Policy Forum: Taxing Wealth Transfers in Canada Using an Accession Tax

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PRÉCIS
Les impôts sur le transfert de fortune ont une longue histoire au Canada : le rapport Rowell-Sirois préconisait une gestion fédérale; le rapport Carter soulignait l’importance d’inclure les transferts de fortune dans le revenu. Pourtant, à partir des années 1980, les impôts sur le transfert de fortune avaient largement disparu au Canada. Cet article plaide en faveur de l’examen d’un impôt progressif sur le transfert de fortune, qui impose les transferts de fortune dans les mains des bénéficiaires. Ce type d’impôt comporte de nombreux avantages administratifs par rapport à l’impôt annuel sur la fortune qui a la cote dans les débats populaires actuels.

ABSTRACT
Wealth transfer taxes have had a long history in Canada: the Rowell-Sirois report suggested federal administration; the Carter report emphasized the importance of including wealth transfers in income. Yet by the 1980s wealth transfer taxes had largely disappeared in Canada. This article makes the case for consideration of an accession tax, which taxes wealth transfers in the recipients’ hands. An accession tax has significant administrative advantages over the annual wealth tax featured in current popular debates.

KEYWORDS: WEALTH TAXES • INHERITANCE TAX • SUCCESSION DUTIES • FISCAL POLICY • ECONOMIC POLICY • HISTORY

CONTENTS
Introduction 852
Approaches to Wealth Taxation 852
Development of WTTs in Canada 853

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INTRODUCTION

This article is concerned with wealth transfer taxes (WTTs) in Canada—specifically, gift and death taxes levied on the recipients of wealth transfers rather than the transferors. Taxes on the recipients of wealth transfers are generally referred to as accession, inheritance, or donee-based taxes.

I will examine worldwide approaches to wealth taxation, briefly summarize the history of WTTs in Canada, and discuss some economic and administrative challenges associated with WTTs. I conclude that, to the extent that wealth and income inequality raise concerns, more consideration could be given to accession taxes in Canada instead of annual wealth taxes.

APPROACHES TO WEALTH TAXATION

Governments commonly consider three tax bases in designing a tax system: consumption, income, and wealth. There are three classes of wealth taxes: capital gains taxes (CGTs), annual wealth taxes (AWTs), and WTTs. WTTs can, in turn, be categorized according to the payer of the statutory levy (the donor or the donee) and the timing of the transfer—during the lifetime of the donor (an inter vivos transfer) or on the donor’s death (a mortis causa transfer, by bequest). This categorization is depicted in table 1.

In 2017, of the 35 member countries of the Organisation for Economic Co-operation and Development (OECD), 1 22 had a WTT, 2 4 had an AWT, 3 and almost all had some form of CGT. 4 Of the 22 with a WTT, 19 used a recipient-based tax, 2 used a donor-based estate tax, and 1 (Switzerland) used a combination of the two, depending on the canton. 5 The number of developed countries with AWTs has decreased significantly since the 1990s. 6 At present, Canada has neither an AWT nor

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1 Lithuania has since joined. See Organisation for Economic Co-operation and Development, “Where: Global Reach” (www.oecd.org/about/members-and-partners).
2 Chris Evans, John Hasseldine, Andy Lymer, Robert Ricketts, and Cedric Sandford, Comparative Taxation: Why Tax Systems Differ (Birmingham, UK: Fiscal Publications, 2017), at 106. The treatment of capital gains with respect to inclusion rates varies across jurisdictions.
3 Evans et al., ibid., mention four OECD countries with an AWT in 2017, but Burman and Slemrod mention three among developed countries in 2018: Leonard E. Burman and Joel Slemrod, Taxes in America: What Everyone Needs To Know, 2d ed. (New York: Oxford University Press, 2020), at 136.
4 Evans et al., supra note 2, at 106. (New Zealand does not have a CGT.)
5 Ibid.
6 In 1990, 12 OECD countries had an AWT. Burman and Slemrod, supra note 3, at 136.
a WTT; instead, it has relied on a CGT to tax wealth on death. This tax is applied on a
deemed realization of capital gains at the time of death, subject to some exceptions.²

Twenty of the 22 OECD countries with a mortis causa WTT also have an inter
vivos WTT.³ Having both makes sense: it prevents avoidance by modifying the timing
of wealth transfers.⁴ However, taxes on death are more common, since there is an
“easily identifiable event” and vesting can be made “conditional upon the payment
of the tax.”⁵

**DEVELOPMENT OF WTTs IN CANADA**

This section discusses the historical development of WTTs, and the trend away
from them, in Canada.

