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Tax Reform: A Missing Piece in Canada's National Housing Policy

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TAX REFORM: A MISSING PIECE IN CANADA'S NATIONAL HOUSING POLICY

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1. INTRODUCTION

Housing occupies a special place in Canadian society. Over two-thirds of Canadian families own a home, which is one of the highest homeownership rates among OECD countries.[1] As well as being a home, housing is a financial asset: it is the biggest family asset for most households, and housing-related expenditures (mortgages, property taxes, and maintenance) are the main cause of household debts.[2] The housing sector accounts for about 7.5% of the Canadian economy and new housing starts is an important indicator of the state of the economy.[3] Any "crisis" associated with housing can have profound impact on Canadians. There are fiscal and regulatory policies to affect the supply and/or demand of housing for social and economic reasons.

This chapter considers the role of tax policy in Canada's housing policy. Drawing on existing literature and publicly available data, it claims that current tax policy is biased in favour of homeownership, which has propelled demand for housing as speculative investment assets, and that, in turn, potentially contributes to rising housing prices and less access to affordable housing. And yet, tax policy has not been well integrated into Canada's national housing policy. This chapter argues that it should. Tax instruments can be redesigned to help address, although not necessarily prevent, housing risks in terms of financial risks and affordable housing.

Research on the importance of tax policy in housing was inspired by the "scare" of a housing bubble being punctured by the Home Capital's crisis in 2017[4] and possible connection between tax policy and speculative investments and secondary mortgages market. This research is important for two reasons. First, it contributes to the housing policy debates by drawing attention to the role of tax policy. It shows that, even though the existing tax instruments were originally intended to promote economic activities in the housing sector they are now likely contributing to the housing crisis. These tax instruments can be redesigned to reduce speculative investments in housing while encouraging investment in affordable housing.[5] Second, this research contributes to Canadian literature on housing by examining the significance of tax policy on the demand and supply of housing. Existing literature in this area is limited (e.g., Dowler,[6] Fallis[7] and Steele[8] and Bird[9], and Hulchanski[10]) and rather dated. This chapter seeks to remedy this gap.

This research is timely. The COVID-19 pandemic amplifies the health risk associated with housing because housing became "the front line defense against the coronavirus"[11] and poor housing conditions are correlated to higher infection rate. For example, the number of COVID-19 cases is nearly four times higher among people living in areas of the city with high levels of overcrowding, which are also areas with high concentration of poverty and racialized communities.[12] Post-pandemic era will likely see broader political support for a more coherent public policy framework to reduce such inequity at the top end (e.g., reducing speculative investment in oversized housing or second or third homes) as well as the bottom (more access to affordable housing). As in other major public policy areas, tax policy can be a major element of the national housing policy framework. This chapter illustrate how that can be the case.

Following this introduction, Parts 2 to 4 provide the necessary context for developing the central argument. Part 2 discusses the importance of housing in Canada. It also examines the housing situation from a market perspective: demand for housing driven by a fundamental need of a home and by speculative investments that regard housing as an investment asset or commodity, and supply of housing out of profit motivations and social policy reasons. Part 3 presents the existing federal, provincial and municipal taxes on housing and notes that the most significant tax measures are those in the Income Tax Act (the "Act"),[13] such as the principal residence exemption, first-time home buyers tax credit, tax-free treatment of imputed rent and the availability of self-help tax shelters through investment in rental housing. Part 4 considers the impact of the tax bias for homeownership on speculative investment in housing and the supply of affordable housing. Part 5 makes the case for using tax policy to advance housing policy objectives. It identifies some main options and teases out some potential challenges. Part 6 concludes the chapter.

2. HOUSING AND HOUSING CRISIS

A. Home Ownership

Housing has a unique place in Canadian society because of its multifaceted relationship with their owners. A housing unit can be a family residence, an instrument of savings, or an object of speculation. For most Canadians, housing is a hybrid of consumption and savings. According to Statistics Canada, the decision to own or rent one's home is "one of the most important decisions for a household" as it "affects household finance, the ease with which people can relocate, the choice of location and type of dwelling, and other important factors related to how people live."[14]

About two-thirds of Canadian households own their home. For example, in 2016, more than 67.8% (9.5 million of the 14.1 million) Canadian households owned their home while about 26% of households rent at market rate, 6% participate in social housing and 25,000 Canadians are chronically homeless.[15] Some Canadian households own more than one housing property. For example, in 2018, 1.2 million multiple-property owners in British Columbia, Nova Scotia and Ontario owned around 2.1 million properties and the non-owner-occupied properties were used to generate income or capital gains or for personal use.[16] The majority of multiple-property owners were concentrated in Toronto and Vancouver and most own two single-detached houses.[17]

Since housing wealth is the most important form of wealth for ordinary Canadians, disparities in homeownership widen the wealth inequality gap in Canada. Home ownership is concentrated in higher-income groups and with older Canadians. For example, in 2017, the lowest-quintile households held 7% of total housing assets, compared to a 46% share among top-quintile households.[18] Among households in the top-income quintile, net worth rose by 56% from 2010 to 2017.[19] During recent decades, the growing gap between high-income and low-income Canadian households has increasingly manifested itself in the housing system; with households that cannot afford to buy remaining in the rental market.[20]

Inter-generalational enequality between baby boomers and younger Canadians is also evident. Canadian families with a major income earner aged 65 and older reported the largest median value in home equity in 2016 at $300,000, where those aged 35 to 44 had median home equity of $168,000.[21] In 2016, the homeownership rate was 74.6% for households aged 65 and over, but only 43.1% for households under 35.[22] Millennials are purchasing homes at a slower rate than baby boomers did when they were young adults, and those purchases are more likely to be condos, rather than detached homes.[23]

Homeownership in Canada has social and economic implications. In general, housing is considered to have significant social implications in terms of children's education, health, sense of security, community life, environment, and has been considered the "root of human flourishing" and critical to "personhood."[24] Access to affordable housing is considered a basic human right.[25] When housing becomes a speculative investment asset or trading commodity, it may create financial risks.

B. AFFORDABILITY CRISIS

The Current Crisis

Affordability is "the sum of a range of factors including the ability to access affordable housing, trade-offs made on quality and location and the range of other costs associated with housing consumption such as taxes and utilities."[26] There are different methods used to calculate housing affordability in Canada.[27] A minimum income threshold is the conventional method that uses "the shelter-cost-to-income ratio, which most commonly sets the affordability threshold at 30% of before-tax household income."[28]

Research commissioned by the CMHC found that affordability pressures are acute for both single adults and lone-parent households across several largest metropolitan areas.[29] According to a recent RBC Economic Brief, in the last quarter of 2018, the share of income a household would need to cover homeownership costs is 84.7% in Vancouver, 66.1% in Toronto, 44.5% in Montreal, and 40.6% in Ottawa.[30] The down payment for an "average" home in most major Canadian cities exceeds the annual household income, and was more than 150% in Vancouver.[31] The time required to save for the down payment on a representative home at a savings rate of 10% is 342 months in Vancouver, 33 months in Montreal, and 92 months in Toronto.[32] Exorbitant down payments particularly affect the ability of younger Canadians to purchase a home.

The challenges in affordable rental housing are well-recognized. For example, over 50% of Ontario households headed by someone aged 25 to 34 rent their home, and nearly half of Ontario renters pay more than the affordability threshold of 20% of before-tax income.[33] Across Canada, 1.7 million people are in core housing need; living in homes that are either inadequate or unaffordable.[34] For many Canadians, shelter costs grow faster than incomes. Low-income and private rental households are particularly vulnerable to "housing stress."[35] On average, a full-time worker needs to make $22.40/hour to be able to rent an average two-bedroom apartment using no more than 30% of her income.[36] In some cities, the hourly wage needed is much higher: $35.43 in Vancouver and $33.70 in Toronto.[37] The minimum wage in 2019 is $13.85 in Vancouver and $14 in Toronto.

It can be said that there is an affordability cricis in many parts of Canaa and it has serious social concerns.[38] A recent study found that, on average, immigrants face more severe housing challenges than non-immigrants, homeowners tend to fare better than renters, and non-couples tend to face greater housing difficulties than couples.[39] The most vulnerable Canadians include "women and children fleeing family violence, Indigenous peoples, seniors, people with disabilities, those dealing with mental health and addiction issues, veterans and young adults."[40]

Government intervention

The government at all levels have intervened to improve affordability of housing. "Conquering the lack of affordable housing is key to solving the rising poverty in Canada. A government housing policy is therefore a necessary ingredient of a comprehensive social policy as well as economic, health and environmental policies."[41] The first modern example of a housing program is from 1918, when the federal government made $25 million available to build new homes for "young returning soldiers of modest income who needed help to purchase a small home."[42] At the end of World War II, the *National Housing Act* was introduced, and the Central Mortgage and Housing Corporation (later renamed the Canada Mortgage and Housing Corporation, or CMHC) was created to house returning war veterans, and to lead Canada's housing programs.[43] Today, the CMHC exists for a single reason: "to make housing affordable for everyone in Canada."[44] The most recent example is the National Housing Strategy, which was launched in 2017 to increase investment in social housing, and help vulnerable Canadians.[45] The Strategy contains a 10-year, $55 billion investment initiative to help ensure that "Canadians have housing that meets their needs and they can afford."[46]

C. FINANCIAL RISKS

Potential crisis

Risks related to housing can have significant impact on the Canadian economy because of the size of the housing sector. The housing and real estate sector is a major pillar of the Canadian economy.[47] In 2019, residential real estate represents 7.5% of the Canadian economy, compared with 4.9% in the United States, and 4.1% in the United Kingdom.[48] About one fifth of the Canadian economy is related to real estate, including through construction, rental and leasing, finance, and insurance.[49]

The Canadian housing market is comprised of three segments: ownership, private market rental, and the social and non-profit sector where rents are administratively set below market rates.[50] Outside the social housing sector, the price of housing is a function of supply and demand, which, in turn, is influenced by many factors, including government policies, regulatory measures as well as general state of the conomy, employment rate and population growth. A buoyant housing market contributes to sustained economic activity.[51]

Meanwhile, household debt and overvaluation in the housing market are among Canada's largest domestic economic risks.[52] Canadians have a propensity to view housing as a "can't lose" investment,[53] and maximize debt to finance home ownership. Mortgage debt accounts for two-thirds of all outstanding household debts in Canada.[54] In 2018, 51.9% of household income was needed to cover ownership costs.[55] High housing prices make homeowners believe they are wealthier than they are, and increase consumer spending. This mindset poses some risks, particularly because "a growing share of the mortgage market is made up of less-regulated financial institutions beyond the big banks", such as Home Capital. Some recent data show that "nearly a quarter of new borrowers hold debt exceeding 450% of their income – a level far beyond the 170% debt-to-income ratio at the national level that is normally quoted – making them significantly more vulnerable to the current rising interest rate environment."[56]

The COVID-19 pandemic does not appear to have affected much of the housing markets as housing sales bounced back in the summer after an initial drop in the spring of 2020. On the other hand, it has "cooled" the rental markets in some largest cities, such as Toronto, Montreal and Vancouver during the "lock down".[57] The economic shock of the pandemic and the uncertainty in post-pandemic recovery can cause financial strains on homeowners, posing a risk for the residential housing market.

