


[Français](#)

Mining Tax Act

R.S.O. 1990, CHAPTER M.15

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Interpretation

1. (1) In this Act,

“assessment” includes a reassessment; (“cotisation”)

“associated corporations” has the meaning given to that expression by section 256 of the *Income Tax Act (Canada)*; (“sociétés associées”)

“Deputy Minister” means the Deputy Minister of Finance; (“sous-ministre”)

“exploration and development expenditures” means any outlay or expense made or incurred that is,

(a) for the purpose of determining the existence, location, extent or quality of a

mineral substance in Ontario,

- (b) for the purpose of bringing a mine in Ontario into production,
- (c) for the purpose of developing a mine in Ontario after the mine comes into production, including sinking or constructing a mine shaft, mine haulage way or similar underground work designed for continuing use, and any extension thereof, or
- (d) any outlay or expense referred to in clause (a), (b) or (c) made or incurred pursuant to an agreement whereby the outlay or expense represents consideration for the acquisition of,
 - (i) interest in a mine or in a right to mine a property, or
 - (ii) shares of the capital stock of a corporation or any interest in or right to acquire such shares,

but, for greater certainty, shall not include,

- (e) any consideration given for any mine, right to mine a property or any share or interest therein or right thereto, except as provided by clause (d), or
- (f) any outlay or expense described in clause (d) to the extent that the outlay or expense was, by virtue of that clause, an exploration and development expenditure of another operator; (“frais d’exploration et d’aménagement”)

“fair market value” means the amount that could be expected to be realized on a sale in the open market by a willing seller to a willing buyer; (“juste valeur marchande”)

“hedging” means the fixing of a price for output of a mine before delivery by means of a forward sale or a futures contract on a recognized commodity exchange, or the purchase or sale forward of a foreign currency related directly to the proceeds of the output of a mine, but does not include speculative currency hedging except to the extent that the hedging transaction determines the final price and proceeds for the output; (“couverture”)

“mine” means any opening in the ground, any working of the ground and any tailings source from or by which any mineral substance is taken, and comprises the mining claim, mining location and the whole parcel of land in which any such tailings source does or did exist or such workings are or have been carried on in Ontario; (“mine”)

“mineral substance” means every type and kind of ore, rock, mineral and tailings, whether organic or inorganic, but does not include diatomaceous earth, limestone, marl, peat, clay, building stone, stone for ornamental or decorative purposes, non-auriferous sand or gravel, or natural gas or petroleum, or sodium chloride recovered by solution method; (“substance minérale”)

“mining assets” means the plant, equipment, machinery and buildings acquired for the purpose of the extraction of mineral substances from the ground and ancillary activities, but does not include processing assets or social assets; (“actif minier”)

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

“Ministry” means the Ministry of Finance; (“ministère”)

“operator” includes,

- (a) a person who has the right to work a mine and win mineral substances therefrom,

personally or through agents or employees or together with one or more other persons, and

- (b) a person who has the right to receive a share of the proceeds or the profits of a mine or who has an interest in a mine, whether as a member of a joint venture, as a member of a partnership, or as a beneficiary of a trust that has the right to work the mine and win mineral substances therefrom, but does not include any person whose only right or interest is the right to receive royalties; (“exploitant”)

“output” means,

- (a) the mineral substances raised, taken or obtained from any mine in Ontario, if those mineral substances are sold as such, or
- (b) the product of a processing operation, where the mineral substances are raised, taken or gained from any mine in Ontario, if the processed product is sold; (“production”)

“proceeds” means the total consideration that is received or is receivable from another person or persons, in any currency, whether in cash or non-cash form, from the output of the mine, including all by-products sold, or the amount determined in the prescribed manner, and all consideration received or receivable from hedging and future sales or forward sales of the output of the mine, converted at the date of receipt of the consideration to the equivalent in Canadian funds or, if applicable, the operator’s elected functional currency as defined in subsection 6.1 (1), if receivable in funds of another country; (“recettes”)

“processing” means, with respect to mineral substances, any form of beneficiation, concentrating, smelting, refining, fabricating of metallic mineral substances, manufacturing of non-metallic mineral substances and any combination thereof; (“traitement”)

“processing assets” means processing plants, machinery, equipment and structures acquired for the purpose of processing mineral substances and ancillary activities, but does not include,

- (a) the value of spare parts held in inventory for such assets,
- (b) stockpiles or inventories of processed mineral substances,
- (c) assets used for the transportation of processed mineral substances to market, or
- (d) mining assets or social assets; (“actif servant au traitement”)

“social asset” means a tangible asset owned by an operator that is incidental to mining and processing operations and that relates directly to the provision of housing, recreational or service facilities, if the asset,

- (a) is necessary to attract or retain employees, and
- (b) is available for the use of all employees; (“élément d’actif social”)

“remote mine” means a mine that is certified under section 4 as a remote mine; (“mine éloignée”)

“stone for ornamental or decorative purposes”,

- (a) does not include diamonds for taxation years ending before March 23, 2007, and

(b) includes diamonds for taxation years ending after March 22, 2007; (“*pierre servant à des fins ornementales ou décoratives*”)

“taxation year” means the period for which the accounts of the operator of a mine are ordinarily made up and accepted for the purposes of assessment under this Act, and any change in a usual and accepted taxation year shall, for the purposes of this Act, be made only with the approval of the Minister, but no taxation year shall be for a period greater than fifty-three consecutive weeks; (“*année d’imposition*”) R.S.O. 1990, c. M.15, s. 1 (1); 1994, c. 18, s. 6 (1-4); 2000, c. 42, s. 70; 2001, c. 23, s. 150; 2004, c. 16, Sched. D, Table; 2007, c. 7, Sched. 23, s. 1; 2011, c. 9, Sched. 24, s. 1.

Non-arm’s length

(2) For the purposes of this Act, in the determination of whether two or more persons are not dealing at arm’s length, section 251 of the *Income Tax Act* (Canada) applies with necessary modifications. R.S.O. 1990, c. M.15, s. 1 (2).

Amount of tax payable

(3) The amount of the tax payable by an operator for a taxation year under this Act is the amount of tax as assessed or reassessed by the Minister, subject to variation on any objection or appeal under this Act. 1994, c. 18, s. 6 (5).

Corporations Tax Act references

(4) Any reference to the *Corporations Tax Act* in this Act shall be deemed to be a reference to that Act as it applied to corporations for taxation years under that Act ending on or before December 31, 2008. 2008, c. 19, Sched. V, s. 5.

Calculation and time of tax payments

When taxes accrue

2. (1) The tax payable under this Act by an operator for a taxation year shall be deemed to accrue proportionately during the taxation year. R.S.O. 1990, c. M.15, s. 2 (1).

Payment of taxes

(2) Every operator liable to pay tax under this Act for a taxation year shall pay the tax by monthly instalments during the taxation year with the balance of the tax, if any, payable not later than two months after the end of the taxation year. R.S.O. 1990, c. M.15, s. 2 (2).

Amount of instalments

(3) The amount of each monthly instalment payable under this section for the taxation year is the lesser of,

- (a) the amount of tax payable by the operator for the taxation year divided by the number of months commencing in the taxation year; or
- (b) the amount of tax payable by the operator for the taxation year ending immediately before the taxation year for which the instalment is being calculated, divided by the number of months commencing in that immediately preceding taxation year. R.S.O. 1990, c. M.15, s. 2 (3).

Instalments after amalgamation

(4) If the taxation year of an operator is the first taxation year after an amalgamation within the meaning of section 87 of the *Income Tax Act* (Canada), the amount of each monthly instalment payable under this section for the taxation year is the lesser of,

- (a) the amount determined under clause (3) (a); or
- (b) the aggregate of all amounts each of which is the amount of tax payable by a

predecessor corporation of the operator, within the meaning of section 87 of the *Income Tax Act* (Canada), for its last taxation year divided by the number of months commencing in the year. R.S.O. 1990, c. M.15, s. 2 (4); 2004, c. 16, Sched. D, Table.

Payment of instalments

(5) Instalment payments under this section shall be paid to the Minister on or before the 25th day of each month commencing in the taxation year by remitting the payments to the Minister. R.S.O. 1990, c. M.15, s. 2 (5); 1994, c. 18, s. 6 (6).

Mining tax

3. (1) Every operator is liable for and shall pay a tax for a taxation year equal to the amount calculated using the formula,

$$[(A - B) \times C] + [(D - E) \times 0.05]$$

in which,

“A” is the amount of the operator’s profit, if any, as determined under subsection (5) for the taxation year, from all mines, other than remote mines, in which the operator has an interest,

“B” is the amount calculated under subsection (1.2) for the taxation year,

“C” is the tax rate for the taxation year as determined under subsection (3.1),

“D” is the amount of the operator’s profit, if any, as determined under subsection (7) for the taxation year, from all remote mines in which the operator has an interest, and

“E” is the amount calculated under subsection (1.3) for the taxation year.

2001, c. 23, s. 151 (1).

Deemed not to be a remote mine

(1.1) A remote mine for which an election is made by an operator under subsection 4 (4.1) is deemed not to be a remote mine for the purposes of determining the amount of tax payable under this Act for a taxation year before the first taxation year in which the operator treats the mine as a remote mine. 2001, c. 23, s. 151 (1).

Calculation of “B”

(1.2) The variable “B” in subsection (1) for a taxation year is the amount calculated using the formula,

$$F \times A / (A + D)$$

in which,

“A” has the same meaning as in subsection (1),

“D” has the same meaning as in subsection (1), and

“F” is the amount of the operator’s annual deduction for the taxation year, as determined under subsection (2) for the taxation year.

2001, c. 23, s. 151 (1).

Calculation of “E”

(1.3) The variable “E” in subsection (1) for a taxation year is the amount calculated

using the formula,

$$F \times D / (A + D)$$

in which,

“A” has the same meaning as in subsection (1),

“D” has the same meaning as in subsection (1), and

“F” has the same meaning as in subsection (1.2).

2001, c. 23, s. 151 (1).

Annual deduction

(2) The amount of an operator’s annual deduction for a taxation year is the amount claimed by the operator, not exceeding the lesser of,

(a) the proportion of \$500,000 that the number of days in the taxation year is of 365; and

(b) the sum of the amounts determined under section (3) for the taxation year for each mine in which the operator has an interest. 2001, c. 23, s. 151 (1).

Annual deduction, associated corporations

(2.1) Despite subsection (2), associated corporations who are operators of one or more mines shall claim annual deductions for a taxation year in amounts that in total do not exceed \$500,000. 2001, c. 23, s. 151 (1); 2004, c. 16, Sched. D, Table.

Part interest

(3) The amount determined under this subsection in respect of an operator’s interest in a mine is the product of the operator’s interest in the mine multiplied by the lesser of,

(a) \$500,000; and

(b) if applicable, the amount determined under subsection (4) in respect of the mine. R.S.O. 1990, c. M.15, s. 3 (3).

Tax rate

(3.1) The tax rate for an operator’s taxation year is the decimal number that is the total of each of the amounts calculated using the following formulas, for which the variables are defined in subsection (3.2):

1. A/T 0.2

2. B/T 0.18

3. C/T 0.16

4. D/T 0.14

5. E/T 0.12

6. F/T 0.10

2000, c. 10, s. 21 (2).

