The Abolition of Wealth Transfer Taxes: Lessons from Canada, Australia, and New Zealand

David G. Duff*

* Associate Professor, Faculty of Law, University of Toronto. I am indebted to Alan Macnaughton, Richard Schmalbeck and Larry Zelenak for helpful comments on earlier drafts. I am also indebted to Doug Robertson, a J.D. student at the University of Toronto Faculty of Law, for excellent research assistance, and to the Social Science and Humanities Research Council of Canada for financial support.

Table of Contents

Abstract 3

I. Introduction 4

II. Public Choice Theory and Tax Policy 7

A. Public Choice and Political Efficiency 7

1. Voters 8

2. Politicians and Political Parties 11

3. Organized Interest Groups 13

4. Public Policy and Political Efficiency 14

B. Political Efficiency and Tax Policy 15

III. Wealth Transfer Taxes in Canada, Australia and New Zealand 20

A. The Abolition of Wealth Transfer Taxes in Canada 25

1. The Carter Commission: 1962- 1967 26

2. Federal Reform: 1967-1971 29

3. Provincial Aftermath: 1971-1985 41

B. The Abolition of Wealth Transfer Taxes in Australia 47

C. The Abolition of Wealth Transfer Taxes in New Zealand 54

D. Public Choice Theory and the Abolition of Wealth Transfer Taxes 55

IV. Conclusion 59

Abstract

When the United States acted to phase-out its estate tax by 2010, it joined a small but growing group of countries which have also repealed their wealth transfer taxes. In Canada, federal gift and estate taxes were repealed in 1972 and provincial wealth transfer taxes were abolished in the 1970s and 1980s. In Australia, State and Commonwealth wealth transfer taxes were repealed in the late 1970s and early 1980s. New Zealand followed suit in the 1990s, reducing estate tax rates to zero in 1992 and repealing the tax in 1999.

This paper reviews the abolition of wealth transfer taxes in Canada, Australia and New Zealand, relying on public choice theories of politically efficient revenue structures to help explain the repeal of these taxes in each country. Part II outlines the essential elements of public choice theory and its implications for tax policy. Part III surveys the history of wealth transfer taxes in Canada, Australia and New Zealand, examining in detail the events leading up to the repeal of these taxes, and illustrating the relevance of public choice theory to their abolition in each country. Part IV offers brief conclusions on the significance of this experience for the future of wealth transfer taxation in these and other countries.

I. Introduction

When the U.S. Congress voted to phase-out the federal estate tax by 2010 and President Bush signed the legislation in June 2001,[1] the United States joined a small but growing number of developed countries in which taxes on the transfer of wealth have been abolished.[2] In Canada, federal gift and estate taxes were repealed in 1972 and provincial wealth transfer taxes were abolished in the 1970s and 1980s. In Australia, State and Commonwealth wealth transfer taxes were repealed in the late 1970s and early 1980s. New Zealand followed suit in the 1990s, reducing estate tax rates to zero in 1992 and repealing the tax in 1999. While the United Kingdom continues to collect taxes on the transfer of wealth, the role of these taxes has declined substantially over the last 30 years,[3] and calls for repeal are often heard.[4] As a result, U.S. repeal should no be viewed as an isolated event but as part of a broader international trend.

[1] Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 501, 115 Stat. 38, 69 (2001). The phase-out is accomplished by increasing the exclusion amount and reducing rates between 2002 and 2009, culminating in repeal for the year 2010. Under a sunset provision, however, the legislation providing for this phase-out and repeal is itself repealed after December 31, 2010 – resulting in the restoration of the tax in 2011. For a detailed description of this legislation, see Tye J. Klooster, "Repeal of the Death Tax? Shoving Aside the Rhetoric to Determine the Consequences of the Economic Growth and Tax Relief Reconciliation Act of 2001" (2003), 51 *Drake L. Rev.* 633-65. According to one commentator, "[t]he fact that there will be two presidential and four congressional elections before the estate tax is fully repealed means that it is possible that the repeal will never happen at all or that the sunset provision will stand and the estate tax will return in 2011." Mary R. Wampler, "Repealing the Federal Estate Tax: Death to the Death Tax, or Will Reform Save the Day?" (2001), 25 *Seton Hall L.J.* 525 at 534.

[2] For an excellent account of the events leading up to repeal in the U.S., see Michael J. Graetz and Ian Shapiro, *Death by a Thousand Cuts: The Fight over Taxing Inherited Wealth*, (Princeton: Princeton University Press, 2005). For a recent argument that Congress might benefit from uncertainty regarding repeal of the federal gift and estate taxes, see Edward J. McCaffery and Linda R. Cohen, "Shakedown at Gucci Gulch: A Tale of Death, Money and Taxes" University of Southern California Law and Economics Research Paper No. 04-20, available at http://ssrn.com/abstract=581084.

[3] See Organisation for Economic Cooperation and Development, *Revenue Statistics of O.E.C.D. Countries*, (2003), available online at http://hermia.ingentaselect.com/vl=4595239/cl=65/nw=1/rpsv/ij/oecdstats/16081099/v55n1/contp1-1.htm (in 1972, estate and gift taxes accounted for 2.3 percent of total revenues in the U.K. and 0.7 percent of gross domestic product; in 2002, these figures were 0.6 percent and 0.2 percent respectively).

[4] See, e.g., Barry Bracewell-Milnes, *Euthanasia for Death Duties: Putting Inheritance Tax Out of its Misery*, (London: Institute of Economic Affairs, 2002). The Conservative Party's 2005 election platform calls for cuts to the U.K. Inheritance Tax, but not repeal.

Whatever the advantages or disadvantages of these taxes,[5] commentators are often puzzled by the apparent political vulnerability of wealth transfer taxes since they generally apply only to a small percentage of substantial estates.[6] For some, political opposition to these taxes stems from psychological factors, such as the association between the tax and death,[7] or an irrational optimism on the part of many people that they will actually be subject to the tax.[8] For others, it is largely ideological, reflecting a conservative emphasis on individual enterprise and an increased hostility to redistributive taxation.[9] Although conservative electoral victories have certainly contributed to the decline of wealth transfer taxes,[10] however, more progressive political parties have also

---

[5] The merits of these taxes are widely disputed. Advocates tend to emphasize their contribution to tax progressivity, their social role to lessen inequalities and unequal opportunities, and their assumed economic superiority to income taxes. See, e.g., Michael J. Graetz, "To Praise the Estate Tax, Not to Bury It" (1983), 93 *Yale L.J.* 259; Eric Rakowski, "Transferring Wealth Liberally" (1996), 51 *Tax L. Rev.* 419; and Joseph A. Pechman, *Federal Tax Policy*, 5th ed., (Washington, D.C.: Brookings Institution, 1987) at 234 (commenting that wealth transfer taxes have "less adverse effects on incentives than do income taxes of equal yield"). Critics, on the other hand, condemn their relatively low revenue yield, high collection costs, avoidability, and alleged impact on savings and entrepreneurship. See, e.g., Richard E. Wagner, *Death and Taxes: Some Perspectives on Inheritance, Inequality, and Progressive Taxation*, (Washington, D.C.: American Enterprise Institute, 1973); Joel C. Dobris, "A Brief for the Abolition of All Transfer Taxes" (1984), 35 *Syracuse L. rev.* 1215; Edward J. McCaffery, "The Uneasy Case for Wealth Transfer Taxation" (1994), 104 *Yale L.J.* 283; and Edward J. McCaffery, "The Political Liberal Case Against the Estate Tax" (1994), 23 *Phil. & Pub. Aff.* 281. For my own views on wealth transfer taxation, see David G. Duff, "Taxing Inherited Wealth: A Philosophical Argument" (1993), 6 *Can. J. L. & Juris.* 3.

[6] In the United States. for example, only 4.3 percent of decedents were required to file estate tax returns in 1998, and only half of these were required to pay any tax. See William G. Gale and Joel Slemrod, "Overview" in William G. Gale, James R. Hines Jr., and Joel Slemrod, eds., *Rethinking Estate and Gift Taxation*, (Washingston, D.C.: Brookings Institution, 2001) 1-64 at 7-9. In the United Kingdom, it is estimated that only 3.5 to 4 percent of estates pay inheritance tax. See Domenic Maxwell, *Fair Dues: Towards a more progressive inheritance tax*, (London: Institute for Public Policy Research, 2004) at 11.

[7] See, e.g., Richard Bird, "The Taxation of Personal Wealth in International Perspective" (1991), 17 *Can. Pub. Pol'y* 322 at 330 (pointing to "the conjuncture of two events [death and taxes] that few people contemplate with pleasure").

[8] See, e.g., Graetz, *supra* note 5 at 285.

[9] See, e.g., Keith G. Banting, "The Politics of Wealth Taxes" (1991), 17 *Can. Pub. Pol'y* 351 at 364. See also Edward J. McCaffery, *Fair Not Flat: How to Make the Tax System Better and Simpler*, (Chicago: University of Chicago Press, 2003) at 66 (suggesting that wealth transfer taxes contradict "common-sense morality"). For a detailed study of the relationship between ideological perspectives and wealth transfer taxes in Canada, see Lisa Philipps, *Taxing Inherited Wealth: Ideologies About Property and the Family in Canada*, LL.M. Thesis, Osgoode Hall Law School (1992).

[10] In the United States, for example, Republican control of the Congress and the White House precipitated repeal of the federal estate tax in 2001. See Graetz and Shapiro, *supra* note 2. Likewise, in Australia,

been willing to abandon these taxes and have been reluctant to restore them once repealed.[11]

In addition to these explanations for the decline and repeal of wealth transfer taxes, public choice theory provides an alternative account, emphasizing the political costs and benefits of different tax policies and the tendency for electoral competition to promote "political efficiency" in the revenue structures adopted by governments over time.[12] To the extent that wealth transfer taxes entail greater political costs and fewer perceived benefits than other tax measures yielding comparable revenue yields, it is not surprising that they might be politically vulnerable.

This paper examines the abolition of wealth transfer taxes in Canada, Australia and New Zealand, relying on public choice theories of politically efficient revenue structures to help explain the repeal of these taxes in each country. Part II outlines the essential elements of this theoretical approach and its implications for tax policy. Part III surveys the history of wealth transfer taxes in Canada, Australia and New Zealand, examining in detail the events leading up to the repeal of these taxes, and illustrating the relevance of public choice theory to their abolition in each country. Part IV offers brief conclusions on the significance of this experience for the future of wealth transfer taxation.

---

electoral victory by the Liberal Party under Malcolm Fraser preceded the repeal of the federal estate tax effective 1 July 1979.

[11] In Canada, for example, it was the Liberal Party under Prime Minister Pierre Trudeau which repealed the federal gift and estate taxes in 1971, notwithstanding that Trudeau had campaigned and won the 1968 election by promising a "Just Society". Similarly in Australia, Labour Prime Minister Gough Whitlam promised to abolish federal death duties in 1975 in an unsuccessful bid to stay in office. In the U.S. as well, as Graetz and Shapiro document, Democrats have been reluctant to defend the estate tax. See Graetz and Shapiro, *supra* note 2.

[12] See, e.g., Walter Hettich and Stanley L. Winer, *Democratic Choice and Taxation: A Theoretical and Empirical Analysis*, (Cambridge: Cambridge University Press, 1999); and W. Irwin Gillespie, *Tax, Borrow and Spend: Financing Federal Spending in Canada., 1867-1900*, (Ottawa: Carleton University Press, 1991).

II. Public Choice Theory and Tax Policy

In the fields of public finance and tax policy, much writing is essentially normative, establishing criteria for an ideal tax structure and evaluating actual tax regimes against this ideal.[13] In contrast, public choice theories of politically efficient revenue structures are largely positive, attempting to explain the kinds of tax structures and tax reforms that actually exist in modern democratic societies.[14] The following sections provide a brief introduction to this theoretical approach, explaining the main determinants of political efficiency within this framework and the manner in which political efficiency is apt to be pursued through tax policy.

A. Public Choice and Political Efficiency

Public choice theory has been defined as "the economic study of nonmarket decision making" or "the application of economics to political science."[15] As such, it concerns itself with traditional topics of political science such as voting behaviour, party politics, and interest group activities, but examines these phenomena through the lens of economic methodology premised on rational choice subject to constraints.[16] As economic

---

[13] This is true of traditional public finance as well as more recent theories of optimal taxation. See, e.g., Richard A. Musgrave, Peggy B. Musgrave, and Richard M. Bird, *Public Finance in Theory and Practice*, (Toronto: McGraw-Hill Ryerson Ltd., 1987); and James A. Mirrlees, "An Exploration in the Theory of Optimum Income Taxation" (1971), 38 *Rev. Econ. Stud.* 175. It is also true of much legal tax scholarship, particularly scholarship based on the Haig-Simons concept of income, and the concept of tax expenditures pioneered by Stanley Surrey. See Henry C. Simons, *Personal Income Taxation: The Definition of Income as a Problem of Fiscal Policy*, (Chicago: University of Chicago Press, 1938); and Stanley S. Surrey, *Pathways to Tax Reform: The Concept of Tax Expenditures*, (Cambridge, MA: Harvard University Press, 1973).

[14] Gillespie, *supra* note 12 at 14-17. Not surprisingly, of course, these positive theories may have normative implications regarding, for example, constitutional arrangements regarding the manner in which revenue decisions are made. See, e.g., James M. Buchanan and Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, (Ann Arbor: University of Michigan Press, 1962). See also Gillespie, *supra* note 12 at 17 (suggesting that "a positive model of revenue structure could assist those of us who advise governments on the tax changes that ought to be made").

[15] Dennis C. Mueller, *Public Choice II*, (Cambridge: Cambridge University Press, 1989) at 1.

[16] *Ibid*. at 1-2.

analysis predicts that a perfectly competitive market tends toward an equilibrium at which economic resources are efficiently allocated, so public choice theory predicts that competition among political parties tends toward a political equilibrium where public policies assume a politically efficient form.[17] In order to understand this concept of political efficiency and the form that it is likely to take, it is useful to examine the motivations and constraints that public choice theory assigns to the central actors in the political process: voters, politicians and political parties, and organized interest groups.[18]

1. Voters

The starting point for a public choice theory of political efficiency is a set of assumptions regarding voters and the reason why they vote. Sharing with economic theory the premise that individuals are rational utility maximizers,[19] public choice theory postulates that voters will generally cast their ballots for candidates and political parties whose policies are expected to maximize their net utility.[20] In the context of government expenditure and revenue policies, public choice theories generally assume that voters will favour candidates and political parties whose policies are expected to maximize the benefits that they receive from government expenditures while minimizing the taxes that

[17] See, e.g., Hettich and Winer, *supra* note 12 at 2; and Gillespie, *supra* note 12 at 16.
[18] Although it is not essential for the purpose of this paper, many public choice theories also consider the behaviour of the bureaucracy and the mass media. See, e.g., Douglas G. Hartle, *The Expenditure Budget Process of the Government of Canada: A Public Choice-Rent Seeking Perspective*, Canadian Tax Paper No. 81 (Toronto: Canadian Tax Foundation, 1988) at 35-68.
[19] See, e.g., Mueller, *supra* note 15 at 2.
[20] For an early expression of this rational voter hypothesis, see Anthony Downs, *An Economic Theory of Democracy*, (New York: Harper and Row, 1957). See also Gordon Tullock, *Towards a Mathematics of Politics*, (Ann Arbor: University of Michigan Press, 1967) at 110-114; and William Riker and Peter Ordeshook, *Introduction to Positive Political Theory*, (Englewood Cliffs, N.J.: Prentice-Hall, 1973). While the concept of "utility" for this purpose might be broadly defined to include an inter-subjective interest in the welfare of others or a Kantian concern with just social institutions, public choice theory tends to ignore this possibility by assuming an egoistic conception of human beings and a narrow and self-interested notion of utility.

they are required to pay.[21] Voters may also favour certain kinds of taxes over others, notwithstanding that amounts owing are the same, suggesting that differential preferences for different kinds of taxes may also play a role in voting decisions.[22]

In addition to the hypothesis that voters will select candidates and political parties whose policies are expected to maximize their net utility, public choice theory also predicts that voting decisions are generally based on limited knowledge of actual policies and their likely consequences. Since the time and effort to obtain this information is considerable, and the probability of one's vote affecting the outcome of an election is negligible, public choice theory predicts that most voters will remain "rationally ignorant" of most policies – ignoring specific details and basing their choices on perceived impacts on net utility as well as more general perceptions of trustworthiness and feelings of emotional attachment.[23] In the field of tax policy, this phenomenon is likely to be particularly pronounced given the complexity of the issues involved.[24] Since the expected benefits of acquiring information are greater where policies touch on one's most immediate interests, however, voters are likely to devote more resources to inform

[21] See, e.g., Gillespie, *supra* note 12 at 17 (explaining that political parties in the pursuit of electoral victory attempt to "maximize the political benefits from spending and minimize the political costs of financing the spending").

