

# Corporation Capital Tax Act

CHAPTER 99 OF THE REVISED STATUTES, 1989

*as amended by*

1990, c. 10, s. 2; 1992, c. 15, s. 2; 1993, c. 17; 2004, c. 3, s. 3;  
2006, c. 2, s. 2; 2013, c. 3, ss. 3, 4; 2015, c. 6, s. 4; 2018, c. 4, s. 5;  
2021, c. 6, s. 2



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2021, c. 6, s. 2

**An Act Respecting a Tax on the Capital  
of Certain Financial Corporations**

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(The table of contents is not part of the statute)

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### Short title

**1** This Act may be cited as the *Corporation Capital Tax Act*. R.S., c. 99, s. 1.

### Interpretation

**2** In this Act,

(a) “amount” means

(i) money expressed in terms of the amount of money, or

(ii) rights or things expressed in terms of the money value of the rights or things;

(b) “amount taxable” means

(i) in the case of a resident corporation, the taxable paid-up capital of the corporation allocated to the Province in accordance with the regulations,

(ii) in the case of a non-resident corporation, the taxable paid-up capital of the corporation employed in Canada and allocated to the Province in accordance with the regulations,

as at the close of the fiscal year;

(c) “assessment” means an assessment of tax payable by a corporation and includes a reassessment or an estimate by the Minister;

(d) “bank” means a bank to which the *Bank Act* (Canada) or the *Quebec Savings Bank Act* (Canada) applies;

(e) “business” means an undertaking of any kind and includes a profession, calling, trade, manufacture or an adventure or concern in the nature of trade;

(f) “corporation” means a bank, trust company or loan company and includes an agent, assignee, trustee, liquidator, receiver or official having possession or control of any part of the corporation’s property but does not include any corporation incorporated without share capital;

(g) “Department” means the Department of Finance;

(h) “fiscal year” means the period for which the business accounts of a corporation are made up and accepted for the purposes of the Income Tax Act;

(i) “Income Tax Act” means the *Income Tax Act* (Canada);

(j) “inspector” means a person appointed or designated an inspector pursuant to this Act;

(k) “jurisdiction” means a province of Canada or a state outside Canada having sovereign power;

(l) “loan company” means a company that is incorporated with at least one of its objects being to lend money and that accepts money on deposit to the same effect as a bank accepts deposits but that is not a bank or trust company and does not include a credit union within the meaning of the *Credit Union Act*;

(m) “Minister” means the Minister of Finance;

(n) “non-resident corporation” means a corporation which is not resident in Canada;

(o) “other surplus” includes any amount by which

(i) the value of any asset of a corporation, as carried on its account books or on its balance sheet, is in excess of the cost of the asset, or

(ii) the value of an asset of a corporation has been written down and deducted from its income or undivided profits, where that amount

(A) is not deductible pursuant to the Income Tax Act, or

(B) is deductible pursuant to paragraph 20(1)(n) or subparagraph 40(1)(a)(iii) of the Income Tax Act,

but, unless required in the regulations to be included, does not include any amount by which the value of an asset of a corporation has been written down and deducted from its income or undivided profits, where that amount is deductible pursuant to any provision of the Income Tax Act other than those mentioned in paragraph (B) of subclause (ii);

(p) “paid-up capital” means the paid-up capital of a resident corporation as at the close of a fiscal year, computed in accordance with Section 6;

(q) “paid-up capital employed in Canada” means the paid-up capital employed by a non-resident corporation as at the close of a fiscal year, computed in accordance with Section 7;

(r) “permanent establishment” means a fixed place of business and includes a branch office, office and agency, and

(i) where a corporation carries on business through an employee or agent who has general authority to contract for the cor-

poration, the place where the employee or agent operates is a permanent establishment of the corporation,

(ii) where a corporation that has a permanent establishment in Canada, owns land in a province, the land is a permanent establishment of the corporation,

(iii) where a corporation has no fixed place of business, it has a permanent establishment in the principal place in which its business is conducted, and

(iv) where a corporation designates a head office in its charter, memorandum of association, articles of association or by-laws, the head office is a permanent establishment of the corporation,

but

(v) the fact that a corporation has business dealings through a commission agent, broker or other independent agent in a place does not of itself mean that the corporation has a permanent establishment in that place, and

(vi) the fact that a corporation has a subsidiary controlled corporation in a place, or a subsidiary controlled corporation engaged in a trade or business in a place, does not of itself mean that the corporation is operating a permanent establishment in that place;

(s) “prescribed” means prescribed by the regulations;

(t) “property” means any kind of property and includes a right of any kind, a share or a chose in action, and, unless a contrary intention is evident, money;

(u) “resident corporation” means a corporation that is resident in Canada;

(v) “resident in Canada” means resident in Canada as determined in accordance with the Income Tax Act;

(w) “return” means the prescribed corporation capital tax return required pursuant to Section 12, and includes any other return which may be demanded pursuant to Section 14;

(x) “share” means a share of capital stock of a corporation;

(y) “shareholder” means a shareholder of a corporation and includes a member of a corporation or other person entitled to receive payment of a dividend or to a share in a distribution on the winding up of the corporation;

(z) “subsidiary controlled corporation” means a corporation of which more than fifty per cent of the issued share capital, with full voting rights under all circumstances, is owned, directly or indirectly, by another corporation;

(aa) “subsidiary wholly owned corporation” means a corporation of which all its issued share capital, other than directors’ qualifying shares, is owned, directly or indirectly, by another corporation;

(ab) “tax” means the tax imposed by this Act and includes any penalties or interest that are, or may be, payable;

(ac) “tax payable” means the tax payable by a corporation for a fiscal year to Her Majesty in right of the Province pursuant to this Act, and includes any amounts fixed by assessment;

(ad) “taxation year” means the fiscal year in relation to which the amount of tax is being computed;

(ae) “total assets” includes the amount by which

(i) the value of any asset of a corporation, as carried on its account books or on its balance sheet, exceeds the cost of the asset, or

(ii) the value of an asset of a corporation has been written down and deducted from its income or undivided profits, where that amount

(A) is not deductible pursuant to the Income Tax Act, or

(B) is deductible pursuant to paragraph 20(1)(n) or subparagraph 40 (1)(a)(iii) of the Income Tax Act,

but, unless required in the regulations to be included, does not include any amount by which the value of an asset of a corporation has been written down and deducted from its income or undivided profits, where that amount is deductible pursuant to any provision of the Income Tax Act other than those mentioned in paragraph (B) of subclause (ii);

(af) “trust company” means a trust company authorized to do business in the Province. R.S., c. 99, s. 2.

