

1997

CHAPTER 39

An Act to amend *The Income Tax Act*

(Assented to May 21, 1997)

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, 1997*.

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

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

Section 3 amended

3(1) Subsection 3(2.1) is amended in the portion that follows subclause (b)(ii) by striking out “income for the taxation year” and substituting “income for the year”.

(2) Subsection 3(2.2) is amended in the portion that follows clause (b) by striking out “income for the taxation year” and substituting “income for the year”.

(3) Clause 3(2.3)(a) is amended by striking out “income for the taxation year” and substituting “income for the year”.

(4) Subsections 3(5), (5.01) and (5.1) are repealed.

(5) The portion of subsection 3(6) preceding clause (a) is amended by adding “and section 3.01” after “section”.

(6) Subsection 3(7) is repealed.

New section 3.01

4 The following section is added after section 3:

“Foreign tax deduction

3.01(1) Where an individual resided in Saskatchewan on the last day of a taxation year and had income for the year that included income earned in a country other than Canada with respect to which non-business-income tax was paid by the individual to the government of a country other than Canada, the individual may deduct from the tax payable by the individual for that taxation year an amount equal to the lesser of:

- (a) the amount, if any, by which any non-business-income tax paid by the individual for the taxation year to the government of that other country exceeds the total of all amounts eligible to be claimed by the individual as deductions for that taxation year pursuant to subsection 126(1) or 180.1(1.1) of the Federal Act; and

(b) that proportion of the tax otherwise payable for that taxation year that:

(i) the total of the individual's incomes from sources in that country, excluding any portion of the individual's income that was deductible by the individual for the taxation year pursuant to subparagraph 110(1)(f)(i) of the Federal Act or with respect to which an amount was deductible by the individual pursuant to section 110.6 of the Federal Act:

(A) for that taxation year, if section 114 of the Federal Act is not applicable; or

(B) if section 114 of the Federal Act is applicable, for the period or periods in the taxation year mentioned in paragraph (a) of that section;

on the assumption that:

(C) no businesses were carried on by the individual in that country;

(D) no amount was deducted pursuant to subsection 91(5) of the Federal Act in computing the individual's income for the year; and

(E) the individual's income from employment in that country was not from a source in that country to the extent of the lesser of the amounts determined with respect to that income pursuant to paragraphs 122.3(1)(c) and (d) of the Federal Act for the taxation year;

is of:

(ii) either:

(A) the individual's income earned in the taxation year in Saskatchewan, if section 114 of the Federal Act is not applicable; or

(B) if section 114 of the Federal Act is applicable, the individual's income earned in the taxation year in Saskatchewan for the period or periods of the taxation year mentioned in paragraph (a) of that section;

minus any amounts deducted by the individual pursuant to section 110.6 or paragraph 111(1)(b) of the Federal Act or deductible by the individual pursuant to paragraph 110(1)(d), (d.1), (d.2), (d.3), (f) or (j) of the Federal Act or section 112 of that Act for the taxation year or with respect to the period or periods mentioned in paragraph (B), as the case may be.

(2) For the 1985, 1986 and 1987 taxation years, the reference in sub-clause (1)(b)(ii) to section 110.6 of the Federal Act is to be read as a reference to section 110.1 or section 110.6 of that Act.

(3) For the purposes of subsection (1), ‘**tax payable**’ and ‘**tax otherwise payable**’ means the amount that, but for sections 120.1 and 127.4 of the Federal Act, would be the tax otherwise payable pursuant to sections 3, 3.1, 4, 5 and 5.1 of this Act.

(4) For the purposes of subsection (1) and clause 7(1)(b), the non-business-income tax paid by an individual to the government of a country other than Canada with respect to the individual’s income for the year is the non-business-income tax paid by the individual to the government of that country with respect to that taxation year as computed pursuant to paragraph 126(7)(c) of the Federal Act for the purposes of that Act”.

Section 7.3 amended

5 Subsection 7.3(4) is repealed and the following substituted:

“(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 the total of:

- (a) with respect to qualified property acquired by the corporation on or before March 20, 1997, 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; and
- (b) with respect to qualified property acquired by the corporation after March 20, 1997, 7% 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 the total of:

- (a) with respect to qualified property acquired by the corporation on or before March 20, 1997, 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 the taxation year, determined without reference to subsection 13(7.1) of the Federal Act; and
- (b) with respect to qualified property acquired by the corporation after March 20, 1997, 7% 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 the 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 any of the three taxation years following the 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 the taxation year or any of the three taxation years following the taxation year”.

