

1981

c 37 Corporations Tax Amendment Act, 1981

Ontario

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CHAPTER 37

**An Act to amend the
Corporations Tax Act**

Assented to October 30th, 1981

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

- 1.—(1) Clauses 1 (1) (d) and (e) of the *Corporations Tax Act*, being chapter 97 of the Revised Statutes of Ontario, 1980, are ^{s. 1 (1) (d, e),} _{re-enacted} repealed and the following substituted therefor:

- (d) “family farm corporation” means a corporation that is throughout the taxation year a corporation,
- (i) all shares of the capital stock of which that confer on the holder thereof the right to vote were owned by one individual ordinarily resident in Canada or by that individual and a member or members of his family ordinarily resident in Canada or by another family farm corporation,
 - (ii) 75 per cent of the assets of which were farming assets, and
 - (iii) which carried on the business of farming in Ontario through the employment of a shareholder or a member of his family actually engaged in the operation of the farm;
- (e) “family fishing corporation” means a corporation that is throughout the taxation year a corporation,
- (i) all shares of the capital stock of which that confer on the holder thereof the right to vote were owned by one individual ordinarily resident in Canada or by that individual and a member or members of his family ordinarily

resident in Canada or by another family fishing corporation,

- (ii) 75 per cent of the assets of which were fishing assets, and
- (iii) which carried on the business of fishing in Ontario through the employment of a shareholder or a member of his family actually engaged in the operation of the business.

s. 1 (1) (f),
amended

(2) Clause 1 (1) (f) of the said Act is amended by adding thereto the following subclause:

- (vi) a mortgage taken by the family farm corporation as security for the balance of the sale price on its sale of farming assets referred to in subclause ii, provided that the amount of the aggregate of its remaining farming assets referred to in subclauses (i) to (v) exceeds 50 per cent of its assets.

s. 5 (8),
re-enacted

2.—(1) Subsection 5 (8) of the said Act is repealed and the following substituted therefor:

Idem

(8) The fact that a non-resident corporation in a taxation year produced, grew, mined, created, manufactured, fabricated, improved, packed, preserved or constructed in whole or in part anything in Canada, whether or not the corporation exported that thing without selling it prior to exportation, shall of itself, for the purposes of this Act, be deemed to mean that the corporation maintained a permanent establishment at any place where the corporation did any of those things in the taxation year.

s. 5 (11),
re-enacted

(2) Subsection 5 (11) of the said Act is repealed and the following substituted therefor:

Idem

(11) Where a corporation does not otherwise have a permanent establishment in Canada, it has a permanent establishment in the place designated in its charter or by-laws as being its head office or registered office.

s. 12,
amended

3. Section 12 of the said Act is amended by adding thereto the following subsection:

(9a) For the purposes of this Act, subsection 20 (12) of the *Income Tax Act* (Canada) does not apply to allow a deduction in computing the income of a corporation for a taxation year except to the extent that the portion of the foreign non-business income tax paid by the corporation to which the subsection applies was not deducted pursuant to subsection 126 (1) of the *Income Tax Act* (Canada).

Foreign non-business income tax
R.S.C. 1952, c. 148

4. Subsection 14 (3) of the said Act is repealed and the following substituted therefor:

s. 14 (3), re-enacted

(3) In the application of section 59 of the *Income Tax Act* (Canada) for the purposes of this Act,

Disposition of resource property

(a) subsection (1), paragraphs 2 (b) and (e), subsection (3), and paragraph (3.2) (a) of the said section are not applicable; and

(b) the references in subsections (2) and (2.1) of the said section to amounts deducted as a reserve in computing income for the immediately preceding taxation year shall include any amount deducted under section 16 of this Act in computing income for the immediately preceding taxation year.

5. Subsections 16 (1) and (3) of the said Act are repealed and the following substituted therefor:

s. 16 (1), re-enacted; s. 16 (3), repealed

(1) Section 64 of the *Income Tax Act* (Canada), except paragraph (1) (a) thereof and subsection (2) thereof, is applicable for the purposes of this Act in so far as the said section applies to corporations.