In 1892, four Canadian provinces imposed succession duties.⁶ By 1903, all
provinces in the federation had WTTs.⁷ In 1913, such taxes constituted almost
40 percent of total provincial tax revenues.⁸ Calls for inheritance and estate taxes
came from farmers’ parties in several provinces in the 1910s.⁹

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7 Subsection 70(5) of the Income Tax Act, RSC 1985, c. 1 (5th Supp.), as amended (herein
referred to as “the ITA”).

8 For a spousal transfer exemption, see subsection 70(6) of the ITA. There are also certain
farm- and fishing-related exemptions in section 70 of the ITA. For discussion, see, for example,
Graham Purse, “How To Give Away the Farm When You’ve Bought the Farm” (2014) 7:5
Taxes & Wealth Management (available on Taxnet Pro).

9 Evans et al., supra note 2, at 106.

10 In a jurisdiction with only a mortis causa WTT, inter vivos transfers would not be taxed; in a
jurisdiction with only an inter vivos WTT, a motivation would exist to make transfers by
bequest.

11 James A. Mirrlees, Stuart Adam, Tim Besley, Richard Blundell, Stephen Bond, Robert Chote,
Malcolm Gammie, Paul Johnson, Gareth Myles, and James Poterba, Tax by Design: The Mirrlees
Review (Oxford, UK: Oxford University Press, 2011), at 348 (herein referred to as “the
Mirrlees review”).

12 See Wolfe D. Goodman, “Death Taxes in Canada, in the Past and in the Possible Future”
(1995) 43:5 Canadian Tax Journal 1360-76.

13 David G. Duff, “The Abolition of Wealth Transfer Taxes: Lessons from Canada, Australia, and
New Zealand” (2005) 3:1 Pittsburgh Tax Review 71-120, at 85.

14 Ibid.

15 By 1919, farmers’ parties in five provinces had called for a “heavy” graduated inheritance tax on
large estates. See “Canada—The Farmer’s Platform—A New National Policy,” Economist,
February 22, 1919; and “Death Duties,” Globe and Mail, December 11, 1919, at 6.
The 1940s were a major period of transition in the evolution of WTTs in Canada. In May 1940, the Royal Commission on Dominion-Provincial Relations (the Rowell-Sirois commission) released its report.\(^{16}\) The report noted that the imposition of succession duties had been left entirely to the provinces up to that time.\(^{17}\) The report distinguished between donor- and donee-based WTTs; described the problem of double taxation for estates with assets in more than one jurisdiction; explained that the yields would be much less variable if these taxes were levied nationally rather than provincially; and concluded that the existing system of provincial succession taxation was detrimental to the Canadian economy.\(^{18}\) The report also stated that, if provinces chose to retain their control over inheritance taxes, uniformity was desirable.\(^{19}\) The commission’s recommendations on wealth transfer taxation were unpopular with the government of Ontario, which opposed federal attempts to interfere with the provincial regime.\(^{20}\)

In 1941, Parliament enacted the Dominion Succession Duty Act, which applied to estates.\(^{21}\) The DSDA utilized a donee-based approach, with tax being payable by each “successor.”\(^{22}\) Its passage marked the first time that the government of Canada had levied inheritance taxes.\(^{23}\) Commenting in 1948 on Canada’s approach to the taxation of wealth transfers, Courtice explained that the DSDA was imposed “in the hope of centralizing all succession duty taxation in the Federal Government, as recommended by the Rowell-Sirois Report.”\(^{24}\) In 1959, Pozer described the DSDA

\(^{16}\) Canada, Report of the Royal Commission on Dominion-Provincial Relations, Book II, *Recommendations* (Ottawa: King’s Printer, 1940) (herein referred to as “the Rowell-Sirois report”).

\(^{17}\) Ibid., at 117.

