

1985

## c 12 Income Tax Amendment Act, 1985

Ontario

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## CHAPTER 12

### **An Act to amend the Income Tax Act**

*Assented to December 18th, 1985*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. The *Income Tax Act*, being chapter 213 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:**

**2b.** Every individual shall, in addition to the amount of tax otherwise payable by such taxpayer under this Act, pay an additional income tax equal to 3 per cent of the amount, if any, by which the tax that would, but for section 120.1 of the Federal Act, be otherwise payable under this Act, before any deduction authorized under subsection 3 (8) or section 7, exceeds \$5,000. <sup>Surcharge</sup>

**2.—(1)** Subsection 3 (5) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 13, section 1 and 1983, chapter 37, section 2, is further amended,

- (a) by striking out “and” at the end of clause (j); and
- (b) by striking out clause (k) and inserting in lieu thereof:
- (k) 48 per cent in respect of the 1982, 1983, 1984 and 1985 taxation years; and
- (l) 50 per cent in respect of the 1986 and subsequent taxation years.

(2) Subclause 3 (8) (b) (i) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 50, section 2, is further amended by striking out “and” at the end of sub-subclause (C), adding “and” at the end of sub-subclause (D) and by adding thereto the following sub-subclause:

- (E) his income from employment in that country was not from a source in that country to the

extent of the lesser of the amounts determined in respect thereof under paragraphs 122.3 (1) (c) and (d) of the Federal Act for the year,

**(3) Section 3 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 13, section 1, 1981, chapter 46, section 2, 1983, chapter 37, section 2 and 1984, chapter 50, section 2, is further amended by adding thereto the following subsection:**

Additional  
refund

(10a) Where a mutual fund trust is entitled to a capital gains refund for a taxation year under subsection (10) and an amount was paid or is payable by the mutual fund trust under section 2b for the taxation year, the mutual fund trust shall be entitled to receive an additional refund for the taxation year equal to the lesser of,

- (a) the amount paid or payable by the mutual fund trust under section 2b for the taxation year; and
- (b) 3 per cent of the amount of the mutual fund trust's capital gains refund for the taxation year calculated under subsection (10) or (11), as applicable.

**3.—(1) Subsection 4 (3) of the said Act is repealed.**

**(2) Subsection 4 (4) of the said Act is amended by striking out "except subsection (3)" in the first line.**

**4. Section 10 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 46, section 4, is further amended by adding thereto the following subsections:**

Determin-  
ation of  
losses

(1a) Where the Minister ascertains the amount of a taxpayer's non-capital loss, net capital loss, restricted farm loss or farm loss for a taxation year and that amount is different from the amount reported by the taxpayer in his or her return of income for the year, the Minister shall, at the request of the taxpayer, determine, with all due dispatch, the amount of such loss and shall send a notice of determination to the person by whom the return was filed.

Provisions  
applicable

(1b) The provisions of paragraphs 56 (1) (l) and 60 (o) of the Federal Act and the provisions of this Act, as they relate to an assessment or a reassessment and to assessing and reassessing tax, are applicable with necessary modifications to a determination or redetermination and to determining and redetermining amounts under this Division, except that sub-

sections (1) and (2) are not applicable to determinations made under subsection (1a) and, for greater certainty, an original determination of a taxpayer's non-capital loss, net capital loss, restricted farm loss or farm loss for a taxation year may be made by the Minister only at the request of the taxpayer.

(1c) For greater certainty, where the Minister makes a determination of the amount of a taxpayer's non-capital loss, net capital loss, restricted farm loss or farm loss for a taxation year, the determination is (subject to the taxpayer's rights of objection and appeal in respect of the determination and to any redetermination by the Minister) binding on both the Minister and the taxpayer for the purposes of calculating the taxable income of the taxpayer in any other year. Determination binding

**5. Subsection 12 (2) of the said Act is amended by striking out "155 (a)" in the fourth and fifth lines and inserting in lieu thereof "155 (1) (a)".**

**6. Section 13 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 46, section 6, is further amended by adding thereto the following subsection:**

(1a) Notwithstanding subsection (1), the amount payable by a mutual fund trust, within the meaning of subsection 132 (6) of the Federal Act, to the Treasurer on or before any day referred to in clause (1) (a) in a taxation year shall be deemed to be the amount, if any, by which, Mutual fund trusts

(a) the amount so payable otherwise determined under that subsection,

exceeds,

(b) 25 per cent of the trust's capital gains refund (within the meaning assigned by subsection 3 (10)) for the taxation year.