Reserves in respect of consideration for disposition of resource property not due until subsequent year

6.—(1) Sub-subclause 18 (2) (b) (ii) (C) of the said Act is repealed and the following substituted therefor:

s. 18 (2) (b) (ii) (C), re-enacted

(C) the aggregate of amounts each of which is an amount, in respect of a Canadian resource property or a property referred to in paragraph 59 (1.2) (b) of the *Income Tax Act* (Canada) or subsection 59 (3.1) of that Act that has been disposed of by it, equal to the amount, if any, by which,

1. the amount included in computing its income for the taxation year by virtue of subsection 14 (3) in respect of the disposition of the property,

exceeds,

2. the amount deducted under section 16 in respect of the property in computing its income for the taxation year,

s. 18 (5),
re-enacted

- (2) Subsection 18 (5) of the said Act is repealed and the following substituted therefor:

Canadian
exploration
and develop-
ment expenses
deductible by
successor cor-
poration and
second succes-
sor
corporation
R.S.C. 1952,
c. 148

- (5) There may be deducted in computing the income for a taxation year of a corporation that is a successor corporation or a second successor corporation, as the case may be, within the meaning of subsection 66 (6) or (7) of the *Income Tax Act* (Canada), the amount, if any, that would be deductible by it under either of those subsections on the basis that,

- (a) the reference in paragraph (b) of each of the said subsections,

- (i) to "this section" is deemed to be a reference to this section of this Act, and

- (ii) to the *Income Tax Application Rules, 1971*, is deemed to be a reference to the *Corporations Tax Application Rules, 1972*; and

- (b) the references in the said subsections to "Canadian exploration and development expenses" are deemed to be references to Canadian exploration and development expenses incurred before the 20th day of May, 1981.

s. 18,
amended

- (3) Section 18 of the said Act is amended by adding thereto the following subsection:

Idem

- (6a) Subsections 66 (10.1), (10.2) and (10.3) of the *Income Tax Act* (Canada) are applicable for the purposes of this Act.

s. 18 (7),
re-enacted

- (4) Subsection 18 (7) of the said Act is repealed and the following substituted therefor:

Control
change

- (7) Subsection 66 (11) of the *Income Tax Act* (Canada), except paragraph (e) thereof, is applicable for the purposes of this Act.

s. 18 (9),
re-enacted

- (5) Subsection 18 (9) of the said Act is repealed and the following substituted therefor:

Limitations

- (9) Except as otherwise provided in this section or section 18a, where a corporation has incurred an outlay or expense in respect of which a deduction from income is authorized under more than

one provision of this section or section 18*a*, the corporation is not entitled to make the deduction under more than one provision but is entitled to select the provision under which to make the deduction.

- (6) Subsections 18 (11) and (12) are repealed and the following substituted therefor: s. 18 (11, 12), re-enacted

(11) Subsection 66 (12.1) of the *Income Tax Act* (Canada) is applicable for the purposes of this Act in so far as the said subsection applies to corporations, except that, in its application for the purposes of this Act, the reference in paragraph (a) thereof to "before May 7, 1974" shall be deemed to be a reference to "before the 20th day of May, 1981". Limitation R.S.C. 1952, c. 148

(12) Subsections 66 (12.2), (12.3) and (12.5) of the *Income Tax Act* (Canada) are, in so far as the said subsections apply to corporations, applicable for the purposes of this Act except that, in the application of the said subsection (12.2) for the purposes of this Act, the reference therein to "before May 7, 1974" shall be deemed to be a reference to "before the 20th day of May, 1981". Unitized oil or gas field in Canada

- (7) Subsections 18 (14) and (15) of the said Act are repealed and the following substituted therefor: s. 18 (14, 15), re-enacted

(14) In this section and section 18*a* and in the provisions of the *Income Tax Act* (Canada) made applicable for the purposes of this Act, Interpretation

- (a) "agreed portion" has the meaning given to that expression by paragraph 66 (15) (a) of the *Income Tax Act* (Canada);
- (b) "Canadian exploration and development expenses" incurred by a corporation means any expense incurred before the 20th day of May, 1981 that is,
- (i) any drilling or exploration expense, including any general geological or geophysical expense, incurred by the corporation after 1971 on or in respect of exploring or drilling for petroleum or natural gas in Canada,
 - (ii) any prospecting, exploration or development expense incurred by it after 1971 in searching for minerals in Canada,
 - (iii) notwithstanding paragraph 18 (1) (m) of the *Income Tax Act* (Canada), as that section

applies to this Act by virtue of section 12 of this Act, the cost to the corporation of a Canadian resource property, but for greater certainty not including any payment made to any of the persons referred to in any of the subparagraphs (i) to (iii) of the said paragraph (*m*) for the preservation of a person's rights in respect of a Canadian resource property or a property that would have been a Canadian resource property if it had been acquired by the corporation after 1971, and not including a payment to which the said paragraph (*m*) applied by virtue of subparagraph (v) thereof,

