

2010 Bill 8

Third Session, 27th Legislature, 59 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 8

ALBERTA CORPORATE TAX AMENDMENT ACT, 2010

MR. GRIFFITHS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 8
Mr. Griffiths

BILL 8

2010

ALBERTA CORPORATE TAX AMENDMENT ACT, 2010

(Assented to , 2010)

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

Amends RSA 2000 cA-15

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

2(1) Section 4.01 is repealed and the following is substituted:

Functional currency reporting

4.01 In determining the Canadian tax results, as defined in section 261 of the federal Act as it applies for the purposes of this Act, of a corporation for a particular taxation year,

- (a) subject to section 4.02, Canadian currency is to be used, and
- (b) subject to section 4.02 and subsection 79(7) and paragraphs 80(2)(k) and 142.7(8)(b) of the federal Act as they apply for the purposes of this Act, if a particular amount that is relevant in computing those Canadian tax results is expressed in a currency other than Canadian currency, the particular amount is to be converted to an amount expressed in Canadian currency using the relevant spot rate for the day on which the particular amount arose.

Functional currency election

4.02(1) A corporation that

Explanatory Notes

1 Amends chapter A-15 of the Revised Statutes of Alberta 2000.

2 Section 4.01 presently reads:

4.01 Where subsection 261(4) of the federal Act applies to a corporation for a particular taxation year as a result of the corporation having filed a valid election under subsection 261(3) of the federal Act, in the application of section 261 of the federal Act for the purposes of this Act,

- (a) the corporation is deemed to have made the same election for the purposes of this Act,*
- (b) all amounts payable under this Act in respect of that year must be paid in Canadian currency, and*
- (c) the corporation's taxes payable for the year must be converted to Canadian dollars in accordance with the regulations.*

- (a) makes an election in accordance with subsection 261(3) of the federal Act for the purposes of the federal Act is deemed to have made the same election for the purposes of this Act, or
 - (b) revokes an election in accordance with subsection 261(4) of the federal Act for the purposes of the federal Act is deemed to have made the same revocation of that election for the purposes of this Act.
- (2)** Amounts required to be paid pursuant to section 38(1)(a) must be determined with respect to tax payable in Canadian currency.
- (3)** Section 261 of the federal Act applies for the purposes of this Act, except that
- (a) all amounts payable by a corporation under this Act in respect of a taxation year must be paid in Canadian currency,
 - (b) if a particular amount that is determined in the corporation's elected functional currency, other than any Alberta SR & ED tax credit to which the corporation is entitled, is deemed to be paid at any time on account of an amount payable by the corporation under this Act for the particular taxation year, the particular amount is to be converted to Canadian currency using the relevant spot rate for the day that includes that time,
 - (c) the corporation's tax payable for the year must be converted to Canadian currency in accordance with the regulations,
 - (d) subsections 261(2), (11), (15) and (18) of the federal Act do not apply, and
 - (e) the references to subsection (18) in subsections 261(19) and (22) of the federal Act as they apply for the purposes of this Act shall be read as references to subsection (5) of this section.
- (4)** For the purposes of determining the amount that may be deducted in respect of a particular amount that arises in a taxation year (referred to in this subsection as the "later year")

of a corporation under section 111 or subsection 126(2), 127(5), 181.1(4) or 190.1(3) of the federal Act as it applies for the purposes of this Act in computing the corporation's tax payable for a taxation year (referred to in this subsection as the "current year") that ended before the later year,

- (a) if the later year is a functional currency year of the taxpayer and the current year is a Canadian currency year of the taxpayer,
 - (i) amounts, expressed in functional currency, available to be deducted in the current year are to be converted to Canadian currency using the relevant spot rate for the last day of the corporation's last Canadian currency year, and
 - (ii) amounts so deducted are to be converted back to functional currency at the same rate for purposes of determining amounts available to be deducted in any other taxation year,
- (b) if the later year is a reversionary year of the corporation and the current year is a functional currency year of the corporation,
 - (i) amounts, expressed in Canadian currency, available to be deducted in the current year are to be converted to functional currency at the average exchange rate for the current year, determined in accordance with the regulations, and
 - (ii) amounts so deducted are to be converted back to Canadian currency at the same rate,
- (c) if the later year is a reversionary year of the corporation and the current year is a Canadian currency year of the corporation, for the purposes of determining amounts available to be deducted in the current year, amounts deducted in a functional currency year ending after the current year and before the later year are to be converted to Canadian currency at the average exchange rate for that functional currency year determined in accordance with the regulations, and
- (d) in any other case, this subsection does not apply.

