

# 1986

## CHAPTER 23

### An Act to amend The Income Tax Act (No. 2)

(Assented to June 13, 1986)

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

**1** This Act may be cited as *The Income Tax Amendment Act, 1986 (No. 2)*. Short title

**2** *The Income Tax Act* is amended in the manner set forth in this Act. R.S.S. 1978,  
c.1-2

**3** Clause 3(5)(b) is amended:

Section 3  
amended

(a) by striking out “on the assumption that no businesses were carried on by him in that country and no amount was deducted under subsection (5) of section 91 of the Federal Act in computing his income for the year” in subclause (i) and substituting the following:

“on the assumption that:

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

(D) no amount was deducted under subsection 91(5) of the Federal Act in computing his income for the year; and

(E) his income from employment in that country was not from a source in that country to the extent of the lesser of the amounts determined in respect thereof under paragraphs 122.3(1)(c) and (d) of the Federal Act for the year”; and

(b) by striking out “paragraph 110(1)(f)” in subclause (ii) and substituting “paragraph 110(1)(d) or (f)”.

**4** The following subsection is added after subsection 4(1):

Section 4  
amended

“(1.1) Notwithstanding subsection (1), clauses (1)(f), (g) and (h) do not apply to an individual who:

(a) claims or is eligible to claim less than 50% of the maximum permissible deduction that may be claimed for each dependant under paragraphs 109(1)(b), (d) or (e) of the Federal Act; or

(b) where two individuals each claim or are each eligible to claim 50% of the maximum permissible deduction that may be claimed for each dependant under paragraphs 109(1)(b), (d) or (e) of the Federal Act, has the higher net income”.

Section 6  
amended

**5(1)** Clause 6(1)(b) is repealed and the following substituted:

“(b) commencing on January 1, 1984 and ending before January 1, 1986, 16%;

(c) commencing on January 1, 1986, 17%”.

(2) Subsection 6(4) is amended:

(a) by striking out “paragraphs 125(1)(a), (b), (c) and (d)” in clause (a) and substituting “paragraphs 125(1)(a), (b) and (c)”; and

(b) by repealing subclause (b)(ii) and substituting the following:

“(ii) commencing on January 1, 1984 and ending before January 1, 1986, 16%;

(iii) commencing on January 1, 1986, 17%”.

(3) Subsection 6(5) is amended:

(a) by striking out “paragraphs 125(1)(a), (b), (c) and (d)” in subclause (a)(iii) and substituting “paragraphs 125(1)(a), (b) and (c)”; and

(b) by repealing subclause (b)(ii) and substituting the following:

“(ii) commencing on January 1, 1984 and ending before January 1, 1986, 16%;

(iii) commencing on January 1, 1986, 17%”.

(4) Subclause 6(7)(b)(ii) is amended by striking out “paragraphs 125(1)(a), (b), (c) and (d)” and substituting “paragraphs 125(1)(a), (b) and (c)”.

Section 7  
amended

**6** Clause 7(1)(a) is repealed and the following substituted:

“(a) with respect to the period:

(i) ending before January 1, 1984, 14%;

(ii) commencing on January 1, 1984 and ending before January 1, 1986, 16%;

(iii) commencing on January 1, 1986, 17%;

of the product of:

- (iv) the foreign investment income of the corporation for the taxation year from sources in the country; and
- (v) that portion of the taxable income earned in the taxation year by the corporation that is determined to have been earned in the taxation year in Saskatchewan in accordance with the regulations made under paragraph 124(4)(a) of the Federal Act".

**7** The following section is added after section 7:

New  
section 7.1

**"7.1(1)** In this section:

Deductions for  
certain  
corporations

- (a) 'active business' means an active business carried on by a corporation as defined in paragraph 125(7)(a) of the Federal Act;
  - (b) 'business connected' means business connected within the meaning of paragraph 125(9)(a) of the Federal Act as that Act existed on January 1, 1984;
  - (c) 'corporation' means a corporation that:
    - (i) was incorporated pursuant to *The Business Corporations Act* or *The Co-operatives Act* after March 26, 1986 and before March 27, 1988; and
    - (ii) is eligible to claim, with respect to a taxation year, a deduction under subsection 125(1) of the Federal Act;
  - (d) 'minister' means the Minister of Finance;
  - (e) 'non-qualifying business' means, with respect to a corporation, a business that is:
    - (i) the professional practice of an accountant, dentist, lawyer, medical doctor, veterinarian or chiropractor;
    - (ii) a business of providing services if more than two thirds of the gross revenue for the taxation year of that business:
      - (A) is derived from services provided to, or performed for or on behalf of, one entity related to the corporation; and
      - (B) can reasonably be attributed to services performed by persons who are specified shareholders of the corporation or persons related to specified shareholders of the corporation;
- unless the corporation employs in the business throughout the taxation year more than five full-time employees who are not specified shareholders of the corporation or persons related to specified shareholders of the corporation; or

