate a number of loss years and those loss years, might "expire" before they can be set off against profitable years. The optional inventory adjustment eliminates this problem by permitting a farmer to elect to recognize all or part of the value of inventory in a year. In addition, the provision operates to permit the farmer to average

income. The mandatory inventory adjustment, on the other hand, was introduced to limit the ability of the farmer to generate losses and gain significant tax deferral and income averaging benefits. It requires a farmer who incurs a loss in a year to recognize the value of purchased inventory up to the amount of the loss.

The obvious complexities of the inventory adjustments undermine the justification of the cash basis method of accounting as a method to assist unsophisticated taxpayers. The cash method of accounting as modified by the inventory adjustment rules in the Act requires considerable expertise to master and to use effectively. But even if we accept that the rules are simpler than the accrual method of accounting, the profile of aquaculture concerns, which may be run by younger and more educated individuals or as part of large multinationals (though admittedly this varies from region to region and type of operation), does not suggest any compelling justification for this tax preference. It is a concession that exists because it has always existed.

It is worth noting that fishermen are permitted to use the cash method of accounting, and always have been, although this was not specifically recognized in the tax Act until 1972. Presumably they also have the requisite lack of sophistication in accounting knowledge. The inventory adjustment rules do not apply to them since, presumably, they do not carry significant inventories over time.

Interestingly, the cash method of accounting and the one-year class rules in New Brunswick have intersected in, perhaps, unexpected ways. The move to the one-year class system has meant that under the cash basis of accounting and with one site, the aquaculturalist will have no income in year 1, and all the income from that crop will typically arise in year 2.[21] This can be accommodated to a certain extent by the optional inventory adjustment.

Preservation of the "family" farm: intergenerational tax-free transfers

Under the Canadian *Income Tax Act*, farmers, including fish farmers, are permitted a more or less tax-free intergenerational transfer of the family farm.[22] In tax parlance, this transaction is called a rollover. In order to qualify for the rollover, the recipient (transferee) of the next generation must be the child or other lineal descendant of the taxpayer.[23] The rollover was initially available only for property used in unincorporated farms. With some tax planning, however, the benefits of the rollover could be obtained for shares of family farm corporations and interests in family farm partnerships. Further, the obvious unfairness to farmers who choose for good family or business reasons to carry on business in corporate or partnership form resulted in the extension of the rollover to property of an individual where the property is either (1) shares of the capital stock of a family farm corporation;[24] or (2) interests in a family farm partnership.[25] The rollovers were introduced as a result of the changes to the Canadian tax system arising from

the tax reform in 1972. One of the Carter Commission's most significant recommendations was the full taxation of capital gains.[26] While the 1969 White Paper on Tax Reform eschewed the Carter approach, encapsulated in the aphorism (incorrectly attributed to Carter) that "a buck is a buck is a buck," it did propose that half, not the full amount, of capital gains be taxed.[27]

The reluctance to adopt the Carter position of full taxation reflected a number of concerns. Because capital gains are normally realized only on gift, sale or death, there is the problem of income "bunching" in one year, which in a progressive rate system can push the taxpayer up into a higher tax bracket. The taxation of capital gains also imposes a hardship on taxpayers in times of inflation. Tax will be levied on "nominal" rather than the "real" appreciation in the value of an asset. Finally, the "deemed disposition" and taxation of capital gains on death is a necessary part of the taxation of capital gains. Otherwise, accrued but unrealized capital gains that were not taxed during the taxpayer's lifetime would escape the tax net altogether. Nevertheless, the fact that all the property of the taxpayer is deemed to be disposed of can contribute to the forced sale of the deceased taxpayer's estate assets.

For farmers, even the 50 percent taxation of capital gains eventually adopted was, they asserted, an unacceptable burden. Farmers were concerned that the taxation on death of capital gains accrued on farm assets, especially land, would undermine the institution of the family farm. Instead of the farm being passed on to children and grandchildren, the farm would have to be sold to pay the tax. Hence, the intergenerational rollover was introduced. Of course, this argument applies to a lesser or greater extent to other types of businesses. And, indeed, a provision was introduced for approximately a ten-year period ending after 1987 with the enactment of the CDN$500,000 capital gains exemption, to permit a limited rollover of up to CDN$200,000 of capital gains on shares of "small business corporations" transferred by a taxpayer to a child.[28] Farm businesses, however, may have faced a heavier tax burden because of the accelerating appreciation in the value of land during that period. Furthermore, farms, especially family farms, were an integral part of the rural landscape and rural towns that governments, then and now, were ostensibly committed to preserve.

Fish farmers are an integral part of the coastal rural landscape. Whether they are more like farmers or other rural businesses, which do not enjoy the rollover, is a more difficult question. It is noteworthy that the intergenerational rollover has not been extended to fishermen. Fishermen can take advantage of the cash basis of accounting but they cannot pass on their business to their children tax free. Of course, fishermen do not own large amounts of appreciating land, and maybe that was, at first, the justification for the difference. But fishermen may own substantial depreciable properties (which might benefit from the rollover), and fishermen and family fishing businesses are mainsprings of many coastal communities.[29]

It is significant that the rollover, which is intended to preserve the family farm for the next generation, does not require the next generation to continue farming, nor does it require family farms to be "family-sized." The transferors or their children must farm before the rollover, because the rollover can only be claimed for any amount of farm property that was "used principally in a farming business in which the taxpayer, the taxpayer's spouse or common-law partner or any of the taxpayer's children was actively engaged on a regular and continuous basis."[30] The transferees do not have to be farmers, however, or, if they are, there is no penalty if they discontinue farming. Therefore, the rollover may, in some circumstances, simply be a means to facilitate the tax-free intergenerational transfer of family property that will then be sold off. It may be possible, as well, for the rollover and the CDN$500,000 capital gains exemption to operate together to multiply possible tax advantages for a family who wants to extricate themselves from farming.[31]

Thus, the intergenerational rollover, as we have seen, is not a particularly well-targeted provision. It probably extends tax advantages to the undeserving and possibly withholds them from individuals/businesses who are important contributors to the rural economy. There are a number of alternatives, most of which would include a claw-back of benefits if the operations are sold out of the family. Further, a direct expenditure program in which specific grants are made, in lieu of a tax preference, would have the further advantage of transparency and greater accountability.[32]

Finally, even if the intergenerational rollover is successful in encouraging the retention of the aquaculture operation in the family, it is arguable that more attention should be paid to the assertion that this result makes good social and economic policy. In some cases, it could be suggested, it may lock in family members whose efforts would be better directed elsewhere. Also, one effect is probably to make aquaculture sites scarcer and hence more expensive – at least in some of the more developed regions – so that new and, generally, young entrepreneurs may be priced out of the market. On the other hand, in some systems, such as the one in place in southwestern New Brunswick, the effect of the rollover may be to encourage intrafamily transfers of smaller concerns, which might preserve some of the few "independents" in the region against the continuing pressure for integration with larger concerns.

