

Introduction and Overview

Author : admin

[\[For detailed instructions on tax research read this PAPER\]](#)

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In starting research into any tax problem one must approach the matter systematically. It's recommended that a person begin by getting a 'lay of the land' by:

- [1 - Obtaining all available and relevant facts and documents;](#)
- [2 - Identifying the issues potentially raised by the matter; and](#)
- [3 - Identifying the law \(statute and common law\) potentially applicable.](#)

These are preliminary steps, and it's usually necessary to go back and revisit them before taking the final few steps. The final steps are:

- [4 - Analyzing the Law;](#)
- [5 - Applying the law to the facts; and](#)
- [6 - Reaching a conclusion.](#)

I find it useful, both in reaching answering a question and for thorough record keeping, to write a memorandum for each of the steps above.

Also, it's important to be cognizant of the fact that you are not working in a vacuum. There is a purpose for which you are asked to answer the particular tax question and an end you aim for. Keep both the purpose and aim in mind as you proceed through each of the steps. Throughout the process keep a file on the work done. Although this can be done electronically, the risk averse nature of most legal professionals leads them to keep a hard-copy (I prefer a hard copy). The file can be kept in one binder with tabs separating the various sections. Whatever the format, this file should contain all of the material you use or are given in reaching your conclusion.

1 - Obtaining all Available and Relevant Facts and Documents

This is the most important step as everything else will hinge on the facts, and the manner of proof of these facts. It may be necessary to revisit this area several times as you may identify the need for additional facts (or the shortcomings of the facts you are in possession of) as you become more familiar with the process.

Be alive to the possibility that whomever you are gathering the facts from may not be giving you all of the available facts. This may be either because they have a reason for not wishing to share the information with you, because they do not realise the relevance or importance of specific information, or because they do not remember. Be a detective at this point, and don't be shy to ask potentially sensitive questions in a tactful and respectful manner (as the circumstances require) so as to get at potentially relevant information.

It is good practice to identify the facts that your answer is based on in whatever document you produce.

2 - Identifying all Issues Potentially Raised by the Matter

Identifying the issues, and later narrowing down the issues, raised by the question you are faced with will allow you to clarify the task you're faced with. In identifying the issues, it may be useful to think of them as falling within the following categories:

- Evidentiary matters - *what do you need to prove or disprove and how can you do so?*
- Tax Rules - *what provisions from the Income Tax Act or its Regulations, or what tax conventions, and other statutes and regulations, or what case law applies?*
- Interpretation matters - *how can the various rules be interpreted or applied?*
- Accounting or Calculation matters - *how do the numbers add up given the tax rules?*

3 - Identifying the Law Potentially Applicable

This step may be simple or complex, depending on the circumstances you are faced with. You have to make sure to identify all of the relevant law that applies to each of the issues raised by your particular facts. Although most of the time the law is found in tax specific statutes, treaties, and decisions, there may well be times where you need to look beyond these sources of law. This is best done by keeping a list of all Federal and Provincial statutes handy, with your own notes as to what matters they may relate to, so that you can review it with every question.

4 - Analyzing the Law

Everyone has a different approach when it comes to solving the legal problems we face. Whatever your approach, it is best to develop a systematic approach that you use in every case. You may find it useful to develop your own checklist and/or template that is modified and expanded throughout your practice. You may not need to follow every step every time, but it's best to have all the possibilities in mind so that they can be consciously eliminated (rather than inadvertently bypassed).

5 - Applying the Law to the Facts

You will find that this step is one wherein reasonable people come to different but reasonable conclusions. Be conscious of your own preferences or cognitive biases that may lead you to see only one possibility. Always play devil's advocate with yourself. If you can't criticize your own work, find someone that is willing to point out all the alternatives you may have missed.

6 - Reaching a Conclusion

Your conclusion-reaching process should be very systematic. This required your judgement. Whatever you do here, make sure you actually answer the question(s) you were asked to answer.

I prefer to use a memorandum that deals with the question using the following sections:

- Question (with short answer)
- Facts
- Assumptions
- Limitations
- Issues
- Analysis
 - Statutes Considered and Provisions Considered (including relevant regulations)
 - Case Law Considered (classified by year, level of court, and similarity of facts)
 - CRA publications and Department of Finance publications
 - Secondary sources (texts, papers, authoritative publications)
 - Application to Facts - Provide a detailed application of the law to the facts for each issue under consideration, identifying the strengths and weaknesses of each
 - Conclusions
 - Provide your conclusion for each issue
 - Answer the question(s) asked

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