

Chapter 9

AN ACT TO AMEND THE INCOME TAX ACT

(Assented to March 10, 2011)

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. **The *Income Tax Act* is amended by this Act.**
2. **(1) Subsection 2.11(2) is amended by striking out "and subsequent taxation years" and substituting "taxation year".**
(2) The following is added after subsection 2.11(2):

Amount of tax payable for 2007 taxation year

(3) The tax payable under this Part for the 2007 taxation year by an individual on his or her taxable income or taxable income earned in Canada, as the case may be, referred to in this Division as the "amount taxable", is:

- (a) if the amount taxable does not exceed \$37,178, 4.0% of the amount taxable;
- (b) if the amount taxable exceeds \$37,178 and does not exceed \$74,357, \$1487 plus 7.0% of the amount by which the amount taxable exceeds \$37,178;
- (c) if the amount taxable exceeds \$74,357 and does not exceed \$120,887, \$4,090 plus 9.0% of the amount by which the amount taxable exceeds \$74,357; or
- (d) if the amount taxable exceeds \$120,887, \$8,277 plus 11.5% of the amount by which the amount taxable exceeds \$120,887.

Amount of tax payable for 2008 taxation year

(4) The tax payable under this Part for the 2008 taxation year by an individual on his or her taxable income or taxable income earned in Canada, as the case may be, referred to in this Division as the "amount taxable", is:

- (a) if the amount taxable does not exceed \$37,885, 4.0% of the amount taxable;
- (b) if the amount taxable exceeds \$37,885 and does not exceed \$75,769, \$1,515 plus 7.0% of the amount by which the amount taxable exceeds \$37,885;
- (c) if the amount taxable exceeds \$75,769 and does not exceed \$123,184, \$4,167 plus 9.0% of the amount by which the amount taxable exceeds \$75,769; or
- (d) if the amount taxable exceeds \$123,184, \$8,435 plus 11.5% of the amount by which the amount taxable exceeds \$123,184.

Amount of tax payable for 2009 taxation year

(5) The tax payable under this Part for the 2009 taxation year by an individual on his or her taxable income or taxable income earned in Canada, as the case may be, referred to in this Division as the "amount taxable", is:

- (a) if the amount taxable does not exceed \$38,832, 4.0% of the amount taxable;
- (b) if the amount taxable exceeds \$38,832 and does not exceed \$77,664, \$1,553 plus 7.0% of the amount by which the amount taxable exceeds \$38,832;
- (c) if the amount taxable exceeds \$77,664 and does not exceed \$126,264, \$4,272 plus 9.0% of the amount by which the amount taxable exceeds \$77,664; or
- (d) if the amount taxable exceeds \$126,264, \$8,646 plus 11.5% of the amount by which the amount taxable exceeds \$126,264.

Amount of tax payable for 2010 taxation year

(6) The tax payable under this Part for the 2010 taxation year by an individual on his or her taxable income or taxable income earned in Canada, as the case may be, referred to in this Division as the "amount taxable", is:

- (a) if the amount taxable does not exceed \$39,065, 4.0% of the amount taxable;
- (b) if the amount taxable exceeds \$39,065 and does not exceed \$78,130, \$1,563 plus 7.0% of the amount by which the amount taxable exceeds \$39,065;
- (c) if the amount taxable exceeds \$78,130 and does not exceed \$127,021, \$4,297 plus 9.0% of the amount by which the amount taxable exceeds \$78,130; or
- (d) if the amount taxable exceeds \$127,021, \$8,697 plus 11.5% of the amount by which the amount taxable exceeds \$127,021.