Providing funds for retirement

The introduction of the capital gains tax at tax reform galvanized farmers to press for relief for family farms. But even with the intergenerational rollover described above, farmers still perceived that they were particularly adversely affected by the taxation of capital gains. Many farmers, after all, experienced low lifetime earnings while sitting on highly appreciating or appreciated assets. Because of their low incomes, they argued, they were not able to save

for retirement in an ordinary tax-subsidized savings vehicle.[33] For many of these individuals, the expected reward for a lifetime of marginal income was a retirement secured by the (untaxed) proceeds from the sale of the farm. Even a half-rate of inclusion of 50 percent of capital gains was not enough relief. Farmers lobbied for a further, special tax reduction.

Of course, other taxpayer interest groups could and did rail against the capital gains tax. Being a "new" tax, and a tax that disproportionately affected upper-income taxpayers,[34] it was almost inevitably challenged. In any case, in 1985 the government of Brian Mulroney introduced a lifetime exemption from taxation of CDN$500,000 of capital gains for all individuals.[35] The lifetime exemption was ostensibly to encourage risk investment in Canada.[36]

As originally formulated, the CDN$500,000 capital gains exemption was to be phased in over a six-year period except for dispositions of "qualified farm property." Taxpayers disposing of qualified farm property were to immediately enjoy the whole $500,000 exemption.[37] Moreover, there was no requirement that the exemption be limited to proceeds destined for use as farmers' retirement savings. Qualified farm property was initially defined to be:

- real property used by the individual, his spouse or any of his children, family farm corporation, or family farm partnership in the course of carrying on the business of farming in Canada:

  (a) in the year the property was disposed of by the individual, or
  (b) in at least five years during which the property was owned by the individual, his spouse and his children;[38]

- the share of a capital stock of a family farm corporation[39] and
- an interest in a family farm partnership.[40]

It did not take long for the deficiencies of the new lifetime $500,000 capital gains exemption to be evident. As the provision was originally drafted, taxpayers could claim the exemption against capital gains accruing on assets outside Canada, and in respect of "non-risky" assets such as real estate. In any case, after only three years the 1988 Tax Reform halted the phase-in of the lifetime exemption at $100,000 and increased the inclusion rate to two-thirds.[41] The $100,000 exemption was subsequently eliminated in 1994.[42] Significantly, however, the $500,000 capital gains exemption was preserved for farmers, although rules were introduced to attempt to limit the exemption to "real" farmers. In addition, the $500,000 exemption was extended to taxpayers who held qualified small business corporation shares.[43] These corporations have to qualify as Canadian-controlled private corporations, carry on an active business and comply with certain other conditions. Farming qualifies as an active business, so some shares of farming corporations may qualify both as shares of a family farm corporation and shares of a qualified small business corporation. Any shareholder is, however, limited to one $500,000 exemption.

The amendments in 1988 referred to above also limited the ability of farmers to claim the exemption. The amendments represented another effort, more extensive and complicated than the rollover rules, to target benefits under the tax system only to "real" farmers. Since there is not the same element of recreational or "hobby" use in fish farm operations, these rules are of less concern to aquaculturalists, but they nevertheless must be addressed if the exemption is claimed.

The rules distinguish between the disposition of farm property other than the shares of a family farm corporation and shares of a family farm corporation. Where a taxpayer disposes of farm property other than shares of the family farm corporation, and the property was owned by an eligible user, either of the two tests described below must be met for the taxpayer to claim the exemption. The gross revenue test requires that the gross revenue of the individual or other eligible users (including a spouse or children) from the farming business in which the property was principally used must exceed the income of the eligible user from all other sources for at least two years. Further, the eligible user must have been actively engaged on a regular and continuous basis in the farming business in which the property was principally used. Alternatively, the property must be used by a family farm corporation or a family farm partnership principally in the business of farming throughout a period of at least twenty-four months during which time the individual or other specified persons (including a spouse or children) was actively engaged on a regular and continuous basis in the farming business.[44]

Holders of shares in a family farm corporation are not subjected to a gross revenue test. Generally, in order for the shares to qualify as property eligible for the exemption, the following conditions apply:

- The corporation has to be in existence for at least twenty-four months.
- Throughout any twenty-four-month period ending before the disposition, more than 50 percent of the fair market value of the property owned by the corporation was used by the taxpayer, spouse, child, or parent principally in the business of farming.
- At the time of the disposition, all or substantially all of the fair market value of the property was used principally in the business of farming by the corporation or the taxpayer, spouse, child or parent.[45]

As mentioned previously, some shares may be both shares of the capital stock of a family farm corporation and qualified small business corporation shares.

The policy rationale behind the initial introduction of the lifetime capital gains exemption is, as has been explained, somewhat suspect. Further, its continuation solely for farmers and holders of qualified small business corporation shares has been criticized, most notably in the *Report of the Technical Committee on Business Taxation* (the Mintz Committee).[46] The report was the result of the efforts of a technical committee of the Department of Finance

established in 1996 to review taxes paid by Canadian business. Its objectives were to suggest ways to:

- improve the tax system to promote job creation and economic growth;
- simplify the tax system to facilitate compliance; and
- enhance fairness in the system.

It recommended

> elimination of the enhanced lifetime capital gain exemption for farm property and qualifying shares of small business corporations, with transitional relief for all gains accrued to the date of the change (to be obtained by election similar to that used for the repeal of the general lifetime capital gain exemption).
>
> It also recommended the exemption be replaced by an enhanced RRSP [registered retirement savings plan] contribution system that would allow taxpayers to use taxable capital gains on farm property and qualifying small business shares that are earned in a year to increase their RRSP contribution room for previous years, up to the maximum room that would be available if they had had sufficient earned income.[47]

Three reasons were cited for the recommendation.[48] First, the committee did not favor taxing capital gains differently, depending on the nature of the particular asset. In the committee's view, the differential taxation of capital gains is contrary to the principle of neutrality in the business tax system. By neutrality, the committee meant that "total tax paid on income earned from different business activities is similar so the decisions of business are largely unaffected by the tax system."[49] For the committee, the pursuit of the principle of neutrality (together with internationally competitive taxes) is essential if the goals of job creation and economic growth, simplification, and fairness are to be attained.[50]

Second, the committee found little evidence that the capital gains exemption or its more limited version, the capital gains exemption for farmers and small business, has had any measurable positive impact on encouraging risk-taking and investment – ostensibly the reason for their introduction.