- (iv) the corporation's share of any of the expenses referred to in subclauses (i), (ii) and (iii) incurred after 1971 by any association, partnership or syndicate in a fiscal period thereof, if at the end of that fiscal period the corporation was a member or partner thereof, and
- (v) any expenses referred to in subclauses (i), (ii) and (iii) incurred after 1971 pursuant to an agreement with another corporation under which the corporation incurred the expense solely in consideration for shares of the capital stock of the other corporation issued to it by the other corporation or any interest in such shares or right thereto,

but for greater certainty, does not include,

- (vi) any consideration given by the corporation for any share or any interest therein or right thereto, except as provided by subclause (v), or
- (vii) any expense described in subclause (v) incurred by another person to the extent that the expense was, by virtue of subclause (v), a Canadian exploration and development expense of that other person,

but no amount of assistance or benefit that a corporation has received or is entitled to receive after the 25th day of May, 1976 in respect of or related to its Canadian exploration and development expenses made or incurred before the 1st day of January, 1981, from a government, municipality or other public authority whether as a grant, subsidy, forgivable loan, deduction from royalty or tax, investment allowance or any other form of assistance or benefit, shall reduce the amount of any of the expenses described in any of subclauses (i) to (v);

- (c) "drilling or exploration expense" incurred on or in respect of exploring or drilling for petroleum or natural gas has the meaning given to that expression by paragraph 66 (15) (d) of the *Income Tax Act* (Canada); R.S.C. 1952,
c. 148
- (d) "joint exploration corporation" has the meaning given to that expression by paragraph 66 (15) (g) of the *Income Tax Act* (Canada);
- (e) "oil or gas well" has the meaning given to that expression by paragraph 66 (15) (g.1) of the *Income Tax Act* (Canada);
- (f) "Ontario exploration and development expenses" incurred by a corporation means any expenses that would be Canadian exploration and development expenses incurred by the corporation if clause (b) of this subsection were read as if the references therein to,
- (i) "in Canada" were references to "in Ontario",
 - (ii) "after 1971" were references to "after the 9th day of April, 1974 and before the 20th day of May, 1981", and
 - (iii) "Canadian" were references to "Ontario";
- (g) "Ontario resource property" of a corporation means any property that would be a Canadian resource property of the corporation within the meaning of paragraph 66 (15) (c) of the *Income Tax Act* (Canada) if that paragraph were read as if the references therein to,
- (i) "in Canada" were references to "in Ontario", and
 - (ii) "after 1971" were references to "after the 9th day of April, 1974 and before the 20th day of May, 1981";
- (h) "outlay" or "expense" have the meaning given to those expressions by paragraph 66 (15) (g.2) of the *Income Tax Act* (Canada);
- (i) "principal-business corporation" has the meaning given to that expression by paragraph 66 (15) (h) of the *Income Tax Act* (Canada);

(j) "shareholder corporation" of a joint exploration corporation has the meaning given to that expression by paragraph 66 (15) (i) of the *Income Tax Act* (Canada).

R.S.C. 1952,
c. 148

Application

(15) For the purposes of clause 1 (2) (d), this section applies in lieu of section 66 of the *Income Tax Act* (Canada).

s. 18a,
enacted

7. The said Act is amended by adding thereto the following section:

Canadian
exploration
expense,
Canadian
development
expense and
Canadian oil
and gas
property
expense

18a. Sections 66.1, 66.2 and 66.4 of the *Income Tax Act* (Canada) are applicable for the purposes of this Act in so far as the said sections apply to corporations except that, in the application of the said sections for the purposes of this Act,

(a) the references therein to "Canadian exploration expense", "Canadian development expense", "Canadian oil and gas property expense", "cumulative Canadian exploration expense", "cumulative Canadian development expense" and "cumulative Canadian oil and gas property expense" shall be deemed to be references to such of those outlays or expenses as are made or incurred after the 19th day of May, 1981;

(b) in addition to the deduction provided under this section by virtue of subsection 66.2 (2) of the *Income Tax Act* (Canada), a corporation may claim in respect of its Canadian development expenses made or incurred in Ontario in the taxation year or in a previous taxation year a deduction of an amount equal to 70 per cent of the amount, if any, by which,

(i) the aggregate of the amounts described in subparagraphs 66.2 (5) (b) (i) to (iii) of the *Income Tax Act* (Canada) that are in respect of expenses made or incurred in Ontario,

exceeds the aggregate of all amounts each of which is,

(ii) any amount previously deducted in computing its income for a taxation year by virtue of this clause, or

(iii) the aggregate of the amounts described in subparagraphs 66.2 (5) (b) (iv) to (xi) of the *Income Tax Act* (Canada) that are in respect of expenses incurred in Ontario; and

(c) for the purpose of computing a corporation's cumulative Canadian development expense at any time, any

amount deducted by virtue of clause (b) in computing income for a taxation year ending before that time shall be deemed to be an amount deducted in computing its income for a taxation year ending before that time, but such amount shall not be included in computing the amount under subclause (b) (iii).

