

Taxation Power

Canada's Constitution divides the power to tax between Parliament and the provincial legislatures. Parliament has power to tax "by any Mode or System of Taxation." This power includes 'indirect taxation'. The legislatures, by contrast, are limited to "Direct Taxation within the Province."[\[1\]](#)

Indirect taxes are imposed in one area of the economy with the expectation that the taxpayer will pass it on to another sector. For example, taxes imposed on manufacturing are the classic instance of indirect taxes. The legislature expects that the manufacturer will pass the tax on to the consumer by building it into the cost of the good sold. Direct taxation is expected to be paid by the taxpayer on whom it is first imposed; it is not expected to be passed on. Accordingly, direct taxation is thought to be more visible to the ultimate taxpayer and, politically, harder to get enacted. This was the nineteenth century economic theory behind the division of taxing powers.[\[2\]](#)

The Constitution requires that Bills imposing taxes must originate in the House of Commons and be preceded by a royal recommendation. This is a means of insuring that the elected chamber and a Cabinet Minister will take primary responsibility for taxation. The Constitution also prohibits Parliament and the legislatures from using their powers to tax lands or property belonging to each other.[\[3\]](#)

Parliament and the legislatures may also raise money by charging fees for their services, and by imposing costs incidental to regulation, such as licencing fees. These charges are not taxation. So, they are not restrained by the constitutional requirements to originate in the House of Commons, be preceded by a royal recommendation, and, in the case of the provincial legislatures, be "direct". To be considered non-tax service charges or regulatory measures, levies must pursue a proper regulatory purpose that is anchored in some grant of constitutional power to the enacting legislative body, other than the taxing powers. The difference between taxes and these other charges is that taxes may be pure revenue raising measures. Regulatory charges, by contrast, usually are imposed to defray the expenses of the regulatory scheme, as, for example, a marketing board imposing the costs of its operation on the regulated producers or a municipality charging for snow removal. Unlike taxes, regulatory charges that are not taxes may originate in the Senate, do not require a royal recommendation, and, if imposed by a provincial legislature, may be indirect.[\[4\]](#)

[\[1\]](#) *Constitution Act, 1867* (UK), 30 & 31Vict, c 3, s 91(3), 92(2), reprinted in RSC 1985, Appendix II, No 5.

[\[2\]](#) John Stuart Mill, *Principles of Political Economy with some of their Applications to Social Philosophy*, 7th ed by William J Ashely (London: Longmans, Green and Co, 1909), Bk V, Ch 3.

[\[3\]](#) *Constitution Act, 1867*, *supra* note 1 at ss 53(4), 125.

[\[4\]](#) See generally: Joseph Elliot Magnet, “The Constitutional Distribution of Taxation Powers in Canada,” (1978) 10:3 Ottawa L Rev 473.