(iii) a business the principal purpose of which is:

- (A) to provide managerial, administrative, financial, maintenance or other similar services;
- (B) to lease property other than real property; or
- (C) to provide any services described in paragraph (A) and to lease property other than real property;

to one or more businesses connected any time in the taxation year with the corporation;

(f) 'specified shareholder' means specified shareholder within the meaning of paragraph 125(9)(c) of the Federal Act as that paragraph existed on January 1, 1984.

"(2) For the purposes of this section, persons and corporations are related if they are related within the meaning of section 251 of the Federal Act.

"(3) Subject to subsections (4) to (10), a corporation may apply to the minister for and the minister may allow a deduction from the tax otherwise payable under this Part, for the first and second taxation years of a corporation, an amount equal to 10% of an amount equal to for each taxation year that proportion of the least of the amounts determined under paragraphs 125(1)(a), (b) and (c) of the Federal Act for the taxation year that:

- (a) the amount of that portion of its taxable income earned in the taxation year in Saskatchewan, determined in accordance with paragraph 124(4)(a) of the Federal Act;

bears to:

- (b) the total amount of the portions of its taxable income earned in the taxation year in all provinces, determined in accordance with paragraph 124(4)(a) of the Federal Act;

minus an amount determined under clause 6(7)(b) for the taxation year.

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

- (a) apply on a form prescribed by the minister; and
- (b) supply the minister with any information that the minister may require.

"(5) Where the minister has received an application pursuant to subsection (3) and is satisfied that the corporation has complied with this section, he may allow the corporation to make the deduction and, where he allows the deduction for a taxation year under this section, shall provide the corporation with a completed form certified by him.

“(6) A corporation is not eligible for a deduction for a taxation year under this section if it, or any predecessor corporation within the meaning of section 87 of the Federal Act, at any time since the date of its incorporation:

(a) was associated with any other business, unless the minister has waived this restriction;

(b) carried on a non-qualifying business in Canada;

(c) carried on an active business by reason of being a member of a partnership, where any other member of the partnership was not eligible for a deduction under this section for the taxation year;

(d) was a beneficiary of a trust, where any other beneficiary of the trust was not eligible for a deduction under this section for the taxation year;

(e) carried on an active business by reason of being a co-venturer in a joint venture with any other corporation, where the other corporation was not eligible for a deduction under this section for the taxation year;

(f) has purchased or otherwise acquired or leased property from another business with respect to which:

(i) any of the shareholders of the corporation or predecessor corporation; or

(ii) any persons related to the corporation or predecessor corporation or its shareholders;

beneficially owned at any time, directly or indirectly, more than 10% of the issued shares of any class of the capital stock of or more than 10% of any other equity interest in the business; or

(g) has carried on an active business by reason of having purchased or otherwise acquired or leased property in a manner prescribed by regulation or has engaged in any activities prescribed by regulations.

“(7) A corporation is not entitled to a deduction under this section for the taxation year if as a result of a transaction or an event, or a series of transactions or events, it is reasonable for the minister to believe that one of the principal purposes of the transaction, event or series of transactions or events is to enable the corporation to claim a deduction from tax under this section that it could not otherwise claim.

“(8) A corporation is not entitled to a deduction under this section for the taxation year if, as a result of a disposition, a deemed disposition or a series of dispositions of shares of any corporation, it is reasonable for the minister to believe that one of the principal purposes of the disposition or deemed

disposition is to enable a corporation to claim a deduction from tax under this section that it could not otherwise claim.

“(9) A corporation is not entitled to a deduction under this section unless it has applied to the minister at the time and in the manner he has prescribed.

“(10) Where a corporation claims a deduction for a taxation year under this section, its annual return required pursuant to this Act for the taxation year is required to be accompanied by the completed form certified by the minister and provided pursuant to subsection (5).

“(11) For the purposes of carrying out the provisions of this section according to their intent, the Lieutenant Governor in Council may make regulations:

- (a) defining, restricting or enlarging the meaning of any word or expression used in this section;
- (b) governing any deduction to be allowed pursuant to this section and any restrictions, limitations, terms and conditions relating to any deduction.