New section 7.31

6 The following section is added after section 7.3:

“Investment tax credit for manufacturing and processing - used equipment

7.31(1) In this section:

- (a) **‘amalgamation’** means an amalgamation as defined in subsection 87(1) of the Federal Act;
- (b) **‘investment tax credit’** means an investment tax credit determined pursuant to this section;
- (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 not qualified property as defined in clause 7.3(1)(d);
 - (ii) is qualified property within the meaning of subsections 127(9), (11) and (11.1) of the Federal Act, but excluding the requirement that the property has not been used, or acquired for use or lease, for any purpose whatsoever before it was acquired by the corporation;
 - (iii) has been acquired in Saskatchewan, or brought into Saskatchewan, by the corporation after February 16, 1995, resulting in the corporation being subject to tax pursuant to *The Education and Health Tax Act* computed on the value of the property or computed on the basis of the rent payable pursuant to a capital lease of the property, other than tax payable pursuant to subsection 5(9.1) of that Act; and

- (iv) is being used in Saskatchewan by the corporation primarily for manufacturing or processing goods for lease or sale;
 - (e) **'rebate'** means a rebate described in subsection (7);
 - (f) **'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 apply to the Minister of Finance for, and the Minister of Finance may allow to the corporation, an investment tax credit for a taxation year in an amount not exceeding the total of the amounts determined pursuant to subsections (4) and (5).
- (4) Where a corporation has acquired in Saskatchewan, or brought into Saskatchewan, qualified property in a taxation year, resulting in the corporation being subject to and paying tax pursuant to *The Education and Health Tax Act* computed on the value of the qualified property, other than tax payable pursuant to subsection 5(9.1) of that Act, the amount to be determined pursuant to this subsection that may be allowed to the corporation for the taxation year pursuant to subsection (3) is equal to the total of:
- (a) subject to clauses (11)(a) and (13)(a), the tax paid by the corporation pursuant to *The Education and Health Tax Act* computed on the value of the qualified property, other than tax payable pursuant to subsection 5(9.1) of that Act; and
 - (b) subject to clauses (11)(b) and (13)(b), the total of:
 - (i) with respect to qualified property acquired in Saskatchewan, or brought into Saskatchewan, by the corporation on or before March 20, 1997, 9% of the sum of all amounts, each of which:
 - (A) is an expenditure incurred by the corporation in the taxation year to install the qualified property or otherwise make it initially available for use in Saskatchewan, other than amounts included in the value of the qualified property on which tax was computed pursuant to *The Education and Health Tax Act*; and
 - (B) forms part of the capital cost to the corporation of the qualified property, determined without reference to subsection 13(7.1) of the Federal Act; and

- (ii) with respect to qualified property acquired in Saskatchewan, or brought into Saskatchewan, by the corporation after March 20, 1997, 7% of the sum of all amounts, each of which:
 - (A) is an expenditure incurred by the corporation in the taxation year to install the qualified property or otherwise make it initially available for use in Saskatchewan, other than amounts included in the value of the qualified property on which tax was computed pursuant to *The Education and Health Tax Act*; and
 - (B) forms part of the capital cost to the corporation of the qualified property, determined without reference to subsection 13(7.1) of the Federal Act.
- (5) Where a corporation has acquired in Saskatchewan, or brought into Saskatchewan, qualified property pursuant to a capital lease and pays tax payable pursuant to *The Education and Health Tax Act* computed on the basis of the rent payable pursuant to the capital lease rather than computed on the value of the qualified property:
 - (a) subject to clauses (11)(c) and (13)(c), the amount to be determined pursuant to this subsection that may be allowed to the corporation for the taxation year pursuant to subsection (3) is equal to the total of:
 - (i) with respect to the tax payable pursuant to *The Education and Health Tax Act* on or before March 20, 1997, 1.09 times the sum of all amounts, each of which:
 - (A) is tax payable pursuant to *The Education and Health Tax Act* computed on the basis of the rent payable pursuant to the capital lease; and
 - (B) is paid during the taxation year by the corporation; and
 - (ii) with respect to the tax payable pursuant to *The Education and Health Tax Act* after March 20, 1997, 1.07 times the sum of all amounts, each of which:
 - (A) is tax payable pursuant to *The Education and Health Tax Act* computed on the basis of the rent payable pursuant to the capital lease; and
 - (B) is paid during the taxation year by the corporation; and
 - (b) an amount determined in accordance with clause (a) may be allowed to the corporation pursuant to subsection (3) for each taxation year in which the corporation continues to lease the qualified property.
- (6) A corporation that wishes to apply for an investment tax credit for a taxation year pursuant to subsection (3) shall:
 - (a) apply on a form acceptable to the Minister of Finance; and
 - (b) supply the Minister of Finance with any information that the Minister of Finance may require.

