

1983 BILL 101

First Session, 20th Legislature, 32 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 101

**ALBERTA CORPORATE INCOME TAX
AMENDMENT ACT, 1983 (NO. 2)**

THE PROVINCIAL TREASURER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 101

1983

ALBERTA CORPORATE INCOME TAX AMENDMENT ACT, 1983 (NO. 2)

(*Assented to* , 1983)

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

1 The Alberta Corporate Income Tax Act is amended by this Act.

2(1) Section 20 is amended by adding the following after subsection (6):

(7) If a corporation is a member of a partnership, in computing for a taxation year each of the amounts described in subsection (1)(a), (b), (c), (d), (e) and (f), it shall include its share of each of those amounts of the partnership, calculated as if the partnership were a corporation.

(2) Subsection (1) applies to taxation years commencing on or after January 1, 1981.

3(1) Section 22(1) is amended

(a) by repealing clause (a) and substituting the following:

(a) “active business” carried on by a corporation in a taxation year means the business of manufacturing or processing property for sale or lease, mining, operating an oil or gas well, prospecting, exploring or drilling for natural resources, construction, logging, farming, fishing, selling property as a principal, transportation or any other business carried on by the corporation other than a specified investment business, a non-qualifying business or a personal services business;

(b) by adding the following after clause (j):

(j.1) “personal services business” has the meaning assigned to it by paragraph 125(6)(g.1) of the federal Act;

(c) by repealing clauses (m) and (p).

(2) Subsection (1)(a) and (b) apply to taxation years commencing on or after November 13, 1981.

(3) Subsection 1(c) applies to taxation years ending after December 31, 1982.

Explanatory Notes

1 This Bill amends chapter A-17 of the Revised Statutes of Alberta 1980.

2 Calculation by partnership.

3 Section 22(1)(m) and (p) presently read:

22(1) In this section,

(m) “specified addition to the cumulative deduction account” of a corporation for a taxation year has the meaning assigned to it by paragraph 125(12)(a) of the federal Act;

(p) “specified reduction in the cumulative deduction account” of a corporation for a taxation year has the meaning assigned to it by paragraph 125(12)(b) of the federal Act;

4(1) Section 23 is amended

(a) in subsection (2)(b)(i) by striking out “income or profits” and substituting “non-business-income”;

(b) by adding the following after subsection (2):

(2.1) For the purposes of subsection (2), “non-business-income tax” has the meaning assigned to it by paragraph 126(7)(c) of the federal Act.

(c) in subsection (3) by striking out “subsection (1)” and substituting “subsection (2)”.

(2) Subsection (1)(a) and (b) apply to taxation years commencing on or after the date of the coming into force of this Act.

(3) Subsection (1)(c) applies to taxation years commencing on or after January 1, 1981.

5 Section 26(4)(a) is amended by striking out “subsection 257(2)” and substituting “paragraph 204(a)”.

6(1) Section 26.1 is amended

(a) by adding the following after subsection (7):

(7.1) Notwithstanding anything in this Division, if at any time (in this subsection referred to as the “particular time”) after November 3, 1983

(a) control of a corporation (in this subsection referred to as the “particular corporation”) has been acquired by a person, and

(b) the Provincial Treasurer is satisfied that the result of the acquisition of control of the particular corporation is that the amount of the royalty tax credit to which the particular corporation, or any corporation or group of corporations with which it is associated in the calendar year in which the particular time falls, is entitled is greater than the amount of the royalty tax credit to which the particular corporation, or any corporation or group of corporations with which the particular corporation is as-

4 Section 23(2) and (3) presently read:

(2) *If a corporation has a permanent establishment in Alberta, has included foreign investment income in computing its income and is entitled to a deduction under subsection 126(1) of the federal Act in respect of income or profits tax paid to a country outside Canada on that foreign investment income, it may deduct from the tax payable remaining after it has claimed the deduction under section 22 an amount equal to the lesser of*

(a) 11% of the foreign investment income for the year from sources in that country multiplied by the Alberta allocation factor,

(b) the amount, if any, by which

(i) the income or profits tax paid by the corporation to a country or political subdivision of a country, in respect of that foreign investment income, except any amount that may be regarded as having been paid in respect of income from a share of the capital stock of a foreign affiliate of the corporation,

exceeds

(ii) the amount deductible under subsection 126(1) of the federal Act in respect thereof

and multiplied by the Alberta allocation factor, and

(c) the amount of the tax remaining after it has claimed the deduction under section 22.