Amount of tax payable for 2011 taxation year

(7) The tax payable under this Part for the 2011 taxation year by an individual on his or her taxable income or taxable income earned in Canada, as the case may be, referred to in this Division as the "amount taxable", is:

- (a) if the amount taxable does not exceed \$39,612, 4.0% of the amount taxable;
- (b) if the amount taxable exceeds \$39,612 and does not exceed \$79,224, \$1,584 plus 7.0% of the amount by which the amount taxable exceeds \$39,612;
- (c) if the amount taxable exceeds \$79,224 and does not exceed \$128,800, \$4,357 plus 9.0% of the amount by which the amount taxable exceeds \$79,224; or
- (d) if the amount taxable exceeds \$128,800, \$8,819 plus 11.5% of the amount by which the amount taxable exceeds \$128,800.

(3) Subsection 2.13(1) is amended by striking out "subsection 2.11(2)" and substituting "the applicable subsection of section 2.11".

3. Subsection 2.27(2) is amended by striking out ", subject to subsection (3),".

4. (1) Subsection 3(1) is repealed and the following substituted:

Non-Canadian income

3. (1) An individual who resided in Nunavut on the last day of a taxation year and had income for the year that included income earned in a country other than Canada in respect of which any non-business-income tax was paid by the individual to the government of a country other than Canada may deduct from the tax payable by the individual under this Act 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 year to the government of such other country exceeds:
 - (i) if section 127.5 of the federal Act does not apply to the individual for the taxation year, the amount deductible from the individual's tax payable under Part I of the federal Act for that year under subsection 126(1) of the federal Act in respect of any non-business-income tax paid to the government of that country; or
 - (ii) if section 127.5 of the federal Act applies to the individual for the taxation year, the amount of the individual's special foreign tax credit for the year determined under section 127.54 of the federal Act that is in respect of any non-business-income tax paid to the government of such other country; and
- (b) that proportion of the tax otherwise payable under this Act for that taxation year that
 - (i) the amount, if any, by which the total of the individual's qualifying incomes exceeds the total of the individual's qualifying losses
 - (A) for the year, if the individual is resident in Canada throughout the year, and
 - (B) for the part of the year throughout which the individual is resident in Canada, if the individual is non-resident at any time in the year,from sources in that country, on the assumption that
 - (C) no businesses were carried on by the individual in that country,
 - (D) no amount was deducted under 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 in respect thereof under paragraphs 122.3(1)(c) and (d) of the federal Act for the year,

is of

- (ii) the amount, if any, by which
 - (A) if the individual was resident in Canada throughout the year, the individual's income earned in the year in Nunavut computed without reference to paragraph 20(1)(ww) of the federal Act, and
 - (B) if the individual was non-resident at any time in the year, the individual's income earned in the year in Nunavut that is included in the amount determined under paragraph 114(a) of the federal Act in respect of the individual for the year,

exceeds

- (C) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b) of the federal Act, or deductible under any of paragraphs 110(1)(d) to (d.3), (f), (g) and (j) of the federal Act for the year, in computing the individual's taxable income for the year.

(2) The following is added after subsection 3(2):

Incorporated definitions

(2.1) For the purpose of this section, "qualifying incomes", "qualifying losses" and "tax-exempt income" have the same meaning as in subsection 126(7) of the federal Act.

Separate deductions where income arises in more than one foreign country

(2.2) Where the income of an individual for a taxation year includes income from sources in more than one country other than Canada, subsection (1) shall be read as providing for separate deductions in respect of each of the countries other than Canada.

Deductions where otherwise tax-exempt income subject to tax imposed by government of country other than Canada

(2.3) Where any income from a source in a particular country would be tax-exempt income but for the fact that a portion of the income is subject to an income or profits tax imposed by the government of a country other than Canada, the portion shall be deemed to be income from a separate source in the particular country.

(3) Subsection 3(3) is amended by striking out "and paragraph 4(3)(b)".

5. (1) The following is added after subsection 3.2(2):

Calculation of overpayment - shared custody parent

(2.1) Notwithstanding subsection (2), where an eligible individual is a shared custody parent in respect of one or more qualified dependants at the beginning of a month, the amount of the overpayment deemed to have been made under subsection (1) during the month is equal to the amount determined by the formula

$$(A + B) / 2$$

where

- (a) A is the amount determined by the formula in subsection (2), calculated without reference to this subsection; and
- (b) B is the amount determined by the formula in subsection (2), calculated without reference to this subsection and subparagraph (b)(ii) of the definition "eligible individual" in section 3.1.