Same

(3.2) For the purposes of subsection (3.1),

“A” is the number of days in the taxation year before May 2, 2000,

“B” is the number of days in the taxation year after May 1, 2000 and before January 1, 2001,

“C” is the number of days in the taxation year after December 31, 2000 and before January 1, 2002,

“D” is the number of days in the taxation year after December 31, 2001 and before January 1, 2003,

“E” is the number of days in the taxation year after December 31, 2002 and before January 1, 2004,

“F” is the number of days in the taxation year after December 31, 2003,

“T” is the total number of days in the taxation year. 2000, c. 10, s. 21 (2).

Part year production

(4) Where a mine is out of production in a taxation year for sixty or more consecutive days, the amount determined under this subsection for the purpose of clause (3) (b) is that proportion of \$500,000 that the number of days in the taxation year that the mine has been in production is of 365. R.S.O. 1990, c. M.15, s. 3 (4).

Profit, mines other than remote mines

(5) An operator’s profit for a taxation year from all mines, other than remote mines, in which the operator has an interest is the amount, if any, by which the aggregate of,

(a) the operator’s proceeds for the taxation year from the mines, other than amounts included in the computation of tax payable under this Act for a prior taxation year in respect of the mines;

(a.1) the portion of any amount received, or that can reasonably be considered to have been received, in the taxation year by the operator as compensation under an insurance policy or otherwise for damage in relation to a mine in which the operator has an interest, or in relation to the operation of the mine, if an amount in respect of the damage has been deducted by the operator in computing the operator’s profit or loss, if any, for the taxation year or a prior taxation year;

(a.2) the portion of any amount received, or that can reasonably be considered to have been received, by the operator in the taxation year as a refund, reimbursement, contribution or allowance or as assistance (whether as a grant, subsidy, forgivable loan, deduction from tax, allowance or any other form of assistance), in respect of,

(i) an amount included in, or deducted as, the capital cost of property, or

(ii) an outlay or expense,

if a deduction for the amount has been allowed in computing the operator’s profit or loss for the taxation year or a prior taxation year, and to the extent that the amount was not otherwise included in computing the operator’s profit, or deducted in computing, for the purposes of this Act, any balance of undeducted expenditures, allowances, outlays, or other amounts, for the taxation year or a prior year,

exceeds the aggregate of,

(b) the expenses incurred by the operator in the taxation year that are not otherwise deductible under this subsection, to the extent that the expenses are attributable to

- the production of output from the mines;
- (c) the operator's operating and maintenance expenses incurred in the taxation year with respect to social assets in Ontario for the mines, after deducting all rents, fees, grants and other payments received by the operator during the taxation year in connection with those expenses;
 - (d) the administrative and overhead expenses incurred by the operator in the taxation year, to the extent the expenses are reasonably attributable to the production or sale of output of the mines;
 - (e) the expenses incurred by the operator in the taxation year in respect of scientific research conducted in Canada or product use development research conducted in Canada, to the extent the research is related to output of the mines;
 - (f) the donations made by the operator in the taxation year for charitable, educational or benevolent purposes that are reasonably related to mining operations in Ontario, other than donations that are reasonably related to any remote mines in which the operator has an interest;
 - (g) an amount not exceeding the maximum amount deductible by the operator for the taxation year in respect of exploration and development expenditures, as determined under subsection (13), less the amount, if any, deducted by the operator for the taxation year under subsection (8) or (9) in respect of those expenditures;
 - (h) an amount not exceeding the operator's allowance for depreciation for the taxation year, calculated in accordance with subsection (12), less the allowance for depreciation, if any, deducted by the operator for the taxation year under subsection (8) or (9);
 - (i) the expenses and outlays incurred by the operator in the taxation year for the transportation of output from the mines to the point of delivery of the output to purchasers;
 - (j) such reserves and deductions as may be prescribed for the purposes of determining an operator's profit from mines that are not remote mines;
 - (k) the operator's prescribed processing allowance for the taxation year, other than its processing allowance for the year in respect of remote mines in which it has an interest; and
 - (l) the amount, if any, of the operator's remote mine loss deduction, as determined under subsection (6), in respect of any remote mines in which the operator has an interest. 2001, c. 23, s. 151 (2); 2011, c. 9, Sched. 24, s. 2 (1, 2).

Remote mine loss deduction

(6) The amount of an operator's remote mine loss deduction for a taxation year is the amount calculated using the formula,

$$(G - H) \times (0.05/C)$$

in which,

G'' is the sum of all amounts, if any, each of which is the operator's loss for the taxation year from a remote mine in which the operator has an interest, as determined under subsection (9),

“H” is the amount by which the sum of the operator’s profit for the taxation year from each remote mine in which the operator has an interest, as determined under subsection (8), exceeds the amount, if any, claimed by the operator under subsection 3.2 (4) for the taxation year, and

“C” is the tax rate for the taxation year as determined under subsection (3.1).

2001, c. 23, s. 151 (2).

Profit from all remote mines

(7) An operator’s profit for a taxation year from all remote mines in which the operator has an interest is the amount calculated using the formula,

$$I - (J + K + L)$$

in which,

“I” is the sum of all amounts, if any, each of which is the operator’s profit for the taxation year from a remote mine, as determined under subsection (8),

“J” is the amount, if any, deducted under subsection 3.2 (4) by the operator for the taxation year,

“K” is the sum of all amounts, if any, each of which is the operator’s loss for the taxation year from a remote mine, as determined under subsection (9), and

“L” is the amount, if any, of the operator’s loss for the taxation year from mines that are not remote mines, as determined under subsection (10).

2001, c. 23, s. 151 (2).

Profit from remote mine

(8) An operator’s profit, if any, from a remote mine for a taxation year is the amount, if any, that would be determined under subsection (5) for the taxation year if the operator were deemed to have no interest in any mine other than the remote mine during the taxation year, the remote mine were deemed not to be a remote mine and the following rules applied:

1. The only amounts deductible under clause (5) (g) are exploration and development expenditures made or incurred in respect of the remote mine for a purpose described in clause (b) or (c) of the definition of “exploration and development expenditures” in subsection 1 (1).
2. The amount deductible under clause (5) (h) is determined without reference to clause (12) (c).
3. No amount is deductible under clause (5) (l).
4. The allowance for depreciation under clause 3 (5) (h) is the amount equal to the aggregate of the maximum amounts calculated in accordance with clauses 3 (12) (a) and (b), subject to clauses 3 (12) (d) and (e) and subsection 3 (21). 2001, c. 23, s. 151 (2).

Loss, remote mine

(9) An operator’s loss for a taxation year from a remote mine is the amount, if any, by which the amount that would otherwise be determined under subsection (8) for the taxation year in respect of the remote mine would be less than zero. 2001, c. 23, s. 151 (2).

Loss, mines other than remote mines

(10) The amount of an operator's loss, if any, for a taxation year from mines other than remote mines is the amount calculated using the formula,

$$M \times C/0.05$$

in which,

“M” is the amount by which the sum of the amounts determined for the taxation year in respect of the operator for the purposes of clauses (5) (b) to (k) exceed the amount determined for the taxation year in respect of the operator under clauses (5) (a), (a.1) and (a.2), and

“C” is the tax rate for the taxation year as determined under subsection (3.1).

2001, c. 23, s. 151 (2); 2011, c. 9, Sched. 24, s. 2 (3).

(11) Repealed: 1992, c. 4, s. 1 (1).

Calculation of allowance for depreciation

(12) The operator's allowance for depreciation for a taxation year in respect of depreciable property is,

- (a) the amount calculated in accordance with subsection (12.0.1) if the depreciable property is a processing asset or an asset for transporting processed mineral substances to market from the place where the processing is completed;
- (b) the amount calculated in accordance with subsection (12.0.3) if the depreciable property is a mining asset but not a mining asset for which an allowance for depreciation is calculated under clause (c);
- (c) where a mine is a new mine or a major expansion of an existing mine designated by the Minister for the purpose of this clause, an amount at the option of the operator, instead of the amount calculated under clause (b), in respect of mining assets acquired after the 7th day of March, 1978, and before completion of the project from a person dealing at arm's length for use in the new mine or the major expansion, not exceeding the lesser of,
 - (i) the operator's profit for the taxation year from the new mine or the major expansion calculated in the prescribed manner, and
 - (ii) the undepreciated capital cost of the mining assets as of the end of the taxation year (before making any deduction calculated under this clause for the taxation year);
- (d) despite clauses (a), (b) and (c), subsection (21) and clause 4 (3) (b), where the operator's taxation year is less than 365 days, an amount not exceeding that proportion of the aggregate of the amounts determined under clauses (a) and (c), subsection (21) and clause 4 (3) (b) in respect of processing and transportation assets and clause (b) in respect of mining assets that the number of days in the taxation year is of 365; and
- (e) despite clause (a), where processing assets are situated outside Canada or assets for transporting processed mineral substances are used outside Canada, an amount not exceeding that proportion of the amount determined under clause (a),
 - (i) in respect of processing assets, that the value of mineral substances mined in Ontario is to the total value of mineral substances fed into the processing

plant situated outside Canada, or

- (ii) in respect of assets used for transporting processed mineral substances, that the value of processed product derived from output is of the total value of processed product transported by those assets. R.S.O. 1990, c. M.15, s. 3 (12); 2002, c. 22, s. 137 (1).

Same, processing and transportation assets

[\(12.0.1\)](#) The amount of the operator's allowance for depreciation under clause (12) (a) for a taxation year in respect of assets acquired in the taxation year or in a prior taxation year is the total of all amounts, if any, determined in respect of the assets referred to in that clause, each of which is an amount determined in respect of the assets acquired in the taxation year or a prior taxation year that does not exceed the lesser of,

- (a) 15 per cent of the capital cost of the assets acquired in the particular taxation year; and
- (b) the undepreciated capital cost, as of the end of the taxation year and before any deduction under subsection (12) is made for the taxation year, of the assets acquired in the particular taxation year. 2002, c. 22, s. 137 (2).

Same

[\(12.0.2\)](#) In calculating the operator's allowance for depreciation under subsection (12.0.1) for the taxation year, the operator shall determine the lesser of the amounts described in clauses (12.0.1) (a) and (b) in respect of the assets acquired in each particular taxation year and then shall add the resulting amounts, if any, in order to determine the operator's aggregate allowance for depreciation. 2002, c. 22, s. 137 (2).

Same, certain mining assets

[\(12.0.3\)](#) The amount of the operator's allowance for depreciation under clause (12) (b) for a taxation year in respect of assets acquired in the taxation year or in a prior taxation year is the total of all amounts, if any, determined in respect of the assets referred to in that clause, each of which is an amount determined in respect of the assets acquired in the taxation year or a prior taxation year that does not exceed the lesser of,

- (a) 30 per cent of the capital cost of the assets acquired in the particular taxation year and after April 9, 1974 that have not been used previously in mining operations and 15 per cent of the capital cost of any other mining assets acquired in the particular year; and
- (b) the undepreciated capital cost, as of the end of the taxation year and before any deduction under subsection (12) is made for the taxation year, of the assets referred to in clause (a). 2002, c. 22, s. 137 (2).