### Liability for tax

3 Every corporation

(a) that has a permanent establishment within the Province; and

(b) whose fiscal year ends on or after the first day of June, 1986, and begins before the date Part III of the *Income Tax Act* respecting the Financial Institutions Capital Tax comes into force,

is liable to pay to Her Majesty in right of the Province a tax computed on the amount taxable of the corporation. R.S., c. 99, s. 3; 2021, c. 6, s. 2.

### Apportionment for first fiscal year

4 Notwithstanding Section 3, where a corporation has a fiscal year ending on or after the first day of June, 1986, and before the thirty-first day of May,

1987, the tax payable by the corporation for that fiscal year is equal to the product of

- (a) the tax payable by the corporation; and
  - (b) the number of days on or after the first day of June, 1986, contained in its fiscal year divided by the total number of days in its fiscal year.
- R.S., c. 99, s. 4.

#### Interest on tax

**5 (1)** The amount of tax or any other amount payable by a corporation pursuant to this Act bears interest at the prescribed rate from the date on which the tax is required by this Act to be paid to Her Majesty in right of the Province until the date on which it is paid.

**(2)** Where the actual tax payable by a corporation for a fiscal year exceeds any payments made on account of an estimate pursuant to Section 19, interest shall be imposed at the prescribed rate on the difference between the estimated tax payable pursuant to Section 19 and the actual tax payable pursuant to this Act as if the actual tax payable had been required to be paid in twelve equal monthly instalments during the fiscal year.

**(3)** *repealed 1992, c. 15, s. 2.*

**(4)** The amount of interest payable is a debt due to Her Majesty in right of the Province and may be recovered in the same manner as tax payable. R.S., c. 99, s. 5; 1992, c. 15, s. 2.

#### Taxable paid-up capital

**6 (1)** The taxable paid-up capital of a bank is the aggregate, computed at the close of the fiscal year, of

- (a) its issued and fully paid-up capital stock;
- (b) its contributed surplus;
- (c) its retained earnings;
- (d) its general reserve;
- (e) any other amount that, in the opinion of the Minister, is required to fairly present changes to shareholder equity; and
- (f) for tax years ending after September 30, 2006, its accumulated other comprehensive income and losses,

less five hundred thousand dollars.

**(2)** The taxable paid-up capital of a loan company or trust company is the aggregate of

- (a) its paid-up capital stock;
- (b) its earned, capital and other surpluses; and

(c) all its reserves, but, unless required in the regulations to be included, not including any reserve, an amount for the creation of which is allowed as a charge against income pursuant to the Income Tax Act,

less

(d) in the case of a loan or trust company whose head office is in the Province, thirty million dollars; and

(e) in all other cases, five hundred thousand dollars,

computed at the close of the fiscal year. R.S., c. 99, s. 6; 1993, c. 17, s. 1; 2006, c. 2, s. 2; 2013, c. 3, s. 3.

### **Paid-up capital employed in Canada**

7 (1) In this Section,

(a) “related group” means a group of persons of which each member is related to every other member of the group;

(b) “related persons” or “persons related to each other” means

(i) individuals connected by blood relationship, marriage or adoption,

(ii) a corporation and

(A) a person who controls the corporation, where it is controlled by one person,

(B) a person who is a member of a related group that controls the corporation, or

(C) any person related to a person described in paragraph (A) or (B), or

(iii) any two corporations where

(A) they are controlled by the same person or the same group of persons,

(B) each of the corporations is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation,

(C) one of the corporations is controlled by one person and that person is related to any member of a related group that controls the other corporation,

(D) one of the corporations is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation,

(E) any member of a related group that controls one of the corporations is related to each member of an unrelated group that controls the other corporation, or

(F) each member of an unrelated group that controls one of the corporations is related to at least one member of an unrelated group that controls the other corporation.

(2) Where two corporations are related to a third corporation, they are deemed to be related to each other.

(3) Where a related group is in a position to control a corporation, it is deemed to be a related group that controls the corporation, whether or not it is part of a larger group which in fact controls the corporation.

(4) A person who has any right pursuant to a contract to

(a) acquire shares in a corporation; or

(b) control the voting rights of shares in a corporation,

is deemed to be the owner of the shares, except where the contract provides that the right is not exercisable until the death of an individual designated in the contract.

(5) Where a person owns shares in two or more corporations, the person is, as shareholder of one of the corporations, deemed to be related to himself as shareholder of each of the corporations.

(6) In clause (b) of subsection (1), two individuals are connected by

(a) blood relationship, where one is the child or other descendant of the other or is the brother or sister of the other;

(b) marriage, where one is married to the other or to a person who is connected by blood relationship to the other; and

(c) adoption, where one has been adopted, either legally or in fact, as a child of the other or as the child of a person who is connected to the other by blood relationship, other than as a brother or sister.