(2) Subsection 3.2(3) is repealed and the following substituted:

Exception

(3) Subsection 122.61(2) of the federal Act applies with such modifications as the circumstances require for the purposes of this Act.

6. (1) Paragraph 4(3)(b) is amended by striking out "the amount of the deduction claimed" and substituting "the amount deductible".

(2) Subparagraph 4(3)(b)(ii) is amended by adding "in all provinces" after "in the year".

7. The following is added after subsection 4(4):

Non-business-income tax paid outside Canada

(4.1) For the purposes of paragraph 4(3)(b), the non-business-income tax paid by a taxpayer to the government of a country other than Canada in respect of his or her income for a year is the non-business-income tax paid by him or her to the government of that country in respect of that year as defined in subsection 126(7) of the federal Act for the purposes of that Act.

Deduction where otherwise tax-exempt income subject to tax imposed by the government of a country other than Canada

(4.2) For the purposes of paragraph 4(3)(b), where any income from a source in a particular country would be tax-exempt income but for the fact that a portion of the income is subject to an income or profits tax imposed by the government of a country

other than Canada, the portion shall be deemed to be income from a separate source in the particular country.

Incorporation of federal definition

(4.3) For the purpose of this section, "tax-exempt income" has the same meaning as in subsection 126(7) of the federal Act.

8. The following provisions are amended by striking out "paragraph 124(4)(a)" and substituting "the definition "taxable income earned in the year in a province" in subsection 124(4)":

- (a) **the definition "taxable income earned in the year" in subsection 4(2);**
- (b) **the definition "taxable income earned in the year in Nunavut" in subsection 4(2);**
- (c) **subparagraph 4(3)(a)(ii);**
- (d) **subparagraph 4(3)(b)(i).**

9. Subsection 4.1(1) is amended by striking out "paragraph 120(4)(a)" and substituting "the definition "income earned in the year in a province" in subsection 120(4)."

10. Subsection 9(4) is amended by striking out "section 3" wherever it appears and substituting "section 2.1".

11. Section 11 is amended by striking out "subsections 152(1), (1.2) and (2) to (8) and 153(1) to (3) of the federal Act" and substituting "and subsections 152(1) to (3.1) and (4) to (9), 153(1) to (3) and 156.1(4) of the federal Act".

12. Section 32.1 is repealed and the following substituted:

Remission of territorial portion of federal tax remitted

32.1. The Commissioner may grant remission of all or any part of any tax, interest or penalty paid under this Act and may authorize the repayment to the person of that amount if all the following criteria are met:

- (a) remission was granted, under the *Financial Administration Act* (Canada), of any tax, interest or penalty paid under the federal Act by or for an individual;
- (b) any tax, interest or penalty was paid by that individual under this Act in respect of the same circumstances that gave rise to the remission granted under the *Financial Administration Act* (Canada); and
- (c) the Commissioner considers that the circumstances are sufficiently similar and that a remission of any money paid under this Act should be granted either for the relief of extreme hardship or because the individual received incorrect advice from the Canada Revenue Agency.

13. Section 48 is repealed and the following substituted:

Penalty relating to s.33

48. Every person who fails to comply with a regulation made under section 33 or incorporated by reference by virtue of subsection 33(2), particularly a regulation made under paragraph 221(1)(d) or (e) of the federal Act, is liable in respect of each failure to comply to a penalty of \$10 for each day of default, to maximum penalty of \$2,500.

14. (1) The English version of subsection 56(10) is repealed and the following substituted:

Judicial notice

(10) Judicial notice shall be taken of the following items, without requiring them to be specially pleaded or proven:

- (a) all orders and regulations made under this Act; and
- (b) a collection agreement entered into under this Act or any agreement for the collection by Canada of the tax imposed under the income tax statute of an agreeing province.

