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c 43 Mining Tax Amendment Act, 1988

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CHAPTER 43

An Act to amend the Mining Tax Act

Assented to June 29th, 1988

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

1. Clause 1 (1) (k) of the *Mining Tax Act*, being chapter 269 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1987, chapter 11, section 1, is amended by striking out "if the manufacturing is carried on in Canada" in the fifth and sixth lines.

2.—(1) Section 3 of the said Act, as amended by the Statutes of Ontario, 1987, chapter 11, section 3, is further amended by adding thereto the following subsections:

(5a) If the operator so elects, the operator's profit for the taxation year shall not include the operator's profit, if any, as determined under subsection (5b), earned during that portion of the exempt period that falls within the taxation year,

Exemption
re: new mine
or major
expansion of
existing mine

- (a) from a new mine that has come into existence after the 20th day of May, 1987; or
- (b) from a major expansion of an existing mine that has occurred after the 20th day of May, 1987,

in which the operator has an interest, upon the filing of a declaration in the prescribed form with the operator's return under subsection 7 (1) for the first taxation year in which a portion of the exempt period occurs.

(5b) For the purposes of subsection (5a), the operator's profit shall be determined under subsection (5) as if the operator's interest in the new mine that has come into existence or in the major expansion of the existing mine that has occurred was the only mine in which the operator had an interest during the taxation year provided that,

Determi-
nation of
profit

- (a) the allowance for depreciation to be deducted under clause (5) (h) shall be the amount equal to the

aggregate of the maximum amounts calculated in accordance with clauses (6) (a) and (b), subject to clauses (6) (d) and (e) and subsection (15); and

- (b) no amount shall be deducted in respect of the allowance for depreciation of the operator calculated under clause (6) (c),

in respect of depreciable property that can reasonably be considered to be used in connection with the new mine or with the major expansion of the existing mine.

Prorating
depreciation
allowance

(5c) Where the number of days in the operator's taxation year exceeds the number of days in the portion of the exempt period that falls within that taxation year, the amount of the operator's allowance for depreciation required to be deducted in determining the operator's profit under subsection (5b) shall be equal to that proportion of the allowance for depreciation determined under clause (5b) (a) that the number of days during the portion of the exempt period in the taxation year is of 365.

Exempt
period

(5d) In subsections (5a), (5c) and (5f), "exempt period" means, in respect of a new mine that has come into existence or a major expansion of an existing mine that has occurred, the thirty-six month period commencing with the month during which the new mine or the major expansion came into production in reasonable commercial quantities.

Commence-
ment of
production

(5e) For the purpose of subsection (5d), a new mine or a major expansion of an existing mine shall be deemed to have come into production in reasonable commercial quantities,

- (a) in the case of a new mine, on the first day of the month when the operator thereof first becomes entitled to receive proceeds from the output of the mine; and
- (b) in the case of a major expansion of an existing mine, on the first day that the rate of production of mineral substances from the expanded mine exceeded by at least 30 per cent the average daily rate of production of mineral substances from the mine during each of the five calendar years ending immediately before the calendar year in which the first outlay was made to expand the mine.

Loss

(5f) Where a determination under subsection (5b) produces a loss for a new mine or a major expansion with respect to the portion of the exempt period within the taxation year, sub-

sections (5a) to (5e) do not apply for that new mine or major expansion for the taxation year.

(2) Subsection 3 (6) of the said Act, as re-enacted by the Statutes of Ontario, 1987, chapter 11, section 3, is amended by striking out “and” at the end of clause (b) and by adding thereto the following clauses:

- (d) notwithstanding clauses (a), (b) and (e), subsection (15) and clause 4 (3) (b), where the operator's taxation year is less than 365 days, an amount not exceeding that proportion of the aggregate of the amounts determined under clauses (a) and (e), subsection (15) and clause 4 (3) (b) in respect of processing and transportation assets and clause (b) in respect of mining assets that the number of days in the taxation year is of 365; and
- (e) notwithstanding clause (a), where processing assets are situated outside Canada or assets for transporting processed mineral substances are used outside Canada, an amount not exceeding that proportion of the amount determined under clause (a),
 - (i) in respect of processing assets, that the value of mineral substances mined in Ontario is to the total value of mineral substances fed into the processing plant situated outside Canada, or
 - (ii) in respect of assets used for transporting processed mineral substances, that the value of processed product derived from output is of the total value of processed product transported by those assets.

(3) Subsection 3 (10) of the said Act, as re-enacted by the Statutes of Ontario, 1987, chapter 11, section 3, is amended by striking out “and” at the end of clause (c), by adding “and” at the end of clause (d) and by adding thereto the following clause:

- (e) the total of the amounts not deductible under this Act as a result of the application of clause (6) (e) or subsection (15) in respect of an allowance for depreciation.

