

1988 BILL 45

Third Session, 21st Legislature, 37 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 45

**ALBERTA CORPORATE INCOME TAX
AMENDMENT ACT, 1988**

THE PROVINCIAL TREASURER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 45

1988

ALBERTA CORPORATE INCOME TAX AMENDMENT ACT, 1988

(Assented to _____, 1988)

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 19 is amended

(a) in subsection (2) by striking out "In this section" and substituting "Subject to subsection (3), in this section";

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

(3) For the purposes of this Part and in the application of Part IV of the federal regulations,

(a) subsection 413(1) of the federal regulations shall be read as if "and "taxable income" shall be deemed to refer to taxable income earned in Canada as determined under section 115 of the Act" were struck out, and

(b) if a corporation is not resident in Canada, "taxable income" shall be deemed to refer to taxable income earned in Canada as determined under section 115 of the federal Act as if the references to section 3 or any of its paragraphs in subsection 115(1) of the federal Act were references to section 6 or the corresponding clauses of section 6 of this Act.

(2) Subsection (1) applies to taxation years commencing after December 31, 1980.

3(1) Section 20 is amended

(a) by repealing subsection (1.1);

(b) in subsections (5)(b) and (6)(b) by striking out "or 66.5" and substituting ", 66.5 or 66.7".

(2) Subsection (1)(b) applies to acquisitions occurring in a taxation year ending after February 17, 1987 of a successor corporation referred to in section 20(5) of the Alberta Corporate Income Tax Act or of a second successor corporation referred to in section 20(6) of the Alberta Corporate Income Tax Act.

Explanatory Notes

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

2 Section 19(2) presently reads:

(2) In this section, "taxable income earned in Alberta" means the amount determined by the application of Part IV of the federal regulations to taxable income.

3 Section 20(1.1), (5) and (6) presently read:

(1.1) A computation under subsection (1) of attributed Canadian royalty income shall not include an amount referred to in paragraph 83.1(1)(c) of the Petroleum and Gas Revenue Tax Act (Canada).

(5) Except with respect to an amalgamation or winding-up to which subsection (6.1) or (6.2) applies, if a corporation (in this subsection referred to as the "successor corporation") has, at any time after May 6, 1974, acquired by purchase, amalgamation, merger, winding-up or otherwise from another person, (in this subsection referred to as the "predecessor") all or substantially all of the Canadian resource properties of the predecessor, the successor corporation shall, in determining its royalty tax deduction

4(1) Section 22 is amended by adding the following after subsection (1):

(1.1) For the purposes of this section, if an amount paid or payable to a corporation, in this subsection referred to as the “recipient corporation”, by another corporation, in this subsection referred to as the “associated corporation”, with which the recipient corporation was associated in any particular taxation year, would

for a taxation year, be entitled to include in the calculation of its attributed Canadian royalty income for the year the lesser of

(a) the amount that, but for this subsection, the predecessor would have been entitled to carry forward under subsection (4) or under section 11(6) or (7) of the Alberta Income Tax Act in respect of his taxation year in which the property so acquired was acquired by the successor corporation, to the extent that such amount has not been included in the attributed Canadian royalty income of the successor corporation for a previous taxation year, and

(b) an amount equal to such part of its income for the year if no deduction were allowed under section 65, 66, 66.1, 66.2, 66.4 or 66.5 of the federal Act as may reasonably be regarded as attributable to the production of petroleum, natural gas or coal from the property so acquired from the predecessor,

and in respect of any such attributed Canadian royalty income included in the amount referred to in clause (a), no amount may be used by the predecessor in determining his royalty tax deduction for a taxation year subsequent to his taxation year in which the property so acquired was acquired by the successor corporation.