(3) *If the income of a corporation for a taxation year includes income from sources in more than one country other than Canada, subsection (1) shall be deemed to provide for a separate deduction in respect of each of the countries other than Canada.*

5 Section 26(4)(a) presently reads:

(4) *In subsection (5),*

(a) "equity share" has the meaning assigned to it by subsection 257(2) of the federal Act;

6 Royalty tax credit.

sociated in the calendar year in which the particular time falls, would have been entitled, had control of the particular corporation not been acquired,

the Provincial Treasurer may determine the amount of the royalty tax credit to which the particular corporation or any corporation or group of corporations with which it is associated in the calendar year in which the particular time falls shall be entitled for taxation years that end in the same calendar year as that in which the particular time falls.

(7.2) Notwithstanding anything in this Division, if at any time after November 3, 1983, a corporation (in this subsection referred to as the "particular corporation"), by reason of an amalgamation or otherwise

- (a) has a taxation year that ends before the time that it otherwise would have ended, or
- (b) has 2 or more taxation years ending in the same calendar year,

the Provincial Treasurer may determine the amount of the royalty tax credit to which

- (c) the particular corporation,
- (d) any successor corporation formed on the amalgamation of the particular corporation with another corporation, or
- (e) any corporation with which the particular corporation was associated in the calendar year in which any of the taxation years described in clauses (a) and (b) of the particular corporation end,

shall be entitled for any of the taxation years of any of the corporations described in clauses (c), (d) and (e) that end in the same calendar year as any of the taxation years described in clauses (a) and (b) of the particular corporation.

(b) *in subsections (12) and (12.1) by striking out "to be the Alberta" and substituting "to be Alberta";*

(c) *by repealing subsections (14), (15) and (16) and substituting the following:*

(14) A corporation is entitled to a royalty tax credit in respect of the taxation year only if it files an application for the credit in the prescribed form

- (a) with its return for that taxation year, or
- (b) on a day after the return has been filed, but no later than 90 days from the date of mailing of the notice of assessment, reassessment, determination or redetermination, as the case may be,

but in no case shall a corporation be entitled to a royalty tax credit unless it files an application for the credit within 1 year from the end of that taxation year.

(2) Subsection (1)(c) applies to taxation years commencing on or after January 1, 1984.

7 Section 26.4(2) is repealed and the following is substituted:

(2) If application for payment of a royalty tax credit instalment in respect of a month has been made by a corporation in the prescribed form, the Provincial Treasurer may determine the entitlement to and the amount, if any, of the royalty tax credit instalment and may apply the amount of the royalty tax credit instalment to any amount owing by the corporation under this Act and shall pay any amount of the royalty tax credit instalment not so applied to the corporation on or after the last day of that month.

8(1) Section 32 is amended

(a) in subsection (1) by striking out “subsection (2)” and substituting “subsections (2) and (3)”;

(b) by adding the following after subsection (2):

(3) In the application of subsection 137(7) of the federal Act, the reference to sections 123.4, 123.5 and 125 shall be deemed to be a reference to section 22 of this Act.

(2) Subsection (1) applies to taxation years commencing on or after January 1, 1981.