[22] *Ibid*. at 26-27. To the extent that differential preferences for different kinds of taxes reflect notions of tax fairness, the recognition of these tax preferences as a factor in voting decisions suggests that voters may be motivated by something other than self-interest narrowly understood. For an attempt to rationalize ideas of tax fairness in terms of utility maximization, see Douglas G. Hartle, *Political Economy of Tax Reform: Six Case Studies*, Discussion Paper No. 290 (Ottawa: Economic Council of Canada, 1985) at 52-54.

[23] See, e.g., Downs, *supra* note 20, chapters 11-13.

[24] See, e.g., Douglas G. Hartle, "Some Analytical, Political and Normative Lessons from Carter" in W. Neil Brooks, ed., *The Quest for Tax Reform*, (Toronto: Carswell, 1988) at 415 (suggesting that most voters' perceptions of their own interests are "more likely than not, seriously flawed when it comes to the details of the tax structure as a whole"); and Banting, *supra* note 9 (emphasizing that "[m]ost voters are not well-informed about the complex world of taxation" and that "[t]here is limited understanding not only of technical language and abstract concepts such as equity, but also of elementary issues such as whether one would benefit from a specific proposal").

themselves about these measures.[25] As a result, affluent individuals and corporations can be expected to be much better informed and well-advised than most about the taxes they pay and about the tax policies proposed by politicians and political parties.[26]

Not surprisingly, critics have challenged as limited and unrealistic both the self-interested view of voting that public choice theory assumes and the egoistic conception of human beings on which it is based.[27] Indeed, since it is irrational to expect that a single vote will affect the outcome of an election, the very act of voting itself suggests that voters must be motivated by considerations other than self-interested utility maximization narrowly defined.[28] While one might attempt to rescue the theory of self-interested voting by assuming a psychological benefit from the act of voting,[29] or distinguishing the (unselfish) decision to vote from the (selfish) choice of candidate or political party, it seems more realistic to admit that altruistic and ethical motivations are likely to mix with more selfish considerations when voters case their ballots.[30] At the same time, the theory that most voters remain rationally ignorant of actual policies calls into question the significance of their votes for public policy more generally.[31]

---

[25] Hartle, *supra* note 22 at 25.

[26] See, e.g., Banting, *supra* note 9 at 353 (observing that "those with a large stake in tax battles inform themselves and equip themselves with a phalanx of professional advisors").

[27] See, e.g., Joseph P. Kalt and Mark A. Zupan, "Capture and Ideology in the Economic Theory of Politics" (1984), 74 *Am. Econ. Rev.* 279; and Herbert Hovenkamp, "Legislation, Well-Being and Public Choice" (1990), 57 *U. Chi. L. Rev.* 63. For more general criticisms of public choice theory, see Mark Kelman, "On Democracy-Bashing: A Skeptical Look at the Theoretical and 'Empirical' Practice of the Public Choice Movement" (1988), 74 *Va. L. Rev.* 199; and Daniel A. Farber and Philip P. Frickey, *Law and Public Choice: A Critical Introduction*, (Chicago: University of Chicago Press, 1991).

[28] See the discussion of this "paradox" of voting, see Mueller, *supra* note 15 at 348-69.

[29] See, e.g., Daniel Shaviro, "Beyond Public Choice and Public Interest: A Study of the Legislative Process as Illustrated by Tax Legislation in the 1990s" (1990), 139 *U. Penn. L. Rev.* 1 at 77 (suggesting that the act of voting can be understood as a source of utility in itself, "involving symbolic or expressive behavior").

[30] See, e.g., Robert E. Goodin and Kevin W.S. Roberts, "The Ethical Voter" (1975), 69 *Amer. Pol. Sci. Rev.* 926; Howard Margolis, *Selfishness, Altruism, and Rationality*, (Cambridge: Cambridge University Press, 1982); and Amitai Etzioni, "The Case for a Multiple Utility Conception" (1986), 2 *Econ. & Phil.* 159.

[31] See, e.g., Geoffrey Brennan and James M. Buchanan, "Voter Choice: Evaluating Political Alternatives" (1984), 28 *American Behavioral Scientist* 185 (arguing that voting decisions are primarily expressive or symbolic rather than instrumental).

While these criticisms undoubtedly lessen the predictive power of public choice theory to some extent, they do not render it worthless. On the contrary, although it is probably mistaken to assume that altruistic and ethical motivations play no role in voting decisions, it is also likely that selfish considerations have a significant effect on the choices that are ultimately made. Similarly, while imperfect information weakens the link between voting decisions and public policy outcomes, it seems unlikely that voters will systematically ignore their own interests on a consistent basis, and it is important to recognize that voters are likely to be more knowledgeable about policies affecting their most immediate interests. For these reasons, the basic premise of public choice theory that voters will tend to favour candidates and political parties whose policies are perceived to maximize their net utility is likely to have considerable predictive value, notwithstanding the phenomenon of rational ignorance and the narrow conception of human motivation on which public choice theory is based.

2. Politicians and Political Parties

For public choice theory, politicians and political parties, like voters, are also assumed to be rational utility maximizers.[32] Unlike voters, however, who pursue this goal by casting ballots for candidates and political parties whose policies are perceived to maximize their net utility, politicians and political parties are presumed to maximize their utility by winning elections.[33] Since voters are assumed to favour candidates and political parties whose policies are expected to maximize their net utility, moreover, it follows that elections are most likely to be won by politicians and political parties whose platforms

---

[32] Mueller, *supra* note 15 at 179.
[33] See, e.g., Downs, *supra* note 20 at 28.

are perceived to maximize the net utility of the largest number of voters.[34] However, because voter preferences are not immediately transparent to politicians and political parties, and voters themselves are generally unfamiliar with specific policies, public choice theories also predict that politicians and political parties can increase the likelihood of electoral success by employing strategies and obtaining resources that enable them to better discern voter preferences (e.g., by consulting with interest groups, polling, and pre-testing policies with focus groups) and to promote their policies and images (e.g., through media exposure and advertising).[35]

As with public choice theories of voting behaviour, critics have also questioned the assumption that politicians and political parties are driven solely by the goal of electoral success.[36] Ideological objectives, for example, are undoubtedly also present, as politicians and political parties certainly seek to influence voters' perceptions of their own best interests in order to win elections and to shape public policy outcomes according to their ideological preferences once in government or in opposition.[37] More sophisticated public choice theories of politicians and political parties should also account for different institutions and electoral rules which may create different strategies for electoral success.[38] In countries with proportional representation, for example, parties and politicians may pursue a narrow voting base instead of a majority block.

Notwithstanding other motivations, however, the logic of electoral competition suggests that politicians and political parties will over time not only seek electoral success, but will also devise campaign strategies and political platforms designed to

---

[34] See, e.g., Mueller, *supra* note 15 at 214 (suggesting that "competition for votes between candidates leads them 'as if by an invisible hand' to platforms that maximize social welfare").
[35] See the discussion of "probabilistic voting" in *ibid*. at 196-216.
[36] See, e.g., Shaviro, *supra* note 29 at 81-87.

appeal to the largest number of voters.[39] Through a process of "natural selection", therefore, one can expect that public policies in a democratic society will tend toward political efficiency.[40]

3. Organized Interest Groups

Interest groups constitute a third group of political actors who are central to public choice theories of political efficiency. Unlike voters and politicians, who are assumed to maximize their own individual utilities, interest groups are assumed to promote the common interests of their members.[41] This is accomplished by informing members about public policy issues affecting their interests,[42] lobbying politicians and political parties in order to obtain policies favourable to members,[43] and promoting policies that advance the common interests of members through direct advertising and the mass media.[44] As a general rule, these services take the form of public or collective goods the benefits from which cannot easily be limited to those who are willing to incur their costs through membership.[45]

---

[37] See the analysis of ideology in Mueller, *supra* note 15 at 286-301.
[38] See the discussion in *ibid*. at 217-28.
[39] See, e.g., Hartle, supra note 18 at xviii-xix (noting that when policies are politically inefficient, "there is an opportunity afforded the opposition parties to form a new coalition that will gain power at the expense of the ruling coalition).
[40] See, e.g., Shaviro, *supra* note 29 at 88 (referring to a process of "natural selection" that can play a role notwithstanding the motivations of some politicians or political parties).
[41] See, e.g., Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups*, (Cambridge, MA; Harvard University Press, 1971) at 5-8.
[42] See, e.g., Hartle, *supra* note 18 at 62-63 (referring to this as the "intelligence function" of organized interest groups).
[43] *Ibid*. at 61 (observing that this lobbying generally involves the provision of information or funding). See also Mueller, *supra* note 15 at 205 (noting that interest groups "try to increase the welfare of their membership by reducing candidate uncertainty over how their membership votes").
[44] See, e.g., *ibid*. at 61 (referring to "costly publicity campaigns designed to convince tens of thousands of voters to support a desired candidate or party on a desired policy decision); and Hartle, *supra* note 24 at 414 (emphasizing the "capacity of special interest groups to influence the mass media").
[45] Olson, *supra* note 41 at 15.

Of particular importance to public choice theory is the existence of information and transactions costs and collective action (free-rider) problems that affect the likelihood that persons with common interests will establish and maintain an organized entity to promote their interests. Because persons are expected to be better informed about matters affecting their most immediate interests than about more general or public interests, public choice theory predicts that narrow or special interests will be better represented by organized interest groups than more general and public interests. Moreover, since the costs to establish and maintain an organized group and the incidence of free-riders are likely to increase as the number of potential members increases, public choice theory also predicts that relatively small numbers of persons with common interests are more likely to be represented by organized interest groups than large numbers of persons with common interests.[46] In the field of tax policy, these considerations suggest that relatively small groups of taxpayers with common interests are much more likely to exercise political influence through organized interest groups than large groups of taxpayers with more diffuse interests.[47]

4. Public Policy and Political Efficiency

The motivations and constraints that public choice theory assigns to the central actors in the political process influence not only their expected behaviour within this framework, but also the kinds of public policies that are likely to maximize political efficiency. Since voters are predicted to be better informed about matters that touch on their immediate interests and less knowledgeable about other issues, for example, public choice theory suggests that political efficiency may be achieved by targeting government

---

[46] See, e.g., *ibid*. at 46-52 (describing large unorganized interest groups as “latent” groups).

benefits to groups of voters who are apt to be well-informed about the benefits that they receive while distributing the related costs widely among groups of voters who are less likely to perceive the burdens that they bear.[48] The more complex the nature of the specific policy, moreover, the less likely it is that those who bear these costs will perceive the burden, lessening further the political costs of the policy.[49] Differential transactions costs and collective action problems suggest a similar strategy for politically efficient public policies, involving the conferral of benefits on selected groups of voters who are well-represented by organized interest groups, and the allocation of related costs among more diffuse groups of voters for whom the financial and organizational barriers to collective political action are much greater.[50] As a result, as Mancur Olson emphasized, differential information and organizational costs create "*a systematic tendency for 'exploitation' of the great by the small!*"[51]

B. Political Efficiency and Tax Policy

If voters regard benefits from government expenditures as utility enhancing and taxes as utility reducing, the pursuit of political efficiency suggests that governments will attempt to maximize the political benefits from spending programs and minimize the political costs from the taxes necessary to finance these programs.[52] For a given level of government expenditure, therefore, a politically efficient revenue structure will minimize the political costs associated with each tax – utilizing each revenue source, as one theorist

---

[47] See, e.g., Banting, *supra* note 9 at 353; and Hartle, *supra* note 24 at 413-15 (emphasizing the influence of narrow and special interest groups in tax policy).
[48] See, e.g., Hartle, *supra* note 18 at 67.
[49] *Ibid*. at 67-68.
[50] *Ibid*.
[51] Olson, *supra* note 41 at 29 [emphasis in original].

explains, "up to the point at which the marginal political cost is equal for all such sources."[53] Over time, moreover, a tendency toward political efficiency suggests that governments will increase and decrease tax rates on specific revenue sources as their relative political costs change, introduce new taxes when the political costs of so doing are less than the political costs from increasing the rate of an existing tax, and repeal old taxes when their political costs exceed those associated with other taxes.[54] The key questions for a public choice theory of tax policy, therefore, concern the factors that affect the political costs of different taxes and the reasons why these political costs change over time.

Beginning with the factors affecting the political costs of different taxes, many can be identified.[55] Most obviously, perhaps, the political costs of a tax can be expected to increase as its rate increases, since organized opposition to the tax is increasingly cost-justified as tax burdens increase.[56] The same reason also suggests that the political costs of a tax will increase as the costs to comply with the tax increase.[57] Political costs are also likely to increase as costs to administer the tax increase, since diminished net revenues attributable to higher administrative costs necessitate higher tax rates or other taxes to

---

[52] Gillespie, *supra* note 12 at 17. Jean Baptiste Colbert made a similar point long ago, explaining that: "The art of taxation consists in so plucking the goose as to obtain the largest amount of feathers with the least amount of hissing."
[53] *Ibid*. at 18.
[54] *Ibid*.
[55] For more general discussions, see *ibid*. at 20-32; and Hartle, *supra* note 22 at 41-54. The factors considered in the text are by no means comprehensive, omitting for example several of those discussed in Gillespie, *supra* note 12. Indeed, Gillespie himself emphasizes that "[t]here may well be" determinants of political costs other than those that he identifies, explaining that "[t]he model is general enough to permit the appropriate adaptations." *Ibid*. at 31. For the purpose of this paper, I discuss only those factors that seem most relevant to the decline and abolition of wealth transfer taxes, particularly in Canada, Australia and New Zealand.
[56] Gillespie, *supra* note 12 at 21. To the extent that adverse economic consequences associated with different taxes increase as rates increase, this effect is a further reason why the political costs of a tax are likely to increase at its rate increases.

maintain revenues – both of which involve political costs.[58] Conversely, the political costs of a tax tend to be lower where the number of taxpayers is large, since the burden is spread widely and the costs of organized opposition substantial.[59] As the number of taxpayers affected by an established tax increases, however, political costs can be expected to increase because groups opposing the tax are likely to attract new members.[60]

Other important determinants of the political costs of taxes include vertical tax competition (the occupation of the same revenue source by different levels of government in a federal system), horizontal tax competition (the pursuit of mobile revenue sources by different national or sub-national governments), and base elasticity (the extent to which revenues automatically increase with economic growth). In principle, the occupation of a revenue source by one level of government tends to increase the political cost of its imposition by another level of government, since at least some organized opposition to the tax is likely to exist already, the collection of tax by the second government increases the effective rate of the tax, and the first government itself can be expected to oppose the measure.[61] Political costs are also high for mobile revenue sources, since those subject to the tax may threaten to or actually relocate these sources to jurisdictions with lower taxes,

---

57 *Ibid*. at 29-30; and Hartle, *supra* note 22 at 52 (observing that higher compliance costs "can be thought of as an increase in the tax burden").
58 Gillespie, *supra* note 12 at 29-30; and Hartle, supra note 22 at 52.
59 Gillespie, *supra* note 12 at 22-23; and Hartle, supra note 22 at 48. The political costs of a tax may also be reduced by introducing concessions for narrow and special interest groups who are generally well-informed about taxes that affect them and already represented by organized interest groups. On the politically efficient use of tax concessions, see *ibid*. at 37-39.
60 Gillespie, *supra* note 12 at 22-23.
61 *Ibid*. at 27-28. See also Hartle, *supra* note 22 at 49 (explaining that governments are likely to oppose occupation of the same revenue source by another level of government because "taxpayers may incorrectly assign the 'blame' to the 'wrong' government; second, taxpayer opposition probably mounts exponentially as effective rates rise on a given base [so that] the political costs of future revenue increases by the 'prior' occupant are raised even further; [and] thirdly, with higher tax rates evasion and avoidance becomes increasingly attractive and enforcement costs are raised").