(6) Except with respect to an amalgamation or winding-up to which subsection (6.1) or (6.2) applies, if a corporation (in this subsection referred to as the "second successor corporation") has, at any time after May 6, 1974, acquired by purchase, amalgamation, merger, winding-up or otherwise from another corporation (in this subsection referred to as the "first successor corporation") that was a successor corporation within the meaning of subsection (5), all or substantially all of the Canadian resource properties of the first successor corporation, the second successor corporation shall, in determining its royalty tax deduction for a taxation year, be entitled to include in the calculation of its attributed Canadian royalty income for the year the lesser of

(a) the amount determined under subsection (5)(a) in respect of the first successor corporation to the extent that the amount has not been included in the attributed Canadian royalty income of the first successor corporation for its previous taxation year in which the property so acquired was acquired by the second successor corporation and has not been included in the attributed Canadian royalty income of the second successor corporation for a taxation year, and

(b) an amount equal to such part of its income for the year if no deduction were allowed under section 65, 66, 66.1, 66.2, 66.4 or 66.5 of the federal Act as may reasonably be regarded as attributable to the production of petroleum, natural gas or coal from the property acquired from the first successor corporation's predecessor corporation within the meaning of subsection (5),

and in respect of any such attributed Canadian royalty income included in the amount referred to in clause (a), no amount may be used by the first successor corporation in determining its royalty tax deduction for a taxation year subsequent to its taxation year in which the property so acquired was acquired by the second successor corporation.

4 Section 22(1) presently reads in part:

22(1) In this section,

(d) "income of the corporation for the year from an active business" has the meaning assigned to it by paragraph 125(7)(c) of the federal Act;

otherwise be included in computing the income of the recipient corporation for the particular year from a source in Canada that is a property,

(a) the portion of the amount that was or may be deductible in computing the income of the associated corporation for any taxation year from an active business carried on by it in Canada shall be deemed to be income of the recipient corporation for the particular year from an active business carried on by it in Canada, and

(b) any outlay or expense, to the extent that it may reasonably be regarded as having been made or incurred by the recipient corporation for the purpose of gaining or producing the amount determined in clause (a), shall be deemed to have been made or incurred by the recipient corporation for the purpose of gaining or producing that income.

(2) *Subsection (1) applies to 1985 and subsequent taxation years.*

5(1) *Section 35 is amended*

(a) *by striking out all that portion of subsection (3) preceding clause (c)(ii) and substituting the following:*

(3) If at any time, in this subsection referred to as "that time", a corporation becomes or 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 immediately before that time and a new taxation year of the corporation shall be deemed to have commenced at that time;

(b) the corporation shall be deemed to have disposed, immediately before the time that is immediately before that time, of each property, other than, where, at that time, the corporation ceases to be exempt from tax under this Act on its taxable income, a Canadian resource property or a foreign resource property, 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 at that time at a cost equal to that fair market value;

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

(i) the capital cost of the property to the corporation at that time shall be deemed to be the amount that was the corporation's capital cost of the property immediately before the disposition, and

(b) *by adding the following after subsection (3)(c):*

(d) notwithstanding section 111 of the federal Act, no amount is deductible in computing the corporation's taxable income

5 Section 35(3) presently reads:

(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 a Canadian resource property or foreign resource property, 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,

(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.

for a taxation year ending after that time in respect of a non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year ending before that time to the extent that the loss could have been applied to reduce the corporation's taxable income for taxation years ending before that time.

(2) *Subsection (1)(a) applies if a corporation*

(a) ceases after January 15, 1987 to be exempt from tax under the Alberta Corporate Income Tax Act on its taxable income, or

(b) becomes exempt from tax under the Alberta Corporate Income Tax Act on its taxable income after June 5, 1987, other than where a corporation becomes exempt from tax under the Alberta Corporate Income Tax Act on its taxable income after that day as a result of the acquisition of shares of the capital stock of the corporation or of another corporation pursuant to

(i) an agreement entered into on or before that day, or

(ii) a take-over bid made in accordance with the applicable securities legislation in Canada, and a take-over bid circular or similar document to give notice to the public of the take-over bid was filed with a public authority or stock exchange in Canada on or before that day.

(3) *Subsection (1)(b) applies if a corporation becomes or ceases to be exempt from tax under the Alberta Corporate Income Tax Act after June 5, 1987.*

6 *Section 37 is repealed and the following is substituted:*

37 A corporation that has failed to file a return as and when required by this Act is liable to a penalty equal to the aggregate of

(a) an amount equal to 5% of the aggregate of

(i) the tax that was unpaid when the return was required to be filed, and

(ii) the amount, if any, by which

(A) the aggregate of amounts paid or applied to the corporation under section 26.4 for the year

exceeds

(B) the aggregate of the royalty tax credit to which the corporation is entitled for the year and the amounts paid by the corporation under section 38(8) for the year on or before the day on which the return was required to be filed,

and

(b) the product obtained when 1% of the aggregate of the amounts referred to in clause (a)(i) and (ii) is multiplied by the number of complete months, not exceeding 12, in the period between the date on which the return was required to be filed and the date on which the return was filed.