9 Section 35 is amended by adding the following after subsection (2):

(3) If at any time after November 12, 1981, a corporation ceases to be exempt from tax under this Act on its taxable income, the following rules apply:

(a) the taxation year of the corporation that would otherwise have included that time shall be deemed to have ended at that time and a new taxation year shall be deemed to have commenced immediately thereafter,

(b) the corporation shall be deemed to have disposed, immediately before that time, of each property, other than property described in any of paragraphs 59(2)(a) to (e) of the federal Act, that was owned by it immediately before that time for an amount equal to its fair market value at that time and to have reacquired the property immediately after that time at a cost equal to that fair market value, and

(c) where clause (b) applies in respect of depreciable property of the corporation and the capital cost thereof to the corporation immediately before that time exceeds the fair market value thereof at that time, for the purposes of section 8,

7 Section 26.4(2) presently reads:

(2) If application for payment of the royalty tax credit instalment in respect of a month has been made by a corporation in the prescribed form, the Provincial Treasurer may apply the amount estimated by the corporation to be the royalty tax credit instalment for a month to any amount owing by the corporation under this Act and shall pay any amount not so applied to the corporation on or after the last day of that month.

8 Section 32 presently reads:

32(1) Subject to subsection (2), section 137 of the federal Act applies for the purposes of this Act insofar as it applies to corporations.

(2) Subsections 137(3) and (4) and paragraph 137(6)(c) of the federal Act do not apply for the purposes of this Act.

9 Exempt corporations.

(i) the capital cost of the property to the corporation immediately after that time shall be deemed to be the amount that was its capital cost thereof before that time, and

(ii) the excess shall be deemed to have been allowed to the corporation in respect of the property in computing its income for taxation years ending before that time.

(4) Subsection (3) does not apply to a corporation that ceases to be exempt from tax under this Act after November 12, 1981 by reason of control of the corporation being acquired by a person or persons pursuant to an agreement in writing entered into on or before that date.

10 Section 44 is repealed and the following is substituted:

44 If a corporation has filed the return required by section 36 for a taxation year and, within 1 year from the day on or before which it was required by section 36 to file the return for that year, has amended the return by filing with the Provincial Treasurer a prescribed form claiming a deduction from income under section 111 of the federal Act in respect of a loss for the taxation year immediately following that year, the Provincial Treasurer shall reassess the corporation's tax for the year.

11 Section 47 is amended

(a) by repealing subsection (1)(c)(ii)(A) and substituting the following:

(A) the aggregate of the amounts of royalty tax credit instalments paid to the corporation by virtue of section 26.4 with respect to the royalty tax credit and any interest payable under section 26.4(4) less the aggregate of any amounts paid by the corporation with respect to the royalty tax credit under section 38(8), and

(b) in subsection (4) by striking out “unless the amount of the interest so calculated is less than \$1 in which case no interest shall be paid or applied under this subsection”;

(c) by adding the following after subsection (4.1):

(4.2) Interest required to be paid or applied under subsection (4) shall be paid out of or charged to the General Revenue Fund.

10 Section 44 presently reads:

44 If a corporation has filed the return required by section 36 for a taxation year and, within one year from the day on or before which it was required by section 36 to file the return for that year, has filed an amended return for the year claiming a deduction from income under section 111 of the federal Act in respect of non-capital losses, net capital losses or restricted farm losses sustained in the taxation year immediately following that year, the Provincial Treasurer shall reassess the corporation's tax for the year.

11 Section 47(1) and (4) presently read:

47(1) For the purposes of this section, "overpayment" means

(a) the amount by which all amounts paid on account of tax under Part 5 and on account of interest and penalties under Part 8 exceeds all amounts payable under Part 5 and Part 8,

(b) the amount of a refundable tax credit other than a royalty tax credit to which a corporation is entitled less any amounts applied under section 38(6) with respect to that refundable tax credit, or

(c) the amount by which

(i) the amount of the royalty tax credit to which a corporation is entitled

exceeds

(ii) the aggregate of

(A) the aggregate of the amounts of royalty tax credit instalments paid to the corporation by virtue of section 26.4 with respect to that royalty tax credit less any amount payable by the corporation with respect to it under section 38(8), and

(B) any amounts applied under section 38(6) with respect to that royalty tax credit.

(4) If an amount in respect of an overpayment is refunded or applied under this section to another liability, interest at the prescribed rate shall be paid or applied to the amount for the period commencing

(a) the day when the overpayment arose,

(b) the day on or before which the return in respect of which the tax was paid was required to be filed, or

12 Section 50(3) is amended by striking out “Deputy”.

13 Section 55 is amended by adding the following after subsection (5):

(5.1) A copy of the originating notice referred to in subsection (5) shall be served on the Provincial Treasurer by being sent by certified mail or registered letter addressed to the Provincial Treasurer.