thereby depriving the higher-tax jurisdiction of revenue and economic activity.[62] Base elasticity, on the other hand, decreases the political costs of a tax, since economic growth allows governments to increase spending without having to increase effective tax rates.[63]

A final factor affecting the political costs of taxes is what W. Irwin Gillespie describes as "tax preference" – a preference for one kind of tax versus another notwithstanding that amounts owing under each tax would be identical.[64] While different tax preferences might turn on compliance costs or other non-revenue impacts,[65] they might also depend on judgements about the appropriateness or fairness of alternative revenue sources.[66] As Gillespie explains, a preference for one tax over another "could arise because one revenue source is judged by citizens to be the product of their own, meritorious efforts (say, labour income), whereas another revenue source is judged not to be the result of hard work (say, an inheritance, a gift or a lottery win)."[67] Alternatively, he suggests, different tax preferences might exist "because one revenue source is judged by taxpayers to have unhealthy, immoral or sinful connotations (expenditures on alcoholic beverages and tobacco products), whereas the connotations of another revenue source are seen as healthy, moral or meritorious (expenditures on milk, footwear and clothing for children and expenditures on charitable donations)."[68] Whatever the reasons for these tax preferences, the political cost to introduce, maintain or increase a tax for which a large

---

[62] Gillespie, *supra* note 12 at 28-29.
[63] *Ibid*. at 30.
[64] *Ibid*. at 26 (hypothesizing that voters "may not be indifferent between two revenue sources, for each of which the tax per dollar's worth of tax base could be equal for a given taxpayer").
[65] See, e.g., *ibid*. (suggesting that different tax preferences "could arise because verification of one revenue source interferes more directly in the conduct of a citizen's affairs (say, a direct tax on incomes, compared with an indirect tax on imports)").
[66] *Ibid*. at 27 (noting that voters may be less politically opposed to taxes that are perceived to be fair than they are to taxes that are perceived to be unfair).
[67] *Ibid*. at 26.
[68] *Ibid*.

number of voters have a lower preference will be greater than the political cost to introduce, maintain or increase a tax for which a large number of voters have a greater tax preference.[69]

Having identified some of the key factors affecting the political costs of different taxes, it is possible to speculate on various reasons why these political costs might change over time. Changes in government expenditures, for example, are likely to affect the political costs of taxes – increasing these costs where rates are increased or exemptions reduced in order to finance increased spending, and decreasing these costs where spending reductions allow taxes to be cut. Actions by other governments can also affect the political costs of different taxes – increasing these costs where other levels of government introduce or increase taxes on the same revenue source, but decreasing these costs where neighbouring governments at the same level introduce or increase taxes on the same revenue source. Another reason why the political costs of different taxes might change involves broader economic changes, as increasing economic integration has undoubtedly increased the political costs of taxes on mobile revenue sources. Inflation can also increase the political costs of a tax, if exemptions are not indexed or adjusted to offset their declining real value. Finally, ideological shifts are likely to change the political costs of different taxes to the extent that they influence people's preferences for different kinds of taxes. For public choice theories of political efficient revenue structures, however, the reasons for changes in the political costs of different taxes are considered exogenous and not themselves subjects of inquiry.

[69] *Ibid*.

III. Wealth Transfer Taxes in Canada, Australia and New Zealand

Wealth transfer taxes were first introduced in the Australian colonies and New Zealand in the second half of the nineteenth century,[70] and by all Canadian provinces between the years 1892 and 1903.[71] In Australia and New Zealand, these taxes were generally based on the estates of persons domiciled in the taxing jurisdiction, though Queensland and South Australia opted for succession duties with rates and exemptions applied to amounts received by beneficiaries,[72] and New Zealand's tax depended both on the size of the estate and the degree of consanguinity between the beneficiary and the deceased.[73] In Canada, the constitutional restriction on provincial taxing powers to "Direct Taxation within the Province"[74] meant that provinces limited their death duties to property situated within the province upon the death of the owner, and to property situated outside the province only if the deceased was domiciled in the province and the

[70] On the early history of death duties in the Australian colonies, see Julie P. Smith, *Taxing Popularity: The Story of Taxation in Australia*, (Canberra: Federalism Research Centre, 1993) at 16-18. For a history of the estate tax in New Zealand, see L. McKay, "Historical Aspects of the Estate Tax" (1978), 8 *N.Z.U.L. Rev.* 1. In Australia, New South Wales enacted the first death duty in 1851. Tasmania followed in 1865, Victoria in 1870, South Australia in 1876, Queensland in 1886, and Western Australia in 1895. In New Zealand, a tax on estates was first introduced in 1866.

[71] J. Harvey Perry, *Taxes, Tariffs, & Subsidies: A History of Canadian Fiscal Development*, (Toronto: University of Toronto Press, 1955), Vol. 1 at 110-111. See also George E. Carter, "Federal Abandonment of the Estate Tax: The Intergovernmental Fiscal Dimension" (1973) 21 *Can. Tax J.* 232 at 233. Ontario was the first Canadian province to introduce a succession duty, which was modeled closely after similar legislation enacted a few years earlier in the states of New York and Pennsylvania. R.A. Bayly, *Succession Duty in Canada*, (Toronto: The Carswell Company, Limited, 1902) at 10. Later that year, succession duties were also introduced in Quebec, New Brunswick, and Nova Scotia. Manitoba enacted a succession duty in 1893, and British Columbia and Prince Edward Island followed the next year. Alberta and Saskatchewan introduced similar levies in 1903 under the Northwest Territories Ordinance.

[72] Peter Saunders, "An Australian Perspective on Wealth Taxation," in John G. Head, ed., *Taxation Issues of the 1980s*, (Sydney: Australian Tax Research Foundation, 1983) 397 at 398. In South Australia, legislators favoured the latter approach on the grounds that "a man should leave his property to several persons instead of one only". *Parliamentary Debates*, 1893, I, 342, cited in Stephen Mills, *Taxation in Australia*, (London: McMillan & Co., 1925) at 140.

[73] McKay, *supra* note 70 at 1. In 1881, the legislature abandoned the succession duty basis of the tax, adopting a pure estate-type tax with an exemption and progressive rates based on the size of the estate. In 1909, however, a succession duty was reintroduced to operate in tandem with the estate tax. *Ibid*. at 3-4.

[74] *Constitution Act, 1867*, s. 92(2).

beneficiary was resident or domiciled in the province.[75] Rates were determined both by the value of the estate and by the relationship between the deceased and the beneficiary.[76]

In each of these jurisdictions, wealth transfer taxes were the first major direct taxes to be imposed, marking a major departure from an earlier era in which governments were financed almost entirely from customs duties and excise taxes.[77] Although the introduction of these taxes reflected an important political shift from regressive indirect taxes to progressive direct taxes,[78] their primary rationale appears to have been to raise revenue.[79] In Australia, revenues from estate duties exceeded 30 percent of total State tax revenues in 1909/10,[80] and continued to account for a significant share of State tax revenues until the late 1960s.[81] In Canada, provincial succession duties accounted for almost 40 percent of provincial tax revenues in 1913,[82] and remained substantial contributors to provincial finances until 1946, when most provinces ceded occupancy of

---

[75] Carter, *supra* note 71 at 233. For a summary of the leading constitutional cases that shaped the evolution of provincial succession duties in Canada, see G.V. LaForest, *The Allocation of Taxing Power Under the Canadian Constitution*, Canadian Tax Paper No. 65 (Toronto: Canadian Tax Foundation, 1981) at 106-09. For a more detailed analysis of the impact of Canadian constitutional law on the design of these succession duties, see Wolfe D. Goodman, "Provincial Wealth Taxes," In *Report of the Proceedings of the Twenty-Third Tax Conference*, 1971 Conference Report, (Toronto: Canadian Tax Foundation, 1972) at 29 (contending that provincial succession duties could have applied to all amounts received by beneficiaries resident or domiciled in the province without violating the constitutional provision limiting provincial taxing powers). That provincial succession duties could also apply to amounts received by resident beneficiaries regardless of the domicile or residence of the deceased, was subsequently established in *Attorney-General of British Columbia v. Ellett Estate* [1980] CTC 338 (SCC).

[76] Carter, *supra* note 71 at 233.

[77] Smith, *supra* note 70 at 16; Philipps, *supra* note 9 at 91.

[78] Smith, *supra* note 70 at 16; Philipps, *supra* note 9 at 93-94 (contending that political agitation for direct taxation was much more muted in Canada than in the United States).

[79] Smith, *supra* note 70 at 17 (referring to Australia); McKay, *supra* note 70 at 1 (referring to New Zealand); and Perry, *supra* note 71 at 109 (referring to Canada).

[80] Calculated from figures in R.L. Mathews and W.R.C. Jay, *Federal Finance: Intergovernmental Financial Relations in Australia since Federation*, (Melbourne: Thomas Nelson Australia Ltd., 1972) at 83 (Table 11).

[81] Although the contribution of estate duties to State tax revenues decreased to 15.1 percent in 1918/19, 12.0 percent in 1928/29 and 7.6 percent in 1938/39, this share increased to 24.1 percent in 1948/49 (after the states abandoned their income taxes to the Commonwealth government during the Second World War), and exceeded 18 percent in 1958/59 and 16 percent in 1968/69. Calculated from figures in *ibid*. at 100, 166, 194, 230, and 247 (Tables 14, 21, 24, 34, and 38). For a breakdown among different States in the years after the Second World War, see Saunders, *supra* note 72 at 398-99.

this field to the federal government.[83] In New Zealand, the estate tax accounted for 13.5 percent of government revenues in 1915, but declined thereafter.[84]

Revenue considerations were also central to the decision of the Commonwealth government in Australia to enact a national estate duty in 1914, and the decision of the federal government in Canada to enact a succession duty in 1941. In Australia, estate duty and income tax were enacted in order to help finance participation in the First World War, after revenues from customs and excise duties collapsed due to the disruption of trade.[85] In Canada, where a federal income tax was enacted primarily for revenue reasons during the First World War,[86] the main justification by Minister of Finance J.L. Ilsley for the introduction of a federal succession duty was "the compelling need for revenue" to fight the Second World War.[87] At the same time, he emphasized, since the provinces had "not fully occupied" the field, there was "room for an additional and independent

---

[82] Calculated from figures in Perry, *supra* note 71 at 123 (Table VII).

[83] The contribution of succession duties to provincial tax revenues was almost 30 percent in 1937 and over 20 percent in 1946, but declined thereafter to 6.9 percent in 1949, 4.8 percent in 1959, and 2.0 percent in 1969. Calculated from figures in Statistics Canada, *Historical Statistics of Canada*, H92-112. Provincial governments, net general revenue by major source, selected years, 1933 to 1969, available on the web at http://www.statcan.ca/english/freepub/11-516-XIE/sectionh.htm#Fed%20Gov%20Fin. While succession duties obviously accounted for a larger share of tax revenues in those provinces that collected their own taxes (Ontario and Quebec until 1963 and British Columbia thereafter), the relative role of these taxes also declined in the postwar period, falling to 9.2 percent in Ontario and 6.1 percent in Quebec in 1958/59 and 3.2 percent in British Columbia, 2.7 percent in Ontario, and 2.4 percent in Quebec in 1968/69. Calculated from figures in *Provincial Finances 1969*, (Toronto: Canadian Tax Foundation, 1969) at 207, 211, and 224 (Tables 53, 55, and 63).

[84] As a percentage of total government revenue, the estate tax declined to 9.1 percent in 1925, 8.8 percent in 1935, 4.6 percent in 1945, 4.0 percent in 1955, 2.5 percent in 1965, and 1.4 percent in 1975. McKay, *supra* note 70 at 21 (Table I). By 1985, the share of tax revenues represented by the estate tax fell to 0.2 percent. OECD, *supra* note 3.

[85] Mathews and Jay, *supra* note 80; and Smith, *supra* note 70 at 45. Although the estate duty included gifts made within a year of death, a separate gift tax was not enacted until 1942.

[86] On the origins of the federal income tax in Canada, see Richard Krever, "The Origin of Federal Income Taxation in Canada" (1981), 3 *Canadian Taxation* 170.

[87] Hon. J.L Isley, Minister of Finance, *Budget Speech*, 29 April 1941, (Ottawa: King's Printer, 1941) at 16 (adding that "[d]eath duties, in general, are a very good type of tax, second only to income tax in their essential fairness and the possibilities of adjusting them progressively to ability to pay"). The succession duty was based partly on the share of the estate received by each beneficiary, partly on the size of the estate, and partly on the relationship between the beneficiary and the deceased. In 1958, this tax was

dominion tax" as a permanent source of federal revenue.[88] As a percentage of total tax revenues, however, federal wealth transfer taxes in Australia and Canada were never very large, accounting for only 2 to 4 percent of federal tax revenues in Australia from 1914 to 1940 and no more than 1.4 percent of federal tax revenues in the post-war period,[89] and contributing no more than 1.7 percent of federal tax revenues in Canada.[90]

In Australia, the introduction of the national estate duty led to a lengthy period in which the Commonwealth and State governments jointly occupied the wealth transfer tax field. Despite recurring proposals to allocate this revenue source solely to the States,[91] or solely to the Commonwealth government,[92] joint occupancy continued until the taxes were repealed at both levels of government in the 1970s and early 1980s. As a result, although the Commonwealth and State governments cooperated to some extent in the administration of these taxes,[93] Australia's "double or duplicative" wealth transfer tax

---

replaced by an estate tax with progressive rates based solely on the aggregate value of the estate. A gift tax had been introduced in 1935, primarily to discourage income-splitting under the federal income tax.

[88] *Ibid*.

[89] Saunders, *supra* note 72 at 398-99.

[90] Figures calculated from Statistic Canada, *Historical Statistics of Canada*, [H75-91. Federal government, net general revenue by major source, selected years, 1933 to 1969](http://www.statcan.ca/english/freepub/11-516-XIE/sectionh/sectionh.htm#All%20Gov), available on the web at http://www.statcan.ca/english/freepub/11-516-XIE/sectionh/sectionh.htm#All%20Gov.

[91] At the Premiers Conference in 1926, for example, the Commonwealth proposed to vacate the estate duty and other revenue sources to the States in exchange for the abolition of per capita grants. The States rejected the proposal for a number of reasons, including the absence of any guarantee that a subsequent Commonwealth Government would not re-enter the field. Mathews and Jay, *supra* note 81 at 120. Likewise in 1974, the Senate Standing Committee on Finance and Government Operations recommended that the Commonwealth government vacate the field of estate and gift duty, subject to the States agreeing on uniform legislation and rates of duty. Senate Standing Committee on Finance and Government Operations, *Report on Death Duties*, (Canberra: Australian Government Publishing Service, 1974).

[92] In 1975, for example, the Taxation Review Committee (Asprey Committee) recommended a single national estate and gift duty administered by the Commonwealth government, with a portion of revenues shared with the States based on "the domicile of deceased persons and donors domiciled within the State and property within the State of deceased persons and donors domiciled outside Australia." Taxation Review Committee, *Full Report*, (Canberra: Australian Government Publishing Service, 1975) at 24.74., available on the web at http://setis.library.usyd.edu.au/oztexts/parsons.html.

[93] Saunders, *supra* note 72 at 400.

system was a source of considerable complexity and high compliance and administration costs.[94]

In Canada, complete joint occupancy lasted only from 1942 to 1946, when all provinces but Ontario and Quebec agreed to withdraw from the collection of succession duties as well as personal and corporate income taxation in return for unconditional grants from the federal government.[95] In order to relieve the estates of decedents in Ontario and Quebec from the combined burden of federal and provincial taxes, the federal succession duty was amended to provide a credit for provincial succession duties up to 50 percent of the federal tax otherwise payable.[96] In 1957, the unconditional grant system was replaced by a series of agreements under which most provinces continued to relinquish succession duties to the federal government in exchange for "rental payments" equal to 50 percent of federal collections of succession duties in each province.[97] In Ontario and Quebec, which refused to "rent" their succession duties to the federal government, the federal tax was reduced in the form of a 50 percent abatement that replaced the former tax credit.[98] In 1964, British Columbia withdrew from this "tax rental agreement" and began to collect its own succession duty, receiving the same abatement

---

[94] Willard H. Pedrick, "Oh, to Die Down Under! Abolition of Death and Gift Duties in Australia" (1981), 35 *Tax Lawyer* 113 at 119. See also Peter Groenewegen, "Options for the Taxation of Wealth" (1985), 2 *Australian. Tax Forum* 305 at 315 (attributing the unpopularity of death duties in Australia in part to "their high compliance costs for taxpayers, the size of which was strongly influenced by the fact that death duties were a major area of Federal-State duplication"); and Taxation Review Committee, *supra* note 92 at 24.71 (acknowledging criticism of the death duties then in force "on grounds of the complexity of separate Commonwealth and State taxes and the considerable costs in administration and compliance that result").