(5) The Canadian tax results of a corporation for any one or more taxation years shall be determined using a particular currency if

- (a) at any time (referred to in this subsection as the “transfer time”) one or more properties are directly or indirectly transferred
 - (i) by the corporation to another corporation (referred to in this subsection as the “transferor” and the “transferee”, respectively), or
 - (ii) by another corporation to the corporation (referred to in this subsection as the “transferor” and the “transferee”, respectively),
- (b) the transferor and the transferee are related at the transfer time or become related in the course of a series of transactions or events that includes the transfer,
- (c) the transfer time
 - (i) is, or would in the absence of subsections 261(16) and (17) of the federal Act as they apply for the purposes of this Act be, in a functional currency year of the transferor and the transferor and the transferee have, or would in the absence of those subsections have, different tax reporting currencies at the transfer time, or
 - (ii) is, or would in the absence of those subsections be, in a reversionary year of the transferor and is not in a reversionary year of the transferee,
- (d) it can reasonably be considered that one of the main purposes of the transfer or of any portion of a series of transactions or events that includes the transfer is to change, or to enable the changing of, the currency in which the Canadian tax results in respect of the property, or property substituted for it, for a taxation year would otherwise be determined, and
- (e) the Minister of National Revenue directs that those Canadian tax results be determined in the particular currency.

(6) For the purposes of determining a corporation's Canadian tax results in a taxation year that is a functional currency year of the corporation, the following amounts shall be converted to the functional currency at the average exchange rate for the year determined in accordance with the regulations:

- (a) the corporation's business limit for the year;
- (b) the corporation's maximum expenditure limit for the year;
- (c) the dollar amounts referred to in section 24(2.1).

(2) This section applies to taxation years that begin after December 13, 2007.

3(1) Section 22 is amended

- (a) in subsection (2.1291)(c) by striking out "April 1, 2009" and substituting "January 1, 2009";**
- (b) in subsection (2.1292)**
 - (i) by striking out "year ending after March 31, 2009" and substituting "year ending after December 31, 2008";**
 - (ii) in clause (c)**
 - (A) by striking out "March 31, 2009" and substituting "December 31, 2008 and before April 1, 2009";**
 - (B) in subclause (iii) by striking out "125%" and substituting "92%";**

(c) by adding the following after subsection (2.1292):

(2.1293) There may be deducted from the tax payable under section 21 for a taxation year ending after March 31, 2009 by a corporation that was, throughout the year, a Canadian-controlled private corporation an amount equal to the product obtained by the multiplication of the following:

- (a) the small business allocation factor for the year;
- (b) 7%;

3 Section 22 presently reads in part:

(2.1291) There may be deducted from the tax payable under section 21 for a taxation year ending after March 31, 2008 by a corporation that was, throughout the year, a Canadian-controlled private corporation an amount equal to the product obtained by the multiplication of the following:

- (c) the proportion of the least of the following amounts that the number of days in the year after March 31, 2008 and before April 1, 2009 bears to the number of days in the year:*
 - (i) the amount determined under subsection (2)(a);*
 - (ii) the amount determined under subsection (2)(b);*
 - (iii) 115% of the corporation's business limit for the year.*

(2.1292) There may be deducted from the tax payable under section 21 for a taxation year ending after March 31, 2009 by a corporation that was, throughout the year, a Canadian-controlled private corporation an amount equal to the product obtained by the multiplication of the following:

- (a) the small business allocation factor for the year;*
- (b) 7%;*

- (c) the proportion of the least of the following amounts that the number of days in the year after March 31, 2009 bears to the number of days in the year:
 - (i) the amount determined under subsection (2)(a);
 - (ii) the amount determined under subsection (2)(b);
 - (iii) the corporation's business limit for the year.

(d) in subsection (3) by striking out "and" at the end of clause (a) and adding the following after clause (b):

- (c) where the corporation's business limit for the taxation year is multiplied by a percentage greater than 100% for the purposes of determining the corporation's small business deduction for the year, any agreement filed with the Provincial Minister must allocate to the corporation at least the amount allocated to the corporation pursuant to the agreement filed with the Minister of National Revenue pursuant to subsection 125(3) of the federal Act, and
- (d) where the corporation's business limit for the taxation year is multiplied by a percentage less than 100% for the purposes of determining the corporation's small business deduction for the year, any agreement filed with the Provincial Minister cannot allocate to the corporation a proportion of the business limit that is greater than the proportion that was allocated to the corporation pursuant to the agreement filed with the Minister of National Revenue pursuant to subsection 125(3) of the federal Act.

(2) Subsection (1)(a), (b) and (c) are deemed to have come into force on January 1, 2009.

