Corporations Tax Amendment Act, 1988

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CHAPTER 42

An Act to amend the Corporations 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. Subclause 1 (2) (d) (iv) of the Corporations Tax Act, being chapter 97 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1984, chapter 29, section 1 and amended by the Statutes of Ontario, 1985, chapter 11, section 1, is repealed and the following substituted therefor:

(iv) where subclause (i) applies,

(A) the other provision shall be deemed to apply for the purposes of the application of sections 12 and 12.2, subsection 13 (7), section 20, subparagraphs 53 (2) (c) (vi), (vii) and (viii) and 53 (2) (h) (ii), (iii) and (iv), sections 56 and 60, subparagraph 66.1 (6) (b) (xi), section 88, paragraph 95 (1) (f), subsection 96 (2.1), paragraphs 111 (1) (e) and 127.2 (6) (a), subsections 127.2 (8) and 127.3 (6), paragraph 133 (8) (b), subsection 137 (4.3), section 138, paragraph 138.1 (1) (k) and section 248 of the Income Tax Act (Canada) for the purposes of this Act,

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(B) subsections 192 (4.1) and 194 (4.1) of the Income Tax Act (Canada) shall be deemed to apply for the purposes of the application of clause 89 (1) (c) (ii) (C) of that Act for the purposes of this Act, and

(C) the other provision shall not apply for the purposes of the application of any provision of the Income Tax Act (Canada), other than a section, subsection,
paragraph, subparagraph or clause referred to in sub-subclause (A) or (B), for the purposes of this Act.

2.—(1) Subsection 16 (1b) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 29, section 5, is repealed.

(2) Subsection 16 (2) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 29, section 5, is repealed.

3.—(1) Clause 17 (1) (a) of the said Act is repealed and the following substituted therefor:

(a) a natural accumulation of petroleum or natural gas, oil or gas well, mineral resource or timber limit; or

(2) Subclause 17 (2) (a) (i) of the said Act is repealed and the following substituted therefor:

(i) natural accumulations of petroleum or natural gas, oil or gas wells or mineral resources in which the corporation has an interest, or

4.—(1) Subsection 18 (14) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 37, section 6 and amended by the Statutes of Ontario, 1983, chapter 29, section 7, is further amended by striking out “section 18a” in the first line and inserting in lieu thereof “in sections 18a and 18b”.

(2) The said subsection 18 (14) is further amended by adding thereto the following clauses:

(aa) “assistance” has the meaning given to that expression by paragraph 66 (15) (a.1) of the Income Tax Act (Canada);

(ca) “flow-through share” has the meaning given to that expression by paragraph 66 (15) (d.1) of the Income Tax Act (Canada) and includes a share issued pursuant to an agreement entered into by a corporation after the 28th day of February, 1986 and before the
1st day of January, 1987 which qualifies as a “flow-through share” for the purposes of that Act;

\[(\text{ia}) \quad \text{“selling instrument” has the meaning given to that expression by paragraph 66 (15) (h.1) of the Income Tax Act (Canada).}\]

(3) Clause 18 (14) (e) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 37, section 6, is amended by striking out “paragraph 66 (15) (g.1)” in the second line and inserting in lieu thereof “subsection 248 (1)”.

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

**18b.** Subsections 66 (12.6) to (12.73), (16) and (17) of the Income Tax Act (Canada) are applicable for the purposes of this Act in so far as they apply to corporations, except that in the application thereof,

(a) references to “the Minister” in subsections 66 (12.68), (12.69) and (12.73) of that Act shall be read as references to the Minister of National Revenue;

(b) the reference to “this Part” in subsection 66 (12.71) of that Act shall be read as a reference to Part II of this Act; and

(c) a prescribed form referred to in subsection 66 (12.68), (12.69) or (12.7) of that Act that was required to be filed, and that was filed, on or before the 19th day of March, 1987, shall be deemed to have been filed at the time required under that subsection.