[95] Carter, *supra* note 71 at 235.

[96] *Ibid*. at 235-37 (explaining that the credit did not always relieve the combined burden of both taxes).

[97] *Ibid*. at 236 (adding that these revenues were supplemented by an equalization component designed to raise the per capita yields in each participating province up to the per capita yield in the two provinces having the highest per capita yields).

[98] *Ibid*. (emphasizing that the substitution of the abatement for the tax credit "amounted to a change merely in form, not in substance").

as was available in Ontario and Quebec.[99] The next year, federal rental payments for this revenue source were increased to 75 percent, with a corresponding increase in the abatement allowed under the federal tax.[100] While British Columbia increased its succession duty to take full advantage of this abatement, Ontario and Quebec left their succession duties unchanged, opting to receive rental payments equal to 25 percent of federal collections in their provinces.[101] As a result, while federal-provincial agreements simplified the collection of wealth transfer taxes in seven of ten Canadian provinces, the combination of federal and provincial taxes in the remaining three was as complicated and "duplicative" as the system in Australia. More importantly, perhaps, the federal government's agreement to return 75 percent of federal wealth transfer tax revenues to the province where the tax was collected (or to abate the federal tax by up to 75 percent where a province collected its own tax) might be expected to significantly weaken its commitment to the tax. As the following sections demonstrate, however, complexity and revenue yield are only two of many reasons why wealth transfer taxes were abolished in Canada, Australia and New Zealand.

A. The Abolition of Wealth Transfer Taxes in Canada

The specific events leading to the abolition of wealth transfer taxes in Canada began somewhat innocuously with the appointment of a Royal Commission on Taxation (the Carter Commission) in 1962, unfolded at the federal level between 1967 and 1971 as the federal government responded to the Report of the Carter Commission, and continued

[99] *Ibid*.
[100] *Ibid*.
[101] *Ibid*.

at the provincial level over the following fourteen years. This section examines each of these phases.

1. The Carter Commission: 1962- 1967

Promised by Progressive-Conservative Prime Minister John Diefenbaker in the opening speech of his 1962 election campaign,[102] an independent commission had long been favoured by tax professionals and business leaders as a vehicle to reduce progressive rates, simplify administration and enforcement, and address technical anomalies in the income tax.[103] When the Progressive-Conservative Party formed a minority government after the election, Diefenbaker announced the appointment of a Royal Commission comprising mainly professionals and businesspersons and chaired by Toronto accountant Kenneth Carter.[104] The Carter Commission's terms of reference were extremely broad, involving a review of all aspects of federal taxation including "income, sales and excise taxes and estate duties".[105]

Given its origins and its membership, there was every reason to expect that the Commission would affirm the prevailing "tax orthodoxy" of business and professional commentators that taxes were too high, that indirect sales or value-added taxes should be considered as alternatives to high income taxes, and that wealth transfer taxes were

---

[102] "The Vital Pledge", *The Globe and Mail* (7 May 1962) at 6.

[103] See Les MacDonald, "Why the Carter Commission Had To Be Stopped," in Brooks, *supra* note 24, 351 at 351-53. The main technical issues involved the characterization of isolated transactions as taxable business income or non-taxable capital gains, and "surplus stripping" transactions designed to convert taxable dividends into non-taxable capital gains.

[104] Of the six members of the Commission, three were "acknowledged authorities in tax circles, with impeccable professional and business connections", one was a lawyer and General Manager of the Nova Scotia Trust Company, another was Treasurer of the National Council of Women and had previously managed the western Canadian branch of an insurance firm, and the last was Manager of the British Columbia Federation of Agriculture and an Executive Director of the Canadian Federation of Agriculture. *Ibid*. at 353.

[105] Order in Council, P.C. 1962-1334 (25 September 1962), reproduced in Royal Commission on Taxation (Carter Commission), *Report*, (Ottawa: Queen's Printer, 1966), Vol. 1, at v.

causing Canadian family businesses to be sold to foreigners.[106] Indeed, submissions to the Commission, most of which were from the same business and professional interests which had pushed for its establishment,[107] tended to repeat these views in more technical form.[108] According to the Shoe Manufacturers' Association of Canada, for example, "[t]he unreasonably high level of succession duties has been the largest single factor both in encouraging the sellout of Canadian enterprises to foreign interests and in eliminating from the economic scene continuing independent family businesses."[109] The Canadian Bar Association decried the "excessive amount of property" that was tied up for long periods of time in trusts to avoid wealth transfer taxes, concluding that these arrangements "frequently restrict the company's proper development and expansion and may add to production costs."[110] On the basis of these and other submissions, Canada's leading financial newspaper concluded that "the economic damage" caused by these taxes was "staggering." [111]

As well as accepting submissions, the Commission embarked on an ambitious research programme, lasting four years and costing approximately $4 million.[112] Among 27 research studies, one found no evidence that the estate tax was a major factor in the sale of small businesses.[113] Others challenged the non-taxation of capital gains, which were traditionally excluded from the source concept of income that Canada had borrowed

---

[106] MacDonald, *supra* note 103 at 354.
[107] According to one commentator, over half of the submissions to the Commission came from business organizations while less than 5 percent were from labour and employee organizations. Robert Gardner, "Tax Reform and Class Interests: The Fate of Progressive Reform, 1967-72" (1981), 3 *Canadian Taxation* 245 at 246, n. 9. For a list of submissions received by the Commission, see Royal Commission on Taxation, *supra* note 105, Vol. 1, Appendix A, at 121-30.
[108] MacDonald, *supra* note 103 at 354.
[109] Reported in "Nation's Business: The dead hand of death duties," *Financial Post* (1 February 1964), p. 1.
[110] *Ibid*.
[111] *Ibid*.
[112] John G. Head, "Evolution of the Canadian Tax Reform" (1973), 1 *Dalhousie L.J.* 51.

from the United Kingdom.[114] Another study examined the incidence of taxation Canada, concluding that the tax system as a whole was regressive for at least the poorest third of Canadian families and possibly more.[115] After much delay, and two intervening elections resulting in Liberal minority governments, the Commission's six-volume Report was finally released in February 1967.

Of the Commission's many recommendations, the most central was its conclusion that "taxes should be allocated according to the changes in the economic power of individuals and families."[116] Emphasizing that "[t]he first and most essential purpose of taxation is to share the burden of the state fairly among all individuals and families",[117] a majority of the Commissioners rejected any distinction among different sources of changes to a taxpayer's economic power,[118] proposing a "comprehensive tax base" according to which the "all the net gains … of each tax unit" should be subject to tax "on

---

[113] John G. Smith, D.B. Fields, and E.J. Mockler, *Death Taxes*, Studies of the Royal Commission on Taxation, Number 11 (December 1964) at 18-20.

[114] Geoffrey R. Conway and John G. Smith, *The Taxation of Capital Gains and the Law Concerning Capital Gains*, Studies of the Royal Commission on Taxation, Number 19 (1966); and Douglas J. Sherbaniuk, *The Concept of Income – The Receipts Side*, Studies of the Royal Commission on Taxation, Number 20 (February 1967).

[115] W. Irwin Gillespie, *The Incidence of Taxes and Public Expenditures in the Canadian Economy*, Studies of the Royal Commission on Taxation, Number 2 (1966).

[116] Royal Commission on Taxation, *supra* note 105, Vol. 1, at 9. See also ibid., Vol. 3, at 39 (suggesting that taxes should be based on "the sum of the market value of goods and services consumed or given away in the taxation year by the tax unit, plus the annual change in the market value of the assets held by the unit"). In adopting this approach, the Commission was obviously inspired by the broad definitions of income formulated by U.S. economists Robert Haig and Henry Simons. See R.M. Haig, "The Concept of Income – Economic and Legal Aspects," in R.M. Haig, ed., *The Federal Income Tax*, (New York: Columbia University Press, 1920) 27 at 59 (defining income as "the money value of the net accretion to one's economic power between two points of time"); and Simons, *supra* note 14 at 50 (defining personal income as "the algebraic sum of (1) the market value of rights exercised in consumption and (2) the change in the value of the store of property rights between the beginning and end of the period in question").

[117] Royal Commission on Taxation, *supra* note 105, Vol. 1, at 4.

[118] *Ibid*. at 9 (emphasizing that if a person "obtains increased command over goods and services for his personal satisfaction we do not believe it matters, from the point of view of taxation, whether he earned it through working, gained it through operating a business, received it because he held property, made it by selling property or was given it by a relative").

an annual basis".[119] Among the implications of this approach, gifts and inheritances would be included in the comprehensive tax base for the year in which they were received,[120] and capital gains and losses would be fully recognized on an accrual basis irrespective of any sale.[121] For administrative reasons, however, the Commission retreated from accrual treatment for capital gains and losses, recommending instead that these gains and losses should be recognized on a realization basis, as well as when property is transferred by way of gift or on death.[122] Since gifts and inheritances would be included in the recipient's income, the Commission also recommended that separate wealth transfer taxes should be repealed.[123] Other key recommendations included the introduction of a family tax unit (including dependent children),[124] a reduction in the top marginal rate from 80 percent to 50 percent,[125] the complete integration of corporate and personal income taxes,[126] and a dramatic reduction in tax concessions for income from mineral and petroleum extraction.[127]

2. Federal Reform: 1967-1971

While the Commission's Report was hailed by leading tax academics as "a landmark in the annals of taxation",[128] affluent individuals and the business and professional interests that pushed for the Commission's formation were overwhelmingly

---

[119] *Ibid.*, Vol. 3, at 39. Two Commissioners (Beauvais and Grant) dissented from this recommendation. See *ibid.*, Vol. 1, at 51-111.
[120] *Ibid.*, Vol. 3, at 41.
[121] *Ibid.*
[122] *Ibid.* at 368-80.
[123] *Ibid.* at 473 and 513
[124] *Ibid.*, chapter 10.
[125] *Ibid.*, chapter 11.
[126] *Ibid.*, Vol. 4, chapter 19.
[127] *Ibid.*, chapter 23.
[128] Arnold C. Harberger, "A Landmark in the Annals of Taxation" (1968), *Can. J. Econ.*, Supplement No. 1, 183-94. See also Head, *supra* note 112 at 52.

negative.[129] Although a reduction in the top marginal rate and repeal of wealth transfer taxes would provide some benefit for affluent individuals, this would be more than offset by the full taxation of capital gains and the inclusion of gifts and inheritances in income. While the Report estimated that 64 percent of Canadian taxpayers would pay lower taxes under its proposals, these reductions averaged only about 5 percent of taxes otherwise payable and were generally limited to taxpayers with incomes of less than $35,000 in 1964.[130] In contrast, 27,000 taxpayers with incomes over $35,000 could have expected to pay an additional $1,000 on average, while an estimated 633 individuals with incomes over $300,000 could have expected to pay an average of more than $67,000 in additional taxes.[131] The mining industry stood to lose the most, as the Report's proposed withdrawal of net depletion allowance and a three-year tax holiday were expected to increase its taxes by more than 100 percent – most of which would have been paid by the 15 largest companies.[132] Not surprisingly, therefore, mining companies led organized opposition to the Report, threatening the cessation of Canadian investments, and enlisting the support of premiers from Western provinces where the extraction industries predominated.[133]

At the end of April 1967, then Finance Minister Mitchell Sharp announced a timetable to deal with the Report, inviting comments on the major recommendations by September of that year, and promising a White Paper incorporating the government's

[129] See, e.g., the detailed review in Gardner, *supra* note 107. See also Meyer Bucovetsky and Richard M. Bird, "Tax Reform in Canada: A Progress Report" (1972), 25 *Nat. Tax J.* 15 at 17-18; and Head, *supra* note 112 at 58-59.
[130] Royal Commission on Taxation, *supra* note 105, Vol. 6 at 62, Table 36-7.
[131] MacDonald, *supra* note 103 at 360.
[132] Royal Commission on Taxation, *supra* note 105, Vol. 6 at 96 and 121.
[133] See, e.g., Bucovetsky and Bird, *supra* note 129 at 17-18; and Gardner, *supra* note 107 at 249.

proposals thereafter and draft legislation to be enacted by the end of 1968.[134] Within two weeks, however, Sharp responded to pressure from the mining industry by guaranteeing that the three year tax exemption for new mines would remain until the end of 1973, whatever decisions were made on the basis of the Report of the Royal Commission.[135] By autumn 1967, Sharp had received over a thousand responses, including 150 substantial submissions, mostly from corporations and business and professional organizations, and mostly critical.[136] While many of these submissions opposed the withdrawal of special tax preferences,[137] considerable criticism was also directed at the Commission's emphasis on fairness as "the first and most essential purpose of taxation" and at the comprehensive tax base in particular. Imperial Oil, for example, opposed the "sacrifice of economic growth to the commission's concept of equity."[138] The Trust Companies Association warned that the inclusion of gifts and inheritances in the income tax base "would remove a major incentive for Canadians to work and produce for the benefit of their families" resulting in a "very large annual disappearance of private capital".[139]

The Government's first official response to the Report came on November 30, 1967, when the Minister of Finance tabled the federal budget. Identifying as common

---

[134] Hon. Mitchell Sharp, "Tax Reform – The Fiscal Context," Address at Banquet of the Nineteenth Tax Conference, 24-26 April 1967, in *Report of Proceedings of the Nineteenth Tax Conference*, (Toronto: Canadian Tax Foundation, 1967) 471 at 473.

[135] *House of Commons Debates* (11 May 1967) at 111 (Hon. Mitchell Sharp) (assuring that "should the government decide to propose the removal of this incentive, it would not do so in a manner that would remove the exemption with respect to income earned before January 1, 1974, nor would it in any essential manner change the method of application of that exemption before that date").

[136] Gardner, *supra* note 107 at 248.

[137] According to Graham Hodgson, "More than 100 oil industry briefs oppose recommendations of Carter tax report" *Globe and Mail* (26 September 1967) p. B1, for example, over 100 protesting submissions were made by the oil industry alone.

[138] Imperial Oil Limited, "Submission to the Minister of Finance Regarding The Recommendations of the Royal Commission on Taxation," (September 1967), p. A-10, cited in Gardner, *supra* note 107 at 248.

[139] Trust Companies Association of Canada, "To: The Honourable Mitchell Sharp Minister of Finance. Re: Report o the Royal Commission on Taxation" (September 1967), p. 2, cited in Gardner, *supra* note 107 at 250.

concerns in the submissions that he had received both the uncertain impact of such far-reaching reforms and the need to attract foreign capital, Sharp announced that whatever proposals the Government would “place before parliament and the public in the form of a White Paper and ultimately in draft legislation” would “undoubtedly be influenced” by the Report of the Commission, but “will be more in the nature of reforms to the existing tax structure rather than the adoption of a radically different approach.”[140] In other words, the Government would adopt a more piecemeal approach to tax reform, rather than the comprehensive framework adopted by the Commission. Before any more specific proposals could be formulated, however, the Government was thrown into turmoil when then Prime Minister Lester Pearson announced his intention to resign in December 1967 and a leadership race and federal election intervened.[141]

With a new Liberal Government under Prime Minister Pierre Trudeau, the promised White Paper was predictably delayed. In April 1968, the new Finance Minister Edgar Benson announced a change in the government’s tax reform schedule, explaining that major reforms would not be presented until some time in 1969.[142] In the interim, however, the Government signalled its rejection of the Commission’s comprehensive tax base by introducing major revisions to the federal gift and estate taxes in the October 1968 federal budget: exempting inter-spousal transfers, integrating these taxes in the form of a cumulative progressive tax, and increasing rates on estates valued at less than $5

[140] *House of Commons Debates* (30 November 1967) at 4906 (Mr. Mitchell Sharp).
[141] As a contender in the race for leadership of the Liberal Party, Sharp insisted that he was in no position to take a public stance on tax reform. Hartle, *supra* note 24 at 412. Before the leadership campaign came to an end, however, Sharp withdrew in favour of Pierre Trudeau, who became Liberal leader and Prime Minister on April 6, 1968. Under Trudeau, the Liberals called a federal election for June 25, 1968, which they won handily and formed a majority government.
[142] Head, supra note 112 at 61.

million.[143] Defending the continued existence of a separate gift and estate tax, the Finance Minister explained that he respected "the intellectual coherence and elegance" of the Commission's recommendation, but that "the overwhelming weight of Canadian opinion is against it now, and many Canadian practices and institutions would be seriously disrupted if we embraced this proposal."[144]

Not surprisingly, given the increased impact on small and medium-sized estates, the amendments to the gift and estate tax generated considerable political opposition, particularly from owners of small businesses and family farms who had played a relatively minor role in opposition to the Royal Commission Report.[145] In Western Canada, where farming interests were particularly strong, the provincial governments of Alberta and Saskatchewan acceded to this sector by refunding the provincial share of the federal estate tax to estates from which it had been collected.[146] In these two provinces, therefore, estate taxes were effectively reduced by 75 percent.