A downturn in housing may trigger a deleveraging episode among Canadian households, which could adversely affect the financial system and the broader economy.[58] The Bank of Canada recently noted that the "vulnerabilities associated with high household debt and imbalances in housing market have declined modestly but remain significant."[59] Younger homeowners would suffer disproportionately if prices subsequently fall, since they are more likely to have outstanding debt secured against their homes.[60] As suggested by the Home Capital case, the residential mortgage market is tied to the overall financial system of Canada, and its risk may affect the Canadian economy.[61]

Regulatory Policies

Policy interventions in the ownership and rental markets tend to be behavior-inducing measures to encourage demand or supply of housing, or establishing or enforcing the rules of the game through regulation. "Most of the history of the role of Canadian government housing policy and programs is a history of efforts targeted at the house-ownership sector."[62] Behavour-inducing measures include tax subsidies to first-time home buyers and home owners.[63] An example of a regulatory regime is the "stress test" for obtaining mortgages and mortgage insurance where the down payment is less than 20% of the total purchase price.[64] As discussed below, income tax instruments are mostly geared towards home owners.

3 TAXATION OF HOUSING

Three types of taxation affect housing in Canada: income taxes, the GST, and property taxes.[65] While income taxes and the GST are imposed by the federal and provincial governments, property taxes are imposed by provinces or municipalities. Housing-related income tax and GST measures are predominantly tax expenditures[66] as they provide preferential treatment of owner-occupied housing. In contrast, property taxes are designed to target housing directly, and are an important source of revenue for local governments. Property taxes take the form of land transfer tax, property tax, vacancy taxes, and the foreign buyers' tax.[67] All of these taxes can be viewed as part of Canada's housing tax system, even though they were not introduced with much, if any, coordination. The impact of these tax instruments on the demand or supply of housing is explored in Part 4.

A. INCOME TAX

The *Income Tax Act* provides several tax subsidies to owner-occupied housing, including the principal residence exemption and first-time home buyers' plan.[68] It does not tax imputed rent – the economic value derived by an owner from living in his/her home[69] while taxing imputed income from some other forms of investments (such as long-term debts or shares of controlled foreign affiliates).[70] Finally, the ITA contains opportunities for owner-investors to create "tax shelters" – investment in housing creates "losses on paper" to offset income from other sources, and as such, the after-tax return on such investment is higher. The ITA is biased in favour of homeownership.

The Principal Residence Exemption

The principal residence exemption is a popular tax subsidy. It, in effect, exempts gains realized from the sale of a principal residence by resident individuals from taxation.[71] It makes buying a home much more attractive than buying investment assets, such as bonds or stocks as gains from the sale of these assets are taxable. A principal residence is a home that was ordinarily inhabited during the year by the taxpayer, their spouse or common-law partner, their former spouse or common-law partner, or their child under 18 years of age.[72] The property can be located outside Canada. There is no limitation on the amount of capital gains eligible for the exemption.

The principal residence exemption was introduced during the 1972 tax reform which added a tax on capital gains.[73] The main justifications for this exemption were the social and economic implications of residential housing. "Homeownership is part of the Canadian way of life"[74] and the exemption "recognizes that principal homes are generally purchased to provide basic shelter and not as an investment, and increases flexibility in the housing market by facilitating the movement of families from one principal residence to another in response to their changing circumstances."[75] The Department of Finance gave the following explanation in the explanatory booklet that accompanied the legislation adding the exemption:

> Many who commented on the [white paper] provisions felt that substantial tax liabilities would still occur in areas where pressure on the housing market pushed prices up strongly and that homeowners would continue to face uncertainty about their tax position. It was also argued that the economic use of our housing stock might be inhibited if families could not 'move up' to larger houses as they grew and established themselves.
>
> The Government has decided that these arguments can best be met by a complete exemption. This will save homeowners from valuation problems and meet the very strong

> views of Canadian homeowners and many other Canadians who aspire to home ownership.[76]

The principal residence exemption is the second most expensive federal tax expenditure,[77] costing the government about $5 to $7 billion each year from 2013-2018.[78] It dwarfs federal direct spending on social housing. For example, CMHC plans to spend an average of $2.8 billion per year on assisted housing programs over the ten-year term ending in 2027, and Employment and Social Development Canada plans to spend $225 million per year on homelessness programs.[79]

The tax exemption benefits homeowners, especially the top 20% of income earners who receive 55% of the benefit from this exemption. Only 10% of the tax benefit goes to the bottom half of income earners.[80] The distributional effect is thus regressive: the more capital gains realized from the sale of homes the more government subsidy. Renters do not benefit from this tax subsidy; owners of smaller homes benefit less. The tax exemption thus subsidies the higher-end of the housing market. It favours investment in housing over other types of investments. It has been suggested that the tax exemption, coupled with low interest rates, makes "investing in our homes an irresistible means of savings."[81] As will be explained in Part 4, the tax exemption has the effect of encouraging accumulation of housing wealth on a tax-free basis, which may cause speculative investment or house flipping.

First-Time Home Buyers Tax Credit

The first-time home buyers tax credit and the tax-free withdrawal from a RRSP under the Home Buyers Plan[82]assist first-time home buyers. The First-time Home Buyers' Tax Credit was introduced in 2009 following the 2008 global financial crisis. It provides an annual tax relief of $750.[83] Its estimated foregone tax revenue is roughly $100 million per year.[84] The Home Buyers Plan is available to individuals who have money accumulated in an RRSP. While withdrawals from RRSPs before retirement age are taxable,[85] withdrawals of up to $35,000 are tax-free if the money is used for a down payment of purchasing a home for the first time.[86] It was found to encourage Canadians under the age of 45 to use the RRSP to save for home ownership.[87]

Non-Taxation of Imputed Rent

Imputed rent is not regarded as taxable income. Non-taxation of imputed rent is not even counted as a tax expenditure in the annual tax expenditures report in Canada.[88] The Act is biased in favour of investment in a home as opposed to other forms of investments, even if such investments are sheltered in a Registered Retired Savings Plan (RRSP) or a Tax-free Savings Account (TFSA). There are two main reasons for this: (1) the money spent on renting is not tax deducible while income from investment (such as interest or dividend) is taxable; and (2) capital gains from the sale of the investment assets is taxable.

The following example shows the favourable treatment of owner-occupied homes:[89]

> A taxpayer (the Homeowner in the chart below) with a marginal tax rate of 50 per cent owns a house, free and clear, which could be rented for $12,000 per year, and he lives in the house. Assume that he moves to another city and becomes a renter (the Renter in the chart below). He leases his house in the old city for $12,000 per year and rents an equivalent house in the new city for $12,000 per year. See how this move leaves him worse off to the tune of $6,000 per year.

	HOMEOWNER	RENTER
Salary	$ 100,000	$ 100,000
Rental income (old city)	0	12,000
Taxable income	$ 100,000	$ 112,000
Tax (at 50 per cent)	(56,000)	(50,000)
Cost of rent (old city)	0	(12,000)
Discretionary income	$ 50,000	$ 44,000

In the above example, Homeowner paid no rent and received no rental income for tax purposes. But Renter paid rent of $12,000 and received rental income of $12,000. For tax purposes, the $12,000 paid by Renter is not deductible from taxable income, while the $12,000 received by Renter is subject to tax at 50 per cent. Therefore, Renter had a tax liability of $6,000 and is thus worse off by $6,000 each year.

The non-taxation of imputed rent has similar distributional effect as the PRE: higher-income and older taxpayers who can afford to buy valuable homes benefit the most. An earlier study found that the non-taxation of imputed rent "tends to favour taxpayers with the greatest amounts of equity in a house, and who have owned the dwelling for the longest time."[90]

Rental Housing as a Tax Shelter

While there are currently no specific subsidies for rental housing investors, the Income Tax Act permits self-created tax shelters. Previously, a tax incentive for Multiple Unit Residential Buildings (MURBs) allowed taxpayers to deduct capital cost allowance (CCA)-generated losses on a rental property from income derived from other sources.[91] The MURB program was criticized for being too costly, inefficient, and prone to abuse; it was repealed in 1981.[92] Now, taxpayers can help themselves in using rental housing as tax shelters.[93] The CCA regime is based on the idea that assets will depreciate in value, and a portion of that loss should be reflected on the individual's or corporation's tax returns as an expense. [94] This regime makes sense for assets with a finite useful life, like a piece of manufacturing equipment, but is less reasonable when the asset holds its value or appreciates, like with housing. However, under the current regime, the landlord can deduct CCA as an expense, even when the asset has not lost its value.[95] These losses can then be used to offset income earned by the landlord's other operations, reducing their overall tax burden.[96] The Act only requires that a loss arise from either business or property, leaving it to the courts to determine if a rental loss is from a source. The courts have adopted a very low threshold.

For example, in *Stewart v. Canada*,[97] the Supreme Court of Canada held that a highly-leveraged investment in a rental housing, which was designed to generate paper losses, constituted a source of income, and the losses were tax deductible. In the *Stewart* case, the taxpayer bought four condos that he then rented to unrelated parties. There was no evidence that the taxpayer intended to make use of any of the properties for his personal benefit. Rather, it appeared that Stewart intended to later sell the condos after they had appreciated in value. In the year after he purchased the condos, Stewart claimed losses on his taxes for the interest he had to pay on the mortgages to acquire those condos. The loss was denied as an expense by the Minister of

National Revenue. Both the Tax Court and the Federal Court of Appeal found that there was no reasonable expectation of profit from property because the scheme "held out no expectation of profit from the rental income". The scheme was promoted by the vendor/developer as a tax shelter to "use rental losses to offset other income and realize a gain at the end of the day from the expected appreciation in the value of the property."[98] The Supreme Court of Canada reversed the lower courts' decisions and ruled that there was a source of property income because the investment was in pursuit of profit. It further held that "the motivation of capital gains accords with the ordinary business person's understanding of "pursuit of profit", and may be taken into account (as one of several factors) in determining whether the taxpayer's activity was commercial in nature".[99] *Stewart* is just one example of the favourable treatment tax planning receives by the courts.[100]

B. Goods and Services Tax

The GST is a multi-stage value-added tax.[101] It is collected by businesses that supply goods and services, but the tax burden falls on consumers. Businesses that purchase goods and services to be used in the course of their commercial activities can claim input tax credits and receive a tax refund. The current federal GST tax rate is 5%. Housing is eligible for special treatment.

Canadians who sell their principal residence, or who purchased a used home are not required to pay GST. However, new housing, including newly constructed or substantially renovated housing, is subject to the GST. [102] To encourage home ownership, individuals who buy new housing may be eligible for a tax rebate to recover some of the GST paid on the purchase.[103] When the pre-tax price exceeds a threshold (currently $450,000), the rebate is not available, suggesting that the tax rebate was intended to assist lower-income homeowners. The estimated annual amount of revenue cost to the government is over $500 million from 2013 to 2019.[104]

Canadians who rent a house, apartment, or condo for a period of at least one month are exempt from the GST.[105] This exemption "is intended to preserve the affordability of housing".[106] The estimated annual cost to the government rose from $1.8 billion in 2013 to $2.2 billion in 2019.[107] Short-term accommodation is also exempt from GST where the daily charge is less than $20.[108] The new housing rebate also applies to new residential rental property.[109] As such, owner-occupants and owner-landlords are receive identical GST treatment.