(7) The paid-up capital employed in Canada of a non-resident corporation is the greater of

(a) the amount equal to the product of

(i) its taxable income earned in Canada in the fiscal year, determined for the purposes of the Income Tax Act, and

(ii) twelve and one-half; or

(b) the amount by which the amount of the total assets of the corporation in Canada, as at the close of the fiscal year, exceeds the amount of the indebtedness of the corporation, as at the close of the fiscal year, relating to its permanent establishments in Canada, excluding

(i) any amounts that are advanced or loaned to its permanent establishments in Canada by

(A) the corporation,

(B) its shareholders directly or indirectly,

(C) any person related to any of its shareholders, or

(D) any other corporation, and

(ii) any other indebtedness that is represented by bonds, bond mortgages, debentures, mortgages, lien notes or any other securities to which any part of the property in Canada is subject.

**(8)** The paid-up capital employed in Canada computed in accordance with subsection (1) is to be treated as though

(a) the non-resident corporation had no permanent establishment outside Canada;

(b) the paid-up capital employed in Canada were the total paid-up capital of the corporation; and

(c) the taxable paid-up capital employed in Canada were allocated, in the prescribed manner, among all the provinces.

**(9)** The indebtedness of the corporation mentioned in subclause (ii) of clause (b) of subsection (1) does not include a trade account payable by the corporation and reported as a current liability, other than an indebtedness to shareholders or to any persons related to any of its shareholders, where the trade account

(a) is outstanding for more than ninety days as at the close of the fiscal year; or

(b) is a portion of a long-term debt to another corporation.

**(10)** The paid-up capital employed in Canada of a non-resident corporation does not include any capital invested in a ship or aircraft operated by the corporation in Canada in the fiscal year where the corporation is entitled pursuant to paragraph 81(1)(c) of the Income Tax Act, in computing its income for the fiscal year, to exclude the income earned in the fiscal year in Canada from the operation of that ship or aircraft. R.S., c. 99, s. 7.

**Certain reductions not permitted**

**8** When computing taxable paid-up capital or taxable paid-up capital employed in Canada, no reduction may be made with respect to any transaction that would unduly or artificially reduce the taxable paid-up capital or taxable paid-up capital employed in Canada of the corporation. R.S., c. 99, s. 8.

**Tax rate**

**9** The tax payable by a corporation is

(a) for a fiscal year commencing between the first day of January, 1982, and the thirty-first day of December, 1989, inclusive, one and one half per cent of its amount taxable;

(b) for a fiscal year commencing between the first day of January, 1990, and the thirty-first day of March, 2004, inclusive, three per cent of its amount taxable;

(c) for a fiscal year commencing between the first day of April, 2004, and the thirty-first day of December, 2014, inclusive, four per cent of its amount taxable; and

(d) for a fiscal year commencing on or after the first day of January, 2015, the lesser of

(i) four per cent of its amount taxable, and

(ii) twelve million dollars. 2015, c. 6, s. 4.

**Fiscal year less than 362 days**

**10** Where a corporation has a fiscal year of less than three hundred and sixty-two days, the tax payable by the corporation for that fiscal year is equal to the product of

(a) the tax payable by the corporation; and

(b) the number of days in its fiscal year divided by three hundred and sixty-five. R.S., c. 99, s. 10.

**Incomplete fiscal year**

**11** Where a corporation ceases to have a permanent establishment in the Province during a fiscal year, it shall, in respect of the incomplete fiscal year, pay the tax in the same manner as though the fiscal year had ended on the day on which it ceased to have a permanent establishment in the Province. R.S., c. 99, s. 11.

**Filing return and payment**

**12 (1)** Every corporation that is liable to pay tax and that has taxable paid-up capital or taxable paid-up capital employed in Canada shall, on or before the last day of the month that ends six months following the close of its fiscal year, without notice or demand

(a) file a corporation capital tax return for the fiscal year with the Minister; and

(b) pay to the Minister the tax payable for the fiscal year, less the amount of any payments made in respect of the fiscal year pursuant to Section 19.

(2) For the purposes of subsection (1), every corporation that is liable to pay tax shall file with the Minister along with its return for a taxation year

(a) copies of corporation tax returns filed for the purposes of the Income Tax Act including copies of any schedules that are requested pursuant to the Income Tax Act and that the corporation has filed with its income tax returns during the taxation year; and

(b) copies of the financial statements filed with the corporation's income tax returns referred to in clause (a). R.S., c. 99, s. 12.

#### **Certification of return**

13 (1) Any return required to be filed pursuant to this Act is to be verified by a certificate certifying that the financial statements included in, or attached to, the return are in agreement with the books of the corporation.

(2) The certificate shall be signed by

(a) the president of the corporation or any other officer having personal knowledge of the affairs of the corporation;

(b) in the case of a corporation having its head office outside the Province, the manager or chief agent of the corporation in the Province; or

(c) any other person connected with the corporation that the Minister may require. R.S., c. 99, s. 13.

#### **Demand by Minister**

14 (1) Notwithstanding Section 12, the Minister may at any time demand that a corporation file a return

(a) covering any fiscal year; and

(b) including any information,

that the Minister may determine, and the Minister may specify a reasonable time within which the demand is to be complied with.

(2) A corporation to which a demand is issued pursuant to subsection (1) shall

(a) file the return with the Minister; and

(b) pay to the Minister the tax payable for that fiscal year, less the amount of any payments made in respect of the fiscal year pursuant to Section 19,

within the specified time. R.S., c. 99, s. 14.

#### **Deferral by Minister of filing or payment**

**15** The Minister may defer the date by which a corporation is required to file a return or to pay the tax payable, or any instalment of tax payable, to any date that the Minister may determine, and may set out conditions that the Minister considers appropriate on the deferral. R.S., c. 99, s. 15.

#### **Filing by trustees and others**

**16** Every trustee in bankruptcy, assignee, liquidator, receiver, administrator or any other person administering, managing, winding up, controlling or otherwise dealing with the property or business of a corporation shall

- (a) file a return pursuant to Section 12 or 14;
- (b) pay any tax payable by the corporation as required by Section 12 or 14; and
- (c) before distributing any assets under the person's control, obtain a certificate from the Minister certifying that no tax, interest or penalties chargeable against, or payable by, the corporation pursuant to this Act remain unpaid. R.S., c. 99, s. 16.