8. Section 29 of the said Act is amended by adding thereto the following subsection: s. 29, amended

(2) For the purpose of subsection (1), the taxable income earned in Canada of a corporation to which clause 2 (3) (b) applies shall not include any amount referred to in paragraph 115 (1) (b) of the *Income Tax Act* (Canada) in respect of the disposition of taxable Canadian property where a Tax Treaty or Convention between Canada and another country has determined that no tax is payable by the corporation in respect of the disposition. Idem R.S.C. 1952, c. 148

9. Clause 49 (1) (a) of the said Act is repealed and the following substituted therefor: s. 49 (1) (a), re-enacted

(a) a corporation referred to in paragraph 149 (1) (c), (d), (e), (f), (h.1), (i), (j), (k), (m), (n), (o), (o.1) or (o.2) of the *Income Tax Act* (Canada). Charities and other corporations

- 10.—(1) Clause 53 (1) (a) of the said Act is repealed and the following substituted therefor: s. 53 (1) (a), re-enacted

(a) the paid-up capital stock of the corporation or, in the case of a corporation incorporated without share capital, the capital contributed to the corporation by its members.

- (2) Clause 53 (1) (d) of the said Act is repealed and the following substituted therefor: s. 53 (1) (d), re-enacted

(d) all sums or credits advanced or loaned to the corporation,

(i) in the case of a corporation incorporated with share capital, by its shareholders, and

(ii) in the case of a corporation incorporated without share capital, by its members,

directly or indirectly or by any person related to any of its shareholders or members, as the case may be, or by any other corporation; and

s. 54 (1) (c),
amended

11.—(1) Clause 54 (1) (c) of the said Act is amended by striking out “and” at the end of subclause (ii) and by adding thereto the following subclauses:

(iv) loans and advances to any corporation doing the business of a bank or to any corporation registered under the *Loan and Trust Corporations Act* are deemed not to be loans and advances to other corporations unless they are issued for a term of 120 days or more and have been held by the corporation for at least 120 days, and

(v) bankers’ acceptances issued for a term less than 120 days are deemed not to be loans and advances to other corporations.

R.S.O. 1980,
c. 249

s. 54 (1) (d),
amended

(2) Clause 54 (1) (d) of the said Act is amended by striking out “section 18” in the fifth line and inserting in lieu thereof “section 18 or section 18a”.

s. 54 (3),
amended

(3) Subsection 54 (3) of the said Act is amended by adding thereto the following clause:

(d) that is an appraisal surplus of a corporation arising where its fixed assets are carried in its books of account at an amount that is in excess of the cost thereof.

s. 55 (1) (b)
(ii) (A),
re-enacted

12. Sub-subclause 55 (1) (b) (ii) (A) of the said Act is repealed and the following substituted therefor:

(A) all amounts that are advanced or loaned to its permanent establishments in Canada,

1. in the case of a corporation incorporated with share capital, by its shareholders, and
2. in the case of a corporation incorporated without share capital, by its members,

directly or indirectly or by any person related to any of its shareholders or members, as the case may be, or by the corporation itself, or by any other corporation, and

13. Section 61 of the said Act is amended by adding thereto the following subsection: s. 61, amended

(4) This section does not apply to a corporation where, Where corporation is associated or member of a partnership

(a) the corporation is associated with one or more other corporations and the aggregate of the taxable paid-up capital of the corporation and of each corporation with which it is associated exceeds \$1,000,000; or

(b) the corporation is a member of a partnership or a connected partnership as defined in subsection 125 (13) of the *Income Tax Act* (Canada), and the aggregate of, R.S.C. 1952, c. 148

(i) the taxable paid-up capital of the corporation, and

(ii) the aggregate of the shares of the taxable paid-up capital of the partnership or the connected partnership that are allocable under subsection 53 (4) to each person related to the corporation, to the extent that such amounts are not already included in the taxable paid-up capital of the corporation by virtue of clause 53 (4) (c) or clause (a) of this subsection,

exceeds \$1,000,000.

