

# 1995

## CHAPTER 22

### An Act to amend *The Income Tax Act*

(Assented to May 18, 1995)

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

#### Short title

1 This Act may be cited as *The Income Tax Amendment Act, 1995*.

#### R.S.S. 1978, c.I-2 amended

2 *The Income Tax Act* is amended in the manner set forth in this Act.

#### Section 4 amended

3(1) The portion of paragraph 4(1)(k)(ii)(C) preceding subparagraph (I) is amended by adding "or his or her cohabiting spouse" after "to whom the individual".

(2) The following clause is added after clause 4(2)(b):

"(c) `tax otherwise payable under this Act pursuant to sections 3, 3.1, 5 and 5.1' and `tax computed under sections 3, 3.1, 5 and 5.1' means the amount that would, but for section 120.1 of the Federal Act, be the tax otherwise payable or computed pursuant to sections 3, 3.1, 5 and 5.1".

(3) The following clause is added after clause 4(2)(c):

"(d) `net income of the individual' means net income of the individual as defined in subsection 3.1(1)".

#### Section 5 amended

4 The portion of section 5 preceding clause (a) is repealed and the following substituted:

"5 The tax otherwise payable under this Act pursuant to sections 3 and 3.1 for a taxation year by an individual shall be increased:".

#### New section 5.1

5 Section 5.1 is repealed and the following substituted:

##### "Debt reduction surtax

5.1(1) The tax otherwise payable under this Act pursuant to sections 3 and 3.1 for a taxation year by an individual shall be increased:

(a) for the 1992 taxation year, by an amount equal to the product of:

(i) 5%; and

(ii) the amount of tax computed pursuant to sections 3 and 3.1 for the taxation year calculated without any deduction or addition pursuant to section 120.1 of the Federal Act;

- (b) for the 1993 and subsequent taxation years, by an amount equal to the product of:
  - (i) 10%; and
  - (ii) the amount of tax computed pursuant to sections 3 and 3.1 for the taxation year calculated without any deduction or addition pursuant to section 120.1 of the Federal Act.
- (2) The tax otherwise payable pursuant to this section shall be reduced:
  - (a) for the 1995 taxation year, by an amount equal to the lesser of:
    - (i) the amount computed under subsection (1) for the taxation year; and
    - (ii) \$75;
  - (b) for the 1996 and subsequent taxation years, by an amount equal to the lesser of:
    - (i) the amount computed under subsection (1) for the taxation year; and
    - (ii) \$150”.

**New section 6.1****6 The following section is added after section 6:****“Pro-rating tax rates**

**6.1** For the purposes of subsections 6(4.1), (4.2), (4.3), (4.4), (4.5), (5.1), (5.2), (5.3), (5.4), (5.5), (6) and (7), where a corporation's taxation year is not a calendar year, any change in a tax rate on January 1 of a particular year is to be applied on a pro-rated basis to the corporation's taxation year”.

**Section 7.2 amended****7 Clause 7.2(1)(c) is repealed and the following substituted:**

“(c) **‘manufacturing or processing’** means manufacturing or processing within the meaning of subsection 125.1(3) of the Federal Act, and includes qualified activities as defined in the Federal Regulations made for the purposes of subsection 125.1(3) of the Federal Act”.

**New sections 7.3 and 7.4****8 The following sections are added after section 7.2:****"Investment tax credit for manufacturing and processing**

7.3(1) In this section:

- (a) **'amalgamation'** means an amalgamation as defined in subsection 87(1) of the Federal Act;
  - (b) **'investment tax credit'** means the investment tax credit calculated pursuant to subsection (4);
  - (c) **'manufacturing or processing'** means manufacturing or processing within the meaning of subsection 125.1(3) of the Federal Act, and includes qualified activities as defined in the Federal Regulations made for the purposes of subsection 125.1(3) of the Federal Act;
  - (d) **'qualified property'** means property of a corporation that:
    - (i) is qualified property within the meaning of subsections 127(9), (11) and (11.1) of the Federal Act;
    - (ii) is acquired after February 16, 1995;
    - (iii) was not used, or acquired for use or lease, for any purpose before it was acquired by the corporation; and
    - (iv) is:
      - (A) used in Saskatchewan by the corporation primarily for manufacturing or processing goods for lease or sale; or
      - (B) leased by the corporation to a lessee, other than a person exempt from tax by virtue of section 149 of the Federal Act, who can reasonably be expected to use the property in Saskatchewan primarily for manufacturing or processing goods for lease or sale, but this paragraph does not apply to property that is machinery and equipment unless the property is leased by the corporation in the ordinary course of carrying on business in Saskatchewan and the principal business of the corporation is manufacturing property that it sells or leases;
  - (e) **'winding-up'** means the winding-up of a corporation to which subsection 88(1) of the Federal Act applies.
- (2) For the purposes of this section, property is acquired on the earlier of:
- (a) the date on which title to the property is obtained; and
  - (b) the date on which the corporation has all the incidents of ownership of the property, including possession, use and risk, notwithstanding that legal title remains with the vendor as security for the purchase price.