(7) Subject to subsection (8), a corporation may apply to the Minister of Finance for, and the Minister of Finance may allow to the corporation, a rebate of the corporation's tax otherwise payable pursuant to this Act for a taxation year in an amount that does not exceed the lesser of:

- (a) the corporation's investment tax credit at the end of the taxation year determined pursuant to subsection (10); and
- (b) the corporation's tax otherwise payable pursuant to this Act for the taxation year.

(8) No rebate pursuant to subsection (7) shall be allowed to a corporation for a taxation year unless the corporation has already fully utilized any deduction to which it is entitled for the taxation year pursuant to section 7.3.

(9) A corporation that wishes to apply for a rebate pursuant to subsection (7) shall:

- (a) apply on a form acceptable to the Minister of Finance; and
- (b) supply the Minister of Finance with any information that the Minister of Finance may require.

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

$$\text{RMP} = \text{CY} + \text{PY} - \text{PD}$$

where:

RMP is the amount of the investment tax credit;

CY is the amount of any investment tax credit allowed to the corporation pursuant to subsection (3) for the taxation year;

PY is the sum of all amounts, each of which is the amount of any investment tax credit allowed to the corporation pursuant to subsection (3) for any of the seven taxation years preceding or any of the three taxation years following the taxation year; and

PD is the sum of all amounts, each of which is the amount of any rebate allowed to the corporation pursuant to subsection (7) for any of the seven taxation years preceding or any of the three taxation years following the taxation year.

(11) A corporation that is a beneficiary under a trust during a taxation year:

- (a) when determining the amount pursuant to clause (4)(a) for the corporation for the taxation year, shall add to the amount otherwise determined its share of any tax mentioned in clause (4)(a) paid by the trust resulting from qualified property acquired in Saskatchewan, or brought into Saskatchewan, by the trust in the taxation year;
- (b) when determining the respective amounts pursuant to clause (4)(b) for the corporation for the taxation year, shall add to the respective amounts otherwise determined its share of the respective amounts that would be determined pursuant to clause (4)(b) for the trust for the taxation year if the trust were a taxpayer; and

- (c) when determining the respective amounts pursuant to clause (5)(a) for the corporation for the taxation year, shall add to the respective amounts otherwise determined its share of any tax mentioned in clause (5)(a) paid by the trust during the taxation year resulting from qualified property acquired in Saskatchewan, or brought into Saskatchewan, pursuant to a capital lease by the trust.
- (12) For the purposes of subsection (11), 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.
- (13) A corporation that is a partner during a taxation year:
- (a) when determining the amount pursuant to clause (4)(a) for the corporation for the taxation year, shall add to the amount otherwise determined its share of any tax mentioned in clause (4)(a) paid by the partnership resulting from qualified property acquired in Saskatchewan, or brought into Saskatchewan, by the partnership in the taxation year;
- (b) when determining the respective amounts pursuant to clause (4)(b) for the corporation for the taxation year, shall add to the respective amounts otherwise determined its share of the respective amounts that would be determined pursuant to clause (4)(b) for the partnership for the taxation year if the partnership were a taxpayer; and
- (c) when determining the respective amounts pursuant to clause (5)(a) for the corporation for the taxation year, shall add to the respective amounts otherwise determined its share of any tax mentioned in clause (5)(a) paid by the partnership during the taxation year resulting from qualified property acquired in Saskatchewan, or brought into Saskatchewan, pursuant to a capital lease by the partnership.
- (14) For the purposes of subsection (13), a corporation's share of the partnership is the amount that would reasonably be considered as its share, having regard to all circumstances.
- (15) For the purposes of calculating the investment tax credit at the end of a taxation year for 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 allowed pursuant to subsection (3), for any portion of which a rebate has not been allowed pursuant to subsection (7).
- (16) For the purpose of calculating the investment tax credit at the end of a taxation year for 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 allowed pursuant to subsection (3), for any portion of which a rebate has not been allowed pursuant to subsection (7).