Finally, although the committee found some evidence to support the proposition that farmers and lower-income business owners do not benefit from tax-assisted retirement savings as much as others, it favored adjustments to that system rather than the wholesale exclusion of the capital gains of some assets from taxation. To quote the committee, "A measure such as the lifetime capital gains exemption provides too much benefit to some who do not need it and not enough to those who do."[51]

As an alternative to the CDN$500,000 exemption, the committee proposed that the capital gains arising on the disposition of qualifying farm

property or a qualified small business corporation share be transferable on a tax-deductible basis to a registered retirement savings plan. The maximum amount transferable would be the lesser of CDN$375,000 (in 1996, three-quarters of capital gains were taxable) and the maximum annual registered retirement savings plan deduction multiplied by the number of years the property was held.[52]

Fluctuating incomes

Income averaging

For over fifty years, farmers have had the advantage of provisions in the *Income Tax Act* intended to ameliorate the adverse effects of fluctuating incomes under the system of progressive rates. The farm sector, which faces the vagaries of weather, the vicissitudes of natural storms, droughts, and disease and insults effected by unreliable markets both at home and abroad, seemed a particularly appropriate beneficiary. Eugene LaBrie suggested additional reasons as follows:

> Other likely factors are the primary nature of these industries, their chronically depressed state, their considerable importance both economically and numerically as voting taxpayers and the laudable independence and innate conservatism of taxpayers engaged in these industries–factors that sometimes prompt the statement that these forms of livelihood are not a source of income but a "way of life."[53]

Indeed, tax reform in 1972 and thereafter saw, despite the contrary recommendations of Carter,[54] a flurry of provisions enacted to deal with the "problem" of fluctuating income. These provisions, except for the block averaging legislation and the optional inventory adjustment, applied not only for farmers, but for other taxpayers. Since then, however, the trend has been to phase out most of the income-averaging provisions.[55] It should be mentioned that some of the other provisions referred to above, such as the farm rollover and the capital gains exemption, assist with the problem of fluctuating incomes in the special circumstances arising from sale or death.

One of the reasons that the income-averaging provisions have been gradually eliminated may be that, over time, the federal tax rates for individuals have tended to "flatten." Indeed, the 1987 reforms telescoped the ten federal rate brackets into three at 29 percent, 26 percent and 17 percent.[56] Today there are four federal rate brackets:

- 16 percent up to $31,677;
- 22 percent up to $63,354;
- 26 percent up to $103,000;
- 29 percent over $103,000.

The provinces generally set their own rates on income steps similar to the federal ones on a similar tax base. Alberta is an exception: it levies a 10 percent flat tax.[57] Québec has its own separate rate and tax base.[58] Corporate tax in Canada is generally a flat-rate tax. Canadian-controlled private corporations, however, face increased rates on active business income over CDN$200,000.[59]

The income-averaging provisions that are in place today – besides the optional inventory adjustment – include the rule regarding farm losses and the special regime developed to recognize agricultural income assistance programs. The farm loss rule permits both individual farmers and farm corporations to carry back business losses three years but forward ten years (an extra three years more than the seven years generally allowed.)[60]

The taxation of agricultural stabilization programs and compensation programs

For political and trade reasons, there is no comprehensive income stabilization program for aquaculture. In contrast, the federal government, in conjunction with the provinces, has provided and continues to provide income stabilization for primary commodity producers other than aquaculturalists. In December 2003, the Minister of Agriculture announced[61] that the required two-thirds of provinces representing 50 percent of Canada's agricultural production had agreed to implement the new Canadian Agricultural Income Stabilization Program (CAIS),[62] which will replace the Net Income Stabilization Account (NISA) program[63] and the Canadian Farm Income Program (CFIP).[64] The new program will not incorporate the tax preference, which is a characteristic of the NISA program. Under that program, two funds are established for producers. A producer contributes to fund number one and governments contribute to fund number two. In low-income years, the producer can withdraw monies from the funds. Amounts from fund number one are not included in the producer's income. However, interest on the funds, and "matching" amounts contributed to fund number two by governments are included in the producer's income but – and this is the tax preference – not until they are withdrawn.[65] Under the CAIS program, the producer is required to provide an amount on deposit. Interest is included in income when earned. In low-income years, producers can withdraw non-taxable amounts from their accounts. There are no government funds on deposit. Rather, taxable government assistance is paid out separately and directly to producers on the basis of a pre-established "insurance" formula related to the producer's amount on deposit.

Despite considerable efforts, the aquaculture industry has not been successful in obtaining income support(s) similar to other farmers from either or both levels of government. Indeed, they have not obtained the more modest goal of a compensation/income support program to moderate the impact of diseases in which major costly measures to producers, including

stock destruction, are necessary to reduce pathogen levels and the risk of disease spread. At the present time, the industry is frustrated by the failure of the federal government to implement a tripartite initiative by itself, the Department of Fisheries and Oceans, and provincial governments concerning a national fish health program that would include some compensation arrangements.[66]

To date, compensation for industry disasters has been provided on an *ad hoc* basis. The most significant "bail-out" of the aquaculture industry occurred from 1996 to 2001 in New Brunswick during the first recorded outbreak of infectious salmon anemia (ISA) in Canada. The payout was under the auspices of the provincial Disaster Relief Fund.[67] Over CDN$14 million of taxable compensation was paid to fish farmers who had to dispose of their inventory.

Research and development costs

The income tax system in Canada permits taxpayers who engage in research and development to claim tax credits.[68] Although these are not directly related to income fluctuations, it can be expected that new enterprises in beginning low-income years might be likely to incur these types of expenses. Further, the "new" aquaculture sector characteristically has embraced innovation and new technology. However, in tandem with other claimants, fish farmers have found it difficult, if not impossible, to make use of the credits. The smaller operators, in particular, do not have the expertise, time or money to document the basis for a claim. This is a familiar complaint that the revenue authorities have attempted to address on numerous occasions. Nonetheless, difficulties remain, and are exacerbated by the frequent legislative changes in the area.