Same

[\(12.0.4\)](#) In calculating the operator's allowance for depreciation under subsection (12.0.3) for the taxation year, the operator shall determine the lesser of the amounts described in clauses (12.0.3) (a) and (b) in respect of the assets acquired in each particular taxation year and then shall add the resulting amounts, if any, in order to determine the operator's aggregate allowance for depreciation. 2002, c. 22, s. 137 (2).

Exception

[\(12.0.5\)](#) Despite the re-enactment of clauses (12) (a) and (b) by section 137 of the *Keeping the Promise For a Strong Economy Act (Budget Measures), 2002*, those clauses, as they read immediately before being re-enacted, continue to apply with respect to an operator

for a taxation year commencing after December 31, 1999 if both of the following conditions are satisfied:

1. Before October 30, 2002, the operator files a return under this Act for the taxation year.
2. In the return or in an adjustment to the return that is filed before October 30, 2002, the amount calculated under clause (12) (a) or (b) (as those clauses read immediately before being re-enacted) for the taxation year is based in whole or in part on assets that have been fully depreciated. 2002, c. 22, s. 137 (2).

Same

(12.1) The following rules apply if an operator has an interest in more than one mine during a taxation year and at least one of the mines is a remote mine:

1. The allowance for depreciation deductible by the operator in calculating the amount of the operator's profit for a taxation year under subsection (5) or (8) or loss for the taxation year under subsection (9) or (10) is the amount that would be the operator's allowance for depreciation for the taxation year under subsection (12) in respect of only the depreciable property that is reasonably related to the mine or mines in respect of which the calculation is made under subsection (5), (8), (9) or (10).
2. The total of all amounts deducted as an allowance for depreciation for a taxation year in respect of all mines in which the operator has an interest must not exceed the operator's allowance for depreciation for the taxation year, as determined under subsection (12). 2001, c. 23, s. 151 (3).

Exploration and development expenditures

(13) For the purposes of clause (5) (g), the maximum amount deductible by an operator for a taxation year in respect of exploration and development expenditures is the aggregate of,

- (a) exploration and development expenditures incurred in Ontario by the operator to the extent that such expenditures qualified as exploration and development expenditures under this Act at the time they were incurred; and
- (b) exploration and development expenditures incurred by another person to the extent that,
 - (i) such expenditures qualified as exploration and development expenditures under this Act at the time they were incurred by the other person, and
 - (ii) such expenditures qualify to be renounced and have been renounced by the other person in favour of the operator under subdivision e of Division B of Part I of the *Income Tax Act* (Canada) and have not been deducted by the other person under this Act or in the calculation of taxable income of the other person under Part I of the *Income Tax Act* (Canada),

less the aggregate of,

- (c) all amounts deducted under this Act by the operator in any previous taxation year in respect of exploration and development expenditures;
- (d) all amounts allowed as eligible exploration expenses under the *Ontario Mineral Exploration Program Act*;

- (e) the amount of any assistance or benefit from a government, municipality or other public authority in respect thereto, including any grant, subsidy, forgivable loan, investment allowance or other form of assistance or benefit received or receivable by the operator, other than a grant or tax credit under the *Ontario Mineral Exploration Program Act*; and
- (f) all exploration and development expenditures that qualify to be renounced and have been renounced by the operator in favour of another person under subdivision e of Division B of Part I of the *Income Tax Act* (Canada). R.S.O. 1990, c. M.15, s. 3 (13).

Reduction of capital cost

(14) For the purposes of this section, where an operator has deducted an amount under subsection 127 (5) of the *Income Tax Act* (Canada) in respect of depreciable property or has received or is entitled to receive assistance from a government, municipality or other public authority in respect of, or for the acquisition of, depreciable property, whether as a grant, subsidy, forgivable loan or any other form of assistance, the capital cost of the property shall be deemed to be the amount by which the aggregate of,

- (a) the capital cost thereof to the operator determined without reference to this subsection; and
- (b) the part, if any, of the assistance that has been repaid by the operator before the disposition thereof by the operator,

exceeds the aggregate of,

- (c) all amounts deducted under subsection 127 (5) of the *Income Tax Act* (Canada); and
- (d) the amount of assistance the operator has received or is entitled to receive in respect of that property before the disposition thereof by the operator. R.S.O. 1990, c. M.15, s. 3 (14).

Non-allowable deductions

(15) No allowance or deduction shall be claimed or made under this section in respect of,

- (a) an outlay, loss or replacement of capital, a payment on account of capital or an amount in respect of depreciation, amortization, obsolescence or depletion, unless expressly permitted by this Act;
- (b) interest or dividends paid;
- (c) royalties for the right to extract mineral substances, or use real property in connection with the extraction of mineral substances, paid to any person other than Her Majesty in Right of Canada or Ontario;
- (d) any income or profits tax and any tax on capital paid to any jurisdiction;
- (e) a fine or penalty, other than a prescribed fine or penalty, imposed after March 23, 2006 under the law of a country or of a political subdivision of a country, including a state, province and territory, by any person or public body that has authority to impose the fine or penalty; and
- (f) an outlay made or expense incurred, before or after the day this clause comes into force, for the purpose of doing anything that is an offence under section 3 of the

Corruption of Foreign Public Officials Act (Canada) or under any of sections 119 to 121, 123 to 125, 393 and 426 of the *Criminal Code* (Canada) or an offence under section 465 of the *Criminal Code* (Canada) as it relates to an offence described in any of those sections. R.S.O. 1990, c. M.15, s. 3 (15); 2006, c. 33, Sched. S, s. 1.

Undepreciated capital cost

(16) The undepreciated capital cost of any depreciable property at any time means the amount by which the aggregate of,

- (a) the capital cost of the property acquired before that time; and
- (b) all amounts included in profit by virtue of subsection (17) for a taxation year ending prior to that time,

exceeds the aggregate of,

- (c) the total of the amounts deducted under this Act before that time as an allowance for depreciation with respect to the property;
 - (d) for each disposition of the property or part thereof, the lesser of,
 - (i) the proceeds of disposition of the property or part, and
 - (ii) the capital cost of the property or part; and
 - (e) the total of the amounts not deductible under this Act as a result of the application of clause (12) (e) or subsection (21) in respect of an allowance for depreciation.
- R.S.O. 1990, c. M.15, s. 3 (16).

Recapture

(17) Where, at the end of a taxation year, the aggregate of all amounts determined under clauses (16) (c) and (d) exceeds the aggregate of all amounts determined under clauses (16) (a) and (b), the excess shall be deemed to be proceeds for the purposes of clause (5) (a). R.S.O. 1990, c. M.15, s. 3 (17).

Where not dealing at arm's length

(18) Where any property is acquired from or transferred to a person not dealing at arm's length with the operator, the capital cost of the property to the purchaser for the purposes of this Act and the proceeds of disposition of the property for the purposes of this Act shall be deemed to be,

- (a) the amount or amounts determined in the prescribed manner where the property is depreciable property referred to in subsection (12); and
- (b) fair market value where the property is not depreciable property referred to in subsection (12). R.S.O. 1990, c. M.15, s. 3 (18).

Idem

(19) Where output from a mine is sold to a purchaser who does not deal at arm's length with the operator, the amount of the proceeds for the purposes of clause (5) (a) shall be deemed to be the fair market value of the output. R.S.O. 1990, c. M.15, s. 3 (19).

Idem

(20) Where any goods or services are obtained or acquired from a supplier who does not deal at arm's length with the operator for an amount that exceeds the fair market value of the goods or services, no amount in excess of the fair market value of the goods or services shall be deductible under subsection (5). R.S.O. 1990, c. M.15, s. 3 (20).

Reduction in processing costs

(21) For the purposes of clauses (5) (b), (c), (d), (e), (i) and (j), (12) (a) and 3.1 (3) (a), where a processing plant owned and operated by the operator is,

- (a) located in Ontario, the amount of the operator's expenses, outlays or allowances relating to processing shall be reduced by the proportion that the value of the input of mineral substances mined in Canada outside Ontario is of the total value of the input of mineral substances to the processing plant; or
- (b) located in Canada outside Ontario, the amount of the operator's expenses, outlays or allowances shall be reduced by the proportion that the aggregate of the value of input of,
 - (i) mineral substances from Ontario mines, other than mineral substances from the operator's Ontario mines, and
 - (ii) mineral substances from mines located outside Ontario, whether from the operator's mines or not,

is of the total value of the input of mineral substances to the processing plant.
R.S.O. 1990, c. M.15, s. 3 (21); 1992, c. 4, s. 1 (2).

Processing plant located outside Canada

(22) No deduction shall be made under clauses (5) (c), (d), (e) and (f) for expenses and outlays related to processing at an operator's processing plant located outside Canada.
R.S.O. 1990, c. M.15, s. 3 (22).

Exemption re new mine or major expansion of existing mine

3.1 (1) An operator having an interest during a taxation year in a new mine that came into existence after the 20th day of May, 1987, or in a mine in which a major expansion occurred after the 20th day of May, 1987, may elect to exclude from profit for the taxation year an amount not exceeding the operator's exempt amount for the taxation year for the mine, as determined under subsection (2), if the operator files or has filed a declaration and allocation for the mining tax exemption in the form approved by the Minister at the prescribed time or times. 1992, c. 4, s. 2; 1997, c. 19, s. 14 (1).

Exempt amount

(2) An operator's exempt amount for a taxation year for a mine is the lesser of,

- (a) the operator's profit, if any, from the new mine or from the major expansion of the existing mine, for the portion of the exempt period that is both within the taxation year and after the 30th day of April, 1991; or
- (b) the amount, if any, by which the operator's exemption limit for the mine exceeds the aggregate of all amounts, if any, each of which is an amount excluded under subsection (1) from the operator's profit for a previous taxation year. 1992, c. 4, s. 2.

Determination of profit

(3) The operator's profit from the new mine or from the major expansion of the existing mine shall be determined under subsection 3 (5) as if the operator's interest in the new mine or in the major expansion is the only interest the operator had in a mine during the taxation year provided that,

- (a) the allowance for depreciation under clause 3 (5) (h) shall be the amount equal to

the aggregate of the maximum amounts calculated in accordance with clauses 3 (12) (a) and (b), subject to clauses 3 (12) (d) and (e) and subsection 3 (21); and

- (b) no amount shall be deducted in respect of the allowance for depreciation of the operator calculated under clause 3 (12) (c) in respect of depreciable property that can reasonably be considered to be used in connection with the new mine or the major expansion of the existing mine. 1992, c. 4, s. 2.

Transitional adjustment

(4) If the operator's taxation year commences before the 1st day of May, 1991, the operator may exclude from profit, in addition to any amount determined under subsection (2) for the taxation year, an amount not exceeding the operator's profit, if any, from the new mine or the major expansion of the existing mine for the portion of the exempt period that is both within the taxation year and before the 1st day of May, 1991. 1992, c. 4, s. 2.

Prorating depreciation allowance

(5) If only part of the operator's taxation year is within an exempt period in respect of a new mine or major expansion, the amount of the operator's allowance for depreciation required to be deducted in determining the operator's profit from the mine or major expansion shall be equal to the proportion of the allowance for depreciation determined under clause (3) (a) that the number of days during the portion of the exempt period in the taxation year is of the total number of days in the taxation year. 1992, c. 4, s. 2.