4 Section 24(3) is repealed and the following is substituted:

(3) If requested by the Provincial Minister, receipts signed on behalf of the registered party, registered constituency association or registered candidate, as the case may be, shall be provided to the Provincial Minister as proof of payment of each amount included in the aggregate amount of contributions in

(c) *the proportion of the least of the following amounts that the number of days in the year after March 31, 2009 bears to the number of days in the year:*

(i) *the amount determined under subsection (2)(a);*

(ii) *the amount determined under subsection (2)(b);*

(iii) *125% of the corporation's business limit for the year.*

(3) *Subsections 125(3) and (4) of the federal Act apply for the purposes of this section except that*

(a) *any references to the Minister are deemed to be references to the Provincial Minister, and*

(b) *any agreement filed with the Provincial Minister may not allocate any different amount to a corporation than the amount allocated to the corporation pursuant to the agreement filed with the Minister of National Revenue pursuant to subsection 125(3) of the federal Act.*

4 Section 24(3) presently reads:

(3) Payment of each amount that is included in the aggregate amount of contributions in respect of which a deduction is claimed under subsection (2) or (2.1) shall be proved by filing with the Provincial Minister receipts for them signed on behalf of the

respect of which a deduction is claimed under subsection (2) or (2.1).

5 Section 36.1 is amended

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

(2.1) If a corporation is, in respect of a taxation year, a prescribed corporation, the corporation shall file its return for the taxation year by way of electronic filing.

(b) in subsection (3) by adding “or (2.1)” after “subsection (2)”.

6(1) Section 43 is amended

(a) in subsection (1) by striking out “or” at the end of clause (b) and adding the following after clause (b):

(b.1) the corporation filing the return has filed with the Provincial Minister a waiver in the prescribed form within the additional 3-year period referred to in clause (b), or

(b) by adding the following after subsection (10):

(11) The Provincial Minister shall reassess a corporation’s tax for a particular taxation year in order to take into account the application of paragraph (d) of the definition “excluded property” in subsection 142.2(1), or the application of subsection 142.6(1.6), of the federal Act, as they apply for the purposes of this Act, in respect of property held by the taxpayer, if

registered party, registered constituency association or registered candidate, as the case may be.

5 Section 36.1 presently reads:

36.1(1) For the purposes of this section, “electronic filing” means using electronic media of a type or class specified in writing by the Provincial Minister in accordance with instructions specified in writing by the Provincial Minister.

(2) A person who meets the criteria specified in writing by the Provincial Minister may file a return of income for a taxation year by way of electronic filing.

(3) A return of income of a corporation for a taxation year that is sent by way of electronic filing by a person referred to in subsection (2) is deemed to have been filed on the day that the Provincial Minister acknowledges that

- (a) the return has been received, and*
- (b) the return is in an acceptable format and is in the prescribed form.*

6 Section 43(1) presently reads:

43(1) The Provincial Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Act by a corporation, notify in writing any corporation by whom a return of income for a taxation year has been filed that no tax is payable for the year, or determine the corporation’s entitlement to and the amount, if any, of a refundable tax credit for a taxation year, except that an assessment, reassessment or additional assessment may be made after the corporation’s normal reassessment period in respect of the year only if

- (a) the corporation or person filing the return*
 - (i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act,*

- (a) the corporation has filed for the particular taxation year the return required by section 36, and
- (b) the corporation has filed with the Minister of National Revenue the prescribed form referred to in subsection 152(6.2) of the federal Act on or before the filing-due date for the corporation's taxation year that
 - (i) if the filing is in respect of paragraph (d) of the definition "excluded property", includes the acquisition of control time referred to in that paragraph, and
 - (ii) if the filing is in respect of subsection 142.6(1.6) of the federal Act, immediately follows the particular taxation year.

(2) Subsection (1)(a) is deemed to have come into force on March 12, 2009.

(3) Subsection (1)(b) applies with respect to taxation years commencing after December 31, 2001, except that

- (a) for taxation years commencing after December 31, 2001, but before October 1, 2006, each reference in section 43(11) of the *Alberta Corporate Tax Act* to "paragraph (d) of the definition "excluded property" " shall be read as a reference to "paragraph (d.3) of the definition "mark-to-market property" " in subsection 142.2(1) of the federal Act as it applies for the purposes of the *Alberta Corporate Tax Act*, and
- (b) a prescribed form referred to in section 43(11)(b) of the *Alberta Corporate Tax Act* is deemed to have been filed on a timely basis if it is filed with the Minister of National Revenue by the corporation on or before the corporation's filing-due date for the corporation's taxation year that includes March 12, 2009.