\(^{18}\) Ibid., at 117-19. See also A.R. Courtice, “Succession Duties,” *Report of the 1948 Tax Conference*, 1948 Conference Report (Toronto: Canadian Tax Foundation, 1949), 61-72, at 68: “The Dominion is better able to negotiate reciprocal arrangements with other countries. It is unreasonable for a foreign nation to have to deal with nine separate provinces.”

\(^{19}\) Rowell-Sirois report, supra note 16, at 117-20: “If our financial recommendations are not adopted, and if the provinces still elect to retain inheritance taxes, we think that every effort should be made to work out a common inheritance tax program.”

\(^{20}\) “Province Gives Sirois Findings Stony Glances: Unofficial Opinions at Queen’s Park Are of Adverse Nature,” *Globe and Mail*, May 17, 1940, at 10.

\(^{21}\) Dominion Succession Duty Act, 1941, 4-5 George VI, c. 14 (herein referred to as “the DSDA”). See Goodman, supra note 12, at 1362.

\(^{22}\) Section 10 of the DSDA. The tax varied according to the relationship between the donor and the donee, and the monetary value of the benefit, with a preferential rate applying where the relationship was close. The tax also took into account the age of the recipient relative to the monetary value of the benefit.

\(^{23}\) Royal Trust Company, “The Canada Estate Tax Act” (1958) 79:7 *Canadian Medical Association Journal* 585-87.

\(^{24}\) Courtice, supra note 18, at 66.
as “merely a collocation of the various provincial Succession Duty Acts.”25 Following the end of the Second World War, all provinces except Quebec and Ontario temporarily gave up their succession duties, along with certain other taxes, in exchange for federal grants; the provincial moratorium on succession taxes was to last until at least 1952.26

In 1958, the Estate Tax Act replaced the DSDA.27 The ETA levied tax on the estate (that is, a donor-based tax) and also applied to real property located outside Canada.28

In 1966, the Royal Commission on Taxation (the Carter commission) recommended replacing estate taxes with an all-encompassing definition of income that would include gifts and inheritances.29 As Duff has noted, because inheritances would form part of the recipient’s income, the Carter commission “recommended that separate wealth transfer taxes should be repealed.”30 The commission found the present system “illogical, inequitable, and inadequate,” and recommended that property should be freely transferable within the family unit, including to minor children.31

In the federal budget delivered on June 18, 1971, the government announced that it was introducing a tax on capital gains and eliminating estate taxes.32 When the federal government abandoned estate taxes, most provinces announced new succession duties or increased their existing succession duties.33 However, provincial estate taxes began to disappear, a trend that continued throughout the decade.

In 1975, Ontario and Quebec continued to ease estate taxes, perhaps in response to the federal government’s decision to tax capital gains on death.34 In 1978, the federal government extended inheritance tax exemptions to incorporated farms and farm partnerships; previously, the exemption had applied only to non-incorporated farms.35 By April 1979, all provinces except Quebec had

25 David Pozer, “The New Estate Tax Act” (1959) 1:2 Osgoode Hall Law Journal 90-94, at 90.
26 See Duff, supra note 13, at 71; and Courtice, supra note 18, at 66.
27 Estate Tax Act, SC 1958, c. 29 (herein referred to as “the ETA”). See Goodman, supra note 12, at 1362.
28 See section 2 of the ETA, and Pozer, supra note 25, at 90.
29 Canada, Report of the Royal Commission on Taxation, vol. 3 (Ottawa: Queen’s Printer, 1966-67) (herein referred to as “the Carter report”), at chapter 8. See Goodman, supra note 12, at 1361.
30 Duff, supra note 13, at 92.
31 Carter report, supra note 29, vol. 3, at 472.
32 Canada, Department of Finance, 1971 Budget, Budget Speech, June 18, 1971, at 12.
33 Goodman, supra note 12, at 1361.
34 See subsection 70(5) of the ITA and related provisions. See also I. Asper, “Comment: Ontario, Quebec Continue Death Tax Easing,” Globe and Mail, August 14, 1975, at B2.
35 See subsection 70(9) of the ITA and related provisions; and “Incorporated Farms Now Eligible for Inheritance Tax Exemptions,” Globe and Mail, April 11, 1978, at 11.
abandoned their succession duties.36 Quebec increased exemptions in 1983 and ultimately repealed its gift and death taxes on May 27, 1986.37

THE CASE FOR AN ACCESSION TAX

In this section, I explain how an accession tax might operate and then set out the economic case for such a tax. Finally, I draw comparisons with an AWT.