Property taxes

Property taxes are levied in all the provinces of Canada. Property taxes are calculated as a percentage of the assessed value of real property, although in some circumstances tax may also be imposed on business machinery and equipment. The taxes have a long history and were originally imposed to support "local" services, especially schools and the responsibilities normally assumed by municipal governments. In some jurisdictions, such as New Brunswick[69] and Prince Edward Island,[70] there is a local tax at a rate set by the particular municipality, in addition to a provincial tax. In Nova Scotia,[71] British Columbia,[72] and Newfoundland and Labrador,[73] the tax is levied and the rate designated by each municipality.

In most provinces, a distinction is made between residential and non-residential land with residential land, generally being taxed at a lower rate. Thus, in New Brunswick the provincial property tax rate for residential property is CDN$1.50/$100.00 of assessed value but 1.5 times that amount

– that is, CDN$2.25/$100.00 – for non-residential uses.[74] Distinctions are also made among other uses of real property, and in British Columbia, for example, there are nine classes of land with different rates.[75] Significantly, agricultural land is treated separately and preferentially.

The reason for the special position of agriculture under the various property tax systems rests on the characterization of property taxes as primarily, but not exclusively, benefits-based taxes. The argument is that if property tax rates are set at levels that capture as closely as possible the cost of services consumed, then, as between farm and residential property of equal value, the effective tax rate on the farm property should be lower. The farm covers (usually) more land, it is true, but it has fewer people and does not require the same level of services. Other reasons for agricultural preferences may include the force of past practice and the desire to slow the rate of conversion of agricultural land to urban uses. Tax concessions may also be extended to agricultural property as a form of economic assistance.

In the five provinces considered in this chapter, British Columbia explicitly provides for the tax treatment for property tax purposes of aquaculture on a comparable basis with agriculture. In that province, primary agricultural production for the purposes of the *Assessment Act* includes aquaculture.[76] In Nova Scotia, on the other hand, farm property is generally exempt from taxation under the *Assessment Act*[77] but aquaculture is taxed.[78] In New Brunswick, aquaculture operations do not qualify for tax deferral under the Farm Land Identification Program administered under the *Real Property Tax Act*.[79] So too in Newfoundland, the Real Property Tax Exemption Program for Agricultural Land[80] does not apply to aquaculture. Finally, Prince Edward Island's legislation makes no reference to aquaculture. "Farm property" is defined as cleared arable land.[81]

It is noteworthy that the types of concessions generally extended to agricultural concerns in rural areas have not been typically extended to other commercial activities in those areas, though resource-based operations may enjoy separate tax relief.

Finally, it should be mentioned that there are other property taxes that may affect aquaculture operations. For example, in British Columbia the province levies a school tax under the *School Act*[82] that is based on the nine categories of property authorized in the *Assessment Act*. The *School Act* exempts 50 percent of the assessed value of property assessed as farmland.[83] The school rate is 0.68 percent (mill rate of 6.8) for farm property, 0.41–0.45 percent for residential property and 0.99 percent for light industry and business in each municipality.[84]

Value added (GST) and provincial sales taxes

The federal government imposes a 7 percent multi-stage or value added sales tax (GST) on goods and services consumed in Canada.[85] Three provinces – New Brunswick, Nova Scotia and Newfoundland – also piggyback on the

federal tax so that the 7 percent tax is increased to 15 percent in those jurisdictions.[86] Every seller along the chain of production and distribution of goods and services must collect the tax, but each taxpayer, except the final non-commercial consumer, is entitled to claim a credit (input tax credit) against taxes owing equal to the taxes already paid by them on their particular inputs.

The production from agriculture and aquaculture is, generally, effectively exempt from GST because basic groceries are zero-rated; that is, the rate of tax on the sale to the final consumer is zero percent.[87] Further, since GST is exigible only on goods or services consumed in Canada, produce destined for the export market is not subject to tax. Though produce is zero-rated, farmers may claim input tax credits for GST paid in carrying on their operations. They may, however, experience cash flow difficulties because they do not collect GST on sales to consumers, but are required to pay GST on their inputs. Many farm inputs are, however, zero-rated, and farmers may register to recoup, on a monthly basis, an amount equal to their input tax credits.

The policy rationale for the zero rate of tax on agricultural and aquaculture produce consumed in Canada arises because of consumer, not producer, concerns, and is based on the politically expedient view that some human essentials should not be taxed. The reason for the non-taxation of exports is to encourage them.

British Columbia[88] and Prince Edward Island[89] impose retail sales tax. Neither tax is applicable to food for human consumption.

License and leasehold fees

In marked contrast to the private property basis of agricultural operations, an important aspect of aquaculture operations in the Atlantic provinces and British Columbia is a direct reliance on the use of public (marine) resources for private purposes. The rent charged for the use of these public resources is generated in the form of leasehold fees for leases or occupation licenses of marine acreage. Leasehold fees and license fees (which are necessary whether or not there is a marine leasehold) are not, of course, taxes, but will, as already indicated, be briefly addressed in this chapter.

Each province administers its own system of licenses and leases except Prince Edward Island, which is administered by the federal government.[90] The fees charged in each of British Columbia and the Atlantic provinces vary but it is fair to say that, overall, the amounts exacted tend to be quite modest (see Table 7.1). The different regimes are outlined below. British Columbia has the highest fees. This figure can be put in some perspective by the observation that an "average" total area of a salmon aquaculture site is generally about 10 hectares. In contrast to British Columbia and New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland charge only nominal fees.

Table 7.1 Provincial lease and license systems[92]

British Columbia			
License		*Lease*	
Finfish	Intensive – 7.5% of Zone Value ($500 min.)	Intensive – 8% of Zone Value ($500 min.)	
	Extensive – 7.5% of half the Zone Value ($500 min.)	Extensive – 8% of half the Zone Value ($500 min.)	
Shellfish	New tenues – 4% of $4940/ha ($600 min.)	New tenues – 5% of $4940/ha ($600 min.)	
	Replacements – 4% of double the assessed land value on file with LWBC ($600 min.)	Replacements – 5% of double the assessed land value on file with LWBC ($600 min.)	
New Brunswick			
License		*Occupational permit*	
Commercial	$50		$100
Private	$10	*Lease*	
Institutional	$20	Marine site, commercial license	
		Finfish	$250/ha
		Mollusks	$20/ha ($100 min.)
		Crustaceans	$250/ha
		Inland site, Commercial license	$20/ha
		Lease fee to holder of private license	$100
		Lease fee to holder of institutional license	$100
Newfoundland			
License	$100/site		
Nova Scotia			
License		*Lease*	$10/ha
U-Fish	$200		
All Others	$300		
Ten-year lease/license	$300		
Prince Edward Island			
License	None	*Lease*	$10/acre or $4.05/ha

Sources: This table was compiled from the following sources:

British Columbia: Land and Water British Columbia Inc., *Land Use Programs*, Vol. 3:3, *Agricultural and Aquacultural Land Use* (2001) at Appendix 1. Online. Available http://lwbc.bc.ca/applying_for_land/aquaculture/aqua_policy.pdf (accessed 18 August 2003). In an appendix, the document provided a map displaying the various "fee" zones that fall within the issuing body's jurisdiction. The zones are priced as follows:

Zone A Value $7,031/ha
Zone B Value $6,375/ha
Zone C Value $5,156/ha
Zone D Value $4,875/ha
Zone E Value $4,325/ha (*Ibid*. at Appendix 4).