- (ii) *has filed with the Provincial Minister a waiver in prescribed form within the normal reassessment period for the corporation in respect of the year,*
 - (iii) *has filed with the Provincial Minister a waiver in prescribed form within any other period established by this Act during which the Provincial Minister may reassess, make additional assessments of or assess tax, interest or penalties or determine the entitlement to and the amount, if any, of any refundable tax credits, or*
 - (iv) *has failed to comply with section 36.2,*
- (a.1) *the assessment or reassessment is required pursuant to section 44.1 or 44.2,*
 - (b) *the assessment, reassessment or additional assessment is made before the day that is 3 years after the end of the normal reassessment period for the corporation in respect of the year and*
 - (i) *is required pursuant to section 44 or would be so required if the corporation had claimed an amount by filing the prescribed form referred to in that section on or before the day referred to in that section,*
 - (ii) *is made as a consequence of the assessment or reassessment pursuant to this clause or section 44 of tax payable by another taxpayer,*
 - (iii) *is made as a consequence of a transaction involving the corporation and a non-resident person with whom the corporation was not dealing at arm's length,*
 - (iv) *is made as a consequence of a payment or reimbursement of any income or profits tax to or by the government of a country other than Canada or a government of a state, province or other political subdivision of any such country,*
 - (v) *is made as a consequence of a reduction under subsection 66(12.73) of the federal Act, as it applies for the purposes of this Act, of an amount purported to be renounced under section 66 of the federal Act, or*

7 Section 43.01(5) is amended by striking out “not more than 12 months after the corporation files the information with the Provincial Minister” **and substituting** “not later than the later of 12 months after the corporation files the information with the Provincial Minister and the end of the assessment period set out in section 43(1)(c)”.

8 Section 50 is amended

(a) by repealing subsection (2) and substituting the following:

(2) An appeal to the court shall be instituted by filing a notice of appeal with the clerk of the court of a judicial district in which the corporation appealing has a permanent establishment and serving on the Provincial Minister a copy of the filed notice of appeal.

(b) by repealing subsection (4) and substituting the following:

(4) The notice of appeal shall have attached to it a copy of the notice of objection and, for the purposes of section 53, is deemed to be a statement of claim.

(vi) *is made as a consequence of the application of section 72.1,*

or

(c) *the assessment is the first assessment in respect of the corporation's Alberta SR&ED tax credit for the year or is an additional assessment or reassessment made on or before the day that is 3 years, in the case of a corporation eligible for the small business deduction, or 4 years, in any other case, after the day of mailing of the first assessment in respect of the Alberta SR&ED tax credit for the year.*

7 Section 43.01(5) presently reads:

(5) If a corporation files information with respect to the federal assessment action under subsection (4), the Provincial Minister may assess the tax, interest, penalties or other amounts payable, or determine an amount deemed to have been paid or to have been paid as an overpayment under this Act by the corporation in relation to the federal assessment action for any taxation year, not more than 12 months after the corporation files the information with the Provincial Minister.

8 Section 50(2) and (4) presently read:

(2) An appeal to the court shall be instituted by serving on the Provincial Minister a notice of appeal in duplicate and by filing a copy of the notice of appeal with the clerk of the court of a judicial district in which the corporation appealing has a permanent establishment.

(4) The notice of appeal shall be attached to the notice of objection and, for the purposes of section 53, is deemed to be a statement of claim.

9(1) Section 55.1 is repealed and the following is substituted:

Waiver or cancellation of penalties or interest

55.1 Notwithstanding the *Financial Administration Act*, the Provincial Minister may waive or cancel all or any portion of any penalty or interest payable under this Act by the taxpayer, or refund any portion of any penalty or interest paid under this Act by the taxpayer,

- (a) at any time, if the waiver is in response to an application by the taxpayer within the time set out in clause (b)(i) or (ii), or
- (b) in any other case, on or before the later of
 - (i) the day that is 10 calendar years after the end of the taxation year to which the interest or penalty relates, and
 - (ii) the day that is 12 months from the date the interest and penalty is assessed.

(2) This section is deemed to have come into force on May 24, 2006.

10(1) Section 56 is amended by adding the following after subsection (4):

(5) Without limiting the generality of subsection (1), a regulation made under subsection (1)(a) prescribing a rate of interest for the purposes of this Act may

- (a) prescribe a rate of interest for any taxation year that is before or after the taxation year in which the regulation comes into force, and
- (b) provide that the prescribed rate applies to assessments or reassessments issued after a date specified in the regulation.

(2) This section is deemed to have come into force on February 10, 2010.