6 Section 37 presently reads:

37 A corporation that has failed to file a return as and when required by this Act is liable to a penalty equal to the aggregate of

(a) an amount equal to 5% of the aggregate of the tax that was unpaid when the return was required to be filed,

(b) an amount equal to 5% of the amount, if any, by which

(i) the amounts paid or applied to the corporation under section 26.4 by the Provincial Treasurer for the year

exceed

(ii) the aggregate of

(A) the royalty tax credit to which the corporation is entitled for the year, and

(B) the amounts paid by the corporation under section 38(8) on or before the day on which the return was required to be filed,

and

(c) the product obtained when 1% of the aggregate of the amounts under clauses (a) and (b) is multiplied by the number of complete months, not exceeding 12, in the period between the date on which the return was required to be filed and the date on which the return was filed.

7 *Section 43(1)(c)(ii) is repealed and the following is substituted:*

(ii) 12 months after

(A) an assessment, reassessment or additional assessment, or

(B) the confirmation of an assessment, reassessment or additional assessment

under the federal Act or a statute of a province of Canada that imposes a tax similar to the tax imposed under this Act,

8 *Section 48 is amended*

(a) *in subsection (1) by striking out “sections 41 to 46” and substituting “this Part”;*

(b) *in subsection (1) by striking out “in duplicate”;*

(c) *in subsection (3) by striking out “in duplicate or”.*

9(1) *Section 55 is amended by adding the following after subsection (3.2):*

(3.3) The Provincial Treasurer shall accept adequate security furnished by or on behalf of a corporation that is a member institution in relation to a deposit insurance corporation as defined in subsection 137.1(5) of the federal Act, for payment of

(a) the tax payable under this Act by the corporation for a taxation year to the extent that the amount of that tax exceeds the amount that that tax would be if no amount that the corporation is obliged to repay to the deposit insurance corporation were included under paragraph 137.1(10)(a) or (b) of the federal Act as made applicable for the purposes of this Act in computing the corporation's income for the year, and

(b) interest payable under this Act by the corporation on the amount determined under clause (a),

until the earlier of

(c) the day on which the corporation's obligation referred to in clause (a) to repay the amount to the deposit insurance corporation is settled or extinguished, and

(d) the day that is 10 years after the end of the year.

(3.4) The adequacy of security furnished by or on behalf of a corporation under subsection (3.3) shall be determined by the

7 Section 43(1)(c) presently reads:

43(1) The Provincial Treasurer may, at any time, assess tax, interest or penalties under this Act or notify in writing any corporation that filed a return for a taxation year that no tax is payable for a taxation year and may determine the entitlement to and the amount, if any, of a corporation's refundable tax credit, and may

(c) in any case other than those described in clauses (a) and (b), within

(i) 3 years from the day referred to in clause (a)(ii), or

(ii) 12 months after an assessment, reassessment or additional assessment under the federal Act or the confirmation of an assessment, reassessment or additional assessment under the federal Act,

reassess or make additional assessments, or assess tax, interest or penalties under this Act and determine the entitlement to and the amount, if any, of the refundable tax credits, as the circumstances require, except that a reassessment, additional assessment or assessment may be made under clause (b) after 3 years from the day referred to in clause (a)(ii) only to the extent that it may reasonably be regarded as relating to the assessment or reassessment referred to in clause (b).

8 Section 48(1) and (3) presently read:

48(1) A corporation that objects to an assessment under sections 41 to 46 may within 90 days from the day of mailing of the notice of assessment, serve on the Provincial Treasurer a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

(3) The Provincial Treasurer may accept a notice of objection under this section notwithstanding that it was not served in duplicate or in the manner required by subsection (2).