C. Property-related Taxes

Property-related taxes include land transfer taxes and recurring taxes on the assessed value of homes and other municipal level vacancy taxes. The main policy objectives of these taxes are to raise revenue, combat restate estate speculation, increase the supply of rental housing, and reduce the wealth gap.[110]

Land Transfer Taxes

Land transfer tax is imposed by all provinces except Alberta and Saskatchewan, which levy a nominal transfer fee.[111] In most provinces, the tax is calculated as a percentage of property value, using the closing price as a close estimate. These tax rates are also progressive. For example, the marginal rate in Ontario and Toronto is: 0.5% of the first $55,000 of the purchase price, 1.0% of

$55,000.01 to $250,000, 1.5% of $250,000.01 to $400,000; 2% of $400,000.01 to $2 million; and 2.5% of more than $2 million.[112] The rates in British Columbia are slightly higher: 1.0% of the first $200,000; 2.0% of $200,001 to $2 million; and 3.0% of over $2 million. First time home buyers can be partially exempted from this tax. For example, the rebate of the Toronto land transfer tax effectively exempted the first $400,000 of the purchase price from the tax.[113]

Non-resident buyers are liable to pay an additional land transfer tax in British Columbia and Ontario. This tax was introduced as a response to the skyrocketing housing prices, which were believed to be caused, in part, by housing speculations by foreign buyers.[114] In both British Columbia and Ontario, this tax was among a number of measures adopted to improve the affordability and stability of housing market in specified areas.[115] The tax rate is currently 15% in Ontario, and 20% in British Columbia.[116]

Recurrying taxes on property

A property tax is a tax on the assessed value of real property[117] at provincial and/or municipal levels.[118] A portion of the tax is earmarked for educational funding or the municipal budget, that is why the tax is often referred to as a "school tax." The rates of property tax can either be flat or progressive, depending on the jurisdiction. For example, in Toronto, the total property tax rate was 0.63% in 2018, with 0.46% being allocated to the city, 0.17% to education, and 0.002% to the city building fund.[119] British Columbia recently introduced progressive property tax rates on high-value homes: starting in 2019, the value of homes between $3 and $4 million are subject to an additional school tax of 0.2%, and any value assessed at $4 million or more is subject to a 0.4% school tax.[120]

An anti-speculation tax targeted at out-of-province home owners was introduced by the British Columbia government in its 2018 budget.[121] It is an annual property tax applicable in specified areas, such as Metro Vancouver and the Fraser Valley. The tax rate for 2019 is $20 per $1,000 of assessed value. This tax is creditable against British Columbia's income tax up to $2,000, so that only homeowners who do not pay income tax in BC pay this tax. The tax is aimed at individuals residing in foreign countries, other provinces, and "satellite families –households with high worldwide income that pay little income tax in BC."[122] Long-term rental housing as well as principal residences are exempt from the tax.

Vancouver also levies an additional Empty Homes Tax.[123] This tax does not apply to principal residences or homes rented for at least six months of the year. Each year, homeowners in Vancouver must submit a property status declaration to determine if their property is subject to this tax. Properties deemed empty are taxed at the rate of 1% of the property's assessed taxable value. Revenues collected from this tax are earmarked for investment in affordable housing.[124]

4. TAX POLICY AND HOUSING CRISIS

A. TAX BIAS FOR HOMEOWNERSHIP

The income tax and GST treatment of housing is biased in favour of homeownership. For example, the Income Tax Act does not "see" any capital gains from the sale of a principal residence, regardless of the value and length of ownership, or imputed income from owning the property. As such, owner-occupied housing is a “nothing” for tax purposes. Such policy is particularly “striking” in light of the fact that housing is the biggest asset for most Canadian households and the 1972 tax reform was guided by the idea that all revenues should be treated and taxed equally.[125] This bias for homeownership goes beyond tax exemptions. Through the Home Buyers Plan and First-time Home Buyers’ Tax Credit, the Act grants “free capital” to home buyers. For example, when a taxpayer withdraws funds out of their RRSP through the First-time Home Buyers Plan, they are using money on which no tax has been payable representing a significant government subsidy. As such, the owner-occupied housing is bought with some free money from the government.

The Income Tax Act contains no explicit tax subsidies to suppliers of housing. Allowing self-help tax shelters could be viewed as an implicit tax subsidy to the supply of rental housing, but it was arguably not intended as such. The government introduced draft legislation in 2003 to shut down such tax shelters, but the proposal was withdrawn after concerns about its potential adverse impact on the market and businesses.[126]

B. TAX-INDUCED FINANCIAL RISKS

The tax bias induces demand for housing, including “harmful demand” which may lead to rising prices and financial risks.[127] Demand for housing is “harmful” if the housing is an over-sized property, the second or third “home” of a household, a speculative investment or a tax shelter. Conceptually, harmful demand is associated with investors who buy housing to multiply the tax exemptions, to accumulate wealth in a tax-preferred form, or to flip housing as commodities. This is in contrast to “natural demand,” which arises when a home is bought to accommodate non-investment reasons, such as a larger home to accommodate a growing family or relocation. Even though people are motivated by different factors to buy a housing property, tax incentives may entice some people to become first-time home buyers and others to buy more valuable homes.[128]

There is no conclusive evidence on the exact effect of tax incentives on increasing homeownership rate in Canada or encourage harmful demand for housing.[129] Inferences can be drawn from research on the United States and Australia which have largely similar housing markets and homeownership biased tax policies.[130] For example, the Research on American housing tax policies suggests that they have encouraged “over-investment” in the form of buying bigger houses, or buying homes before the buyers were financially prepared and that the value of the tax subsidies changes the taxpayer’s marginal tax rate, leading to a rise in housing prices and an increase loan-to-value ratios.”[131] Similarly, Australian research shows that their housing tax incentives result in “inflated housing prices,”[132] and, in fact, “rising housing prices” are “driven in large part by the commodification of established housing and growing demand for housing assets by ‘mum and dad’ investors.”[133]

Also, the principal residenc exemption was found to be one of the causes of housing price inflation during the 1970s:[134]

> Since other assets are subject to capital gains tax, the attractiveness of housing as an investment increases, particularly during periods of inflation (since when inflation rises,

> higher nominal gains on assets held by investors are subject to capital gains tax). Therefore, demand rises and house prices increase as investors seek to avoid the rising margin of capital gains tax on other investments. Existing homeowners experience substantial capital gains and potential homebuyers find the opportunity of purchasing moving out of reach. No detailed evaluation of the effects of these tax subsidies on housing markets is presently available."[135]

The technical design of the principal residence exemption allows the exemption to be used for multiplying the number of tax exemptions by a household or maximizing the amount of a tax exemption. For example, the exemption is limited to each household consisting of a taxpayer, his/her spouse or common-law partner and children under the age of 18. As such, a property can be “owned” by the taxpayer’s parent or adult child and qualify for the exemption. There is no maximum limitation on the amount of gain to be exempted, which, in effect, promotes demand for more valuable housing and more “trading” or flipping of houses. As such, higher-income earners, who pay higher rates of marginal tax, have the most to gain by investing capital in housing.

Demand pulled up by the tax incentive causes higher prices when supply is constant. The “counter-speculation” tax measures at local levels are not significant enough to offset the effect of the bias in the Income Tax Act. Housing debts, market shocks, and price fluctuations driven by investors can pose major risks to the Canadian economy.

C. AFFORDABILITY

The issue of affordability is directly related to housing prices. As such, tax policies that drive up harmful demand simultaneously reduce affordability for first-time buyers and renters. The affordability of homeownership is tied to affordability of private rentals. If renters can afford to buy homes, they create more rental spaces on the market, which may reduce the price of rent. Higher cost of purchasing a house by the landlord is translated into higher rental charges. Prior to the outbreak of the COVID-19 pandemic in early 2020, due to the increases in condo prices in major cities, demand for rental units had been increasing: rent increased by an average of 6.4% in Vancouver, 4.4% in Toronto, and 7.6% in Victoria in the past three years.[136] The impact of pandemic on the rental market is unknown at the time of writing (November 2020).

The Income Tax Act offers no explicit subsidies to renters or businesses that supply low-cost housing.[137] The municipal level vancancy taxes may encourage the supply of rental spaces, but the effect is unknown, and presumably neglectable.

Overall, there is sufficient evidence to show that the tax bias for homeownership is likely a contributing factor in Canada’s housing crisis. It would thus make sense to consider tax policies as part of the housing policy in order to address the fiscal risks and affordability problems.

5. TAX REFORM AS PART OF HOUSING POLICY

A. WHY?

Canada's National Housing Strategy currently focuses on increasing the supply of housing to address the problem of affordability for the most vulnerable.[138] That is undoubtedly important. However, it is not enough to achieve the vision of affordable housing for all Canadians, especially younger, working Canadians[139] as it does not address the economic risks associated with speculative investments and inequity issues. Because the three segments of the housing market (ownership, rental and social housing) are inter-connected, a national housing strategy would ideally address the system as a whole through a combination of tax and non-tax measures. Meanwhile, however, housing tax policies are outdated and are in need of reform.

Tax reform and the new housing reality

The Income Tax Act currently regards housing mainly as a personal consumption property for owners. Profits on the sale of a home are treated as a recovery of the personal expenses of the owner, and thus should not be taxable like profits from sale of investment assets.[140] Not taxing the owners means that tax policy treats housing as a unique product and the housing market differently from other markets. Such view of housing may have made sense when the problems of income and wealth inequality were not as severe, and owning a home was a fact of life without government intervention.[141] However, this is no longer the reality today. As discussed in part 2, the new reality is that housing is a complex multi-faceted issue.

The current housing crisis presents an opportunity for Canada to modernize the housing tax system. There appears to be increasing awareness of the housing crisis and political support for improving affordability. "Polling data show that housing affordability is now a top issue for the electorate, especially for younger Canadians."[142] Major political parties seem to recognize the problem of housing and indicate commitment to addressing it.[143] The COVID-19 pandemic only heightens the importance of housing.

The Pathway to Affordable Housing for all Canadians

Tax reform is a pathway to achieving the goal of affordable housing for all Canadians, including the "middle class". In the current system, the "middle class" misses out because social housing spending benefits Canadians in low-income groups and indirect government spending through tax subsidies benefit those with high incomes the most. Little goes to the middle-income households.[144] To improve equity in housing and help the middle class, tax reform is necessary.

Reducing the tax bias for homeownership at the top may help reduce housing prices so that housing is more affordable to Canadians in the middle class. It would also improve tax equity in respect of housing because the bias results in a "upside-down subsidy" to those who are already better-off. Only 10 per cent of the benefits of the $5-7 billion per year from the principal residenc exemption[145] went to the bottom half of taxfilers, while 35 per cent of the benefits went to the top 10% of income-earners.[146] Inter-generational inequality is aggravated by housing tax policies to the extent that the tax subsidies benefit older homeowners and raise housing prices beyond the reach of younger Canadians. In fact, "for an individual aged 25-34, the ratio of median fulltime, full-year income relative to average home costs increased from 4:1 in 1976 to 10:1 as of 2017."[147] Even if younger Canadians can benefit from the tax subsidies to first-time homebuyers, the front-end tax subsidy pales in amount in comparison to the back-end tax subsidy through the principal residence exemption. Savings from a more strategically-targeted principal residence exemption can be re-deployed to improve equity, such as increasing the subsidy to low-income first-time home buyers.