Additionally, the document defined the following terms:

- "**Intensive area**" – The area of Crown land used for aquaculture activities and related improvements directly associated with the production of finfish, shellfish or marine plants. The intensive area will include net-cages, netting, float camps, net storage, docks and mort sheds as well as a thirty-meter buffer around these structures. The thirty-meter buffer is mandatory and is intended to cover the area where anchor lines are likely to pose a restriction to navigation owing to the scope and angle of lines closest to the structures. Outside of the thirty-meter buffer, the lines are generally at a suitable depth to allow safe passage of a boat; however, any anchor lines beyond the thirty-meter buffer that restrict access or hamper navigation will also be included as part of the intensive area.
- "**Extensive area**" – The area of Crown land used for anchoring structures outside of intensive areas that do not impede navigation or access to lands beyond. (*Ibid*. at 4–5).

New Brunswick: *Aquaculture Act*, S.N.B. 1988, c. A-9.2; N.B. Reg. 91–158. The Regulation establishes and defines the two categories of aquaculture sites, and the three classes of licenses as follows:

- "**Inland aquaculture site**" is a class of aquaculture site that is situated in non-tidal waters or on land.
- "**Marine aquaculture site**" is a class of aquaculture site that is situated in tidal waters.
- "**Commercial aquaculture license**" is a class of aquaculture license that permits a licensee to conduct aquaculture for commercial gain.
- "**Institutional aquaculture license**" is a class of aquaculture license that permits a licensee to conduct aquaculture for the purposes of research outside a laboratory or an aquarium, or for use in public fishery enhancement activities, and not for the purposes of commercial gain.
- "**Private aquaculture license**" is a class of aquaculture license that authorizes a licensee to carry on aquaculture for private use and not for commercial gain (*ibid*. s. 2).

Newfoundland: Department of Fisheries and Aquaculture. Online. Available http://www.gov.nl.ca/fishaq/Aqua/Licencing.stm#Cost (accessed 26 March 2004).

Nova Scotia: Department of Agriculture and Fisheries. Online. Available http://www.gov.ns.ca/nsaf/aquaculture/application/aqua_fees.htm (accessed 26 March 2004).

Prince Edward Island: Interview with Dale Smith, Chief, Aquaculture Division, Department of Fisheries and Oceans (18 August 2003).

In a review of the lease/license fees extant in New Brunswick prepared for the Licensing and Inspection Branch of the Department of Fisheries and Aquaculture in New Brunswick,[91] the authors concluded that while the New Brunswick fees were higher than those of most of the other east coast provinces, they were lower than those in most of the eastern seaboard states. It should be mentioned, however, that many provinces and states periodically review their fee structures.

It is noteworthy that in other resource sectors, Canadian governments have sometimes insisted on sharing, or indeed appropriating, the Ricardian rent derived from the use of public resources for private purposes. Thus, governments earn substantial royalties from the exploitation of minerals and fossil fuels. On the other hand, they have, for whatever reason, sometimes elected to forgo any share in this surplus such as in the capture fisheries. This is a debate that so far has not been much pursued in considering these license and leasehold fees.

Conclusion

As I have demonstrated, the agriculture model of taxation in Canada has often been applied to the aquaculture sector. Fish farmers have approved of this development, not the least reason being that the model provides tax benefits. Further, the tax treatment of aquaculturalists as farmers supports other initiatives by the aquaculture industry to have government supports and incentives similar to those for agriculture extended to aquaculture. There seems little doubt that most aquaculturalists consider themselves as farmers, not fishers, and, indeed, different from other small and large rural businesses.

This chapter has compared the taxation of aquaculture with that of agriculture in the three main categories of taxation. It found that under the income tax system in Canada, fish farmers are generally taxed in the same way as other farmers. On the other hand, except in British Columbia, aquaculture operators are not treated the same as farmers for property tax purposes, although they may enjoy some tax concessions. Finally, the chapter considered the sales taxes regimes of the federal government and the provinces. Aquaculturalists are treated similarly to other farmers. It is difficult to derive any useful policy insights from comparisons in this last category.

Two questions arise when considering the policy implications of the application of the agricultural model to aquaculture. The first-order question is whether the special rules for agriculture are defensible when applied to traditional farmers. The second question, assuming the special rules can be justified, is whether, given the similarities and differences between the two sectors, the rules should be extended to fish farmers.

While the agricultural model was considered in relation to all the main categories of taxes, this chapter concentrated on the income tax system(s).

The income tax system draws more completely on the agricultural model in the taxation of aquaculture and ultimately seems to yield more insights. The special rules for agriculture, generally extended to aquaculture, were examined from four functional perspectives. They were rules designed to:

- enhance administration and compliance;
- assist in intergeneration succession;
- help farmers provide for their retirement; and
- alleviate the burden of fluctuating incomes.

It is fair to say that many of the special rules relating to agriculture were developed in an economic and social context that no longer exists. Thus, their continued application to both agriculture and aquaculture is, from a policy perspective, suspect. For example, the rules relating to the administration of the *Income Tax Act* (cash-basis accounting), which permitted unsophisticated and unschooled farmers (among others) to calculate and report income more easily, have morphed into a labyrinth of complex rules and elections. Their extension to the aquaculture industry, which has a substantial representation from a younger, better-educated generation (although this is not true across the board), and where a substantial component of the industry comprises large corporations, is not convincing.