14.—(1) Clause 70 (2) (a) of the said Act is repealed and the following substituted therefor: s. 70 (2) (a), re-enacted

(a) on or before,

(i) the last day of each month of the taxation year in respect of which the tax is payable, an instalment equal to one-twelfth of the tax payable as estimated by it at the rates for the taxation year on,

(A) its estimated taxable income and other subject of tax for the taxation year, or

(B) its first instalment base for the taxation year, or

(ii) the last day of each of the first two months of the taxation year in respect of which the tax is payable an instalment equal to one-twelfth of its second instalment base for the taxation year, and on or before the last day of each of the following ten months of the taxation year an

instalment equal to one-tenth of the amount remaining after deducting the amount computed pursuant to this subclause in respect of the first two months of the taxation year from its first instalment base for the taxation year; and

s. 70,
amended

(2) Section 70 of the said Act is amended by adding thereto the following subsection:

Interpre-
tation

(7) For the purpose of clause (2) (a), “first instalment base” and “second instalment base” have the meanings prescribed by regulation.

s. 71,
repealed

15. Section 71 of the said Act is repealed.

s. 76 (1),
re-enacted

16. Subsection 76 (1) of the said Act is repealed and the following substituted therefor:

Credit
interest
on overpaid
instalments

(1) Where instalments of tax as required by subsection 70 (2) are overpaid at any time prior to,

(a) the day on or before which the balance of the tax payable for the taxation year is required to be paid pursuant to clause 70 (2) (b); or

(b) the day on which a refund was made upon assessment where such assessment is made before the day referred to in clause (a),

whichever is earlier, or where the balance required to be paid pursuant to clause 70 (2) (b) is overpaid prior to the date on or before which such payment was required to be made, interest at such rate as is prescribed for the purpose of subsection 75 (3) shall be allowed on the amount of the overpayment from the day on which the overpayment arose to the beginning of the period in respect of which interest is payable under subsection 75 (3).

s. 85,
amended

17. Section 85 of the said Act is amended by adding thereto the following subsection:

Idem

(4) A reassessment made by the Minister pursuant to subsection (2) is not invalid by reason only of not having been made within six years from the day of mailing of a notice of an original assessment or of a notification described in subsection 73 (7).

Commence-
ment and
application

18.—(1) Section 1, subsection 2 (2), and sections 3, 10, 11 (except subclause 54 (1) (c) (iv) of the said Act as enacted by subsection 11 (1) of this Act), 12 and 13 shall be deemed to have come into force on the 20th day of May, 1981 and apply to

corporations in respect of all taxation years ending after the 19th day of May, 1981.

- (2) Subsection 2 (1) and section 15 shall be deemed to have come into force on the 20th day of May, 1981 and apply to performances given after the 19th day of May, 1981.
- (3) Sections 4, 5, 6 (except that portion of clause 18 (14) (b) of the said Act following subclause (vii) thereof, as enacted by section 6 of this Act), and section 7 shall be deemed to have come into force on the 20th day of May, 1981 and apply to outlays or expenses, amounts received in respect of outlays or expenses and dispositions of property made or incurred after the 19th day of May, 1981.
- (4) That portion of clause 18 (14) (b) of the said Act, following subclause (vii) thereof, as enacted by section 6, shall be deemed to have come into force on the 1st day of January, 1981 and applies to corporations in respect of all taxation years ending after 1980.
- (5) Section 8 shall be deemed to have come into force on the 20th day of May, 1981 and applies to dispositions of taxable Canadian property situated in Ontario made during taxation years ending after 1980.
- (6) Section 9 shall be deemed to have come into force on the 1st day of January, 1979 and applies to corporations in respect of all taxation years commencing after 1978.
- (7) Subclause 54 (1) (c) (iv) of the said Act, as enacted by subsection 11 (1) of this Act, shall be deemed to have come into force on the 23rd day of April, 1980 and applies to corporations in respect of all taxation years ending after the 22nd day of April, 1980.
- (8) Section 14 comes into force on the 1st day of October, 1981 and applies to corporations in respect of all taxation years commencing after the 30th day of September, 1981.
- (9) Sections 16 and 17 come into force on the day this Act receives Royal Assent.

19. The short title of this Act is the *Corporations Tax Amendment Act*, Short title 1981.