#### **Minister not bound**

**17** The Minister is not bound by a return or information supplied pursuant to Sections 12 to 16 and may

- (a) notwithstanding any return filed or information supplied; or
- (b) where no return has been filed,

make an assessment. R.S., c. 99, s. 17.

#### **Accrual of tax**

**18** The tax is deemed to accrue proportionately as the days of the fiscal year for which the tax is imposed pass. R.S., c. 99, s. 18.

#### **Instalments and prescribed information**

**19 (1)** For the purposes of this Section, a corporation's fiscal year is deemed to end on the last day of the month in which its fiscal year ends.

**(2)** Every corporation which is liable to pay tax and whose fiscal year commences after the first day of June, 1986, shall pay to the Minister, on or before the twentieth day of each month of the fiscal year, an instalment payment equal to one twelfth of the tax payable, as estimated by the corporation.

(3) In addition to the tax payable pursuant to subsection (2), every corporation shall submit to the Minister such information as may be prescribed.

(4) Notwithstanding subsection (2), every corporation that is liable to pay tax and whose fiscal year ends in the period from the first day of June, 1986, to the thirty-first day of May, 1987, both dates inclusive, shall pay to the Minister, on or before the last day of the second month following the end of the fiscal year, any tax payable, as estimated by the corporation. R.S., c. 99, s. 19.

#### **Books and records**

**20** Every corporation shall

- (a) keep and maintain, and make available, within the Province;
- or
- (b) make any arrangement with the Minister, that is satisfactory to the Minister, to make available,

books and records relating to the operations of the corporation for the purposes of inspection, examination and audit by the Minister. R.S., c. 99, s. 20.

#### **Prescribed records**

**21 (1)** Where the books and records kept by a corporation are, in the opinion of the Minister, inadequate for the purposes of this Act, the Minister may, by written order

- (a) require suitable books and records to be kept by the corporation;
- (b) prescribe their form and the nature of the entries to be made in the books and records,

and the Minister may specify a reasonable time within which the order shall be complied with.

(2) A corporation to which an order is issued pursuant to subsection (1) shall, within the specified time, keep the books and records in the manner required by that subsection. R.S., c. 99, s. 21.

#### **Order by Minister**

**22** The Minister may, by order, require any person to

- (a) provide the Minister or any appointed officer with any information necessary for the administration and enforcement of this Act;
- (b) file any other return or supplementary return with the Minister or any appointed officer;
- (c) produce for the Minister any book, record, writing or other document in the possession or control of the person;

(d) make available to the Minister any books, records or documents of a corporation necessary for the administration and enforcement of this Act,

and the Minister may specify a reasonable time within which the order is to be complied with. R.S., c. 99, s. 22.

#### **Recovery of tax**

**23 (1)** The amount of the tax may be recovered with costs, by action in the name of the Minister in any court of competent jurisdiction as a debt due to Her Majesty in right of the Province.

**(2)** An action pursuant to subsection (1) shall be tried without a jury, and the court may make an order as to costs in favour of or against Her Majesty in right of the Province. R.S., c. 99, s. 23.

#### **Assessment by Minister**

**24 (1)** Where

(a) a corporation fails to file a return in respect of a fiscal year;

(b) a return in respect of a fiscal year is not, in the opinion of the Minister, substantiated by books and records of the corporation; or

(c) upon inspection or examination of a return or audit of books, records and documents, it appears to the Minister that any tax payable by a corporation in respect of a fiscal year has not been paid in accordance with this Act,

the Minister may make an assessment of the amount of tax payable by the corporation in respect of the fiscal year, and, subject to Section 25, the amount assessed is conclusively deemed to be the amount of tax payable by the corporation in respect of that fiscal year.

**(2)** Where

(a) the books and records kept by a corporation are, in the opinion of the Minister, inadequate for the purposes of this Act;

(b) after being requested by the Minister to produce its books and records, a corporation fails or refuses to produce its books and records for examination; or

(c) a corporation alleges that its books and records have been lost or destroyed,

the Minister may make an assessment of the tax payable by the corporation in respect of a fiscal year on the basis of the Minister's valuation of the amount taxable of the corporation, and, subject to Section 25, the amount assessed is conclusively deemed to be the amount of tax payable by the corporation in respect of that fiscal year.

(3) Where the Minister has made an assessment, the Minister is not, by reason of the assessment, prevented or prohibited from making a further assessment of the amount of tax payable by the corporation in respect of that fiscal year.

(4) The Minister may serve a written notice of an assessment on the corporation and may require the corporation to pay, or otherwise account, to the Minister for the assessed tax payable within thirty days after service of the notice of assessment.

(5) A corporation that is served with a notice of assessment shall pay, or otherwise account for, the assessed tax payable within thirty days after the day on which it is served with the notice of assessment, whether or not an appeal is taken from, or an objection is made to, the assessment.

(6) The notice of assessment mentioned in subsection (4) is admissible in evidence, without proof of the office or signature of the person appearing to have signed the notice, as *prima facie* proof that the amount stated in the notice is due and owing.

(7) An assessment is not to be varied or disallowed by reason only of any irregularity or informality. R.S., c. 99, s. 24.

#### **Dispute of liability for tax**

25 (1) Where a corporation disputes liability for the assessed tax payable as set out in the notice of assessment, it may directly or by its agent serve a written notice of objection on the Minister within ninety days after the day on which the notice is served.

(2) The notice of objection must set out clearly the reasons for the appeal and all relevant factors.

- (3) Upon receipt of the notice of objection, the Minister shall
- (a) consider the matter and affirm or amend the assessment; and
  - (b) notify the appellant of the Minister's decision.