(4) Section 3 of the said Act, as amended by the Statutes of Ontario, 1987, chapter 11, section 3, is further amended by adding thereto the following subsections:

Reduction in
processing
costs

(15) For the purposes of clauses (5) (b), (c), (d), (e), (i) and (j), (5b) (a) and (6) (a), where a processing plant owned and operated by the operator is,

- (a) located in Ontario, the amount of the operator's expenses, outlays or allowances relating to processing shall be reduced by the proportion that the value of the input of mineral substances mined in Canada outside Ontario is of the total value of the input of mineral substances to the processing plant; or
- (b) located in Canada outside Ontario, the amount of the operator's expenses, outlays or allowances shall be reduced by the proportion that the aggregate of the value of input of,
 - (i) mineral substances from Ontario mines, other than mineral substances from the operator's Ontario mines, and
 - (ii) mineral substances from mines located outside Ontario, whether from the operator's mines or not,

is of the total value of the input of mineral substances to the processing plant.

Processing
plant located
outside
Canada

(16) No deduction shall be made under clauses (5) (c), (d), (e) and (f) for expenses and outlays related to processing at an operator's processing plant located outside Canada.

3.—(1) Clause 4 (3) (b) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 11, section 4, is repealed and the following substituted therefor:

- (b) the deduction allowed under clause 3 (5) (h) in respect of processing assets situated in Canada, assets for transporting processed mineral substances to market from the point at which processing in Canada is completed and mining assets acquired prior to the 10th day of April, 1974, attributable to the operation of a specified uranium undertaking, shall not be,
 - (i) greater than the lesser of 15 per cent of the capital cost and the undepreciated capital cost of the assets as of the end of the taxation year (before making any deduction under clause

3 (5) (h) in respect of the assets for the taxation year), and

- (ii) less than the lesser of 5 per cent of the capital cost of the assets as of the end of the taxation year and the undepreciated capital cost of the assets as of the end of the taxation year (before making any deduction under clause 3 (5) (h) in respect of the assets for the taxation year); and

.

(2) Section 4 of the said Act, as amended by the Statutes of Ontario, 1987, chapter 11, section 4, is further amended by adding thereto the following subsection:

(6) Notwithstanding subsection 3 (5), where mineral substances are transported outside Canada to be processed by or on behalf of the operator, no deduction shall be made for expenses and outlays incurred outside Canada relating to the processing of the operator's output that is attributable to a specified uranium undertaking in respect of a taxation year ending after the 9th day of April, 1979.

Processing
expenses and
outlays
incurred
outside
Canada

4.—(1) Subclause 9 (1) (a) (iv) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 11, section 9, is repealed and the following substituted therefor:

(iv) has filed with the Minister a waiver in the prescribed form on or before the later of,

(A) the expiry of a four-year period commencing on the day of mailing of the notice of an original assessment, and

(B) the latest day such a waiver could be filed under this Act for any previous taxation year; and

.

(2) Clause 9 (1) (b) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 11, section 9, is repealed and the following substituted therefor:

(b) in any other case, on or before the later of,

- (i) the expiry of a four-year period commencing on the day of mailing of the original notice of assessment, and
- (ii) the latest day on which a reassessment, additional assessment or assessment can be made under any predecessor of this clause for any previous taxation year,

5. Section 17 of the said Act is repealed.

6. Clause 26 (1) (g) of the said Act, as re-enacted by the Statutes of Ontario, 1987, chapter 11, section 22, is repealed and the following substituted therefor:

- (g) prescribing the manner of determining and the matters to be taken into account in determining whether there is a mine project that is a new mine or a major expansion of an existing mine for the purposes of subsection 3 (5a) and clause 3 (6) (c) and the time at which a mine project is completed for the purposes of clause 3 (6) (c).

Commence-
ment

7.—(1) Except as provided in subsections (2) to (4), this Act comes into force on the day it receives Royal Assent.

Idem

(2) Subsection 2 (1) and section 6 shall be deemed to have come into force on the 21st day of May, 1987, and apply in respect of taxation years ending after the 20th day of May, 1987.

Idem

(3) Section 1, subsections 2 (2), (3) and (4) and section 3 shall be deemed to have come into force on the 1st day of April, 1986, and apply in respect of taxation years ending after the 31st day of March, 1986.

Idem

(4) Section 4 comes into force on the day this Act receives Royal Assent and applies to assessments, reassessments and additional assessments for taxation years of operators commencing after the day this Act receives Royal Assent.

Short title

8. The short title of this Act is the *Mining Tax Amendment Act, 1988*.