How an Accession Tax Would Operate

A WTT on donees should apply regardless of whether transfers are made inter vivos or mortis causa. This view is supported by the United Kingdom’s Mirrlees review (a wide-ranging study of tax policy and design, completed in 2010).38 Moreover, both types of WTTs are used in OECD countries.39

The Mirrlees review recommended an accession tax based on total gifts received over the donee’s lifetime.40 Fleischer41 and Duff42 also recommend an accession

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36 J. Harvey Perry, A Fiscal History of Canada—The Postwar Years, Canadian Tax Paper no. 85 (Toronto: Canadian Tax Foundation, 1989), at 402. Succession duties were terminated by Alberta and Saskatchewan in 1971; by all four Atlantic provinces in 1975; by British Columbia and Manitoba in 1977; and by Ontario in 1979. See W. Irwin Gillespie, Tax, Borrow, and Spend: Financing Federal Spending in Canada, 1867-1990 (Ottawa: Carleton University Press, 1991), at 259, table A-1.

37 Goodman, supra note 12, at 1370. It should be noted here that probate fees (which are considered to be a tax: Eurig Estate (Re), [1998] 2 SCR 565) continue to exist under various provincial probate laws; see, for example, Saskatchewan’s Administration of Estates Act, SS 1998, c. A-4.1, and Ontario’s Estates Administration Act, RSO 1990, c. E.22. Probate fees are generally a modest percentage of the fair market value of the assets governed by the will requiring probate, and numerous forms of planning exist to minimize or avoid probate fees, although these can have significant consequences: see, for example, Dunnison Estate v. Dunnison, 2017 SKCA 40, in which an asserted bare trust to avoid probate failed, leading to an outright gift to an estranged son; and Hilmoe v. Hilmoe, 2018 SKCA 92, in which probate planning resulted in a second wife obtaining the family farm instead of the natural children. Multiple will planning (for example, where a person has two wills, one for assets that require probate and a second for assets that do not require probate) may be undertaken to minimize probate fees. In addition, alter ego trusts and joint partner trusts (which must meet specific requirements in subparagraph 104(4)(a)(iv) of the ITA) can be used to avoid such fees.

38 Mirrlees review, supra note 11, at 358.

39 See the discussion above under “Approaches to Wealth Taxation.”

40 Mirrlees review, supra note 11, at 357. Importantly, an accession tax considers lifetime receipts whereas an inheritance tax considers transfers annually. On this point, see Ray D. Madoff, “Considering Alternatives: Are There Methods Other Than the Estate and Gift Tax That Could Better Address Problems Associated with Wealth Concentration” (2016) 57:3 Boston College Law Review 883-92, at 886.

41 Miranda Perry Fleischer, “Divide and Conquer: Using an Accessions Tax To Combat Dynastic Wealth Transfers” (2016) 57:3 Boston College Law Review 913-46, at 913.

42 David G. Duff, “Alternatives to the Gift and Estate Tax” (2016) 57:3 Boston College Law Review 893-912, at 911.
tax based on cumulative receipts. The underlying logic is that each gift cannot be considered in isolation; otherwise, tax could be mitigated by dividing gifts into small instalments.\textsuperscript{43} The Carter commission warned of this possibility.\textsuperscript{44} The French system, introduced in 1992, takes into account gifts made within 10 years prior to death.\textsuperscript{45} Canada’s DSDA considered gifts within three years of death, as did the successor statute, the ETA.\textsuperscript{46}

Whatever form an accession tax would take, it would have to be coordinated with the rules for withdrawals from registered retirement savings plans (RRSPs)\textsuperscript{47} and take into account any challenges associated with taxing interests in trusts.\textsuperscript{48} The design should also consider whether a WTT would function as separate legislation or be integrated with the existing federal ITA.\textsuperscript{49}

Fleischer recommends WTTs on donees at increasing marginal rates.\textsuperscript{50} While donee-based taxes can be progressive or flat,\textsuperscript{51} progressive rates may be appealing because of diminishing marginal utility.\textsuperscript{52} Moreover, progressive rate structures appear to be prevalent in existing WTTs in Europe.