More than one operator

(6) If more than one operator is entitled to elect under subsection (1) to exclude an amount from profit in respect of the same mine, the operators shall determine among themselves the exemption limit of each of them, but in no case shall the total of the operators' exemption limits for the mine exceed \$10,000,000 less the total of all amounts, if any, each of which is an amount that has been excluded under subsection (1) in respect of the mine from the profit of a person who is no longer an operator of the mine. 1992, c. 4, s. 2.

Interpretation

(7) For the purposes of this section,

- (a) an operator's exemption limit for a mine is,
- (i) if there have been no other operators of the mine after the 30th day of April, 1991, \$10,000,000,
 - (ii) if there are or have been other operators of the mine after the 30th day of April, 1991, \$10,000,000 less the aggregate of,
 - (A) all amounts, if any, each of which is an amount that was excluded from profit in respect of the mine under subsection (1) by a person who is no longer an operator of the mine, and
 - (B) all amounts, each of which is the amount of an exemption limit allocated to another operator of the mine in a determination made under subsection (6);
- (b) the exempt period, in respect of a new mine or a major expansion of an existing mine, is the thirty-six month period commencing with the month when the new mine or the major expansion comes into production in reasonable commercial quantities;
- (c) a new mine shall be deemed to come into production in reasonable commercial

quantities on the first day of the month when an operator of the new mine first becomes entitled to receive proceeds from the output of the mine; and

- (d) a major expansion of an existing mine shall be deemed to come into production in reasonable commercial quantities on the first day when the rate of production of mineral substances from the expanded mine exceeds by at least 30 per cent the average daily rate of production of mineral substances from the mine during each of the five calendar years ending immediately before the calendar year in which the first outlay was made to expand the mine. 1992, c. 4, s. 2.

Loss

(8) This section does not apply in respect of a new mine or a major expansion of an existing mine if a determination under this section of the operator's profit from the new mine or the major expansion produces a loss with respect to the portion of the exempt period within the taxation year for which the determination was made. 1992, c. 4, s. 2.

Exempt amount for remote mines

3.2 (1) In this section,

“exempt amount for remote mines” means, with respect to an operator, the amount determined under subsection (4) for a taxation year; (“montant exonéré au titre des mines éloignées”)

“exemption limit” means, with respect to an operator's remote mine, the amount determined under subsection (6); (“limite d'exonération”)

“exempt period” means, with respect to a remote mine, the exempt period described in subsection (5). (“période d'exonération”) 2000, c. 42, s. 72.

Application

(2) This section applies to an operator that has an interest in a remote mine that comes into existence after May 7, 1996. 2000, c. 42, s. 72.

Election by operator

(3) An operator may exclude from the operator's profit for a taxation year ending after May 7, 1996 from remote mines in which the operator has an interest an amount not exceeding the operator's exempt amount for remote mines. 2000, c. 42, s. 72.

Calculation of exempt amount

(4) The operator's exempt amount for remote mines for a taxation year is the total of all amounts, if any, each of which relates to a remote mine in which the operator has an interest and equals the lesser of,

- (a) the operator's profit, if any, from the remote mine for that portion of the exempt period that is during the taxation year; and
- (b) the amount, if any, of the operator's exemption limit, if any, for the remote mine for the taxation year. 2000, c. 42, s. 72; 2001, c. 23, s. 152 (1).

Exempt period

(5) The exempt period for a remote mine is 120 months less the number of calendar months that have passed in the exempt period for the mine under clause 3.1 (7) (b) and the exempt period begins with the month in which any operator of the mine first becomes entitled to receive proceeds from the output of the mine. 2000, c. 42, s. 72.

Exemption limit

(6) The operator's exemption limit for a remote mine for a taxation year is the following amount:

1. If there has been only one operator of the mine since it came into existence, the operator's exemption limit for the mine is the amount, if any, by which \$10 million exceeds the total of all amounts, if any, excluded from profit by the operator for a previous taxation year under subsection (3) or 3.1 (1).
2. If there have been or are two or more operators of the mine, an operator's exemption limit for the mine is the amount, if any, by which \$10 million exceeds the aggregate of,
 - i. all amounts, if any, each of which is an amount that was excluded from profit in respect of the mine by the operator for a previous taxation year under subsection (3) or 3.1 (1),
 - ii. all amounts, if any, each of which is the amount of an exemption limit allocated to another operator of the mine under subsection (7) or 3.1 (6), and
 - iii. all amounts, if any, each of which is an amount that has been excluded under subsection (3) or 3.1 (1) from profit by a person who is no longer an operator of the mine. 2000, c. 42, s. 72.

Exemption limit, more than one operator

(7) If, in a taxation year, more than one operator holds an interest in a remote mine, the operators shall, by agreement, allocate among themselves the exemption limit for the remote mine and each operator shall file a copy of the allocation agreement with its tax return for each taxation year in which the operator makes an exclusion under subsection (3). 2000, c. 42, s. 72.

Restriction on allocation of exemption limit

(8) The total of all operators' exemption limits for a remote mine as allocated under subsection (7) shall not exceed the amount by which \$10 million exceeds the amounts, if any, that have been excluded under subsection (3) or 3.1 (1) from profit by a person who is no longer an operator of the mine. 2000, c. 42, s. 72.

Determination of profit

(9) For the purposes of this section, an operator's profit from a remote mine for a portion of the exempt period that is during a taxation year is determined under subsection 3 (8) as if that portion of the exempt period were a taxation year. 2001, c. 23, s. 152 (2).

Certification of a remote mine

4. (1) The Minister of Northern Development, Mines and Forestry may certify a mine as a remote mine for the purposes of this Act,

- (a) if the mine comes into existence after May 7, 1996;
- (b) if there is a closure plan for the mine under Part VII of the *Mining Act*; and
- (c) if, in the opinion of the Minister of Northern Development, Mines and Forestry, there is at least 30 kilometres between the pit's mouth of the mine and the nearest all-weather road or railway suitable to meet the transportation requirements of the mine. 2000, c. 42, s. 73; 2009, c. 33, Sched. 23, s. 2.

When mine comes into existence

(2) For the purposes of clause (1) (a), a mine is considered to come into existence after

May 7, 1996 in either of the following circumstances:

1. No operator of the mine is entitled to receive proceeds from the output of the mine before May 8, 1996. The mine is separate and distinct geologically from, and has no common workings with, any other mine that is operated at any time before the taxation year in which any operator of the mine first becomes entitled to receive proceeds from the output of the mine.
2. The mine reopens after May 7, 1996 after having been closed for a continuous period of at least 60 months. 2000, c. 42, s. 73.

Application for certification

(3) An operator who wishes to have a mine certified as a remote mine shall apply to the Minister of Northern Development, Mines and Forestry for certification of the mine and shall include in the application,

- (a) evidence, acceptable to the Minister of Northern Development, Mines and Forestry, that the criteria set out in subsection (1) are met; and
- (b) such other information as the Minister of Northern Development, Mines and Forestry may require. 2000, c. 42, s. 73; 2009, c. 33, Sched. 23, s. 2.

Time for applying

(4) An application for certification cannot be made before there is an initial closure plan for the mine under Part VII of the *Mining Act*. 2000, c. 42, s. 73.

Election

(4.1) Subject to subsection (4.2), an operator may elect to calculate its profit for a taxation year under subsection 3 (5) or section 3.1, as the case may be, in respect of a remote mine in which the operator has an interest as if the mine were not a remote mine. 2001, c. 23, s. 153.

Time of election

- (4.2) An operator may elect under subsection (4.1) for a taxation year only if,
- (a) an election under that subsection is made by the operator in a return delivered under section 7 for the taxation year in which the mine was certified as a remote mine; and
 - (b) the operator has not treated the mine as a remote mine for a prior taxation year. 2001, c. 23, s. 153.

Exception

(4.3) Despite clause (4.2) (a), if an operator delivers the return mentioned in that clause before subsection (4.2) comes into force, the operator may elect under subsection (4.1) for a taxation year if,

- (a) the election under subsection (4.1) is delivered to the Minister within 90 days after subsection (4.2) comes into force; and
- (b) the operator has not treated the mine as a remote mine for a prior taxation year. 2001, c. 23, s. 153.

Revocation of certification

(5) The Minister of Northern Development, Mines and Forestry may revoke the certification of a mine under this section,

- (a) if it is reasonable to believe that an incorrect statement was made in the

application or information was omitted from the application for the purpose of obtaining the certification; or

- (b) if either of the criteria set out in clauses (1) (a) and (b) is not met. 2000, c. 42, s. 73; 2009, c. 33, Sched. 23, s. 2 (1).

Effect of revocation

(6) If the certification of a mine is revoked, it shall be deemed never to have occurred. 2000, c. 42, s. 73.

Effect of mine closure

(7) If a mine certified under this section is closed for a continuous period of at least 60 months, the mine ceases to qualify as a remote mine. 2000, c. 42, s. 73.

Reopening of mine

(8) If a mine described in subsection (7) is reopened, it is considered to be a new mine upon the reopening and the operator may make a fresh application for certification of the mine under this section. 2000, c. 42, s. 73.

Definition

(9) In this section,

“pit’s mouth”, in respect of a mine, has the meaning prescribed by regulation. 2000, c. 42, s. 73.

Duty to give notice of active operation

5. (1) The operators of a mine from which any mineral substance is raised, taken or gained shall, within ten days after the commencement of active operation of the mine, give written notice to the Minister that the mine is in active operation, and such notice shall state the name and address of every operator of the mine. R.S.O. 1990, c. M.15, s. 5 (1).

Notice of change

(2) Every operator of a mine that is in active operation shall forthwith give written notice to the Minister of every change in the operator’s name or address and such notice shall contain an address for service of the operator where notices or demands under this Act may be given or served. R.S.O. 1990, c. M.15, s. 5 (2).

Service of notice

(3) Any notice or demand required or provided for by this Act shall be deemed to have been properly and sufficiently given or served on the operator if mailed by registered mail to the address for service given by the operator, and in case no address for service is given as herein required, the notice or demand shall be sufficiently given or served if mailed by registered mail to any address that the Minister considers most likely to bring the notice or demand to the attention of the operator. R.S.O. 1990, c. M.15, s. 5 (3).

Deemed receipt of registered mail

(3.1) A notice or demand mailed to an operator by registered mail under subsection (3) is deemed to have been received on the fifth day after the day of mailing unless the operator establishes that, although acting in good faith, the operator did not receive it or did not receive it until a later date. 2011, c. 9, Sched. 24, s. 3.

Notice of discontinuance

(4) The operators of a mine shall forthwith give written notice to the Minister of every discontinuance of active operation of the mine and of every recommencement thereof after discontinuance. R.S.O. 1990, c. M.15, s. 5 (4).

Meaning of “active operation”

(5) For the purposes of this section and section 6, a mine is in active operation when any operator thereof is regularly entitled to receive proceeds from the output of the mine. R.S.O. 1990, c. M.15, s. 5 (5).

Shipping forbidden before notice

6. (1) No person shall ship, send, remove or carry away or permit to be shipped, sent, removed or carried away from the mine from which the same has been taken any mineral substance or any product thereof until notice has been given to the Minister as required by section 5 that the mine from which the mineral substance or product is taken is in active operation. R.S.O. 1990, c. M.15, s. 6 (1).

Offence

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000. R.S.O. 1990, c. M.15, s. 6 (2).