In this context, the long-awaited White Paper was finally released on November 7, 1969.[147] Although explicitly rejecting the Commission's comprehensive tax base,[148] as

[143] *An Act to amend the Income Tax Act and the Estate Tax Act*, R.S. 1968-1969, c. 33. See, e.g., Michael B. Jameson, "Proposed Estate Tax Changes," in *Report of the Proceedings of the Twenty-First Tax Conference, 1968* (Toronto: Canadian Tax Foundation, 1969) 72.

[144] *House of Commons Debates* (22 October 1967), at 1685 (Mr. Edgar Benson).

[145] Gardner, *supra* note 107 at 251. See also Richard M. Bird, "Canada's Vanishing Death Taxes" (1978), 16 *Osgoode Hall L.J.* 133 at 137 (observing that the amendments to the federal gift and estate taxes "gave rise to considerable public outcry, to the point where it appears the whole experience may have made the government particularly cautious in this area when designing its major tax reform over the next few years").

[146] *Provincial Finances 1969*, (Toronto: Canadian Tax Foundation, 1969) at 58. In Alberta, this legislation came into effect on April 1, 1967. In Saskatchewan, refunds commenced on April 1, 1969. In its 1969 budget, the Government of Manitoba announced that it would also introduce legislation to refund the provincial share of the federal estate tax unless the federal government resolved the "competition for economic advantage" satisfactorily. Millie Goodman, "Checklist" (1969), 17 *Can. Tax J.* 155 at 161-62. The legislation, however, died on the Order Paper when a provincial election was called, and was not reintroduced by the social democratic New Democratic Party that came to power.

[147] Hon E.J. Benson, *Proposals for Tax Reform*, (Ottawa, 1969). For useful summaries of the White Paper's proposals, see Bucovetsky and Bird, *supra* note 129 at 18-20; and Head, *supra* note 112 at 61-67.

well as several other proposals such as family taxation[149] and the elimination of all resource tax incentives,[150] the White Paper agreed with the Commission Report that, as a general rule, capital gains should be fully taxable at ordinary rates.[151] In order to prevent the concurrent application of capital gains tax and estate tax "at a most inconvenient time", however, the White Paper rejected the Commission's proposal that capital gains should be recognized when property is transferred at death, recommending instead that "the person who inherits the assets be treated as if he had purchased them at their cost to the deceased" plus "part of the death taxes paid on the assets in question – the part that relates to the capital gain."[152] In the case of gifts, though, the White Paper recommended that capital gains be taxable in the year of the gift and that the person receiving the property be treated "as if he had purchased the asset for its fair market value."[153] Finally, and unexpectedly, the White Paper recommended that shareholders in widely-held Canadian corporations should be required to recognize accrued gains and losses every five years – though only half of these gains and losses would be recognized for tax purposes.[154]

In the White Paper itself, the Minister of Finance welcomed "public discussion of the proposals … before Parliament is asked to approve a bill to implement tax reform."[155]

---

[148] Benson, *supra* note 147, para. 3.3, at 36 (stating that the government "rejects the proposition that every increase in economic power, no matter what its source, should be treated the same for tax purposes").

[149] *Ibid*., para. 2.5, at 15 (noting that the Commission's proposed family unit would create a "tax on marriage").

[150] *Ibid*., para. 5.24, at 64 (concluding that "special rules are still needed for the mineral industry").

[151] *Ibid*., paras. 3.13-3.18, at 38 (proposing as well special rules to exempt gains on the sale of principal residences and to tax only half the gains of widely-held Canadian companies). In order to prevent retroactive application of the tax, the White Paper also proposed that tax should only apply to gains accruing after a stipulated "valuation day". *Ibid*., para. 3.16, at 38.

[152] *Ibid*., para. 3.42, at 42.

[153] *Ibid*., para. 3.41, at 42.

[154] *Ibid*., para. 3.33, at 40-41. This approach had been considered in the Commission's Report, but was not specifically recommended. Royal Commission on Taxation, *supra* note 105, Vol. 3, at 344 and 378-80.

[155] *Ibid*., paras. 1.1 and 1.4, at 5.

For this purpose, the Government's preferred vehicle was the parliamentary hearings on the White Paper conducted by the House of Commons Standing Committee on Finance, Trade and Economic Affairs and the Standing Senate Committee on Banking, Trade and Commerce. Unlike Congressional Committees in the United States, these committees had limited staff and minimal technical knowledge, and were completely unprepared for the difficult task of reviewing and commenting upon detailed tax proposals.[156] The Commons committee alone received 524 briefs and 1,093 letters, and heard 211 oral presentations from 820 individuals.[157]

The vast majority of these submissions were from corporations and business associations,[158] most of which were highly critical of the proposals to tax capital gains at ordinary rates and to tax accrued gains on widely-held shares every five years.[159] Many organizations also objected to the taxation of capital gains as well as gifts and estates, notwithstanding the White Paper's proposal to defer the recognition of gains on bequests until the property is ultimately sold.[160] The Ontario Government released a set of counter-proposals in June 1970, recommending significantly lower capital gains tax rates, taxation of accrued gains at death, and a simultaneous and substantial reduction in wealth transfer taxes.[161] Small business owners organized a broader campaign of public advertisements, letters, speaking tours, and rallies under the banner of the Canadian

---

[156] Bucovetsky and Bird, *supra* note 129 at 21.
[157] Standing Committee on Finance, Trade and Economic Affairs, *Eighteenth Report Respecting the White Paper on Tax Reform*, (Ottawa: Queen's Printer, 1970) at 5.
[158] Gardner, *supra* note 107 at 252.
[159] Bucovetsky and Bird, *supra* note 129 at 21; and Head, *supra* note 112 at 67-70.
[160] R.M. Bird and M.W. Bucovetsky, *Canadian Tax Reform and Private Philanthropy*, Canadian Tax Paper No. 58, (Toronto: Canadian Tax Foundation, 1976) at 34. See also the summary of various submissions in Hartle, *supra* note 22 at 66-72.
[161] Hon Charles MacNaughton, *Ontario Proposals for Tax Reform in Canada*, (Toronto: Department of Treasury and Economics, 1970).

Council for Fair Taxation, established in December 1969.[162] According to the group's founder and President, John Bulloch, the combination of capital gains tax and the estate tax amounted to "an attack on the middle-class values of hard work, thrift and initiative" and a "confiscation of the money and resources of the huge middle segment of the population".[163] At the height of the campaign, the Government was reported to be receiving protest letters at a rate of 7,000 each day.[164]

When the parliamentary committees reported in the fall of 1970, it was not surprising that they would "reflect in varying degrees the overwhelmingly hostile reaction of representatives of the business and professional organisations from whom the bulk of the brief and other submissions were received."[165] According to the Commons committee, the one-half inclusion rate for shares of widely-held corporations should be extended to all capital assets,[166] the five-year realization rule for these shares should be abandoned,[167] and the proposal to tax accrued gains at death should be restored in order to prevent indefinite deferral.[168] Since the last of these recommendations would, the committee noted, "magnif[y] the problem, brought to the committee's attention innumerable times, of the concurrent impact of the two taxes at the same time, at death," a further recommendation proposed a reduction of the federal estate tax "across the board, either by reducing the rates or by expanding the brackets."[169] The Senate

---

[162] See Gardner, *supra* note 107 at 252; and Philipps, *supra* note 9 at 133-34.

[163] Ronald Anderson, "Benson meets hostile response at public meetings on proposals" *Globe and Mail* (11 February 1970) p. 1.

[164] Ronald Anderson, "Tax reform fight found producing hysteria" *Globe and Mail* (21 February 1970) p. B1.

[165] Head, *supra* note 112 at 70. See also Bucovetsky and Bird, *supra* note 129 at 21 (concluding that their limited staff and minimal technical knowledge "meant that the two Committees were unlikely to serve as anything else than a sounding board for those segments of public opinion that were most vocal").

[166] Standing Committee on Finance, Trade and Economic Affairs, *supra* note 157 at 26.

[167] *Ibid*.

[168] *Ibid*. at 33.

[169] *Ibid*. at 33 and 34.

committee went further, recommending a distinction between short-term and long-term gains and a rate of tax on the latter limited to the lesser of 25 percent or half the marginal income tax rate of the taxpayer,[170] and the postponement of tax on transfers of property by gift as well as at death, with a carryover of the donor's cost to the recipient.[171] In addition, the committee suggested, the government "might well consider abandoning the estate tax field to the provinces."[172]

The Government, which had given itself room to manoeuvre by presenting its response to the Commission Report in the form of a White Paper rather than a budget,[173] substantially revised its proposals in light of the parliamentary committee reports and the organized opposition, releasing its final tax reform package in the form of draft legislation accompanying the federal budget on June 18, 1971.[174] Following the recommendations of the Commons committee, the draft legislation adopted a one-half inclusion rate for all capital gains and losses accruing after a designated valuation day,[175] dropped the White Paper proposal to tax accrued gains on widely-traded shares every five years,[176] and accepted the Carter Commission's original proposal to tax accrued gains when property is transferred on death as well as by gift.[177] Following the recommendation of the Senate committee, the Government decided to abandon the estate and gift tax field to the provinces.[178]

---

170 Standing Senate Committee on Banking, Trade and Commerce, *Report on the White Paper Proposals for Tax Reform Presented to the Senate of Canada*, (Ottawa, September 1970) at 59-60.
171 *Ibid*. at 61.
172 *Ibid*. at 45.
173 Bucovetsky and Bird, *supra* note 129 at 21 (explaining that the defeat of a budget constitutes a "want of confidence" requiring the government's resignation, while a White Paper constitutes "an expression of the thrust of government thinking that nonetheless provides freedom for alteration or strategic retreat").
174 Hon. E.J. Benson, *Summary of 1971 Tax Reform Legislation*, (Ottawa: Queen's Printer, 1971).
175 *Ibid*. at 30 and 32-33.
176 *Ibid*. at 30.
177 *Ibid*.
178 *Ibid*. at 33.

The reasons for the Government's decision were expressed in four short paragraphs in its *Summary of 1971 Tax Reform Legislation*. First, it explained, the combination of capital gains tax and estate tax at death "could in some instances result in substantial tax impact arising on the death of a taxpayer."[179] Second, it continued, "[a] reduction in federal estate taxes to the extent suggested by the Commons committee would result in a revenue loss of about half the $55 million now received by the federal government from this source" after payment of the provincial share to provincial governments.[180] Third, it concluded, "[t]wo provinces now return their entire share of estate taxes to estates and it is no longer possible to establish a uniform national system of death duties through federal legislation."[181] As a result, it concluded, "[i]n these circumstances, it has been decided that the federal government will vacate the estate and gift tax field on December 31, 1971."[182] Thus, it would seem, the introduction of capital gains tax at death, the low revenue yield for the federal government, and the disparate effects of federal and provincial joint occupancy of the field led to the repeal of the federal gift and estate tax. Unstated, of course, was the organized opposition to capital gains and wealth transfer taxes reflected in public campaigns and submissions to the parliamentary committees.

By sacrificing the federal gift and estate tax, the Government finally obtained the acquiescence of organized interest groups to the introduction of capital gains tax and the recognition of accrued gains at death. In a letter to the editor of the *Toronto Daily Star*, Canadian Council for Fair Taxation President John Bulloch praised the "highly

179 *Ibid*.
180 *Ibid*.
181 *Ibid*.
182 *Ibid*.

nationalistic" tax legislation for abolishing wealth transfer taxes "that would, in combination with capital gains taxes, have forced the sale of family businesses, frequently to foreign interests."[183] The construction industry and the Canadian Real Estate Association welcomed the repeal of the federal gift and estate tax because "the small builder is still the backbone of the residential construction industry."[184] The business press was generally favourable, characterizing the tax reform legislation as "a far superior tax plan" to the White Paper.[185] Aside from a critical editorial in the *Toronto Daily Star*,[186] and unfavourable commentary from a few Canadian tax academics,[187] the predominant public response to the repeal of the federal gift and estate tax was silence.[188]

In Parliament, where the Liberal Party held a comfortable majority, enactment of the draft legislation was never in doubt. While the Progressive-Conservative Leader of the Opposition criticized the Government for the inconsistency of amending the gift and estate tax in 1968 and repealing it three years later,[189] he and the members of his

[183] John F. Bulloch, Letter to the Editor, *Toronto Daily Star* (22 June 1971), p. 7.
[184] Kenneth B. Smith, "Budget, Tax Reaction" *Globe and Mail* (19 June 1971), p. B13.
[185] I.H. Asper, "Benson Iceberg Becomes Benson Compromise and a Political Timebomb is Defused," *Globe and Mail*, (19 June 1971), p. B3.
[186] "Santa to the rich," Editorial, *Toronto Daily Star* (30 June 1971), p. 6 (arguing that the abolition of federal wealth transfer taxes "clearly violates a principle to which society should give some deference: equality of opportunity. And it overlooks without justification a perfectly good source of government revenue"). The editorial proceeded to describe the repeal of the federal gift and estate tax as "but one example of Mr. Benson's depressingly long march from Carter's central concern with tax equity", adding that: "The people who would have directly benefited from its implementation were not heard in Ottawa: their small voices ignorant, and poor, were submerged in the flood of glossy briefs that poured into the capital from all the vested interests."
[187] See, e.g., Gordon Bale, Letter to the Editor, *Globe and Mail* (25 June 1971), p. 7 (describing repeal of the federal gift and estate tax as "tax regression rather than tax reform"). See also Richard M. Bird, "The Case for Taxing Personal Wealth" in *Report of the Proceedings of the Twenty-Third Tax Conference, 1971* (Toronto: Canadian Tax Foundation, 1972) 17 at 24 (defending wealth transfer taxes on "moral, social and economic grounds" and emphasizing the need for "a reaffirmation of the national interest in taxing wealth); and John Bossons, "Economic Overview of the Tax Reform Legislation" in *ibid*., 45 at 54 (concluding that the repeal of the federal estate tax "would provide a substantial windfall for a relatively small number of present wealth holders" equivalent to "a lump-sum transfer of approximately $4.5 billion to individuals who currently own wealth that would be taxed in future years under the estate tax").
[188] Bird, *supra* note 145 at 133.
[189] See, e.g., *House of Commons Debates* (23 June 1971) at 7307 (Mr. Stanfield) (arguing that "the minister put the country through a lot of turmoil and trouble by an increase in estate taxes in an attempt to reduce the

parliamentary caucus generally supported the decision to repeal the federal gift and estate tax. In fact, several complained that since provincial governments might continue to levy succession duties, the taxation of capital gains at death could create "extreme hardship" – particularly for family farms.[190] Only members of the social democratic New Democratic Party opposed abolition of the tax, criticizing the Government for abandoning the Prime Minister's campaign promise of a "Just Society" by ignoring equality of opportunity and tax progressivity.[191] After minor technical amendments, the draft legislation was passed on December 17, 1971, and came into effect on January 1, 1972.

tax on very small estates. Now, with great fanfare the minister announces its abolition, also for the very best of reasons"); and *ibid*. (17 December 1971) at 10572 (Hon. Robert Stanfield) (contending that after the reform of the estate tax in 1968, the minister of finance was "doing away with all of what he put before the House two years previously and all that he had fought for in the House").