9 Section 55.1 presently reads:

55.1 Notwithstanding the Financial Administration Act, the Provincial Minister may, on application by a taxpayer on or before the day that is 10 calendar years after the end of a taxation year of the taxpayer,

- (a) waive or cancel all or any portion of any penalty or interest payable under this Act by the taxpayer in respect of that taxation year, or*
- (b) refund any portion of any penalty or interest paid under this Act by the taxpayer in respect of that taxation year.*

10 Section 56(1)(a) presently reads:

56(1) The Lieutenant Governor in Council may make regulations

- (a) prescribing anything that by this Act is to be prescribed or is to be determined or regulated by regulation;*

11 Section 61(6) is amended by striking out “or certified mail”.

12 Section 64(1) is amended by striking out “or certified mail” and substituting “letter”.

13(1) Section 85 is amended

(a) in subsection (4.2) by striking out “Ontario or” wherever it occurs;

(b) by adding the following after subsection (4.2):

(4.21) In the application of subsection (4.2) to the 2009 taxation year in respect of a corporation that

- (a) had a permanent establishment in Ontario at the end of its immediately preceding taxation year, and**
- (b) establishes a permanent establishment in Alberta at any time in its 2009 taxation year,**

11 Section 61(6) presently reads:

(6) Where the Provincial Minister is of the opinion that it is necessary for the administration of this Act, the Provincial Minister may, by a demand served personally or by registered letter or certified mail, require any corporation required by this section to keep records and books of account to retain those records and books of account, together with every account and voucher necessary to verify the information contained in the records and books of account, for any period specified in the demand.

12 Section 64(1) presently reads:

64(1) Notwithstanding any other provision of this Act, the Provincial Minister may, subject to subsection (4), for any purpose related to the administration or enforcement of this Act, including the collection of any amount payable under this Act by any person, by notice served personally, by facsimile or by registered or certified mail, demand that a corporation or any other person provide or produce, within the reasonable period of time stipulated in the notice,

- (a) any information or additional information, including a return under section 36 or a supplementary return, or*
- (b) any document.*

13 Section 85(4.2) presently reads:

(4.2) Notwithstanding subsection (4.1) and sections 6.1 and 6.2, where a corporation establishes a permanent establishment in Alberta at any time in a taxation year and had a permanent establishment in Ontario or Quebec in the immediately preceding taxation year, and either or both of the following applies:

- (a) the corporation had a balance at the end of the immediately preceding taxation year for purposes of the applicable Ontario or Quebec corporate tax statute that varied from the corresponding balance at the end of the immediately preceding taxation year for purposes of the federal Act, and the balance for purposes of the federal Act arose from the application of paragraphs 18(1)(b), 20(1)(a), 20(1)(e), 20(1)(l), 20(1)(l.1), 20(1)(m), 20(1)(m.1), 20(1)(n), 20(1)(o) and 20(1)(p), subsections 20(26), 20(30), 21(1), 21(2), 26(2),*

the words “at the end of the immediately preceding year” in subsection (4.2)(c) and (d) shall be read as “at the beginning of the year”.

(2) Subsection (1)(a) applies to the 2010 and subsequent taxation years of a corporation unless the corporation had more than one 2009 taxation year, in which case subsection (1)(a) applies in respect of the 2nd 2009 taxation year and subsequent taxation years.

(3) Subsection (1)(b) applies in respect of the 2009 taxation year of a corporation unless the corporation had more than one 2009 taxation year, in which case subsection (1)(b) applies only in respect of the first 2009 taxation year.

14 In the following provisions “certified mail or” is struck out:

section 36(2);
section 48(2) and (7);
section 50(3);
section 71;
section 89(2);
section 102(2).

37(1), 40(1), 91(2) and 138(3) and sections 65 to 68 and 110.1 of the federal Act;

- (b) the corporation had a non-capital, net capital, restricted farm, farm or limited partnership loss balance at the end of the immediately preceding taxation year for purposes of the applicable Ontario or Quebec corporate tax statute that varied from the corresponding balance for purposes of the federal Act,*

the amount of any such balance at the beginning of the taxation year in which the corporation establishes a permanent establishment in Alberta is deemed to be equal to the aggregate of

- (c) the product obtained when the balance at the end of the immediately preceding year for purposes of a particular province in which the corporation had a permanent establishment at any time in that year is multiplied by the percentage of taxable income allocated to that province for that taxation year, and*
- (d) the product obtained when the balance at the end of the immediately preceding year for federal purposes is multiplied by the percentage of taxable income that is not allocated to a province for that taxation year.*

14 References to “certified mail or” struck out.