Tax feform and additional funding for social housing

Direct and indirect spending through tax expenditures on housing are not integrated at the moment. In 1990, the Liberal Task Force on Housing led by Paul Martin and Joe Fontana recognized the importance of tax policies in housing policy, and recommended a review of all forms of taxation on housing in order to create a "fair and integrated reform of the entire tax system."[148] That recommendation has not been heeded to thus far. The current housing taxes were introduced piecemeal and can be redesigned to promote national housing objectives.

Also, a redesigned housing tax system can generate extra revenues that can be earmarked for improving affordable housing. Funding for investment in social housing may be insecure or unsustainable. There is no earmarked revenue source for the $55 billion investment in the National Housing Strategy. A change in government or policy would put this funding at risk. It would make sense to "recycle" or re-direct the fiscal resources from the generous tax expenditures on high-income homeowners and/or speculative housing investments to funding affordable housing.

B. HOW?

Redesigning the principal residence exemption

The principal residence exemption should be retained, but redesigned. Its abolishment is not politically feasible or necessary. However, additional safeguards are necessary to ensure that it remains true to its original aim of helping Canadian families. Possible new safeguards include tightening up disqualifying conditions for the exemption and putting a lifetime limit on the amount of gains eligible for exemption.

The qualifying conditions for the exemption can be better targeted at "ordinary homes" to prevent multiplying the exemption by a taxpayer. For example, the qualifying property must be actually used by the taxpayer as a home and any housing property owned by a taxpayer's parent or adult child and bought with the taxpayer's money should be treated as owned by the taxpayer. The latter test is akin to an attribution rule that, in effect, attributes the ownership of the property registered in the name of a parent or adult child to be the taxpayer's for purpose of the principle residence exemption. As a result, gains from such attributed property would not qualify for the exemption unless it is designated as the principal residence of the taxpayer.

In recognition of the fact that a home is both a personal consumption and a key investment asset, the principal residence exemption should be limited to the portion of gains attributable to the "home" aspect. Conceptually, the portion of gains attributable to the 'investment' aspect will be taxable just like capital gains from the sale of other investment assets. The practical difficulty in bifurcating the capital gains as accruing to the home and to investment means that it is impossible to do this on a property-by-property basis. A presumptive rule must be used: any gain below the chosen limit is presumed to be personal gains from the home, and any amount above the limit is presumed to be investment gains.

The design of the limitation can be informed by research on the value of "average" home in Canada. Since the housing prices vary greatly from region to region, it may be possible to have the limit "indexed" to reflect regional differences.[149] If it is impossible to reach a consensus on such "nuanced" limitation, a national arbitrary amount can be used. This is the case with the current lifetime capital gains exemption for owners of small businesses.[150] The Carter Commission recommended a lifetime exemption for each family unit or individual up to a total of $25,000 (a present value is close to $200,000).[151] The United States also imposes a limit: the first $250,000 of gain from the sale of a home is exempt from tax of a single individual, or $500,000 for a married couple filing jointly.[152]

Imposing a cap on the principal residence exemption would improve tax equity and reduce harmful demand. It would put Canadians who invest in housing on equal footing to those who invest in other assets, and thus reduce investment distortions and improve efficiency of the capital market. More importantly, it would improve tax equity, especially inter-generational equity because homeowners are predominantly older.[153] Limiting the amount of the tax exemption also make sense in tax policy as the excessive gains are mostly "windfalls" arising from the location and societal environment. Furthermore, limiting the tax exemption will also bring this expensive tax subsidy in line with other major tax subsidies to individuals, none of which is open-ended. For example, the child care expense deduction is limited to a fixed amount per child, and the tax-free contribution to an RRSP is limited to $14,500 per year.[154] It is difficult to predict the effect of the proposed lifetime limitation on reducing harmful demand. It is hoped that the limitation reflects a balance between preserving Canadian attitudes towards housing, without stimulating speculative investment in Canadian housing or using housing as a wealth accumulation vehicle.

New tax incentives for supplying affordable housing

Increasing supply is a possible solution to the "serious middle-income housing affordability crisis."[155] The private market alone has not worked efficiently, and public policy intervention is necessary. Tax policy should be in the mix of policy instruments to incentivize the supply of more affordable housing, especially rental.[156] A new tax incentive can be introduced for this purpose.

Several options can be considered. One is to revive and redesign the MURB program.[157] This program provided a tax subsidy to promote the building of rental housing in urban areas. It allowed investors to deduct losses from deducting capital cost allowance associated with the construction of new residential buildings against other income. The effect was to create a tax shelter for investors, which would lower the cost of capital or increase the rate of return. Lessons could be learned from this earlier program on how to minimize abuse of the tax shelter.[158]

Another option is an American style low-income housing tax credit.[159] This tax credit is the federal government's primary program for encouraging the investment of private equity in the development of affordable rental housing for low-income households.[160] Qualifying rental properties include apartment buildings, single-family dwellings, townhouses, and duplexes. More specifically, it supports the construction or rehabilitation of affordable rental units by allowing an investor to take a federal tax credit equal to a percentage of the development cost. To obtain funding, developers generally sell tax credits awarded from state housing agencies to private investors who claim the tax credit when the rental property is made available to tenants.[161]

To encourage owners to rent, the capital cost allowance deduction can be redesigned as a tax incentive through increasing the rate of depreciation or accelerating the deduction if the property has a tenant. When a rental property is sold, a rollover can be allowed to defer the taxation on capital gains and the recaptured capital cost allowance on the condition that the former and new property provide affordable housing.

The main justification for the above measures is to correct the homeownership bias of the current tax policy and to solve the affordable housing problem through private market mechanism. Tax incentives to provide housing support to low or middle income individuals would encourage more stable communities and neighbourhoods and therefore is defensible on the basis that it encourages behavior with positive externalities. There are numerous tax expenditures of this type in the Income Tax Act, such as the small business deduction[162] or the scientific research and experimental development tax credit.[163]

Considering taxation of imputed rent

Non-taxation of imputed rent is one of the major tax advantages for investing in a principal residence. It benefits homeowners only. The economic value of living in one's own house is a significant source of implicit income. A Statistics Canada research study finds that on average, "this implicit source of earnings raised the incomes of retirement-age households (aged 70 and over) by 16%" from 1969 to 2006, and the implicit returns to housing have risen over time.[164] It is reasonable to assume that the recent increasing housing prices raised the implicit returns even further.

Taxing imputed rent is supported by economic theory – income should measure a person's consumption plus savings, the principle of ability to pay, and tax neutrality between housing and non-housing investment assets. [165] The economic advantage of not having to pay rent for accommodation out of after-tax earnings constitutes income in the broad sense. It aggravates the tax bias for owner-occupied homes. This can be explained by this simple example. Two individuals, X and Y, have a net worth of $100,000. X invests $100,000 in buying a house as a principal residence. Y invests $100,000 in stocks, earning $10,000 dividend annually and pays $12,000 rent to the landlord. Each year, taxable income for X would be zero, but $10,000 for Y. If both X and Y sell their assets for a gain of $20,000, this gain is exempt for X, but taxable for Y. In this example, Y must pay rent with after-tax income while X enjoys housing tax-free. Taxing X's imputed rent, and removing the principal residence exemption, would remove the bias for X and treat X and Y the same.

Imputed income is taxable in other areas. For example, when a corporation supplies rent-free housing to its controlling shareholder, the shareholder is deemed to receive a benefit from the corporation and is required to include the value of the benefit in her income.[166] In a sense, the shareholder becomes an owner-occupier of the house, albeit through her corporation and must pay tax on the value of the housing, or the imputed rent. Another example is the imputation of interest on long-term investment contracts on an annual basis for tax purposes.[167] A third example is imputing dividends to the Canadian resident controlling shareholder of a foreign corporation in respect the corporation's foreign accrual property income.[168] Several OECD countries, including Iceland, Luxembourg, the Netherlands, Slovenia, and Switzerland tax imputed rent. [169]

The main reasons why imputed rent taxation is not possible are administrative and political. The administrative difficulties involved in valuing annual imputed rent can be formidable. These difficulties are presumably not insurmountable, as other countries have done it. Imputed rent is taken into account in measuring national income and gross national product (GDP).[170] Political pressures and entrenched interests that led to the current homeownership-biased tax policy are expected to block any reform to remove such bias.

If a general taxation on imputed rent is not feasible, Canada should at least consider recognizing imputed rent as "income" for the purposes of qualifying for social assistance programs, such as the Canada Child Benefit and Old Age Security, that are means-tested. House-rich and income-poor households should, ideally, not be able to qualify for social assistance that are designed as poverty-relief measures.

6. CONCLUSIONS

Housing is important to all Canadians, owners and renters alike. The tax treatment of housing affects homeowners and renters differently. Federal tax policies are structurally biased in favour of owners, especially those with high incomes. This Chapter has offered evidence on the implications of this bias for demand for housing and speculative investment. Even though local property taxes may help "correct" the effect of such bias through transfer taxes or property taxes, the bias remains significant.

This chapter argues that housing policy and housing tax reforms should not be viewed in isolation because tax bias is at play in the housing market. Addressing this tax bias would help advance Canada's housing objectives – affordable housing for all. Further, by addressing the tax bias, the housing tax regime would be updated to better suit today's complex reality of housing in the Canadian society and economy. Tax reforms should ideally take place in conjunction with or at least in the context of the national housing policy. More specifically, the principal residence exemption should be redesigned to encourage "natural' demand for homes and remove those elements that induce speculative investments and increase housing risks. That can be done through limiting the amount of the tax-exempt gains and tightening the eligibility of homes for the exemption. Specific tax incentives should be seriously considered to increase the supply of affordable housing. Any savings from the tax reform can be earmarked for investment in social housing.

It is important to note, however, while this Chapter argues for a better role of tax policy in Canada's housing policy and offers some ideas for tax reform, it urges more research be done on the costing of tax reform options and the impact on housing prices and affordability. For example, the impact of tax reform on harmful demand for housing and the linkage between harmful demand and secondary mortgage market and financial risks needs to be quantified or estimated.

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[1] See Dan Andrews & Aida Caldera Sánchez, "Drivers of Homeownership Rates in Selected OECD Countries" (2011) at 8 – 11, online (pdf): *Organisation for Economic Co-operation and Development* <https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ECO/WKP(2011)18&docLanguage=En>. See generally RBC Economic Research, "Focus on Canada's Housing Market" (2019), online (pdf): <http://www.rbc.com/economics/economic-reports/pdf/canadian-housing/Home_Ownership_Feb2019.pdf> [RBC Focus].

[2] The principal residence was the largest asset, accounting for more than one-third of the total value of assets. See Statistics Canada, *Survey of Financial Security, 2016*, (Ottawa: Statistics Canada, 7 December 2017) online: *Statistics Canada* <https://www150.statcan.gc.ca/n1/daily-quotidien/171207/dq171207b-eng.htm> [Financial Security Survey]; Stephen S Poloz, "Canada's Economy and Household Debt: How Big Is the Problem?" (Address to the Yellowknife Chamber of Commerce delivered on 1 May 2018), online: *Bank of Canada* <https://www.bankofcanada.ca/2018/05/canada-economy-household-debt-how-big-the-problem/>.