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

**19a.** Section 66.6 of the Income Tax Act (Canada) is applicable for the purposes of this Act with the references therein to “this Part” read as references to Part II of this Act.

7. Clause 21 (1) (a) of the said Act is repealed and the following substituted therefor:
(a) subsection (1.1) and paragraph (2) (b) thereof are not applicable; and

8. Clause 22 (b) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 29, section 8, is repealed and the following substituted therefor:

(b) an amount determined in accordance with the rules provided in paragraph 81 (1) (b), (c), (f) or (m) of the Income Tax Act (Canada).

9.—(1) Subsection 23 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1985, chapter 11, section 8, is repealed and the following substituted therefor:

(3) Paragraphs 87 (2) (y.1), (z), (cc) and (pp) and 88 (1) (e.7) of the Income Tax Act (Canada) are not applicable for the purposes of this Act.

(2) Subsection 23 (4) of the said Act, as amended by the Statutes of Ontario, 1985, chapter 11, section 8, is repealed and the following substituted therefor:

(4) Paragraph 88 (1) (e.2) of the Income Tax Act (Canada) shall, in its application for the purposes of this Act, be read without reference therein to paragraphs 87 (2) (y.1), (cc) and (pp) of the said Act, and as though the reference therein to paragraph 87 (2) (p) were a reference to subsection (2) of this section.

10. Section 25 of the said Act, as amended by the Statutes of Ontario, 1985, chapter 11, section 10, is further amended by adding thereto the following subsection:

(6) For the purposes of this Act, the amount referred to in clause 96 (2.1) (b) (iv) (A) of the Income Tax Act (Canada) shall equal the corporation’s share of the foreign exploration and development expenses incurred by the partnership in the fiscal period that are deductible in computing income for the purposes of this Act.

11. Section 27 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 29, section 8 and 1986, chapter 39, section 8, is further amended by adding thereto the following subsections:

(8) Subparagraph 110 (1) (f) (i) of the Income Tax Act (Canada) is not applicable for the purposes of this Act.
(9) For the purposes of this Act, the amount referred to in subclause 111 (1) (e) (ii) (C) (I) of the *Income Tax Act* (Canada) shall equal the corporation's share of the foreign exploration and development expenses incurred by the partnership in that fiscal period that are deductible in computing income for the purposes of this Act.

12. Subsection 29 (1) of the said Act, as amended by the Statutes of Ontario, 1985, chapter 11, section 12, is further amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding thereto the following clause:

(c) in the application of paragraph 115 (1) (d) of the *Income Tax Act* (Canada), no deduction is permitted with respect to an amount referred to in subparagraph 110 (1) (f) (i) of that Act.

13.—(1) Clauses 40 (2) (c) and (d) of the said Act, as enacted by the Statutes of Ontario, 1985, chapter 11, section 19, are repealed and the following substituted therefor:

(c) subparagraph (b) (i) shall be read in its entirety as "the 7 year period referred to in clause 73 (7) (b), where that clause applies"; and

(d) subparagraph (b) (ii) shall be read in its entirety as "the period referred to in clause 73 (7) (c), in any other case".

(2) Clause 40 (5) (b) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 29, section 15, is repealed and the following substituted therefor:

(b) the reference in clause (C) of the said subparagraph to "this Part" shall be read as a reference to Part II of this Act, and the said clause shall be read without reference to the words "determined without reference to section 123.2".

14. Clause 49 (1) (a) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 37, section 9, is repealed and the following substituted therefor:

(a) a corporation referred to in paragraph 149 (1) (c), (d), (e), (f), (h.1), (i), (j), (k), (m), (n), (o), (o.1), (o.2) or (o.3) of the *Income Tax Act* (Canada).
15. Subsection 54 (2c) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 29, section 18, is repealed and the following substituted therefor:

(2c) For the purposes of this Part, “any other surplus” at the close of a taxation year includes, in addition to any other amount included therein by virtue of this section,

(a) all amounts, other than accounts payable referred to in subsection 53 (1a), owing by the corporation in respect of expenses deductible by the corporation in the calculation of its income subject to tax under Part II, if the amounts are owing to a person with whom the corporation was not dealing at arm’s length at the time the liability was incurred; and

(b) dividends declared,

which were unpaid at the close of the preceding taxation year and remain unpaid and owing to a person with whom the corporation was not dealing at arm’s length at the close of the taxation year.