Functional currency reporting**Definition**

6.1 (1) In this section,

“elected functional currency” of an operator means the currency of a country other than Canada that is the elected functional currency of the operator within the meaning of subsection 261 (1) of the *Income Tax Act* (Canada) for the purposes of that section. 2011, c. 9, Sched. 24, s. 4.

Application of subs. (3)

(2) Subsection (3) applies to an operator in respect of a particular taxation year that begins after December 31, 2010 if the following conditions are satisfied:

1. The operator’s taxation year under this Act coincides with the operator’s taxation year for the purposes of the *Income Tax Act* (Canada).
2. The operator has satisfied the requirements under subsection 261 (3) of the *Income Tax Act* (Canada) in respect of the taxation year.
3. On or before the day that is six months before the end of the taxation year,
 - i. the operator has elected that subsection (3) apply to the operator for the taxation year by filing an election with the Minister of Revenue in the form and manner required by the Minister,
 - ii. the election has not been revoked under subsection (4) for the taxation year,
 - iii. the operator has provided the Minister of Revenue with a copy of the election filed under section 261 of the *Income Tax Act* (Canada) and any other information that the operator has sent to or has received from the Minister of National Revenue in connection with the election, and
 - iv. the operator has provided evidence satisfactory to the Minister of Revenue that the operator has satisfied all conditions set out in this subsection and in subsection 261 (3) of the *Income Tax Act* (Canada).
4. The operator has satisfied any other conditions as may be prescribed by the Minister. 2011, c. 9, Sched. 24, s. 4.

Functional currency tax reporting

(3) The following rules apply to an operator for a particular taxation year with respect

to the operator's elected functional currency:

1. The following amounts in respect of the operator shall be determined using the operator's elected functional currency:
 - i. The amount of the operator's profit or loss from all mines in which the operator has an interest, if any, as determined under this Act for the taxation year.
 - ii. The amount of tax or any other amount payable by the operator for the taxation year under this Act, other than a reimbursement payable by the operator under subsection 11 (4).
 - iii. The amount of tax or other amount refundable or paid to the operator, or applied by the Minister to another liability of the operator, under this Act in respect of the taxation year.
 - iv. Any amount that is relevant in determining the amounts described in respect of the operator under subparagraph i, ii or iii.
2. Unless the context requires otherwise, section 261 of the *Income Tax Act* (Canada) applies for the purposes of this Act with any modifications that are necessary or that may be prescribed by the Minister, including the following modifications:
 - i. References to "taxpayer" in section 261 of that Act shall be read as references to "operator" in this Act.
 - ii. References to "Canadian tax results" in section 261 of that Act shall be read as references to the amounts determined under paragraph 1.
 - iii. References to the "Minister" in section 261 of that Act shall be read as references to the "Minister of Revenue" in this Act. 2011, c. 9, Sched. 24, s. 4.

Revocation

(4) An operator's election under paragraph 3 of subsection (2) is revoked for the purposes of this Act if, on any day in a functional currency year,

- (a) the operator does not satisfy any requirements that may be prescribed by the Minister;
- (b) the operator does not satisfy the requirements under subsection 261 (3) of the *Income Tax Act* (Canada); or
- (c) the operator files a notice of revocation under subsection 261 (4) of the *Income Tax Act* (Canada). 2011, c. 9, Sched. 24, s. 4.

Same

(5) If an operator files a notice of revocation under subsection 261 (4) of the *Income Tax Act* (Canada), the revocation of the operator's election under this Act applies to each taxation year of the operator that begins on or after the day that is six months after the day the notice is filed. 2011, c. 9, Sched. 24, s. 4.

Same

(6) If an operator files a notice of revocation under subsection 261 (4) of the *Income Tax Act* (Canada), the operator shall send a copy of the notice to the Minister of Revenue within 30 days after the notice is filed. 2011, c. 9, Sched. 24, s. 4.

Amounts payable under Act

(7) For greater certainty, in respect of a particular functional currency year or a prior taxation year of an operator, all amounts payable by the operator under this Act or amounts that became collectable and enforceable as if they were tax payable under this Act, are to be paid in Canadian currency. 2011, c. 9, Sched. 24, s. 4.

Regulations

(8) The Minister may make regulations prescribing anything that is referred to in this section as being prescribed by the Minister. 2011, c. 9, Sched. 24, s. 4.

Returns and audits

Returns

7. (1) On or before the last day of the month that ends six months following the close of the taxation year, every operator of a mine in Ontario shall, without notice or demand, deliver to the Minister a return containing an estimate of the tax for which the operator is liable and the return shall be verified by a certificate stating that the information included in the return is in agreement with the books required to be kept under this Act, and such certificate shall be signed by a person who has personal knowledge of the affairs of the operator and the mine, but the Minister may require the person who certified the return to verify under oath the return or any part thereof, and any person so required shall forthwith make and file with the Minister an affidavit verifying the truth of the matters and facts contained in the return. R.S.O. 1990, c. M.15, s. 7 (1).

Audit and inspection

(2) Section 93 of the *Corporations Tax Act* applies for the purposes of this Act and in the application of it,

- (a) references to the corporation liable to pay tax under that Act shall be read as references to the operator liable to pay tax under this Act; and
- (b) the reference in clause 93 (2) (a) to “a return as required by section 75” shall be read as “a return as required under this Act”. 1994, c. 18, s. 6 (7); 2004, c. 16, Sched. D, Table.

Assessment, interest and penalties

Notice of assessment

8. (1) The Minister shall with all due dispatch examine each return delivered under section 7 together with any other information furnished under this Act and shall assess the tax for the taxation year and the interest and penalties, if any, payable. R.S.O. 1990, c. M.15, s. 8 (1).

Interest on deficiency in tax account

(2) Interest at the rate prescribed by the regulations shall be calculated and charged daily and be payable by an operator on the deficiency in the operator’s tax account for a taxation year, for each day there is a deficiency in the tax account after the end of the instalment period for the taxation year. 1994, c. 18, s. 6 (8).

Note: Subsection 8 (2), as re-enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (8), applies in determining the amount of interest in respect of any day that is on or after January 1, 1998, and, for the purposes of determining the amount of interest in respect of any period of time before January 1, 1998, subsections 8 (2), (3), (4), (5), (6), (7), (8), (10), (13), (14) and (15) apply as they read on the day before January 1, 1998. See: 1994, c. 18, s. 6 (24).

Interest on deficiency in instalment account

(3) If an operator is required to pay instalments under this Act in respect of a taxation year, the operator is liable to pay interest at the rate prescribed by the regulations, calculated and charged daily on the deficiency in the operator's instalment account for the taxation year, for each day there is a deficiency in the instalment account during the period from the 25th day of the first month commencing in the taxation year to the end of the instalment period. 1994, c. 18, s. 6 (8).

Note: Subsection 8 (3), as re-enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (8), applies in determining the amount of interest in respect of any day that is on or after January 1, 1998, and, for the purposes of determining the amount of interest in respect of any period of time before January 1, 1998, subsections 8 (2), (3), (4), (5), (6), (7), (8), (10), (13), (14) and (15) apply as they read on the day before January 1, 1998. See: 1994, c. 18, s. 6 (24).

Deficiency, tax account

(4) For the purposes of this Act, the deficiency, if any, in an operator's tax account for a taxation year on a particular day is the amount by which,

(a) the aggregate of,

- (i) the tax payable by the operator under this Act for the taxation year,
- (ii) the interest payable by the operator under subsection (2) in respect of the taxation year during the period after the end of the instalment period for the taxation year but before the particular day,
- (iii) all amounts in respect of the taxation year each of which is refunded or paid by the Minister to the operator or applied by the Minister to another liability of the operator, as the case may be, on or before the particular day,
- (iv) all amounts each of which is an amount previously credited or applied by the Minister to the operator's tax account or instalment account for the taxation year, and included in the amount determined under clause (b), that is subsequently debited or reversed by the Minister on or before the particular day,
- (v) the interest payable by the operator under subsection (3) for the instalment period for the taxation year,
- (vi) all penalties assessed in respect of the taxation year with effective dates on or before the particular day, and
- (vii) all other amounts in respect of the taxation year that became payable under this Act, or became collectible and enforceable as if they were tax payable under this Act, on or before the particular day,

exceeds,

(b) the aggregate of,

- (i) all amounts paid by the operator and applied by the Minister on or before the particular day on account of the operator's liability under this Act for the taxation year and all other amounts not otherwise included under this clause that are credited or applied by the Minister on or before the particular day on account of the operator's liability under this Act for the taxation year,

- (ii) the interest in respect of the taxation year allowed under subsection (8) during the period after the end of the instalment period for the taxation year but not after the particular day, and
- (iii) the interest allowed to the operator under subsection (10) for the instalment period for the taxation year. 1994, c. 18, s. 6 (8); 2009, c. 33, Sched. 16, s. 8.

Note: Subsection 8 (4), as re-enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (8), applies in determining the amount of interest in respect of any day that is on or after January 1, 1998, and, for the purposes of determining the amount of interest in respect of any period of time before January 1, 1998, subsections 8 (2), (3), (4), (5), (6), (7), (8), (10), (13), (14) and (15) apply as they read on the day before January 1, 1998. See: 1994, c. 18, s. 6 (24).

Note: If a taxation year commences before January 1, 1998, the amounts determined under subclauses 8 (4) (a) (ii) and (v) and 8 (4) (b) (ii) and (iii), as enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (8), shall include interest in respect of the taxation year determined for periods before January 1, 1998, calculated under subsections 8 (2), (3), (8) and (10) as they read before January 1, 1998. See: 1994, c. 18, s. 6 (33).

Deficiency, instalment account

(5) For the purposes of this Act, the deficiency, if any, in an operator's instalment account for a taxation year on a particular day in the instalment period is the amount by which,

- (a) the aggregate of,
 - (i) all instalments of tax payable on or before the particular day by the operator in respect of the taxation year,
 - (ii) the interest payable by the operator under subsection (3) in respect of the operator's instalment account for the taxation year for the period before the particular day,
 - (iii) all amounts in respect of the taxation year which are refunded or paid by the Minister to the operator or applied by the Minister to another liability of the operator, as the case may be, on or before the particular day,
 - (iv) all amounts each of which is an amount previously credited or applied by the Minister to the operator's instalment account for the taxation year, and included in the amount determined under clause (b) for the taxation year, that is subsequently debited or reversed by the Minister on or before the particular day, and
 - (v) all other amounts in respect of the taxation year that became payable under this Act, or became collectable and enforceable as if they were tax payable under this Act, on or before the particular day,

exceeds,

- (b) the aggregate of,
 - (i) all amounts paid by the operator and applied by the Minister on or before the particular day on account of the operator's instalment obligations under this Act for the taxation year and all other amounts not otherwise included under

this clause that are credited or applied by the Minister on or before the particular day on account of the operator's instalment obligations for the taxation year, and

- (ii) the interest allowed under subsection (10) on or before the particular day in respect of the operator's instalment account for the taxation year. 1994, c. 18, s. 6 (8).

Note: Subsection 8 (5), as re-enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (8), applies in determining the amount of interest in respect of any day that is on or after January 1, 1998, and, for the purposes of determining the amount of interest in respect of any period of time before January 1, 1998, subsections 8 (2), (3), (4), (5), (6), (7), (8), (10), (13), (14) and (15) apply as they read on the day before January 1, 1998. See: 1994, c. 18, s. 6 (24).