Other special rules can be criticized, even though one accepts the stated or implicit policy reasons advanced for their existence. For example, the goal of the special rules relating to intergenerational succession is to preserve "local" and "family" farms. The special rules relating to intergeneration succession may not operate effectively, however. There is no guarantee, even after the tax-free transfer, that the next generation will stay in the community and continue to farm. They may simply take the (unwarranted) tax advantages and sell off farm and assets. Further, the rollover rules may actually create additional barriers to new entrants to the aquaculture industry. So too, the CDN$500,000 capital gains exemption (which also generally applies to qualified shares of small business corporations that are not farm corporations) goes far beyond providing tax assistance comparable to that provided to the general population to save for retirement. It helps farmers who sell out to retain more of the proceeds, but there are no stipulations that the amounts must be deposited into a retirement fund. In addition, in order to limit the provision to "real" hands-on farmers, government efforts to target its benefits have generated a maze of overly complex rules that may not fulfill their intended purpose but certainly constitute a trap for the unwary and unadvised, or both.

Finally, there may be insufficient recognition of the circumstances under which the aquaculture industry operates. For example, most of the special rules in the Act that attempt to ameliorate the tax effects of fluctuating incomes have been eliminated over the past decade or more. Further, fish farmers generally do not qualify for income support programs extended to

other farmers, including the Net Income Stabilization Account (NISA) program, which incorporates some tax preferences and the new Canadian Agricultural Income Stabilization (CAIS) program, which generally does not because of its different structure.

In the property tax area, the agricultural model is sometimes and sometimes not applied to aquaculture, depending on the jurisdiction and particular tax provision. While a benefits-based justification of property taxes (and historical precedent) may support reduced rates of tax on agriculture, it is not so compelling when applied to aquaculture. From a property tax perspective, aquaculture may more appropriately be compared with other rural industries, including industries in the resource sector.

Finally, it should be noted that fish farmers in the marine sector generally pay modest leasehold fees (which are not taxes) for their marine acreage. The system of leasehold interests is in significant contrast to the full ownership rights of most farmers. A list of leasehold fees for the five marine provinces has been included in this chapter.

Notes

1 *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended [ITA]. This chapter purports to reflect the law as of September 2003. Note that, in its 2 May 2006 budget, the Canadian fedeal government proposed extending the intergenerational rollover and the CDA$500,000 capital gains deduction to fishers with certain kinds of qualified fishing property. Online. Avaliable http://www.fin.gc.ca/budget06/bp/bpa3ae.htm#fishers.

2 *Ibid*. The federal government taxes individuals and corporations. For 2003, the tax on individuals is 16 percent to CDN$31,677, 22 percent to CDN$63,354, 26 percent to CDN$103,000 and 29 percent thereafter. Corporate rates vary depending on the type of corporation and the type of income. The general corporate rate is 28 percent, but Canadian-controlled private corporations (CCPCs) are taxed at about 12 percent on certain amounts and types of income. Corporate dividends received by individuals are also subject to tax but a dividend tax credit is credited against tax payable to partially or, in the case of certain income of CCPCs, completely recognize the corporate tax already paid.

Part l.3 of the Act imposes a special tax on corporations on their taxable capital employed in Canada in excess of their capital deduction for the year. The tax operates as a minimum tax applicable to larger corporations. The Part l.3 tax is gradually being phased out and will be fully eliminated in 2008. Until that time, the capital deduction will be increased from CDN$10 to CDN$50 million for taxation years ending after 2003 and the rate gradually reduced from 0.225 percent to 0.0625. The tax has been of considerable concern to aquaculture operations.

3 *Excise Tax Act*, R.S.C. 1985, c. E-15, Part IX.

4 *Income Tax Act*, R.S.B.C. 1996, c. 215; *New Brunswick Income Tax Act*, S.N.B. 2000, c. N-6.001; R.S.N.S. 1989, c. 217; *Income Tax Act*, R.S.P.E.I. 1988, c. I-1; *Income Tax Act, 2000*, S.N. 2000, c. I-1.1. Provincial tax rates vary among provinces. Both individuals and corporations are taxed. For 2003 in British Columbia, the tax on individuals is 6.05 percent up to CDN$31,124, 9.15 percent to CDN$62,249, 11.7 percent to CDN$71,470 and 14.7 percent over CDN$86,785. Corporate rates depend on the type of corporation and the type of income. The general corporate rate is 13.5 percent but Canadian-controlled

private corporations are taxed at 4.5 percent on certain amounts and types of income. Corporate dividends received by individuals are also subject to tax, but a dividend tax credit is credited against tax payable to partially or, in the case of certain income of CCPCs, completely recognize the corporate tax already paid. The tax base for provincial individual and corporate taxes generally approximates the federal base.

New Brunswick and Nova Scotia levy provincial corporate capital taxes. *New Brunswick Income Tax Act*, S.N.B. 2000, N-6.001,s. 62(1); *Income Tax Act*, R.S.N.S. 1989, c. 217, as amended by S.N.S. 1997, c. 3, s. 8. In New Brunswick, the annual rate is 0.3 percent with the first $5 million non-taxable. The annual rate in Nova Scotia is generally 0.25 percent.

5 *Social Service Tax Act*, R.S.B.C. 1996, c. 431; *Revenue Tax Act*, R.S.P.E.I. 1988, c. R-14.

6 *Excise Tax Act*, R.S.C. 1985, c. E-15, Part IX, Div. VIII; *Federal–Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8; *Harmonized Sales Tax Act*, S.N.B. 1997, c. H-1.01; *Sales Tax Act*, S.N.S. 1996, c. 31; *Tax Agreement Act*, S.N. 1996, c. T-0.01.

7 See, generally, Canada, Agriculture and Agri-Food Canada, *Agricultural Property Tax Concessions and Government Transfers to Agriculture* (Ottawa: Agriculture and Agri-Food Canada, 2000). Online. Available http://www.agr.gc.ca/spb/rad-dra/publications/agprop/agprop_e.php (accessed 26 March 2004) [*Agricultural Property Tax*]. See the "Property taxes" section (p. 257).

8 See the "License and leasehold fees" section (p. 259).

9 Statistics Canada, "Aquaculture Statistics," (17 October 2002) *The Daily.* Online. Available http://www.statcan.ca/Daily/English/021017/d021017b.htm (accessed 26 March 2004).

10 *Les Immeubles Dramis Inc.* v. *M. N. R.* [1981] C.TC. 2319; 81 D.T.C. 512 [*Les Immeubles* cited to C.T.C.]. See also C.C.R.A., Interpretation Bulletin, IT-322R, "*Income Tax Act* Farm Losses" (25 October 1978) at para. 8.