(4) Where a corporation is successful in respect of an objection made pursuant to this Section, any overpayment of tax by it is to be

- (a) applied against any other liability of the corporation to Her Majesty in right of the Province; or
- (b) refunded to the corporation,

together with interest at the prescribed rate for the period commencing on the day the overpayment occurred and ending on the day that the overpayment is disposed of in accordance with clause (a) or (b), but no interest is payable where the amount of interest is less than one dollar. R.S., c. 99, s. 25.

**Review of interest or penalty**

**26 (1)** A corporation that is dissatisfied with any interest or penalty imposed pursuant to Section 5 or 42 may apply to the Minister for a review of the amount fixed, and the Minister, after considering the application, shall confirm or amend the amount imposed by way of interest or penalty, as the case may be, or may, if the Minister is satisfied that no loss has been sustained by Her Majesty in right of the Province, revoke the imposition of the interest and notify the person accordingly.

**(2)** The amount of interest fixed in the notification given pursuant to this Section is for the purposes of this Act deemed to be the amount fixed by the Minister. R.S., c. 99, s. 26.

**Certification of amount of tax**

**27 (1)** The Minister may certify the amount of tax

(a) assessed by the Minister after the expiry of the ninety-day period described in subsection (1) of Section 25 where there is no objection;

(b) determined after the expiry of sixty days from the date of the decision of the Minister following an objection and in the absence of a notice of appeal; or

(c) after the abandonment or final determination of an appeal.

**(2)** Notwithstanding Section 24, where a corporation fails to pay the amount of tax owing by it as shown in a return, the Minister may certify the amount payable, including any interest and penalty, up to the date of certification.

**(3)** A certificate made pursuant to this Section may be filed with the prothonotary of the Supreme Court and is thereupon enforceable as a judgment of that Court.

**(4)** All reasonable costs and charges incurred by the Minister with respect to the filing of a certificate are recoverable in the same manner as tax payable.

**(5)** Notwithstanding subsection (2), interest is payable by a corporation after certification up to and including the date of final payment. R.S., c. 99, s. 27.

**Third party demand**

**28 (1)** In this Section and in Section 32, “third party” means a person who is, or is about to become, indebted to or liable to pay money to a person liable to pay tax.

(2) Where the Minister has knowledge, or reasonable grounds to believe, that a person is, or is about to become, a third party, the Minister may serve a demand on the third party requiring that all or any part of the money which is payable by the third party to a person liable to pay tax be paid to the Minister within

- (a) thirty days after the day on which the demand is served; or
- (b) any longer period that the Minister may specify,

and upon service of the demand the Minister has an equitable interest in the money payable to the extent of the tax payable by the person liable to pay the tax.

(3) The receipt of the Minister for moneys paid pursuant to this Section is a good and sufficient discharge of the liability of the third party to the extent of the payment by him pursuant to this Section.

(4) Where a third party is served with a demand pursuant to this Section and subsequently pays any amount to the person liable to pay tax, that third party is liable to Her Majesty in right of the Province to the extent of the lesser of

- (a) the amount paid to the person liable to pay tax; or
- (b) the amount specified in the demand,

and the amount described in clause (a) or (b), as the case may be, may be recovered from the third party in the same manner as tax payable. R.S., c. 99, s. 28.

#### **Appointment of inspector and others**

29 An inspector or inspectors and such other persons as may be necessary for the proper carrying out of this Act and the regulations shall be appointed in accordance with the *Civil Service Act*. R.S., c. 99, s. 29.

#### **Powers of inspector**

30 (1) For the purposes of enforcing and administering this Act and the regulations, an inspector appointed or designated pursuant to Section 29, may, from time to time, and at all reasonable times, enter into any premises or place where a corporation or business is carried on, any property is kept, anything is done in connection with a corporation or business or any books or records are, or should be, kept pursuant to this Act and may

- (a) audit or examine the books and records and any account, voucher, letter, telegram or other document that relates or may relate to
  - (i) the information that is or should be in the books or records, or
  - (ii) the amount of tax payable;
- (b) require
  - (i) a person who is or may be liable to pay tax, or

(ii) in the case of a corporation liable to pay tax, the president, manager, secretary or any director, agent or representative or any other individual on the premises or in the place,

to give the inspector all reasonable assistance with the audit or examination and to answer all questions relating to the audit or examination orally, in writing, on oath or by statutory declaration;

(c) for the purposes of clause (b), require a person mentioned in that clause to attend at the premises or place with the inspector; and

(d) when, during the course of an audit or examination, it appears to the Minister, or inspector, that there has been a violation of this Act or the regulations, the Minister or inspector may, with a warrant issued pursuant to Section 31, seize and take away any of the records, books, accounts, vouchers, letters, telegrams and other documents that may be required as evidence of a violation and may retain those documents until the time they are required in any court proceeding.

(2) Where any place or premises referred to in this Section is a dwelling-house, an inspector may not enter that dwelling-house without the consent of the occupant except pursuant to the authority of a warrant issued pursuant to subsection (3).

(3) Where on *ex parte* application a justice of the peace is satisfied by information on oath that

(a) the conditions for entry described in subsection (2) exist in relation to a dwelling-house;

(b) entry to the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act; and

(c) entry to the dwelling-house has been refused or that there are reasonable grounds for believing that entry thereto will be refused,

the justice may issue a warrant authorizing the inspector named therein to enter that dwelling-house subject to such conditions as may be specified in the warrant.

(4) In executing a warrant issued pursuant to subsection (3), the inspector named therein shall not use force unless the inspector is accompanied by a peace officer and the use of force has been specifically authorized in a warrant. R.S., c. 99, s. 30.

### Search with warrant

31 (1) An inspector with a warrant issued pursuant to subsection (2) may at any reasonable time enter any place or premises, other than a private dwelling place or any part of any place or premises used as a permanent or temporary pri-

vate dwelling place, where the inspector believes on reasonable grounds that an offence against the Act or regulations is being or has been committed and search that place or premises for evidence of the offence.