[190] *Ibid*. (8 November 1971) at 9447 (Mr. Gordon Ritchie) (suggesting that the federal capital gains tax in combination with provincial estate taxes "will create extreme hardship in agriculture and in the farm units as we know them today"). See also *ibid*. (22 June 1971) at 7226 (Hon. Marcel J.A. Lambert) (arguing that with the introduction of a federal capital gains tax, "[t]he people for whom this means another tax on top of other taxes are the farmers and ranchers, particularly those who live in provinces where the removal of the estate tax is meaningless"); *ibid*. (8 November 1971) at 9416 (Mr. Cliff Downey) (suggesting that despite the abolition of the federal estate tax, "really there will be no respite for many people in this country in respect of estate taxes, simply because there has not been sufficient consultation with the provinces"); *ibid*. (9 November 1971) at 9483 (Mr. A.P. Gleave) (arguing that "I really do not see how you can have an estate tax as well as a capital gains tax applied to the farming industry. You can have one or the other, but I doubt that you can have both. If you have both the result will be a tax jungle because a number of provinces have indicated they are going to retain and even increase estate taxes"); *ibid*. (15 November 1971) at 9568 (Mr. Wallace Bickford Nesbitt) (suggesting that following the repeal of the federal estate tax, "[u]ndoubtedly some of the provinces will move into the estate tax field, as a result of which Canadians in certain parts of Canada will, in effect, be taxed doubly as compared with Canadians in other places"); and *ibid*. (15 November 1971) at 9589 (Hon. Marcel J.A. Lambert) (suggesting that federal and provincial estate taxes have contributed to foreign ownership of Canadian businesses, and are "the reason family businesses have been sold to strangers, whether they are from the United States or elsewhere").

[191] See, e.g., *ibid*. (14 September 1971) at 7803 (Mr. J. Edward Broadbent) (arguing that the abolition of the estate tax is detrimental to the principle of equality of opportunity, and that the Liberal party "which governs this country is the one which talks about equality of opportunity. This is the same party that is abolishing estate taxes. So much for justice in that area"); *ibid*. (15 September 1971) at 7840-41 (Mr. David Orlikow) (describing gift and estate taxes as "one of the basic features of every progressive tax system"); *ibid*. (17 September 1971) at 7955 (Mr. John Gilbert) (suggesting that the abolition of federal wealth transfer taxes "will further stratify the Canadian people into an economic caste system"); and *ibid*. (10 December 1971) at 10369 (Mr. John Burton) (arguing that "it is absolutely essential, if we are to have any sort of just society at all, to tax inherited wealth").

3. Provincial Aftermath: 1971-1985

At the provincial level, the federal government's decision to repeal the federal gift and estate tax was generally opposed.[192] Although the Province of Quebec had long favoured exclusive provincial jurisdiction of these taxes[193] and welcomed federal abandonment of the field,[194] most other provinces objected to the loss of revenue from federal rental payments and worried about the prospect of tax competition among provinces opting to collect their own succession duties.[195] Smaller provinces in particular complained about the lack of prior consultation and the absence of adequate notice to establish their own gift and succession duties, as well as the administration and collection costs that this would entail,[196] requesting the federal government to maintain the existing system of estate and gift taxation for at least a year from January 1, 1972, to give them time to address the implications of the federal proposal.[197] Although it refused to accede to this request, the federal government nonetheless offered to administer and collect provincially-imposed succession duties and gift taxes for a period of three years, provided that: (1) the agreements were entered into by at least four provinces; (2) that

---

[192] Carter, *supra* note 71 at 239.

[193] See, e.g., *Report of the Proceedings of the Federal-Provincial Conference, 1963* (Ottawa: Queen's Printer, 1964) at 47; and Prime Minister Pierre Trudeau, *The Taxing Powers and the Constitution of Canada*, Government of Canada Working Paper on the Constitution, (Ottawa: Queen's Printer, 1969) at 34.

[194] Michel Bélanger, Secretary of the Treasury Board, Province of Quebec, addressing the Canadian Tax Foundation's Twenty-Third Tax Conference, in *Proceedings of the Twenty-Third Tax Conference, 1971*, *supra* note 190 at 267 (stating that "[t]here is some benefit in having at least one more field of taxation where there will no longer be joint occupancy").

[195] See, e.g., H. Ian Macdonald, Deputy Treasurer and Deputy Minister of Economics, Province of Ontario, addressing Canadian Tax Foundation's Twenty-Third Tax Conference, in *ibid*. at 260 (criticizing the federal government's decision as "a withdrawal from fiscal leadership, an invitation to tax avoidance, and an undermining of the equity considerations which loom so large in the federal tax reform program"). Although provincial governments would gain some revenue over time from the taxation of accrued gains at death, revenue estimates suggested that these were unlikely to exceed revenue losses from the abolition of the federal estate tax. Bossons, *supra* note 187 at 56 (projecting annual losses for all provincial governments of $16o million in 1972, growing to $451 million in 2002). For a similar conclusion, see Bird and Bucovetsky, *supra* note 160 at 54-55.

[196] Carter, *supra* note 71 at 241.

[197] *The National Finances, 1971-72*, (Toronto: Canadian Tax Foundation, 1972) at 49.

each participating province would agree to a model Act under which the base of the tax would be the same for all provinces; (3) that "some degree of uniformity of rates would be provided under the model Acts having regard to the rates now in effect in those provinces imposing their own succession duties;" and (4) that "it would be clear that the federal government's role is purely administrative and that the presentation to the public would make it clear that it is a provincial, not a federal tax."[198]

In Alberta, where the provincial share of the federal estate tax had been refunded since 1967, the provincial government made it clear that it had no intention to enter into any such agreement and would not introduce its own wealth transfer tax.[199] In Manitoba and Saskatchewan, however, where the social-democratic New Democratic Party (N.D.P.) had won provincial elections in 1969 and 1971, as well as the four Atlantic Provinces, provincial governments accepted the federal government's offer and introduced largely uniform succession duties and gift taxes.[200] In order to protect their succession duties, British Columbia and Ontario entered into agreements with the federal government for the collection of gift tax, and Quebec enacted its own gift tax which it

---

198 Hon. Patrick M. Mahoney, Parliamentary Secretary to the Minister of Finance, *House of Commons Debates*, (19 October 1971), p. 8851. See also Douglas H. Clark, Department of Finance, Ottawa, addressing Canadian Tax Foundation's Twenty-Third Tax Conference, in *Proceedings of the Twenty-Third Tax Conference, 1971*, *supra* note 187 at 275-76. The offer to collect provincial succession duties was extended only to the seven provinces (other than British Columbia, Ontario and Quebec) that did not collect their own succession duty at the time. The offer to collect provincial gift tax was extended to the nine provinces (other than Quebec) that had entered into federal-provincial tax collection agreements in the field of personal income taxation.

199 Hon. Gordon Miniely, Provincial Treasurer, Alberta, *1972 Budget Address*, (Edmonton: Treasury Department, 1972) at 6 (stating that the provincial government "will not … enter into an agreement for the collection on our behalf of succession duties, and estate and gift taxes, as we have no intention of imposing these taxes on citizens of Alberta").

200 *Provincial and Municipal Finances 1975*, (Toronto: Canadian Tax Foundation, 1975) at 87. According to one commentator at the time, "revenue considerations were of primary concern to these six provinces; they concluded that they simply could not afford to give up this source of revenue." Wolfe D. Goodman, *The New Provincial Succession Duty System: An Examination of the Succession Duty Acts of the Atlantic Provinces, Manitoba and Saskatchewan*, Canadian Tax Paper No. 56, (Toronto: Canadian Tax Foundation, 1972) at 1.

collected as of January 1, 1972.[201] At the beginning of 1972, therefore, the federal government was collecting the uniform succession duty for six provinces and gift tax for eight provinces, the governments of British Columbia, Ontario and Quebec were collecting their own succession duties, Quebec was collecting its own gift tax, and Alberta levied no wealth transfer taxes. Not surprisingly, this situation did not last very long.

Of the six provinces accepting the federal government's offer to administer and collect provincial succession duties, Prince Edward Island was the first to repeal its succession duty legislation, which it did before any tax was even collected.[202] Estimating that total collections from the new tax over three years would amount to only $240,000,[203] the provincial government apparently concluded that the anticipated revenue was simply not worth the effort. In his Budget Speech in 1973, however, the Province's Minister of Finance proudly declared that "Alberta and Prince Edward Island are presently the only two provinces without some form of death duties."[204] Fearing the loss of investment to this "tax haven", the government of Nova Scotia announced on February 23, 1973 that it's succession duty and gift tax would expire by March 31, 1974.[205] A month later, New Brunswick's Minister of Finance blamed "tax policies in other provinces" when he announced the repeal of his province's succession duty and gift tax

---

[201] *Provincial and Municipal Finances 1975*, *supra* note 200 at 87.
[202] Bird and Bucovetsky, *supra* note 160 at 40.
[203] *Ibid*., n. 122.
[204] Hon T.E. Hickey, Minister of Finance, Prince Edward Island, *Budget Speech* (Charlottetown: Department of Provincial Treasury, 1973) at 5.
[205] Nova Scotia, *Budget Address*, (23 February 1973). For references to the "tax haven" problem, see the exchange between the Nova Scotia Minister of Finance and an opposition member in Nova Scotia, House of Assembly, *Debates and Proceedings*, (23 February 1973), p. 936.

effective December 31, 1973.[206] Newfoundland concluded the abolition of wealth transfer taxes in Atlantic Canada by repealing its succession duty and gift tax effective April 9, 1974.[207]

In Western Canada, where Alberta became Canada's first "death tax haven" when it refused to enact a succession duty or gift tax in 1972,[208] provincial wealth transfer taxes lasted only a few more years. Although the Premier of British Columbia promised in June 1972 to repeal his province's succession duty and gift tax by 1 April 1973, [209] the election of a N.D.P. Government the next month put this policy on hold.[210] When the collection agreements with the federal government expired at the end of 1974, British Columbia assumed the administration of its own gift tax, and N.D.P. Governments in Manitoba and Saskatchewan began collecting their own succession duties and gift taxes.[211] The election of the conservative Social Credit Party in British Columbia at the end of 1975, however, marked the beginning of the end of wealth transfer taxes in Western Canada. In his 1977 Budget Speech, British Columbia's Minister of Finance announced that the provincial succession duty and gift tax would be abolished in order to prevent the "forced" sale of family farms and businesses to "outsiders" and "to encourage the retention and

---

[206] Hon. Jean-Maurice Simard, Minister of Finance, New Brunswick, *Budget Speech*, 20 March 1973, (Fredericton: Finance Department, 1973) at 23. For family farms and fishing businesses, provincial succession duty ceased to apply from March 31, 1973.
[207] *Provincial and Municipal Finances 1975*, *supra* note 200 at 87.
[208] Hartle, *supra* note 22 at 75.
[209] "B.C. to cancel death duties and gift tax" *Globe and Mail*, (2 June 1972) p. B2.
[210] See British Columbia, *Debates of the Legislative Assembly* (24 October 1972) at 235-6 (Hon. D. Barrett), where Premier David Barrett defended the continuance of the provincial succession duty as follows: "If one rich man leaves because of this law or because of succession duty then I say let him go. And good riddance! We'd be far better off without him rather than having someone living around here who's trying to escape their social and financial responsibility to the people of British Columbia … We say the rich are welcome, the capital we want it to stay, but it must pay its fair share."
[211] *Provincial and Municipal Finances 1975*, *supra* note 200 at 87.

accumulation of capital by residents of British Columbia."[212] Later that year, the N.D.P. Government in Saskatchewan announced that it would repeal the provincial succession duty and gift tax, notwithstanding the Government's conviction that "a tax on wealth is a fair tax" – attributing this decision to the abolition of these taxes in other provinces and "a widespread opinion that the successors of the average citizen will be subject to the tax" even though it applied to less than 3 percent of estates in Saskatchewan.[213] Although the N.D.P. Government in Manitoba maintained its commitment to provincial wealth transfer taxes in its 1977 budget,[214] a Conservative Government was elected later that year, and repealed these taxes in early 1978.[215]

By 1978, therefore, Ontario and Quebec were the only Canadian jurisdictions that continued to collect succession duties and gift taxes.[216] In each of these provinces, however, provincial governments had adopted a policy of gradually reducing these taxes over time as revenues from the taxation of post-1971 capital gains increased – regarding these taxes as temporary measures to maintain revenues until "the capital gains tax matures."[217] In Ontario, where succession duty rates were originally increased in 1972 in

---

[212] Hon. Evan M. Wolfe, Minister of Finance, *British Columbia Budget*, (Victoria: Department of Finance, 1977) at 23.

[213] Hon. Walter E. Smishek, Minister of Finance, Saskatchewan, *Budget Speech*, (Regina: Treasury Department, 1977) at 30.

[214] Hon. Saul A. Miller, Minister of Finance, *1977 Manitoba Budget Address*, (Winnipeg: Department of Treasury, 1977) at 16. According to the Minister: "We believe the federal government belongs in the estate tax field, and we are prepared to vacate it, if and when Ottawa recognizes its responsibility. In the interim, we believe the provincial Succession Duty Act should be maintained."

[215] Bird, *supra* note 145 at 140.

[216] Like British Columbia, Ontario began collecting its own gift tax in 1975 after the collection agreement with the federal government expired.

[217] Hon. W. Darcy McKeough, Treasurer of Ontario, *1972 Ontario Budget* (Toronto: Ministry of Treasury, Economics and Intergovernmental Affairs, Taxation and Fiscal Policy Branch, 1972) at 37. See also Ontario, *1973 Budget*, (Toronto, 1973) at 29 (emphasizing the "undesirable impact on small businesses, family farms and Canadian ownership" and noting that other provinces were vacating the field); and Mr. Raymond Garneau, Minister of Finance, Quebec, *Budget Speech* (18 April 1972) at 18 (promising "the gradual abolition of succession duties" with reductions "made in light of possible action on the part of the other provinces and the impact of the capital gains tax").

order to compensate for the loss of federal rental payments,[218] basic exemptions were increased from $100,000 to $150,000 in 1974,[219] $250,000 in 1975,[220] and $300,000 in 1977.[221] Making the perceived connection between succession duty and capital gains tax explicit, the 1977 Budget also made capital gains tax payable at death creditable against succession duties.[222] Two years later, the provincial Government repealed Ontario's succession duty and gift tax, declaring that "the continuation of this tax is hurting our economic performance and costing us jobs" and that "the present combination of other taxes provided government with an adequate return as wealth is accumulated."[223]

In Quebec, succession duties were reduced by 20 percent in each year from 1974 to 1977, resulting in a total reduction in tax otherwise payable of 80 percent by 1977.[224] With the election of the sovereigntist and social democratic Parti Québecois (P.Q.) in November 1976, however, the final 20 percent reduction that had been scheduled for 1978 was cancelled in the new Government's first budget.[225] The next year, the P.Q.