11 *Les Immeubles, supra* note 10 at 2574.

12 See, generally, Gary H. Munro and Kurt Oelschlagel, *Taxation of Farmers and Fishermen*, looseleaf (Toronto: Carswell, 2002).

13 Canada, Department of Finance, "Tax Expenditures and Evaluations 2002," at Table 1, "Personal income tax expenditures." Online. http://www.fin.gc.ca/toce/2002/taxexp02_e.html (accessed 26 March 2004).

14 Canada, *Report of the Royal Commission on Taxation*, Vol. 4 (Ottawa: Queen's Printer, 1966) at 440 (Chair: Kenneth Le Mesurier Carter) [Carter Report].

15 *Ibid*.

16 ITA, *supra* note 1, s. 28.

17 Carter Report, *supra* note 14 at 441. Carter would have permitted farmers who earned less than CDN$10,000 of gross revenue in the year to use the cash method of accounting.

18 *Ibid*.

19 ITA, *supra* note 1, para. 28(1)(b).

20 ITA, *supra* note 1, para. 28(1)(c).

21 New Brunswick, Agriculture, Fisheries and Aquaculture, *Bay of Fundy Marine Aquaculture Site Allocation* (Fredericton: Agriculture, Fisheries and Aquaculture, 2000).

22 ITA, *supra* note 1, subsecs. 70(9) (transfer of farm property on taxpayer's death to child), 70(9.2) (transfer of shares of family farm corporations and interests in family farm partnerships on taxpayer's death to child). Intergenerational transfers may be made during the parent's lifetime but income and capital gains attribution rules may apply in some circumstances. See ITA, *supra* note 1, subsecs. 73(3) and (4).

23 ITA, *supra* note 1, subsec. 70(10).
24 *Ibid*. subsec. 70(10).
25 *Ibid*.
26 Carter Report, *supra* note 14 at 28.
27 Canada, Department of Finance, *Proposals for Tax Reform* (Ottawa: Queen's Printer, 1969) at 36. It should be noted that the taxation of depreciable property was changed at tax reform so that tax-free transfers of that type of property between non-arm's-length individuals were eliminated unless the taxpayers could take advantage of a specific rollover provision such as the farm rollover.
28 ITA, *supra* note 1, subsec. 70(9.4) repealed by S.C. 1986, c. 6, s. 33(3).
29 See "Tax treatment of inshoremen unfair – CCPFH," (1 October 2003) *The Sou'Wester* at 1.
30 ITA, *supra* note 1, subsec. 70(9).
31 The parent could roll over the property to several children who on their subsequent divestment of their share of the property might, in some circumstances, each be able to claim the CDN$500,000 capital gains exemption. But see ITA, *supra* note 1, subsec. 69(11).
32 See Stanley S. Surrey, *Pathways to Tax Reform: The Concept of Tax Expenditures* (Cambridge, MA: Harvard University Press, 1973). Most tax theorists have embraced, to a greater or lesser extent, Surrey's description of tax expenditures in his seminal work. He describes deviations from a normative tax base as tax expenditures. In Surrey's account, most of the special farm provisions, including the intergenerational rollover and the CDN$500,000 capital gains exemption, qualify as tax expenditures.
33 There is a uniform comprehensive limit on tax-deductible contributions to tax-assisted retirement savings vehicles. The two principal vehicles are registered pensions plans, ITA, *supra* note 1, s. 147.1, and registered retirement savings plans (RRSPs), ITA, *supra* note 1, s. 146. Generally, the earnings of registered retirement savings vehicles are not subject to tax, but any withdrawals are taxed in the hands of the withdrawing taxpayer. For the 2005 taxation year, the limit for deductible contributions to an RRSP, assuming the taxpayer has not otherwise accumulated tax-sheltered savings benefits, is the lesser of 18 percent of earned income or $16,500. The taxpayer may carry unused contribution room forward indefinitely. The dollar limit will be increased to CDN$18,000 in 2006 and thereafter indexed by the growth in the average wage. See also ITA, *supra* note 1, s. 147.1 for the rules regarding registered pension plans.
34 Canada Customs and Revenue Agency, *Income Statistics 2001–1999 tax year: Final Basic Table 9*. Online. http://www.ccra-adrc.gc.ca/tax/individuals/stats/gb99/pst/final/pdf/table9-e.pdf (accessed 26 March 2004).
35 ITA, *supra* note 1, s. 110.6 added by 1986, c. 6, s. 58 generally applicable to 1985 *et seq.*
36 See, for example, the critique by William R. G. Lawlor, "Surplus Stripping and Other Planning Opportunities with the New $500,000 Capital Gains Exemption," *Proceedings of the Thirty-seventh Tax Conference*, 1985 Conference Report (Toronto: Canadian Tax Foundation, 1986) at 8:1–8:10.
37 The ability of an individual to claim the capital gains exemption is limited by their "annual gains limit," "cumulative gains limit" and "cumulative net investment loss." See ITA, *supra* note 1, subsec. 110.6(1). The annual gains limit and the cumulative gains limit, among other things, reduces a taxpayer's net capital gains, and therefore his or her capital gains exemption, by net capital losses claimed. The cumulative gains limit is the amount, if any, by which a taxpayer's investment expenses (e.g. interest) exceeds investment income.
38 ITA, *supra* note 1, subsec. 110.6(1) introduced in the 1985 Budget, *supra* note 35.

39 *Ibid.*
40 *Ibid.*
41 The capital gains inclusion rate was increased by the 1988 Budget to two-thirds in 1988 and 1989 and then to three-quarters in 1990. The 2000 Budget decreased the rate (with some transition provisions) to the one-half rate that presently applies.
42 ITA, *supra* note 1, subsec. 110.6(3) repealed by S.C. 1995, c. 3, s. 32(3) with some election provisions for 1994 and 1995.
43 ITA, *supra* note 1, subsec. 110.6(2.1) added by S.C. 1988, c. 55, s. 8l(6).
44 ITA, *supra* note 1, subsec. 110.6(1).
45 ITA, *supra* note 1, subsec. 110.6 added by 1988, c. 55, subsec. 81(4), applicable with respect to dispositions of shares after 17 June 1987.
46 *Technical Committee on Business Taxation Report* (Ottawa: Department of Finance, 1998).
47 *Ibid.* at 7.18.
48 *Ibid.* at 7.18–7.19.
49 *Ibid.* at 1.5.
50 *Ibid.*
51 *Ibid.* at 7–18.
52 *Ibid.*
53 Eugene La Brie, *The Principles of Canadian Income Taxation* (Toronto: C.C.H. Canadian, 1965) at 388.
54 Carter Report, *supra* note 14.
55 The block averaging provision was the longest-lasting income-averaging provision dedicated solely to farmers and fisherman. It was introduced in 1944 and was finally eliminated in the tax reform of 1987, which was accompanied by the rate flattening already referred to. Former ITA, *supra* note 1, sec. 119. Block averaging was available to both individuals and corporations, and permitted a taxpayer to average income over a five-year period. It was by far the most generous income-averaging provision used by farmers and fisherman.