(2) Where on *ex parte* application a justice of the peace is satisfied by information on oath that there are reasonable grounds to believe that there is, in any place or premises referred to in subsection (1),

(a) anything on or in respect of which an offence against the Act or regulations is being or has been committed; or

(b) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of an offence against the Act or regulations,

the justice may issue a warrant authorizing the inspector named therein to enter and search the place or premises for any such thing subject to such conditions as may be specified in the warrant.

(3) In executing a warrant issued pursuant to subsection (2), the inspector named therein shall not use force unless the inspector is accompanied by a peace officer and the use of force has been specifically authorized in a warrant.

(4) An inspector may exercise the powers of entry and search referred to in subsection (1) without a warrant issued pursuant to subsection (2) if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be practical to obtain the warrant.

(5) For the purposes of subsection (4), exigent circumstances include circumstances in which the delay necessary to obtain a warrant would result in danger to human life or safety or the loss or destruction of evidence. R.S., c. 99, s. 31.

#### **Demand for return and documents**

32 (1) For the purposes of enforcing and administering this Act and the regulations, the Minister may demand from any person, including the president, manager, secretary, director, agent or representative of a partnership or corporation

(a) a return, a supplementary return and any information related to a return or supplementary return; and

(b) the production, including the production on oath, of any books, letters, accounts, invoices, financial or other statements or any other document,

that relates to a person liable to pay tax.

(2) For the purposes of administering and enforcing this Act and the regulations, the Minister may demand from

(a) any person, syndicate, trust or corporation; and

(b) any agent or official of any person, syndicate, trust or corporation,

that is or may become a third party, the production, including the production on oath, of any books, letters, accounts, invoices, financial or other statements or other documents.

(3) The Minister may specify a reasonable time within which a demand pursuant to this Section is to be complied with, and every person to whom a demand is made shall comply with the demand within the specified time. R.S., c. 99, s. 32.

### Copies

33 Where any book, record or other document has been seized, examined or produced pursuant to this Act, the Minister or an inspector may make, or cause to be made, copies of the book, record or other document, and a document purporting to be certified by the Minister or an inspector to be a copy made pursuant to this Section is admissible in evidence, without proof of the office or signature of the person appearing to have certified the document and has the same probative force as the original document. R.S., c. 99, s. 33.

### Refund of overpayment

34 (1) Subject to Section 36, where it is disclosed upon an assessment that the amount of tax actually paid by a corporation for a fiscal year exceeds the amount of a tax that the corporation is required to pay for that fiscal year, the Minister shall refund the amount of the overpayment to the corporation.

(2) Notwithstanding subsection (1), where the corporation owes any tax to Her Majesty in right of the Province pursuant to this or any other Act,

(a) the amount of the overpayment, or as much of the overpayment as is required, is to be retained by the Minister and applied to the tax owing; and

(b) the Minister shall notify the corporation of the set-off.  
R.S., c. 99, s. 34; 2013, c. 3, s. 4.

### Limitation period

35 (1) No refund is payable pursuant to Section 34 where the overpayment is not discovered within ten years after the day on which it is paid.

(2) No action shall be brought to recover any overpayment after the expiration of ten years from the day on which the overpayment occurred. R.S., c. 99, s. 35; 2018, c. 4, s. 5.

### Payment from Consolidated Fund

36 A refund paid pursuant to Section 34 shall be paid out of the Consolidated Fund of the Province and accounted for as a reduction of revenue receivable pursuant to this Act. R.S., c. 99, s. 36.

**Appeal**

**37** (1) If the appellant is dissatisfied with the decision of the Minister, the appellant may appeal therefrom to a judge of the Supreme Court.

(2) The appellant shall, within sixty days from the date of the giving of the notice of the decision complained of, serve upon the Minister a written notice of the appellant's intention to appeal to a judge of the Supreme Court, which notice shall be signed by the appellant or by the appellant's solicitor or agent and shall set forth the grounds of the appeal.

(3) Within fourteen days after the service upon the Minister of the notice of appeal, the appellant shall apply to the judge for the appointment of a time and place for the hearing of the appeal, and shall serve upon the Minister not less than fourteen days before the hearing a written notice of the time and place appointed for the hearing.

(4) The judge shall hear the appeal and the evidence adduced before him by the appellant and Her Majesty in right of the Province in a summary manner, and shall decide the matter of the appeal.

(5) Upon the request made to the judge by any party to the appeal, the hearing may be held *in camera*.

(6) The Minister shall cause to be produced before the judge on the hearing of the appeal all papers and documents in the Minister's possession affecting the matter of the appeal.

(7) The costs of the appeal shall be in the discretion of the judge, and the judge may make an order respecting them in favour of or against Her Majesty in right of the Province and may fix the amount thereof.

(8) The Minister or the appellant may appeal from the decision of the judge to the Nova Scotia Court of Appeal and the rules governing appeals to the Court of Appeal from a decision of a judge of the Supreme Court apply to appeals pursuant to this subsection. R.S., c. 99, s. 37; R.S., c. 240, ss. 9, 10; 1992, c. 16, ss. 5, 38, 39.

**Assessment not affected by irregularity**

**38** An assessment made by the Minister and confirmed or amended pursuant to Sections 24 and 25 shall not be varied or disallowed because of any irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Act or the regulations up to the date of the issuing of the notice of the assessment. R.S., c. 99, s. 38.

**Effect of objection on appeal**

**39** Neither the giving of an objection nor a notice of appeal by any person nor any delay in the hearing of the objection or the appeal

- (a) affects in any way

- (i) the due date of any tax or part thereof pursuant to this Act that is the subject-matter of the objection or the appeal,
  - (ii) the interest or penalties provided by this Act in respect of any tax as due and payable, or
  - (iii) any liability for payment of any tax provided by this Act; or
- (b) delays in any way the collection of any tax, but if the tax is set aside or reduced on the objection or the appeal, the Minister shall refund to the person entitled thereto the excess of tax paid and of any additional interest or penalty paid thereon. R.S., c. 99, s. 39.