Note: If a taxation year commences before January 1, 1998, the amounts determined under subclauses 8 (5) (a) (ii) and (b) (ii), as enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (8), shall include interest in respect of the taxation year determined for periods before January 1, 1998, calculated under subsections 8 (2), (3), (8) and (10) as they read before January 1, 1998. See: 1994, c. 18, s. 6 (33).

Interpretation

(6) For the purposes of this Act,

- (a) an amount paid by an operator under this Act shall be deemed to be paid on the day prescribed by the regulations;
- (b) the instalment obligations of an operator for a taxation year include the liability of the operator to pay,
 - (i) instalments on account of tax payable for the taxation year as required under this Act,
 - (ii) interest under subsection (3) on the deficiency, if any, in the operator's instalment account for the taxation year, and
 - (iii) any other amounts included in the calculation of a deficiency in the operator's instalment account for the taxation year; and
- (c) the instalment period for a taxation year is the period from the first day of the taxation year to the day immediately before the day the balance, if any, of the tax payable for the taxation year is required to be paid under subsection 2 (2). 1994, c. 18, s. 6 (8); 1996, c. 29, s. 35 (1).

Note: Subsection 8 (6), as re-enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (8), applies in determining the amount of interest in respect of any day that is on or after January 1, 1998, and, for the purposes of determining the amount of interest in respect of any period of time before January 1, 1998, subsections 8 (2), (3), (4), (5), (6), (7), (8), (10), (13), (14) and (15) apply as they read on the day before January 1, 1998. See: 1994, c. 18, s. 6 (24).

Note: If a taxation year commences before January 1, 1998, the amounts determined under subclause 8 (6) (b) (ii), as enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (8), shall include interest in respect of the taxation year determined for periods before January 1, 1998, calculated under subsections 8 (2), (3), (8) and (10) as

they read before January 1, 1998. See: 1994, c. 18, s. 6 (33).

Exception, instalment period

(6.1) Despite clause (6) (c), if, at the time a calculation of interest is done under this Act, the most recent assessment or reassessment for the taxation year was made before the day the balance, if any, of the tax payable for the taxation year is required to be paid under this Act, the instalment period for the taxation year shall be deemed to have ended on the day before the day the assessment or reassessment was made. 1994, c. 18, s. 6 (8).

Note: Subsection 8 (6.1), as enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (8), applies in determining the amount of interest in respect of any day that is on or after January 1, 1998, and, for the purposes of determining the amount of interest in respect of any period of time before January 1, 1998, subsections 8 (2), (3), (4), (5), (6), (7), (8), (10), (13), (14) and (15) apply as they read on the day before January 1, 1998. See: 1994, c. 18, s. 6 (24).

Effective date of penalties

(6.2) The effective date of a penalty assessed under this Act shall be determined in accordance with the following rules:

1. If the penalty is under subsection 15 (1) in respect of a return, the effective date is the date on or before which the operator was required to deliver the return.
2. If the penalty is under subsection 15 (4) in respect of tax payable for a taxation year, the effective date is the date the balance of tax payable, if any, for that taxation year is required to be paid by the operator under subsection 2 (2).
3. In any other case, the effective date is the date the penalty is assessed by the Minister. 1996, c. 29, s. 35 (1).

Assessments and reassessments

(7) Subsections 80 (8), (9), (17) and (18) of the *Corporations Tax Act* apply for the purposes of this Act and, in the application thereof, references to the corporation shall be read as references to the operator. 1994, c. 18, s. 6 (10); 2004, c. 16, Sched. D, Table.

Payment of assessment

(7.1) Every operator shall pay, immediately on receipt of a notice of assessment or reassessment or of a statement of account in respect of a taxation year, any part of the tax, interest, penalties and any other amounts then unpaid in respect of the taxation year, whether or not an objection to or an appeal from an assessment in respect of the taxation year is outstanding. 1994, c. 18, s. 6 (10).

Note: Subsection 8 (7.1), as enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (10), applies in respect of notices of assessment and reassessment and statements of account in respect of any taxation year issued after January 1, 1998. See: 1994, c. 18, s. 6 (25).

Refunds

(7.2) If a return required to be delivered for a taxation year by an operator under this Act is delivered within four years from the end of the taxation year, the Minister,

- (a) may, upon mailing the notice of assessment for the taxation year, refund or pay, without application from the operator, the overpayment, if any, in respect of the taxation year, in the amount determined by the Minister to be the overpayment as

of the day the Minister makes the determination; and

- (b) subject to subsection (7.3), shall refund or pay the overpayment, if any, in respect of the taxation year, in the amount determined by the Minister to be the overpayment as of the day the Minister makes the determination, after mailing the notice of assessment, if the operator has applied for the refund or payment in writing within the period determined under clause 9 (1) (b) for that taxation year. 1994, c. 18, s. 6 (10).

Note: Subsection 8 (7.2), as enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (10), applies to overpayments determined by the Minister on or after January 1, 1998. See: 1994, c. 18, s. 6 (26).

Application to other liabilities

(7.3) Instead of making a refund or payment under this section, if the operator is liable or is about to become liable to make a payment under this Act, or under any other Act administered by the Minister that imposes tax or is prescribed by the regulations, the Minister may apply the amount of the overpayment to the liability and in such case, the Minister shall notify the operator that such action was taken. 1994, c. 18, s. 6 (11).

Note: Subsection 8 (7.3), as enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (11), applies to applications of overpayments made after June 23, 1994, whether or not the overpayment arose before or after June 23, 1994. See: 1994, c. 18, s. 6 (27).

Interest on surplus in tax account

(8) Interest at the rate prescribed by the regulations shall be calculated and allowed daily to an operator on the surplus in the operator's tax account for a taxation year, for each day there is a surplus in the tax account after the end of the instalment period for the taxation year. 1994, c. 18, s. 6 (12).

Note: Subsection 8 (8), as re-enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (12), applies in determining the amount of interest in respect of any day that is on or after January 1, 1998, and, for the purposes of determining the amount of interest in respect of any period of time before January 1, 1998, subsections 8 (2), (3), (4), (5), (6), (7), (8), (10), (13), (14) and (15) apply as they read on the day before January 1, 1998. See: 1994, c. 18, s. 6 (24).

Surplus in tax account defined

(8.1) For the purposes of this Act, the surplus, if any, in an operator's tax account for a taxation year on a particular day is the amount by which,

- (a) the aggregate of,
- (i) the amounts determined under subclauses (4) (b) (i) and (iii) in respect of the operator for the taxation year, and
 - (ii) the interest in respect of the taxation year allowed under subsection (8) during the period after the end of the instalment period for the taxation year but before the particular day,

exceeds,

- (b) the amount determined under clause (4) (a) in respect of the operator for the taxation year. 1994, c. 18, s. 6 (12).

Note: Subsection 8 (8.1), as enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (12), applies in determining the amount of interest in respect of any day that is on or after January 1, 1998, and, for the purposes of determining the amount of interest in respect of any period of time before January 1, 1998, subsections 8 (2), (3), (4), (5), (6), (7), (8), (10), (13), (14) and (15) apply as they read on the day before January 1, 1998. See: 1994, c. 18, s. 6 (24).

Note: If a taxation year commences before January 1, 1998, the amounts determined under subclause 8 (8.1) (a) (ii), as enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (12), shall include interest in respect of the taxation year determined for periods before January 1, 1998, calculated under subsections 8 (2), (3), (8) and (10) as they read before January 1, 1998. See: 1994, c. 18, s. 6 (33).

Refund of overpaid instalments

(9) If the Minister is satisfied, after receiving written application from an operator for a refund under this subsection and before assessing tax payable by the operator for a taxation year, that the total amount of monthly instalments paid by the operator in respect of the taxation year exceeds the amount of tax that is or will be payable by the operator for the taxation year, the Minister may refund the excess amount to the operator before the end of the taxation year. R.S.O. 1990, c. M.15, s. 8 (9).

Interest on surplus in instalment account

(10) Interest at the rate prescribed by the regulations shall be computed and allowed daily to an operator on the surplus in the operator's instalment account for a taxation year, for each day there is a surplus in the instalment account during the period from the 25th day of the first month commencing in the taxation year to the end of the instalment period. 1994, c. 18, s. 6 (13).

Note: Subsection 8 (10), as re-enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (13), applies in determining the amount of interest in respect of any day that is on or after January 1, 1998, and, for the purposes of determining the amount of interest in respect of any period of time before January 1, 1998, subsections 8 (2), (3), (4), (5), (6), (7), (8), (10), (13), (14) and (15) apply as they read on the day before January 1, 1998. See: 1994, c. 18, s. 6 (24).

Surplus, instalment account

(10.1) For the purposes of this Act, the surplus, if any, in an operator's instalment account for a taxation year on a particular day in the instalment period is the amount by which,

(a) the aggregate of,

- (i) the amount determined as of the particular day under subclause (5) (b) (i) in respect of the operator for the taxation year, and
- (ii) the interest allowed under subsection (10) in respect of the operator's instalment account for the taxation year for the period before the particular day,

exceeds,

(b) the amount determined as of the particular day under clause (5) (a) in respect of the operator for the taxation year. 1994, c. 18, s. 6 (13).

Note: Subsection 8 (10.1), as enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (13), applies in determining the amount of interest in respect of any day that is on or after January 1, 1998, and, for the purposes of determining the amount of interest in respect of any period of time before January 1, 1998, subsections 8 (2), (3), (4), (5), (6), (7), (8), (10), (13), (14) and (15) apply as they read on the day before January 1, 1998. See: 1994, c. 18, s. 6 (24).

Note: If a taxation year commences before January 1, 1998, the amounts determined under subclause 8 (10.1) (a) (ii), as enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (13), shall include interest in respect of the taxation year determined for periods before January 1, 1998, calculated under subsections 8 (2), (3), (8) and (10) as they read before January 1, 1998. See: 1994, c. 18, s. 6 (33).

[\(11\)](#) Repealed: 1994, c. 18, s. 6 (14).

[\(12\)](#) Repealed: 1994, c. 18, s. 6 (14).

Note: The repeal of subsections 8 (11) and (12) by the Statutes of Ontario, 1994, chapter 18, subsection 6 (14) applies to taxation years commencing on or after January 1, 1998. See: 1994, c. 18, s. 6 (28).

Interest, after objection or appeal

[\(13\)](#) Where by a decision of the Minister or of a court after the filing of an objection or an appeal under this Act it is finally determined that the tax payable under this Act by an operator for a taxation year is less than the amount assessed to which the objection was made or from which the appeal was taken and, as a result of the decision there is a surplus in the operator's tax account or instalment account for a taxation year, the interest rate prescribed by the regulations for the purposes of this subsection, and not the rate prescribed for the purposes of subsection (8) or (10), as the case may be, shall be used to determine the amount of interest for the purposes of those subsections, for each day that the surplus in the account is attributable to the decision. 1994, c. 18, s. 6 (15).

Note: Subsection 8 (13), as re-enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (15), applies in determining the amount of interest in respect of any day that is on or after January 1, 1998, and, for the purposes of determining the amount of interest in respect of any period of time before January 1, 1998, subsections 8 (2), (3), (4), (5), (6), (7), (8), (10), (13), (14) and (15) apply as they read on the day before January 1, 1998. See: 1994, c. 18, s. 6 (24).