[3] See Evan Siddall, "Housing Should be Affordable. Period" The Globe and Mail (29 June 2019) Opinion 05.

[4] See Armina Ligaya & Barbara Shecter, "Like the Perfect Storm: An FP Investigation into the Events That Took Home Capital to the Brink" (22 September 2017) online: *The Financial Post* <https://business.financialpost.com/news/inside-the-rise-and-fall-of-home-capitalInvestment>; Joe Castaldo, "What the Home Capital Crisis Reveals About the Housing Market" (5 May 2017) online: *Macleans' Magazine* https://www.macleans.ca/economy/the-war-for-control-of-the-home-capital-story/; and James Saft, "Stay tuned, Home Capital's crisis may puncture Canada's housing bubble yet", *The Financial Post* (May 2, 2017) < https://financialpost.com/news/economy/stay-tuned-home-capitals-crisis-may-puncture-canadas-housing-bubble>.

[5] Making housing affordable to ordinary Canadians is a key objective of the National Housing Strategy. See See Employment and Social Development Canada, "Canada's National Housing Strategy: A Place to Call Home" (2018), online (pdf): *Publications Canada* <http://publications.gc.ca/collections/collection_2018/edsc-esdc/Em12-54-2018-eng.pdf> [NHS Report].

[6] See generally Robert G Dowler, *Housing-Related Tax Expenditures: An Overview and Evaluation* (Toronto: Centre for Urban and Community Studies, University of Toronto, 1983).

[7] See generally George Fallis, "Tax Expenditures and Housing Policy in Canada" in Philipps, Brooks & Li, *supra* note 6 at 10:1 – 10:26 [Fallis 2012]; George Fallis, "Stage Two Tax Reform and Housing" (1988) 26 Osgoode Hall LJ 603 at 603 – 628; George Fallis & Lawrence B Smith, "Tax Reform and Residential Real Estate" in Jack Mintz and John Whalley, eds, *The Economic Impacts of Tax Reform* (Toronto: Canadian Tax Foundation, 1989) 336 – 365; George Fallis, *Housing Programs and Income Distribution in Ontario* (Toronto: Ontario Economic Council, 1981); George Fallis, et al, *Final Report: The Economic Impact of Federal Rental Housing Program* (1989), online (pdf): *Publications Canada* <http://publications.gc.ca/collections/collection_2017/schl-cmhc/NH15-563-1989-eng.pdf>.

[8] See generally Marion Steele, "The Canadian Home Buyers' Plan: Tax Benefit, Tax Expenditure, and Policy Assessment" (2007) 55:1 Can Tax J 1 – 30 at 1 [Steele 2007]; Marion Steele & Francois Des Rosiers, *Building Affordable Rental Housing in Unaffordable Cities: A Canadian Low-Income Housing Tax Credits* (Toronto: C.D. Howe Institute, 2009); Marion Steele & Peter Tomlinson, "Increasing the Affordability of Rental Housing in Canada: An Assessment of Alternative Supply-Side Measures" (2010) 3:2 *The School of Public Policy Publications* at 4.

[9] See generally Richard M Bird, Enid Slack & Almos Tassonyi, *A Tale of Two Taxes: Property Tax Reform in Ontario* (Lincoln Institute of Land Policy, 2012); Richard M Bird, "The Incidence of the Property Tax: Old Wine in New Bottles?" (1976) 2 Can Pub Pol'y 323 – 334; Enid Slack & Richard M Bird, "The Political Economy of Property Tax Reform" online (pdf): *OECD Library* <https://www.oecd-ilibrary.org/docserver/5jz5pzvzv6r7-en.pdf?expires=1567118051&id=id&accname=guest&checksum=3FF14082151C2B1567C9FE46B1B9CA32>.

[10] See generally J David Hulchanski, "What Factors Shape Canadian Housing Policy?" in Robert Young and Christian Leuprecht, eds, *Canada: The State of the Federation: Municipal-Federal-Provincial Relations in Canada* (Montreal & Kingston: McGill-Queen's University Press, 2006) 221 – 247; J David Hulchanski & Michael Shapcott, eds, *Finding Room: Policy Options for a Canadian Rental Housing Strategy* (Toronto: CUCS Press, 2004); and J David Hulchanski, "Canada's Dual Housing Policy: Assisting Owners, Neglecting Renters" (2007) at 222, online (pdf): *Centre for Urban and Community Studies* <http://www.urbancentre.utoronto.ca/pdfs/researchbulletins/CUCSRB38Hulchanski.pdf> [Hulchanski -Dual Housing Policy].

[11] United Nations Human Rights, Office of the High Commissioner, "Protecting the right to housing in the context of the COVID-19 outbreak" (October 29, 2020) <https://www.ohchr.org/EN/Issues/Housing/Pages/COVID19RightToHousing.aspx>.

[12] Stephanie Eliott and Scott Leon, "Crowded Housing and COVID-19: Impacts and Solutions" (July 24, 2020), online: <https://www.wellesleyinstitute.com/healthy-communities/crowded-housing-and-covid-19-impacts-and-solutions/>.

[13] R.S.C. 1985 (5th Supp.), c.1.

[14] See Statistics Canada, "Housing in Canada: Key Results from the 2016 Census" (25 October 2017) online: <https://www150.statcan.gc.ca/n1/daily-quotidien/171025/dq171025c-eng.htm>.

[15] *Ibid*. The rate of homeownership rose from 62.6% in 1991 to 68.4% in 2006, to 69% in 2011. Homeownership was influenced by factors such as demographics, the size of the housing stock, availability, and cost of alternatives to homeownership, interest rates and access to financing, and the preferences and needs of Canadians. Canadians overwhelmingly prefer to live in a detached single-family home. See generally Mustel Group & Sotheby's International Realty Canada, "Modern Family Home Ownership Trends Report: The Evolution of the Canadian Dream" (2018), online (pdf): <https://sothebysrealty.ca/insightblog/2018/11/01/2018-modern-family-home-ownership-trends-report/>; John R Miron, *Housing in Postwar Canada: Demographic Change, Household Formation, and Housing Demand* (Kingston & Montreal: McGill-Queen's University Press, 1988); Housing Services Corporation, "Canada's Social and Affordable Housing Landscape" (2014), online (pdf): *Homeless Hub* <https://www.homelesshub.ca/sites/default/files/attachments/531-Canada-Social-Housing-Landscape_2014.pdf >; NHS Report, *supra* note 5 at 3.

[16] Ellen Bekkering, Jean-Philippe Deschamps-Laporte and Marina Smailes, "Housing Statistics in Canada: Residential Property Ownership: Real Estate Holdings by Multiple-property Owners" (September 27, 2019) < https://www150.statcan.gc.ca/n1/pub/46-28-0001/2019001/article/00001-eng.htm>

[17] *Ibid*.

[18] See Statistics Canada, *Indebtedness and Wealth Among Canadian Households*, Economic Insights, by Guy Gellatly & Elizabeth Richards, Statistics Canada, Catalogue no.11-626-X (Ottawa: Statistics Canada, 2019).

[19] For those who owned their principal residence, the median reported value was $349,000 in 2016, up 10.3% from 2012 and double that of 1999. Home equity in 2016 was 115.2% higher compared with 1999. Financial Security Survey, *supra* note 2.

[20] *Ibid.*

[21] *Ibid*.

[22] RBC Focus, *supra* note 1.

[23] *Ibid*.

[24] For the social impact of housing, see generally Matthew Desmond, *Evicted: Poverty and Profit in the American City* (New York: Crown Publishing Group, 2016); Darcel Bullen, “A Road to Home: The Right to Housing in Canada and Around the World” (2015) 24 J L & Soc Pol’y 1 – 9: Matthew Desmond & Monica Bell, “Housing, Poverty, and the Law” (2015) 11 Annual Rev L & Soc Science 15–35; Sarah Monk, Connie Tang & Christine Whitehead, *What Does the Literature Tell Us About the Social and Economic Impact of Housing? Report to the Scottish Government: Communities Analytical Services* (Scottish Government, Social Research 2010) 24 – 33; Siddall, *supra* note 3.

[25] United Nations, Universal Declaration of Human Rights, art.25(1) – “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family…”. See also Office of the United Nations High Commissioner for Human Rights, “The Right to Adequate Housing”, < file:///C:/Users/jinyanli/Downloads/fs21_rev_1_housing_en(1).pdf>. This is iterated in the NHS Report, *supra* note 5 at 8.

[26] See Richard Eccleston et al, *Final Inquiry Report: Pathways to Housing Tax Reform* (Australian Housing and Urban Research Institute: Melbourne, 2018) at 7.

[27] See generally CMHC, “Defining the Affordability of Housing in Canada” (2019) online (pdf): *CMHC* <https://www.cmhc-schl.gc.ca/en/data-and-research/publications-and-reports/research-insight-defining-affordability-housing-canada> [CMHC Affordability].

[28] *Ibid*. CMHC often uses this method. It is also widely used in other jurisdictions. Among its weaknesses is that it does not take into account of the differences in household income, size, and composition. A residual income method is an alternative method, which looks at the amount of minimum income that a household would need to pay for shelter costs, taxes and basic needs in their area. Another method is a basic needs (or residual income) approach which “subtracts from a household’s disposable (that is, after-tax) income the cost of non-shelter necessities, based on the size and composition of the household type. What is left after basic needs constitutes what is available, and therefore affordable, for shelter.” This method considers the types of households that are subject to affordability pressures and the nature of those pressures. A challenge in applying this method is the determination of the basket of goods and services that comprise “necessities. Bank of Canada’s housing affordability index (a ratio) to estimate the share of disposable income that a representative household would put toward housing-related expenses. The numerator of this ratio is the sum of housing-related costs (the average quarterly mortgage payment plus utility fees) and the denominator is the average household disposable income. For details, see Bank of Canada, “About the Housing Affordability Index” (23 August 2018), online: *Bank of Canada* <https://credit.bankofcanada.ca/financialindicators/hai>.

[29] CMHC Affordability, *supra* note 27.

[30] See generally RBC Economic Research, “Housing Trends and Affordability, March 2019” (2019), online (pdf): *RBC* <http://www.rbc.com/economics/economic-reports/pdf/canadian-housing/house-mar2019.pdf> [*RBC Housing Trends*].

[31] See Erica Alini, “Here’s the Income You Need to Pass the Mortgage Stress Test Across Canada”, (14 April 2018) online: *Global News* <https://globalnews.ca/news/4139837/heres-the-income-you-need-to-pass-the-mortgage-stress-test-across-canada/>.

[32] See generally Matthieu Arseneau & Kyle Dahms, “Housing Affordability Improves in 2019Q1 Amid Healthy Labour Market” (2019), online (pdf): *House Price Index* <https://housepriceindex.ca/wp-content/uploads/2019/06/NBFM-Housing-Affordability-Monitor-Q1_2019-Eng.pdf>.