One significant advantage of the donee-based approach is that it militates against the characterization of a WTT by anti-death-tax campaigners as a form of double taxation.\textsuperscript{53} That is, the donee-based WTT is not levied upon the “thrifty and hardworking donor.”\textsuperscript{54} Similarly, Graetz has observed that “[p]eople are far less

\begin{thebibliography}{9}
\item Magnus Henrekson and Daniel Waldenström, “Inheritance Taxation in Sweden, 1885-2004: The Role of Ideology, Family Firms, and Tax Avoidance” (2016) 69:4 Economic History Review 1228-54, at 1231.
\item Carter report, supra note 29, vol. 3, at 473.
\item Jonathan Goupille-Lebret and Jose Infante, “Behavioral Responses to Inheritance Tax: Evidence from Notches in France” (2018) 168 Journal of Public Economics 21-34, at 23.
\item Pozer, supra note 25, at 92.
\item On this point, in the US context, see Alan J. Auerbach, “The Mirrlees Review: A U.S. Perspective” (2012) 65:3 National Tax Journal 685-708, at 690, footnote 6.
\item Madoff, supra note 40, at 889-90.
\item For a US perspective, see Wojciech Kopczuk, “Taxation of Intergenerational Transfers of Wealth,” in Alan J. Auerbach, Raj Chetty, Martin Feldstein, and Emmanuel Saez, eds., Handbook of Public Economics, vol. 5 (Amsterdam: North Holland, 2013), 329-90, at 336. See also Lily L. Batchelder, “What Should Society Expect from Heirs—The Case for a Comprehensive Inheritance Tax” (2009) 63:1 Tax Law Review 1-112.
\item Fleischer, supra note 41, at 913.
\item Glen Loutzenhiser, Tiley’s Revenue Law, 8th ed. (Oxford, UK: Hart Publishing, 2016), at 844.
\item The idea may originate with Daniel Bernoulli, Hydrodynamica, sive de Viribus et Motibus Fluidorum Commentarii: Opus Academicum (Strasbourg: Johann Reinhold Dulsseker, 1738); see Niall Ferguson, The Ascent of Money: A Financial History of the World (New York: Penguin Books, 2008), at 215. See also, more recently, Richard H. Thaler, Misbehaving: The Making of Behavioral Economics (New York: W.W. Norton, 2016), at 106.
\item Duff, supra note 42, at 912.
\item Ibid., at 911.
\end{thebibliography}
sympathetic to repeal [of the US estate tax] when they view the estate tax as a tax on Paris Hilton, rather than on Conrad Hilton.”

The Carter commission was quite broad in its formulation of WTTs, recommending the inclusion of all property received from another tax unit, including gifts, transfers for inadequate consideration, debt forgiveness, succession transfers, and relief payments for dependants. Exemptions from WTTs may include certain dollar amounts before the tax takes effect or lower rates for transfers to children or spouses. Germany, Italy, and France each take into consideration the relationship between the donee and the donor in their inheritance tax regimes, and countries may offer preferable treatment when the transfer is to a charity. This was also true of the now-repealed Swedish inheritance tax. The Mirrlees review asserted that there is a stronger argument for taxing wealth transferred to the next generation as opposed to persons of equivalent age.

Assets such as businesses and farms present their own problems in the context of wealth transfers. In Germany, for example, over half of corporate transfers appear to be exempt from inheritance tax, potentially limiting its utility in raising revenue. Dodge has noted that a “recurring political leitmotiv” is that estate taxes cause the breakup of family farms and business, but observes that this claim has been met with questioning academic scrutiny.