16. Subsection 61 (4) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 37, section 13 and amended by the Statutes of Ontario, 1983, chapter 29, section 19 and 1986, chapter 39, section 13, is repealed and the following substituted therefor:

(4) Subsections (1) and (2) do not apply to a corporation where,

(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 $2,000,000 with respect to a loss year of the corporation as defined in subsections (5) and (6); or

(b) the corporation is a member of a partnership or a connected partnership and the aggregate of

(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 sub-
section,

exceeds $1,000,000 or $2,000,000 with respect to a loss year of the corporation as defined in subsections (5) and (6).

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

61a.—(1) In this section, “a corporation that is a farm equipment dealer” means a corporation whose principal business throughout the taxation year is the retail sale, leasing or servicing of farm equipment, or any combination thereof, but does not include a corporation substantially all of the business of which throughout the taxation year is the servicing of farm equipment.

(2) Notwithstanding subsections 58 (1) and 59 (1), the tax payable under this Part by a corporation that is a farm equipment dealer for each of its first two taxation years commencing after the 31st day of December, 1986 and before the 1st day of January, 1989, shall be,

(a) where the amount subject to tax under this Part does not exceed $3,000,000, the lesser of,

(i) $200, and

(ii) either,

(A) where the corporation is otherwise eligible to pay tax under subsection 61 (1) or (2), the tax that would be payable thereunder, or

(B) in any other case, the tax otherwise payable under this Part calculated under subsections 58 (1) and 59 (1); and

(b) where the amount subject to tax under this Part is in excess of $3,000,000, the lesser of,

(i) the aggregate of,

(A) $200, and
(B) the tax that would be payable, under subsections 58 (1) and 59 (1), but not section 61, if the amount subject to tax under this Part was the amount of such excess, and

(ii) the tax otherwise payable under subsections 58 (1) and 59 (1).

18.—(1) Subsection 73 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 29, section 20, is amended by striking out "or farm loss" in the third line and inserting in lieu thereof "farm loss or limited partnership loss".

(2) Subsection 73 (3) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 29, section 20, is further amended by striking out "or farm loss" in the amendment of 1984 and inserting in lieu thereof "farm loss or limited partnership loss".

(3) Subsection 73 (4) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 29, section 20, is further amended by striking out "or farm loss" in the amendment of 1984 and inserting in lieu thereof "farm loss or limited partnership loss".

(4) Subclause 73 (7) (a) (iv) of the said Act is repealed and the following substituted therefor:

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

(A) the expiry of a four-year period commencing on the day of mailing of a notice of an original assessment or of a notification that no tax is payable for a taxation year, and

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

(5) Clause 73 (7) (b) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 29, section 20, is amended by striking out "eight" in the first line and inserting in lieu thereof "seven".
(6) Clause 73 (7) (c) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 29, section 20, is repealed and the following substituted therefor:

(c) 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 a notice of the original assessment or of a notification that no tax is payable for the taxation year, 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,

19. Subsection 91 (4) of the said Act is repealed.

20.—(1) This Act, except as provided in subsections (2) to (20), comes into force on the day it receives Royal Assent.

(2) Subsection 27 (8) of the said Act, as enacted by section 11 of this Act, and section 12 of this Act shall be deemed to have come into force on the 1st day of January, 1982, and apply with respect to taxation years of corporations ending after the 31st day of December, 1981.

(3) Section 9 shall be deemed to have come into force on the 1st day of January, 1985, and applies with respect to taxation years of corporations ending after the 31st day of December, 1984.