“(12) A regulation made pursuant to this section may be made retroactive to a day not earlier than January 1, 1986”.

Section 8.2  
repealed;  
transitional

**8(1)** Section 8.2 is repealed.

(2) Notwithstanding subsection (1), section 8.2 remains in force to the extent necessary to determine payments under that section to taxpayers with respect to taxable capital gains arising before the date that this section comes into force.

Section 8.3  
amended

**9(1)** Clause 8.3(1)(a) is amended by adding “but without reference to section 120.1 of the Federal Act” after “sections 3, 3.1, 4 and 5”.

(2) Subsection 8.3(1) is amended:

- (a) by striking out “and” after subclause (c)(i);
- (b) by striking out “and” after subclause (c)(ii);
- (c) by adding the following subclauses after subclause (c)(ii):
  - “(iii) section 4 of *The Livestock Facilities Tax Credit Act*;
  - “(iv) section 5 of *The Stock Savings Tax Credit Act*; and
  - “(v) section 12 of *The Labour-sponsored Venture Capital Corporations Act*; and”;
- (d) by adding the following clause after clause (d):
- “(e) the amounts required by subsection 10(7) to be added in computing the amount deductible under this subsection:

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- (i) for the taxation year; and
- (ii) for any of the immediately preceding seven taxation years to the extent that those amounts have not been previously deducted pursuant to this subsection”.

**10(1)** Subsection 10(1) is amended:Section 10  
amended

(a) by adding “and no amounts were deductible under subsection 8.3(1) for the year” after “were the average tax for the year” in clause (b);

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

“(b.1) determine the amount, if any, by which the aggregate of the provincial taxes as determined under clause (b) for the years in the averaging period exceeds the aggregate of all amounts, each of which is an amount deducted under subsection 8.3(1) in computing the tax payable for the preceding years, which, in this section, has the meaning given to that expression under section 119 of the Federal Act”; and

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

“(c) deduct from the amount determined under clause (b.1) the aggregate of taxes payable less credits claimed under this Part for the preceding years”.

**(2)** Subsection 10(4) is repealed and the following substituted:

“(4) Where this section, except subsection (3), is applicable to the computation of a taxpayer’s tax for a taxation year and the aggregate of the taxes payable under this Part for the preceding years exceeds the amounts determined under clause (1)(b.1), the excess is deemed to be an overpayment made when the notice of assessment for the year of averaging was mailed”.

**(3)** The following subsection is added after subsection 10(6):

“(7) Where this section is applicable to the computation of an individual’s tax payable under this Part for a taxation year, the amount, if any, by which the aggregate of all amounts deducted under subsection 8.3(1) in computing the individual’s tax payable for the preceding years exceeds the aggregate of the provincial taxes as determined under clause (1)(b) is to be added in computing tax credits allowed pursuant to subsection 8.3(1)”.

**11** Subsection 11(1) is amended:Section 11  
amended

(a) by adding “, other than a corporation that was a registered charity within the meaning of the Federal Act throughout the year,” after “corporation”; and

(b) by adding “, or would be payable if this Part were read without reference to sections 127.2 and 127.3 of the Federal Act,” after “is payable”.

Section 13  
amended

**12(1)** Subsection 13(4) is amended by striking out “four years”:

- (a) in subclause (a)(ii); and
- (b) in clause (b);

and in each case substituting “three years”.

(2) The following subsection is added after subsection 13(4):

“(4.1) Where the Minister of Finance would, but for this subsection, be entitled to reassess, make an additional assessment or assess tax, interest or penalties by virtue only of the filing of a waiver under subclause (4)(a)(ii), the Minister of Finance shall not make that reassessment, additional assessment or assessment after six months from the date on which a notice or revocation of the waiver in the prescribed form is filed”.

(3) Subsection 13(5) is amended by striking out “four years” wherever it occurs and in each case substituting “three years”.

Section 17  
amended

**13** The following subsection is added after subsection 17(4):

“(5) Where:

- (a) the tax payable under this Part, computed without reference to sections 127.2 and 127.3 of the Federal Act, by a corporation for a taxation year; or
- (b) the first instalment base for a corporation for a taxation year;

is not more than \$1,000, the corporation may, instead of paying the instalments required by clause (2)(a) for the taxation year, pay to the Minister of Finance, pursuant to clause (2)(b), all of its tax as estimated by it under section 12 for the taxation year”.

