



UNIFORM LAW CONFERENCE OF CANADA

**INTER-PROVINCIAL/TERRITORIAL COLLECTION OF
TAX DEBTS - REPORT OF THE WORKING GROUP
(2017)**

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1. Introduction

1.1 Background

[1] The ULCC's *Uniform Enforcement of Canadian Judgments and Decrees Act* (1997) incorporates the "full faith and credit" principle as it relates to enforcement of judgments. The theory is that a judgment from one jurisdiction may be registered in the court of another jurisdiction, and, on registering, is treated as a judgment of the new jurisdiction.

[2] In 2007, the uniform Act was amended to include judgments under a tax law. A "Canadian tax judgment" may be registered in the new jurisdiction and enforced as a judgment of that jurisdiction. A Canadian tax judgment includes a certificate of an amount payable under a tax law registered in a court of a province or territory. This reverses to some extent a longstanding revenue rule, which states that no jurisdiction takes notice of the revenue laws of another.

[3] Subsequently, potential issues were identified by the Inter-Provincial and Territorial Tax Conference sub-committee on the inter-province/territorial collection of tax debts that relate to the fair, clear, efficient and effective inter-jurisdictional collection of tax debts. Thus, this Working Group, including members from the IPTTC and the ULCC, was formed to review the uniform Act and make recommendations for improvements.

[4] It should be noted that enforcement of tax judgments has previously been addressed by the ULCC. The *Reciprocal Enforcement of Tax Judgments Act* was adopted in 1965, revised in 1966 and repealed in 1980. It was not adopted by any Canadian jurisdiction.

1.2 Project Status

[5] The Working Group was formed in the fall of 2016 and is comprised of the following members:

IPTTC	ULCC
Phillip Peters (Alberta) Co-Chair	Nolan Steed (Alberta) Co-Chair
Manfred Grunling (Alberta)	Peter Lown (Alberta)
Kevin O'Hara (Ontario)	Corinne Carlson (Alberta)
Ava Tomlinson (Ontario) (now retired)	Darcy McGovern (Saskatchewan)
Karen Dobbs (Ontario) (replaces Ava)	Jane Chapco (Saskatchewan)
Isabelle Paradis (Quebec)	John Gregory (Ontario)
Michael Lema (Canada)	Frédérique Sabourin (Quebec)

[6] The Working Group has met by phone a number of times since the fall, and has identified the issues that they will be working on in the upcoming year. This reports sets out those issues, and the anticipated future work of the group.

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2. Nature of Tax Debt

[7] Taxes are normally used by a jurisdiction as general revenue to fund public spending for the benefit of the residents of that jurisdiction. Thus, from a policy perspective, there is an argument that the collection of tax debts may justify special rules, procedurally and substantively, as compared with collection of debts by ordinary creditors. For example, to ensure collectability, certain taxes have deemed by statute to be held in trust for Her Majesty or even survive bankruptcy in some cases under applicable legislation.

[8] The question being raised is whether and how to protect certain tax policies when provincial and territorial borders are crossed.

[9] As currently written, the uniform Act places tax judgments in the same category as ordinary judgments enforceable by private creditors.

3. Guiding principles and terminology

[10] For the purposes of this paper and the group's discussions, the following terminology is used:

- **Home Jurisdiction:** the province or territory where the tax debt arose.
- **Away Jurisdiction:** the province or territory where the tax debt is sought to be enforced.

[11] As an initial step, the Working Group agreed conceptually on various premises, including the following:

- For the purposes of this project, tax debts should include principal, interest, penalties and additional costs (if any).
- Tax debts should include not just income taxes, but commodity taxes and other tax-like debts (e.g. carbon levy). This appears to already be captured in the definition of Canadian judgment in the uniform Act.
- Tax debts should be determined in accordance with the law in the home jurisdiction and should generally be final (i.e. not subject to objection or appeal) before they can be enforced in an away jurisdiction.
- Enforcement provisions should be of practical use to home jurisdictions. In fact, a specific mandate of the IPTTC sub-committee was to include the involvement of collection officials – the people who will be using the legislation – in developing its suggestions.