(3) A corporation may deduct from its tax otherwise payable pursuant to this Act for a taxation year an amount not more than the lesser of:

- (a) its investment tax credit at the end of the taxation year; and
- (b) its tax otherwise payable pursuant to this Act for the taxation year.

(4) The investment tax credit for a corporation at the end of a taxation year is the amount ITCMP, if it is positive, calculated in accordance with the formula:

$$\text{ITCMP} = (\text{CC} + \text{CCPY} + \text{OA} + \text{OAPY}) - \text{PD}$$

where:

ITCMP is the amount of the investment tax credit;

CC is 9% of the sum of all amounts, each of which is the capital cost to the corporation of qualified property acquired by it in the taxation year, determined without reference to subsection 13(7.1) of the Federal Act;

CCPY is 9% of the sum of all amounts, each of which is the capital cost to the corporation of qualified property acquired by it in any of the seven taxation years preceding or any of the three taxation years following that taxation year, determined without reference to subsection 13(7.1) of the Federal Act;

OA is the sum of all amounts, each of which is an amount required by subsection (5) or (7) to be added in computing the corporation's investment tax credit at the end of the taxation year;

OAPY is the sum of all amounts, each of which is an amount required by subsection (5) or (7) to be added in computing the corporation's investment tax credit at the end of any of the seven taxation years preceding or the three taxation years following that taxation year; and

PD is the sum of all amounts, each of which:

- (a) is an amount deducted pursuant to this section from tax otherwise payable pursuant to this Act by the corporation for a preceding taxation year; and
- (b) is related to qualified property acquired in the taxation year, in any of the seven taxation years preceding that taxation year or in any of the three taxation years following that taxation year.

(5) When computing its investment tax credit at the end of a taxation year, a corporation that is a beneficiary under a trust shall add its share of the amount that the trust, if the trust were a taxpayer, would be required to calculate as the amounts CC and CCPY pursuant to subsection (4) for that taxation year.

(6) For the purposes of subsection (5), a corporation's share of the trust is the amount that would reasonably be considered as its share, having regard to all circumstances, including the terms and conditions of the trust.

(7) When computing its investment tax credit at the end of a taxation year, a corporation that is a partner shall add its share of the amount that the partnership, if the partnership were a taxpayer, would be required to calculate as the amounts CC and CCPY pursuant to subsection (4) for that taxation year.

(8) For the purposes of subsection (7), a corporation's share of the partnership is the amount that would reasonably be considered as its share, having regard to all circumstances.

(9) For the purposes of calculating the investment tax credit of a new corporation that is the result of an amalgamation, the new corporation is deemed to be the continuation of each of its predecessor corporations if:

(a) the amalgamation took place after February 16, 1995; and

(b) one of its predecessor corporations had an investment tax credit, any portion of which was not deducted in any taxation year by the predecessor corporation in computing its tax otherwise payable pursuant to this Act.

(10) For the purpose of calculating the investment tax credit of a parent corporation, a subsidiary of which has been wound-up, the parent corporation is deemed to be a continuation of its subsidiary if:

(a) the winding-up took place after February 16, 1995; and

(b) the subsidiary corporation had an investment tax credit, any portion of which was not deducted in any taxation year by the subsidiary corporation in computing its tax otherwise payable pursuant to this Act.

(11) A corporation may renounce its investment tax credit on or before the date by which the corporation is required to file its return of income for the year pursuant to section 150 of the Federal Act.

(12) If a corporation renounces its investment tax credit pursuant to subsection (11), the corporation is deemed for all purposes never to have received, have been entitled to receive or have had a reasonable expectation of receiving that investment tax credit.

#### **"Manufacturing and processing profits tax reduction**

**7.4(1)** In this section:

(a) **'Canadian manufacturing and processing profits'** means Canadian manufacturing and processing profits as defined in subsection 125.1(3) of the Federal Act;

(b) **'eligible Canadian manufacturing and processing profits'** means the lesser of:

(i) the amount, if any, by which the corporation's Canadian manufacturing and processing profits for the taxation year exceeds, if the corporation was a Canadian-controlled private corporation throughout the taxation year, the least of the amounts determined pursuant to paragraphs 125(1)(a) to (c) of the Federal Act with respect to the corporation for the taxation year; and

(ii) the amount, if any, by which the corporation's taxable income for the taxation year exceeds the total of:

(A) if the corporation was a Canadian-controlled private corporation throughout the taxation year, the least of the amounts determined pursuant to paragraphs 125(1)(a) to (c) of the Federal Act with respect to the corporation for the taxation year;

(B) 10/4 of the total of amounts deducted pursuant to subsection 126(2) of the Federal Act from the tax for the taxation year otherwise payable under Part I of the Federal Act by the corporation; and

(C) if the corporation was a Canadian-controlled private corporation throughout the taxation year, the amount determined pursuant to clause 129(3)(a)(i)(B) of the Federal Act with respect to the corporation for the taxation year;

(c) **`eligible Saskatchewan manufacturing and processing profits'** means the amount calculated by allocating to Saskatchewan the corporation's eligible Canadian manufacturing and processing profits on the same basis as set out in the regulations made under subsection 124(4) of the Federal Act;

(d) **`maximum reduction allowance'** is 7%;

(e) **`qualifying reduction rate'** means the amount calculated by allocating to Saskatchewan the maximum reduction allowance on the same basis as set out in the regulations made under subsection 124(4) of the Federal Act.