Section 20  
amended

**14** The following subsection is added after subsection 20(2):

“(2.1) Where the aggregate of all amounts each of which is an amount of interest payable by a taxpayer under subsection (2) or under subsection 161(2) of the Federal Act does not exceed \$25 for a taxation year, the taxpayer is not required to pay and the Minister of Finance shall not assess that interest”.

Section 23  
amended

**15(1)** Subsection 23(1) is amended by striking out “four years” wherever it occurs and substituting in each case “three years”.



(2) Subsection 23(2) is amended:

- (a) by adding “or repayment” after “making a refund”; and
- (b) by striking out “overpayment” and substituting “refund or repayment”.

(3) The following subsections are added after subsection 23(4):

“(4.1) Where the court, the Court of Appeal or the Supreme Court of Canada has, on the disposition of an appeal with respect to taxes, interest or a penalty payable under this Act by a taxpayer resident in Canada:

- (a) referred an assessment back to the Minister of Finance for reconsideration and reassessment;
- (b) varied or vacated an assessment; or
- (c) ordered the Minister of Finance to repay tax, interest or penalties;

the Minister of Finance shall with all due dispatch, whether or not an appeal from the decision of the court or the Court of Appeal has been or may be instituted:

- (d) where the assessment has been referred back to him, reconsider the assessment and make a reassessment in accordance with the decision of the court, the Court of Appeal or Supreme Court of Canada, unless otherwise directed in writing by the taxpayer;
- (e) refund any overpayment resulting from the variation, vacation or reassessment; and
- (f) where he is ordered to repay tax, interest or penalties, repay the tax, interest or penalties as ordered.

“(4.2) The Minister of Finance may repay any tax, interest or penalties or surrender any security accepted for tax, interest or penalties by him to any taxpayer other than one described in subsection (4.1) who has filed an objection or instituted an appeal if, having regard to the reasons given on the disposition of the appeal, he is satisfied that it would be just and equitable to do so.

“(4.3) The Minister of Finance may, in accordance with the provisions of this Act, *The Queen’s Bench Act*, *The Court of Appeal Act* or the *Supreme Court Act* (Canada), as amended from time to time, as they relate to appeals from the decisions of any court, appeal from the decision of any court notwithstanding any variation or vacation of any assessment by the court whose decision is being appealed or any reassessment made by the Minister of Finance under

clause (4.1)(d), and any appeal from a decision of a court is to proceed as if it were an appeal from the assessment that was referred back, varied or vacated”.

Section 25  
amended

**16** Subsection 25(5) is amended by striking out “four years” and substituting “three years”.

Section 26  
amended

**17** Clause 26(1)(b) is amended by striking out “one hundred and eighty days” and substituting “90 days”.

Section 32  
amended

**18** Subsection 32(3) is repealed and the following substituted:

“(3) The Minister of Finance may, if he considers it advisable in a particular case, accept security for payment of any taxes, interest, penalties or other amount that is or may become payable pursuant to this Act.

“(3.1) Where at any time a taxpayer requests in writing that the Minister of Finance surrender any security accepted by the Minister of Finance pursuant to subsection (3), the Minister of Finance shall surrender the security to the extent that the value of the security exceeds the amount for which the security was accepted that remains payable at that time”.

Section 40  
amended

**19** Subsection 40(6) is amended by striking out “thereon” and substituting “on the amount that should have been deducted or withheld”.

Coming into  
force

**20(1)** Subject to subsections (2) to (6), this Act comes into force on the day of assent.

(2) Section 11, subsections 12(1), 12(3) and 15(1) and section 16 of this Act come into force on the day of assent but are retroactive and are deemed to have been in force on and from January 1, 1983.

(3) Sections 3 and 6, subsection 9(1) and sections 13 and 14 of this Act come into force on the day of assent but are retroactive and are deemed to have been in force on and from January 1, 1984.

(4) Subsections 12(2), 15(2) and 15(3) and sections 18 and 19 of this Act come into force on the day of assent but are retroactive and are deemed to have been in force on and from February 16, 1984.

(5) Section 4, clauses 5(2)(a) and 5(3)(a), subsection 5(4) and section 8 of this Act come into force on the day of assent but are retroactive and are deemed to have been in force on and from January 1, 1985.

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(6) Subsection 5(1), clauses 5(2)(b) and 5(3)(b), section 7, subsection 9(2) and section 10 of this Act come into force on the day of assent but are retractive and are deemed to have been in force on and from January 1, 1986.