14 Section 59 is repealed.

15 Section 60(1) is amended by striking out “is about to become” and substituting “will be, within 90 days.”

16 Section 74(1) is repealed and the following is substituted:

74(1) A corporation that

- (a) wilfully evades or attempts to evade payment of tax payable by it, or
- (b) wilfully claims or attempts to claim a refundable tax credit greater than that to which it is entitled

is guilty of an offence.

17 Section 75(b) is repealed and the following is substituted:

(b) destroys, alters, mutilates, secretes or otherwise disposes of the records or books of account of a corporation in order to assist in the evasion or attempted evasion of payment of tax imposed by this Act on a corporation or to assist a corporation in claiming or attempting to claim a refundable tax credit greater than that to which the corporation is entitled,

(c) the day when the return of the corporation was actually filed,

whichever day is latest and ending with the day of refund or application of overpayment under subsection (3) unless the amount of the interest so calculated is less than \$1 in which case no interest shall be paid or applied under this subsection.

12 Section 50(3) presently reads:

(3) A notice of appeal shall be served on the Provincial Treasurer by being sent by certified mail or registered letter addressed to the Deputy Provincial Treasurer.

13 Service of originating notice.

14 Section 59 presently reads:

59 The Provincial Treasurer may apply ex parte to the court for the issuance of a warrant directed to the sheriff of any judicial district in which property of the corporation is located or situated for the amount of the tax, interest at the prescribed rate and penalty or any of them owing by the corporation together with interest from the date of the issue of the warrant and the costs and expenses of the sheriff and that warrant shall have the same force and effect as a writ of execution issued out of the court and shall be subject to any terms and conditions that the court considers proper.

15 Section 60(1) presently reads:

60(1) If the Provincial Treasurer has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to a corporation liable to make a payment under this Act, he may, by notice served personally or by certified mail or registered letter, require him to pay the money otherwise payable to that corporation in whole or in part to the Provincial Treasurer on account of the liability under this Act.

16 Section 74(1) presently reads:

74(1) A corporation that wilfully attempts to evade payment of the tax payable by it or to claim a refundable tax credit greater than that to which it is entitled is guilty of an offence.

17 Section 75(b) presently reads:

75 An individual who

(b) to evade payment of a tax imposed by this Act or to claim a refundable tax credit greater than that to which it is entitled, destroys, alters, mutilates, secretes or otherwise disposes of the records or books of account of a corporation,

18 Section 77(2) is amended by adding the following after clause (a.1):

(a.2) information obtained under this Act as to the name, address or type of business of a taxpayer by the Provincial Treasurer to a person employed by a department or agency of the Government of Alberta solely for the purpose of enabling that department or agency to obtain statistical data for research and analysis,

19(1) Sections 5 and 9 shall be deemed to have come into force on March 30, 1983.

(2) Section 11(a) shall be deemed to have come into force on May 4, 1982.

(3) Section 11(c) shall be deemed to have come into force on April 1, 1983.

*In accordance with section 4(1) of the Interpretation Act,
this Bill, except sections 5, 9 and 11(a) and (c), comes
into force on the date it receives Royal Assent.*

18 Section 77(2) presently reads:

- (2) *Subsection (1) does not apply to the communication of*
- (a) statistical information that is provided to the Alberta Bureau of Statistics by the Provincial Treasurer to be used by the Bureau in accordance with section 3 of the Statistics Bureau Act,*
 - (a.1) information to the Department of Consumer and Corporate Affairs that a return under this Act has been filed by any person or an application under section 26.4(1) has been made by any person,*
 - (b) income tax information to employees of the Treasury Department solely for the purposes of evaluating and formulating tax policy, and*
 - (c) information between the Provincial Treasurer and a corporation respecting the tax cost of property acquired by the corporation in any case where, by reason of any provision of this Act or the federal Act, that cost is other than its actual cost.*