A WTT gives rise to evasion and avoidance concerns. For example, in 1965, the Economist explained that, where the tax is donor-based, an avoidance technique might include taking up domicile in a low-tax jurisdiction. In the US context, Batchelder has recently proposed that, out of necessity, any WTT will require complex rules to counter avoidance strategies. In Canada, the general anti-avoidance rule

55 Michael J. Graetz, “Death Tax Politics” (2016) 57:3 Boston College Law Review 801-14, at 809.
56 Carter report, supra note 29, vol. 3, at 479.
57 EY, Worldwide Estate and Inheritance Tax Guide 2019 (www.ey.com/en_gl/tax-guides/worldwide-estate-and-inheritance-tax-guide-2019). These preferences may include lower rates or exemptions for transfers to spouses, children, close relations, or charities, but it is difficult to generalize. See Kopczuk, supra note 49, at 330.
58 Henrekson and Waldenström, supra note 43, at 1232.
59 Mirrlees review, supra note 11, at 356.
60 Loutzenhiser, supra note 51, at 844. This has been referred to as the bugaboo of estate and gift tax regimes; see Madoff, supra note 40, at 890.
61 Stefan Bach and Andreas Thiemann, “Inheritance Tax Revenue Low Despite Surge in Inheritances” (2016) 6:4/5 DIW Economic Bulletin 41-48, at 48.
62 Joseph M. Dodge, “Replacing the Estate Tax with a Reimagined Accessions Tax” (2008) 60:5 Hastings Law Journal 997-1062, at 1001.
63 On the topic of avoidance, see Kopczuk, supra note 49, at 330.
64 “Taxing Fortunes,” Economist, December 11, 1965, at 1220.
65 See Lily L. Batchelder, “Leveling the Playing Field Between Inherited Income and Income from Work Through an Inheritance Tax,” in Jay Shambaugh and Ryan Nunn, eds., Tackling
(GAAR) and civil penalties against tax advisers under the ITA\textsuperscript{66} may assist with enforcement, and a statutory mechanism to counteract generation-skipping planning (such as taxes upon grandchildren) would be necessary.

Sweden provides an interesting example of a tax system in which a WTT failed. Henrekson and Waldenström argue that bracket creep and increasing housing prices meant that almost one-third of adult heirs had to pay inheritance tax in Sweden; this was instrumental in its unpopularity and ultimate abolition.\textsuperscript{67} The threshold for inheritance tax in Sweden occasionally dropped below twice the annual income of workers, and thus the tax increasingly affected the middle class.\textsuperscript{68} Two major events ultimately triggered the repeal of the Swedish WTT: first, in the 1980s, it was reported that four notable families had left the country to avoid the inheritance tax;\textsuperscript{69} and second, stock prices of Astra (now AstraZeneca) fell concurrently with the death of a founder, leading to a tax rate on that estate in excess of 100 percent.\textsuperscript{70}

**The Economic Argument for an Accession Tax**

Views differ on wealth as a base for taxation. In the United Kingdom, the Meade report concluded that wealth confers a benefit upon its owner and “is therefore a proper subject for tax.”\textsuperscript{71} Similarly, in the US context, Fleischer has expressed concern that large wealth transfers confer “unearned power and influence.”\textsuperscript{72} She finds the notion of the “creation of a hereditary plutocracy” to be antithetical to US democratic ideals.\textsuperscript{73} It is reasonable to assert that plutocracy is also implicitly, if not explicitly, contrary to Canadian notions of democracy.\textsuperscript{74}

Inheritances are just as relevant as income and savings with respect to the measurement of well-being, and both income and savings are generally taxed in

\textsuperscript{66} ITA sections 245 (GAAR) and 163.2 (civil penalties).
\textsuperscript{67} Henrekson and Waldenström, supra note 43, at 1229.
\textsuperscript{68} Ibid., at 1247.
\textsuperscript{69} “Richest Swedish Families Leave To Avoid High Taxes,” Globe and Mail, May 9, 1988, at B14. As noted by Henrekson and Waldenström, supra note 43, at 1231, Sweden also maintained a gift tax regime.
\textsuperscript{70} Henrekson and Waldenström, supra note 43, at 1249.
\textsuperscript{71} Institute for Fiscal Studies, *The Structure and Reform of Direct Taxation: Report of a Committee Chaired by Professor J.E. Meade* (London: Allen & Unwin, 1978), at 317 (herein referred to as “the Meade report”).
\textsuperscript{72} Fleischer, supra note 41, at 914.
\textsuperscript{73} Ibid., at 915.
\textsuperscript{74} See sections 15(2) and 36 of the Constitution Act, 1982, being schedule B to the Canada Act 1982 (UK), 1982, c. 11.
Canada. Unlike income and savings, however, there is no deferred pleasure (for example, work over leisure) or deferred consumption (for example, saving instead of buying a new boat) for inheritances. Inheritances thus represent the obtaining of money at no opportunity cost, and are therefore properly subject to taxation on the basis of fairness and economic incentives.