(4) Section 3 and subsection 4 (3) shall be deemed to have come into force on the 1st day of April, 1985, and apply with respect to taxation years of corporations ending after the 31st day of March, 1985.

(5) Subclause 1 (2) (d) (iv) of the said Act, other than sub-subclause (B) thereof, as re-enacted by section 1 of this Act, shall be deemed to have come into force on the 23rd day of May, 1985, except as provided in subsections (10) and (12), and in the application thereof, the “other provision” referred to in sub-subclause (A) shall apply for the purposes of the application of subsection 13 (7) of the Income Tax Act (Canada) for the purposes of the said Act only with respect to property acquired by a corporation after the 22nd day of May, 1985, other than property acquired by the corporation before the 1st day of April, 1985, and

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day of January, 1986 pursuant to a written agreement entered into by the corporation before the 23rd day of May, 1985.

(6) Sub-subclause (2) (d) (iv) (B) of the said Act, as enacted by section 1 of this Act, shall be deemed to have come into force on the 24th day of May, 1985.

(7) Section 6 shall be deemed to have come into force on the 20th day of July, 1985, and applies with respect to taxation years of corporations ending after the 19th day of July, 1985.

(8) Section 14 shall be deemed to have come into force on the 1st day of November, 1985.

(9) Section 7 shall be deemed to have come into force on the 22nd day of November, 1985.

(10) The reference to subparagraph 66.1 (6) (b) (xi) of the Income Tax Act (Canada) in sub-subclause 1 (2) (d) (iv) (A) of the said Act, as enacted by section 1 of this Act, shall be deemed to have come into force on the 1st day of December, 1985, and applies with respect to expenditures made after the 30th day of November, 1985.

(11) Section 8 shall be deemed to have come into force on the 1st day of January, 1986, and applies with respect to taxation years of corporations ending after the 31st day of December, 1985.

(12) The reference to subsection 96 (2.1) and paragraph 111 (1) (e) of the Income Tax Act (Canada) in sub-subclause 1 (2) (d) (iv) (A) of the said Act, as enacted by section 1 of this Act, section 10 of this Act, subsection 27 (9) of the said Act, as enacted by section 11 of this Act and subsections 18 (1), (2) and (3) of this Act shall be deemed to have come into force on the 26th day of February, 1986.

(13) Section 15 shall be deemed to have come into force on the 26th day of February, 1986, and applies with respect to liabilities incurred by corporations in taxation years commencing after the 25th day of February, 1986.

(14) Subsection 4 (1) of this Act and clause 18 (14) (ca) of the said Act, as enacted by subsection 4 (2) of this Act, shall be deemed to have come into force on the 1st day of March, 1986.

(15) Clauses 18 (14) (aa) and (ia) of the said Act, as enacted by subsection 4 (2) of this Act, and the application of subsections 66 (12.6) to (12.73) of the Income Tax Act (Canada) for the purposes of the said Act, as enacted by section 5 of this
Act, shall be deemed to have come into force on the 1st day of March, 1986, and apply with respect to expenses incurred after the 28th day of February, 1986.

(16) The application of subsections 66 (16) and (17) of the *Income Tax Act* (Canada) for the purposes of the said Act, as enacted by section 5 of this Act, shall be deemed to have come into force on the 1st day of March, 1986, with respect to fiscal periods of partnerships ending after the 28th day of February, 1986.

(17) Section 19 shall be deemed to have come into force on the 15th day of May, 1986.

(18) Sections 2 and 17 shall be deemed to have come into force on the 1st day of January, 1987.

(19) Subsection 13 (2) shall be deemed to have come into force on the 1st day of January, 1987, and applies with respect to taxation years of corporations ending after the 31st day of December, 1986.

(20) Subsections 13 (1) and 18 (4), (5) and (6) come into force on the day this Act receives Royal Assent and apply with respect to reassessments and assessments for taxation years of corporations commencing after the day this Act receives Royal Assent.

21. The short title of this Act is the *Corporations Tax Amendment Act, 1988*.