---

[218] Hon W. Darcy McKeough, *Introduction to Supplementary Estimates and Tax Legislation* (Toronto: Ontario Department of Treasury and Economics, Taxation and Fiscal Policy Branch, 1971) at 27.
[219] Hon. John White, Treasurer of Ontario, *1974 Ontario Budget* (Toronto: Ministry of Treasury, Economics and Intergovernmental Affairs, Fiscal Policy Division, 1974) at 12.
[220] Hon. W. Darcy McKeough, Treasurer of Ontario, *1975 Ontario Budget* (Toronto: Ministry of Treasury, Economics and Intergovernmental Affairs, Taxation and Fiscal Policy Branch, 1975) at 27.
[221] Hon. W. Darcy McKeough, Treasurer of Ontario, *Ontario Budget 1977* (Toronto: Ministry of Treasury, Economics and Intergovernmental Affairs, Fiscal Policy Division, 1977) at 18.
[222] *Ibid*. (explaining that "this credit mechanism will result in ever-increasing reductions in succession duty over time, as the value of capital assets increases and the Succession Duty Act is amended periodically to recognize the effect of inflation"). This approach had been recommended by a provincial advisory committee in 1973 in order to address the perceived "double tax burden" from succession duty and capital gains tax at death. Ontario Advisory Committee on Succession Duties, *Report* (23 February 1973) at v and 10-14.
[223] Hon. Frank S. Miller, Treasurer of Ontario, *Ontario Budget 1979*, (Toronto: Ministry of Treasury and Economics, Fiscal Policy Division, 1979) at 5 and 6.
[224] Mr. Raymond Garneau, Minister of Finance, Quebec, *Budget Speech*, (28 March 1974) at 19; Mr. Raymond Garneau, Minister of Finance, Quebec, *Budget Speech*, (17 April 1975) at 19; and Mr. Raymond Garneau, Minister of Finance, Quebec, *Budget Speech*, (11 May 1976) at 35.
[225] Mr. Jacques Parizeau, Minister of Finance, Minister of Revenue, and Chairman of the Treasury Board, *1977-78 Budget Speech*, (12 April 1977) at 52 (noting that the Carter Commission had recommended the abolition of succession duties on the basis that inheritances should "be taxed as if they were income for those receiving them" and adding that "governments have not adopted this theory, but have used the partial taxation of capital gains as a reason for removing succession duties").

Government announced that the provincial succession duty would be retained but substantially amended, with rates based solely on amounts received by each beneficiary, the total exemption of bequests between spouses, and further exemptions for transfers to children and other dependents.[226] The legislation, which was introduced in Quebec's National Assembly in June 1978, was enacted on 22 December 1978, and came into effect immediately.[227] Over the next several years, the tax raised up to about $45 million per year,[228] but the Government faced continuing pressure to abolish provincial wealth transfer taxes "because such duties do not exist elsewhere in Canada".[229] With a new Minister of Finance, and a provincial election on the horizon (which it lost), the P.Q. Government repealed Quebec's succession duty and gift tax on 23 April 1985.[230]

B. The Abolition of Wealth Transfer Taxes in Australia

Unlike Canada, where the events leading to the repeal of federal and provincial wealth transfer taxes began with the appointment of a Royal Commission, the abolition of wealth transfer taxes in Australia originated in a popular protest movement initiated by a

---

[226] Mr. Jacques Parizeau, Minister of Finance, ministre des Finances, ministre du Revenue, and président du Conseil du trésor, *1978-79 Budget*, (18 April 1978) at 50-51.

[227] *Succession Duty Act*, L.Q. 1978, c. 37. For a detailed review of the revised legislation, see Robert Raich, "An Overview of the New Quebec Succession Duty Act" in *Report of the Proceedings of the Thirtieth Tax Conference, 1978*, (Toronto: Canadian Tax Foundation, 1980) 725. Among the many revisions to the provincial succession duty, one of the most important was replacement of a "transmissions basis" whereby the tax applied to property situated outside the province only if the deceased was domiciled in the province and the beneficiary was resident or domiciled in the province with an "accessions basis" according to which the tax would apply to all property situated outside the province received by a person resident or domiciled in Quebec on the death of another person. Although the constitutionality of this approach was called into question by the British Columbia Court of Appeal in *A-G of British Columbia and the Canada Trust Company v. Ellett Estate*, [1979] C.T.C. 134 (B.C.C.A.) (ruling on a provision of the British Columbia succession duty enacted in 1972), it was accepted on appeal to the Supreme Court of Canada in *A-G of B.C. v. Ellett Estate*, [1980] C.T.C. 338 (S.C.C.).

[228] See the revenue figures reported in Mr. Gérard D. Levesque, Minister of Finance, Québec, *1986-1987 Budget*, (1 May, 1986) at 20.

[229] Mr. Jacques Parizeau, ministre des Finances, Québec, *1983-84 Budget*, (10 May 1983) at 24.

[230] Mr. Yves L. Duhaime, ministre des Finances, Québec, *1985-86 Budget*, (23 April 1985) at 17 (stating erroneously that "Québec has … been the only province to collect succession duties" since capital gains became partially taxable in 1972).

skilled carpenter and building contractor from Western Australia named Sydney Negus.[231] In 1970, after learning that estate duty could have a substantial impact on relatively modest amounts left to his wife, Negus launched a successful petition campaign calling for the abolition of estate duties, ran for public office, and was elected to the Federal Senate.[232] As Willard Pedrick observes, "the election of an Independent, whose only campaign issue had been abolition of death duties, was not lost on professional party leaders."[233] Little more than a decade later, Australian wealth transfer taxes had completely disappeared.

Three factors appear to have contributed to the strength of Australia's estate duty abolition movement in the early 1970s, particularly among farmers and small business owners.[234] First and foremost, exemptions had not been increased to account for inflation, causing Commonwealth and State taxes to apply to relatively modest estates.[235] At the federal level, for example, the Commonwealth estate duty at the time contained an exemption of only AU$10,000 for estates passing to a spouse, child or grandchild, and AU$5,000 for all other estates.[236] As a result, as the Taxation Review Committee (Asprey Committee) reported, over 55 percent of taxable estates in 1972-73 were valued at less than AU$40,000 and almost 83 percent were valued at less than AU$80,000.[237] At the State level, exemptions were generally lower, resulting in a larger number of taxable

[231] See Pedrick, *supra* note 94 at 114.
[232] *Ibid*.
[233] *Ibid*.
[234] Smith, *supra* note 70 at 79-80.
[235] *Ibid*. at 79. See also Pedrick, *supra* note 94 at 119-20; and Groenewegen, *supra* note 94 at 315.
[236] These figures resulted from the *Statute Law Revision (Decimal Currency) Act* 1966 (No. 93), which converted amounts in pounds to dollars by simply doubling the nominal amounts. Prior to 1966, the exemptions were £5,000 for estates passing to a spouse, child or grandchild, and £2,500 for all other estates. *Estate Duty Act* 1941 (No. 51) (Australia).
[237] Taxation Review Committee, *supra* note 92 at para. 24.1 (Table 24.B).

estates.[238] Farming interests consistently complained that farms had to be sold to pay the duties, though evidence to this effect was "sparse and mostly anecdotal."[239] Not surprisingly, therefore, it was political leaders with a rural political base who pushed the abolition agenda.[240]

In addition to the failure to adjust estate duties for inflation, a second factor contributing to the unpopularity of these taxes was the failure to integrate the Commonwealth and State duties.[241] While the existence of this "double or duplicative" system of wealth transfer taxes increased compliance costs for all taxable estates,[242] the relative burden was likely higher for small and medium-sized estates.[243] In addition, a study for the Asprey Committee concluded that the costs to comply with the Commonwealth and State taxes were larger for estates with small businesses than for most other estates.[244] Despite several recommendations to allocate this revenue source either solely to the states or solely to the Commonwealth government, however, joint occupancy remained until the taxes were finally repealed.[245]

A final explanation for the strength of Australia's estate duty abolition movement relates to the relative ease with which these taxes could be avoided.[246] Discretionary trusts, for example, could be used to transfer wealth from generation to generation

---

[238] Pedrick, *supra* note 94 at 119-20.
[239] *Ibid*. at 121.
[240] Groenewegen, *supra* note 94 at 311-12.
[241] Smith, *supra* note 70 at 80.
[242] Pedrick, *supra* note 94 at 119.
[243] Groenewegen, *supra* note 94 at 315.
[244] B.L. Johns, W.C.D. Dunlop, and W.J. Sheehan, *Taxation and the Small Firm in Australia*, Taxation Review Committee Commissioned Studies (Canberra: Australian Government Publishing Service, 1975), chapter 8.
[245] See *supra* notes 91-94 and accompanying text.
[246] Smith, *supra* note 70 at 79.

without any tax.[247] At the federal level, gift tax was not integrated with estate duty, and gifts themselves were aggregated only over an eighteen month period.[248] Because of these and other deficiencies,[249] the tax was generally considered to be easily avoided by the most affluent and sophisticated taxpayers,[250] shifting the primary burden to small and medium-sized estates.[251] As a result, as one commentator explains, "[t]he extent of tax avoidance … created public cynicism about the taxes."[252]

At the same time as the unpopularity of these taxes increased, their importance to Commonwealth and State revenues declined. In 1973, the Commonwealth government collected roughly AU$75 million from its gift and estate duties, representing only 0.7 percent of total tax revenues – a lower percentage than at any time in their history.[253] While the States collected approximately $185 million from their wealth transfer taxes in 1973,[254] accounting for almost 9 percent of total tax revenues,[255] this percentage had declined substantially from only a few years earlier due to the transfer of the payroll tax field from the Commonwealth to the State governments in 1971,[256] and was lower than at any time since the end of the Second World War.[257] As inflation caused more and more small estates to become taxable, moreover, net revenues suffered because administrative

---

[247] Hill, *Death and Gift Duties*, Taxation Review Committee Commissioned Studies (Canberra: Australian Government Publishing Service, 1975) at 75-76, cited in Pedrick, *supra* note 94 at 122.
[248] Hill, *supra* note 248 at 92 and 105-06, cited in Pedrick, *supra* note 94 at 122-232.
[249] For a detailed description, see Pedrick, *supra* note 94 at 122-24.
[250] See, e.g., Taxation Review Committee, *supra* note 92 at 115 (concluding that the Commonwealth estate duty "is certainly at present a tax which can be avoided by well-advised persons with ease, and which might almost be said to be paid principally from the estates of those who died unexpectedly or who had failed to attend to their affairs with proper skill").
[251] Smith, *supra* note 70 at 79-80.
[252] *Ibid*. at 79.
[253] Saunders, *supra* note 72 at 399 (Table 1). Income taxes, on the other hand, accounted for almost 70 percent of total tax revenues in 1973. Calculated from figures in O.E.C.D, *supra* note 2.
[254] Calculated from figures in Saunders, *supra* note 72 at 399 (Table 1).
[255] Calculated from figures in O.E.C.D., *supra* note 3.

costs were incurred to obtain relatively amounts of revenue from these estates.[258] In 1972-73, for example, the smallest 55.7 percent of estates subject to Commonwealth estate duty accounted for only 3.9 percent of revenue collected.[259] Joint occupancy by the Commonwealth and State governments also contributed to high administrative costs as both levels of government as well as all State governments were required to maintain the organizational apparatus to enforce and collect the taxes.

The abolition movement's first legislative victory was in Queensland, a "hotbed of agrarian resentment against death duties", where the Brisbane *Courier Mail* had run a series of articles highlighting the hardships caused by death duties and the growing campaign for abolition.[260] After exempting inter-spousal transfers from estate and gift duties in 1975,[261] the conservative Liberal-Country Party coalition government embraced complete abolition in 1976 and repealed the taxes effective January 1, 1977.[262] Although the coalition's Liberal Party Treasurer Sir Gordon Chalk expressed misgivings about the budgetary implications of abolition, which would reduce State revenues by $25 to $30 million dollars per year,[263] Country Party Premier Joh Bjelke-Peterson apparently concluded that the loss in revenues would be more than offset by internal migrants attracted by the combination of a warm climate and tax-free bequests.[264] Indeed, before

---

[256] For an explanation of the events leading up to the transfer of this revenue source, see Mathews and Jay, *supra* note 81 at 248-54. In 1968/69, wealth transfer taxes had accounted for 16.6 percent of State tax revenues. Calculated from figures in *ibid*. at 247 (Table 38).

[257] Saunders, *supra* note 72 at 399 (Table 1).

[258] *Ibid*. at 400.

[259] Taxation Review Committee, *supra* note 92 at para. 24.1 (Table 24.B).

[260] Pedrick*, supra* note 94 at 114.

[261] *Gift Duty Act Amendment Act* 1975 (No. 63). See also Pedrick, *supra* note 94 at 114-15.

[262] *Succession and Gift Duties Abolition Act* 1976 (No. 93) (Qld). See also Pedrick, *supra*, note 94 at 115.

[263] *Brisbane Courier Mail* (3 December 1976). For the fiscal year 1975-76, Queensland collected almost $27 million from succession and probate duty. Pedrick, *supra* note 94 at 115, n. 6.

[264] *Ibid*. at 115. Since 1980, in fact, over half a million Australians from other states have moved to Queensland, though the abolition of wealth transfer taxes in these other states suggests that climate was destined to play a bigger role than taxation!

the repeal had even come into effect, the Gold Coast Visitor's Bureau prepared a pamphlet entitled "Legal Information on the Abolition of Death Duties in Queensland" reporting the duty payable in other States on an estate of $100,000 and detailing the ways in which death duties could be avoided by investment or domicile in Queensland.[265]

Not surprisingly, other States responded to this interstate tax competition by amending and then abolishing their own gift and estate duties. In 1976, inter-spousal transfers were exempted in New South Wales and South Australia,[266] and the State of Victoria enacted legislation exempting estates passing to spouses, children and grandchildren from duty in stages between 1976 and 1981.[267] Over the next three years, Tasmania introduced exemptions first for inter-spousal transfers and then all transfers.[268] In Western Australia, inter-spousal transfers were made exempt in 1977 and gift and estate duties were abolished in 1980.[269] Finally, South Australia abolished its gift and estate duties in 1980 and New South Wales in 1981.[270] As a result, as one commentator has written, "by the early 1980s, the momentum against any death taxation in Queensland carried all other state death duties to the grave."[271]

At the Commonwealth level, interstate competition was obviously not an issue. Nonetheless, the political momentum of the estate duty abolition movement proved

---

[265] *Ibid*. at 115, n. 10.

[266] *Stamp Duties (Amendment) Act* 1977 (No. 13) (NSW); *Succession Duties Amendment* Act 1976 (No. 72) (SA).

[267] *Probate Duty Act* 1976 (No. 8936) (Vic), *Probate Duty Act* 1977 (No. 9056) (Vic), *Probate Duty Act* 1979 (No. 9334) (Vic), *Probate Duty Act* 1980 (No. 9441) (Vic), *Probate Duty Act* 1981 (No. 9618) (Vic). See also Saunders, *supra* note 72 at 398.

[268] *Deceased Persons' Estates Duties Act (No.2)* 1978 (No. 49) (Tas), *Deceased Persons' Estates Duties Amendment Act* 1982 (No. 49) (Tas). See also Pedrick, *supra* note 94 at 115-16; and Saunders, *supra* note 72 at 398.

[269] *Death Duty Act Amendment Act* 1977 (No. 3) (WA), *Death Duty Act Amendment Act* 1978 (No. 61) (WA). See also Pedrick*, supra* note 94 at 115-16.

[270] *Succession Duties Act Amendment Act* 1979 (No. 67) (SA); *Stamp Duties (Further Amendment) Act* 1980 (No. 161) (NSW). See also Saunders, *supra* note 72 at 398.

[271] Smith, *supra* note 72 at 79.

overwhelming. After Mr. Negus was elected, and before Queensland abolished its gift and estate duties, a Senate Committee examined the subject of wealth transfer taxes, recommending that the Commonwealth vacate the field, leaving the States to negotiate a uniform base and rates.[272] Of the eight Senators on the Committee, however, three filed a dissenting report recommending that the Commonwealth repeal its gift and estate duties and that the States be encouraged to reduce their taxes with a view to their eventual abolition.[273] Although the Asprey Committee affirmed an important role for wealth transfer taxation when it delivered its Report in January 1975,[274] recommending a national integrated gift and estate duty designed to reduce administration and compliance costs and to minimize opportunities for avoidance,[275] the effort to modernize these taxes appears to have been too late.[276] In the election that followed the Australian constitutional crisis later that year,[277] former Labor Prime Minister Gough Whitlam promised to abolish Commonwealth estate and gift duties in an unsuccessful effort to return to power.[278] During the 1977 election campaign, the incumbent Liberal Prime Minister Malcolm Fraser announced the immediate exemption of all transfers to a spouse or a child, and

---

[272] Senate Standing Committee on Finance and Government Operations, *supra* note 93. Senator Negus was invited to chair the Committee for the purpose of this inquiry, but "declined on the ground that his commitment to death tax relief would disable him from performing as an impartial chairman." Pedrick, *supra* note 94 at 114, n. 2.

[273] Saunders, *supra* note 72 at 401.

[274] Taxation Review Committee, *supra* note 93 at para. 24.4 (emphasizing that these taxes "support the progressivity of the tax structure by the indirect means of a progressive levy on wealth once a generation" and "limit … the growth of large inherited fortunes, a trend that most people would agree to have undesirable social consequences").