Much of the WTT literature focuses on equality of opportunity. A progressive WTT is a policy available to limit “the transmission of inter-generational inequality.” Where the rates are high, a WTT may limit transfers of large fortunes to future generations. Thus, despite affecting potentially a small pool of taxpayers, a WTT can have important distributional implications and can be “unusually progressive,” although it will typically generate little revenue.

Wealth transferred to a recipient is relevant to considerations of equity. Advocates of an accession tax tend to emphasize equality of opportunity and the potential for the “Carnegie effect” to reduce the labour efforts of recipients of large wealth transfers. The “Carnegie effect” refers to the American philanthropist Andrew Carnegie, who had spoken out in favour of a progressive tax on wealth transfers in 1889.

**ACCESSION TAXES AND AWTS**

Recently, scholars such as Piketty, and Saez and Zucman have called for AWTs. This is likely in part because tax systems that rely on income and/or consumption as the tax base do not provide for a direct tax on wealth. This failure to tax wealth

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75 Canada’s tax system does, however, provide tax-favoured treatment for certain assets. Examples include the tax-exempt status of investment income earned in tax-free savings accounts; the deferred taxation of contributions to RRSPs and registered pension plans; the exemption from capital gains and imputed rental income for owner-occupied housing; the exemption from accrual taxation of savings in registered disability savings plans (RDSPs) and registered education savings plans; and complex partial withdrawal exemption rules in the case of RDSPs.

76 See Samuel D. Brunson, “Afterlife of the Death Tax” (2019) 94:2 Indiana Law Journal, 355-88, at 381: “Heirs would owe taxes on their receipts at the same rate as workers who earned the same amount of money and enjoyed the same consumption potential.”

77 Batchelder, supra note 65, at 50. This proposition is also true for inter vivos gifts.

78 Meade report, supra note 71, at 318.

79 Evans et al., supra note 2, at 104.

80 Meade report, supra note 71, at 317.

81 See Kopczuk, supra note 49, at 330 and 333.

82 See generally the Mirrlees review, supra note 11.

83 See Douglas Holtz-Eakin, David Joulfaian, and Harvey S. Rosen, “The Carnegie Conjecture: Some Empirical Evidence” (1993) 108:2 Quarterly Journal of Economics 413-35, at 432.

84 Mirrlees review, supra note 11, at 349.

85 Graetz, supra note 55, at 808.

86 There has been a robust recent debate regarding wealth taxes, particularly since the publication of Thomas Piketty’s *Capital in the Twenty-First Century*, trans. Arthur Goldhammer
can create inequities, because wealth confers prestige and influence upon its holder.\textsuperscript{87} An AWT may improve vertical and horizontal equity,\textsuperscript{88} because the possessor obtains advantages from holding wealth,\textsuperscript{89} but the distribution of the tax burden among persons with different levels of well-being remains contentious.\textsuperscript{90} Saez and Zucman suggest that a progressive wealth tax would require a “comprehensive base.”\textsuperscript{91} They argue that the effects on innovation would be modest,\textsuperscript{92} and note that there is “scant empirical evidence” of migratory effects.\textsuperscript{93}

Despite some recent popular support for AWTs, there is robust academic literature that opposes them. The Mirrlees review concluded that AWTs are not appealing.\textsuperscript{94} Duff has suggested that periodic taxes on wealth (for example, AWTs) are a “poor substitute” for a WTT.\textsuperscript{95} Similarly, Boadway and Pestieau argue that AWTs face significant administrative challenges, and that CGTs and WTTs are preferable.\textsuperscript{96}

In a paper prepared for the Mirrlees review, Boadway, Chamberlain, and Emmerson argue that AWTs are in decline and “have failed to live up to expectations.”\textsuperscript{97}