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

(18) If a corporation renounces its investment tax credit at the end of a taxation year pursuant to subsection (17):

(a) the corporation is deemed to have renounced any investment tax credit that might have been allowed to it pursuant to subsection (3) for any preceding taxation year for which the corporation has not applied for an investment tax credit; and

(b) the corporation is deemed for all purposes never to have received, never to have been entitled to receive and never to have had a reasonable expectation of receiving the investment tax credit renounced or deemed to have been renounced”.

New sections 7.5 and 7.6

7 The following sections are added after section 7.4:

“Mining reclamation trust tax credit

7.5(1) This section applies to mining reclamation trusts that relate to mines situated in Saskatchewan.

(2) For each taxation year, a mining reclamation trust shall pay a tax equal to 17% of its income that is subject to tax pursuant to Part XII.4 of the Federal Act for that taxation year, and for the purposes of this section, Part XII.4 of the Federal Act applies, with any necessary modification.

(3) A taxpayer who is a beneficiary of a mining reclamation trust may deduct from the tax otherwise payable pursuant to this Act for a taxation year of the taxpayer an amount not exceeding the taxpayer’s mining reclamation trust tax credit for that taxation year calculated in accordance with subsection (4).

(4) A taxpayer’s mining reclamation trust tax credit for a taxation year is the total of the amounts calculated pursuant to clauses (a) and (b):

(a) the total of all amounts, each of which is an amount A calculated in accordance with the following formula:

$$A = \frac{\text{trust tax} \times \text{beneficiary's income}}{\text{trust income}}$$

where:

trust tax is the tax payable pursuant to subsection (2) by the mining reclamation trust for the taxation year of the trust that ends in the taxation year of the taxpayer;

beneficiary's income is the amount, if any, by which:

- (i) the total of all amounts with respect to the trust that, pursuant to subsection 107.3(1) of the Federal Act, are included in computing the taxpayer's income for the taxation year, other than amounts included because of the taxpayer being a member of a partnership;

exceeds:

- (ii) the total of all amounts with respect to the trust that, pursuant to subsection 107.3(1) of the Federal Act, are deducted in computing the taxpayer's income for the taxation year, other than amounts deducted because of the taxpayer being a member of a partnership; and

trust income is the trust's income for the taxation year of the trust that ends in the taxation year of the taxpayer, computed without reference to subsections 104(4) to (31) of the Federal Act;

- (b) with respect to all partnerships of which the taxpayer is a member, the total of all amounts, each of which is the amount that can reasonably be considered to be the taxpayer's share of the relevant credit with respect to the partnership.

(5) For the purposes of clause (4)(b), the relevant credit with respect to a partnership is the amount that would, if the partnership were a person and if its fiscal period were its taxation year, be its mining reclamation trust tax credit calculated pursuant to subsection (4) for its taxation year that ends in the taxation year of the taxpayer.

(6) If all or any part of a taxpayer's mining reclamation trust tax credit calculated pursuant to subsection (4) remains unused after the deduction pursuant to subsection (3), the minister shall pay to the taxpayer an amount equal to the unused portion of the tax credit.

"Certain dispositions of property

7.6(1) In this section:

(a) **'taxpayer'** means a person who or partnership that enters into a transaction described in subclause (2)(a)(i), whether or not the person or partnership is a taxpayer within the meaning of clause 60(1)(bb) at the time of the transaction;

(b) **'untaxed income'**, in relation to a disposition of property, means the total of all amounts, each of which is the portion of the transferor's income or taxable income earned in the transferor's taxation year in a province other than Saskatchewan, as determined pursuant to subsection 120(4) or 124(4) of the Federal Act, that:

- (i) is attributable to the disposition; and
- (ii) because of a difference between the transferor's cost or adjusted cost base of the property pursuant to the Federal Act and the transferor's cost or adjusted cost base of the property pursuant to the income tax statute of that province, is not included in the transferor's income for the transferor's taxation year pursuant to the income tax statute of that province.