[33] See e.g., Advocacy centre for tenants ontario (atco), "Where Will We Live? Ontario's Affordable Rental Housing Crisis" (2018) online (pdf): <https://www.acto.ca/production/wp-content/uploads/2018/05/wherewillwelive_may2018_acto_report.pdf>; "bringing affordable rental housing to york region: challenges and recommendations for markham, ontario" online (pdf): <https://www.york.ca/wps/wcm/connect/yorkpublic/986e5820-fa49-4c5b-b49a-21c230d65e5d/the+housing+puzzlers.pdf?mod=ajperes> [markham, affordable housing]; The Canadian Press, "Affordable Housing In Canada In Crisis As Rental Rates Climb, Supply Dwindles", (10 april 2018) online: *The Huffington Post* <https://www.huffingtonpost.ca/2018/04/10/affordable-housing-crisis-canada_a_23407878/>.

[34] See generally CMHC, "Housing Need Stable In Canada, 1.7 Million Canadian Households Affected" (14 november 2017) online: *CMHC* <https://www.cmhc-schl.gc.ca/en/housing-observer-online/2017-housing-observer/housing-need-stable-in-canada-1-point-7-million-canadian-households-affected>. The CMHC uses core housing need as an indicator to identify households not living in, and not able to access, acceptable housing. Core housing need describes "households living in dwellings considered inadequate in condition, not suitable in size, and unaffordable." Housing is deemed affordable when its shelter costs represent less than 30% of before-tax household income. Based on the 2016 census, the national rate of core housing need was 12.7% in 2016, representing 1.7 million households. The rate is 8.5% in prince edward island, 15.3% in ontario, 14.9% in british columbia, and 36.5% in nunavut.

[35] *Ibid*.

[36] For a recent study, see David Macdonald, *Unaccommodating: Rental Housing Wage in Canada* (Toronto: Canada Centre for Policy Alternatives, 2019).

[37] *Ibid*.

[38] See e.g. Michal Rozworski, "The Roots of Our Housing Crisis: Austerity, Debt and Extreme Speculation" (14 June 2019), online: *Policy Note* <https://www.policynote.ca/the-roots-of-our-housing-crisis-austerity-debt-and-extreme-speculation/>; Fatima Syed, "The Solution to Canada's Housing Crisis is Right Under our Roofs" *The Toronto Star* (15 June 2019) online: <https://www.thestar.com/news/gta/2019/06/15/the-solution-to-canadas-housing-crisis-is-right-under-our-roofs.html>; Stuart Thomson, "Canada's Housing Crisis and Mortgage Stress Test are Officially Election Issues"(31 January 2019) online: *The National Post* <https://nationalpost.com/news/politics/canadas-housing-crisis-and-mortgage-stress-test-are-officially-election-issues>.

[39] See CMHC, "New Study Reveals Socio-Economic Housing Inequalities" (11 June 2019), Online: *CMHC* <Https://Www.Cmhc-Schl.Gc.Ca/En/Housing-Observer-Online/2019-Housing-Observer/New-Study-Reveals-Socio-Economic-Housing-Inequalities/>.

[40] NHS Report, *supra* note 5 at 4.

[41] See generally Paul Martin & Joe Fontana, "Finding Room: Housing Solutions for the Future: Report of the National Liberal Caucus Task Force on Housing" (1990), online (pdf): <http://www.urbancentre.utoronto.ca/pdfs/home/Finding_Room_1990_by_Paul_M.pdf>.

[42] See CMHC, "Housing in Canada 1945 to 1986: An Overview and Lessons Learned" (1987) at 7, online (pdf): *Publications Canada* <http://publications.gc.ca/collections/collection_2017/schl-cmhc/NH15-518-1987-eng.pdf>; Fallis 2012, *supra* note 7.

[43] Canada Mortgage and Housing Corporation, <https://web.archive.org/web/20140909232847/https://www.cmhc-schl.gc.ca/en/corp/about/hi/index.cfm>.

[44] It provides mortgage loan insurance and engages in securitization of residential mortgages to make it easier for home buyers to obtain mortgages. It also provides funding for social housing (most of which is administered by provinces and territories, supporting low-cost loans to federally assisted social housing sponsors, providing funding to address housing needs in First Nation communities. See CMHC, "What Does CMHC Do?" (31 May 2018), online: <https://www.cmhc-schl.gc.ca/en/about-cmhc/cmhcs-story>.

[45] See NHS Report, supra note 5.

[46] *Ibid* at 5.

[47] See Don Pittis, “With Housing and Oil Off the Boil, Why Hasn't the Canadian Economy Gone into Free Fall?” (31 May 2019), online: *CBC* <https://www.cbc.ca/news/business/bank-of-canada-economy-housing-1.5152705>; Darryl Dyck, “As Canada’s Economic Engine Stalls, Can Other Industries Pick Up the Slack?” (8 January 2016), online: *The Globe and Mail* <https://www.theglobeandmail.com/real-estate/the-market/with-a-resource-slump-can-canadas-other-industries-power-the-economy/article28092680/>.

[48] Siddall, *supra* note 3.

[49] See Statistics Canada, “Gross Domestic Product, Income and Expenditure, Fourth Quarter 2017” (2018), online (pdf): *Statistics Canada* <https://www150.statcan.gc.ca/n1/en/daily-quotidien/180302/dq180302a-eng.pdf?st=Ad0VEbe0>.

[50] See generally Steve Pomeroy & Greg Lampert, “Examining the Dynamics of Canada’s Housing Tenure System: Implications for A National housing Strategy” (2017), online (pdf): *Canadian Housing and Renewal Association* <https://chra-achru.ca/sites/default/files/Annual_Reports/Dynamics%20of%20Canada%27s%20housing%20tenure%20system%20Final%20Rev%20Oct%209.pdf>.

[51] See generally OECD, *Economic Policy Reforms 2011: Going for Growth* (Paris: OECD, 2011); Christophe Andre, *A Bird’s Eye View of OECD Housing Markets* (OECD Economic Department Working Paper No.736, ECO/WKP, 2010).

[52] See Francis Fong, *The Real Story Behind Housing and Household Debt in Canada: Is a Crisis Really Looming?* (Chartered Professional Accountants of Canada, 2018) at 2.

[53] Evan Siddall, “Too Much of a Good Thing: On Housing, Wealth, and Intergenerational Inequality” (delivered at the Halifax Chamber of Commerce, 26 April 2018), online: *CMHC* https://www.cmhc-schl.gc.ca/en/media-newsroom/speeches/2018/on-housing-wealth-and-intergenerational-inequity [Siddall 2018].

[54] See CMHC, “Household Debt-to-Income Ratio Near Record High” (13 December 2018), online: *CMHC* <https://www.cmhc-schl.gc.ca/en/housing-observer-online/2018-housing-observer/household-debt-income-ratio-near-record-high>.

[55] See generally *RBC Housing Trends*, supra note 33. Spending by Canadians on real estate costs (broker fees, land-transfer taxes and legal costs) is 50% more than spending on research and development. Siddall, *supra* note 3. In contrast, Americans spent 25% more on research and development than they do on real estate costs.

[56] Fong, *supra note 52* at 2. See also Don Coletti, Marc-Andre Gosselin & Cameron MacDonald, “The Rise of Mortgage Finance Companies: Benefits and Vulnerabilities” (2016), online (pdf): *Bank of Canada* <https://www.bankofcanada.ca/wp-content/uploads/2016/12/fsr-december-2016-coletti.pdf>. It should be noted, however, that the level of household debt does not mean that Canadians are being irresponsible with debt. In fact, the growth of such debt can be a rationale response to falling interest rates and increasing housing prices. See generally Livio Di Matteo, *Household Debt and Government Debt in Canada* (Fraser Institute: Vancouver, 2017).

[57] See RBC Report, “Seven Ways COVID-19 Is Affecting Canadian Housing” (October 2020) < https://thoughtleadership.rbc.com/seven-ways-covid-19-is-affecting-canadian-housing/>

[58] Fong, *supra* note 52.

[59] See generally Bank of Canada, “Financial System Review – 2019” (2019), online (pdf): <https://www.bankofcanada.ca/wp-content/uploads/2019/05/Financial-System-Review—2019-Bank-of-Canada.pdf>.

[60] Siddall 2018, *supra* note 53.

[61] See Armina Ligaya & Barbara Shecter, “Like the Perfect Storm: An FP Investigation into the Events That Took Home Capital to the Brink” (22 September 2017) online: *The Financial Post* <https://business.financialpost.com/news/inside-the-rise-and-fall-of-home-capitalInvestment>; Joe Castaldo, “What the Home Capital Crisis Reveals About the Housing Market” (5 May 2017) online: *Macleans’ Magazine* <https://www.macleans.ca/economy/the-war-for-control-of-the-home-capital-story/>.

[62] Hulchanski -Dual Housing Policy, *supra* note 10 at 224.

[63] See Part 3 below.

[64] First introduced in Canada in 2018, the mortgage stress test for insured mortgages requires lenders to check that mortgage applicants could still make payments based on the higher of the Bank of Canada's qualifying rate. To complete the test, mortgage lenders calculate the Gross Debt Service and Total Debt Service ratios to determine if applicants have sufficient income to make mortgage payments. In response to COVID-19, the CMHC, which is one of Canada's three insured mortgage providers, made changes to its underwriting criteria for new insured mortgage applications. For example, it requires that no more than 35% of a home buyer's pre-tax income can go towards the mortgage costs; ssee https://www.cmhc-schl.gc.ca/en/media-newsroom/news-releases/2020/cmhc-reviews-underwriting-criteria.

[65] *ITA*, infra note 13; *Excise Tax Act*, R.S.C., 1985, c. E-15. General sales taxes are harmonized with the GST in many provinces.

[66] For an overview, see Neil Brooks, Jinyan Li & Lisa Philipps, "Tax Expenditure Analysis: State of the Art" in Lisa Philipps, Neil Brooks & Jinyan Li, eds, *Tax Expenditures: State of the Art* (Toronto: Canadian Tax Foundation, 2011) at 1:1 – 1:25.

[67] See e.g. *Property Transfer Tax Act*, RSBC 1996, c 378; *Land Transfer Tax Act*, RSO 1990, c L 6; *Assessment Act*, RSO 1990, c A31; *Municipal Act*, 2001, SO 2001, c 2; *Speculation and Vacancy Tax Act*, SBC 2018, c 46.

[68] Until 2018, there was a tax subsidy to relocated employees under s.110(1)(j) of the ITA. Under this provision, benefits from employer-provided interest-free home relocation loans are not taxable. The amount of the exemption is limited to the lesser of the amount of the taxable benefit and the deemed interest benefit on the first $25,000 of a five-year interest-free loan. This measure was repealed as of the 2018 taxation year.

[69] In addition, the ITA provides for a Home Accessibility Tax Credit in respect of renovation or alteration expenses in order to improve assess for persons with disabilities. There was also a temporary home renovation tax credit introduced in 2009 on eligible home renovation expenses in order to stimulate spending following the 2008 global financial crisis. For a discussion of earlier housing-related tax expenditures, see Dowler, *supra* note 6.

[70] See e.g. *ITA*, *supra* note 13, ss 12(4), 12(11), 91, 95.

[71] *Ibid*, ss 3(b), 38(a).

[72] *Ibid*, s 54, "principal residence".

[73] For further discussion, see Edwin C Harris, "A Case Study in Tax Reform: The Principal Residence," (1983) 7 Dalhousie LJ 169 at 193. The taxation of capital gains was introduced as part of the 1972 tax reforms. The provision was amended in Budget 1981 so that, for years after 1981, a family may only treat one property as its principal residence for a taxation year. It was amended again in 2016 to require the reporting of dispositions, introduce an indefinite reassessment period for unreported dispositions, and to limit the types of trusts that are eligible to designate a property as a principal residence for a taxation year beginning after 2016.