**Penalty for failure to file or comply with demand**

**40 (1)** Every corporation which is liable to file a return and which fails to file a return or to verify a completed return in the manner prescribed in subsection (1) of Section 13 for a fiscal year is guilty of an offence and liable on summary conviction to a fine of not more than one hundred dollars for each day during which the failure continues.

**(2)** Every corporation that fails to comply with a demand of the Minister or an inspector is guilty of an offence and liable on summary conviction to a fine of not more than two hundred dollars for each day during which the failure continues. R.S., c. 99, s. 40.

**Penalty for failure to comply with order**

**41** Every corporation that fails to comply with an order made pursuant to Section 21 is guilty of an offence and liable on summary conviction to a fine of not more than one thousand dollars and, in the case of a continuing offence, to a further fine of not more than one thousand dollars for each day during which the offence continues. R.S., c. 99, s. 41.

**Penalty for evasion**

**42 (1)** Every corporation that attempts to evade payment of all, or any part, of the tax payable by it by wilfully

- (a) understating the value of the amount taxable of the corporation; or
- (b) overstating any deduction that it is entitled to make from its paid-up capital or its paid-up capital used in a jurisdiction outside the Province,

is liable to a penalty to be assessed by the Minister of not more than fifty per cent of the amount of the tax sought to be evaded.

**(2)** A penalty assessed pursuant to this Section is in addition to any tax, interest or other penalty payable pursuant to this Act and the regulations and to any prosecution for an offence pursuant to this Act and the regulations and may be collected in the same manner as tax payable. R.S., c. 99, s. 42.

**Penalty for other offences**

**43** Every person who

(a) refuses, or wilfully neglects, to produce books, records or documents to a person entitled pursuant to this Act to inspect, examine or audit the books, records or documents;

(b) refuses, or wilfully neglects, to answer any question that

(i) is put to that person by a person entitled pursuant to this Act to direct questions, and

(ii) as that person is required pursuant to this Act and the regulations to answer;

(c) refuses, or wilfully neglects to file any return or make any report required from that person pursuant to this Act and the regulations;

(d) files or makes a false or misleading return or report or gives false or misleading answers or information in any return or report pursuant to this Act and the regulations, or makes a false or misleading answer to any question described in clause (b);

(e) destroys, alters, mutilates, conceals or disposes of the books or records of a corporation in order to evade tax;

(f) makes or permits, or assents to or acquiesces in the making of, false or misleading entries or omissions in the books or records of a corporation in order to evade tax; or

(g) wilfully evades, or attempts to evade, complying with this Act or payment of tax,

is guilty of an offence and liable on summary conviction to a fine of not more than one thousand dollars and, in addition, shall pay a penalty in an amount equal to double the amount of the tax which was evaded or sought to be evaded and, in the case of a continuing offence, to a further fine of not more than one thousand dollars for each day during which the offence continues. R.S., c. 99, s. 43.

**Penalty for obstruction**

**44** Every person who obstructs the Minister or an inspector, while making an inspection, examination or audit, is guilty of an offence and liable on summary conviction to a fine of not more than one thousand dollars and, in the case of a continuing offence, to a further fine of not more than one thousand dollars for each day during which the offence continues. R.S., c. 99, s. 44.

**Other penalties**

**45** Every person who contravenes any provision of this Act or the regulations, for which no other penalty is specifically provided, is guilty of an offence and is liable on summary conviction to a fine of not more than one thousand dollars and, in the case of a continuing offence, to a further fine of not more than one thousand dollars for each day during which the offence continues. R.S., c. 99, s. 45.

**Liability of certain individuals**

**46 (1)** Where a corporation has committed an offence pursuant to this Act, any officer, director, employee or agent of the corporation who directed, authorized, assented to or participated in the commission of the offence is a party to and guilty of the offence and is liable on summary conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

**(2)** Where a corporation fails to pay the tax payable, any officer, director, employee or agent of the corporation who is responsible for the failure is guilty of an offence and liable on summary conviction to

(a) the fine to which the corporation would be liable pursuant to Section 42; and

(b) a penalty in an amount equal to the amount of tax that should have been paid.

**(3)** In any proceedings pursuant to this Act, a corporation is deemed to be a party to the act, omission, neglect or failure of an officer, employee, agent or any other person acting for the corporation where the officer, employee, agent or person acted within the scope of employment. R.S., c. 99, s. 46.

**Sections 736 and 737 of Criminal Code**

**47** In disposing of a complaint made or in imposing punishment for an offence pursuant to this Act or the regulations, Sections 736 and 737 of the *Criminal Code* (Canada) shall not be applied. R.S., c. 99, s. 47.

**Complaints**

**48** A complaint may be made and all proceedings may be taken thereon in respect of any offence pursuant to this Act or the regulations, without any limitation of time. R.S., c. 99, s. 48.

**Onus of proof**

**49** In any proceedings pursuant to this Act, the onus of proving that the tax was paid is upon

(a) the person liable to pay tax; or

(b) on any person claiming on behalf of the person liable to pay tax. R.S., c. 99, s. 49.

**Service of documents**

**50 (1)** Where, pursuant to this Act or the regulations, any notice, order, demand or other document is authorized or required to be served on or delivered or sent to a person, the document may be served by

(a) personal service;

(b) in the case of a corporation, delivering it to any office of the corporation in the Province; or

(c) registered mail addressed to the person at the address in the Province as shown on the most recent return filed pursuant to this Act or as shown on the records of the Department.

(2) Where service is made by registered mail, the service is deemed to be made on the fifth day after the day of mailing unless the person on whom service is being made establishes that acting in good faith that person did not through accident, illness or other reasonable cause receive the notice or order until a later date. R.S., c. 99, s. 50.

### Release of information

**51 (1)** No return made by a corporation pursuant to this Act is open to inspection except for the purpose of administering or enforcing this Act.