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4. Key issues and subjects of research

[12] In the analysis of potentially protecting tax policy through inter-jurisdictional enforcement, both procedurally and substantively, the Working Group is considering issues in three major categories, expressed in the following questions:

1. Are amendments to the definition of Canadian tax judgments in the uniform Act needed?
2. Should there be special, easier processes for collecting a tax judgment in another (away) jurisdiction?
3. Should there be any sort of enhanced priority for tax judgments in another (away) jurisdiction?

Each issue is described further below.

[13] Issues 2 and 3 do not necessarily fit neatly into the uniform Act, and may be better suited to a jurisdiction's civil enforcement legislation or tax legislation.

4.1 Issue 1: Definition of tax judgment

[14] There is already a definition of Canadian tax judgment in the uniform Act:

“Canadian tax judgment” means

- (a) a judgment for the recovery of an amount of money payable under an Act imposing a tax made by a court of a province or territory of Canada other than *[enacting province or territory]*, and
- (b) a certificate of an amount payable under an Act imposing a tax that is registered in a court of a province or territory of Canada other than *[enacting province or territory]* and that is deemed under the law of that province or territory to be a judgment of that court; (« jugement canadien de nature fiscale »).

[15] This definition is unanimously agreed as well-developed, although it has been noted that at least one province (Ontario) does not use the certificate system for the collection of taxes. Thus, depending on the recommendations of the group on the other two issues, amendments to this definition could be needed.

4.2 Issue 2: Process for enforcement of tax judgments

[16] Under the existing uniform Act, registration of a Canadian judgment in an away province means that the judgment is enforceable as an ordinary judgment under the relevant civil enforcement mechanisms available in the away province.

[17] There are differences, however, in the enforcement provisions of civil enforcement legislation and taxing legislation. For example, those provinces and territories that adopt the garnishment provisions found in s.224 of the *Income Tax Act* (Canada) operate in some cases notwithstanding bankruptcy and creditor protection legislation. One question that might be asked is whether the home jurisdiction might be permitted to access remedies available under the tax legislation of the away jurisdiction, or be limited to the remedies and restrictions of ordinary civil enforcement legislation.

[18] The Working Group will be exploring whether any of these mechanisms should be available in the away jurisdiction, and if so, how.

4.3 Issue 3: Priority of tax judgments

[19] The third major issue to be examined relates to priority of tax judgments, and in particular, whether a home tax judgment should be afforded any priority over ordinary debts in the away jurisdiction. In some provinces and federally, some tax debts have priority over ordinary creditors.

[20] Thus, the group is looking at whether there is any benefit in treating a tax debt in an away jurisdiction “better” than the debt of an ordinary creditor, and if so, what and how. There are a number of sub-issues which the group will be exploring as part of its work in this area:

- Relative priorities of tax debts from the home jurisdiction and the away jurisdiction.
- Priority of home tax debts as against ordinary creditors in the away jurisdiction.
- Super-priority of certain tax debts under the *Income Tax Act* (Canada) and similar provincial provisions—generally withholding taxes—and whether any similar treatment should be afforded to such tax debts being enforced in an away jurisdiction.
- Deemed trusts in provincial tax legislation and potential enforcement issues in an away jurisdiction.
- Existing priority provisions for tax debts (including provincial tax debts) in bankruptcy and whether they could or should apply to a home jurisdiction’s tax debts in an away jurisdiction, recognizing that bankruptcy is under federal jurisdiction.

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5. Next Steps

[21] The Working Group will continue to tackle these issues and is aiming to provide recommendations in time for the 2018 meeting. As noted in paragraph 12 above, priorities may not belong in uniform enforcement of judgments legislation, so recommendations may relate to provincial or territorial civil enforcement or tax legislation.