[74] See Department of Finance, *Proposal for Tax Reform: White Paper on Taxation*, (Ottawa: Department of Finance, 1969) at 33, online (pdf): *Publications Canada* <http://publications.gc.ca/collections/collection_2016/fin/F32-169-1969-eng.pdf> [Taxation White Paper].

[75] See generally Department of Finance, *Summary of 1971 Tax Reform Legislation*, (Ottawa: Department of Finance, 1971), online (pdf): *Publications Canada* <http://publications.gc.ca/collections/collection_2016/fin/F2-241-1971-eng.pdf>; Department of Finance, "Report on Federal Tax Expenditures: Concepts, Estimates and Evaluations 2020" (28 February 2019), online: *Department of Finance* <https://www.fin.gc.ca/taxexp-depfisc/2019/taxexp1906-eng.asp#Non-taxation-of-benefits-in-respect-of-home-relocation-loans> [Tax Expenditure Report].

[76] Taxation White Paper, *supra* note 74 at 31.

[77] Tax Expenditure Report, *supra* note 75. In terms of revenue cost, the principal residence exemption is second only to the tax subsidy to registered pension plans and RRSPs. See generally David Macdonald, *Out of the Shadows: Shining a Light on Canada's Unequal Distribution of Federal Tax Expenditures* (2016) at 6, online (pdf): *Canadian Centre for Policy Alternatives* https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2016/11/Out_of_the_Shadows.pdf [Macdonald 2016]; Neil Brooks, "Policy Forum: The Case Against Boutique Tax Credits and Similar Tax Expenditures," (2016) 64 Can Tax J 65 – 133.

[78] Tax Expenditure Report, *supra* note 75. In terms of revenue cost, the principal residence exemption is second only to the tax subsidy to registered pension plans and RRSPs. See Macdonald 2016, *ibid.*

[79] See Office of the Parliamentary Budget Officer, *Federal Program Spending on Housing Affordability* (Ottawa: Office of the Parliamentary Budget Officer, 2019) at 3, online (pdf): *Office of the Parliamentary Budget Officer* <https://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2019/Housing_Affordability/Federal%20Spending%20on%20Housing%20Affordability%20EN.pdf>.

[80] Macdonald 2016, *supra* note 77; Dowler, *supra* note 6 at 18.

[81] Siddall 2018, supra note 53.

[82] The Home Buyers' Plan is similar to an earlier Canadian home-ownership stimulation program (CHOSP) which provided grants to first-time homeowners buying newly built homes. It was was in effect from June 1982 to May 1983. It was administered by the CMHC.

[83] *ITA*, *supra* note 13, s 118.05.

[84] Tax Expenditure Report, *supra* note 75.

[85] *ITA*, *supra* note 13, ss 56, 60, 146.

[86] See "What is the Home Buyers' Plan?" (28 Marcy 2019), online: *Government of Canada* <https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/rrsps-related-plans/what-home-buyers-plan.html>.

[87] Ibid.

[88] Most other OECD countries, including the United States, include this item as a tax expenditure and some countries, such as the Netherlands, tax imputed rent as income. See Fallis 2012, *supra* note 7 at 10:9.

[89] Li, Magee & Wilkie, *Principles of Canadian Income Tax Law*, 9th ed (Toronto: Thomson Reuters, 2017) at 119-120.

[90] Dowler, *supra* note 6 at 64; P Fulton, "Tax Preferences for Housing: Is there a case for Reform?" in Wayne R Thirsk & John Whalley, eds., *Tax Policies and Options in the 1980s* (Toronto: Canadian Tax Foundation, 1981).

[91] For further discussion of the MURB program, see generally Alex MacNevin, *Research Report: Federal Tax Regimes and Rental Housing* (Ottawa: CMHC, 1993), online (pdf): *Publications Canada* <http://publications.gc.ca/collections/collection_2018/schl-cmhc/nh18-1/NH18-1-441-1993-eng.pdf>; Clayton Research Associates, *Tax Expenditures – Housing*, (Ottawa: CMHC, 1981), online (pdf): <http://publications.gc.ca/collections/collection_2017/schl-cmhc/NH15-514-1981-eng.pdf>.

[92] MacNevin, *ibid*; Robert D Brown, "A Critical Review of Tax Shelters", in Thirsk & Whalley, *supra* note 90.

[93] See generally Brown, *ibid*.

[94] For an explanation of the CCA regime, see Li, Magee & Wilkie, supra note 89 at 270-82.

[95] In comparison, if an individual invests her capital on purchasing shares, she cannot deduct any portion of the investment cost (even if the share's value went down) as the CCA deduction does not apply to shares.

[96] *ITA*, *supra* note 13, s 3(d).

[97] 2002 SCC 46 [*Stewart*].

[98] *Stewart v. R.*, [2000] 2 CTC 244, 2000 DTC 6163 (Fed CA) at para 10, citing the Tax Court Judge's finding.

[99] *Stewart*, supra note 97 at para 68.

[100] See generally Li, Magee & Wilkie, *supra* note 89 at 528-39.

[101] The GST is defined in Part IX of the *Excise Tax Act*, *supra* note 8. In addition to the GST, every province (except Alberta) levies a provincial sales tax. The provincial sale tax is harmonized with the GST in New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, and Prince Edward Island.

[102] For purposes of GST, housing includes shares in a co-operative housing co-op, mobile homes and floating homes. See Canada Revenue Agency, Guide RC4028, “GST/HST New Housing Rebate” (4 October 2016), online (pdf): <https://www.canada.ca/content/dam/cra-arc/formspubs/pub/rc4028/rc4028-10-16e.pdf>.

[103] *Excise Tax Act*, *supra* note 65, ss 254, 256. The rebate is available to builders or purchasers of newly constructed and substantially renovated residential housing as long as the housing is for use as a primary place of residence. The rebate is 36% of the total GST paid to a maximum of $6,300 for houses valued at or below $350,000. The rebate is gradually phased out for houses valued between $350,000 and $450,000.

[104] Tax Expenditure Report, *supra* note 75 at 33.

[105] *Excise Tax Act*, *supra* note 65, Schedule V, Part I, s 6.

[106] Tax Expenditure Report, *supra* note 75 at 122.

[107] *Ibid*.

[108] *Excise Tax Act*, *supra* note 65, Schedule V, Part 1, s 6(b).

[109] *Excise Tax Act*, *supra* note 8, s 256.1.

[110] For more discussion, see generally Altus Group Economic Consulting, “Economic Implications of the Municipal Land Transfer Tax in Toronto,” (Toronto: 2014) at 6; Christian AL Hilber & Teemu Lyytikainen, “Transfer Taxes and Household Mobility: Distortion on the Housing or Labour Market?” (London: Spatial Economics Research, 2015) at 23; Ben Dachis “Stuck in Place: The Effect of Land Transfer Taxes on Housing Transactions” (Toronto: C.D. Howe Institute, 2012) at 11; Ben Dachis, Gilles Duranton & Matthew A Turner, “Sand in the Gears: Evaluating the Effects of Toronto’s Land Transfer Tax,” (Toronto: C.D. Howe Institute, 2008) at 3. For an assessment of the recent BC and Ontario taxes on foreign buyers and owners of vacant homes, see generally Noah Sarna & Zheting Su, “Policy Forum: Taxing Non-Residents’ Residences –A Critical View of the Law Behind the New Realty Taxes in British Columbia and Ontario,” (2018) 66:3 Can Tax J 553; Thomas Davidoff, “Policy Forum: Vancouver’s Property Taxes in Perspective,” (2018) 66:3 Can Tax J 573; Paul Kershaw, “Policy Forum: A Tax Shift –The Case for Rebalancing the Tax Treatment of Earnings and Housing Wealth,” (2018) 66:3 Can Tax J 585; Kevin Milligan, “Policy Forum: Editor’s Introduction—New Approaches to Property Taxation,” (2018) 66:3 Can Tax J 549.

[111] Alberta charges a registration fee and a mortgage registration fee. Title registration fee includes a base fee of $50 plus an additional $1 charge for every $5,000 of the fair market value of the property (rounded up to the nearest $5,000). Mortgage registration fee includes a base fee of $50 plus $1 for every $5,000 of the mortgage loan.

[112] The same rates apply under the Toronto land transfer tax.

[113] See City of Toronto, “Municipal Land Transfer Tax (MLTT) Rates and Fees” (March 2017), online: *Toronto* <https://www.toronto.ca/services-payments/property-taxes-utilities/municipal-land-transfer-tax-mltt/municipal-land-transfer-tax-mltt-rebate-opportunities/>.

[114] In British Columbia, Bill 28, the *Miscellaneous Statutes (Housing Priority Initiatives) Amendment Act, 2016*, came into force on August 2, 2016. In Ontario, a Non-resident Speculation Tax was introduced on April 21, 2017 as an additional tax levied under s 2(2.1) of the *Land Transfer Tax Act*, RSO 1990, c L6.

[115] Office of the Premier, Ontario, News Release, “Making Housing More Affordable” (20 April 2017).

[116] In Ontario, a rebate of the tax may be available if the foreign buyer subsequently became a permanent resident of Canada (four years following the purchase), is an international student enrolled full-time for a continuous period of at least two years, or has legally worked full-time under a valid work permit in Ontario for a continuous period of at least one year since the date of purchase or acquisition.subsequently.

[117] For example, assessment value of residential housing in Ontario is established by the Municipal Property Assessment Corporation by using a direct comparison approach (that is, using recent sales of comparable properties as indication of value of the assessed property) and assessment is done every four years.See MPAC, “How Assessment Works,” Online https://www.mpac.ca/HowAssessmentWorks/ThreeApproachesValue

[118] Local governments are creatures of the provinces. As such, local governments have no independent taxing powers. Although the property tax is largely a local tax, most provinces in Canada also levy a property tax. For further discussion on Ontario's property tax, see Bird, Slack & Tassonyi, *supra* note 18; Hemson Consulting Ltd., "Property Taxation in Ontario: A Guide for Municipalities" (2012), online (pdf): <https://www.mfoa.on.ca/MFOA/WebDocs/HEMSON%20-%20Property%20Tax%20Guide%20May%2012%202012.pdf>.

[119] See City of Toronto, "2018 Property Tax Rates & Fees" (last visited 30 August 2019), online: <https://www.toronto.ca/services-payments/property-taxes-utilities/property-tax/property-tax-rates-and-fees/2018-property-tax-rates-fees/>.

[120] See generally Budget 2018, *Working For You: Budget and Fiscal Plan 2018/19-2020/21*, (Victoria: Ministry of Finance, 2018), online (pdf): <https://bcbudget.gov.bc.ca/2018/bfp/2018_Budget_and_Fiscal_Plan.pdf>.

[121] *Ibid* at 7

[122] *Ibid* at 72.

[123] See generally City of Vancouver, by-law No 11674, *Vacancy Tax Bylaw* (11 January 2017).

[124] See City of Vancouver, "Empty Homes Tax" (last visited 30 August 2019), online: <https://vancouver.ca/home-property-development/empty-homes-tax.aspx>.