Nil interest until return delivered

[\(14\)](#) If a return for a taxation year is not delivered under this Act until after the day on which it is required to be delivered, or the return as delivered does not comply with the requirements under this Act or does not contain all the information or documents required by the Minister to be delivered with or as part of the return, the interest rates prescribed by the regulations for the purposes of this section to determine the amount of any interest allowed to the operator in respect of the taxation year to which the return relates shall be deemed to be nil for the period from the day the return was required to be delivered under this Act to the day after the day the return as required under this Act or the information or documents, as applicable, are delivered to the Minister. 1994, c. 18, s. 6 (15).

Note: Subsection 8 (14), as re-enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (15), applies in determining the amount of interest in respect of any day that

is on or after January 1, 1998, and, for the purposes of determining the amount of interest in respect of any period of time before January 1, 1998, subsections 8 (2), (3), (4), (5), (6), (7), (8), (10), (13), (14) and (15) apply as they read on the day before January 1, 1998. See: 1994, c. 18, s. 6 (24).

Overpayment defined

(15) For the purposes of this section, an overpayment in respect of a taxation year of an operator as of a particular day is an amount equal to the surplus as of that day in the operator's tax account for the taxation year as determined under this section, except that in determining the amount included under clause (8.1) (b), the amount determined under subclause (4) (a) (iii) shall not include the overpayment being determined. 1994, c. 18, s. 6 (15).

Note: Subsection 8 (15), as re-enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (15), applies in determining the amount of interest in respect of any day that is on or after January 1, 1998, and, for the purposes of determining the amount of interest in respect of any period of time before January 1, 1998, subsections 8 (2), (3), (4), (5), (6), (7), (8), (10), (13), (14) and (15) apply as they read on the day before January 1, 1998. See: 1994, c. 18, s. 6 (24).

Interest off-set

(15.1) Despite subsections (2) and (3),

- (a) the total interest payable by an operator on the deficiency in its instalment account and in its tax account for a taxation year for the period from the first day of the instalment period for the taxation year to the assessment date for the taxation year shall be the amount, if any, by which,
 - (i) the total of the interest charged and payable under subsection (3) for the instalment period for the taxation year and under subsection (2) for the period after the end of the instalment period but not after the assessment date,exceeds,
- (ii) the total interest allowed under subsection (10) to the operator for the instalment period for the taxation year and under subsection (8) for the period after the end of the instalment period for the taxation year but not after the assessment date; and
- (b) the total interest payable by an operator on the deficiency in its tax account for a taxation year for each statement period after the assessment date referred to in clause (a) shall be the amount, if any, by which the total interest charged and payable under subsection (2) for the particular statement period exceeds the total interest allowed for the statement period under subsection (8). 1994, c. 18, s. 6 (15).

Note: Subsection 8 (15.1), as enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (15), applies in determining the amount of interest in respect of any day that is on or after January 1, 1998, and, for the purposes of determining the amount of interest in respect of any period of time before January 1, 1998, subsections 8 (2), (3), (4), (5), (6), (7), (8), (10), (13), (14) and (15) apply as they read on the day before January 1, 1998. See: 1994, c. 18, s. 6 (24).

Same

(15.2) Despite subsections (8) and (10),

- (a) the total interest allowed to an operator on the surplus in its instalment account and in its tax account for a taxation year for the period from the first day of the instalment period for the taxation year to the assessment date for the taxation year shall be the amount, if any, by which,
 - (i) the amount determined under subclause (15.1) (a) (ii) in respect of the operator for the taxation year, exceeds,
 - (ii) the amount determined under subclause (15.1) (a) (i) in respect of the operator for the taxation year; and
- (b) the total interest allowed to an operator on the surplus in its tax account for a taxation year for each statement period after the assessment date referred to in clause (a) shall be the amount, if any, by which the total interest allowed under subsection (8) for the particular statement period exceeds the total interest charged and payable for the statement period under subsection (2). 1994, c. 18, s. 6 (15).

Note: Subsection 8 (15.2), as enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (15), applies in determining the amount of interest in respect of any day that is on or after January 1, 1998, and, for the purposes of determining the amount of interest in respect of any period of time before January 1, 1998, subsections 8 (2), (3), (4), (5), (6), (7), (8), (10), (13), (14) and (15) apply as they read on the day before January 1, 1998. See: 1994, c. 18, s. 6 (24).

Definitions, statement period, etc.

(15.3) In this section, in respect of a taxation year of an operator,

- (a) the assessment date for the taxation year for the purposes of subsections (15.1) and (15.2) is the day the most recent assessment or reassessment for the taxation year is made;
- (b) a statement period is the period of time commencing on the day immediately following the day when a statement of account for the taxation year is issued, or an assessment or reassessment in respect of the taxation year is made by the Minister, as the case may be, and ending on the day the next statement of account for the taxation year is issued by the Minister; and
- (c) a statement of account is a statement that the Minister may issue to the operator from time to time containing an accounting as of a particular date of the operator's liability under this Act for the particular taxation year. 1994, c. 18, s. 6 (15).

Note: Subsection 8 (15.3), as enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (15), applies in determining the amount of interest in respect of any day that is on or after January 1, 1998, and, for the purposes of determining the amount of interest in respect of any period of time before January 1, 1998, subsections 8 (2), (3), (4), (5), (6), (7), (8), (10), (13), (14) and (15) apply as they read on the day before January 1, 1998. See: 1994, c. 18, s. 6 (24).

Application of payments received

(16) An amount paid, applied or credited on account of amounts payable under this Act by an operator in respect of a particular taxation year shall be applied,

- (a) first, against the tax payable by the operator for the particular year;
- (b) second, against any penalty payable by the operator in respect of the particular year;
- (c) third, against any interest payable by the operator in respect of the particular year; and
- (d) fourth, against any other amount or amounts payable by the operator in respect of the particular year. 1994, c. 18, s. 6 (17).

Note: Subsection 8 (16), as re-enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (17), applies to amounts paid, applied or credited on or after January 1, 1998. See: 1994, c. 18, s. 6 (29).

Collection of debt under *Financial Administration Act*

(17) A debt due to the Crown by an operator under section 8.1 of the *Financial Administration Act* in respect of a payment under this Act may be collected and enforced under the provisions of this Act as if it were tax payable by the operator for the taxation year to which the payment relates, once written notice of the debt has been sent by mail to the operator. 1994, c. 18, s. 6 (18).

Recovery of excess refund

(18) If an amount in respect of a taxation year has been refunded or paid to an operator under this Act or applied by the Minister to another liability of the operator and the Minister subsequently determines that the amount refunded, paid or applied exceeded the amount to which the operator was entitled under this Act, the amount of the excess is a liability of the operator under this Act from the date the amount was refunded, paid or applied. 1994, c. 18, s. 6 (18).

Assessment of excess refund

(19) The Minister may issue an assessment for the amount of a liability of an operator described in subsection (18) and section 10 applies with necessary modifications to the assessment as though the assessment were made under section 9. 1994, c. 18, s. 6 (18).

Reassessment

9. (1) The Minister may,

- (a) at any time, if the operator filing a return,
 - (i) has made any misrepresentation or committed any fraud in filing the return or supplying any information under this Act,
 - (ii) has failed to file the financial information with the return required to be filed under section 7,
 - (iii) has been negligent in supplying any information under this Act,
 - (iv) has filed with the Minister a waiver in the form approved by the Minister on or before the later of,
 - (A) the expiry of a four-year period commencing on the day of mailing of the notice of an original assessment, and

(B) the latest day such a waiver could be filed under this Act for any previous taxation year; or

(v) has claimed a deduction described in clause 3 (15) (f) before or after the day on which that clause comes into force; and

(b) in any other case, on or before the later of,

(i) the expiry of a four-year period commencing on the day of mailing of the original notice of assessment, and

(ii) the latest day on which a reassessment, additional assessment or assessment can be made under any predecessor of this clause for any previous taxation year,

reassess or make additional assessments, or assess a tax, interest or penalties, as the circumstances require. R.S.O. 1990, c. M.15, s. 9 (1); 1997, c. 19, s. 14 (2); 2006, c. 33, Sched. S, s. 2.

Revocation of waiver

(2) Where the Minister is authorized to issue an assessment under subsection (1) by reason only that the operator has filed a waiver under subclause (1) (a) (iv), the Minister may not issue an assessment later than one year after the date on which the operator has filed a notice of revocation of the waiver in the form approved by the Minister. R.S.O. 1990, c. M.15, s. 9 (2); 1997, c. 19, s. 14 (3).

Pension plan withdrawals

(3) Despite subsection (1), where any amount is withdrawn by an operator from an employees' superannuation or pension fund or plan, the Minister may reassess the amount of tax payable by the operator under this Act for a maximum of ten taxation years immediately preceding the taxation year in which the withdrawal is made, and may disallow the deduction of all or any part of the amounts previously deducted by the operator in the calculation of the profit of the mine for such taxation years with respect to contributions made by the operator and any predecessor thereof to such fund or plan, but in no case shall the total of the amounts disallowed for such taxation years exceed the lesser of the amount withdrawn from the fund or plan and the amount of such contributions to the fund or plan as determined in the prescribed manner. R.S.O. 1990, c. M.15, s. 9 (3).

Objections and appeals

10. Sections 84 to 91 and 92.1 of the *Corporations Tax Act* apply for the purposes of this Act, and in the application thereof the following rules apply:

1. References therein to "a corporation" and "the corporation" shall be read as "an operator" and "the operator", respectively.
2. The reference to section 80 of that Act in subsection 84 (1) and clause 84 (7) (a) shall be read as a reference to sections 8 and 9 of this Act.
3. The reference in subsection 84 (6) to "clause 80 (11) (b) or (c)" shall be deemed to be a reference to clause 9 (1) (b) of this Act.
4. Clause 84 (7) (b) is not applicable for the purposes of this Act.
5. Clause 84 (7) (d) shall be read without reference to the words "if section 92 does not apply".
6. All references therein to sections 84, 85 and 87 of that Act, and subsections thereof

as applicable, shall be deemed to be references to those sections and subsections as made applicable by this section.

7. The reference to subsection 80 (18) in section 86 shall be deemed to be a reference to that subsection as made applicable by section 8 of this Act. R.S.O. 1990, c. M.15, s. 10; 2004, c. 16, Sched. D, Table; 2006, c. 33, Sched. S, s. 3; 2011, c. 9, Sched. 24, s. 5.

Books of account

11. (1) Every operator shall keep at or near the mine, or at such place determined under subsection (3), proper books of account showing,

- (a) the quantity, weight, value, composition and other particulars of the mineral substances raised, taken or gained from the mine;
- (b) the returns from the processing plant;
- (c) the proceeds from the output of the mine;
- (d) each of the several expenses, payments and allowances deducted pursuant to section 3; and
- (e) any other facts and circumstances necessary or proper for ascertaining the amount of tax imposed by this Act. R.S.O. 1990, c. M.15, s. 11 (1).

Removal of mineral substances from mining premises

(2) No mineral substance raised, taken or gained from any mine shall be removed from the mining premises or processed at any processing plant until the weight of the mineral substance has been ascertained and entered in the books of account required to be kept under subsection (1). R.S.O. 1990, c. M.15, s. 11 (2).