9 Section 55(3.2) presently reads:

(3.2) If at any time a corporation requests in writing that the Provincial Treasurer surrender any security accepted by the Provincial Treasurer under subsection (3) or (3.1), the Provincial Treasurer shall surrender the security to the extent that the value of the security exceeds the aggregate of amounts payable under this Act by the corporation at that time.

Provincial Treasurer and he may require additional security to be furnished from time to time by or on behalf of the corporation if the Provincial Treasurer determines that the security that has been furnished is no longer adequate.

(2) *Subsection (1) applies after February 17, 1987.*

10(1) *Section 77 is amended*

(a) *by repealing subsection (1) and substituting the following:*

77(1) Subject to subsections (2) and (2.1), a person engaged or employed or formerly engaged or employed in the administration of this Act who

(a) knowingly communicates information obtained by or on behalf of the Provincial Treasurer for the purposes of this Act or knowingly allows it to be communicated to a person not legally entitled to the information,

(b) knowingly allows a person who is not legally entitled to do so to inspect or have access to any book, record, writing, return or other document obtained by or on behalf of the Provincial Treasurer for the purposes of this Act, or

(c) knowingly uses, other than in the course of his duties in connection with the administration or enforcement of this Act, any information obtained by or on behalf of the Provincial Treasurer for the purposes of this Act,

is guilty of an offence.

(b) *in subsection (2.1)*

(i) *by striking out all that portion preceding clause (a) and substituting the following:*

(2.1) A person employed or engaged in the administration of this Act may, for the purposes referred to, communicate or allow to be communicated information obtained under this Act to the following, or allow the following to inspect or have access to any written statement furnished under this Act:

(ii) *by striking out “to or by any” wherever it occurs and substituting “a”;*

(iii) *in clause (d) by striking out “to any” and substituting “a”;*

(iv) *by striking out “and” at the end of clause (c), by adding “and” at the end of clause (d) and by adding the following after clause (d):*

(e) a person employed by the Treasury Department in the administration or enforcement of a taxation statute, solely for the purposes of administering and enforcing that taxation statute.

(v) *by striking out “and” at the end of clause (d) as amended by section 10(1)(b)(iv) of this Act, by adding “and” at the end*

10 Section 77(1) and (2.1) presently read:

77(1) Subject to subsection (2) or (2.1), a person who communicates or allows to be communicated any information obtained under this Act by a person while employed in the administration of this Act to a person not legally entitled to that information or allows any person to inspect or have access to any written statement furnished under this Act, is guilty of an offence.

(2.1) A person employed in the administration of this Act may communicate or allow to be communicated information obtained under this Act, or allow inspection of or access to any written statement furnished under this Act

(a) to or by any person employed in the administration or enforcement of the Petroleum Incentives Program Act, solely for the purposes of administering and enforcing that Act,

(b) to or by any person employed in the administration or enforcement of the Alberta Rental Investment Grants Program, operated pursuant to regulations made under the Department of Municipal Affairs Act, solely for the purposes of administering and enforcing that program,

(c) to or by any person employed in the administration or enforcement of the Small Business Equity Corporations Act, solely for the purposes of administering and enforcing that Act, and

(d) to any person employed in the administration or enforcement of the Alberta Stock Savings Plan Act, solely for the purposes of administering and enforcing that Act.

of clause (e) as enacted by section 10(1)(b)(iv) of this Act and by adding the following after clause (e):

(f) a person employed in the administration or enforcement of the Canadian Exploration and Development Incentive Program Act (Canada), solely for the purposes of administering and enforcing that Act.

(2) Subsection (1)(b)(v) applies after June 24, 1987.

11 Section 90 is amended

(a) in clause (a) by striking out “of the aggregate”;

(b) in clause (b) by striking out “amount under clause (a)” and substituting “tax that was unpaid when the return was required to be filed”.

11 Section 90 presently reads:

90 An insurance company that has failed to file a return as and when required by this Part is liable to a penalty equal to the aggregate of

(a) an amount equal to 5% of the aggregate of the tax that was unpaid when the return was required to be filed, and

(b) the product obtained when 1% of the amount under clause (a) is multiplied by the number of complete months, not exceeding 12, in the period between the day on which the return was required to be filed and the day on which the return was filed.