(2) The English version of subsection 56(15) is repealed and the following substituted:

Evidence as to collection agreement

(15) A document purporting to be a collection agreement entered into under this Act or an agreement with Canada for the collection of tax imposed under the income tax statute of an agreeing province is admissible in evidence as proof, in the absence of evidence to the contrary, of the contents thereof, if it is

- (a) published in the *Canada Gazette*; or
- (b) certified as such by or on behalf of
 - (i) the Commissioner, or
 - (ii) the Provincial Treasurer or the Minister of Finance of the appropriate agreeing province.

15. The following is added after section 56:

TAX AVOIDANCE

Application of federal Act

56.1. Sections 245 and 246 of the federal Act apply for the purpose of this Act.

Definitions

56.2. (1) In this section,

"avoidance transaction" means, subject to subsection 245(4) of the federal Act, a transaction or a part of a series of transactions that, if not for this section, would result directly or indirectly in a tax benefit, unless the transaction may reasonably be considered

to have been undertaken or arranged primarily for a *bona fide* purpose other than to obtain a tax benefit; (*opération d'évitement*)

"tax benefit" means a reduction, avoidance or deferral of tax or other amount payable under this Act, or an increase in a refund of tax or other amount under this Act; (*avantage fiscal*)

"tax consequences to a person" means

- (a) the amount of the person's
 - (i) income for the year,
 - (ii) loss,
 - (iii) taxable income,
 - (iv) taxable income earned in Canada,
 - (v) income earned in the taxation year in Nunavut,
 - (vi) income earned in the taxation year outside Nunavut, and
 - (vii) taxable income earned in the year in Nunavut, or
- (b) any amount, other than an amount referred to in subparagraphs (a)(i) to (vii), that is payable or refundable to the person under this Act or that is relevant for the purpose of determining any other amount referred to in this section; (*attributs fiscaux d'une personne*)

"transaction" includes an arrangement or event. (*opération*)

General anti-avoidance provision

(2) If a transaction is an avoidance transaction, the tax consequences to a person shall be determined in a manner that is reasonable in the circumstances in order to deny a tax benefit that but for this section would result directly or indirectly from that transaction or from a series of transactions that includes that transaction.

Determination of tax consequences

(3) Without restricting the generality of subsection (2), in determining the tax consequences to a person under that subsection,

- (a) an amount deducted in computing an amount referred to in the definition "tax consequences to a person" may be allowed or disallowed in whole or in part;
- (b) any deduction referred to in paragraph (a) or any other amount used to determine an amount payable or refundable under this Act may be allocated to another person;
- (c) the nature of any payment or other amount may be recharacterized; and
- (d) the tax effects that would otherwise result from the application of other provisions of this Act may be ignored.

Request for adjustments

(4) If a notice of assessment, reassessment or additional assessment reflecting the application of subsection (2) to a transaction or a series of transactions has been sent to a person, or a notice of determination has been sent to a person, another person is entitled, within 180 days after the date of mailing of that notice, to request in writing that the Minister make an assessment, reassessment or additional assessment applying subsection (2) or otherwise make a determination respecting returns of income, assessments of tax, withholdings of tax or reassessments of tax.

Duties of Minister

(5) Upon receipt of a request under subsection (4), the Minister shall consider the request and make an assessment, reassessment, additional assessment or determination notwithstanding an expiry of a time limit, except that an assessment, reassessment, additional assessment or determination may be made under this subsection only to the extent that it may be reasonably regarded as relating to a transaction referred to in subsection (4).

Notification of tax consequences

(6) The tax consequences to a person after the application of this section shall only be determined through a notice of assessment, reassessment, additional assessment or determination under section 11 or 12.

16. (1) Section 2 is deemed to have come into force on January 1, 2007.

(2) Section 15 is deemed to have come into force on January 1, 2011.