Idem

(3) The Minister may determine the number and character of books required to be kept under subsection (1) and may require that the books of account mentioned in subsection (1) be kept at such place in Ontario as the Minister determines. R.S.O. 1990, c. M.15, s. 11 (3).

Costs

(4) An operator shall reimburse the Minister for all costs incurred by the Minister to examine books of account at the place where they are kept outside Canada by the operator and the Minister may forthwith take all remedies available under this Act or at law to recover such costs. 1992, c. 4, s. 3.

Retention of books of account

(5) Subsection 94 (3) of the *Corporations Tax Act* is applicable for the purposes of this Act and, in the application thereof, the reference to “every corporation” shall be read as “every operator”. R.S.O. 1990, c. M.15, s. 11 (5); 2004, c. 16, Sched. D, Table.

Entry to mine

12. (1) Any person authorized by the Minister for any purpose related to the administration or enforcement of this Act may at all reasonable times enter upon any mine in Ontario and the operator of the mine shall,

- (a) permit such person to descend all pits and shafts and use all tackle, machinery, appliances and things belonging to or under the control of the operator that the person considers necessary or expedient for the purposes of carrying out his or her duties under this subsection;

- (b) give to such person free ingress and egress to, from and over all buildings, erections, structures and vessels used in connection with the mine and any processing plant at which mineral substance taken from the mine is processed or in any way modified; and
- (c) permit the person to take such samples or specimens of mineral substance as the person considers necessary for the purpose of determining their value by assay or otherwise. R.S.O. 1990, c. M.15, s. 12 (1).

Definition

(2)In this section,

“mineral substance” includes diatomaceous earth, limestone, marl, peat, clay, building stone, stone for ornamental or decorative purposes, non-auriferous sand or gravel, natural gas or petroleum or sodium chloride recovered by the solution method. R.S.O. 1990, c. M.15, s. 12 (2).

Confidentiality

13. (1) Every person employed or formerly employed directly or indirectly in the administration or enforcement of this Act or in the development and evaluation of tax policy for the Government of Ontario shall preserve secrecy with respect to all matters related to this Act that come to his or her knowledge in the course of such employment and shall not communicate any information or material related to any such matter to any other person not legally entitled thereto except,

- (a) as may be required in connection with the administration or enforcement of this Act or any other Act administered by the Minister or the regulations under any of them;
- (b) as may be required in connection with the development and evaluation of tax policy by the Government of Ontario or the Government of Canada;
- (c) to counsel for the person required by this section to preserve secrecy; or
- (d) with the consent of the person to whom the information or material relates. R.S.O. 1990, c. M.15, s. 13 (1); 1994, c. 18, s. 6 (19).

Offence

(2) Every person who contravenes this section is guilty of an offence and on conviction is liable to a fine of not more than \$2,000. R.S.O. 1990, c. M.15, s. 13 (2).

Agreements to exchange information

(3) Despite subsection (1), the Minister may, for the purpose of aiding in an investigation for taxation purposes under this or any other Act, enter into an agreement with the Government of Canada or of any province under which officers of such government will be allowed access to information obtained or any written statement furnished under this Act and officers of the Government of Ontario will be allowed access to information obtained or any written statement furnished under any Act of such government. R.S.O. 1990, c. M.15, s. 13 (3).

Compromising disputes as to liability for tax

14. If any doubt or dispute arises as to the liability of an operator to pay the tax or any portion of the tax demanded under this Act, or if owing to special circumstances it is deemed inequitable to demand payment of the whole amount imposed by this Act, the Minister may accept such amount as the Minister considers proper. R.S.O. 1990, c. M.15, s. 14.

Penalty for failure to deliver return

15. (1) Every operator or person who fails to deliver a return for a taxation year as and when required under this Act, or fails to include in the return or deliver with the return any information or documents required to be delivered as part of or with the return, shall pay a penalty equal to 5 per cent of the amount, if any, of the deficiency in the operator's tax account for the taxation year as of the day the return was required to be delivered, as determined under section 8 before taking into consideration the penalty being imposed under this subsection. 1994, c. 18, s. 6 (20).

Note: Subsection 15 (1), as re-enacted by the Statutes of Ontario, 1994, chapter 18, subsection 6 (20), applies in respect of failure to deliver returns required to be delivered under this Act on or after January 1, 1998. See: 1994, c. 18, s. 6 (32).

(2) Repealed: 1994, c. 18, s. 6 (20).

(3) Repealed: 1994, c. 18, s. 6 (20).

Statements or omissions in return

(4) Where a person, acting or purporting to act on behalf of an operator, knowingly, or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, has made, or has participated in, assented to or acquiesced in the making of, an incorrect statement or omission (in this subsection referred to as a "false statement") in a return, certificate, statement or answer (in this subsection referred to as a "return") filed or made in respect of a taxation year as required by or under this Act or the regulations, the operator is liable to a penalty of 25 per cent of the amount, if any, by which,

(a) the tax for the year that would be payable by the operator under this Act if the operator's profit for the taxation year was computed by adding to the operator's profit for the taxation year as reported by the operator in the return for the year that portion of the understatement of profit for the taxation year that is reasonably attributable to the false statement,

exceeds,

(b) the tax for the year that would have been payable by the operator under this Act had the tax payable for the taxation year been assessed on the basis of the information provided in the operator's return for the taxation year. R.S.O. 1990, c. M.15, s. 15 (4).

Offences

16. (1) Every operator that fails to deliver a return as and when required by this Act or the regulations is guilty of an offence and, in addition to any penalty otherwise provided, on conviction is liable to a fine of not less than \$200 for each day of default. R.S.O. 1990, c. M.15, s. 16 (1).

Idem

(2) Every person who fails to comply with or contravenes subsection 93 (7) of the *Corporations Tax Act*, as made applicable by subsection 7 (2) of this Act, section 11 or subsection 12 (1), is guilty of an offence and, in addition to any penalty otherwise provided, on conviction is liable to a fine of \$200 for each day during which the default or contravention continues. R.S.O. 1990, c. M.15, s. 16 (2); 2004, c. 16, Sched. D, Table.

Officers of corporations

(3) Sections 96 and 97 of the *Corporations Tax Act* apply for the purposes of this Act. R.S.O. 1990, c. M.15, s. 16 (3); 2004, c. 16, Sched. D, Table.

False statements

17. Every person who has,

- (a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer delivered or made as required by or under this Act or the regulations;
- (b) to evade payment of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of the records or books of account of an operator;
- (c) made, or assented to or acquiesced in the making of, false or deceptive entries, or omitted, or assented to or acquiesced in the omission, to enter a material particular, in records or books of account of an operator;
- (d) wilfully in any manner evaded or attempted to evade compliance with this Act or payment of taxes imposed by this Act; or
- (e) conspired with any person to commit an offence described by clauses (a) to (d),

is guilty of an offence and, in addition to any penalty otherwise provided by this Act, is liable on conviction to a fine of not less than the greater of \$500 or 50 per cent of the amount of the tax that should have been shown to be payable or that was sought to be evaded and not more than double the amount of the tax that should have been shown to be payable or that was sought to be evaded, or to imprisonment for a term of not more than two years or to both fine and imprisonment. R.S.O. 1990, c. M.15, s. 17.

Collection

18. (1) Sections 99, 100, 102, 103, 104, 105, and 106 of the *Corporations Tax Act* apply with necessary modifications for the purposes of this Act and, without limiting the generality of the foregoing, references therein to “a corporation” and “the corporation” with respect to a person liable to pay an amount under that Act shall be read as “an operator” and “the operator” for the purposes of this Act. R.S.O. 1990, c. M.15, s. 18 (1); 1994, c. 18, s. 6 (21); 2004, c. 16, Sched. D, Table.

Unregistered liens discharged

(2) Any property of any kind that is, by virtue of any predecessor of this section, subject to a first lien and charge that is not registered in the proper land registry office, is absolutely discharged from such unregistered first lien and charge unless, in the case of real property, in any proceeding a claim has been made or other steps taken by the Minister with respect to such unregistered first lien and charge or, prior to the 1st day of January, 1988, a notice of such first lien and charge has been registered by the Minister in the proper land registry office. R.S.O. 1990, c. M.15, s. 18 (2).

Injunction or receiver

19. In addition to any other remedy for the recovery of any tax imposed under this Act, an injunction or an order in the nature of an injunction or the appointment of a receiver with all necessary powers, or such other relief or remedy as seems necessary or expedient for securing payment of the tax may, in any case where any tax under this Act is overdue or where the payment of any accrued or future tax seems in danger, be obtained by application to a judge of the Superior Court of Justice at the instance and in the name of the Minister to prevent the removal, transportation or transmission of any ore, mineral substance or mineral-bearing substance, or to prevent or restrict mining operations, or to provide for such

operations upon such terms and conditions as the judge considers proper. R.S.O. 1990, c. M.15, s. 19; 2001, c. 23, s. 154.

Action to recover amounts

20. (1) If any amount required to be paid under this Act or the reimbursement required under subsection 11 (4) is not paid when due, the same may be recovered with costs from the operator by an action to be tried without a jury at the suit of the Minister in any court of competent jurisdiction. R.S.O. 1990, c. M.15, s. 20 (1); 1994, c. 18, s. 6 (22).

Action by Minister does not abate

(2) Any action that may be brought under this Act may be brought by the Minister as plaintiff, and it is not necessary to name the Minister, and the action does not abate by reason of a change in the person of the Minister or by reason of the office being vacant at any time, but the action may proceed as if no change had been made or no vacancy existed. R.S.O. 1990, c. M.15, s. 20 (2).

Remedies in subss. (1), (2) additional to all other remedies

(3) The remedies and the rights of action provided in subsections (1) and (2) are in addition to all other rights and remedies that may be exercised under this Act. R.S.O. 1990, c. M.15, s. 20 (3).

Regulations

21. (1) The Lieutenant Governor in Council may make regulations,

(a) prescribing rates of interest for the purposes of this Act or a formula for computing those rates and the method of calculating that interest;

.....

(c) prescribing anything that by this Act is to be prescribed or is to be determined by the regulations;

(d) defining any word or expression used in this Act or the regulations made under this Act that has not already been expressly defined in this Act;

.....

(f) prescribing the manner of determining the profit for the taxation year of an operator who is a member of a partnership or a beneficiary of a trust where the partnership or trust is operating a mine;

(g) prescribing the manner of determining and the matters to be taken into account in determining whether there is a mine project that is a new mine or a major expansion of an existing mine for the purposes of clause 3 (12) (c) and section 3.1 and the time at which a mine project is completed for the purposes of clause 3 (12) (c). R.S.O. 1990, c. M.15, s. 21 (1); 1992, c. 4, s. 4; 1994, c. 18, s. 6 (23); 1997, c. 19, s. 14 (4).

Note: The amendment to clause 21 (1) (g), as enacted by the Statutes of Ontario, 1992, chapter 4, section 4, applies in respect of taxation years of operators ending after April 30, 1991. See: 1992, c. 4, s. 5 (3).

Regulation may be retroactive

(2) A regulation made under subsection (1) may be made effective retroactively to a date not earlier than the 1st day of January, 1974. R.S.O. 1990, c. M.15, s. 21 (2).

Forms

22. The Minister may approve the use of forms for any purpose of this Act and the forms may provide for such information to be furnished as the Minister may require. 1997, c. 19, c. 14 (5).

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