**7. Section 15 of the said Act is amended by striking out "159 and 160" in the first line and inserting in lieu thereof "159, 160, 160.1 and 160.2".**

**8. Subsection 16 (1) of the said Act is repealed and the following substituted therefor:**

(1) Where at any time after the day on or before which a return of a taxpayer's income was required to be filed under this Act for a taxation year, General

- (a) the amount of his or her tax payable for the year under this Act,

exceeds,

- (b) the aggregate of all amounts each of which is an amount paid at or before that time on account of his or her tax payable and applied as at that time by the Provincial Minister against the taxpayer's liability for an amount payable under this Act for the year,

the person liable to pay the tax shall pay interest on such excess, for the period after the 19th day of April, 1983 during which it is outstanding, at such rates per annum as are prescribed and are in effect from time to time during the period for the purposes of subsection 161 (1) of the Federal Act.

**9.—(1) Subsection 19 (3) of the said Act is repealed and the following substituted therefor:**

Interest on  
overpayments

(3) Where an amount in respect of an overpayment for a taxation year is refunded, or applied under this section on other liability, interest at the rate per annum prescribed for the purpose of subsection 164 (3) of the Federal Act shall be paid or applied thereon for the period beginning with the latest of,

- (a) the day when the overpayment arose;
- (b) the day on or before which the return of income for the year was required to be filed or would have been required to be filed if tax were payable for the year; and
- (c) the day when the return of income for the year was actually filed,

and ending with the day of refunding or application aforesaid, unless the amount of the interest so calculated is less than \$1, in which event no interest shall be paid or applied under this subsection.

Idem

(3a) Where, at any particular time, interest has been paid to, or applied to a liability of, a taxpayer pursuant to subsection (3) in respect of an overpayment and it is determined at a subsequent time that the actual overpayment was less than the overpayment in respect of which interest was paid or applied, the following rules apply:

1. The amount by which the interest that has been paid or applied exceeds the interest, if any, computed in respect of the amount that is determined at the subsequent time to be the actual overpayment shall be deemed to be an amount (in this subsection referred to as "the amount payable") that became payable under this Act by the taxpayer at the particular time.
2. The taxpayer shall pay interest, at the rate prescribed for the purposes of subsection 161 (1) of the Federal Act, on the amount payable for the period beginning at the particular time and ending on the date of payment.
3. The Provincial Minister may at any time assess the taxpayer in respect of the amount payable and, where the Provincial Minister makes such assessment, the provisions of this Act are applicable, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 10 of this Act.

**(2) Subsection 19 (6) of the said Act is repealed and the following substituted therefor:**

(6) In this section, "overpayment" of a taxpayer for a taxation year means the aggregate of all amounts paid on account of his or her tax under this Act for the year minus all amounts payable by him or her under this Act for the year.

Definition

**10. Subsection 29 (1) of the said Act is amended by striking out "and" at the end of clause (d) and by adding thereto the following clause:**

- (f) authorizing or requiring any officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Provincial Minister by this Act.

**11. Subsection 36 (8) of the said Act is repealed and the following substituted therefor:**

(8) The Provincial Minister may assess any person for any amount that has been deducted or withheld by that person under this Act or a regulation or that is payable by that person under this section, section 36a or section 41 and, upon the Provincial Minister sending a notice of assessment to that person, Divisions I and J of Part I of the Federal Act are applicable with necessary modifications.

Assessment  
for amount  
deducted

Commence-  
ment and  
application

**12.—(1) This Act, except sections 1, 2, 4, 7, 8, 9 and 11, comes into force on the day it receives Royal Assent.**

Idem

(2) Subsection 2 (1) comes into force on the 1st day of January, 1986.

Idem

(3) Section 1 and subsection 2 (3) come into force on the 1st day of January, 1986, and apply with respect to the 1986 taxation year.

Idem

(4) Subsection 2 (2) shall be deemed to have come into force on the 1st day of January, 1984, and applies with respect to the 1984 and subsequent taxation years.

Idem

(5) Section 4 shall be deemed to have come into force on the 1st day of January, 1983, and applies with respect to assessments and reassessments made, to assessing tax and reassessing tax, to determinations and redeterminations made or to determining or redetermining amounts after 1982.

Idem

(6) Section 7 shall be deemed to have come into force,

(a) with respect to the reference in section 15 of the said Act to section 160.1 of the Federal Act, on the 12th day of December, 1978; and

(b) with respect to the reference in section 15 of the said Act to section 160.2 of the Federal Act, on the 17th day of November, 1978, and applies to deaths occurring after the 16th day of November, 1978.

Idem

(7) Section 8 shall be deemed to have come into force on the 20th day of April, 1983.

Idem

(8) Subsection 9 (1) shall be deemed to have come into force on the 20th day of April, 1983, and applies with respect to interest paid or applied after the 19th day of April, 1983.

Idem

(9) Subsection 9 (2) shall be deemed to have come into force on the 1st day of January, 1983, and applies to the 1983 and subsequent taxation years.

Idem

(10) Section 11 shall be deemed to have come into force on the 13th day of November, 1981, and is applicable after the 12th day of November, 1981.

Short title

**13.** The short title of this Act is the *Income Tax Amendment Act, 1985*.