(2) This section applies to a series of transactions or events, the first of which occurs on or after January 1, 1992, in which:

- (a) in one transaction:
 - (i) a taxpayer disposes of property to a person or partnership with whom the taxpayer is not dealing at arm's length; and
 - (ii) the proceeds of disposition are less than the fair market value of the property at the time of the disposition; and
- (b) in a subsequent transaction, either:
 - (i) the property mentioned in clause (a); or
 - (ii) other property:
 - (A) that has a fair market value derived primarily from the property mentioned in clause (a); or
 - (B) that is acquired by any person or partnership other than the taxpayer in substitution for the property mentioned in clause (a);

is disposed of, and the proceeds of disposition are greater than the adjusted cost base of the property pursuant to the Federal Act.

(3) Where a series of transactions or events described in subsection (2) occurs, any untaxed income arising from the subsequent transaction shall be added to the taxpayer's proceeds of disposition mentioned in sub-clause (2)(a)(ii).

(4) Notwithstanding any other provision of this Act or the Federal Act, as it applies for the purposes of this Act, where subsection (3) applies to a disposition of property, all amounts that are required to be determined pursuant to this Act or the Federal Act for the purpose of determining the tax payable pursuant to this Act shall be determined as if the proceeds of disposition were equal to the proceeds of disposition determined pursuant to subsection (3)".

New section 32.1

8 The following section is added after section 32:

"Remission orders

32.1(1) Where a collection agreement is entered into, the minister may grant remission, not exceeding \$5,000, of any tax, interest or penalty that is imposed on an individual pursuant to this Act, where:

- (a) pursuant to the *Financial Administration Act* (Canada), remission is granted by the Governor in Council to the individual of any tax, interest or penalty imposed pursuant to the Federal Act because:
 - (i) the collection of the tax or interest or the enforcement of the penalty would cause extreme hardship to the individual; or
 - (ii) the individual received incorrect advice from the Department of National Revenue with respect to the tax in relation to which the remission is granted;

(b) the remission order granting the remission described in clause (a) applies to the individual because the individual is named in the order and not because the individual is a member of a class described in the order; and

(c) the circumstances giving rise to the remission are the same as the circumstances that give rise to the remission described in clause (a) granted to the individual.

(2) A remission granted pursuant to this section may be total or partial and may be conditional or unconditional.

(3) Where a remission is granted subject to a condition and the condition is not fulfilled, the remission is deemed to be void and the minister may take any proceedings that the minister considers necessary to recover the amount with respect to which remission had been conditionally granted.

(4) A remission granted pursuant to this section may be paid out of taxes collected pursuant to the collection agreement and may be accounted for as a reduction of the amount of taxes collected.

(5) The Minister of Finance shall cause a detailed statement of remissions granted pursuant to this section to be incorporated annually in the public accounts prepared pursuant to section 18 of *The Financial Administration Act, 1993*.

New section 53.1

9 The following section is added after section 53:

“Anti-avoidance rules

53.1 Sections 245 and 246 of the Federal Act apply, with any necessary modification, for the purposes of this Act to transactions and events that occur after the coming into force of this section”.

Section 60 amended

10 Subclause 60(1)(s)(ii) is repealed and the following substituted:

“(ii) in relation to the administration and enforcement of this Act, other than subsection 32.1(5) and sections 7.31, 7.4, 54 and 58, the minister”.

Coming into force

11(1) Subject to subsections (2) to (6), this Act comes into force on assent.

(2) Sections 3 and 4 of this Act come into force on assent, but are retroactive and are deemed to have been in force on and from January 1, 1986.

(3) Section 5 of this Act comes into force on assent, but is retroactive and is deemed to have been in force on and from March 21, 1997.

(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 February 16, 1995.

(5) Section 7.5 of *The Income Tax Act*, as being enacted by section 7 of this Act, comes into force on assent, but is retroactive and is deemed to have been in force on and from February 22, 1994.

(6) Section 7.6 of *The Income Tax Act*, as being enacted by section 7 of this Act, comes into force on assent, but is retroactive and is deemed to have been in force on and from January 1, 1992.