[275] *Ibid*. at paras. 24.7-24.76.

[276] Smith, *supra* note 71 at 79-80 (attributing the abolition of these taxes to "tax policy inertia, which allowed popular support for these taxes to dwindle").

[277] On 11 November 11 1975, Australia's Governor-General Sir John Kerr dismissed the Labor Prime Minister Gough Whitlam after the Senate, in which the opposition Liberal-Country coalition had a majority, blocked a bill that appropriated funds for the payment of government expenditure. Kerr appointed the Opposition Leader Malcolm Fraser, who obtained passage of the bill and immediately requested the Governor-General to dissolve Parliament and call a general election. For a useful explanation of the 1975 constitutional crisis, see http://www.nationmaster.com/encyclopedia/Australian-constitutional-crisis-of-1975.

promised to abolish Commonwealth estate and gift duties altogether if re-elected.[279] After the Liberal-Country Coalition won a majority on 10 December 1977, the Government introduced legislation to repeal these taxes effective 1 July 1979.[280] Although the Labor Party moved to withdraw the legislation "until such time as an alternative form of tax on capital is introduced,"[281] the motion was defeated along party lines and the legislation was enacted in 1978.[282]

C. The Abolition of Wealth Transfer Taxes in New Zealand

Though separated from the Australian mainland by more than a thousand miles of water, New Zealand was not immune from the effects of estate and gift duty abolition in Australia. Under pressure from farming interests, who complained that increased land values resulted in a larger estate tax burden,[283] the New Zealand Government amended the estate and gift duties in 1979 by significantly increasing the basic exemption in stages from $25,000 to $250,000 in 1982.[284] Little more than a decade later, the estate tax was effectively abolished by reducing to zero the rate of tax on persons dying on or after 17

---

[278] Pedrick, *supra* note 94 at 116.
[279] "Fraser: reject Labor's 'recipe for disaster'" *Sydney Morning Herald* (22 November 1977) at 8 (quoting Fraser's statement that "[e]state duty has caused distress and hardship to thousands of Australian families, to small business, to farmers").
[280] *Estate Duty Amendment Act* 1978 (No. 23) (Australia), *Gift Duty Amendment Act* 1978 (No. 25) (Australia). See also Pedrick, *supra* note 94 at 116-17.
[281] Australia did not tax capital gains at the time.
[282] Pedrick, *supra* note 94 at 116-17.
[283] See R.A. Green and Lindsay McKay, "The Estate and Gift Duties Amendment Act 1979: The Demise of Wealth Transfer Taxation" (1980), 10 *Vict. U. Wellington L. Rev*. 227 at 240-42.
[284] *Financial Statement to the House of* Representatives, (Wellington, 21 June 1979) 33. For a critical assessment of this amendment, see Green and McKay, *supra* note 283.

December 1992.[285] In 1999, further legislation formally repealed New Zealand's estate tax, though its gift tax remains in place.[286]

Although less than one percent of decedents were subject to the tax in 1992,[287] abolition of estate duty was welcomed by New Zealand's leading agricultural organization, Federated Farmers of New Zealand, which praised the legislation as a "victor[y] for rural business and communities."[288] From the government's perspective, while the tax raised approximately NZ$80 million in 1992, this accounted for less than 0.3 percent of total tax revenues.[289] Finally, as Cedric Sandford has suggested, New Zealand's estate duty "may also owe its demise, at least in part, to what happened in Australia, because of the free movement of nationals between New Zealand and Australia".[290] As an estate-type tax based on the estates of persons dying while domiciled in New Zealand, New Zealand's tax, like that of the Australian States, was particularly vulnerable to tax-motivated emigration by affluent retirees.

D. Public Choice Theory and the Abolition of Wealth Transfer Taxes

Writing in 1978, Canadian economist Richard Bird characterized the disappearance of Canada's wealth transfer taxes as "strange".[291] Writing in 1983, Australian economist John Head described the abolition of Australia's federal estate and

---

[285] *Estate Duty Abolition Act* 1993 (No. 13) (New Zealand). See the brief discussion of this amendment in Asa Gunnarson, "Ability to Pay in New Zealand's Tax System" (1997), 27 *Vict. U. Wellington L. Rev.* 697 at 711.
[286] *Estate Duty Repeal Act 1999* (New Zealand).
[287] According to a story in the *Daily News* (3 December 1998), of 55,000 persons who died while domiciled in New Zealand in 1992, only 453 estates were subject to estate duty.
[288] "Stamp Duty Cut Applauded," *Christchurch Press* (27 May 1999).
[289] O.E.C.D., *supra* note 3.
[290] Cedric Sandford, *Why Tax Systems Differ: A Comparative Study of the Political Economy of Taxation*, (Fersfield: Fiscal Publications, 2000) at 100.
[291] Bird, *supra* note 145 at 133.

gift duty as "totally incomprehensible".[292] More recently, Cedric Sandford argued that the abolition of wealth transfer taxes in both countries "had an accidental element about it".[293] While there is certainly a large element of contingency to the events culminating in the abolition of these taxes in Canada, Australia and New Zealand, public choice theory suggests that the outcome in each of these cases is neither "strange", nor "incomprehensible", nor entirely "accidental". On the contrary, the abolition of wealth transfer taxes in these countries was in many respects a predictable response to the shifting political costs of these and other taxes.

In Canada, the Carter Commission's proposals to tax gifts and inheritances as income and capital gains at death significantly increased the political costs of the federal gift and estate tax as well as provincial succession duties – taxes for which the political costs were already high given their application to a relatively narrow group of people. While the 1968 amendments to the federal gift and estate tax might have lowered political costs by rejecting the Carter Commission's proposal to tax gifts and inheritances as income and exempting inter-spousal transfers, political costs were clearly increased by integrating the gift and estate taxes and increasing federal rates on estates valued at less than $5 million. Not surprisingly, these amendments galvanized farming and small business interests, increasing further the political costs of Canadian wealth transfer taxes and federal tax reform more generally.

Although the White Paper attempted to contain these political costs by rejecting the taxation of accrued gains at death, the proposals to tax capital gains at ordinary rates and widely-held shares every five years were politically very costly, since these measures

[292] Head, *supra* note 72 at 14.
[293] Sandford, *supra* note 290 at 105.

would "impose obvious and substantial new burdens on a relatively small but affluent, articulate and well organised section of the community which could hardly be expected to stand idly by", resulting in benefits that "would be widely dispersed over the relatively unorganised mass of taxpayers at the bottom of the income scale."[294] Clearly expecting opposition from organized interest groups, the Government attempted to manage the tax reform process by referring its proposals to parliamentary committees. These committees, however, were completely unprepared for this task and served mostly as "sounding board[s] for those segments of public opinion that were most vocal"[295] – namely, the organized interest groups that had opposed the Carter Commission's proposals from the outset. Predictably, the parliamentary committee reports "reflect[ed] in varying degrees the overwhelmingly hostile reaction of representatives of the business and professional organizations from whom the bulk of the briefs and other submissions were received."[296] Finally, confronting the prospect of substantial revenues from the introduction of capital gains tax versus minimal revenues from the gift and estate tax (75 percent of which was transferred to provincial governments or abated in the case of provinces collecting their own succession duties), the federal government opted to withdraw from the wealth transfer tax field, enacting a capital gains tax on half the amount of the gain with accrued gains taxable at death.

At the provincial level, several governments endeavoured to maintain wealth transfer taxes, though the eventual abolition of these taxes was probably inevitable when Alberta refused to enact a provincial succession duty and gift tax in 1972. With low revenues, high administrative costs, and the risk of inter-provincial migration, wealth

[294] Head, *supra* note 112 at 69 and 70.
[295] Bucovetsky and Bird, *supra* note 129 at 21.

transfer taxes were abolished in Atlantic Canada by 1974, Western Canada by 1978, and Ontario in 1979. While Quebec held out, substantially amending its succession duty in 1978, even it succumbed to the pressures of horizontal tax competition, repealing its succession duty and gift tax in 1985.

In Australia, the political costs of estate and gift duties collected by Commonwealth and State governments increased significantly in the late 1960s and early 1970s as inflation eroded the real value of exemptions, increasing the number of taxable estates. Even before then, the political costs of these taxes were probably high, given their relatively narrow application and the high administrative and compliance costs resulting from joint occupancy by both levels of government. Not surprisingly, those who were subject to the tax established an organized movement pressing for abolition of the taxes. As the political costs of these taxes increased and government reliance on estate and gift duties as a source of revenue decreased, these governments looked at other less politically costly sources of revenue as alternatives to these taxes. When Queensland abolished its estate and gift duties effective 1 January 1977, horizontal tax competition quickly led to the abolition of these taxes in all other States. At the federal level, Committees made recommendations for major reform, but the political momentum of the abolition movement carried the day and Commonwealth gift and estate duties were repealed effective 1 July 1979. New Zealand held out for a little more than a decade, but the combination of political opposition, low revenues and horizontal tax competition proved fatal there as well as the estate tax was repealed effective 17 December 1992.

[296] Head, *supra* note 112 at 70.

IV. Conclusion

Opponents of wealth transfer taxes are apt to take comfort both from their abolition in Canada, Australia and New Zealand and from public choice explanations for these events, and proponents may despair. As an advocate of these taxes myself,[297] this is obviously not what I intend. Although wealth transfer taxes were abolished in Canada, Australia, and New Zealand, are under pressure in the United Kingdom, and are scheduled to be phased out in the United States, they appear to have retained their vitality in several other countries,[298] a few of which rely on these taxes more today than they did in the early 1970s.[299] While political costs and benefits may influence the choices that governments make among different revenue sources, these are clearly not the only factors as political values and ideologies as well as the structure of state institutions can also play an important role.[300]

Nonetheless, it is important to be realistic about the considerable political challenges that are apt to make the retention or reintroduction of wealth transfer taxes especially difficult. As experience in Canada, Australia and New Zealand suggests, the political costs of these taxes tend to be much higher than those of broad-based income, consumption, or payroll taxes, and can increase significantly if tax reforms (Canada) or

---

[297] Duff, *supra* note 5.

[298] In Norway, for example, wealth transfer taxes accounted for 0.21 percent of tax revenue and 0.08 percent of GDP in 1971 and 0.2 percent of tax revenue and 0.09 percent of GDP in 2001. Similarly in Japan, wealth transfer taxes accounted for 1.27 percent of tax revenue and 0.26 percent of GDP in 1971 and 1.22 percent of tax revenue and 0.35 percent of GDP in 2001. OECD, *supra* note 3.

[299] In France and Germany, for example, wealth transfer taxes accounted for larger percentages of tax revenues and GDP in 2001 than they did in 1971: increasing in France from 0.52 percent of tax revenue and 0.18 percent of GDP in 1971 to 1.23 percent of tax revenue and 0.6 percent of GDP in 2001, and increasing in Germany from 0.2 percent of tax revenues and 0.06 percent of GDP in 1971 to 0.4 percent of tax revenues and 0.15 percent of GDP in 2001. *Ibid*.

[300] See, e.g., Banting, *supra* note 9 at 352-55 (considering literature on the politics of redistribution as well as public choice theory, and concluding that these approaches should be understood as complementary, not contradictory).

tax policy inertia (Australia) increase the burden on small and medium-sized estates.[301] In federal systems, moreover, the political costs of wealth transfer taxes are greatly increased by joint occupancy by both levels of government (vertical tax competition) and mobility among sub-national jurisdictions (horizontal tax competition). Although the costs of horizontal tax competition in this field can be reduced by applying the tax to inheritances received by beneficiaries who are resident or domiciled in the taxing jurisdiction, since these persons are likely to be less mobile than affluent retirees, the example of Quebec (where this "accessions basis" was adopted in 1978 but provincial succession duty and gift tax were repealed in 1985), suggests that wealth transfer taxes in a federal jurisdiction should be collected by the federal government.

For those who wish to preserve and restore the taxation of wealth transfers, then, what lessons can be drawn from the abolition of these taxes in Canada, Australia and New Zealand? Reflecting on public choice accounts of tax policy and the historical experience in these countries, three conclusions seem evident. First, if wealth transfer taxes are to be maintained or reintroduced, the political costs of these taxes cannot be allowed to increase beyond a level that is necessary to their essential purposes. Basic exemptions, for example, must exclude small and medium-sized estates, and special rules must minimize the burden on family-owned enterprises and principal residences – ideally by deferring the collection of tax until these assets are sold rather than exempting these transfers from tax altogether. Capital gains taxes must be adjusted to lessen the combined impact of two taxes when property is transferred by gift or on death, for example by permitting the donor's cost to carryover to the recipient. Administrative and compliance

[301] This appears to have been a factor in the U.S. as well, where inflation and increased real estate values eroded the effectiveness of the integrated gift and estate tax credit in the 1990s.

costs must be minimized by integrating federal and sub-national taxes or abolishing the latter, by eliminating complex rate structures based on the size of an estate and the shares received by different classes of beneficiaries, and by statutory rules designed to minimize opportunities for avoidance. Horizontal tax competition must be discouraged by ensuring that wealth transfer taxes are collected by federal governments in federal systems and by applying these taxes to gifts and inheritances received by beneficiaries who are resident or domiciled in the taxing jurisdiction in addition to property situated in the taxing jurisdiction and transfers of property by persons domiciled in the taxing jurisdiction.

Second, if governments are to enact the legislative measures necessary to preserve or re-establish wealth transfer taxes, methods must be devised in order to protect public decision-making processes from the influence of organized interest groups who can be expected to oppose these measures. In Canada, for example, the Carter Commission was able to produce a Report that was hailed as “a landmark in the annals of taxation” because it had both the institutional mandate and the financial resources to engage in a thorough and non-partisan analysis of tax policy. In contrast, the parliamentary committees that considered the federal government’s White Paper proposals in 1970 were thrust into a highly political exercise without the knowledge or resources to withstand the pressure exerted by organized interest groups that dominated the process. Although this was only one of many factors that led to the eventual abolition of wealth transfer taxes in Canada, its impact at the time may have been decisive.

Finally, if these taxes are to retain and attract public support, efforts must also be made to increase their perceived benefits. One strategy for this purpose might be to earmark the revenues from these taxes to a particular expenditure program, especially a program that complements the redistributive objectives of the tax such as early childhood education for children from low-income families. More generally, a greater "tax preference" for wealth transfer taxes might result from less emphasis on the revenues raised from these taxes, which are bound to be less than taxes on income, consumption or payrolls, and more explicit acknowledgement of their symbolic and social function to lessen inequalities and unequal opportunities.[302] Public support for these taxes might also be improved by applying these taxes to amounts received by living beneficiaries rather than the aggregate amount of a decedent's estate, demonstrating that the tax is intended not to punish those who have succeeded in life or to compound the misery of death, but to regulate the distribution of wealth and opportunities among beneficiaries for whom a gift or inheritance is largely undeserved.[303] In fact is interesting to note that the decline in wealth transfer taxes in O.E.C.D. countries has been much greater among countries with estate-type taxes that fall on the estates of persons dying domiciled in the jurisdiction than countries with inheritance-type taxes that apply to amounts received by beneficiaries living in a particular jurisdiction. In addition to any lessons from the history of abolition in Canada, Australia and New Zealand, wealth transfer tax advocates might also look to the experience of these countries where wealth transfer taxes appear to have been more resilient.

---

[302] In this respect, see Ontario Committee on Taxation, *Report*, (Toronto: Ontario Printer, 1967), Vol. III at 136 (emphasizing the social purpose of wealth transfer taxes "to control the growth in this country of an economically powerful minority whose influence is based upon inherited wealth"); and Taxation Review Committee, *supra* note 92 at para. 24.4 (recognizing role of wealth transfer taxes to "limit … the growth of large inherited fortunes, a trend that most people would agree to have undesirable social consequences"). See also McKay, supra note 70 (noting the rare emphasis on the social purposes of wealth transfer taxes in New Zealand); and Bird, *supra* note 145 at 138 (suggesting that public support for the wealth transfer taxes in Canada was weak because "revenue was clearly the main purpose of [these] taxes so far as most Canadians and Canadian governments were concerned").

[303] See, e.g., Graetz and Shapiro, *supra* note 2 at 233-36 and 256.