[125] See Li, Magee & Wilkie, *supra* note 89 at 40-2.

[126] A draft of section 3.1 of the *ITA* was released by the Department of Finance on October 31, 2003. It was to deal with the deductibility of interest and other expenses for income tax purposes. The intent of the proposed legislation was to address concerns resulting from adverse court decisions that departed significantly from what the Government had considered to be the law regarding interest deductibility.

[127] See generally Paul Kershaw & Eric Swanson, "A Housing Policy Framework and Policy Options for the 2019 Federal Election" (2019), online (pdf): *Generation Squeeze* <https://d3n8a8pro7vhmx.cloudfront.net/gensqueeze/pages/5290/attachments/original/1559941195/Federal-housing-framework_2019-05-29.pdf?1559941195>.

[128] Andrews & Sánchez, *supra* note 1 at 17 – 18 shows that the homeownership rate is influenced by two main factors: (1) a household's preference for home ownership relative to renting which, in turn, is influenced by policies, including taxation; and (2) purely demographic and socio-economic developments, such as population ageing. Academic literature emphasizes one of three sets of factors assumed to influence decisions about owning and renting housing: economic and financial considerations, socio-demographic characteristics, and psychological and behavioral drivers. See generally K Fu, "A Review of Housing Tenure Choice," in J. Want, et al, eds, *Proceedings of the 17th International Symposium on Advancement of Construction Management and Real Estate* (Berlin: Springer, 2013) 351 – 360. Beliefs about the benefits of homeownership are strong indicators of expectations to own, more so than even some economic and socio-demographic characteristics that are commonly assumed to drive tenure preferences, such as family composition and income. See generally Rachel Bogardus Drew, "Believing in Homeownership: Behavioral Drivers of Housing Tenure Decisions," (2014), online (pdf): *Harvard University* <https://www.jchs.harvard.edu/sites/default/files/w14-3_drew.pdf> .

[129] Research shows the mortgage interest deduction (MID) in the United States "has little if any positive effect on homeownership". See generally William G Gale, Jonathan Gruber & Seth Stephens-Davidowitz, "Encouraging Homeownership through the Tax Code," (2007) at 1179, online (pdf): *The Brookings Institute* <https://www.brookings.edu/wp-content/uploads/2016/06/20070618.pdf>.

[130] There are similar tax preferences for housing in the United States, such as non-taxation of imputed rent and tax exemption of capital gains. The United States also allows mortgage interest to be deducted in computing income, a measure that is not available in Canada. See generally Edward L Glaeser & Jesse M Shapiro, ''The Benefits of the Home Mortgage Interest Deduction,'' (2003) 17 Tax Policy & Economy 37 – 82; and Gale, Gruber & Stephens-Davidowitz, ibid; Eccleston et al, *supra* note 26.

[131] Gale, Gruber & Stephens-Davidowitz, *ibid*.

[132] See Eccleston et al, *supra* note 26.

[133] *Ibid* at 8.

[134] See J Bossons, "The Effect of Inflation-Reduced Hidden Wealth Taxes" (Toronto: Canadian Tax Foundation, 1981) at 16.

[135]Dowler, *supra* note 6 at 61.

[136] RBC Housing Trends, *supra* note 33.

[137] The Ontario Engergy and Property Tax Credit is available to low to middle-income taxpayers on the basis of the amount of rent, property taxes or long-term housing costs; see <https://www.ontario.ca/page/ontario-trillium-benefit#section-2>.

[138] For example, CMHC is leading and delivering the National Housing Strategy initiatives. Initiatives on creating new housing supply include: providing low-cost repayable loans and forgivable loans for building new affordable housing shelters, transitional and supportive housing; providing low-cost loans to encourage the construction of sustainable rental apartment projects across Canda; see https://www.cmhc-schl.gc.ca/en/nhs/guidepage-strategy/about-the-initiatives?guide=CREATE%20NEW%20HOUSING%20SUPPLY.

[139] NHS Report, *supra* note 5 at 5.

[140] Harris, *supra* note 72 at 172.

[141] *Ibid*. Even then, however, the principal residence exemption was criticized for compromising the basic tax policy goals of equity and neutrality.

[142] Kershaw & Swanson,, *supra* note 127 at 4.

[143] E.g., the Liberal Government introduced the National Housing Strategy. See also Progressive Conservative Party of Ontario, "For the People: A Plan for Ontario" (2018), online (pdf): *PCPO* <https://www.ontariopc.ca/plan_for_the_people>; "Federal Conservative Leader Andrew Scheer on GO Trains, Affordable Housing, and Election" (20 August 2019), online: *CBC* <https://www.cbc.ca/news/canada/kitchener-waterloo/conservative-leader-andrew-scheer-waterloo-region-1.5252441>; NDP, "Making Life More Affordable for Everyday People" < https://www.ndp.ca/affordability>; and Green Part of Canada, "Green Party of Canada Housing Policies: A Closer Look" < https://www.greenparty.ca/en/blog/2019-10-08/green-party-canada-housing-policies-closer-look>.

[144] See Macdonald 2016, *supra* note 75.

[145] Department of Finance, *Report on Federal Tax Expenditures – Concepts, Estimates and Evaluations 2020* <https://www.canada.ca/en/department-finance/services/publications/federal-tax-expenditures/2020.html> shows at page 35 that the estimated cost of the principal residence exemption is: $5,045 millions (2014), $6,135 millions in 2015, $7,960 millions in 2016 and $7,520 millions in 2017, and the projected cost is $5,315 millions in 2018, $4,870 millions in 2019, $5,870 millions in 2020 and $7,070 millions in 2021.

[146] David Macdonald, *Out of the Shadows: Shining a light on Canada's unequal distribution of federal tax expenditures* (November 2016), Canadian Centre for Policy Alternatives, < https://www.policyalternatives.ca/loopholes>, at 13.

[147] Kershaw & Swanson, *supra* note 127 at 588.

[148] Martin & Fontana, *supra* note 41. Recommendation 25 states that "the Task Force recommends that the Conservative government begin consultations with Canadians and provincial governments on the creation of a fair and integrated reform of the entire tax system. The present Manufacturers Sales Tax … must not be replaced with a tax that creates more inequities and deepens the affordability crisis faced by hundreds of thousands of Canadian households."

[149] NHS Report, *supra* note 5 calls for more research on housing. It is hoped that more national data is available to inform the design of this limit.

[150] *ITA*, *supra* note 13, s 110.6.

[151] See Canada, *Report of Royal Commission on Taxation*, Volume 3 (Ottawa: Queen's Printer, 1966) at 353, online (pdf): *Publications Canada* <http://publications.gc.ca/collections/collection_2014/bcp-pco/Z1-1962-1-1-eng.pdf>.

[152] See Internal Revenue Service, "Publication 523 (2018), Selling Your Home" (10 January 2019), online: *Internal Revenue Service* <https://www.irs.gov/publications/p523>.

[153] Since health care is funded by general tax revenues at the federal level, the foregone tax revenue under the principal residence exemption could be used to defray the increasing health care cost on caring older Canadians instead on working younger taxpayers who may struggle with housing.

[154] *ITA*, *supra* note 13, ss 63, 146(1).

[155] See generally Wendell Cox & Ailin He, "Canada's Middle-Income Housing Affordability Crisis, (2016) online (pdf): Frontier Centre for Public Policy" <https://fcpp.org/wp-content/uploads/2016/06/Cox-He-Middle-Income-Housing-Crisis.pdf>. Since 2002, the federal and provincial governments have jointly funded initiatives aimed at increasing social housing for low-income households through social housing. Current programs include: grants for the construction of new rental units; rent subsidies for low-income households; renovation grants; and down-payment assistance for home purchases by low-income households. See generally Auditor General of Ontario, "Annual Reports – Social and Affordable Housing" online: *Auditor General of Ontario* <www.auditor.on.ca/en/content/annualreports/arreports/en17/v1_314en17.pdf>.

[156] Among the non-tax instruments suggested by researchers include reducing restrictions on land-use, removing "barriers (regulatory, administrative or otherwise) inhibiting home developers and builders to respond quickly to the demand for new housing –especially when that demand is rising rapidly" or exempting new secure purpose-built rental housing from rent controls. See Cox & He, *ibid.*; RBC Focus, *supra* note 1; LandlordBC, "Understanding BC's History of Rent Control and Tax Policy to Improve Today's Rental Housing Crisis" (8 April 2019), online: *LandlordBC* <https://landlordbc.ca/understanding-bcs-history-of-rent-control-and-taxy-policy-to-improve-todays-rental-housing-crisis/>.

[157] See supra notes 91-92 and the accompanying text.

[158] Steele & Tomlinson, *supra* note 8.

[159] See *Internal Revenue Code*, 26 USC § 42. It was introduced in the US Tax Reform Act of 1986. See Steele & Des Rosiers, supra note 8 suggesting that this tax credit is a better way for CMHC to disburse money to lower levels of government for the purpose of building social housing and that such credit is "an ideal way to leverage some of the $2 billion in short-term stimulus funding for the construction of social housing into a sustainable long-term investment."

[160] See Congressional Research Service, "An Introduction to the Low-Income Housing Tax Credit" (February 27, 2019): < https://fas.org/sgp/crs/misc/RS22389.pdf>.

[161] See generally Joint Committee on Taxation, *Present Law and Data Relating to Tax Incentives for Rental Housing* JCX-40-17 (Washington, DC: Joint Committee on Taxation, 2017); Mark P Keightley, *An Introduction to the Low-Income Housing Tax Credit* RS22389 (Washington DC: Congressional Research Service, 2018); Corianne Payton Scally, Amanda Gold & Nicole DuBois, *The Low-Income Housing Tax Credit: How It Works and Who It Serves* (Washington, DC: Urban Institute, 2018).

[162] ITA, supra note 13, s.125.

[163] Ibid., s.127.

[164] See Statistics Canada, *Incomes from Owner-Occupied Housing for Working-age and Retirement-age Canadians, 1969 to 2006* by W Mark Brown & Amelie Lafrance (Ottawa: Statistics Canada, 2010). The study finds that the increase in implicit returns helped reduce the income gap between retirement-age and working-age households over the period. For example, before accounting for home equity, from 1969 to 2006 the relative income ratio of households aged 70 and older to the 40-to-49 age class and the 50-to-59 age class increased by 15 and 8 percentage points, respectively.

[165] See generally A F Sheppard, "The Taxation of Imputed Income and The Rule in Sharkey v. Wernher," (1973) 11 Can Bar Rev 617 – 641; Li, Magee & Wilkie, *supra* note 93 at 96-100 (an overview of the comprehensive tax base) and at119-21 (imputed income).

[166] *ITA*, *supra* note 13, s 15.

[167] *Ibid*, ss 12(4), 12(11).

[168] *Ibid*, ss 91, 95.

[169] Andrews & Sánchez, *supra* note 1.

[170] See generally Statistics Canada, *User Guide: Canadian System of Macroeconomic Accounts: Chapter 5 Income and Expenditure Accounts*, Catalogue No 13-606-G (Ottawa: Statistics Canada, 2016), online (pdf): *Statistics Canada* <https://www150.statcan.gc.ca/n1/en/pub/13-606-g/2016001/article/14620-eng.pdf?st=MeZmrw_B>.