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\item \textsuperscript{87} Robin Boadway and Pierre Pestieau, Over the Top: Why an Annual Wealth Tax for Canada Is Unnecessary, C.D. Howe Institute Commentary no. 546 (Toronto: C.D. Howe Institute, June 2019), at 5.
\item \textsuperscript{88} However, an accession tax also would improve horizontal and vertical equity. See Brunson, supra note 76, at 381.
\item \textsuperscript{89} See Cedric Sandford, “Taxing Wealth,” in Cedric Sandford, ed., More Key Issues in Tax Reform (Bath, UK: Fiscal Publications, 1995), 49-69, at 50-52.
\item \textsuperscript{90} Burman and Slemrod, supra note 3, at 142.
\item \textsuperscript{91} Emmanuel Saez and Gabriel Zucman, “How Would a Progressive Wealth Tax Work? Evidence from the Economics Literature,” ICRICT, June 17, 2019, at 5 (www.icricht.com/you-should-also-read/2019/6/17/how-would-a-progressive-wealth-tax-work-evidence-from-the-economics-literature). (“ICRICT” refers to the Independent Commission for the Reform of International Corporate Taxation.) Advocates of AWTs do make important points about wealth inequality. However, in light of the myriad practical problems with AWTs, it is worthwhile to consider whether an accession tax could be a more workable solution to the problem, as I suggest in this article.
\item \textsuperscript{92} Saez and Zucman, supra note 91, at 11.
\item \textsuperscript{93} Ibid., at 13.
\item \textsuperscript{94} Mirrlees review, supra note 11, at 347.
\item \textsuperscript{95} Duff, supra note 42, at 908.
\item \textsuperscript{96} Boadway and Pestieau, supra note 87, at 11.
\item \textsuperscript{97} Robin Boadway, Emma Chamberlain, and Carl Emmerson, “Taxation of Wealth and Wealth Transfers,” in Stuart Adam, Timothy Besley, Richard Blundell, Stephen Bond, Robert Chote, Malcolm Gammie, Paul Johnson, Gareth Myles, and James Poterba, eds., Dimensions of Tax Design: The Mirrlees Review (Oxford, UK: Oxford University Press, 2010), 737-814, at 781-82.
\end{itemize}
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Evans et al. offer a comprehensive critique of disclosure and valuation problems associated with AWTs.98 Burman and Slemrod point to a number of problems with AWTs, including “many exemptions and deductions, high levels of avoidance and evasion, and high costs of administration and compliance.”99 Burman and Slemrod also mention that AWTs create incentives for the wealthy to hide investments in diamonds and antiquities.100 Finally, because AWTs can reduce the return on savings and business investment, a portion of the tax incidence of an AWT may fall on workers.101

WTTs and CGTs may therefore, for practical purposes, remain a better option than AWTs for taxing wealth accumulations, in circumstances in which a government is concerned about inequality, equality of opportunity, or the potential effect of bequests on the recipients’ willingness to work. Moreover, compared to an accession tax, an AWT may suffer from greater avoidance and valuation problems, perverse incentives, intrusive audits, asset monetization, the hiding of assets, and the need to repay taxes when wealth declines. By contrast, an accession tax contemplates the financial position of the donee, preserving horizontal equity, and it may have a less distorting effect on work incentives for recipients. Therefore, more consideration could be given to accession taxes where wealth and income inequality raise concerns; however, the debate remains complex.

CONCLUSION

WTTs existed in Canada for much of the 20th century, but by the 1980s, they had largely disappeared. Yet powerful equity and efficiency arguments can be made for WTTs. While AWTs may enjoy considerable popular support, their disadvantages include many administrative problems, and in that light their dwindling use internationally is unsurprising. In this regard, an accession tax has clear advantages and should be considered, particularly where concerns about growing inequality are paramount.

The main nuance in the WTT debate is that WTTs must be levied on the recipients of transfers in order to (1) respond to some of the objections from anti-double-tax campaigners, (2) preserve work incentives for recipients, and (3) prevent unearned accumulations of wealth. Given the potential advantages of WTTs, it is surprising that recent popular debate has focused almost entirely on AWTs.

98 Evans et al., supra note 2, at 106-15.
99 Burman and Slemrod, supra note 3, at 137.
100 Ibid., at 138.
101 Ibid.