(2) No person charged with the administration or enforcement of this Act shall

(a) communicate, or allow to be communicated, to any person who is not legally entitled thereto any information obtained pursuant to this Act; or

(b) allow any person who is not legally entitled thereto to inspect or have access to any information obtained pursuant to this Act.

(3) Notwithstanding subsections (1) and (2) but subject to subsection (4), the Minister may

(a) communicate any return, record or information submitted by a corporation pursuant to this Act; or

(b) allow inspection of or access to any return, record or information,

to any person employed by the Government of Canada or by any province, if

(c) the information, records and returns obtained by that government for the purposes of any Act that imposes a tax are communicated or made accessible on a reciprocal basis to the Minister; and

(d) the information, records and returns communicated or made accessible by the Minister will not be used for any purpose other than the administration and enforcement of a federal or provincial law that provides for the imposition of a similar tax.

(4) Subject to the approval of the Governor in Council, the Minister may, on behalf of Her Majesty in right of the Province, enter into agreements with the Government of Canada or the government of any other province

(a) for the purpose of making the application and administration of this Act and any similar Act of another province more equitable;

(b) respecting the payment or the relief from the payment of the tax pursuant to this Act or imposed pursuant to a similar Act of any other province to avoid the duplicate imposition of tax. R.S., c. 99, s. 51.

#### **Remission of interest or penalty**

**52 (1)** Notwithstanding any other Act or any other provision of this Act, the Minister, if the Minister deems it right and proper so to do, may remit any interest or penalty imposed pursuant to Section 5 or 42.

**(2)** A remission pursuant to this Section may be total or partial or conditional or unconditional, and may be granted whether before or after or pending any suit or proceeding for the recovery of any penalty or interest and before or after any payment thereof has been made or enforced by process or execution. R.S., c. 99, s. 52.

#### **Admissibility of affidavit**

**53 (1)** In any proceedings pursuant to this Act an affidavit purporting to be signed by the Minister or an inspector is admissible in evidence as *prima facie* proof of the facts set out in the affidavit.

**(2)** No proof is required of the signature or the official position of the Minister or an inspector on an affidavit made pursuant to this Section. R.S., c. 99, s. 53.

#### **Assignment of duties by Minister**

**54 (1)** The Minister may assign to any officer of the Department designated by the Minister the performance of any of the duties and the exercise of any of the powers imposed or conferred on the Minister by or pursuant to this Act.

**(2)** Any officer to whom the performance of any such duties or the exercise of any such powers is assigned in accordance with subsection (1) shall perform the duties and may exercise the powers as if they were imposed or conferred on the officer by this Act.

**(3)** This Section does not apply to a power of review conferred upon the Minister by Sections 25 and 26. R.S., c. 99, s. 54.

#### **Change of fiscal year**

**55** No corporation shall change its fiscal year for the purposes of this Act, unless

(a) it gives written notice to the Minister prior to the proposed change; and

(b) the Minister has not, within sixty days of the receipt of the notice mentioned in clause (a), objected to the proposed change. R.S., c. 99, s. 55.

#### **Tax collected part of Consolidated Fund**

**56** Every amount received by the Minister by way of tax forms part of the Consolidated Fund of the Province. R.S., c. 99, s. 56.

#### **Limitation on assessment**

**57** In making an assessment pursuant to this Act, the Minister shall not consider a period greater than four years prior to the date of the assessment unless the person has made any misrepresentation that is attributable to neglect, carelessness or wilful default or if there is evidence that the person has committed fraud. R.S., c. 99, s. 57.

#### **Additional powers of Minister**

**58** The Minister may

(a) require any person connected with the corporation that the Minister considers appropriate to sign and forward a certificate verifying a return;

(b) specify any information that is to be included in an individual return; and

(c) issue certificates for the purposes of clause (c) of Section 16. R.S., c. 99, s. 58.

#### **Regulations**

**59** For the purpose of carrying out the provisions of this Act according to their intent, the Governor in Council may make regulations

(a) prescribing the forms to be used for the purposes of this Act or the regulations;

(b) prescribing the records to be kept by corporations;

(c) respecting information required to be disclosed in a return or in any other prescribed form;

(d) prescribing the information to be made or furnished by each corporation each month pursuant to Section 19 and prescribing the forms to be used for this purpose;

(e) requiring amounts or portions of amounts to be included in total assets, other surplus or reserves of a corporation or a class of corporations for the purposes of clauses (b) and (n) of Section 2, clause (b) of subsection (1) of Section 6 and clause (c) of subsection (2) of Section 6;

(f) prescribing the allocation formula for the paid-up capital of each corporation for the purposes of clause (b) of Section 2;

- (g) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (h) prescribing the rates of interest payable pursuant to Sections 5 and 34;
- (i) prescribing certain classes of corporations resident in Canada that are deemed, for the purposes of this Act or for the purposes of any specified provision of this Act, to be corporations that are not resident in Canada;
- (j) prescribing rules governing the manner in which assets and liabilities of and capital used in any partnership or joint venture carried on by a corporation with some other person are to be accounted for in determining the amount taxable of the corporation;
- (k) prescribing rules for determining the value of the amount taxable of a corporation that is used by the corporation in a jurisdiction outside the Province;
- (l) prescribing any other matter or thing that is required or authorized by this Act to be prescribed in the regulations. R.S., c. 99, s. 59.

**Retroactive regulations**

**60 (1)** A regulation made pursuant to Section 59 may, if it so provides, be made retroactive in its operation to a date not earlier than the first day of June, 1986.

**(2)** The exercise by the Governor in Council of the authority contained in Section 59 shall be regulations within the meaning of the *Regulations Act*. R.S., c. 99, s. 60.

**Effective date**

**61** This Act comes into force on, from and after the first day of June, 1986, and shall accordingly be read, construed, interpreted and applied on, from and after that date. R.S., c. 99, s. 61.