(2) Subject to the other provisions of this section, where a portion of the taxable income of a corporation for a taxation year is Canadian manufacturing and processing profits, a corporation may apply to the Minister of Finance for, and that Minister may allow, a reduction of the tax otherwise payable by the corporation pursuant to this Act for a taxation year in an amount equal to the product of:

(a) the corporation's eligible Saskatchewan manufacturing and processing profits for the taxation year; and

(b) the corporation's qualifying reduction rate for the taxation year.

(3) Where a corporation has a taxation year part of which precedes July 1, 1995 and part of which follows June 30, 1995, the reduction of tax pursuant to subsection (2) for the taxation year shall be calculated as follows:

(a) divide the taxation year into two notional taxation years, the first ending on June 30, 1995, and the second beginning on July 1, 1995;

(b) apportion the amount of the reduction of tax that would otherwise be determined pursuant to subsection (2) for the taxation year between the two notional taxation years proportionately according to the number of days in each;

and the amount determined pursuant to clause (b) that is attributable to the notional taxation year beginning on July 1, 1995 is the total amount of the reduction of tax allowable pursuant to subsection (2) for the taxation year.

(4) A corporation that wishes to apply for a reduction shall:

(a) apply on a form acceptable to the Minister of Finance; and

(b) supply the Minister of Finance with any information that he or she may require.

(5) Where the Minister of Finance has received an application pursuant to subsection (4) and is satisfied that the corporation has complied with this section, the Minister of Finance may reduce the corporation's tax otherwise payable pursuant to this Act for a taxation year in accordance with this section.

(6) A corporation is not eligible for a reduction of tax pursuant to this section for a taxation year unless it has applied to the Minister of Finance within three years of the date by which, pursuant to section 11 of this Act, it is required to file its return of income for the taxation year.

(7) When computing:

(a) Canadian manufacturing and processing profits;

(b) eligible Saskatchewan manufacturing and processing profits; or

(c) qualifying reduction rates;

no account shall be taken of any transaction that would unduly or artificially increase the Canadian manufacturing and processing profits, eligible Saskatchewan manufacturing and processing profits or qualifying reduction rates, as the case may be.

(8) If the Minister of Finance believes that one of the purposes of a transaction or event or series of transactions or events is to unduly or artificially increase any reduction of tax provided for in this section, the Minister of Finance may calculate the reduction of tax as if the transaction, event, or series of transactions or events had not occurred".

### Section 8.3 amended

**9 Clause 8.3(1)(a) is amended by striking out "and 5" and substituting ", 5 and 5.1".**

### Application of amendments

**10(1)** Subject to subsections (2) to (8), the amendments to *The Income Tax Act* being made pursuant to this Act apply on and after the day this Act comes into force.

(2) Subsection 3(1) applies to the 1993 and subsequent taxation years.

(3) Subsection 3(2) applies to the 1992 and subsequent taxation years.

(4) Subsection 3(3) applies to the 1987 and subsequent taxation years.

(5) Section 4 applies to the 1976 and subsequent taxation years.

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- (6) Subsection 5.1(1) of *The Income Tax Act*, as enacted by section 5 of this Act, applies to the 1992 and subsequent taxation years.
- (7) Subsection 5.1(2) of *The Income Tax Act*, as enacted by section 5 of this Act, applies to the 1995 and subsequent taxation years.
- (8) Section 9 applies to the 1992 and subsequent taxation years.

**Coming into force**

- 11**(1) Subject to subsections (2) to (8), this Act comes into force on assent.
- (2) Subject to subsection (3), subsection 5.1(2) of *The Income Tax Act*, as enacted by section 5 of this Act, comes into force on July 1, 1995.
- (3) If this Act is assented to after July 1, 1995, subsection 5.1(2) of *The Income Tax Act*, as enacted by section 5 of this Act, comes into force on assent, but is retroactive and is deemed to have been in force on and from July 1, 1995.
- (4) Section 6 of this Act comes into force on assent, but is retroactive and is deemed to have been in force on and from January 1, 1987.
- (5) Section 7 of this Act comes into force on assent, but is retroactive and is deemed to have been in force on and from March 1, 1994.
- (6) Section 7.3 of *The Income Tax Act*, as enacted by section 8 of this Act, comes into force on assent, but is retroactive and is deemed to have been in force on and from February 16, 1995.
- (7) Subject to subsection (8), section 7.4 of *The Income Tax Act*, as enacted by section 8 of this Act, comes into force on July 1, 1995.
- (8) If this Act is assented to after July 1, 1995, section 7.4 of *The Income Tax Act*, as enacted by section 8 of this Act, comes into force on assent, but is retroactive and is deemed to have been in force on and from July 1, 1995.