Other income-averaging provisions instituted and then eliminated after tax reform included the general averaging provisions, former ITA, s. 118, income-averaging annuity contracts, former ITA, sec. 61, and forward averaging, former ITA, s. 123. These provisions were applicable to all taxpayers, including farmers, but only if they were unincorporated. The general averaging provisions and the income-averaging annuity contracts (IAACs) were eliminated in the November 1981 budget. General averaging did not give most taxpayers significant benefits, was applicable only in the year income rose (not fell) and was usually automatically done by the tax collector. The IAAC provisions permitted the taxpayer to buy an annuity for an amount equal to certain kinds of income she or he received in the year. The annuity had to be paid commencing within ten months, and in the years it was paid, both capital and interest were taxed. The IAAC was of particular significance to farmers because it permitted the taxpayer to buy an annuity for cash basis inventory in a year the farming ceased.

For a brief period, from 1981 to 1987, the provisions abolished were replaced by the forward averaging refundable tax, former ITA, s. 110.4. As the name implies, income over a certain amount in the year is subject to tax, but the income may be reincluded in income in a future year at a lower tax rate. The difference between the tax paid and the tax payable in the future year on the income is refunded.

56 ITA, *supra* note 1, s. 117 as amended by S.C. 1988.
57 *Alberta Personal Income Tax Act*, R.S.A. 2000, C.A-30, s. 4.
58 *Taxation Act*, R.S.Q., c. I-3.

59 ITA, *supra* note 1, subsec. 125(1). The small business income threshold will be increased for the next three years by $25,000 a year to a maximum of $300,000 on 1 January 2006.
60 ITA, *supra* note 1, s. 111.
61 Agriculture and Agri-Food Canada, New Release, "Minister Vanclief Officially Launches New Farm Income Program" (11 December 2003).
62 Agriculture and Agri-Food Canada, *Canadian Agricultural Income Stabilization (CAIS) Program Handbook*. Online. http://www.agr.gc.ca/producerassistance2003/cais03hb.html (accessed 26 March 2004).
63 *Farm Income Protection Act*, S.C. 1991, c. 22.
64 CFIP ended in 2002.
65 ITA, *supra* note 1, ss. 12(10.2) and (10.3).
66 See *A Business Case in Support of a National Aquatic Animal Health Program*, March 2002. Available from New Brunswick Salmon Growers Association, St. Georges, New Brunswick.
67 *Emergency Measures Act*, S.N.B. 1978, c. E-7.1, s. 20.
68 ITA, *supra* note 1, s. 127(5).
69 *Real Property Tax Act*, R.S.N.B. 1973, c. R-2, s. 4, as amended by S.N.B. 1994, c. 93, s.7; *ibid.* s. 5(1)–(2), as amended by S.N.B. 1982, c. 56, ss. 4, 5.
70 *Real Property Tax Act*, R.S.P.E.I. 1988, c. R-5, ss. 4(1), 8.
71 *Municipal Government Act*, S.N.S. 1998, c. 18, s. 72(6).
72 *Local Government* Act, R.S.B.C. 1996, c. 323, s. 359(1). *Taxation (Rural Area) Act*, R.S.B.C. 1996, c. 448; but see *School Act*, R.S.B.C. 1996, c. 412, Div. 4.
73 *Municipalities Act, 1999*, S.N. 1999, c. M-24, s. 112. *St. John's Assessment Act*, R.S.N. 1990, c. S-1, ss. 3, 4.
74 *Real Property Tax Act*, *supra* note 69, s. 5(1).
75 *Assessment Act*, R.S.B.C. 1996, c. 20, s. 19; B.C. Reg. 205/84; B.C. Reg. 438/81.
76 R.S.B.C. 1996, c. 20; B.C. Reg. 411/95, Sch. A.
77 R.S.N.S. 1989, c. 23, s. 46. as amended by S.N.S. 1990, c. 19, s. 14; S.N.S. 1996, c. 5, s. 3; S.N.S. 1998, c. 13, s. 2; S.N.S. 1998, c. 18, s. 547.
78 *Assessment Act*, R.S.N.S. 1989, c. 23, s. 2(1)(s), as amended by *Municipal Law Amendment (2000) Act*, S.N.S. 2000, c. 9, s. 2.
79 *Farm Land Identification Regulation – Real Property Tax Act*, N.B. Reg. 84–75. *Agricultural Land Protection and Development Act*, S.N.B. 1996, c. A-5.11, s. 1.
80 *Municipalities Act*, S.N. 1999, c. M-24, s. 118(j). Government of Newfoundland and Labrador, *Real Property Tax Exemption Program for Agricultural Land*. Online. Available http://www.gov.nl.ca/agric/soils/sl170.htm (accessed 26 March 2004).
81 *Real Property Assessment Act*, R.S.P.E.I. 1988, c. R-4, s. 4(1).
82 *School Act*, R.S.B.C. 1996, c. 4l2, ss. 119–120.
83 *Ibid*. s. 130.
84 These rates vary among school districts and from year to year. See *Agricultural Property Tax*, *supra* note 7 at A-3.
85 *Supra* note 3.
86 *Supra* note 6.
87 *Excise Tax Act*, *supra* note 3, ss. 123(1), 165(3).
88 *Social Service Tax Act*, R.S.B.C. 1996, c. 431, s. 70.
89 *Revenue Tax Act*, R.S.P.E.I. 1988, c. R-14, s. 12(1).
90 *Fisheries Act*, R.S.B.C. 1996, c. 149, s. 13(5); *Aquaculture Act*, R.S.N.B. 1988, c. A-9.2, ss. 5(1), 25(1); *Fisheries and Coastal Resources Act*, S.N.S. 1996, c. 25, s. 64; *Aquaculture Act*, R.S.N.L. 1990, c. A-13, s. 4.
91 *A Review of Aquaculture Lease/License Fees in New Brunswick and Other Jurisdictions* (May 1999).